

## CHAPTER ONE: INTRODUCTION

*They lit the torch and threw it into the house, laughing. They said if we did not leave, they would come back and not leave even the dogs alive. Then we left without taking anything, only odds and ends.*<sup>1</sup>

### 1.1 Thesis statement

The legal, policy and humanitarian framework set up to address internal displacement in Africa is relatively new, transplanted and incomprehensive. This has resulted in peace-meal and uncoordinated protection attempts in the Great Lakes region. This study will discuss available protection initiatives, both legal and institutional at the international and regional levels that are reflected in national IDP protection mechanisms. In the process existing strengths and gaps will be highlighted and feasible counteractive measures will be recommended.

### 1.2 Description of problem

Despite Africa's longstanding commitment to providing hospitality to neighboring displaced populations during turmoil and upheaval, a down surge in such hospitality has been observed recently. The very progressive normative framework<sup>2</sup> and humanitarian practice set in motion to sustain hospitality towards the displaced, has been upstaged by the changing and complex nature of new patterns of displacement, immersing new trends and challenges relating to forced displacement, as well as new challenges that the modern African state has had to encounter in order to realize its vision for sustainable development.<sup>3</sup> These issues that have taken the frontline, coupled with weak capabilities of African states,<sup>4</sup> dwindling

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<sup>1</sup> Cited in Korn D *Exodus within Borders: an introduction to the crisis of internal displacement* 2000 at 24.

<sup>2</sup> OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa 1001 UNTS 45, 10 September of 1969 (entered into force on 20 June 1974).

<sup>3</sup> Crisp J 'Forced displacement in Africa: dimensions, difficulties and policy directions' *Refugee Survey Quarterly* 2010 Vol. 29 No. 3 at 4.

<sup>4</sup> At times this is because African states seem to have weak grips on their territorial space, sometimes the African humanitarian capacity has been eroded or marginalised by the influx and manner in which international humanitarian action is conceived and provided in Africa. This has had the effect of

international support, lack of burden sharing initiatives to support displacement hosting communities and states, have made addressing displacement difficult. Additionally, immerging global security pressures that seem to place an emphasis on the nexus between the presence of massive displaced populations, security threats and underdevelopment have also contributed to the changing nature of responses to displacement in Africa.

IDPs in many of the above situations have additionally faced insecurity and violence including attacks by armed groups despite being in ‘protected villages’ or camps. Within the Great Lakes Region, the Lord’s Resistance Army (LRA) of Uganda, an outlawed militia continued to cause havoc, displacing new groups of people, whilst continuing to attack those in camps in a number of countries. This was despite the signing of the Cessation of Hostilities Agreement between the LRA and Government of Uganda in 2006. The group which had for a while set up camp in Sudan, has of late been more active in the neighboring countries of DRC, CAR and Sudan to a small extent.<sup>5</sup> This has made displacement a regional issue, because it is obvious that while, some countries within Africa and the Great Lakes region are reporting a decrease in displacement figures, others are reporting a rise in displacement figures. At the same time, some of the factors contributing to displacing populations within Africa and the Great Lakes particularly seem to have a regional dimension, making displacement and protection complicated and circular.

Other protection concerns such as sexual violence have continued to be an issue rendering internal displacement a multi-dimensional complex phenomenon.<sup>6</sup> IDPs whether in the process of returning home, or still residing in camps still struggle with accessing basic necessities such as food, clean water, shelter and healthcare. There is also wide ranging lack of access to justice or failure of justice, for both IDPs in camps, especially sexual violence cases, or those returning home lacking justice in resolution of land disputes.<sup>7</sup> For some of the

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marginalising local humanitarian capacity or rendering them irresponsible; See African Union ‘Conference background paper-African Union addressing the challenge of forced displacement in Africa’ Experts Meeting of the Special Summit on Refugees, Returnees and Displaced Persons 5-7 November 2008, Addis Ababa, Ethiopia at 4 at <http://www.african-union.org/.../conferences> accessed on 04-05-2012.

<sup>5</sup> Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) *Internal displacement: Global overview of trends and developments in 2010* March 2011 Geneva at 37.

<sup>6</sup> IDMC global overview of 2010 as above.

<sup>7</sup> IDMC global overview of 2010 as above.

