

**REFLECTIONS ON THE POSSIBILITY OF A
COMPREHENSIVE FRAMEWORK FOR THE
PROTECTION OF IDPs IN AFRICA'S GREAT LAKES
REGION**

By

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DECLARATION

I declare that this thesis which I hereby submit for the Degree of Doctor of Laws (LL.D), at the University of Pretoria is my own work, and has not been previously submitted by me for a degree at this or any other tertiary institution.

Olivia Kokushubila Lwabukuna

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DEDICATION

I dedicate this work to my Father Patrick Kajuna Lwabukuna for believing and insisting I could do it, and to my mother Judith Kokwenda Lwabukuna for always giving his belief a mother's touch.

ACRONYMS

ADF -Allied Democratic Forces
ADF-Allied Democratic Forces
AMISOM-African Union Mission in Somalia,
Amuka - Government-sponsored Rhino militia in Lira and Apac Districts
ARLPI-Acholi Religious Leaders Peace Initiative
AU-African Union
CEWARN-Conflict and Early Warning Mechanism
CLAN-Children's Legal Action Network
CRD-Community Resilience and Dialogue activity
CSOPNU-Civil Society Organisations for Peace in Northern Uganda
DOA-The rebellion of Dan Opiro in Apak
DRC-Democratic Republic of Congo
EAC-East African Community
EACJ-East African Court of Justice
EASBRIG-East African Standby Brigade
ECOMOG- Economic Community of West African States Monitoring Group
EDF-Equatorial Defence Force (Sudan)
ERC-Emergency Relief Coordinator
FEDEMU-Federal Democratic Movement of Uganda
GoU-Government of Uganda
HSM-Holy Spirit Movement of Alice Auma Lakwena
HURIPAC-Human Rights and Peace Centre, Makerere University
IASC-Inter Agency Standing Committee
ICGLR-International Conference of the Great Lakes Region
ICRC-International Committee of the Red Cross
IDD-Internal Displacement Division
IDMC-Internal Displacement Monitoring Center
IDP-Internally Displaced Person
IGAD-Inter Governmental Authority for Development
IOM- International Organization for Migration
IRC-International Rescue Committee
IRIN- United Nations Integrated Regional Information Network
KADU-Kenya African Democratic Union
KAMATUSA- Kalenjin, Maasai, Turkana, Samburu Traditional Association of the Rift Valley
KANU-Kenya African National Union
KHRC-Kenya Human Rights Commission
KNHCR- Kenya National Human Rights Commission
LC-Local Council
LRA-Lord's Resistance Army
MoJNCCA-Ministry of Justice, National Cohesion and Constitutional Affairs
MoSSP-Ministry of State for Special Programmes
NALEAP-and National Legal Aid and Awareness Programme
NALU-National Army for the Liberation of Uganda
NGO-Non-governmental organisation
NIF-National Islamic Front (Sudan)
NRM/A-National Resistance Movement/Army

OIF-Operation Iron Fist
PEV-IDP-Post Election Violence-Internally Displaced Persons
PRA-People's Redemption Army
PWGID-Protection Working Group on Internal Displacement
R2P- Responsibility to Protect
RCK-Refugee Consortium of Kenya
RDC-Resident District Commissioner
RLP-Refugee Law Project
SLLA-Severino Lukoya's Lord's Army
SPLA-Sudan People's Liberation Movement/Army
UCDA-Uganda Christian Democratic Army
UNAMID-United Nations African Union hybrid Mission in Darfur
UNAMIS-United Nations Advance Mission in the Sudan
UNDA-Ugandan National Democratic Alliance
UNHCR-United Nations High Commission for Refugees
UNICEF-United Nations Children's Fund
UNLA-Uganda National Liberation Army
UNLA-Uganda National Liberation Army
UNOCHA-United Nations Office for the Coordination of Humanitarian Affairs
UNOCHA-United Nations Office for the Coordination of Humanitarian Affairs
UNRA-Uganda National Rescue Fronts I and II
UN-United Nations
UPA-Uganda People's Army
UPA-Uganda People's Army
UPC-Uganda People's Congress
UPDA-Uganda People's Democratic Army
UPDF-Uganda People's Defence Forces
UPDM/A-Uganda People's Democratic Movement/Army
USAID-United States Agency for International Development
WFP-World Food Programme
WNBF-West Nile Bank Front

SUMMARY: REFLECTIONS ON THE POSSIBILITY OF A COMPREHENSIVE FRAMEWORK FOR THE PROTECTION OF IDPs IN AFRICA'S GREAT LAKES REGION

The Great Lakes region covers central, eastern and some parts of southern Africa. It is situated strategically in the middle of the African continent and its stability, peace and development is imperative for the African continent. Inter and Intra-state conflicts have gone on in the region for the past couple of decades. These conflicts, which threatened to become a regional war, seem to have come to an end, but have left terrible reminders including the presence of masses of internally displaced persons.

Various attempts have been made within the Great Lakes at state and regional level to address the issue of internal displacement. This study has highlighted these attempts while outlining the major setbacks and the gaps manifesting in existing institutional and legal framework. The study further has proposed the need for a comprehensive legal framework which should among other things codify the standards of protection; provide for the means and institutions of coordinating protection and assistance in all phases of displacement; serve as a legal basis for coordinating various regional and international actors and agencies involved in providing protection and assistance for internally displaced persons in Africa; highlight the measure or level of political will to achieve this; and finally provide means of monitoring such protection and assistance and ensure compliance by states. The study has also highlighted that existing frameworks, legal and institutional within the Great Lakes region and through additional aid from international mechanisms and actors are not adequate to resolve the issue of internal displacement within the region permanently and find durable solutions to millions of people laboring from protracted displacement. The study suggests alternative reliance on African systems and their conceptual contribution to the resolution of conflict and displacement in Africa and the Great Lakes in particular.

The Final part of the study looks at national attempts to address the problem of internal displacement. Kenya and Uganda are discussed and contrasted in depth whilst highlighting their similarities and differences in addressing internal displacement. Both countries have at one point or the other experienced 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 ministries of government. 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. These two countries have been used as case studies for identifying the domestic process of addressing internal displacement as well as determining the degree of comprehensiveness of the frameworks set up to address internal displacement.

TABLE OF CONTENTS

Declaration	ii
Acknowledgements	iii
Dedication	iv
Acronyms	v
Summary	vii
CHAPTER ONE: INTRODUCTION 1	
1.1 Thesis statement	1
1.2 Description of problem	1
1.3 Assumptions	4
1.4 Research questions	5
1.5 Background	6
1.5.1 Current legal position	9
CHAPTER 2: FRAMING AFRICAN (DIS) PLACEMENT	19
2.1 Introduction	19
2.2 Evolution of forced displacement in Africa	21
2.3 The conceptualization of forced displacement in Africa	23
2.3.1 External displacement (refugees)	23
2.3.2 Internal Displacement	25
IDPs and Internal displacement as terms	25
2.3.3 The IDP category and its consequences	30
2.3.3.1 The IDP category and African indigenous migration patterns	34
2.4 Dynamics and patterns of forced displacement in Africa	35
2.4.1 Disasters	35
2.4.2 Development induced displacement	36
2.4.3 Situations of generalized violence falling short of armed conflict	37
2.4.4 Conflict related displacement	38
2.4.4.1 Conflict related displacement and some underlying causes in Africa	38
(a)Formation or sustaining the Nation ‘State’	38
(b)Failure to (re) negotiate national and ethnic identities	40
2.5. Responding to internal displacement: To contain or protect?	43
2.5.1 Theoretical responses	43
2.5.2 Legal responses	46
2.5.2.1 Protection	48
2.5.2.2 Balancing Intervention	51
2.5.2.3 Sovereignty and responses to internal displacement	53
2.5.2.4 Membership and internal displacement	59
2.5.2.5 Re-conceptualizing African sovereignty in light of responsibility to protect	61
2.6 (Re) constructing forced displacement and protection in Africa	65
2.6.1 Complementing internal displacement frameworks: African worldviews	66
2.6.1.1 African Humanism	69
2.6.1.2 African perspectives on rights and entitlements	71
2.6.1.3 African perspectives on justice	73
2.6.1.4 African religion and reconciliation	74
2.7 Conclusion	78

CHAPTER 3: INTERNATIONAL RESPONSES TO INTERNAL DISPLACEMENT	80
3.1 Introduction	80
3.2 Emergence of international responsibility	81
3.3 International Legal framework	84
3.3.1 Guiding Principles on Internal Displacement	84
3.3.1.1 Reservations	88
3.3.2 International Humanitarian Law (civilian protection)	89
3.3.3 International Human Rights Law	96
3.3.3.1 International Covenant on Civil and Political Rights and its optional protocols (ICCPR)	101
3.3.3.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)	102
3.3.3.3 Other Human rights instruments relevant to IDPs	105
3.3.3.4 Critiquing human rights law	108
3.3.4 International Refugee Law	110
3.3.5 International Criminal Law	111
3.4 Institutional frameworks: the collaborative response and cluster approach	113
3.4.1 The role of the United Nations	114
3.4.1.1 United Nations Organization for the Coordination of Humanitarian Affairs (UNOCHA)	117
(i) OCHA and the Inter-Agency Internal Displacement Division/Unit	119
3.4.1.2 UNHCR and internal displacement	121
3.4.1.2 (i) Critiquing UNHCR	124
3.4.1.3 IOM (The International Organization for Migration)	125
3.4.1.4 UNICEF and internal displacement	126
3.4.1.5 WFP and internal displacement	127
3.4.1.6 WHO (World Health Organization)	128
3.4.1.7 UNDP and internal displacement	129
3.4.2 International Commission of the Red Cross (ICRC)	130
3.4.2.1 ICRC mandate	130
3.4.3 Non-Governmental Organizations (NGOs) and International Organizations (IOs)	132
3.4.4 Peace keeping Operations and Integrated Missions	134
3.4.5 Global protection cluster working group (PCWG)	136
3.5 Conclusion	137
CHAPTER 4: REGIONALISM: THE ‘SPAGHETTI BOWL’ FOR ADDRESSING INTERNAL DISPLACEMENT IN THE GREAT LAKES?	140
4.1 Introduction	140
4.2 Theorizing regional-ism	142
4.2.1 Neo-liberalists	143
4.2.2 Neo-Marxist	144
4.2.3 Neo-realist	144
4.2.4 African consciousness (Pan Africanism)	146
4.2.4.1 Background to Pan-Africanism and African regional efforts	146
4.2.4.2 Regionalism and internal displacement-two steps forward one backward?	148
4.2.4.3 Africa’s regionalism, sovereignty and responsibility to protect	150
4.2.4.4 African initiatives to intervene	152

4.3 Evolution of regional responses to internal displacement in Africa and the Great Lakes (legal and institutional)	154
4.3.1 The OAU/AU and (internal) displacement	154
4.3.1.1 The role of the African Union Commission on Human and People's Rights (ACHPR)	155
4.3.1.2 ACHPR's Special Rapporteur on Refugees, asylum seekers, IDPs and migrants	158
4.3.1.3 The Coordinating Committee on Assistance and Protection to Refugees (CCAR)	160
4.3.1.4 The AU (Permanent Representative Committee) PRC Sub-Committee on Refugees, Returnees and IDPs	162
4.3.1.5 The Humanitarian Affairs, refugees and Displaced Person's Division (HARDP)	163
African Union legal Mechanisms	165
4.3.1.6 Convention for the Protection and Assistance of Internally Displaced Persons in Africa	166
4.3.2 The International Conference on the Great Lakes Region IC/GLR	172
4.3.2.1 Regional programmes of action	174
4.3.2.2 IC/GLR Protocols relating to internal displacement	177
(i) The protocol on the protection and assistance of IDPs	178
(ii) The protocol on the rights of returning populations	183
(iii) The protocol on the prevention and suppression of sexual violence against women and children	187
4.3.2.3 Follow up mechanisms	188
4.3.2.4 A regional coordination committee	190
4.3.3 The East African Community (EAC)	191
4.3.3.1 Pitfalls of EACJ as a human rights court	194
4.3.4 The Intergovernmental Authority for Development (IGAD)	197
4.4 Problems encountered by regional and sub-regional organizations in GLR	201
4.5 Conclusions	203

