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| Institution: London School of Economics and Political Science |
| Unit of Assessment: 20: Law |
| Title of case study: International law, human rights and constitution making |
| <p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Beyani's research on the protection of refugees' human rights demonstrably underpins his work as a drafter of the Kenyan Constitution, as a United Nations Special Rapporteur, and as an expert advisor on the content of international treaties concerning protections to be accorded to internally displaced persons. The impacts specifically ascribable to his research relate to:</p> <ul style="list-style-type: none"> • promoting the protection of human rights by treaty and constitution making; • denying refugee status to those accused of international crimes; • protecting displaced populations from genocide, war crimes, and ethnic cleansing; and • protecting the right to seek and obtain asylum. |
| <p>2. Underpinning research (indicative maximum 500 words)</p> <p>Beyani joined the LSE Law Department in 1996. The core proposition of his 2000a and subsequent research outputs is that arrangements for refugee protection invariably impose a false dichotomy between refugee-specific standards and human rights standards. Although freedom of movement is a fundamental liberty, international and domestic legal interpretations of the concept are often premised, if only implicitly, on a model of protection which does not recognize refugees as bearers of the full panoply of human rights and freedoms. According to Beyani, the fundamental challenge for those endeavouring to develop and advance national and international norms regarding refugee protection is that of satisfactorily addressing this core proposition.</p> <p>Principally on the basis of 2000a, Beyani has become, over the past decade, an international expert on freedom of movement and, in particular, on internal displacement. In 1999-2000 – prompted by the fact that many involved in the Rwandan genocide had infiltrated refugee camps in Tanzania and the Democratic Republic of the Congo – Beyani agreed to chair a research project examining the content and application of the 1951 United Nations Refugee Convention. The resulting output (2000b) – making the case, in accordance with Article 1(F)(a) of the Refugee Convention, for excluding from refugee protection those who have committed international crimes – was presented to the International Criminal Tribunal for Rwanda and led, in 2003, to the redrafting of the United Nations' High Commissioner for Refugees' guidelines on the exclusion from refugee protection (section 5, source 6).</p> <p>Beyani 2013a is composed of essays written between 2000 and 2008; research for chapter 3 of the collection (2013a: 36-63) was supported by a £70,000 grant from the Open Society Foundation. Beyani also received funding from the Ford Foundation in 2003 (through the Pilkington Trust) to produce a guide on the use of the African Human Rights System to protect the rights of refugees; the guide was eventually published as Beyani 2013b. The importance of his research on displaced persons has been recognized in his appointment as United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons (section 5, source 4). As Special Rapporteur, he undertakes field research and produces official reports which are presented to the UN Human Rights Council and the General Assembly each year.</p> <p>Although this case study is confined to instances where Beyani's impact during the REF period can be clearly connected to his research, it is worth noting that his broader impact on international human rights law is immense. For example, in December 2008 – following the violence after the presidential elections in 2007 failed to produce a clear winner – he was invited by the African Union Panel of African Eminent Personalities, led by Kofi Annan, to participate in drafting the new Constitution of Kenya. His nomination was ratified in February 2009 and he served in Kenya while on sabbatical until October 2010. The new Constitution has been the engine of wider reforms in Kenya, inspiring a rebirth of the country, renewed peace, as well as democracy, good governance,</p> |

and human rights protection. Beyani played a key role in the making of this constitution, including his carrying out civic education in all parts of Kenya during its preparation. He is now performing a similar role in both Zambia and South Sudan.

