



BROOKINGS

**Forum on the African Union Convention on
Protection and Assistance of Internally Displaced
Persons in Africa (Kampala Convention)**

**17 June 2011
Kampala, Uganda**

Organized by:
The Brookings-LSE Project on Internal Displacement
and
The UN Office for the Coordination of Humanitarian
Affairs

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1. INTRODUCTION

1.1. Background

The African Union (AU) adopted the world's first binding Convention on Internally Displaced Persons (IDPs) in Africa (Kampala Convention) on 23 October 2009. However, further work is needed to secure the necessary 15 ratifications for the convention to enter into force. Presently 31 Member States have signed the Convention, five have ratified and deposited instruments with the AU Commission, and another three have ratified but have yet to deposit the instruments.

The Convention is based on a broad definition of IDPs, including those displaced by conflict, human rights violations, natural disasters and development projects. It sets guidelines on responsibilities for preventing displacement, protecting and assisting people who are displaced, and searching for solutions to their displacement. The Convention also gives civil society a strong role.

One of the key architects of the AU Convention, Professor Chaloka Beyani, now UN Special Rapporteur on the Human Rights of Internally Displaced Persons (IDPs), led a forum on 17 June 2011 in Kampala to discuss the Convention.

1.2. Objectives

The objectives of the one-day forum were to:

- Provide a platform to promote the speedy signature, ratification and domestication of the AU Convention for the Protection of Internally Displaced Persons in Africa;
- Raise awareness about the Convention: why it is needed, what it says, and what ratification entails;
- Provide an opportunity to respond to questions about the Convention;
- Give further understanding of displacement resulting from natural disasters and development projects;
- Encourage representatives of governments, civil society, UN agencies and NGOs to come together to reflect on the Convention and to consider ways of encouraging governments to ratify the Convention.

The Forum took place immediately after a two-day regional workshop on natural disasters and human rights, attended by representatives of governments, civil society and UN agencies. Taking advantage of the presence of these workshop participants, the forum was also open to a broader cross-section of stakeholders.

2. PROCEEDINGS OF THE FORUM

2.1. Opening

2.1.1. Welcome Remarks

Mr. Renny Wafula, the UN OCHA-AU Liaison Officer, expressed profound gratitude to all partners who have contributed to organising the workshop and to the participants for coming. He emphasized that the AU is doing everything possible to support African governments to sign, ratify and deposit instruments of ratification so that the Convention can come into force. The AU is also committed to moving the process of domesticating the IDP convention forward.

2.1.2. Opening Statements

Ms. Elizabeth Ferris from the Brookings-LSE Project on Internal Displacement explained that the Project had long emphasized the importance of strengthening normative frameworks for IDPs. The Project, which is co-directed by the UN Special Rapporteur on the Human Rights of IDPs, was particularly encouraged with the AU Convention as the first legally binding instrument in the world on IDPs. She expressed the hope that this Forum would serve to inspire participants to take actions on the national level to encourage governments to sign and ratify the Convention.

Mr. Nikyema, the UN Humanitarian Coordinator for Uganda, highlighted that this Forum was being held immediately after the ‘Workshop on Protecting and Promoting Rights in Natural Disasters in the Great Lakes Region and East Africa’. He stressed that the AU convention is one of the key instruments to help realise human rights in situations of natural disasters, which is a particularly important issue in light of the growing frequency and ferocity of disasters. However, one-and-a-half years after its adoption, the Convention has yet to come into force. Thirty-five countries have signed, while fifteen ratifications are needed for the conventions to come into force. So far in the Great Lakes Region only Uganda has ratified the Convention. Mr. Nikyema encouraged participants to advocate for ratification of the convention in their respective countries after the Forum. He noted that the Forum was, in fact intended to reflect on the importance of the convention, how to popularise it and support its implementation. He gave a brief overview of important steps that have been taken by the AU since the adoption of the Convention, among which is development of a plan of action for implementation of the strategy. He reiterated the UN’s commitment to IDPs and to this Convention and then officially opened the Forum.

