

POLICY BRIEF

A Synergistic Approach to the OAU Refugee Convention and the Kampala Convention

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Photo by EDUARDO SOTERAS / AFP via Getty Images

Introduction

Data released by the United Nations High Commissioner for Refugees (UNHCR) in mid-2022 reveals a multifaceted scenario in North Africa. The region is home to approximately 1.4 million refugees and asylum seekers. Sudan has emerged as a significant host country, sheltering over 1.2 million individuals.¹ Other North African countries, including Algeria, Egypt, Libya, Mauritania, Morocco, and Tunisia, collectively host approximately 140,000 individuals with official refugee status.²

However, the dynamics of displacement in North Africa extend beyond refugees. By the end of 2022, Algeria, Mauritania, and Sudan reported approximately 252,000 internally displaced persons (IDPs) resulting from various disasters, with Sudan alone accounting for 227,000 IDPs.³ From 2012–22, the region experienced a staggering 1.9 million internal displacements, triggered by 72 recorded disaster events encompassing floods, wildfires, earthquakes, storms, and extreme temperatures.⁴

This leads us to a compelling question: How many of these climate-induced IDPs in North African countries were originally refugees who fled other countries? The intersection between climate-induced internal displacement and refugee status remains a complex and under-explored aspect of climate migration. The rising incidence of climate change events in North Africa compounds this challenge.⁵ While the region grapples with increasingly frequent climate-induced disasters, data and statistics on the convergence of refugee status and internal displacement remain scarce.⁶

In the African context, the Organisation of the African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) provides protection to refugees who have crossed international borders, while the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) provides a framework for protecting and assisting IDPs across the continent, including in the context of climate-induced internal displacement.⁷

While most North African countries, except Morocco and Western Sahara, have ratified the OAU Refugee Convention as of May 16, 2019, the ratification of the Kampala Convention remains limited.⁸ As of April 27, 2022, Mauritania and Western Sahara are the only North African countries to have ratified the Kampala Convention, leaving a gap in the legal frameworks for addressing climate-induced internal displacement.⁹

This policy brief explores how the Kampala Convention can complement the OAU Refugee Convention in this complex landscape. It aims to bridge the protection gap for individuals facing the dual challenge of refugee status and climate-induced internal displacement and explores how the two conventions can work together to better protect and assist them. The brief then provides recommendations on how to strengthen the legal and policy frameworks for protecting refugees who experience climate-induced internal displacement within their host countries in North Africa.

Understanding the Protection Gap

The Absence of a Specific Legal Framework

The primary protection gap in the context of refugees experiencing climate-induced internal displacement within their host countries lies in the absence of a dedicated legal framework for addressing this intersection. The existing legal instruments, the OAU Refugee Convention and the Kampala Convention, are designed to cater to distinct categories of displaced individuals — refugees and IDPs, respectively. As a result, refugees who find themselves internally displaced due to climate change-related factors face a lack of clear and comprehensive protection.

For example, refugees from Sudan, who are initially granted asylum in Tunisia under the OAU Refugee Convention due to political persecution, also encounter climate-induced internal displacement within Tunisia due to severe drought and food scarcity. This situation highlights the protection gap where refugees, although covered by the OAU Refugee Convention, face challenges in securing specific protections and assistance related to climate-induced internal displacement. To bridge this gap, it is imperative to explore how these refugees can be afforded the necessary safeguards under existing legal instruments.

Uncertainty Regarding Dual Categorization Under the OAU Refugee Convention and the Kampala Convention

A fundamental question arises when examining the protection gap: Can a refugee also be considered an IDP under the Kampala Convention when experiencing climate-induced internal displacement? This dual categorization under two distinct conventions is a complex issue and requires careful consideration. The challenge is to determine whether refugees facing climate-induced internal displacement can simultaneously fit into both categories, and if so, what specific protections and assistance are provided under each convention.