CHAPTER 5: FRAMEWORKS FOR NATIONAL RESPONSIBILITY IN ADDRESSING INTERNAL DISPLACEMENT: THE CASE OF KENYA AND UGANDA	208
5.1 Introduction	208
5.2 Overview of dynamics of internal displacement in the Great Lakes region	209
5.2.1 Burundi	210
5.2.2 Democratic Republic of Congo (DRC)	211
5.2.3 Uganda	211
5.2.4 Kenya	212
5.3 Conceptual characteristics of a national response	213
5.4 Evolution of internal displacement in Kenya and Uganda	216
5.4.1 Ugandan Militarization of grievances	217
5.4.2 Ethnicity, land and evolution of politics of displacement	219
5.4.3 Patterns and Phases of displacement in Kenya	224
5.4.4 Nationalism and ethno-political displacements	227
5.5 Prevention and minimization of displacement and its adverse effects	229
5.6 Raising National awareness	237
5.7 Data collection	238
5.8 Training on the rights of IDPs	246

5.9 National legal frameworks for safeguarding the rights of IDPs	249
5.10 National Plans of Action and Policy frameworks on internal displacement	253
5.11 National Institutional focal point for IDPs	257
5.11.1 IASC Protection Cluster in Uganda	261
5.11.1.1 Camp Coordination and Camp Management (CCCM) sub-cluster	263
5.11.1.2 Child Protection Sub-cluster	263
5.11.1.3 Gender Based Violence Sub-cluster	264
5.11.1.4 Protection Sector Support Group	266
5.11.2 Protection clusters in Kenya	268
5.11.2.1 National Protection Working Group on Internal Displacement (PWGID)	269
5.11.2.2 PWGID Sub-working Groups and Field Protection Working Groups	270
5.12 Community participation and traditional mechanisms	273
5.13 Conclusions and durable solutions	275
CHAPTER 6: CONCLUSION	279
6.1 Implementing International Standards	282
6.2 Regional, sub-regional and national mechanisms	284
6.3 Towards a comprehensive route for Africa's internally displaced?	285
BIBLIOGRAPHY	289

CHAPTER ONE: INTRODUCTION

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

1.1 Thesis statement

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

1.2 Description of problem

Despite Africa's longstanding commitment to providing hospitality to neighboring displaced populations during turmoil and upheaval, a down surge in such hospitality has been observed recently. The very progressive normative framework² and humanitarian practice set in motion to sustain hospitality towards the displaced, has been upstaged by the changing and complex nature of new patterns of displacement, immersing new trends and challenges relating to forced displacement, as well as new challenges that the modern African state has had to encounter in order to realize its vision for sustainable development.³ These issues that have taken the frontline, coupled with weak capabilities of African states,⁴ dwindling

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

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

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

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

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

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

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

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

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

⁶ IDMC global overview of 2010 as above.

⁷ IDMC global overview of 2010 as above.

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

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

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

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

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

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

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

1.3 Assumptions

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

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

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

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

1.4 Research questions

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

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

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

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

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

1.5 Background

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

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

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

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

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

¹³ Kamanga 2005 as above at 4.

¹⁴ Kamanga 2005 as above at 4.

political¹⁵ rather than geographical considerations. This has resulted in inter-linked and very porous borders, which are very hard to control.¹⁶ Consequently within the borders of these countries are interlinked ethnic groups with common cultures and ethnic identities who were eventually divided and settled in different countries. These ethnic groups identify more closely with their ‘ethnicity’ as opposed to their national identities, hence the cross border nature of ethnic conflicts within the region and the cross border nature of the resulting displacement.

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

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

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

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

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

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

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

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

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

By the end of 2010 there were around 11.1 million people internally displaced by conflict and violence in Africa.²³ This alarming number of internally displaced persons, was still considered better than the 11.6 million that Africa had recorded in 2009, and the 13.2 million internally displaced that were recorded around 2004.²⁴ This shows that there is an actual downward trend in the numbers of internally displaced persons in Africa. This makes Africa the only continent which by the end of 2010 had recorded a decrease in the number of internally displaced persons, but despite this, new large population displacements were still observed around the same time.²⁵ Africa still represented 40 percent of the world's internally displaced.²⁶

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

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

²² IC/GLR BRIEF 2005 above.

²³ IDMC global overview of 2010 as above at 36.

²⁴ IDMC global overview of 2010 as above.

²⁵ IDMC global overview of 2010 as above.

²⁶ IDMC global overview of 2010 as above at 37.

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

1.5.1 Current legal position

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

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

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

²⁸ Terms of reference for the case study of the Great Lakes Region as above.

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

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

frameworks were highlighted and the gaps were these frameworks failed were pointed out and addressed.³¹

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

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

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

³¹ Korn 2000 as above at 89 and 90.

³² Korn 2000 as above at 90.

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

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

³⁵ Barutciski 1998 as above at 13.

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

At an international level clusters for the coordination and assistance as well as protection to internally displaced persons were introduced to 14 African countries in 2010.⁴⁰ They were not necessarily effective in all the countries they were applied in,⁴¹ but they worked better in others.⁴² The clusters were first rolled out in Uganda, which was one of the pilot countries in Africa, they came to an end in Uganda in 2010 as they were phased out into the national response structures, while they were introduced to Kenya in 2008 and rolled out in 2009.⁴³

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

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

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

³⁸ The AU-IDP Convention 2009 as above; Beyani 2006 as above at 192.

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

⁴⁰ IDMC global overview of 2010 as above at 39.

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

⁴² They were regarded to have been pro-active and effective in Sudan.

⁴³ Kenya and Uganda.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter two: Framing African (Dis) Placement

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

⁵⁰ Deng and Cohen 1998 as above at 18.

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

⁵² Korn 2000 as above at 86.

⁵³ Phoung C *The international protection of internally displaced persons* 2005 at 11.

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

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

Chapter three: International responses to internal displacement

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

Chapter four: Regional and sub-regional protection initiatives

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

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

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

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

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

Chapter six: conclusion

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

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

CHAPTER 2: FRAMING AFRICAN (DIS) PLACEMENT

*The worldview, normative assumptions, and referential frame upon which the paradigm is based, must, like the science they serve, be consistent with the culture and cultural substance of the people. When the paradigm is inconsistent with the cultural definition of the phenomena, the people who use it to assess and or evaluate that phenomena become essentially conceptually incarcerated.*⁵⁵

*If one looks at what are called African tribal migrations over the recent centuries, many of the movements would today be defined as ‘refugee problems’ minority groups or dissident families were fleeing from dominant authorities and moved to what is now a different country*⁵⁶

2.1 Introduction

In this study I intend to realize the potential of existing frameworks in comprehensively and effectively protecting internally displaced persons within the Great Lakes region. In achieving such a task I question underlying concepts or ideals that influence the subject at hand. To better comprehend the complexities that affect and effect internal displacement, I unweave the phenomena of forced displacement, to understand its foundational intricacies and its interwoven conceptual causes. In this chapter I also deal with historical and philosophical foundations of protection or lack of such as far as internally displaced persons are concerned. I interpret the discourse of responses to forced migration (including normative frameworks such as human rights law, humanitarian law and refugee law) as both a source of protection to internally displaced persons and an obstruction. Lastly, key concepts that frame the issue of displacement, especially internal displacement are visited. These include concepts such as sovereignty, internal displacement and intervention. I also consider and interpret what these concepts mean in everyday practice, more specifically within the African contexts where they are applied.

⁵⁵ Akbar N ‘Africentric social sciences of human liberation’ *Journal of Black Studies* 14 June 1984 at 396 quoting Nobles W ‘African consciousness and liberation struggles: Implications for the development and construction of scientific paradigms’ Presented at Fanon Research and Development Conference, Port of Spain, Trinidad 1978.

⁵⁶ See Kibreab G *The State of the Art Review of Refugees Studies in Africa* Uppsala Papers in Economic History Research Report No 26 of 1991 at 18 and 19.

Existing frameworks for protecting internally displaced persons are relatively well disseminated, but the issue of their practical applicability and comprehensive functionality is still contentious within the African communities they are meant to apply. The philosophical, anthropological and social bases of forced displacement are not yet understood very well. The context within which forced displacement in Africa takes place and other societal underpinnings are also not understood very well. Yet the international community, regional and national authorities have desperately rushed to adopt one legal framework after the next to address the phenomena without necessarily understanding its social context and deep seated complexities.⁵⁷ I argue that frameworks adopted have in most cases failed to include contextual realities of the social fabric they are meant to repair. This could have, in addition to other reasons, contributed to the incomprehensive protection frameworks for the internally displaced in Africa and the Great Lakes region.

It should be noted at this point that reference has been made to the inclusion of community practices in various legal instruments adopted to protect the displaced. But this has been more of a ‘tick box’ provision. There are no practical guides in such frameworks on how to include such community practices into the protection framework, or what these community practices are constituted of.⁵⁸ In the second part of this chapter I explore African horizontal theories and community practices. I then highlight what gaps these practices can fill and their potential in comprehensively transforming vertical existing frameworks for the protection and assistance of internally displaced persons. I eventually suggest an infusion of existing legal and socio-dynamics of Africa. The dynamics I suggest include African worldviews such as traditional African approaches to conflict resolution, post conflict adjustment mechanisms, reparations, justice and other African concepts that are more alive and reflect the realities of the areas where internal displacement occurs. The goal of such proposed infusion is to bring the existing protection framework for internally displaced persons in the Great Lakes region closer to the lived realities and accessible practices of peoples of the region.⁵⁹ But before discerning the complexities of forced displacement, it is imperative to discuss the evolution of the concept and impacts of such evolution on Africa.

⁵⁷ Schechter J ‘Anthropological theory and fieldwork: Problem solving tools for forced migration issues’ *High Plains Applied Anthropologist* 2000 No. 2 Vol. 20 Fall at 153.

⁵⁸ See Brookings Institution the ‘Framework for national responsibility’ 1998 at 14.

⁵⁹ AU-IDP Convention 2009 as above.

2.2 Evolution of forced displacement in Africa

African history is riddled with events of mass movements of people, both voluntary and forced. Movement in Africa is more of a norm than an exception, especially in pre-colonial Africa. There are two broad categories of migration and displacement patterns identified in pre-colonial Africa. These include internal and international migrations, spread out across slave migration, voluntary migration of laborers, migration of farmers or traders, and the movement of people as a result of inter-tribal warfare, and natural disasters.⁶⁰ Most African nations might possibly be made up of old waves of migrants, today such movements and people are regarded as refugees.’ This raises an important question of how categorizing a group can actually change how history remembers them.⁶¹ These pre-colonial movements in Africa were not regarded as forced displacements, but the values that exist, especially in Africa regarding hospitality and generosity to ‘visitors’ or those in dire displacement circumstances, or refugees stemmed from such movements.⁶²

It has been argued that in pre-colonial societies where regional and national frontiers were fluid, groups of people that left their habitual residences for neighbouring regions were welcome by kin. They were protected and assisted in an informal and unpublicized manner without giving much thought to the implications of such movements, whether legal or social.⁶³ They were welcome to share in the available resources, whether it was through distribution of land for them to plough, or new wives to marry, they were integrated into their host communities without much distinction. There were no statistics kept on these asylum seekers, neither were they regarded as asylum seekers in the first place. They were not placed in camps and identified as ‘others’ they simply became part of their new community.⁶⁴

⁶⁰ Zeleza P *A modern economic history of Africa Volume 1: the nineteenth century* 1994 at 73 quoted in The African Union Conference background paper, Experts Meeting on the Special Summit on Refugees, Returnees and Displaced Persons in Africa, 2008 as above at 8.

