

The impact of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa

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Summary

In 2009 the African Union Assembly adopted the Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The adoption of the Kampala Convention was in response to the protection and assistance of persons displaced within the borders of the state. While there was a regional instrument that dealt with the protection of persons displaced outside state borders, the gap in the protection of persons displaced internally within state borders prompted the adoption of the framework. Hailed as a binding regional response to a global challenge, the Kampala Convention has emerged as an important framework since adoption. However, there is scant information and discussion about its impact on the protection and assistance of internally-displaced persons. This article seeks to fill this gap by considering the impact of the Kampala Convention on the regional landscape on the protection and assistance of internally displaced persons in Africa.

Key words: *internally displaced persons; impact; Africa; Kampala Convention, African Union; IDP Convention*

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1 Introduction

With a third of the world's 40 million internally displaced persons (IDPs) on the African continent, the need for an adequate response to the protection and assistance of IDPs has resonated significantly.¹ In response to the normative protection gap, African leaders adopted the Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention) in Kampala, Uganda, in 2009 to cater for 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence' for reasons such as 'armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters'.² However, to qualify as an 'internally displaced' person, one must not have crossed an internationally-recognised state border.³ As the first binding international instrument of its kind, the Kampala Convention has become a reference point for the protection and assistance of IDPs. As at November 2019, 30 African Union (AU) member states have ratified the Kampala Convention.⁴ While much has been stated about the potential value of the Convention, especially in the early years of its adoption, there is scant information and discussion about its impact on the internal displacement landscape.⁵ In advancing the discussion, the article is divided into two main parts. The first part provides a context in which protection and assistance of IDPs has emerged. This is useful to understand the gap that the Kampala Convention – as with its antecedent, the UN Guiding Principles – fills in relation to IDPs. The second part examines the impact through the optics of four parameters, namely, direct substantive, indirect substantive, direct symbolic and indirect symbolic impacts.

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- 1 C Beyani 'Recent developments: The elaboration of a legal framework for the protection of internally-displaced persons in Africa' (2006) 50 *Journal of African Law* 187; J Crisp 'Forced displacement in Africa: Dimensions, difficulties and policy directions' (2010) 29 *Refugee Survey Quarterly* 1; MT Maru *The Kampala Convention and its contribution to international law* (2014); AM Abebe *The emerging law on forced displacement in Africa: Development and implementation of the Kampala Convention on internal displacement* (2017); KM DeJesus 'Forced migration and displacement in Africa: Contexts, causes and consequences' (2018) 37 *African Geographical Review* 79-82; N Bhalla 'Africa welcomes refugees but freedoms, jobs needed, aid groups' *Reuters* 12 February 2019; UN Economic Commission for Africa Issue Paper on the Theme: United Nations Support to the African Union Year of Refugees, Returnees and Internally Displaced Persons: Towards durable solutions to forced displacement in Africa UN Doc E/ECA/RCM/20/INF2 23 February 2019 para 4; African Union 'Member states expert meeting on the operationalisation of the African humanitarian agency opens' African Union (Press releases) 15 April 2019.
 - 2 Art 1(k) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009) (Kampala Convention).
 - 3 As above.
 - 4 United Nations High Commissioner for Refugees 'UNHCR welcomes Somalia's ratification of the Kampala Convention' *UNHCR* 27 November 2019.
 - 5 Examining the impact of the Kampala Convention provides an optic through which to understand in concrete terms its importance in shaping the landscape on internal displacement in Africa.

2 Context

In response to the global issue of internal displacement, a set of UN Guiding Principles on Internal Displacement (UN Guiding Principles) was adopted in 1998 with the aim of providing normative guidance to states on the protection and assistance of IDPs.⁶ These Guidelines sought to build on existing international practice to identify specific normative protection in response to the gap between the protection of persons displaced within state borders. This gap prompted early discussions during the formation of the 1951 Refugee Convention,⁷ when the notion of assistance to populations displaced within state borders was mooted. However, there was a prevalent consensus at the time that issues of internal displacement were primarily internal state affairs and were not for discussion in the international legal community in view of the principle of non-interference.