2.2. Overview of IDP Convention

2.2.1. Key Note Address and Overview of the IDP Convention by Chaloka Beyani: UN Special Rapporteur on the Human Rights of Internally Displaced Persons

Mr. Chaloka Beyani, the UN Special Rapporteur on the Human Rights of Internally Displaced Persons, gave a historical background of the AU Convention adopted by the AU in 2009. The Convention recognises that displacement cannot be handled unilaterally and requires solidarity and partnerships with non-state actors. One of the most important elements, he emphasised, is the statement of obligation of the states to IDPs.

He gave a brief overview of the process of developing the Convention, the extensive nature of discussions, especially of the objectives. In 2004, the AU Council asked the Commission to elaborate a legal framework for protection and assistance of IDPs in Africa. The concept note was discussed by a group of legal experts in 2005 and presented at a meeting of ministers in May 2006 in Ougadougou, Burkina Faso. The meeting agreed that the time was right for a Convention and a representative group of legal experts worked from 2007-08 to draft the Convention. In 2009 the Convention was adopted at the AU Summit in Kampala. In comparison with other treaty-making processes, the drafting of the Kampala convention was marked by a high level of participation with foreign ministers and then heads of state who not only discussed the substantive provisions but also offered amendments to the text. This has been important in that AU member states have ownership of the Convention.

Mr. Beyani then turned to a detailed explanation of each Article of the Convention, beginning with the definition of terms, the objectives of the Convention, the obligations of AU Member States and the AU, and the obligation of international organisations to discharge their duties in accordance with international as well as national laws in situations of internal displacement.

Mr. Beyani highlighted important obligations of states under the Convention, such as the obligation for states to designate an authority for coordination of government policies toward IDPs. This is a key issue since in some states no structure exists for coordination. Another key aspect is that members are held accountable for state actions that violate human rights of IDPs.

The Convention addresses different types of displacement, including displacement caused by conflict, natural disasters and development projects. It also addresses issues of durable solutions, re-integration, compensation for loss of property and livelihoods, registration of IDPs and replacement of lost personal documentation.

The Convention will enter into force once 15 signatories have deposited their ratifications with the AU Secretariat. Once it enters into force, a conference of states parties will be established, facilitated by the AU, to serve as a monitoring mechanism. In addition, the African Peer Review Mechanism (APRM) can be used to track capacity and compliance of States

with the domestication of the Convention and work is needed to sensitise the APRM on their role in this aspect.

Mr. Beyani concluded his remarks by asking participants to take action in their countries to sensitise officials in positions of influence, such as members of parliament, ministers, advisors, and commissioners about the importance of ratifying the Convention.

2.2.2. Issues emerging from Key Note Address and Overview of the IDP Convention

Cessation of IDP status: While the status of ‘refugee’ is based on international refugee law, there is no formal IDP status and hence no cessation of that status. IDPs are already citizens or habitual residents of a country and in that respect are entitled to protection from the state. While there is no cessation of IDP status, the more critical question is the point at which protection and assistance for IDPs is no longer needed. Under the Convention, while States retain their sovereignty, they have no right to withhold assistance and protection.

The rights of people evicted from gazetted areas such as forests and road reserves: Under humanitarian law, the term ‘home or habitual residence’ has a legal connotation that provides legal protection for the categories of people that are compelled to leave their home or habitual residence. In Kenya, the eviction of people from the Mau forest is a quest to protect the ‘water tower’ of the country and falls within the context of mitigating or preventing natural disasters. Article 12 of the Convention provides guidance about appropriate compensation and remedies. For example, compensation and restitutive restoration may apply if people have lost their livelihoods. Legality and illegality of tenure is not a factor for IDPs; the key issue is the displacement and need for assistance. Compensation should be made, although a distinction can be made with respect to legality or illegality of tenure.

Is the Convention monitoring mechanism strong enough to ensure that the Convention is implemented? Monitoring and compliance mechanisms are always a weakness in international law. The AU designates a conference of states parties as the monitoring mechanism but it is important that civil society actors draw attention to shortcomings and failures of states to observe the provisions of the Convention. Moreover, the Africa Peer Review Mechanism, if taken seriously and, if IDP issues are included, can be an effective monitoring tool. But strong national mechanisms are needed, including national human rights commissions.

Development-induced displacement: The safeguards within the Convention are informed by international law on the movement of populations. The thrust is to, as much as possible, prevent non-consensual movement; in cases where it cannot be avoided, the environmental and social impact assessments are required to investigate impacts, options, development needs, mitigation and different alternatives. The principle

laid down by international law is that development should be for the benefit of the affected people, acceptable to them, and of compelling and overwhelming public interest. Moreover the Convention emphasises the need to consult with affected populations.

