



Global Protection Cluster



REGULATORY FRAMEWORKS ON INTERNAL DISPLACEMENT



Global, regional and national developments





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FOREWORD



In my role as Special Rapporteur on the Human Rights of Internally Displaced Persons (IDPs), I have observed that while national governments have the primary responsibility towards IDPs, their responses in exercise of this responsibility often tend to be ad hoc, uncoordinated and, therefore, sometimes ineffective. National laws, policies or strategies on internal displacement can assist national authorities in addressing the challenges of displacement in a planned manner and improve short-term and long-term responses. Such national instruments may serve to clarify how to identify IDPs and determine their entitlement to protection and assistance. They also allow for responsibilities, budgets, administrative and response structures to be created. In doing so, confidence can be enhanced amongst regional and international development partners. National instruments can grant IDPs' entitlements based on their situation, rights and needs, and enshrine those entitlements in law and policy, including their right to be included in development assistance programmes as citizens or habitual residents of the State.

When I assumed my mandate in 2010, I made the promotion of the ratification and implementation of the African Union's Kampala Convention a key priority for my tenure. I dedicated a thematic report to the Human Rights Council on the Convention in 2014, in which I provided a comprehensive series of recommendations aimed at its implementation. I continued to engage the African Union on the promotion, ratification and implementation of the Convention. Those States that have ratified the Convention must go further to implement it in practice. I continue to urge States to put in place national action plans to honour their commitments under such regional standards, and my mandate remains available to provide technical assistance to them in that regard.

As I stated at the Leaders' Round Table on Forced Displacement of the World Humanitarian Summit, the international community should support the strengthening of policy and legal frameworks to protect and foster inclusion of displaced people. It should continue to work closely with the African Union and its members to ratify and implement the Kampala Convention on internal displacement, as well as with other regional organizations to strengthen their activities to prevent and reduce internal displacement, including through the elaboration of new regional standards. It should also strengthen its technical capacity services to provide relevant expertise to Member States and regional bodies, as required, to develop national laws, policies and strategies on internal displacement, in line with the Guiding Principles on Internal Displacement.

In this context, I commend the important work of the Task Team on Law and Policy of the Global Protection Cluster, the technical entity coordinating global efforts on law and policy-making on internal displacement. This paper takes stocks of the monitoring and technical support services that the Task Team has been delivering since its creation in 2015. I hope this will steer the development and upholding of standards that were set out by the Guiding Principles and the Kampala Convention, and will translate into the adoption and implementation of normative frameworks at the regional and national levels.

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INTRODUCTION



IDMC reported 27.8 million new incidents of internal displacement worldwide in 2015. The figure, however, only includes those associated with conflict and rapid-onset disasters. It does not cover people forced from their homes by development projects and slow-onset disasters, making it a significant underestimate of the overall phenomenon.

Conflict and violence caused 8.6 million new displacements, and the three countries worst affected – Yemen, Syria and Iraq – between them accounted for more than half of the global total.¹ Outside the Middle East, Ukraine, Nigeria and the Democratic Republic of Congo (DRC) had the largest numbers of new displacements.

Given the human and socio-economic toll of internal displacement on both the country of origin and the region,² it is vital that governments and other entities engaged in protecting and assisting IDPs organise their efforts in comprehensive and coordinated ways that follow pre-agreed standards and rules. Normative frameworks help to this end by providing operational structures for responders and ensuring that IDPs and their right to protection are recognised. The UN General Assembly acknowledges the Guiding Principles on Internal Displacement as “an important international framework for the protection of internally displaced persons”.³ Since their adoption in 1998, a growing number of countries and regions have begun the process of developing normative tools that largely reflect them.

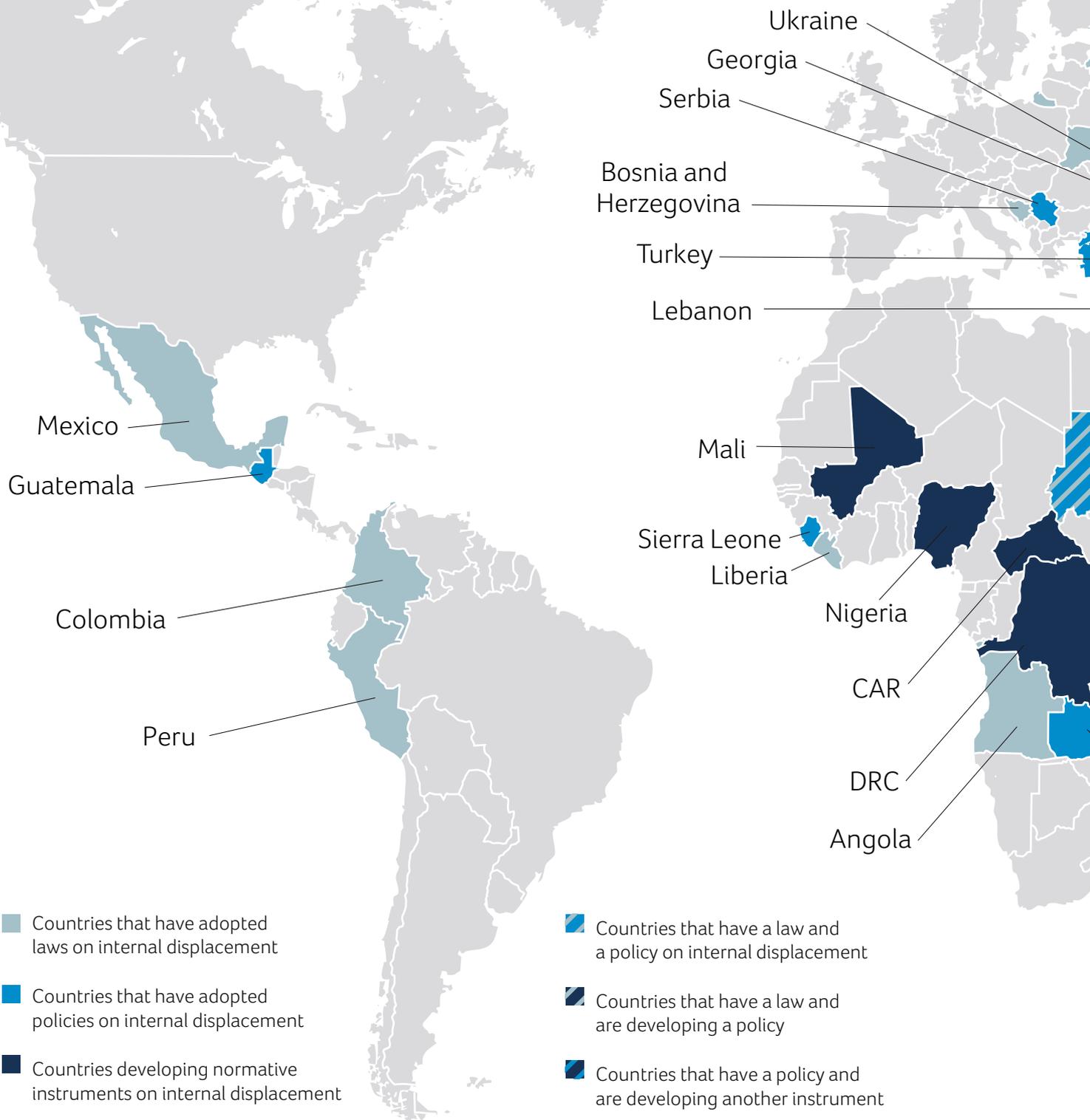
This paper is based on a mapping exercise that the Global Protection Cluster (GPC)’s Task Team on Law and Policy conducted in 2015. The exercise led to the launch of a global database on laws and policies on internal displacement, available at <http://www.internal-displacement.org/law-and-policy>. Following an overview of the global framework for IDPs’ protection and assistance, this study outlines lessons from national and regional processes such as the development and adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, widely known as the Kampala Convention, with a view to informing similar endeavours in the future.

