



THE DOMESTICATION OF THE AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF IDPS IN BURKINA FASO:

TRAINING WORKSHOP REPORT

Koudougou, 8 - 10 December 2021

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Abbreviations

AU	African Union
GoBF	Government of Burkina Faso
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
KC	Kampala Convention
MFSNFAH	Ministry of Women, National Solidarity, Family and Humanitarian Action
UN	United Nations
UNHCR	United Nations High Commission for Refugees

Executive Summary

The Government of Burkina Faso through the Ministry of Women, National Solidarity, Family and Humanitarian Action (MFSNFAH), the Protection Cluster and the UNHCR office in Burkina Faso jointly hosted a workshop on the process of domestication of the AU Convention for the Protection and Assistance of IDPs (“Kampala Convention”) from 8 to 10 December 2021 in Koudougou, Burkina Faso. Members of the relevant Inter-Ministerial Committee as well as partners attended the workshop. The aim of this workshop was to provide relevant actors with the technical competencies in terms of process and content required for the development of legal and policy frameworks that contribute to the prevention of displacement, the protection of IDPs and other persons potentially affected by displacement and support the search for durable solutions, in line with relevant international and regional standards. The workshop included presentations on relevant international principles and law as well as significant group work. By the end of the workshop, the participants had discussed and agreed on a roadmap identifying the necessary next steps with a tentative timeline to achieve the milestones jointly identified in the process, as well as on the terms of reference for a national expert to come on board as a consultant to support the work of the Inter-Ministerial Committee.

Section 1.0: Workshop Overview

1.1 Background and Objectives

Burkina Faso is facing a multifaceted crisis of great complexity due to the volatile security situation, inter-communal tensions, environmental change, and the COVID-19 pandemic which constitutes a public health crisis. The attacks by armed groups have spread over several regions of the country, as well as operations to combat these armed groups, have caused both a massive displacement of populations to urban centres, and the inaccessibility and / or congestion of some basic social services, such as schools, health centres and civil registration services. According to statistics from the National Council for Emergency Relief and Rehabilitation (CONASUR), the total number of Internally Displaced Persons (IDPs) in the country is 1,407,685 people as of 30 September 2021 – making Burkina Faso one of the world's fastest growing displacement crisis. Many have fled several times and sometimes travel long distances, even up to 300 kms. In addition to massive displacement, the deterioration of the security situation has also led to restricted humanitarian access.

On 5 July 2012, Burkina Faso acceded to the African Union (AU) Convention on the Protection and Assistance of IDPs in Africa (Kampala Convention). As a state party, the Government of Burkina Faso expressed its intention to initiate and complete measures to incorporate the Convention into its domestic legislation. The process was launched in 2017, by the National Council for Emergency Relief and Rehabilitation (CONASUR) with the support of UNDP. The development and implementation of a national framework on internal displacement will also contribute to the achievement of the AU Agenda 2063, 2030 Agenda and the Sustainable Development Goals in Burkina Faso, in line with the global commitment to “leave no one behind”.¹

In light of the deepening of the humanitarian crisis, the revision of the existing national legislation became a necessity. In December 2020, the Government of Burkina Faso requested the support of the humanitarian community on this matter. UNHCR and members of the Protection Cluster formed a Working Group on the Domestication of the Kampala Convention to support the CONASUR in this process. In early 2021, a draft decree proposing the creation of an inter-ministerial group in charge of overseeing the domestication process, the ToRs for the group and the plan of action was submitted to the Minister of Women, National Solidarity, Family and Humanitarian Action (MFSNFAH). The plan of action foresees the finalization of documents by the end of December 2021 and the start of the process of submitting and adopting the bill starting from early 2022.

From 19 to 24 September 2021 the IDP Protection Expert Group (IPEG), including Ms. Cecilia Jimenez Damary, the Special Rapporteur on the Human Rights of IDPs, and Dr. Chaloka Beyani, the former mandate holder, travelled to Burkina Faso. One of the main objectives of the mission focused on supporting national efforts to domesticate the Kampala Convention and outline relevant considerations and steps for law and national policy processes, including resource allocation.

This workshop was a direct follow up to the IPEG mission, which recommended that a workshop be organised for the benefit of the relevant stakeholders that should be involved in the development and implementation of a national framework on internal displacement domesticating the Kampala Convention to set the stage for the continuation of this work in 2022.

The Government of Burkina Faso through the Ministry of Women, National Solidarity, Family and Humanitarian Action, the Protection Cluster and the UNHCR Office in Burkina Faso therefore jointly hosted a workshop on the domestication of the Kampala Convention from 8 to 10 December 2021. The aim of this workshop was to provide relevant actors with the technical competencies in terms of process and content required for the transposition of the Kampala Convention into national legislation, which will

¹ Internally displaced persons are explicitly mentioned in the [2030 Agenda](#) as a vulnerable group whose needs and rights need to be included.

contribute to the prevention of displacement, the protection of IDPs and other persons potentially affected by displacement and support the search for durable solutions in line with relevant international and regional standards.

Workshop participants included the members of the newly appointed Inter-Ministerial Committee in charge of this process, as well as representatives of CONASUR, the Inter-Ministerial Committee on IHL, the National Human Rights Commission, relevant UN agencies (including UNHCR, UNDP and OCHA), the International Committee of the Red Cross (ICRC), coordinators of the Protection Cluster at the national and sub-national levels, relevant staff of international NGOs and national CSOs (SPONG, AFJ, NRC, AF2D, MBDHP).

This report summarises the discussions and outcomes of the workshop and therefore can be used as a guide to implement related activities in 2022.