3. References to the research (indicative maximum of six references)

(2000a) C. Beyani, *Human Rights Standards and the Free Movement of People within States* (Oxford: Clarendon Press, 2000). ISBN 9780191683459 (e-book version). National and international scholars' reliance on the research at e.g. [2011] Colum. J. Transnat. L. 690; [2010] Regent J. Int. L. 251; [2005] J. Refugee Studs 100; [2003] Chinese J. Int. L. 519). <http://eprints.lse.ac.uk/22961/>

(2000b) C. Beyani, *Exclusion From Protection*, published as a special issue of (2000) 12 *International Refugee Law* (with J. Fitzpatrick, W. Kalin, and M. Zard). http://ijrl.oxfordjournals.org/content/12/suppl_1.toc

(2006) C. Beyani, 'The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa' (2006) 50 *Journal of African Law* 187-97. DOI number: 10.1017/S0021855306000155 <http://eprints.lse.ac.uk/23000/>

(2008) C. Beyani, 'The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law' (2008) 102 *Proceedings of the American Society of International Law* 194-98. <http://eprints.lse.ac.uk/36257/>

(2013a) C. Beyani, *Collected Essays on the Use of International Law* (London: Cameron May, 2013). ISBN 9781907174124. Available from LSE http://www.cmppublishing.com/Books_Collected%20Essays%20on%20the%20Use%20of%20International%20Law.html

(2013b) C. Beyani, *Protection of the Right to Seek and Obtain Asylum under the African Human Rights System* (Leiden: Nijhoff, 2013). ISBN 9789004228610 (e-book version). <http://eprints.lse.ac.uk/47943/>

Evidence of quality: peer-reviewed journal articles and citations as noted above.

4. Details of the impact (indicative maximum 750 words)

Beyani's impact on the law relating to refugee protection is distinctive, has considerable reach and significance, and is closely and demonstrably connected to underpinning research cited in section 3. Beyani 2000a underpins the formulation of the African Union (Kampala) Convention for the Protection and Assistance of Internally Displaced Persons (2009). In that study (2000a: 146-7) and in a follow-up essay (2013a: 25-34), Dr Beyani sets out criteria for determining the rights of internally displaced Africans to bring actions against their states of origin. Those criteria are partly replicated in Article 4 of the Kampala Convention. On the basis of his scholarship, Dr Beyani was from 2004 to 2009 accorded a lead role in the treaty making process of the African Union: this resulted in the adoption of the Kampala Convention in 2009 (details on Dr Beyani's role can be found in the Brookings Institution's documentary on his work – section 5, source 5 – and in Beyani 2008: 197). This Convention is the first to create binding obligations on how to protect and provide assistance to persons displaced within states by causes such as violations of human rights, generalized violence, armed conflict, and natural or human made disasters.

From 2004 to 2006, Dr Beyani led the treaty making process of the International Conference of the Great Lakes Region, resulting in the adoption of the Great Lakes Region of the Pact on Security, Stability and Development (section 5, sources 1, 2 and 3). This Pact was devised as a means to end conflict in the Great Lakes Region where five States had recently gone to war. Since it was agreed in 2006, the Pact has been used by the Foreign Ministers of the Great Lakes Region as the basis for their twice-yearly meetings to examine issues relating to peace, security, and

development, and make recommendations to the Heads of State of the Summit: in August 2012, for example, the Pact formed the framework of the Great Lakes foreign affairs ministers' efforts to find a solution to the conflict in the eastern District Republic of Congo ("Great Lakes Ministers for Neutral Force in DRC", *Observer* 7 August 2012). Portions of Beyani 2000a inform his contribution to the drafting of the Great Lakes Protocols. For example, the wording of Article 4(g) of the Protocol on the Protection and Assistance to Internally Displaced Persons –

"Member States undertake to ... [e]nsure freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate"

– finds its early form in Beyani 2000a: 60:

"Standards pertaining to the movement and residence of persons in regional entities ... [to be] determined on an objective basis by reference to the justification, the reasonableness, and the proportion of the act complained of".

Beyani was among the team of experts appointed by the International Commission on State Intervention and Sovereignty to formulate the responsibility to protect. He was assigned the task of examining 'state sovereignty' and 'intervention' in international law. His findings were reflected in the formulation of the Responsibility to Protect as endorsed by the World Summit Outcome in 2005 in General Assembly Resolution A/RES/60/1. 2005, para 138:

"Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means".

