AFRICAN HUMANITARIAN POLICY FRAMEWORK

Initial Draft

Humanitarian Affairs Division
11/3/2010

The policy provides an objective set of principles that covers different aspects of humanitarian action Coordination, including Civil-Military coordination; Protection including Refugees, IDPs and Civilians in conflict zones; Disaster Management and Response; Peaceful negotiations and Conflict resolution; Post-Conflict Reconstruction and Development; Asylum and Mixed Migration; International Humanitarian Law and Advocacy; Capacity building and Resource Mobilization
AFRICAN HUMANITARIAN POLICY FRAMEWORK

I. INTRODUCTION

The Strategic Plan of the AU Commission 2009-2012, has as part of its component, the need to “strengthen Africa-wide Humanitarian response and action”. In order to achieve this, it is imperative that a policy framework be developed that will facilitate the implementation of a continental policy, including the management of disaster and other complex emergencies.

The African Humanitarian Policy Framework (The Framework) is aimed at complementing both the African Peace and Security Architecture (APSA) and the ongoing efforts at developing and implementing the Governance Architecture, by enhancing continental aspiration of entrenching the principle of non-indifference, in order to prevent and respond to grave atrocities and breaches of human security through man-made and natural disasters on the continent.

The Framework provides an objective set of principles that covers different aspects and scope of humanitarian action. These are Coordination, including Civil-Military coordination; Protection including Refugees, IDPs and Civilians in conflict zones; Disaster Management and Response; Peaceful negotiations and Conflict resolution; Post-Conflict Reconstruction and Development; Asylum and Mixed Migration; International Humanitarian Law and Advocacy; as well as Capacity building and Resource Mobilization.

The Framework identifies the role and responsibility of the African Union at continental, sub-regional and national levels, including field levels where applicable, in the area of protection of civilians in humanitarian crises and in conflict zones. The Framework also highlights the coordination role of the
African Union for effective responses in the areas of protection, assistance and implementation of durable solutions at all levels.

II. LEGAL AND INSTITUTIONAL BASIS

The Framework is premised upon the Strategic Plan of the AUC for 2009-2012 mandating the Commission to develop a comprehensive humanitarian policy, including the implementation of disaster and emergency management frameworks, in order to strengthen an Africa-wide humanitarian response and actions. This decision is also predicated on:

- The Constitutive Act of the AU;\(^1\)
- The African Charter on Human and Peoples' Rights;\(^2\)
- The Protocol to the African Charter on the establishment of an African Court on Human and People’s Rights\(^3\)
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;\(^4\) and
- The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa.\(^5\)

The Framework is therefore drafted in fulfillment of the mandate spelled out above.

III. GOALS AND OBJECTIVES

The Framework aims at situating the African Union Commission as the main humanitarian actor coordinating humanitarian action and institutions on the continent, by providing technical and material support to its member states in situations of humanitarian crises. The implementation of the policy will first, support the effective delivery of protection and assistance to affected populations (refugees, returnees, IDPs and host populations); and second, contribute meaningfully, to the putting in place of durable solutions to

\(^1\) Constituteive Act of the AU, adopted at the 36\textsuperscript{th} Ordinary Session of the Assembly of Heads of State and Government, 11 July 2000, Lome - Togo in Articles 3 (f), (g) & (h); and Art. 13.


\(^3\) Adopted on 10 June 1998 and entered into force on 24 January 2004 in its articles 2 and 3.


\(^5\) Adopted by the Special Summit of the AU held in Kampala, Uganda, on 22\textsuperscript{nd} October 2009. It is yet to enter into force upon 15 ratifications.
situations of forced displacements and effective response to natural and man-made disasters.

In brief, the policy framework will ensure that, African Union interventions are anchored in creating an effective coordination mechanism, both within the Commission, between the Commission and member states and other humanitarian actors. This will ensure maximum impact and will give appropriate visibility to the AU humanitarian role.

IV. MAIN AREAS OF IMPLEMENTATION OF THE FRAMEWORK

1. Coordination (Including Civil-Military)

The coordination of humanitarian response is a multi-dimensional task as well as a shared responsibility involving a variety of actions, different sets of actors, coupled with the provision of different types of support and employing different tools and mechanisms.

At the strategic level, coordination is aimed at addressing all the different humanitarian situations that are a result of conflicts, natural or manmade disasters. Such coordination will be achieved through the development of common strategies to be adopted by humanitarian actors; setting common priorities, shared goals and agreed operational tactics. It also includes jointly agreed monitoring and evaluation frameworks. This allows coherence in implementing continental coordination mechanisms that adequately respond to humanitarian needs.