The Limited Ratification of the Kampala Convention

The limited ratification of the Kampala Convention by North African countries also contributes significantly to the protection gap. The Kampala Convention provides a framework for addressing the protection and assistance of IDPs, including those displaced due to climate change-related factors. The low number of ratifications within the region means that many countries lack a legal framework to comprehensively address climate-induced internal displacement, leaving refugees experiencing such displacement with insufficient protection and assistance.

Exploring Dual Status Under the OAU Refugee Convention and the Kampala Convention

The definitions of “refugee” and “internally displaced person” as provided, respectively, by the OAU Refugee Convention and the Kampala Convention determine who qualifies for protection and assistance under these regional instruments.

Under the OAU Refugee Convention, three cumulative prerequisites must be met for a person to be considered a refugee and obtain refugee protection.¹⁰ The person must 1) have a genuine fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, 2) be located outside their country of nationality, and 3) have an inability or unwillingness to seek protection from their country of nationality due to such fear. Article 1, Section 2 of the convention extends this protection by eliminating the necessity for a well-founded fear of persecution and broadens the circumstances that compel individuals to flee their home country. Hence, refugees, by definition, have been displaced across borders.

On the other hand, the Kampala Convention defines IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”¹¹

This definition identifies two conditions an individual must satisfy to be considered an IDP: 1) the individual must be involuntarily displaced, and 2) the individual must not have crossed an international border. The absence of cross-border displacement in the definition explains why IDPs are not refugees. An individual may meet the definition of IDP if displaced by a natural disaster.

While the requirement for the absence of international border-crossing is a key aspect, the interpretation of the definition of IDP under the Kampala Convention allows for a nuanced understanding. This interpretation suggests that individuals classified as refugees may also fall under the category of IDPs if they undergo internal displacement within the borders of their host country. For example, refugees forced to relocate within their host country due to natural disasters remain within its borders, thus fulfilling the criteria for internal displacement under the Kampala Convention.

Moreover, the Kampala Convention does not refer to the notion of citizenship. However, the phrasing “to flee or to leave their homes or places of habitual residence” indicates that the presence of these people or groups of people must have reached some permanency in the said country. This also applies to refugees.¹² In this sense, the Kampala Convention definition underscores the inherent vulnerabilities of IDPs by outlining their defining characteristics, instead of conveying a normative concept.¹³ Therefore, a refugee could simultaneously be considered an IDP as defined by the Kampala Convention and, thus, benefit from the protection and assistance that the convention provides.

Some scholars consider refugees who experience displacement within the country where they sought refuge or asylum to remain refugees only, and not IDPs.¹⁴ However, it would be fitting to consider the application of the Kampala Convention by analogy whenever refugee law does not adequately address their needs arising from their displacement.¹⁵

How the OAU Refugee Convention and the Kampala Convention Can Complement One Another

IDPs share similar factual circumstances with refugees.¹⁶ However, despite the protections provided by international refugee law, refugees face numerous social, economic, and legal challenges that can only be exacerbated by internal displacement within their host countries.¹⁷ Indeed, “when people are on the move, it is difficult to ensure that their rights are protected, hence necessitating a specific legal framework to protect them.”¹⁸

Although the OAU Refugee Convention serves as a foundational framework for addressing refugee issues within the African continent by setting out the rights and obligations of both refugees and host states, it has limitations when it comes to addressing the complex issue of climate-induced internal displacement within a host country. As the mandate of the OAU Refugee Convention is rooted in the historical context of decolonization and conflict in Africa, it seems that the OAU Refugee Convention cannot be readily adapted to this situation.¹⁹

Refugees who experience internal displacement within their host country cannot be protected from some of the challenges that are posed by internal displacement and that were not accounted for under international refugee law — for instance, the right to not be arbitrarily displaced or to not be forced to return or resettle within the host country.²⁰

As the complexities of displacement evolve, particularly in the context of climate-induced internal displacement, there exists a notable protection gap.²¹ The Kampala Convention emerges as a complementary framework that can work in tandem with the OAU Refugee Convention to effectively bridge this gap by addressing various root causes for displacement and covering protection before, during, and after displacement.