IDPs that have returned, hardships continue to exist by virtue of their ethnic identities. Many IDPs have in some cases opted to remain in disbanded camps or move on to transit self help camps, or integrate within the urban poor due to poor protection mechanisms on return or lack of durable solutions for the original causes of the displacements.<sup>8</sup>

While such persons are displaced from their original homes due to ethnic strife and related factors, they are arguably entitled to exercise and enjoy their basic human rights such as the right to shelter and property; the right to social justice; the right to education; the right to have access to medical facilities; the right to equal employment opportunities and of course the right to life, during displacement and upon their return or resettlement. At the domestic level, adoption and implementation of relevant domestic policies and legislation appears problematic. The process is slow, stagnated and besides the general issue of bad allocation of resources, lack of political will, poor sensitization towards the problem and ignorance or indifference are also deeply embedded within the existing national response structures. It is obvious that States within the region seem to have taken individual attempts to address the problem, but the conflicts in the region are cross border, consequently controlling displacement has become difficult.

Attempts to address the problem of IDPs in the region and the surrounding areas have not totally failed; but they are piecemeal, uncoordinated and appear unsatisfactory. While issues concerning IDPs appear to be domestic on the face of it, to the extent that the conflicts and displacements affect neighbouring states – in one way or the other, they raise fundamental issues both in domestic and international law. The above changing dynamics and trends in national, international, regional, politics, security and economics, have drastically affected migration regimes generally and forced migration specifically. They together with other underlying factors have posed new challenges to ensuring protection and assistance of displaced groups in Africa, especially internally displaced persons.<sup>9</sup> The effect of such changing nature calls for a reflection and re-imagining of existing protection regimes and institutional structures.<sup>10</sup> Taking into account the apparent deficiencies both in international and domestic law and policies, this study seeks to examine pertinent issues concerning the

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<sup>8</sup> Kenya Human Rights Commission (KHRC) and Kenyan National Network for IDPs (IDPs Network) *Gains and gaps: a status report on IDPs in Kenya 2008-2010* February 2011 at 20.

<sup>9</sup> The African Union Conference background paper to the Experts meeting of the Special summit on refugees, returnees and displaced persons 2008 as above at 3.

<sup>10</sup> The African Union conference background paper to the experts meeting of the special summit on refugees, returnees and displaced persons, 2008 above at 3.

effectiveness of protection frameworks for Internally Displaced Persons (IDPs) in the Great lake Region (GLR) - of Central and East Africa.

### **1.3 Assumptions**

The above problem and the direction this study will take in the process of addressing the problem are premised on a number of interrelated assumptions. The first assumption is that there is no effective IDP protection framework in existence for Africa, and closely related to this is the assumption that having such a legal or policy framework in itself is not enough to ensure adequate and effective protection. The study goes on to suggest that a system of protection for IDPs based in and considerate of African socio-historic circumstances and cultural orientations might be much more inclusive in addressing the problem.

The second assumption building on the first one is that international efforts to address internal displacement have been commendable, numerous and quite progressive. The study argues that despite that, such legal and institutional attempts cannot in themselves suffice to address the problem in Africa. This is because the formulation and constitution of such mechanisms while very good on paper requires local and national cooperation without which they are rendered redundant. Additionally, major international frameworks for addressing internal displacement are soft law, and the rest are Customary International law. This it is assumed is still a major setback to addressing issues that involve internal disturbances in Africa, and perhaps elsewhere because the frameworks are un-compelling in nature.

The third assumption is that regional and sub-regional collaboration to address the problem of internal displacement is crucial in the process of eliminating internal displacement in Africa and the Great Lakes region where borders are porous and displacement is cyclic. At the same time closely related to this observation is the fact that such initiatives must not tend to render local and community participation irrelevant, for without cooperation from states and communities experiencing the problem, all efforts will fail to be translated into effective and comprehensive protection on the ground. Additionally such efforts will be more effective if coordinated throughout affected regions as opposed to enacting overlapping and similar inadequate frameworks to address a problem within the same geographic or political 'space'.

The final assumption on which this study is premised is that there are existing attempts locally and at the national level to address the problem of internal displacement, but these initiatives are questionable because even though they are indicative of progress in eliminating internal displacement, they cannot succeed by simply transplanting international and regional frameworks or institutional arrangements into local systems. The protection mechanisms for internally displaced persons are likely to be more successful at the local level if they reflect values that the broader populace can relate to and identify with. They are also more likely to be effective if they are more concerned with addressing the root causes of the problem as opposed to getting rid of ‘physical displacement’ itself which is usually a symptom of deeper seated problems

#### **1.4 Research questions**

Based on the above assumptions this study seeks to examine pertinent issues concerning Internally Displaced Persons in the Great Lakes region, hence necessitating the following key question:

Have internally displaced persons within the Great Lakes region realized through existing frameworks, comprehensive and effective protection?

