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Good international citizenship and the protection of internally displaced persons: examining Kenya's law and policy

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ABSTRACT

Good international citizenship is traditionally associated with the practices of Western democracies but is also increasingly relevant to non-Western states that seek to promote human rights on the basis of sovereignty and non-interference. Such approach has important implications for how non-Western states devise their own national laws and policies. To examine such implications, this article analyses Kenya's framework for protecting Internally Displaced Persons (IDPs). Kenya's standing as good international citizen has facilitated the formation of a comprehensive national IDP framework that has allowed Kenya to emerge as a leading state in the protection of the right not to be arbitrarily displaced. Despite such progress, the consolidation of Kenya's IDP framework also depends upon effective implementation and commitment to regional conventions.

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Introduction

Good international citizenship is understood as a form of ethical foreign policy that contributes to international law and international society. It is traditionally associated with Western liberal and social democracies that embrace cosmopolitanism and internationalism, and project their humanitarianism and enlightened self-interest across international regimes. For such states, good international citizenship reflects domestic values of human rights and social welfare, and is aligned, in principle, with a domestic political consensus that favours an assertive approach to promoting humanitarianism beyond state borders.[1] Such approach has increasingly been challenged by non-Western states that prioritise non-interference and the centrality of the state as the principal agent in upholding legality in international affairs.[2] In many ways, the emergence of non-Western paths to good international citizenship reflects a broader divide evident in the current global order on how Western and non-Western states approach human rights issues, and how their ways of promoting human rights is interlinked with different interpretations of international human rights law and the principle of sovereignty. Such divide has been fully exposed by recent crises as the conflicts in Ukraine and Gaza.

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Non-Western approaches to good international citizenship, with their emphasis on sovereignty, non-interference, and domestic preferences, deserve further investigation as they can shed light on how non-Western approaches to human rights can be both promising and problematic. On the one hand, non-Western states that claim some form of good international citizenship seek to avoid moralism and interventionism, and create durable and pragmatic solutions in global governance that respect sovereignty and domestic preferences.[3] Non-Western states can be seen as 'saving' good international citizenship from lofty altruism and placing it on a realistic basis, while creating new paths to international responsibility and provision of global public goods, such as human rights regimes.[4] Such inclusive approach allows states with different values, preferences and interests to devise diverse diplomatic initiatives and coalitions to promote human rights.[5] Non-Western states, for example, that are new democracies can redefine their foreign policy interests and identity to prioritise human rights promotion, and institutionalise human rights principles within domestic bureaucracies such as ministries of foreign affairs.[6] On the other hand, non-Western approaches may be degrading good international citizenship to mere rhetoric where national interest calculations and anti-Western discourses take precedence over upholding human rights internationally.[7] Non-Western states that understand good international citizenship through the lenses of sovereignty may be propelled to prioritise national frameworks that are, in principle, aligned with international human rights law but in reality manipulate international treaties to achieve national objectives.[8] Good international citizenship can therefore become the vehicle for legitimating and normalising illiberal domestic laws and policies, and destabilising international human rights governance.[9] International organisations such as the United Nations Human Rights Council are often undermined by non-Western states that seek appointment to improve their international image but maintain poor domestic records and act as spoilers within the Council.[10] Even when non-Western states have civil societies that aspire to commit to human rights treaties, differences across non-Western regions in security, religion, culture, and law disrupt and delay the development of national human rights institutions.[11] The broader question that underpins all these perspectives is whether non-Western states that claim good international citizenship substantially reconfigure their national law and policy in order to implement the human rights policies they often espouse internationally.

To enquire such possibility, the article focuses on Kenya's approach to the protection of Internally Displaced Persons (IDPs). Kenya's case is especially relevant to examining the domestic dimension of good international citizenship as the country's international position is closely linked to its capacity to tackle a series of domestic challenges, including forced internal displacement. Accordingly, the research question that the article addresses is: to what extent does Kenya's good international citizenship lead to reconfiguring domestic law and policy in IDP protection? To address this question, the article proceeds as follows. Firstly, the concept of good international citizenship is examined theoretically, and then the article identifies such concept as a key theme in Kenya's foreign policy. The third section outlines Kenya's ambition in developing a comprehensive national IDP framework, while the fourth section examines how such framework advances the protection of the right not to be arbitrarily displaced. The fifth section examines domestic and international challenges that also affect the development of Kenya's IDP framework. The article concludes that Kenya's good international

citizenship facilitates domestic change in IDP law and policy, and places Kenya on a leading position in terms of prevention, but the consolidation of such framework also depends upon other domestic and regional factors.