Key objectives of the workshop were to:

- Define the rationale for the development of a national instrument on internal displacement and verify its relevance to the national context;
- Identify the recommended type of instrument on internal displacement for the domestication of the Kampala Convention and its related contents, having in mind the national displacement scenario and in view of the potential displacement challenges the country may be faced with in the future;
- Plan for, organise and steer a national multi-stakeholder consultative process towards a law on internal displacement;
- Create consensus on the way forward.

1.2 Workshop Materials

Below is an outline of relevant documents utilized during the workshop.

- **Kampala Convention:** An official African Union translated version of the 2009 Kampala Convention in French language was distributed to all participants.
- **Guiding Principles on Internal Displacement:** The 1998 Guiding Principles on Internal Displacement address the specific needs of internally displaced persons worldwide were shared with workshop participants. The Guiding Principles identify rights relevant to the protection of persons from forced displacement and to their protection and assistance during displacement, as well as during durable solutions.
- **Manual for law and policymakers on internal displacement:** primarily addressing the content of a national instrument on internal displacement, presenting the minimum essential elements of state regulations and offering examples of good practices;
- **Guide on the development of national laws and policies on internal displacement:** guiding stakeholders through the various steps of the process;
- **Handbook for Parliamentarians on internal displacement:** specifically addressing the role of Parliamentarians in such processes.

1.3 Opening Remarks

Opening remarks were made by the following individuals:

- **M. BAKOUAN Florent, representing the Minister of Humanitarian Action,**
- **M. SANDWIDI.R.Victor Patrick, Adviser ECOWAS, representing the ECOWAS Representative in Burkina Faso,**
- **M. Abdouraouf Gnon-Konde, UNHCR Representative in Burkina Faso,**
- **Dr. Chaloka Beyani, former Special Rapporteur on the human rights of IDPs**

As representative of the line Ministry for the response to internal displacement in country and on behalf of the Minister herself, Ms. Helene Marie Laurence Ilboudo-Marchal, **Mr. BAKOUAN Florent** welcomed all participants to this important event and welcomed the workshop as a timely initiative to promote understanding on enhancing the use of the tools of the Kampala Convention as a framework for the

protection of internally displaced persons in Africa, in order to inform the process of its domestication or customisation in Burkina Faso.

M. SANDWIDI.R.Victor Patrick, representing the ECOWAS Representative expressed their gratitude for the invitation and emphasised the continuous support that the organisation is ready to provide to the government of Burkina Faso in this area, which constitutes a priority at the regional level. Indeed, this activity follows another workshop ECOWAS had organised in September 2021 to promote advocacy and awareness raising around the domestication of the Kampala Convention in Burkina, and therefore the organisation congratulated the government for the appointment of the Inter-Ministerial Committee and its readiness to make progress on this issue of the utmost importance.



Mr. Abdouraouf Gnon-Konde, UNHCR Representative, recalled the dire humanitarian situation that the country is currently facing and commended on behalf of the RC/HC Barbara Manzi and the Humanitarian Country Team the efforts by the government to find peace, solutions and improve the lives of those affected by the crisis. He then congratulated the Minister of Women, National Solidarity, the Family and Humanitarian Action, on whom the responsibility for the government's action in supervising the efforts of all actors in relation to the management of internal displacement for her commitment and leadership. It also took the opportunity to salute the outpouring of solidarity from the entire international community.

In light of the deteriorating situation, the representative emphasised the urgent need for the government to accelerate the process of domestication of the Kampala Convention – of course counting on the support that UNHCR, together with other humanitarian and UNCT partners, are ready to provide. The IDP Expert Group mission in September was a concrete expression of that support, which really focused on the importance of implementing the Kampala Convention. This workshop therefore represents a concrete follow up to the recommendations of the IPEG as well as ECOWAS, with the aim to provide relevant stakeholders with the necessary knowledge on content and process of domestication. To this end, UNHCR supports the facilitation of the workshop to make the relevant expertise available to the members of the Inter-Ministerial Committee. Concluding, the Representative emphasised the importance of ensuring a multi-stakeholder, collaborative process and encouraged all participants to ensure concrete, tangible outcomes for the benefit of all IDPs in Burkina Faso.

Dr. Chaloka Beyani, former Special Rapporteur on the human rights of IDPs and member of the IPEG who visited the country in September – and last but not the least, drafter of the Kampala Convention – joined the workshop remotely to express his continuous support to the country in this area. He highlighted that the preparation of the Kampala Convention started in Addis Ababa in 2005. But the official decision to draft the Convention was taken by the Second Ministerial meeting of the AU on Refugees which was held from 1-2 June 2006 in Ouagadougou, during which he presented a concept note and outline of the Convention. Burkina Faso therefore marked the incubation of this AU Convention, which was adopted in Kampala on 23 October 2009 and entered into force on 6 December 2012. Burkina Faso also ratified the Kampala Convention on 5 July 2012, therefore contributing to its entry into force in the same year.

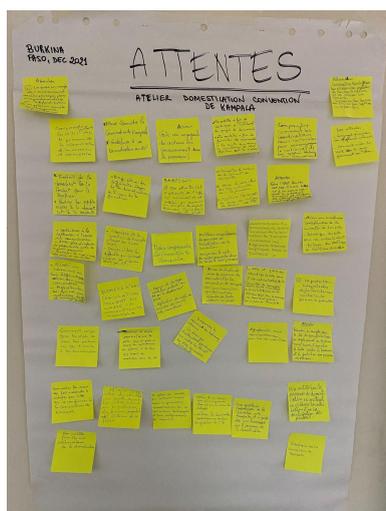
He stressed that the Kampala Convention is a pioneering instrument, the first legally binding instrument on IDPs, and should be seen as a standard setting international instrument of regional scope on how to provide protection and assistance as well as durable solutions for IDPs throughout the continent of Africa. It was drafted as a forward looking instrument and its adaptability to individual countries like Burkina Faso is context dependent. Following the 1998 UN Guiding Principles on internal displacement, the Convention is based on state sovereignty as the basis of state responsibility for protection and

assistance to IDPs, including obtaining durable solutions. He also particularly emphasised the following points in relation to the Convention:

- it was designed to be inclusive in seeking to relate to all aspects of internal displacement. By virtue of Article 9, States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement;
- It translates the human rights of IDPs directly into the responsibilities of the States Parties based on the performance of pertinent obligations to prevent, provide protection and assistance, and durable solutions, from the language of the rights of IDPs into the language of 'States Parties shall...'. It makes clear what is required of States Parties to comply with the Convention.
- It outlines positive obligations of the States Parties where measures and action are required to provide protection, and negative obligations of States Parties, armed groups, and non state actors, where the form of protection is in the nature of refraining from certain acts, such as discrimination or genocide. Responsibilities of States Parties descend from international human rights law, international humanitarian law, and international refugee law by analogy. The benefit and value addition of the Kampala Convention lies in combining and codifying these aspects of law into a one stop framework of application.
- Its objectives enshrine measures for the operationalisation of the Convention and underline its entire fabric, and provide indicators for the implementation of the Convention. They are the basis for the general obligations assumed by States Parties in Article 3 to respect and ensure respect for the Convention, and incorporate its obligations into domestic law. Art. 3 connotes measures of preparedness, both in preventive and response terms. Adoption of policies and domestic law is critical to provide a cohesive framework for addressing internal displacement and measures to support efforts taken by states to that end.

Most importantly, Dr. Beyani emphasised that **the obligation to domesticate the Kampala Convention is such that a new legal framework is required to be formulated and put in place in Burkina Faso**. Although the establishment of the Inter-Ministerial Committee is a very welcome step, **updating or amending the 2014 Law on the Prevention and Management of Risks, humanitarian crises and disasters does not meet the requirement of the obligation to domesticate the Kampala Convention**. Nonetheless, a review of that law in light of the Sendai Framework on Disaster Risk Reduction 2015-2030 may also be useful - the relevance of the Kampala Convention in this respect is shown in its Article 4(2), which obliges states in Africa to implement disaster risk strategies, emergency and disaster preparedness in areas of potential displacement.

He stressed that **the implementation of the Convention must be aimed at generating functional capacity**. Article 3 requires States Parties to designate an authority or body for coordinating protection and assistance for IDPs: this is because such activities are a shared responsibility among multiple ministries within states, and **a whole-of-government approach to IDPs is needed**. In a decentralised state like Burkina Faso, **coordination is also necessary between the National Government, the Regional Governments, and Municipalities who are the first responders**. The IDP Protection Expert Group mission visited Kaya and Ouahigouya and learnt at first hand the important role of regional and municipal authorities in attending to IDPs in those areas.



In concluding, he hoped that this workshop would provide a forum for advancing the cause for the domestication of the Kampala Convention by the Government of Burkina Faso on the basis of a common and shared understanding of the Convention as a protection tool that was given the go ahead in Burkina Faso under the auspices of the African Union.

The opening remarks were followed by the presentation of the workshop agenda, the introduction of the participants and a discussion about their expectations for the workshop.

Section 2.0: Workshop Sessions

2.1 Why a National Framework on Internal Displacement in Burkina Faso?

Presenters: Maurice Azonnankpo & Martina Caterina, UNHCR

The session started with a presentation laying out the current picture of the internal displacement situation globally and regionally, to put the discussion at the national level in Burkina Faso in the broader context and set the scene for the next sessions. At the end of 2020, there were 82.4 million forcibly displaced people worldwide – including refugees, asylum-seekers and 48 million IDPs due to conflict and violence. The number of IDPs increases to 55 million when also adding the number of people displaced by disasters and the adverse effects of climate change. In 2020 alone, 11.1 million new displacements were recorded in Sub-Saharan Africa. In 4 out of 5 countries with the highest number of IDPs in Africa (Ethiopia, Somalia, South Sudan and Mozambique) efforts were underway to domesticate the Kampala Convention through the development and adoption of laws and policies on internal displacement, in recognition of the importance of establishing a national framework to guide the national response to address and resolve the issue.

The presentation was followed by a discussion allowing the participants to brainstorm on how the development, adoption and implementation of a national instrument on internal displacement may contribute to solving their national problem. Three points in particular were highlighted:

- IDPs are either citizens or permanent residents of the country in which they are displaced, and are protected by the constitution and relevant national legislation. They also, however, have specific protection and assistance needs and vulnerabilities that domestic legislation does not usually address fully, as it is not tailored to the particularities and challenges of internal displacement. Nor is it drafted with times of humanitarian crisis involving displacement in mind. **A national framework on internal displacement will help to tailor responses to specific displacement situations in Burkina Faso based on IDPs' rights under international law, and ensure IDPs' specific needs are addressed.**
- National sovereignty means that the primary responsibility for addressing internal displacement lies with the government. The fulfilment of this responsibility is a challenge, however, particularly in the context of limited institutional capacities and funding. In order to meet the challenge effectively, a number of countries have adopted national laws, policies or strategies on internal displacement. **The development of a national instrument is essentially an exercise of sovereignty, and as such is a core responsibility of governments facing internal displacement.** Such instruments can provide important guidance to national authorities and other relevant parties involved in responding. **A national instrument sets a frame for effective, predictable and coordinated response**, in particular by clarifying government roles, responsibilities and coordination arrangements.
- **A national instrument also reflects the State's commitment to its international and regional obligations** (particularly given that under the Kampala Convention, State Parties are required to establish a legal framework domesticating the Convention), which boosts credibility and reliability of national responses, and opportunities for international cooperation.

