

## CHAPTER 5: FRAMEWORKS FOR NATIONAL RESPONSIBILITY IN ADDRESSING INTERNAL DISPLACEMENT: THE CASE OF KENYA AND UGANDA<sup>1009</sup>

### 5.1 Introduction

This study discusses and enumerates the levels of protection, if any offered by existing frameworks for the protection of internally displaced persons in and around the Great Lakes region. In achieving this, in this chapter I consider specific national efforts (legal and institutional) in Kenya and Uganda in terms of addressing the internal displacement phenomena. These two countries find themselves at the center of a cross-sectional reflection of dynamic displacement patterns that exist within the Great Lakes region. They are both former British colonies, they share more than ten interrelated ethnic groups, transcending any previously imposed borders.<sup>1010</sup> They share common languages such as Swahili as well as local dialects. They belong to similar regional groupings including the EAC (East African Commission), the IGAD (Intergovernmental Authority for Development), and they both are members of the ICGLR (International Conference for the Great Lakes region). At one point or the other they have both experienced the problem of internal displacement, although not necessarily on the same scale, dynamics, time frame or even severity. They both seem to have taken incredible steps to address the issue of internal displacement including drafting policies, laws as well as assigning responsibilities for the displaced to specific focal institutions. Internally displaced persons in both countries seem to be in the process of returning home, even though at very different scales, and not always necessarily as a durable solution.

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<sup>1009</sup> Guiding Principle 3(1) provides that states have a primary duty to protect and provide aid.

<sup>1010</sup> The Batutsi are found in Rwanda and neighboring Burundi and to a small extent Uganda, the Luos of Uganda are also found in Kenya, the Maasai of Kenya re to a relatively large extent found in Tanzania, the Nubi of Sudan are also found in Uganda, the Meru of Kenya are found in Tanzania and so forth. It becomes evident that affiliation to one's tribe, within the African context, is very important, it's the only thing that was not dissipated by arbitrary border demarcation, and continues to unite tribes spread across borders, to an extent of involving them in the ongoing internal conflicts within neighboring countries

Internal displacement has affected the region of the Great Lakes relatively more highly and severely than most other regions in Africa.<sup>1011</sup> There are eleven countries falling within and around the Great Lakes region. Within this configuration are Lusophone, Francophone and Anglophone countries. Within the same group are countries that are former colonies of Britain, Germany, France, Belgium and Portugal. The countries of this region are diverse in history and language, yet they are similar in traditions and ethnicity which binds them closer than any geography of borders ever could. At the same time one cannot totally avoid the fact that their colonial inheritances divided them and influenced their pasts, presents and probably their futures. Within this same region various regional organizations have been created to unify and perhaps address these outstanding differences. There are more than seven regional organizations within this region. Each represents interests of certain groups as opposed to others, with most simply duplicating already existing functions and interests. Under all the above circumstances, addressing internal displacement within the region will require holistic approaches that involve, international, regional, and most importantly national efforts.

## 5.2 Overview of dynamics of internal displacement in the Great Lakes region

It was estimated by the UNHCR (United Nations High Commission for Refugees) and the IDMC (Internal Displacement Monitoring Center) that the number of people displaced internally by conflict, human rights violations or generalized violence as of December 2010 was around 27.5 million.<sup>1012</sup> Africa had about 11.1 million IDPs in 21 countries, of course this figure was 500,000 IDPs less than those recorded at the end of 2009, however new and large displacements were reported in Sudan, DRC and Somalia.<sup>1013</sup> The number of IDPs has since declined to about 9.7 million IDPs within 21 countries in Africa.<sup>1014</sup> Africa had at some point about 40 percent of the internally displaced worldwide, this constituted half of the

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<sup>1011</sup> The Great lakes region has been called a 'regional and global flashpoint for forced displacement' because of the enormity of the phenomena. Related to the enormity and chronic nature of the problem, is the equally endemic, violent nature of conflicts that have raged in the region; Kamanga 2005 as above at 4.

<sup>1012</sup> Internal Displacement Monitoring Centre (IDMC)-Norwegian Refugee Council *Internal displacement: global overview of trends and developments in 2010* Published March 2011 at 9, also available at <http://www.unhcr.org/refworld/docid/4d932e151e.html> accessed 24 November 2011.

<sup>1013</sup> IDMC March 2011 as above at 8; Internal displacements in 2011 were highly caused by election violence in Countries such as Cote d'Ivoire, over a million people were displaced in late 2010, fighting in South Sudan has displaced more people. New displacements have also been recorded in Central Africa Republic, Kenya and Nigeria.

<sup>1014</sup> Internal Displacement Monitoring Centre (IDMC)-Norwegian Refugee Council *Internal displacement: global overview of trends and developments in 2011* Published December 2011 at 37.

world's IDPs. It also had close to more than a third of the refugee population worldwide.<sup>1015</sup> Out of all African countries, 17 were reported to have legislation or policies specifically addressing internal displacement.<sup>1016</sup> This effort coupled with other initiatives such as the adoption of the African IDP Convention has set Africa at the forefront as far as developing legal mechanisms to protect IDPs is concerned.<sup>1017</sup> Of course these efforts will only be useful if these legal mechanisms are ratified and so far not all countries that have policies or legislations are implementing them effectively. Additionally, only 12 African countries have ratified the African IDP Convention, which requires fifteen ratifications to come into effect.<sup>1018</sup> As of April 2010 there were at least 4,345,275 IDPs,<sup>1019</sup> by October 2011 this figure had decreased to 4,033,884 internally displaced persons in Eastern Africa.<sup>1020</sup>

### 5.2.1 Burundi

Burundi had an estimated 70,000 IDPs by end 2011, most of them living in the northern part of the country.<sup>1021</sup> According to UNHCR Burundi's Refugee fact sheet, of October 2011, the IDPs were initially put at 156,167.<sup>1022</sup> They were displaced by ethnic violence and civil strife, which broke out after the 1993 *coup d'état* and the fighting between the government and rebel groups which followed. The security situation improved after the last rebel group in the country laid down its arms in 2008, and no new conflict-induced displacement was reported in 2009. Most IDPs reportedly have no intention of returning to their place of origin, largely because of the better economic opportunities around the sites, rather than for security reasons. Many of the sites are gradually becoming permanent villages. The government has, with international support, integrated vulnerable members of the host community and

<sup>1015</sup> IDMC March 2011 as above at 9.

<sup>1016</sup> IDMC March 2011 as above at 8; Angola was the first country worldwide to develop a framework based on the Guiding Principles, The *Normas sobre o reassentamento das populações deslocadas* of 2001 (Norms for the resettlement of displaced populations), as well as Burundi which set up Protocol for the creation of a permanent framework for the consultation on IDP protection of 2001, Liberia had a Declaration on the Rights and Protection of Liberian IDPs, Sierra Leone had a resettlement strategy of 2001, and Sudan set up an IDP policy of 2009, Uganda had an IDP policy of 2004 and a number of frameworks of action, whilst Kenya set up a draft IDP policy of 2010.

<sup>1017</sup> IDMC March 2011 as above at 10.

<sup>1018</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>1019</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA) Sub-Regional Office for Eastern Africa (SROEA) 2010 'Displaced Populations Report' Nairobi April Issue 7 at 1.

<sup>1020</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA) Sub-Regional Office for Eastern Africa (SROEA) 2011 'Displaced Populations Report' Nairobi October Issue 10 at 1 [http://reliefweb.int/sites/reliefweb.int/files/resources/F\\_R\\_458.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/F_R_458.pdf) accessed 25-04-2012.

<sup>1021</sup> IDMC December 2011 as above at 37.

<sup>1022</sup> OCHA-SROEA 2011 report *ibid* at 5.

landless returnees into some existing sites now called “peace villages”. In 2009 the ministry in charge of supporting the reintegration of IDPs and returnees drafted the National Strategy of Socio-Economic Reintegration for People Affected by Conflict. Results of the 2009 study on IDPs conducted by the government are not yet released.<sup>1023</sup> The working group on internal displacement created in 2010 is currently undertaking IDP profiling in 122 sites across 15 provinces in the country.<sup>1024</sup>

### 5.2.2 Democratic Republic of Congo (DRC)

Access to people in affected areas in the Democratic Republic of Congo remains a great challenge, especially in eastern DRC due to the continued deterioration in security. The DRC is estimated to have had at least 2, 136, 358 IDPs by September 2009.<sup>1025</sup> IDP statistics have since decreased to 1,709,278.<sup>1026</sup> The security situation in North Kivu also remains unstable, due to military operations and clashes between armed groups, specifically the Democratic Forces for the Liberation of Rwanda (FDLR), Mai Mai militias, and the recent mutineers called M 23<sup>1027</sup> against Armed Forces of the Democratic Republic of Congo (FARDC). The presence of the LRA is also an additional cause of instability especially in Orientale. The Province of North Kivu is estimated to have about 600, 984 IDPs, South Kivu 518,618, Orientale (which includes Ituri/Haut Uele/Bas –Uele) has 447, 627 IDPs, Katanga has 73, 814 IDPs, Maniema produced new displacements of 55, 450 IDPs.<sup>1028</sup>

### 5.2.3 Uganda

It is estimated that there were about 445,145 IDPs in Uganda by March 2010. This is about 50,000 less IDPs than was reported in September 2009.<sup>1029</sup> This change in the figures of IDPs was observed as a result of the progress achieved after relative success in implementing durable solutions for IDPs. More than 30 IDP camps were closed in 2010. Out of almost 251 IDP camps in Northern Uganda in 2005, only 72 camps remained with 942, 000 (approximately 85 per cent) of IDPs having returned to their villages of origin. UNHCR and

<sup>1023</sup> IDMC 2009 country report Burundi at [www.internal-displacement.org](http://www.internal-displacement.org); OCHA-SROEA 2010 report as above at 5.

<sup>1024</sup> OCHA-SROEA October 2011 as above at 4.

<sup>1025</sup> OCHA DRC, September 2009 at 5.

<sup>1026</sup> OCHA DRC, *RDC Synthèse IDPs au 03 November 2011*.

<sup>1027</sup> March 23 Movement composed of former integrated rebels that have recently defected from FARDC army, they are working in collaboration with CNDP

<sup>1028</sup> OCHA DRC 2011 as above at 4.

<sup>1029</sup> The 2009 estimates were made by the Inter Agency Standing Committee (IASC) Working Group in Uganda, Update on IDP movements, September 2009; UNCHR Kampala ‘Donor update’ January 2010.

its partners were in the process of gradually phasing out the remaining camps.<sup>1030</sup> By April 2011, of the original IDP population in the Acholi sub-region, almost 92% had returned to their communities or resettled, leaving only 73, 239 IDPs in need of assistance.<sup>1031</sup>

#### 5.2.4 Kenya

In the wake of the 2007 and 2008 post election violence in Kenya, it was estimated that more than 600,000 people were displaced internally and another large number fled the country as a result of the tribal and political conflicts that were catalyzed by the not so transparent elections.<sup>1032</sup> Since then, steps have been taken by the government and other non governmental institutions to adjust the situation by trying to repatriate and resettle the displaced people. However, the programme of resettlement faces many challenges, which include fear of returning into the communities that allegedly caused harm upon the displaced people. Unresolved and politically aggravated tribal and land grievances have made resettlement problematic.<sup>1033</sup> As of end of February 2010, there remained 3,714 households (approximately 29,200 persons) living in 25 transit sites, in three districts in the Rift Valley Province.<sup>1034</sup> This number of post election violence (PEV) IDPs has been compounded by about 250,000 protracted cases of IDPs from previous post election violence and 30,000 IDPs evicted as a result of Mau forest conservation initiatives.<sup>1035</sup> This brings the figure of internally displaced people in Kenya to about 309,200.<sup>1036</sup> The Kenyan government, through the Ministry of State for Special Programmes (MoSSP) continues to offer assistance to IDPs awaiting final resettlement.<sup>1037</sup> The country also unveiled a draft IDP Bill at the end of 2011 and a draft IDP policy in March 2010. The policy emphasizes the criminality of arbitrary displacement, and calls for laws to address historical injustices, such as the National Land

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<sup>1030</sup> UNHCR Kampala 2010, Humanitarian update, March.

<sup>1031</sup> UNHCR, Sub-office Gulu, Uganda, November 2011; OCHA-SROEA October 2011 as above at 6.

<sup>1032</sup> Kamugi P 'The situation of internally displaced persons in Kenya' *Jesuit refugee service* (E.A) March 2008 at 5.

<sup>1033</sup> 'Crisis in Kenya: land, displacement and the search for durable solutions' A meeting to launch an HPG policy briefing that analyses post-election displacement resettlement and return in relation to land issues in Kenya at 5 at <http://www.odi.org.uk/resources/docs/2263.pdf> accessed on 23-11-2011

<sup>1034</sup> OCHA Kenya, 'Kenya Humanitarian situation', April 2010.

<sup>1035</sup> OCHA-SROEA October 2011 *ibid* at 5.

<sup>1036</sup> This figure includes about 12, 965 IDPs from Turkana who were not include in the PEV IDP figures; Ministry of State for Special Programmes (MoSSP), 'Update on the resettlement of IDPs', presented at the Forum on Internal Displacement Situation in Kenya, 30 September 2011.

<sup>1037</sup> Of course it is hard to keep track of those IDPs that have settled in urban areas, as well as the protracted IDP population prior to the 2007 election violence.

Policy of 2009. The draft IDP policy is largely based on the African Union Convention for IDPs.<sup>1038</sup>

### 5.3 Conceptual characteristics of a national response

It has been emphasized and recognized numerously that the duty towards internally displaced persons, lies first and foremost with their state.<sup>1039</sup> They should, in accordance with the established principles of international law, enjoy its protection, and assistance. Governments accept this responsibility as well. The issue is what does this responsibility entail? How can it be weighed, and attained?

To answer these questions a framework has been set up, spelling out guidelines for states and IDPs themselves.<sup>1040</sup> To this end, it has been highlighted that the following benchmarks have to be achieved by individual governments in the process of fulfilling national responsibility for addressing internal displacement. These include: Preventing internal displacement or minimizing its adverse effects, then raising national awareness over the problem. This must be followed by facilitating the collection of data on the statistics and conditions of IDPs nationally. Support should also be provided with respect to training on the rights of IDPs. Additionally, facilitating the creation of a legal framework for maintaining the rights of IDPs and developing a national policy on internal displacement would compliment a state's effort to address displacement. Lastly, designating an institutional focal point on IDPs, providing support and encouraging the national human rights institutions to integrate matters of internal displacement into their agendas as well as ensuring the consultation and participation of IDPs in matters that concern them is imperative; and finally supporting the attainment of durable solutions, allocation of adequate resources and good management of such and cooperating with the international community in circumstances where national capacity is unavailable or inadequate will all contribute to setting up a successful and comprehensive national protection framework.<sup>1041</sup>

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<sup>1038</sup> IRIN News, 'KENYA: Draft policy offers new hope for IDPs' Nairobi, 19 March 2010.

<sup>1039</sup> Article 3(1) of the Guiding Principles on Internal Displacement 1998 as above.

<sup>1040</sup> Brookings Institution 'Addressing internal displacement: framework for national responsibility' April 2005 at 5.

<sup>1041</sup> Brookings framework for national responsibility 2005 as above at 5-6.

The framework set up is not meant as a guide and monitoring tool only to governments. Recognition is made towards the key roles played by other actors such as national human rights institutions (NHRIs), international organizations, regional bodies, donors and civil society in assisting and at times reinforcing state initiatives in the process of addressing internal displacement.<sup>1042</sup> In the process of addressing internal displacement, relevant governments are advised to do so in a comprehensive manner. This encompasses dealing with all the causes of internal displacement as identified in the United Nations Guiding Principles.<sup>1043</sup> Additionally all groups of displaced persons have to be taken into account without discrimination, especially the more vulnerable people who are usually overlooked and are susceptible to specific protection, assistance and reintegration needs.

Women who head households, unaccompanied minors, people with disabilities, and the elderly are usually neglected.<sup>1044</sup> Women and girls suffer and face discrimination in the process of for instance obtaining documentation, in their own names, they have a hard time accessing income in reasonable manners. They also face hardship in camps with regard to access to food rations, especially unaccompanied women. On return acquiring land, especially in most African countries where the presence of a man is required becomes very difficult for such women. This means single women, widows and girls face additional hardship in terms of their needs being addressed.<sup>1045</sup> Minority ethnic groups, indigenous populations and the rural poor should also be treated equally in terms of provision of assistance and protection in situations of internal displacement.<sup>1046</sup> As a result of their prior marginalization, they are usually in positions of heightened disadvantage during displacement.

A national response is required to be able to take into account all relevant affected groups and address all their concerns with regard to social, economic and political issues leading to their prior and on-going exclusions, which sometimes are causes of displacement.<sup>1047</sup> Frameworks set up by governments to address internal displacement also should take into account the needs of the displaced comprehensively. This involves

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<sup>1042</sup> Brookings framework for national responsibility 2005 as above at 6.

<sup>1043</sup> The Guiding Principles spell them out as conflict, communal strife, serious violations of human rights, natural and man-made disasters as well as development projects.

<sup>1044</sup> Brookings framework for national responsibility 2005 as above at 9.

<sup>1045</sup> Brookings framework for national responsibility 2005 as above.

<sup>1046</sup> Brookings framework for national responsibility 2005 as above at 10.

<sup>1047</sup> Brookings framework for national responsibility 2005 as above.

addressing all problems causing and resulting from displacement such as IDP's material needs for food, clean water, shelter, medical attention, and other humanitarian needs. But addressing needs does not only require satisfying their material and assistance needs, it also encompasses addressing their protection needs such as political and civil rights as well as social, economic and cultural rights. These may range from providing access to documentation, the right to vote, access to work, education, training, to providing them with land and a forum to consult and contribute to matters affecting their livelihoods, as well as monitoring and facilitating feedback on programmes set up to assist them.<sup>1048</sup>

National responses should also be responsive in all phases of displacement, including taking up responsibility to ensure the prevention of arbitrary displacement, ensuring security and their well being during displacement and finally promoting environment for durable solutions to address their plight through processes such as return, reintegration and resettlement.<sup>1049</sup> The process of addressing internal displacement locally is also supposed to be considered on all levels of government. The national, regional and local levels should be involved, otherwise protection efforts shaped at the central government will not swift through to IDPs on the ground through local officials who come into daily contact with them.<sup>1050</sup>

Additionally, in as much as it is very appealing and organized to have one specific organ of government mandated to address issues of displacement, it is also advisable for all branches of government to participate towards the protection of IDPs. This is because their various needs and rights can only be comprehensively addressed by various relevant governmental departments.<sup>1051</sup> Lastly the government is expected to address internal displacement in all areas where it has manifested. These will include displacement camps, urban localities where IDPs have settled, and even remote areas which might not be under the control of government. It is necessarily for governments to show their willingness to protect their people even where insurgents are in physical control of areas. This requirement can even be satisfied where other actors such as church organizations, NGOs or International

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<sup>1048</sup> Brookings framework for national responsibility 2005 as above.

<sup>1049</sup> Brookings framework for national responsibility 2005 as above.

<sup>1050</sup> Brookings framework for national responsibility 2005 as above.

<sup>1051</sup> The departments include departments dealing with Humanitarian affairs, human rights, health, housing, justice, social welfare, education, home affairs, development, political sectors, and more importantly, the military and police who are responsible for offering physical protection to IDPs.



#### 5.4.1 Ugandan Militarization of grievances

Uganda's displacement patterns were shaped by the political instability in that country dating as far back as the independence of that country.<sup>1054</sup> This instability politicized ethnocentric antagonism giving rise to the militarization of ethnic group differences that has plagued the political, social and economic landscape of the country. Uganda attained its independence in 1962, under an unusual coalition between the Uganda People's Congress (UPC) led by Milton Obote and 'Kabaka yekka' (KY),<sup>1055</sup> a party led by the King of Buganda, Kabaka Mutesa II.<sup>1056</sup> Attack and violence on the Kabaka and his purported flight to the United Kingdom, which was followed by the abrogation of the 1962 independence Constitution of Uganda by Milton Obote in 1967, was the beginning of the reign of violence and displacements in Uganda. This was later compounded by the Idi-Amin's military *coup d'état* in 1971 and his consequent reign of terror from 1971-1979.<sup>1057</sup> By the time Yoweri Museveni's NRA (National Resistance Army) now 'Movement' was taking power from Tito Okello Lutwa in January 1986, the country and its people had been subjected to massive human rights violations and instability. This happened throughout the second Obote reign and a few other short lived administrations, ending up with the military government of Okello that came to power in 1985.<sup>1058</sup>

Since Museveni's reign began in 1986, 14 insurgencies have taken place, living in their wake massive displacements, internally and externally.<sup>1059</sup> The most vicious of these conflicts, is

<sup>1054</sup> Lomo Z, Nagagga A and Hovil L 'Behind the violence: causes, consequences and the search for solutions to the war in Northern Uganda' *Refugee law project working paper* Feb 2004 No. 11 at 4; See also Lomo Z and Hovil L 'Behind the violence: the war in Northern Uganda' *ISS Monograph* March 2004 No 99 at 11.

<sup>1055</sup> Meaning Kabaka only.

