

## CHAPTER 4: REGIONALISM: A ‘SPAGHETTI BOWL’ FOR ADDRESSING INTERNAL DISPLACEMENT IN THE GREAT LAKES REGION?

*The call for Africa’s renewal, for an African renaissance, is a call to rebellion. We must rebel against the tyrants and the dictators, those who seek to corrupt our societies and steal the wealth that belongs to the people. We must rebel against the ordinary criminals who murder, rape and rob, and conduct war against poverty, ignorance and the backwardness of the children of Africa. Surely, there must be politicians and business people, youth and women activists, trade unionists and, religious leaders, artists and professionals from Cape to Cairo, from Madagascar to Cape Verde, who are sufficiently enraged by Africa’s condition in the world to want to join the mass crusade for Africa’s renewal. It is to these that we say without equivocation, that to be a true African is to be a rebel in the cause of African renaissance, whose success in the new century and millennium is one of the great historic challenges of our time.*

*Former South African President Thabo Mbeki*

### 4.1 Introduction

In this study I intend to explore the level of effectiveness and comprehensiveness, if at all, within existing protection frameworks for internally displaced persons in the Great Lakes region. In this chapter I will advance the above aim by discussing the role of regional mechanisms in providing and initiating attempts to protect internally displaced persons, and whether such initiatives have complemented or replaced the role of states.<sup>657</sup> I also intend to discuss the level of effectiveness of the numerous regional initiatives and what effects their overlapping mandates have had on the level of protection of internally displaced persons.

Internal displacement is one of the main dilemmas facing Africa and the Great Lakes region in particular. Conflicts within the countries in the region which have spill over effects, have intermittently affected forced migration patterns in the region. Uganda, the Democratic Republic of Congo (DRC), Rwanda, and Burundi have faced ethnic conflicts. In Kenya, bad

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<sup>657</sup> Shaw T ‘African renaissance or alliance: towards new regionalism and new realism in the Great lakes at the start of the twenty-first century’ at <http://www.unisa.ac.za/Default.asp?Cmd=ViewContentID=11586> accessed on 07-06-2011 at 2.

governance has resulted in years of deep rooted ethnic resentment and land grievances which compounded with the rigged elections of December 2007, culminated in unprecedented post election violence. All the above factors have resulted in the internal displacement of millions of people within the Great Lakes region. The re-emergence of regional blocks such as the African Union (AU), the East African Community (EAC), and the emergence and consolidation of sub-regional blocks such as the International Conference of the Great Lakes Region (ICGRL) and Intergovernmental Agency for Development (IGAD), the Southern African Development Cooperation (SADC), The Common Market for Eastern and Southern Africa (COMESA), has changed the role of the state in Africa. The state's failed role in practicing good governance seems to be addressed increasingly by intergovernmental bodies. The endorsement of the African Union Convention for the protection of internally displaced persons, the Great Lakes Protocol on the protection of internally displaced persons, the Kampala Declaration and the Khartoum Declaration lend credence to the perception that regional administrations are doing way and beyond their duty to protect displaced citizens of Africa.

The 'spaghetti Bowl' of regional organization membership within and around the Great Lakes<sup>658</sup>

	EAC	IC/GLR	IGAD	Tripartite	COMESA	SADC	AU
Angola		×				×	×
Burundi	×	×		×	×		×
CAR		×					×
DRC		×		×	×	×	×
Kenya	×	×	×		×		×
RoC		×					×
Rwanda	×	×		×	×		×
Sudan		×	×		×		×
Tanzania	×	×				×	×
Uganda	×	×	×	×	×		×
Zambia		×			×	×	×

<sup>658</sup> Norwegian Agency for Development Cooperation (Norad) Report 'International Conference of the Great lakes region: review of the Norwegian support to the ICGLR secretariat' Report 17 of June 2009 at 12.

One thing is certain after looking at the above table, regional efforts taking place are repetitions of what has been done previously. The issue is whether new regional initiatives are capable of obtaining more effective outcomes. This leads one to further wonder, how such initiatives will effect different outcomes where they have failed to achieve such in the past? How is the creation of similar institutions with similar functions in the same geographic area beneficial to the displaced if at all? What are they capable of delivering that is different and more effective than what has previously been done? In answering these and other questions it seems imperative to first understand the dynamics of regional initiatives and their underlying origins specifically within Africa.

#### **4.2 Theorizing regional-ism**

Theories of regionalism can be divided into regional cooperation, market integration, development integration, as well as regional integration. These are the pretexts within which any form of regional collaboration is based.<sup>659</sup> Regional cooperation, which is the most common form of regional collaboration, is usually a form of collaborative venture between two or more partners, with common interests in a particular issue. Such ventures could include execution of joint projects, technical sector cooperation, common running of services and policy harmonization. It also may include joint development of common natural resources; acting and representing as a joint stand amongst the rest of the world and at global representations; as well as joint promotion of production.<sup>660</sup> Some of the tenants of regional cooperation such as market integration consist of the linear progression of degrees of integration, including free trade areas, custom unions, common markets, economic unions, and total economic integration. This has been very hard to implement in the African context mainly because there are no well established necessary conditions for its implementation, even though it seems to be a working model for the European Union.<sup>661</sup>

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<sup>659</sup> Lee M 'Regionalism in Africa: A part of problem or a part of a solution' *Polis/R.C.S.P/C.P.S.R* 2002 Vol. 9, *Numero Special* at 3.

<sup>660</sup> Lee 2002 as above at 3.

<sup>661</sup> Lee 2002 as above at 4; Organisations such as the East African Community and the Common Market for Eastern and Southern Africa have been created under such initiatives, and they are functioning towards achieving total integration, but still face difficulties, for instance the original East African Community dissolved because amongst other reasons, the countries of the region were not at similar economic and industrialisation levels to implement such a system. The current community seems to be better prepared but the process of total integration into a federation is being rushed and it could eventually suffer a similar fate to its predecessor.

Development integration was developed as a theory to deal with complications that arose as a result of market integration.<sup>662</sup> It regards the objective of integration as economic and social development, hence the linkage to development theories. The theory requires more state intervention than that required in market integration. States are required to first and foremost make political commitments to integration.<sup>663</sup> Although it was designed to address problems created by market integration, development integration has proved more difficult to implement than market integration. Regional integration on the other hand is defined as the process by which a group of nation states voluntarily and in various degrees 'have access' to each other's markets and establish mechanisms and techniques that minimize conflicts and maximize internal and external economic, political, social and cultural benefits of their interaction. It would seem that states within the Great Lakes region and the resulting regional blocks formed take the forms of either incomplete regional cooperation or market integration and at times seem to be regional integration initiatives depending on the level of cooperation achieved.

Arguments with regard to what 'regionalism' entails and what it is not, have also involved some schools of thought in the field of international relations. The three dominant theoretical schools of thought are; the neo-realists, the neo-liberalists and the neo-Marxists.<sup>664</sup>

#### *4.2.1 Neo-liberalists*

Most of these are strongly euro-centric and thus focus a lot on the changing character of intra-regional relations, as well as the conditions under which these characters are likely to promote or hinder the movement towards regional economic cooperation.<sup>665</sup> They argue that regional groupings are not necessarily meant to build or break world order. The proponents of this theory as opposed to neo-realists do vehemently support the fact that regional cooperation is meant to foster actual cooperation among states as opposed to the idea of

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<sup>662</sup> Lee 2002 as above at 4.

<sup>663</sup> It is believed that such commitments lay foundations for cooperation. It is anticipated that such an approach would help member states work toward implementing policies that will help with problems created as a result of unequal distribution of benefits, which happens to be one of the major causes of the failure of market integration.

<sup>664</sup> Guraziu R 'Is regionalism a stumbling or a stepping stone in the process of globalisation' *Globalisation: International political economy, political and international studies* May 2008 at 6 <http://www.atlantic-community.org/app/webroot/files/articlepdf/Regionalism%20-%20a%20stepping%20stone%20or%20a%20stumbling%20block%20in%20the%20process%20of%20globalisation.pdf> accessed on 15-04-2012.

<sup>665</sup> Guraziu 2008 as above at 6.

individual state benefits.<sup>666</sup> Moreover they regard regional cooperation as the general norm as opposed to it being the exception especially in areas where policy coordination is imperative in realizing the procurement of public goods, including stable monetary relations, free trade or sustainable ecological development.<sup>667</sup> Neo-liberalists believe that continuous and effective regional cooperation will allow for developing states to compete in world markets and eventually lead to multilateral cooperation which will in turn reduce conflicts.<sup>668</sup> This theory has not been functional in the African context, the it was the basis for SAPs (structural adjustment programs). Economic theories applied to developed nations were transposed to the developing ones without taking into account the socio-political and economic realities of developing economies, adverse effects were later observed. These effects have contributed to the continuing weak economies and resource based conflicts in Africa.

#### *4.2.2 Neo-Marxists (draw mainly on imperialism)*

They do not believe that regionalism is un-useful as long as it leads to free trade and reduces conflicts, which in most cases it does not. Their arguments are largely focused on developing regions. They argue that the relationship between Europe and the developing world is largely a form of ‘collective colonialism’ some neo-Marxists have argued that regionalism is simply a building block for the re-construction of a different global system. They further argue that the countries of the south, that have for many years been excluded from competing in the global monopolies of finance, technology, natural resources, media and communication as well as energy and power can only stand a chance to participate to their advantage or shield themselves from the capitalist led globalization if they act within regionalization as opposed to acting individually.<sup>669</sup>

#### *4.2.3 Neo-realist*

This is one of the dominant theories of international relations. The theory of regionalism from a neo-realists perspective is based in power politics. It argues that even if a state were to derive an absolute gain, from cooperation, it will refrain from entering into a cooperative relationship if it expects that its partner will benefit relatively more from the relationship and

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<sup>666</sup> Guraziu 2008 as above at 7.

<sup>667</sup> Guraziu 2008 as above.

<sup>668</sup> Gurazio 2008 as above.

<sup>669</sup> See Amin S ‘Regionalization in response to polarizing globalization’ in Hettne B, Inota A, and Sunkel O (eds.) *Globalism and the new regionalism* Vol. 1 1999 at 54.

will end up comparatively stronger.<sup>670</sup> Neo- realist also further argue that lack of domestic legitimacy to defend economic resources and scramble over these same inadequate resources, has forced the elite of most developing countries to seek cooperation with more powerful countries.<sup>671</sup> The argument basically assumes that the leaders of these political and economically inadequate countries feel that their problems, including the provision of scarce resources and the necessary security required to protect these resources can be resolved by resorting to regional cooperation and alliances.<sup>672</sup> The presupposition of this theory is that security threats often arise from ‘weaknesses in the domestic political economy’ as opposed to ‘more narrowly defined and autonomously generated political threats’ and that the leaders of these countries believe cooperation can resolve this.<sup>673</sup>

Neo-realists believe that any regional agreements entered into are first and foremost based on security issues, they emphasize that countries enter into these agreements by solely taking into account what they relatively stand to gain from the cooperation. For realist international and regional organizations are nothing but interstate institutions representing the visions of individual states that comprise them. This theory has been challenged for not taking into account the changing nature of international relations which to a large extent has been affected by the ‘globalization bug’ and in some situations regional or international cooperation is much more than just a result of seeking individual state gain. How about the EU do all states within the EU cooperate for eventual gain, or is it simply just about cooperation? The issue of regional cooperation within African states seems to also fall within the ambits of this argument. Most states in Africa lack the necessary legitimacy to operate for the populations and within the regions they find themselves in. This is usually because some of them come to power as a result of unconstitutional government changes, corruption, un-transparent elections or they lack popular legitimacy. Regional cooperation has been sought under such circumstances to create the appearance of legitimacy, as well as to strengthen security by shielding weaknesses in the domestic political economy.

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<sup>670</sup> Guraziu 2008 as above at 6.

<sup>671</sup> Guraziu 2008 as above.

<sup>672</sup> Guraziu 2008 as above.

<sup>673</sup> Guraziu 2008 as above.

#### 4.2.4 African consciousness (*Pan Africanism*)

When it comes to other theoretical frameworks for regional efforts existing today on the African continent, one cannot totally exclude the rise of African consciousness and the desire for Africans in Africa and Diaspora to cooperate in the quest for resolving issues collaboratively. African or black consciousness as it is sometimes referred to, has its roots in so many places besides Africa, but it is seen as a source of cooperation among African nations especially in immediate and post colonial Africa. The eventual outcomes and aims of the rise of pan- africanism are many and at times elusive, but the end result was to enable individual African states to achieve that which they had a hard time achieving individually. It was intended to bring-together African states in their quest for political, economic and social independence and progress.<sup>674</sup>

##### 4.2.4.1 Background to Pan-Africanism and African regional efforts

Pan africanism was not just a way of life, it was an ideology that later was regarded as a midwife to African integration. Pan-africanism is one of the first attempts on the African continent and in Diaspora to integrate not just African people, but their ideas, ideologies, as well as political and economic ambitions. For purposes of this work, it can be regarded as the earliest attempt in regional coordination in Africa. Pan Africanism has been defined or described varyingly. Dr Dubois in 1919 described it as an African movement, which meant to the Africans, what the Zionist movement meant to the Jews, it was to him a centralization of race effort and the recognition of the racial fount.<sup>675</sup> On the other hand, pan-africanism has been understood to mean the intellectual and political movements among Africans and Diaspora Africans. It encompasses all ideas which emphasize or seek cultural unity and political independence of Africa collaboratively. It also includes ideas or political movements which advocate for the political unity of Africa, at least close political collaboration in one form or another.<sup>676</sup> It was this perception that influenced the drive towards regional and eventually continental unity.<sup>677</sup>

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<sup>674</sup> Legum C *Pan Africanism: a short political guide* 1965 at 14.

<sup>675</sup> Legum 1965 as above.

<sup>676</sup> Geiss I *The Pan African movement* 1968 at 3.

<sup>677</sup> Geiss 1968 as above.

In the early 1960s, Africa had a common goal, which constituted liberation and ending colonialism. The continent and its young charismatic leaders embarked on a unified journey to achieve this. In the process pan-africanism was re-born on the African continent. This is evidenced by the movements to unionize Africa from the fifties. States then achieved independence and with it came responsibilities. There was no longer dependence on the colonial masters, to adapt quickly and survive a harsh new responsibility of being ‘sovereign’, the new African leaders decided that coming together and integrating politically, economically as well as ideologically would strengthen the continent and the young independent states.<sup>678</sup>

Several historical events that occurred in this era affected the eventual expansion and assumption of pan africanism as a continental framework of thought. This started with the Egyptian revolution of 1952-3, followed by the Algerian revolution of 1954-62, and the independence of Guinea in October 1958. Pan-africanism eventually assumed a regional identity, regional pan-african movements started to mushroom. In 1960, the year that was widely identified as the ‘year for Africa,’ the initial climax of pan-africanism seemed to have been reached. In one sweep approximately half the continent attained or was in the process of attaining political independence, through continental and regional efforts backed by Pan African solidarity.<sup>679</sup> These regional efforts were later in 1963 consolidated by the formation of the Organization of African Unity (OAU).

Fifty years on, most of the initiatives introduced during that era are still not complete. One of the biggest problems to face Africa as a result of liberation struggles, forced displacement, still exists and in a more complex manner. In as much as the initial regional efforts to address forced displacement were well meant, the issue has expanded and become more complex.<sup>680</sup> The initial exoduses by masses of people that occurred either as a result of liberation struggles, or state instability within the newly independent states called for an immediate continental response. These interstate exoduses have been replaced by in-state forced movements and are the new African dilemma. Various regional attempts have been adopted in Africa to address this new phenomenon and the level of their success or failure forms the foundational theme of this work.

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<sup>678</sup> Nye J Pan Africanism and East African integration 1966 at viii.

<sup>679</sup> Geiss 1968 as above at 421.

<sup>680</sup> Initial efforts were through the OAU Convention Governing Specific Aspects of the Refugee Problem in Africa of 1969.



#### 4.2.4.2 Regionalism and internal displacement-two steps forward one backward?

As observed above, attempts to regionally address political and economic issues in Africa materialized during African liberation struggles. These were later compounded by economic struggles faced by the then newly independent African states.<sup>681</sup> To better understand what these regional attempts entailed or represented and their outcome, one has to understand what ‘regionalism’ entails in the African context. In Africa regionalism has come to mean regional institutions and their corresponding set of legal frameworks. The issue then is whether it can be said that the relative increase in the number of regional institutions implies that they are equally as necessary and effective in Africa. Or does it just reflect the increase in the number of states internationally and the need to address some issues at a regional level? It can actually be summed up that the increase in regional blocks, does not have to necessarily reflect the increase in states, but it most definitely reflects the need for a closer cooperation within those groups of states, whose cooperation may be impossible, or lacking at the international community level.<sup>682</sup> It should also be noted that it is such underlying reasons for the formation of regional blocks, and the underlying political and economic pressures of the time, that influence the way regionalism and regional communities and their efforts are described and the roles they play especially in Africa.<sup>683</sup>

The study of regional organizations dates back to Second World War, and is highly related to the growth of international organizations.<sup>684</sup> But on the other hand, it can be said that regionalism has always been a part of the growth of states, from the establishment of empires within certain geographically defined regions, to the existence of spheres of influence, to the creation of unions of states in the international system. The nineteenth century was characterized by the existence of various unions, leagues and associations, which goes to prove that the idea of regional groupings is not very new.<sup>685</sup> In Africa, with the relative inexperience of the young African states, a few African statesmen suggested regional cooperation starting with the introduction of Pan African movements, and later developing to

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<sup>681</sup> Khadiagala G ‘Governing regionalism in Africa: themes and debates’ *Policy Brief* 2008 No. 51 at 2.

<sup>682</sup> Fawcett L ‘Regionalism and world politics: Past and present’ at <http://www.garnet-eu.org/pdf/Fawcett1.pdf> accessed on 20-04-2012 at 1

<sup>683</sup> Fawcett as above at 7.

<sup>684</sup> Fawcett as above at 4.

<sup>685</sup> Fawcett as above.

the creation of the African Union.<sup>686</sup> One African statesman is even renowned for his ambitious proposals to create an African Union Government.<sup>687</sup> Since the introduction of regional cooperation more than fifty years ago the concept has grown considerably, with some challenges, but nevertheless it has developed. In Africa it has been used as a tool to achieve economic independence from the West and Northern states, as well as a security tool.<sup>688</sup>

In matters of forced displacement and internal displacement specifically, regional cooperation has proved to be more than useful. It is necessary especially in regions of Africa with porous borders experiencing cross border conflicts and regional instability. Africa and particularly the Great Lakes region which has faced regional security threats for decades now, has come to rely a lot on regional mechanisms to prevent and at times resolve existing security threats. Whether reliance on such regional mechanisms has been overemphasized or has led to the erosion of state responsibility remains to be seen. The issue of whether these regional mechanisms and responses are effective in addressing issues resulting from internal displacement also remains to be seen.

There are a number of regional and sub regional organizations which have adopted the responsibility to protect internally displaced persons in Africa and within and around the Great Lakes Region specifically by virtue of their location. These include the African Union (AU), which replaced the Organization of African Union (OAU), the East African Community (EAC), the International Conference for the Great Lakes Region (IC/GLR), the Intergovernmental Authority for Development (IGAD) and to a small extent the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA).

#### 4.2.4.3 Africa's regionalism, sovereignty and responsibility to protect

One of the main features of the new institutional framework of the African Union is that all its members must observe certain fundamental values and standards, including respect for human rights, democratic governance and the discouragement of unconstitutional changes of

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<sup>686</sup> Khadiagala 2008 as above at 2 and 3.