The AU mandate and capacity to intervene in situations that may lead to displacement: The AU Peace and Security Council has the mandate to intervene in such situations, but has not yet functioned effectively. The AU does not yet have the capacity to successfully intervene in such cases. The relation between the Council and regional organisations such as the African Standby Force needs to be clarified. Political and diplomatic interventions such as non-recognition of governments, sanctions, and suspension are generally explored before military intervention is considered.

Gender based violence (GBV): This is only briefly mentioned in the Convention but the Great Lakes Protocol on Gender Based Violence already exists to address this. The UN Special Rapporteur on IDPs also has the duty to handle GBV as a thematic issue.

Forced relocation, as occurred in Ethiopia and Chad in the past, is prohibited under the Convention.

Ratification and domestication of the AU Convention: Ratification is an executive action at the national level, which has different prerequisites, instruments and requirements in different countries. The lead ministries and other line ministries need to be aware of their stake and their roles in this process to be able to push the process forward. Domestication is the process of developing and implementing policy that follows the entry into force of the Convention, involving preparation of legislation, guidelines and standards/benchmarks.

Registration: Registration, including family registration, is crucial to quality assistance and protection and, therefore, the responsibility to issue documentation to IDPs is part of the responsibility to protect.

Reparation and titled land: A community has the right to choose land tenure systems that are appropriate to them; however protection under these systems is often inadequate due to lack of documentation that recognises these systems. This increases the vulnerability of communities, especially for women and children.

Obligations of South Sudan after independence: Sudan is a signatory to the Great Lakes protocol. Under the doctrine of state succession, South Sudan may adopt or rescind treaties and obligations that they were party to as part of the Sudan.

2.3. The AU Roadmap for Implementation of the Outcomes of the AU Special Summit on Refugees, Returnees and IDPs in Africa

2.3.1. Renny Mike Wafula, UN OCHA-AU Liaison Office

After providing a short overview of AU structures, Mr. Wafula noted that the 2009 AU Summit not only adopted the Convention and the Kampala Declaration, but also 52 related recommendations. In July 2010, a Roadmap for the 2010-2015 period was adopted which called for speedy ratification of the Convention, development of a plan of action, implementation and finally revision of the plan of action based on experience.

The Plan of Action is an implementation and accountability framework which sets broad targets, facilitates coordination, follow-up, reporting and monitoring. In addition, it provides a platform for interaction between the AU and regional groupings. The 10-point action plan includes such activities as ratification, resource mobilization, and supporting durable solutions and is divided between short-, medium- and long-term actions.

Capacity building and technical assistance for the AU Commission, national and municipal levels of governments are highlighted in the Plan of Action. The expectation is that the AU and partners will find means to strengthen and support technical assistance to member states.

The legal and policy goals of the Plan of Action are not only the ratification of the Kampala Convention, but the whole set of human rights issues surrounding displacement, including the harmonization of national laws and policies with the IDP convention.

Funding for implementation of the Convention is limited to 2% of the AU budget, about US\$ 1.4 million, although there has been a recommendation to increase this to 4% next year. A resource mobilisation strategy is to be completed by 2012.

Status domestication of the IDP Convention: The Convention was adopted on 23 October 2009 and the hope was that it would come into force within one year. However, a few additional ratifications are needed and Mr. Wafula expressed his hope that more ratifications could come from the governments of countries represented in this meeting.

Moving the agenda forward: There is a need for the AU to engage with other actors including the UN Special Rapporteur on IDPs, the Regional Economic Communities and international NGOs to mobilize support for ratification and – once the Convention comes into force – for its domestication into national laws.

2.3.2. Moses Chrispus Okello, Refugee Law Project

The Refugee Law Project is at the centre of the discussions about the roadmap for the implementation of the Outcomes of the AU Special Summit on Refugees, Returnees and IDPs in Africa.