2.2 International Legal Frameworks for the Protection of Internally Displaced Persons

Presenter: Martina Caterina, UNHCR

The session aimed to: (1) present the types of international law that provide legal protection for IDPs and their major characteristic; (2) describe who is responsible for protecting IDPs and what that responsibility entails.

When we speak about "IDPs", we are not referring to a legal status but a category that helps us identify the specific vulnerabilities and protection and assistance needs these people have; rights violated and rights at risk. IDPs are defined as "*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or*

human-made disasters, and who have not crossed an internationally recognized State border,” (Guiding Principles on Internal Displacement, Preamble; Kampala Convention, art. 1). The two main elements of the definition are: the coercive / involuntary character of the movement, the fact that such movement takes place within national borders. The definition includes internally displaced citizens and habitual residents (therefore potentially including stateless persons, returning refugees, foreigners) in a country, and regardless of where they live: in urban or rural areas; in camps or settlements, among host communities or in private/rented accommodation.



The session delved into the international legal standards for the protection of IDPs, highlighting that IDPs are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. International law does not specifically address the plight of IDPs, but this does not mean that they are not protected under the law. In fact, the following bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement, including during armed conflict:

International Human Rights Law (IHRL): both international instruments for general protection – ICCPR and ICESCR – and special protection – CERD, CEDAW, CRC, CAT, CRPD etc., as well as regional instruments: in Africa, the African Charter on Human and Peoples' Rights and its Protocol on Human and Peoples' Rights on the Rights of Women in Africa; the African Charter on the Rights and Welfare of the Child. Both instruments include specific provisions relating to State obligations to respect human rights in times of armed conflict, and make express reference to the need to protect and assist internally displaced women and children.

International Humanitarian Law (IHL): IHL is a set of rules that, in times of armed conflict, seeks – for humanitarian reasons – to protect persons who are not, or are no longer, directly participating in hostilities, and to restrict means and methods of warfare. IHL thus establishes minimum standards of humane conduct that must be complied with in any situation of armed conflict. These standards aim, inter alia, to protect civilian populations and their means of survival. IHL violations – such as direct attacks on and all forms of ill-treatment of civilians, destruction of property not required by imperative military necessity, rape or other forms of sexual violence – are one of the main causes triggering displacement in armed conflicts.

IHL contains many provisions relevant to preventing displacement and protecting IDPs as part of the civilian population. They are to be found mainly in the 1949 Fourth Geneva Convention and the 1977 Additional Protocols I and II, as well as in customary IHL. States have the responsibility to implement IHL, including the obligation to incorporate the rules of international law into their national legal frameworks. Among others, the following provisions should be considered when enacting national legislation:

- Prohibition of forced displacement and the right to voluntary return in safety
- Non-discrimination
- Respect for life, dignity and humane treatment
- Adequate standards of living and humanitarian assistance
- Respect for family life and family unity
- Penal repression

International Criminal Law: National authorities have an obligation to criminalize violations of IHRL and IHL in national legislation and to prosecute and punish those responsible before national courts and tribunals. In some cases, individuals can be brought to justice under international criminal law. The Statute of the International Criminal Court (ICC) defines a number of crimes that are considered to be of international concern and which can be investigated and prosecuted by the Court, provided that the Court has jurisdiction over the act. These include: **war crimes, crimes against humanity, and genocide.**

Depending on the circumstances, certain forms of forced displacement can amount to a crime against humanity (art. 7), a war crime (art. 8) and, in specific situations, genocide (art. 6).

Other relevant branches of law include **International Refugee Law**, which is applicable to IDP situations by analogy (not directly!), particularly with regards to the principles of non-refoulement/ freedom of movement; Durable solutions; Non-discrimination. The application of **International Disaster Law** also has a key role to play in preventing and addressing issues relating to internal displacement in the context of disasters and the adverse effects of climate change.

A presentation of the key international framework for the protection of IDPs, the **1998 Guiding Principles on Internal Displacement**, followed. Although not a binding document, like a treaty, the Guiding Principles are based on and reflect existing standards of international law, which are binding. They cover all phases of displacement:

- the pre-displacement phase, providing protection from unlawful displacement;
- protection and assistance during displacement; and
- durable solutions, namely return, local integration at the place of displacement or resettlement in another part of the country and reintegration.

The Guiding Principles address a range of particular needs and protection risks that typically arise in situations of internal displacement, such as family separation, loss of documentation, freedom of movement in and out of camps, and loss of property. They also identify the corresponding rights and guarantees to address these concerns. Incorporating civil and political rights as well as economic, social and cultural rights, the Guiding Principles cover the broad spectrum of rights, including those not typically at the forefront of humanitarian action.

Question: Why has the international community not developed a global treaty?

Answer: Following the first appointment by the UN Secretary General in 1992, the representative of the SG made a review of the existing standards to find out whether they were ready enough to protect IDPs at the time. The result of the review and some of the considerations at the time were:

- Developing a treaty would be a long process of negotiation.
- A challenge was recognized, and risk acknowledged in combining international human rights law and International humanitarian law when developing a treaty.
- A fear of lowering existing standards during negotiation of the process.
- A restatement and codification of what is already implicit in existing conventions both in international human rights law and international humanitarian law was identified is enough.
- The ratification gap that would come as a result of developing a new treaty would lead to the advantage of using a soft law instrument. That this was taken as a better strategic approach to go about the issue.

There has been a discussion on how the AU could put the convention before the UN General Assembly for it to be adopted without a vote, as an AU contribution of the UN; another alternative implementation approach that could be followed is the European Convention on Violence Against Women (the Istanbul convention), which is open for signature and ratification by non-European states. The African Union could have a protocol that allows non-African states to be party to the AU convention.

Question: Punishment for arbitrary displacement as a crime?

