

The

# KAMPALA CONVENTION

One year on: Progress and prospects

(6.12.13)



NORWEGIAN  
REFUGEE COUNCIL





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**One year on: Progress and prospects**

## Acknowledgements

This report would not have been realized without the hard work and dedication of many people and organisations that not only have a vested interest in humanitarian issues in Africa, but also have the passion and zeal to work in difficult and sometimes dangerous situations. To all such people, we want to thank them most sincerely for their commitment to humanity.

We also wish to thank all the people who were involved in researching, drafting, reviewing, fact-checking, editing, and proof-reading this report for their expertise and effort.

Finally, we wish to thank most sincerely our dedicated partners, both as individuals and organisations, for their continued technical and financial support, especially towards the implementation of the Kampala Convention and the regional consultative workshops with member states to this end.

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Addis Ababa, Ethiopia 2013

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Front cover photo: Reports of massacres sent thousands of people fleeing in the Central African Republic.  
UNHCR/ B. Heger, September 2013

Back cover photo: An IDP camp, Masisi, North Kivu, DR Congo. Jonathan Haymes, October 2013

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# FOREWORD

Today we celebrate the first year anniversary of the entry into force of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The convention is unprecedented in the world as a critical tool for addressing the situation of internally displaced people (IDPs), and the speed at which it has been signed and ratified bears witness to the commitment that African states have made to their protection.

We recognise the tremendous potential the implementation of the convention holds, but we also bear witness to an ever-deepening situation of internal displacement in Africa in recent years. The number of children, women and men forced to flee their homes continues to grow, and displacement caused by conflict and violence in the region now accounts for 40 per cent of forced migration globally. The impact of climate change has progressively taken hold, with both intense sudden-onset and deteriorating slow-onset disasters uprooting people across the continent. Available estimates suggest that as many as 8.1 million people were displaced by sudden-onset disasters in Africa in 2012 alone.

The scale of internal displacement in Africa calls for a response that goes beyond any one entity's capabilities. The only way in which we can chip away at its impact is to join forces, and rally resources, expertise and leadership from regional bodies, governments and civil society.

The Kampala Convention highlights just such a need for collaboration and participation. In this spirit, the African Union (AU) Commission has produced this report in collaboration with the Norwegian Refugee Council (NRC) to take stock of the progress made in its ratification and implementation. It is our hope that the report will contribute to the continuing momentum of the process.

Since the convention's adoption in October 2009, 19 member states have shown leadership in completing ratification, and a good proportion of them are engaged in the domestication process. This would not have been possible without the contribution of a number of stakeholders. The AU is pleased to have played a critical convening and facilitating role, which has led to concrete results such as the establishment of national action plans, monitoring and evaluation mechanisms, and a model law to guide the development of legislation to implement the convention. The AU has also taken an active role in supporting the advancement of risk management plans at the regional level.

Together, the AU and NRC reaffirm their commitment to gather evidence and develop practical tools to guide effective programming based on the principles and standards set out by the Kampala Convention.



*NRC Secretary-General Jan Egeland and AU Commissioner for Political Affairs Dr. Aisha Abdullahi*

# FOREWORD

The entry into force a year ago today of the AU Kampala Convention was an historic milestone in the protection of Africa's internally displaced people (IDPs) and a beacon of hope for them. African states showed regional unity and vision in attempting to address a problem of enormous proportions and shattering human cost, and committed themselves to taking specific steps to assist and protect the continent's IDPs.

Promoting the national domestication and implementation of the convention as a means of enhancing the protection of IDPs' rights is a central priority for both of our mandates. We are therefore delighted to introduce this report, produced jointly by the AU Commission and NRC's Internal Displacement Monitoring Centre (IDMC).

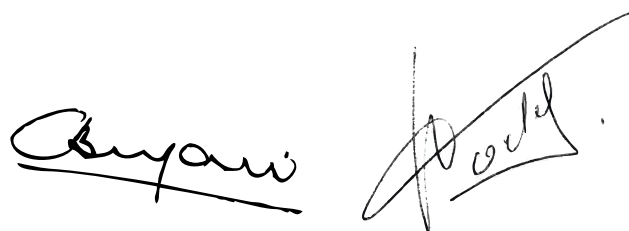
Twelve months after the convention entered into force, we note steady progress in its ratification, and welcome the fact that several states have moved towards incorporating its provisions into their legal systems. We temper these encouraging messages, however, with the sobering observation that internal displacement continues to impose hardship upon millions of people in Africa, and we call on African leaders to be relentless in implementing the convention at home.

As with any other international legal framework, it will require commitment and leadership to put the Kampala Convention's

provisions into practice. Only its domestication and implementation will make it possible to improve the lives of millions of uprooted people and prevent the displacement of millions more.

In keeping with the UN Guiding Principles on Internal Displacement, the convention provides definitions that fully address displacement caused by conflict, generalised violence, human-made or natural disasters and development projects - all of them widespread drivers of forced migration in Africa. As a corollary to the rights-based Guiding Principles, it establishes a comprehensive set of obligations under which states are to prevent displacement, assist and protect IDPs, and seek durable solutions for them.

The first anniversary of the convention's entry into force is an opportunity to reaffirm the spirit in which it was adopted and the hope it provides for millions of IDPs in Africa.

The image shows two handwritten signatures in black ink. The signature on the left is 'Chaloka Beyani' and the signature on the right is 'Maya Sahli Fadel'.

*UN Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, and AU Special Rapporteur on refugees, asylum seekers, internally displaced persons and migrants, Maya Sahli Fadel*



## NORTHERN AFRICA

	New during 2012	Cumulative as of end 2012
Conflict, violence, human rights violations	0	200,000
Rapid-onset disaster (natural hazard-related)	600	Undetermined (26,900 newly displaced during 2008–2012)

## WESTERN AFRICA

	New during 2012	Cumulative as of end 2012
Conflict, violence, human rights violations	314,168	1,268,500
Rapid-onset disaster (natural hazard-related)	6,698,600	Undetermined (8,911,600 newly displaced during 2008–2012)



## CENTRAL AFRICA

	New during 2012	Cumulative as of end 2012
Conflict, violence, human rights violations	1,106,000	2,929,800
Rapid-onset disaster (natural hazard-related)	572,200	Undetermined (822,700 newly displaced during 2008–2012)

## SOUTHERN AFRICA

	New during 2012	Cumulative as of end 2012
Conflict, violence, human rights violations	280	760,000
Rapid-onset disaster (natural hazard-related)	303,900	Undetermined (1,796,000 newly displaced during 2008–2012)

**WELCOME!**  
**Angola, Malawi  
and Rwanda**

All newly ratified  
in the last 12 months

- Legally bound
- Signed, but not legally bound
- Unsigned

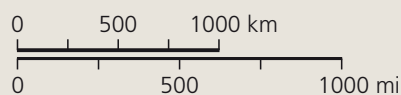


# KAMPALA CONVENTION 2013: Who's in?



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by IDMC.

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# INTRODUCTION

On 6 December 2012, the African Union convention for the protection and assistance of internally displaced people (IDPs) in Africa, the so-called Kampala Convention, adopted in Kampala, Uganda on 23 October 2009, came into force. The world's first legally binding continental convention on internal displacement, the Kampala Convention represents an innovative and comprehensive framework to address both the needs of those displaced, as well as the needs of the communities that take them in and offer refuge. It draws on international humanitarian law (IHL) as well as international human rights law (IHRL) to form a basis, not only for humanitarian response, but also for sustained and holistic engagement across a range of internal displacement stakeholders.

One year after the entry into force of the convention, this report seizes the opportunity of this first anniversary to see how far African countries have come in assisting and protecting their internally displaced populations, while identifying the challenges that lay ahead. The report focuses on four key issues relating to internal displacement: national responsibility, forced evictions, displacement due to disasters, and the important role of civil society organisations and IDPs themselves in addressing internal displacement. Each chapter is accompanied by a case study which serves to highlight how different African Union (AU) member States are using the Kampala Convention to prevent and mitigate the effects of internal displacement.

Geographically, this report covers all five regions of the AU: central, eastern, northern, southern and western. There is little mention of northern Africa, not because there are no internally displaced people there, but because none of the countries in the region had signed or ratified the convention as of 6 December 2013. Whereas the main focus of the report is on progress made in countries that have ratified the convention, not all countries that have ratified are reflected in this report; instead, a few countries with specific good practices have been highlighted as a way of sharing experiences and lessons learnt. The report also highlights progress made in countries that have not yet ratified the convention but have made considerable progress in responding to internal displacement in line with the principles of the convention, such as development of national frameworks and policies.