<sup>687</sup> Kwame Nkrumah articulated the idea of an African Union Government in the 1960s, which was later very vigorously championed by the late Libyan leader Muammar Gaddafi.

<sup>688</sup> Khadiagala 2008 as above at 2.

government.<sup>689</sup> A state that fails to observe the above may face among others, political and economic sanctions.<sup>690</sup> The African Union's Constitutive Act, has shifted from focusing on the doctrine of the original Organization of African Union (OAU), which was non-interference to non-indifference in cases involving genocide, crimes against humanity and war crimes.<sup>691</sup> A co-relating duty has been placed upon states themselves to request intervention from the Union in order to restore peace and security where they are incapable of doing so themselves.<sup>692</sup> What has been achieved by this step is the re-conceptualization of the concept of absolute sovereignty exercised by members of the African Union and based in the African Charter of the Organization of the African Unity of 1963.<sup>693</sup> This re-conceptualization has further made it necessary to re-assert the self determination doctrine which in effect demands for the respect of people's sovereign rights over a state's sovereignty. As Depaigne puts it:

The sovereign is no longer the king, but the nation. Sovereignty is tied to human rights. The sovereign derives its legitimacy from the freedom and well being of its constituent parts, the individuals. This relation is reciprocal, human rights legitimize the sovereignty of a nation and, in turn, this sovereignty legitimizes human rights.<sup>694</sup>

The acknowledgement of responsibility to protect by African governments has evolved substantially especially after the Rwandan Genocide of 1994. Sub-Saharan countries, with the exception of Zimbabwe<sup>695</sup> were significantly avid supporters of the adoption of resolution 1674<sup>696</sup> which reaffirmed the UN World summit provisions regarding the doctrine of responsibility to protect.<sup>697</sup> Countries like Rwanda insisted on the 'necessity of collective R2P', whilst Benin 'signaled its full support' and Tanzania endorsed R2P insisting that 'when governments fail or are unable to offer such protection, we should have a collective

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<sup>689</sup> Kioko B 'The right of intervention under the African Union's Constitutive Act: from non-interference to non-intervention' *International Review of the Red Cross (IRRC)* 2003 Vol. 85 No. 852 at 807.

<sup>690</sup> African Union Constitutive Act 2000 Art 23 (2).

<sup>691</sup> African Union Constitutive Act 2000 Art 4(h).

<sup>692</sup> African Union Constitutive Act 2000 Art 4(j).

<sup>693</sup> Kioko 2003 as above at 807.

<sup>694</sup> Depaigne V 'Locating sovereignty, states, self determination and human rights' *The Bologna Center Journal of International Affairs* 2007 Vol. 10 Spring at 37.

<sup>695</sup> Bellamy 2009 as above at 113.

<sup>696</sup> On April 28 2006.

<sup>697</sup> Bellamy 2009 as above at 114.

responsibility to protect humanity'.<sup>698</sup> A similar view was shared by South Africa Ghana, and Republic of Congo.<sup>699</sup>

The above African support to responsibility to protect is seen in the way the Constitutive Act embraces the three levels of action prescribed by the report of the ICISS which was the pioneer of responsibility to protect. The prescribed levels of action include prevention, intervention and post conflict reconstruction.<sup>700</sup> The African Union Ministerial Committee of fifteen held in Swaziland in 2005 reiterated strong support for a reformed UN Human Rights Commission its closely related doctrine of 'responsibility to protect'.<sup>701</sup> In light of recommendations from the ICISS, with respect to providing prevention, protection and reconstruction to internal situations on the African continent, the Peace and Security Council (PSC) was created. The fifteen member council was created in 2004 to support prevention, management and resolution of conflicts on the continent. It functions as a form of collective security and early warning system that provides timely and effective responses by the AU to conflict situations. The PSC is a source of authority on intervention on the basis of civilian protection. Subsidiary bodies to the PSC, besides the , early warning system, include the panel of the wise, and Africa's standby force, the AU policy on post conflict reconstruction and development (PCRD). These institutional capacities of the AU's PSC are collectively the foundation for implementing the three dimensions of the responsibility to protect, namely prevention, intervention and post conflict reconstruction.<sup>702</sup>

The African Union has made significant legal and institutional efforts in terms of protecting citizens. The concept of the responsibility to protect still has a few loop holes when it comes to implementation.<sup>703</sup> Skepticism surrounds African peace keeping missions and it is argued that collective action by these efforts is limited both by resources and capacity.<sup>704</sup> Additionally, sovereignty is still a major concern for most African governments and has the potential to obstruct future attempts to promote collective action.<sup>705</sup> The responsibility to

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<sup>698</sup> Bellamy 2009 as above.

<sup>699</sup> Bellamy 2009 as above at 114, 115.

<sup>700</sup> Policy advisory group 2007 as above at 20.

<sup>701</sup> African Union Draft Recommendations at the Ministerial Committee of Fifteen on the Report of the High Level Panel on the Reform of the UN System 20-22 February, Mbabane, Swaziland , CTTE/15/Min/ReformUN/Draft/Recomm (I).

<sup>702</sup> Policy advisory group 2007 as above at 20.

<sup>703</sup> Policy advisory group 2007 as above at 21.

<sup>704</sup> Policy advisory group 2007 as above.

<sup>705</sup> Policy advisory group 2007 as above.

protect stands a better chance at comprehensively succeeding only if there is political will to implement existing national, regional and international standards and principles. Mere existence of legal and institutional capacities does not in itself guarantee adherence to such standards.<sup>706</sup> There is a great need for the African framework to reconcile its decisions with the cleavages that exist within its compliance mechanisms as well as the reality of responses on the ground. This can be achieved through prevention of conflict, promotion of transparency, facilitation of democratic governance and consensus on intervention measures where national governments have failed to perform accordingly.<sup>707</sup>

#### 4.2.4.4 African initiatives to intervene

The African Union, as a representative body of Africa has taken steps to address the impasses by re-conceptualizing ‘intervention’. This step was taken first of all to spell out where Africa stood as far as intervention stood, for the rest of the western world to understand the parameters of intervention within Africa. The proposal to re-examine the philosophical and legal bases for intervention was also supported by a growing need by African states to ensure the territorial integrity of the African continent, and the territorial integrity of individual African countries by framing African solutions for African problems.<sup>708</sup> But there was also another reason for this standpoint, and that was to re-address failures of some OAU policies as far as protection of civilians was concerned. Article 4 (h) of the African Union Constitutive Act was added to address concern by African heads of State and governments over The OAU’s failure to stop gross human rights violations that the continent had witnessed in the past.<sup>709</sup> There seemed to be an inability by African states and their regional governments to prevent and protect civilians within African states from terrible eventualities all in the sake on ‘non-intervention’.<sup>710</sup>

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<sup>706</sup> Policy advisory group 2007 as above.

<sup>707</sup> Policy advisory group 2007 as above.

<sup>708</sup> See Memorandum (EX/Assembly/2 (I) which states that ‘Taking into account that one of the objectives of the African Union is to promote the peace and security of the continent, when the proposal for the establishment of an Africa defense and security framework comes into being, there will be no need for agreements with non-African States. In any case, the Constitutive Act in Article 4(d) makes it clear that there has to be a common defense policy for the Africa Union’.

<sup>709</sup> These include regimes of Idi Amin in Uganda which left hundreds of thousands dead and millions displaced, the Bokassa regime in Central Africa and of course the genocide in Rwanda.

<sup>710</sup> In similar light President Museveni in his 1986 maiden speech to the to the 22<sup>nd</sup> Ordinary Session of the OAU Heads of State and Government in Addis Ababa, Ethiopia, accused the OAU for condoning by silence the massacre of over three quarters of a million Ugandans at the hands of their governments; In the same light as President Museveni, President Aferweki of Eritrea reiterated OAU’s failure to protect the civilians of Africa who were being murdered and abused within their countries.

The African Union Assembly which is the supreme organ<sup>711</sup> of the Union was responsible for deciding on aspects of intervention as provided by article 4 (h). It provides that intervention should take place in respect of war crimes, genocide, and crimes against humanity. The Protocol amending the Constitutive Act, in addition to provisions of article 4 (h), provides for intervention where there are ‘any serious threats to legitimate order or to restore peace and security to the Member State of the Union upon the recommendation of the Peace and Security Council (PSC)’.<sup>712</sup> This provision of the amending protocol allows the PSC to make recommendations to the Union’s Assembly to intervene where the necessary provisions for intervention do not apply but the circumstances require it.<sup>713</sup>

This raises theoretical questions, as to how a decision is made that circumstances warrant intervention falling outside the provisions of article 4(h). Would circumstances involving total breakdown of law leading to massive displacements warrant such intervention? How about post election violence resulting from un-transparent election results? This provision has left a gap in the means to interpret it. There has been concern that it could have been enacted out of concerns to protect regimes as opposed to protect people during such upheavals.<sup>714</sup> But I would like to disagree, the provision seems highly relevant for internal disturbances that while not amounting to genocide or crimes against humanity or war crimes, endanger civilian lives.<sup>715</sup> In situations similar to the violence that took place in Kenya during post election violence where hundreds of thousands were displaced and thousands killed something should be done. In a situation where the governments’ legitimacy is questioned by its own people, then the Union can and should intervene to restore order and protect lives. This provision seems relevant to the modern African State which is at times incapable of managing its territory, or refuses to do so in certain areas.<sup>716</sup>

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<sup>711</sup> Article 6 of the African Union Constitutive Act of 2000 as above.

<sup>712</sup> Kioko 2003 as above at 815.

<sup>713</sup> These necessary conditions being genocide, war crimes and crimes against humanity.

<sup>714</sup> Sturman K and Baimu E ‘Amendment of the African Union’s right to intervene: a shift from human security to regime security’ *African Security Review* 2003 Vol. 12 No. 2 at 5.

<sup>715</sup> The process should be directed by fundamental values and standards set up in Constitutive Act, the African Peer Review Mechanism (APRM) and the Solemn Declaration and Memorandum of Understanding under the Conference on Security, Stability, and Development in Africa (CSSDCA).

<sup>716</sup> Intervention in such circumstances might be supported by popular public opinion (from organs that are composed of social and professional groups from member states such as the Pan African Parliament and the Economic, Social and Cultural Council) that it conforms to hopes and aspirations of the African people.

### 4.3 Evolution of regional responses to internal displacement in Africa and the Great Lakes (legal and institutional)

#### 4.3.1 The OAU/AU and (internal) displacement

The OAU was created to address issues on the African continent that had arisen during and after the attainment of independence by African states. The issue of forced displacement and resulting refugee-hood was one of the key problems facing the newly independent African states. After the creation of OAU, and closely related to the struggle for independence by African states, was the creation of the Coordinating Committee on Assistance and Protection to Refugees and Internally Displaced People (CCAR).<sup>717</sup> The committee was a manifestation of continuing efforts by the African continent and its leaders to address the issue of forced displacement. The OAU, had initially in 1964 established the OAU Commission of ‘ten’ which later evolved into the Commission on Refugees, currently known as the AU Permanent Representative’s Committee- Sub Committee on Refugees (PRC-Sub Committee on Refugees).<sup>718</sup>

In 1968, after it became evident that the problem of forced displacement required a much more concerted effort, the OAU’s Council of Ministers additionally established the CCAR. The duties of the newly formed CCAR included assumption of functions of coordinating and harmonizing the disparate efforts of various actors in the field with common objectives.<sup>719</sup> The priority areas of intervention at the time included education, which proved useful in preparing refugees for national responsibilities upon their return. This initiative was an institutional preparation for the ground breaking OAU convention governing specific aspects of the refugee problem in Africa that was enacted the following year.<sup>720</sup> Of course as seasons changed, so did the effectiveness of the OAU and its organs. Eventually when OAU gave way to a revitalized AU, some institutions were phased out while others became part of the new AU. Under the AU, the following organs in one way or the other are deemed responsible for the plight of displaced persons, including internally displaced persons.

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<sup>717</sup> It was created in 1968.

<sup>718</sup> UNHCR Press ‘Revitalizing the AU Coordinating Committee on Assistance to Refugees, Returnees and Internally Displaced Persons-a timely agenda’ Friday 17<sup>th</sup> November 2006 at [www.unhcr.org/AfricanNews/News%20Archive2.aspx?id=786](http://www.unhcr.org/AfricanNews/News%20Archive2.aspx?id=786) accessed on 15-04-2012.

<sup>719</sup> UNHCR Press 2006 as above.

<sup>720</sup> 1969.

Whether they are actually effective in carrying out these responsibilities still stands to be proved. The following organs and legal frameworks have such responsibility:

#### 4.3.1.1 The role of the African Union Commission on Human and People's Rights (ACHPR)

The Commission was established under article 30 of the African charter<sup>721</sup> and is charged through article 45 with three major functions, including the promotion of human and people's rights, protection of such rights as well as the interpretation of the African charter.<sup>722</sup> The ACHPR allows NGOs to have observer status and is mandated to cooperate with African and international institutions in promoting and protecting human and people's rights.<sup>723</sup> This mandate extends to discussions and concerns involving even IDPs. Additionally the ACHPR has on a couple of occasions received submissions dealing with complaints over arbitrary displacement. This means it is a genuine forum for addressing matters of internal displacement on the continent and should act as or is the only monitoring and enforcement mechanism for the African IDP convention.<sup>724</sup> NGOs or other concerned persons or groups may bring complaints to the commission involving violations of human rights through or as a result of displacement.<sup>725</sup> One function of the ACHPR as already stated above includes monitoring of state parties' implementation of their human rights obligations as set out in the African charter.<sup>726</sup>

The charter requires that states submit reports every two years on the legal and other measures taken to implement it.<sup>727</sup> State parties to the charter are required in addition to include in their report to the ACHPR information on the legislative and other measures taken to effect the IDP convention.<sup>728</sup> This provision is an additional legal mechanism that ensures that states comply with their duties under the Kampala convention as well as under the

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<sup>721</sup> The African Charter on Human and People's Rights, OAU Doc. CAB /LEG/67/3 rev. 5, 21 ILM 58 (1982), 27<sup>th</sup> June 1981 (entered into force on 21<sup>st</sup> October 1986).

<sup>722</sup> African Union Economic Social and Cultural Council and Internal Displacement Monitoring Center (AU-ECOSOCC and IDMC) *Making the Kampala Convention work for IDPs: Guide for civil society on supporting the ratification and implementation* July 2010 at 21.

<sup>723</sup> Nyanduga T 'The role of African Commission on Human and People's Rights in addressing internal displacement' (unpublished) *1<sup>st</sup> Regional Conference on Internal Displacement in West Africa* 26-28 April 2006 at 3.

<sup>724</sup> Article 12 of the African Charter in particular recognizes the right to leave and return to one's state as well as the right to seek asylum in accordance with national and internal law. This right can be extended to include other rights such as freedom of movement and residence in the case of IDPs.

<sup>725</sup> Article 45 (2) of African Charter 1981 as above.

<sup>726</sup> Article 62 of the African Charter 1981 as above.

<sup>727</sup> Article 62 of the African Charter 1981 as above.

<sup>728</sup> See Article 14 (4) of Kampala IDP Convention 2009 as above.



provisions of the African charter hence ensuring maximum protection for IDPs on the continent. The concluding observations that are released by the ACHPR after consideration of submission of state party reports to the commission, usually reflect positive or negative steps taken by the government.<sup>729</sup> Through such observations recommendations are made to state parties and these can be very useful for future reference.<sup>730</sup>

In matters involving internally displaced persons, these concluding observations can also be a form of peer review in terms of state party's fulfillment of obligations towards the displaced. The recommendations of the commission are also useful in directing states on what future actions can be taken in terms of addressing internal displacement or other related matters effectively and in conformity with the commission's promotion, protection and interpretation of human and people's rights under the African charter.<sup>731</sup> The only setback is that decisions and recommendations of the commission are not binding upon states. Additionally, from the investigations and missions carried out by the commission, there is bad record on the efficacy of human rights mechanism implementation and domestic incorporation.<sup>732</sup>

Nevertheless, in exercising the protection mandate under the communication procedure for individual complaints, the commission has over the years interpreted the charter to determine violations of the charter obligations by state parties.<sup>733</sup> It has also been a forum for accountability and the charter has formed a basis for individuals to claim rights in an international forum.<sup>734</sup> In the context of displacement related issues the commission has made a number of decisions.<sup>735</sup> Although Property rights or any other rights in situations of displacement have never been previously addressed specifically, they were applied in a number of submissions before the commission including, under a generous standing rule

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<sup>729</sup> AU-ECOSOCC and IDMC 2010 as above at 21.

<sup>730</sup> AU-ECOSOCC and IDMC 2010 as above.

<sup>731</sup> AU-ECOSOCC and IDMC 2010 as above.

<sup>732</sup> Nyanduga 2006 as above at 6.

<sup>733</sup> Nyanduga 2006 as above.

<sup>734</sup> African Commission on Human and People's Rights (ACHPR) and Center for Human Rights-University of Pretoria CHR-UP) *Celebrating the African Charter at 30: A guide to the African Human Rights System* 2011 at 7.

<sup>735</sup> ACHPR and CHR-UP 2011 as above at 7; See also communications arising out of the Darfur conflict.

before the commission.<sup>736</sup> The African commission applied such rights under the charter to a case about refugees in Malawi.

It also made similar considerations in the African Commission (social and economic rights action center (SERAC-) vs Nigeria (Ogoni case). In this decision Nigeria was found in violation of the African convention on human and people's rights in connection with the actions of its armed forces in forcing Ogoni people from their homes, destroying their farmlands and sowing terror. This was a case related to arbitrary displacement as a result of environmental degradation and subsequent displacement to make room for oil exploration. The ACHPR interpreted unusual rights contained in the charter to protect the internally displaced communities. Through the doctrine of 'implied rights', the court interpreted the right to life and health to include the right to food. The commission also implied the right to housing and shelter from the right to property and protection of the family and indirectly elaborated the actions as state violation of social economic rights of displaced populations.<sup>737</sup>

In another ground breaking decision, the commission pronounced on the right to development under the African Charter, and through this pronouncement, directed and obligated the Kenyan government to reinstate the forcibly displaced indigenous communities of Endorois to their ancestral land. The Kenyan government had forcibly removed the Endorois people, an indigenous community from their ancestral land around Lake Bogoria region without proper consultation or compensation.<sup>738</sup> The rights protected in this submission were two fold as far as internal displacement of communities is concerned. First of all the commission recognized the right to development under the Charter. Secondly this was an indirect recognition of a right which is also protected under the AU IDP Convention as a prohibition of arbitrary displacement caused by ill conceived development projects that

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<sup>736</sup> *Malawi African Association and Other vs. Mauritania*, ACHPR Comm. No. 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98 (2000) available at [www1.umn.edu/humanrts/Africa/comcases/54-91.html](http://www1.umn.edu/humanrts/Africa/comcases/54-91.html) accessed on 12-10-2011.

<sup>737</sup> '...Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to...health the right to property, and the protection accorded to the family forbids wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected...[T]he combined effect of articles 14, 16 and 18 reads into the Charter a right to shelter or housing...'; See para. 57, 60, and 65 of *SERAC vs. Nigeria* (2001) AHRLR 60 (ACHPR 2001).