Moses Chrispus Okello reminded the forum of the contextual issues: the Great Lakes region's interlocking conflicts that have led to more displacement. He highlighted positive aspects of the AU Convention:

- The AU Convention's Plan of Action promises to shift the discussion of solutions from an exclusive focus on voluntary repatriation to exploring citizenship and naturalization;
- There is a clear focus on SBGV, although the Convention is silent on the question of discrimination on the basis of sexual orientation;
- It promises to criminalise the act of displacement and sets out specific mechanisms to hold accountable those responsible for displacing people;

He also pointed out the negative aspects:

- In three years only five governments have ratified the Convention, indicating that there is an uphill task ahead for domestication of the Convention. The slow pace of ratification may delay implementation of the three-year Plan of Action;
- Since most countries are heavily dependent on donor funding, increasing the implementation budget allocation from 2-4% may be difficult;

Some elements of the Plan of Action need to be nuanced to avoid reinforcing the status quo, such as long-standing camps.

Finally, while the Convention seeks to end displacement on the continent, in the last six years the number of displaced people has in fact increased by 8 percent. Displacement is an indicator of bad governance. Human rights violations need to end before displacement can end.

2.3.3. Plenary discussion

Synergies between the regional economic communities and other regional actors should be sought, and there is a need to harmonise actions, e.g., of the IGAD Plan of Action and the AU Peace and Security Council, which have similar roles.

The Convention addresses some issues like armed groups. The next AU summit will deal with root causes of conflicts in the region, such as weak governance and lacking resilience.

2.4. Panel Discussion: Different Perspectives on the IDP Convention

2.4.1. Role of the Media and Civil Society in Promoting the Implementation of the IDP Convention and Plan of Action

Mr. Dismas Nkunda emphasised the importance of appropriate and targeted communication as well as the need to holding governments accountable for their actions in the public arena. He emphasised that it is everyone's role to participate in the discussion process about the Convention through the various media available, including writing letters to the editor and sharing personal displacement experiences.

Mr. Joseph Chilengi talked about the role identified for civil society organizations (CSOs) in the Convention and the need to work within national laws of the countries in which they exercise their mandate.

He noted that the traditional role of 'watchdog'/monitor that CSO play is challenged in the Convention in that CSOs are actually part of the Convention itself.

To generate advisory opinions CSOs need to have knowledge of the processes. CSOs are an organ of the AU and, by statutory obligation, no policy is made without civil society.

Mr. Chilengi gave examples of some of the successful lobbying efforts by CSOs pushing for the adoption of the convention at national levels. Civil society and media can now contribute to the process of ratifying the Convention by influencing opinions.

2.4.2. Displacement from Natural Disasters and Development Projects

Ms. Elizabeth Ferris gave an overview of displacement resulting from natural disasters and from development projects which are included in the definition of IDPs under the Kampala Convention. About 1.7 million people were newly-displaced by natural disasters in Africa in 2010. While there aren't any figures on the number displaced by development projects, the numbers are undoubtedly large and growing. Development-forced displacement and resettlement often results from capital-intensive, large-scale infrastructure projects such as dams, irrigation schemes, mineral operations, plantations, highways, urban renewal, industrial complexes and tourist resorts. Development actors, led by the World Bank have developed guidelines for resettlement of communities in projects funded by the Bank. In general these guidelines advise against displacement unless there is a compelling reason for doing so and all alternatives have been explored. Affected communities must be consulted about the process and in principle those resettled should be at least as well off as before their displacement. In practice this hardly ever happens. Rather, those displaced by development are usually more impoverished, marginalised and jobless than before. The biggest drivers of displacement are large dams.

In comparison with those displaced by conflict, there is usually a long lead time with development projects, which offers more of an opportunity to influence decisions. The State is often the developer and therefore has

more direct responsibility for the displacement than for IDPs displaced by conflict or natural disasters. Development projects may be projects intended to mitigate other environmental problems such as climate change. Stakeholders should ensure the AU Convention on IDPs does not harm the very population it is trying to protect.

2.4.3. Housing, Land and Property Rights and the AU IDP Convention

Ansa Masaud of UN HABITAT shared experiences from UN HABITAT's work on land and property issues in the region. She highlighted the tendency of the poor to settle in high-risk zones with no formal tenure systems and the difficulty of establishing a continuum from emergency humanitarian intervention to development after a natural disaster strikes.