<sup>1056</sup> Kemirere B 'The impact of forced migration on women in Northern Uganda' *Unpublished doctorate dissertation* University of South Africa December 2007 at 82.

<sup>1057</sup> Kemirere 2007 as above at 81.

<sup>1058</sup> Kemirere 2007 as above at 84-85.

<sup>1059</sup> These include Uganda People's Democratic Army, Uganda People's Army, Holy Spirit Movement (led by Alice Lakwena), Uganda National Rescue Fronts I and II, Allied Democratic Forces, Lord's Resistance Army (led by Joseph Kony), People's Redemption Army, Ugandan National Democratic Alliance, Uganda National Liberation Army, Severino Lukoya's Lord's Army (Lukoya was Alice Lakwena's father), Uganda Christian Democratic Army, West Nile Bank Front, and the rebellion of Dan Opiro in Apak; See Lomo, Nagagga and Hovil 2004 as above at 4; However, it should be pointed out that the rebellions were not confined to the greater north region only because even in Western Uganda, where Museveni hails from, the National Army for the Liberation of Uganda (NALU) under Amon Bazira emerged. Most of these rebellions were short lived because by the end of 1987, the NRA had signed comprehensive peace agreements with most of the rebel groups and integrated them into the army, this was not the case in Acholi though; See Bareebe S *The rise and rise of the Monitor: History of the media, Uganda's History and history of the Monitor newspaper* 2007

the conflict in northern Uganda which has gone on for over eighteen years.<sup>1060</sup> The war in northern Uganda initially involved a rebellion in Acholi around August 1986 by disgruntled former UNLA (Uganda National Liberation Army) soldiers from Obote and later Tito Okello's regimes. Additionally, Idi Amin's remnant troops and other soldiers that had belonged to former insurgencies who had all fled to their *Acholi* homelands in the north came together with UNLA to form the UPDA (Uganda People's Democratic Army). The conflict capitalized in 1986, after Museveni disobeyed the Nairobi power sharing agreement of December 1985 and ousted Okello from power. The conflict was between the UPDA and the NRA/M of Museveni.<sup>1061</sup> The conflict involved five multifaceted rebellions and this was one of the reasons why it was circular and has prolonged for so long.<sup>1062</sup> This conflict was for political power, especially by the *Acholi* former soldiers who for so long had mainly constituted the Ugandan army. There was a need to reclaim this power from the *westerners* who they felt largely constituted Museveni's NRM.<sup>1063</sup>

The other reason for the conflict was deep seated differences and unaddressed grievances between *northerners* and the previous as well as reigning government. As time progressed, northern Uganda rebels, from the UPDA and their successive insurgencies came together under the leadership of Alice Auma Lakwena and the Holy Spirit Movement, seemingly to address these grievances.<sup>1064</sup> But Alice lost favour and power after losing to the NRM in 1987. Joseph Kony (Alice's cousin) seized the opportunity and formed the LRA (Lord's Resistance Army) in 1987. The LRA has since then represented varying undefined and often unclear goals. It did not seem keen to represent interests of the Acholi people or their grievances. Kony's belief and worldview is based in fanatical religiousness, African spiritualism and apocalyptic ideologies which have led him to use fear, violence, manipulation, and abduction to both control the LRA soldiers and sustain the northern

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<sup>1060</sup> Lomo, Nagagga and Hovil 2004 as above at 4.

<sup>1061</sup> Lomo, Nagagga and Hovil 2004 as above at 5.

<sup>1062</sup> Lomo, Nagagga and Hovil 2004 as above at 4.

<sup>1063</sup> Bareebe 2007 as above at 7.

<sup>1064</sup> Alice Lakwena was a traditional priestess and was believed to have mystic powers to pre-determine and eventually win battles over her enemies as well as the power to immunize her soldiers against the power of bullets. It is these purported mystical powers that helped her join scattered groups of former soldiers and insurgencies to raise an army to fight the reigning government.

Uganda conflict.<sup>1065</sup> The LRA has killed, raped, maimed and destroyed everything they have come across.

Since the Northern Uganda conflict started eighteen years ago, it has resulted in the displacement of over 1.8 million people and deaths of hundreds of thousands of people at its height.<sup>1066</sup> The government's only response during the twenty year war was to regard most of the northerners as war elements or sympathizers and deposit them into 'protected camps' for the internally displaced. This was done both as a humanitarian attempt to protect and assist the displaced, but also as a mechanism of containing the population from participating in the surrounding insurgencies. Unfortunately it is not the first time in Uganda that people have been constricted and contained in camps for the wrong reasons.<sup>1067</sup> At the same time large groups of internally displaced persons have resorted to integrating themselves into urban communities to avoid the desecration visited upon those in camps, both by the government and insurgencies.<sup>1068</sup> It can be surmised that the most severe and largest numbers of displaced persons in northern Uganda were produced by government policies of 'protected villages' as opposed to the war itself.

#### *5.4.2 Ethnicity, land and the evolution of politics of displacement in Kenya*

The bases and patterns of internal displacement in Kenya are less conspicuous and multifaceted than those of Uganda. They are also more sporadic and hard to place in specific points in time or place. In as much as ethnic antagonism existed immediately after, and prior to independence as a result of British colonial land policies, the physical violence and tensions resulting from such, manifested after the introduction of multiparty democracy in 1991.<sup>1069</sup> Daniel Arap Moi, former Kenyan President and chairman of the then sole ruling party, KANU (Kenyan African National Union), made in 1991, one of the most accurate predictions that the return of Kenya to a multiparty system would result in an outbreak of

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<sup>1065</sup> Lomo, Nagagga and Hovil 2004 as above at 4.

<sup>1066</sup> See Lomo, Nagagga and Hovil 2004 as above at 4; World Bank Report 2004.

<sup>1067</sup> This happened before in 1983 in the 'Luero triangle' when about 750,000 people, this time in Luero District in Northern Kampala, were forcibly contained in camps by Obote's government purportedly to control the rising Museveni insurgency. Civilians were subjected to abuse and military control, and a lot of them died in these camps, the ones who were found outside this triangle were assumed to be part of the insurgency and were killed; See Kemirere 2007 as above at 85.

<sup>1068</sup> Lomo, Nagagga and Hovil 2004 as above at 7.

<sup>1069</sup> The Sentinel Project for Genocide Prevention 'Preliminary assessment: the risk of Genocide in Kenya' Current to September 2011 (Revised) at <http://thesentinelproject.org/wp-content/uploads/Kenya-Risk-Assessment-2011.pdf> accessed on 23-11-2012.

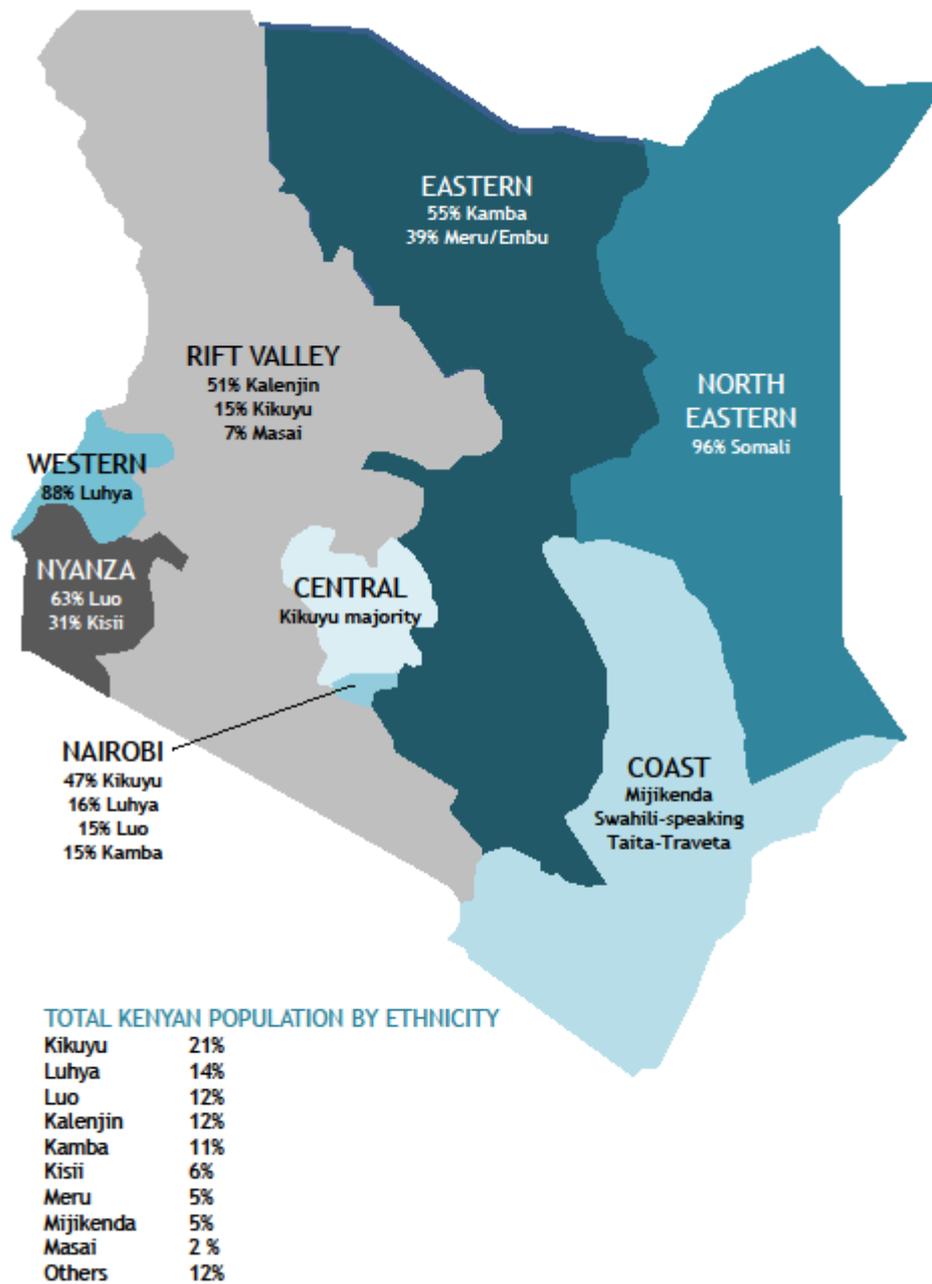
tribal violence that would affect the nation immensely.<sup>1070</sup> He stated that due to Kenya's ethnic diversity, with over 46 different ethnic communities, a multiparty system which is essentially characterized by competition within political structures coupled with the existing ethnic animosity within the Kenyan community, would lead to further ethnic competition and result in inter-tribal clashes as well as eventual break down of the state.

The shocking revelations that followed over the years are that, violent clashes between various ethnic groups have ensued in the country, but evidence suggests that they are not *per se*, a spontaneous consequence of the multiparty regime that was introduced. They increasingly seem to emanate from political provocation and polarization of ethnic tensions and land issues.<sup>1071</sup> After the re-introduction of a multiparty system in Kenya in 1991, there was a bloody election that followed in 1992, as well as in 1997, 2002 and then 2007.

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<sup>1070</sup> Abdullahi A 'State creation of internally displaced persons in Kenya 1991-98: The process and the political dimensions' *East African Journal of Peace and Human Rights* 2004 Vol. 10 No 1 at 1.

<sup>1071</sup> Africa Watch *Divide and rule: state sponsored ethnic violence in Kenya* 1993 Vol. 3 Human Rights/Africa Watch at 1.



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<sup>1072</sup> The sentinel project for genocide prevention ‘Preliminary Assessment: the risk of Genocide in Kenya’ A map of estimated Kenyan population by ethnicity, current to September 2011 (Revised) at 27; It should be noted that according to this report, the cities that were prevalent with post election violence, in 2007/08 are found within the Rift Valley, followed by Nyanza Provinces, which are highly inter-ethnic.

The land question has always been central to the discussion of displacement in Kenya. Even during colonial times, land was one of the main reasons why people were displaced from their indigenous holdings. In the Rift Valley, which was then called ‘White highlands’, the most fertile land in the country, indigenous dwellers of the land, such as the Maasai, Kalenjin, Samburu and Turkana were displaced from their land. These communities were pastoralists or semi-pastoralists, they did not have the skills to cultivate the land for profit. Kikuyus from Central Province, Luos, and Kisiis were brought in high numbers as labourers for the white highland farmers.<sup>1073</sup> Some land laws and regulations to legalize these practices were promulgated. Legal provisions for land acquisition limited the colonial settlers to ‘waste and unoccupied land.’ But because at the time the highlands and other areas with arable land that was preferable for agriculture were occupied, and due to the repeal of various safeguarding Ordinances from 1897, eventually massive African forcible displacement took place.<sup>1074</sup>

The 1902 Crown Ordinance predetermined such measures being taken by providing that if land was no longer occupied by Africans, it could be put up for sale or lease as if it were ‘waste and unoccupied land.’ The Ordinance did not make consent from tribal chiefs or community a prerequisite for acquiring such land. By 1915 the Crown Lands Ordinance had re-defined crown lands to include ‘land inhabited by Africans or reserved for the use of and support of, native tribes.’ This together with the 1915 Native Reserves Policy is how finally most Africans were forcibly removed from fertile land to create room for plantations and the ‘white highlands’. By independence in 1963, over three million hectares, which was almost more than half of the potentially fertile agricultural land was taken away from Africans.<sup>1075</sup>

At independence, the new president of the Country, Jomo Kenyatta, who happened to be Kikuyu, introduced a policy for the highlands land to be procured and distributed to former labourers of the white farmers and those who could afford to buy land. Unfortunately these happened to be Kikuyu in largest numbers. These land policies did not take into consideration the need for land by the previous disowned pastoralist groups, who were from then on permanently displaced from the homelands, first by the colonial machinery and secondly by their new government. Such preferential treatment of one ethnic group by one of

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<sup>1073</sup> Kamugi P ‘The politics of displacement in multiparty Kenya’ *Journal of Contemporary African Studies* 2009 Vol. 27 No 3 at 348.

<sup>1074</sup> Kamugi 2009 as above at 348.

<sup>1075</sup> Kamugi 2009 as above at 348.

its own at the helm of government at any given point in time has spread through to other areas of government including public and private sectors. It did not end with Kenyatta's administration, or Kikuyu favoritism. When Daniel Arap Moi, the Kalenjin Vice President of Kenya took over government on Kenyatta's death in 1978, he followed in Kenyatta's footsteps by appropriating the most fertile land and positions of influence for his ethnic group.<sup>1076</sup> This being the case, the beginning of antagonism and struggle for Kenya's land and other interests on a tribal or ethnic basis had started. The Kalenjins also tried to re-distribute the highlands within the rift valley for themselves. This was of course impossible because the land was occupied by Kikuyu farmers. So militias were formed and supported by politicians and successful Kalenjin businessmen to violently and systematically attack Kikuyu farmers in the highlands until they either sold or left the area.<sup>1077</sup> This was the beginning of systematic displacement in Kenya and the trend has continued to manifest in various contexts.

There are two varying trends of thought as to what is the actual role of land in the politics of displacement in Kenya. The first group advocates that it was a product of longstanding land distribution failures before and after independence.<sup>1078</sup> Others claim that land is simply used as an incentive in the quest for political power through ethnocentric antagonism.<sup>1079</sup> The first group of scholars sees displacement in Kenya as a failure by the immediate post-independence government in the management of landlessness and poverty that resulted from colonial land alienation and disinheritance.<sup>1080</sup> During the democratization process in the 90s, the land question came up again. In areas characterized by multi-ethnicity, the issue became an instrument for political mobilization.<sup>1081</sup> The last card to be dealt was to label pro-democracy efforts as an apocalyptic force that would lead to chaos in multiethnic Kenya.<sup>1082</sup> One can actually sum up that the issue of displacement is not a consequence of one as opposed to the other school of thought. It is in fact a culmination of both land mismanagement and the politicization and mobilization of ethnicity through land grievances.

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<sup>1076</sup> Kamugi 2009 as above at 348.

<sup>1077</sup> Kamugi 2009 as above.

<sup>1078</sup> Kamugi 2009 as above.

<sup>1079</sup> Kamugi 2009 as above.

<sup>1080</sup> Kamugi 2009 as above at 345-364 at 347,348.

<sup>1081</sup> Kamugi 2009 as above 348.

<sup>1082</sup> See the 1990 speech by former Kenyan President Daniel Arap Moi on the potential doom of multiparty.

Both factors are actually dependent upon one another for violence and displacement to ensue within Kenya.

The Introduction of a multiparty system in 1991 exacerbated an issue that had existed within the government for years. With multiparty, groups and individuals had forums and representatives to express their dissatisfaction with the incumbent government, and even attempt to change them.<sup>1083</sup> The initial formation of Kalenjin, Maasai, Turkana and Samburu Traditional Association of the rift valley (KAMATUSA), coastal tribes and some Luhya, was an expression of these dissatisfactions. They even went as far as establishing a political party (KADU) Kenya African Democratic Union, to advance this position against the kikuyu and Luo dominated KANU (Kenya African National Union) in 1960.<sup>1084</sup> The opposition had suggested the establishment of a federal government (Majimbo), which would decentralize power from the central government and allow regional administration of land. This system was ignored only to be incorporated after hundreds of thousands of people were displaced and thousands killed in various cycles of violence.<sup>1085</sup>

#### 5.4.3 Patterns and Phases of displacement in Kenya

The most notable phase of internal displacement in Kenya was recorded in 2007, where it was estimated that almost 600, 000 people were internally displaced by the post election violence that took place in the country.<sup>1086</sup> But as it has already been noted, displacement is a circular and sporadic event in Kenyan politics. It has happened numerous and in some cases subtly since multiparty was introduced, and to some extent even slightly before that. Displacement is both a cause and effect of political manipulation in Kenya.<sup>1087</sup> It is also both a result and cause of land injustices in Kenya. Historical displacement is additionally also a cause of recent displacements in the country.

Displacement patterns in Kenya are characterized by poor government policies when it comes to land distribution and re-distribution. They are also characterized by political

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<sup>1083</sup> FIDH and KHRC *Massive internal displacements in Kenya due to politically instigated ethnic clashes: absence of political and humanitarian responses* April 2007 at 10.

<sup>1084</sup> Kanyinga K 'The legacy of the white highlands: land rights, ethnicity and the 2007 post election violence' *Journal of Contemporary African Studies* 2009 Vol. 27 No. 3 at 327.

<sup>1085</sup> Kanyinga 2009 quoted in Kamugi 2009 as above at 349.

<sup>1086</sup> Kanyinga 2009 as above at 328.

<sup>1087</sup> Kanyiga 2009 as above at 327, 328.

manipulation of such grievances through polarization of ethno-antagonism and ethnic balkanization which is actually rarely voiced, or expressed by the people really affected by it.<sup>1088</sup> Rather the dissatisfaction is expressed by lawless and often extortion minded, jobless, politically unaffiliated and indifferent, youth militia that are usually masked as ethnic rights activists and defenders of the land and other causes.<sup>1089</sup> They take up the law into their own hands with financial support and under the umbrella of impunity laden politicians. They kill and displace hundreds of thousands of people before or during each election year to further the ends of these politicians.

Displacement tendencies started in 1991, before, during and after elections. Initially they were employed to make the introduction of multiparty in Kenya seem like a bad idea, but internal displacement took on a life of its own by actually managing to affect even the election outcomes.<sup>1090</sup> The government then employed this tactic as a way and means of dominating elections from then on. But it would be a wrong generalization to assume that displacement patterns in Kenya are not also characterized by other underlying factors, beyond the political ones. Displacement is also a legitimate outcome of deep seated land grievances in Kenya that were inherited from the colonial administration and exacerbated by administrations that followed.<sup>1091</sup>

Displacements in Kenya are further a result of the disgruntled and often jobless, homeless and at times education-less youth who are also remnants of previous displacement cycles. These youth become targets for recruitment by militias and violent gangs that plunder, extort, rape, displace and kill without any specific outlined political agendas.<sup>1092</sup> Once a while they become thugs for hire during election years and are used by the elite as tools of chaos and displacement. Some of these groups have not in their entirety existed as vigilante groups. Some initially started out as social land movements, only to metamorphose into militias and gangs.<sup>1093</sup> Internal displacement in Kenya is a complex multifaceted phenomenon that has varying intertwined, interlinked and often overlapping cyclic causes and consequences. It is

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<sup>1088</sup> Osamba J 'The dynamics of ethno-political conflict and violence in the rift valley province of Kenya' *Nationalism and ethnic politics* 2001 Vol. 7 No. 4 at 90.

<sup>1089</sup> Osamba 2001 as above at 93.

<sup>1090</sup> Osamba 2001 as above at 94.

<sup>1091</sup> Osamba 2001 as above at 106.

<sup>1092</sup> These include gangs such as Mungiki, the Sabaot land defence force, Marakwet land defense force and many more.