Good international citizenship and the national dimension

Good international citizenship is historically associated with Western democracies and their foreign policies of internationalism, cosmopolitanism and exceptionalism that sustain the international society of states.[12] It is often assumed in the literature that the general duties of good international citizenship are practiced by liberal and social democratic states that also promote these duties in their domestic laws and policies.[13] Contradictions, however, are often evident. In the post-Cold War era, Western middle powers like Australia and Canada often act outside of the United Nations (UN) legal framework, prioritise national interests and security alliances (such as AUKUS, NATO), support US hegemony, and show limited responsibility in upholding international conventions in migration and climate change.[14] Nordic middle powers (Norway, Sweden, Denmark) claim to uphold international law in development, peacekeeping and human rights, but are using such policies instrumentally to strengthen their status and position in international organisations such as the UN.[15] The mixed record of Western states shows that good international citizenship does not simply reflect domestic norms of altruism, justice and fairness, which are often assumed to comprise the identity of liberal and social democratic states.[16]

The contradictions in the practices of Western states re-open the discussion of how good international citizenship can be understood. Linklater notes that good international citizenship needs to be based on both the national interest and the support for the international society of states, while allowing for multiple forms of international citizenship and respect for the right to self-determination.[17] Such flexible definition is necessary to ensure the concept is not used as a vehicle for interventionism, 'cultural imperialism' and 'moral universalism', where Western standards of good citizenship (domestically and internationally) are imposed upon others.[18] Such definition helps reveal the concept's Western-centrism by identifying solidarism as the central underlying idea of good internationalism citizenship. Solidarism views legal sovereignty as conditional, holds states as responsible for upholding human rights and preventing harm and suffering globally, and expects international courts to monitor violations of international law.[19] Solidarism provides the political and legal justification for interventionism. For ex, the UK has applied solidarism through 'stabilisation' strategies, where the UK government takes initiatives in development aid, peacekeeping, and conflict-resolution in order to stabilise fragile states and limit violent conflict.[20] Solidarism is challenged by non-Western states that prioritise pluralism and its principles. These include prohibiting interventionism, conducting diplomacy on the basis of national interests, recognising the leadership of established and rising powers, and legally allowing the use of force for self-defence.[21] Such form of good international citizenship recognises sovereignty, non-interference and non-intervention as fundamental pillars of international law and international relations.

Despite differences between solidarism and pluralism, there is space for 'a middle ground where it is possible to recognize that independent political actors are neither animated solely by power politics nor on an irreversible journey towards a post-sovereign

universal community'.[22] New forms of 'good global statehood' can engulf progressive foreign policies while seeking greater legitimacy by bringing solidarism to respect the diversity of views, interests and experiences within states.[23] Middle ground is also feasible through 'pluralist internationalisms' that entail civility and solidarity as guiding principles that help alleviate the missionary universalism of Western interventionism.[24] A middle ground approach allows for convergences in the practices of Western and Southern states as they seek to promote institutions, support regional rules-based orders, and assume bridge-building initiatives as an alternative to US–China antagonisms.[25] Evidence of middle ground policy can also be found in Southern middle powers such as South Africa and South Korea that seek to contribute to global public goods and promote multilateralism through politically 'safe' initiatives that enhance their status as leading states of the global South.[26]

The bridging of solidarism and pluralism highlights the imperative of anchoring good international citizenship in national legal and policy frameworks. Even critiques of the middle ground approach recognise that the state remains the central legal basis of international order despite its mixed internationalist record.[27] The development of good international citizenship in the international order can lead to transformation of domestic law and policy within states.[28] The reconfiguration of domestic legal frameworks, such as constitutional law, to internalise cosmopolitan values propels states to modify their behaviour in ways that are more effective compared to when states are expected to abide by international legal systems.[29] The incorporation of international regimes, such as international human rights law, into domestic state law and policy means that governments have less space to evade international obligations.[30] Such process constrains a state's tendency to act irresponsibly while empowering its potential as good international citizen. Domestic legal and policy frameworks allow states to uphold cosmopolitan values through sovereign decision-making, while embracing hospitality and accepting the responsibility not to harm civilians and non-civilians.[31] While domestic legal and policy change allows for locking-in safeguards that reduce incentives by domestic political actors to violate international obligations, there are various stages to this process.[32] States may ratify international treaties but delay their incorporation into domestic law and policy. However, once a certain level of institutionalisation is reached (for example when democracies establish constitutional law that is not possible to reverse unless there are large majorities and broad-based consensus), the domestic legal basis of good international citizenship is less exposed to political agendas.[33] This process can also extend to external relations as states may establish additional legal safeguards at the domestic level (often in accordance with international human rights law) that impose self-restraint and responsibility in their international behaviour (for example by extending the rule of law to the state's citizens abroad).[34]

This discussion reveals that non-Western approaches to good international citizenship can play a critical role in how such states deliberate and establish domestic law and policy. The degree to which good international citizenship is the catalyst for reforming domestic law and policy may ultimately determine whether a claim to good international citizenship is sustainable in the long run. Major misalignment between an ambitious foreign policy and a poor domestic record can expose the inconsistency and lack of credibility in a state's foreign policy. Conversely, a strong domestic record allows a state to lead by example and show its willingness to uphold domestically the

standards that is promotes internationally. The next section examines such possibilities in Kenya's foreign policy and analyses how its projection of good international citizenship affects the development of law and policy at the domestic level.