In developing this formulation, Beyani relied on research undertaken and published in chapter 1 of 2013a, where an early attempt at the formulation can be found at pp.4-5:

"Th[e] concept [of state sovereignty] cannot be examined in isolation of its function in the system of international order ... [but rather must be] be based on the idea of sovereignty as underlying a primary responsibility for states to protect the safety, lives, welfare, and well-being of persons, and to discharge the functions of government adequately".

The Responsibility to Protect was invoked by the UN Security Council in its resolution S/RES/1973 (2011) in relation to Libya (authorizing "all necessary measures" to protect civilians) and in its resolution S/RES/1975 (2011) in relation to Ivory Coast ("Reaffirming [the Council's] strong commitment to the sovereignty, independence, territorial integrity and unity of Côte d'Ivoire ...").

Why the impact matters. There are two important consequences which derive from Beyani's research having had the impact demonstrated in this study: a) the rights of refugees (and, especially, internally displaced persons) are better protected than had been the case before Beyani was given the opportunity to put his research to practical effect; and b) the African constitution- and treatise-building initiatives detailed in this study would, but for Beyani's interventions based on his underpinning research, be at a significantly less advanced stage.

5. Sources to corroborate the impact (indicative maximum of 10 references)

All Sources listed below can also be seen at: <https://apps.lse.ac.uk/impact/case-study/view/37>

1. Alison Duxbury (Professor of International Law, University of Melbourne), "The Commonwealth Secretariat and the Implementation of Human Rights" (June 2005), pp. 7-8 at http://www.humanrightsinitiative.org/advocacy/chogm/chrf2005/comsec_and_human_rights.pdf
<https://apps.lse.ac.uk/impact/download/file/1477>

2. Walter Kälin [representative of the UN's Secretary-General on the Human Rights of Internally

Displaced Persons], 'Hardening Soft Law: Implementation of the Guiding Principles on Internal Displacement' (2008) 102 *Proceedings of the American Society of International Law* 187-188 at 188:

"Chaloka Beyani ... has not only been the key drafter of the Great Lakes Protocol on Internally Displaced Persons but is currently also involved in drafting and negotiating the planned African Union Convention on internal displacement in Africa".

<https://apps.lse.ac.uk/impact/download/file/1406>

3. 'Introductory Note on the Pact on Security, Stability and Development in the Great Lakes Region 2006' (2007) 46 *International Legal Materials* 173-75 at 173:

"[Beyani] acted as legal advisor to the IC/GLR [International Conference on the Great Lakes Region] and led the drafting of the Pact and the Protocols on Non-aggression and Mutual Defence, Prevention and Suppression of Sexual Violence Against Women and Children, Protection and Assistance to Internally Displaced Persons, Property Rights of returning Persons ... [and] also redrafted the rest of the Protocols to harmonise their provisions and align them with those of the Pact and the Programmes of Action". <https://apps.lse.ac.uk/impact/download/file/1407>

4. NTV (Kenyan television) report on Beyani's findings (in his capacity as UN Special Rapporteur) condemning living conditions of internally displaced persons in Kenya, uploaded 27 Sept. 2011:

<http://www.youtube.com/watch?v=4gAo0QK6eWE> (2,152 online views at 5 Sept. 2013).

5. Brookings Institution documentary: Chaloka Beyani on the importance of international support for internally displaced persons, released 25 March 2013:

<http://www.brookings.edu/about/projects/idp/un-mandate/chaloka-beyani>

<https://apps.lse.ac.uk/impact/download/file/1478>

6. UNHCR, Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (HCR/GIP/03/05, 4 September 2003), at

http://www.justice.gov/eoir/vll/benchbook/resources/UNHCR_Guidelines_Exclusion_Clauses.pdf

<https://apps.lse.ac.uk/impact/download/file/1479>