<sup>1093</sup> Osamba 2001 as above at 90.

not a result of one specific historical moment. It is rather a result of on-going events including land grievances, ethnic balkanization, political manipulations, bad governance, corruption, a culture of impunity, economic marginalization and so much more.<sup>1094</sup>

What has made internal displacement in Kenya a closed and often un-discussed issue is the subtle nature in which it often took place until the 2007 post election events which displaced an estimated 600, 000 people.<sup>1095</sup> The displaced population in Kenya has often been undocumented and unregulated. But in reality the caseload of displaced populations of 2007 only added to previous masses of over 400, 000 IDPs from the 1991 and 1997 pre-and post election violence.<sup>1096</sup> This number together with those displaced by resource conflicts in the northern pastoral communities, disarmament projects, and counterinsurgencies, not to mention various development projects have led to an estimation of over one million IDPs, unprotected, unassisted and at times unaccounted for.<sup>1097</sup>

From the above exposition, it seems that internal displacement patterns in Kenya and Uganda are in themselves very complex and yet totally diverse. Internal displacement in Northern Uganda is a result of a complex conflict that has evolved for over twenty years from the time the country got its independence. It is a result of poor formation of a nation-state at independence, a nation state that had not yet acquired a nation spirit or nurtured one. It is result of fragmented identity formulation which forced each group in the country at any given time to feel that their identity and very existence was in danger of perishing unless they were the ones heading the administration.<sup>1098</sup>

Internal displacement in Northern Uganda is further a result of misplaced and misinformed nationhood and identity. This is evidenced by the original cause of the conflict getting blurred somewhere along the way, and a new conflict which was undefined, uncontrolled and with no specific identity and only characterized by personal gratification and greed taking on.<sup>1099</sup> The issue of internal displacement in Uganda has also been fuelled by irresponsible,

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<sup>1094</sup> Kamungi 2009 as above at 328, 348.

<sup>1095</sup> Kamugi 2009 as above at 348.

<sup>1096</sup> Kamungi 2009 as above at 345.

<sup>1097</sup> Kamungi 2009 as above.

<sup>1098</sup> Lomo and Hovil 2004 as above at 11.

<sup>1099</sup> Lomo and Hovil 2004 as above.

indifferent government policies towards the plight of its citizens who were often caught in the cross fire between or used as shields by both government and the insurgents.<sup>1100</sup>

#### *5.4.4 Nationalism and ethno-political displacements*

It has become obvious from the above discussions involving both Uganda and Kenya that the nature and patterns of displacement in these countries specifically and other African countries generally, might also be a result of the clash between the imposed nationalist ideologies and the pre-existing ethnic identities.<sup>1101</sup> In Africa, a continent widely shaped by loyalty to tribes and clans, the formation of national identities was too drastic. In places where divisions were already incited within multi-ethnic communities, national identities were never formed comprehensively.<sup>1102</sup> In Uganda, divisions already incited and created by the colonial divide and rule policies, were to permeate into the next 40 years from independence and affect the stability of the country.<sup>1103</sup>

This was the same situation in Kenya. Even after independence was achieved, the spirit of a nation was very weak, with each ethnic group or tribe claiming to own it and interpret it according to its own understanding and for its own benefit.<sup>1104</sup> A nation state as it exists today was never a part of African mentality. And the creation of such without infusing the new and foreign philosophy with the pre-existing ideology of indigenous ethnic identities has sowed seeds of tribal divisions and the consequent ethnic violence.<sup>1105</sup> In most African countries of course, it is not simply the preservation of ethnic identity and interests on its own that has led to what one may call the 'African nation crisis' but rather the politicization, corruption and manipulation of the desire for such ethnic recognition and preservation.<sup>1106</sup>

By the time Uganda had started initiatives to attain independence in the 1950s, these initiatives were already characterized by divisions. These divisions started in religious balkanization, as predominant catholic political parties disagreed with protestant ones, and

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<sup>1100</sup> Nagagga , Lomo and Hovil 2004 as above at 4.

<sup>1101</sup> Nagagga, Lomo and Hovil 2004 as above.

<sup>1102</sup> Osamba 2001 as above at 90.

<sup>1103</sup> Osamba 2001 as above at 98.

<sup>1104</sup> Osamba 2001 as above at 101.

<sup>1105</sup> Osamba 2001 as above at 102.

<sup>1106</sup> Osamba 2001 as above at 98.

both stood against their Muslim counterparts.<sup>1107</sup> At the same time there were ethnic and tribal divisions as most of Uganda's other tribes stood against the Baganda and the King of Buganda and his political party.<sup>1108</sup> Europeans had included him and used his influence to speed up the establishment of their colony. This was at the same time meant to intentionally sow divisions and it subsequently worked in their favour. Such divisions managed to slow down the process of bargaining for independence and eventually manifested in deep divisions after independence which culminated in the overthrow of the Kabaka and the beginning of numerous coup d'états, civil wars and unrest in Uganda.<sup>1109</sup>

In Kenya, the promotion of tribes such as Kikuyu, Luo and Kisii, based on their agricultural background, and their subsequent early exposure to colonial lifestyle, education and economic maneuvers, led them to acquire positions in the colonial administration, becoming settlers and squatters on white farms.<sup>1110</sup> Eventually they were the ones who largely engineered the rebellions (maumau) against the colonial government.<sup>1111</sup> During the struggle for independence, they were in the front line, by virtue of their exposure, education and economic advantage over other tribes, and after independence they were better positioned to bargain for the best land, and run the administration of the country. They also demonstrated economic dominance over other ethnic groups.<sup>1112</sup>

Other pastoral groups, who were expelled from their land, were not exposed to good education, or economic oversight. These deep seated divisions played themselves out in the political struggles that followed as the nation failed to present a nationalistic stand over and over again while tribalism and ethnicity deformed nationalism.<sup>1113</sup> It was impossible to attain the identity of a nation if such divisions were sown to highlight the differences in the tribes. It has resulted in a deep seated fear that under an administration made up of a majority of one

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<sup>1107</sup> Babugura 2007 as above at 85.

<sup>1108</sup> Kemirere 2007 as above.

<sup>1109</sup> Kemirere 2007 as above.

<sup>1110</sup> Osamba 2001 as above at 90.

<sup>1111</sup> Osamba 2001 as above at 89.

<sup>1112</sup> Osamba 2001 as above.

<sup>1113</sup> This can be seen in the formation of political parties in the sixties, since the colonial government had discourage country wide political parties and encouraged rival district or ethnic based political associations, even the political parties formed to fight for independence mirrored this. KANU was for the elitist, educated, and economically advanced Kikuyus and Luos, while KADU was largely made up of small and less educated communities such as Kalenjin, Luhya and coastal Mijikendas among others. See Osamba 2001 as above at 90.

specific ethnic group, other groups would be marginalized.<sup>1114</sup> This has led to various factions manipulating these ethnic tensions to advance their political aspirations. In extreme cases, it has even led to ethno-political violence, death and mass displacements. In both cases, government responses have been non-preventive at most, efforts have been made a little too late.<sup>1115</sup>

## **5.5 Prevention and minimization of displacement and its adverse effects**

Prevention involves the act of prevention itself and subsequent eradication of conditions that might lead to population displacement within a state. This also includes mitigating the effects of displacement that would in any case be unavoidable, as well as ensuring that such displacement does not last longer than is necessary.<sup>1116</sup> The creation of early warning and rapid response systems and the promotion of an environment that demands the respect of human rights and international humanitarian law are additionally an indication of governments' initiatives towards the prevention of arbitrary internal displacement. Where displacement happens as a result of government decision and not during emergency stages of armed conflict or disasters, the government has to ensure that provision for proper accommodation, nutrition, safety, health and hygiene as well as non separation of family members is observed.<sup>1117</sup>

Decisions that will result in the displacement of people must be taken by a government authority empowered to do so, after informing the purported group to be displaced the reasons and procedures for their displacement, the compensation and relocation arrangements involved and acquiring their free consent.<sup>1118</sup> Vulnerable groups such as women should be highly involved at each stage of the displacement, and indigenous groups with special attachment to land must be specifically considered and their displacement must be vehemently prevented.<sup>1119</sup> Where displacement has already happened, displaced persons must be provided with an avenue to enforce their rights and obtain remedies to such displacement eventually. Displacement must not be carried out in a manner that violates the

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<sup>1114</sup> Osamba 2001 as above.

<sup>1115</sup> KHRC and IDP Network 2011 as above at 8.

<sup>1116</sup> Principle 5-9 of the Guiding Principles on Internal Displacement 1998 as above.

<sup>1117</sup> Brookings framework for national responsibility 2005 as above at 5 and 6.

<sup>1118</sup> Brookings framework for national responsibility 2005 as above at 12.

<sup>1119</sup> Brookings framework for national responsibility 2005 as above.

rights, dignity, liberty and security of those affected. It is the responsibility of government to ensure this.<sup>1120</sup>

In the case of displacement in Kenya and Uganda, it is questionable whether all the above, or even some of the principles have been upheld. In Uganda matters involving internal displacement fall within the ambit of the Department for disaster preparedness and management of refugees, which is in the Prime Minister's office.<sup>1121</sup> In Kenya on the other hand, the Ministry of state for special programmes is responsible for addressing matters of internal displacement.<sup>1122</sup> In both countries attempts to prevent any future displacement do not seem to have been taken seriously.

In Uganda, after the twenty year civil war, emphasis is currently placed on the return, reintegration and development phase, and much does not seem to be done on addressing the root causes of the displacement or even attempting to attain durable solutions so that history does not repeat itself.<sup>1123</sup> It should be noted that return in itself is not as much a durable solution as it is a physical process.<sup>1124</sup> Most returnees in Northern Uganda still face constant hardships during and after the process of return. A good number of internally displaced persons are still in IDP camps within the country out of fear of returning, or because the right processes were not followed for them to manage to return.<sup>1125</sup>

In Kenya, attempts to prevent any possible future displacement seem non-existent.<sup>1126</sup> The very nature of displacement patterns in Kenya depend on the absence or ill preparedness of such attempts.<sup>1127</sup> Despite the fact that there is a special institution and government ministry that is accountable for such process, there is nothing to show that the politically incited ethnic and land grievances have seized or will not happen again.<sup>1128</sup> Upcoming elections stand to test the very nature of the existence, or lack of efforts to address the issue of displacement in Kenya. Campaigns and political mobilizations across ethnic lines are already taking place

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<sup>1120</sup> Brookings framework for national responsibility 2005 as above.

<sup>1121</sup> Ugandan National IDP Policy 2004 as above.

<sup>1122</sup> Kenyan Draft National IDP Policy 2010 as above.

<sup>1123</sup> IASC Uganda in-country self assessment 25-26 October 2006 (12-10-2011) at 2.

<sup>1124</sup> IASC Uganda in-country self assessment 2006 as above.

<sup>1125</sup> IASC Uganda in-country self assessment 2006 s above.

<sup>1126</sup> IRIN Kenya 'Kenya: Nyanza's forgotten IDPs' at <http://www.irinnews.org/printreport.aspx?reportid=91946> accessed on 17-08-2011.

<sup>1127</sup> Kamugi 2009 as above at 348.

<sup>1128</sup> KHRC and IDP Network 2011 as above at 46.

within the country.<sup>1129</sup> This is despite the existing arrest warrants and indictments issued by the ICC Prosecutor against Kenyan politicians alleged to have incited directly or indirectly the 2007-2008 generalized post election violence that resulted in the deaths and massive displacements of hundreds of thousands of people.<sup>1130</sup>

In 2008 the government of Kenya, the UNHCR and other stake holders started the protection and shelter clusters.<sup>1131</sup> By end 2008/09 the protection cluster was phased out and handed over to the Ministry of Justice, Nation Cohesion and Constitutional Affairs as well as the Kenyan National Commission for Human Rights.<sup>1132</sup> The cluster was renamed as the National Protection Working Group on Internal Displacement (PWGID).<sup>1133</sup> Following its creation, two field based protection working groups, one in Nakuru and the other in Eldoret both within the Rift Valley Province, areas most affected by post election violence were also set up.<sup>1134</sup>

The creation of the National Protection Working Group on Internal Displacement was meant to address some issues raised above and a lot of other issues that IDPs in Kenya face. Since the PWGID was created to replace the cluster approach in addressing internal displacement in Kenya, a number of developments have been made. These include the development of PWGID ToR (terms of reference), a draft national IDP policy was also adopted and is currently in the process of presentation to parliament after the ‘inter ministerial committee approves it.’<sup>1135</sup> Additionally the child protection and SGBV clusters have been mainstreamed into the PWGID structures and matters involving durable solutions that are key areas of concern in the attempt to address internal displacement have also been

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<sup>1129</sup> KHRC and IDP Network 2011 as above.

<sup>1130</sup> KHRC and IDP Network 2011 as above; Mwirichia V and Katusya B ‘How far is home for Kenya’s internally displaced persons? Institute for Security Studies at [http://www.iss.co.za/iss\\_today.php?ID=1238](http://www.iss.co.za/iss_today.php?ID=1238) accessed on 26-10-2011.

<sup>1131</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat Nairobi 8<sup>th</sup> Feb 2011 at 6.

<sup>1132</sup> UNHCR BO, Kenya IDP Protection Cluster ‘Protection working group on internal displacement’ Transition Concept Note Nairobi 06-02-2009 at 1.

<sup>1133</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat (Speech by UNHCR representative to Kenya-Javier Lopez Cifuentes) 2011 as above at 6; See also The Secretariat, UNHCR Kenya Branch, Report of the Nakuru protection working group, workshop held in Nakuru, 18<sup>th</sup> January 2011.

<sup>1134</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat 2011 as above at 6; See also The Secretariat, UNHCR Kenya Branch, Report of the Nakuru protection working group, workshop 2011 as above.

<sup>1135</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat 2011 as above.

addressed.<sup>1136</sup> Lastly the PWGIDs acted as focal points for early warning and coordination mechanisms during the 2010 referendum period.<sup>1137</sup> Further, a parliamentary select committee on internal displacement has been created to deal with matters of internal displacement to foresee the approval of the draft IDP policy by the relevant authorities and if possible adoption by cabinet.<sup>1138</sup> The same group is also occupied with attempts to promote the process to ratify the Kampala Convention. Failure or any delays in doing so is not a good indication of the country's efforts to address displacement, considering the massive displacements it has faced over the last decade. The PWGID has coordinated efforts for information gathering and sharing on the general situation of IDPs, access to durable solutions, government assistance schemes as well as advocacy matters on IDPs.<sup>1139</sup>

The Kenyan national draft policy on internal displacement advocates for early warning procedures and preventive steps to be taken to avoid or mitigate future displacements.<sup>1140</sup> These include training all relevant government actors such as civilian, police or military institutions on human rights and humanitarian law principles concerning IDPs.<sup>1141</sup> Additionally, the implementation of national laws, policies, programmes and reports of relevance to internal displacement is also highlighted as a necessity in preventing displacements.<sup>1142</sup> Historical injustices such as land problems also need to be comprehensively addressed. The formulation of documents such as the National Land Policy has been pointed out by the draft IDP policy as an admirable step towards preventing displacement.<sup>1143</sup>

The draft policy provides that access to justice also needs to be re-vamped and re-facilitated. Institutions such as courts and police need to be re-constituted to become more inclusive and prompt.<sup>1144</sup> This will consequently result in prompt resolution of disputes and it is one way of curtailing street justice. Access to justice should also be facilitated and made more readily

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<sup>1136</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat 2011 as above.

<sup>1137</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat 2011 as above.

<sup>1138</sup> Report of the capacity building forum with the Parliamentary Select Committee on Resettlement of Internally Displaced Persons, Serena Beach Hotel, Mombasa 23<sup>rd</sup> May 2011 at 22.

<sup>1139</sup> UNHCR Kenya Draft report of the National Protection Working Group on Internal Displacement Retreat 2011 as above 25.

<sup>1140</sup> Kenyan Draft IDP Policy – 'Introduction' 2010 as above.

<sup>1141</sup> Kenyan Draft National IDP Policy 2010 as above.

<sup>1142</sup> Kenyan Draft National IDP Policy 2010 as above.

<sup>1143</sup> Kenyan Draft National IDP Policy 2010 as above.

<sup>1144</sup> Kenyan Draft National IDP Policy 2010 as above.

available, through legal aid and mobile clinics.<sup>1145</sup> Such attempts should include and involve the immediate concerned population, so local dispute resolution mechanisms should be encouraged. The purpose of such provision was to minimize chances of disputes getting out of hand and communities resorting to violence to settle such misunderstandings.

The draft policy further provides that acts of impunity, including arbitrary displacement of populations should be promptly and seriously addressed.<sup>1146</sup> Punitive measures must be taken to discourage them, additionally, mobile populations are provided for by taking them into consideration and advocating for the creation of programmes that would provide them additional or alternative livelihoods to minimize disputes over land which they completely depend on.<sup>1147</sup> The policy provides additionally for deterrent measures being taken through the adoption of laws that discourage and prohibit actions that might result in displacements such as public incitement of violence through political incitement, hate speech, cattle rustling, smuggling and the proliferation and use of weapons.<sup>1148</sup> In areas where there seems to be a danger of displacements, the policy provides for security forces to be deployed in advance to monitor and control any violence.<sup>1149</sup> Enmity and disputes, especially ethnic ones within communities should not be polarized, but rather resolved and if possible through local dispute resolution and reconciliation.<sup>1150</sup>

In situations of displacement caused by natural disasters, the draft policy provides that early warning systems must be set up, and preparations should be made for addressing the situation rapidly.<sup>1151</sup> Deterrent measures including avoiding precipitating natural hazards, through processes such as deforestation should also be taken by the government.<sup>1152</sup> In as much as the policy has outlined these preventive measures very keenly, there are no clear indications as to what exactly is being done on the ground to do so. For instance the policy does not specify which security section is responsible to be deployed in areas where displacement seems likely. There is no indication as to what steps are being taken to deter public incitement. So far no politician involved in hate speech and incitements of 2007/08 has been held

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<sup>1145</sup> Kenyan Draft National IDP Policy 2010 as above.

<sup>1146</sup> Kenyan Draft National IDP Policy 2010 as above.

<sup>1147</sup> Kenyan Draft National IDP Policy 2010 as above at 7.

<sup>1148</sup> Kenyan National IDP Policy 2010 as above.

<sup>1149</sup> Kenyan National IDP Policy 2010 as above.

<sup>1150</sup> Kenyan National IDP Policy 2010 as above at 8.

<sup>1151</sup> Kenyan National IDP Policy 2010 as above.

<sup>1152</sup> Kenyan National IDP Policy 2010 as above.

accountable locally. Some laws have been passed but their functionality is questionable.<sup>1153</sup> In fact as the 2012 elections loom over, there is a huge possibility that the same public propagandas and ethnic mobilizations will be seen without any action being taken. Local dispute resolution has also been hard to facilitate, mostly because the communities that displaced each other are still not ready to sit and settle their differences.<sup>1154</sup> Another hindrance is the fact that issues that underlie displacement in Kenya have not yet been addressed. This presents a danger of displacement cycles repeating themselves as soon as the underlying grievances are sparked again.<sup>1155</sup>

Where displacement has already happened the Kenyan government and other stake holders are expected by the draft IDP policy to mitigate and respond promptly to the displacement.<sup>1156</sup> This should include contingency planning, arranging effective disaster management mechanisms in areas at risk, and setting up information dissemination strategies to populations at risk.<sup>1157</sup> Additionally the policy requires emphasis being made by government to the effect that families are not separated, and loss of property and documentation should be prevented, minimized or rapidly addressed after it has happened.<sup>1158</sup> Resources and relief facilities must also be availed to places at risk of facing displacement, in advance to mitigate the effect of displacement on these populations. Finally areas that are deemed to be possible host communities must be prepared financially and given additional services in preparation for the humanitarian influx oncoming.<sup>1159</sup>

The MoSSP (Ministry of State for Special Programmes) has a department that deals specifically with risk and disaster reduction, and another that deals with mitigation and resettlement.<sup>1160</sup> In the performance of such functions, the departments are guided by the National Policy for Disaster Management in Kenya as well as the National Disaster Response Plan.<sup>1161</sup> To better prepare and plan for future contingencies, the departments have collected records of multifaceted disasters dating from 1974, areas they occurred, degree of casualties

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<sup>1153</sup> KHRC and IDP Network 2011 as above at 51.

<sup>1154</sup> KHRC and IDP Network 2011 as above.

<sup>1155</sup> KHRC and IDP Network 2011 as above.

<sup>1156</sup> Kenyan Draft National IDP policy 2010 as above at 12.

<sup>1157</sup> Kenyan National IDP Policy 2010 as above.

<sup>1158</sup> Kenyan National IDP Policy 2010 as above.

<sup>1159</sup> Kenyan National IDP Policy 2010 as above.

<sup>1160</sup> Government of Kenya, Ministry of State for Special Programmes at <http://www.sprogrammes.go.ke> on 4-10-2011

<sup>1161</sup> Government of Kenya, Ministry of State for Special Programmes as above.

and how they were addressed or failed to be addressed.<sup>1162</sup> Some of the functions of these departments include the prevention mitigation, preparedness and vulnerability reduction in all areas that are highlighted as previous and or future disaster risks.<sup>1163</sup> These departments also play part in the capacity and facilitation of focal institutions and mechanisms that can contribute to the building of resilience to disasters and violence that may lead to for instance the displacement of populations.<sup>1164</sup>

In Uganda the National IDP policy of 2004 made some suggestions as to how the situation of displacement can be prevented or mitigated. The policy defines prevention as measures designed to avert hazards, natural, socio or political events and processes from resulting becoming disasters.<sup>1165</sup> The policy also defines early warning as the provision of relevant information on potential or actual disasters in advance.<sup>1166</sup> There have been steps taken in the process of disaster risk reduction through the establishment of a National Policy on Disaster Preparedness and Management.<sup>1167</sup> A national platform for disaster risk reduction was also set up in accordance with the Hyogo Framework of Action.<sup>1168</sup> This is a commendable step, the issue is whether it has been realized and applied at a district level to actually prevent the disasters these steps are meant to curtail.