Answer: National criminal legislation may contain different crimes that address arbitrary displacement – as international or ordinary crimes. In addition to the characterisation of the crime, the clear and specific enunciation of the sanction incurred in case the law is violated is the other side of the principle of legality that needs to be guaranteed. In that sense, international law, and particularly the 1998 Rome Statute (Article 77, Penalties)², represents a benchmark for the establishment of penalties for international crimes.

² Rome Statute of the International Criminal Court (1998): PART 7.PENALTIES – Article 77: “Applicable penalties. 1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute: (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. 2. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A

In turn, ordinary crimes have to be punished following some principles, such as exemplarity and proportionality. As international crimes are considered as the gravest crimes of concern to the international community, the penalties provided for arbitrary displacement as an ordinary crime should consequently not exceed the ones for international crimes.

2.3 The AU Convention for the Protection and Assistance of IDPs

Presenter: Patrice Dossou Ahouansou, UNHCR

An overview of the status of ratification and domestication of the Kampala Convention in West Africa was offered to the participants. Following that, and building on the presentation of Dr. Beyani, this session emphasised the general obligations the Convention imposes on States Parties, particularly to:

- Incorporate its obligations into domestic law
- Designate a body to coordinate activities aimed at protecting and assisting IDPs
- Provide the necessary resources to deliver such activities
- Adopt other measures necessary for or facilitating the implementation of the Convention, such as national policies or strategies on internal displacement



Some of the innovative contributions of the Kampala Convention were highlighted, including:

- It identifies responsibilities and roles of States but also the AU, international organizations, civil society, humanitarian agencies and other actors who have roles in protecting IDPs;
- It emphasizes the need for collaborative approach of all of the actors to adequately respond in a comprehensive manner to internal displacement;
- It recognizes that forced displacement in Africa is a complex phenomenon caused by a variety of factors. It expressly refers to certain causes of internal displacement, like harmful practices, that are particular to African context and identifies the efforts that should be taken to prevent such violations:
 - It devotes an entire article to displacement caused by development projects;
- It also particularly acknowledges displacement of pastoralists, which is essential as 40% of the land of the continent is inhabited by pastoralists who have a special attachment to their land.
- It places the community at the centre, emphasizing the importance of involving IDPs in response, planning and management of durable solutions - like the guiding principles stipulated, but also underscoring the role of host communities.

Question: What constitutes arbitrary displacement according to the Kampala Convention?

Answer: The list of what situations and acts constitute arbitrary displacement in the Kampala Convention is much longer than in the Guiding Principles, because the list was adapted to the African context. For example, the reference to harmful practices came from the Maputo Protocol on the rights of women. There is arbitrary displacement of young girls who flee because of harmful practices, particularly FGM and sought refuge elsewhere. Another example of arbitrary displacement as a result of harmful practices is the secondary displacement cases of IDPs, who are victims of sexual violence because of the stigma associated with pregnancy as a result of the sexual violence, the victims leave their habitual residence to other areas where they can get protection.

This session was complemented by a group exercise facilitated by **Eliane Timbkieta, UNHCR**, based on a case study which allowed participants to identify the violations of international human rights and humanitarian law happening in the scenario, and become more familiar with the content of the Convention - having to identify what provisions were relevant to address the various violations.

forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.”



2.4 Lessons Learnt from Other Countries Domesticating the Kampala Convention:

The experience of Niger

Presenter: Mr Zabeirou Alfazazi, Government of Niger – Director of Legislation at the Ministry of Humanitarian Action and Co-Coordinator of the Protection Cluster in Niger.

Mr. Alfazazi was involved in the successful process of domestication of the Kampala Convention through an IDP law which was adopted in 2018, and continues to follow up on its implementation. The process he described demonstrated the importance of the strong government leadership and ownership throughout, and he underscored two key lessons learnt which he advised the participants to keep in mind:

1. the relevance of a multi-stakeholder, participatory process: rounds of consultations were carried out during the period in which the draft law was developed with key governmental and non-governmental stakeholders, including first and foremost internally displaced people. In this regard, it was highlighted that the Protection Cluster facilitated visits by the Inter-Ministerial Committee in charge of the domestication process in Diffa and Tillabery, two main locations affected by displacement.
2. the importance of identifying clearly the technical support needed in this process, and therefore the role that a national expert – coming on board as a consultant to accompany the Inter-Ministerial Committee in this process – played, supporting the legal review of national legislation and the drafting of the national framework. The expertise in IHRL, IHL and standards for the protection of IDPs was extremely helpful to inform the process, as the involvement of other key partners (UN partners, ICRC) with regards to technical assistance.

The experience of the Central African Republic (CAR)

Presenter: Maurice Azonnankpo, UNHCR

The experience of CAR was presented as an example of a law-making process to domesticate the Kampala Convention which was well designed and implemented in a participatory and consultative manner, but encountered certain obstacles which impeded the final adoption of the law, which remains pending. Some of the key lessons learnt from the process in CAR included:

- an important focus on capacity-building of relevant stakeholders, including through technical and legal workshops, as well as on awareness-raising around the issue of internal displacement and the need for a national legal and policy framework to be established (through public hearings, awareness campaigns, open debates)
- a multi-stakeholder process, consultative and promoting IDP participation; as well as evidence-based (joint needs assessments, experience and field visits, focus group discussions with IDPs and host communities keeping a perspective of age, gender and diversity in mind);
- the importance for the process to be kept at a technical level and while engaging with political stakeholders, which is necessary, trying to foresee possible roadblock and obstacles that a politicised process may lead to (e.g. despite all efforts, the draft law was not adopted when presented in congress due to dynamics between majority and opposition). Engaging with Parliamentarians early on (across different political parties) to ensure their support was therefore also recommended as an important action.

