

The potential of South Sudan's national law on protection and assistance to IDPs

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South Sudan faces significant and complex humanitarian challenges but the recent drafting of a national IDP law reflects a renewed commitment to and vision for protecting its citizens.

As of June 2020, there were more than 1.67 million internally displaced persons (IDPs) in South Sudan, while 2.2 million South Sudanese were refugees in neighbouring countries. Over 200,000 IDPs are hosted in UNMISS Protection of Civilian Sites. In 2013 the former UN Special Rapporteur on the human rights of IDPs, Chaloka Beyani, undertook a mission to South Sudan, and reported on the absence of adequate capacity and institutional preparedness to prevent and respond to internal displacement in the short, medium and longer term. In particular, the mission recommended a comprehensive policy framework for South Sudan.

Further reports highlighted the dire need for prevention and indicated that protection challenges for IDPs in South Sudan result from complex and overlapping drivers of conflict; many IDPs have been repeatedly displaced due to a variety of compounding causes such as inter-communal violence, security concerns and natural disasters. The human cost of this conflict is immense, characterised by human rights violations, the targeting of civilians by armed groups, and the forced displacement of civilians.

2018: a pivotal year

In what turned out to be a remarkably significant year for the protection of IDPs, in 2018 South Sudan embarked on the development of a national IDP law entitled the Protection and Assistance to Internally Displaced Persons Act 2019. The draft national legislation, an initiative of the Government of South Sudan through its Ministry of Humanitarian Affairs and Disaster Management (MHADM) and parliamentary committees, sought to domesticate the 2009 Kampala Convention as well as the 1998 Guiding Principles on Internal Displacement

to make them applicable in South Sudan. This process of formulating a national IDP law – galvanised and supported by the GP20 initiative – has led to the ratification of the Kampala Convention by the Government of South Sudan. And at the global level, the adoption of the Global Compact on Refugees (GCR) and South Sudan's commitment to implementation of the GCR provide an opportunity to achieve comprehensive solutions for displaced South Sudanese. These developments signalled the commitment of the government to enhance protection for IDPs and to redouble efforts towards ending the current displacement situation. The former Minister for Humanitarian Affairs and Disaster Management, Hussein Mar Nyuot, on forwarding the draft legislation to the Ministry of Justice, noted that the national legislation would also reinforce the ongoing implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) signed in 2018. The R-ARCSS provides for return and reintegration of refugees and IDPs as an integral element in the process of achieving durable peace in South Sudan.

Reflections on developing the national law

Those drafting the national law took a participatory approach in order to better identify the needs of IDPs and the challenges faced by the government to respond adequately to internal displacement. The GP20 Plan of Action provided the necessary coordination mechanisms for stakeholders and for the participation of IDPs (and assessment of their needs). The South Sudan GP20 partners, led by MHADM and UNHCR, galvanised a number of stakeholders including government line ministries and departments, humanitarian and development

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actors, academia, civil society, IDPs, the African Union, donors and other stakeholders, thereby ensuring a whole-of-society approach. It is important in such a process that those leading consultations with senior policymakers in government have expertise in law-making on internal displacement.

In terms of the actual process, a workshop on law and policy was first convened jointly by UNHCR and MHADM in July 2018, to which IDPs were invited. The workshop marked the starting point for consultations with IDPs and senior government officials, helping to build their understanding of IDP law making and boost their knowledge base to ensure their informed and effective participation. Following this, there was a 'validation' event for government officials to affirm the importance of the process; this was important in order to cultivate political will around the legislation. Furthermore, the participation of line ministries both at technical and ministerial levels enabled an exchange on practical issues on coordination of protection and assistance to IDPs that in turn supported the development of the institutional arrangements as framed in the national law.

IDP participation in the process was then widened out through UNHCR-led countrywide consultations with IDPs and host communities. This was critical to informing the draft law. For example, it became evident during the consultations that women are likely to face challenges in reclaiming property left behind during displacement due to their lack of documentation and due to discriminatory cultural practices; as a result, appropriate protection for women's property rights was included in the draft law. However, effective access to and consultation with IDPs and host communities – vital if their perspectives and priorities are to influence the development and implementation of the law – proved extremely challenging in some areas due to conflict, while limited infrastructure and internet access made it difficult to carry out data collection.

