

**Developing National Law, Policy and Strategies around the *African Union
Convention for the Protection and Assistance of Internally Displaced Persons in Africa***

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It is an honour and privilege to be with you today. I would like to thank the African Union and the Pan-African Movement for the invitation to participate in this pre-summit to next week's AU Summit on Forced Displacement in Africa, with special thanks to our host, the Government of Uganda. It was 10 years ago that I first came to Kampala, at the invitation of the Office of the Prime Minister as it was convening, together with the Norwegian Refugee Council's Global IDP Project, the world's first-ever national training workshop on the UN *Guiding Principles on Internal Displacement*. The Guiding Principles, which restate the rights of internally displaced persons (IDPs) based on international human rights and humanitarian law, very much informed the drafting of the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*. So, it seems only fitting that is here in Kampala where this landmark document is scheduled for adoption by heads of State next week.

The draft AU Convention is significant, both for Africa and as what is poised to become the world's first international convention for protecting, assisting and finding solutions for IDPs. Africa has a long-standing tradition of leadership and innovation on issues of forced migration, beginning with the 1969 OAU *Convention Governing the Specific Aspects of the Refugee Problem in Africa*. Africa also is home to many world "firsts" regarding internal displacement. To begin with -- though it is hardly an enviable distinction -- Africa is the continent hardest hit by the global crisis of internal displacement and African States consistently feature prominently -- in fact, long have topped -- the list of individual countries worldwide with the most IDPs.

At the same time, Africa often has led the way in mobilizing attention and launching initiatives to address this problem. As mentioned, it was in Africa and indeed in this very city, that the world's first national workshop on the Guiding Principles was held in 1999. Already the year earlier, and just months after the Guiding Principles were presented to the UN in 1998, the world's first regional seminar devoted to internal displacement was held, co-organized by the OAU, UNHCR and the Brookings Institution. In the years that followed, all of Africa's sub-regional organizations -- ECOWAS, IGAD and SADC -- likewise convened seminars on internal displacement, which brought together States and civil society to identify recommendations for enhanced responses in each sub-region. Consistently prominent among these recommendations was the call for States to incorporate the Guiding Principles into national legislation and policy. It was in Angola where the world's first national legislation based on the Principles was adopted, with the 2000 *Norms on Resettlement of Displaced Populations*; and in Uganda where the first national policy on IDPs was developed. A number of other African countries have followed suit. This trend is mirrored in other parts of the world. Africa has gone one step further: the *Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons* agreed to by 11 member States of the International Conference on the Great Lakes Region, makes it a *legal obligation* for States to incorporate the Guiding Principles into domestic law.

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The draft *AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa* represents the culmination of these efforts. Its significance lies in the unified commitment of African States to address the continent's crisis of internal displacement through a comprehensive, collective and collaborative approach.

Yet, the anticipated adoption of the Convention next week is just the first step. The Convention's effectiveness, and the true measure of African leadership in addressing internal displacement that it represents, will depend upon the degree of compliance. So, how to ensure the Convention's significance does not end with the signing ceremony? How to translate its words into deeds, or more specifically, into concrete improvements to the safety and well being of Africa's IDPs?

National law, policy and strategy on internal displacement are among the most important tools for translating the rights and responsibilities articulated in the Convention into reality. The critical importance of doing so is clearly and firmly stated in the draft Convention itself. In *Article 3(3)*, State Parties commit themselves, among their core obligations, to enact or amend relevant domestic legislation in conformity with their obligations under international law and "to adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels."

IDPs, as persons who remain within their own country, are entitled, without discrimination, to the same rights as the rest of the population. This means that protecting, assisting and finding solutions for IDPs is, first and foremost, a national responsibility; the international community has only a subsidiary role to play. To provide guidance, *A Framework for National Responsibility* has been developed which identifies 12 steps that Governments can take to address internal displacement.¹ Among the benchmarks for realising national responsibility are: to ensure a legal framework that upholds the rights of IDPs; and to develop a national policy or strategy on internal displacement.