In the process of obtaining answers to the above question the following underlying questions will to be addressed:

1. Has failure to incorporate African worldviews in socio-legal and political factors underlying the debate involving the internally displaced contributed to the lack of comprehensive initiatives and the seeming continuous failure of the IDP protection regime in Africa and the Great Lakes?
2. Have assistance and protection frameworks and programmes at the international level been adequately instrumental in protecting the internally displaced and have such frameworks and programmes been implemented in the Great Lakes comprehensively and effectively?
3. Are there adequate efforts at the African regional and sub-regional level in addressing problems faced by internally displaced people that could be applied to the Great Lakes region? Are these efforts coordinated and effective during all phases of displacement?

4. Have national (legal, policy and institutional) responses towards the internally displaced in Kenya and Uganda been adequate and effective during all phases of displacement? Can the efforts within these two pilot countries be said to reflect the wider practices of countries within the Great Lakes region?

## 1.5 Background

The Great Lakes region is strategically important for future progress of the African continent. The area is home to more than 150 million people not to mention other species and covers an area of over four million square kilometers.<sup>11</sup> Most of the region's potential is untapped, its fertile lands and natural vegetation are still largely intact, and its wildlife and natural attractions offer invaluable economic possibilities. Despite all the above the region is struggling for stability and sustainable development. The region influences most of eastern, central and some parts of southern Africa and its stabilization will positively influence these regions and subsequently, the African continent.

The GLR (Great Lakes region) has experienced serious ethnic conflicts resulting in alarming numbers of IDPs within the region. The region comprises Rwanda, Burundi, the Democratic republic of Congo (DRC), Uganda, Tanzania and Kenya.<sup>12</sup> The region is also further made up of countries that are not traditional members of the Great Lakes region but happen to be core members of the International Conference for the Great Lakes region( ICGLR). These countries include Angola, Central African Republic, The Republic of Congo, Sudan and Zambia.<sup>13</sup> There is also a group of countries that are not core members of the Great Lakes region but have co-opted to be additional members of the regional conference of the Great Lakes, these countries are Egypt, Namibia, Botswana, Zimbabwe, Malawi, Mozambique and Somalia.<sup>14</sup>

Demarcation of the region by European colonial powers in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries- such as Belgium, Germany and Great Britain, appears to have been based on

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<sup>11</sup> Britannica Encyclopaedia at <http://www.britannica.com/blackhistory/> accessed on 10-05-2012 at 26.

<sup>12</sup> Kamanga K 'Regional paper I: Sub-Saharan Africa-Great lakes region' *Developing DFID's policy approach to refugees and internally displaced persons*, 2005a research consultation by the Refugee studies center at 4.

<sup>13</sup> Kamanga 2005 as above at 4.

<sup>14</sup> Kamanga 2005 as above at 4.

political<sup>15</sup> rather than geographical considerations. This has resulted in inter-linked and very porous borders, which are very hard to control.<sup>16</sup> Consequently within the borders of these countries are interlinked ethnic groups with common cultures and ethnic identities who were eventually divided and settled in different countries. These ethnic groups identify more closely with their ‘ethnicity’ as opposed to their national identities, hence the cross border nature of ethnic conflicts within the region and the cross border nature of the resulting displacement.

Following de-colonization, the struggle shifted from self determination to political organization. This change was ideally still influenced by colonial ideologies and cold war mentalities which left most African ethnic groups divided and in isolation across borders. As a result many inter- ethnic conflicts followed as each group struggled for political and economic representation, these conflicts were cross border and have led to internecine outcomes.<sup>17</sup> External influences cannot be totally held accountable for the problems within the region. There are also failures within the political economies of states of the Great Lakes region. Weak government policies that fail to account for active citizenry, as well as the culture of impunity that has been left without proper address have additionally contributed immensely to the polarization of conflicts and the resulting displacement.

Most of the countries in the region have been directly and indirectly affected by major conflicts in the area.<sup>18</sup> Such conflicts fell into two main categories: Rwanda Burundi, DRC and Uganda have faced internal conflicts and cross border conflicts over decades; and Kenya was seriously affected by the post-election violence in 2007 and 2008 which resulted in alarming numbers of IDPs.<sup>19</sup> At this point the generalized violence in Kenya cannot be regarded as an anomaly. Rather, it is a periodic and continuous political polarization of deep seated land grievances, ethnic tensions and governance resentments. Political elements have

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<sup>15</sup> Such considerations were based on unilateral agreements reached at the 1886 Berlin Conference in which the local leaders were neither, consulted nor were they party to such agreements. See Korn 2000 as above at 7, 8.

<sup>16</sup> ‘The Great Lakes Region of Africa: Divergent pasts and converging future at 1 at [www.glendon.yorku.ca/greatlakesofafrica/02-11-09](http://www.glendon.yorku.ca/greatlakesofafrica/02-11-09); Korn 2000 as above at 21.