2.5 Durable solutions: theory and practice

Presenters: Martin Bisoka Mbanda, UNDP & Martina Caterina, UNHCR

The session started with a “Voting with your feet” exercise which allowed participants to reflect on what constitutes a durable solution for IDPs, what key principles should guide the search for durable solutions and what criteria determine to what extent a durable solution has been achieved. The ensuing presentation introduced the 2010 Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for IDPs, the key reference on this matter.

According to the Framework, “a durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.” A durable solution can be achieved through:

- sustainable reintegration at the place of origin (often referred to as “return”);
- sustainable local integration in areas where IDPs seek refuge (local integration);
- sustainable integration in another part of the country (settlement elsewhere).



IDPs’ search for solutions is a complex and gradual process that addresses human rights, humanitarian, development, reconstruction and peacebuilding challenges. It needs to be supported from the onset of a crisis to avoid the risk of protracted, multiple and recurrent displacement. **This process requires the coordinated and timely engagement of different actors.** IDPs’ right to make an informed and voluntary choice about their settlement options should be respected, as should their right to participate in the planning and management of strategies and programmes that facilitate durable solutions.

The session emphasised that finding durable solutions for IDPs is the main goal for a State responding to the issue, and the establishment of an effective legal and policy framework is a key component of such national efforts, to articulate roles and responsibilities, funding and coordination mechanisms, and ultimately help IDPs enjoy their human rights without discrimination in line with international standards.



2.6 The State of Play of the Protection of IDPs in Current National Legislation

Presenter: Julie Rose Ouedraogo, Association des Femmes Juristes

This session aimed to: (1) present the main legal texts related to the protection of IDPs; (2) highlight the shortcomings of national legislation in relation to the Kampala Convention; and (3) understand the value of bringing national legislation in line with the Kampala Convention.

Regarding the **current state of IDP protection in national legislation**: IDPs as citizens or habitual residents are protected under national law, and the characteristics and principles of human rights are applicable to them. The Constitution of Burkina Faso recognises and protects the rights included in all the main human rights conventions; its Art. 151 also provides that ratified Conventions, such as the Kampala Convention, are directly applicable and can be invoked in national courts without further need of domestication.

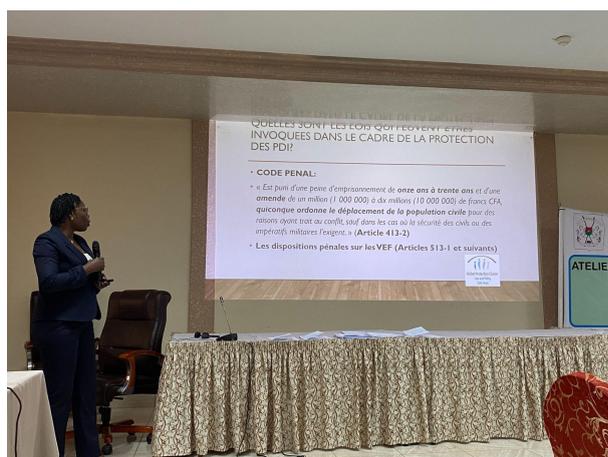
Burkina Faso's Penal Code already incorporates the crime of forced displacement of people in the IHL sense (Article 413-2). Further national legislation provides a right to access to justice and legal aid, the right to civil status documents, the protection of children, people with disabilities, the elderly, etc. Of particular importance is also the **Law 012-2014/AN on the prevention and management of risks, humanitarian crises and disasters**, which includes a reference to internally displaced people.

Regarding the **shortcomings of national legislation**: in spite of the provisions highlighted above, national legislation is still insufficient for the full protection of IDPs, particularly for what concerns civil documentation, social protection, and education. There is also a lack of a prohibition of all forms of arbitrary displacement indicated in the Kampala Convention.

In conclusion, **the value of bringing national legislation in line with the Kampala Convention is evident**: IDPs are a vulnerable group in need of special protection, which can be achieved in various ways:

- through the revision of the existing legislation to take into account the specific needs and vulnerabilities of IDPs, and/or
- through the development and adoption of an IDP-specific law.

In particular, a law domesticating the Kampala Convention would have the advantage of bringing together all rights and obligations of IDPs and all actors working on their protection in one coherent instrument, what the **Law 012-2014/AN on the prevention and management of risks, humanitarian crises and disasters does not provide thus its limitations to cover protection and assistance in the displacement cycle**. Adopting a national law on protection and assistance to IDPs provides more avenues of redress for IDPs, ensuring that they can effectively exercise their rights.



2.7 WHAT - Understanding the content of a National Framework on Internal Displacement:

- Minimum Essential Elements of State Regulation
- Contextualizing International Standards: Comparative IDP Law and Policy

Presenter: Martina Caterina, UNHCR

This session aimed to: (1) present the minimum essential elements of state regulation as set out in the “Protecting IDPs: a Manual for Law and Policy Makers” to the participants; (2) engage participants with real samples of IDP laws and policies from other countries, guided by specific leading questions and a checklist based on international and regional legal standards.

After a brief presentation of the minimum essential elements, the participants were divided in groups and carried out a comparative analysis of how the IDP laws of Kenya and Niger and the IDP Policy of Somalia cover key issues. They then compared how these three different IDP instruments reflect and translate the minimum essential elements in their national context and compiled lessons learned from the exercise to inform the development of an IDP law in Burkina. The analysis particularly focused on the following elements:

- IDP definition: the three documents integrated the definition of the Kampala Convention as such, but the Somalia IDP policy took a step further to clarify that the policy also applies to pastoralists who have been internally displaced, returning refugees, people who have been forcibly evicted – all regardless of their location (urban/rural, camp/out of camp).
- Designated focal points for national response (an agency? an inter-ministerial body?); identified coordination mechanisms (among ministries and between central and local level); funding arrangements.