She talked about the ICGLR Pact on Peace, Security and Development in the Great Lakes region, The Global Land Tool Network and the increasing focus on country-level support. She also discussed important developments in the region such as the ICGLR regional approach to land rights. She noted that there is now greater recognition among decision and policy makers that comprehensive approaches are needed and that, given the complexity of issues around land, agencies should either engage comprehensively (both technically and politically) or not at all.

2.4.4. Plenary discussion

Domestication of the Convention: There is a need for other political leaders and civil service officials outside the foreign affairs ministries to support the process of domestication of the Convention and for the AU to hold its members accountable for delivery on their commitments. Many states do not have resources for domestication; this is where international support should go.

2.5. Wrap up and Next Steps

2.5.1. Renny Mike Wafula and Professor Chaloka Beyani

Mr. Wafula thanked everyone for their active participation and urged them to continue to be open to engagement on issues related to their mandate. He reiterated the AU's commitment to playing its part in addressing the issues that came up during the discussions.

Mr. Beyani emphasised the importance of identifying the simplest processes for ratification and domestication. He noted, for example, that those governments that had ratified the Great Lakes Protocol had already indicated their support of the provisions contained in the AU Convention and thus a separate ratification process of the Convention might not be necessary. He stressed the need for policy frameworks as the first requirement for domestication. Countries also need to consider developing structures, logistics, resources and other practical aspects such as focal points to facilitate the incorporation of provisions of the Convention into national laws and policies.

Mr. Beyani underscored the need for partnerships between the AU, member states, international organisations and CSOs. He urged participants to take the knowledge from the regional workshop to the national level to support domestication in the various domestic contexts.

2.5.2. Plenary issues

The AU will continue to engage states and regional committees in the process of supporting the Convention. In September, there will be a regional AU Conference in Durban to review its instruments and to respond to questions regarding ratification and domestication. To simplify ratification, the AU will develop model legislation that states can use.

In addition, ECOSOC runs a training programme on understanding the AU and influencing policy processes within the AU.

There is an important need to build links with key research institutions that can contribute to improving understanding on issues related to internal displacement and promote good practices and solutions.

After the official closing of the Forum by Chaloka Beyani and Renny Mike Wafula, Beth Ferris and Truphosa Anjichi-Kodumbe thanked the organisers, resource persons and participants for their contributions.

Annex 1: Agenda – Forum on the African Union Convention on Protection and Assistance of Internally Displaced Persons in Africa

Agenda – June 17, 2011	
Time	Topic
Session 1	Opening
09.00-09.45	<ol style="list-style-type: none"> 1. Welcome Remarks: Renny Mike Wafula, UNOCHA-UN Liaison Officer (chair) 2. Opening statements: Theopane Nikyema, UN Humanitarian Coordinator
Session 2	Overview over IDP Convention
09.45-11.00	<ol style="list-style-type: none"> 1. Key Note Address and Overview of the IDP Convention by Chaloka Beyani: UN Special Rapporteur on the Human Rights of Internally Displaced Persons
11.00-11.30	Coffee Break
Session 3	The AU Roadmap for Implementation of the Outcomes of the AU Special Summit on Refugees, Returnees and IDPs in Africa
11.30-12.30	<ol style="list-style-type: none"> 1. Renny Mike Wafula, UNOCHA-AU Liaison Office 2. Moses Chrispus Okello, Refugee Law Project
12.30-13.30	Lunch Break
Session 4	Panel Discussions: Different Perspectives on the IDP Convention
13.30-15.30	<ol style="list-style-type: none"> 1. Role of the Media and Civil Society in promoting the Implementation of the IDP Convention and Plan of Action Joseph Chilengi, Director Africa IDP Voice/Chair ECOSOC Political Affairs Cluster Dismas Nkunda Co-Director/ International Refugee Rights Initiative 2. Displacement resulting from Natural Disasters and Development Projects: Elizabeth Ferris, Brookings-LSE Project on Internal Displacement 3. Housing, Land and property rights and the AU IDP Convention: Ansa Masaud, UN Habitat-Nairobi
Session 5	Wrap-up and Next Steps
15.30-16.30	<ol style="list-style-type: none"> 1. Renny Mike Wafula 2. Chaloka Beyani