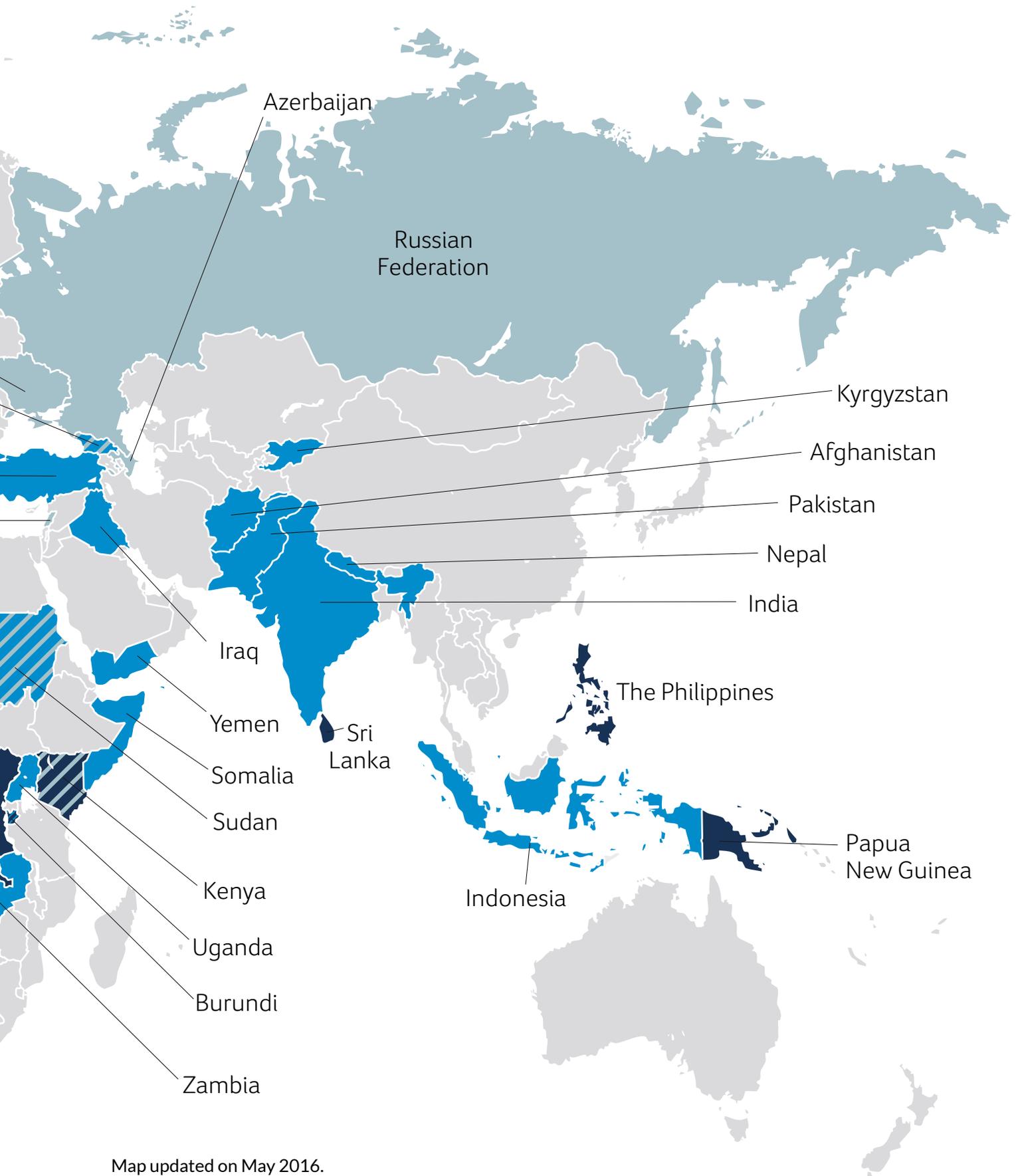
¹ IDMC-NRC, Global Report on Internal Displacement 2016, available at <http://goo.gl/9snb1N>

² Those countries with the largest populations of internally displaced people (IDPs) also tend to produce the most refugees; see UNHCR, Global Trends, Forced Displacement in 2015, available at <http://goo.gl/Mo2SqK>

³ UNGA, Resolution A/60/L.1, September 2005, para.132, available at <http://goo.gl/R6ngif>

COUNTRIES THAT HAVE ADOPTED LAWS OR POLICIES ON INTERNAL DISPLACEMENT





Map updated on May 2016.

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

INTERNATIONAL STANDARDS FOR IDP PROTECTION



An analytical report published by the UN Secretary General in 1992 found that there was “no clear statement” of IDPs’ rights in international law and highlighted the need to create a normative frame of reference for responding to internal displacement. Concern that many governments might resist the adoption of an international treaty led to the proposal that the Commission on Human rights draw up a non-binding instrument with a “comprehensive, universally applicable body of principles” from existing international law to guarantee IDPs’ effective protection and to establish a focal point within the UN human rights system.⁴ This led to the appointment of the Secretary General’s first representative on IDPs’ human rights, Francis Deng, who developed, with a team of legal experts, the Guiding Principles. The set of 30 principles is based largely on pre-existing human rights and humanitarian law, and inspired by analogy by norms of refugee law.⁵

The Guiding Principles and customary international law

Continued normative developments at the country level are desirable, not only to reinforce national systems, but also to further recognise the Guiding Principles as part of international customary law. Should such recognition be achieved, all states would be obliged to respect them “regardless of whether they have incorporated the Principles into domestic law or ratified regional instruments that might be adopted in the future”.⁶

Given the growing acceptance and use of the principles among governments, international organisations, UN treaty bodies and courts, some have begun to conclude that they have acquired legal significance.⁷ According to Walter Kälin, formerly the UN Secretary General’s representative on IDPs’ human rights, experience has shown “that some governments and domestic courts are ready to use the Guiding Principles in a legal sense”.⁸

⁴ UN, Analytical report of the Secretary General on Internally Displaced Persons, doc. E/CN.4/1992/23, para.103-104, 110

⁵ *Ibid*, add.2

⁶ Forced Migration Review/Brookings-Bern, The Future of the Guiding Principles on Internal Displacement, special issue 5, available at <http://goo.gl/3E3NV9>

⁷ Roberta Cohen. Lessons Learned from the Development of the Guiding Principles on Internal Displacement, Crisis Migration Project, Georgetown University, October 2013, p. 12.

⁸ Brookings/Cuny, How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework, December 2001, available at <http://goo.gl/qrEUdE>

The legal use of the Guiding Principles is visible in the adoption of national laws and policies that explicitly refer to them, but also through court rulings such as the Constitutional Court of Colombia's decision T-025 of 2004, which formally incorporated them into the country's legal framework.⁹ The German government has taken the official position that "the Guiding Principles can now be considered to be international customary law",¹⁰ and in its 2008 national policy the Iraqi government stated that they had become part of international law.¹¹

A treaty on internal displacement is not considered a feasible option in many quarters, and there is a palpable weariness towards advocating for new legally binding instruments.¹² Nonetheless, "as more and more states adopt laws and policies, and more regional instruments come into force as stepping stones, an international convention could be considered in the future".¹³

A global agenda on law and policy

The World Humanitarian Summit (WHS) provided a new opportunity for governments to commit to preventing internal displacement and devising durable solutions for IDPs, including through the adoption of regulatory tools.

The UN Secretary General's report to the summit, *One Humanity: Shared Responsibility*, built on the strong messages that emerged from the preceding regional consultations and reaffirmed the principle of accountability as intimately linked to the compliance of all those involved in a humanitarian response with international normative standards. It also identified two areas of normative engagement:

- ➔ "Develop national legislation, policies and capacities for the protection of displaced persons"
- ➔ "Adopt and implement regional and national legal and policy frameworks on internal displacement"¹⁴

This clear call reflects a renewed emphasis on the need for the increased accountability of all stakeholders, state and non-state alike, in preventing and responding to internal displacement.

The Secretary General's report also refers to the Kampala Convention, holding it up as a model for future normative developments in other regions. This is in line with the outcomes of consultations in 2014 and 2015 that consistently underscored the need for regional instruments to address internal displacement.¹⁵ In March 2015, participants in the consultation for the Middle East and north Africa recommended that regional organisations such as the Arab Maghreb Union, the Gulf Cooperation Council and the League of Arab States strengthen their role in protecting civilians in conflict, and advocated for the adoption of regional instruments for IDPs that build on the experience of other regions.¹⁶

⁹ Brookings Institution, *The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia*, 2009, available at <http://goo.gl/P63z9E>

¹⁰ Report of the Special Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, A/HRC/13/21, January 2010, p.5, available at <http://goo.gl/8V9Osm>

¹¹ Government of Iraq, national policy on internal displacement, July 2008, available at <http://goo.gl/aAGi71>

¹² Nevertheless the Government of Sierra Leone at the 32nd session of the Human Rights Council on 20 June 2016, stated that "an international convention on this subject would be timely and appropriated"

¹³ Roberta Cohen, *op. cit.*, p. 13.