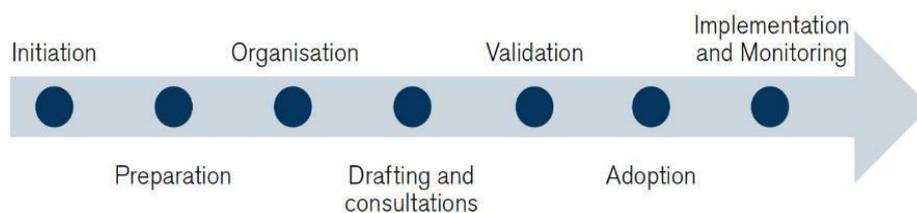
The exercise was also useful to reflect how different instruments should be framed based on a country's legal and administrative system (e.g. what instruments may also be needed to facilitate the implementation of a law, such as implementing decrees/regulations, additional policies or strategies to identify priorities...).

2.8 HOW - Development of a National Framework:

- Preparatory steps
- A Multi-Stakeholder, Participatory Approach

Presenters: Christoph Bado, MBDHP & Patrice Dossou Ahouansou, UNHCR

This session aimed to present the key steps in the development of a national instrument on internal displacement and emphasises why a multi-stakeholder, participatory approach matters. It also aimed to draw attention to the importance of announcing the decision and convening stakeholders early to ensure that the instrument developed responds comprehensively to the needs of IDPs and other people affected by displacement and supports durable solutions to displacement. It was highlighted that **the consultative process to develop a national instrument is as important as the outcome, because it will shape its content and prospects for its successful implementation.**



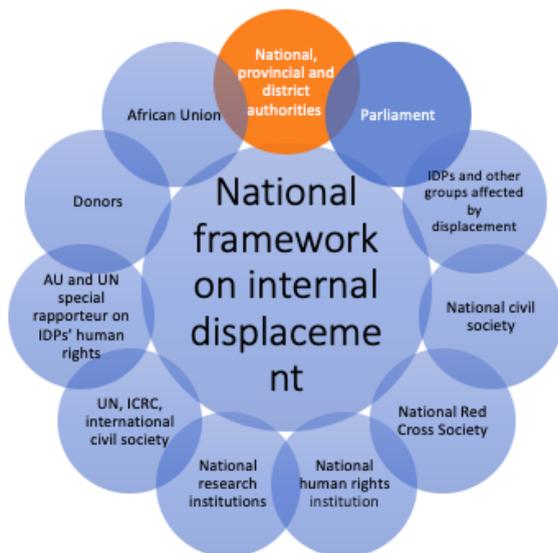
Building on the experiences shared regarding the domestication process in Niger and CAR, a brief presentation was offered focusing on:

- the preparatory steps that need to be taken to plan and organise a effective process;
- roles and responsibilities to support the government institution leading the process, with four major roles identified: **drafting expert; drafting committee / steering committee (sometimes merged); consultation partners.**

The importance of consulting with IDPs and other displacement-affected communities, among other stakeholders, was particularly highlighted to make the drafting process as inclusive as possible. Specific attention was dedicated to the importance of a detailed **legal review of national legislation relating to the protection of IDPs** (legal audit).

Such analysis would help identify whether national laws and policies adequately address the specific need of IDPs and comply with regional or international standards, and identify any problems and gaps

that may need to be addressed in the new instrument, or addressed by modifying the existing framework.



The presentation was followed by a discussion to identify all the key stakeholders that should be involved in the law-making process on internal displacement in Burkina Faso at its different stages, also highlighting the key role of Parliamentarians (who were not present at this workshop) and the need to specifically target them through awareness raising and advocacy activities.

2.9 Agreeing on Next steps:

- Mandate of the Inter-Ministerial Committee
- Roadmap and TORs for a National Consultant

On the last day, as it was agreed collectively at the end of day 2 of the workshop, the participants were given two documents that they examined in detail in groups, and subsequently revised in plenary:

- a draft roadmap for the domestication of the Kampala Convention, with identified milestones and proposed timeline;
- draft Terms of Reference (ToRs) for a national expert who would work as a consultant to accompany the process and support the work of the Inter-Ministerial Committee.



By the end of the workshop, the Inter-Ministerial Committee and its supporting partners had provided detailed feedback and agreed on the text of both documents (See Annex 1 and Annex 2). Two important aspects were discussed and agreed:

- It was clarified by CONASUR that the decree establishing the Inter-Ministerial Committee participants had not yet been fully adopted; in its current form, the draft decree established an

Inter-Ministerial Committee whose mandate was to revise the Law 012/2014 on the prevention and Management of Risks, humanitarian crises and disasters. The participants agreed that in light of what they had learned during the workshop, that mandate would be too narrow; a better approach would be to advocate at the highest level for the mandate of the Inter-Ministerial Committee to be rather focused around the domestication of the Kampala Convention; a legal review to be carried out early next year would then clarify and confirm the approach to be followed (i.e. whether a more comprehensive legal instrument would be necessary, as indicated by various presenters during the workshop).

- It was discussed that the drafting expert should be someone with the adequate technical capacities, legal knowledge and expertise on internal displacement required; the expert would work in cooperation with national entities to gather the information available on the displacement situation, consult to understand the main challenges and core issues to be addressed, provide draft documents for consideration; advise during deliberations and making agreed amendments and changes to the text.

On 10 December 2021, the workshop was concluded with an intervention of the **UN Resident Coordinator/Humanitarian Coordinator, Barbara Manzi**. She took the opportunity to congratulate the participants for the concrete progress made during the workshop and highlighted the importance of this work for the protection of the human rights of IDPs – an excellent way to celebrate Human Rights Day. She welcomed the workshop as a concrete follow up to the IPEG mission in Burkina Faso and stressed the need to prioritise the domestication of the Kampala Convention moving forward, particularly in light of the increasingly worrying displacement situation in the country. Finally, she reiterated the continuous support that the UN and the humanitarian family in Burkina stands ready to provide to the Government in all these matters.

