

## CHAPTER 6: CONCLUSION

Issues that the study set out to address included whether failure to incorporate African worldviews in socio-legal and political factors underlying the debate involving the internally displaced contributed to the lack of comprehensive initiatives and the seeming continuous failure of the IDP protection regime in Africa and the Great Lakes; and whether assistance and protection frameworks and programmes at the international level have been adequately instrumental in protecting the internally displaced and whether such frameworks and programmes have been implemented within the Great Lakes comprehensively and effectively. Additional queries included finding out whether there were adequate efforts at the African regional and sub-regional level to address problems faced by internally displaced people and whether such efforts were coordinated and effective during all phases of displacement. Lastly the study aimed to prove whether national (legal, policy and institutional) responses towards the internally displaced in Kenya and Uganda have been adequate and effective during all phases of displacement, and whether such efforts could be said to reflect the wider practices of countries within the Great Lakes region.

This study has been undertaken on the premise that existing international and regional IDP protection initiatives, both legal and institutional are weak, uncoordinated and incomprehensive, thus resulting in failure to be reflected and implemented at the national level. These peace-meal and often sporadic efforts to protect internally displaced persons were initially presumed to be a consequence of among others, lack of effective IDP protection framework within Africa. Closely related to this, has been the realization that even the presence of such protection framework, is not in itself enough to ensure adequate protection for IDPs. The process of copying and pasting existing international frameworks cannot be expected to automatically be effective within the African context without taking into consideration the socio-economic and historical circumstances of Africa.

The study has also been undertaken with the understanding that there are numerous and commendable international efforts to protect internally displaced persons. But with this realization in mind, the aim has been to determine and discuss specific international and regional norms that were meant to explicitly address African displacement, and further determine whether these norms and institutional initiatives have been adequate. In addition to

the existence of such norms, or mechanisms, there has been a need throughout the study to establish extra regional, sub-regional and local undertakings and cooperation to achieve comprehensive protection. Additionally, the fact that most existing frameworks for protecting internally displaced persons were soft law raised doubt towards the enforcement of state responsibility. In Africa though, it seems the problem has been addressed by the recent elaboration of legal frameworks for the protection of the internally displaced both at the regional level, through the Kampala IDP convention, and sub-regionally through the Great Lakes IDP protocol. Such frameworks have strengthened responsibility, and defined accountability of states, not only towards their displaced nationals, but also towards the community of states and non-state actors.

The study is also based on the acknowledgement of the need for regional cooperation in order to address cross border and cyclic displacement patterns within the Great Lakes region as a result of porous borders and inter-linked conflicts. At the same time, there is realization of a need to allow states to take individual responsibility for the safety of their nationals, as well as a need to limit the overlapping regional initiatives undertaken to protect the displaced. It seems the key to proper protection of the internally displaced within the Great Lakes region is cooperation, coordination, accountability and implementation, rather than competition and conformist governance.

The Great Lakes region of East and Central Africa has faced violent conflicts, genocide, cyclic displacement and instability for protracted periods of time. The region has for a long time accounted for the largest number of displaced populations in Africa, both internally and externally. Within the Great Lakes are countries that have been major producers of displaced persons as well as countries that are major recipient of the displaced. The region has been referred to as the regional and global displacement flashpoint' since the term protracted displacement is incapable of expressing the gravity of the levels and dynamics of displacement. The nature of conflicts within the region has over the years metamorphosed and acquired an internal dimension, shifting from producing refugees, to creating masses of people displaced and trapped within their own borders. Such a complex and grave situations of displacement have made it appropriate and necessary to draw attention to the region in terms of protection responses. After taking into account the multiplicity, interlink-ages and complexity of the causes of displacement within the region, it seems there is a need for a

holistic approach to responding to the phenomena of internal displacement within the Great Lakes.

Addressing internal displacement within the Great Lakes region requires among other things dealing not only with the immediate causes of the problem, but also the root causes. These include issues such as failure of the nation state, governance, ethnic nationalism, factionalism, and impunity, corruption as well as scramble for scarce resources. Addressing matters of internal displacement has been initiated within the region with attempts such as the adoption of the Great Lakes pact, the African Union IDP convention and national initiatives. But there is one hindrance that is still to be addressed, state sovereignty. African states have operated under the fear of re-colonization, since independence, hence the cling to ‘traditional sovereignty’. Sovereignty has been invoked as a tool of power and control, it has been used to subdue citizens and then preclude any form of foreign scrutiny. In protection civilian populations, including the internally displaced, sovereignty had to be balanced. Therefore the concept of ‘sovereignty as a responsibility’ was introduced alongside the creation of frameworks to protect civilians in dire humanitarian situations. With the application of this concept, sovereignty has ceased being a privilege, it is now a responsibility.