As such, to raise the question about international legal solidarity towards IDPs in this period was to raise an objection to the doctrine of non-interference which guided state relations and which, in fact, was at its peak during the Cold War. However, things slowly started changing at the end of the Cold War when it became clear that the internal affairs of states could not be left solely to the states to decide. There were countries of the former Soviet Union in which identities were constructed along ethnic lines that significantly affected other populations within the states. In Africa, the situation in the Sudan was a reflection of the essence of international legal protection.⁸ During the phases of civil wars between the northern and the southern part (now South Sudan), protection largely was constructed along ethnic lines and given that the north and south were divided in a heavily-charged socio-ethnic conflict, the posture of the national government towards displaced populations unveiled patterns of these divides. The pertinent question that thus emerged from these concerns was what then was to become the plight of populations left at the mercy of national governments that were less emphatic to their protection needs. A mere reflection on this question raises the pertinent role of the international community towards the protection, not merely of persons seeking asylum, but of those who are internally displaced within state borders. The development of the norm on IDPs was to create a standard to which states may hold themselves to account in

6 UN Commission on Human Rights, Addendum, 'Guiding Principles on Internal Displacement' Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission on Human Rights Resolution 1997/39, UN Doc E/CN.4/1998/53/Add.2 11 February 1998 (UN Guiding Principles); see also R Cohen & FM Deng *Masses in flight: The global crisis of internal displacement* (1998).

7 UN Convention Relating to the Status of Refugees, 189 UNTS 150 (1951 Refugee Convention).

8 F Deng *War of visions: Conflict of identities in the Sudan* (1995) 484; HA Ruiz 'The Sudan: The cradle of displacement' in R Cohen & FM Deng (eds) *The forsaken people: Case studies of the internally displaced* (1998) 142.

relation to IDPs and to which the international community may assess the level of states in the furtherance of protection for IDPs, be it as a consequence of conflict, development projects or natural disasters. With the development of the Guiding Principles, there have been a plethora of normative awakenings to enhancing the protection of displaced populations and, within this rhetoric,⁹ the Kampala Convention has sprung up as a normative force.

However, the development of the Kampala Convention never really was the objective of the first Organisation of African Unity (OAU) Ministerial Conference on forced displacement held in Khartoum, Sudan, in 1994.¹⁰ In fact, while the issue of internal displacement was largely brought to the fore through the notable contribution of the OAU leading up to the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED Conference),¹¹ the development of a regional framework on the protection and assistance of IDPs began in the early 2000s in the period of the development of a normative framework in the Great Lakes for the protection and assistance of IDPs.¹² Seeing that the issue of internal displacement was a continental issue that affected countries beyond the Great Lakes region, developing a norm for the protection and assistance of IDPs became an imperative at the level of the AU and the formation of the Kampala Convention notably began with the decision of the AU Executive Council to address the issue of internal displacement in Africa through a binding instrument.¹³ Earlier, in 1969, the OAU, now the AU, had developed a framework for the protection of persons displaced outside state borders.¹⁴ This

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- 9 See E Ferris 'Assessing the impact of the Principles: An unfinished task' (2008) *Forced Migration Review: Ten Years of the Guiding Principles on Internal Displacement* 10-11; D Cantor *Returns of internally displaced persons during armed conflict: International law and its application in Columbia* (2018); N Majidi & D Tyler 'Domesticating the Guiding Principles in Afghanistan' (2018) *Forced Migration Review: Twenty Years of the Guiding Principles on Internal Displacement* 31-34.
- 10 See Khartoum Declaration of the OAU Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa, adopted at the OAU Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa in Khartoum, Sudan, 13-14 December 1998.
- 11 UN General Assembly International Conference on the Plight of Refugees, Returnees and Displaced Persons, Report of the Secretary-General, UN Doc A/43/717 19 October 1988.
- 12 Protocol on the Protection and Assistance of Internally Displaced Persons, adopted by the International Conference on the Great Lakes Region (2006).
- 13 See AU Executive Council Decision on the situation of refugees, returnees and displaced persons AU Doc EX/CL/127 (V) (2004).
- 14 The 1969 Refugee Convention incorporates the 1951 UN Refugee Convention refugee definition of persons who 'owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'. Notably, however, the definition of the 1969 Refugee Convention expands the category of refugees, recognising that refugees are 'every person who, owing to external aggression, occupation, foreign domination

protection, captured through the 1969 OAU Convention, was in response to the dynamics of displacement on the continent in the period following decolonisation. However, there was no regional standard on the plight of persons displaced within state borders. Given the need to articulate guidance, the AU Commission was requested to commence the development of a context-suited framework in response to the issues faced by IDPs in Africa. This process resulted in the development and eventual codification of the Kampala Convention which seeks to respond to the protection gaps, leveraging on the provisions of the United Nations (UN) Guiding Principles.

The Kampala Convention has 23 provisions.¹⁵ Notably, it requires states to protect the rights of all persons against being arbitrarily displaced and, in so doing, to respect provisions of international law that are relevant for the protection of IDPs. Moreover, the Kampala Convention further accentuates the general obligation of states to prevent conditions that result in displacement such as 'political, social, cultural and economic exclusion and marginalisation'.¹⁶ The Kampala Convention further emphasises obligations relating to protection and assistance, including cooperation among states in the protection of these persons and the facilitation of access to humanitarian assistance.