ANNEX 1

Workshop Evaluation

Participants have rated the course with an average score of 4.3 out of 5, and some of the general comments we have received are as follows:

"The workshop was edifying, and helped to clarify key concepts"

"It allowed us to see the shortcomings in the protection of IDPs in the current legislation"

"A necessary event. It provided important information in advance to the drafting and adoption of a law on internal displacement"

"I found the content of the presentations very relevant, and also the methodology used by the trainers as it facilitated dialogue between participants"

"The exchange of experience with Niger allowed us to receive relevant information to inform and inspire our domestication process moving forward"

"We have learned a lot"

"(The workshop) allowed us to better understand the overall process"

"The methodology for reviewing the roadmap and terms of reference was appropriate as it allowed all groups to express themselves and resulted in agreed-upon quality documents"

ANNEX 2

Participant list

NAME	ORGANISATION	FUNCTION
SOULAMA Seydou	DIRCAB	Membre du Comité Inter-Ministériel - Supervisor
BAKOUAN Yipenè Florent	SP/CONASUR	Membre du Comité Inter-Ministériel - Président
DIALLO Hamidou	SP/CONASUR	Membre du Comité Inter-Ministériel - Rapporteur
DJIGUEMDEZ Joel Aristide	Ministère de la Justice, des droits humains et de la promotion civique	Membre du Comité Inter-Ministériel - Rapporteur
TRAORE Anselme	Ministère de la sécurité	Membre du Comité Inter-Ministériel
SAWADOGO Salifou	Ministère de l'Eau et de l'Assainissement	Membre du Comité Inter-Ministériel
SOME Marie Sylvie	DGESS/MDNAC	Membre du Comité Inter-Ministériel
SAWADOGO/DIBENDE wend-panga Augustine	Ministère de l'urbanisme de l'habitat et de la ville	Membre du Comité Inter-Ministériel
OUATTARA Abdramane	Ministère des Affaires étrangères	Membre du Comité Inter-Ministériel
DABILGOU Sibiri Elie	Ministère du transport	Membre du Comité Inter-Ministériel
ILBOUDO Irissa	Ministère de l'Agriculture SE/CNSA	Membre du Comité Inter-Ministériel
Saïdou KABORE	MATDS / DGPCS	Membre du Comité Inter-Ministériel
Gontran Yanbèrar SOME	MEEVCC	Membre du Comité Inter-Ministériel
Youssion NAPON	DGSAH	Membre du Comité Inter-Ministériel
Dominique YE	DGFE	Membre du Comité Inter-Ministériel
P. Honoré Eric BONOU	DGFG/MFSNFAH	Membre du Comité Inter-Ministériel
Amédée BAMOUNI	FNS	Membre du Comité Inter-Ministériel
Mariam OUEDRAOGUO	DGESS	Membre du Comité Inter-Ministériel
A. Lydie OUEDRAOGO	DGEP/DPP	Agent
Sylvie L. TANKOANO	SP/CONASUR	Agent
Nathalie SOMA	SP/CONASUR	Agent
Daniel OUEDRAOCIO	SP-CIMDH	Agent
Hazou Claire BAMOUNI	CONASUR	Agent
Antionelle ZIDA	SP/CONASUR	Chef de section
Issaka PAMIAM	SP/CONASUR	Chef de departement
Dah Kouzodon	CNDH	Focal point CNDH pour CP
Ines DA	CORUS	Agent
Georges KOUWONOU	AJUEMOA	Coordonateur
Raissa SOW	Cluster Protection	Assc Prot Clust Coord Off
Alimata SIDIBE	Cluster Protection	Prot Clust Coord Off
Nathalie MBENOUN	Cluster Protection	Prot Clust Coord Off
Tony TUMAGU	Cluster Protection	Prot Clust Coord Off
Alimata OUATTARA	Cluster Protection	Prot Clust Coord Off
Sheldon MUNIHIRE	Cluster Protection	Prot Clust Coord Off
Salia Adama Yao	Cluster Protection	Prot Clust Coord Off

KAMPALA CONVENTION DOMESTICATION WORKSHOP

Moïse MUYISA	NRC - LBT AOR	National Coordinator
Eliane COMPAORE	UNHCR	Assc Protection Officer
Daouda DJOUMA	OCHA	Humanitarian Affairs Officer
Augustine SAWADOGO	OSC - SPONG	Chargée du volet humanitaire
Adissa MAIGA	AF2D	Tresoriere
Boucaré BONKOUYOU	SCI	Co-coordonnateur CP AOR
Labidé AUALY	CNOSC/BF	Sécrétaire National
Christoph R. BADO	MBDHP	S.G.A.
Emeline P. JAMEDGO	CICR	Coo.cor.
Facilitators/Presenters		
Abdouraouf Gnon Konde	UNHCR Burkina Faso	Representative
Barbara Manzi	UN	Resident Coordinator
B. Mbanda MARTIN	PNUD	Conflict Prevention and Resilience Advisor
Julie Rose OUEDRAOGO	AFJ/BF	
Martina Caterina	UNHCR HQ Geneva	Legal Officer, Chair GPC Task Team on Law & Policy
Maurice AZONNANKPO	UNHCR Burkina Faso	Deputy Representative
Minata Condé	Protection Cluster	Senior Protection Cluster Coordinator
Patrice Dossou Ahouansou	UNHCR Reg Bureau Dakar	Senior Protection Officer
R. V. Patrick SANDWIDI	CEDEAO	Political Advisor