Kenya's foreign policy and good international citizenship

Kenya's position in international relations since its independence can be understood as that of a reluctant regional power that prioritises multilateralism, diplomatic pragmatism, the use of soft power, and the resolution of domestic challenges.[35] Kenya's moderate and cautious approach to regional and multilateral affairs has been driven by ethical principles that prioritise sovereignty and non-interference, peaceful conflict resolution, regional cooperation and coexistence, and commitment to the UN and African Union (AU) systems.[36] During the Cold War, Kenya's quiet diplomacy entailed a delicate balance between acting as a neutral broker in African affairs and acting as a reliable partner for Western powers, such as the US and the UK, which were also critical for Kenya's economic development.[37] Kenya's foreign policy therefore encompasses certain intertwined and interconnected themes that are enacted across different contexts. One such theme is good international citizenship, which is projected alongside themes such as a being a voice of pan-Africanism, operating as 'an island of stability', and assuming a pro-active role within the international community.[38] Good international citizenship reflects a consistent pattern in Kenya's foreign policy where international law is applied at the domestic level and the state commits to providing to its citizens the highest standards of human rights, with such process allowing Kenya to exercise greater agency in international relations.[39] In combating COVID-19, for example, the government reaffirmed state control over vaccine supply with the aim of showing to its citizens it can enforce fair and safe procures in public health. It also aimed, however, to address an international audience and demonstrate how it acts as a good international citizen by adhering to WHO guidelines while maintaining the principle of non-interference.[40]

Kenya's good international citizenship does not merely derive from a willingness to have a visible international status but is also conditioned by regional and global factors that showcase Kenya's capacity to address certain challenges. Kenya is recognised as an 'anchor state' for regional peace, stability and security in East Africa.[41] It is part of the economic rise of Africa and its ambitious policy Kenya Vision 2030 enhances the country's position as economic gateway for East Africa.[42] Also, its pivotal geographical position in the Horn of Africa propels the country to mediate in conflicts as in Somalia and Sudan, and contribute to numerous UN and AU peacekeeping missions. Moreover, the War on Terror led Kenya to emerge as a central actor in counter-terrorism in East Africa, launching operations against Somali terrorist group Al-Shabaab and becoming one of the top recipient of US counter-terrorism assistance.[43] Finally, Kenya hosts secretariat and planning divisions of the East African Standby Force (EASF) of the AU and is the only African state that hosts the headquarters of UN agencies (the UN Environment Programme and the UN Habitat).[44]

It is mainly Western states, or the Western donors as often called in Kenyan politics, that have sought to contribute to Kenya's role as a model of good governance in East Africa. Kenya's strategic partnerships with the US and the UK form the most consistent

aspect of its foreign policy, despite occasional tensions caused by events such as the 2007 post-election violence and the International Criminal Court (ICC) indictments (details below).[45] Kenyan governments have cultivated Western expectations, voluntarily committing to domestic democratic reforms that can firmly place Kenya within the global club of like-minded democracies.[46] Western donors use development assistance to exercise some leverage over Kenyan governments (especially regarding the proper conduct of elections), but are always cautious in ensuring that democracy-promotion doesn't undermine Kenya's stability and security.[47] Development aid and dept relief programs are granted as long as Kenya upholds an international image of a multi-party democracy, despite incidents of post-election violence and human rights violations.[48] In terms of security, Western donors have recognised Kenya as an 'anchor state' in combating terrorism after 9/11, and have influenced extensively Kenya's own counter-terrorism framework and strategy.[49] The US-Kenya strategic partnership is reflective of the Western donors' approach. US and Kenya share the necessity of promoting democratic and human rights reforms in the latter, but occasional disagreements do not affect Kenya's significance in hosting US military units, in counter-terrorism strategies and in regional conflict-resolution.[50] In this respect, there is some equity in how Kenya interacts with Western donors in devising domestic policies that allow Kenya to uphold a positive image globally.

Kenya's agency is shaping its international image is evident in its tense relations with the ICC. The ICC indicted certain high-profile Kenyan politicians, including leading figures Uhuru Kenyatta and William Ruto, for crimes committed during the 2007 elections. In response, Kenyatta and Ruto launched an international campaign to challenge the ICC in the AU, the United Nations Security Council (UNSC), and the Assembly of States Parties (ASP) that includes states that have ratified the Rome Stature.[51] Such challenge aimed to expose the ICC as being biased against African leaders, violating African states' sovereignty, acting as a vehicle of Western imperialism and being inconsistent in how it pursues international criminal law. It also aimed to show that Kenya's international standing does not only depend on Western assistance, but also allows for alternative partnerships with states such as China, India and Japan that show greater respect for Kenya's sovereignty.[52] Rather than adopting an inward and defensive stance, Kenya's response was about protecting its international status and communicating its own version of what it means to respect international law. Such outward-looking perspective is reflected in how the ICC episode caused a reconfiguration of Kenya's foreign policy, which was for the first time fully outlined in the 2014 document 'Kenya Foreign Policy'.[53]

This discussion shows that Kenya's good international citizenship provides some space to Kenyan governments to instrumentalise international law to protect national interests while maintaining the image of a reliable state. Compared to its domestic record, Kenya's international activism in protecting human rights is often more ambitious, as evident in Kenya's contribution to the Commonwealth Monitoring Force Zimbabwe (CMFZ) and to UN-led operations in Angola, Liberia and Mozambique.[54] Such activism aims to legitimise the image of a responsible state.[55] Internal and external crises also propel Kenya to assume a more assertive stance in regional and multilateral fora to promote its national objectives. Critical events such as the AU intervention in Kenya following the 2007/8 violence, the ICC decisions regarding such violence, and

the threat emanating from the al-Shabaab terrorist group, have all forced Kenya to instrumentalise fora such as the AU and the Intergovernmental Authority on Development (IGAD) in order to protect its international image.[56] Kenya's hosting of the International Peace Support Training Centre (IPSTC), which is used for EASF training, is also instrumentalised to showcase Kenya's ability to abide by UN standards of peacekeeping.[57]