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'. See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) (1969 Refugee Convention) arts 1(1) & (2); 1951 Refugee Convention (n 6) art 1; see generally SA Aiboni *Protection of refugees in Africa* (1978); MR Rwelamira 'Two decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa' (1989) 1 *International Journal of Refugee Law* 557; E Arboleda 'Refugee definition in Africa and Latin America: The lessons of pragmatism' (1991) 3 *International Journal of Refugee Law* 185; J Oloka-Onyango 'Human rights, the OAU Convention and the Refugee crisis in Africa: Forty years after Geneva' (1991) 3 *International Journal of Refugee Law* 453; G Okoth-Obbo 'Thirty years on: A legal review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa' (2001) 20 *Refugee Survey Quarterly* 79; JOM Okello 'The 1969 OAU Convention and the continuing challenge for the African Union' (2014) 48 *Forced Migration Review* 70.

15 Art 2 of the Kampala Convention provides an indication of its objectives as follows: (1) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions; (2) Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa; (3) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences; (4) Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons; (5) Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons'. Kampala Convention (n 2) art 2.

16 Art 1(b) Kampala Convention.

Moreover, the Convention underscores the duty of international organisations and humanitarian agencies and emphasises protection for IDPs in the context of armed conflict as with the obligation of armed groups, notably, to refrain from arbitrary displacement. The obligations of the AU, notably within the context of the responsibility of states to protect and support, are emphasised. Further, the obligation of states during internal displacement, including positive steps that must be undertaken by states with the assistance of international organisations and agencies, is underscored. The Kampala Convention provides for protection in the context of development projects. Moreover, it advances durable solutions and underscores the relevance of compensation, the registration of IDPs and institutional protection through the machinery of a Conference of State Parties (COSP) to the Kampala Convention, the African Peer Review Mechanism (APRM) and the African Commission on Human and Peoples' Rights (African Commission).¹⁷

While drawing heavily on this framework, the Kampala Convention sets its own tone. It recognises issues of harmful practices as root causes of internal displacement and also places specific obligations on international organisations and humanitarian agencies. Moreover, the Kampala Convention incorporates salient obligations such as the AU's cardinal doctrine on responsibility to protect in situations of grave breaches of human rights, including genocide, war crimes and crimes against humanity.¹⁸ It is useful to draw on certain correlations between the Kampala Convention and the Guiding Principles in reflecting both on the normative influence of the latter and the contribution of the former. Further, both instruments underscore the pertinence of the right not to be arbitrarily displaced, also reflecting core root causes such as conflict, natural disasters and development projects. Moreover, both instruments underscore the importance of international humanitarian and human rights law in contextualising protection for IDPs. As in the case of the Guiding Principles, the Kampala Convention is emphatic on the primary obligation of the state given that the nature of internal displacement reflects a picture of persons within state territories over which states, by virtue of settled custom in international law, have control.

Beyond this, however, both instruments reflect the need for international cooperation in providing humanitarian assistance to

17 Specifically, art 14 provides: '(1) States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention. (2) States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties. (3) States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union. (4) States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.' Art 14 Kampala Convention (n 2).

18 Art 8(1).

IDPs, recognising that the issue of internal displacement is not merely a matter that states should be made to encounter alone. In addition, both instruments emphasise the nexus with refugee law, noting that IDPs may also become refugees and as such have the right to seek asylum. On the issue of gender, both instruments stress the protection of women, also recognising intersectionality, for instance, with pregnant and elderly women. While both instruments are fairly elaborate, there are obvious misses that are worth reflecting on. In both instruments, for instance, there hardly is any reference to awareness raising, notably due to the fact that the issue of awareness has been recognised as integral to compliance. Moreover, neither instrument also defines what arbitrary displacement is, despite the fact that it is integral to protection of the group it seeks to serve. However, the fact that these gaps may raise interpretative questions is not an argument that affects the value of the instruments. For instance, the concern about awareness can be resolved if one reflects on the obligation of states to take measures that are strategic and policy-oriented towards protecting IDPs at the domestic level. Distinctively, however, the Kampala Convention is hard law and, as such, binding on states for which accountability may be sought from states.

3 Impact

Given that the ultimate test of international human rights law is at the domestic level, establishing its impact offers a basis for understanding the 'influence that ... treaties may have had in ensuring the realisation of the norms they espouse in the individual countries'.¹⁹ The impact of treaties has been a subject of interest among various international legal scholars.²⁰ The consensus in the literature is that there is a need for evidence-based treaty assessments. However, a systemic approach for this examination has been isolated. In the field of human rights law there are useful indicators that have emerged from discussions on this subject, notably, in relation to judicial decisions.²¹ The question of impact or effect of treaties resonates from the notion that the aim of treaties is to effect changes within the scope of a subject matter. Whether through norm setting or institution creation, human rights

19 C Heyns & F Viljoen 'The impact of the United Nations human rights treaties on the domestic law' (2001) 23 *Human Rights Quarterly* 483 485.