## Internal displacement in Africa

More than a third of the world's 28.8 million conflict IDPs in 2012 were displaced in Africa, and three African countries—Sudan, the Democratic Republic of Congo (DRC) and Somalia—have consistently appeared among the five biggest internal displacement crises worldwide over the last five years<sup>1</sup>. The headline figure, however, refers only to people internally displaced by conflict, who

are estimated to represent at least twice the number of conflict-induced refugees<sup>2</sup>. The number of people who fled their homes as result of sudden-onset natural disasters across the continent in 2012 is estimated to be as high as 8.2 million<sup>3</sup>. Even these figures do not fully reflect the scale and complexity of displacement patterns in Africa. A lack of knowledge about the extent to which development projects such as mining and large-scale land purchases for agribusiness are displacing local populations means such people remain largely uncoun- ted. The same can be said of pastoralists and other populations affected by slow-onset disasters, who find themselves forced to flee drought and ensuing famine that is often compounded by state land policies. In some countries, communities have been displaced by national attempts to protect forests and nature reserves through the creation of national parks and investments in eco-tourism.

It is increasingly clear that these apparently separate phenomena are more often than not interlinked. Displacement in Darfur was caused by armed conflict, but this in turn was driven primarily by chronic under-development and marginalisation, improper management of natural resources and a lack of wealth redistribution across Sudan as a whole. In Somalia, the consequences of years of conflict clearly worsened the effects of the 2011 drought, making famine almost inevitable and displacing as many as 1.5 million people. Good governance and development are particularly relevant to the prevention of, response to and resolution of cycles of conflict and instability – and by extension displacement – most notably in unstable state settings.

## More than a third of the world's 28.8 million conflict IDPs in 2012 were displaced in Africa

This becomes still more apparent when one considers that around 90 per cent of the countries monitored by IDMC host people living in protracted displacement<sup>4</sup>. This is the case in 15 African countries, and many of them – including DRC, Sudan, Somalia and the Central African Republic (CAR)—are also experiencing fresh displacement. IDPs tend not to live in camps, but rather with host communities and families, meaning that displacement affects not only the IDPs themselves, but entire communities both in places of origin and places of refuge. When IDPs do choose to live together as a group, it is usually in makeshift shelters and informal settlements rather than in the kind of camps that refugees often reside in.

Data gathering on displacement generally focuses on fresh displacement caused by ongoing conflict and rapid onset-disasters, and in many contexts is primarily carried out by humanitarian organisations. Regular tracking tends to focus overly on camp or site settings where better access means IDPs are easier to identify. Indeed, the identification of IDPs dispersed in settlements and urban areas as distinct from other extremely vulner-



Many people fleeing violence in Central African Republic sought refuge in the grounds of the Roman Catholic church in Bossangoa. Some 37,000 people sheltered there.  
Photo: UNHCR/B. Heger, September 2013

able groups can pose considerable challenges. Data for natural disasters refers only to those newly displaced: there is no tracking of the duration of displacement in the longer term, and there are frequently no cumulative totals. In conflict settings, even in chronic contexts such as DRC, data generally focuses on new displacement and in most contexts is cumulated year-to-year. This may give a reasonable overview of new displacement over the last five years, but there is little understanding of what may have happened to people still living in displacement as a result of earlier waves of violence, and little quantitative or qualitative data on displacement dynamics beyond IDPs' initial flight. Data relating to settlement options and durable solutions is particularly scarce. IDPs living in protracted displacement are often forced to flee a number of times, but the extent of secondary displacement and its impact on those affected is difficult to assess. The phenomenon is particularly opaque in the burgeoning urban settings of many African cities, where rapid and often unregulated urbanisation can be both a consequence and a cause of displacement.

These data gaps are particularly important when it comes to the assessment of durable solutions. IDPs who return to their places of origin relatively quickly are often counted by humanitarian data tracking, but the situation of those who have managed to overcome the effects of displacement and integrate locally or elsewhere in the country is often poorly reflected. Displacement-related data gathering sometimes stops altogether once humanitarian organisations leave, in part because the emergency is deemed to be over, and in part because there is no real focus on understanding longer term dynamics of displacement.

It is perhaps not surprising then that evidence from across the world suggests that IDPs can find themselves worse off once the emergency phase ends and humanitarian support is withdrawn. If years of dependence on humanitarian aid are to be avoided, the response must not only address immediate needs but also build, or 'build back better', in contexts of extreme fragility and poverty. All too often, durable solutions are elusive because the causes of displacement remain unaddressed after the initial humanitarian response.

### The humanitarian-development divide

One reason for this is the extent to which internal displacement and the people it affects continue to be seen as a humanitarian or 'security' issue. This is true of both international institutions and national authorities, which often see IDPs as synonymous with conflict itself. Recent development frameworks such as South Sudan's New Deal Compact identify new displacement as an indicator of instability and insecurity. However, the resolution of protracted displacement and outstanding vulnerabilities arising from it, and the achievement of durable solutions are in no way referenced in the longer-term indicators of socio-economic recovery.

Some development organisations, such as the UN Development Programme (UNDP) and the World Bank, are clearly making efforts to incorporate displacement analysis into country assistance frameworks, but significant obstacles to a shared understanding of displacement remain and these prevent the implementation of an integrated, coordinated and comprehen-



sive response. The focus on the humanitarian aspects of displacement in data gathering means there is very little common understanding of causes, symptoms and solutions across the many entities which necessarily need to pool their technical expertise to address such a complex issue over time. Even within a humanitarian response, distinctions made between displacement caused by flooding, conflict, forced evictions and development projects can still make for inconsistent engagement by both national and international organisations as the decision to engage or not is based on different mandates. Responsibility for addressing internal displacement sits squarely with national authorities, but limited capacity and/or political will means leadership is sometimes lacking. Given the humanitarian and security implications of internal displacement, governments are often keen to declare it over as soon as possible, rather than see any development rhetoric evolve around the issue.

The result is a continued emphasis on the emergency phase and, in the case of protracted displacement, a prolonged and piecemeal humanitarian response driven more by structures and funding than any comprehensive analysis of complex dynamics – a response that does little to address causes of displacement, build resilience amongst affected communities or improve the protective environment for IDPs.

As such, the difficulties in responding to internal displacement are often indicative of broader structural challenges inherent in bringing together the humanitarian response and development planning. Responding to urban displacement provides a good example. In addition to the challenges in differentiating IDPs from other urban poor, solutions require a combination of targeted support to address IDPs specific humanitarian and longer-term needs, and a comprehensive approach in terms of low-cost hous-

ing and urban planning. The need for simultaneous mobilisation of humanitarian and development expertise is clear, but such an approach is rarely found in practice. More collaborative action involving states, international development and humanitarian organisations, local and national civil society and, not least, the communities affected by displacement themselves, is crucial if this is to change. Moreover, the importance of local governments in preventing displacement and integrating IDPs' needs into community development plans, cannot be over-emphasised.

The Kampala Convention offers a framework for just such collaborative action, drawing on IHL and IHRL to form a basis not only for humanitarian response but also for sustained and holistic engagement with displacement dynamics across a multitude of stakeholders.

### Kampala Convention: a framework for all?

The Kampala Convention draws on both IHRL and IHL to refer to all those involved in response, while highlighting primarily the obligations of states themselves. In addition to the groundbreaking fact that it is legally binding, the convention is unique in its comprehensiveness. It clearly outlines roles and responsibilities for national authorities, but also specifically refers to those of non-state armed groups, private companies, civil society organisations, the international community, and IDPs and communities affected by displacement themselves. It also reflects the diverse and frequently multiple causes of displacement in Africa, explicitly referring to armed conflict, generalised violence, human rights violations, natural and human-made disasters including climate change and public and private sector development. As such, it reminds us that forced displacement is not only a humanitarian issue, but must be viewed through a human rights



Internally displaced people in Dungu, Democratic Republic of the Congo. Photo: IDMC/ M. Wissing, July 2013

lens to fully understand its causes and consequences. Reflecting the integration of both IHL and IHRL, the convention outlines duties at every stage of displacement, covering prevention, the humanitarian response and durable solutions. In so doing, it highlights the potential for support for prevention and steps towards durable solutions to complement each other. It reminds us that humanitarian responses do not take place in a vacuum but can be prepared for and mitigated in a way that also contributes to the achievement of durable solutions. The Kampala Convention's consistent focus on national responsibility not only highlights the primary duty of states to respect IDPs' rights regardless of the causes of their displacement. Through repeated emphasis on obligations, it also gives them concrete responsibilities. Reviving the concept of national sovereignty as duty as well as privilege-bearing, the convention consistently emphasises both IDPs' rights and governments' obligations towards them as the basis for fulfilling states' crucial leadership role in delivering and/or facilitating responses at every stage of the displacement process.