<sup>738</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council vs. Kenya* (2009) AHRLR 75 (ACHPR 2009).

are not subject to ‘overriding and compelling public interest, especially with respect to communities that have a special attachment to land.’<sup>739</sup>

#### 4.3.1.2 ACHPR’s Special Rapporteur on Refugees, asylum seekers, IDPs and migrants

The African commission has 11 members at any one given time.<sup>740</sup> One of these commissioners is also the special rapporteur on refugees, asylum seekers, IDPs and migrants.<sup>741</sup> The special rapporteur’s mandate includes among other things seeking, examining and acting upon information on the situation of refugees, asylum seekers and internally displaced persons in Africa.<sup>742</sup> He is also responsible for undertaking studies, research and related activities to facilitate ways on how to maximize the protection of the vulnerable displaced.<sup>743</sup> To successfully ensure this the special rapportuer has undertaken fact finding visits, investigations and other activities to areas affected by displacement and he has disseminated information regarding the obligations of the African Union.<sup>744</sup> During these visits the rapporteur also engages dialogues with member states as well as National Human Rights Institutions and other relevant intergovernmental and non-governmental bodies, regional and international organizations involved in the promotion and protection of displaced persons rights in Africa.<sup>745</sup> In addition to fact finding missions the rapporteur provides assistance to AU states by co-developing relevant policies, regulations and laws aimed at facilitating protection of refugees, asylum seekers And IDPs in Africa.<sup>746</sup>

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<sup>739</sup> There was also a provision against displacement induced by lack of development in the initial draft which was later dropped, but there are similar provisions in final document; See Abebe 2010 as above at 35; See also Annotated Outline of the Draft Legal Framework for the Protection and Assistance of Internally Displaced Persons in Africa, AU/EXP/HARDP/2 (V-ii), at 1; See also related article 10, article 4(5), article 3(1) (i) and 3(1) (b) of the AU IDP Convention 2009 as above.

<sup>740</sup> See article 31(1) of the African Charter 1981 as above.

<sup>741</sup> The special rapporteur mechanism was created through a resolution adopted during the 35<sup>th</sup> session of the African Commission in May 2004. The mandate was established to highlight the human rights concerns of IDPs.

<sup>742</sup> See AUC Resolution of the 36<sup>th</sup> Ordinary Session on Human and People’s Rights, Dakar, Senegal 7<sup>th</sup> December 2004.

<sup>743</sup> ACHPR Resolution on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, 7<sup>th</sup> December 2004 at [http://achpr.org/english/info/rdp\\_res1.html](http://achpr.org/english/info/rdp_res1.html) accessed on 21-01-2012.

<sup>744</sup> Nyanduga T Report of Commissioner to the 45<sup>th</sup> Ordinary Session of the ACHPR, Special Rapporteur on Refugees, Asylum Seekers, IDPs and Migrants in Africa for the period of November 2008-May 2009 Banjul, Gambia.

<sup>745</sup> Nyanduga 2009 as above.

<sup>746</sup> Nyanduga 2009 as above.

All the above initiatives are complemented by the compilation of reports on the human rights of the displaced, returnees or migrants in the particular area. These reports are submitted at every ordinary session of the African commission that deals with matters of refugees, asylum seekers and internally displaced persons in Africa.<sup>747</sup> After reporting to the ACHPR the rapporteur also partakes in the process of ensuring that his recommendations are implemented by member states, thus playing a follow up role.<sup>748</sup> It is this ability to check on and monitor the suggested processes of strengthening protection that has made the office of the special rapporteur even more effective in terms of protecting displaced persons on the continent.

During his appointment, Ambassador Tom Bahame, Nyandunga, a former Commissioner of the African Union conducted fact finding missions to various areas in Africa and reported back on the situations prevailing in the particular states.<sup>749</sup> This designation is a reflection of the broad recognition among states that problems of internal displacement are no longer purely a matter of national concern.<sup>750</sup> His mandate is also regarded as a review mechanism to keep checks on African governments as far as the human rights of the displaced populations are concerned. The mandate of the special rapporteur on refugees, asylum seekers and IDPs has additionally raised awareness and promoted the implementation of the 1951 UN Convention on Refugees as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the new African Union Convention on IDPs.<sup>751</sup>

The only set back is that the mandate holder has limited staff and continuously seems over stretched and under resourced.<sup>752</sup> Additionally, the effectiveness of the Special rapporteur is undermined by lack of institutional coordination between the AU Secretariat and AU commission.<sup>753</sup> Lastly since the majority of IDPs are found in Africa, and their vulnerability and displacement is caused by armed non-state actors, it would seem ideal for the special rapporteur to engage with them as well in his fact finding missions something that has not

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<sup>747</sup> Nyanduga 2009 as above.

<sup>748</sup> Nyanduga 2009 as above.

<sup>749</sup> Nyanduga 2009 as above.

<sup>750</sup> See more information on the Special Rapporteur at [www.achpr.org/english/info/index\\_rdp\\_en.html](http://www.achpr.org/english/info/index_rdp_en.html) accessed on 15-04-2012.

<sup>751</sup> AU-ECOSOCC and IDMC 2010 as above at 22.

<sup>752</sup> Abebe A 'The African Union convention on internally displaced persons: its codification, background, scope and enforcement challenges' *Refugee Survey Quarterly* 2010 Vol. 29 No. 3 at 54.

<sup>753</sup> Abebe 2010 as above.

been done.<sup>754</sup> It is also surprising that, despite their non-involvement, they are expected to be bound by various protection instruments of the African Union.

#### 4.3.1.3 The Coordinating Committee on Assistance and Protection to Refugees (CCAR)

African Union, the successor to the OAU, inherited the problem of forced displacement on the continent. With it came inadequate and dysfunctional organs and institutions set up previously to deal with the problem. The Sub Committee on Refugees, Returnees and Displaced Persons of the AU Permanent Representatives Committee (PRC) was inherited from the former OAU. It is regarded as the highest specialized advisory body of the African Union, with a membership of all the 53 members of the African Union. A forced displacement advisory body was also established to supplement its functions, it's called the CCAR.<sup>755</sup> This body was initially part of the OAU, its function then and now is clearly set out. Whether that function was effective is a question that remains to be answered by this work. Whether the Committee managed to address the practical mechanisms and the need for strategy which were required to coordinate programmes responsible for the protection and assistance to the ever increasing tide of the forcibly displaced is also still questionable.<sup>756</sup>

The committee had its strong points which allowed it to carry out these functions. Some of the notable strengths include: Its unique role as the only body within the OAU to bring key partners in the field of humanitarian assistance together; Its capacity to shed light on OAU programmes and activities responsible for refugees and internally displaced persons was also commendable; its ability to provide NGOs with a forum for advocating for refugee and IDP issues was progressive; as well as its ability to provide the OAU with a chance to draw expertise, funding and experience from other organizations that the CCAR coordinated with, and affording OAU a chance to meet donors.<sup>757</sup> The committee's responsibilities have evolved over the years, more so because, the original purpose for which it was created has fallen away. Liberation struggles and colonialism as a common enemy to African states, no

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<sup>754</sup> Zeeder G 'Engaging non-state actors on internally displaced persons protection' *Refugee Survey Quarterly* 2005 Vol. 24 Issue 3 at 109.

<sup>755</sup> In 1968 the OAU Council of Ministers established the CCAR to assume the functions of coordinating and harmonizing disparate efforts of the various actors in the field of forced displacement.

<sup>756</sup> African Union 'The Coordinating Committee on Assistance and Protection to Refugees, Returnees and Internally Displaced Persons (CCAR): A new focus to meet the challenges of a changed humanitarian environment' 2005 at 1.

<sup>757</sup> AU-CCAR 2005 as above at 2.

longer exist.<sup>758</sup> It should be noted that the committee's responsibilities did not totally fall away, the priorities simply changed. Post independence dynamics on the African continent have been characterized by internal conflicts resulting in massive movements of people within and out of states, so the committee still has responsibility towards people internally displaced.

The CCAR is still a recognized platform for follow up on AU mechanisms such as the AU convention for IDPs.<sup>759</sup> It also promotes more positive policies on refugees, returnees and IDPs, as well as being involved in prevention and protection from displacement at the earliest point of conflicts. It also still advises the bureau of the PRC Sub-Committee on refugees, returnees and IDPs. The PRC reports to the AU Executive council which in turn means the CCAR indirectly provides an avenue for bringing matters concerning the displaced to the attention of the Executive council.<sup>760</sup> This means that through the CCAR forum issues of displacement can be brought to the attention of decision making organs of the African Union.<sup>761</sup> The CCAR is also a good forum for bringing together NGOs, AU and its partners, UN agencies, practitioners and decisions makers in the field of prevention and response to forced displacement.<sup>762</sup> This does not only reiterate the relevance of the committee in policy formulation, but also sets it as an effective vehicle for resource mobilization and advocacy on behalf of refugees and IDPs.<sup>763</sup>

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<sup>758</sup> UNHCR Press release 2006 as above at 'Revitalizing the AU-Coordinating Committee on Assistance to refugees, returnees and IDPs -a timely agenda' Addis Ababa Friday 12<sup>th</sup> November 2006 at 1.

<sup>759</sup> AU-ECOSOCC and IDMC 2010 as above at 22.

<sup>760</sup> AU-ECOSOCC and IDMC 2010 as above.

<sup>761</sup> AU-CCAR 2005 as above at 5.

<sup>762</sup> AU-CCAR members include the UNHCR, ILO, ECA, WHO, UNESCO, All Africa Conference of Churches, Amnesty International, Catholic Relief Services, CARITAS International, Lutheran World Federation, World Council of Churches, World University Services, International Council of Voluntary Agencies, Commonwealth Secretariat, and the Association of African Universities; Observers include African Alliance, of Young Men's Christian Association, African Rehabilitation Institute, Pastoral and Environmental Network in the Horn of Africa, International Committee of the Red Cross, Refugee Council, Refugee Studies Programme, World Islamic Society Call of the Great Socialists Peoples' of the Libya Arab Jamahiriya, Jesuit Refugee Services, Federation of the Red Cross and Red Crescent Societies, *Medecins Sans Frontieres*, Otto Benecke Stiftung, Young Women Christian Association, African Refugee Foundation, African Humanitarian Institute, Pan African Youth Movement and the United Nations Office for the Coordination of Humanitarian Affairs.

<sup>763</sup> Tigere P and Amukhobu R 'The African Union's institutional framework for responding to forced displacement in Africa' Policy Review, *Conflicts Trends* 2005 Issue 3 at 53.

#### 4.3.1.4 The AU (Permanent Representative Committee) PRC Sub-Committee on Refugees, Returnees and IDPs

As the nature of forced displacement in Africa changed dramatically on the continent from situations of external displacement to those of internal displacement, the new African organ had to adapt to this as well. Having a unit within the OAU that addressed general issues of refugees, returnees and the internally displaced was not sufficient. It became obvious that the existing legal framework were not effective anymore. The OAU Refugee Convention of 1969 dealing with specific aspects of Refugee Problems in Africa, as well as its Protocol, and the International Refugee Convention of 1951 seemed inadequate to address the issue of displacement on the African continent.<sup>764</sup> The African Union has inherited most of the problems that were borne by its predecessor. New ways of addressing existing problems have had to be adopted. One of the main issues it has had to tackle is 'internal displacement'. The African Union has had to deal with various situations of mass displacements, together with its organs. The African Commission on Human and People's Rights and the corresponding African Court of Justice and the Peace and Security Council have had a key role to play.

The African Union has made the issue of refugees part of its agenda in its bi-annual summit.<sup>765</sup> The African Union Commission reports to the leaders of Africa on matters relating to the development of situations of refugees, returnees and IDPs every six months.<sup>766</sup> Decisions and declarations are made during this summit with regard to the response to matters of forced displacement. The AU has a Permanent Representatives Committee (PRC) which is made up of representatives from all 53 AU member states.<sup>767</sup> The AU Permanent Representatives' Committee has established a Sub-Committee on Refugees, returnees and Internally Displaced Persons.

The PRC-Sub committee is composed of the same membership as the AU-PRC. The sub-committee meets periodically almost two or three times a year to review developments relating to refugees and other displaced persons, pursuant to which recommendations are

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<sup>764</sup> Fontaine P 'The governance of the refugee problem in Africa: a research agenda' *Refugee Survey Quarterly* 2006 Vol. 25 Issue 4 at 3.

<sup>765</sup> African Union 'Structures covering humanitarian affairs in the African Union' <http://www.au.int/en/dp/pa/forum> accessed on 14-05-2012.

<sup>766</sup> African Union structures as above.

<sup>767</sup> AU-ECOSOCC and IDMC 2010 as above at 26.

made with regard to action to be taken by AU organs and member states.<sup>768</sup> The PRC-Sub committee has a bureau of five member states, one from each of the five AU regions. This bureau represents members of the AU PRC Sub-Committee by undertaking ambassadorial level field missions to countries that are plagued by the refugee and internal displacement crisis, and offers AU support, reviews major challenges, and proposes interventions where it deems necessary.<sup>769</sup> These field visits are closely supported by the UNHCR.<sup>770</sup> UNHCR through its liaison office to AU also happens have observer status at the PRC- Sub committee.<sup>771</sup>

#### 4.3.1.5 The Humanitarian Affairs, refugees and Displaced Person's Division (HARDP)

The new African Union is divided into various departments. The Department of political affairs, happens to be responsible for dealing with IDPs in Africa. The department has remained one of the central departments of the African Union since its inception in 1963. Its functions include democratization, governance, human rights and the rule of law. The mandate was intended to contribute to the promotion of a political environment within and among African countries, as well as internationally in order to promote sustainable development and accelerate economic integration of the continent.<sup>772</sup>

Within the Department of political affairs is the Humanitarian Affairs, Refugees and Displaced Persons Division (HARDP). This section is based on the OAU 1969 Convention governing specific aspects of the refugee problem. The HARDP division has been involved in monitoring refugee and internal displacement through various projects, including conducting country visits to member states affected by internal displacement and refugees, participating in meetings and seminars, as well as monitoring humanitarian crises that are capable of producing mass population displacements on the continent.<sup>773</sup>

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<sup>768</sup> AU-ECOSOCC and IDMC 2010 as above.

<sup>769</sup> AU-ECOSOCC and IDMC 2010 as above; African Union structures as above.

<sup>770</sup> African Union structures as above.

<sup>771</sup> AU-ECOSOCC and IDMC 2010 as above at 26.

<sup>772</sup> African Union 'Political Affairs Department' at [http://www.africa-union.org/Structure\\_of\\_the\\_Commission/depPOLITICAL%20AFFAIRS%20DIRECTORATE.htm](http://www.africa-union.org/Structure_of_the_Commission/depPOLITICAL%20AFFAIRS%20DIRECTORATE.htm) accessed on 12-03-2011 at 1.

<sup>773</sup> African Union: Political Affairs Department as above at 2.



Other functions include the provision of assistance in collaboration with other departments and any relevant organizations to the immediate groups of refugees, displaced persons and, or any groups of victims of other humanitarian crisis. The division is also responsible for harmonizing policies and activities among countries and Regional Economic Communities, including the repatriation and resettlement of displaced persons. The division further promotes cooperation with relevant regional and international organizations. It promotes international and humanitarian law, as well as seeking durable solutions to the root causes of refugees and displaced persons in Africa.<sup>774</sup>

The division has conducted various country visits to a number of countries in Africa plagued by the problem of refugees and displacement. Between November 2002 and May 2003, the African Union Commission on Refugees and other AU commissions undertook missions to various African countries that had been facing grave humanitarian crises involving displacement. The missions involved evaluating the humanitarian situation on the ground, assisting the affected situations, and raising awareness about the existing crises to the international community. The countries visited included Algeria, Cote d'Ivoire, Guinea, Mali, Burkina Faso, Ghana, Sudan, Chad, Republic of Congo and the Democratic Republic of Congo.<sup>775</sup>

What still remains questionable is the effect of these visits, how do field trips of the African Union commission, of the humanitarian division aid internally displaced persons? It is very obvious that some of the places visited above, for instance Chad, the Republic of Congo, and the Democratic Republic of Congo are highly plagued by the crisis of internal displacement. Shouldn't the duties of these field missions extend further than simply just raising awareness and evaluating the humanitarian crisis on the ground?

The division is the operational unit of the AU Commission and it acts as a secretariat to all organs on forced displacement matters.<sup>776</sup> The division facilitates activities of such organs, as well as decision making, policy development and general discussion forums on matters related to forced displacement. The division also coordinates the interface between

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<sup>774</sup> See African Union 'Humanitarian affairs, refugees and displaced persons division (HARDP)' at [http://www.africa-union.org/Structure\\_of\\_the\\_Commission/Political%20Affairs/x/Humanitarian%20Affair.pdf](http://www.africa-union.org/Structure_of_the_Commission/Political%20Affairs/x/Humanitarian%20Affair.pdf) accessed on 14-05-2012.

<sup>775</sup> AU-HARDP as above at 4.

<sup>776</sup> Tigere and Amokhobu 2005 as above at 53.

humanitarian actors and the decision making organs of the union in all matters related to forced displacement. It has also launched an inaugural African report on forced displacement, and taken responsibility for advocating for inclusion and provision of educational opportunities to African refugees and IDPs.<sup>777</sup> The division in the process of expanding and effectively responding to forced displacement, played an important role in the elaboration and adoption of a legal framework for the protection and assistance to internally displaced persons.<sup>778</sup>

### *African Union legal Mechanisms*

The AU's work of addressing the problem of forced displacement is governed by legal architecture that can be found in various African legal instruments and policy decisions of organs of former OAU, currently AU.<sup>779</sup> It has been developed over forty years through a series of trial and errors. One thing that highly defines the initiatives to protect the displaced in Africa is that they have always been ground breaking and progressive not to mention standard setting. The existing legal frameworks providing for forced displacement include Ministerial Declarations, Resolutions, Executive Council decisions, and legally binding treaties related to forced displacement and other humanitarian situations that are of concern to AU.<sup>780</sup>

These treaties have been shaped by common African conceptions and perceptions of status and the role of individuals within society, as well as the obligation of individuals towards social groups that confer identities upon them.<sup>781</sup> African frameworks for forced displacement have also borrowed from international mechanisms and ideologies of human rights, but they have been enriched by African cultures and the understanding of basic rights of protection. These frameworks include the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1981 African Charter on Human and People's Rights, and the 1999 African Charter on the Rights and Welfare of the Child and related Protocols.<sup>782</sup> The elaboration of a legal framework for the protection of IDPs has been an

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<sup>777</sup> Tigere and Amokhobu 2005 as above.

<sup>778</sup> Tigere and Amokhobu 2005 as above.

<sup>779</sup> Tigere and Amokhobu 2005 as above at 49.

<sup>780</sup> Tigere and Amokhobu 2005 as above.

<sup>781</sup> Tigere and Amokhobu 2005 as above.

<sup>782</sup> Tigere and Amokhobu 2005 as above.

additional ground breaking initiative to address issues of forced displacement on the continent.

#### 4.3.1.6 Convention for the Protection and Assistance of Internally Displaced Persons in Africa

In October 2009, at the Special Summit on Refugees, Returnees and IDPs, the African Union adopted the first ever binding legal framework providing for the protection of internally displaced persons worldwide.<sup>783</sup> The convention has been described as ground breaking<sup>784</sup> and a landmark legal<sup>785</sup> contribution to the evolving protection framework for IDPs.<sup>786</sup> The convention is a comprehensive legal document covering all phases of displacement from prevention, to protection, assistance and durable solutions.<sup>787</sup> It also embraces all causes of internal displacement including armed conflict, generalized violence, violations of human rights, natural or human made disasters and development projects.<sup>788</sup> Additionally the convention recognizes the distinctive African circumstances hence recognizing harmful practices as a cause of displacement as well.<sup>789</sup>

The provision covering development projects is provided in article 10 of the convention.<sup>790</sup> It is a unique provision considering other instruments such as the Guiding Principles avoided an exclusive provision by limiting provision of development induced displacement to the list

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<sup>783</sup> The African Convention on IDPs 2009 as above.