<sup>17</sup> ‘The Great lakes region of Africa: divergent pasts and converging future,’ as above.

<sup>18</sup> United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) ‘Affected populations in the Great Lakes Region’ Report of 31<sup>st</sup> October 2004 at 3.

<sup>19</sup> It is estimated that more than 600 000 people were displaced. For more information see the IRIN Kenya Website, [www.irin.kenya.org](http://www.irin kenya.org) accessed on 23-07-09.

over years employed such tactics during elections to destabilize potential voters in areas where rival parties are popular.<sup>20</sup>

The Rwandan genocide of 1994 that claimed over 800,000 lives, devastated that country and immensely destabilised the region. Rwanda's neighbour Burundi, involved in ethnic warfare since 1993, has made considerable headway towards national reconciliation. Meanwhile, the conflict in the Democratic Republic of Congo (DRC), which erupted in 1998 and involved six other African governments and rebel movements compounded the already fragile inter and intra-state relations in the region. This conflict pitted the DRC which was being supported by Angola, Zimbabwe and Namibia and to a lesser extent, the Central African Republic (CAR) and the Republic of Congo, against Rwanda, Uganda and partly Burundi.<sup>21</sup> Countries involved in the conflict fought in hot pursuit of rebels and militia that happened to be remnants of previous governments that had been toppled by the respective regimes. Rwanda and Uganda were further embroiled in territorial conflicts (for alleged security reasons) as well as resource exploitation in the DRC.<sup>22</sup> These conflicts, which were eventually responsible for de-stabilizing the region and sending ripples through the rest of the African continent, seem to have come to an end, leaving behind terrible reminders including the presence of masses of displaced persons.

By the end of 2010 there were around 11.1 million people internally displaced by conflict and violence in Africa.<sup>23</sup> This alarming number of internally displaced persons, was still considered better than the 11.6 million that Africa had recorded in 2009, and the 13.2 million internally displaced that were recorded around 2004.<sup>24</sup> This shows that there is an actual downward trend in the numbers of internally displaced persons in Africa. This makes Africa the only continent which by the end of 2010 had recorded a decrease in the number of internally displaced persons, but despite this, new large population displacements were still observed around the same time.<sup>25</sup> Africa still represented 40 percent of the world's internally displaced.<sup>26</sup>

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<sup>20</sup> Abdullahi A, 'State creation of internally displaced persons in Kenya: 1991-1998: the process and the political dimension' *East African Journal of Peace and Human Rights* 2004 Vol. 10 No.1 at 12.

<sup>21</sup> The Tanzanian Ministry of Foreign Affairs and International Cooperation 'Brief on the International Conference on the Great Lakes Region (IC/GLR BRIEF)' of October 2005 at 1.

<sup>22</sup> IC/GLR BRIEF 2005 above.

<sup>23</sup> IDMC global overview of 2010 as above at 36.

<sup>24</sup> IDMC global overview of 2010 as above.

<sup>25</sup> IDMC global overview of 2010 as above.

<sup>26</sup> IDMC global overview of 2010 as above at 37.



It is estimated that over six million people have been displaced in the Great Lakes Region either within their national borders or as refugees in neighbouring countries.<sup>27</sup> Poverty and low standards of living have left many internally displaced persons vulnerable to diseases and human rights violations and made the possibility for recruitment into insurgent groups very high.<sup>28</sup> States in the region have independently addressed the problem but attempts to eliminate it seem futile. Original countries of the Great Lakes Region and those that voluntarily acceded through the (ICGLR) International Conference of the Great Lakes Region, are attempting to bring ethnic groups within borders together as well as trying to find areas of common interest involving countries in the region and their various ethnic groupings.

### *1.5.1 Current legal position*

When the issue of internal displacement started gaining prominence, there was not so much written on the subject, it was a new area which most scholars and refugee advocates did not support. In Africa most of the states were just beginning to balance their responsibilities of independence, others were still seeking independence. The problem was overshadowed by the refugee issue. In the early 90s internal displacement became so rife that the attention of the international community was required. Some schools of thought suggested that the refugee framework be extended to cater for IDPs as well.<sup>29</sup> This seemed like an overextension of an already overextended mandate of the UNHCR.

One school of thought advocated for an independent regime to provide for the internally displaced. This group was led by the first Representative of the General Secretary on internally displaced persons Mr Francis Deng. After he took over office he set out to establish a set of rules that would not conflict with the already existing legal frameworks while at the same time filling in the gaps that were not addressed by the existing rules.<sup>30</sup> Through his efforts and those of Ms Cohen and after laborious consultations with various experts, International Humanitarian law, International Human Rights as well as International refugee law was revisited, rules providing for the protection of IDPs within these

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<sup>27</sup> Terms of reference for the case study of the Great Lakes Region 'From emergency relief to rehabilitation: an evaluation of the Dutch Humanitarian assistance,' 4 March 2005 at 4.