20 See M Scheinin 'Impact of the law of treaties' in MT Kamminga & M Scheinin (eds) *The impact of human rights law on general international law* (2009) 23; F Viljoen 'Impact in the African and Inter-American systems: A perspective on the possibilities and challenges of cross-regional comparison' in P Engstrom (ed) *The Inter-American human rights system: Impact beyond compliance* (2019) 303; ST Ebovrah 'The uneven impact of international human rights law in Africa's sub-regional courts' in M Scheinin *Human rights norms in 'other' international courts* (2019) 287.

21 See C Rodríguez-Garavito 'Beyond enforcement: Assessing and enhancing judicial impact' in M Langford et al (eds) *Social rights judgments and the politics of compliance: Making it stick* (2017) 75.

treaties seek to orientate changes in the behavioural pattern of actors towards a particular issue. It often is for this reason that a study on the impact of treaties is of essence as a way of measuring the pertinence of the treaty and, in effect, determining its utility. Leveraging on notable scholarly discussions, this part defines four parameters for contextualising impact: direct-substantive, direct-symbolic, indirect-substantive and indirect-symbolic. Before engaging these parameters in the context of the Kampala Convention, it is useful to briefly reflect on the parameters.

Generally, the primary aim of treaty formation is to influence the subject matter of focus. Where such influence specifically relates to treaty obligations, the treaty may be regarded as having a direct influence. The notion of 'direct' influence derives from duties that are explicit in the treaty. Generally, treaties provide for such direct influences either in the form of concrete law and institutional formation (substantive) or actions geared at building momentum on the subject (symbolic). As such, a treaty's direct influence can further be sub-divided into substantive and symbolic. A direct influence is substantive where it relates to concrete steps that alter the normative and institutional landscape on the subject of focus. However, a direct influence may also be symbolic and, in this context, relate to actions that build momentum on the need for viable solutions and which frames the treaty subject matter as an urgent concern. However, when these influences do not relate to treaty obligations, they are regarded as indirect and can also be either substantive or symbolic. It is not always the case that a treaty impact may have these four dimensions of impact. However, in the context of the Kampala Convention these four dimensions can be clearly discerned.

Leveraging on this typology, this part reflects on the impact of the Kampala Convention in the formation of laws and the development of institutions that are directly related to treaty obligations (direct substantive impact) and that are not directly related to treaty obligations (indirect substantive impact). This part further reflects on the impact of the Kampala Convention in framing displacement as an urgent concern (symbolic impact). Such symbolic impact may be directly related to the treaty (direct symbolic impact) or not directly related to the treaty (indirect symbolic impact). Such impacts include treaty use for advocacy; conferences; media reportage; symposiums; academic writing; and by reporting mechanisms through concluding observations or recommendations.

3.1 Direct substantive impact

Since the adoption of the Kampala Convention in 2009, norms have emerged at the national level as a direct substantive effect of the

treaty.²² At least seven countries have developed laws and policies (including draft laws and policies) leveraging on the Kampala Convention: Liberia, Malawi, Niger, Nigeria, South Sudan, Somalia and Zambia.²³

While reflecting the Kampala Convention as an important source, these frameworks also draw on key provisions of the Kampala Convention. For instance, the Liberia IDP law and the Malawi IDP Framework draw its definition of IDPs from the Kampala Convention.²⁴ In addition to the definition of IDPs in the Kampala Convention, the Niger IDP law draws on the provisions of the Kampala Convention with regard to IDP registration and the responsibility of humanitarian actors. Moreover, an emphasis on coordination notably is emphasised in the treaty. The Niger IDP Law establishes a national coordination committee required to facilitate the coordination of government decision making along with national human rights institutions, civil society and international organisations as with national and international humanitarian agencies. Another pertinent emphasis is on the need for durable solutions: The notions of local integration, resettlement and return are duly emphasised.²⁵ The Nigerian IDP policy mirrors the Kampala Convention. One of the policy objectives is to ‘accentuate the commitment of the government of Nigeria to the obligations of state parties under various international treaties’, with respect to ‘international humanitarian law and human rights protection in situations of emergencies and internal displacement, with special attention to the Kampala Convention’.²⁶ The South Sudan IDP Law also draws heavily on the Kampala Convention. The South Sudan framework leverages on the Kampala Convention in recognising climate change as a root cause of internal displacement, requiring that measures be established to address its effects.²⁷

22 The Kampala Convention requires states to ‘incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law’. Art 3(2)(a) Kampala Convention.