In doing so, states are called upon not only to consult but ensure the active participation of men, women, boys, girls and minorities from communities affected by displacement - including IDPs themselves and civil society organisations that reflect this diversity – in any relevant activities. This applies to the search for durable solutions and to the development of national laws and policy frameworks as preventive and protective measures. The convention also makes it clear that states are responsible for preventing displacement caused by human rights violations, “forced evacuations ... not required by the safety and health of those affected” and “projects carried out by public or private actors”.

Its focus on the prevention of arbitrary displacement emphasises the responsibility of states to adhere to and ensure respect for international law, so as to prevent conditions that might lead to it in the first place. This includes the establishment of individual responsibility for acts of arbitrary displacement and ensuring the accountability of non-state entities such as multinational companies and private military and security organisations. It also elaborates the concept of arbitrary displacement by providing a definition and specific examples<sup>5</sup> that illustrate states' responsibilities in preventing it. In doing so, it challenges the traditional humanitarian focus on displacement caused by conflict and sudden-onset disasters by including populations that may be forced to relocate by state or private entities pursuing large-scale eco-tourism developments, national park extensions, resource exploitation and agribusiness projects.

Through its focus on natural hazards, the convention aims not only to reflect the extent to which such threats play an integral part in displacement dynamics in Africa, but also to draw on practical lessons learned in disaster risk reduction (DRR) and disaster response across the continent in recent years. The famines in east Africa and the Sahel region point to the need for

greater investment in building community resilience, bridging the gap between reactive humanitarian response and longer-term development interventions. This is particularly important in situations of chronic instability and cyclical or protracted displacement. As such, the convention complements various global and regional initiatives, including the Hyogo Framework for Action and aligned with it, the Regional Strategy for Disaster Risk Reduction adopted by AU member states in 2004 as part of its Extended Programme for Action for 2006 to 2015. The regional focus on risk reduction is particularly relevant. It has clear links both to the growing “resilience agenda” as a means of engaging comprehensively with displacement, and to the convention's focus on addressing its causes as a basis for the pursuit of durable solutions.

## **The Kampala Convention outlines duties at every stage of displacement, covering prevention, the humanitarian response and durable solutions**

Upon ratification, states are required to incorporate the provisions of the Kampala Convention into domestic law. They should also develop measures such as national policies or strategies on internal displacement, designate a national institutional focal point, and provide and allocate resources for protection and assistance activities to the best of their ability. In practice, the process of domesticating the convention and establishing national legislation in line with states' obligations offers a significant opportunity to develop a comprehensive vision of displacement based on a human rights framework, thus forming a common platform for all relevant entities to plan and implement well targeted responses. Through a comprehensive human rights analysis of its causes and effects, displacement can be seen as a process of human, material and financial impoverishment in which the immediate and subsequent failure to recognise human rights effectively drives the disenfranchisement of individuals and communities alike. The convention provides states and other entities with a framework not only to develop such an analysis, but also to design a similarly comprehensive response where development engagement plays a key role in supporting the achievement of durable solutions.

Such an approach would challenge the traditional concept of a linear transition from humanitarian to development interventions and help overcome the many difficulties historically faced in integrating the two. It would recognise the value of a “composite” and collaborative approach based on a shared vision and language, under which sustained or development engagement aims to address the multiple causes of displacement and obstacles to recovery alongside dedicated capacity for response during emergencies based on principled humanitarian action. All things considered, the Kampala Convention could be an opportunity to demonstrate to the world what support for durable solutions to internal displacement really entails.

# NATIONAL RESPONSIBILITY

*The concept of national responsibility stems from the principle of sovereignty, one of the cornerstones of international relations granting the state exclusive jurisdiction over its citizens, and laying the foundations of its duty to protect and assist all populations residing on its territory, including IDPs. The Kampala Convention puts the accent on obligations, and makes it clear that states are not alone in fulfilling their responsibilities.*

The concepts of statehood, national jurisdiction and national sovereignty are laid out in the UN Charter<sup>6</sup>, and General Assembly Resolution 46/182 (1991) reasserts sovereignty, territorial integrity and national unity to underline the fact that the delivery of humanitarian assistance - including its initiation, organisation, coordination and implementation - is a primary responsibility of the state. This notion is reinforced in the AU Constitutive Act, adopted on 11 July 2000 in Lomé, Togo, as well as in the Annotations to the Guiding Principles, which emphasise that the concept of national sovereignty identifies states as the principal duty bearers in terms of fulfilling the individual rights of their citizens and others residing on their territory, including IDPs - and as such, carriers of external and internal obligations towards them. Their obligations to IDPs lie in “respecting, protecting, and fulfilling their civil and political as well as their economic, social, and cultural rights”.<sup>7</sup> As a corollary, the Guiding Principles also assert IDPs’ “right to request and to receive protection and humanitarian assistance from these authorities”.<sup>8</sup>

## What does the Kampala Convention say on the issue?

The preamble to the Kampala Convention clearly reaffirms the principles of the sovereign equality of states, territorial integrity and political independence. It also references the Guiding Principles<sup>9</sup> recognition that national authorities have the primary responsibility to assist and protect IDPs as part of their obligation to ensure that the basic needs of all civilian populations under their jurisdiction are met. The main text of the convention reinforces this point, clearly asserting states’ responsibility to respect and protect IDPs and fulfil the rights to which they are entitled.

## National authorities have the primary responsibility to assist and protect IDPs

The adoption of the convention and its coming into force were rightfully heralded as landmark moments in a process that aims to protect one of the most vulnerable groups of people in Africa. It is the first legally binding, continent-wide instrument to prevent

internal displacement, protect and assist IDPs and facilitate durable solutions. One of its most remarkable features is that it sets out the responsibilities of different entities, including civil society organisations and host communities, and recognises collaboration as a pillar of an effective response to IDPs’ needs.

That said, in keeping with the principle of sovereignty as responsibility and in line with traditional human rights doctrine, the convention emphasises that states have the primary duty to protect and fulfil human rights, including those of IDPs.<sup>10</sup> The Guiding Principles restate international legal norms by spelling out their relevance in protecting IDPs’ rights, but the Kampala Convention puts the accent on obligations by clarifying each entity’s concrete responsibilities. As such, it revives the concept of national sovereignty as a mandate-giving principle, rather than a mere privilege.

## The Framework for National Responsibility

The Framework for National Responsibility (FNR) was developed by the Brookings-Bern project in 2005. It builds on recommendations by the UN General Assembly and seeks to distil the Guiding Principles in asserting the nature and the substance of a state’s responsibility. In doing so, it identifies 12 steps that national authorities should take with a view to fulfilling their duties towards IDPs.

## The Kampala Convention [...] revives the concept of national sovereignty as a mandate-giving principle, rather than a mere privilege

The Kampala Convention incorporates the logic of the FNR and turns its prescriptions from guidance into legally binding obligations<sup>11</sup>. Article 3.2 is emblematic in setting out the measures necessary to implement the convention. It requires the states parties to incorporate their obligations into domestic law<sup>12</sup>, to designate a national focal point<sup>13</sup>, to adopt policies and strategies on internal displacement<sup>14</sup> and to provide the necessary funds for the protection and assistance of IDPs<sup>15</sup>. The prevention of displacement<sup>16</sup> and the prohibition of arbitrary displacement are clearly referred to in Articles 4.4 and 4.5, which include states’ obligation to introduce specific measures to prevent and mitigate the effects of natural disasters, and to protect communities with special dependency or attachment to their land. Article 13 obliges states to create and maintain an updated register of all IDPs<sup>17</sup>, and Article 11 sets out the need to ensure that IDPs achieve durable solutions<sup>18</sup>, including the obligation to create conditions for voluntary and sustainable return, local integration or relocation. Article 9.2 covers IDPs’ right to information, consultation and participation in decisions that affect them as part of a





The Diko family fled insecurity in their hometown of Douentza, Mali in June 2012 and found refuge in a former hotel in Mopti. They say they are ready to return to their homes but lack money to pay for public transportation. Photo: UNHCR / H. Caux, February 2013

state's obligations during displacement, and Article 11.2 restates the same duty in the context of the search for durable solutions.<sup>19</sup>

Collaboration is a central theme of the convention, which envisages cooperation with international and humanitarian organisations<sup>20</sup> during all phases of displacement. Article 9.3 specifically sets out that the states parties are to discharge their responsibilities, where appropriate, with assistance from international organisations, humanitarian agencies, civil society organisations and other relevant entities. This obligation is further articulated elsewhere, calling for such cooperation to take place when a state's resources are inadequate<sup>21</sup> and obliging them to allow their partners rapid and unimpeded access to IDPs<sup>22</sup>.