<sup>28</sup> Terms of reference for the case study of the Great Lakes Region as above.

<sup>29</sup> For instance Cohen R 'Strengthening protection of IDPs: UN's role' *Law and ethics, Georgetown Journal of International Affairs* 2006 Winter/Spring at 101.

<sup>30</sup> Korn 2000 as above at 86; Deng F and Cohen R *Masses in flight: the global crisis of internal displacement* 1998 at 15.

frameworks were highlighted and the gaps were these frameworks failed were pointed out and addressed.<sup>31</sup>

These attempts resulted in an introduction of the first set of synthesized Guiding Principles. Since the problem of internal displacement involves questioning of state sovereignty, Deng's team was very careful in terming them. These principles are soft law and are not binding, but they have been adopted into the laws of various countries as legislation and it was expected that through use and with time the principles would attain the status of customary international law.<sup>32</sup>

Of course there is another school of thought that has been debating the creation of an independent legal framework for IDPs under the argument that this would lead to undermining the protection of refugees. This group mostly made up of refugee advocates and of course some governments that were complicit in displacing their own and denying them their rights, argues that this new wave of concern for the protection of IDPs was driven by the growing interest of asylum states to keep large numbers of 'would be refugees' at bay.<sup>33</sup> This argument is supported by the containment theory and has been relied on by various scholars who seem to be wary of the international focus on IDPs.<sup>34</sup> It has been stated on a couple of occasions that advocacy for extending the refugee framework to include IDPs or the creation of an independent legal framework to protect IDPs would either dilute existing international law or create confusion.<sup>35</sup> At the end of the day the argument for IDPs is the more favorable one evidently.

This can be seen through the existing framework that came into existence after the Guiding Principles were introduced to address the gaps identified within the international framework. The Principles are a synthesis of relevant standards of international human rights law, international refugee law and international humanitarian law, but it should be noted, they do

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<sup>31</sup> Korn 2000 as above at 89 and 90.

<sup>32</sup> Korn 2000 as above at 90.

<sup>33</sup> Dubernet C *The international containment of displaced persons: Humanitarian spaces without exit* 2001 at 2; Nogueira B 'Internal displacement in international society: Containing people or extending rights? At 1, Paper presented at the *Annual meeting of the ISA-ABRI joint international meeting* Rio de Janeiro, Brazil, July 22, 2009 at <http://www.allacademic.com> accessed on 23-11-09.

<sup>34</sup> Barutciski M 'Tensions between the refugee concept and the IDP debate' *Forced Migration Review* 3 December 1998 at 12.

<sup>35</sup> Barutciski 1998 as above at 13.

not in themselves create binding obligations.<sup>36</sup> From these principles other instruments have been adopted. In Africa specific instruments tailored to protect IDPs have been adopted and ratified. Members of the International Conference on the Great Lakes devised a legal framework under which the Guiding Principles were adopted and could be implemented.<sup>37</sup> Some of the instruments are more than soft law, they are binding and not only on the states involved, but they are meant to bind non- state actors as well.<sup>38</sup> The Guiding Principles have also been adopted into the legislation and policies of some countries, thus making them part of the domestic legal systems of the particular countries and they have been instrumental in the re-integration process of IDPs in these countries.<sup>39</sup>

At an international level clusters for the coordination and assistance as well as protection to internally displaced persons were introduced to 14 African countries in 2010.<sup>40</sup> They were not necessarily effective in all the countries they were applied in,<sup>41</sup> but they worked better in others.<sup>42</sup> The clusters were first rolled out in Uganda, which was one of the pilot countries in Africa, they came to an end in Uganda in 2010 as they were phased out into the national response structures, while they were introduced to Kenya in 2008 and rolled out in 2009.<sup>43</sup>

The African Union has also taken steps and addressed the issue of refugees and internally displaced persons by adopting the African Union Convention for the protection of internally displaced persons (Kampala Convention). The Convention so far has been ratified by 12 countries, Uganda being among the first four countries to ratify the Convention, whilst Kenya is yet to do so. The Convention needs 15 ratifications to come into effect in the

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<sup>36</sup> Beyani C 'Recent developments: the elaboration of a legal framework for the protection of IDPs in Africa' *Journal of African law* 2006 Vol. 50 No. 2 at 192.