The Kampala Convention stands as a seminal continental instrument designed to address the multifaceted challenges confronted by IDPs across Africa. As the first international legally binding instrument on IDPs, the convention provides a comprehensive framework to safeguard the rights, dignity, and well-being of IDPs across the continent.²²

In this context, the Kampala Convention places the primary responsibility for protecting and assisting IDPs within their territories squarely on the shoulders of states. It calls on states to enact domestic legislation and establish a national authority or body to coordinate efforts related to IDPs.²³ In addressing climate-induced internal displacement, the Kampala Convention explicitly instructs states to “take actions to safeguard and support individuals internally displaced as a result of natural or human-made disasters, including climate change.”²⁴

A Synergistic Approach: Enhancing Protection Through Collaboration

In essence, the Kampala Convention and the OAU Refugee Convention are complementary instruments that, when working in harmony, can provide a comprehensive and coordinated response to the challenges faced by refugees who experience climate-induced displacement in their host countries. To further elucidate this collaborative approach, the following points outline specific measures that illustrate how the synergistic implementation of these conventions can enhance protection for refugees affected by climate-induced internal displacement.

- **Prevention and mitigation of climate-induced internal displacement:** The Kampala Convention acknowledges the need to adequately plan for climate-related disasters through the development and implementation of early warning systems, disaster risk reduction strategies, emergency and disaster preparedness, and management measures.²⁵ This proactive approach aligns with the growing recognition of the need to mitigate climate-related displacement and complements the OAU Refugee Convention’s mission of safeguarding refugees.

- **Engaging refugees affected by climate-induced internal displacement:** The Kampala Convention stipulates that “States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance.”²⁶ Extending this provision to refugees who experience climate-induced internal displacement, particularly regarding the planning of resettlement strategies and the development of lasting solutions to address climate-related displacement, allows states to better address their specific needs and vulnerabilities and confers legitimacy on the process.²⁷ Moreover, involving refugees in decision-making processes should promote responsiveness to their unique circumstances. This includes considering the needs of vulnerable groups among refugees, such as women and children who may be disproportionately affected by climate-induced internal displacement.
- **Extending humanitarian assistance obligations to refugees affected by climate-induced internal displacement:** The Kampala Convention establishes the responsibility of states to provide IDPs with humanitarian assistance, encompassing vital necessities like food, shelter, medical care, and social services.²⁸ Moreover, it highlights the possibility of states seeking assistance from various actors, including international organizations and humanitarian agencies, to fulfill these obligations.²⁹ These provisions can be applied to refugees who experience climate-induced internal displacement within their host countries, complementing the protection granted by the OAU Refugee Convention. This allows them to receive the necessary support tailored to their specific requirements and vulnerabilities, thereby preventing arbitrary displacement, and fostering a collaborative, comprehensive response to the challenges associated with climate-induced internal displacement.
- **Ensuring documentation for refugees impacted by climate-induced internal displacement:** The Kampala Convention emphasizes the necessity of proper documentation for IDPs and promotes the creation and maintenance of an updated register, the issuance of relevant documents, and the replacement of documents lost or destroyed in the course of displacement “without imposing unreasonable conditions.”³⁰ The extension of this provision to refugees facing climate-induced internal displacement within their host countries, who might require such documentation to access rights and services efficiently, seems necessary to complement the protection offered by the OAU Refugee Convention. Collaboration with international organizations CSOs, humanitarian agencies, and civil society organizations, as encouraged by the Kampala Convention, can enhance the effectiveness of these initiatives.³¹
- **Ensuring effective remedies for refugees impacted by climate-induced internal displacement:** The Kampala Convention calls for establishing a legal framework to ensure just and fair compensation and emphasizes the importance of reparations for those who have suffered displacement-related damages.³² For refugees experiencing climate-induced internal displacement, Article 12, Section 3 serves as an additional layer of protection. It ensures that if a host country fails to adequately respond to the needs of IDPs during natural disasters or environmental crises, IDPs have a legal basis to claim compensation and reparations for damages suffered. This complements the protection framework of the OAU Refugee Convention by emphasizing the importance of accountability and reparations in situations where such protection is lacking.