### Regional cooperation

The Kampala Convention also stresses collaboration between states and regional institutions. It calls on the AU to support states' efforts to protect and assist IDPs, giving it a key role in the implementation of the convention. The AU is asked to coordinate the mobilisation of resources and collaborate with international organisations and other humanitarians. The convention also envisages collaboration with the AU's specialised institutions, such as the African Commission on Human and Peoples' Rights (ACHPR) and its Special Rapporteur for

Refugees, Returnees, IDPs and Asylum Seekers. As recently stated by Dr Aisha Abdullahi, the AU Commissioner for Political Affairs<sup>23</sup>, the organisation intends to further assist the states parties in the implementation of the convention, including with the development of a model law that will enable a complete and harmonised transposition of its provisions into national legal frameworks.

### Opportunities

The Kampala Convention sets out the terms for the states parties to fulfil their role as primary providers for IDPs. In this sense, their level of compliance with the convention can be understood as an indicator of their efficient exercise of the principle of national responsibility. By establishing responsibilities for a number of entities, however, it also offers them the prospect of concrete support in doing so. As such, it presents cooperation not only as a duty, but as a real opportunity for states to properly fulfil their responsibilities and provide effective protection and assistance to IDPs.



# AU COMMISSION SUPPORT TO MEMBER STATES

The October 2009 AU Special Summit on refugees, returnees and IDPs, during which the Kampala Convention and its action plan were adopted, called on member states to “integrate the Kampala Convention into national legislation as well as to implement the Kampala Declaration and recommendations on refugees, returnees and internally displaced persons in Africa.” It also called for the AU to, inter alia:

- develop a national model legislation on IDPs to facilitate the process of domestication of the Kampala Convention
- provide technical assistance, as appropriate, to members for the implementation of the convention
- encourage member states to undertake measures to review and, where necessary, amend or strengthen national legislation and to adopt national policies to ensure effective implementation of the Kampala Convention as well as establish and or strengthen specialized institutional frameworks for the management of IDPs

It is in this context that the AU Commission developed a model law of the Kampala Convention, from which member states could draw inspiration in the domestication process. Moreover, the AU Commission conducted a series of workshops across the continent that helped set in motion the dialogue for the adoption of national legislation to domesticate the Kampala Convention: in the western region, workshops were held for Nigeria and Sierra Leone; in the central region for Chad and the Democratic Republic of the Congo; Uganda for the eastern region (see case study); and in the southern region, for Zambia, Swaziland and Lesotho.\* Plans for a workshop in the northern region were postponed until next year.

During the western region workshop, the draft model law for the implementation of the Kampala Convention was presented and discussed. States participating in the workshop addressed in detail the role that development interventions have in providing support to IDPs and discussed specific steps to implement the standards contained in the convention. The workshop also underlined the need for better data collection

and a more nuanced understanding of displacement dynamics, the importance of using communications strategies to harness public attention and participation and the need to strengthen institutional capacities to respond to displacement.\*

The workshop for the central region was held in Chad in May, 2013 and was attended by the Chadian Minister of the Interior and Public Security, members of parliament, representatives of the ministries in charge of IDPs of both States, representatives of civil society, development partners, and various UN agencies. The workshop aimed to propose specific national plans for the implementation of the convention. Drawing on a discussion of the context of displacement in the region, workshop participants identified a set of key actions to be undertaken. These included the development of an action plan for the domestication of the convention; dissemination of its contents; better data collection on displacement caused by multiple causes, and the need to work with a wide range of partners, including development actors.\*

Finally, a southern region workshop was held from 18 to 19 July in Lusaka, Zambia. It drew participation from members of parliament, high-ranking officials from government ministries such as Home Affairs, Ministry of Land and Disaster Management Agencies, as well as civil society organisations and international organisations from throughout the region. After an AU presentation on the Kampala Convention, the AU model law and development perspectives to displacement, country-specific group discussions allowed participants to discuss their own efforts to domesticate the convention, as well as challenges faced to this end. The workshop concluded with the development of national action plans with clear roles and responsibilities for the implementation of the Kampala Convention.\*

\* For more detail and the full list of recommendations, see the workshop reports, on file with the AU Division of Humanitarian Affairs, Refugees and Displaced Persons.

## CASE STUDY: UGANDA

Uganda has a history of leadership in addressing internal displacement in Africa. Not only did it host the first Special Summit on humanitarian issues in Africa in October 2009, during which the Kampala Convention was adopted, it was also the first country to ratify the convention. Moreover, Uganda is a state party to the Great Lakes Pact, including its Protocol on the Property Rights of Returning Persons and the Protocol on IDPs, which requires the legal domestication of the Guiding Principles.

Uganda has taken a number of steps to address the protracted displacement crisis in the north of the country. In 2004, a year before the crisis peaked with 1.8 million people living in displacement, it was among the first countries in the world to develop a national policy for IDPs. As a result of significant political will and leadership in meeting IDPs' needs, large-scale return and other settlement options have been facilitated and almost all of the country's 251 official displacement camps have been dismantled. Fostering conditions to sustain durable solutions for all remaining IDPs and returnees in the north is, however, a continuing challenge, and primarily a development one.

The Ugandan authorities' political will and continuing need to tackle internal displacement made it a logical choice as the site for the first nationally-tailored workshop to plan for the

domestication and implementation of the Kampala Convention. The workshop was organised by the AU Commission, NRC and IDMC, and took place in November 2012. It aimed to establish a dialogue between humanitarian, legal and development experts from multiple levels of the government and civil society organisations on ways forward. It sought to examine the existing policy on internal displacement to gauge successes and outstanding gaps in meeting the assistance and protection needs of IDPs, and to launch a participatory process for enacting the convention through the identification of initial steps for an action plan.<sup>24</sup> National stakeholders were encouraged to:

- sustain contact with one another and establish a steering committee, working group or similar body to direct the policy-making process;
- map stakeholders and work to involve as broad a range of them as possible, particularly government stakeholders such as officials from the prime minister's office, MPs, and the parliamentary committee for human rights;
- establish a timeline for achieving benchmarks in the process;
- launch an advocacy campaign to raise awareness of the convention and the need to implement it, and to build support and interest from donors and technical parties for a domestic-led process.

Consensus was reached in the workshop that the new collaborative body would push for two things:

1. The amendment of the 2004 policy on IDPs to harmonise it with the convention's passage and increased powers, and to integrate the recommendations brainstormed during the workshop on how to meet challenges in terms local governance, land governance, and access to services and livelihoods so as to better assist and protect all groups of IDPs;
2. A new legal instrument to domesticate the convention to be drafted in accordance with the AU model law.

As of October 2013 the process was stalled, but implementing the convention should remain a priority for Uganda. No significant conflict-induced displacement has been reported since 2006, but many people continue to be newly displaced, particularly as a result of sudden and slow-onset natural disasters for which the country needs to be better prepared. Displacement caused by development and environmental conservation projects is also an issue that needs to be addressed.

In the words of a Ugandan advocate for IDPs' rights, "it is therefore paramount for the government of Uganda to take critical leadership in providing the first IDP law in terms of domestication, as it took leadership in ratifying the Kampala Convention". In doing so, it should continue to collaborate with regional institutions and take advantage of the potential support such cooperation offers. It should also revive discussions with all relevant stakeholders at the local and national level, including IDPs and other displacement-affected communities.



In the years following the 2006 ceasefire agreement between the government of Uganda and the Lord's Resistance Army, the Uganda Mine Action Programme cleared out land mines so that IDPs who wanted to return home could do so. Photo: IRIN/Charles Akena, December 2010

# PARTICIPATION AND PROTECTION

*Who better than IDPs to know about their problems and the ways to solve them?*

*Civil society organisations (CSOs), host communities and IDPs themselves can and should play a role in meeting IDPs' needs and facilitating the achievement of durable solutions to their displacement. Such participation is key to ensuring that laws, policies, humanitarian assessments and responses reflect their specific issues, needs, coping mechanisms and assets. Strengthening participation and ensuring a leading role for the community also helps to rebuild self-confidence and self-esteem, and as such constitutes a step towards self-reliance, resilience and durable solutions.*

*The Kampala Convention, enriched by the experience of African states in protecting IDPs, recognises the critical role that civil society has to play, and commits states parties to consulting and cooperating with it to ensure efficient, comprehensive and community-based protection and assistance during all phases of displacement.*

## What does the Kampala Convention say on the issue?

"States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance"<sup>25</sup>. In line with the human rights-based approach of the Guiding Principles, the Kampala Convention sets out the rights and guarantees relevant to IDPs' protection, including their right to participate in decisions that affect their lives. The duty of states and humanitarians to ensure this takes place entails the establishment of consultation and participation mechanisms based on a community-based or "bottom up" approach, with the aim of ensuring that IDPs play an active role in their own protection, rather than being passive beneficiaries. This implies the meaningful and systematic engagement of communities affected by displacement in the development of relief programmes, from assessment to evaluation<sup>26</sup>, and throughout the displacement process including "their participation in finding sustainable solutions"<sup>27</sup>.