¹⁴ UNSG, *Agenda for Humanity*, Annex to the Secretary-General's Report for the World Humanitarian Summit, available at <https://goo.gl/JDy6Yq>

¹⁵ WHS, consultation reports, available at <https://goo.gl/AjdPKE>

¹⁶ WHS, regional consultation for the Middle East and north Africa, March 2015, available at <https://goo.gl/mCtAzk>

The May 2015 forum convened in Guatemala City mentioned the importance of building frameworks for IDPs' protection in Latin America and the Caribbean.¹⁷ The Pacific consultation held in Auckland in July 2015 echoed stakeholders' previously expressed recognition of the need for "legal frameworks that provide long-term solutions to people displaced both internally and across borders" at both the national and regional level.¹⁸

Thematic discussions revived debate about a convention on internal displacement or humanitarian action,¹⁹ but ultimately they promoted regional initiatives, suggesting that such efforts were likely to be more viable and less controversial, and could in the long run pave the way for a binding global instrument.²⁰

At a high-level round table discussion on forced displacement held as part of the summit, several countries made clear commitments to develop and implement laws and policies on internal displacement. Somalia shared its plan to adopt a policy in line with the Kampala Convention, the Philippines committed to enact a national bill and Uganda proposed hosting the Kampala Convention's secretariat.

Regardless of the summit outcomes and the commitments made by states and others, the questions of whether a legally binding global instrument is desirable and the Kampala Convention is replicable remain relevant, as does the need for national or sub-national normative frameworks to guide and propel local responses.

¹⁷ WHS, regional consultation for Latin America and the Caribbean, May 2015, available at <https://goo.gl/waCWF1>

¹⁸ WHS, regional consultation for the Pacific, July 2015, available at <https://goo.gl/gctCM9>

¹⁹ Renny Mike Wafula, Intervention on Regional and National Instruments for the Protection and Assistance of Internally Displaced Persons, global consultations for WHS, October 2015

²⁰ WHS, Thematic Team IV, Serving the needs of people in conflict, on file at IDMC

REGIONAL INSTRUMENTS: KAMPALA CONVENTION AND BEYOND



Some regional organisations, such as the Organization of American States (OAS) and the Council of Europe have called on their member states to develop legislation and national policies on internal displacement in line with international standards.²¹ It was in Africa, however, that the first legally binding regional instruments for IDPs' protection were developed. The 2006 Pact on Security, Stability and Development in the Great Lakes Region, known widely as the Great Lakes Pact, and its protocol on IDPs' protection and assistance require member states to incorporate the Guiding Principles into their national legislation.²²

In 2009, the African Union (AU) adopted the Kampala Convention, a landmark instrument that established a common regulatory standard for IDPs. The convention also draws on the Guiding Principles and is the first common regional framework to define roles and responsibilities for a wide range of institutions and organisations operating in displacement settings and other stakeholders present.²³

Significant advances

In his 2014 report to the UN Human Rights Council, which was largely devoted to the Kampala Convention, the Special Rapporteur on the Human Rights of IDPs stated that it “goes beyond the Guiding Principles by articulating the need for a holistic response to internal displacement, based on a combined framework of international human rights law and international humanitarian law”.²⁴ By setting out the obligations of states parties, the [Kampala] Convention complements the Guiding Principles: while the latter focus on the rights of IDPs, the former is intended as a tool for duty-bearers.

The Kampala Convention is widely regarded as a major advancement in building a legally binding regulatory framework for the protection of IDPs. This is also due to the role it attributes to “all stakeholders – States but also other groups and entities involved in or affected by internal displacement.”²⁵ The Convention translates into concrete duties many of the benchmarks of the 2005 Framework on national responsibility.²⁶ In 2005, the Framework, a guidance tool set out under the auspices of the then Representative on the Human Rights of IDPs to assist governments in fulfilling their responsibility towards IDPs, identified twelve key steps countries should take when experiencing internal displacement.

²¹ OAS, Resolution 2667, 7 June 2011, available at <http://goo.gl/eQzC1q>

²² ICGLR, Great Lakes Pact and additional protocols, 2006, available at <http://goo.gl/Hlm08p>

²³ AU, Kampala Convention, 2009, available at <http://goo.gl/0o7utl>

²⁴ UN, Report of the Special Rapporteur on the Human Rights of IDPs, A/HRC/26/33, April 2014, p.10, available at <http://goo.gl/25Zjus>

²⁵ *Ibid*

²⁶ IDMC, The Kampala Convention. One year on: progress and prospects, 6 December 2013, p.14, available at <http://goo.gl/sTEb3l>

Just like the Guiding Principles, the Framework echoed one of the key tenets of IDP response, namely the national authorities' primary responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. Two of its steps are related to the adoption of IDP laws and policies on displacement. The Framework required national governments to "create a legal framework upholding the rights of IDPs" and to "develop a national policy on internal displacement."

The Kampala Convention takes an innovative approach by formulating responses tailored to the specifics of displacement in Africa. Among other things:

- It places communities at the centre of the humanitarian process. It refers to the vital role of host communities as providers of protection and assistance, and recognises their needs both at the height of a crisis and during protracted displacement.²⁷
- It speaks to a wide range of responders. It sets out responsibilities for states as primary duty bearers in all humanitarian responses, but also identifies roles for the African Union, international organisations, humanitarian agencies, civil society and others. In line with other frameworks of international humanitarian law, it also imposes a number of negative obligations on non-state armed groups.²⁸
- It recognises forced displacement in Africa as a complex phenomenon caused by a variety of factors. It sets out a wide but non-exhaustive list of triggers, including racial discrimination and equivalent practices; forcible population transfers incompatible with international humanitarian law; conflict and generalised violence; forced evacuations associated with disasters when not justified by safety or health concerns; human rights abuses, including gender-based violence and other harmful practices and inhumane or degrading treatment; and "any other act, event, factor or phenomenon of comparable gravity and which is not justified by international law".²⁹
- It acknowledges that development projects cause displacement and devotes an entire article to the issue, in which it emphasises the responsibilities of the development sector. As the Special Rapporteur on the Human Rights of IDPs has noted, it implicitly reinforces the notion that those who finance and implement projects should be held accountable for any failure to protect those affected against the risk of displacement.^{30 31}
- It acknowledges that nomads and pastoralists can also be displaced, an important recognition on a continent where pastoral areas account for 40 per cent of the total land mass.³²

²⁷ AU, Kampala Convention, preamble, articles 3(2)(c), 5(5) and 9(2)(b), available at <http://goo.gl/Oo7utl>

²⁸ *Ibid*, article 7(5)

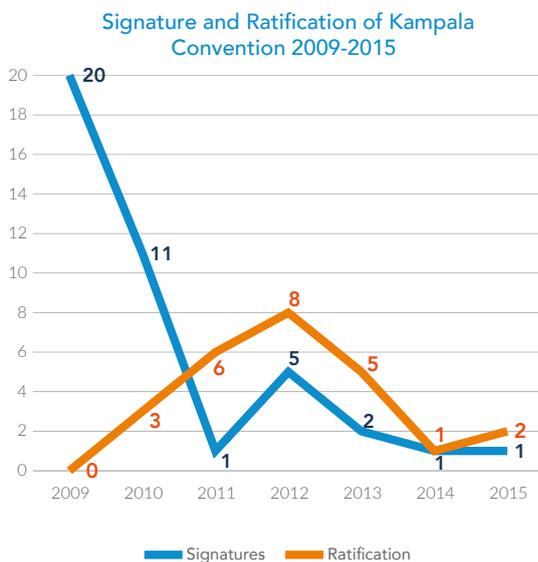
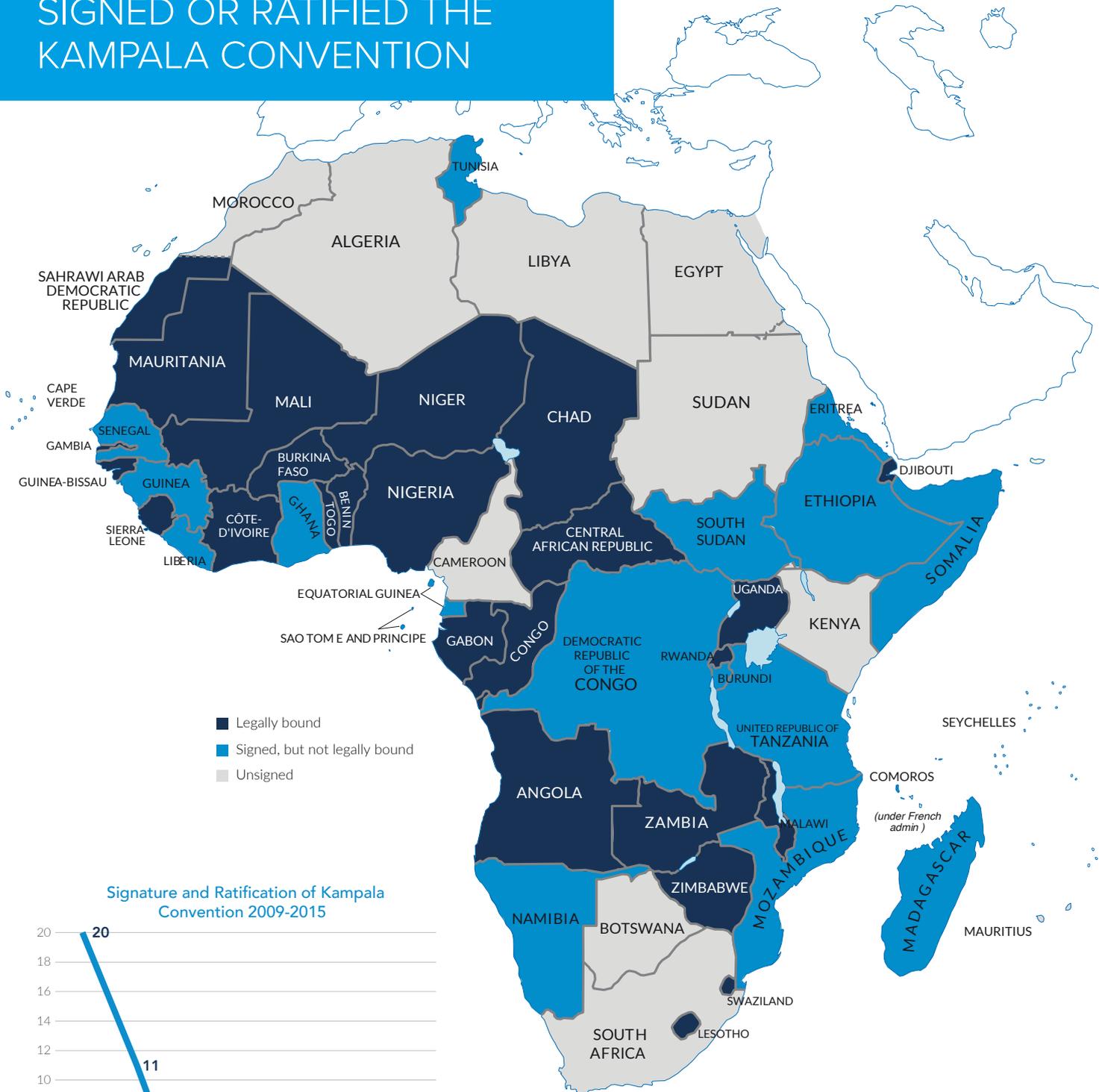
²⁹ *Ibid*, article 4(4)