The government of Uganda is first and foremost responsible for the prevention, protection, mitigation, preparedness, early response and recovery against, during and after displacement and other disasters affecting its own people.<sup>1169</sup> The level of preparedness and its impact is lately provided for by the National Policy on Disaster Preparedness and Management which is controlled by the Directorate of Relief, Disaster Preparedness and Refugees within the office of the Prime Minister (OPM), assisted by other relevant ministries.<sup>1170</sup> The Draft National Policy on Disaster Preparedness<sup>1171</sup> provides that all districts must additionally have a DDMC (District Disaster Management Committees) which have been renamed as District

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<sup>1162</sup> Government of Kenya, Ministry of State for Special Programmes as above.

<sup>1163</sup> Government of Kenya, Ministry of State for Special Programmes as above.

<sup>1164</sup> Government of Kenya, Ministry of State for Special Programmes as above.

<sup>1165</sup> Uganda IDP Policy 2004 as above.

<sup>1166</sup> Uganda IDP Policy 2004 as above.

<sup>1167</sup> Uganda IDP Policy 2004 as above.

<sup>1168</sup> United Nations Uganda National Humanitarian Profile 2011 at 10

<sup>1169</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1170</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1171</sup> It has not yet been finalised it was scheduled for Cabinet approval on 11<sup>th</sup> October 2011, but due to the pre-elections it was re-scheduled. It should be noted that its coming into effect is important especially with the upcoming elections which sometimes lead to unrest.

Disaster Management Technical Committees.<sup>1172</sup> However, in light of disasters, both natural and man made, that have affected the people of Uganda, it is hard to notice the functionality of these district committees or their level of preparedness for disaster. With the exception of the DDMCs in Acholi, Teso, Lango and Karamoja, the rest of them seem inactive continuously citing lack of resources and limited guidance from government on how to effect their functionalities.<sup>1173</sup>

The DDMCs are expected to operate in a coordinated manner through the Chief administrative officer (CAO) and other heads of technical departments within the district including (health, production, water, sanitation, social services and education sectors, police, humanitarian and UN agencies as well as the army, and NGOs).<sup>1174</sup> This is a comprehensive approach to preventing and addressing disasters by including all relevant sectors. This ensures that all relevant needs and rights of affected populations or populations in danger of being affected are addressed promptly.<sup>1175</sup> Additionally the National Coordination and Operations Centre within the office of the Prime Minister (OPM-NECOC), deals with sudden unforeseen events and emergencies.<sup>1176</sup> It has the responsibility of coordinating all emergency response institutions of government such as Fire Brigade, Police Rapid Response Unit, UPDF emergency Support Units, Uganda Red Cross, as well as hospital emergency units and private emergency groups.<sup>1177</sup>

The above initiatives are hard to manage without a proper funding mechanism. Existing humanitarian organizations are left with peace-meal attempts to do so under their own initiatives. The government of Uganda does not have any emergency reserves to use in the curtailing or immediate response to disasters.<sup>1178</sup> It has to rely on the Ministry of finance to release funds, and this can only happen after Cabinet has approved such a venture. This usually takes time and a lot of lobbying, which makes rapid response lose its meaning, let alone happen in some instances.<sup>1179</sup> A suggestion had been made concerning an emergency contingency fund to be administered by the department of Disaster Preparedness in the

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<sup>1172</sup> Uganda IDP Policy 2004 as above.

<sup>1173</sup> United Nations Uganda National Humanitarian Profile 2011 as above at 14.

<sup>1174</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1175</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1176</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1177</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1178</sup> United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1179</sup> United Nations Uganda National Humanitarian Profile 2011 as above at 15.

OPMs office, but that remains to be seen.<sup>1180</sup> The Kenyan government has on the other hand set up an IDP resettlement fund, as well as a mitigation fund to provide for the redress of IDP matters in Kenya. But the fund is still managed directly by government, opening up spaces for corruption and nepotism.

## 5.6 Raising National awareness

The first thing of importance after internal displacement has taken place is for governments to acknowledge the problem and also accept responsibility for addressing it.<sup>1181</sup> Public discussion of the issue through the media, various forums and the development of strategies by the government to address the problem are some of the landmarks that go to show the recognition of the problem and its intensity.<sup>1182</sup> Part of such acknowledgment includes raising public awareness over the issue, establishing consensus and prioritizing efforts to address displacement at a national level.<sup>1183</sup> The displaced population is supposed to be made part of such national priority, and involved in the process of addressing displacement.<sup>1184</sup> The government should work together with other non governmental entities such as civil society and NGOs who are more conversant with the displaced population to further disseminate knowledge about internal displacement and its ramifications on the concerned population.<sup>1185</sup> This can be achieved through nation-wide concerted efforts of sensitization campaigns covering and involving all relevant government authorities.<sup>1186</sup> Raising awareness about internal displacement must also involve the rest of the un-displaced population so that displacement is not either un-estimated or treated as a cancer, but instead, it is handled as a concern for all society.<sup>1187</sup>

Currently in Uganda matters involving public awareness concerning disaster risks, preparedness measures and general information on what steps to take in times of disaster is to

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<sup>1180</sup> Emergency Preparedness and Response Planning Workshop of August 2005 as above at 5; See United Nations Uganda National Humanitarian Profile 2011 as above.

<sup>1181</sup> Brookings framework for national responsibility 2005 as above at 13.

<sup>1182</sup> Brookings framework for national responsibility 2005 as above.

<sup>1183</sup> Brookings framework for national responsibility 2005 as above.

<sup>1184</sup> Brookings framework for national responsibility 2005 as above.

<sup>1185</sup> Brookings framework for national responsibility 2005 as above.

<sup>1186</sup> Brookings framework for national responsibility 2005 as above.

<sup>1187</sup> Brookings framework for national responsibility 2005 as above; Brookings Institution-University of Bern 'Protecting Internal Displaced Persons: Manual for law and policy makers' Brookings-Bern Project on Internal Displacement October 2008 at 24.

a large extent limited.<sup>1188</sup> Media attempts to sensitize the public about disaster risks could be very useful but have not yet been relied on. Radio, especially when used in local language could be useful to get early warning out to the possible victims of disasters.<sup>1189</sup> Other forms of early warning that should be used but have not been relied on include church and schools. Additionally public awareness campaigns can be mobilized by the private sector in the process of preventing displacement and mitigating its effects.<sup>1190</sup>

## 5.7 Data collection

Collecting credible and timely information on the numbers, locations and conditions of internally displaced persons is very important when it comes to designing effective policies and programs to address the needs and protect rights of the displaced.<sup>1191</sup> The data collected must be gathered efficiently and inclusively taking into account age, gender, and other relevant indicators.<sup>1192</sup> This will ensure that specific needs of particular groups such as female headed households, unaccompanied minors, disabled persons, the elderly, ethnic minorities and indigenous are taken into account.<sup>1193</sup> The collection of data must also include all IDPs whether they reside in camps or have integrated into urban areas, or are living with relatives or within any other settlements.<sup>1194</sup>

Various categories of IDPs must be included, in the past most records of IDPs have tended to account only for IDPs in camps, especially those uprooted by armed conflict and *en masse*.<sup>1195</sup> This leaves out other groups of IDPs uprooted as a result of for instance generalized violence, human rights violations, natural disasters, development projects and other causes. Most attention is usually paid towards those IDPs facing immediate emergency, thus sidelining those in protracted situations of displacement, and those displaced in small

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<sup>1188</sup> United Nations Office for the Coordination of Humanitarian Affairs OCHA, Uganda disaster preparedness plan 'Disaster preparedness for effective response: Supporting the implementation of priority 5 of the Hyogo Framework of Action in Uganda' Draft for comment Kampala Uganda March 27-28 2008 at 4.

<sup>1189</sup> Office of the Prime Minister (OPM) Department of Disaster Management and Refugees (DDMR) 'Operationalising the National Policy for IDPs' (OPM TA 01 Draft) Kampala, Uganda April 2005 at 4.

<sup>1190</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

<sup>1191</sup> Brookings framework for national responsibility 2005 as above at 14.

<sup>1192</sup> Brookings framework for national responsibility 2005 as above.

<sup>1193</sup> Brookings framework for national responsibility 2005 as above.

<sup>1194</sup> Brookings framework for national responsibility 2005 as above.

<sup>1195</sup> Brookings framework for national responsibility 2005 as above.

groups are forgotten as well.<sup>1196</sup> Data gathered over these groups of IDPs must be updated regularly since the needs of IDPs change overtime.<sup>1197</sup>

Additionally efforts must be made to collect information about displaced persons who live within areas under direct control of insurgent groups.<sup>1198</sup> In most instances IDPs who find themselves trapped within these areas are usually abandoned by their governments, and at times misconstrued as insurgent sympathizers. Consequently they fall through protection gaps of the relevant governments and humanitarian aid groups. At the same time they face the wrath of these insurgent groups.<sup>1199</sup> This situation is enumerated by the crisis faced by the Acholi people of Northern Uganda during the past twenty years of the war between the government of Uganda and various insurgencies in northern Uganda.

The process of gathering data involving the internally displaced should be aimed towards better understanding of the needs, numbers, and conditions of IDPs. Its main objective should be to facilitate better provision of protection and assistance to IDPs.<sup>1200</sup> Data gathering and recording of numbers of the displaced should not jeopardize the security, protection and freedom of movement of the internally displaced.<sup>1201</sup> This means that the fear of persecution, which usually characterizes the plight of most IDPs from conflict related conditions, should be considered. Additionally aids to data collection and administration, such as registration and provision of documentation, must not be made preconditions to, for instance, achieving certain status, or protection and assistance.<sup>1202</sup>

Internal displacement in Kenya has happened over a period of time and under sporadic conditions. The biggest impediment to the process of addressing displacement is data collection and records.<sup>1203</sup> Initial displacement patterns were subtle and unrecorded, thus the process of determining how many internally displaced persons are in Kenya is very tough. As already stated, it is highly arguable that election related violence between 1991 and 1997 displaced more than 600, 000 people in the Coast, Rift Valley, Nyanza and Western

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<sup>1196</sup> Brookings framework for national responsibility 2005 as above.

<sup>1197</sup> Brookings framework for national responsibility 2005 as above.

<sup>1198</sup> Brookings framework for national responsibility 2005 as above.

<sup>1199</sup> Brookings framework for national responsibility 2005 as above.

<sup>1200</sup> Brookings framework for national responsibility 2005 as above.

<sup>1201</sup> Brookings framework for national responsibility 2005 as above.

<sup>1202</sup> Brookings framework for national responsibility 2005 as above at 15.

<sup>1203</sup> KHRC and IDP Network 2011 as above at 35.

Provinces of Kenya.<sup>1204</sup> It has been further reported that in some cases the number of IDPs in Kenya had decreased by 2004,<sup>1205</sup> while other reports claim it had increased again<sup>1206</sup> as time progressed.<sup>1207</sup> These statistics, at the time suggested that Kenya actually ranked 7<sup>th</sup> among countries with high numbers of IDPs in Africa

The government undertook the profiling of IDPs from 2008, this was an inherently good exercise, but it was deeply flawed.<sup>1208</sup> The government through the Ministry of State for Special Programmes (MoSSP) and the National Bureau of Statistics (NBS), together with the aid of UNHCR, made an attempt to profile IDPs, though it was belated, non exhaustive and it lasted over a very short period of time.<sup>1209</sup> Nevertheless, the government's data shows that 663, 921 people were displaced internally, 78, 254 houses destroyed, and 640 households were displaced externally to Uganda.<sup>1210</sup> Additionally, 350, 000 people are accounted to have moved to about 118 camps nationwide and 331,921 IDPs sought refuge and reintegrated within communities.<sup>1211</sup>

These figures remain questionable and inconclusive, this is because the IDP names were either doctored or removed by local leaders as a result of corruption or missing documentation.<sup>1212</sup> Similar situations of incoherent data and 'ghost IDPs' being registered have been numerous recorded.<sup>1213</sup> It has been pointed out that the statistics in government reports of March 2010, July 2010 and January 2011<sup>1214</sup> with regard to the number of people

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<sup>1204</sup> Kenyan Human Rights Commission *Killing the vote: state sponsored violence and flawed elections in Kenya*, Nairobi 1998, and Kenyan Human Rights Commission *Kayas of violence, Kayas of blood: violence, ethnicity and the state in coastal Kenya* 1998 Nairobi quoted in KHRC and IDPs Network 2011 status report as above at 8.

<sup>1205</sup> Decreased from 600, 000 to 360, 000 by 2004, The International Federation of Human Rights (FIDH) AND Kenya Human Rights Commission (KHRC) *Massive internal displacements in Kenya due to politically instigated ethnic clashes: absence of political and humanitarian responses* report of April 2007 at 17.

<sup>1206</sup> Increased from 360,000 to 450, 000 by 2006, Internal Displacement Monitoring Centre (IDMC) 'I am a refugee in my own country: conflict induced internal displacement in Kenya' Geneva 2007 at 13.

<sup>1207</sup> KHRC AND FIDH 2007 as above at 17 and IDMC 2007 as above at 13, quoted in KHRC and IDPs Network 2011 report as above at 9.

<sup>1208</sup> KHRC and IDP Network 2011 as above at 35.

<sup>1209</sup> The exercise came to an end in December 2008, this was a very short time to account for all displaced populations in the country; KHRC and IDP Network 2011 as above at 18.

<sup>1210</sup> KHRC and IDPs Network 2011 report as above.

<sup>1211</sup> KHRC and IDPs Network 2011 report as above.

<sup>1212</sup> KHRC and IDPs Network 2011 report as above at 35.

<sup>1213</sup> See also UNHCR 'Draft report of the National Protection Working Group on Internal Displacement Retreat' 2011 as above at 10.

<sup>1214</sup> This was not actually a report *per se*, but a paid up advertisement by the Government of Kenya Office of the Deputy Prime Minister and the Minister of Finance 'Statement on Government's support

who were displaced against those who have returned or are yet to return are conflicting.<sup>1215</sup>

There is an 18000 IDP discrepancy in the report, a large number of people that are unaccounted for, presumably some of the ‘ghost IDPs’. This is a large number of people and if there is a claim that such number of people have reintegrated when they have not, then there is a correlating amount of re-settlement funds that have also been disbursed and disappeared.<sup>1216</sup> The table below summarizes statistics of post election displaced individuals and households by the government of Kenya.

<sup>1217</sup> Provinces	Households	No. Of individuals
Nyanza	24, 981	117,547
Western	12, 385	58,667
Rift Valley	84, 947	408,631
Central	10, 092	46,959
Eastern	1,438	6,769
Coast	1,241	4774
North Eastern	26	148
Nairobi	5,349	19,416
Total	140,459	663,921

Additionally there were many camps or farms holding IDPs that were not included in the government reports, even as pending assistance cases.<sup>1218</sup> Another disturbing aspect of the data recording methodology is that there was an insufficient reflection of gender and generational aspects of IDP populations.<sup>1219</sup> This made it impossible to determine how many

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for IDPs’ in the *Daily Nation*, Friday January 7 2011p 24, quoted in KHRC and IDPs Network 2011 report as above at 18.

<sup>1215</sup> KHRC and IDPs Network 2011 report as above at 35-36.

<sup>1216</sup> KHRC and IDPs Network 2011 report as above at 36; Every IDP household that was re-integrated by the government was given Ksh. 10,000 and 25,000 for land, housing, relief and food, if the numbers of people on record for government sponsored re-integration are amplified, then there is a large amount of money that has fallen in the wrong hands.

<sup>1217</sup> Government of Kenya, Ministry of State for Special Programmes, IDP status brief as of 3<sup>rd</sup> March 2010, 30<sup>th</sup> July 2010, and government public advertisement In *Daily Nation* Newspaper of January 7<sup>th</sup> 2011(hereinafter referred to by the KHRC and IDPs Network 2011 report above at 18, as State report for March 2010, July 2010, and January 2011).

<sup>1218</sup> These include Jedidia camp in Milangine, Neema and Tumaini in Naivasha, Geteti in Gilgil, ‘Saka Saka’ in Eldoret, Casino in Kuresoi, D.C Kuresoi, Kamara and Kivunja in Molo, Endebess, among others as stated in KHRC and IDPs Network 2011 report as above at 36.

<sup>1219</sup> KHRC and IDPs Network 2011 report as above at 36.

women, men, children, elderly, youth where within the IDP groups recorded.<sup>1220</sup> This is not just a matter of inconclusive data collection, it is also a hindrance to the process of determining vulnerable populations, or those that require special attention, for instance women and children.<sup>1221</sup> In other places, during reintegration, there was no adherence to demarcation between age groups, to identify who were elders in family. Groups of people from different families were combined, and only the head of the household was paid resettlement funds.<sup>1222</sup> Because of the lack of conclusive records, some young people were erroneously listed as heads of households, while the rest of the families missed out on funds.<sup>1223</sup>

A group of IDPs who failed to be captured in the 2008 profiling deadline, but who were integrated already at the time has become an additional issue, because they cannot access services as formerly displaced persons.<sup>1224</sup> This new wave of disgruntled IDPs is causing further havoc and displacements. Poor profiling has bred corruption among IDPs themselves, government and development organization officials.<sup>1225</sup> This is because people struggle to access services underground and ‘fake’ IDPs pay to enjoy the perceived benefits that IDPs seem to enjoy over other poor members of the Kenyan community.<sup>1226</sup> This is one of the reasons why demonstrations were rife around the end of 2010 when more than 200 IDPs from the Ebenezer camp in Kikopey protested along the Nairobi-Nakuru road by sitting on the road and blocking any form of movement on one of the country’s busiest highways.<sup>1227</sup>

Additionally it has been observed that there is no effective system to track and monitor displacement.<sup>1228</sup> This coupled with conflicting data, as well as limited geographical focus, and lack of disaggregated data has made the process of profiling IDPs very difficult. In as much as the Ministry for special programmes has kept IDP records, the issue still remains

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<sup>1220</sup> KHRC and IDPs Network 2011 report as above.

<sup>1221</sup> KHRC and IDPs Network 2011 report as above.

<sup>1222</sup> KHRC and IDPs Network 2011 report as above.

<sup>1223</sup> KHRC and IDPs Network 2011 report as above.

<sup>1224</sup> KHRC and IDPs Network 2011 report as above at 55.

<sup>1225</sup> KHRC and IDPs Network 2011 report as above at 50.

<sup>1226</sup> KHRC and IDPs Network 2011 report as above.

<sup>1227</sup> KHRC and IDPs Network 2011 report as above at 36.

<sup>1228</sup> UNHCR Draft report of the National Protection Working Group on Internal Displacement 2011 as above at 10.

that there is no specific custodian of IDP data in Kenya.<sup>1229</sup> There needs to be proper coordination and standards between different actors involved with IDPs. Additionally, standard tools to profile all IDPs despite their locations should be implemented, and lastly data already existing in the MoSSP database can be used as a basis to be consolidated and validated for better functionality in protection and assisting IDPs.<sup>1230</sup>

One of the key impediments to planning and implementing prevention, protection and assistance to IDPs in Uganda, as well as coordinating the IDP policy was the initial lack of systematic, comprehensive information on the whereabouts, environment and number of IDPs within the country.<sup>1231</sup> After the introduction of the cluster protection system in Uganda in November 2005,<sup>1232</sup> this issue was not in the least totally eliminated, but efforts were made to address it. The cluster system in Uganda set up various organizations operating within agreed humanitarian clusters.<sup>1233</sup> The Geo-Information Working Group links all these clusters, it is made up of various technical persons from local, national and international humanitarian, human rights organizations, United Nations as well as Government departments that are responsible for dealing with and collecting information on populations facing humanitarian crises within Uganda.<sup>1234</sup> It has been responsible for information sharing, including information on IDPs in Uganda. Other responsibilities include data dissemination and publication, standardization and harmonization of data presented by various members of the Working Group, as well as facilitating a coordinated joint assessment of the data presented.<sup>1235</sup>

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<sup>1229</sup> UNHCR Draft report of the National Protection Working Group on Internal Displacement 2011 as above.

<sup>1230</sup> UNHCR Draft report of the National Protection Working Group on Internal Displacement 2011 as above.

<sup>1231</sup> Uganda National humanitarian profile of 2011 as above.

<sup>1232</sup> Uganda 'In-country self assessment 25-26 October 2006 as above at 1.

<sup>1233</sup> For instance the clusters in Uganda included Food Security led by FAO/WFP, Health/Nutrition/HIV/AIDS led by UNICEF, Education led by UNICEF, Water /Sanitation led by UNICEF, Protection led by HCR (together with protection sub clusters including Camp management-HCR, SGBV-UNICEF, Child Protection-UNICEF, Human Rights-OHCHR), and the last cluster is Early Recovery led by UNDP.