Policy Recommendations

Through an analysis of the legal frameworks provided by the OAU Refugee Convention and the Kampala Convention, as well as an exploration of the gaps and opportunities for collaboration between these instruments, it is evident that a synergistic approach is essential to effectively address the protection and assistance needs of affected populations. Building upon the insights gained from this analysis, the following policy recommendations are proposed to enhance the resilience and well-being of refugees facing climate-induced internal displacement in North Africa:

1. Strengthen the ratification of the Kampala Convention and the implementation of the OAU Refugee Convention. North African countries should prioritize the accession to and implementation of the Kampala Convention. Additionally, governments should enhance their capacity to implement the OAU Refugee Convention effectively, including through the establishment of monitoring mechanisms to ensure compliance with treaty obligations.
2. Enhance synergy between the OAU Refugee Convention and the Kampala Convention by establishing a continental coordinating mechanism. The establishment of a continental coordinating mechanism, facilitated by the African Union, could serve as a platform for dialogue, information sharing, and joint initiatives aimed at addressing the intersection of refugee status and climate-induced internal displacement. African governments, UN agencies, CSOs, and academia should be actively involved in the design and implementation of this mechanism to ensure its effectiveness and inclusivity.

3. Invest in climate resilience and disaster preparedness. North African countries, supported by international partners and financial institutions, should prioritize investments that include developing early warning systems, improving infrastructure to withstand climate-related hazards, and implementing community-based adaptation measures. International cooperation is needed to build their capacity to mitigate and respond to the impacts of climate change with a focus on protecting vulnerable populations, including refugees and IDPs.
4. Promote research and data collection on the intersection of refugee status and climate-induced displacement. This includes conducting comprehensive assessments of the drivers, trends, and impacts of climate-induced displacement on refugee populations, as well as identifying best practices and innovative solutions for enhancing protection and assistance. North African governments should allocate funding to support multidisciplinary research projects and capacity-building initiatives that address this critical knowledge gap.

Notes

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3. "Global Internal Displacement Database," Internal Displacement Monitoring Centre, accessed September 15, 2023, <https://www.internal-displacement.org/database/displacement-data>.
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5. "Third Academic Roundtable on Climate Change and Displacement in Middle East and North Africa" UNHRC, June 2021, <https://www.unhcr.org/us/media/third-academic-roundtable-climate-change-and-displacement-middle-east-and-north-africa>.
6. "Third Academic Roundtable on Climate Change and Displacement."
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8. "OAU/AU Treaties, Conventions, Protocols & Charters," African Union, <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>.
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12. "Kampala Convention," art. 1(k); Amare Tesfaye, "Internally Displaced Persons in Africa: A Glimpse View of the Protections Accorded in the Kampala Convention," *Jimma University Journal of Law* 9 (December 2018), <https://journals.ju.edu.et/index.php/jlaw/article/view/1000>.
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19. “OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,” Preamble.
20. “Kampala Convention,” art. 4, sec. 1, and art. 11.
21. Romola Adeola, “Climate Change, Internal Displacement and the Kampala Convention,” in *Policy Briefing: Climate Change and Migration* (South African Institute of International Affairs, 2020).
22. Dieng.
23. “Kampala Convention,” art. 3, sec. 2.
24. “Kampala Convention,” art. 5, sec. 4.
25. “Kampala Convention,” art. 4, sec. 2.
26. “Kampala Convention,” art. 9, sec. 2(k).
27. Adeola.
28. “Kampala Convention,” art. 9, sec. 2(b).
29. “Kampala Convention,” art. 9, sec. 3.
30. “Kampala Convention,” art. 13, sec. 3.
31. “Kampala Convention,” art. 13, sec. 1.
32. “Kampala Convention,” art. 12, sec. 2.

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