

Beyond good intentions: implementing the Kampala Convention

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The new African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) outlines the obligations of a wide range of actors in all phases of displacement.

Africa is taking the lead in formulating human rights standards to legislate for protection and assistance for IDPs. Angola, Burundi, Sierra Leone and Uganda were among the first in the world to develop national policies or plans of action based on the UN Guiding Principles on

the domestication of the Guiding Principles into national legislation.

Even as this process was underway, the AU recognised the need to have an overarching continent-wide legal framework on IDPs in Africa, similar to the 1969 Organisation of

African Unity Convention governing the Specific Aspects of Refugee Problems in Africa.

The approach for drafting the Kampala Convention² borrowed heavily from the IC/GLR process, most notably the principles of participation, inclusiveness, partnership

and ownership. In this regard, the concept of 'comprehensive leadership' that recognises the need for inputs from all stakeholders was adopted. Within this framework, inter-ministerial committees and thematic experts from member states played a key role in the drafting process, with critical input from CSOs including human rights and humanitarian NGOs, trade unions, women and youth groups. Before the adoption of the Kampala Convention at the Special Summit on Refugees, Returnees and IDPs in October 2009, CSOs developed a communiqué presented to the Heads of States, in which they raised questions on

such issues as statelessness, birth registration and enforcement of existing international and African standards, which they felt were not adequately addressed by the Convention or hindered effective protection at the national level.³ An AU-CSO pre-summit meeting (organised by the AU Citizens and Diaspora Directorate and the Pan African Movement) contributed to the AU Action Plan for speedy ratification and implementation of the Convention. CSOs will be involved in monitoring and evaluating progress on implementing the Convention and the ensuing AU Action Plan.

Opportunities

The Convention outlines general provisions for the prevention of displacement. It summarises measures aimed at preventing and mitigating internal displacement by eradicating the root causes, such as persistent and recurrent conflicts and the effects of natural disasters. The Convention requires states to modify their national criminal law in order to "declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity" (Article 4(6)) – a measure that resonates positively with the need to restrict African states and non state actors' tendency to displace populations as a war or counter-insurgency strategy or in order to disenfranchise groups associated with political opposition.

Inclusion of civil society in the drafting process provided useful criticism and expertise that helped capture disparate causes of displacement and contextual challenges to effective response. CSOs also helped refine the drafts by pointing out factual errors, aligning the Convention's obligations with provisions of the Guiding Principles and making suggestions on the language such as on obligations of armed groups. The Convention



The prime minister of Uganda, Apolo Nsubambi, (right) with Sierra Leone's foreign minister, Zeinab Bangura, at the African Union Summit in Kampala, Uganda, 19 October 2009.

Internal Displacement. From 1999, the International Conference on the Great Lakes Region (IC/GLR), a joint UN-AU (African Union) effort to address complex conflicts, displacement and underdevelopment in the Great Lakes region, led to the formulation and signing of the 2006 Pact on Security, Stability and Development. This Pact, which came into force in June 2008, represents the first multilateral instrument in the world to commit member states to adopt and implement the Guiding Principles, through its Protocol on the Protection and Assistance of Internally Displaced Persons.¹ It also provides the legal basis for

recognises the challenges to durable solutions such as land disputes, disputes relating to property of IDPs and lack of reconciliation. It provides for freedom to choose residence, and calls for “an effective legal framework to provide just and fair compensation” and for states to protect the individual property of IDPs.

The Kampala Convention, like the IC/GLR Protocols, calls for registration of IDPs.⁴ This requirement is designed to address situations where governments minimise or otherwise manipulate numbers of IDPs or make it difficult for them to access assistance or social services.

African states have led the way in signing and ratifying international Conventions and their adoption of the Kampala Convention – in the face of the scale and complexity of the issues – is to be applauded. States often, however, fail to adhere to the binding provisions. In drafting the Convention, states have also incorporated mechanisms to monitor compliance (Article 14), including a regular Conference of State Parties and regular reporting under the African Charter on Human and People’s Rights and the African Peer Review Mechanism. These internal and external mechanisms aim to provide oversight in the implementation of the Convention, safeguard against diplomatic rhetoric and ensure participation of stakeholders in remedying displacement situations governments may be unable or unwilling to respond to.

Like any other legal instrument, the Kampala Convention can be used by advocates as an advocacy tool to encourage member states to acknowledge the plight of IDPs and to provide increased protection and assistance.

The challenge of implementation

In most African countries, good laws are frequently rendered impotent by a political culture of impunity. Perpetrators of human rights violations are often untouchable: powerful people in government, in the economy and in other influential sectors. The strength of their control and influence undermines civil society.



Thousands flee the IDP site and surrounding area in Kibati, north Kivu, Democratic Republic of Congo, November 2008.

This results in a hostile, indeed dangerous, political environment for victims and for advocates pushing for durable solutions. It also translates into protracted situations of displacement, suggesting that displacement in most of Africa is a political question needing far more than legal solutions.

Speaking on the IC/GLR, Zachary Lomo argued that the key problem facing IDPs is not the absence of laws but rather “the absence of strong national systems and local and international commitment to enforce existing international standards.”⁵ The formulation of international or regional standards for protection and assistance for IDPs reflects the good intentions of individuals and groups and states seeking to alleviate human suffering and to promote a human rights culture. These good intentions are often defeated by political imperatives or founder due to lack of an effective strategy of engagement with the powers that be.