In order to effectively support the coordination strategy, it is imperative that it be coupled with developing and early warning capability that allows for current and up to date analysis of social, political, economic and military interplay in any given complex and multi-dimensional situation. This assists humanitarian actors to gain critical understanding of the causes, dynamics and the impact of any crises in the context in which they occur. Such assessments allow for the development of realistic plans of action that avoid duplication among humanitarian actors. This will assist in finding solutions for complex emergencies, to problems that are not in the sole remit of a particular agency or actor but impedes the overall delivery of humanitarian assistance.
Mindful of the complex and multidimensional nature of humanitarian crisis and the need to have recourse to the use of military assets to carry out humanitarian activities, it is essential that the dialogue and interaction between civilian and military actors in humanitarian emergencies aim at protecting and promoting humanitarian principles, avoid competition, minimizing inconsistency, and when appropriate pursue common goals.

In line with accepted international practice, the following six operating principles will guide the use of military assets in humanitarian emergencies:

- Decision to accept military assets (particularly in conflict situations) must be made by humanitarian organizations, not political authorities, and based on humanitarian criteria;
- Military assets should be requested only where there is no comparable civilian alternative and only the use of military assets can meet a particular critical humanitarian need;
- A humanitarian operation using military assets must retain its civilian nature and character. The operation must remain under the overall authority and control of the humanitarian actor or organization responsible for that operation, whatever the specific command arrangements for that military asset itself. To the extent possible, the military asset should operate unarmed and be civilian in appearance.
- Countries providing military personnel to support humanitarian operations should ensure that they respect the code of conduct and principles of the humanitarian organization responsible for that deployment.
- The large scale involvement of military personnel in direct delivery of humanitarian assistance should be avoided except in natural and manmade disasters where necessary.
- Any use of military assets should ensure that the humanitarian operation retains its international and multilateral character.

2. **Protection**

Drawing from the 1951 Refugees Convention and its 1967 Protocol, the OAU Convention of 1969, refugees should not be returned to face persecution or the threat of persecution– the policy framework in the areas of protection is anchored on the principle of non-refoulement. In other words, the framework policy guards the principle that protection must be extended to all refugees without discrimination.
Owing to the African experience, the framework policy appreciates the numerous other reasons, apart from the persecution-based approach of the 1951 Convention, that result in mass numbers of refugees. The Framework takes note of and the generalized conflicts which precipitated population displacement such as the liberation wars during the colonization period and the subsequent internal conflicts which necessitated the adoption of the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa (OAU Convention).

The Framework incorporates the existing 1951 Convention and is further premised on the expansion of the definition of a refugee to apply to every person, who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The effective implementation of the policy framework in the area of protection shall be supported primarily by the coordination mechanism and by the implementation of the following Conventions and existing policies:

- Protection and assistance to refugees, returnees and IDPs in Africa in the course of implementation of the OAU Convention on refugees and the AU Convention on IDPs and other relevant international legal instruments
- Protection of civilians in Armed Conflicts and deployment of African troops in crises situation
- Implementation of African Stand by Forces (ASF)
- Effective implementation of the roles of the Panel of the Wise and the Continental Early Warning System under the Peace and Security Architecture to prevent conflicts that could result in population displacements
- AU Post Conflict Reconstruction and Development policy

The policy framework further calls upon the AUC to undertake regular assessment / monitoring of the humanitarian situation in various member States in order to determine the need for a continental political solution by the African Union; develop a Network of information sharing and reporting system with humanitarian actors/experts and national institutions in charge
of Forced Displacement in AU member state; monitor and implement decisions and recommendations by other AU Organs and report to relevant organs such as the Peace and Security Council periodically amongst others.

3. **Disaster Preparedness, Management and Response**

The Framework in the area of Disaster Management, Preparedness and Response should synchronize with the Commission’s mitigation policy on Disaster Management. The regularity of both natural and manmade disasters on the continent requires that high priority must be given to the imperative to save lives, bring medical and other assistance to those injured and vulnerable, including developing the requisite capacity to undertake emergency response, urban search and rescue capacity.

In order to achieve an effective response, there are certain requirements that ought to be met. These requirements include:

a) Appropriate training in emergency response that prepares national authorities to be the first level of response in any emergency situation. Such emergency response mechanism is expected to be embedded at member state level across respective sub-regions on the continent;

b) An early warning and monitoring system;

c) The establishment of a database of Experts on different areas of disaster management, including urban search and rescue teams.

d) Ensuring predictable and adequate funding for effective disaster response. It is noted that the level of humanitarian financing remain low and it is grossly below the humanitarian needs on the continent. At the moment, the main source of financing humanitarian assistance is from the 2% of the AU Member States assessed contributions. Additional source of funding for disasters is the Special Emergency Assistance Fund, set up to assist Member States affected by drought, famine and other forms of natural disasters.

