

RECOMMENDATIONS OF THE CIVIL SOCIETY MEETING ON AFRICAN UNION MECHANISMS AND THE PROTECTION OF REFUGEE, IDP AND CITIZENSHIP RIGHTS

19-20 October 2009

African civil society organizations and experts met in Kampala, Uganda, from 19-20 October 2009 on the margins of the AU Special Summit on Refugees, Returnees and Internally Displaced persons. Issues discussed included statelessness and nationality rights, which have been both a cause and consequence of forced displacement and discrimination in Africa.

The session recognised that effective citizenship is a doorway to accessing other rights, including for refugees and the displaced. In this context, it was noted that the right to nationality needed to be promoted as a mechanism both to prevent and to respond to displacement on the continent.

The session addressed the following recommendations to the Heads of State attending the special summit:

Root causes of displacement

1. African governments should take urgent measures to address the root causes of displacement, including poor governance, underdevelopment, human rights violations, climate change and lack of preparedness for natural catastrophes.
2. Conflict remains the principal direct cause of displacement in Africa. Most conflicts are rooted in power struggles between the elites of various ethnic communities. To address these, it is imperative that African governments pursue inclusive policies to ensure equality of opportunity and equitable development for all irrespective of ethnic identities. Ethnicity should not be the basis for the grant or refusal of any right.
3. The threat of natural disasters associated with climate change must also be urgently addressed. While all Africans stand to lose, refugees, IDPs and stateless persons are particularly vulnerable to the consequences climate change. Early warning and preparedness strategies must be put in place.
4. Inequitable management of rights to land is another critical issue at the root of forced displacement. States should take steps to ensure that access to land is not based on ethnicity or race but is open to all on an equitable basis. In addition, alternative modes of sustaining livelihoods need to be created in order to remove pressure on land.
5. Africa's leaders and people should work towards the expression of a new vision of nationality and belonging that overcomes the divisions of the colonial past and rigid insistence on an intrinsic link between ethnicity and the right to land and to nationality. A vision which creates a forward-looking definition in law and policy that welcomes as members of the national community all who have a contribution to make to its development.

Mass expulsions

6. African states should respect the provisions of Article 12(5) of the African Charter on Human and Peoples' Rights prohibiting mass expulsions, which are a major cause of displacement and of statelessness.

Draft Convention on IDPs

7. We welcome African leaders' commitment to addressing the crisis of forced displacement in Africa through the adoption of the Draft African Union Convention for the Protection and Assistance to Internally Displaced Persons (AU IDP Convention) and urge its rapid ratification and implementation.
8. States should immediately show their commitment to its provisions by putting in place mechanisms that will advise and monitor government compliance with the Convention and ensure that it is implemented at regional and national levels. This might include reinforcement of the capacity of existing mechanisms such as the African Commission on Human and Peoples' Rights and the Committee of Experts on the Rights and Welfare of the Child.
9. We welcome in particular Article 9 of the Draft AU IDP Convention (which addresses displacement caused by development projects), and urge that states ensure that projects which may cause displacement in the name of development are debated fully with the participation of all and that such projects are only implemented if beneficial to the affected communities.

Enforcement of existing international and African standards

10. African states' national laws, practices and systems related to forced displacement, citizenship and statelessness should be brought into line with existing international and regional conventions.
11. In particular, African states should ratify and implement the 1954 UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness. Few have done so to date.
12. Enforcement of international obligations should be strengthened through domestic and regional courts, the African Commission and African Court on Human and Peoples' Rights (and the African Court of Justice and Human Rights when it comes into force) and other mechanisms such as the African Peer Review Mechanism.

Statelessness

13. African states should grant nationality to their own peoples in an inclusive way, without discrimination on grounds of race, ethnicity, national origin, gender, political opinion or similar category. In particular, nationality laws should give men and women equal rights in relation to the right to pass nationality to their spouses and children.
14. The AU should prioritise the challenges of statelessness and establish mechanisms to address statelessness, in particular with regards to:
 - ethnic groups living in border regions,
 - nomadic populations,
 - speakers of minority languages,
 - the descendants of long-term migrant populations,
 - people of mixed-race or mixed-ethnicity parentage, especially where only the mother and not the father is a national of the country of residence.
15. Stateless people should be treated as one of the vulnerable groups in Africa and afforded protection as such.
16. The right to a nationality should be enshrined in Africa's constitutions and national laws.