The convention reiterates the need to assess the specific protection issues and vulnerabilities of IDPs and host communities<sup>28</sup>, drawing special attention to "internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities

or with communicable diseases"<sup>29</sup>. It also determines that states and their humanitarian partners should "take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses". This applies to all IDPs, whether in camp settings or not, based on the right to choose one's residence and the overarching principles of equality and non-discrimination.

Such assessments form the basis of protection response. They should be conducted in a participatory manner, ensuring that representatives of all members of displaced and host communities are consulted, and are able to express their own issues and concerns and propose solutions to them. Through the systematic application of an age, gender and diversity approach, humanitarians and the affected communities themselves seek to ensure that all people are able to exercise their rights on an equal footing and are able to participate fully in decisions affecting their lives. The results of participatory assessments will help all concerned prioritise and design response programmes. Such an approach entails the establishment of understanding and trust with the communities in question, and a significant investment in empowerment activities. "Invisible" IDPs in urban centres, children, the elderly and people with disabilities, including those with limited opportunities or capacities to express themselves - deaf people, for example - should be given the chance to participate.

## Host communities

At least half of the 58 countries monitored by IDMC in 2012 had few or no camps for IDPs. Alternative arrangements such as living with a host family or in private accommodation in a host community are the norm for the vast majority of urban and rural IDPs, both in Africa and worldwide. Even when camps do exist, most IDPs prefer to seek refuge in host communities, where they envisage better livelihood opportunities, particularly in urban centres, or have family members ready to receive them. Many IDPs also feel more secure living with host communities than they do in camps<sup>30</sup>.

Host communities are usually less visible, less accessible and tend to be neglected by humanitarians, but they often have only limited resources and coping mechanisms themselves and are significantly strained by the arrival of IDPs. Hosting IDPs can quickly make poverty worse and cause frustrations, resentment, discrimination and exploitation. Assessing and responding to the needs of host communities in a timely manner, and developing programmes that take them into account, are key to the prevention of major protection issues and conflicts.

The Kampala Convention captures this reality and obliges states parties to take "measures as appropriate, including strategies and policies on internal displacement at national and local lev-



The vast majority of IDPs, both in Africa and worldwide, live not in camps but with host families or in host communities. Such was the case during the 2012 Mali crisis, where most people who fled the violence in the country's north initially sought shelter with family and friends in urban areas in the safer south. Photo: UNHCR/H. Caux, November 2012



els, taking into account the needs of host communities"<sup>31</sup>. It also calls for host communities to be included in protection and needs assessments in order to evaluate the impact of displacement on them and design approaches and programmes involving both the humanitarian and development sectors before they fall into extreme poverty and deprivation. The convention recognises the need to support communities which contribute to IDPs' protection and to encourage them to continue. A participatory methodology using an age, gender and diversity approach is recommended, in order to understand and incorporate the different and often complex dynamics between IDPs and host communities, and their specific protection issues, into the design of a well-targeted response.

### Civil society organisations

Given their degree of interaction with IDPs, CSOs are often among the best-placed to identify the main obstacles displaced populations face in fulfilling their rights and obligations, and as such they have a significant role to play in ensuring that states take the necessary steps to implement the Kampala Convention<sup>32</sup>. The African experience of internal displacement made its drafters aware of the importance of close collaboration with CSOs, including those representing IDPs, and the convention requires states and humanitarian organisations to work hand-in-hand with them, and consider them as partners throughout the

displacement process<sup>33</sup>. CSOs, which often have close contact with IDPs and host communities, have a good understanding of the displacement and local context, and are precious partners in the implementation of a participatory approach.

CSOs also play an advocacy role, pushing for the ratification and implementation of the convention. Their inclusion along with representatives of displaced communities in the implementation process, especially in the development of comprehensive national laws and policies on internal displacement, is essential to guarantee both real buy-in from civil society and long-term cooperation in the protection and assistance of IDPs. It also ensures that the specifics of local internal displacement situations are captured and incorporated into any new policies and legislation (see case study).

### Opportunities

One of the Kampala Convention's innovations lies in its systematic focus on the role of civil society, including IDPs and host communities themselves, in responding to displacement. It encourages states and international organisations to recognise the need to build on the capacities of all components of affected communities, empower them and help to strengthen their resilience so that they are able to engage fully in the defence and exercising of their rights.

## CASE STUDY: KENYA

Kenya offers an inspiring example of the participation of both government and non-government bodies in the process of developing a comprehensive national legal and policy framework on internal displacement.

In addition to providing direct humanitarian assistance to IDPs and other communities affected by displacement, civil society organisations (CSOs) have played a very active role in the development of legal and policy frameworks for their protection.<sup>34</sup> Following the initial response to the country's largest displacement event in recent years, which was caused by the post-election violence of 2007/8, in early 2009 the protection cluster was transformed into the Protection Working Group on Internal Displacement (PWGID), operating at the national level. The group is made up of Kenyan CSOs, UN agencies and government ministries working on displacement issues, and was created to look beyond the emergency phase to longer-term objectives and IDPs' achievement of durable solutions. The development of a policy on internal displacement coincided to a great extent with the formation of PWGID, whose mandate also included participation in efforts towards the finalisation of the Kampala Convention (which was still a draft at that time) and advocacy for the implementation of the Protocol on IDPs of the Great Lakes Pact, of which Kenya is a member state.

### **Kenyan civil society is strong and vibrant and generally enjoys a good relationship with the authorities**

Policy processes are mainly a state prerogative, but Kenyan civil society is strong and vibrant and generally enjoys a good relationship with the authorities. As such, the extent to which CSOs, and particularly members of PWGID, contributed to the development of the national policy on internal displacement was significant.<sup>35</sup> Their engagement was in line with their institutional mandates, technical expertise, personal commitment and financial resources. They played an essential role in collecting and analysing information, facilitating discussions on the policy through consultation with IDPs and raising awareness of the process among stakeholders. They convened forums to build consensus on issues including policy choices - for example, on whether to develop a framework specific to IDPs or to incorporate protection mechanisms into existing frameworks - and standards to be included in the policy. As the process moved forward, they continued to lobby relevant authorities and provide logistical and technical support. PWGID also collaborated

closely with the 2010 parliamentary select committee on the resettlement of IDPs, in order to coordinate with the parallel development of a legislative framework on internal displacement.<sup>36</sup>

As a result of this collaborative approach and the participation of different stakeholders in the process, a comprehensive national policy on internal displacement was finalised and adopted by Cabinet in October 2012. The December 2012 Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act complements the policy. CSOs continue to play an active role in supporting the implementation of the new Act, for example by raising awareness of the legislation among stakeholders and lobbying for the establishment of the National Consultative Coordination Committee provided for by the law. The committee, which is charged with implementing the new Act, is also designed to promote a participatory approach by including two people representing non-state entities and the donor community, and two people of opposite gender nominated by IDPs as their representatives, among its members.

### **A Ratification Act was eventually adopted in December 2012, so the country is now in a position to ratify the convention**

Kenya has yet to sign the Kampala Convention, ratification of which the country's Truth, Justice and Reconciliation Commission recommended in its May 2013 report.<sup>37</sup> The process has been delayed by the fact that the country's new constitution in 2010 marked the passage from a dualist to a monist legal system, which made it necessary to adopt a law on the domestication of treaties. A Ratification Act was eventually adopted in December 2012, so the country is now in a position to ratify the convention.

Meanwhile, Kenya's current legal framework on protecting and assisting IDPs heavily mirrors the provisions of the Kampala Convention, the Great Lakes Protocol on IDPs and the Guiding Principles. The Kampala Convention, in particular, provides for a well elaborated mechanism of monitoring compliance (Art. 14) that provides a good platform for the government to present reports to the Conference of State Parties on the progress it has made in assisting IDPs and supporting durable solutions for them. The government could also use such a platform to share its experience and best practice in terms of the development of legal and policy frameworks on internal displacement, inspiring other countries within the region and beyond as momentum builds for the implementation of the Kampala Convention.

# DISASTERS AND CLIMATE CHANGE

*In 2012 alone, an estimated 7.7 million people became displaced by rapid-onset disasters triggered by floods and storms in countries that have signed or ratified the Kampala Convention. These countries are well aware of the risks they face, but few have established sufficient measures to prevent, prepare for and manage the displacement caused. Domestication of the convention provides an opportunity to strengthen existing national policies and plans on disaster risk reduction (DRR) and climate change adaption, and those currently being developed, by addressing one of the major impacts of both rapid and slow-onset disasters, namely internal displacement.*

## What does the Kampala Convention say on the issue?

The convention is clear about states parties' obligations in terms of protecting people internally displaced "as a result of or in order to avoid the effects of ... natural or manmade disasters" (Article 1.k), including disasters associated with the impacts of climate change (Article 5.4). It refers to the establishment and implementation of early warning systems, DRR strategies and disaster preparedness and management measures as ways of

preventing and preparing for displacement (Article 4.2). It also sets out the obligation "to prevent or avoid conditions that might lead to the arbitrary displacement of persons" (Article 4.1), with explicit reference to forced evictions in the context of disasters (Article 4.4.f).