23 Federal Republic of Nigeria National Policy on Internally Displaced Persons in Nigeria (2012) (Draft) (Nigeria IDP Policy); Guidelines for the Compensation and Resettlement of Internally Displaced Persons (2013) (Zambian Policy); Policy Framework on Displacement within Somalia (2014) (Somalia IDP Policy); Puntland Policy Guidelines on Displacement (2014) (Puntland IDP Policy); Malawi Durable Solutions Framework for Internally Displaced Persons and Flood affected Populations (2015) (Malawi IDP Framework); Niger Law Relating to the Protection and Assistance of Internally Displaced Persons (2018) (Niger IDP Law); Liberia: Act for the implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2018) (Draft) (Liberia IDP Law); South Sudan: Protection and Assistance of Internally Displaced Persons Act, 2019 (Draft) (South Sudan IDP Law).

24 Liberia IDP Law (n 23); Malawi IDP Framework (n 23).

25 Niger IDP Law (n 23).

26 Nigeria IDP Policy (n 23).

27 South Sudan IDP Law (n 23).

As with the South Sudan framework, the Somalia IDP Policy recognises climate change as a root cause of internal displacement.²⁸ Notable influences of the Kampala Convention are also reflected in the provision of the Puntland IDP Policy starting with the first four paragraphs of the Preamble which underscore the consciousness to 'the gravity of the situation of internally-displaced persons as a source of continuing instability and tension for African states'; 'the specific vulnerability of internally-displaced persons'; and reaffirm 'the inherent Somali tradition of hospitality by local host communities for persons in distress and support for such communities'.²⁹ In the Zambian Policy the impact of the Kampala Convention is most visible in the design of operational principles with respect to development projects.³⁰ Notably, the Zambian Policy emphasises the need to explore viable alternatives to projects and conduct assessments.

Institutionally, the direct substantive impact of the Kampala Convention is the formation of the COSP to monitor and review implementation as required under article 14(1) of the Kampala Convention.³¹ The first COSP was held in April 2017 in Harare, Zimbabwe, with the objective of exploring avenues to foster compliance among member states of the AU.³² Pertinent concerns were raised with respect to data, notably in relation to making data more acceptable and reflective of the situations of internal displacement. The impact of business activities in many parts of Africa, the links between humanitarian protection and development support, and the importance of stakeholder engagement as with continental solidarity in addressing key issues were emphasised. Countries also aired notable actions towards the implementation of the Kampala Convention. For instance, Malawi noted that in March 2015 it adopted a Durable Solution framework which draws on the Kampala Convention and seeks to enable the state, humanitarian and development partners to evaluate opportunities towards providing durable solutions for flood-affected populations. On an institutional front Zimbabwe highlighted the existence of a civil protection unit. Overall, the meeting emphasised the pertinence of training of officials involved in protecting and assisting IDPs. An action plan for the

28 Somalia IDP Policy (n 23).

29 Puntland IDP Policy (n 23).

30 Zambian Policy (n 23).

31 Art 14(1) of the Kampala Convention recognises the Conference of State Parties as the principal organ to 'monitor and review the implementation of the objectives' of the Kampala Convention. Art 14(1) Kampala Convention (n 2).

32 '1st meeting of the conference of states parties to the Kampala Convention' African Union (Press Releases) 3 April 2017; 'Kampala Convention: UN expert welcomes the establishment of the Conference of State Parties' *Global Protection Cluster* 5 April 2017.

implementation of the Kampala Convention was adopted at the COSP³³ with an emphasis on enhanced national strategies.

Apart from these impacts, there are also indirect substantive impacts that have emerged on the premise of the Kampala Convention. The next part examines these indirect impacts that, while not explicit treaty obligations, reinforce the influence of the Kampala Convention.

3.2 Indirect substantive impact

While not explicitly provided for in the treaty, laws and policies have emerged that were influenced by the Kampala Convention. A notable indirect substantive impact of the Kampala Convention is the development of an AU Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa.³⁴ The Kampala Convention is the 'primary basis for the Model Law'³⁵ which seeks to 'assist in the implementation of the Convention as a framework for regional and international cooperation with respect to which the African Union is expected to play a more proactive role'.³⁶ The Model Law was developed by the African Union Commission on International Law (AUCIL) and adopted by the AU Assembly in 2018.³⁷ The Model Law incorporates 63 articles in providing an exposition on the Kampala Convention and reinforces the interpretation of national legislation in line with the Kampala Convention.³⁸

Moreover, another notable impact is the development of the General Comment on Free Movement of Persons in Africa.³⁹ While the General Comment articulates guidance on free movement within state borders in line with article 12 of the African Charter on Human and Peoples' Rights (African Charter), its provisions were shaped by the Kampala Convention, particularly with regard to the movement of IDPs due to armed conflict, disasters and development projects. The

33 'Plan of Action for the implementation of the Kampala Convention adopted by conference by conference of state parties' African Union (Press releases) 6 April 2017.