⁶¹ Malkki L ‘Speechless emissaries: refugees, humanitarianism, and de-historicization’ *Cultural anthropology* 1996 Vol. 11 No. 3 at 381.

⁶² African Union Conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 8.

⁶³ See Bakwesegha C ‘Forced migrations in Africa and the OAU Convention’ in Adelman H and Sorenson J (eds.) *African Refugees: development aid and repatriation* 1994 at 3 quoted in African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 8.

⁶⁴ African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 8.

Colonial Africa battered with new waves of forced displacements resulting from wars of occupation and conquest.⁶⁵ This was catalyzed by forced land alienation, introduction of cash crop economies and mines that required cheap and often forced labour. Ruthless tax systems that ensured the sustainability of the colonial administration, and creation of labour reserves which were often crowded with very harsh living conditions were a few other incentives to flee.⁶⁶ Africans were driven from their land, forced to work for their colonial masters in order to pay taxes and cheap labour. These conditions led to massive displacement of large parts of the African population, while others died under these tough conditions.⁶⁷ Africans who fled where not recognized as asylum seekers or refugees in other colonies, instead they were generally categorized as illegal migrants or vagrants.⁶⁸ A special case was only observed between 1935-41 in the British colonial territories of Sudan, Somaliland, Kenya and French Djibouti when thousands of Ethiopians fleeing fascist Italy invasion and occupation, were recognized as refugees.⁶⁹

During the cold war, most of Africa was still reeling from effects of colonialism, in addition to complications brought about by the cold war which was ideally fought out in the backyards of developing nations. Massive population displacements had occurred as a result of anti-colonial wars of liberation.⁷⁰ Young independent African states were battling with effects of wars of liberation while others were still going through these wars. Additionally they had to deal with the crisis of the 'independent African state' and remnants of colonialism within these states. This was reflected through further displacements resulting from complications inherited by post colonial African states. These states were among other things characterized by arbitrary borders, ethnic nationalism, factionalism, identity crisis and sub-nationalist movements. The result was numerous demands for secession, secession wars and struggles to control the minimal resources available.⁷¹

⁶⁵ Zolberg A 'Migrants and refugees: a historical perspective' *Refugees* December 1992 Vol. 91 at 36.

⁶⁶ African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 9.

⁶⁷ Rwamatwara E 'Forced migration in Africa: a challenge to development' *Stichproben. Wiener Zeitschrift Fur kritische Afrikastudien* 2005 N. 8, 5. Jg. at 178.

⁶⁸ African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 9.

⁶⁹ Wilkin D 'Refugees and British administrative policy in Northern Kenya, 1936-1938' *African Affairs* 1980 Vol. 79 No. 317 at 510 quoted in African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 9.

⁷⁰ In East Africa-Kenya, in Southern Africa and Lusophone Africa – Angola, Mozambique, Guinea Bissau and Cape Verde and many other places.

⁷¹ African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 9.

All the above factors were responsible for displacing large populations of people. Weak states that were incapable of controlling their territories resorted to ‘bully’ governance. This coupled with numerous breakaway attempts as well as effects of manipulation from the Super powers embroiled in the cold war, led to what has been theorized as the ‘African refugee crisis.’⁷² These crises led to the displacement of masses of people externally, and at the same time metamorphosed into masses of people being displaced within their states. This internal displacement is a consequence of internal wars, resource conflicts, civil wars, bad governance, the coercive introduction of multiparty and increase in natural and manmade hazards.⁷³ Globalization and economic factors coupled with the already fragile nature of the African state and identity crises inherited by the post colonial state as well as coerced democratization have changed the nature of displacement in Africa, making it internal and cyclic.⁷⁴

2.3 The conceptualization of forced displacement in Africa

The theme of this study is centered on the concept of displacement, in particular internal displacement. It would be ideal for the term ‘internal displacement’ to be defined and various contexts in which it has been used to be highlighted. It is also important for purposes of this study to first highlight the difference between internal displacement and external displacement (refugees).

2.3.1 External displacement (refugees)

At this point I have to make a distinction between groups of people that are internally displaced and the externally displaced with a view of settling the misconceptions. The main misconception this study is concerned with is the fact that some scholars believe that internally displaced persons are refugees in the making (would- be refugees), there have been

⁷² African Union conference background paper on the Experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 10; The saying that ‘when giants fight, it’s the grass that gets wounded’ stands true in Africa. The cold war was waged in African backyards with African countries being stuck between the eastern or western blocks. Countries like Angola and the Democratic Republic of Congo are a few examples of how such manipulations bred internal disturbances which resulted in massive displacements.

⁷³ African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above at 10.

⁷⁴ African Union conference background paper on the experts meeting on the special summit on refugees, returnees and displaced persons 2008 as above.

numerous debates raised around the issue.⁷⁵ Most refugee advocates committed to the promotion of asylum and combating xenophobia are concerned about the misconceptions raised above. This is because they are relied on to deny asylum and have led to reduced possibilities for refuge in potential host countries.⁷⁶

It should be noted that even though there is similarity between the two concepts, there are strategic differences between the two, and misunderstanding those differences could lead to the marginalization of one of the groups. It has been misstated on a number of occasions that the reality of displacement is the same whether one is a refugee or an IDP.⁷⁷ This point of view seems to overlook the fact that refugees by being outside their countries are in fundamentally different circumstances according to the international order.⁷⁸ The consequence of such line of thinking disregards the fact that the international community's access to IDPs is limited, but there is ample access to refugees.

What qualifies the case of refugees from that of IDPs is not so much the physical displacement, but in addition, they are foreigners who escape persecution and seek refuge in another country.⁷⁹ It has been argued that the kind of rights that are granted to refugees would not make sense for displaced persons who are still in their country of origin.⁸⁰ Refugee rights include basic socio-economic rights that allow them to survive in a foreign country where they do not have citizenship rights. The effects of such rights would not be the same if they are granted to citizens in their own states. This becomes more ridiculous where the same government expected to enforce such rights, is in actual sense responsible for displacing its own people.⁸¹ The whole concept of protection for refugees is based on the notion of 'international protection' because the particular country the person belongs to cannot offer such protection for the particular period of time. On the other hand IDPs are still to a large extent regarded as a responsibility of their nation.

⁷⁵ Barutciski 1998 as above at 12.

⁷⁶ Barutciski 1998 as above.

⁷⁷ Barutciski 1998 as above.

⁷⁸ Barutciski 1998 as above.

⁷⁹ Barutciski 1998 as above.

⁸⁰ Barutciski 1998 as above.

⁸¹ Barutciski 1998 as above.

2.3.2 Internal Displacement

IDPs and Internal displacement as terms

The term ‘internally displaced Person’ (IDP) has been defined in various existing documents dealing with international law, international humanitarian law and international human rights law. The most modern and classical definition of the term was officially set in the United Nations Guiding Principles on Internal Displacement.⁸² These were the first international standards specifically tailored to the needs of Internally Displaced Persons (IDPs). The principles are basically a restatement and compilation of existing international humanitarian law, international human rights law and refugee law by analogy. They clarify grey areas and gaps in various instruments in existence pertinent to IDPs by covering all phases, and causes of internal displacement.⁸³ Their coverage includes prevention against arbitrary displacement, protection and assistance during displacement, finding durable solutions that are aimed at a return that is safe, dignified alternative resettlement and reintegration and self sustaining development.⁸⁴ The principles describe internally displaced persons as:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized border⁸⁵

It is imperative to point out that what is spelt out above is not a legal definition of an IDP. It rather is a description of who may fall within the ambits of the provisions of the above statement.⁸⁶ Being displaced within one’s own country of origin or habitual residence does not confer special legal status in the same manner as for instance being displaced across

⁸² United Nations Guiding Principles on Internal Displacement E.CN.4/1998/53/Add.2, 11th February 1998 (hereafter referred to as the Principles or Guiding Principles).

⁸³ See Deng and Roberta 1998 as above at 17.

⁸⁴ Deng F ‘The plight of the internally displaced: a challenge to the international community’ at 2 at <http://www.brookings.edu> visited on 12-09-2010; See also Lwabukuna O ‘Internal displacement in Africa: African solutions to African problems? Challenges and prospects’ *Journal of Internal Displacement* 2011 Vol. 1 No. 1 at 135.

⁸⁵ Guiding Principles on Internal Displacement *introduction* 1998 as above.

⁸⁶ Training on the protection of IDPs ‘Who is an internally displaced person?’ Internal Displacement Monitoring Center, Norwegian Refugee Council at 2 at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8FA27BA51F738586C125711500467CD2/\\$file/Definition%20module%20handout.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8FA27BA51F738586C125711500467CD2/$file/Definition%20module%20handout.pdf) accessed on 27-03-2012.

borders.⁸⁷ This is based on the fact that the rights and protections which IDPs are entitled to arise out of their humanity and citizenship or habitual residence within a particular state.⁸⁸ They have a specific vulnerability by virtue of their displacement that places a duty on the state to protect them.⁸⁹ These guarantees are inherent in existing human rights and humanitarian law to which states have ratified or signed or are bound through customary international law.⁹⁰

The description of the terminology highlights two core elements of internal displacement. The first is that the movement is involuntary in character, and secondly, such movement takes place within national borders.⁹¹ Even though other people within states may face human rights violations, displacement places upon IDPs a particular vulnerability arising from sudden loss of income; destruction of the social organization of displaced communities; constant transit and hiding; consequences of unhealthy and inhospitable environments; psychosocial distress resulting from displacement; physical abuse and the loss of documentation and consequently any legal recognition.⁹² This sort of vulnerability does not only require assistance in terms of subsistence aid. It also additionally calls for adequate protection in terms of developing an environment that advocates for the promotion of international human rights, responding to the acts of displacement through existing institutional protection arrangements and restoring dignified living conditions for the displaced through rehabilitation, restitution and reparation.⁹³

The principles further look at displacement from the point of view of legal ‘persons’ (persons to be recognized as displaced) as opposed to defining the process of displacement itself. It seems obvious that the purpose was to differentiate the internally displaced from externally displaced. Since the process was similar, the differentiation was achieved in the definition by concentrating on the definition of the legal persons involved. This makes sense considering that IDPs have been misconceived to be would- be refugees in the eventuality of crossing any

⁸⁷ Barutciski 1998 as above at 12.

⁸⁸ Training on the protection of IDPs as above at 2.

⁸⁹ Training on the protection of IDPs as above at 3.

⁹⁰ Training on the protection of IDPs as above.

⁹¹ Training on the protection of IDPs as above at 1.

⁹² Training on the protection of IDPs as above at 3.