<sup>1234</sup> <http://www.ugandaclusters ug> accessed on 13-10-2011.

<sup>1235</sup> Geo-Information Management Working Group at <http://www.ugandaclusters ug/geo-im.htm> visited on 13-10-2011; The working group is made up of among others, Uganda Bureau of Standards (UBOS), Organisation for the Coordination of Humanitarian Affairs (OCHA), Centers for Disease Control and Prevention (CDC), Health Environment for All (HEFA), Wildlife Conservation Society(WCS), Academy for Educational Development (AED), UNICEF, FAO, USAID, WFP, UNHCR, IOM, WHO, SNV Netherlands, NWSC, Buso Foundation, GIC Uganda, JICA, FCIT-Makerere, GEO-MIK Consult, NPA, Mount Batten, ICRC, Makerere University, later additions include GTZ/OPM, NUDC/OPM, UN Global Pulse; Uganda: GEO-IM Working Group contact list as

The working group operates on the basis of the Inter Agency Standing Committee's (IASC) Endorsed Operational Guidance on responsibilities of Cluster or Sector Leads and the OCHA Information Management.<sup>1236</sup> Each cluster lead has a focal person involved in information management. The person represents the particular cluster in the Geo- Information Working Group. The Working Group is currently co-chaired by Northern Uganda Data Centre (NUDC) based in the Office of the Prime Minister.<sup>1237</sup> The NUDC shares the chairmanship with the Uganda Bureau of Statistics (UBOS) and the United Nations Office for the Coordination of Humanitarian Affairs (UN-OCHA).<sup>1238</sup> Collection of data on IDPs in Uganda was effected under the cluster system and it was an exercise that was done very efficiently through the inclusion of vertical and horizontal information from multiple agencies and governmental departments dealing with the displaced on different levels. Data was translated into maps very quickly and this methodology of information management actually supports timely effective coordination, advocacy and decision making.<sup>1239</sup> The data collected was segregated to highlight women, children, health, agriculture, food, water, access to roads, protection, education and many other aspects of community needs and differences.<sup>1240</sup>

The only set back in the operations of the Working Group is that it did not pay enough attention to IDPs.<sup>1241</sup> Instead statistics were mostly meant to include the Ugandan community as a whole, so where IDPs were discussed, they are simply discussed as part of the general vulnerable population facing humanitarian crisis.<sup>1242</sup> This at the same time has its advantage, because it mainstreams the issue of displacement into problems generally facing the country, but it fails to drastically call for isolated attention to IDPs.

The UNHCR has been in the process of winding up its activities in Uganda, while other agencies had also winded, or were in the process of winding up operations, or changing mandates from humanitarian relief and protection to reintegration, developmental and

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of August 200 at <http://www.ugandaclusters.ug> accessed on 13-10-2011; See also Minutes of the Geo-IM Working Group meeting on 2-March 2010, UBOS conference room, 10.00 A.M-12.10 P.M.

<sup>1236</sup> <http://www.ugandaclusters.ug/ge-im.htm> accessed on 13-10-2011.

<sup>1237</sup> <http://www.ugandaclusters.ug/ge-im.htm> accessed on 13-10-2011.

<sup>1238</sup> <http://www.ugandaclusters.ug/ge-im.htm> accessed on 13-10-2011.

<sup>1239</sup> <http://www.ugandaclusters.ug/ge-im.htm> accessed on 13-10-2011.

<sup>1240</sup> <http://www.ugandaclusters.ug/ge-im.htm> accessed on 13-10-2011.

<sup>1241</sup> <http://www.ugandaclusters.ug/ge-im.htm> accessed on 13-10-2011.

<sup>1242</sup> Uganda Bureau of Statistics 'Uganda population and Housing Census ' 2002 Kampala, Uganda 2006 ; See also the Uganda Population and Housing Census of 2004, 2009-2010.

protection. Regardless of this, a last minute evaluation and data publication on IDPs was released in December 2010 by the UNHCR sub-office in Gulu district. According to these statistics there were a total of 121 original IDP camps in Acholi in 2005. The estimated initial population in these camps was around 1,110,000 IDPs.<sup>1243</sup> Lango had 61 camps and about 466,000 IDPs, while West Nile had 8 camps and around 54,000 IDPs.

Toro-Bunyoro, with the exception of Masindi whose IDPs lived in settlements among host communities as opposed to formal camps, had an estimated IDP population of 67,000, Whilst Teso had 61 camps initially, with a round up IDP population of 143,000.<sup>1244</sup> Currently the situation of displaced persons is in the phase of reintegration and development, even though there are still people in camps, and a number of camps are still active. Additionally, IDPs that have reintegrated, or resettled are still facing to a large extent the same assistance and at times protection needs that they still faced when they were in camps.<sup>1245</sup> This again goes to raise the issue of when displacement should be regarded to have ended and what factors have to be taken into account.<sup>1246</sup>

The population that is estimated to be in active camps and settlements as of December 2010 was around 5,664 IDPs in Acholi, 20,000 in Toro-Bunyoro and 726 in Teso.<sup>1247</sup> Of course there were people who were still living in camps and settlements that were already closed and inactive. In Acholi approximately 37,335 people were in closed camps, while there were about 7,365 in closed camps in West Nile and 2,149 in Teso.<sup>1248</sup> IDPs still in transit sites are about 52,359 in 282 transit sites in Acholi alone.<sup>1249</sup> These people are not in camps anymore, they have moved to areas close to their former homes, but have not yet settled back completely.

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<sup>1243</sup> IDP Population update December 2010 UNHCR Sub-office Gulu.

<sup>1244</sup> IDP Population update Gulu 2010 as above.

<sup>1245</sup> UNHCR Representation in Gulu, Uganda 'Camp Management and return monitoring' NEWSLETTER Issue Number IV March-June 2008 at 2 at <http://www.internaldisplacement.org> accessed on 13-10-2011.

<sup>1246</sup> Mooney E 'Bringing the end into sight for internally displaced persons: when does internal displacement end?' *Forced Migration Review* 17 May 2003 at 4 at [www.fmreview.org/FMRpdfs/FMR17/fmr17.01.pdf](http://www.fmreview.org/FMRpdfs/FMR17/fmr17.01.pdf) accessed on 10-05-2012.

<sup>1247</sup> IDP Population update Gulu 2010 as above.

<sup>1248</sup> IDP Population update Gulu 2010 as above.

<sup>1249</sup> IDP Population update Gulu 2010 as above.

As of December 2010 there were only 14 remaining active camps from the original 251 in 2005. Of these, 13 were in Acholi and 1 in Teso.<sup>1250</sup> They had a population of about 26, 390 IDPs, while IDPs remaining in closed camps amounted to 46, 849.<sup>1251</sup> This amounted to about 73, 239 IDPs in Uganda, which is equivalent to 1% of the original displaced population of about 1.8 million IDPs.<sup>1252</sup> The main reasons supplied for the remaining population in camps include insecurity in areas of return, insecurity created from fear of the Karimajong cattle rustlers who are still active, competing land claim disputes by various clans, land mines and insecurity from Sudan.<sup>1253</sup>

### **5.8 Training on the rights of IDPs**

In order to comprehensively effect the process of providing adequate protection to internally displaced persons, there is a need to acquaint people involved in dealing with such population with the national, regional and international rights and entitlements of the said population.<sup>1254</sup> This is to ensure that in their dealings with the group, stereotypes are not displayed, rights are not infringed and entitlements are not withheld.<sup>1255</sup> It also equips the officers dealing with IDPs with a tool for adequate protection for the displaced population. It additionally ensures that the relevant officials are aware of their responsibilities for protecting and assisting internally displaced persons.<sup>1256</sup> Training is additionally a way of government building its capacity and accountability as well as equipping itself to fulfill its responsibilities.<sup>1257</sup>

In the process of facilitating training, the relevant government must ensure that the relevant stakeholders are involved. These include government policy makers, government officials at the local, regional and national level who come into contact with the displaced population and are tasked with implementing government policies and effecting laws in the field.<sup>1258</sup> Additionally, the military, police and other law enforcement officers who play an important role in ensuring protection should be included.<sup>1259</sup> Camp administrators, and officials tasked with humanitarian relief and the protection of the human rights of IDPs must also be trained

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<sup>1250</sup> IDP Population update Gulu 2010 as above.

<sup>1251</sup> IDP Population update Gulu 2010 as above.

<sup>1252</sup> IDP Population update Gulu 2010 as above.

<sup>1253</sup> IDP Population update Gulu 2010 as above.

<sup>1254</sup> Brookings framework for national responsibility 2005 as above at 15.

<sup>1255</sup> Uganda Human Rights Commission 2000-2001 report at 39 at <http://www.uhrc.ug/index.php> accessed on 12-10-2011.

<sup>1256</sup> Brookings framework for national responsibility 2005 as above at 15.

<sup>1257</sup> Brookings framework for national responsibility 2005 as above.

<sup>1258</sup> Brookings framework for national responsibility 2005 as above.

<sup>1259</sup> Brookings framework for national responsibility 2005 as above.

in order for them to keep abreast with the rights of people they are protecting.<sup>1260</sup> Staff of national human rights institutions and decision makers in similar national institutions must be constantly involved in learning about protection developments on internal displacement.<sup>1261</sup> Lastly Parliamentarians who are responsible for passing laws and policies affecting the displaced, as well as civil society, and IDPs themselves must be better equipped to advocate for and know their own rights.<sup>1262</sup> The sort of training to be offered needs to incorporate all IDP rights to be protected. It also needs to account for protection throughout all phases of displacement, from prevention, to finding durable solutions. It additionally needs to cover all the possible causes of internal displacement. There are various sources available that governments can avail themselves to in the process of training their officials.<sup>1263</sup>

In Uganda it has been made clear that the process of protecting and assisting IDPs involves a lot of actors. From policy makers in the capital, Kampala to officials at district, sub-county and camp levels, there is a wide interaction with IDPs in the process of satisfying the provisions of the Ugandan IDP policy.<sup>1264</sup> The necessity of educating such a group of stakeholders was recognized early on when it was provided that they should be educated on the measures that the IDP policy advocates for in order to enhance their understanding of the process of making it operational.<sup>1265</sup> It has been stated that the importance of all stakeholders to understand their roles and responsibilities towards protecting IDPs prepares them to carry out their functions more efficiently.<sup>1266</sup> In the scenario of Uganda, the Uganda peoples' army had a special role in the protection of all 'protected villages',<sup>1267</sup> and mapping mines and unexploded devices, thus all levels of the army needed to be aware of the rights and entitlements of IDPs and their corresponding responsibilities.<sup>1268</sup>

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<sup>1260</sup> Brookings framework for national responsibility 2005 as above.

<sup>1261</sup> Brookings framework for national responsibility 2005 as above.

<sup>1262</sup> Brookings framework for national responsibility 2005 as above.

<sup>1263</sup> These include Erin Mooney *Essentials of Migration Management for policy makers and practitioner: course manual* IOM 2004, *Commonwealth Secretariat, Human Rights Unit Report of the Expert Group Meeting on Internal Displacement in the Commonwealth: Common Themes and Best Practice Guidelines* 19-21 May 2003 (June 2004), Brookings Institution *Protecting internally displaced persons: Manual for law and policy makers* October 2008.

<sup>1264</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 5.

<sup>1265</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

<sup>1266</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

<sup>1267</sup> These were villages established by the Government of Uganda for all people from villages attacked by insurgent forces in Northern Uganda to relocate to, the relocation was in some cases non-consensual. The idea behind the 'protected villages' is that the government provided protection through the Army to keep out attacks from external factors. This end was not always achieved because the villages were under-protected and like caged beings, the people were stuck in these camps and still attacked within the same 'protected' villages.

<sup>1268</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 15.

In Kenya the new Protection Working Group on Internal Displacement (PWGID) that came into effect in 2009 is responsible for identifying training and capacity building needs within member organizations and other humanitarian partners.<sup>1269</sup> It is also responsible for the coordination of the process of addressing these needs and making effective use of the commonly available resources, especially the specific expertise of each member organization and their capability to contribute to training and capacity building in relevant areas. Special attention is to be paid to the training and capacity building needs of national authorities and civil society.<sup>1270</sup>

In the process of strengthening the PWGID's work through enhanced protection monitoring, coordination, as well as advocacy and capacity building as a means of achieving durable solutions towards the problem of internal displacement in Kenya, the UNHCR has made an appeal in 2011.<sup>1271</sup> This project which is intended to run through to 2013, among other things intends to equip members of the Protection Working Group at the national and field level with enhanced capacity to carry out advocacy initiatives, efficient activity coordination as well as the ability to monitor and share information.<sup>1272</sup> This will be achieved through among other things, the provision of training sessions annually for field members of the Protection Working Group to develop its work plan and develop common monitoring or reporting tools on key protection issues.<sup>1273</sup>

Additionally, training is to be offered on matters of Sexual and Gender Based Violence (SGBV), as well as child protection, international, regional and national IDP principles to members of the PWG.<sup>1274</sup> Training sessions will involve Government of Kenya officials, including officials from the Ministry of State for Special Programmes (MOSSP) as well as Children's Departments, the Gender Commission and the Land Ministry on a range of issues, from human rights to IDP instruments. Lastly training sessions are scheduled for non-state actors such as IDP groups, NGOs and the media.<sup>1275</sup> In the case of Uganda similar training

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<sup>1269</sup> UNHCR Draft report of the National Protection Working Group on Internal Displacement 2011 as above at 10; UNHCR BO Kenya *Transition Concept Note* 2009 as above at 6.

<sup>1270</sup> UNHCR BO Kenya *Transition Concept Note* 2009 as above.

<sup>1271</sup> UNHCR 'Kenya humanitarian emergency response plan' 2011 as above at 2.

<sup>1272</sup> UNHCR 'Kenya humanitarian emergency response plan' 2011 as above.

<sup>1273</sup> These include needs of vulnerable groups such as women, girls, boys, minorities and IDP and host communities.

<sup>1274</sup> UNHCR 'Kenya humanitarian emergency response plan' 2011 as above at 2.

<sup>1275</sup> UNHCR 'Kenya humanitarian emergency response plan' 2011 as above at 3.

has over the years been provided by the Uganda Human Rights Commission as well as the Refugee law project at Makerere University.<sup>1276</sup>

## 5.9 National legal frameworks for safeguarding the rights of IDPs

The fundamental part of protection of IDPs by their government is the creation of a legal framework enshrining the rights of such IDPs.<sup>1277</sup> In various countries facing the issue of internal displacement, enacting a legal document reflecting IDP protection through definitions, setting forth their rights, establishing government obligations towards them has proved very invaluable.<sup>1278</sup> Enacting such laws is usually necessary because existing laws are either a barrier to IDPs attaining their rights, or their position is not recognized in such laws, or such laws on their own do not provide sufficient provision for the specific situations of internally displaced persons.<sup>1279</sup> The nature of such legal documents and the rights for which they cover, or the stages of displacement they address do vary. At times issues such as the degree of consultation and necessary changes to be made to existing laws as well as the urgency of adopting a legal framework have to be considered.<sup>1280</sup>

Some countries have adopted legal instruments that address displacement in its entirety.<sup>1281</sup> Others have adopted instruments that address a certain stage of internal displacement such as return and resettlement.<sup>1282</sup> Whilst others have adopted Decrees or Regulations to complement already existing laws and address most urgent aspects of a displacement crisis.<sup>1283</sup> Some states have opted to review and analyze existing national laws so that they are compatible with terms of the Guiding Principles, and others have adopted laws that deal with certain rights for the internally displaced.<sup>1284</sup>

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<sup>1276</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 15.

<sup>1277</sup> Brookings framework for national responsibility 2005 as above at 16; See also Brookings manual for law and policy makers 2008 as above at 27.

<sup>1278</sup> Brookings framework for national responsibility 2005 as above at 16.

<sup>1279</sup> Brookings manual for law and policy makers 2008 as above at 27.

<sup>1280</sup> Brookings manual for law and policy makers 2008 as above at 28.

<sup>1281</sup> Uganda National Policy for IDPs 2004 as above.

<sup>1282</sup> Angolan Norms on the Resettlement of Internally Displaced Populations 2001.

<sup>1283</sup> Standard Operational Procedures for the enforcement of Angolan IDP Norms 2002; Angolan Council of Ministers IDP Decree 79/02 2001 and 2002; Sierra Leone's IDP Resettlement Strategy of October 2001; Sierra Leone's Recovery Strategy for Newly Accessible Areas of May 2002.

<sup>1284</sup> Arusha Peace and Reconciliation Agreement for Burundi, Protocol IV of 2000; Protocol for the Creation of a Permanent Framework for Consultation on IDP Protection 2001.

Whatever approach is relied upon, national legislation on internal displacement must be compatible with existing international standards as spelt out by the Guiding Principles.<sup>1285</sup>

United Nations resolutions have urged governments facing the internal displacement crisis to enact national laws in line with Guiding Principles.<sup>1286</sup> Additionally, regional mechanisms have also suggested such approach while attempting to infuse the Guiding Principles into their regional laws and policies and in some cases they have held their member states bound to enact local legislation reflecting provisions of the Guiding Principles by setting out Model Laws as a form of guidance for their member states.<sup>1287</sup>

Both Uganda and Kenya have come up with frameworks for the protection and assistance of internally displaced persons. These frameworks consist of legislation, IDP policies and even ministries that have been declared as focal points for addressing internal displacement. Both countries are members of the African Union, The United Nations, the Intergovernmental Authority for Development, the East African Commission as well as the International Conference of the Great Lakes Region. This means that they are subject to international legal instruments providing for general or specific legal protection for internally displaced persons. They are also subject to African regional instruments providing for the protection of IDPs, generally and specifically, as well as sub-regional instruments that make it a requirement to adopt domestic legislation reflecting provisions of Guiding Principles on Internal Displacement.

Uganda has a number of legal frameworks that were adopted pursuant to the dire conditions of its internally displaced persons there. None of these legal frameworks have specifically adopted provisions of the Guiding Principles. Most of them address the issue of internal displacement indirectly. The Ugandan revised edition of the Constitution of 2000 provides in chapter 4 for the general protection and promotion of fundamental and other human rights and freedoms as well as protection of human rights and freedoms during state of

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<sup>1285</sup> Brookings framework for national responsibility 2005 as above at 16.

<sup>1286</sup> Brookings framework for national responsibility 2005 as above.

<sup>1287</sup> See International Conference of the Great Lakes Region 2006 as well as the Great Lakes Pact on Security, Stability and Development 2004.

emergency.<sup>1288</sup> The rights found within the constitution that are relevant to IDPs in Uganda are found between article 20 and 49 of the constitution.<sup>1289</sup>

Additionally legal provisions related to matters of displacement in Uganda can be deduced from the Land Act of 2004. The Act provides for the provision of land and to an extent addresses issues of land belonging to formerly displaced and returning populations.<sup>1290</sup> Other relevant laws include chapter 294 of the Amnesty law of 2000,<sup>1291</sup> the Decentralization law as well as the Act establishing the Ugandan High Court Special Crimes Division.<sup>1292</sup> The International Crimes Division (ICD) which was originally called the War Crimes Division is a permanent special division of the High Court. It is a national court established in 2008, under the 1995 Constitution of the Republic of Uganda. It also operates on the basis of the Ugandan Constitution. The division is not an international court, neither is it a section of the International Criminal Court (ICC) or an international tribunal.<sup>1293</sup>

In Kenya laws that address or are related to matters of internal displacement include the Constitution of Kenya.<sup>1294</sup> The Bill of Rights section in the constitution provides for rights relevant to situations of internal displacement such as equality and freedom from discrimination,<sup>1295</sup> human dignity,<sup>1296</sup> political rights,<sup>1297</sup> freedom of movement and

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<sup>1288</sup> Chap. 4 of the Constitution of Uganda 1995 as revised in 2000, Laws of the Republic of Uganda, Uganda Law Reform Commission Vol. 1 (entered in force on 31<sup>st</sup> December 2000).

<sup>1289</sup> They include equality and freedom from discrimination, protection of right to life, protection of personal liberty, respect for human dignity and protection from inhuman treatment, protection from deprivation of property, right to privacy, of person, home and other property, protection of freedoms of conscience, expression, movement, religion, assembly, and association, civic rights and activities, and economic rights.

<sup>1290</sup> It is important to address matters of land to minimize conflicts between returning communities that in itself is capable of causing further displacement.

<sup>1291</sup> The law was enacted to facilitate reconciliation and reintegration of former combatants and people responsible for acts that resulted in displacements of populations. The Act grants amnesty to those combatants that purge their actions and promise never to involve themselves in such actions. The Act has the effect of addressing the cyclic causes of displacement by addressing fear of communities from settling down.

<sup>1292</sup> In June 2007, the Government of Uganda and the LRA signed an, annexure to the final peace Agreement on Accountability and Reconciliation, which required to government to set up both formal and non-formal justice mechanisms to address accountability and reparations for the atrocities and injustices committed during the war in Northern Uganda.