<sup>784</sup> News and Media 'New treaty for internally displaced persons in Africa', UN Office, Geneva, 23 October 2009 at [http://www.unog.ch/website/news\\_media.nsf/httpNewsByYear\\_en7BC75F3CB532CE63C125765800371677?OpenDocument](http://www.unog.ch/website/news_media.nsf/httpNewsByYear_en7BC75F3CB532CE63C125765800371677?OpenDocument) accessed on 12 March 2012.

<sup>785</sup> Refugee International, 'New African Union Convention Protects Internally Displaced Persons' 26 October 2009 at <http://www.refugee.international.org/node/3848> accessed on 12 March 2012.

<sup>786</sup> Solomon A 'An African solution to internal displacement: AU leaders agree to a landmark convention', Brookings-Bern Project on Internal Displacement, Washington DC 23, October 2009 at [http://www.brookings.edu/papers/2009/1023\\_african\\_union\\_solomon.aspx](http://www.brookings.edu/papers/2009/1023_african_union_solomon.aspx) accessed on 12 March 2012.

<sup>787</sup> Abebe 2010 as above at 45.

<sup>788</sup> AU-ECOSOCC and IDMC 2010 as above at 13.

<sup>789</sup> Abebe 2010 as above at 46 and 43; Article 1 of the Convention defines harmful practices as 'all behaviour, attitudes and or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education'.

<sup>790</sup> Article 10 (1-3) provides that state parties must do their best to prevent displacement caused by projects carried out by public or private sectors, they must ensure that the stake holders explore all feasible alternatives whilst fully informing and consulting with the persons likely to be displaced by these projects, lastly a socio-economic and environmental impact of the projects must be assessed prior to their undertaking.

of forms of displacement considered as arbitrary.<sup>791</sup> On the other hand the Great Lakes Protocol has even included development induced displacement as one of the causes of displacement listed within the definition of internal displacement.<sup>792</sup> It is understandable that the limitation of reference to development induced displacement within the Guiding Principles was an attempt to avoid over-extension of the definition. The African Union IDP convention has recognized that development induced displacement is specific to African conditions. Even though not well documented, it is one of the main causes of displacement in developing countries.<sup>793</sup> This inadvertently means the attention placed upon it is not unwarranted.

Some of the aims of the convention have been to promote and strengthen regional and national frameworks for the prevention of internal displacement, its mitigation, protection, assistance and the finding of durable solutions as well as the prohibition and elimination of its root causes.<sup>794</sup> Under the convention such duty lies primarily with the concerned member state.<sup>795</sup> However the convention has made a provision, that in situations where the state is either unwilling or unable to effectively carry out these obligations, it is expected to seek, enable and facilitate the assistance of the African Union, international organizations and humanitarian agencies.<sup>796</sup> Article 4(h) of the African Union Constitutive Act which is the basis of the provision provides similarly that, the union has the right to intervene into a member state's affairs in respect of exceptional grave circumstances of (arbitrary displacement) amounting to war crimes, genocide, and any crimes against humanity.<sup>797</sup>

Additionally the Protocol relating to the Establishment of the Peace and Security Council of the African Union has specific reference to IDPs.<sup>798</sup> This protocol provides for a

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<sup>791</sup> Principle 6 (2) (c) of the Guiding Principles on Internal Displacement 1998 as above.

<sup>792</sup> Article 1(5) of the Great lakes IDP Protocol 2006 as above.

<sup>793</sup> Cernea M 'Development-induced and conflict induced IDPs: bridging the research divide' *Forced Migration Review* 2006 Special Issue 27 at <http://www.fmreview.org/pdf/cernea.pdf> at 2 accessed on 09-12-2010; Internal Displacement Monitoring Center (IDMC), *Internal displacement in Africa: Extremes of vulnerability and deprivation* Geneva 2004 Global IDP Project, Norwegian Refugee Council at 23.

<sup>794</sup> Article 2 of AU IDP Convention 2009 as above.

<sup>795</sup> Article 3 (d) of AU IDP Convention 2009 as above.

<sup>796</sup> See article 8(1) and 8(2) of the AU IDP Convention 2009 as above.

<sup>797</sup> Abebe 2010 as above at 44.

<sup>798</sup> Protocol relating to the Establishment of the Peace and Security Council of the African Union of 9<sup>th</sup> July 2002 (entered into force on 26 December 2003); The Peace and Security Council was established on 25<sup>th</sup> May 2004.

comprehensive framework for conflict prevention, management and reconstruction.<sup>799</sup> The protocol also provides for actions to be taken by the commission during emergencies, including deploying protection missions.<sup>800</sup> These missions have proved to be useful in protecting internally displaced populations.<sup>801</sup> In fact, they have been deployed in some cases under AU and UN resolutions to specifically provide protection to internally displaced persons.<sup>802</sup>

Various humanitarian conditions, including matters of forced displacement are provided for under both the African Union constitutive Act and the Peace and Security Protocol.<sup>803</sup> Regardless of the level of importance of these provisions, the provision of the Constitutive Act has to be approached very cautiously considering that African states have always been wary of ‘intervention’. The drafters of the African Union IDP convention faced resistance when incorporating provisions similar to those of article 4(h) of the Constitutive Act into the convention. This is why Article 8 (1) of the AU IDP convention reflects this position even though in a somewhat toned down manner.<sup>804</sup>

The convention has gone as far as setting out obligations of not only state parties, but also the African Union, international organizations, humanitarian agencies, as well as members of armed groups.<sup>805</sup> This obligation specifically imposed on armed groups by article 7, is very

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<sup>799</sup> The Protocol has four important subsidiary bodies, the continental early warning system; the panel of the wise; Africa’s standby force (based on 5 sub-regional brigades); and policy for post conflict reconstruction and development; Article 3(1)(a) and 4(2) of the AU IDP Convention 2009, similarly obligates states to prevent and protect populations from arbitrary displacement.

<sup>800</sup> See Article 30 and 45 (2) of the African Charter 1981 as well as article 19 of the Protocol on Peace and Security Council of the African Union 2002 as above.

<sup>801</sup> Youngs R ‘A new approach in the Great lakes? Europe’s evolving conflict-resolution strategies’ *Journal of Contemporary African Studies* 2004 Vol.22 No. 3 at 318; See also Khadiagala 2008 as above at 2 and 3.

<sup>802</sup> See humanitarian interventions through UN Security Council resolutions In Darfur (resolution 1709), in Zaire in 1996 (resolution 1078 and 1080) these military humanitarian interventions were authorized to ensure delivery of humanitarian assistance to refugees and IDPs. The AU Peace and Security Council also authorized missions into Darfur.

<sup>803</sup> African Union ‘The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa: Explanatory note’ at 2 at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/5A1FC4CC9028079DC12577450048DE13/\\$file/Kampala%20Convention%20-%20Explanatory%20Note.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/5A1FC4CC9028079DC12577450048DE13/$file/Kampala%20Convention%20-%20Explanatory%20Note.pdf) accessed on 14-05-2012.

<sup>804</sup> Abebe 2010 as above at 44; The AU ‘shall have the right to intervene in a member state pursuant to “a decision of the Assembly” in accordance with article 4 (h) of the Constitutive Act in respect of grave circumstance, namely war crimes, genocide, and crimes against humanity’.

<sup>805</sup> Armed groups are defined broadly by article 1(e) of the AU IDP Convention of 2009 as ‘dissident armed forces or other organized armed groups that are distinct from the armed forces of the state’; See Articles 3,4,5,6,7,8,9,10,11,12,13 of AU IDP Convention 2009 as above.

unique in the sense that it is uncommon.<sup>806</sup> The convention goes on to state that the imposition of such should not in any sense be transcribed as affording legal status or legitimizing armed groups.<sup>807</sup> In as much as this unprecedented attempt was hailed as a big leap in the context of protecting IDPs, the issue of means of enforcing this obligation by states concerned is still mind boggling, non-state actors were not involved in the drafting process, thus it is questionable how they can be expected to adhere to it, or feel bound by it.<sup>808</sup> Doubt is in the ability of struggling African states to enforce criminal liability for such armed non-state actors. This might prove problematic considering that implementation mechanisms of the AU IDP convention are still incomplete and almost un-coordinated and related national institutions are largely non-existent.<sup>809</sup>

But in as much as regional accountability still seems incomprehensive, there have been individual state attempts to do so in accordance with provisions of the convention regarding states' obligations to individually and jointly eradicate and criminalize acts of arbitrary displacement.<sup>810</sup> In countries such as Uganda focal points and national policies on internal displacement have been adopted.<sup>811</sup> Additionally an International crimes division (formerly war crimes division) has been set up within the High Court to try war crimes committed by armed groups during the 20 year insurgency in Northern Uganda which displaced about 90 percent of the population.<sup>812</sup> In doing so the state does not only seem to respect human rights and humanitarian norms, but it also ensures their respect by others, specifically, armed groups and other non-state actors.<sup>813</sup>

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<sup>806</sup> Armed groups have an obligation under article 7(5) of the convention to prevent forced displacement in territories they control, provide humanitarian organizations with access to the displaced and facilitate the delivery of relief.

<sup>807</sup> Article 7(1) of the AU IDP Convention 2009 as above.

<sup>808</sup> States have an obligation under article 7(4) of the convention to prevent interference with the non enjoyment of human rights of IDPs by non state actors including holding members of armed groups responsible for human rights abuses and violations of international humanitarian law; See Giustiniani F 'New hopes and challenges for the protection of IDPs in Africa: The Kampala convention for the protection and assistance of internally displaced persons in Africa' *Denver Journal of International Law and Policy* 2011 Vol. 39 No. 2 at 359,360, 361.

<sup>809</sup> The AU IDP Convention under article 14 and 18 recognizes the AU-NEPAD Peer Review Mechanism, ACHPR and its Special Rapporteur and the Conference of State Parties (COP) as bona fide monitoring and review mechanisms.

<sup>810</sup> See article 5 of AU IDP Convention 2009 as above; Abebe 2010 as above at 49.

<sup>811</sup> Chikwanha A *Internal displacement and the threats of human security workshop* 7<sup>TH</sup> May 2008 Consultative conference proceedings report AHSI, Institute for Security Studies at 3.

<sup>812</sup> Chikwanha 2009 as above at 3.

<sup>813</sup> Abebe 2010 as above at 49.

In an attempt by the convention to ensure that displacement is not protracted and cyclic, provisions on return and durable solutions as well as reparation and compensation are highly detailed. The convention in the process of committing states to seeking lasting solutions to the issue of displacement provides for IDPs' right to voluntary return, and local integration or relocation as key aspects of attaining durable solutions.<sup>814</sup> In the process of implementing such durable solutions, the convention promotes full disclosure of information, consultation, consent and participation of IDPs themselves.<sup>815</sup> The convention also obligates states to take steps to protect individual, collective and cultural property belonging to displaced people as a way of minimizing disputes during the return process.<sup>816</sup>

The convention recognizes the significance of peaceful settlement and the role of property related disputes in unsettling returning populations and causing further displacement. It therefore urges states to create mechanisms and simplified procedures of settling such disputes.<sup>817</sup> This includes the provision of effective remedies for damages incurred as a result of the displacement to all people affected through the establishment of legal frameworks for compensations and reparations.<sup>818</sup> The convention has not gone into details in defining the remedies but the remedies envisaged may range from specific compensation, restitution in kind, apologies, public acknowledgement of wrongs, and guarantees of non-repetition.<sup>819</sup> Such detailed remedies may prove to be important in forging reconciliation between returning persons and those who were responsible for their flight.

One way to fulfill reviewing and monitoring implementation of the convention is through states indicating measures they have taken to implement the AU IDP convention whenever they present their reports under article 62 of the African charter.<sup>820</sup> Additionally those states that are part of the AU-NEPAD Peer Review Mechanism (APRM) are required to similarly report when they present their reports to the APRM.<sup>821</sup> Lastly the office of the ACHPR Special rapporteur and the AU secretariat, especially the Humanitarian affairs division also

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<sup>814</sup> Article 11(1) of AU IDP Convention 2009 as above; See also Abebe 2010 as above at 51; AU-ECOSOCC and IDMC 2010 as above at 16.

<sup>815</sup> Articles 9(2)(k), 9(2)(i), 10(2) and 11(2) of AU IDP Convention 2009 as above.

<sup>816</sup> AU-ECOSOCC and IDMC 2010 as above at 15.

<sup>817</sup> Abebe 2010 as above at 51.

<sup>818</sup> Articles 9(2)(i), 11(4) 11(5) and 12.

<sup>819</sup> Annotated Outline of the Draft Legal Framework for the Protection and Assistance of Internally Displaced Persons in Africa , AU/EXP/HARDP/2(V-ii) at 1; Abebe 2010 as above at 51.

<sup>820</sup> Article 14 (4) of AU IDP Convention 2009 as above.

<sup>821</sup> Article 14 (4) as above.

have an important role to play in monitoring implementation of the AU convention through their constant field missions.

The convention has also provided for the establishment of a Conference of State Parties (COP) which is to be responsible for monitoring its review and implementation.<sup>822</sup> This conference is meant to serve as a conduit for states to strengthen their capacity for cooperation and mutual support.<sup>823</sup> There is however no compelling indication that such instrument will be an effective oversight system to monitor implementation steps taken by states.<sup>824</sup> In the absence of a requirement for submission of progress reports to COP, it is unclear how COP intends to review the implementation of the convention.<sup>825</sup> So far there are no expert groups envisaged to participate in COP's review process, and the text of the convention does not signify anything to this effect.<sup>826</sup> There is limited guidance on how COP will coordinate with other regional human rights institutions and respective peer review, monitoring and human rights enforcement mechanisms such as the ACHPR, ACtHPR, the Special rapporteur and the APRM.<sup>827</sup>

The convention is a very strong protection mechanism for internally displaced persons on the continent. One major problem is that it has not yet come legally into effect. This can only happen if it is ratified by fifteen member states,<sup>828</sup> so far there are only twelve ratifications.<sup>829</sup> It is very troubling since the convention took the shortest deliberation to get adopted, one would have expected ratification to be speedy as well, but that was not the case.<sup>830</sup> Since 2009 when it was adopted, and after taking into consideration the gravity of internal displacement on the continent the delay in its ratification goes to throw great doubts and questions on the nature and political ambitions of African leaders when they adopt these sorts of regional documents, without the necessary intention to ratify them promptly if at all. The AU has been aware of the potential challenges of ratification and the foreseen delays of

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<sup>822</sup> Article 14 of AU IDP Convention 2009 as above.

<sup>823</sup> Abebe 2010 as above at 52.

<sup>824</sup> Abebe 2010 as above.

<sup>825</sup> Abebe 2010 as above.

<sup>826</sup> See article 14 of AU IDP Convention 2009 as above; Abebe 2010 as above at 52.

<sup>827</sup> Abebe 2010 as above at 53.

<sup>828</sup> Article 17(1) of the AU IDP Convention 2009 as above.

<sup>829</sup> African Union *list of countries which have signed, ratified or acceded to the African Union convention for the protection and assistance to internally displaced persons (Kampala convention)* as of 7<sup>th</sup> February 2012 at <http://www.africa-union.org> accessed on 21-01-2012.

<sup>830</sup> Abebe 2010 as above at 54.



the convention coming into force.<sup>831</sup> This is partly why during the special summit it consciously pushed for the adoption of a declaration to accompany the convention.<sup>832</sup> The declaration sought to systematically address the various phases of displacement and critical issues in building an effective regional response to internal displacement.<sup>833</sup> In July 2010 a plan of action on the implementation of the AU IDP convention was adopted. The idea behind the adoption of these two non binding instruments was to push for the implementation of certain IDPs protection commitments which did not require the convention to come into force.<sup>834</sup>

#### 4.3.2 *The International Conference on the Great Lakes Region IC/GLR*

The International conference of the Great Lakes region is an international inter-governmental organization composed of eleven member states.<sup>835</sup> Its conception began in 1999 when the United Nations appointed a special representative to the Great Lakes region (GLR), Mr Berhanu Dinka from Ethiopia.<sup>836</sup> The purpose of his appointment was to facilitate the galvanization of efforts towards the holding of a multi-stage international conference on the Great Lakes region. The conference which has convened state, non-state actors and members of the international community was aimed at bringing an end to the recurring, often cross border conflicts and formulating a plan for re-building the region in a manner that recognizes the interconnectedness of the regions' populations, insecurities and economic instabilities.<sup>837</sup>

There seemed to be a need to seek regional solutions considering that the conflicts within individual countries had threatened to spill into a regional war that was precipitated by the

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<sup>831</sup> Abebe 2010 as above at 52.

<sup>832</sup> African Union (Kampala) Declaration on Refugees, Returnees and Internally Displaced Persons in Africa Ext/Assembly/AU/PA/Decl.(I)Rev. 1 Adopted at the Special Summit on Refugees, Returnees and Internally Displaced Persons in Africa, Kampala, Uganda 22-23 October 2009 at [www.africa-union.org](http://www.africa-union.org) accessed on 16-04-2012.

<sup>833</sup> Abebe 2010 as above at 41.

<sup>834</sup> Abebe 2010 as above at 52.

<sup>835</sup> The member states include Kenya, Uganda, Tanzania, Rwanda, Burundi, the Democratic Republic of Congo, the Republic of Congo, Central African Republic, Sudan, Zambia and Angola.

<sup>836</sup> The process was formalised under the United Nations Security Council Resolution 1291 and 1304 calling for the international conference on peace, security democracy, and development in the Great lakes region.

<sup>837</sup> Government of Tanzania, Ministry of Foreign Affairs and International Cooperation 'Brief on the International Conference of the Great Lakes Region' October 2005 at 1.

Rwandan genocide of 1994, followed by political instability in the Democratic of Congo.<sup>838</sup> In November 2004, under the auspices of the African Union and the United Nations, the IC/GLR inaugural summit was held in Dar es Salaam.<sup>839</sup> It was marked by the signing of the Dar es Salaam Declaration on Peace, Democracy, Security and Development in the Great Lakes region<sup>840</sup> by leaders of the core countries.<sup>841</sup> This was followed by the Nairobi Summit in December 2006, where a regional Pact on Security, Stability and Development was signed.<sup>842</sup> The Pact entered into force on the 21 June 2008, after ratification by eight, member states.<sup>843</sup>

One of the main aims of the Great Lakes process was to create lasting conditions for security, stability, sustainable development and reconstruction in the region as a whole.<sup>844</sup>

The Greatest achievement of the Great Lakes process was not only in setting up a legal, institutional and structural system for addressing the needs, providing assistance and protection to internally displaced persons and other persons in humanitarian crisis, it also set up a system that was meant to be a foundation for regional stability and development according to the Pact. This ambitious project has been at times criticized for being too wide and unrealistic. It has been argued, and rightly so, that the Great Lakes process might, as unique in conception as it was, be another regional white elephant.<sup>845</sup> This notion is confirmed by the expansive contents of the Great Lakes pact. The pact contains the Dar es salaam Declaration, ten Protocols, four Programmes of Action (made up of 33 priority projects) and a set of implementing mechanisms and co-relating institutions (including the

<sup>838</sup> Rutinwa B *The aftermath of the Rwanda genocide in the Great Lakes Region: Events between the fall of Kigali in 1994 and the fall of Kinshasa in 1997, lessons for conflict maintenance in Africa* 2011 at 6.