³⁰ *Ibid*, articles 10 and 3(1)(i)

³¹ UN, Report of the Special Rapporteur on the Human Rights of IDPs, A/HRC/26/33, April 2014, p.19, available at <http://goo.gl/25Zjus>

³² AU, Policy framework for pastoralism in Africa, October 2010, available at <http://goo.gl/cACFR0>

AU COUNTRIES WHICH HAVE SIGNED OR RATIFIED THE KAMPALA CONVENTION



Map updated on May 2016.

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

Lessons learned

Regional legal initiatives may benefit from the lessons learned from the processes that led to the adoption of the Kampala Convention. A 1994 symposium organised by the Organization of African Unity (OAU) and the UN Refugee Agency (UNHCR) to commemorate the 25th anniversary of the Convention Governing the Specific Aspects of Refugee Problems in Africa brought to light the varying levels of protection accorded to refugees and IDPs by the regional standards that existed at the time.³³ While official steps to set up a common framework on internal displacement in Africa were not taken by the African Union until 2004, this recognition laid the foundation for a concrete engagement on the part of the OAU's member states, institutions and civil society to address this issue. Looking back at the process, which culminated in the adoption of the Kampala Convention in 2009, its success can be attributed to a number of factors that could be replicated in other regions.

POLITICAL WILL

The development of a regional framework in Africa was made possible thanks to the steady engagement of a regional intergovernmental organisation – the AU – which showed political commitment and devoted adequate resources to a goal that had been identified as an institutional priority. As the Special Rapporteur on the Human Rights of IDPs noted: “It is the principles of the Constitutive Act 2000 of the African Union which establishes obligations that are conducive to the protection of internally displaced persons.”^{34 35}

In 2004, the AU's Executive Council asked the African Commission on Human and People's Rights (ACHPR) “to collaborate with relevant cooperating partners and other stakeholders to ensure that IDPs are provided with an appropriate legal framework”.³⁶ The council also convened a special AU summit on refugees, returnees and IDPs, which was eventually held in Kampala in 2009.³⁷

PARTICIPATORY PROCESS

The Kampala Convention was negotiated during a lengthy preparatory process that involved states, regional economic communities, civil society organisations (CSOs), UN agencies and other stakeholders. It also included the creation of a task force that coordinated preparations for the special summit.³⁸ The ample consultations that took place between 2006 and 2009 allowed for a high degree of consensus around key policy choices that are now enshrined in the convention's provisions. CSOs took an active part in a pre-summit meeting with the AU that formulated the action plan for ratification and implementation.³⁹

MORAL LEADERSHIP

Eminent personalities such as Archbishop Desmond Tutu and the former UN Secretary General, Kofi Annan, played an active role in championing the Kampala Convention process. The concrete commitment of states such as Sierra Leone and Uganda, which had emerged from grave humanitarian crises that caused mass

³³ OAU/UNHCR, The Addis Ababa Document on Refugees and Forced Population Displacements in Africa, September 1994, recommendations, available at <http://goo.gl/tQZzHE>

³⁴ AU, Constitutive Act, (article 3(h), 3(k), 4(h), 4(j) and 4(o)), available at <http://goo.gl/b9dwUX>

³⁵ Chaloka Beyani, The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa, *Journal of African Law*, Vol. 50, No. 2(2006), pp.187-197, available at <http://goo.gl/cw7cgA>

³⁶ AU, Decision on the Situation of Refugees, Returnees and Displaced Persons, EX/CL/Dec.127, available at <http://goo.gl/RUvrDT>

³⁷ AU, Decision on the Ministerial Conference on Refugees, Refugees and Internally Displaced Persons, EX/CL/Dec.289(IX), available at <http://goo.gl/xmnJGO>

³⁸ WHS, Thematic Team IV: Serving the needs of people in conflict, on file at IDMC

³⁹ Forced Migration Review, Beyond good intentions: Implementing the Kampala Convention, issue 34, pp.53-55, available at <http://goo.gl/3i8Wlw>

displacement, was also instrumental in shoring up support for a regional treaty that could have been seen as impinging on states' sovereignty. The Ugandan government set a significant example with the adoption of a comprehensive national policy on internal displacement in 2004, at a time when the process that led to the Kampala Convention had just begun.⁴⁰

Challenges

OBSTACLES TO RATIFICATION AND DOMESTICATION

When the Kampala Convention was adopted there was an expectation that state parties would take follow-up steps to ensure its implementation. In 2010 the AU adopted an action plan with two objectives – to speed up the accession to, and the signing and ratification of the convention; and to facilitate its domestication and implementation.⁴¹

A preliminary assessment of the extent to which these objectives have been reached, carried out in 2014, found that although the convention represents a major advancement in creating a protection and assistance system for IDPs and others affected by displacement, much more needs to be done to ensure its effectiveness.⁴²

The convention was the fastest AU treaty to enter into force. The rate of ratification peaked between 2011 and 2013, but it has decreased substantially since, with only three countries becoming parties in 2014 and 2015.⁴³ Nor have some of the countries that host the highest number of IDPs in Africa, such as DRC, Somalia, South Sudan and Sudan, which clearly risks undermining its relevance. It is hoped that ratification by countries like DRC and Somalia will reinvigorate the overall regional process, prompting more states to formally express their adherence.

As for the obligation to integrate the provisions of the Kampala Convention by adopting laws and policies on internal displacement,⁴⁴ it should be noted that the **seven countries that have adopted IDP-specific laws or policies**, or those others that have enacted instruments relevant to IDP protection or have formally recognised the legal applicability of the Guiding Principles in their national system,⁴⁵ have done so outside the Kampala Convention process or even before its adoption. On the positive side, some countries like the Central African Republic (CAR), DRC and Nigeria are in the process of developing relevant instruments and Zambia, in its Guidelines for the compensation and resettlement of internally displaced persons (IDPs) adopted in 2013, makes specific reference to the domestication of the Kampala Convention.⁴⁶

⁴⁰ IDMC, IDP Laws and Policies, Uganda page, available at <http://goo.gl/GrDV7O>

⁴¹ AU executive council meeting, 19-23 July 2010, available at <http://goo.gl/co8OkQ>

⁴² UN, Report of the Special Rapporteur on the Human Rights of IDPs, A/HRC/26/33, April 2014, p.10, available at <http://goo.gl/25Zjus>

⁴³ Renny Mike Wafula, Infographic sheet on the AU Convention for the Protection and Assistance of IDPs circulated at the AU-GPC regional workshop on the Kampala Convention, December 2016, on file at IDMC

⁴⁴ AU, Kampala Convention, article 3(2)(a),(c), available at <http://goo.gl/Oo7utl>

⁴⁵ IDMC, IDP Laws and Policies, a mapping tool, 2015, available at <http://goo.gl/juJxa0>

⁴⁶ Op. cit, Zambia

All these initiatives point to a positive trend, but it should be stressed that none of the 25 countries that are currently state parties to the Kampala Convention has completed domestication. Law and policy-making tends to be time-consuming, but this only goes part way to explaining the lack of progress. Scant political will and a lack of technical knowledge are also significant factors. It is hoped that the processes currently pending finalisation will soon be completed and will set examples for other state parties.