Of course in Africa, more steps have had to be taken at the regional level to ensure the enforcement of similar principles. Article 4 (h) of the African Union Constitutive Act of 2000 legitimizes intervention on principles similar to those expounded by the doctrine of responsibility to protect. These initiatives have been reiterated in the African Union convention for IDPs which also allows intervention by the community of states to protect civilians. Of course for such provisions to be effective, African countries need to sign and ratify the IDP convention and implement its provisions domestically. The convention is yet to come into effect because of inadequate ratifications. Such setbacks reflect the insufficient level of willingness by African leaders to address problems of displacement on the continent.

In setting up frameworks to address displacement generally and internal displacement specifically on the African continent, there have also been concerns raised over the nature and creation of the category of ‘internally displaced persons’. There is alarm raised over perceived limitations and exclusions of such a category. There are also contentions against the parallel protections that seem to exist between protection mechanism for internally displaced persons and those meant for the externally displaced, such as refugees, as well as

other categories of displaced persons. Various arguments have been raised against IDP protection initiatives including concerns over the un-necessity of the category, fear over crashes this might create with other existing humanitarian protection frameworks, concerns over scarcity for funding available to create a new institutional mechanism specifically for IDPs, and the redundancy of such a category in Africa, where people are bound to have nomadic tendencies, as well as failure to solicit IDPs' consent to be categorized as objects of the humanitarian system. Yet despite all the above arguments, it has seemed necessary to categorize the internally displaced that way in order to facilitate their protection and assistance needs.

### **6.1 Implementing International Standards**

International attention to the issue of internal displacement has also been highly relevant to the creation of regional, sub-regional and national initiatives to protect internally displaced persons in Africa. These legal and institutional frameworks have been instrumental in addressing internal displacement, even though not as comprehensively as they might have been perceived at conception. The legal frameworks existing mainly stem from the United Nations Guiding Principles on Internal Displacement. The principles are a restatement of existing international human rights, humanitarian and to a certain extent criminal law, as well as refugee law by analogy. They represent an international initiative to address internal displacement comprehensively by covering all, phases, aspects and causes of internal displacement.

The main setback the principles have faced is that they are non-binding frameworks hence they are not enforceable. Yet they have been restated and adopted not to mention being given recognition by various international forums such as the United Nations General Assembly, the United Nations Human Rights Commission, and numerous Security Council resolutions. It is hoped that with time through constant application and recognition they will gain the status of international customary law. But until then their enforceability will depend on the willingness of states to adopt them, locally recognize them and adopt binding legal frameworks that reflect their provisions. There are few countries that have done so, but majority, especially countries facing internal displacement crises are yet to do so. The other setback is lack of institutional capacity to implement provisions of the principles. There is no one specific institution, such as the way UNHCR is for refugees, which provides for IDPs.

There have been international initiatives to collaboratively institutionalize IDP protection through Inter-Agency mechanisms. Such initiatives, while ground breaking, to a large extent still face issues of lack of accountability, coordination, funding, lead capacity, human capacity, and multiple functionality resulting in protection gaps for the internally displaced.

Additionally the transposition of such frameworks into Africa has not been as smooth as expected. International frameworks are sometimes difficult to implement or gain acceptance within the African context. This is largely because these mechanisms were not specifically set to adapt to African context or meant to apply to African situations. The history of colonization affects everything western and how it is perceived in Africa. There is a tendency to see western initiatives as basic interference and negative imposition. To this extent, it would be easier to address the issue of internal displacement, which is largely an internal problem, by promoting regional interventions and frameworks. The advantage of such mechanisms is that they easily identify with the circumstances and peoples they are meant to provide for. Additionally, any regional suggestions, recommendations or interventions will not be perceived as foreign as international attempts would. Therefore initiatives from for instance, the African Standby Force, African Commission on Human and People's Rights, the African Peer Review Mechanisms, the office of the Special Rapporteur for refugees, and IDPs, and sub-regional mechanisms such as the Great Lakes follow up mechanism, the ECOWAS and ECOBRIG would be much more suited and ideal to address internal displacement. They would also face less resistance, than any other initiatives. But there is one setback, such regional or sub-regional initiatives are not well equipped to deal with the scale, magnitude or complex nature of internal displacement on the continent independently.