In addition to the overarching political challenges, there appear to be disconnects between programming for IDPs and legal provisions. For example, the humanitarian response in Kenya following the 2007 post-election violence relied on agencies’ standard operating procedures (SOPs) and the mechanics of the Cluster Approach, with little reference to existing legal guidelines. In fact, it was towards the end of the intervention that the Protection Cluster began to think of formulating a National

Policy on IDPs based on the IC/GLR Protocols, the Guiding Principles and (lately) the Kampala Convention.

In most African countries, the formulation of regional or international instruments is undertaken by the foreign ministry, with some of these ministries demonstrating limited technical expertise. Often, such ministerial participation is at the highest level, not at the practical level which is guided by existing government policy. Lack of inter-ministerial coordination blocks the entry of new guidelines.

The interval between adoption of regional instruments and coming into force of legislation can lead to protracted legal lacunae in responding to IDPs’ needs – particularly when Members of Parliament are opposed to the legislation, as is often the case because of questions such as land access and the desire for justice.

While multilateral diplomatic processes to adopt the instruments can enjoy political backing, including allocation of resources, such political will wanes very soon after. Indeed, many countries take a very long time to accede to new standards or to deposit their instruments of ratification, thus delaying the coming into force of such standards. States may ignore the new international instruments, citing competing development, reconciliation or reconstruction priorities or lack of resources.

The development of region-wide binding conventions or standards involves much diplomatic bargaining and compromise to reach consensus on issues. Often, the need to move the process forward creates loopholes for states to avoid responsibility for complex problems such as statelessness. In both the IC/GLR and the Kampala Convention, states failed to prioritise the challenge of statelessness or to establish mechanisms to address statelessness.

Suggestions for civil society advocacy

Civil society organisations have identified four key roles that they can play to speed up the implementation of the Convention:

- understand and disseminate the message of the Convention among and within countries and among IDPs so that they can seek the protection and assistance that it offers
- determine how to enable and enhance effective protection and assistance for IDPs based on CSOs' own activities and presence
- explore how the Convention can be used to provide a stronger and clearer legal basis for states and other stakeholders to protect IDPs
- undertake specific post-ratification activities in the AU's Plan of Action.

In addition to these, other actions to be taken to push for speedy ratification and implementation might include:

- coordination with line ministries with national monitoring mechanisms linked to NEPAD⁶ to identify the service delivery gaps and how the provisions of the Convention can mitigate these gaps
- fostering a cordial working relationship with the government. Adversarial advocacy strategies make government officials reluctant to work with human rights groups, which they dismiss as 'noise-makers'. Civil society organisations should conduct research and argue from positions backed by data.
- analysis of the status of ratification of international instruments and

highlighting reservations, and organisation of multi-stakeholder forums to discuss the reservations and possible solutions

- production of periodic audit reports to the AU Economic, Social and Cultural Council (ECOSOCC) to lobby governments (as part of the obligation to monitor compliance)
- provision of technical or advisory services to implementation mechanisms including government bodies and bodies within Regional Economic Commissions (RECs) and the AU
- initiating the drafting of appropriate laws for domestication of international law; understanding the law-making process and identifying allies in parliament; and identifying influential caucuses among MPs and lobbying them to support such laws
- making sure civil society bodies are aware of the Convention and base their strategic plans and programming objectives on key provisions of the Convention
- working with both low- and high-level civil servants to ensure legislation percolates through government and non-governmental programmes, and encouraging the designation of a focal point in each ministry (who should record activities for purposes of institutional memory and continuity)

- focusing advocacy on positive aspects of the Kampala Convention – legislators are often motivated to pass or reject laws by perception of political mileage
- establishing working groups and partnering with global campaigns for peace, security and IDP protection – such as the Global Partnership for the Prevention of Armed Conflict,⁷ the Darfur Consortium,⁸ and R2P (the Responsibility to Protect)⁹.

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1. Protocol at <http://tinyurl.com/2006PactIDPPProtocol>
See also Jesse Bernstein and Olivia Bueno, 'The Great Lakes Process: new opportunities for protection', FMR 29, January 2007 <http://www.fmreview.org/FMRpdfs/FMR29/73.pdf>
2. <http://tinyurl.com/KampalaConvention>
3. Recommendations of the Civil Society Meeting on African Union mechanisms and the Protection of Refugee, IDP and Citizenship Rights, 19-20 October 2009
4. Article 13(1): "State Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control ..."
5. Zachary Lomo 'Regional or national protection for Great Lakes IDPs?' FMR Special Issue December 2006. <http://www.fmreview.org/FMRpdfs/BrookingsSpecial/14.pdf>
6. The New Partnership for Africa's Development <http://www.nepad.org>
7. GPPAC <http://www.gppac.net>
8. <http://www.darfurconsortium.org>
9. Responsibility to Protect <http://www.responsibilitytoprotect.org>

Resource for Civil Society on the Kampala Convention

Civil society has a critical role to play in promoting and supporting implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

To support such efforts, a new *Guide for Civil Society on the Convention for the Protection and Assistance of Internally Displaced Persons in Africa: Supporting the Convention's Ratification and Implementation* is being prepared to provide information on key provisions of the Convention and highlights ways in which civil society can raise awareness of the Convention in AU member states, advocate for its ratification, and contribute to its implementation.

The Guide is being developed in consultation with African civil society organisations through the AU Economic, Social and Cultural Council (ECOSOCC) and the AU Citizens and Diaspora Organisations Directorate (CIDO), and will be published in partnership with the Internal Displacement Monitoring Centre (IDMC).

Arabic, English, French and Portuguese versions of the Guide will be available for download as of mid-2010 at: <http://www.internal-displacement.org> or in hard copy by contacting idmc@nrc.ch or cido@africa-union.org.