<sup>1293</sup> Justice for All (JLOS) 'Frequently asked questions on the International Crimes Division of the High Court of Uganda' at [http://www.jlos.go.ug/uploads/ICD\\_FAQs.pdf](http://www.jlos.go.ug/uploads/ICD_FAQs.pdf) accessed on 24-04-2012.

<sup>1294</sup> Chap. 4 of Constitution of Kenya 2010 Revised edition, National Council of Law Reporting at [www.kenyalaw.org](http://www.kenyalaw.org) accessed on 22-04-2012.

<sup>1295</sup> Article 27 of Kenyan Constitution 2010 as above.

<sup>1296</sup> Article 28 of Kenyan Constitution 2010 as above.

<sup>1297</sup> Article 38 of Kenyan Constitution 2010 as above.

residence,<sup>1298</sup> protection of rights to property<sup>1299</sup> socio-economic rights<sup>1300</sup> and rights of minorities and marginalized people.<sup>1301</sup> Additionally, chapter 5(1) of the constitution provides for a land policy, such a provision becomes relevant in Kenya where most displacements arise out of deep seated land grievances.

On the other hand, the National Cohesion and Integration Act of 2008<sup>1302</sup> makes discrimination on the basis of ethnic or racial grounds a criminal offence. It bars comparisons of persons of different groups and makes it illegal to harass another person based on his race or ethnicity. Among actions that are prohibited includes hate speech,<sup>1303</sup> incitement, and other crimes based on discrimination of groups. The Act establishes a commission responsible for enforcing and addressing complaints against actions prohibited by the Act. This Act comes in handy in terms of displacement contexts of Kenya. It actually deals with some of the causal and catalysts of displacement within the country, such as hostility, violence, hatred, contempt, committed against or by a person, group or media to incite hate speech on the basis of ethnicity or race.<sup>1304</sup>

Kenya also has the Conferment of Special Tribunal Jurisdiction Bill,<sup>1305</sup> The bill was adopted to address impunity and criminal actions associated and committed to incite, fuel and manipulate post election violence that have displaced thousands in Kenya.<sup>1306</sup> The Bill is mindful of both the basis of the Coalition Government Agreement of February 28<sup>th</sup> 2008 and the Agreement on the Establishment of a Commission of Enquiry on Post Election Violence of March 2008 as well as its recommendations which were intent on addressing the root causes of the violence, impunity and ending displacements. Due to procedural hindrances within the existing judicial institutions, a need to address such criminal conduct required the conferment upon the high court special tribunal jurisdiction. Among the jurisdictions

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<sup>1298</sup> Article 39 of Kenyan Constitution 2010 as above.

<sup>1299</sup> Article 40 of Kenyan Constitution 2010 as above.

<sup>1300</sup> Article 43 of Kenyan Constitution 2010 as above.

<sup>1301</sup> Article 56 of Kenyan Constitution 2010 as above.

<sup>1302</sup> Act no. 117 of 2008 NCKK.

<sup>1303</sup> Article of the National Cohesion and Integration Act as above.

<sup>1304</sup> The Political Party's Act reiterates similar provisions by outlawing ethnic alliances that exclude others on a national scale, see [www.Nation.co.ke/news/agencies](http://www.Nation.co.ke/news/agencies) February 1, 2011.

<sup>1305</sup> Introduced on February 7<sup>th</sup> 2011.

<sup>1306</sup> Article 3(1) of Kenyan Conferment of Special Tribunal Bill of 2011.

conferred is the right to hear cases involving crimes against humanity including forcible transfer of populations, torture and rape or other forms of sexual violence.<sup>1307</sup>

For decades, the Kenyan Government has carried out large-scale forced evictions especially in informal settlements, contravening international human rights standards.<sup>1308</sup> These forms of arbitrary evictions constitute what the Draft IDP policy of Kenya describes as internal displacement.<sup>1309</sup> Evictions that were carried out in MAU forests and other areas in Kenya arbitrarily to pave way for forest conservation have left IDPs living in desperate conditions.<sup>1310</sup> The Kenyan Eviction and Resettlement Guidelines can also lend assistance to the national IDP framework.<sup>1311</sup> The guidelines protect individuals from arbitrary displacements or evictions as a result of various reasons including development based displacement, market based displacement and mitigation or prevention of displacement resulting from natural disasters.<sup>1312</sup>

### **5.10 National Plans of Action and Policy frameworks on internal displacement**

Uganda adopted an IDP policy in 2004 pursuant to a deteriorating situation of internal displacement. It was one of the first few countries in the world to institute a national policy specifically aimed at protecting internally displaced persons.<sup>1313</sup> The Ugandan IDP policy sought to establish principles intended to foster guidance to the government of Uganda, and its institutions, humanitarian and development agencies on matters of internal displacement.<sup>1314</sup> It also was meant to ensure that needs of internally displaced persons were addressed in an effective manner, and that they consequently would enjoy the same rights and freedoms under the Constitution and other laws as all other non-displaced people in Uganda. The policy has been instrumental even in the creation of institutions responsible for

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<sup>1307</sup> Article 2 of Kenyan Conferment of Special Tribunal Bill 2011 as above.

<sup>1308</sup> Eviction and resettlement guidelines; The Kenyan IDP policy also discusses evacuations, forced evictions and relocations, something that is not inherently provided for in the guiding principles but is relevant to the situation in Kenya. For instance Mau forest evictees; See Kenyan Draft IDP policy 2010 as above at 10.

<sup>1309</sup> See chap. 5 of the Kenyan Draft IDP policy, Abridged version of 2011 at 10.

<sup>1310</sup> Chap. 5 of Kenyan Draft IDP Policy, abridged version 2011 as above.

<sup>1311</sup> Republic of Kenya, Ministry of Lands, *Eviction and Resettlement Guidelines*, LRTU Secretariat October 2009.

<sup>1312</sup> Kenyan Eviction guidelines 2009 as above at 34; These guidelines are meant to work consistently with international human rights, refugee, criminal and humanitarian law and other relevant national laws.

<sup>1313</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 2.

<sup>1314</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

addressing the plight of IDPs. The policy provided for clear structures and operationalization process for implementing its stated objectives.<sup>1315</sup> It did not provide for creation of a new independent institution, instead it proposed the establishment of an institutional framework that brought together various agencies and actors within the field and all levels of government to work together in addressing displacement.<sup>1316</sup>

The policy clearly provided for hierarchy in institutions that were to be part of the concerted efforts to address displacement. Human rights have been specifically provided for in the policy.<sup>1317</sup> The policy amplifies such by providing for the creation of a Human Rights Promotion and Protection Sub-Committee (HRPP). This committee is responsible for monitoring and ensuring protection of the rights of displaced persons and ensuring that the process of making intervention plans related to IDPs are done on the basis of national and international standards. The Uganda IDP Policy also caters for the development of sector programmes.<sup>1318</sup>

The policy covers a range of issues including taking note of national and international instruments ratified by the government as well as Guiding Principles applicable to the protection and treatment of internally displaced persons.<sup>1319</sup> Additionally, the IDP Policy provides for institutional arrangements, as well as the roles and responsibilities of relevant stakeholders.<sup>1320</sup> It also provides for specific IDPs rights that it is meant to protect.<sup>1321</sup> The policy distributes responsibilities to national and international humanitarian and development agencies as well as intergovernmental organizations and the donor community by specifying

<sup>1315</sup> OPM-DDMR ‘Operationalising the IDP Policy’ 2005 as above.

<sup>1316</sup> OPM-DDMR ‘Operationalising the IDP Policy’ 2005 as above.

<sup>1317</sup> Republic of Uganda National Policy for Internally Displaced Persons Office of the Prime Minister (OPM) Department of Disasters Preparedness and Refugees (DDPR) August 2004 at 10.

<sup>1318</sup> Uganda National IDP policy 2004 as above.

<sup>1319</sup> The instruments taken note of include the African Charter on Human and Peoples ‘Rights (1981), the Convention on the Elimination of All forms of Discrimination Against Women (1979), Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (1984), Convention on the Rights of the Child (1989) and Additional Protocols, International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), United Nations Guiding Principles on Internal Displacement (1998), the African Charter on Rights and Welfare of the Child, the Geneva Conventions (1949) and Additional Protocols, especially Protocol II, and the SPHERE Project, Minimum Standards in Disaster Response.

<sup>1320</sup> Uganda National Policy for IDPs 2004 as above at 3-16.

<sup>1321</sup> These rights include, security, freedom of movement, protection against arbitrary displacement, voluntary return, and resettlement, legal status, identification, and registration, property rights, family unification, food security, shelter, clothing, education, health, water and sanitation, resettlement kits, rehabilitation and infrastructure, as well as the exemption from graduated tax, and protection of environment; See Republic of Uganda National Policy on IDPs *ibid* at 19-32.

the nature and conditions of collaboration between these institutions and the Government of Uganda.<sup>1322</sup> The policy finally provides for its dissemination and publication as well as requirement for the training of relevant stakeholders with regard to its provisions.

The Kenyan Draft National Policy for the protection and assistance of internally displaced persons is a result of a very wide consultative process involving various stakeholders under the guidance of the Protection Working Group on Internal Displacement (PWGID).<sup>1323</sup> In July 2009, during the first national stakeholder's forum for the protection and attainment of durable solutions for IDPs, a consensus was reached on the need to develop a national policy on the protection and assistance for IDPs in Kenya.<sup>1324</sup> Subsequently in March 2010, the Ministry of State for Special Programmes (MOSSP) with support from members of the PWGID and the Representative of the United Nations Secretary General on the human rights of internally displaced persons,<sup>1325</sup> led the process of drafting a national policy on IDPs.<sup>1326</sup>

The draft policy reaffirms the human rights of IDPs as recognized and protected under the Bill of Rights of the old Constitution and the expanded Bill of Rights under the new Constitution.<sup>1327</sup> It also has taken into account other regional and international instruments to which Kenya is a party. These instruments include, the Great Lakes Protocol on Internal Displacement and the African Union Convention for the Protection and Assistance to Internally Displaced Persons (Kampala Convention). The Kampala convention is yet to be ratified while the protocol has not yet been implemented locally in the form of legislation. This is of course not a very good sign for a country that is plagued by internal displacement.

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<sup>1322</sup> Republic of Uganda National Policy on IDPs 2004 as above at 33-37.

<sup>1323</sup> The PWGID is a stakeholders group made up of actors from various government industries, civil society organisations, representatives of IDPs as well as representatives of United Nations Agencies. The group has been established as a forum for discussion of issues related to the situation of internally displaced persons and their protection concerns.

<sup>1324</sup> Government of Kenya Draft National Policy on Internal Displacement Simplified Version February 2011 as above at iv.

<sup>1325</sup> The United Nations Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Mr Walter Kalin, visited Kenya between January and March 2010. He supported initiatives by the Government to develop a Draft National Policy on Internal Displacement and additionally provided technical support to the Kenyan PWGID to advance the process; See United Nations Report of the Secretary General on the Human rights of internally displaced persons to the 65<sup>th</sup> session of General Assembly UN-GA A/65/282 at 6.

<sup>1326</sup> Kenyan Draft National abridged IDP Policy 2011 as above at iv.

<sup>1327</sup> The draft policy has been revised so that it would be in line with the new Constitution which came into effect in 2010.

The Kenyan Draft Policy starts in chapter one by outlining the main principles on which the policy is based. These include among others, human dignity, the involvement of IDPs, as well as equality and non-discrimination. Chapter two provides a definition of who an IDP is in Kenya.<sup>1328</sup> The Policy defines an IDP as:

persons or groups of persons who have been forced to abandon their homes or places of habitual residence due to wars, clashes, or widespread violence and conflicts, large scale development or preservation projects,<sup>1329</sup> or as a result of natural or human made disasters such as floods and famine or to avoid human rights violations.<sup>1330</sup>

This definition is different from the definition provided by the Guiding Principles and the one provided by the Ugandan national IDP policy which has restated the Guiding Principles explicitly. The definition in Kenya has actually been highly stretched to mirror the situation of internal displacement within the Kenyan context. In doing so, the definition might have become too narrow and left gaps in which other people in IDP like situations in Kenya might fall through. The Kenyan draft IDP policy further provides for institutions that are meant to be responsible for addressing internal displacement in chapter three.<sup>1331</sup> Chapter four to nine of the Draft Policy provide for among other things, measures for preventing internal displacement, protecting Kenyans against arbitrary displacement and protection as well as assistance during displacement,<sup>1332</sup> disaster preparedness and mitigation of effects of internal displacement, providing assistance and protection as well as finding durable solutions for IDPs in Kenya. Chapter ten of the draft policy provides for how the policy is to be implemented.<sup>1333</sup>

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<sup>1328</sup> Kenyan abridged Draft National IDP Policy 2011 as above at 3.

<sup>1329</sup> Such as the large scale displacement of people from the Mau Forest

<sup>1330</sup> Kenyan abridged Draft National IDP Policy 2011 as above at 3.

<sup>1331</sup> Kenyan abridged Draft National IDP Policy 2011 as above at 5-6; Some of these institutions include the Ministry of State for Special Programmes (MOSSP), National Consultative Coordination Committee (NCCC), other relevant line ministries (including Ministry for Land, Justice, Foreign Affairs, Internal Security and Education), other National Actors (such as Kenya Red Cross Society, Kenya National Commission on Human Rights, and Civil Society Organisations), IDP communities, Community based organisations, elders and communities hosting or receiving IDPs, Regional Organisations (such as the African Union, East African Community, and the Inter-Governmental Authority for Development), International Humanitarian Organisations, Humanitarian and Development Partners, Armed Groups and Non-State Actors.

<sup>1332</sup> The rights of IDPs in Kenya that are up-held by the Draft National Policy for IDPs include right to freedom of movement, seek safety in any part of the country, to leave Kenya, to be protected against forcible return, respect for family life, to be recognised as a person before the law, not be arbitrarily deprived of homes, property, economic and social rights such as education, health, water, housing, food and sanitation.

<sup>1333</sup> Kenyan abridged Draft National IDP Policy 2011 as above at 7-19.

Other policies within these two countries that are relevant to the situations of internal displacement include, the Kenyan Draft IDP Bill,<sup>1334</sup> the Kenyan Draft Human Rights Policy,<sup>1335</sup> Land policies of both Kenya<sup>1336</sup> and Uganda,<sup>1337</sup> the Kenya Draft National Cohesion and Integration policy,<sup>1338</sup> the Kenyan Disaster Management Policy,<sup>1339</sup> Uganda's Disaster Risk Reduction and Management Policy<sup>1340</sup> and the Kenya National Draft Policy on Peace building and conflict management.<sup>1341</sup> Relevant plans of action include Kenyan Framework of Agenda for National Accord,<sup>1342</sup> Uganda's Plan of Action for Teso and Lango,<sup>1343</sup> as well as Kenya's National Reconciliation and Emergency, Social and Economic Recovery,<sup>1344</sup> and Uganda's Poverty Eradication Action Plan,<sup>1345</sup> Uganda's Draft Disaster Preparedness Plan.<sup>1346</sup>

### 5.11 National Institutional focal point for IDPs

The National IDP Policy of Uganda of 2004 specifically provided for institutions that would be responsible for dealing and providing protection and assistance to internally displaced persons in Uganda.<sup>1347</sup> The policy provided for the establishment of a framework that would bring together committees and relevant actors concerned with internal displacement in various levels of government.<sup>1348</sup> The policy first appointed the Office of the Prime Minister specifically the Department of Disaster Preparedness and Refugees (OPM-DDPR) as the lead agency for the protection and assistance of internally displaced persons.<sup>1349</sup> The OPM-DDPR has the responsibility of supervising and ensuring that the responses of ministries, humanitarian and development agencies are well coordinated in situations of internal displacement under the leadership of the Commissioner for Disaster Management and

<sup>1334</sup> Adopted by the Parliamentary select committee on internal displacement in December 2011.

<sup>1335</sup> 2010.

<sup>1336</sup> 2010.

<sup>1337</sup> The Draft national land policy of 2009 of Uganda is anticipated to address the issue of mal-administration of land and re-distribution of land belonging to formerly displaced persons who are now returning home.

<sup>1338</sup> 2011.

<sup>1339</sup> 2009.

<sup>1340</sup> 2009.

<sup>1341</sup> 2009.

<sup>1342</sup> 2008.

<sup>1343</sup> See [www.ugandaclusters ug/protection.htm](http://www.ugandaclusters ug/protection.htm) as above.

<sup>1344</sup> April 2008.

<sup>1345</sup> First incepted in 1997.

<sup>1346</sup> OCHA 'Uganda disaster preparedness plan: disaster preparedness for effective response for the implementation of priority 5 of the Hyogo Framework of Action in Uganda 2005-2015' Kampala, Uganda as above.

<sup>1347</sup> Republic of Uganda National IDP Policy for Internally Displaced Persons August 2004 at 3-16

<sup>1348</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3.

<sup>1349</sup> Republic of Uganda IDP policy 2004 as above at 3.

Refugees (CDMR).<sup>1350</sup> It also has been responsible for effective and timely protection and further, provision of assistance to internally displaced persons in Uganda. Other supporting institutions identified by the IDP Policy include various Committees on matters relating to internal displacement.<sup>1351</sup> These committees have brought together relevant actors concerned with internal displacement at different government levels.<sup>1352</sup> The responsibility of the committees has been to promote coordination of multi-sectoral planning mechanisms at the national, district and sub-county levels in order to effectively address the protection and provision of humanitarian assistance to internally displaced persons.

The Inter Ministerial Policy Committee (IMPC) was established by the Prime Minister and was composed of ministers from relevant ministries.<sup>1353</sup> It has been responsible for policy formulation and overseeing of internal displacement matters. The policy provided that the minister in charge of the DDR was also to be in charge of IMPC.<sup>1354</sup> The Inter -Agency Technical Committee (IATC) was established and chaired by the Permanent Secretary in the Office of the Prime Minister. It was charged with planning and coordinating activities of the sectoral ministries, Government departments, the private sector, the United Nations, international organisations and non-governmental Organisations.<sup>1355</sup>

At the district level, the District Disaster Management Committees (DDMCs) of every district are lead agencies within particular districts when it comes to protection and assistance to IDPs. They are constituted of all relevant heads of Government departments, humanitarian and development agencies and the private sector within the district, as well as male and female IDP representatives.<sup>1356</sup> The DDMC is headed by the Chief Administrative Officer (CAO) who is usually the head of civil service in the district. The Resident District

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<sup>1350</sup> Republic of Uganda IDP Policy 2004 as above at 4.

<sup>1351</sup> Republic of Uganda IDP Policy 2004 as above at 5.

<sup>1352</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3.

<sup>1353</sup> Republic of Uganda IDP policy 2004 as above at 6.

<sup>1354</sup> Members of the IMPC include amongst others Ministers for Internal Affairs; Finance, Planning and Economic Development; Agriculture, Animal Industry and Fisheries; Health; Lands, Water and Environment; Defence; Education; Local Government; Gender, Labour and Social Development; Justice and Constitutional Affairs; Housing and Communications; and Information.

<sup>1355</sup> Republic of Uganda IDP Policy 2004 as above at 7; OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3; the IATC's members consist of senior officials from the above mentioned ministries and additionally, the Office of the President, Department of Information; representatives of the Ugandan Human Rights Commission; representatives of the Amnesty Commission; representatives of United Nations, major national and international organisations, especially lead organisations operating within affected communities; representatives from donor technical groups; the Head of the UN office for the Coordination of Humanitarian Affairs.

<sup>1356</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3.

Coordinator (RDC) who is the chairperson of the District Security Committee, by virtue of his position is also in charge of the security of IDPs within the district. Lastly, the district chairperson is responsible for mobilising local resources for the well being of IDPs.<sup>1357</sup> Sub-County Disaster Management Committees (SC-DDMCs) also include heads of Government departments at a sub-county level, humanitarian and development agencies and the private sector representatives resident in the particular sub-counties as well as male and female IDP representatives resident within a camp in the sub-county. The necessity for such diverse group arises from the fact that the protection of IDPs requires quick and immediate response involving the application of locally available resources. This requires empowering institutions at the local level.<sup>1358</sup> This is a very good approach as long as these district committees are equipped to carry out the responsibilities placed upon them.

In a special quest for the promotion of the protection of the human rights of internally displaced persons in Uganda, an institutional framework specifically charged with the protection of human rights and the provision of an environment which would foster the upholding of rights, securities and entitlements of IDPs was instituted.<sup>1359</sup> The institutions charged with this were the Human Rights Promotion and Protection Sub-Committee (HRPP-SC)<sup>1360</sup> and the District Human Rights Promotion and Protection Sub-Committee (D-HRPP-SC).<sup>1361</sup> These committees have fulfilled different but similar functions at their appropriate levels. They were meant to monitor and ensure protection of the rights of internally displaced persons as well as ensuring that the planning of all intervening initiatives by government ministries and other agencies were done within national and international human rights standards.<sup>1362</sup>

The human rights committees monitor the protection of human rights of IDPs, act as focal points for complaints and criticism of the policy and its implementation, promote and protect IDPs' human rights, support individuals whose human rights have been violated and lastly

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<sup>1357</sup> Republic of Uganda IDP Policy 2004 section 2.4 as above at 11.

<sup>1358</sup> Republic of Uganda IDP Policy 2004 as above at 17.