⁹³ Bagshaw S and Paul D *Protect or neglect: towards a more effective United Nations approach to the protection of internally displaced persons* The Brookings-SAIS Project on Internal Displacement and United Nations Office for the Coordination of Humanitarian Affairs-Internal displacement Division November 2004 at 28.

international borders. In line with such misconceptions, it seemed defining the process of displacement could have brought confusion. It seems such a definition was additionally adopted for political, legal and bureaucratic purposes of differentiating refugees from internally displaced persons.⁹⁴

Guiding Principles have provided widely for internally displaced persons when compared to other existing documents on displaced persons. As seen above, the Principles have defined the problem of ‘internal displacement’ in terms of the victims and the circumstances, rather than the process itself.⁹⁵ The definition given by the Principles improves on the protection ambit of the 1951 Convention dealing with refugees in a number of ways.⁹⁶ First the definition recognizes conditions of people displaced by the so called ‘non- political’ factors such as effects of natural disasters (what nowadays is commonly referred to as effects of climate change). Since 1951 there have been debates centered on the expansion of coverage of the definition and factors generating the refugee problem. While many people have called for non political factors to be included into the definition of a refugee, and thus an expansion of the mandate of the UNHCR, others have advocated for the creation of new categories or new labels such as ‘economic refugees’ or ‘environmental refugees.’ The Guiding Principles have managed to expand and take into account such coverage as far as IDPs are concerned.⁹⁷

The Principles also go further than the individualism of the 1951 Refugee Convention. They recognize the group character of displacement. This has had positive and negative connotations arising out of self contradiction within the definition. This is because the definition is also individualistic since it includes ‘displaced persons’ and ‘displaced groups of persons.’ In discussing groups and at the same time dealing with individuals it becomes hard to tell the thematic concentration of the principles. Consequently questions as to how much weight should be attached to a group or to an individual during displacement, and whether the level of protection differs have to be asked. These are but a few questions that the inclusive definition of an IDP by the Guiding Principles raises.

⁹⁴ Ibeanu O ‘Exiles in their own Home: conflicts and internal population displacement in Nigeria’ *Journal of Refugee Studies* 1999 Vol. 12. No. 2 at 165.

⁹⁵ Guiding principles *Introduction* 1998 as above.

⁹⁶ Training on the protection of IDPs as above at 4.

⁹⁷ Training on the protection of IDPs as above at 4.

The UNHCR definition is also slightly restrictive in protection. It places greater emphasis only on those who would be ‘convention’ refugees had a border been crossed. According to the UNHCR a convention refugee is in terms of article 1 A (2) of the Convention Relating to the Status of Refugees a person who:

Owing to a well founded fear of persecution for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is outside the country of his nationality, and is unable or unwilling to avail himself to the protection of that country⁹⁸

Basically by applying the above definition, an IDP would be the above defined person who ‘...owing to a well founded fear of persecution for reasons of race, religion, nationality, or membership of a particular social group or political opinion... leaves his home or habitual place of residence...but does not cross a border’. The provision, even as far as IDPs are concerned is still very restrictive and a lot of victims of forced displacement who would qualify as IDPs within the Guiding Principles can fall through its application gaps.

On the other hand, the Great Lakes Protocol on Protection and assistance of IDPs has managed to exceed expectations by going further than all the above definitions. In addition to the definition provided by the Guiding Principles, it also defines IDPS as:

Persons or groups of persons forced or obliged to flee or leave their homes or places of habitual residence in particular, as a result of, or in order to avoid the effects of development induced displacement and who have not crossed an internationally recognized border⁹⁹

The above definition specifically includes groups of people displaced as a consequence of large scale development initiatives. It recognizes development as one of the root causes of internal displacement within the Great Lakes region. The drafters of the Guiding Principles tactfully avoided constructing the IDP definition in such a way to limit overextension of the Guiding Principles.¹⁰⁰ But in doing so, they excluded application of the principles over a very large group of IDPs resulting from development initiatives. It has been argued that

⁹⁸ UNHCR Statute and the Refugee Convention of 1951 define a refugee similarly with the exception that the Refugee Convention goes one step further and stipulates the geographical position and time of determining Refugee Status, although some of the extension was later curbed by the Refugee Protocol of 1967.

⁹⁹ Article 1(5) of the Great lakes Protocol on the Protection and Assistance to Internally Displaced Persons of 2006 at http://www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf accessed on 27 March 2012.

¹⁰⁰ Deng and Cohen 1998 as above at 17.

development induced displacement could have produced the largest number of IDPs especially in developing countries.¹⁰¹ But failure to record such displacements has kept a lid on the actual figures and consequently affected comprehension over the magnitude of the problem.¹⁰² For the Great Lakes IDP protocol to have acknowledged such problem and included it within its definition, makes such protocol more comprehensive in application.

The African Union Convention on internal displacement like the Guiding Principles on Internal Displacement defines IDPs as:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular or as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border¹⁰³

The AU IDP convention in addition to defining who an IDP is, defines the process of internal displacement as ‘the involuntary, or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized State borders’.¹⁰⁴ Both the Guiding Principles and the Great Lakes protocol on internal displacement have failed or avoided to define the process of displacement itself, but the African Union convention has taken this extra step. The definition of the process takes into recognition additional factors such as evacuation or relocation and thus easily provides for situations of forced eviction which are usually hardly recognized as internal displacement causing factors. The African Union IDP convention also recognizes development as a displacement factor, but only discusses it in its articles as opposed to including it within the definition.¹⁰⁵ This is similar to the way the Guiding Principles referred to unjustified development projects as a cause of displacement.¹⁰⁶ They did not include development induced displacement in the definition, but rather inserted it as a clause within the texts. This has had the effect of calling less attention to development induced displacement, thus failing to acknowledge the fact that

¹⁰¹ Cernea M ‘Development induced and conflict induced IDPs: bridging the research divide’ *FMR Special Issue* December 2006 at 26.

¹⁰² Internal Displacement Monitoring Centre, Norwegian Refugee Council *Global overview of trends and developments in 2004* Geneva Global IDP Project 2005 35 and 37; Cernea 2006 as above at 26.

¹⁰³ Article 1(k) of the AU-IDP Convention 2009 as above.

¹⁰⁴ Article 1 (i) of the AU-IDP Convention 2009 as above.

¹⁰⁵ Article 9 and 10 of the AU-IDP Convention 2009 as above.

¹⁰⁶ Principle 6(2) (c) of the Guiding Principles 1998 as above.

effects of development projects on the population are as serious as other displacement causing factors.

Besides all the above discussed definitions and numerous interpretations of their meanings, who is an IDP really? What does the concept mean and entail within the African context? Why the definition ‘internally displaced person(s)’? From the description of IDPs in the Guiding Principles, an IDP can be a person, or a particular group of people. They can be displaced as a result of a range of possibilities, including expulsion by force, intimidation into leaving, threats or out of necessity, either way, internal displacement is always coerced or involuntary.¹⁰⁷

Additionally, internal displacement is not always a matter of sudden movement resulting from immediate threats. It also may result from gradual planned departures in anticipation of danger or evictions.¹⁰⁸ This means that displacement does not necessarily happen as a result of undesirable events, sometimes it happens in anticipation of such, and anyone who moves involuntarily as a result of fear emanating from such anticipation falls within the description of an IDP. Determining who moves from where is irrelevant as long as an element of involuntary departure is evident. People could be moving from their homes, places where they habitually reside, traditionally held pieces of land and even in the cases of nomads who in African contexts do not have pre-determined residence, displacement can still happen. The question is how in Africa, a continent whose cultures and ways of life are highly constituted by mobility, such displacement can be proved.¹⁰⁹

2.3.3 The IDP category and its consequences

Being called or grouped as an ‘internally displaced person’ is being assigned a label. Such label comes with certain limitations, exclusions and consequences. The creation or adoption of the category of an ‘internally displaced person’ is politically and socially constructed to address issues of certain people within a given context. The label of an internally displaced’ does not simply categorize the displaced as people, it objectifies them and objectifies power

¹⁰⁷ Training on the protection of IDPs as above at 1.

¹⁰⁸ Training on the protection of IDPs as above at 2.

¹⁰⁹ Training on the protection of IDPs as above at 1.

over them in relation to those who deal with them.¹¹⁰ They are categorized as vulnerable and at the mercy of certain actors such as the government, or the international community, or non-state actors. It also additionally influences the way the rest of the un-displaced or people dealing with the concept of forced displacement see them or act on their behalf.¹¹¹

It has been argued that labels are capable of including and excluding others. For many people at the brink of persecution or fear of such, refugee and IDP status is a privilege, for those who are labeled as IDPs and get adequate protection and assistance by virtue of that, they are a privileged group.¹¹² The inscription of such a label excludes the rest of the poor un-displaced people who might probably be in similar conditions to those of the internally displaced but failed to physically move.¹¹³ At the same time, there are negative connotations as a result of falling within the IDP category. One is always regarded as being ‘out of place’ and in a foreign ‘temporary’ ‘space.’ This also excludes IDPs from benefiting from certain entitlements, because they are excluded by virtue of falling within the ‘foreigner’ category, a category of people who do not belong and hence have no rights of ‘stay.’¹¹⁴

The IDP label is additionally too concerned with including certain people into the ‘internally displaced’ category, to the extent of forgetting to deal with groups of people or communities that host such IDPs. There are very few documents that actually take account of the strenuous conditions that host communities face whilst accommodating the internally displaced.¹¹⁵ At the same time, the IDP label serves to exclude these same communities that are highly involved in, and affected by the process of displacement. The benefits accorded to IDPs will not accrue to host communities within the same area that IDPs are being hosted, despite the

¹¹⁰ Brun C ‘Research guide on internal displacement’ *Research Group on Forced Migration* 2005 Norwegian University of Science and Technology (NTNU) at 19 at Forced Migration Online at <http://www.fmo.uk> accessed on -4-05-2012.

¹¹¹ Brun 2005 as above at 19.

¹¹² Shacknave A ‘Who is refugee’ *Ethics* 1985 Vol. 95 No. 2 at 281.

¹¹³ Brun 2005 as above at 19.

¹¹⁴ Brun 2005 as above.

¹¹⁵ Brun 2005 above at 20; International Conference on the Great Lakes Region Regional Programme of Action on Humanitarian and Social Issues ‘Framework for durable solutions to the humanitarian, social and environmental issues in the Great lakes region’ Sub-Programme 1 which constitutes a framework for disaster preparedness, protection and assistance to IDPs and their environment. Within this Sub- Programme is provision for a project on the protection, assistance and search for durable solutions for displaced population (refugees and IDPs) and communities that host them August 2006 at 3 at https://icglr.org/IMG/pdf/Framework_for_durable_solutions_to_the_Humanitarian_Social_and_Environmental_Issues_in_the_Great_Lakes_Region.pdf accessed on 27 March 2012.

burden and life adjustment these communities have to face as a result of the presence of the displaced amidst them.¹¹⁶

This inclusion of certain groups within categories, whilst excluding others has the effect of strengthening identities and consolidating differences between the included and the excluded. But there is a danger in such differentiation, it might breed antagonism and hostility towards groups that are ‘included’ by the ‘excluded’.¹¹⁷ At the same time categorization contributes to the development of stereotyping and the essentialisation of a person’s experiences. Under such conditions, being an IDP becomes a person’s dominant identity and overshadows other relevant aspects of one’s identity such as gender, ethnicity, class or caste.¹¹⁸

The humanitarian regime has reinforced the stereotype identities designated to IDPs by treating them as a homogenous group which has specific collective vulnerabilities and needs as a result of being out of ‘place and familiar space.’¹¹⁹ Humanitarian action has transformed IDPs into objects or clients. Humanitarian actors contribute in providing aid and assistance to IDPs, but at the same time they have to label them and categorize them before they can offer them such aid. One has to fit within the category of an IDP, and display the needs and ‘out of place’ character.¹²⁰

Categorizing and labeling IDPs also has socio-political connotations. By labeling groups of people, they tend to lose or get dissociated from their previous identities, and as individuals they become separated from their context and their former lives.¹²¹ Categorizing and labeling groups of the displaced de-historicizes acts of displacement committed against them. It de-politicizes the causes, consequences and effects of such acts, by universalizing their identities and making them members of a new order, ‘the internally displaced’ while re-inventing for them a new ‘space’ or territory in the form of ‘camps.’¹²² In doing so the international humanitarian community creates a new ‘space’ under the misconception that it is providing aid and homes, culture and new identities, but in actual sense if asked, IDPs themselves in

¹¹⁶ Brun 2005 as above at 20.

¹¹⁷ Brun 2005 as above at 20.