Kenya's good international citizenship can be critical in how its domestic laws and policies are formulated, as with the case of refugee policy. Kenya's contribution to refugee protection is immense as it has hosted 500,000 refugees in the past 30 years, and maintains some of the biggest refugee camps globally, such as the Dadaab and Kakuma camps.[58] Such international responsibility requires a balance between a cosmopolitanism that entails upholding international law and granting policy access to international actors such as the United Nations High Commissioner for Refugees (UNHCR), and sensitivity to Kenya's national interests.[59] Kenya's 2006 Refugee Act includes provisions in national security (that have been domesticated from the 1951 Convention on the Status of Refugees) that allow for securitising refugee protection.[60] On this basis, Kenya has sought to legitimately break the non-refoulment principle and repatriate Somali refugee as part of counter-terrorism operations against the Al-Shabaab terrorist group.[61] This causes the securitisation of Somali refugee camps as refoulement is socially constructed as integral to protecting Kenya's sovereignty and national security.[62] The readjustment of Kenya's refugee law is facilitated by its international relations as US intelligence influences how Kenyan authorities deal with border controls.[63] International aid actors also contribute to this process as they align their humanitarian aid provision in refugee camps with Kenya's national interests.[64] In the case of protecting LGBTI refugees, it is both the Kenyan authorities and UNHCR that determine how human rights can be protected.[65] UNCHR also provides Kenya with a socio-economic policy of inclusion (based on UNHCR's Comprehensive Refugee Response Framework) that allocates small pieces of land to refugees in Kenya for agricultural purposes.[66] Overall, refugee policies are made through an assemblage of domestic and international institutions, including the Kenyan Department of Refugee Affairs, the UNHCR, the International Organization for Migration, the US Resettlement Support Centre, and international and local NGOs.[67] Kenya's policies are forged on an international-domestic nexus where domestic policies are conditioned by multiple international forms of governance.

This section shows that Kenya's good international citizenship derives from three sources. First, Kenya's geopolitical position allows the country to enjoy recognition as promoter of political stability and economic development in East Africa, and as a model of good governance in the region. Second, Kenya's foreign policy traditionally favours caution, moderation, and conflict-resolution, with Kenyan governments traditionally showing willingness to commit to, and internalise international law and the advancement of human rights. Third, Kenya's foreign policy entails a strong emphasis on national autonomy but also the inclination to use its agency to constructively engage with, rather than antagonise international actors. These factors underpin a form of good international citizenship that strongly shapes and internationalises domestic law and policy. International actors expect Kenya to improve its domestic laws and policies to enhance democratisation and protection of human rights, and therefore to strengthen its capacity and legitimacy in addressing regional problems. This means

that Kenya's international relations affect in various ways how its domestic laws and policies are formulated, enacted, and implemented. The case of IDP protection, to which the article will now focus, is indicative of this process.

The development of Kenya's national IDP framework

Since its independence in 1963, Kenya has experienced numerous waves of internal displacement caused by political crises, natural disasters, conflicts over natural resources, and conflicts over land between ethnic groups and pastoralists who traditionally move between areas in search of pasture and water for their livestock. The worst incident of internal displacement occurred during the disputed presidential elections of December 2007, when an estimated 670,000 people fled their homes and around 1,300 were killed.[68] The violence associated with the 2007 election was a defining moment in the evolution of Kenya's response to internal displacement as the Kenyan government adopted measures designed to protect and assist IDPs for the first time. While Kenya was late to respond to the needs of IDPs given its history of internal displacement, the idea of a comprehensive national IDP framework started to gain increasing support.

Some initial steps were taken before the 2007 events. First, there is the establishment of the Kenya National Commission on Human Rights (KNCHR) through the Kenya National Commission on Human Rights Act in 2002. Although the KNCHR's mandate is not specific to IDP protection, it enhances the protection of human rights for all Kenyan civilians, and the government supports KNCHR efforts to integrate internal displacement into its work, especially in its annual report to the National Assembly.[69] The KNCHR plays an important role in promoting IDP rights and holding the government accountable through its advocacy work.[70]

Second, Kenya acceded the Great Lakes Pact and its protocols in 2006,[71] which includes the Great Lakes Protocol on IDPs that is based on the Guiding Principles on Internal Displacement (GPID).[72] This commits member states to enact national legislation to domesticate the GPID into their national legal systems.[73] Both of these frameworks are central to Kenya's willingness to develop domestic law and policy that can elevate Kenya as an exemplar state in IDP protection. It is important to outline here the significance of the GPID. The development of comprehensive national IDP frameworks requires incorporating major international conventions, such as the GPID,[74] into domestic law and policy. Such process is voluntary as states may choose to adhere to sovereignty and non-interference to evade responsibility to protect IDPs in aspects such as non-refoulement.[75] States that develop comprehensive national IDP frameworks tend to heavily incorporate IDP rights included in the GPID concerning the post-displacement phase,[76] and provisions on the protection of, and assistance to IDPs.[77]

States that aim to assume greater responsibility also prioritise the prevention of internal displacement, which is the most advanced component of a national IDP framework as it tackles the root causes of displacement on a proactive basis. The significance of the dimension of prevention is highlighted in the literature that focuses on people displaced as result of armed conflict and analyses the legal issues surrounding displacement from the perspective of international humanitarian and human rights law.[78] The most critical pillar in the prevention of internal displacement is the advancement of the right not to be arbitrarily displaced. This is outlined in Principle 6 of the GPID as 'the

right to be protected against being arbitrarily displaced from his or her home or place of habitual resident', and the purpose of expressly stating such a right is to 'defin[e] explicitly what is now only implicit in international law'.[79] As will be shown in the next section, Kenya's national IDP framework promotes this right to a considerable extent.