These steps are important because, as the UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, has pointed out, "one important yet often underestimated cause for many of the difficulties encountered by internally displaced persons is the fact that general legislation does not take into account their specific needs and vulnerabilities"; as a result, they often face tremendous obstacles to enjoy the rights guaranteed to them under national legislation.² For instance, in some countries, internally displaced children cannot enjoy their right to education simply because they cannot produce the documents necessary to be admitted to school in the locality to which they fled. Of course, when one is suddenly forced to flee because one's village is under attack or is engulfed in a natural disaster, gathering the necessary identity documents is hardly the priority; even when this is possible, these documents often are lost or even confiscated in the course of flight. Similarly, many IDPs are denied their right to participate in elections for lack of documentation or because there are no provisions for absentee voting. In some countries, national responses focus only on certain IDPs, for instance, on people uprooted by conflict, while overlooking those displaced by natural disasters who often face similar difficulties accessing their rights; or focus on IDPs in camps, whereas in many situations many IDPs, often even the majority, are not in camps, but with host families or in collective centres or still on the run.

While the legal obstacles that IDPs face in accessing their rights can be significant, they are not insurmountable. The key is to incorporate international obligations and norms into domestic law and policy. In so doing, reference should be made to the Guiding Principles on Internal Displacement. Although not a legally binding document, the Principles are based on and reflect international human rights and humanitarian law, which is binding. In 2005, heads of State and Government at the UN World Summit recognized the Guiding Principles as an "important international framework for the protection of internally displaced persons." As Kofi Annan, then UN Secretary-General, has stressed, this World Summit's statement calls for promoting the Principles through their incorporation at the domestic level. Some 20 countries have adopted

legislation on internal displacement based on the Principles; a number of others are in the process of doing so.

It must be stressed that it is not sufficient simply to make general references to the Guiding Principles or even transcribe the Principles word-for-word in a national IDP law or policy; while valuable as a normative statement of commitment to the Principles, this does little to make them operational in a practical manner. Rather, what is required is to bring the range of relevant national legislation and policy in line with the international standards reflected in the Principles. For instance, in the examples cited earlier, this would entail reviewing and making necessary amendments to the national education law and policy as well as to the electoral code to ensure that IDPs can access their rights to education and to vote in elections.³

Practical guidance to support States can be found in the *Manual for Law and Policy Makers on Internal Displacement* developed by the UN RSG on IDPs, working with a wide range of experts, including representatives from Africa.⁴ Moreover, for the elaboration of strategies (whether international or national) to address internal displacement, guidance can be found in the *Inter-Agency Handbook for the Protection of Internally Displaced Persons*.⁵ Specifically in Africa, conferences of States and civil society in the IGAD and SADC sub-regions have elaborated various elements that States should be expected to include in any national policy on internal displacement.

The adoption of a national policy or strategy on internal displacement is a distinct, but complementary, measure to the enactment or amendment of national legislation. Approaches will differ depending upon the particular situation in a country. For instance, the focus may be on a specific phase of displacement, as in Angola with the norms on resettlement and return, or it may be more comprehensive in addressing all phase of displacement, as is the case with Uganda's national policy on IDPs. Regardless of its scope and specific content, a national policy or strategy must spell out institutional responsibilities for its implementation, including the roles and responsibilities of different government ministries and agencies, the different levels of government (national, regional and local) and an effective coordination mechanism among them. An essential finding borne out by the experience in Angola, Uganda and in many other countries is that while the actual drafting of a national policy or strategy most likely will take place in the capital city, specific attention and support must be given to the role of regional, district and local authorities, who are often more directly confronted with the plight of internally displaced persons and thus are an essential flank in the overall national response. An interesting example comes from Nigeria where the process of developing the national policy on internal displacement was being informed by a series of regional consultations with local authorities, civil society, IDPs and host communities in the various affected regions.