¹¹⁸ Brun 2005 as above.

¹¹⁹ De Voe D ‘Framing refugees as clients’ *International Migration Review* 1981 Vol. 15 No. 1/2 Refugees Today at 88.

¹²⁰ De Voe 1981 as above.

¹²¹ De Voe 1981 as above; Rajaram P ‘Humanitarianism and representations of the refugee’ *Journal of Refugee Studies* 2002 Vol. 15 No. 3 at 248.

¹²² Rajaram 2002 as above at 248 and 249.

most cases do not want to be perceived in this manner.¹²³ They do not want to be a group of vulnerable aid dependant ‘internally displaced.’ But for them to benefit from the entitlements associated with the protection and aid regime, they have to represent themselves to the outside world within the labels inscribed upon them. Such representation by the IDPs themselves reinforces already existing stereo-typed identities, even though this is not a passive conformity.¹²⁴

Additionally, the IDP label overshadows the fact that there is diversity even within groups that make up IDPs, and that varying conduct and mannerisms are demonstrated by individuals within it. The label tries to de-politicize and down-play the fact that matters such as ethnicity, gender or location and other identities can affect and diversify the experience of being an IDP. It almost portrays a scene of uniformity in experiences which is not an ideal reality. Based on their gender, ethnicity, place of refuge, whether in camp or self settlement, whether one is a single or unaccompanied minor, whether one is in a female headed household or disabled, will varyingly affect how they experience being displaced.¹²⁵ If this is the case, if IDP categorization is not so perfect, if it is responsible for wrongly homogenizing IDP experiences, if it conveys stigmatization upon IDPs, why is it still applied? If the IDP label localizes IDP experiences by terming displacement as an issue of just losing ‘space’ of origin, if it seems to give unreasonable privileges to IDPs, why has the term acquired international recognition? Is it appropriate in today’s protection regime for people undergoing displacement in Africa? Does it represent them, their realities and their needs?

Despite all the above misgivings, there is still usefulness in categorizing an IDP. The argument raised in support of this is that it is impossible to have a non labeled solution.¹²⁶ One cannot avoid reference to terms such as ‘refugees’ and ‘IDPs.’ They are necessary in discouraging the normalization or ‘romanticism’ of the experience of forced migration, especially when one takes into account the current globalised order and constant mobility.¹²⁷ It has been suggested that instead of advocating for the elimination of labels, re-definition of

¹²³ Rajaram 2002 as above at 248; Zetter R ‘Labeling refugees: forming and transforming a bureaucratic identity’ *Journal of Refugee Studies* 1991 Vol. 4 No. 1 at 40; See also Malkki L ‘Speechless emissaries: refugees, humanitarianism and de-historicization’ *Cultural anthropology* 1996 Vol. 11 No. 3 at 381.

¹²⁴ Brun 2005 as above at 20.

¹²⁵ DeVoe 1981 as above at 88.

¹²⁶ Brun 2005 as above at 21.

¹²⁷ Brun 2005 as above at 22.

policy making perspectives should be considered so that focus is directed on the people involved as opposed to the label that has been inscribed upon them.¹²⁸

Other suggestions for neutralizing the effects of categorization include, promotion of active participation of the affected population in; the process of defining their needs, collaborating in the generation of resources, as well as in improving access to basic goods and services.¹²⁹ The only set back to such approach is that, for such a unitary front and the full involvement of IDPs to be effective, there must be actual consensus, which means that all underlying misunderstandings and root causes to the displacements must be addressed prior to such initiatives.¹³⁰ Such endeavors will among other things require an in-depth critique of the current policies, terminology and the focus of government, international and humanitarian community in order to achieve comprehensive resolutions.

2.3.3.1 The IDP category and African indigenous migration patterns

The above category of persons falling within the description of an IDP leaves a few questions hanging. What about other mobile populations of Africa. Where is the line to be drawn, and who holds the ‘pen’ to make such decision? Care should be taken to ensure that the IDP description does not just become a tool of defining a target group for assistance and protection programmes. IDPs are not a homogenous group, any national of a state can be an IDP at any given time as long as there are external factors outside the persons convenience necessitating it. So what about the African nomadic groups, at what point can they be regarded as IDPs? What about African visitations that last a little more than usual, should these fall within the definition of internal displacement if they are compelled by external factors?

In Africa matters such as cattle raiding and pursuit of livelihoods that depend on extensive use of common property and natural resources such as land, have necessitated people to move strategically in order to sustainably manage and conserve these events and resources. It is an African way of life, especially an African nomad. Events such as cattle raiding did not historically necessarily amount to armed conflict or a case of generalized violence.

¹²⁸ Brun 2005 as above.

¹²⁹ Mazur R ‘Refugees in Africa: the role of sociological analysis and praxis’ *Current Sociology* 1995 Vol. 36 No. 2 at 43 quoted in Brun 2005 as above at 22.

¹³⁰ Brun 2005 as above at 22.

Additionally, severe drought has also affected most of the natural resources used by these groups which has necessitated them to move, even though as nomads they have always moved from one grazing land to the next seeking more arable pastures. Can they be said to have been displaced simply because now their movement falls within certain prescribed definitions? Where are they displaced from, seeing they do not have specific residence? Do they fall within the definition of environmentally displaced persons?¹³¹ Such considerations are some of the factors that a comprehensive IDP protection framework for Africa needs to take into account.

2.4 Dynamics and patterns of forced displacement in Africa

It should be noted that there are various reasons for displacement, these include:

2.4.1 Disasters

Disasters, including natural and man made disasters such as famine, floods, drought, earthquakes, typhoons, and nuclear accidents fall within the provision of the definition of an IDP.¹³² Natural calamities especially those resulting from climate change are some of the major causes of displacement in Africa. Kenya's arid regions have faced displacement continuously, Uganda's population has also faced and still deals with displacement as a result of famine, Ethiopia as well as various countries in East Africa face this problem especially because of lack of rainfall, or deforestation. In 2000 severe flooding displaced over 1.25 million people across southern Africa.¹³³

In Mozambique for instance, the flooding was also coupled with the occurrence of Cyclone Eline. This resulted in hundreds of thousands of people being left homeless and the destruction of infrastructure and farmland. Recurring drought has not made things easier especially in areas like Zimbabwe where the resulting food insecurity has forced people to leave their homes, and has even further complicated the lives of those already displaced.¹³⁴ In DRC the volcanic eruption of Mount Nyiragongo in Goma in 2002 forced thousands of

¹³¹ See definition of mobile people provided by the *Dana Declaration on Mobile People and Conservation* of June 2002; Training on the protection of IDPs as above at 5.

¹³² Guiding Principles on Internal Displacement 1998 as above; Great lakes protocol for the protection and assistance to internally displaced persons 2006 as above; AU-IDP Convention 2009 as above.

¹³³ Regional meeting on refugees and internally displaced persons in the Southern African Development Community (SADC) Seminar on internal displacement Gaborone, Botswana 24th -26th August 2005 at 3.

¹³⁴ SADC IDP seminar 2005 as above at 21.

people who were predominantly already displaced by the Congolese Rally for Democracy, an insurgent group controlling the area.¹³⁵ Victims of disasters are included within the definition because they too may face discrimination and other human rights violations by virtue of their displacement. In some instances, the government responds to disasters, in a discriminatory way by neglecting certain groups of victims on political or ethnic grounds, hence the need for these groups of people's protection to be spelt out by the Guiding Principles.¹³⁶

2.4.2 *Development induced displacement*

This may fall within the last part of the definition for an IDP in the Guiding Principles. The 'In particular' clause indicates that the list for causes of displacement is not an exhaustive one.¹³⁷ Additionally principle 6 (2) (c) of the Guiding Principles prohibits displacement as a result of unjustified large-scale development projects. Development induced displacement is largely influenced by organized resettlement of populations to make way for large development projects such as the creation of natural parks, dams and game reserves. It may also include expansion of towns, introduction of infrastructural structures such as highways, railways and large hotel resorts or factories.¹³⁸ When this movement involves indigenous populations that have a special attachment to their land, for instance pastoralist communities, it may result in deep rooted and non reparable distress. It is regarded as arbitrary displacement when it is done without or with inadequate attempt to resettle or compensate those displaced.¹³⁹ The effect of such displacement can still be felt in communities of indigenous people such as the San of Southern Africa and the Maasai of East Africa.¹⁴⁰

It has been lately realized that a large number of internally displaced persons in Africa are actually as a result of development. It is stated that the number of people displaced by development projects might actually be higher than that of people displaced by conflicts.¹⁴¹ According to the World Bank, the total number of people displaced as a result of development worldwide reached an astonishing number of 200 million during the last two

¹³⁵ SADC IDP seminar 2005 as above at 22.

¹³⁶ Training on the protection of IDPs as above at 2.

¹³⁷ See Principle 6(2) of guiding principles 1998 as above.

¹³⁸ Training on the protection of IDPs as above at 2.

¹³⁹ Training on the protection of IDPs as above at 2; Principle 6 of guiding principles 1998 as above.

¹⁴⁰ SADC IDP seminar 2005 as above at 23.

¹⁴¹ Internal displacement monitoring centre, Norwegian Refugee Council *Internal displacement: Global overview of trends and developments in 2004* Global IDP Project Norwegian Refugee Council, Geneva 2005, 35-37.

decades of the 20th century.¹⁴² It has also been noted that development induced displacement is more common than is believed and yet very little attention has been paid to the problem. The only encouragement existing in Africa can be found in article 9 and 10 of the newly adopted African Convention for Internally Displaced Persons as well as the Great Lakes Protocol for the protection and assistance to internally displaced persons.¹⁴³ It should be noted that within the Guiding principle's non 'exhaustive' description of an IDP, economic migrants, are not provided for. However, people who migrate as a consequence of economic injustices and systematic marginalization equivalent to violations of economic rights, would fall under the description.¹⁴⁴

2.4.3 Situations of generalized violence falling short of armed conflict

These are cases that do not constitute armed conflict, but nevertheless cause internal tensions and disturbances.¹⁴⁵ Many displaced persons in Africa find themselves in situations where force and repressive measures are employed by governments to maintain or restore order or to suppress certain elements.¹⁴⁶ These incidences of generalized violence include riots, unorganized and violent demonstrations, isolated sporadic violence and violent ethnic conflicts that do not amount to full armed conflict. Under such circumstances, the government has on a number of occasions undertaken forceful measures to suppress these situations.¹⁴⁷

At times this has been carried out with vicious reprisals. In the process large scale arrests, massive restrictions to freedom of movement, administrative detentions and mass political imprisonment which all have elements of gross violations of human rights have been carried out.¹⁴⁸ This in most cases results in waves of people being displaced and it is only right that they should be catered for as internally displaced persons.¹⁴⁹ This situation was observed in Kenya when unprecedented violence and ethnic clashes polarized by political elements resulted in massive displacements of people.¹⁵⁰ The government in the process of addressing

¹⁴² Cernea 2006 as above at 26.

¹⁴³ Great lakes IDP Protocol Chap. 1 Article (1) (5) and Chap. 5 Article 5 2006 as above.

¹⁴⁴ Training on the protection of IDPs as above at 2.

¹⁴⁵ Training on the protection of IDPs as above at 2.

¹⁴⁶ Training on the protection of IDPs as above at 2.

¹⁴⁷ Training on the protection of IDPs as above at 2

¹⁴⁸ Training on the protection of IDPs as above.

¹⁴⁹ Training on the protection of IDPs as above.

