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## New protection for IDPs under the Kampala Convention?

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### Fokus

Adopted by the African Union (AU) in October 2009, 30 days after the fifteenth African state, Swaziland, deposited its instruments of ratification with the African Union, the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) today enters into force.

On 6 December 2012 the **Convention for the Protection and Assistance of Internally Displaced Persons in Africa** (Kampala Convention) enters into force. This Convention is the first legally binding regional instrument that contains an obligation for states to protect and assist internally displaced persons (IDPs). The Convention aims to establish a legal framework in Africa to prevent displacement from happening, to protect and assist people during the displacement and to bring displacement to an end and seek durable solutions. Displacement may occur due to man-made actions such as armed conflicts, generalized violence, and violations of human rights as well as natural hazards.

Areas where the Convention significantly advances the existing normative framework on internal displacement include: protection from arbitrary displacement; the responsibilities of the African Union, multinational companies and private security actors that arise in addition to the obligation of states responsibilities under the Convention; as well as the right to a remedy for the wrongs associated with displacement.

The fact that the Convention addresses **protection from arbitrary displacement** shows that a strong focus is placed already on the prevention of critical situations. Also relating to this aspect of prevention is the obligation of States Parties to devise early warning systems in areas of potential displacement. Thereby and by the obligation of States to establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures, the problem of anticipatory movement of persons can be addressed. This is especially relevant because, as to date, most of the persons moving in anticipation of a disaster do not qualify for protection under the existing legal instruments.

Another key area of the Kampala Convention is **the right to a remedy** for the wrongs associated with displacement, including the loss of housing, land and property (art. 12). The open wording does include a) not only the IDPs themselves but also other persons affected by the displacement as, e.g. host communities, and b) the loss of real or personal property as well as physical and mental harm incurred. States Parties shall provide persons affected by displacement with effective remedies—irrespective of whether the state was involved in the loss or damage or whether this was outside the state's control. In particular, the explicit reference to climate change should be noted (see also art. 5) with a view to droughts that might occur more often in the future in some African regions. States Parties shall maintain an effective legal system to provide just and fair compensation and other forms of reparations, where appropriate, to IDPs for damage incurred as a result of displacement.

As regards the **solution** to the difficult situation of displacement States Parties shall promote and create satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity. IDPs shall, thus, be free to make an informed choice on whether to return, integrate locally or relocate by consulting the state on these and other options. The participation of IDPs shall be ensured in finding sustainable solutions. Unlike other Conventions, the Kampala Convention does not provide for one preferred option but gives the IDP a free choice between the legally equal possible options of restitution, compensation and other remedies.

**The International Committee of the Red Cross (ICRC)** welcomes the Convention as "a significant step forward in the protection and assistance of internally displaced people in Africa" because it is "a legal document potentially binding all African countries—a quarter of world's States". Many people affected by armed conflict and situations of generalized violence are internally displaced. In Africa alone, some 10 million people are internally displaced across the continent, making up one third of the world's IDP population. The ICRC assisted over 2.2 million people displaced internally in Africa in 2010 and close to 4 million in 2011.

However, the new legal instrument *per se* will not resolve any situation unless states in fact provide for practical solutions and make sure that IDPs in fact have access to one of the mentioned remedies. Whether the Convention brings effective protection for IDPs, depends not only on its ratification but on the implementation and enforcement of the obligations stated under the Convention. This poses a high burden on the States Parties. The success of this new legal instrument thus depends on whether the States Parties are in a position to tackle this burden.

### Verantwortung

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