## What do signatories and states parties already have on their books?

It is the tenet of good policymaking to leverage rather than duplicate existing policies and mechanisms in pursuit of shared objectives. In its official statement to the Fourth Session of the Global Platform on Disaster Risk Reduction in May 2013, the AU underlined the link between internal displacement in Africa, global efforts to reduce disaster risk under the current Hyogo Framework for Action (HFA 2005-2015) and work towards a successor framework. The statement called specific attention to the ratification of the Kampala Convention, which "acknowledges the responsibilities of governments to protect people displaced by natural disasters and climate change and take measures to mitigate such displacement".<sup>38</sup> At the same time, and aligned with the HFA, AU member states are implementing a regional DRR strategy<sup>39</sup> through an Extended Programme of Action (2006-2015).<sup>40</sup> Its objective is "to contribute to the attainment of sustainable development and poverty eradication through substantial reduction of social, economic and environmental impacts of disasters", including risks associated with climate change.



A solar-powered water pumping system has been set up in response to the 2011 drought, providing reliable water access to the local community of the Zona-K IDP camp, Somalia. Photo: NRC/N. Tado, April 2011



Inadequate shelter, tents made from latrine plastic, were set up in the Chiqakalane Camp near Chokwe, Mozambique as a response to the early-2013 floods. Photo: IFRC/H. Butler, February 2013



The need to make specific reference to displacement as a significant humanitarian impact of disasters, or as a driver of disaster risk affecting some of the world's most vulnerable populations, is key. The chair's summary from the 2013 global platform positions displacement among key issues to be addressed in the post-2015 DRR and sustainable development agendas, and makes suggestions for ways forward. It explicitly highlights the need for concrete measures to tackle displacement as an underlying driver of disaster risk and recognises the role of IDPs themselves in addressing the challenge. Measures include sound urban development and spatial planning, led at the local level by municipalities and local authorities. It also calls for the design of policies that mutually reinforce the close connections between the fields of human mobility and disaster risk reduction, together with climate change, sustainable development and environmental protection.<sup>41</sup>

## In 2012 alone, an estimated 7.7 million people became displaced by rapid-onset disasters [...] in countries that have signed or ratified the Kampala Convention

The Kampala Convention also highlights growing recognition of the prevention and reduction of disaster risk as a legal obligation. It welcomes the progressive development and codification of international law on the protection of those affected by disasters, and emphasises the strategic role of parliamentarians in strengthening risk governance through legislation, oversight and resource allocation for the communities they represent.

In the context of national laws and policies, state parties have the opportunity to build upon national DRR policies, plans and mechanisms. Parties to the UN Framework Convention on Climate Change (UNFCCC) were invited to develop National Adaptation Programmes of Action (NAPAs). NAPAs form part of the convention's Least Developed Country (LDC) work programme and provide the basis for LDCs to request financial assistance from the Global Environment Fund (GEF). The process is intended to serve as a simplified channel through which LDCs can communicate their urgent and immediate adaptation needs, that is to say, those for which further delay would increase vulnerability and/or cost. The protection needs of populations displaced or at risk of being displaced by disasters and whose situations are likely to go unresolved for prolonged periods, especially in the least-developed countries, fit squarely into this category.

A similar process established under the Cancun Adaptation Framework (CAF) in 2012 enables LDCs and other developing countries that are party to the UNFCCC to develop National Adaptation Plans (NAPs). These identify medium and long-term adaptation needs, and set up and implement development strategies and programmes to address them by building adaptive capacity and resilience<sup>42</sup>. As shown in table 1, 38 out of the 42 countries that have signed or ratified the Kampala Convention to date have existing climate change adaptation plans and policies and/or DRR plans upon which they could build in order to strengthen the convention's implementation. Within the wider AU membership, other countries including Burundi, Cameroon, Kenya and Madagascar also have such policies and plans in place, while in other countries, such as Botswana, Nigeria and Zambia, their development is currently underway.<sup>43</sup>

It is evident that national policies and frameworks on the protection of and assistance to IDPs need to include measures



that address disasters and climate change. In the background section to most of the documents, countries refer to past or potential population movements linked to climate change, either as a result of sudden-onset hazards such as floods, slow-onset hazards such as droughts or even more gradual changes such as sea-level rise.

## **38 out of the 42 countries that have signed or ratified the Kampala Convention to date have existing climate change adaptation plans and policies and/or DRR plans**

A handful of countries refer to vulnerability and risks they face in terms of such displacement. For example, Malawi's NAPA explains: "Floods and other natural disasters have led to the displacement of people, a situation that is compounded by extreme poverty in rural areas that is making it difficult for rural family households to purchase food and farm inputs to enhance crop production."<sup>44</sup> Chad's NAPA is also one of the few that mentions displacement per se, categorising both it and migration as life-saving adaptation measures.<sup>45</sup> Guinea-Bissau's NAPA considers "risks arising from pressure on forest resources" and says that "climate changes would affect the vegetation cover, thus degrading and leading human settlements to move successively from one vegetation formation to another."<sup>46</sup> Mali's NAPA refers to people who have migrated in response to past droughts and to those left behind because they lacked the resources to migrate.<sup>47</sup> Uganda's NAPA refers to instances where people have migrated from and within the northern part of the country in response to climate-related drivers such as droughts, noting that migration can in turn increase the risk of conflict.<sup>48</sup>

Countries may be aware of the risks of displacement related to disasters and climate change, but they have often not clearly defined how to prevent or manage them. Ethiopia's NAPA refers to the country's history of displacement caused by disasters, and calls for resettlement and the development of drought and flood early warning systems.<sup>49</sup> Senegal's NAPA focuses on coastal zone management and managing risks associated with sea-level rise, saltwater intrusion and coastal flooding, which may lead to displacement.<sup>50</sup> Tanzania's NAPA includes several provisions that aim to either prevent or manage displacement, such as regularising and upgrading unplanned settlements in areas prone to hazards, introducing stricter building regulations, establishing land tenure systems that facilitate sustainable human settlements, and relocating vulnerable communities to safer areas.<sup>51</sup> Neither plan, however, goes into detail about such measures or how they might be implemented.

Because the NAPAs were developed in conjunction with national development plans, nearly all of them include provision for activities that may address the underlying causes of displacement induced by disasters and climate change. These include measures to reduce rural poverty; improve water and food security; reduce and manage drought risks; strengthen livelihoods; and halt processes of environmental degradation, deforestation and desertification. In a similar vein, the DRR plans do not focus explicitly on the prevention of displacement, but each is oriented around five priority areas of which one is to address the underlying factors that lead to disaster outcomes.

### **Opportunities**

Signatories and states parties to the Kampala Convention are already well aware of the risks they face from climate change and natural hazards. The instruments referred to above consider displacement and often aim to prevent it by addressing its underlying causes. They do not always, however, include specific provisions for the management of displacement, nor the longer-term process of integration of IDPs back home or in other locations. Too often, women, children, older people and people with disabilities are not fully included in disaster prevention and response planning and implementation, meaning that systems are inadequate to ensure their protection and address their displacement-related needs both during and after the immediate crisis.<sup>52</sup>

## **For families and communities facing repeated displacement by disasters [...], the reduction of risk and adaptation measures in both the short and longer term are central to break these cycles**

There is a wealth of experience both in the region and internationally that could be further drawn on to guide measures to address different stages and aspects of disaster-induced displacement, such as the management of mass evacuations and issues around access to safe and adequate housing and land. As states parties domesticate the convention, they may be able to strengthen existing plans and policies and their implementation by adding details on measures to protect and assist people displaced and at risk of displacement, and to provide them with sustainable solutions. For families and communities facing repeated displacement by disasters and the increasing vulnerability it entails, the reduction of risk and adaptation measures in both the short and longer term are central to break these cycles and support sustainable recovery and development.

## CASE STUDY: NIGERIA

Floods are a regular occurrence in Nigeria, particularly in low-lands and river basins, where the most vulnerable communities live and work. Between July and October 2012, the most devastating floods in 40 years hit the country, causing one of the largest disaster-induced displacement crises of the year.<sup>53</sup> The National Commission for Refugees reported that more than six million people were forced to flee their homes. The National Emergency Management Agency (NEMA) said that 7.7 million people were directly affected, of whom over 2.1 million were officially registered as internally displaced in order to receive assistance. In an effort to respond to the needs of the millions affected by the floods, the Nigerian government promptly released federal funds that facilitated timely life-saving interventions and helped to alleviate suffering. NEMA and the UN Office for Coordination of Humanitarian Affairs (OCHA) also launched a humanitarian forum on flood response to support planning and information on priority areas and needs.