Following the 2007 election violence, the involvement of international actors further intensified. As Kenya initiated a process of drafting a national IDP law and policy, the participation of international stakeholders was critical in how IDP protection was defined. This process ensured that the mechanisms established for IDP protection also integrated key roles for international actors. The UN, through its 'cluster approach',[80] assisted the Kenyan government to develop a comprehensive bill on internal displacement. The Kenyan government also received assistance from the UNHCR, the Internal Displacement Monitoring Centre (IDMC) and the Special Rapporteur on the Human Rights of IDPs. In addition, the government invited participation from nationally based organisations with international links, such as the KNCHR, the Kenya Red Cross Society and the Protection Working Group on Internal Displacement.[81] The UNHCR's Office in Nairobi contributed to developing a system for monitoring IDP communities (including population movement and collecting information to ensure that protection needs of displaced persons are adequately addressed). This monitoring system partnered with government institutions, and especially the Ministry of Interior and Coordination and the Ministry of Health.[82] Leading organisations in the field of migration, such as the International Organization for Migration and the United Nations Office for the Coordination of Humanitarian Affairs (which also work in coordination with UNHCR), used their offices in Kenya to address the assistance and protection needs of displaced people.[83] The KNCHR, the UN Children's Fund and the UN Office for the Coordination of Humanitarian Affairs established coordination centres in the Rift Valley and the western provinces considered as 'hot spots of violence'. The coordination centres were mandated to respond to incidents of violence while monitoring issues such as family separation, tracing of missing persons, denial of access to assistance and provision of assistance or services, as well as forced movement.[84]

The implementation of international agreements and the participation of international actors, as well as Kenya's own initiatives, shaped the formation of Kenya's comprehensive national IDP framework. This entails both a legal and a policy pillar. The legal pillar is the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, also known as the IDP Act, and was adopted in 2012.[85] Kenya is the second African country after Angola to adopt a legal framework specific to the protection of, and assistance to IDPs. This places Kenya at the forefront of the protection of IDP rights in the region. The IDP Act establishes an institutional framework that outlines government responsibilities, including the National Consultative Coordination Committee (NCCC), which is responsible for effectively implementing the IDP Act.[86] The IDP Act also replicates the IDP definition contained in the GPID.[87] In this regard, Kenya's national IDP framework covers a broad range of IDPs in its definition by including people displaced by conflict, human rights violations, natural disasters, man-made disasters and development projects.

The policy pillar is the national IDP Policy and was drafted in 2010, titled as the National Policy on the Prevention of Internal Displacement and the Protection and Assistance to IDPs.[88] The IDP Policy, like the IDP Act, establishes an institutional

framework outlining the roles and responsibilities of relevant stakeholders, including the Kenyan government, community-based organisations and regional institutions such as the African Union.[89] The IDP Policy includes three significant topics not covered by the IDP Act. Firstly, it obliges non-state armed groups to respect the rules of international humanitarian law in cases of armed conflict.[90] Secondly, it identifies the criminal responsibility of non-state actors for acts of arbitrary displacement and other violations of IDPs' human rights.[91] Thirdly, it promotes cooperation with the international community in the implementation of this policy: 'the Government shall seek support and cooperate with members of the international community, including humanitarian, development and human rights actors, in the implementation of this Policy, in particular in circumstances overwhelming national capacities to provide adequate protection and assistance to IDPs'.[92] The IDP Policy comprehensively addresses internal displacement; it covers all phases and all causes of displacement by adopting the GPID's definition of IDPs.[93] It also goes further than the IDP Act in making the IDP definition Kenya-specific by including inter-communal hostilities, such as competition over lands or other resources, and projects on environmental preservation.[94]

Overall, Kenya's national IDP framework is strongly shaped by international actors and Kenya's own willingness to align its domestic IDP law and policy with international legal norms. The extent of international involvement and Kenya's own drive to internationalise IDP protection played a catalyst role in how national law and policy emerged. This process was not merely about meeting basic international obligations but about acting as an exemplar state in IDP protection. Such ambition is especially evident when we move to examine how Kenya's framework prioritises the critical area of prevention of internal displacement, which is the focus of the next section.

Preventing arbitrary displacement

Unlike most national frameworks that focus on the assistance to, and return of IDPs, the most advanced component of Kenya's national framework is the prevention of internal displacement. Kenya's willingness to embrace such responsibility places it on a select group of states globally that commit to preventing arbitrary displacement and protecting the right of IDPs not to be arbitrarily displaced. Specifically, between 1998, when the GPID were established, and 2020, only 34 countries had developed national instruments dealing with the prevention of internal displacement.[95] In this respect, Kenya's claim to good international citizenship leads to reconfiguring domestic law and policy not only on a reactive, post-crisis basis, but also through a proactive approach that aims to prevent IDP crises. Kenya then becomes a state that not only meets fundamental obligations in IDP protection, but also moves beyond those and willingly adopts a comprehensive national framework that tackles the root causes of internal displacement.