<sup>1359</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3; See also Republic of Uganda IDP Policy 2004 as above at 10.

<sup>1360</sup> This Sub-committee is composed of a cross section of actors from Government ministries, local authorities and humanitarian and development agencies.

<sup>1361</sup> This sub-committee is composed of the following people resident within a particular district: a representative of religious institution; a representative of NGOs; a representative of humanitarian and development agencies; a representative of the Ugandan Human Rights Commission; the District police commander; a representative of the Amnesty Commission; and a secretary of the DDMC.

<sup>1362</sup> Republic of Uganda IDP Policy 2004 as above at 10.

are responsible for reporting on progress of implementation of the IDP policy.<sup>1363</sup> The D-HRPP-SC together with the DDMC are responsible for the protection and provision of security to IDPs at the District level in Uganda. Their joint responsibilities include ensuring the security of IDPs and their property, ensuring freedom of movement within camps, protecting IDPs from illegal or arbitrary forced displacement, ensuring voluntary return and resettlement without coercion, ensuring provision of necessary documents to enable IDPs to exercise their rights, and enabling families separated by displacement to reunite as quickly as possible.<sup>1364</sup>

These committees are meant to provide a forum for integrated discussion and coordination of issues concerning IDPs. This cooperation has been the basis of the operational functionality of the IDP policy in Uganda. But this has not happened without impediments. At the district level it is commendable that the government avoided creating new administrative structures to facilitate implementation of the IDP Policy and used existing structures. However assessment of the capacity of such existing structures must have been taken into consideration first. It seems that at a practical level, many district level offices responsible for implementing the IDP policy, especially the Offices of the Chief Administrative Officer, were labouring due to unmanageable work load.<sup>1365</sup> Many government district officials reiterated that even before the IDP policy came into effect, the task of disaster management was overwhelming in itself.<sup>1366</sup> They stated that in as much as the necessity of implementing the IDP policy was highly obvious, the dire lack of capacity to implement the provisions of the policy was incapacitating their functionality.<sup>1367</sup> The IDP policy had also pre-empted the lack of adequate capacity within districts, especially the ones that were crippled by conflict and disasters for a long time. Subsequently, provision for a full time District Disaster Preparedness Coordinator was made.<sup>1368</sup> The office came as a relief to most district officials who were overloaded with addressing their daily duties and addressing mass displacements additionally.

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<sup>1363</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 4.

<sup>1364</sup> OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

<sup>1365</sup> Danish International Development Agency-Human Rights and Good Governance Programme (DANIDA-HRGGP) and the Coalition for TESO IDPs Rights (COTIR) Report on the implementation of the National policy for internally displaced persons in TESO August 2005 at 13.

<sup>1366</sup> DANIDA and COTIR Report 2005 as above.

<sup>1367</sup> DANIDA and COTIR Report 2005 as above.

<sup>1368</sup> Republic of Uganda IDP Policy 2004 Section 2.4 iii as above at 13.

But there are pending reservations by district officials in the way the new office has been created. In some instances it operates parallel to existing district mechanisms without necessarily reporting entirely or coordinating with the district administration.<sup>1369</sup> There was also lack of clarity with regard to the position of the DDPC within the district local governments. In a decentralised system of displacement management the direct function of an OPM/UNDP backed DDPC dis-empowered the existing district structures that should have been empowered, this lack of clarity affected coordination activities.<sup>1370</sup> Lack of coordination and sharing of responsibilities at the national, district and sub-county levels also affected initial steps to effectively implement the IDP policy institutional-wise.<sup>1371</sup> This was partly because the policy had appointed various institutions and committees to deal with internal displacement, but was silent about reporting mechanisms and lines of authority between these institutions.<sup>1372</sup> Subsequently, a popular perception was that, those responsible for implementing the policy at the national level were detached from the actual situations ongoing within districts and sub-counties.<sup>1373</sup>

#### *5.11.1 IASC Protection Cluster in Uganda*

The cluster approach is an interagency approach which requires various complimentary agencies to be part of a coordinated response. In order to respond effectively and in a coordinated manner to the IDP situation in Uganda, an inter-agency collaborative approach was implemented by the Inter Agency Standing Committee (IASC).<sup>1374</sup> Uganda was one of the first countries to be selected as pilot projects for the global humanitarian cluster approach.<sup>1375</sup> The clusters were activated at the end of 2005 at the national, as well as district level in Kitgum, Pader, Gulu, Amuru and the Lango and Teso sub-regions.<sup>1376</sup> In the first year only four clusters were activated, these were Early Recovery Cluster (headed by UNDP), Protection Cluster (headed by UNHCR), Water and Sanitation (headed by

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<sup>1369</sup> Interview with district local government official, Soroti Town, 29<sup>th</sup> June 2005 quoted in DANIDA and COTIR Report 2005 as above at 14.

<sup>1370</sup> DANIDA and COTIR Report 2005 as above at 15.

<sup>1371</sup> DANIDA and COTIR Report 2005 as above at 16.

<sup>1372</sup> DANIDA and COTIR Report 2005 as above.

<sup>1373</sup> See Interview with employee of humanitarian agency, Soroti town, 28<sup>th</sup> June 2005 quoted on DANIDA and COTIR Report 2005 as above at 16.

<sup>1374</sup> Uganda Human Rights Commission (UHRC) and IASC Protection Cluster 'Joint protection transition strategy of the Uganda Human Rights Commission and the Inter Agency Standing Committee protection cluster' at 2.

<sup>1375</sup> Steets and Grunewald 2010 as above at 16.

<sup>1376</sup> Steets and Grunewald 2010 as above at 16.

UNICEF), and the Health, Nutrition and HIV Cluster (headed by UNICEF).<sup>1377</sup> Later on the Early Recovery Cluster was renamed to Governance, Infrastructure and Livelihoods, and by 2006 other clusters including the Education, Food, Security and Agricultural Livelihood Cluster (headed by FAO and WFP) had been activated as well.<sup>1378</sup>

The protection cluster around the same time set up its sub clusters including the Camp Coordination and Camp Management sub cluster (CCCM). Camp Coordination has since been merged back into the protection cluster in 2009.<sup>1379</sup> The Gender Based Violence (GBV), Child Protection as well as the Human Rights and Rule of Law sub clusters were also formed along with the CCCM within the Protection Cluster.<sup>1380</sup> By the end of 2006, the protection cluster had identified gaps within protection mechanisms that it set out to address.<sup>1381</sup> All the rights that were lacking adequate protection had been addressed by the National IDP Policy but were yet to be adequately implemented. The creation of sub-clusters in accordance with IASC Global guidance within the protection cluster with focused technical and operational areas of responsibility made this task easier by directing special attention and resources to these areas.<sup>1382</sup>

The objectives of the Protection Cluster in Uganda included effective protection of IDPs in Uganda; effective and efficient delivery of appropriate assistance to populations within camps; and advocating for freedom of movement for IDPs as a way of promoting the attainment of at least one level of durable solutions.<sup>1383</sup> The introduction and functioning of the protection cluster in Uganda was not without huddles. The first problem was that the lead agency, UNHCR was picked to lead the cluster on its introduction to Uganda, but UNHCR

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<sup>1377</sup> Steets and Grunewald 2010 as above.

<sup>1378</sup> Steets and Grunewald 2010 as above at 17.

<sup>1379</sup> After the lifting of the remaining restrictions to freedom of movement, all IDPs started the process of return, local integration or resettlement. This necessitated camp phase out initiation, after this was achieved, the CCCM no longer had to exist independently from March 2007, it worked with the Protection cluster from 2008 to advocate for more protection during camp phase out and durable solutions; See Uganda –Inter Agency Standing Committee (IASC) CCCM Cluster: Merging the CCCM into the Protection Cluster’ Kampala January 2009.

<sup>1380</sup> Steets and Grunewald 2010 as above at 17-18.

<sup>1381</sup> The challenges included insecurity, restricted freedom of movement, limited access to property, farmland and prospects of sustainable livelihoods, congested and squalid living conditions in camps, poor access to basic services, lack of justice or civilian policing, and high incidences of sexual and gender based violence as well as child protection case; See Uganda Human Rights Commission and IASC Protection Cluster as above at 2.

<sup>1382</sup> Uganda Human Rights Commission and IASC Protection Cluster as above.

<sup>1383</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

was never deeply involved in IDP protection matters in northern Uganda prior to the introduction of clusters.<sup>1384</sup>

There were no pre-existing structures set up for the coordination of protection or its sub-themes. It had not established a good rapport with local authorities, so the issue of providing protection was challenging.<sup>1385</sup> Additionally, the sub-clusters were each operating very independently from the main protection cluster itself especially the Child and GBV clusters. The relationship between the two was not well coordinated. This in turn created problems of inter-sub cluster coordination. There was not enough coordination between them or the main protection cluster even though their functions were interconnected at times.<sup>1386</sup> Additional problems have been raised over the nature of the definition of ‘protection’ in Uganda which happened to be a very contentious and wide concept.<sup>1387</sup> The protection cluster has thus taken over a lot more scope than it should have, and in the process protection gaps cannot be escaped.<sup>1388</sup>

#### *5.11.1.1 Camp Coordination and Camp Management (CCCM) sub-cluster*

The CCCM was initially an independent sub-cluster before it merged into the protection cluster after the return process begun in Northern Uganda. It was tasked with overall information management and identification of protection gaps in camps and return areas.<sup>1389</sup> When the camp phase out stage began, the CCCM was responsible for the description of camp phase out procedures in cooperation with the relevant districts.<sup>1390</sup> Under its guidance, government camp phase out committees were established, and they in turn at the height of IDP return process took over the remaining responsibilities of the CCCM sub-cluster.<sup>1391</sup>

#### *5.11.1.2 Child Protection Sub-cluster*

There has been a relative increase in the protection afforded to children displaced in Northern Uganda since the introduction of cluster protection. Additional geographic area has been

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<sup>1384</sup> Steets and Grunewald 2010 as above at 67.

<sup>1385</sup> Steets and Grunewald 2010 as above.

<sup>1386</sup> Steets and Grunewald 2010 as above at 66.

<sup>1387</sup> The Ugandan National policy on Internal Displacement of 2004 defines ‘protection’ as the ‘full respect of the rights of the internally displaced and provision of physical security’ This definition could encompass numerous factors, stages, circumstances as well as responsibilities towards the displaced populations.

<sup>1388</sup> Steets and Grunewald 2010 as above at 67.

<sup>1389</sup> Steets and Grunewald 2010 as above.

<sup>1390</sup> Steets and Grunewald 2010 as above.

<sup>1391</sup> Steets and Grunewald 2010 as above.

covered in terms of protection, subsequently this has offered protection to children that were previously left out by protection mechanisms.<sup>1392</sup> Before the introduction of the cluster system, the main child protection coordination mechanism was made up of the National Psycho-Social Support Core Team.<sup>1393</sup> The team approached the issue of child protection very narrowly, by only focusing on promoting the psycho-social well being of the affected groups.<sup>1394</sup> It also did not maintain close working relations with what was going on in the field, this coupled with lack of coherent leadership, led to its collapse in 2005.<sup>1395</sup>

It seems this is the one place that national actors were more involved than in any other clusters, and this shows in the indicators of effectiveness of the cluster.<sup>1396</sup> The child protection cluster has been active since 2007 in Uganda until it was phased out at cluster phase out stage in end 2009.<sup>1397</sup> It worked very well because local mechanisms and the community were involved and thus given responsibility for their children from the onset.<sup>1398</sup> Additionally, child protection focal points were even appointed at a sub-county level, allowing local participation.<sup>1399</sup> Even in areas where the cluster was not active, the government copied and applied this all-inclusive protection approach involving community based child protection techniques.

#### *5.11.1.3 Gender Based Violence Sub-cluster*

The Gender-based violence sub-cluster was introduced in 2006. It was initially under the focal leadership of UNICEF, and then from 2008, UNFPA took over. The sub cluster has played a great role in harmonizing approaches to GBV in Uganda. It has worked closely with national government authorities especially in the creation of a national GBV Bill as well as contributing to capacity building.<sup>1400</sup> The sub-cluster also played a key role in supporting the establishment and coordinating the development of national associations such as the Uganda

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<sup>1392</sup> Steets and Grunewald 2010 as above at 68.

<sup>1393</sup> Inter Agency Standing Committee 'Child protection sub-cluster coordination in Uganda' Inter Agency Review Documentation 26<sup>th</sup> May -7<sup>th</sup> June 2008 at 2.

<sup>1394</sup> IASC Inter Agency Review Documentation Uganda 2008 as above.

<sup>1395</sup> IASC Inter Agency Review Documentation Uganda 2008 as above.

<sup>1396</sup> IASC Inter Agency Review Documentation Uganda 2008 as above at 1 and 2.

<sup>1397</sup> Steets and Grunewald 2010 as above at 68.

<sup>1398</sup> Cluster meetings at the district level were chaired by government officials at that level from 2006 when the cluster was introduced.

<sup>1399</sup> Steets and Grunewald 2010 as above at 68; IASC Inter Agency Review Documentation Uganda 2008 as above at 2.

<sup>1400</sup> IASC Inter Agency Review Documentation Uganda 2008 as above.

Association of Women Lawyers (FIDA-Uganda), which in turn has played a key role in the protection against GBV and has provided support, to GBV victims.<sup>1401</sup> The only problem is that the local affected population was not consulted adequately when formulating policies that concerned them. Part of the problem is that sexual violence is a private affair and communities choose not to discuss it further or report it. There is also a gap in information gathering and consultation as far as GBV in Uganda is concerned.<sup>1402</sup>

After the signing of the Cessation of Hostilities Agreement between the Government of Uganda and the LRA/M in 2006, peace seemed to be on the horizon, and IDPs in ‘protected’ villages were finally allowed to return home.<sup>1403</sup> Even though the final signing of the Peace Process has been evaded by the LRA, almost 87 percent of IDPs are reported to have started initiating steps towards durable solutions.<sup>1404</sup> This includes returning to their original places, reintegrated or resettled somewhere else. This has facilitated the process of protection in Uganda taking a turn and clusters being phased out. This process of transition from the cluster protection system to a national led protection during development has been done in phases.

Collaboration between the Uganda Human Rights Commission (UHRC) and protection cluster members aims to enable the UHRC to effectively lead, coordinate as well as advocate for sustainable durable solutions for the remaining IDPs and those that have left camps and are in the process of integration.<sup>1405</sup> For the remaining sub-clusters of child protection and GBV, handing over to concerned government bodies has been done.<sup>1406</sup> Coordination involving the humanitarian and recovery phase of the child protection sub-cluster has been taken over by the Department of Children and Youth of the Ministry of Gender, Labour and Social Development (MGLSD), of course with continued support from former protection cluster members such as UNICEF.<sup>1407</sup> The ministry and UNICEF will lead a Child Protection Coordination Forum that will continue engaging with all child protection agencies and government departments dealing with child protection issues in Northern Uganda.<sup>1408</sup> The

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<sup>1401</sup> Steets and Grunewald 2010 as above at 69.

<sup>1402</sup> Steets and Grunewald 2010 as above.

<sup>1403</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above at 4.

<sup>1404</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1405</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above at 3-4.

<sup>1406</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above at 4.

<sup>1407</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1408</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

National Child Protection Working Group, which is made up of all relevant child protection stakeholders will be operating within the framework of the Child Protection Recovery Strategy for Northern Uganda for the year 2009-2011.<sup>1409</sup> The GBV sub-cluster has been taken over by the GBV National Reference Group led by the Ministry of Gender, Labour and Social Development.<sup>1410</sup>

#### *5.11.1.4 Protection Sector Support Group*

This is the new re-formation of the protection sector stakeholders, especially the ones concerned with child and GBV protection. The protection sector support group is chaired by the Uganda Human Rights Commission.<sup>1411</sup> The commission is among other things responsible for leading and coordinating IDP protection issues and responses in consultation with members as well as other humanitarian and development agencies, and government led GBV and child protection working groups.<sup>1412</sup> The sector is also responsible for monitoring and evaluation of the return and reintegration process in the country, as well as convening and chairing monthly protection sector support group coordination meetings in Kampala and at district level in the process of encouraging information sharing. It is also responsible for representing the sector at various coordination forums in Uganda.<sup>1413</sup>

The situation in Northern Uganda has to some extent stabilized, most of the initiatives currently under way are anchored in transition from humanitarian action to recovery.<sup>1414</sup> This stage is very challenging for the IDP population who are caught in between humanitarian needs and recovery sustenance.<sup>1415</sup> Some protection challenges such as information on key protection concerns, including food, security, access to water, basic social services, access to land and property, are coupled with recovery needs and cannot be addressed by one institution, hence the need for a synergy of resources, skills and mandates across sectors.<sup>1416</sup> This is why membership of the protection support sector group is open to all interested parties and representatives of coordination bodies from humanitarian, recovery and

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<sup>1409</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1410</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1411</sup> Uganda Human Rights Commission and IASC Protection Cluster as above at 7.

<sup>1412</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above at 8.

<sup>1413</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1414</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1415</sup> Ugandan Human Rights Commission and IASC Protection Cluster as above.

<sup>1416</sup> Uganda Human Rights Commission and IASC Protection Cluster as above at 7.

development actors across Uganda, as well as representatives from the three branches of government and mass media as well as eminent personalities.<sup>1417</sup>

Kenya's IDP protection institutions are relatively new and have not developed to the detailed level of the Ugandan institutions and coordination system for addressing, protection and assisting the internally displaced. The Kenyan Draft National IDP Policy provides for institutions and stakeholders responsible for dealing with internal displacement in Kenya.<sup>1418</sup> These include among others, The Government of Kenya, which has the main responsibility for preventing, internal displacement and assisting, protection and mitigating the consequences of internal displacement, as well as finally finding durable solutions to internal displacement. This duty, within the Government is placed upon the Ministry of State for Special Programmes (MoSSP), which operates as the lead ministry responsible for coordinating all matters on internal displacement, implementing the IDP policy as well as organizing and convening the National Consultative Coordination Committee (NCCC).<sup>1419</sup>

The NCCC is to act as the platform for information sharing, consultation and coordination at the national, county and other administrative levels.<sup>1420</sup> It is to be made up of representatives from government ministries, relevant national bodies, IDP communities, civil society and the international community.<sup>1421</sup> Other institutional actors provided for by the IDP draft policy include relevant ministries<sup>1422</sup> who will be responsible for mainstreaming IDP issues into their laws and policies. Additional institutional focal points include Kenyan Red Cross Society, Kenyan National Commission on Human Rights, Civil society organizations as well as IDP Networks, Community based organizations, Forums for elders, communities hosting IDPs, as well as the regional and international organizations and humanitarian organizations.<sup>1423</sup> The Kenyan Draft IDP policy, as opposed to the Ugandan one is not very detailed about the exact roles of these actors, it does not state specific institutional actors, instead it just highlights groups that are to be regarded as responsible for IDPs. There is a big difference between the institutional arrangements in Uganda and in Kenya. The Ugandan IDP policy and its

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<sup>1417</sup> Uganda Human Rights Commission and IASC Protection Cluster as above at 9.

<sup>1418</sup> Chapter III of the Kenyan Draft National Policy on Internal Displacement as above at 5.

<sup>1419</sup> Chapter III (1)(a) of the Kenyan draft IDP policy 2010 as above at 5.

<sup>1420</sup> Chapter III (1)(a) of the Kenyan draft IDP policy 2010 as above.

<sup>1421</sup> Chapter III (1)(b) of the Kenyan draft IDP policy 2010 as above at 5.

<sup>1422</sup> These might include Ministries of Land, Justice, Foreign affairs, Internal security, and Education.

<sup>1423</sup> Chapter III (1) (c) and (2-7) of the Kenyan Draft policy 2010 as above at 6.

provisions are more detailed and specific, highlighting the hierarchy, nature and level of responsibility for IDPs, something that is not available within the Kenyan setting.

### *5.11.2 Protection clusters in Kenya*

Before the drafting of the Kenyan Draft IDP policy, when the crisis of post election displacements was at its height, a system had to be set up to address the problem immediately. In January 2008, the National Disaster Operations Center on behalf of the Kenyan government requested the humanitarian community to aid in the mitigation of the displacement crisis in Kenya.<sup>1424</sup> The United Nations Humanitarian Coordinator and the Inter Agency Standing Committee activated the cluster system in Kenya in response to the needs related to the post election crisis. Eleven clusters were activated to allow rapid response and mobilization of donor funding, as well as to provide mechanisms for coordination of local and international humanitarian agencies and to support ailing government structures. The UNHCR, under request from UN Humanitarian Coordinator and the Inter Agency, assumed leadership of the clusters as well as provision of operational support and coordination of three clusters.<sup>1425</sup> These were Camp Coordination and Camp Management (CCCM) which UNHCR co-chaired with the Kenyan Red Cross Society, as well as Emergency and Shelter and IDP protection. After the process of massive return and ‘operation rudi nyumbani’,<sup>1426</sup> the Camp Coordination and Camp Management Cluster was phased out at the end of 2008.<sup>1427</sup>

The protection cluster was established in January 2008, and had two sub-clusters at the national level addressing Gender Based Violence and Child Protection. Its membership consisted over 30 agencies including the Ministry of Justice and the Kenyan Human Rights Commission, as well as international and national NGOs and UN agencies.<sup>1428</sup> The terms of reference for the establishment of the protection cluster were meant to provide only for post

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<sup>1424</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above at 2.