<sup>839</sup> UN had failed to fund and constitute an organ for the conference process, Canada and the Netherlands stepped in and teamed up to form and lead a Group of Friends of the Great Lakes Region. The group worked with both the UN and the African Union to spear head the process

<sup>840</sup> Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region of 2004.

<sup>841</sup> Core countries of the GLR are Tanzania, Uganda, Rwanda, Burundi, DRC and Kenya (these are the sub-Saharan countries that are located around the four 'Great Lakes' namely, Victoria, Tanganyika, Albert and Kivu), hence making up the Great Lakes Region. Zambia and Sudan were added as a result of their geographical interest and effect from the conflicts, The Republic of Congo, and Central African Republic were added after having participated in the war in DRC, and due to their close link to the region.

<sup>842</sup> It was signed by the 11 heads of member states of the ICGLR namely, Angola, Burundi, the Central African Republic, the Democratic Republic of Congo, Kenya, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

<sup>843</sup> As of June 2008, they included Burundi, Central Africa Republic, the Democratic Republic of Congo, Kenya, Republic of Congo, Rwanda, Tanzania and Uganda

<sup>844</sup> Article 2 of the Pact on Security, Stability and Development in the Great Lakes Region.

<sup>845</sup> Internal displacement monitoring centre (IDMC) and international refugee rights initiative (IRRI) 'The great lakes pact and the rights of displaced people: a guide to civil society' 2008 at 7.

special fund for reconstruction and development) as well as a regional follow up mechanism.<sup>846</sup>

All these instruments reflect an ambitious undertaking to address economic integration, mutual defense, resources development and human rights. The issue is whether the Great Lakes process is capable of comprehensively fulfilling such undertakings. But as some scholars have presented, major challenges were envisaged in matters such as for instance ratification.<sup>847</sup> Countries such as Kenya, despite being one of the core members, and despite being plagued by the issue of displacement for years, has still failed to ratify the Protocol on IDPs.<sup>848</sup> This has of course not affected the Protocol from coming into effect, but it is detrimental to the IDPs of Kenya. It is surprising that the Great Lakes process involved few countries who were grappling with the issue of displacement and conflict, yet there are ratifications still pending. Other factors such as coordination, resource mobilization, state centralism and constant fixation with state security have affected implementation of the ambitious process, and should have been taken into account from the beginning.<sup>849</sup> But when one looks at the provisions of the Pact much is to be anticipated in terms of its provision for the people of the Great Lakes region.

#### 4.3.2.1 Regional Programmes of action

The programme of action is an integral part of the pact. It provides for clusters of interlinked projects designed to ensure that the new legal standards and obligations by states are actually implemented and the objectives of the Pact are achieved.<sup>850</sup> Matters related to internally displaced persons fall within the humanitarian and social issues thematic area, which is one of the four main regional programmes of action. This particular thematic area is responsible for setting up and monitoring any frameworks for durable solutions to the humanitarian, social and environmental issues within the region.<sup>851</sup> The programme is further composed of

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<sup>846</sup> IDMC and IRRI, IDP guide 2008 as above at 10.

<sup>847</sup> Chikwanah 2009 as above at 4.

<sup>848</sup> Republic of Kenya, National Assembly, Programme of Parliamentary Business, week commencing Tuesday November 09, 2010, 10<sup>th</sup> Parliament, 4<sup>th</sup> Session REF: HB/COMM/2010/VOL.1/(26) 'Workshop on constitutional implementation' Nairobi.

<sup>849</sup> Chikwanha 2009 as above at 4.

<sup>850</sup> International refugee rights initiative (IRRI) 2008 as above at 9.

<sup>851</sup> IDMC and IRRI, IDP guide 2008 as above at 41; See also ICGLR Regional programme of action for humanitarian and social issues: Sub-Programme 1, Project 4.1.1 framework for disaster preparedness, protection and assistance to IDPs and their environment of August 2006.

a sub-programme of action on a framework for disaster preparedness, protection and assistance to IDPs and their environment. The sub-programme deals with, among other things compliance with international and regional instruments on human rights, international humanitarian law and refugee law.<sup>852</sup> It also deals with the issuance of identity documents to internally displaced persons as well as refugees and stateless persons. It addresses matters of protection, assistance and the search for durable solutions for displaced populations, including refugees and IDPs as well as assisting communities that are responsible for hosting them.<sup>853</sup> It further provides for the establishment and implementation of a legal framework on issues related to the recovery of land and properties by returning populations including refugees and IDPs.<sup>854</sup> The sub-programme is lastly responsible for promoting compliance in the form of environment assessment, restoration and rehabilitation of human settlements, particularly in and around refugee or IDP camps and settlements.<sup>855</sup>

There are a number of setbacks to the above initiatives including as usual, failure of states to comply with all relevant international instruments. Behind such auspicious commitments by countries of the GLR, is the reality that conflicts that break out within the region largely result in states neglecting the protection of human rights, which in turn leads to further violations of human rights, humanitarian law and refugee law.<sup>856</sup> The whole point of complying with human rights obligations to strategically prevent conflicts while adhering to international humanitarian and refugee law is a smart way to mitigate the displacement of populations within the region. Failure to adhere to these frameworks is one of the reasons for the constant conflicts and displacement. If regional ICGLR frameworks set up to obligate this, are not implemented it sets redundancy in the process.

The issue of identity documents is provided for by article 68 and 27 the Dar es Salaam Declaration and 1951 Refugee Convention respectively, as well as principle 20 of the Guiding Principles.<sup>857</sup> This process is within the Great Lakes process clouded by multiple

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<sup>852</sup> The instruments referred to include (see project 4.1.1 of ICGLR 2006) appendixes; The Sub-programme of action acts in accordance with articles 56, 57, and 64 of the Dar es Salaam Declaration 2004 as above.

<sup>853</sup> This is a unique provision considering that most humanitarian instruments and efforts have sidelined communities that host the displaced. In Africa, these communities are forced to share minimal resources, hence finding themselves in need of assistance as well.

<sup>854</sup> The GLR Protocol on the property rights of returning populations 2006.

<sup>855</sup> IDMC and IRRI, IDP guide 2008 as above at 41.

<sup>856</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 1.

<sup>857</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 3.

applications and manipulations of the process of acquiring identity documents by nationals, refugees and IDPs.<sup>858</sup> There is also lack of confidentiality in holding information submitted by the applicants, leading to some of them fearing exposure through the process in areas where security is not yet comprehensive.<sup>859</sup> There is also inconsistency in standards of recognizing educational, marital and birth certificates, not to mention the cumbersome bureaucratic processes of obtaining identity documents for IDPs.<sup>860</sup>

The second sub-programme of action is responsible for the resumption of basic social services and the provision of healthcare and psychosocial support to groups with special needs. It is made up of initiatives to fight HIV/AIDS, sexually transmitted infections, tuberculosis and malaria within the Great Lakes region. The prevention and fights against sexual exploitation, abuse and gender based violence and assistance to victims of such violence also falls within this cluster. The above provisions and initiatives were eventually cemented and legally codified through the adoption of protocols, including the protocol on the protection and assistance to internally displaced persons, the protocol on the property rights of returning persons as well as the protocol on the prevention and suppression of sexual violence against women and children.<sup>861</sup>

Despite such auspicious provisions, first of all there are no adequate sensitization initiatives to involve or reach women who are the intended beneficiaries of such programmes.<sup>862</sup>

Women within the region are not even aware of their rights or protections within the Great Lakes process. Secondly, most countries within the region still have active laws, customs and practices that undermine women's human rights.<sup>863</sup> For a meaningful framework to be effectively implemented, such practices and laws must be abolished. Lastly, regional laws and laws adopted by governments in furthering implementation of the Great Lakes mechanisms must be engendered and there has to be a political will on the ground to give effect to such frameworks.<sup>864</sup> The only other loophole within the framework against sexual

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<sup>858</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 6.

<sup>859</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above.

<sup>860</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above.

<sup>861</sup> IDMC and IRRI, IDP guide 2008 as above at 41.

<sup>862</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 8.

<sup>863</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 3.

<sup>864</sup> ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 8; See also African Union Press *Communique* 'African Union Commission (AUC) and the International Conference on the Great Lakes Region (ICGLR) sign a Memorandum of Understanding' Monday 25<sup>th</sup> October 2010, Addis Ababa.

violence is that it has failed to provide against sexual violence directed towards men.<sup>865</sup> The political realities and instability, as well as conflicts within the region, do not only expose women to sexual violence, but men and young boys as well, and there was lack of foresight in failing to provide for this group as well.

#### 4.3.2.2 IC/GLR Protocols relating to internal displacement

The protocols that are part of the Great Lakes pact lay out concrete frameworks for achieving goals set out in the four priority areas identified in the Pact. These include economic development and regional integration, democracy and good governance, peace and security, as well as humanitarian and social issues. This last priority is of relevance to internally displaced persons in the region and is addressed by protocols that mainly or generally deal with the human rights and experiences of internally displaced people. The protocols include; the GLR protocol on the property rights of returning populations and the Protocol on the protection and assistance of internally displaced persons. These legal frameworks are strict and in accordance with existing international humanitarian law and human rights law.<sup>866</sup> These two protocols were adopted as a result of recognition by countries of the Great Lakes that the issue of displacement was crucial and required immediate response since it was directly linked to issues of peace, security and development.<sup>867</sup>

The protocol addressing prevention and suppression of sexual violence against women and children is also to a large extent responsible for internally displaced persons. This is because of the nature of conflicts and displacement being associated with a high prevalence of sexual violence within the region. Displaced women and children are usually at a higher risk of being exposed to sexual violence before, during and after their flight. This makes the protocol highly relevant to this large displaced population of women and children.<sup>868</sup> The other seven protocols contained in the Great Lakes pact do not address issues of the internally displaced specifically, but they contain provisions addressing refugees and the

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<sup>865</sup> IDMC and IIRI, IDP guide 2008 as above at 41.

<sup>866</sup> The Protocol on the Protection of IDPs in the GLR of 2006 is largely based on the UN Guiding Principles on the Protection and Assistance of Internally Displaced Persons of 1998 which are described by the United Nations General Assembly Resolution A/RES/60/1 of 24 October 2005 as “an important framework for the protection of internally displaced”.

<sup>867</sup> IDMC and IIRI, IDP guide 2008 as above at 11.

<sup>868</sup> IDMC and IIRI, IDP guide 2008 as above at 12.

internally displaced, as well as extending the general quality of human rights protection within the region.<sup>869</sup>

(i) The protocol on the protection and assistance of IDPs in the GLR

The aims of the protocol can be summed as establishing a legal framework for the adoption of the Guiding Principles on Internal Displacement as well as creating an opportunity for their implementations into national laws.<sup>870</sup> In addition the protocol is aimed at ensuring the protection of IDPs needs physically and materially, as well as reinforcing members state's obligations towards prevention and elimination of the root causes of displacement.<sup>871</sup> The protocol is one of the most comprehensive and binding documents regionally as far as the needs of IDPs are concerned.<sup>872</sup> It was also one of the first multilateral binding documents worldwide addressing the needs of internally displaced persons through provision for the implementation obligations of the Guiding Principles.<sup>873</sup> The protocol is an innovation in international or regional standard setting because it puts particular emphasis on implementation by providing model legislation on the implementation of the protocol as well as a regional programme of action for the protection, assistance and search for durable solutions for IDPs as well as the communities that host them.<sup>874</sup>

The protocol addresses the following aspects of internal displacement; it assigns responsibility to member states to enact national legislation necessary for the implementation of the Guiding Principles in domestic law.<sup>875</sup> It further and more importantly sets out obligations for the creation of a practical implementation framework. The protocol has taken the provisions of the Guiding Principles even further by specifying that member states must pin point organs of government that will be responsible for providing protection and

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<sup>869</sup> For instance, article 2 of the GLR Protocol on democracy and good governance of 2006 provides for the 'prohibition of ethnic, religious, racial, gender or regional discrimination' as a core constitutional principle. Addressing discrimination is relevant in dealing with the root causes of internal as well as external displacement. In addition it fosters human security and creates a stable environment for return and re-integration.

<sup>870</sup> Kalin W 'The Great lakes protocol on internally displaced persons: responses and challenges' London School of Economics-International Humanitarian Law Project Symposium on International Law in Post Conflict situations: the Great Lakes Process 27<sup>th</sup> September 2007 at 3.

<sup>871</sup> IDMC and IRRI, IDP guide 2008 as above at 12; See article 3(3) of the Great lakes IDP Protocol 2006 as above.

<sup>872</sup> Kalin 2007 as above at 3.

<sup>873</sup> At [www.reliefweb.int/ocha\\_ol/pub/idp\\_gp/idp.html](http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html); See article 6 of the Great lakes IDP Protocol 2006 as above.

<sup>874</sup> Kalin 2007 as above at 3.

<sup>875</sup> Article 6(3) of Great lakes IDP Protocol 2006 as above.

assistance to internally displaced persons,<sup>876</sup> implement disaster preparedness, and ensure the effective and informed participation and consultation of internally displaced persons themselves. NGOs and civil society have been assigned with the responsibility to hold governments accountable to their obligations as well as ensuring that IDP participation is actually included in the national legal and institutional frameworks.<sup>877</sup>

The protocol also provides that even though member states have the primary responsibility for protecting IDPs,<sup>878</sup> where governments fail to do so, either by lack of capacity or will, they should accept and respect the obligations of organs of the international community to do so instead.<sup>879</sup> This provision spells out the right of assistance mentioned in the Guiding Principles, but goes on to strengthen the responsibility of governments to accept assistance.<sup>880</sup> In addition the protocol also imposes an obligation on humanitarian agencies and national NGOs' responsibility towards the internally displaced within their localities.<sup>881</sup> It also emphasizes collaboration between these organizations and government organs as well as the United Nations, international organizations and other regional and sub regional mechanisms such as the African Union and civil society.<sup>882</sup>

The protocol also goes further than the Guiding Principles by addressing displacement that is development induced as a result of large scale development projects within its definition.<sup>883</sup> This sort of displacement is particular to the region because of the nature of developing countries. It should be noted that development induced displacement is one of the main causes of displacement in the Great Lakes region that is in fact inadequately documented or addressed.<sup>884</sup> It is a key issue in the region as well as other regions of the developing world. Some of the displacements resulting from these development projects are carried out beyond accepted legal and policy provisions. Additionally they are widely un-regulated and unaddressed. This would explain why the protocol was very particular and specific about the obligations of states towards people displaced by development, including specifying the requirement that governments must in addition, regulate the circumstances in which

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<sup>876</sup> (6)(4)(c).

<sup>877</sup> IDMC and IRRI, IDP guide 2008 as above at 14.

<sup>878</sup> 3(3).

<sup>879</sup> 3(10).

<sup>880</sup> Guiding Principles on Internal Displacement 1998 as above at 18 and 25.

<sup>881</sup> 3(8).

<sup>882</sup> 6(4) d of the Great lakes IDP Protocol 2006 as above.

<sup>883</sup> Article 1(5) of the Great lakes IDP Protocol 2006 as above.

<sup>884</sup> Cernea 2006 as above at 6.



displacement may be lawfully permitted.<sup>885</sup> The protocol requires in addition to provisions of the Guiding Principles, governments obtaining a free and informed consent from the people to be displaced<sup>886</sup> as well as the participation, particularly by women IDPs in the planning, and management of their relocation as well as their return and reintegration or resettlement.<sup>887</sup> The protocol also progressively addresses the needs of host communities, especially in terms of burden sharing when it comes to assistance and support in providing and accommodating IDP populations, as well as extending such assistance and protection to host communities where need be.<sup>888</sup>

There are other important provisions made by the protocol that not only reflect the provisions of the Guiding Principles, but go further and elaborate in detail or make specific reference to situations prevailing in the Great Lakes region. The protocol has addressed matters of security of IDPs throughout their stay in camps, especially the issue of separating armed elements of the displaced populations from the civilian elements.<sup>889</sup> However, there has been a failure in outlining how this can be achieved.<sup>890</sup> It is a formidable task to ensure security where the humanitarian nature of camps has been militarized. Camps within the region have grappled with this problem for a long time. There should have been detailed provision on how to go about separating such armed elements, but this did not happen.<sup>891</sup>

The protocol has also provided for the issue of registration of IDPs, even though the consequences of this provision are self defeating at times. On one hand registration is important and useful for accessing services and rights, on the other hand, depending on the nature and reasons for flight, registration is almost like ‘signing a persecution list’. Some IDPs fear giving away their whereabouts and being identified. Others feel that by registering they are signing up for special treatment which might alienate them from the rest of the poor but undisplaced population constituting the host communities within which they live<sup>892</sup> At times the procedures of registration may even be highly manipulated to an extent that

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<sup>885</sup> Article 5 of the Great lakes IDP protocol 2006 as above.

<sup>886</sup> Article 5(3) of GLR IDP protocol 2006 as above.

<sup>887</sup> Article 5(6) of the GLR IDP Protocol 2006 as above.

<sup>888</sup> IDMC and IIRI, IDP guide 2008 as above 16; article 4(1) e of GLR IDP Protocol 2006 as above.

<sup>889</sup> Article 3(9) of GLR IDP Protocol 2006 as above.

<sup>890</sup> IDMC and IIRI guide 2008 as above at 16.

<sup>891</sup> Ensuring security in situations of displacement, especially in complex dynamics of camps within the Great lakes region is a daunting task. It involves complicated legal and practical issues; See Human Rights First ‘Refugees, rebels and the quest for justice’ 2002 at 1.

<sup>892</sup> IDMC and IIRI, GLR guide 2008 as above at 16.

registration is limited to certain accepted groups of IDPs while the rest are regarded by government authorities as imbibing or sympathizing with elements of the armed groups.

In reflecting the true realities of the Great Lakes region, registration, even though a provision of the protocol, should not be the only criteria for acquiring assistance and protection. This is because not all IDPs can manage to register for various reasons such as location, discrimination, bureaucracy, fear of further persecution and so forth.<sup>893</sup> Access to documentation is a very important requirement,<sup>894</sup> especially when it comes to displaced persons by virtue of the fact that forced displacement uproots communities abruptly and forces them to leave without their belongings or documentation. Documentation is necessary for IDPs to register, access services, schools, voting as well as property.<sup>895</sup> The protocol fails to adequately address this issue, as well as the issue on freedom of movement, which is provided for but limited by the wording of the protocol.<sup>896</sup> The vague and undefined restriction of the right to freedom of movement to certain areas only, risks imposing limitations upon freedom of movement as guaranteed by the Guiding Principles.<sup>897</sup>

The protocol further in a unique manner provides for families of mixed ethnicities.<sup>898</sup> This provision is not only very important, but also reflective of the particular nature and context of conflicts and resulting displacement in the Great Lakes region. The protocol however has failed to provide for how this particular provision is to be effected, how can families of mixed ethnicity be catered for on return? Of course one of the solutions would be to resettle them in other areas within the region, but such measures are not explored.<sup>899</sup> Lastly the protocol provides for follow up mechanisms through regional mechanism to monitor the protection of IDPs.<sup>900</sup> The regional follow up mechanism, which is in the form of a review and follow up institution dealing with monitoring the situation of IDPs against existing framework is set up and headquartered in Lusaka-Zambia. The mechanism, in the spirit of

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<sup>893</sup> IDMC and IRRI, GLR guide 2008 as above at 16.

<sup>894</sup> Article 68 of the Dar es Salaam Declaration 2004 as above.

<sup>895</sup> IDMC and IRRI, GLR guide 2008 as above at 17.

<sup>896</sup> Article 4(1)(g) guarantees 'freedom of movement and choice of residence *within designated areas of location*, except when such movement and residence is necessary, justified or proportionate to the requirements of maintaining public security, public order and public health'.