<sup>37</sup> The Great lakes Pact of 2006 which includes Protocols dealing specifically with IDPs (Protocol on Protection and Assistance to Internally Displaced Persons 2006) at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/60ECE277A8EDA2DDC12572FB002BBDA7/\\$file/Great%20Lakes%20pact\\_en.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/60ECE277A8EDA2DDC12572FB002BBDA7/$file/Great%20Lakes%20pact_en.pdf) accessed on 27-09-2011; the African Union Convention for the Prevention, Protection and Assistance of Internally Displaced Persons adopted 29<sup>th</sup> October 2009 (hereafter, AU-IDP Convention 2009) at [http://www.africa-union.org/root/AR/index/Convention%20on%20IDPs%20Eng\\_%20-%20Final.pdf](http://www.africa-union.org/root/AR/index/Convention%20on%20IDPs%20Eng_%20-%20Final.pdf) accessed on 04-05-2012.

<sup>38</sup> The AU-IDP Convention 2009 as above; Beyani 2006 as above at 192.

<sup>39</sup> Angola's Norms for the Resettlement of Displaced Persons of 2001; Ugandan National Policy for Internal Displacement of 2004; Burundi and Sudan also enacted legislation that incorporated provisions of the Guiding Principles.

<sup>40</sup> IDMC global overview of 2010 as above at 39.

<sup>41</sup> They seemed to have failed to make a difference to IDPs in Burundi; See IDMC global overview of 2010 as above at 39.

<sup>42</sup> They were regarded to have been pro-active and effective in Sudan.

<sup>43</sup> Kenya and Uganda.

meantime IDPs are laboring without adequate protection even though the requisite instrument is in existence.

A major step taken at the East African regional level to address the issue of internally displaced persons was the Great Lakes Pact on Peace, Security and Stability entered into by heads of states in December 2006 and came into force in June 2008. The Pact was a result of a four year negotiation process and was an achievement towards putting an end to persisting conflicts in the region, and a sign of hope for millions of IDPs and refugees. The Pact has incorporated special provisions for the forcibly displaced, some of its objectives include the introduction of a Regional Protocol to deal with the protection and assistance of Internally Displaced Persons as well as a Protocol on the property rights of rights of returning populations, a Protocol on the protection of women and children against sexual violence and Protocols to address some of the root causes of flight in the Great Lakes. The pact requires member states to the Great Lakes conference to immediately adopt its provisions including the Protocols addressing IDP issues into their domestic systems. The pact is the only attempt internationally at a sub regional level to formally address the issue of the internally displaced.<sup>44</sup>

The Ugandan government implemented a strategy to deal with the internally displaced through the 2004 government policy on the internally displaced. This policy recognizes the rights and needs of internally displaced persons and reaffirms the responsibilities towards them of government and other parties.<sup>45</sup> The Kenyan government in 2010 finalized a draft National IDP policy, it is still with the relevant ministry waiting to be tabled to cabinet for approval, since end 2010. A Draft Bill for IDPs has also been finalized by the Kenyan Government at the end of 2011.

It should be pointed out that Uganda and Kenya are the two main countries within the Great Lakes region that will be discussed in depth. Both countries have experienced internal displacement, but the nature, scale and duration as well as the impacts were different. The two countries are a cross representation of very extreme dynamics of causes and

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<sup>44</sup> Internal Displacement Monitoring Centre (IDMC) 'Great Lakes Pact, a welcome towards better protection of the displaced; implementation must be a priority' 2008 Global IDP Project, Norwegian Refugee Council Geneva at 14.

<sup>45</sup> Organization for the Coordination of Humanitarian Affairs (OCHA) Great lakes affected populations at 6 at [www.reliefworld.int/library/documents/2004/ocha-glakes-31-oct.pdf](http://www.reliefworld.int/library/documents/2004/ocha-glakes-31-oct.pdf) accessed on 16-04-2007.

consequences of internal displacement. Kenya has faced governance and impunity since independence and Uganda has struggled with mutiny and militarized grievances since independence. Both situations have resulted in circular and long standing displacement patterns. Of course the Ugandan situation stood out because it was highlighted as a humanitarian crisis which was continuous with specific non-state actors held responsible for it, while the Kenyan situation was for a long time forgotten because it was sporadic and latent. Both countries are now in the process of resettling and reintegrating the displaced, however, the programmes of resettlement face many challenges which include fear of returning into the communities that allegedly caused harm upon the displaced people. Unresolved and politically aggravated tribal and land grievances have made resettlement problematic, and in some cases, the original root causes of the displacement in both countries are yet to be addressed. This brings about the question of how ‘durable’ are these durable solutions? And has ‘protection’ really been comprehensively addressed?