Indeed, civil society can be an invaluable source of support in the elaboration of national law and policy. Experience in Africa and around the world underscores that national laws, policies and strategies are most effective when these are developed in partnership with civil society including, most certainly, in consultation with IDP communities. NGOs specializing in legal issues can make important contributions by: studying national legislation, identifying specific areas where amendments are needed in line with international standards, advocating for these amendments with the Government and supporting IDPs with legal assistance to claim and access their rights. In some countries, civil society has been directly and formally involved in national initiatives to develop policies and strategies on internal displacement, by being given seats at the drafting table. States also have found civil society to be valuable partners in implementation of laws and policies. In Angola, the *Norms on Resettlement* not only guaranteed IDPs' access to land and assistance enabling their self-reliance, but also specifically provided for the active involvement of local community groups in the return process.

Civil society has an especially crucial role to play in monitoring the implementation of national legislation and policy. In the draft AU Convention, Article 14, States agree to establish a Conference of State Parties to monitor and review implementation of the Convention; States

also will be required, when presenting their report under the African Charter on Human and Peoples' Rights, to indicate the legislative and other measures undertaken to give effect to the Convention. Civil society can provide invaluable input and independent analysis to be taken into account in these reviews.

In conclusion, national law, policy and strategy on internal displacement are tremendously important tools for translating the rights and responsibilities articulated in the Convention into reality. Arguably, they are the key to unlocking the Convention's tremendous protection potential. Dr. Adisa, Director of the African Union Commission's Citizens and Diaspora Directorate (CIDO), in his opening remarks to this forum, emphasized the need "to translate this Convention into domestic legislations, by filling gaps and loopholes where they exist."

Of course, as with Convention itself, national laws, policies and strategies are only as good as their implementation. As has been stressed elsewhere by the African Commission on Human and Peoples' Rights' Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, Bahame Tom Nyanduga:

Unless African States address the gap between the assumption of international legal obligations, their implementation and domestication, the adoption of additional instruments will not alleviate human rights violations, including those affecting internally displaced persons.⁶

To guard against an implementation gap with the AU Convention on IDPs, the Plan of Action that is to follow and the provisions for monitoring and periodic review of national implementation efforts are all tremendously important. So too are the obligations of each State to devote necessary financial resources to addressing internal displacement and to designate a national focal point for coordinating implementation efforts, including with civil society.

The dialogue and spirit of partnership characterizing this joint AU-NGO pre-summit will be instrumental to the processes of ratification and the implementation of the Convention. As emphasized earlier today, the true value of words lies in the actions they engender. The energy, ingenuity and commitment that is so evident in this assembled group of civil society is certain also to be vital to ensuring that the words of the final AU Convention are, in fact, followed by corresponding and concrete action -- to protect, assist and find solutions to the plight of Africa's displaced.

¹ Erin Mooney, *Addressing Internal Displacement: A Framework for National Responsibility* (Brookings Institution-University of Bern Project on Internal Displacement, 2005). The Framework is available in 11 languages, including Arabic, French, and Portuguese. It was presented to the United Nations Commission on Human Rights by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, as UN Doc. E/CN.4/2006/71/Add.1 (23 Dec. 2005) and at regional conferences, including to ECOWAS and SADC.

² Walter Kälin, 'Internal Displacement and the Role of Parliamentarians in Times of Crises,' Statement to the Inter-Parliamentary Union, 120th meeting, Addis Ababa, 9 April 2009.

³ See Erin Mooney and Jessica Wyndham, '*The Right to Education in Situations of Internal Displacement*' and Jeremy Grace and Erin Mooney, '*The Right to Political Participation, in particular the Right to Vote, in Situations of Internal Displacement*' in forthcoming compilation of the studies on which the Manual (see note 4) was based; to be published by the American Society of International Law and Brookings-Bern Project.

⁴ *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (Brookings-Bern Project on Internal Displacement, 2008).

⁵ *Handbook for the Protection of Internally Displaced Persons*, Provisional Release (Global Protection Cluster Working Group, 2007), available at: www.humanitarianreform.org/Default.aspx?tabid=294. The final edition of the Handbook is forthcoming in early 2010.

⁶ Bahame Tom Nyanduga, Statement to the Regional Seminar on Internal Displacement in the SADC Region, Gaborone, Botswana, 24-26 August 2005, co-sponsored by SADC, UNHCR and the Brookings-Bern Project on Internal Displacement. The report of this seminar is available at: www.brookings.edu/idp/contents.aspx#SADC