Kenya's IDP Act and the IDP Policy both internalise the obligations outlined in the GPID and the Great Lakes IDP Protocol. The latter commits member states to 'prevent arbitrary displacement and to eliminate the root causes of displacement',[96] and integrate the GPID into national legislation. The integration of the GPID into Kenya's national framework is the clearest indication that (in line with GPID's Principle 3) the Kenyan authorities accept they are the primary duty bearers for the protection of IDPs within their jurisdiction. This responsibility is outlined in the IDP Act that provides

that 'the Government shall protect every human being against arbitrary displacement',[97] and the IDP Policy that states that 'the Government recognizes, respects and ensures respect for the right of every human being to be protected against being arbitrarily displaced from his or her home or place of habitual residence'.[98]

Kenya's firm commitment to prevent displacement is evident in the fact that it has one of the rare legal frameworks that criminalise the arbitrary displacement of IDPs.[99] The IDP Act states that '[a]rbitrary displacement in the manner specified under Principle 6 (2) of the Guiding Principles is prohibited'.[100] The IDP Act therefore internalises the conditions outlined in Principle 6(2) of the GPID, which define the meaning of arbitrariness in the context of displacement and condition state responsibility in cases of arbitrary displacement.[101] Principle 6 also defines the right not to be arbitrarily displaced, determines what are the impermissible grounds and conditions of displacement, identifies the required standards of compliance with international law, and identifies the minimum procedural standards for determining the arbitrariness of displacement. Kenya's IDP Policy is more extensive in its coverage of different conditions. It states: (i) in situations of armed conflict, displacement will be considered arbitrary where it is not premised on the need to protect the civilian population or for the realisation of certain military exigencies; (ii) in situations of disasters, displacement is not permissible unless the safety and health of those affected requires their evacuation; and (iii) in situations of large-scale development projects, displacement will be considered arbitrary where it is not justified for compelling and overriding public interest.[102] Finally, in situations of generalised violence, displacement is deemed arbitrary when such violence is politically used or instigated.[103]

The acceptance by Kenya of such comprehensive definitions of arbitrary displacement means that Kenya is committing to a number of responsibilities in preventing arbitrary displacement. These are outlined in both the IDP Act and the IDP Policy. Responsibilities outlined in IDP Act (Article 6) replicate key principles of the GPID. First, displacement should be avoided wherever possible.[104] Second, if displacement is unavoidable, Kenya needs to justify any displacement arising out of conflict, natural disaster or large-scale development projects (for reasons such as imperative military reasons, health or safety of IDPs).[105] Third, Kenya must investigate feasible alternatives to minimise the adverse consequences of displacement, such as providing habitable sites with satisfactory conditions of hygiene, nutrition and health.[106] Fourth, Kenya is committed to providing information relating to the displacement to IDPs and allow for the effective management of their relocation.[107] Fifth, the IDP Act provides that Kenya's primary responsibility is to prohibit arbitrary displacement and penalise arbitrary displacement under circumstances in which it amounts to a crime against humanity or a war crime, in accordance with the Rome Statute of the ICC and the International Crimes Act 2008.[108] The IDP Act further provides that any person who commits an offence under the IDP Act is liable to a fine and/or imprisonment.[109]

The IDP Policy goes even further in defining Kenya's responsibilities. These include (i) the prevention of future displacement, (ii) the protection from arbitrary displacement, and (iii) the preparedness and mitigation of the adverse effects of internal displacement. The IDP Policy also includes individual criminal responsibility, including that for non-state actors,[110] for arbitrary displacement amounting to an international crime according to the Rome statute of the ICC and the International Crimes Act 2008.[111] The IDP Policy,

like the IDP Act, also explicitly recognises the IDPs' right not to be arbitrarily displaced.[112] This is in accordance with Principle 6 of the GPID[113] and with situations specific to Kenya. For instance, displacement associated with post-election violence is a defining characteristic of Kenya's internal displacement. For this reason, the IDP Policy criminalises the 'use of hate speech' and makes the government responsible for preventing violence and displacement through the monitoring, investigating, prosecuting and punishing of hate speech.[114] Furthermore, the IDP Policy provides a detailed list of measures for preventing future displacement triggered by armed conflict or other violence, and natural or human-made disasters.[115] Social issues are also covered, ranging from poverty and unemployment to public awareness campaigns and civic education.[116] This aspect of the Kenyan IDP policy is unique compared to other national frameworks because it is the only instrument that highlights the importance of building and enhancing the capacity of individuals and communities to increase their resilience to displacement.

Kenya's capacity to act as a leading state in preventing displacement is not only evident in how it assumes certain responsibilities but also in how it integrates international norms and treaties in its domestic IDP law and policy. The IDP Act ensures that Kenya's government adheres to the international norms of IDP protection and is bound by the applicable rules of international human rights law and international humanitarian law.[117] The IDP Act allows Kenyan nationals to be the direct beneficiaries of human rights and constitutional guarantees. It also grants authority to the KNCHR to enforce this right on behalf of displaced populations and to promote IDP rights by handling individual complaints and facilitating IDPs' access to legal remedies. The IDP Act recognises the KNCHR's function to report on the government's implementation of national IDP legislation and its compliance with international treaty obligations.[118] It therefore internalises international standards in order to hold the government accountable. As noted above, the IDP Act also creates a legal framework for upholding the right not to be arbitrarily displaced. It makes this right legally enforceable through the KNCHR, but also through the African Commission on Human and Peoples' Rights. Finally, the IDP Act promotes Kenya's commitment to the African Charter on Human and Peoples' Rights[119] that established the African Commission.[120] The African Commission is entitled to submit cases to the African Court on Human and Peoples' Rights,[121] and by lodging their complaints to the African Court, IDPs can seek remedies denied by the national authorities.