Implementation of most of the above legal and institutional mechanisms is incomplete or ineffective. The time it takes and any possible further delays mean people have to suffer longer, and tracing them gets more difficult, since they constantly relocate to seek better refuge especially in circumstances where protection or assistance needs are not adequately addressed. This suggests that there are a number of mechanisms for the protection and assistance of IDPs existing in Africa. But among other things, there are deficiencies within these in international, regional and domestic instruments as well as deficiencies in humanitarian responses and policies thereof.

IDPs are citizens of countries within which they are displaced. This makes them first and foremost, the responsibility of their nations. Additionally, the rights of IDPs are internationally protected under international laws such as international human rights law, and international humanitarian law as well as refugee law by analogy. But these protections are general and not necessarily specific to the situation of IDPs.<sup>46</sup> There is no distinct international body of law that provides specifically for their protection, with the exception of

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<sup>46</sup> The African Union ‘African Union addressing the challenge of forced displacement in Africa: the evolution and current situation of forced displacement in Africa’ Conference background paper, Experts Meeting Special Summit in Refugees, Returnees and Displaced Persons in Africa, 2008 at 6 at <http://www.african-union.org/.../conferences> accessed on 04-05-2012.

regional legal mechanisms that have been adopted recently.<sup>47</sup> There is also no specific institution, besides the much debated ‘cluster and collaborative approach,’ that is mandated to deal with the problems of IDPs.<sup>48</sup>

It should be noted that any durable solutions that can be adopted in the process of addressing the above inadequacies can go a long way to addressing other related problems within Africa. If IDPs are well protected and assisted this would minimize the escalation of warrior communities and forcible recruitment of IDPs through manipulation by insurgents and rebels. This could be a long term solution to instability, peace and security. Camp residency or integration into the urban poor, does not only destroy a community’s sense of independency and their cultural orientation, it diminishes their skills and renders them a dependent population. IDPs in Africa and the Great Lakes region in particular have for a long time depended on aid to survive. Large portions of Africa’s populations have been stuck in deplorable poverty not because they are lazy or incapable of producing, but because they are not allowed by circumstances to do so. Addressing displacement, is addressing part of the poverty cycle that Africa has faced for so long. At the same time addressing issues of internal displacement can be a long term solution to the problem of external displacement as well, and can encourage voluntary repatriation.<sup>49</sup>

The topic of internal displacement has been discussed and written on numerous over the past years. From the Bosnian war to massive displacements in Columbia some scholarly works have been published. It should be noted though, that not much has been written on Africa, especially on Sub-Saharan Africa and not much has been written from a current legal perspective, or even a local-national perspective for that matter. There is lack of primary sources such as books, cases and Statutes addressing internal displacement in Africa, the jurisprudence is still very limited on the matter. The African Commission on Human and People’s Rights has had very few cases brought to it on the issue of internal displacement.

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<sup>47</sup> These for example include the African Union Convention for the Protection of Internally Displaced Persons of 2009, the Great Lakes Protocol for the Protection and Assistance to Internally Displaced Persons of 2006, the Cartagena Declaration on Refugees of 1984 and so forth.

<sup>48</sup> The African Union conference background paper to the experts meeting of the special summit on refugees, returnees and displaced persons 2008 as above at 7.

<sup>49</sup> It should be noted that this should not be used to the detriment of externally displaced persons by involuntary repatriating them to areas where they might still face persecution. If circumstances that forced them to flee still exist, then this should be taken into account.

The main existing work on internal displacement included a general overview of internal displacement. It was mainly researched for purposes of being the basis for the compilation of legal norms to address internal displacement in 1998, which is about fourteen years ago.<sup>50</sup> Within this book specific reference to Africa was only made briefly while addressing regional initiatives to address displacement. The other work was in fact a companion to *Masses in flight* and was published within the same period to give numerical and data support to the above compilation.<sup>51</sup> It contained case studies of ten countries that were suffering from severe internal displacement at the time. Among these were Burundi, Rwanda, Liberia and Sudan. A shorter and simplified version based on *Masses in flight* has been published as well. It gave better insight into the problem of displacement with the aid of illustrations, but the content was just similar without much insight on Africa.<sup>52</sup> The rest of work done and published on internal displacement is on international aspects,<sup>53</sup> Asia, Yugoslavia, Caucasus and General theoretical or conceptual bases of the creation of the category of ‘Internally displaced persons.’<sup>54</sup> However a large number of articles have been published on internal displacement in Africa, especially after the adoption of the Kampala convention which is the only binding legal document in existence to provide for IDPs.