<sup>897</sup> Principle 14 of the guiding principles on IDPs of 1998, which is also reflected in obligations imposed upon African states by the African Charter on Human and Peoples' Rights of 1981, as well as the International Covenant on Civil and Political Rights of 1966 as above. (Restrictions in both of these instruments is not limited for citizens, but refugees).

<sup>898</sup> 4(1)(h) of GLR IDP Protocol 2006 as above.

<sup>899</sup> IDMC and IRRI, GLR guide 2008 as above at 17.

<sup>900</sup> 4(1)(j) of GLR IDP Protocol 2006 as above.

the process of setting up the secretariat for the IC/GLR, has taken a lot of preparation and spent a lot of money on being set up, and hiring of staff and initial stages. Its actual functioning even before effective operation had already cost a lot and had begun to face monetary constraints.<sup>901</sup> Additionally, there is no clear set up in the operation of the follow up mechanism, which has ‘review functions’ as well.

This can be regarded as a consequence of duplicative functionality or lack of collaboration between follow up mechanism and other organs with similar functions on the African continent and internationally. There may for instance include the ACHPR’s special rapporteur for IDPs, COP, NEPAD’S APRM, or the United Nations special rapporteur for the human rights of IDPs. It should be noted that to make the process of protecting IDPs effective and comprehensive, decisions taken at the national, regional and international level must be complimentary. If the functions of the Great Lakes follow-up mechanism are similar for instance, to those of the African Peer Review Mechanism, then we should rely on one mechanism as opposed to duplicating these functions. If the peer review process was unsuccessful, there is no point in creating another organ at the sub-regional level with similar features and functions. Collaboration between organs of regional, sub-regional and international organs would minimize such functional and budget dilemmas.

There were model legislations set up and attached initially to the draft protocols. They were expected to be adopted by member states as framework models for national legislation. However they were never adopted as part of the pact. It should be noted that to this very day only a handful of countries within the region have attempted to set up national systems addressing IDP rights. Most of these countries have not even relied on the model legislation as a skeleton for these frameworks, and very few have frameworks actually addressing IDP rights as opposed to simply having policies and other loosely framed unbinding strategies.<sup>902</sup>

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<sup>901</sup> IDMC and IRRI, GLR guide 2008 as above at 31.

<sup>902</sup> To date Angola set up Norms for Resettlement of internally displaced persons (2001), Sierra Leone has resettlement strategy and A recovery strategy for newly accessible areas of (October 2001) and (May 2002), Burundi has the Arusha peace and reconciliation agreement for Burundi, Protocol IV (2000) as well as the Protocol for the creation of a permanent framework for consultation on IDP protection (2001), and a Rehabilitation IDP policy of (2004), Liberia has the Declaration of the rights and protection of Liberian IDPs (2002), it also has a national community resettlement and reintegration of guiding principles (2004) which specifies adoption mechanisms, Uganda has an IDP policy of 2004 and Sudan adopted one in 2009, whilst Kenya came up with a draft IDP policy in 2010, Nigeria is in the process of setting up a framework or policy of its own.

The Great Lakes protocol for IDPs alone is not sufficient to find durable solutions for IDPs within the region.<sup>903</sup> An innovative way of addressing the phenomena is through the pact's provision of a legal foundation to link the IDP protocol with other relevant protocols addressing issues outlined as being imperative from a peace building perspective.<sup>904</sup> It should be noted that displacement cannot be addressed without finding durable solutions to the root causes of the problem. At the same time, finding durable solutions is implicitly interlinked with effective peace building.<sup>905</sup> This means that other mechanisms within the Great Lakes that facilitate peace building have to be collectively initiated. Therefore issues such as security, property matters, reconciliation, post conflict reconstruction and inclusive political transition have to be addressed in conjunction with IDP protection and assistance matters.<sup>906</sup> In this regard the Protocol on Property Rights of Returning Populations, the Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of discrimination as well as the Regional Programme of Action for Humanitarian and Social Issues are of utmost importance in rendering IDP protection initiatives within the Great Lakes region comprehensive.

(ii) The protocol on the rights of returning populations

Forced displacement, especially in the Great Lakes region is coupled with sudden and massive relocations, preceded by conflicts, marginalization and at times egregious torture. This means that most of the communities are displaced without their belongings or property. On return land, property and other belongings are usually already lost, confiscated or expropriated. This lack of access to property might be a big hindrance to the process of return and reintegration, it might also in some circumstances, be a cause for further conflict and eventually further displacement for returning communities, thus delaying the process of finding durable solutions. As far as return is concerned, the following factors are very imperative: ensuring the safety of the returnees; returning property to the displaced and the reconstruction of their homes; and creating an economic, social and political environment that is capable of sustaining return.<sup>907</sup> The Great Lakes Protocol on property therefore

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<sup>903</sup> Kalin 2007 as above at 4.

<sup>904</sup> Kalin 2007 as above.

<sup>905</sup> Kalin 2007 as above.

<sup>906</sup> Kalin 2007 as above at 3 and 4.

<sup>907</sup> Kalin 2007 as above at 2.

addresses an issue that is very crucial for the rights of displaced persons as well as the eventual stability and development of the region. The protocol was the first instrument dealing with matters of displaced persons to address the issue, seeing that the United Nations refugee convention and the African Union refugee convention had failed to do such.<sup>908</sup>

The protocol ensures that member states provide legal protection by addressing physical as well as material needs of internally displaced persons. The protocol recalls the protection afforded by the Guiding Principles on Internal Displacement and additionally, caters for vulnerable categories of the displaced such as women, children, the elderly, and communities with special attachment to land, who in most cases usually get displaced in the first place as a result of dispossession or conflicts over land.<sup>909</sup> It should be noted that the initiative to include both administrative and traditional authorities in the process of property restitution as far as displaced persons are concerned was pioneered by this particular protocol. It is a very commendable effort because it takes into account realities of the African situation where administrative authorities are inefficient, overwhelmed by the masses they have to tend to, or at times completely non-existent. Traditional authorities are usually more responsible for administering property especially in rural Africa.<sup>910</sup>

Although the protocol provides for displaced persons who are returning explicitly, it does not cater for the ones that opted not to return, and re-settle or integrate with host communities. The operation of the protocol should be wide and capable of encompassing the broad protection of property rights of all displaced persons.<sup>911</sup> It should also be made clear that these provisions for aiding the restitution or compensation of property should not be limited to or based upon only the return of internally displaced persons or refugees.<sup>912</sup> Recovery of property as per the protocol is largely based on article 4, which goes on further to provide for legislative as well as judicial procedures for the recovery of property belonging to the displaced. The article also provides for compensation in extreme circumstances where recovery and restitution is impossible.<sup>913</sup>

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<sup>908</sup> IDMC and IRRI, GLR guide 2008 as above at 18.

<sup>909</sup> IDMC and IRRI, GLR guide 2008 as above.

<sup>910</sup> IDMC and IRRI, GLR guide 2008 as above.

<sup>911</sup> Article 4 of the Great Lakes Protocol on the Returning Rights of Internally Displaced Persons of 2006, provides that states 'shall assist internally displaced persons and refugees and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they have left behind or were disposed of upon their displacement'

<sup>912</sup> IDMC and IRRI, GLR guide 2008 as above at 19.

<sup>913</sup> IDMC and IRRI, GLR guide as above.

As previously stated, the duty to address property issues was not only left to the state but also to traditional structures. However, in most cases the state is administratively or institutionally incapable, or at times unwilling to carry it out. Traditional structures, which usually to a large extent in Africa manage customary land tenure, are also responsible under the protocol for the resolution of land and property disputes and apportionment.<sup>914</sup> Under these traditional mechanisms the protocol prescribes simplified and swift requirements for proof of ownership, taking into account that conflicts and disruptions result in loss of records, and in most cases ownership to rural property is not even formally documented.<sup>915</sup> This is very important, because it takes into account the realities of the region, where documenting mechanisms and human capacity is still lacking, and where conflict has prevailed for a long time. Making the requirements for ownership inconsiderate and very stringent would affect property restitution, and eventually the return of the displaced population. At the same time this all-inclusive property restitution process has not been all smooth. It has caused a few setbacks practically, considering that customary practices and national laws do not always harmonize easily.<sup>916</sup>

Registration of restituted property is provided as a way of legalizing ownership of the property. This is a commendable step, however it may create potential complications. For instance, the wording ‘provide for an affordable scheme of property registration’ is subject to interpretation.<sup>917</sup> What is affordable will depend on the circumstances of each IDP and a standard should have been set to clarify this because it leaves room for state machinery to exploit the situation and eventually marginalize IDPs. Another issue is mainstreaming the administration of all forms of properties, even the ones previously occupied under customary law into local government. This may also create complications such as individualizing property previously owned communally, opening up possibilities for exploiting the process and eventually this might disincentivise or exclude other members of the community from

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<sup>914</sup> Article 4(3)(c) of GLR Property Protocol 2006 as above.

<sup>915</sup> Article 4(3)(b) of GLR Property Protocol 2006 as above.

<sup>916</sup> See IDMC and IRRI, GLR guide 2008 as above at 21; In many areas in the region local custom provides that if land is abandoned for even short periods of time, other people can lawfully take possession, this provision is rarely, if ever, found in statutory law. It also has the impact of negatively affecting displaced people; At the same time the protocol has tried to address the clash by providing that recognition of customary land title and other types of possession must not violate the basic principles on non-discrimination.

<sup>917</sup> Article 4(3)(d) of GLR Property Protocol 2006, which states that Member states commit to establish an affordable property registration scheme under which title to property, including land, held under both customary and statutory land tenure systems is recognised.

use of communal properties.<sup>918</sup> The appropriation of the displaced persons' abandoned property, by the state, can only happen where it has been totally proven that the circumstances are compelling and overwhelming. This serves as a way of ensuring that the property of the displaced is not abused, or used as a shield for military operations or for destruction in collective punishments of groups of displaced persons the government regards as its enemies or sympathizers.<sup>919</sup>

The protocol is also progressive to the extent that it provides for restitution of property to returning widows, who are usually not considered in most circumstances when it comes to property, whether displaced or not.<sup>920</sup> The protocol also obligates member state to ratify and comply with international and regional law protecting women.<sup>921</sup> Children and orphans are also provided for and the protocol requires member states to establish mechanisms for holding property in trust for returning children as well as regulating and harmonizing inheritance and succession laws regionally. The setback is that there has been no provision on how such rights can be achieved, but it progressively provides that where national property registration is concerned, women should be recognized.<sup>922</sup>

The protocol originally had model legislation, on which member states were expected to base their national frameworks. The legislation was never adopted as part of the pact, but it offers a guide to some of the possible administrative and institutional steps that can be made nationally to advance the process of property return to the displaced. The legislation suggests the establishment of traditional property recovery panels which can be conceived as community-based mechanisms for recovering traditionally held properties for returnees, and decisions of these panels are appealable to property claims commissions. The property claims commissions was described as a full time inquisitorial and quasi-judicial body charged with examining and deciding property disputes and acting as an advisory body to the relevant minister.<sup>923</sup>

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<sup>918</sup> Article 4(3)(d) of GLR Property Protocol 2006 as above; See also Principle 15.2 of the Pinheiro principles (The 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons )which recommend but do not necessarily require registration as far as ensuring legal security of tenure is concerned.

<sup>919</sup> See Article 3(2) and 4 of GLR Property Protocol 2006 as above.

<sup>920</sup> Article 5 of the GLR Property Protocol 2006 as above.

<sup>921</sup> These include CEDAW and the ACHPR Protocol on the Rights of Women in Africa; See article 3(1)(e) of the GLR Property Protocol 2006 as above.

<sup>922</sup> Article 5(4) of GLR Property Protocol 2006 as above.

<sup>923</sup> IDMC and IRRI, GLR guide 2008 as above at 23.

As a general critique, matters such as compensation, which are made a secondary solution to recovery, are not provided for by the protocol. It also does not provide for who determines that recovery has become impossible, what it entails, assessment of value of property for compensation purposes, or who takes responsibility for loss of property, and how are they identified especially in conflict. The protocol also fails to provide for who determines compensation and whether the compensation will be in cash or kind (land).

(iii) The protocol on the prevention and suppression of sexual violence against women and children<sup>924</sup>

The protocol obliges member states to punish the perpetrators of the crimes of sexual violence in situations of peace and armed conflict. It expansively defines the crimes of sexual violence,<sup>925</sup> genocide, crimes against humanity and war crimes and also sets out the elements that constitute these crimes as a basis for determining the criminal liability of the perpetrators.<sup>926</sup> The protocol advises member states to determine a maximum degree of punishment for the perpetrators of sexual violence as a way of maintaining uniformity within the region and a united front against sexual violence.<sup>927</sup> The protocol provides for regional responses such as extradition mechanisms for perpetrators of the crime of sexual violence within the region.<sup>928</sup> It also provides for the compensation to survivors and victims of sexual violence by the perpetrators and the establishment of national funds for assisting the survivors and victims. Finally the protocol provides for the creation of a special facility in the

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<sup>924</sup> The protocol provides an expansive approach to the definition: Article 1(5) defines sexual violence as ‘any act which violates the sexual autonomy and bodily integrity of women and children under international criminal law, including, but not limited to; rape, sexual assault, grievous bodily harm, assault or mutilation or female reproductive organs, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, harmful practices inclusive of all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and children, such as their right to life, health, dignity, education and physical integrity, as defined in the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa adopted on 11 July 2003; IDMC and IIRI, GLR guide 2008 as above at 25.

<sup>925</sup> Article 1 defines sexual violence to include rape, sexual assault, grievous bodily harm, assault or mutilation of female reproductive parts, sexual slavery, enforced pregnancy, enforced sterilization, harmful practices, sexual exploitation or coercion, trafficking in or smuggling women and children for sexual slavery, enslavement, forced abortions or forced pregnancies, infection of women and children with sexually transmitted diseases, or any other act of comparable gravity.

<sup>926</sup> Art 9 of GLR Sexual Violence Protocol 2006 as above.

<sup>927</sup> Art 5(1) of GLR Sexual Violence Protocol 2006 as above.

<sup>928</sup> Art 6 of GLR Sexual Violence Protocol 2006 as above.



regional fund for reconstruction and development as a means of providing victims with legal assistance, medical treatment, social and psychological rehabilitation.<sup>929</sup>

The provisions of the protocol are ambitious but at the same time there are a few gaps in the process of operationalizing these provisions. Specification is not made as to how payment of compensation is to be effected in practice, how identification of perpetrators will be made, and how this identification can be collaborated. After identification the issue of the financial position of the perpetrators is also relevant. This to an extent is addressed by the suggestion that states be responsible through the creation of a facility funded by the fund for reconstruction and development which will be responsible for providing social, legal and medical assistance. The related model legislation, which was never adopted as part of the pact provided for the establishment by member states of a committee for the protection of women and children from sexual violence. The model legislation also provided a compensation commission, but since this is no longer an obligation, action will have to rely on the will of states to implement the envisaged suggestions.

#### 4.3.2.3 Follow up mechanisms

The Great Lakes pact does additionally provide for an additional institution in the form of a regional follow up mechanism. It is responsible for ensuring implementation of the pact and allowing the Great Lakes process to transition from a 'paper' initiative to the level of a practical national process owned by member states. The organs that make up the follow up mechanism include: The summit of heads of state and government, the troika, the regional inter-ministerial committee, the ad-hoc group of experts, the conference secretariat, the national coordination mechanism as well as collaborative mechanisms.<sup>930</sup>

The summit of heads of state is the supreme organ of the conference. It is chaired by a head of state and government of a member state in a rotational process. The summit is held every two years. Then follows in order the inter-ministerial committee, which is the executive organ of the conference. It is made up of foreign affairs ministers of the member states. It meets twice a year in ordinary sessions. This is followed by the National coordination and collaboration mechanism, which is composed of representatives of the conference in each

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<sup>929</sup> ICGLR Sub Programme 1, Project 4.1.1 2006, framework for durable solutions as above at 5.

<sup>930</sup> IDMC and IRRI, GLR guide 2008 as above at 31.

member state who are responsible for the day to day implementation, coordination and facilitation of the conference initiatives.

The secretariat of the International Conference for the Great Lakes Region was conceived as a means of having one central point of coordination and facilitation and monitoring of the conferences activities and initiatives. It is the main driving force behind the conference and is responsible for ensuring that implementation of the programmes of action, projects and protocols are done comprehensively. It is also responsible for coordinating and ensuring that the follow up regional mechanism, which performs peer review functions within the region is effective. It mobilizes resources from development partners, the private sector and civil society at member state level. It is also responsible for building and maintaining partnerships with all the above, and finally strengthening institutional capacities, including the development of conference staff at regional and national level and knowledge dissemination.<sup>931</sup>

The secretariat is to a large extent aided in function by national coordinating mechanisms (NCMs). These facilitate the implementation of the pact, including IDP protocols at the national level and mainstream its objectives into existing national institutions and programmes. In every country the national coordination mechanism is chaired by a national coordinator. The structure is different for every country but the national coordinators are usually found in the foreign affairs ministry.<sup>932</sup> The NCMs in every country are usually made up of a special envoy or deputy special envoy for the Great Lakes Region, accompanied by four thematic chairs from the relevant ministries and a representative from the ministry of foreign affairs, if the national coordinator is not from that ministry. There are also representatives of parliament, civil society, women as well as youth groups, the media and private sector.<sup>933</sup> The structure of the NCMs is largely influenced by the four thematic areas of the conference, that is economic development, regional integration, democracy and good

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<sup>931</sup> IDMC and IRRI, GLR guide 2008 as above at 33.

<sup>932</sup> According to the list of national coordinators provided by the ICGLR as of 10<sup>th</sup> June 2011, the Angolan coordinator is found in the ministry of international relations, the Burundian in the ministry of international relations and international cooperation, the one for CAR in the Ministry of foreign affairs and regional integration, for DRC in Ministry of regional and international cooperation, Republic of Congo has a national coordinator based in the Ministry of foreign affairs and for Kenya its also in the Ministry of foreign affairs, Rwanda is in Ministry of foreign affairs and Sudan is in the Ministry of foreign affairs, the Ugandan coordinator is based in the Ministry of foreign affairs as well Tanzania and Zambia.(re-organise into groups of foreign affairs ministry).

<sup>933</sup> IDMC and IRRI, GLR guide 2008 as above at 32

governance, peace and security as well as humanitarian and social issues under which matters of displacement fall.<sup>934</sup> The meetings are usually twice a month with the aim of making decisions on implementation, including budget allocation. This is followed by monthly reports which are submitted to heads of state, key ministries and the secretariat.

It should be noted that the inclusion of NCMs into the functions of the Great Lakes conference is a very progressive and unique way of involving other actors besides governments in matters of this intergovernmental organization. This ensures participation in implementation by NGOs, civil society, and international organizations working on behalf of internally displaced persons, or the displaced themselves. It should be noted that such structures are practically useful only where the member states actually set up the systems that work efficiently. However, this is not the case for all member states, some are not as progressive in establishing NCMs.<sup>935</sup>

#### 4.3.2.4 A regional coordination committee

A coordination committee on humanitarian, social and environmental issues was set up as part of the regional follow up mechanism. It is ideally responsible for coordinating and implementing activities in the humanitarian and social issues programme of action.<sup>936</sup> It also promotes the harmonization of protection and assistance policies involving the displaced, as well as host communities. It further mobilizes resources and advocacy matters concerning humanitarian and social issues; lends support to the sensitization and advocating process calling for compliance of international instruments including the domestication of regional protocols concerned with IDPs, sexual violence and property rights of returning persons in the Great Lakes Region. The committee is also responsible for facilitating and coordinating dialogue on matters related to humanitarian and social issues within the regional community and lastly, it is responsible for providing institutional support to national or local facilities addressing similar issues.<sup>937</sup>

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<sup>934</sup> IDMC and IRRI, GLR guide 2008 as above.