The full scale and impact of flood-induced and other forms of displacement in Nigeria is not known, however, in part because data collection is inconsistent, and roles and responsibilities in terms of response are unclear. These gaps result in a lack of understanding of the full range of situations in which IDPs take shelter – mostly outside official relief camps – and of the country's displacement dynamics as a whole. In particular, little is known about how people's vulnerabilities are complicated by multiple and sometimes annual displacement, and this in turn leads to a fragmented response.

Even before the country ratified the Kampala Convention in April 2012, the Nigerian authorities were taking steps to better

coordinate their response to internal displacement. In 2003 a committee was established to draft a national policy on IDPs which would clearly define the roles and responsibilities of state agencies and civil society organisations. The draft policy was presented to the government in 2011 and was subsequently revised and reviewed by multiple stakeholders. A policy on migration was also drafted in 2013, which includes provisions on internal displacement. Both policies are due to be presented to the country's Cabinet for adoption sometime in 2013.

Once adopted, the policy on IDPs will be a solid rights-based instrument which addresses the multiple issues of internal displacement as framed by the Kampala Convention. The policy recognises the rights and needs of vulnerable people and host families, and covers all three settlement options for IDPs. Current disaster response mechanisms focus on emergency assistance, but the new policy affirms an overriding aim to “achieve durable solutions to the problem of displacement” and establishes criteria to take into account based on the IASC Framework for Durable Solutions. It envisages a national focal point on IDPs, designated by the president, to coordinate implementation and response, notably through the setting up of an inter-agency coordinating committee.

In addition to the policy on IDPs, there are further opportunities for the government's responsibilities under the Kampala Convention and Nigeria's disaster risk strategies to reinforce one another. The government's recent work to develop a comprehensive disaster risk management plan, for which it has requested help from the UN Office for Disaster Risk Reduction (UNISDR), would help the country address the displacement-related risks and obstacles faced by the millions of people who are forced to flee their homes by flooding each year.<sup>54</sup>

Millions of people were displaced in Nigeria when the worst flooding in 40 years caused rivers to swell and forced families to flee their homes. Image courtesy of Shelterbox, January 2013



# ARBITRARY DISPLACEMENT AND FORCED EVICTIONS

*The Kampala Convention takes bold steps to condemn and comprehensively address arbitrary displacement, forced evictions and their consequences, including by committing states to examine how they carry out development and other projects through a human rights lens.*

One of the main strengths of the Kampala Convention is that it adopts a comprehensive approach to internal displacement by recognising the need to prevent and address the issue regardless of its causes, whether it results from human rights violations in the context of conflict, natural disasters or development projects. The convention defines internal displacement as the “involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”. It provides states parties with tailored guidance on developing a comprehensive response that addresses a broad spectrum of causes and entities that contribute to internal displacement in Africa.

## What does the Kampala Convention say on the issue?

The Kampala Convention elucidates the concept of arbitrary displacement with a definition and specific examples that illustrate the responsibility of states to prevent it in contexts of armed conflict, generalised violence, natural disasters and human rights violations that occur outside emergencies.

There are a number of prohibited categories of arbitrary displacement<sup>55</sup> from which states should protect its citizens and habitual residents. These include displacement by generalised violence; displacement resulting from policies or practices aimed at altering the ethnic, religious or racial composition of a population, which is often associated with situations of war; displacement during armed conflicts; displacement used as a method of warfare; and displacement used as a collective punishment.

The convention also specifies that human rights violations which force people to flee their homes can constitute arbitrary displacement<sup>56</sup>, whether in the context of peace, generalised violence or war. Read in conjunction with the definition of internal displacement and provisions calling on states to prevent displacement caused by public or private sector projects<sup>57</sup>, it requires states to regulate the ways in which they carry out forced displacement, including evictions and relocations whether during emergencies or not.

The prevention of forced displacement and protection from it are key aspects of the convention. In international human rights law, protection from forced displacement is not specifically spelled out in explicit language, but individuals' right to be protected is implicit in the rights to freedom of movement and choice of residence, respect for the home and privacy, and adequate housing<sup>58</sup>. The convention explicitly recognises that people should be protected from arbitrary displacement, as do the Guiding Principles, which it describes as an “important international framework”.

The convention's strong focus on the prevention of displacement emphasises the responsibility of states to adhere to and ensure respect for international law, so as to prevent conditions that might lead to arbitrary displacement in the first place. This includes the establishment of individual responsibility for acts of arbitrary displacement and ensuring the accountability of non-state entities such as multinational companies and private military and security organisations.

## Disasters and development projects

The Kampala Convention addresses abuses in which people are displaced for unfounded or illegitimate reasons. It guides states against using disaster situations for unlawful evacuations and warns that “evacuations not warranted by the affected populations' safety and health can constitute arbitrary displacement”<sup>59</sup>. This provision highlights the need to ensure that safety is not used as a smokescreen to displace people in pursuit of profit. This intent is also reflected in the provisions related to the prevention of displacement caused by development projects. Article 10 covers such displacement, and its provision is broader than that of Guiding Principle 6, which refers only to “large-scale development projects”. The Kampala Convention encompasses a wide range of projects that may cause displacement: the upgrading or demolition of slums, tourism projects such as hotel developments and the establishment of game reserves, parks and protected natural spaces; infrastructure projects such as dams, roads, railways and airports; and the exploitation of natural resources. Such projects can be a significant driver of forced evictions if they are not carried out according to international legal standards.

According to such standards, protection from forced eviction is a right of all people, irrespective of whether or not they hold land or property deeds under domestic law. In reality, however, the lack of deeds frequently exposes people, including IDPs, to forced evictions.

In most of rural Africa, people do not have property deeds. Rather they have only customary access to land, which is not always recognised by law. As a result, their land may easily be allocated through concessions from local or national officials to



private companies without appropriate consultation or compensation. This may result in the displacement of the populations affected once they are deprived of their access to land and with it their livelihoods. This is particularly concerning for populations with a special attachment to their land and dependency on it, such as pastoralists. The Kampala Convention provides that these groups should be protected from displacement given their particular culture and spiritual values, except in situations of compelling and overriding public interest<sup>60</sup>. In other situations, it is the land of those displaced by conflict or disaster which has been allocated in their absence and prevents return and the achievement of durable solutions.

In urban contexts, development can be a source of primary and secondary displacement, as many IDPs take refuge in informal settlements without tenure security, leaving them exposed to forced evictions by authorities or private owners of the land they settled on.

This article uses the term “forced eviction” as understood by international human rights law<sup>61</sup>, which defines it as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”. A forced eviction is a human rights violation, and the “forced” or unlawful aspect lies in it being carried out against people’s will and without respecting certain conditions and procedural legal standards<sup>62</sup>.

The Kampala Convention’s provisions on compensation<sup>63</sup> highlight the responsibility of states to provide people affected by displacement with appropriate remedies, and to establish an effective legal framework to provide just and fair compensation for damage and losses incurred as a result of their displacement.

A 2012 draft model law for the implementation of the convention prepared by the AU Commission on International Law reflects the legal standards mentioned above and is indicative of how states should plan and carry out evictions in the context of development<sup>64</sup>. States should include procedural guarantees to ensure that any displacement, eviction or relocation is conducted on the basis of a decision made according to law; that it is justified by compelling and overriding public interest; that it promotes general welfare, including that of IDPs; that it is considered only when there are no other feasible alternatives; that it is reasonable and proportional; and that it is regulated to ensure full and fair compensation and rehabilitation. The AU model law also sets out guidelines for impact assessments, including analysis of the specific effects of forced evictions on women, children, the elderly and other marginalised or vulnerable people. It guides states on how to carry out displacement in a manner that respects property rights as well as individuals’ dignity and rights to life and security.

## Opportunities

The Kampala Convention takes bold steps to condemn and comprehensively address arbitrary displacement, forced evictions and their consequences, including by committing states to examine how they carry out development and other projects through a human rights lens. This is perhaps the most powerful illustration of the overall commitment of AU member states to protect and assist IDPs and refugees in an increasingly complex environment where causes of displacement often overlap. By recognising the multiple and interlinked causes of displacement and assigning clear responsibilities to state and non-state entities, it provides an excellent framework to design comprehensive laws, policies and responses to address the various types of internal displacement.