The Policy Framework which calls for establishment of a Coordinating mechanism will also include an effective approach to funding and an innovative overarching resource mobilization strategy that explores the possibility of extending funding sources to the continental private sector including high net-worth individuals and covering all areas of humanitarian action, including and in particular disaster management, preparedness and response.
4. **Asylum and Mixed migration**

Central to the protection of asylum-seekers is the principle of non-refoulement, namely that individuals seeking protection in another state, fleeing their state of nationality because of persecution or well founded-fear of persecution should not be forced to return to the country from which they are fleeing.\(^6\) In the situation of mixed migrations, there is need to identify the problem as that of avoiding the subjection of refugees to risks such as refoulement, other human rights violations such as trafficking and hazardous entry through smuggling. The focus on non-refoulement is necessitated by the fact that constantly, refugees’ right to protection is violated in situations where the demarcation between asylum-seekers and other migrants is unclear, particularly where economic migrants are involved.

However despite the better protection that refugees have under international law as compared to economic migrants, it still remains that migrants are entitled to a certain level of protection. Under international human rights law, discrimination on the basis of nationality or social or ethnic origin is prohibited.\(^7\) This means that despite their status as migrants in foreign states, migrants must not be discriminated against hence they must be awarded protection just like any other citizen. Every state that has ratified these instruments is therefore obliged to take all appropriate measures to ensure that there is equality of treatment for all individuals irrespective of nationality.

The Human Rights Committee has laid the principle that states must adopt legislative, judicial, administrative, educative and other appropriate measures in order to give effect to the rights in the International Covenant on Civil and Political Rights (ICCPR).\(^8\) Protection of individuals within the

---


\(^{8}\) General Comment No 31 of the Human Rights Committee specifically provides that states Para 7.
territory of a state from discrimination on the grounds of national or social origin in the enjoyment of their rights is one of the obligations that states have. That obligation is not only limited to respecting the rights but extends to protecting individuals’ rights against violation by private entities and individuals. States may thus violate Covenant rights by permitting or failing to take appropriate measures or exercise due diligence to prevent the harm caused by private persons or entities.

The AU Migration Policy Framework for Africa, adopted in June 2006 provided a clear distinction between forced displacement and other forms of population migrations.

This Framework aims therefore at supporting member states in creating best practices in the area of treatment of asylum seekers versus other migrants. Such best practices could include sharing of data related to the movement of populations across borders. This is because such collection, collation and analysis helps to develop a coherent and comprehensive policy enunciating the characteristics of the movement, such as the groups moving, their countries of origin, motivations for movement, modes of transport, transit routes and entry points.

The Framework therefore, discourages the use of such concepts known as internal flight, relocation or protection alternative to deny refugee status to claimants who do not have a well-founded fear of persecution throughout the country of origin.

The Framework provides for the development of technical competence to enable the exclusion of genocidaires and other perpetrators of heinous crimes against humanity and war crimes, in accordance with the principles enshrined in the Constitutive Act of the African Union.

The Framework also includes cessation clauses, particularly, with regard to protracted refugee situations and provides for such innovative steps like the granting of citizenship and resettlement programmes. This does not exclude voluntary repatriation as the most durable solution sought by the majority of refugees.

---

9 ICCPR, Art 2.
10 General Comment Number 31 of the Human Rights Committee General Comment Para 8.
The Framework calls on the African Union Commission to provide appropriate technical assistance and expertise to member states to enable them to distinguish the three categories of migrants and create provision for protection, coordinate legal and orderly migration amongst African States that mitigates irregular migration, while providing immediate humanitarian assistance to those affected, be they refugees, economic migrants, regular migrants, victims of trafficking and others.

5. **Peace talks and Conflict resolution**

The Framework emphasizes the promotion of dialogue. It encourages the involvement and participation of victims of both natural and man-made disasters and conflicts in peace processes. The ad Framework advocates such participation because it encourages the victims to stake a claim of ownership to the outcome of the processes be it a resolution and/or peace agreement.

Given the demographic composition of victims in most cases, it is envisaged that women and youth will form an integral part and make useful contributions to peace discussions and negotiations.

The Framework is there to ensure that this is taken into consideration in any given peace process.

6. **Post conflict reconstruction and Development**

The AU Policy on Post-Conflict Reconstruction and Development (PCRD) adopted in Banjul, The Gambia in July 2006 is an important tool for finding sustainable solutions to Refugees’, Returnees’ and IDPs’ problems. The PCRD is a comprehensive set of measures that seek to address the needs of countries emerging from conflict, including the needs of affected populations. It also provides measures for preventing the escalation of disputes; avoid relapse into violence; address the roots causes of conflict; and consolidate sustainable peace.