Annex 2: Participants list

No.	Name	Organization	Position
Burundi			
1	Nathan Mwesigye Byamukama	Executive Secretariat International Conference on the Great Lakes Region (IC/GLR)	Program Officer, Cross-Cutting Issues
2	Irakoze Ildéphonse	Plateforme Nationale de Gestion des Risques	Director for the National School for Civil Protection
3	Didier Ninteretse	Burundian Red Cross	Project Coordinator - "Urgency Brigades"
4	Audace Ngiye	Governmental Commission for Human Rights	President
5	Annick Mugisha	Norwegian Refugee Council	Assistant Coordinator Camp Management
6	Alexandra Illmer	UNICEF	Monitoring and Evaluation Officer
DRC			
7	Gatungo Nisabe Cyprien	South Kivu Ministry of Justice and Human Rights	Advisor
8	Liliane Kayode Egounlety	MONUSCO-OHCHR	Human Rights Officer
9	Gilbert Sengamali Kipaka	OCHA	HAO assistant
10	Francesco Ardisson	UNHCR	Senior Protection Officer
Kenya			
11	Mahdi Mohamed Adan	Kenyan Red Cross	Response Manager
12	Collins Omondi	KNCHR	Human Rights Officer
13	Johanne Hjort	UNHCR	Associate Protection Officer
14	Nazi Mwambura Kivutha	Ministry of State for Special Programmes	Assistant Director Dept of Mitigation and Resettlement
15	Ansa Masaud	UN-HABITAT	Disaster and Post-Conflict Section
16	Lucy Kiama	Refugee Consortium of Kenya	Executive Director
Rwanda			
17	Mireille Dederi	Ministry of Disaster Management and Refugees	Professional in Charge of Eligibility and Protection
18	Jolly Iribagiza	Ministry of Disaster Management and Refugees	Professional in Charge of Resource Mobilization and Partnership
South Sudan			
19	Yar Paul Awar	Southern Sudan Relief and Rehabilitation Commission (SSRRC)	Deputy Chairperson

20	Lam Jock	Ministry of Humanitarian Affairs and Disaster Management	Deputy Director ICT
Tanzania			
21	Lilian Makame	Commission for Human Rights and Good Governance	Enquiry Officer
22	Charles Msangi	Prime Minister's Office - Disaster Management Department	Disaster Management Manager
23	Linmei Li	UNHCR	Senior Protection Officer
Uganda			
24	Med Kaggwa	Uganda Human Rights Commission	Chairperson
25	Salima Namasbya	Refugee Law Project	Senior Legal Advisor
26	Mark Choonoo	UNICEF	Emergency Coordinator
27	Birgit Gerstenberg	OHCHR	Head of Office
28	Deborah Oyella	OHCHR	IDP focal point
29	Andrew Akutu	OHCHR	Disaster Management focal point
30	Jaqueline Kagoda	Office of the Prime Minister	Disaster Management Officer
31	Joseph Mugisa	Uganda Police	Commissioner of Operations
32	Charles Wabmue	Norwegian Refugee Council	Grants Manager
33	David Kigozi	International Refugee Rights Initiative	Programme Coordinator
34	Ronald Mayanja	World Vision	Emergency Response Disaster Mitigation Coordinator
35	Moses Chrispus Okello	Refugee Law Project	Senior Research Advisor
36	Anna Mutavati	UNFPA	Senior PO
37	Bagota Hope	Uganda Human Rights Commission	Vol M&I
38	Dismas Nkunda	International Refugee Rights Initiative	Co-Director
39	Katie Flannery	International Refugee Rights Initiative	Intern
40	Okello Gorette Odoki	HURIFO	Deputy Executive Director
Zambia			
41	Joseph Chilengi	African Union Economic, Social and Cultural Council	Chairperson

Facilitators			
42	Renny Mike Wafula	OCHA Ethiopia (AU liaison office)	Consultant, AU Special Summit on Forced Displacement in Africa,
43	Elizabeth Ferris	Brookings-LSE Project on Internal Displacement	Co-Director
44	Daniel Petz	Brookings-LSE Project on Internal Displacement	Senior Research Assistant on Natural Disasters
45	Chaloka Beyani	UN	Special Rapporteur on the Human Rights of IDPs
46	Truphosa Anjichi-Kodumbe	OCHA SRO ROSEA	Humanitarian Reporting Officer
47	Stian Bergeland	OCHA Uganda	Associate Humanitarian Affairs Officer