There are also indications that Kenya seeks to exceed international standards in preventing displacement. Kenya's establishment of an Early Warning System (EWS) includes measures that go beyond GPID Principle 6 in preventing displacement. The EWS elaborates on the GPID general guidance and specifies additional actions that authorities should take to prevent displacement. It creates a prevention mechanism charged with monitoring and reporting on populations at risk of displacement, which issues early prevention warnings to relevant government authorities.[122] Kenya is also a signatory to the Protocol on the Establishment of a Conflict Early Warning and Response Mechanism (CEWARN), a platform for member states of the Inter-Governmental Authority on Development (IGAD).[123] CEWARN was established in 2002 to promote the exchange of information and collaboration among member states.[124] Its main functions are to create databases with information for early warning and response, and to set standards

and develop common practices for information collecting and reporting.[125] Kenya's national IDP framework builds upon this platform to develop Kenya's own CEWARN. For example, to address conflict-induced displacement after the post-2007 election violence, the National Cohesion and Integration Commission was established to monitor hate speech and mobilisation for political violence, and prevent violence and displacement.[126]

To conclude this discussion, Kenya's claim to good international citizenship facilitates the formation for a compressive framework that advances the right not to be arbitrarily displaced. As Kenya sought to emerge as a leading state in preventing displacement, it developed a national approach to IDPs that was not merely reactive to crises but created responsibilities for Kenya to act on a proactive basis. Major international conventions, such as the GPID, underpin all aspects of Kenya's law and policy, and it could be argued that the aspiration of meeting and exceeding international obligations is reflected in all key aspects of how the IDP Act and the IDP Policy protect and promote the right not to be arbitrarily displaced.

Challenges for Kenya's national IDP framework

As argued so far, Kenya's good international citizenship facilitates the consistent development of a domestic legal and policy framework that aligns, and to some degree exceeds international legal standards in IDP protection. The development of a comprehensive framework with the prevention of internal displacement at its core allows Kenya to emerge as a leading state in IDP protection globally given that many other states do not address the dimension of prevention. However, the existence of comprehensive national law and policy does not necessarily translate to effective implementation, while the internalisation of international norms and conventions doesn't always include the internalisation of regional norms and conventions. These challenges are examined as follows.

First, there are challenges in terms of implementation. The Kenyan government endorsed the IDP Policy in October 2012, but there has been slow progress towards its implementation, and it remains a draft IDP Policy. As both the Kenyan Constitution and the IDP Policy were pending adoption in 2010, there was a general perception in the parliament that adoption of a national policy was not a priority compared with more urgent legislation needed for the timely implementation of the new constitution.[127] Also, there have been delays in establishing the National Consultative Coordination Committee (NCCC), the main body responsible for implementing the IDP Act. The NCCC only became operational in 2015 and its scope is not clearly defined, nor has its relationship with ministries and entities working in the areas of disasters and land. In addition, there are limits to the role of the KNCHR in assessing the human rights of IDPs and the situations leading to their arbitrary displacement. The IDP Policy identifies the KNCHR as the government's chief agency for promoting and protecting the human rights of IDPs.[128] The KNCHR is obliged by the Kenya National Commission on Human Rights Act to submit an annual report to the National Assembly with an 'overall assessment of the performance of the government in the field of human rights'.[129] However, the National Assembly had discussed no annual report in the years following the adoption of the IDP Act.[130] Finally, there remain unresolved

aspects in the demarcation of administrative responsibilities. Article 11(1) of the IDP Act reads that 'the national Government shall bear ultimate responsibility for the administrative implementation of this Act'. At the same time, Article 11(3) reads that 'County Governments shall bear responsibility for the administrative implementation of the provisions of this Act … '.[131] Such overlapping mandates can cause lack of coordination.