To sustain the results achieved so far, the AU and its partners will have to make additional efforts. The common African position on humanitarian effectiveness presented at the WHS introduced a new ten-year AU action plan that calls for a shift “from norm setting to implementation”.⁴⁷ Another potentially vital step is the development of a new action for the Kampala Convention to replace the current one, which expired in 2012, and set out new areas of AU engagement to support national processes.

The convention recognises that the AU Commission has to “support the efforts of the States Parties to protect and assist internally displaced persons” under its provisions, matched by a corresponding obligation on behalf of the state parties to respect the AU’s mandate.⁴⁸ To support these efforts it might be opportune to further explore the identification of states and other stakeholders as regional “champions”, and to verify the role of AU regional economic communities in promoting the convention. It has also been suggested that the parliament of the Economic Community of West African States (ECOWAS) might ratify the convention, a move that would automatically apply to all ECOWAS member states without them having to take individual action.

EMBRYONIC MONITORING SYSTEM

Major efforts are required to ensure that state parties’ implementation of the Kampala Convention is effectively monitored. The convention attributes the role to various AU institutions, ACHPR and the African peer review mechanism. State parties are obliged to present a report to the African Commission every two years detailing the activities they have undertaken to implement the African Charter on Human and People’s Rights, and to submit information on the legislative and other steps taken to give effect to the Kampala Convention. State parties that have accepted the voluntary procedure of the African peer review mechanism have to present more detailed information.

The convention also requires the establishment of a Conference of States Parties as its main monitoring entity.⁴⁹ Three years after it entered into force, however, the body – which is not intended to be a new AU institution – is still to be convened. With this body due to be established during a conference of ministers tentatively scheduled for December 2016, the AU Commission and the international and regional partners supporting the AU will need to find meaningful ways to engage with the Conference of States Parties.

Civil society will also have a particularly important role to play with the conference of state parties. In the same way as it supported the development of the convention, it should be able to contribute to the work of the conference by participating in ACHPR’s work – including through its NGO forum – and proposing resolutions for adoption.⁵⁰ NGOs have a vital role to play in supporting ACHPR’s monitoring function by monitoring the respect and the fulfilment of IDPs’ rights and by presenting shadow reports to ACHPR.⁵¹

⁴⁷ AU, High-Level Panel on Humanitarian Effectiveness in Africa, May 2016, available at <http://goo.gl/CLqwKK>

⁴⁸ AU, Kampala Convention, articles 5(3) and 8(3), available at <http://goo.gl/0o7utl>

⁴⁹ *Ibid*, article 14

⁵⁰ ACDHRS, NGO forum, available at <http://goo.gl/0Pnt5Z>

⁵¹ IDMC-ECOSOCC, Making the Kampala Convention Work for IDPs, July 2010, p.21, available at <http://goo.gl/2R4tcq>

A model for other regions?

The Kampala Convention's adoption was the culmination of a highly participatory process under the aegis of the African national leadership, which decided to make the advancement of regional standards on IDPs' protection a priority. During the drafting process, which took place over five years, the principle of sovereign responsibility and the imperative of a coordinated humanitarian response provided inspiration for those involved. It has been a commendable effort, but the AU and its member states have much more to do to complete the process. In particular, the AU should fast-track the formulation and adoption of a second action plan for the convention in order to encourage its wider dissemination, ratification, incorporation and implementation.

In his report to the WHS, the UN Secretary General stressed that the Kampala Convention serves as a model for similar regional undertakings. The Agenda for Humanity suggests that states could use the convention as inspiration to "adopt and implement regional ... legal and policy frameworks on internal displacement" elsewhere in the world.⁵² The universal value of international human rights and humanitarian law would be confirmed by new regional instruments.

That said, even well-accepted notions, such as the definition of an IDP, might have to be adapted to include forms of displacement that are widespread in certain countries or regions. It may also be necessary to devise protection arrangements compatible with the local legislative traditions and institutional architecture. Displacement associated with organised criminal violence in Central America or the effects of climate change in the Pacific are two cases in point.

In addition to the progressive elements of many of its provisions, the Kampala Convention offers other countries and regions a useful example of the advantages of a regional instrument on internal displacement. Such a framework constitutes an opportunity to capitalise on lessons learned at the national level and elevate them to the supranational level. It provides a common normative reference to address displacement that is often not confined to a single country, given that conflict, violence and disasters may spill over into neighbouring countries. If it is effectively implemented, a common framework may also increase regional stability, reduce the likelihood of mass refugee movements and strengthen relations between countries by fostering new forms of collaboration.

The UN Secretary General is not alone in promoting the adoption of regional treaties in other parts of the world. Special Rapporteur on the Human Rights of IDPs has also urged other regional organisations to do more to prevent and mitigate displacement, including by replicating the Kampala Convention.

Central America in particular seems ripe for the development of a regional protection mechanism for IDPs. The scope of displacement appears to warrant such a move, and the institutional set-up is conducive. The Brazil declaration and action plan, the product of a meeting of Latin American and Caribbean governments in Brasilia to mark the 30th anniversary of the 1984 Cartagena Declaration on Refugees, noted the need for regional action to tackle the displacement crisis in Central America's Northern Triangle of El Salvador, Guatemala and Honduras. It also suggested the Central American Integration System (SICA), a sub-regional inter-governmental body, as a suitable host for a "Human Rights Observatory on Displacement".^{53 54}

⁵² UNSG, Agenda for Humanity, Annex to the Secretary-General's Report for the World Humanitarian Summit, available at <https://goo.gl/JDy6Yq>

⁵³ SICA, Central American Integration System website, available at <http://goo.gl/8GT6w6>

⁵⁴ Cartagena +30, Brazil declaration, December 2014, available at <http://goo.gl/vUe8JE>

The Inter-American Commission on Human Rights has also demonstrated its willingness to play a central role in addressing displacement in the region, but its ability to do so is hampered by the lack of a regional standard to engage member states on the issue. An inter-governmental organisation such as OAS, however, could perform such a role, working towards a consensus on a common framework by supporting a consultation process *à la Kampala*.

The potential for a supranational framework for Central America will be determined by the political will of the states involved. If there is resistance towards the idea of a legally binding instrument, a softer statement of principles issued by a regional institution might be an option. Failing that, the creation of a regional forum for the discussion of domestic experiences could lay the foundations for the engagement of national institutions in domestic law or policy-making, and a broader recognition of the phenomenon of internal displacement and its impacts.

Regions without normative instruments, human rights mechanisms or an inter-governmental body with a clear interest in filling such gaps are unlikely to be able to develop an instrument similar to the Kampala Convention. Instead, the need for regulatory tools for IDP responses might be better fulfilled by launching a global initiative to support its call for the adoption of national legislation, policies and capacities, with certain states championing the process and acting as a local role model for others.

NATIONAL FRAMEWORKS



The value of domestic laws and policies on internal displacement is unquestionable, whether or not regional frameworks are in place. They can, and should, clarify government responsibilities, define responders' roles and increase the predictability of humanitarian action by institutionalising collaborative arrangements. They should define IDPs' rights and the measures to be taken to ensure they are fully protected. If they do so, national normative frameworks can serve as pillars of a solid response. More importantly, national institutions are the sole entities entitled to develop and adopt normative frameworks, hence a law or a policy on internal displacement represents also the approach of a national government to address the issue.

The number of countries to have developed such national laws or policies in accordance with international standards continues to grow. IDMC's database of laws and policies on internal displacement contains information on instruments already adopted and ongoing processes that may lead to new ones. The database builds on and constitutes an evolution of pre-existing similar databases, such as the Brookings Index on Laws and Policies on Internal Displacement.

As of the end of 2015, 11 countries – seven of them in Africa – were either in the process of developing a national instrument or their governments had expressed interest in doing so.⁵⁵ Some, such as Nigeria, are relatively close to finalising the process, but disagreements on the designation of an institutional focal point for IDPs has impeded final adoption. In DRC, the lack of political momentum and an overcrowded legislative agenda have hampered progress. Despite suffering a serious security crisis in 2015, it is noteworthy that CAR has pursued its roadmap for the adoption of a national instrument by drafting a law and bill that are currently pending revision.⁵⁶

Law and policy-making: what to do and how

Countries that have adopted laws or policies on internal displacement have done so for many reasons, but all have recognised that addressing the phenomenon is a complex process which requires a solid framework and political and legal commitment. Technical assistance and capacity building may also be necessary to provide the expertise needed to formulate provisions and facilitate a common understanding of key notions.