<sup>935</sup> IDMC and IRRI, GLR guide 2008 as above; See also Report 17 of the Norwegian Agency for Development Cooperation (NORAD) 'The international conference of the Great lakes region (ICGLR): review of the Norwegian support to the ICGLR secretariat June 2009 at 8.

<sup>936</sup> ICGLR framework for durable solutions to the humanitarian, social and environmental issues in the great lakes region: regional programme of action on humanitarian and social issues August 2006 at 6.

<sup>937</sup> ICGLR framework for durable solutions 2006 as above at 7.

The GLR process seems to have dealt with the issue of displacement in a holistic manner. It offers a range of possibilities and prospects in dealing with the issue of internal displacement. The fact that the framework was based on an already existing international framework and the fact that member states were required to adopt the frameworks into their domestic processes, meant that indirectly the Guiding Principles would also be adopted and implemented in the domestic systems of these states. This approach has managed to address a legal lacuna at domestic level in these countries when it comes to matters of adopting, implementation and enforcement of protection for internally displaced persons in the GLR.<sup>938</sup> This framework has managed to outline the scope of protection and assistance of the displaced, spell out obligations for the member states involved, and lay out obligations for stakeholders to adopt and implement the law.<sup>939</sup>

The IC/GLR process has managed to comprehensively address the issue of internal displacement in the region theoretically as well. The issue of displacement in the region has contributed immensely to most states in the region having recurring conflicts. The IDP population has been a root cause of violent conflict in the DRC between 1996 and 2003, in Rwanda, between 1990 and 2003, in Burundi in the 1990s, in Angola, the Cabinda Province is still unstable, as well as in Uganda and the Central African Republic. It is agreeable that a regional approach for dealing with the issue was vital and imminent for lasting peace, but full support and commitment of the members is also necessary. States have to be able to apply these frameworks at a national level. They also have to support and fund the regional processes of resolving root causes of displacement. At the moment most of the efforts are regional and the duties of individual states seem to be highly diluted by regional efforts.<sup>940</sup>

#### 4.3.3 *The East African Community (EAC)*

In East Africa, integration and regional response was a method of governance relied on earlier than most other parts of Africa.<sup>941</sup> The Permanent Tripartite Commission of the

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<sup>938</sup> Report of a civil society consultation on African Union mechanisms and the protection of refugees, internally displaced persons and citizenship rights 'Forced displacement, citizenship and statelessness in Africa' 19-20 October 2009 Kampala-Uganda at 11,12.

<sup>939</sup> Report of civil society consultation on African Union 2009 as above at 13.

<sup>940</sup> Church W and Jowell M 'Conflict circuit breakers in the Great Lakes Region of Africa' *African Security Review* 2007 Vol. 16 No.1 at 27-28.

<sup>941</sup> Nye 1966 as above at viii; See also Onyango O 'Who owns the East African Community' Presentation at a DENVIA Public Dialogue on the East African Community, held at Hotel Equatoria, November 23 2005 at 3 where Professor Onyango traces the original East African Community to the

original East African Cooperation was first formed in 1967 as the East African Commission and collapsed in 1977 as a result of irreconcilable government policies.<sup>942</sup> The new EAC was re-established through the Tripartite Commission for Cooperation on November 13 1993, and the community treaty came into force in 2000, the institution was launched in 2001.<sup>943</sup> It was originally comprised of Kenya, Uganda and Tanzania, recently Rwanda and Burundi have been incorporated. The process of regional cooperation in this region was designed to proceed in three stages. The first stage was creating greater mobility (people integration); then market integration and finally integration into a single political unit. Despite these ambitious plans, the process of integration is lagging behind. Integration of people has not even been achieved because mobility is highly limited. Member states are still responsible for the forcible repatriation and none response to the issues facing most forced migrants within the region. Displacement is still a largely observed phenomenon and most countries seem to promote the regional policy of security over citizenship rights or forced displacement. This is rather disappointing for a regional institution that initially seemed committed to integration. The role of integration acting as an additional layer of protection to the forcibly displaced in the region seems far-fetched from the EAC's viewpoint.<sup>944</sup>

In as much as the regional mechanisms of the EAC towards protecting displaced persons are incomprehensive, individual member states should have been able to come up with solutions to address the issue at a national level. This does not seem very likely, with the exception of Tanzania that recently took a very commendable step when it decided to confer citizenship status to Burundi refugees who had been in exile since the 1970s.<sup>945</sup> There are a few

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late 19<sup>th</sup> century. According to him the community began with the construction of the Uganda/Kenya railway in 1897, followed by the governor's conference (1900-1947), which became the East African High Commission (1947-1960), and was followed by the East African Common Services Organisation, (1961-1967), that eventually led to the Treaty of East African Co-operation (from 1967 until the break-up in 1977). Indeed, as he says, it is sad testimony to what we lost that the European Economic Community (EEC), (now the European Union—EU) was in many ways modelled on the EAC; See also Kamanga K 'Some constitutional dimensions of the East African cooperation' in Onyango O (ed.) *Constitutional development in East Africa for year 2001*, at 126.

<sup>942</sup> Most cooperation and success under EAC was in the economic fields, progress in the political, legal and socio-cultural field was minimal. There was also no legal basis upon which any cooperation could be based. This meant that differences of opinion on the actions and misdeeds of the members could not be properly sorted out. This together with: political differences between the leadership of the body; perceived and real inequalities in the benefits each country was deriving from the association; the influence of particular prominent political actors, and weakness of the foundation on which the organization was built were reasons for the destruction of the community; See Onyango 2005 as above at 4.

<sup>943</sup> Onyango 2005 as above.

<sup>944</sup> Report of civil society consultation on African Union 2009 as above at 11.

<sup>945</sup> Report of civil society consultation on African Union 2009 as above.

initiatives by the EAC that seem to be heading towards the direction of addressing internal displacement even though a few organs have been set up to address issues of peace and security.<sup>946</sup> These include the treaty for the establishment of the EAC. The treaty prescribes the upholding of human rights principles in accordance with the African Charter on human and people's rights. The treaty clearly states that the promotion and protection of human rights is one of the fundamental principles that are meant to govern the achievement of the community's objectives.<sup>947</sup>

The EAC Development strategy 2006-2010 reinforces the above position and further provides for development of strategies towards the promotion and protection of human rights in East Africa.<sup>948</sup> A regional Bill of Rights has been advocated and process for its adoption is already under way<sup>949</sup>. It is envisaged that it will be enforced by the forthcoming African Court of Justice and Human Rights. Additionally there has also been advocacy for the expansion of the jurisdiction of the East African Court of Justice whose mandate is purported to expand from addressing economic matters to including good governance, security and human rights including issues of forced displacement.<sup>950</sup> The Draft East African Bill of Rights is also expected to be an operational code for this court in matters involving human rights.<sup>951</sup>

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<sup>946</sup> International refugee rights initiative (IRRI) 2008 as above at 5.

<sup>947</sup> Article 6 and 123(3)(c) of the EAC Treaty, signed on 30<sup>th</sup> November 1999, entered into force on 7<sup>th</sup> July 2000.

<sup>948</sup> International refugee rights initiative (IRRI) 2008 as above at 5; It should be noted that , there have been new developments in terms of the level of protection afforded to displaced populations within East Africa. The 4th EAC Development Strategy 2011/12-2015/16 has for the first time included the phenomenon of forced displacement within the Community's strategic vision for regional integration. One of the strategic aims is "harmonization of IDP and refugee management practices across the region" by 2014.

<sup>949</sup> 'Kituo cha katiba' a regional non governmental multidisciplinary civic organization (also known as the East African Center for Constitutional Development) based in Kampala Uganda has continuously advocated for and was responsible for developing it in association with National Human Rights Institutions in the region under the auspices of Kituo Cha Katiba (Eastern African Centre for Constitutional Development), November 2007, Kampala, Uganda.

<sup>950</sup> In his speech regarding the possibility of incorporating a Bill of Rights into the EAC Treaty, the secretary general of the East African Community, Ambassador Juma Mwapachu, acknowledged that although the organisation had in the past concentrated only on matters of regional and economic integration, it would do well and right to address issues concerning good governance and human rights which had increasingly come to the fore including matters such as forced displacement. He stated that the Draft Bill of rights initiative should have been addressed 10 years ago. He further suggested that existing national human rights commissions in member states should be coalesced into an East African Human Rights Commission.

<sup>951</sup> Maina P (ed.) *The protectors: Human rights commissions and accountability in East Africa* 2008 at 209

A draft protocol to operationalize the extended jurisdiction of the EACJ has also been underway.<sup>952</sup>

#### 4.3.3.1 Pitfalls of EACJ as a human rights court

For the EACJ to act as a human rights court and hence provide human rights protection, including where situations of arbitrary forced displacement prevail, it has to have an extended jurisdiction. This has necessitated the introduction of the Protocol to operationalize the extended jurisdiction of the court. But this protocol seems to have had a lot of shortcomings, including the factor of reconciling with the EAC Treaty. The treaty provides for the EACJ and limits the operation of the court to interpretation, application of and compliance with the treaty.<sup>953</sup> At the same time article 27 (2) allowed at a given future date for the extension of jurisdiction of the court subject to determination of the Council of Ministers, which determination was not included in finalizing the protocol. Instead the protocol originated from the secretariat on direction of the Sectoral council since there was a need to fast track regional integration so some procedures were abandoned.<sup>954</sup> The draft protocol provides for original, appellate, human rights and other jurisdictions including alternative dispute resolution.<sup>955</sup>

Other problems in operationalizing the protocol arise from bureaucratic inertia, legal illiteracy, ignorance of the law, influences of politics, and the rapid need to expand the EAC. Decisions made by the court fail to be implemented at national level because national laws of some EAC countries are not up to date or harmonized. There is also lack of commitment, failure to communicate the decisions in a timely manner or at all, as well as the issue of divided loyalties between the state and regional pressures. At the same time decisions taken at the regional level have failed to advance the rights of most nationals of the EAC because of ignorance over the nature and advantage of such mechanisms. Most East Africans are not

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<sup>952</sup> Maina 2008 as above at 208; Despite these progressive steps there have been dramatic developments regarding the draft EAC Protocol to operationalise the extended jurisdiction of the EACJ to cover human rights. At its meeting in November 2011, the Sectoral Council on Legal and Judicial Affairs (Composed of Attorney Generals) ordered that the Protocol be totally abandoned. The Summit (Heads of States) held in April 2012 resolved that the Protocol should not only be adopted, but that it should also extend to the EACJ criminal jurisdiction.

<sup>953</sup> See article 27(1) of the EAC Treaty 2000 as above.

<sup>954</sup> For instance consultation with national stakeholders was hurried and incomplete, in fact it has been suggested that the schedule for the introduction of the protocol was ambitious and unrealistic given the importance of the draft protocol and its ramifications; Maina 2008 as above at 302.

<sup>955</sup> Maina 2008 as above at 301.

even aware of such regional mechanisms so it is questionable how the court would be of aid when it comes to realization of human rights. The nations within the region still to a large extent underscore regional identity and politics as well. The regional process is still not really a first point of call for most matters.<sup>956</sup> The Draft Bill of Rights has specific sections intended to offer protection to displaced populations within the East African Community. Internal displacement is provided for within the Draft Bill of Rights, in fact an internally displaced person means:

A person who has been forced to leave their home or place of habitual residence for reasons such as natural or man-made disasters, including religious or political persecution or war, but has not crossed an international border<sup>957</sup>

This provision within the proposed regional Bill of Rights is meant to empower the displaced communities of the region. It is a landmark step taken to protect and enforce the rights of marginalized groups of internally displaced persons. The fact that IDP's are provided for, means that eventually their rights will also have enforceability within the proposed extended jurisdiction of East African Court of Justice. Decisions made with this regional court have the effect of binding member states, and automatically being enforceable within local courts and jurisdictions. A regional Bill of Rights that specifically and explicitly provides for the protection of IDPs is an indication of willingness at a regional and national level to address issues of forced displacement.

The provision for internally displaced persons is strengthened by a detailed provision for equality and freedom from discrimination within the proposed East African Bill of Rights.<sup>958</sup> Additionally the Bill of rights provides for freedom of movement within East Africa.<sup>959</sup> Sections within the Bill of Rights that might be applicable to the protection of the internally displaced include a provision meant to specifically provide for IDPs and refugees.<sup>960</sup> Partner states are by virtue of the Bill obligated to provide protection and

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<sup>956</sup> Maina 2008 as above at 210.

<sup>957</sup> Article 1(i) of the Article 1(i) of the Recommendations for a Draft Bill of Rights for The East African Community November 2009, Developed by the National Human Rights Institutions in the region under the auspices of Kituo Cha Katiba (Eastern African Centre for Constitutional Development) Kampala, Uganda, also see [www.kituchakatiba.org](http://www.kituchakatiba.org) accessed on 14-05-2012.

<sup>958</sup> Article 3 of the East African Bill of Rights 2009 as above.

<sup>959</sup> Article 12 of the East African Draft Bill of Rights 2009 as above.

<sup>960</sup> Article 29 of the East African Draft Bill of Rights 2009 as above.



humanitarian assistance to internally displaced persons and refugees within their territorial jurisdiction as well as facilitating means for IDPs and refugees to return voluntarily, in safety and dignity to their homes or places of habitual residence or resettle elsewhere. States are also obligated to provide refugees and IDPs with access to basic rights such as food, clean water, shelter medical services, and sanitation.

The Draft Bill of Rights has managed to avidly provide for internally displaced persons within East Africa to a very detailed extent. The issue is whether it will be implemented and if that will happen in the same form that the Bill is in at present. The implementation of the Bill is also highly dependent on the extended jurisdiction of the East African Court of Justice coming into effect as well as a lot of other factors. So much is capable of happening to impede such processes. This means despite the very progressive provisions within the Bill of Rights, we will have to wait for what eventually follows. Other initiatives at the East African level that can prove to be useful to the protection of internally displaced persons include the recent draft protocol on a conflict early warning and response mechanism, which additionally is responsible for coordination and collaboration with other regional economic communities as well as the African union.<sup>961</sup>

The deputy to the secretary general of EAC has also on several occasions stated that the community was in the process of developing a regional framework on good governance, encompassing the four major themes of democratization, justice and the rule of law, anti-corruption, ethics, integrity and human rights and social justice.<sup>962</sup> Additionally, the EAC has also initiated other frameworks including provision for free movement and residence of East Africans within East Africa. The frameworks include four Annexes under the EAC Common Market Protocol. The inclusiveness within such initiatives might, among other things, be able to mitigate or even tackle the issues of domestic and regional conflicts, as well as forced displacement within the region which are to a large extent rooted and catalyzed by divisive notions of identity and citizenship.<sup>963</sup>

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<sup>961</sup> International refugee rights initiative (IRRI) 2008 as above at 5.

<sup>962</sup> International refugee rights initiative (IRRI) 2008 as above at 6.

<sup>963</sup> International refugee rights initiative (IRRI) 2008 as above at 6.

There is also in place an East African Community strategy for regional peace and security in East Africa which was developed to anchor peace and security sector activities.<sup>964</sup> Some of the goals of the strategy relevant to the condition of internally displaced persons within the region include: establishing common mechanisms for the management of refugees and asylum seekers which can be extended to offer guidance and protection to matters of internally displacement; and the establishment of a regional disaster management mechanism; as well as the development of a conflict early warning mechanism and a conflict management and resolution mechanism.<sup>965</sup> Such initiatives are imperative to the region which is constantly faced by disasters both natural and man-made, and which have the impact of displacing people and creating humanitarian crises.

It seems from the above initiatives that there is fertile ground within the community to explicitly include principles for the protection of civilians and consequent collective obligations against gross violations of human rights.<sup>966</sup> As the community advances towards being a federation there is an increasing need to harmonize existing practices including transparency in human rights and humanitarian protection.<sup>967</sup>

#### *4.3.4 The Intergovernmental Authority for Development (IGAD)*

The Intergovernmental Authority on Development (IGAD) in Eastern Africa was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD) which was founded in 1986. Recurring and severe droughts and other natural disasters between 1974 and 1984 caused widespread famine, ecological degradation and economic hardship in the region. Although individual countries made substantial efforts to cope with the situation and received generous support from the international community, the magnitude and extent of the problem required a regional approach to supplement national efforts.

In 1983 and 1984, six countries in the Horn of Africa - Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda - took action through the United Nations to establish an intergovernmental body for development and drought control in their region. The Assembly

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<sup>964</sup> The Strategy was adopted by the 13<sup>th</sup> Council of Ministers meeting held in November 2006.

<sup>965</sup> East African Community Strategy for Regional Peace and Security in East Africa Arusha, Tanzania October 2006.

<sup>966</sup> International refugee rights initiative (IRRI) 2008 as above at 5.

<sup>967</sup> International refugee rights initiative (IRRI) 2008 as above at 5.

of Heads of State and Government met in Djibouti in January 1986 to sign the Agreement which officially launched IGADD with Headquarters in Djibouti. The State of Eritrea became the seventh member after attaining independence in 1993. In April 1995 in Addis Ababa, the Assembly of Heads of State and Government made a Declaration to revitalize IGADD and expand cooperation among member states. On 21 March 1996 in Nairobi the Assembly of Heads of State and Government signed an agreement establishing the revitalized IGAD with a new name "The Intergovernmental Authority on Development". The Revitalized IGAD, with expanded areas of regional cooperation and a new organizational structure, was launched by the IGAD Assembly of Heads of State and Government on 25 November 1996 in Djibouti, the Republic of Djibouti.<sup>968</sup>

The duties of IGAD and its mandates have expanded ever since, taking responsibility not only for natural disasters, but also for human sponsored wars such as addressing the conflict in Somalia where IGAD and AU have collaborated in peace keeping matters. The problem of internally displaced persons in the IGAD sub-region is underlined by the sheer number of IDPs itself. Within the IGAD sub-region, many factors have contributed to internal displacement, including socio-political strife, bad governance, and greed, often exacerbated by the scramble for natural resources such as arable land, and natural calamities such as drought, floods and other mishaps.<sup>969</sup>

The IGAD region has been affected by floods, which occurred in Somalia in 1997, these floods affected Kenya as well as Ethiopia and displaced hundreds of thousands of people. The floods were preceded by unprecedented droughts and famine in the 80s which also displaced millions within the region. Currently the instability in Somalia that has gone on for years and the state of failure of government mechanism in that country has not only further displaced millions, but it has also placed a greater responsibility on sub-regional mechanisms.<sup>970</sup> In Sudan the tensions between North and South have raged on for decades, displacing millions. The country has one of the largest numbers of internally displaced persons worldwide. Border conflicts in Ethiopia arising from arbitrary demarcations together with internal wars have also displaced many within the region.

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<sup>968</sup> At <http://www.unhcr.org> visited on 14-04-2011.

<sup>969</sup> Ayalew T 'The role of regional and sub-regional organizations: statement by the Inter-governmental Authority on Development (IGAD) *Refugee Survey Quarterly* 1999 Vol. 18 No.1 at 102.

<sup>970</sup> Ayalew 1999 as above at 103.