34 AU Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa (2018) (AU Model Law); see R Adeola 'The African Union Model Law on Internally Displaced Persons: A critique' in O Shyllon (ed) *Model law on access to information for Africa and other regional Instruments: Soft law and human rights in Africa* (2018) 224.

35 AU Model Law (n 34) para 10.

36 Report of the Draft AU Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa, AU Doc AUCIL/Legal/Doc 6 (IX) (2014) para 8.

37 The development process of the Model Law commenced in 2011 with the AUCIL as the focal institution. A Special Rapporteur within the AUCIL was tasked with the mandate of developing the framework which was presented and adopted by AU policy organs, most notably the AU Assembly. See AU Model Law (n 34).

38 AU Model Law (n 34).

39 General Comment on art 12(1) of the African Charter on Human and Peoples' Rights (2019).

Kampala Convention has also shaped the incorporation of provisions on forced displacement in other regional instruments, notably, the African Disability Protocol.⁴⁰

3.3 Direct symbolic impact

Since its adoption the Kampala Convention has been used to give visibility to the need for the enhanced protection of IDPs, framing perceptions on internal displacement as an urgent concern. In this regard the AU has been visible in strengthening 'the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons'⁴¹ and also collaborating with 'international organisations and humanitarian agencies, civil society organisations and other relevant actors in accordance with their mandates, to support measures by state parties to protect and assist internally displaced persons'.⁴² Over the last decade the Kampala Convention has formed the premise for the discussion on internal displacement at the AU Annual Humanitarian Symposiums and at the AU/UNHCR Humanitarian Law and Policy Trainings which seek to build the capacity of the AU and its member states on issues of forced displacement in Africa.

Over the last decade another important way in which the Kampala Convention has shaped perceptions on internal displacement as an urgent concern is through yearly anniversaries. The anniversaries notably 'serve as a reminder of how, as a legally binding tool, it frames displacement as a problem that requires comprehensive, structural and long-term responses at all levels'.⁴³ At its tenth anniversary a regional focus on forced migrants, including IDPs, was adopted through the designation by the AU Assembly of the year 2019 as the Year of Refugees, Returnees and Internally Displaced Persons in Africa.⁴⁴ The designation of 2019 as the year of forcibly-displaced populations has in many ways raised the profile of issues relating to displaced populations in Africa. Through this designation, there have been a renewed interest in the protection and assistance of IDPs which has led to strategic engagement based on the Kampala Convention at national and regional levels. This has been reflected in a plethora of regional meetings, studies and trainings that have emerged in the furtherance of IDP protection.

40 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018).

41 Art 8(3)(a) Kampala Convention (n 2).

42 Art 8(3)(c) Kampala Convention.

43 Norwegian Refugee Council and Internal Displacement Monitoring Centre Briefing Paper: The Kampala Convention two years on: time to turn theory into practice 8 December 2014.

44 See African Union Theme: Year of Refugees, Returnees and Internally Displaced Persons in Africa: Towards durable solutions for forcibly displaced persons in Africa (2019).

3.4 Indirect symbolic impact

Although not explicitly contained in the Kampala Convention, there are ways in which the Kampala Convention has been used to build momentum in addressing the issue of internal displacement. These are observable from a plethora of sources, including advocacy by civil society, Concluding Observations adopted after state reporting processes, media reports, conferences and studies.

With respect to civil society advocacy, a notable impact is the delivery of training and the development of studies on the protection and assistance of IDPs based on the Kampala Convention. The Norwegian Refugee Council (NRC), the Internal Displacement Monitoring Centre (IDMC) and the International Committee of the Red Cross (ICRC) have carried out notable initiatives in this regard. Over the last decade there have been a plethora of trainings and studies due to the Kampala Convention.

Since 2012 the IDMC has conducted trainings and reviews on the Kampala Convention in various parts of Africa, including Zimbabwe, Uganda and Ethiopia.⁴⁵ In 2012 the IDMC held its first pilot workshop pooling together over 30 national actors mostly from Uganda. The aim of this exercise was to develop key action plans for the protection and assistance of IDPs through the optics of the Kampala Convention. During the workshop the need for participatory approaches to the protection and assistance of IDPs was emphasised. It was observed that while Uganda had a national policy developed prior to the Kampala Convention, this policy was not as comprehensive and there was a need to amend the policy to reflect the Kampala Convention.

In 2014 and 2015 joint workshops were held by the NRC and the IDMC to build national strategies for the protection of IDPs based on the Kampala Convention. Both workshops brought together actors from government and civil society from various parts of the continent including Mali, Uganda, Nigeria, Côte d'Ivoire, South Sudan, Zambia and the Central African Republic. This process was not used merely to introduce the Kampala Convention as a regional imperative around which national level actions should be congregated, but also to build internal capacities to address challenges experienced by actors in the protection and assistance of IDPs.