In addition, there have been certain delays in addressing the needs of IDPs. For years, the government largely focused on those displaced by the 2007 post-election violence.[132] Despite the comprehensive definition of IDPs in the IDP Act, there seems to be a stronger emphasis on politically or election-induced internal displacement rather than other IDPs such as victims of natural disasters. Due to the exclusion of certain IDP categories, the early prevention system cannot effectively respond to the forced displacement of other IDPs, or to the potential causes that might lead to new displacement waves. Moreover, there are shortcomings of government-initiated programmes, such as the Operation Rudi Nyumbani (Return Home), which aim to assist the return of IDPs. For example, resettlement efforts by the government mostly focus on registered IDPs who are displaced by post-election violence, while people displaced by earlier or subsequent violence, or by other causes, are not accounted for. Even these focused efforts are marked by considerable delays.[133] Substantial numbers of IDPs end up in transit sites and urban areas, and they do not return to their former homes due to lingering insecurity and lack of social cohesion.[134] Government policy is highly focused on registering fewer IDP numbers with the return programme, which creates protracted displacement and makes IDPs less visible. Donor organisations observe large numbers of IDPs remaining displaced for years, and attention towards their needs is declining.[135] Delays resulted in the ICC investigating Kenya's situation in 2010. When the National Accord and Reconciliation Act was signed in 2008, the government acknowledged that ending Kenya's electoral violence and displacement would necessitate addressing impunity for human rights violations, particularly among senior politicians.[136] The government, however, was slow in fighting impunity, which in itself accentuated political violence and displacement.[137] As noted above, the post-2007 election violence eventually led the ICC to charge certain political figures with being criminally responsible for the acts of deportation or forcible transfer of population, which amount to crimes against humanity under Article 7(1)(d) of the Rome Statute.[138] Overall, when the government started addressing the root causes of displacement after the post-2007 election violence, IDPs initially viewed favourably these actions as the best way to prevent future violence in their communities, but in subsequent years, IDPs' support for government initiatives has declined.[139] All these factors cause lack of confidence among IDPs in government policy and lead to deteriorating mental health, life satisfaction and quality of life.[140]

Secondly, there are limitations in how Kenya's framework is compatible with regional frameworks. The African Commission is the only way to refer IDP cases to the African Court because Kenya has not recognised the competence of the African Court to receive cases from NGOs and individuals.[141] There have been some cases concerning the displacement of Kenyan IDPs referred to the African Court by the African Commission. An example is the case dealing with the eviction of an indigenous community, the Ogiek Community,[142] from a forested area in Kenya. The African Court decided that Kenya violated the indigenous community's right to freedom of movement (Article 12), among others,[143] under the African Charter.[144] The African Court made no explicit

mention to the right not to be arbitrarily displaced because this right is not explicitly recognised under the African Charter. However, the right to freedom of movement does include protection against forced internal displacement according to the Human Rights Committee,[145] and to some extent, this includes the IDP's right to not to be arbitrarily displaced. In this respect, the legal enforcement of the right not to be arbitrarily displaced is potentially evident. For this to be possible, Kenya would need to ratify the Kampala Convention (also known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa).[146] This is the only regional legally binding instrument that explicitly recognises the right not to be arbitrarily displaced and imposes obligation on states to protect this right. If Kenya ratified this Convention, this would allow the African Court to evaluate any acts of forced displacement, arbitrary eviction, and movement-related rights of displaced populations in Kenya on the basis of the right not to be arbitrarily displaced. The African Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter, and any other relevant human rights instrument, including the Kampala Convention, when this is ratified by the state concerned.

The challenges outlined above reveal additional dimensions that affect the extent to which Kenya's good international citizenship can engineer domestic change. Kenya's claim to good international citizenship can be a catalyst for change in law and policy, but this process does not necessarily transform Kenya's approach to IDPs. The aforementioned challenges mean that Kenya's good international citizenship promotes domestic legal and policy reconfiguration to a certain point, but additional actions are needed in order to lock-in such changes. This a lengthy and complex process affected by different factors that are not necessarily contained within the international-domestic nexus. Good international citizenship will therefore necessitate not only internalisation, but also consistent implementation of international norms and treaties, while it will also need to account for regional conventions that are critical to IDP protection.

Conclusion

The article has discussed how Kenya's claim to good international citizenship helps generate domestic change through the formation of a comprehensive legal and policy IDP framework. The article found that Kenya's international standing is intrinsically linked to its domestic policies, which are consistently formulated through the interaction of domestic authorities and international actors such as Western donors and international organisations. The impact of good international citizenship is especially evident in how Kenya's IDP Act and IDP Policy advance the right not to be arbitrarily displaced, allowing Kenya to be positioned globally as a leading state that tackles the prevention of internal displacement. Despite such progress, the development of a domestic IDP framework remains a complex, multifaceted and long-term process as implementation issues and misalignment with regional conventions comprise additional challenges to be addressed. Overall, Kenya's case confirms that good international citizenship can be the catalyst for the reconfiguration of domestic law and policy in IDP protection, even though the strengthening of such national framework ultimately depends upon other factors.

The article's broader contributions are as follows. First, non-Western approaches to good international citizenship are not only about a certain framing and narrative of

foreign policy, but are also interlinked with domestic laws and policies, and the internalisation and implementation of international and regional legal conventions and norms. Second, Kenya's case reveals that when interacting with international actors, non-Western good international citizens do not merely concede domestic space to international scrutiny but very much monitor and control how exactly international norms are domesticated. Third, the threshold for non-Western states to claim some form of good international citizenship is a subject of deliberation. International actors can impose certain of their demands but may also be willing to accept that non-Western states formulate distinct approaches in how to deal with domestic challenges. Fourth, good international citizenship can have various sources. Non-Western states in critical geopolitical positions claim a form of good international citizenship that is not only dependent upon upholding key international norms and treaties of human rights, but also derives from maintaining regional order, peace, and stability. Finally, even that aspect of good international citizenship that is related to human rights promotion can be shaped according to the state's preferences. In the case of Kenya, IDP protection was mainly driven by a focus on a particular right, the right not to be arbitrarily displaced, which deals with the prevention of internal displacement. That shows that Kenya maintained substantial agency in how its approach to IDP protection was defined in a domestic context.

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    (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

    (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

    (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

    (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and,

    (e) When it is used as a collective punishment'.
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