In Ethiopia, at this point displacement as a result of famine is a matter of history considering that the country has made considerable steps in attaining a level of self sufficiency in food production. But it still has a considerable number of internally displaced persons as a result of land and border demarcation conflicts. Kenya still faces un-resolved land grievances, which a few years ago, with the catalyst of tribal grievances and a weak electoral commission resulted in another protracted post election violence, which displaced hundreds of thousands of people. Some areas in Northern Kenya still struggle with drought as well, and it still displaces people. Somalia is to date a failed state in international realms, and the clan conflicts have defied any pre-existing notion of ethnic or religious homogeneity.<sup>971</sup> In Sudan, with the recent referendum process and the establishment of an independent South Sudan, it is highly anticipated that this might gradually curtail the situation of internal displacement. But new instabilities resulting from conflicts between the two new states are yet to be settled. Uganda has been embroiled in an internal war with cross border factors that lasted over 20 years in the northern parts of the country. This has resulted in massive displacement of people, who at this point, after the signing of several peace agreements seem to have slowly reintegrated.<sup>972</sup>

IGAD recognizes the impact of the growing number of internally displaced persons, refugees, demobilized soldiers and migrants and it has adopted a strategy to strengthen member states' capacity to deal with conflicts; resolve conflicts with dialogue; and mitigate the mass human suffering in collaboration with others, like UN agencies, non-governmental organizations and civil society. IGAD has been part of the international body responsible for the facilitation mediation and humanitarian assistance to millions of displaced people in Sudan.<sup>973</sup> It has sent observer missions to the referendum process as well. It has played a good part in the Peace keeping missions in Somalia and contributed to the assistance of environmentally displaced pastoralists of the dry and arid regions of Northern Kenya, and the Karamoja and Somali clusters whose conflicts are mostly environmental poverty related.<sup>974</sup>

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<sup>971</sup> Ayalew 1999 as above.

<sup>972</sup> Report of the experts meeting at the Conference on internal displacement in the IGAD Sub-region Khartoum-Sudan September 2003, at 5.

<sup>973</sup> Alao 2000 as above at 18.

<sup>974</sup> The Karamoja are a pastoralist community found in Kenya, Sudan, Ethiopia and Uganda, they have lived for centuries on pastoralist activities, there is immense rising conflict within these communities and displacement as a result of degradation in the land and drought ensuing. IGAD has conducted consultations and studies on how best these conflicts in the Karamoja cluster can be addressed.

Regional peace and security has always been an “area of cooperation” for IGAD, however a full strategy has yet to be developed.<sup>975</sup> The objectives of the draft IGAD peace and security strategy are: facilitation of the development of appropriate national-level mechanisms to promote national peace and security within the context of common core values; appraisal of structures and mechanisms for conflict early warning, management and resolution within the region and across its boundaries; achievement of consensus on aims, principles and benchmarks for the promotion of regional peace and security; as well as monitoring and supporting post-conflict transitions.<sup>976</sup>

In the process two significant initiatives related to these objectives have already emerged. First, in furthering the appraisal of structures and mechanisms for conflict early warning, IGAD implemented a Conflict Early Warning Response Mechanism (CEWARN) in 2000. The mechanism has a mandate to receive and share information concerning potentially violent conflicts as well as their outbreak and escalation in the IGAD region. It also undertakes analysis of the information and formulates options for early response.<sup>977</sup> CEWARN is developing gradually and its initial focus has been on pastoralist conflicts, specifically collecting data and analyzing conflicts in the ‘Somali cluster’ and the ‘Karamoja cluster.’ CEWARN is clearly relevant to the prevention aspect of internal displacement.<sup>978</sup> It holds a great promise as a platform for collection of data and information exchange including IDPs in the future.<sup>979</sup>

Additionally, IGAD in 2003 at its Khartoum ministerial meeting on IDPs adopted a declaration that endorsed the Guiding Principles as a useful tool for protecting IDPs.<sup>980</sup> It also called for the strengthening of sub-regional coordination and cooperation. At the same meeting ministers committed themselves to establishing a unit within IGAD secretariat that would be responsible for collecting data, disseminating the Guiding Principles, providing technical assistance on IDP related issues as well as exploring further means of sub-regional cooperation to address issues of forced displacement.<sup>981</sup> IGAD also has another organ that

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<sup>975</sup> International refugee rights initiative (IRRI) 2008 as above at 12.

<sup>976</sup> International refugee rights initiative (IRRI) 2008 as above.

<sup>977</sup> Article 1 (a) of the Protocol on the Establishment of a Conflict Early Warning and Response Mechanism for IGAD Member States 2002

<sup>978</sup> International refugee rights initiative (IRRI) 2008 as above at 12.

<sup>979</sup> Abebe A ‘Legal and institutional dimensions of protecting and assisting internally displaced persons in Africa’ *Journal of Refugee Studies* 2009 at 16.

<sup>980</sup> Abebe 2009 as above at 16.

<sup>981</sup> See Khartoum Declaration of 2003; See also Abebe 2009 as above at 16.

may be useful in the protection of IDPs. The Peace and Security Division, deals with peace, security and humanitarian affairs. Within this division is the humanitarian affairs section which among other things deals with the alleviation and mitigation of humanitarian crises including issues of refugees returnees, and IDPs.<sup>982</sup>

#### **4.4 Problems encountered by regional and sub-regional organizations in GLR**

From the above discussions there seems to be more than enough regional initiatives to address internal displacement. If this is the case, then one wonders why displacement still plaguing this region of the world. It is evident that the organizations themselves, save a few were not set up to address humanitarian and security issues.<sup>983</sup> Most of the organizations found in and around the Great Lakes Region, were set up to foster regional integration, economic development and market integration, they were capitalist ventures to harmonize and make economies user friendly to other members within the region.<sup>984</sup> This was an oversight on the part of the creators of these organizations, because regional integration and economic development cannot be achieved without peace, security and stability, something that is highly lacking in and around the Great Lakes region.<sup>985</sup>

The organizations have only had to deal with the humanitarian and security issue as an ‘add on’ as opposed to it being an integral part of these regional mechanisms.<sup>986</sup> This being the case, their structural abilities and human capacity for conflict resolution and humanitarian crises, not to mention monetary abilities, are either lacking, incomprehensive, or mismanaged.<sup>987</sup> Regional and sub-regional institutions in and around the region also lack the necessary finances to mount strong defense operations that are capable of preventing forced displacement, or protecting displaced populations thereof.<sup>988</sup>

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<sup>982</sup> See Abebe 2009 as above at 16.

<sup>983</sup> Olonisakin F ‘ Conflict management in Africa: the role of the OAU and sub-regional organizations’ *Building Stability in Africa: Challenges of the New Millennium*, February 2000 Monograph 46, at <http://www.iss.co.za/pubs/monographs/no46/Conflict.html> accessed on 12-03-2011 at 2.

<sup>984</sup> Olonisakin 2000 as above at 4; Alao 2000 as above at 19.

<sup>985</sup> Olonisakin 2000 as above.

<sup>986</sup> Alao 2000 as above at 19; These regional and sub-regional organizations did not have the chance to gradually develop conflict management or response systems, most of them were compelled to abruptly develop the systems to deal with events that were thrust upon them. There was no chance for these organizations to prepare for early warning, conflict prevention or early mediation.

<sup>987</sup> Olonisakin 2000 as above at 4.

<sup>988</sup> Olonisakin 2000 as above; Alao 2000 as above at 20.

There is also a hindrance presented by political factions and divisions within the region.<sup>989</sup> Sometimes it seems that only when a particular country has an interest, geographically or otherwise, or is directly affected by the conflicts within the region, is it then ready to take steps to address the issue. This means that despite the fact that there are regional organizations in the region, they are actually ‘masks’ representing the ambitions and aspirations of individual states that make up these organizations.<sup>990</sup> This means that the existence of regional legal frameworks makes no difference where the will is lacking. Additionally, the Great Lakes Region is made up of a number of countries, but none of them is ready to take up a leadership position, or is politically and economically a regional ‘hegemony’ strong enough to take up a leadership stand.<sup>991</sup> Without a regional hegemony, such as Nigeria in ECOWAS, or South Africa in SADC or the way Libya was to North Africa, the region sometimes has failed to take up initiatives that would have been capable of making a difference in the outcome of conflicts and displacement patterns.<sup>992</sup>

Other problems encountered by organizations within the region and sub-region include problems of legitimacy.<sup>993</sup> Some actions by African regional and sub-regional organizations, have at times been perceived to lack legitimacy, especially where action is taken without the approval of the UN.<sup>994</sup> This becomes more serious where such action involves the use of force. But due to selective intervention, some conflicts have not attracted the reaction of the international community, or the reaction has not been immediate. African regional mechanisms have had to step in to avert catastrophes. The thin line between bureaucratic measures necessary for a Security Council resolution and action by regional groups is all the difference it takes to avert crises. Under such cases legitimacy of actions remains elusive since it is often disregarded at the expense of a moral duty to protect civilians.<sup>995</sup> The last

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<sup>989</sup> Alao 2000 as above at 20.

<sup>990</sup> Alao 2000 as above.

<sup>991</sup> Olonisakin 2000 as above at 4; Alao 2000 as above at 20.

<sup>992</sup> In the wake of the Rwandan genocide, had the region had a leader, intervention might have been taken, instead of ‘procrastinating’ while waiting for the Western powers to act, which did not happen and consequently millions of people died. On the other hand Nigeria took up a stand and led the intervention into Liberia with ECOWAS mandate and South Africa under SADC did the same for Lesotho. Whether the will and ability to exercise such unilateral and at times questionable decisions can also be dangerous, is also a point for discussion. This could also be one of the reasons why the Great Lakes region has hesitated on a number of occasions to act and make a difference despite the existence of a number of organisations within the region capable of doing so.

<sup>993</sup> Alao 2000 as above at 21.

<sup>994</sup> For instance the ECOMOG operation into Liberia initially suffered when its legitimacy was challenged. The operation only received approval of the UN retrospectively, but it was instrumental in managing the conflict.

<sup>995</sup> Olonisakin 2000 as above at 5.

main issue lies in overlapping mandates of regional and sub-regional organizations. Such mix-match mechanisms have been known to cause dilemma in decision making, and bring further complication in enforcement procedures.<sup>996</sup>

#### 4.5 Conclusions

Internal displacement results from a lot of factors including conflicts, economic backwardness, food insecurity, the absence of human rights practices and preventable environmental degradations. In Africa, a continent already facing high socio-economic inequalities and deprivation, the forcible movement of its population is an additional major set back. One thing is certain, Africa and the GLR sub-region in particular are not hesitating in initiating concerted efforts to address displacement. Various regional and sub-regional blocks with overlapping mandates within the same geographical location of eastern and central africa including the International Conference of the Great Lakes Region, the East African Community, and the Inter-Governmental Authority for Development have taken steps to address the issue of internal displacement and its causes and consequences. The African Union has also contributed immensely by adopting a framework for the protection and assistance of internally displaced persons in Africa. In its Constitutive Act of 2000, it also provides for intervention where it is established that gross human rights violations in the form of genocide, war crimes, and crimes against humanity, or additional threats to legitimate order exist.

The issue is whether individual states are failing to take initiatives to address the problem of internal displacement as a result of these concerted efforts. This is because despite the above efforts, the principles of sovereignty, territorial integrity and non-interference are still a ‘Chinese wall’ in the face of efforts to aid the displaced populations in some countries in the region. The individuality of states even within their regional communities is still highly evident. The obligation to protect internally displaced persons at the domestic level is largely still inadequately addressed. Failure to protect individuals at the national level is reflected

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<sup>996</sup> For instance when one considers the new East African Community Draft Bill of Rights and its provisions for enforcement in the African Commission, it overlaps with normal communication, and submission procedures to the African Commission. The creation of the up-coming African Court of Human Rights and Justice is also going to bring in more issues of overlapping mandates and create further enforcement complications; See Maina 2008 as above at 209.



within regional efforts. This confirms that even with the creation of regional groupings, it is often individual states that speak in these groups.

In as much as regional and sub-regional efforts have been taken, adoption and implementation at the local level is consequently still slow. To date only twelve states have ratified the African Convention for IDPs. A lesser number of states have incorporated provisions of the GLR IDP Protocol and Guiding Principles into their national legislation or even implemented them by designating bodies responsible for coordinating activities aimed at protecting and assisting IDPs. Within the GLR only Burundi has legislation specifically providing for IDPs. Uganda set up a policy for addressing internal displacement and has also assigned a ministry for addressing the matter. In March 2010 Kenya also drafted a policy for addressing matters related to internal displacement, its level and scope of application is still in vacuum because the policy has been stuck for over two years awaiting cabinet approval. Kenya also set up a Draft IDP Bill at the end of 2011, whose enactment remains questionable. Sudan has an IDP Policy, which is hardly reflected in protection initiatives. The rest of the countries within the region are yet to take steps at the local level to address this problem. This is disappointing for a region so immensely affected by displacement.

The process of regional response is also envisaged to face, and is already facing other major challenges, besides the existing political obstacles to finding durable peace, security and development.<sup>997</sup> The main challenge still facing the process as stated above is implementation. Beyond the immediate fulfillment of ratification of regional instruments, adoption of necessary legislation and allocation of focal institutions to implement such instruments, as well as the sourcing of funds to support such initiatives, there are other complex underlying issues that still plague the process.<sup>998</sup> These issues have to be dealt with before sustainably mitigating, addressing and preventing internal displacement and other humanitarian concerns within the region otherwise implementation will be affected.

They include addressing the tension between accountability and reconciliation. International law and the whims of the international community have always insisted, and to an extent rightly so, for the need for states to hold accountable those responsible for war crimes and crimes against humanity. It is also generally acceptable that attainment of peace without

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<sup>997</sup> Kalin 2007 as above 4.

<sup>998</sup> Kalin 2007 as above.

justice is most often unsustainable. At the same time there are circumstances where chasing justice to a large extent affects the implementation of peace agreements. It has come to a point where it seems that a marriage of accountability and reconciliation is impossible. Nevertheless as we have seen in the case of Northern Uganda,<sup>999</sup> thought is needed on how to reconcile these two mutually un-exclusive ideals where the issue of criminal proceedings threatens to affect the implementation of peace agreements.<sup>1000</sup>

The second obstacle to the effectiveness of regional processes and their implementation is the issue of conflicts resulting from competing property claims on return. It is imperative to address this problem which sometimes arises out of corruption and maladministration of property belonging to the displaced. At times these claims are usually legitimate, especially if the people involved have been displaced during different time frames. It should at this point be noted that internal displacement often occurs during times of strife, when governments are dysfunctional or incapable of operating effectively. This means that all systems of administration can be suspended and impunity and self service reigns. Criminal elements also take advantage of the system to appropriate property. Since there are varying factors involved, it is important for frameworks to be set up to address the issue when communities return.<sup>1001</sup> It should be noted that failure to address property claims may contribute to failure of returning communities to sustainably settle down. Even worse the conflicts that result from property claims are capable of further displacing communities and creating new cycles of displacement.<sup>1002</sup>

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<sup>999</sup> In Northern Uganda after a civil war of over 20 years, populations returning from displacement resisted the imposition of criminal responsibility through legal systems upon former insurgency participants. The argument was logical, in that most of the communities where at some point abductees, that the society as a whole were victims as well as perpetrators. Additionally it was felt that the legal process of accountability would prolong enmity and possibly alienate the former soldiers into the bush where they would carry on fighting. To speed up the peace and reintegration process, Amnesty was offered to all lower ranking former soldiers, coupled with community reintegration and reconciliation rituals (these included public acknowledgement of wrong doing, apology and other compensatory measures, which means there was a level of accountability) carried out to ease the process of rebuilding the community. At the same time high ranking officials of the LRA were held legally responsible and warrants have been issued against them. The Ugandan system is an example of a compromise system where the two principles of accountability and reconciliation were brought together, let us hope it will be effective and sustainably result in durable peace, security and development.

<sup>1000</sup> Kalin 2007 as above at 5.

<sup>1001</sup> The Great lakes protocol on the property rights of returning populations represents such an instrument, but it stands alone, there are no other instruments providing for such. Additionally the protocol only applies to countries that are member states to the ICGLR.

<sup>1002</sup> Kalin 2007 as above at 5.

Regional mechanisms are also caught between auspicious projects and fail to address the basics such as including civil society, sub-national authorities, traditional communities and IDPs themselves in the process of finding durable solutions.<sup>1003</sup> It is a classic case of ‘humanitarianism’ when every other person involved in finding solutions to the problem is actually not a part of the problem. Majority of frameworks set up to offer protection and assistance to IDPs have provisions for involving affected communities in the process of seeking solutions. But there is no provision on how this is to be achieved. There is also no provision as to how the sectional population of affected groups will be represented. It has come to a point where the provisions seem set on satisfying a ‘tick box’ requirement.

Implementation efforts could be more efficient and sustainable if national and regional governments could practically include local authorities, traditional communities and IDPs . However such initiatives also require modalities of operation and roles to be clearly set out before hand. There also needs to be a will to actually involve and include the affected communities as actors and reactors and not simply as victims or subjects of humanitarian efforts. Failure to achieve this level of inclusiveness has resulted in multi-layered reactions as government and regional authorities set up their own processes, whose access is often limited by bureaucracy, while IDP communities set up and use their own methods of survival and sustainability.<sup>1004</sup>

What is apparent from the above suggestions is that they are mainly applicable at the national level. This means the key problem facing IDPs in Africa’s Great Lakes is not only lack of coordinated and effective regional mechanisms, but also the absence of strong national protection systems and local commitment to enforcing existing international and regional standards.<sup>1005</sup> There is a need for strong national systems that address the root causes of forced displacement. It has to be realized that internal displacement is simply a symptom of other underlying national building crises and failure to reform the post-colonial state within

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<sup>1003</sup> There is also a need for improved coordination between the African union and sub-regional org in IDP and other humanitarian protection initiatives. There has to be increased effort in communication between AU and civil society, as well as sub-regional organizations and civil society. They are on the ground and could facilitate early warning as well as monitoring implementation of relevant instruments(see AU and GLR guide to civil society, as well as other initiatives to involve CSOs in IDP protection initiatives.

<sup>1004</sup> Kalin 2007 as above at 5.

<sup>1005</sup> Lomo Z ‘Regional or national protection for Great lakes IDPs?’ *FMR Special Issue* 2006 Brookings-Bern 23-25 at 23 at <http://www.fmreview.org/pdf/lomo.pdf> accessed on 26-04-2011.

the region.<sup>1006</sup> States within the region are characterized by weak and poorly led states prone to external interference, impunity, bad governance, corruption, and scramble for natural resources leading to the destruction of political, social, economic and judicial institutions.<sup>1007</sup>

It is understandable how within such a messy national framework, regional initiatives seem like a viable option. They are considered independent, impartial, and can easily mobilize resources and expertise. But they also have their setbacks; first of all, they are unable to acknowledge how internal displacement crises are related to national politics and governance. Secondly, they do not endeavour to understand national legal systems and rules. Additionally, they are capable of supporting institutions that do not purport to be accountable to the intended beneficiaries. Lastly external interventions have a tendency of destroying local systems and engendering dependency.<sup>1008</sup>

Regional efforts should not substitute the duty of the state towards its own people. The states in the region are first and foremost responsible for the displaced populations within their borders. They therefore should act immediately to adopt and implement these regional mechanisms as well as becoming responsible for funding or acquiring funds for these regional efforts. If regional and state efforts can be complemented then this would maximize best practices and work in the best interest of the displaced populations within the Great Lakes Region.

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<sup>1006</sup> Lomo 2006 as above at 24.

<sup>1007</sup> Lomo 2006 as above.

<sup>1008</sup> Lomo 2006 as above.