45 'Domesticating and implementing the Kampala Convention: A dialogue for action' Pilot Workshop Uganda 12-13 November 2012; Norwegian Refugee Council and Internal Displacement Monitoring Centre 'Workshop report: The national responsibility to protect internally displaced people: The Kampala Convention' Addis Ababa, Ethiopia 8-10 December 2014; Norwegian Refugee Council and Internal Displacement Monitoring Centre 'A review of the legal framework in Zimbabwe relating to the protection of IDPs: In the context of the Kampala Convention and other supranational normative frameworks' December 2014.

In 2016 the ICRC undertook a regional study on the practical dimensions of the Kampala Convention.⁴⁶ The study emerged from the recognition of the value of the Kampala Convention as an imperative norm in shaping the landscape on IDP protection and assistance and the necessity of leveraging on its substantive provisions in advancing interventions. The study provides notable recommendations for national and regional actors in addressing internal displacement. Through this study the ICRC engages in bilateral engagement with states and regional institutions on the protection and assistance of IDPs.⁴⁷

Moreover, in its Concluding Observations the African Commission has also leveraged on the Kampala Convention in underscoring the need for law and policy formation. In its Concluding Recommendation on Uganda's fifth periodic state report, the African Commission observed that Uganda had 'not fully aligned its laws and regulations with its commitments under regional and international human rights treaties', including the Kampala Convention.⁴⁸ Following Malawi's state report covering the period 1995 to 2013, the African Commission urged Malawi to adopt 'a comprehensive strategy for the domestication and effective implementation' of the Kampala Convention which it ratified in 2013.⁴⁹ Moreover, in its Concluding Observation on Liberia the African Commission requested Liberia to 'provide information on the domestication of the Kampala Convention within the domestic legal system, and the measures put in place to ensure its full implementation'.⁵⁰ Special IDP mechanisms at the global and regional levels have also leveraged on the Kampala Convention in articulating the need for enhanced legal protection of IDPs. Notably, the African Commission Special Mechanism on Internally Displaced Persons has repeatedly urged states to formulate laws on IDPs in line with the Kampala Convention. At the global level the UN Special Rapporteur on the Human Rights of IDPs urged Libya to sign and ratify the Kampala Convention given that it could 'be

46 International Committee of the Red Cross *Translating the Kampala Convention into practice: A stocktaking exercise* (2016).

47 ICRC 'Translating the Convention into practice: A stocktaking exercise' (2017) 99 *International Review of the Red Cross* 365-366.

48 Concluding Observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda (2010-2012), adopted at the 57th ordinary session, Banjul, The Gambia 4-18 November 2015.

49 Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter on Human and Peoples' Rights (1995-2013) adopted at the 57th ordinary session, Banjul, The Gambia 4-18 November 2015.

50 Consideration of Reports Submitted by State Parties under Article 62 of the African Charter on Human and Peoples' Rights: Concluding Observations and Recommendations on the initial and Combined Periodic Report of the Republic of Sierra Leone on the Implementation of the African Charter on Human and Peoples' Rights, adopted at the 19th extraordinary session, Banjul, The Gambia 16-25 February 2016.

helpful to the government of Libya as a guidance tool to regulate the government's actions at the national and regional levels'.⁵¹

At the global level countries have referred to the need for law and policy measures based on the Kampala Convention during the Universal Peer Review of African states, including Côte d'Ivoire and Ethiopia.⁵² During Ethiopia's second periodic review, Uganda and Sierra Leone highlighted the need for the ratification of the Kampala Convention. Sierra Leone recommended to Ethiopia to '[c]onsider ratifying the Kampala Convention and drawing up a plan of action for internally displaced persons'.⁵³ During the third cycle Norway made a similar recommendation, requesting Ethiopia to ratify the instrument and to 'create a policy framework for all internally displaced persons'.⁵⁴

The Kampala Convention has also had the indirect symbolic effect of shaping media coverage on internal displacement. Over the last decade local and international media notably have spotlighted the issue of internal displacement with reference to the Kampala Convention. Outside Africa this has been reflected in news articles by prominent press news agencies such as Reuters, and *The Guardian* (UK). In Africa media coverage on internal displacement has been shaped by the Kampala Convention in prominent national press, including *Daily Maverick* (South Africa), *The New Times* (Rwanda) and *New Vision* (Uganda).⁵⁵

For instance, *Daily Maverick* published a significant piece in which it spotlighted the importance of the Kampala Convention in shaping the regional focus on IDPs. Noting that the Kampala Convention comes as an African solution to an African problem, the piece reflects the fact that it provides a viable roadmap in addressing the challenges facing IDPs. It further underscores the need for the treaty's proposed solutions to be 'made available to those affected by displacement'.⁵⁶ Also, *The New Times* published a piece in which the issue of internal displacement is shaped by the existence of the Kampala Convention.⁵⁷ In reflecting on the issue of internal displacement in Africa, *The New Times* accentuate the importance of the Kampala

51 See UN Human Rights Council Report of the Special Rapporteur on the human rights of internally displaced persons on her visit to Libya UN A/HRC/38/39/Add.2 10 May 2018.