An internally displaced child peeks out from her shelter at the Zona-K settlement in Mogadishu, Somalia, from which many reports of evictions have been received. Photo: UN HABITAT, December 2012

## CASE STUDY: PASTORALIST IDPS

Sixty-six per cent of African land is used for pastoral production<sup>65</sup>, and pastoralism is recognised as part of the continent's cultural heritage<sup>66</sup>. Little is known, however, about the internal displacement of pastoralists, and some even argue that they cannot become internally displaced at all, given their traditional mobile lifestyle. As stated by the UN Special Rapporteur on the human rights of IDPs though, they can indeed suffer displacement<sup>67</sup>.

The displacement of pastoralists is intrinsically linked to the loss of livestock, their primary basis of subsistence, inaccessibility of land and resources, and the loss of access to markets. Factors that can trigger displacement include sudden shocks such as conflict, violence, cattle rustling, human rights violations and sudden-onset disasters; slow-onset processes such as drought and environmental degradation; and both state and private intervention. Research has shown that each of these causes may directly result in pastoralists' displacement.<sup>68</sup> In reality, however, it is often the result of a combination or sequence of causes, which makes it impossible to identify a single trigger. This is likely to be the case in the context of slow-onset disasters, protracted or cyclical crises, and in fragile states<sup>69</sup>.

### Resolving the clash between the legitimate concerns of pastoralists and the legitimate goal of an intervention is a common challenge to overcome

The Guiding Principles, the Great Lakes Protocol on IDPs and the Kampala Convention all include obligations to protect pastoralists from displacement because of their ancestral attachment to their land, a relationship often linked to their cultural, spiritual and physical wellbeing. In Article 4 (5), the Kampala Convention obliges states parties to "endeavour to protect communities with special attachment to, and dependency on, land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests".

For example, Kenya has introduced constitutional and legal reforms on land rights, but pastoralists remain vulnerable to losing theirs as a result of expropriation, appropriation or dispossession by both public and private entities<sup>70</sup>. The typical justification is that such actions make way for more efficient, productive and sustainable use of the land. The introduction of commercial



Turkana herdsmen with their cattle in northern Kenya. Pastoralist movements cease to be normal once factors that give rise to them are 'coercive' in nature. Photo: IRIN/Gwenn Dubourthoumieu, July 2010

agriculture, the exploitation of natural resources such as oil and gas, and other projects to advance development in northern Kenya would appear to be legitimate public interests. Such interventions, however, often encroach on pastoral lands and can be a direct cause of displacement, tension and conflict. This is particularly the case in drought-stricken areas, where such interventions further restrict access to scarce resources and affect the usage schedules of pastoral communities. Resolving the clash between the legitimate concerns of pastoralists and the legitimate goal of an intervention is a common challenge to overcome.

In order to avoid unfettered interventionism, the Kampala Convention determines that such projects must be justified by compelling and overriding public interest. In cases affecting communal land used by pastoralists, the public interest must meet a higher threshold in order to outweigh that of pastoralists on the basis of their special attachment to, and dependency on, their lands.

Kenya's 2012 legislation on IDPs generally reflects the provisions of the Kampala Convention. It provides for special protection against the displacement of pastoralists and obliges the government and any other organisation, body or individual to prevent internal displacement in the context of development projects, including the exploitation of natural resources. If such interventions cannot be justified by compelling and overriding public interest, any ensuing displacement is considered arbitrary and constitutes an offence. When such displacement can be justified, the Act lays out detailed procedures and conditions that must be adhered to, and makes it clear that such cases must be the exception rather than the rule. Authorities are also obliged to provide for durable solutions if the displacement is permanent.

# ANNEX

Table 1: Estimated scale of disaster-induced displacement 2008-2012 <sup>71</sup>, Disaster Risk Reduction (DRR) policies, National Adaptation Programmes of Action (NAPA), and National Adaptation Plans (NAP) in AU member states

AU member states	Kampala Convention ratified (R) and/or signed (S)	Individuals displaced by rapid-onset disasters, 2008-2012	Climate change NAPA or NAP	DRR plan or national platform
Algeria		3,100		
Angola	R	430,300	X	
Benin	R	544,800	X	X
Botswana		no data		
Burkina Faso	R	183,100	X	X
Burundi	S	12,300	X	
Cameroon		38,200	X	
Cape Verde		no data		
Central African Republic*	R	37,000	X	
Chad	R	593,100	X	
Comoros	S	11,000	X	
Congo-Brazzaville	S	no data	X	X
Cote d'Ivoire	S	10,000	X	X
Djibouti	S		X	X
DR Congo	S	152,000	X	X
Egypt*		3,000		
Equatorial Guinea	S	no data		
Eritrea	S	no data	X	
Ethiopia	S	175,000	X	
Gabon	R	2,400	X	X
Gambia	R	35,800	X	X
Ghana	S	122,800	X	X
Guinea	S	4,500	X	X
Guinea-Bissau*	R	6,600	X	X
Kenya		360,300	X	
Lesotho	R	8,400	X	X
Liberia	S	5,100	X	
Libya		no data		
Madagascar*		377,800	X	
Malawi	R	51,500	X	
Mali	R	36,700	X	

\* States under political sanctions as of 01 November 2013

AU member states	Kampala Convention ratified (R) and/or signed (S)	Individuals displaced by rapid-onset disasters, 2008-2012	Climate change NAPA or NAP	DRR plan or national platform
Mauritania	S	5,000	X	
Mauritius		no data		
Mozambique	S	640,300	X	
Namibia	S	126,400	X	X
Niger	R	793,000	X	X
Nigeria	R	6,817,900	X	X
Rwanda	R	26,600	X	
SADR	S	no data	n/a	
Sao Tome and Principe	S	no data	X	
Senegal	S	293,400	X	X
Seychelles		no data		
Sierra Leone	R	no data	X	X
Somalia	R	53,200	X	
South Africa		80,200		
South Sudan	S	340,000		
Sudan		237,500		
Swaziland	R	no data		
Tanzania	S	52,400	X	X
Togo	R	58,000	X	X
Tunisia	S	no data		
Uganda	R	33,000	X	X
Zambia	R	70,100	X	X
Zimbabwe	S	no data	X	



# NOTES

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- 3 IDMC, Global Overview, 2012
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- 5 Kampala Convention, Article 4
- 6 Guiding Principles Article 2(7)
- 7 Walter Kälin, Annotations to the Guiding Principles, Second Edition, Spring 2008, p. 19.
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- 9 Guiding Principles Article 3(1)
- 10 Kampala Convention, Article 3(d)
- 11 The only FNR Benchmark absent from the Kampala Convention is no. 8, which establishes the role of national human rights institutions (NHRIs). This, however, is made up for by the framework for their cooperation with the *African Commission on Human and Peoples' Rights*, under which NHRIs are requested to assist the commission in the promotion of human rights at the country level and to submit regular reports.
- 12 FNR, Benchmark 5
- 13 FNR, Benchmark 7
- 14 FNR, Benchmark 6
- 15 FNR, Benchmark 11
- 16 FNR, Benchmark 1
- 17 FNR, Benchmark 3
- 18 FNR, Benchmark 10
- 19 FNR, Benchmark 9
- 20 FNR, Benchmark 12
- 21 Kampala Convention, Article 5.6
- 22 Kampala Convention Articles 3.1 j) and 5.7
- 23 Summary of outcomes of the southern Africa regional workshop on the domestication of the Kampala Convention, 18-19 July 2013, Lusaka, Zambia.
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- 35 Ibid, p.21
- 36 Ibid, p.9
- 37 The Truth, Justice and Reconciliation Commission of Kenya : [http://www.tjrkenya.org/index.php?option=com\\_content&view=article&id=573&Itemid=238](http://www.tjrkenya.org/index.php?option=com_content&view=article&id=573&Itemid=238).
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## AFRICAN UNION

The African Union (AU) Division of Humanitarian Affairs, Refugees and Displaced Persons was established in 1968 as the Bureau for Placement and Education of African Refugees (BPEAR) after the 1967 International Conference on the Legal, Economic and Social Aspects of African Refugee Problems, a conference organized under the auspices of the then Organization of African Unity, the United Nations High Commissioner for Refugees, the United Nations Economic Commission for Africa, and the Dag Hammarskjöld Foundation. Today the Division sits within the Political Affairs Department of the African Union Commission.

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## IDMC

The Internal Displacement Monitoring Centre (IDMC) is a world leader in the monitoring and analysis of the causes, effects and responses to internal displacement. Through its monitoring and analysis of people internally displaced by conflict, generalised violence, human rights violations, and natural or human-made disasters, IDMC raises awareness and advocates for respect of the rights of at-risk and uprooted peoples.

IDMC is part of the Norwegian Refugee Council (NRC).  
For more information, visit our website at:  
[www.internal-displacement.org](http://www.internal-displacement.org).

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