TECHNICAL ASSISTANCE

IDMC's new mapping tool confirmed the need to promote IDP laws and policies, and support countries that are embarking on law and policy-making.⁵⁷ The GPC Task Team was set up in 2015 to do so at the national and regional level. It has advised Nigerian policy-makers revising the country's 2012 draft policy on IDPs, and initiated a review of Mali's legal system to support the domestication of the Kampala Convention.

⁵⁵ IDMC, IDP Laws and Policies, a mapping tool, 2015, available at <http://goo.gl/juJxa0>

⁵⁶ Op. cit., CAR

⁵⁷ IDMC, Kampala Convention: from ratification to domestication and operationalisation, April 2016, available at <http://goo.gl/gNg9Bm>

IDMC provided technical assistance to Somaliland in the drafting of a policy on IDPs that was enacted in January 2016. The Somalia protection cluster also worked closely with Somaliland's Ministry of Resettlement, Rehabilitation and Reconstruction in the process, providing training for all parties involved.⁵⁸ The Office of the Special Rapporteur on the Human Rights of IDPs supports a number of legislative endeavours.

There are essentially two main options for states to regulate their response to internal displacement – the adoption of stand-alone laws or policies specifically focused on the issue, or mainstreaming it in other legislation. Even when a stand-alone law or policy on internal displacement is adapted, it often works as a complement and usually a certain degree of streamlining and adaptation of existing sectoral regulations is required. Either approach is acceptable so long as they involve discussions between all stakeholders and cover IDPs' protection needs comprehensively.

In developing an adequate framework, a number of other steps may also be required. They include legislative moves to harmonise the provisions of a specific instrument on IDPs with laws and policies on issues such as education, social welfare, housing, health, civil documentation, housing, land and property.

CONSULTATIVE PROCESSES

The adoption of regulatory instruments is a sovereign task, but a consultative approach involving other stakeholders should be taken throughout the process. The involvement of humanitarian and development agencies, CSOs, IDPs themselves and other communities affected by displacement helps to identify issues of concern and create the consensus needed to smooth the way to the adoption and implementation of a new instrument.

A guidance tool published by IDMC and the Brookings-LSE Project on Internal Displacement highlights the benefits of a consultative process in seven stages.⁵⁹ The approach supports the Agenda for Humanity's call, contained in core responsibility three, to "end aid dependency and promote the self-reliance of internally displaced populations".

Kenya's Act on IDPs is the product of an extensive consultative process, kick-started by the country's parliamentary committee on IDPs' resettlement, during which the perspectives of government ministries and the Protection Working Group on Internal Displacement, an inter-agency mechanism, contributed to formulating its provisions. Twenty-six public hearings with IDPs and other communities affected by displacement were also held.⁶⁰

Any advocacy and sensitisation efforts to support the development of a normative framework should include parliamentarians, with the aim of ensuring that they view IDPs as an integral part of their constituencies. This in turn may lead to incentives to prioritise a law on internal displacement. The handbook for parliamentarians published by UNHCR and the Inter-Parliamentary Union (IPU) also provides an overview of the active role legislators can play in promoting such an instrument, including via their engagement in formal and informal consultations.⁶¹

⁵⁸ IDMC, Adopting and implementing Somaliland's draft policy framework on internal displacement, 2015, available at <http://goo.gl/TsOhi3>

⁵⁹ IDMC/Brookings-LSE, National Instruments on Internal Displacement, a guide to their development, 2013, available at <http://goo.gl/3H8CVx>

⁶⁰ DRC and Refugee Consortium of Kenya, Behind the Scenes: Lessons learnt from Developing a National Policy Framework on Internal Displacement in Kenya, January 2013, available at <https://goo.gl/B45dsu>

⁶¹ UNHCR-IPU, Handbook for Parliamentarians – Internal Displacement: Responsibility and Action, 2013, available at <http://goo.gl/wFg18d>

Trends and challenges

According to our new mapping tool, as of March 2016, at least 27 states had enacted laws, policies or other national instruments specifically on internal displacement.⁶²

In many cases, adoption has included the incorporation or at least a formal reference to the Guiding Principles. Some of the countries surveyed, such as Burundi and Sudan, have endorsed their applicability when signing national or regional peace agreements that include their provisions. The Liberian government, through its one-page Instruments of Adoption dated November 2004, undertook a “wholesale adoption” of the global framework on internal displacement.⁶³ The 12 African state parties to the Great Lakes Pact’s protocol on IDPs have undertaken to incorporate the Guiding Principles into their legislation.⁶⁴

Over the years, states’ recognition of internal displacement and their engagement in developing normative tools to respond to the phenomenon have snowballed. Recently adopted laws and policies related to IDPs such as in Kenya in 2012, Afghanistan and Yemen in 2013, and Somaliland in 2016, stand out for their advances in establishing frameworks that regulate all phases of displacement comprehensively and demonstrate a clear intention to tailor responses to the reality on the ground. Those adopted in Afghanistan and Somaliland also include sections dedicated to improving IDPs’ living conditions while they pursue durable solutions, provisions that are particularly relevant to those living in protracted displacement.

Earlier laws and policies tended to focus on IDPs’ needs during emergencies and neglect the pursuit of durable solutions – or the opposite in the case of Angola – single out one settlement option at the expense of others, or only cover some areas of intervention.

PARTIAL VERSUS COMPREHENSIVE REGULATION

The decision to adopt a law or policy focused on a specific aspect of displacement may be dictated by the urgency of IDPs’ needs, or a lack of time and political will to develop a broader instrument. In other cases it may be the result of a need to recognise the entitlements of a specific group. India’s 2003 national policy on resettlement and rehabilitation for project-affected families, which focuses on people displaced by development projects, is a case in point.⁶⁵ Other situations have required measures to ensure the protection of a particular right for IDPs. In the US, the 2006 Hurricane Education Recovery Act aimed to prevent the disruption of schooling for pupils displaced by Hurricane Katrina who had to enrol in states other than Alabama, Louisiana, Mississippi or Texas.⁶⁶

Those providing external technical support for the development and implementation of national frameworks have generally supported a holistic approach, recommending instruments that cover all phases of the response and all issues affecting IDPs, whether via stand-alone laws or policies or the integration of IDPs’ issues into other legislation.⁶⁷

⁶² IDMC, IDP Laws and Policies, a mapping tool, 2015, available at <http://goo.gl/juJxa0>

⁶³ Brookings Institution, A Developing Trend : Laws and Policies on Internal Displacement, 2006, available at <http://goo.gl/mLIRem>

⁶⁴ ICGLR, Great Lakes Pact and additional protocols, 2006, available at <http://goo.gl/7DGkfh>

⁶⁵ <http://goo.gl/uHINDm>

⁶⁶ IDMC, IDP Laws and Policies, a mapping tool, 2015, USA page, available at <http://goo.gl/YCqmxF>

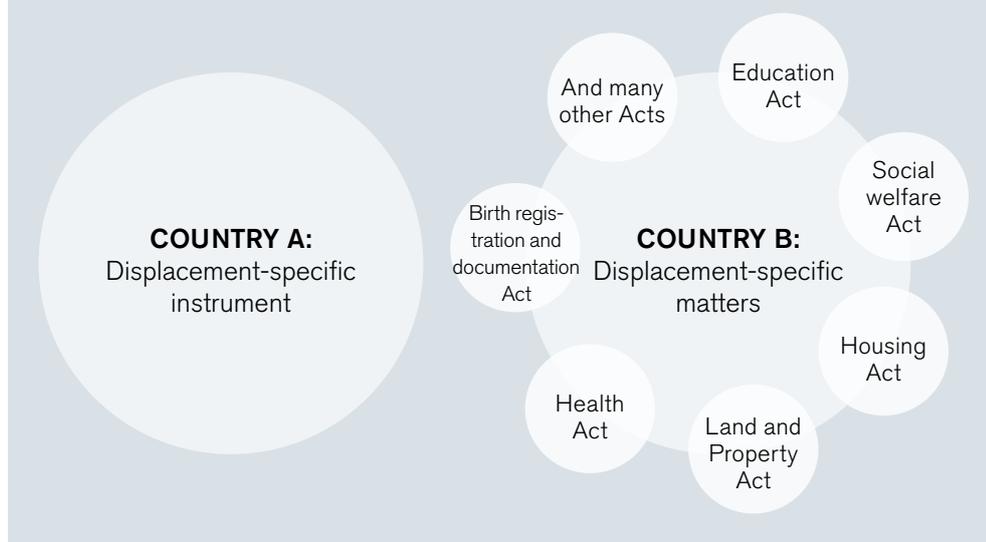
⁶⁷ IDMC/Brookings-LSE, National Instruments on Internal Displacement, a guide to their development, 2013, pp.34-35, available at <http://goo.gl/3H8CVx>