<sup>1425</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above.

<sup>1426</sup> Return home.

<sup>1427</sup> The return process is feared to have been non-consultative and forceful for most of the displaced population. The operation seemed to have disregarded the lack of conducive conditions on the ground, as well as dignified return and failures by local and government authorities to facilitate peace and reconciliation in areas of return. A good number of IDPs are feared to return to their original homes, and settled in transit sites, urban areas or acquired land as groups and settled into ‘self help camps’.

<sup>1428</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above at 2.

election violence IDPs.<sup>1429</sup> This was impossible because it has become imperative to also address the plight of caseloads of IDPs that were displaced in the previous post election cycles, those displaced as a result of political violence in Mount Elgon, as well as those displaced as a result of conservation projects, ethnic and inter-communal violence, cross border conflicts, resource related conflicts, cattle rustling and natural hazards.<sup>1430</sup>

#### 5.11.2.1 National Protection Working Group on Internal Displacement (PWGID)<sup>1431</sup>

In 2009, the protection cluster transformed at a national level into the Protection Working Group on Internal Displacement (PWGID).<sup>1432</sup> The PWGID is responsible for contributing to capacity building of the Government of Kenya to strengthen its ability to address protection needs of IDPs. It is also empowered to provide training on the Guiding Principles, facilitate advocacy and lobbying for the implementation of the Draft IDP policy, facilitate advocacy for the implementation of the Great Lakes Protocol on internal displacement as well as the ratification of the African Union IDP Convention.<sup>1433</sup> It is a tool for monitoring the implementation of these frameworks to ensure that policies adopted are consistent with international and regional obligations, and will provide guidance and support to government, civil society and vulnerable IDP communities.<sup>1434</sup> Leadership of the Protection working group in Kenya is co-chaired by the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) and the Kenyan National Human Rights Commission (KNCHR).<sup>1435</sup> Additional secretariat support is provided by the UNHCR which was the protection cluster lead in Kenya since the activation of clusters in the country. During 2011, the process of transition took place and UNHCR duties were handed over to KNCHR.<sup>1436</sup>

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<sup>1429</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above.

<sup>1430</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above.

<sup>1431</sup> Establishing protection working groups at the country level is essential in ensuring that protection receives focused attention and is effectively addressed in the collaborative humanitarian response. Protection working groups aim to bridge gaps, build partnerships, and improve the protection response through increased accountability, predictability and effectiveness.

<sup>1432</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above at 3.

<sup>1433</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above.

<sup>1434</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above at 4.

<sup>1435</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above.

<sup>1436</sup> Kenya IDP Protection Cluster ‘Protection Working Group on Internal Displacement’ Transition Concept Note as above.

The PWGID is made up of a number of United Nations Agencies, NGOs and Government departments involved with IDP protection issues.

#### 5.11.2.2 PWGID Sub-working Groups and Field Protection Working Groups

The protection working group on internal displacement currently has five sub-working groups in the area of child protection as well as sexual and gender based violence, Legal aid, Psycho-social or Peace building and Advocacy.<sup>1437</sup> Since the transition from protection clusters to the Protection working group, child protection has been taken over by children's department (UNICEF) and the Sexual and gender based violence sub-group has been taken over by the National Commission on Gender and Development in collaboration with UNFPA. Psycho-social and Peace building is led by MoSSP (DRC), and the Advocacy sub-group is chaired by the Refugee Consortium of Kenya (RCK). Additionally, the Protection Working Group has sub-field working groups for areas of Nakuru and Eldoret where internal displacement was rife and severe.<sup>1438</sup>

The above protection and sub-protection working groups have positively contributed to a certain extent in dealing with internal displacement in Kenya. The Legal aid sub-working group contributed in rallying for the development of the Draft National IDP policy, as well as the legal audit of the policy, and the process of aligning the draft IDP policy with the new Constitution by November 2010.<sup>1439</sup> Additionally, the sub-working group played an important role in the implementation of a plan matrix to identify institutions, mandates and roles under the IDP policy, as well as contributing by providing input into the draft memo for the National IDP policy between December 2010 and February 2011, which memo is aimed at furthering advocacy for the adoption of the policy by Cabinet.<sup>1440</sup>

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<sup>1437</sup> Kenya IDP Protection Cluster 'Protection Working Group on Internal Displacement' Transition Concept Note as above.

<sup>1438</sup> Kenya IDP Protection Cluster 'Protection Working Group on Internal Displacement' Transition Concept Note as above at 2.

<sup>1439</sup> Kenya IDP Protection Cluster 'Protection Working Group on Internal Displacement' Transition Concept Note as above.

<sup>1440</sup> Members of the Legal aid sub-working group include the Ministry of State for Special Programmes (MoSSP), Kenya National Human Rights Commission (KNHCR), Kenya Human Rights Commission (KHRC), Refugee Consortium of Kenya (RCK), South Consulting, United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), UNHCR, UNICEF, International Rescue Committee (IRC), Ministry of Justice, National Cohesion and Legal Affairs (MoJNCCA), Children's Legal Action Network (CLAN), and National Legal Aid and Awareness Programme (NALEAP).

The Advocacy sub-group has been responsible for the development and implementation of an advocacy plan related to the National IDP policy as well as rallying for ratification of the AU IDP Convention. This plan was developed around June 2010 and revised in December 2010 ready for adoption.<sup>1441</sup> The advocacy sub-group also contributed to KNHCR's abridged version of the Draft National IDP Policy in December 2010 to make dissemination and understanding of the policy easy and accessible.<sup>1442</sup> The children sub-working group has been instrumental in the development of terms of reference for child protection within the PWGID.<sup>1443</sup> Its members have even advocated for the creation of similar structures at field level within the Nakuru and Eldoret Field Working Groups. The sub-group has also provided legal aid services to children abused through NALEAP and the Nakuru Field Sub-group.<sup>1444</sup> The SGBV sub-group is responsible for among other things contributing to the protection of abused IDP women within local communities.

At the field level, the Sub-groups of Nakuru and Eldoret are respectively chaired by the Provincial Peace Forum in collaboration with the Ministry of Provincial Administration and Internal Security and MoJNCCA as well as the Regional Commissioner for Western Rift Valley in collaboration with the Ministry of Provincial Administration and Internal Security and KNHCR.<sup>1445</sup> Their secretariats were both run by UNHCR until in 2011 when this transitioned to the KNHCR. These Field based sub-groups on protection have been instrumental in the revival of the structure of membership and monthly meetings. At this point these meetings bring together the Government of Kenya, UN Agencies, Community based Organizations (CBOs), Civil Society Organizations (CSOs) in the Districts of Nakuru and Eldoret, as well as an IDP representatives.<sup>1446</sup>

The field groups are also a good source of ground information, for instance during the 2010 referendum period, they provided early warning data for the PWGID in Kenya, and were able

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<sup>1441</sup> The advocacy plan included among other things, the development of material rights for IDPs, provision for the conduction of training to the Government of Kenya and other actors, as well as advocacy for breakfast meetings with decision makers such as parliamentarians.

<sup>1442</sup> Members of this sub-group include Refugee Consortium of Kenya(RCK), Kenyan National Human Rights Commission (KNHCR), UNICEF, Danish Refugee Council (DRC), 'Kituo cha Sheria'(Center for Legal Empowerment), as well as UNOCHA.

<sup>1443</sup> Kenya IDP Protection Cluster 'Protection Working Group on Internal Displacement' Transition Concept Note as above at 2.

<sup>1444</sup> Members of this sub-group include The Children's Department within the Government of Kenya, UNICEF, CLAN, Child Welfare Society, and Save the Children-/UK, as well as NALEAP-MoJNCCA.

<sup>1445</sup> UNHCR Report of the Eldoret protection working group, 2011 as above.

<sup>1446</sup> UNHCR Report of the Eldoret protection working group, 2011 as above.

to monitor the situation closely than any other working groups could.<sup>1447</sup> They have also been key contributors of ground information on the Mau forest evictions and the on-going land resettlement schemes for PEV IDPS.<sup>1448</sup> This task is necessary for the functionality of the PWGID in Kenya, seeing that other means of acquiring data are inadequate and disorganized. The best data that can be gathered on IDPs depends a lot on the Field protection working groups that are situated within the vicinity of the highly affected populations.<sup>1449</sup>

The field working groups have also additionally strengthened coordination of other protection working groups such as the SGBV or Child protection sub-groups by virtue of their constant meetings and acting as forums for IDPs, the Government and NGOs and discussing issues of common concern. The Field working groups have in Nakuru and Eldoret confirmed the importance of the PWG and its need to continue. There has also been a consensus among the two field based working groups on the need to look beyond the PEV (Post Election Violence) IDPs to include previous case loads of IDPs who were not provided for by most protection kits and policies adopted and advocated for by the PWG. Both Field working groups have undertaken to establish SGBV and Child Protection sub-groups within their field focus areas. The Eldoret working group additionally has undertaken to enhance IDP representation and communication with District Commissioners in the field.<sup>1450</sup>

Despite the successes of setting up a protection working group on internal displacement in Kenya, challenges and gaps still seem to exist within the system. Weak links can easily be identified between the National PWGID and its counterparts in the Field Protection Working Groups.<sup>1451</sup> The PWGID is made up of more than thirty stakeholders from diverse industries.<sup>1452</sup> At times this has led to competing levels of commitment and preferences when it comes to protection issues, when a member's priorities are different from those of the PWGID.<sup>1453</sup> There is also the issue of the IDP Policy whose negotiations started in 2009, was tabled and drafted by 2010 and has been lying somewhere in the MoSSP and its adoption into a final policy delayed.<sup>1454</sup>

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<sup>1447</sup> UNHCR Report of the Eldoret protection working group, 2011 as above.

<sup>1448</sup> UNHCR Report of the Eldoret protection working group, 2011 as above.

<sup>1449</sup> UNHCR Report of the Eldoret protection working group, 2011 as above.

<sup>1450</sup> Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

<sup>1451</sup> Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

<sup>1452</sup> Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

<sup>1453</sup> Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

<sup>1454</sup> KHRC and IDP Network 2011 as above at 17.

This does not only mock the efforts of all the stakeholders and policy makers who made tireless effort to table the draft IDP policy in record time, it also wanes the hopes of thousands of IDPs who are pinning hopes of a better life and realization of their rights through this policy. Because of the way return, resettlement and reintegration was done, there are still so many people in original IDP camps that are now closed.<sup>1455</sup> Many more are in transit sites and fear returning to their homes, a lot more have haphazardly integrated into the urban poor communities.<sup>1456</sup> This begs the conclusion that displacement in Kenya might not have ended, because the needs of the displaced persons were not addressed and durable solutions were not attained. This might also mean that a new cycle of displacements is bound to happen again.

### **5.12 Community participation and traditional mechanisms**

Community structures are capable of becoming important source of protection in situations of displacement. Displaced communities should be involved in decisions taken in the process of implementing programs to address their needs. The programs implemented must take into account maintenance and restoration of broken relationships as well as supporting integration of displaced communities and contributing to their security.<sup>1457</sup> It is important in the process of strengthening protection for displaced communities to support civil society and facilitate conflict resolution and reconciliation among different cultural, ethnic and religious groups. Such initiatives can contribute to durable return, reintegration and resettlement of IDPs.<sup>1458</sup>

Unfortunately the involvement of displaced communities and employing community based protection initiatives has not been adequately employed in most countries facing the crisis of displacement.<sup>1459</sup> It has been noted and importantly so that one aspect of internal displacement that has been too frequently overlooked is the ability of internally displaced people themselves to adapt to the experience of displacement.<sup>1460</sup> This oversight has had the effect of robbing displaced people their voice and belittles their enormous potential to, and

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<sup>1455</sup> Operation ‘rudi nyumbani’ as above.

<sup>1456</sup> KHRC and IDP Network 2011 as above at 17.

<sup>1457</sup> Bagshaw and Paul 2004 as above at 86.

<sup>1458</sup> Bagshaw and Paul 2004 as above at 87.

<sup>1459</sup> Bagshaw and Paul 2004 as above.

<sup>1460</sup> Bagshaw and Paul 2004 as above.

contributions they have made in shaping their lives during and after displacement.<sup>1461</sup> It has to be realized that in situations of displacement, especially internal displacement in Africa, protection first and foremost comes from the family and community, something that humanitarian teams have failed to grasp.<sup>1462</sup> Overlooking such an important aspect usually results from failure to fully consult with IDPs and has the effect of multilayered responses as the international, regional and national efforts are effected on one hand and IDPs resolve their issues independently outside the protective umbrella on the other hand.<sup>1463</sup>

In Kenya creation of the National IDP Network took place in 2003 with support from civil society actors working with IDPs at the time.<sup>1464</sup> The network is made up of IDPs from violence's in the 90s to victims from the 2007 post election violence, and displaced victims from other causes such as socio-economic matters. The network represents IDPs in all Kenyan provinces.<sup>1465</sup> The Kenyan IDP network is a representation of an initiative by IDPs themselves to try and advocate for as well as resolve their problems. It goes to show that when all else fails, the displaced communities are still capable of taking care of themselves. Unfortunately as is the case of Kenya, without continuous support from civil society, government and to a large extent politically conscious international organizations, IDPs find themselves on their own or sidetracked by policies developed to address their needs.<sup>1466</sup>

The issue of security, peace building and reconciliation has also been continuously addressed on the ground by IDPs themselves in Kenya. In areas where ethnic rivalry is still high, despite efforts made by government to provide security, these efforts are over accessible and most of the time unresponsive.<sup>1467</sup> These efforts are further diluted by inadequate and top-down peace building initiatives that do not trickle down to the ground.<sup>1468</sup> Peace initiatives that are capable of lasting must involve the communities themselves. They could take various

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<sup>1461</sup> Vincent M 'Introduction' in Vincent M and Sorenson B *Caught between borders: response strategies for the internally displaced* 2001 at 1.

<sup>1462</sup> Bagshaw and Paul 2004 as above at 86.

<sup>1463</sup> Bagshaw and Paul 2004 as above at 88.

<sup>1464</sup> The included the National Council of Churches (NCK), The Catholic Diocese of Nakuru and Kenyan Human Rights Commission (KHRC).

<sup>1465</sup> Kamugi P and Klopp J 'Failure to protect: lessons from Kenya's IDP Network' *FMR* 28 at 52-53.

<sup>1466</sup> There is no specific NGOs dealing with IDPs except for the Norwegian Refugee Council, there is also lack of international commitment to advocate effectively and assertively for IDPs. This again is because of the political nature of internal displacement and of course the importance of cooperation from the Kenyan government as an international response hub in east Africa; See Kamugi and Klopp as above at 54.

<sup>1467</sup> KHRC and IDP Network 2011 as above at 46.

<sup>1468</sup> KHRC and IDP Network 2011 as above.

forms including employing traditional mechanisms of peace building and peace making. In Kenya of course there is first of all lack of strong traditional mechanisms, and secondly the communities have not yet reached the point of compromising or seeking local peace, but initiatives to involve them in peace processes could facilitate this.<sup>1469</sup>

In Uganda, After 20 years of war and displacement communities have slowly reintegrated and sought their own peace initiatives relying heavily on traditional mechanisms.<sup>1470</sup> Initiatives such as cleansing ceremonies, of *mato oput* and bending of the spears are constructive peace building initiatives that have contributed to rebuilding the torn communities.<sup>1471</sup> They constitute elements of truth telling, repentance, forgiveness, compensation, re-humanization and reintegration. All these factors require participation of communities and the parties responsible for committing displacement causing factors. The effect of such concerted initiatives is that can durably address root causes of displacement and it is a displaced community initiative.<sup>1472</sup> The case of Kenya and Uganda go to show that IDPs are best placed to know and understand their needs. It is imperative to allow them to participate in programs that are meant to cater for them, and also facilitate and support their initiatives. Through the process of displacement they develop coping skills, national, regional and international programs for the displaced can only be effective and comprehensive if they reinforce and build upon such skills.<sup>1473</sup>

### 5.13 Conclusions and durable solutions

Protection initiatives at the domestic level constitute the most important aspect of IDP protection machinery. Within the countries of Kenya and Uganda, there have been various causes for instability and consequent displacement. As such protection for internally displaced persons becomes highly relevant. Protection entails among other things, prevention from displacement, protection during displacement and the facilitation of voluntary return, reintegration or resettlement. All these have to be done in a sustainable way, ensuring that durable solutions to the root causes of displacement are found. At the international and regional level numerous attempts have been made to set up frameworks, legal and

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<sup>1469</sup> KHRC and IDP Network 2011 as above.

<sup>1470</sup> Rose C and Ssekandi F 'The pursuit of transitional justice and African traditional values: a clash of civilizations - The case of Uganda' *Sur, Rev. int. direitos human* 2007 Vol.4 No.7 at 107, 108.

<sup>1471</sup> Rose and Ssekandi as above.

<sup>1472</sup> Rose C and Ssekandi as above.

<sup>1473</sup> Brookings framework for national responsibility 2005 as above at 20.

institutional providing for the protection of internally displaced persons. The expectation for such initiatives was that they get adopted and implemented at the domestic level to protect internally displaced persons, which has proved to be problematic. The issue from the above discussions is not the lack of enough frameworks to address the internal displacement crisis. The problem it seems lies in the manner, means and will to implement such frameworks. In both Kenya and Uganda, there are numerous frameworks, both legal and institutional providing for internally displaced persons. In fact from the above discussion, there are too many initiatives intended to protect internally displaced persons even at the domestic level. Yet it seems that the problem of internal displacement is far from being resolved.

In Kenya, despite numerous initiatives, such attempts are piecemeal, uncoordinated and highly initiated in a 'tick box' manner. Additionally some of the frameworks set up have remained in their 'draft' forms for so long, they have not yet accomplished the task they were set up to do. Other relevant sub-regional, regional and international initiatives have not been adopted into the domestic system. Kenya has not yet ratified the African Union IDP convention, and despite being a core member of the Great Lakes process, it has failed to implement provisions of the Great Lakes IDP protocol through legislation enactment.

Existing protection initiatives are instigated by the PWGID, but there are too many stakeholders involved resulting in lack of proper coordination or accountability. Most importantly, there isn't enough information dissemination about such initiatives so IDPs are highly unaware of them. This could be addressed by civil society, but they have not been included adequately in the process. The existing National IDP Network is facing lack of funding, support and forum. Apart from some limited resettlement packages and food relief in some places, the government and civil society have done little for Kenya's IDPs.<sup>1474</sup> Besides, the process of resettlement, and management of the resettlement fund have been ridden by corruption and nepotism. Another enormous problem is land, an issue which is both an underlying cause and a consequence of violence. The government has failed to reform its system of land management which politicians continuously manipulate for gain.<sup>1475</sup>

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<sup>1474</sup> Kamugi and Klopp as above at 52.

<sup>1475</sup> Kamugi and Klopp as above at 53.

Current initiatives to frustrate the ICC process, which aims to hold accountable parties that were responsible for mass displacement highlights the level of political unwillingness to legally end the problem of displacement and address impunity.<sup>1476</sup> To find durable solutions to displacement in Kenya, there is a need to better profile IDPs, and eliminate fake IDPs. The data should be gender disaggregated and involve protracted IDPs and those from cases other than PEV. Financial support has to be consolidated and well managed to limit corruption, access to land has to be re-negotiated and it should be in places IDPs feel safe. Healthcare, housing, assistance in relief and food production, as well as provision of documentation, education and facilitation of security, peace building and reconciliation efforts among communities should be promoted.<sup>1477</sup>

In Uganda protection initiatives have benefitted from long term processes, because they were initiated earlier than in Kenya. At this point with almost 92% of formerly displaced populations having reintegrated or resettled, concentration should be on reconstruction and development. But this should not be done at the expense of totally ignoring returning IDPs who still need some form of humanitarian relief and assistance. The protection frameworks in place in Uganda, resulting from provisions of the IDP policy were very detailed, the only problem was that the frameworks set up had to exist parallel to international initiatives such as Inter-Agency initiatives, and the cluster response. Such had the effect of duplicating functions and at times creating protection gaps.

At the end of cluster set up in Uganda, the process of protection was left to the Uganda Human Rights Commission. It is imperative to point out that local institutions have to be involved from the on-set. Failure to do this, leaves them incapable of handling the protection machinery left to them when international actors pull out. This has been the case in Uganda. External pressure forced Uganda to develop an IDP policy, that in most instances conflicted with the county's constitution. The consequence was institutions created by the policy taking second place to international mechanisms. IDP issues were never in the hands of Ugandans. So when clusters were phased out, and local actors had to take over, the transition has been bumpy.<sup>1478</sup> It has to be realized that internal displacement is a local problem, and local actors must be involved, willing and active in IDP protection from the onset. Internal displacement

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<sup>1476</sup> KHRC and IDP Network *ibid* at 50

<sup>1477</sup> KHRC and IDP Network 2011 as above at 52.

<sup>1478</sup> Lomo 2006 as above at 24.

should be addressed holistically otherwise protection gaps will always exist at the local level. So far the national initiatives in existence are numerous, but ad-hoc, and most go unnoticed.