¹⁵⁰ KHRC and IDP Network 2011 as above at 16.

these sporadic acts of violence took extreme steps which caused further violence and displacements. At times these situations of generalized violence have been incited and used for political gain, as was seen in the case of the post election debacle in Kenya.¹⁵¹

2.4.4 Conflict related displacement

Conflict related displacement can be induced by non-international or international armed conflict. This means that it can either be a result of fighting between armed forces of two states or fighting between a state's regular armed forces and identifiable armed groups, or between armed groups fighting one another within the territory of one state.¹⁵² The latter is the most common basis for displacement in Africa. As a result of violence most people usually leave their homes either as a result of fearing for their lives or after being threatened. When caught in the middle of cross fires IDPs face the least protection. It should be noted that in most conflicts armed groups rather than confronting one another, settle their scores by tactfully attacking or killing innocent civilians or they force communities to flee from their homes. At times people flee to save their lives or to avoid being inducted forcefully into the insurgent groups as warriors. Since borders are sometimes inaccessible or unsafe to cross, people are forced to hide in forests thus becoming undocumented IDPs. At times the government itself is responsible for displacing its people. This usually happens when the government incites the violence or where it refuses to protect its citizens.

2.4.4.1 Conflict related displacement and some underlying causes in Africa

a) Formation or sustaining the Nation 'state'

State system in Africa was highly influenced by colonialism.¹⁵³ This imposed system not only introduced arbitrary borders, which were and are still a major cause of instability in Africa, it also influenced the political environment in an authoritarian style. The nature of colonialism and how it was introduced was not democratic, or a self governance process, it was rather a military occupation and administrative rule brought about by military conquests or tactful

¹⁵¹ KHRC and IDP Network 2011 as above at 8.

¹⁵² Training on the protection of IDPs as above at 1.

¹⁵³ Breitenbach W *Democratisation in Sub-Saharan Africa: Transitions, elections, and prospects for consolidation* 1997 at 5.

misleading treaties.¹⁵⁴ Even the colonial powers that tried to introduce development of political institutions did so without necessarily allowing democratic self-rule. African states were hardly prepared to self rule, neither were they familiarized with the state institutions that were eventually grudgingly left to them.¹⁵⁵

These states that Africa inherited do not in any case reflect the historical kingdoms or nations in pre-colonial Africa. Nations like Buganda, Ghana, Mali and a lot others had pre-colonial 'space' and 'place', constituted of certain homogeneous ethnic composition with vast compact majorities. They still reflect this homogeneity, even though its co-existence with the rest of the additional ethnic minorities has become problematic.¹⁵⁶ The heterogeneity that these states were forced to absorb after the creation of colonial boundaries is today a basis for their fragmented nature and continuous wars of secession and insurgency uprisings that have killed, maimed and displaced millions. Modern African states did not inherit the legacy of colonial Africa alone, they additionally were forced to adopt a framework that they hardly were included in setting up, or administrating. A framework that was for all purposes meant to subdue and maintain colonial legacy.¹⁵⁷ Decolonization was not democratization, the African state that was inherited was artificial it did not reflect any solid historical or socio-political African foundations. This has contributed to its continuous crumble, taking with it every sense of humanity and dispossessing not only material things but also the artificial 'sense of place' created by colonial borders.

But it would be very unfair to blame the fate of Africa entirely on the colonial administration. The new administrators of the young independent African states did not advocate for renewed nationalism based on the cultural pre-colonial state. Self determination was highly done within the realms of existing colonial structures, without transformation of the state to suit the African bedrock that had been destroyed. Africa did not inherit or build nations, it inherited 'colonies' and contributed to damaging nations. Some states inherited were not only composed of heterogeneous ethnic Africans, within these settler colonies, complications of

¹⁵⁴ Breytenbach 1997 as above.

¹⁵⁵ Breytenbach 1997 as above at 6.

¹⁵⁶ The dilution of this homogeneity has caused insurgent wars, *coup de tats* and secession wars in Ethiopia and Eritrea, Nigeria, DRC, Sudan and many other places in Africa.

¹⁵⁷ Breytenbach 1997 as above at 7.

additional ‘race’ factors also came about as a result of imported laborers and settled colonial ‘groups’.¹⁵⁸

b) Failure to (re)negotiate national and ethnic identities

Ethnicity widely includes social identity formation that is based on culturally specific practice and unique sense of symbols and beliefs. It is belief on common origin and common history and a sense of belonging to a group that in some combination confirms social identities of its members in their interaction with both insiders and outsiders. Ethnicity generally encompasses the way people think of themselves in relation to others, the way they react to the world surrounding them.¹⁵⁹ The ethnic group has been said to be abstract and at times constructed or invented.¹⁶⁰ At the same time this figment of human imagination is held responsible for a lot of things including irrationalities of the development project, outmoded values and regressive consciousness, fostering corruption and destructive conflict as well as causing political instability and weak national identity.¹⁶¹

In as much as ethnic identities are to some extent constructions of some sort, they are also real. They are a living presence resulting from both material and historical forces.¹⁶² Ethnic polities existed in pre-colonial Africa and co-existed, within the normal inter-relations of polities. They were political societies with governmental institutions within a local ‘space’ where territoriality and ethnic identity thinly coincided and were defined by means of exclusion and inclusion. The state as we know it is simply an amalgamation of these polities into abstract and often incomplete fluid ethnicities.¹⁶³ These ethnic identities are still relatively strong and evident even in rural and some urban settings, but they have for the wrong or right reasons additionally acquired or been said to have acquired ‘political identity’.

¹⁵⁸ Settler colonies include Algeria, Kenya, Zambia, Zimbabwe, Namibia, and South Africa which had among others, settler communities of Arabs, Whites and Asians.

¹⁵⁹ Oucho J ‘The ethnic factor in internal displacement of populations in Sub-Saharan Africa’ *African Journal of Political Science* 1991 Vol. 2 No. 2 at 106.

¹⁶⁰ Ake C ‘What is the problem of ethnicity in Africa?’ *Transformation* 1993 Vol. 22 at 1.

¹⁶¹ Ake 1993 as above.

¹⁶² Ake 1993 as above at 2.

¹⁶³ Ake 1993 as above at 1.

This politicization and metamorphosis of ethnic exclusivity into political atoms, is what has affected the nature of inter-ethnic relations in African democracy, peace and stability.¹⁶⁴ The politicization of ethnicity has not simply acquired momentum in post colonial Africa, it emanated from colonial structures that through reliance on traditional structures to rule, emphasized political competition among them.¹⁶⁵ Decolonization further enhanced the politicization of ethnicity, nationalist movements were mobilized on ethnic levels. Eventually such practice evolved into political ethnicity when nationalist movements, which were initially united by the idea of acquiring political independence, started disintegrating as self determination turned into personal power struggles.¹⁶⁶

Social structuralists such as ethnic pluralists advocate for ethnic homogeneity if the political order of any state is to be maintained. They argue that there is a possible link between ethnic homogeneity and stability on the one hand, and ethnic heterogeneity and instability on the other.¹⁶⁷ But how does one explain those communities that are ethnically very diverse and yet there is stability? The argument would be that multi-ethnicity on its own is not sufficient to cause tension, the existence of various ethnic groups cannot explain the salience of ethnicity.¹⁶⁸ Multi-ethnicity in unranked systems of stratification, where ethnicity is polarized, has a tendency of bringing about contesting claims on issues such as power, status and domination.¹⁶⁹ Additionally where societal or group competition exists, resulting from interactions between individuals from different ethnic backgrounds, and the surrounding circumstances are capable of breeding struggles for, and access to, control over scarce resources, this might manifest itself in the form of group antagonism.¹⁷⁰ Where and when such antagonism is exploited by competing elites, who in the African case, do evoke primordial ethnic loyalties, often under the guise of promoting class interests of the group, ethnicity and all its negative consequences is (re)born and (re) configured.¹⁷¹

This is why ethnicity has competed with the identity of a nation for so long in Africa. The identity of a nation was forged, while the ethnic identity is a primordial one. It transcends

¹⁶⁴ Ake 1993 as above at 2.

¹⁶⁵ Oucho 1991 as above at 111.

¹⁶⁶ Oucho 1991 as above at 108-111.

¹⁶⁷ Breytenbach 1997 as above at 23.

¹⁶⁸ Breytenbach 1997 as above.

¹⁶⁹ Breytenbach 1997 as above at 24.

¹⁷⁰ Breytenbach 1997 as above.

¹⁷¹ Breytenbach 1997 as above.

borders, laws and class.¹⁷² An ethnic identity brings a lot more commonality from real or imagined common history, language, culture, at times religion, and narratives.¹⁷³ It is less superficial especially in Africa and thus can easily be exploited for loyalty. People in times of change, are much more inclined to align with that which is less foreign, and less unknown to them. Five hypotheses by Cross supported this position when he stated that: when growth declines, ethnic consciousness rises; when political change takes place, ethnic realization also rises; when spatial mobility of one group is affected or threatened by the mobility of others, ethnic identification increases; when the employment industry of a group is threatened by advancement from other groups, ethnicity increases; and when one group becomes aware of its real or imaginary interests, ethnic belonging is more visible.¹⁷⁴ It is the last statement that makes a lot of sense for this argument. Of course for the stated awareness to be realized, external factors have played a large part in Africa, including but not limited to the ‘politicization’ of ethnic as well as limited resources, lack of job opportunities, bad governance as well as the culture of impunity and militarization of grievances and illiteracy.

In African states where ethnic homogeneity prevailed, or where a balance was struck between ethnicity and national identity, peace has managed to prevail.¹⁷⁵ African states need to find a way to re-balance and re-configure the nation and ethnic in order to re-constitute the co-existence of peace, democracy, mobility and development. This can be achieved through among other things the marriage between agents of nation, which include law and agents of the ethnic, which include traditional or indigenous worldview. If such a meaningful balance takes place in the process of addressing conflicts and is used as a mechanism for preventing further conflicts and displacements there is a chance for comprehensive success to be attained.

¹⁷² Ake 1993 as above at 1.

¹⁷³ ‘The politics of cultural pluralism and ethnic conflict’ at 97

http://www.pearsonhighered.com/assets/hip/us/hip_us...0205791239.pdf accessed on 26-10-2011

¹⁷⁴ Cross M ‘Colonialism and ethnicity: a theory comparative study’ *Ethnic and Race Studies* 1978 Vol. 1 No. 1 quoted in Breytenbach 1997 as above at 25.

¹⁷⁵ Breytenbach 1997 as above.

2.5. Responding to internal displacement: To contain or protect?

2.5.1 Theoretical responses

It has been argued that the forced migration regime is currently pre-occupied with the protection of states as opposed to the protection of the displaced themselves.¹⁷⁶ This has among other things raised the question of whether responses to protect IDPs stem from an interest to breach the wall of sovereignty in order to protect the human rights of individuals within their states, or whether they are simply an attempt to keep third world refugee problems from inconveniencing the developed world.¹⁷⁷ Is the IDP regime people-centered or is it simply a reinforcement of state-hood? The immergence of concerns over the protection of the rights of IDPs has sparked various schools of thought over the issue. Each of these schools maintains that it has a better point of view. Proponents of the main two schools of thought disagree on certain issues while maintaining few common arguments.

The first school of thought supports the idea that the immergence of concerns for the protection of IDPs was a selfish ploy by states of asylum and third developed donor states to curb the problem of external displacement (refugees) by limiting would-be refugees to internal borders (internal displacement). The effect of this would be containment of the responsibility of having to harbour masses of asylum seekers. This theory is called the containment theory, and it has been opposed on an improbability and impracticality basis.¹⁷⁸ On a number of occasions the ‘containment conspiracy’¹⁷⁹ as it is sometimes referred to, has been criticized for relying on the unsubstantiated assumption that displaced persons are refugees in the making.¹⁸⁰

This theory it is believed, has been raised each time refugee advocates opposed the immerging IDP protection framework and norms. Containing would-be refugees, it is argued,

¹⁷⁶ Aleinikoff A ‘State centred refugee law: from resettlement to containment’ *Michigan Journal of International Law* 1993 Vol. 14 Fall at 120.