Initiatives such as peace keeping missions have not been as successful in protecting civilians until hybrid missions were created together with the UN to address the matter. They lack the necessary coordination, human capacity, equipment, and funds to mount such programs. The office of the Special rapporteur lacks the necessary finance and manpower, and has over the years been largely motivated almost single handedly by personal efforts as opposed to institutional capacity. The African commission, does not have the ability to give binding decisions, some of the decisions it has rendered that have addressed matters of displacement, are ground breaking, but they are not enforceable. Their execution is largely dependent on the willingness of states to follow the commission's directives.

## 6.2 Regional, sub-regional and national mechanisms

Of course the above setback should not obscure the fact that there have been progressive regional and sub-regional initiatives to address internal displacement. These initiatives have been reflected through the Great Lakes pact, which is a result of sub-regional cooperation and development efforts by the International Conference of the Great Lakes Region. Existing initiatives related to IDP protection include protocols addressing matters such as displacement, property rights of returning populations as well as addressing matters of sexual violence. There are also progressive initiatives from the East African Commission and the Inter Governmental Authority for Development, and the African Union of course. All the above regional and sub-regional organizations provide for, and address matters of internal displacement. To a large extent they all restate the Guiding Principles in their documents as an international source of protection for the displaced. There are also some correlating institutions that have been set up to aid the implementation of these frameworks, even though they are not yet adequately coordinated or equipped. Yet, they still constantly face problems such as repetitive functionality, issues of operational mandate, especially when multiple organizations within the same region, with similar membership have to address the same matter. It is also problematic to assign responsibility and accountability to any one of these regional organizations when as far as IDPs are concerned they have similar provisions and functions.

Specific Initiatives taken at the national level are commendable for Kenya and Uganda. The two countries represent cross sectional forms of internal displacement dynamics, yet the magnitude of initiatives taken to protect the displaced can almost be comparable. Uganda of course was a darling of international protection responses for a long time, considering the massive humanitarian crisis caused by the 20 year Northern Uganda war. Kenya on the other hand, has faced protracted internal displacement for a long time, but it has been sporadic and not well documented enough to call for massive international attention until the post election crisis of 2007/08. Initiatives to address internal displacement in both countries are numerous and at times they seem uncoordinated, but that is not the main problem. The main issue is that initial protection responsibility in both countries was highly controlled by international actors. Participation of local parties, such as government, civil society and local based NGOs

was not visible. Where local attempts took place, they were done parallel to the international initiatives such as the Inter-Agency protection clusters. During phase out level, when the international actors deemed it fit to transfer responsibility to the locals there was an obvious disconnect because the local actors were not, first of all prepared, and also because they had not participated fully in the processes from inception.

In Kenya, after the visit of the United Nations Special Rapporteur on the Human Rights of IDPs, Mr Chaloka, Beyani, gaps similar to the ones pointed out above were identified. They include lack of specific IDP policy, arising from the fact that the existing draft IDP policy has after two years still failed to be effected. He also identified lack of legislative framework, even though the Kenyan Government had responded by enacting a Draft Bill for IDPs at the end of 2011, the existence of a Bill, in no way offers protection to IDPs as yet. He also noted the issue of incomprehensive, inefficient, disaggregated IDP data collection systems, insufficient institutional capacity, and most of the time uncoordinated as well. Durable solutions have failed to be attained, with IDPs largely fearing to return, the process of return is not participatory, and it is fuelled by corruption. Additionally, laws that exist in both countries are yet to be brought into harmony with newly adopted IDP instruments and this in its own has created implementation dilemma.

### **6.3 Towards a comprehensive route for Africa's internally displaced?**

To address internal displacement, effectively and comprehensively in Africa, protection initiatives cannot be isolated. It is obvious that international, regional and national initiatives have to be combined to perfect the art of IDP protection, because the jurisdiction of protection for the internally displaced cannot be assigned to a single agent. Whether attempts are international or regional, they still maintain certain protection gaps that can only be resolved through collaborative initiatives. At the same time it is obvious from the above discussion that lack of adequate protection for the displaced is not entirely a result of inadequate protection mechanisms either at the international or regional level. Inadequate protection for internally displaced persons in Africa, is highly an issue of absence of strong national systems and lack of local and international commitment to enforcing existing

international standards collaboratively.<sup>1479</sup> Additionally some of the mechanisms adopted and ratified are a result of international pressure for countries to do so. This lack of participation in international process willingly, is reflected in the lack of political will to domestically implement provisions of instruments adopted.