Whichever path is taken, the guidance contained in the Brookings-Bern manual for law and policymakers is particularly relevant. Developed under the auspices of the then special representative on IDPs' human rights, it identifies the minimum core elements of a national instrument to regulate IDPs' protection.⁶⁸ IDMC has also been engaged since 2014 in reviewing national frameworks on displacement in collaboration with different partners.⁶⁹ In line with the Brookings manual's recommendations, we focus on a number of key areas including the following:

- 1 The definition of an IDP, affected communities and other groups
- 2 The appointment of an institutional focal point
- 3 The creation of coordination mechanisms
- 4 The allocation of adequate financial and human resources
- 5 The identification of an institution in charge of operational and financial oversight
- 6 The establishment of data collection and management systems
- 7 The prevention of displacement and prohibition of arbitrary displacement
- 8 Protection and assistance during displacement, including a restatement of IDPs' rights
- 9 The pursuit of durable solutions

Example: Displacement-specific and sectoral regulation

Country A has a displacement-specific instrument that guarantees displaced children's right to education and provides for free access to primary schools. Country B has no displacement-specific instrument. Its national education act, however, determines that displaced children should be provided with free access to primary schools.



⁶⁸ Brookings-Bern, *Protecting Internally Displaced Persons: a Manual for Law and Policymakers*, October 2008, available at <http://goo.gl/DBtgJc>

⁶⁹ IDMC, *A review of the legal framework of Zimbabwe relating to the protection of IDPs*, December 2014, available at <http://goo.gl/0FmQVZ>; IDMC, *A review of the normative framework of Kenya relating to the protection of IDPs*, August 2015, available at <http://goo.gl/5au2V0>; IDMC, *A Review of the Normative Framework of Mali Relating to the Protection of IDPs*, October 2016

DISASTER RISK MANAGEMENT AND REDUCTION LAWS

To promote the effective integration of measures to address internal displacement within broader national emergency and disaster response systems, consideration should be given to incorporating the issue into national disaster risk management laws. Such legislation generally establishes the institutions responsible for managing and coordinating disaster responses, sources and allocates funding, and defines rights and responsibilities.

Ensuring that disaster risk management committees and institutions address displacement as part of response and recovery efforts is an important means of preventing a siloed approach to the issue. The laws Indonesia and Vietnam have adopted include provisions related to the right of people affected by disasters to receive government relief and support. In Vietnam's case, the legislation establishes the government's responsibility for providing shelter following a disaster and allocating funding for the restoration of damaged homes.⁷⁰ There is not yet a trend of explicitly addressing internal displacement within disaster risk management laws, but it should be promoted in an effort to foster a more holistic approach to the issue.

Disaster risk reduction measures are also considered an important means of preventing displacement. As set out in a handbook published by the International Federation of Red Cross and Red Crescent Societies (IFRC) and the UN Development Programme (UNDP), a broad set of laws – not only related to disaster risk management but also construction, urban planning, environmental management and climate change – can support effective disaster risk reduction, improve communities' resilience and so contribute to preventing displacement associated with disasters.⁷¹

SUB-NATIONAL SOLUTIONS

Even in countries that have not recognised the phenomenon of internal displacement at the national level, frameworks may be developed locally to support institutional responses. Mexico offers a case in point with two pieces of legislation one step below the federal structure – one adopted by the state of Chiapas in 2012, and the other by the state of Guerrero in 2014 – which fill gaps in the national legislative framework by codifying IDPs' entitlements and setting out corresponding institutional responsibilities.^{72 73}

The main limitation of such laws is that they apply only to displacement that affects people who habitually reside in the geographical area in question, and only establish obligations to create conditions for IDPs' return or resettlement and social integration in the same jurisdiction. Given, however, that displacement rarely respects such geographical limitations, a much wider recognition and coherent engagement at the national level would be more appropriate.

That said, a sub-national regulatory exercise may provide an opportunity to better organise durable solutions at the local level or to facilitate the protection of IDPs' rights upon their return to an area that has been hit by conflict or a disaster. The 2009 return policy framework for Pakistan's North-Western Frontier Province

⁷⁰ Vietnam's Law on Disaster Prevention and Control (2013), article 10, 29 and 34.

⁷¹ IFRC/UNDP, The Handbook on Law and Disaster Risk Reduction, 2015, available at <http://goo.gl/SSIFik>

⁷² State of Chiapas, Law for the Prevention and Addressing of Internal Displacement, 2012, available at <http://goo.gl/EIB9Y1> (Spanish)

⁷³ State of Guerrero, Law for the Prevention and Addressing of Internal Displacement, 2014, available at <http://goo.gl/j9rqOt> (Spanish)

aims to implement the safe, dignified and voluntary return of IDPs from the area.⁷⁴ It sets out the general principles for return and stipulates that it should be applied in conformity with the constitution and the laws of Pakistan. Likewise, Turkish measures adopted in 2005 provided normative support for the return of people displaced in Eastern and South-eastern Anatolia between 1984 and 1998.⁷⁵

Somalia is equipped with a number of frameworks that reflect the specifics of internal displacement in the country, and its fragmented institutional reality. The office of the Special Rapporteur on the Human Rights of IDPs has helped the national government to develop a draft policy framework, the adoption of which appears imminent.⁷⁶

The 2012 Puntland policy guidelines on displacement provide generic coverage of the different phases and aspects of displacement in the north-eastern state,⁷⁷ and the 2016 Somaliland internal displacement policy “is designed to promote and advocate for the safety and the welfare of the IDPs in Somaliland within the framework of the international conventions and the Somaliland Constitution”.⁷⁸

INSTRUMENTS IN THE MAKING

IDMC’s new mapping tool includes countries in the process of developing national or sub-national normative instruments on internal displacement. At least nine countries have taken steps towards adopting a dedicated instrument or have developed but not yet enacted a law or a policy. Among the relatively new processes in Africa, CAR has proceeded with the drafting of a policy and a law despite its prevailing crisis, and Mali has set up a technical committee for the domestication of the Kampala Convention.⁷⁹ The committee, which is an inter-institutional consultation body, has recently started a normative audit to identify potential gaps in existing Malian legislation and is charged with steering the policy-making process.

Following recommendations issued by the Special Rapporteur on the Human Rights of IDPs after his mission to Honduras in 2015, the government has taken its first steps towards creating a framework to address displacement associated with criminal violence.⁸⁰ In Papua New Guinea, a technical working group was formed in November 2015 to support the development of a draft policy on IDPs, which will eventually need the national executive council’s approval. The International Organization for Migration (IOM) has provided support via a paper that provides a policy framework and a set of concepts for the working group.

There are many potential pitfalls in the development of a new normative instrument. A lack of recognition of internal displacement, insufficient technical expertise and dysfunctional coordination among stakeholders

⁷⁴ Government of NorthWestern Frontier Province, Return Policy Framework, 2009, available at <http://goo.gl/S6shcE>

⁷⁵ Government of Turkey, Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey, 2015, available at <http://goo.gl/6blO76>

⁷⁶ Government of Somalia, Draft Policy Framework on Displacement within Somalia, 2014, <http://goo.gl/oUJZNXn>

⁷⁷ Puntland Government of Somalia, Puntland Policy Guidelines on Displacement, 2012, available at <http://goo.gl/r5B34q>

⁷⁸ Ministry of Resettlement, Rehabilitation and Reconstruction, Somaliland Internal Displacement Policy, 2016, <http://goo.gl/G0ybw1>

⁷⁹ Ministry of Solidarity, Humanitarian Action and Reconstruction in the North, Decision no. 2016/0109, 28 April 2016

⁸⁰ UN, Report of the Special Rapporteur on the Human Rights of IDPs on his mission to Honduras, A/HRC/32/35/Add.4, 2016, available at <http://goo.gl/t6CNtR>

often drag out the drafting process, and even once the text is finalised, the new bill may have to compete for attention with others in a crowded legislative agenda. Unless governments make a concerted effort to prioritise displacement issues, the result is likely to be further delays. Contention between institutions is also a recurring challenge. Unless responsibilities for implementation are clearly apportioned and mechanisms established to coordinate humanitarian responses, the very reasons for having embarked on the process in the first place may be undermined.

The cases of Nigeria and DRC highlight some of these challenges, but they also reveal how the ratification of an international instrument such as the Kampala Convention can inform and impel a national normative process.

