

An African Solution to Internal Displacement: AU Leaders Agree to Landmark Convention

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Meeting at the Special Summit of the African Union in Kampala, Uganda on 22-23 October 2009, African heads of state and government have undertaken significant commitments to solve one of the continent's (and the world's) most pressing humanitarian crises—the displacement of an estimated 11.6 million men, women, and children within the borders of their own countries. These commitments are reflected in the adoption of the first instrument to legally bind an entire region on matters of internal displacement.

By placing their signatures on the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, these leaders affirmed the leading role and responsibility of their national governments in protecting and assisting internally displaced persons (IDPs) and preventing situations of internal displacement in the region as well as within their individual countries by addressing the phenomenon's root causes.

Decades of recurrent armed conflict, combined with natural disasters and the effects of climate change, have given rise to sizable populations of internally displaced persons (IDPs) throughout the region. Although the total number of individuals currently suffering from internal displacement in Africa is the lowest in a decade, there is still a greater number of IDPs in this region than in any other in the world.

Three of the world's top five countries with the largest populations of conflict-induced IDPs are in Africa; Sudan, with an estimated 4.9 million IDPs, tops the list. In addition, populations of internally displaced persons numbering over 1 million can currently be found in the Democratic Republic of Congo and Somalia as well. Hundreds of thousands of IDPs can also be found in Cote d'Ivoire, Ethiopia, Kenya, Uganda, and Zimbabwe. Overall, at least 20 African states are currently experiencing the internal displacement of their citizens.

The lives of these IDPs and others like them elsewhere around the world that have been forced from their homes and arbitrarily displaced within their own countries are fundamentally transformed and shattered by their displacement. Displacement not only violates an individual's dignity but can also amount to a violation of their human rights, including *inter alia* their rights to life, shelter, food, an adequate standard of living, property, equality, and non-discrimination. It also often exposes the most vulnerable among them, women and children in particular, to illness, destitution, exploitation, gender-based violence, and forcible recruitment into armed groups.

The African leaders who endorsed the Convention in Kampala have explicitly recognized the link between promoting peace, security, and development on the continent and the need to mitigate the plight of those forced to flee their homes and communities because of armed conflict, human rights abuses, and other threats, including natural disasters. In contrast to refugees, who cross an internationally recognized boundary, IDPs are not protected under international law and often fall through the protection gap at the

domestic level. Many can remain in limbo, marginalized, and vulnerable to human rights violations for extended periods.

The Convention demonstrates the commitment of African governments to protect the fundamental rights and freedoms of internally displaced persons, facilitate durable solutions to displacement, and ensure that millions of people are no longer excluded from society as a whole. In this sense, the Convention contributes to Africa's overall security and development architecture in addition to serving as the centerpiece of regional responses to displacement.

Strengthening the Protection Framework: The AU Contribution to the Law of Internal Displacement

The new IDP Convention makes a significant contribution to the law of internal displacement. Its adoption at the Kampala Summit represents the culmination of a five-year, African-led process of consultations, drafting, and negotiations that can be traced to a July 2004 decision of the African Union's Executive Council that IDPs in Africa should be provided with an adequate framework at the regional level for protection and assistance.

What emerged from this process is a legally binding instrument for all of Africa, one that references and simultaneously reinforces existing international standards for protecting the human rights of IDPs established by the Guiding Principles on Internal Displacement. By doing so, the Convention has contributed to the Principles' universal authority and their evolution from "soft law" to "hard standards." It can also serve as a model instrument for other regions and individual countries experiencing internal displacement to consider adapting to their own conditions.

Among its many provisions, the Convention affirms the panoply of rights enjoyed by IDPs under human rights and humanitarian law, including the right of all persons to be protected from arbitrary displacement and the right of those displaced to seek protection and assistance. However, as a protection instrument, the Convention is focused first and foremost on elaborating the obligations of States parties during all phases of internal displacement—from prevention through protection of individuals during displacement and efforts to facilitate their sustainable return, local integration, or relocation.

In addition to categorically prohibiting displacement and its use as a means of warfare, i.e. ethnic cleansing, the Convention requires States parties to criminalize acts of arbitrary displacement. Notably, national authorities bound by the Convention are also obliged to ensure that individuals who commit acts of arbitrary displacement are held responsible for these acts. This obligation extends to holding non-state actors, such as insurgencies and rebel groups, private military contractors, and multinational corporations, accountable for arbitrary displacement.

In the same vein, the Convention requires armed groups that are distinct from those of the state to protect and assist internally displaced persons in areas under their effective control. Moreover, armed groups—like formal States parties to the Convention—are called upon to provide humanitarian organizations with access to the displaced and facilitate the delivery of relief supplies to those in need. Assistance to local communities that host internally displaced persons is also called for by the Convention.

The Convention's Signatories have stipulated to a number of concrete measures to be taken at the national level in order to prevent displacement and protect and assist those who are arbitrarily displaced. These

range from complying with international human rights and humanitarian law to developing early warning and disaster management systems.

Signatories to the Convention have also agreed to designate institutional focal points on internal displacement in each of their countries to facilitate coordination among relevant government agencies and with local and international partners. The Convention also obliges governments to provide compensation and other reparations to remedy the harm suffered by persons as a result of their displacement.

Together, these measures will go a long way toward fulfilling each State party's national responsibility to address internal displacement and respond to the needs of those displaced. Combined with provisions calling for cooperation among States parties and with international organizations, humanitarian agencies, and civil society organizations to protect IDPs, the Convention is a potentially effective instrument.

No international treaty is perfect, and the AU IDP Convention does have a few weaknesses. Concerns over the lack of effective enforcement mechanisms and insufficient guarantees for equality and non-discrimination have been raised. Similarly, there is some question regarding the extent to which non-state actors and armed groups called upon by the Convention to protect IDPs can be bound by its provisions. Nevertheless, the Convention, which has benefited from the input of international experts, is considered to be generally consistent with international standards such as the Guiding Principles on Internal Displacement.

The task ahead for the Signatories and the Convention's supporters is to implement its provisions in a timely fashion and in a manner that makes a real difference to the lives of persons affected by internal displacement in the region, including host communities.

Ratification and Implementation: From Paper to Concrete Protections

The first step forward should involve a process of national dialogue and civic education aimed at securing the Convention's ratification and implementation by the States parties. This process can provide a good opportunity for all stakeholders at the national level to carefully review and consider the nature and scope of the rights and obligations set forth in the Convention.

The role of civil society and national human rights institutions will be key to transforming the commitments made by those who gathered in Kampala into concrete protections for the internally displaced. These actors, which include law societies, faith-based organizations, civic associations, and IDPs themselves, can play important roles in promoting greater awareness about the Convention, advocating for its ratification, and working on implementation issues. Their participation in the drafting of implementing legislation required by the Convention will be of particular importance.

In addition to providing legal and humanitarian assistance to IDPs directly and advocating on their behalf, civil society will also be able to provide national authorities with additional capacity and expertise to carry out reforms that are necessary to implement the Convention. This includes assisting in efforts to facilitate property dispute resolution, strengthening political participation, supporting measures to unify families separated during displacement, and monitoring compliance with the Convention.

The Convention will enter into force as a legally binding instrument once it has been ratified by 15 states. When this takes place, Africa will affirm its position at the forefront of efforts to develop regional frameworks to protect internally displaced persons. Other regions will hopefully follow their lead.