52 See UN Human Rights Council Report of the Working Group on the Universal Periodic Review: Côte d'Ivoire UN Doc A/HRC/42/6 3 July 2019 para 140.22.

53 UN Human Rights Council Report of the Working Group on the Universal Periodic Review: Ethiopia UN Doc A/HRC/27/14 7 July 2014 para 155.9.

54 UN Human Rights Council Report of the Working Group on the Universal Periodic Review: Ethiopia UN Doc A/HRC/42/14 5 July 2019 para 163.5.

55 See 'AU Summit to discuss 17 million IDPs in Africa' *New Vision (Uganda)* 15 October 2009; 'Africa's displaced people: Forgotten no more' *The New Times* 14 May 2010; K Patel 'Internally displaced people: An African solution to a huge African problem' *Daily Maverick* 6 December 2012.

56 *The New Times* (n 55).

57 As above.

Convention as a regional solution, emphasising that while IDPs have for far too long been forgotten, the Kampala Convention closes the protection gap and opens up new possibilities in enhancing the protection of these persons in Africa. According to the news agency, states that sign the Kampala Convention 'agree to shoulder primary responsibility for preventing forced displacement, among other things by threatening prosecution of those responsible'.⁵⁸

There have also been conferences and studies on the issue of internal displacement influenced by the Kampala Convention.⁵⁹ Notably, in September 2019 an international conference on the protection of forced migrants in Africa was held in South Africa.⁶⁰ An outcome statement was adopted noting, among others, that the 'Kampala Convention provides an important framework for the protection and assistance of IDPs'.⁶¹ This is in view of 'its prevalent impact in facilitating engagement with states, supporting the work of international organisations and enhancing the development of national legislations of African states'.⁶² To its credit, the Kampala Convention reflects a regional consensus that the optics of engagement on issues of internal displacement in Africa have to be more critical and robust fostering lasting solutions that build on the objective of ending internal displacement in Africa.

4 Conclusion

This article reflects on the impact of the Kampala Convention over the last decade. On the basis of the preceding part of this article, I contend that the Kampala Convention has contributed significantly to shaping the regional narrative on internal displacement. Over the last decade the Kampala Convention has defined national, regional and global narratives on internal displacement. Based on this treaty framework, states have sought to harmonise standards, and one of the ways in which this has been reflected is through national laws and policies on internal displacement in Africa.

While it is evident that much of the development in the regional and national landscape on internal displacement is shaped by the

58 As above.

59 See S Ojeda 'The Kampala Convention on internally displaced persons: Some international humanitarian law aspects' (2010) 29 *Refugee Survey Quarterly* 58; L Groth 'Engendering protection: An analysis of the 2009 Kampala Convention and its provision for internally displaced women' (2011) 23 *International Journal of Refugee Law* 221; Maru (n 1); UN Human Rights Council Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani, UN Doc A/HRC/26/33 4 April 2014; Abebe (n 1).

60 International conference on forced migration in Africa, hosted by the Centre for Human Rights, 'Calls for decisive action' *Centre for Human Rights (News)* 10 September 2019.

61 Future Africa Statement on Forced Migration in Africa 7 September 2019 2.

62 As above.

Kampala Convention, there is a need for progress, particularly in the area of good practices. It is imperative that for further action, there needs to be sustained advocacy from the region, constant dialoguing with states at sub-regional level and internal mechanisms at the domestic level that foster responsibility and ensure accountability. An important forum where this can be done at the regional level is at the annual AU humanitarian symposiums that serve as an avenue through which various institutions, civil society, member states of the AU and sub-regional communities reflect on ways in which the humanitarian landscape can be enhanced.

Moreover, beyond anniversaries there needs to be a sustained introspection among states, increased insights on relevant issues relating to the protection and assistance of IDPs within the context of the Kampala Convention, the invigoration of commitments at all levels and impact evaluation which is integral to the furtherance of protection and assistance to IDPs. To sustain the future of the Kampala Convention, there should be the continental adoption of a sustained multi-stakeholder public awareness raising on the protection and assistance of IDPs; the emergence of regulatory frameworks on IDP protection at the national level; enhanced institutional capacity of institutions; and improved efficacy of AU organs in the response to issues of internal displacement.