In light of the above initiatives taken to address and discuss the issue of internal displacement with reference to Africa, I intend in this study to focus on highlighting attempts to establish a recognized and binding framework for the protection and assistance for internally displaced persons in Africa. I will discuss such attempts and their level of effectiveness or lack thereof within the context of the Great Lakes Region. To facilitate addressing the above intentions, the study is divided into five different sections as follows:

## Chapter two: Framing African (Dis) Placement

This area of the study focuses on the historical and conceptual dimensions of forced displacement in Africa. Discussions of how forced displacement has evolved in Africa, and the world in general, as well as the underlying reasons and conceptual dynamics are made. Additionally, the unique nature of the categorization of “IDPs” and the effect this has on the

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<sup>50</sup> Deng and Cohen 1998 as above at 18.

<sup>51</sup> Deng F and Cohen R *The Forsaken people: case studies of the internally displaced* 1998 at 10.

<sup>52</sup> Korn 2000 as above at 86.

<sup>53</sup> Phoung C *The international protection of internally displaced persons* 2005 at 11.

<sup>54</sup> Weiss T and Korn D *Internal displacement: Conceptualization and its consequences* 2006 at 17.

group and other stakeholders involved in protection as well as the rest of the population are discussed, whilst highlighting how in Africa this has had certain unforeseen connotations, especially after failure to take into consideration the specific African migratory patterns. The chapter also highlights the underlying reasons between the emergence of the ‘internally displaced’ label and the dynamics of co-existence with the ‘externally displaced’ and other migrants. Lastly a discussion of possible alternatives of framing displacement in Africa is made in an attempt to fill up the perceived protection and conceptual gaps existing within the displacement protection regime in Africa.

### Chapter three: International responses to internal displacement

In this chapter the evolution of the legal protection regime for IDPs and its foundational pillars within already existing law is discussed. International instruments and international organizations that provide for the protection of displaced persons in Africa, and the Great Lakes Region in particular are analyzed and their legal implications are assessed in relation to their relevance, application and their successes when it comes to protection of IDPs. International organizations and international NGOs such as (ICRC, OCHA, IOM, CARE, IRIN, IDMC) and UN agencies’ whose functions are of major importance to the cause and outcome of the conflicts and resulting displacements in the region have also been discussed. It is important to know how many organizations and instruments dealing with forced displacements have been adopted or ratified and are actually actively implemented by states in the region. Other initiatives such as the institutional application of the International protection cluster by the Inter Agency Standing Committee (IASC) and how this works have been highlighted. The distribution of functions and hierarchies within the clusters and the individual responsible lead agencies for protection of IDPs is also discussed. International adjudicative institutions, as well as international peace keeping missions that are responsible for effecting transitional justice, prevention, protection and resettlement of IDPs have been analyzed and their mandates and effectiveness towards comprehensively addressing the issue of internal displacement have been discussed.

### Chapter four: Regional and sub-regional protection initiatives

Regional groupings (AU, EAC, IGAD, and ICGLR) and their provisions in matters of displacement have been discussed, any initiatives at the regional level to address



displacement are compared and contrasted, and attempts to harmonize these efforts have been assessed. Existing and forthcoming legal frameworks are discussed, for instance the Great Lakes Pact and its protocols and the African Union Convention on internal displacement have been critically analyzed and their implementation examined.

#### Chapter five: State practices, legislation and policy, Uganda and Kenya

It should be pointed out that all countries within the Great Lakes region could not be included in the study, for purposes of clarification and attention to detail, a few countries had to be picked in the process of establishing the researcher's thesis arguments. These countries are Uganda and Kenya. Uganda was picked because of its plausible attempts and policies it has enacted so far to deal with the displaced and the fact that it is one of the countries in the Great Lakes region which has had alarming numbers of displaced persons resulting from conflict. Kenya is picked because like Uganda it has a large number of displaced persons but displacement in Kenya is of a different dynamic. First of all it is not entirely caused by ethnic conflict, rather, it is displacement incited by government policies and land grievances, not to mention political ploys adopted strategically during or before elections to destabilize the democratic voting process. Displacement in Kenya is long term but it occurs in intervals.

This chapter has discussed the extent of success and outlined failures and possible lessons for protection, assistance, repatriation, reparation and reconciliation in the region after taking the practices of each country into consideration on a comparative basis. Local legislation, reported cases, by-laws, or any guiding norms or principles adopted and applied by individual countries in cases involving the internally displaced have been discussed. National policies on displacement and institutional mandates have also been analyzed with the view of establishing the adequacy of actual practice of protection on the ground.

#### Chapter six: conclusion

In conclusion it can be summed up that to address internal displacement, effectively and comprehensively in Africa, protection initiatives cannot be isolated. It is obvious that international, regional and national initiatives have to be combined to perfect the art of IDP

protection, because the jurisdiction of protection for the internally displaced cannot be assigned to a single agent. Whether attempts are international, national or regional, they still maintain certain protection gaps that can only be resolved through inclusive, collaborative and accountable initiatives.