¹⁷⁷ Aleinkoff 1992 as above at 134.

¹⁷⁸ Barutciski 1998 as above at 11; Dubernet 2001 as above at 3; Nogueira 2009 as above at 1.

¹⁷⁹ Dubernet 2001 as above at 3.

¹⁸⁰ Dubernet 2001 as above at 35 where she claims that IDPs do not have to necessarily become refugees because of the geographical locations of the conflict, or its nature; See also Cohen and Deng 1998 as above at 4.

would be ideal not only for refugee receiving states, but also governments that are responsible for displacing their own. It is argued, that such practice would have had the potential to leave large groups of people at the mercy of states that in most instances were not inclined to protect them. It is further argued that ‘containment’ would have easily concealed the magnitude of internal political problems by limiting ‘escape’ to the borders of particular countries. The ‘right to remain’ and the ‘right not to be displaced’ as it has been termed would limit people’s rights to seek asylum and undermine the asylum regime.¹⁸¹

Of course critiques of this theory left out a few benefits of the intended practice of ‘in country protection’. There is no adequate proof that the process was intended to undermine the asylum regime.¹⁸² It has been argued, and rightly so that the two regimes are separate and they are meant to cater for different groups and needs.¹⁸³ Asylum seekers no longer maintain a ‘citizenry’ relationship with their countries and hence they choose to or are coerced by such circumstances to leave.¹⁸⁴ On the other hand, the IDP regime it is argued, is meant to cater for those still within their countries, but it does not preclude those who are able, or in need of asylum from seeking it. Additionally the two regimes are different in practice, one is based in human rights protection against human rights abuses and can be applied as an intervention even within ones country. The other is based on international law set up to provide for those out of their countries, it has nothing to do with the protection against human rights abuses even when in foreign land.¹⁸⁵ Basically one can argue that refugee law, is a system of law set up to temporarily replace ‘state law’ whilst refugees sojourn in another country. It affords them legal status, and fills in the gap against one being rendered stateless.¹⁸⁶

Having said this I cannot totally disregard the fact that ‘containment’ could have been and still might be one of the incentives behind re-newed international initiatives for in-country protection.¹⁸⁷ At the same time it has to be accepted that humanitarian considerations have played a larger role in the adoption of frameworks to protect IDPs. Which is why the second school of thought advocates that national, regional and international efforts towards the

¹⁸¹ Dubernent 2001 as above at 3.

¹⁸² Aleinkoff 1992 as above at 129.

¹⁸³ Barutciski 1998 as above at 3.

¹⁸⁴ Aleinkoff 1992 as above at 125.

¹⁸⁵ Barutciski 1998 as above at 3.

¹⁸⁶ Aleinkoff 1992 as above at 125, 129.

¹⁸⁷ Aleinkoff 1992 as above at 129,130.

protection of IDPs were influenced by a mere logic of rights.¹⁸⁸ It is argued that response and protection initiatives for IDPs were solely based on the need to protect this group of people with no particular hidden agenda. This is the humanitarian basis of protection for the internally displaced. This notion is accepted by most radical scholars, and similar views have been the basis for the international community's involvement in adopting and setting up frameworks to protect IDPs.¹⁸⁹

These international initiatives have been reproduced, regionally and at national levels. They have been successful and possess the potential to be more successful, but they have also faced criticisms and challenges. First, it is felt that the IDP protection regime by concentrating on specific groups of people within a country, has failed to protect, sidelined or failed to acknowledge the needs of other un-displaced people within the same regions.¹⁹⁰ These are usually victims of conflicts who have failed to escape, and are living in conditions similar to those of IDPs. The appearance of 'favouritism' or selective intervention has the effect of discrediting the underlying intentions and functionality of such operations. Secondly, humanitarian attempts to address the problem of internal displacement have in most cases intentionally sidestepped protection responsibilities that most IDPs lack and instead concentrated on providing assistance.¹⁹¹ This is among other things a result of failure to acknowledge the insignificance of conceptualizing an IDP.¹⁹² This conceptualization has not changed the fact that notions of state hood, sovereignty and boundaries still play an important role in how such assistance or protection may be given.¹⁹³ The duty of protection requires political confrontation with state authorities, a step that most humanitarian organizations are not ready to take, because they do not want to risk their humanitarian status being revoked in particular countries. This means that even after rights and duties are defined, they are still subject to forms and structures of political power.¹⁹⁴

This reiterates the argument that if the emphasis on humanitarian in-country protection is not supported by local political will to actually protect the internally displaced, it might simply result in the re-affirmation of state-centeredness. In which case in-country protection simply

¹⁸⁸ Barutciski 1998 as above at 3.

¹⁸⁹ Barutciski 1998 as above.

¹⁹⁰ Aleinikoff 1992 as above at 122.

¹⁹¹ Aleinikoff 1992 as above.

¹⁹² Aleinikoff 1992 as above.

¹⁹³ Aleinikoff 1992 as above.

¹⁹⁴ Aleinikoff 1992 as above.

aids developed states to solve their asylum crises, whilst ‘the non-intervention’ principle will in a state-centered way restrict serious measures to improve the human rights of internally displaced people within their countries.¹⁹⁵ Careful consideration has to be made to balance all these factors if an effective protection regime for IDPs is to be set up. Care has to be taken to ensure that the IDP protection regime does not become a containment tool, and at the same time the humanitarian and human rights practices of this regime should be balanced with state sovereignty to overcome the ‘non-intervention’ principle.

For effective future response to both IDP and refugee issues, debates over the two phenomena have to come to an end to concentrate on adequate protection of both groups.¹⁹⁶ It should be noted that the two opposing camps involved in this debate have and might in the future pit refugees against IDPs. Constant reliance on theories like ‘containment’ should be reconciled with the will of the displaced and that of their leaders, otherwise they might eventually undermine protection frameworks for both refugees and IDPs. When one considers the level and nature of steps taken by the international community, regional, and national governments to date to address internal displacement, it becomes obvious that such reconciliation is underway. It seems that refugee experts and those dedicated to the protection of IDPs are taking steps together to set up frameworks outside the refugee regime, but closely related to it to provide for the protection of internally displaced persons.

2.5.2 *Legal responses*

International law originally did not involve itself or provide for the protection of human rights of individuals. It was regarded as a system of law that solely regulated relations between states. Thus the relations between individuals and states were solely governed by the national laws of those states. Some states relied on this to misuse the international principle of state sovereignty to cover their own misnomers. It therefore did not come as a surprise when international law revolutionized and gave way to the human rights movement for the protection of individual rights through international action and made available international

¹⁹⁵ Aleinkoff 1992 as above at 134.

¹⁹⁶ Phuong C *The international protection of internally displaced persons* 2004 at 3.

remedies to cater for any circumstances where the standards provided by international law are not respected.¹⁹⁷

In as much as the existing normative framework for protecting the displaced is based on international law, including human rights, international humanitarian law and refugee law, it is shaped against the contextual backdrop of power relations of states. In practice decisions are made on the basis of political realities of governments, regional and international actors.¹⁹⁸ With the end of the cold war, came a total overhaul of the existing international power relations. The superpowers first lost their veto in the Security Council, following this the international community could agree unanimously to address certain international matters without interference from super power blocks. The nineties brought with them complex sets of conflicts, especially in Africa, gradually interstate wars had metamorphosed into intra state conflicts displacing millions of people internally. At the same time the international community could not afford to harbor any more refugees than it already had. Most of these masses of people escaping internal wars had already started posing threats to the security of neighboring countries.¹⁹⁹ Effects of massive population displacement in countries like Rwanda after the 1994 Genocide resulted in the destabilisation of the Great Lakes region. The effects of the fall of Kigali in 1994 were a catalyst in the Fall of Kinshasa in 1997 and contributed to further conflict in Uganda.²⁰⁰

It is against this backdrop that a general consensus was made within the international community to concern itself with the internal affairs of states and ensure that civilians were adequately protected by their governments. This included demanding access to displaced people and other populations facing massive human rights abuses.²⁰¹ Other protection concerns involved authorizing operations to ‘protect’ civilians under imminent threat or similar peace keeping missions, even to an extent of making specific directives to protect or

¹⁹⁷ Robertson A and Merrills J *Human rights in the world: an introduction to the study of the international protection of human rights* 1996 at 1.

¹⁹⁸ Darcy J and Collinson S ‘Introduction: uncertain benefits of protected status’ in Collinson S, Darcy J, Waddell N, and Schmidt A (eds.) *Realising protection: the uncertain benefits of civilian, refugee and IDP status* Humanitarian Policy Group-HPC Report 28 of September 2009 at 2 available at <http://www.odi.org.uk/hpg> accessed on 8-09-2011.

¹⁹⁹ Rutinwa B *The aftermath of the Rwanda genocide in the Great lakes region: events between the fall of Kigali in 1994 and the fall of Kinshasa in 1997 and lessons for conflict maintenance in Africa* (reprinted) 2011 at 6.

²⁰⁰ Rutinwa 2011 as above at 6.

²⁰¹ Darcy and Collinson 2009 as above at 2.

engage in the process of facilitating not only material, but physical protection to civilians including IDPs and refugees.²⁰²

Some of these initiatives have been successful while others have not entirely delivered what they promised.²⁰³ Peacekeeping missions in Sierra Leone, the Democratic Republic of Congo (DRC), Liberia, Haiti, Burundi, Cote d'Ivoire and Sudan have faced serious issues including under-resourcing, limited mandates, various distortions and contradictions, accusations and assumptions.²⁰⁴ There are also competing interests, objectives and political strategies between national, regional and international actors. In addition to the weaknesses highlighted above, it must be pointed out that international initiatives for protecting IDPs, especially the interventionist approach have raised particular issues with regard to the 'new sovereignty'.²⁰⁵ Can such interventions ever succeed without cooperation from the requisite governments?²⁰⁶ The idea of replacing the sovereign role of civilian protection, under forceful measures in unknown terrains might in addition to control, require physical presence, and preferably not a temporary presence.²⁰⁷

2.5.2.1 Protection

Protection of internally displaced persons is divided into two aspects, legal protection as well as institutional protection but it is also regarded in some instances as a social issue.²⁰⁸

Protection has been defined as:

The challenge of making states and individuals meet their humanitarian responsibilities to protect people in situations of war, and filling in for them as much as possible when they fail to meet these responsibilities.²⁰⁹

²⁰² Darcy and Collinson 2009 as above.

²⁰³ Darcy and Collinson 2009 as above.

²⁰⁴ Darcy and Collinson 2009 as above at 2 and 8.

²⁰⁵ It is referred to as 'new sovereignty' –(writer's emphasis) because there is a general consensus that sovereignty has changed and evolved and is no longer the rigid sovereignty that allowed states to act on their own, even where there was direct evidence that their citizens were being abused. Today's sovereignty it is claimed, is much more 'conformist' with international standards and obligations.

²⁰⁶ Darcy and collinson 2009 as above at 8 and 9.

²⁰⁷ Darcy and Collins 2009 as above at 8.

²⁰⁸ Brun 2005 as above at 11.

²⁰⁹ Hugo S and Eguren L *Humanitarian protection* 2004 ALNAP Guidance Booklet at 2 at <http://www.alnap.org/pubs/pdfs/protectionbooklet3.pdf> accessed on 30.04.05 in Brun 2005 as above at 11.

All activities that are performed either by the state or international community with the aim of obtaining full respect for the rights of an individual in accordance with the ‘letter and spirit’ of the relevant bodies of law constitute the definition of ‘protection’.²¹⁰ Protection is meant to cover the full range of rights enumerated in international human rights law including civil, political, cultural and socio-economic rights, as well as those provided by international humanitarian and refugee law by analogy. Protection is generally intended to ensure the equal and full respect of rights of all individuals, despite their age gender, ethnic, social, religious or other background.²¹¹ In the case of internal displacement such systematic and comprehensive protection becomes hard to establish. One first has to consider what rights are being protected, and what activities have to be undertaken to perform these rights?

