



Refugee Law Project

Faculty of Law, Makerere University



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Transitional Justice is key to addressing the challenge of mass displacement in Africa

As African heads of state and government converge in Kampala for a special summit on refugees, Internally Displaced Persons (IDPs) and returnees in Africa (19 – 23 October), hopes are high that they will sign a draft African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. If they do, the Convention will be the first instrument in the world to legally oblige States to protect and assist IDPs. State signatories will also commit to elimination of the root causes of persistent conflict on the continent, and to putting in place a comprehensive framework for ending displacement and providing reparations for victims of war and conflict. **As such it is an important step towards clearly recognising the role of transitional justice in resolving forced migration situations.**

Uganda has many lessons to offer its counterparts: the existence of policy instruments such as the National IDP Policy (the second in the world), the Peace Recovery and Development Plan (PRDP) and the Refugee Act 2006, has placed the country ahead of many African states in terms of protection and assistance of IDPs and refugees respectively. Indeed, as noted in a press statement released by Uganda's Office of the Prime Minister (OPM) in *The Daily Monitor* on 1st October 2009, the opportunity to host this Summit is a tribute to Uganda's pioneering efforts.

This does not mean that no issues remain for Uganda; For example, as OPM itself has noted, IDPs and refugees are often isolated and made to reside in insecure and inaccessible areas, and ought therefore to be allowed greater freedom of movement. A key step in reducing refugee and IDP isolation would be to end the current practice of pegging assistance to refugee and IDP camps. This practice, in which international partners such as UNHCR and WFP are complicit, leaves refugees and IDPs with an unenviable choice: either move to the camps and access assistance and protection from there or stay outside the camps and find yourself excluded from any protection mechanism or material assistance. The resultant struggles for survival blight Uganda's applauded image as a leading country in the promotion and assistance of IDPs and refugees.

Even if encampment might be necessary in the immediate phase of displacement, long term protection of refugees and IDPs should be based on humanitarian and human rights law principles, which emphasise individual freedoms. This would also serve the purpose of eliminating one of the drivers of conflict created by encampment: all governments should note that policies which place refugees and IDPs into isolated camps, also create populations which are vulnerable to recruitment (often forcible) by militias, army and rebel groups, as well as enabling refugees to mobilise militarily for purposes of invading their countries of origin.

Reducing the obligation to live in camps also requires governments to deal more comprehensively with the reality of diverse patterns of population displacement and settlement. In Uganda, for



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example, our research suggests that where refugees and IDPs have been displaced multiple times and experienced repeated violation of their rights in camps, they ultimately decide to self-settle in rural or urban areas. Once they self-settle, they are currently excluded from assistance. Our 2007 RLP Briefing Report on the exclusion of urban-based IDPs also suggests that this exclusion will ultimately hamper any national reconciliation processes. The obligation to assist refugees and IDPs regardless of their choice of residence is bestowed upon States by Article 5 (5) of the Draft Convention. Article 8 and 13 broaden this obligation by calling upon states to not only extend assistance to host communities (for example surrounding slum dwellers or forced migrants who have decided to self-settle among their rural peers) but to also register and provide IDPs with identification documents where necessary.

Returning to the question of where transitional justice fits with resolving forced migration situations, it is important to note that Article 3 (2) k and Article 12 of the Draft Convention enjoin states to adopt specific reparatory measures such as compensation, satisfaction and guarantees of non-repetition for acts of human rights violations. This is an acknowledgement that durable solutions, be they reintegration, resettlement or return of IDPs and refugees are impossible if no attempt has been made, using transitional justice mechanisms, to take stock of the causes of and redress the violence of displacement. It also suggests that delegates at the Summit will need to look far beyond existing models of protection and assistance to IDP, refugee and returnee populations, and start to draw from innovative and creative transitional justice practices around the continent.

One important step towards this would be to ensure that the Plan of Action that is put in place to implement the decisions adopted at the summit makes links between the African Union's Draft Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the African Union's Policy on Post Conflict Reconstruction and Development (PCRD).

Another will be to link the Convention to on-going transitional justice processes on the continent. While the PCRD does not explicitly use the phrase "transitional justice", its six indicative elements (including [security](#), [humanitarian/emergency assistance](#), [political governance and transition](#), [socio-economic reconstruction and development](#), [human rights, justice and reconciliation](#), [women and gender](#)) are key ingredients when dealing with legacies of violence.

The Constitutive Act of the African Union places the entire institution, not just the Draft Convention's Plan of Action, at the centre of transitional justice processes on the continent, and we have witnessed this in its interventions to halt post-election violence in Kenya, and its ongoing attempts to diffuse the stalemate between Government of Sudan and the International Criminal Court. The draft protocol under consideration in Kampala this week creates an opportunity to eliminate the threat to stability posed by mass displacement, once and for all, by linking approaches to solving forced displacement with strategies for ensuring the transitional justice is realised.

In light of the above, the Refugee Law Project would like to make the following recommendations:

AU Executive Council Representatives

- Ensure that the Plan of Action includes explicit linkages between the Convention and the African Union's policy on Post Conflict Reconstruction and Development



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- Acknowledge the centrality of Transitional Justice Mechanisms in creating a domestic environment which is conducive to ending long-term displacement, both of refugees and IDPs
- Encourage member states to review existing legislation and bring it in line with the provisions of the Convention
- Make use of the early warning systems and demonstrate political will in averting potential causes of displacement by strengthening the relevant institutions for example through adequate budgetary allocations, transparency and accountability.

Government of Uganda and the OPM

- Upon signing the AU Convention amend and make explicit the inclusion of urban IDPs in Uganda's IDP related policies and interventions, notably the provisions on reparations
- Speedily profile and register all urban-based IDPs
- Address the gap between policy and practice regarding urban IDPs by re-orienting personnel responsible
- Involve urban IDP community groups in developing assistance and return or resettlement programmes
- Re-think encampment policies for refugees and IDPs and give true meaning to the right to freedom of movement

UNHCR and other international agencies

- Support the government of Uganda in conducting IDP profiling, registration and provision of documentation to IDPs in urban areas such as Kampala, Jinja, and Entebbe in addition to urban centers in northern Uganda to assess numbers, living conditions, and aspirations
- In line with the draft convention create assistance programmes that are sensitive to the relationship between "hosts" and IDPs in urban areas
- In line with the spirit of the forthcoming UNHCR protection dialogue on urban refugees and IDPs, support the Government of Uganda in developing and establishing alternative policies and mechanisms for the delivery of assistance to forcibly displaced persons, including to those settled in urban areas.

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