The implementation of the relevant aspects of the PCRD forms an integral part of this Framework.
7. International Humanitarian Law and Advocacy

(The Geneva Conventions of 12 August 1949 relative to the Protection of Civilian Persons in Time of War)

International humanitarian law encompasses the body of rules of public international law, embodied in treaties or based on custom, which aims at containing the horrors of war by limiting the means and methods of warfare on the one hand, and by protecting war victims on the other. International humanitarian law protects wounded and sick members of the armed forces in war on land; wounded, sick and shipwrecked military personnel in sea warfare; medical personnel, prisoners of war and the civilian population.

The 1949 Geneva Conventions and their 1977 Additional Protocols, form the bedrock of contemporary international humanitarian law. They contain only a few provisions referring to refugees or stateless persons and none referring to internally displaced persons.

Refugees and displaced persons are, in most cases, civilians and, as such, they are protected by the provisions relating to the protection of civilians in time of war. Civilian populations should be the object of neither attack nor reprisals.

International humanitarian law was developed in the context of conflicts between sovereign States, and it still bears the stigma of its origin. States have long resisted any codification of rules applicable to non-international armed conflicts. Indeed, most States long denied that humanitarian law be applied to non-international armed conflicts, and some of them regrettably still resist the idea today. As a consequence, the law applicable to non-international armed conflicts is much less developed than the body of rules which apply to international armed conflicts. Nevertheless, all four 1949 Geneva Conventions have a common article; Common Article 3 – which applies to non international armed conflicts. This Article provides that “Persons taking no active part in the hostilities [...] shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”

Furthermore Article 17, of Additional Protocol II specifically prohibits the forced displacement of the civilian population:
“1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.”

These provisions are confirmed by the Statute of the International Criminal Court, adopted in Rome on 17 July 1998. The Statute qualifies as war crimes “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” as well as “ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.” With minor differences of wording, these provisions of the Rome Statute apply to international and non international armed conflicts.

These provisions, which apply to the whole of the civilian population, are intended to protect it against forcible displacement, whether because of the violence of fighting or because of the action of the enemy power. Provided they are respected, such provisions will protect civilian persons from the risk of becoming refugees or internally displaced persons. Should civilians nevertheless be uprooted, whether before the conflict or as a consequence of it, international humanitarian law offers a specific protection to refugees and stateless persons.

In order to respond to the controversy on non-international armed conflicts and the applicability of International Humanitarian Law (IHL) in such situations, the Framework provides for the evolvement of IHL in the light of current resurgences and preponderance of intra state conflicts and atrocities perpetrated by Non-State-Actors in hostilities. The Policy calls for concerted efforts by all relevant Departments of the Commission, particularly, the Office of Legal Council and its African International Law Commission to expedite such evolvement to bridge the normative gaps in order to enhance the protection of civilians in non-international armed conflict.
ADVOCACY

8. Capacity building and Resource Mobilization

The strengthening and/or development of qualified personnel with the necessary technical capacity and skills to carry out the assessment and management of risks associated with humanitarian activities in all its ramifications cannot be overemphasized.

Therefore, the African Union will invest in efforts to develop human skills or societal infrastructures within the African community, States and organizations to reduce the level of risk created by different factors. These include armed conflict and criminality in the war-affected areas, natural disasters, climate change, bad health conditions, including HIV/AIDS, illiteracy, bad governance, etc.

The capacity building efforts will focus on the following fields:

- Consolidating the existing peace talks and conflict resolution unit;

- Creating a specific network and watch program to tackle the issue of abuse of international humanitarian law in conflict time, and reducing crime, including violence against women, girls and youths during conflict.

- Creating or strengthening the necessary infrastructure to support needed programs and services in communities during natural and manmade disasters.

- Protecting the environment and the natural variety of life in all forms, levels, and combinations, to create and enabling environment for survival. Regional diversity, ecosystem diversity, species diversity, genetic diversity needs a special attention and protection unit to be created. A process of developing or building up communities of men and women to enable empowerment, self-sufficiency and control over their environment is required in different parts of Africa.
- In the context of climate change, the process of developing the technical skills and institutional capability in developing countries and economies in transition will enable them to address effectively the causes and results of climate change.

- The establishment of a Continental Emergency Response Team that is trained by relevant partners to form the first wave of response to disaster on the continent before the arrival of assistance outside of the continent.

- The establishment and training of Urban Search and Rescue Team capable of responding to urban manmade and/or natural disasters on the continent.

Fostering and strengthening an African position in light of the Doha and the most recent Copenhagen Summit on Climate Change to ensure the best outcome for Africa as one of the worst victims of the consequences of climate change.

The Policy Framework recognizes the need to develop appropriate resource mobilization Strategies beyond the traditional funding baskets; exploring nontraditional sources as well as, nongovernmental sources including private sector sources, high net-worth individuals and other innovative approaches and forms of fund raising on the continent for humanitarian purposes.