The internationalization of internal displacement also does not lend credence to the process. Protection of internally displaced persons is not owned by the displaced or their immediate communities, and most times not even their governments. The process usually seems like a humanitarian circus with IDPs as the ultimate objects. In the process of providing assistance to the displaced, they cease to be people, and they are simply end products to a process. Finding durable solutions and addressing root causes is not meant to aid and resettle the people, it rather seems like a test over how effective the humanitarian machinery is. This failure to assign the process to the people it is meant to help, has actually had the effect of exclusion by the humanitarian process. This failure to include the displaced in decision making on matters that are meant to affect them, has objectified them as inconsequential, helpless people who cannot do anything for themselves. Bu this is highly not the case, displaced persons are the main initiators of most of the processes that affect them, with or without humanitarian aid. They are the ones who decide when it is unsafe and necessary to flee, and they are the ones who decide when it is safe to return and reintegrate. Without their consent, initiatives to protect them will always face their resistance and durable solutions cannot be said to have been achieved.

There is a need to include the worldview of the communities that have been displaced within mechanism aimed at addressing their needs and protecting them. Most internally displaced people in Africa originate from rural Africa. They are not aware of law, regulations or cannot read documents. But they have associated with their own systems of peace building, peacekeeping, reconciliation and reintegration. Such traditional mechanisms should be tapped into to allow the displaced communities to re-build themselves within their own settings. Besides, even without formal assistance from the government or aid groups, rural displaced communities still resort to these traditional forms of mechanisms during displacement and reintegration despite the existence of formalized procedures.

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<sup>1479</sup> Lomo 2006 as above at 23.



Civil society and National Human Right Institutions have a large role to play in mainstreaming of such processes. They are at the grassroots level, hence they are capable of reaching society in a way that governments and international actors cannot. But within the Great Lakes, and Africa in general CSOs and NHRIs are not equipped to take on the task. They have not even been adequately involved in protection initiatives. For instance, during the adoption of instruments, including the African IDP convention, or GLR Protocols, very few CSOs were consulted of given an opportunity to participate. CSOs and NHRIs are supposed to be also included in IDP protection clusters at country level and national IDP protection working groups, but very few of them usually participate in such processes. When they do participate, there is a general incapability to criticize government representatives within the same groups over for instance government's failure to implement and take necessarily steps to adequately protect the displaced. The role of civil society has been underplayed, throughout the process of muscling up initiatives to protect internally displaced persons in Africa. Civil society should be able to bring communiqué to the African Commission on matters of violations of IDP rights. They also should be able to adequately lobby for the ratification and implementation of IDP protection instruments at regional, sub-regional and domestic level. But to do so successfully, they need to be empowered and encouraged, an initiative that is highly lacking. In fact, civil society is instead criticized and dwarfed so that government failures to protect civilians are not exposed.

Africa seems to have taken adequate regional and sub-regional initiatives to set up IDP protection instruments and their corresponding institutions. These facilities and instruments may not be perfect, and still have protection gaps, but they reflect commendable effort. Additionally, there is more than adequate international basis to offer protection to the displaced within Africa. Yet the issue of displacement persists, for the following reasons: There is a tendency to address displacement when it has occurred, instead of taking preventative measures. Most of the protection initiatives set up are reactionary, there is no enough early warning mechanisms set up to determine future possibilities of displacement occurring. Both at regional and national level, this is still a hindrance to protection. The continent which has a very high prevalence for displacement, both internal and external, is not prepared financially, capacity-wise or institutionally to prevent, avert, or mitigate crises that result in displacement. Other factors such as bad governance, impunity, corruption, a culture of dissidence and the militarization of grievances are yet to be addressed both at national and regional level. Even with the seemingly highly effective article 4 (h) of the

African Union constitutive Act providing for intervention in certain grave circumstance to protect civilians, these acts of impunity do not seem to be capable of coming to an end any time soon.

Constant rigged elections, post election violence, military coups, and corruption scandals have become common practice. There is still a need to work hard to end the immediate and root causes of displacement. Where tension exists, peace talks and preventive processes should be initiated as quickly as possible. Regional and national governments should ensure that the interests of those who flee their homes are protected through progressive, inclusive legislation. Additionally, efforts should be made to sign, ratify and implement the relevant protection instruments locally. Constitutions and national laws which determine accesses to land, or natural resources which are the main determinants of disputes in Africa should be reformed in line with international human rights and equality standards. But the main issue to address is endemic leadership problems at national level. Most problems that result in internal displacement are political in nature, immediate resolutions will not address them. They require political solutions, such as good leadership that unites its people, which builds its people, which transcends ethnic differences, and observes transparency and collective visions to build people of the Great Lakes region.