Following this, consultations with stakeholders at a high-level event in September 2018 led to validation of a zero

draft of the national law. Discussions revolved around issues of State responsibility, coordination of protection and assistance, and durable solutions. Discussions on State responsibility led to a recommendation for the government to play a stronger role in providing protection and assistance, linking this with the need to a) enable IDPs to have a free choice of durable solution, namely voluntary return, local integration or resettlement, and b) improve security and strengthen rule of law to enable returns to happen in safety and with dignity. On the question of coordination, it was noted that provision of protection and assistance to IDPs requires a multi-tiered approach. In this regard, the consultations recommended an inter-ministerial coordination mechanism complemented by lower-level operational and technical inter-sectoral forums dedicated to addressing the situation of IDPs. The monitoring role of human rights institutions was particularly noted as being key to establishing checks and balances.

Finally, building further on the participatory process, a seminar was co-hosted by UNHCR, MHADM and the University of Juba to sensitise members of public on the IDP law and seek their insights on issues of protection and assistance for IDPs. The seminar was attended by over 70 participants drawn from line ministries, the Transitional National Legislative Assembly (TNLA), the African Union and regional organisations, UN agencies, national and international NGOs, community/faith-based organisations, academia, national media, and South Sudan's law society. It is envisaged that public awareness campaigns will be undertaken once the law is presented by the Ministry of Justice to the TNLA for enactment as a draft bill.

Addressing the protection and solutions gap

South Sudan had adopted a National Framework on Return, Resettlement and Reintegration in 2017 to provide a framework for humanitarian assistance and reconstruction in South Sudan. The government revised this Framework in October 2019 but although it represents an

important step towards the search for durable solutions, it lacks the comprehensiveness of a legal framework as envisaged by the Guiding Principles and the Kampala Convention. The development of a piece of national legislation on internal displacement was thus timely, in view also of the country's accession to the Kampala Convention which calls on national governments to enact or amend relevant legislation to protect and assist IDPs (Article III, 2). Since the Kampala Convention incorporates the 1998 Guiding Principles on Internal Displacement, domesticating it provides a legal normative basis for application of the Guiding Principles in addressing the situation of IDPs in South Sudan. The national legislation thus presents a unique opportunity to deal coherently with the need for IDP protection, based on both a whole-of-government and a whole-of-society approach.

Innovatively, the draft law adapts international protection benchmarks to suit local conditions; for example, it establishes special protection measures to safeguard housing, land and property rights for women and children. Recognising the challenges of achieving durable solutions in the current context, the law provides for pragmatic approaches such as area-based programming, transitional solutions, and the use of cash assistance to strengthen the resilience of communities. In parallel with the Guiding Principles, the legislation specifically focuses on solutions to internal displacement by providing options for return, integration in the location of displacement, or resettlement to another part of the country.

Another way in which the draft law profoundly focuses on solutions is by incorporating the guidance of the IASC Framework on Durable Solutions, hence making it applicable in the country. The law also establishes a fund to support its implementation (provided through the allocation of 30% of national oil revenues), an approach that is new to the region and one that will ensure that humanitarian responses and strategies for long-term solutions are funded from the country's own resources rather than being dependent on external funding. The national legislation thus aligns

with the spirit of the GCR and has potential to strengthen implementation of the R-ARCSS towards a lasting peace in South Sudan.

Creating and maintaining momentum

Looking back at the process of developing the law, it is worth noting that the GP20 Action Plan was key to galvanising a multi-stakeholder commitment to developing the national law, and remains an important forum to support the enactment of the draft legislation by the TNLA and the implementation of the law once enacted. The strong partnership created by GP20 with the Government of South Sudan is likely to aid its implementation further.

Importantly, having a national legal framework for IDPs also builds awareness of the government's primary responsibility in law, obliging it to a large extent to allocate the requisite resources for the protection and assistance of IDPs, including durable solutions. Harnessing opportunities created at the regional and global level through the implementation of the Kampala Convention and the GCR will also be important in creating the necessary momentum to implement the law. Finally, however, while the development of the draft national law represents an important step, continued commitment and momentum in enacting and implementing the law are vital if IDPs are to be adequately protected and assisted, and if they are to achieve durable solutions.

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