17. A person's nationality may not be taken away except on the basis of objective criteria following due process of law and may never be taken away if the person would therefore become stateless.
18. African states should enshrine these principles in a treaty on nationality and statelessness in Africa and urgently put in place a process to develop such a treaty.

Protection measures at national level

19. African states that ratify the Convention on IDPs should domesticate it into national laws, policies and plans of action and institutional and funding mechanisms to ensuring implementation.
20. National legislation should explicitly outline measures for protection and assistance of displaced persons with special needs such as the separated and unaccompanied children, female and child headed households, expectant mothers, the elderly and persons with disability for purposes of ensuring that the most vulnerable groups are targeted.
21. As a first step, state governments should establish an effective system of registration, screening and documentation of IDPs, refugees and returnees for authentication and early identification of such vulnerable groups. Documentation granted to IDPs and refugees should facilitate their free movement.
22. The urgency of effective responses to the threats posed by natural disasters, climate change and other threats to our environmental security and as a cause of displacement cannot be overstated. Responses are inadequate. Governments need to move beyond early warning to rapid response in order to mitigate environmental threats and the resultant humanitarian disasters.
23. As governments respond to the challenges presented by large scale displacement, including the management of the environmental impact of large scale migrations, it was noted that policies which force concentration of refugees and IDPs in particular areas, restricting freedom of movement, may exacerbate negative environmental impacts and should be approached with caution and may be in contradiction of other fundamental rights.
24. We welcome the recognition in the draft Convention of the importance of involvement of host communities in integration programmes for displaced persons. Host communities should be made aware of the plight of the displaced at an early stage in order to avoid tensions and potential conflict between the two groups.
25. States should take measures to ensure the equitable right of access to land for persons who have been displaced and are returning home.
26. States have an obligation to urgently address xenophobic violence against migrants and refugees, taking appropriate action within the law against those who perpetrate crimes against foreigners.

Solidarity

27. African states should show solidarity with other states that are confronted by natural disasters or the massive displacement of populations.

Birth registration

28. African states should put in place comprehensive laws and effective systems for birth registration to ensure an explicit and unqualified right to an identity, nationality, and citizenship. In creating these systems, states should be sensitive to the value and traditional role of oral systems of identification. This will lead to the fulfilment and enjoyment of fundamental rights and freedoms accorded to citizens.

Regional integration and citizenship

29. African states should accelerate the process of creating regional citizenships and seize the opportunities presented by regional economic integration as creating potential pathways for accessing citizenship rights.
30. African states should take steps to ensure that all their nationals, irrespective of status, can vote in national elections, including those who may be incarcerated or living abroad.
31. African states should grant the right to vote to nationals of other member states of regional communities (especially in local elections).
32. African states should facilitate the access of their own citizens and others in their territories to regional citizenships and facilitate the recognition of travel documents granted on that basis.

The following recommendations were directed to our colleagues in civil society:

33. Civil society should be pro-active and engage the state at an early stage to ensure implementation of the convention and to promote refugee, IDP and citizenship rights in national legislative and policy frameworks.
34. Legal frameworks and policies formulated to protect the rights of IDPs, refugees and returnees should be participatory and inclusive of all stakeholders as a durable solution, sustainability and ownership of the entire process. An all African Civil Society Conference should be organized to draft a comprehensive policy towards the protection and promotion of the rights of IDPs, refugees and returnees.
35. Civil society engagement on statelessness and a right to a nationality needs to be increased and targeted effectively.
36. Civil society should work collaboratively. Civil society needs to form strategic partnerships in order to be more effective in advocacy, in particular, engagement with national, sub-regional and regional parliamentarian and the media in order to advance causes of national concern.
37. Civil society should engage with, and work to reinforce, existing African regional mechanisms including the African Union Commission, the African Commission on Human and Peoples' Rights and the Committee of Experts on the Rights and Welfare of the Child.