Nigeria's national policy on IDPs is awaiting adoption by the country's federal executive council.⁸¹ Several organisations, including UNHCR and IDMC, provided technical support in the early stages of the drafting exercise, which was spearheaded by the National Commission for Refugees, Migrants and Internally Displaced Persons. A technical committee made up of experts representing various stakeholders was formed after ratification of the Kampala Convention to incorporate its standards into the draft policy, but the process lost momentum after the committee validated the draft in 2012.

Difficulties in identifying an institutional focal point and apportioning responsibilities to the two main institutions involved in national-level responses have also proved obstacles to adoption, and in 2015 a law and policy task force was created to revamp technical discussions on the draft text and advocate for its adoption.

In March 2013, UNHCR's regional bureau in Kinshasa conducted a study that aimed to overcome obstacles in the transposal of international provisions on IDPs' protection into DRC's law on internal displacement. After preliminary consultations, two separate institutions developed draft bills that were subsequently merged into a single text.⁸²

Already a state party to the Great Lakes Pact, the government adopted a first order to ratify the Kampala Convention in November 2013. The start of the process helped to create momentum for the adoption of the national law on IDPs. The latest draft is awaiting approval from the council of ministers before it goes before the national assembly for adoption.

FROM ADOPTION TO IMPLEMENTATION

Lack of political commitment, a shortfall in resources and insufficient planning often hamper the implementation of a new national law or policy, ultimately leading to a failure to realise its objectives. Its impact depends largely on the institutional arrangements put in place to ensure that its provisions translate in action on the ground.

⁸¹ Federal Government of Nigeria, Draft National Policy on Internally Displaced Persons in Nigeria, 2012, <http://goo.gl/uaMJ4M>

⁸² Government of DRC, Law on the Protection and Assistance of Internally Displaced People, September 2014 version, available at <http://goo.gl/HTmZrk> (French)

The IDMC/Brookings-LSE guide to developing national instruments on internal displacement highlights at least three steps that facilitate implementation: planning and coordination, including the designation of a focal point, the allocation of adequate resources and collaboration between all stakeholders; initiatives to improve knowledge and capacities, such as training, awareness-raising activities and wider dissemination; and effective monitoring and evaluation to measure progress and identify gaps and shortfalls promptly.⁸³

The latter point is particularly important. A new law may create unintended obstacles to IDPs' ability to fully exercise their rights, and an effective monitoring mechanism is likely to detect such issues and suggest changes to the normative text. Amendments made to Ukraine's law on IDPs' rights and freedoms in December 2015 are a case in point. They removed a number of requirements that had prevented IDPs from registering and benefitting from state assistance.⁸⁴ Other countries, such as Uganda and Zambia, are also considering revisions to their texts.

A study of Afghanistan's national policy on IDPs by Samuel Hall Consulting highlighted three areas in which humanitarian, development and government responders at the national, provincial and district level should support implementation: dissemination to promote a common understanding of the definition of an IDP; securing adequate funding by ensuring that IDPs' issues are integrated into annual ministerial budgets and plans; and, sensitisation and training to build key stakeholders' capacities.⁸⁵

In Kenya, the creation of a national consultative coordination committee in January 2015 laid the foundations for implementation of the country's 2012 Act on the Prevention, Protection and Assistance to IDPs. An IDMC review of the country's normative framework revealed, however, that further legislative and policy action was required to complete the process.⁸⁶

A country's legal system may also play an important role in monitoring and ensuring implementation. Constitutional justice in Colombia has served not only to provide redress for violations of individual rights, but also to help foster structural changes in state action and improve the framework underpinning it. An analysis of the role of the country's Constitutional Court found that "compliance with the orders of a constitutional judge ... transcends mere compliance with a judgment". It also found that the engagement of the judiciary had broader effects such as clarifying the extent of state obligations, keeping displacement on the government's agenda, ensuring the adequate allocation of resources and guaranteeing IDPs' effective participation in policy processes.⁸⁷

⁸³ IDMC/Brookings-LSE, *National Instruments on Internal Displacement: A Guide to their Development*, September 2013, available at <http://goo.gl/3H8CVx>

⁸⁴ Government of Ukraine, *Law on ensuring of rights and freedoms of internally displaced persons*, October 2014 with December 2015 amendments, available at <http://goo.gl/rzHkK3>

⁸⁵ Samuel Hall Consulting, *Policy Brief – National Policy on IDPs in Afghanistan. From Policy to Implementation: Engaging with national procedures, national and international stakeholders in 2015*, p. 18.

⁸⁶ IDMC-NRC, *A review of the normative framework in Kenya relating to the protection of IDPs*, August 2015 <http://goo.gl/5au2V0>

⁸⁷ Andrés Celis, *Protection of the Internally Displaced by Constitutional Justice: The Role of the Constitutional Court in Colombia*, Brookings, November 2009, <http://goo.gl/yRNh7o>.

THE WAY FORWARD



Given the continuing increase in the number of IDPs worldwide, the development and implementation of laws and policies on internal displacement at the national and regional level is of vital importance. The complexity of the phenomenon and the need to address problems that are fast becoming intractable require political commitment and its clear expression by engaging in normative processes that recognise the existence of displacement and IDPs' rights.

Law and policy-making on internal displacement is still a relatively new endeavour. It will need years of further development, particularly in terms of implementation, before the effectiveness and impact of new instruments can be meaningfully assessed. In the meantime, the value of national and regional frameworks goes beyond their stated aim.

Regional instruments provide an opportunity for policy-makers and politicians to reach consensus on the need to abide by commonly recognised standards and principles. They enable states affected by displacement to learn from each other about ways to address the phenomenon, and offer a platform for concerted action on an issue which, in many cases, has cross-border consequences.

The enactment of national laws and policies testifies to a government's official recognition of the problem of internal displacement on its territory, sets out its approach to addressing it and sends a request to partners to collaborate towards that end.

Strong political will is a prerequisite, but greater expertise in law and policy-making on internal displacement is also very important to ensure the relevance of new instruments. In 2014, the Special Rapporteur on the Human Rights of IDPs spoke of the need for a "common platform to ensure sharing the wealth of documents, guiding tools and best practices relating to the issue of internally displaced persons" to advance domestication of the Kampala Convention.⁸⁸ The GPC has partially filled this gap through the creation of its Task Team on Law and Policy, but a broader initiative involving like-minded states, institutions and CSOs may be the way forward. To this end, a wide range of actions are recommended:

Governments:

- Increase efforts to speedily adopt comprehensive frameworks on internal displacement in line with international standards and that respond to national and local realities
- Guarantee the meaningful participation of all stakeholders, including IDPs and other communities affected by displacement, in developing, validating and implementing new national instruments
- Ensure the effective implementation of existing instruments by identifying a focal point, creating coordination mechanisms, allocating adequate resources and establishing operational and financial oversight mechanisms

⁸⁸ Report of the Special Rapporteur on the Human Rights of IDPs, A/HRC/26/33 <http://goo.gl/25Zjus>

- Improve the capacity of national institutions to devise strategies to facilitate implementation and monitor the activities undertaken effectively

African Union:

- Complete the evaluation of the 2009 to 2012 action plan for the Kampala Convention and adopt a new plan without delay
- Increase advocacy efforts at the bilateral level and in all appropriate forums for the speedy and effective domestication and implementation of the convention
- Mainstream monitoring of the convention through existing mechanisms, including by integrating specific performance indicators
- Facilitate the convening of the first Conference of States Parties without delay, including by calling on all AU partners for financial contributions to this end

Regional inter-governmental organisations outside Africa:

- Acknowledge and analyse the scope, complexity and specifics of internal displacement at the regional or sub-regional level, and identify normative and operational responses
- Adopt regional frameworks by convening conferences and expert debates, and bringing the issue to the attention of member states via decision-making bodies
- Examine consultation processes for the development of regional mechanisms, including those used for the Kampala Convention, emphasising the lead role of state institutions while guaranteeing the inclusion of other stakeholders, first and foremost IDPs, other communities affected by displacement and civil society
- Encourage regional human rights mechanisms to begin or expand their reporting on internal displacement and recommend the strengthening of normative response systems in countries particularly affected by the phenomenon

International institutions, humanitarian agencies and civil society organisations:

- Continue to advocate for the respect of IDPs' human rights, including by contributing to the development of effective frameworks that support coordinated humanitarian action
- Increase assistance for national and regional efforts to develop and implement normative instruments on internal displacement through capacity building, expert deployments, technical advice and the creation of displacement law and policy curricula in their respective organisations and institutions
- Strengthen the mandate of the Special Rapporteur on the Human Rights of IDPs to ensure adequate capacity to conduct advocacy and provide technical support for the development and implementation of laws and policies
- Ensure the continuation and possible evolution of GPC's Task Team on Law and Policy as a platform to spur political engagement, mobilise resources and create the technical expertise required for the development and the implementation of new regulatory frameworks