‘Protection’ encompasses an objective of protecting, a legal responsibility to do so, as well as the activity itself. ‘Protection’ is an objective that is not limited to survival and physical security of an individual, but it goes further and covers a whole set of rights, ranging from civil and political rights such as the right to freedom of movement, the right to participation, to economic, social and cultural rights, such as the right to education and health.²¹² Protection as a legal responsibility is supposed to be practiced by the state and its agents. In situations of armed conflict, this legal responsibility automatically extends to all parties to the conflict, including armed groups, as provided by international humanitarian law.²¹³ Where states are unable or unwilling to fulfill their protection obligation, human rights and humanitarian actors play a key role.²¹⁴ Protection lastly involves the activity itself, for ‘protection’ to happen actions must be made to ensure that the rights of individuals are enjoyed.

It is not enough for protection to be defined and described, it also has to be operationalized. This can be done in the following stages; there are three types of protection activities that can be undertaken concurrently to ensure this, including responsive protection which prevents or stops violations of rights; remedial protection which addresses violations through justice as

²¹⁰ Inter Agency Standing Committee (IASC) Handbook for the protection of internally displaced persons, June 2010, at 7 available at <http://www.unhcr.org/refworld/4790cbc02.html> accessed on 2-09-2011.

²¹¹ IASC Handbook for the protection of IDPs 2010 as above at 7.

²¹² IASC handbook for the protection of IDPs 2010 as above.

²¹³ Geneva Conventions (1949) Common article 3 and Additional Protocol II to the Geneva Conventions of 1977.

²¹⁴ Several international organisations including the OHCHR, UNHCR, UNICEF, and ICRC have express mandates to protect displaced persons. All United Nations and partner agencies have a responsibility to integrate human rights into their work and into the process of providing protection.

well as reparation and rehabilitation; and system-environment-building protection which promotes the respect for rights and rule of law to foster a conducive environment where violations would not occur.²¹⁵ Responsive protection is closely linked to remedial protection, these two broadly include monitoring and reporting, including relaying information to officials at UN headquarters in Geneva and New York. It further ensures that protection is integrated into humanitarian needs assessments and these protection needs are also addressed by the consolidated appeals process (CAP) within the United Nations.

Responsive protection also ensures that assistance is made an integral part of protection, or protection is administered parallel to assistance and the two are integrated. This is important because for a long time humanitarian organizations concentrated on assistance without protection which was redundant because sustenance without security defeats the purpose. Community based protection also falls within this approach and is employed to protect displaced persons within camps or displaced communities.²¹⁶ It also includes protection strategies that are integrated into or form part of return, resettlement and reintegration processes as a form of long term protection.²¹⁷

On the other hand, environment building activities widely involve disseminating, promoting and applying the Guiding Principles and other standards of international human rights and humanitarian law that are of relevance to internally displaced persons. It also involves advocacy activities that include bringing violations to the attention of institutions such as the Red Cross and the United Nations so that such complaints may be presented to the relevant authorities. Non-state actors are also an integral part of the problem of internal displacement, engaging with them and developing strategies to do so is part and parcel of building an environment to prevent and promote protection for IDPs. Other initiatives include setting up early warning systems as well as raising awareness among the displaced about the rights available to those at risk of displacement. Finally increasing the presence of humanitarian organizations that can lend support to the communities at risk or facing displacement can also facilitate building a preventative protection environment. Additionally, strengthening

²¹⁵ IASC Handbook for the protection of IDPs 2010 as above at 7.

²¹⁶ It should be noted though that there is no specific provision on how such community based protection is to be implemented, and what steps need to be taken to effect it. Such vague provisions have failed to be translated into practical action.

²¹⁷ Bagshaw S and Paul D *Protect or neglect: Towards a more effective United Nations approach to the protection of internally displaced persons* The Brookings-SAIS Project on Internal Displacement and UN-OCHA-Inter-Agency Internal Displacement Division November 2004 at 29.

national capacity by providing protection training to local and international staff, civil society, non-state actors and all local stake holders on how to reinforce preparedness and deal with displacement when it occurs can contribute to the creation of an environment that is prepared to sustain displacement when it occurs, or prevent displacement from occurring.²¹⁸

As stated above for effective and comprehensive protection to be achieved, especially within the scenario of internal displacement, relevant states must be ready and willing to meet their humanitarian responsibility and protect their own during strife, war or any situations of internal disturbances. Where these States are either unwilling or unable, then the international community must be willing to fill in for them as much as possible.²¹⁹ But once again it should be pointed out that unlike refugees, IDPs are usually persons who have not crossed an international border, therefore no single international legal instrument exclusively resolves their protection needs.²²⁰ At the same time IDPs are first and foremost the responsibility of their country, covered by laws of their own countries. According to human rights law which remains relevant in most internal displacement situations, they are entitled to enjoy equally the same rights and freedoms under domestic and international law as their fellow countrymen.²²¹ To achieve such level of protection without the necessary willingness or facilitation from the sovereign state they belong to has posed problems and remains one of the main challenges in operationalizing the IDP protection regime.

2.5.2.2 Balancing Intervention

When the United Nations was taking over the League of Nations in 1945, politics had been largely governed by principles of non intervention.²²² At the time of the creation of the main international law institutions and instruments dealing with mobility, the main concern was refugees, from World War II. This among other things required re-visiting terms such as intervention. Intervention as a concept has existed in international law alongside the creation of a nation state and the rise of the concept of sovereignty. Intervention has adopted various definitions over the years. Intervention in the classical sense involves forcible self help by a state or group of states to protect human rights. Vervey defines it as:

²¹⁸ Bagshaw and Paul 2004 as above at 28.

²¹⁹ Hugo S and Eguren L in Brun 2005 as above at 11.

²²⁰ Bagshaw and Paul 2004 as above at 26.

²²¹ Bagshaw and Paul 2004 as above.

²²² Abeiw F *The evolution of the doctrine and practice of humanitarian intervention* 1999 at 2; See also Article 2(7) of the United Nations Charter (signed on 26th June 1945).

The threat or use of force by a state or states abroad for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights, in particular the right to life of persons, regardless of their nationality, such protection taking place neither upon authorization by relevant organs of the United Nations nor with the permission of the legitimate government of the target state²²³

While Vervey has concentrated on defining intervention in terms of ‘forceful or military’ terms, it is not the only or main form that intervention usually adopts. Ian Brownlie has defined humanitarian intervention broadly as ‘the threat or use of armed force by a state, a belligerent community, or an international organization with the object of protecting human rights’. His definition is broad because it covers more than one form of humanitarian intervention. It includes ‘forcible or military intervention’ as well as ‘humanitarian access.’ In most discussions of humanitarian intervention there is usually a distinction between the two. What is usually discussed is the ‘soft’ intervention by states, international organizations like the United Nations or humanitarian organizations into a country’s foreign affairs or internal affairs or the provision of access to offer assistance to affected civilian populations caught in internal armed conflict or other complex humanitarian emergencies. Military intervention is usually not covered, or if covered, then it is usually employed as a last resort.²²⁴ Yet care has to be employed when using the term, because in some cases it has been used controversially and interchangeably to reflect either military or humanitarian presence.

Intervention still has to be allowed cautiously because it might be misused to undermine the sovereignty of another state. A query remains as to when intervention can be justified, who should decide this, and how can distinction be made between sheer unjustified intervention into a country’s policies or domain, and intervention on the basis of responsibility to protect by the community of states towards civilians. The debate on intervention especially within Africa has been largely sparked by events that have unfolded in countries like Somalia, Rwanda, Sudan, Kenya, Liberia, Sierra Leone and Cote d’voire.²²⁵ But the issue has been conceptualizing intervention in Africa. Humanitarian intervention is what humanitarian agencies do, but the ‘humanitarian intervention’ provided for by the Security Council and

²²³ Vervey T ‘Legality of humanitarian intervention after the cold war’ in Ferris E (ed.) *The challenge to intervene: A new role of the United Nations?* 1992 at 114 quoted in Abiew 1999 as above at 1.

²²⁴ Abiew 1999 as above.

²²⁵ Thakur R ‘Intervention, sovereignty and the responsibility to protect: experiences from ICISS’ *Security Dialogue* 2002 Vol.33 No. 3 at 323.

other military operations are not humanitarian intervention *per se*.²²⁶ The concern is that appropriation of the term to objectify illicit interference is what is causing African countries and other beneficiaries of the term to question its use.²²⁷

To western minds employing the term signifies an interest in protecting human life as opposed to self interested power politics. On the other hand, employing the same term, non western minds conjure up historical memories of strong countries imposing their will on the weak, memories of imposed borders, imposed Christianity, imposed slavery all in the name of spreading civilization or promoting human rights.²²⁸ Traditional conceptualizations of ‘intervention’ concentrate in claims, rights and prerogatives of potentially intervening states as opposed to urgent needs of the intended beneficiaries.²²⁹ The language of humanitarian intervention paints its beneficiaries as a hopeless group of clients who are in dire need of rescuing. It paints humanitarian intervention as inevitable, but usually the same interventions face perennial impasses and systematic failures.²³⁰ There is a need to re-visit the term and justify it within the context of realities of African countries that are the intended beneficiaries of the project. Without such justification, intervention will retain its ‘bully’ face. There must be an attempt to balance intervention, public interest and sovereignty in Africa for the IDP protection system to be effective.

2.5.2.3 Sovereignty and responses to internal displacement

Some of the arguments above have introduced the notion of sovereignty, but what exactly is sovereignty and how does it figure in the present discussion? Sovereignty as a concept or institution has continuously been constructed, reconstructed and re-conceptualized. It is obviously a very fluid term that has changed to defy any notion that it is a fixed permanent feature of norms and practices.²³¹ Confusion over the term sovereignty is common, the term has been given various descriptions by different authors, experts, or treaties. Sovereign

²²⁶ I am of the view that humanitarian intervention does not constitute forceful measures, that it includes supply of aid to affected populations. When one has to refer to military procedures or economic sanctions, then the word ‘humanitarian’ should not be employed.

²²⁷ Thakur 2002 as above at 327.

²²⁸ Thakur 2002 as above at 328.

²²⁹ Thakur 2002 as above.

²³⁰ Malkki L ‘Speechless emissaries: refugees, humanitarianism and de-historicization’ *Cultural anthropology* 1996 Vol. 11No. 3 at 377.

²³¹ Deng B ‘The evolving concept and institution of sovereignty: challenges and opportunities’ *AISA Policy Brief* 2010 No. 28 at 2.

originates from the old French ‘*soverain*’ and from latin ‘*superanus*’ which meant super. A sovereign is regarded as supreme or pre-eminent.²³²

Aristotle described sovereignty as a tool that was supposed to help in the realization of the highest values and achieve the ultimate aims of its population. To him superiority in a political community had to be vested in the rational principle embodied in laws handed to men by the gods rather than in any person or persons in the community.²³³ When one looks at this argument, then no man would be above law, for what was sovereign was not man but the law. This law that was immutable was sent to regulate conduct between persons in a just and equitable manner to achieve the highest values. Such kind of sovereignty that puts people at the center of state policies and laws, a sovereignty that is aimed at improving their lives and including them to build and affirm not just their state, but national sovereignty is what the world has been and is still striving for.²³⁴

Sovereignty internally connotes the exercise of supreme authority by a state within its individual territorial boundaries, externally it connotes the equal status a state has among other states.²³⁵ It has been stated that the original meaning of sovereignty employed both etymology and the usage of the concept in legal and political theory, that linking it to such systems brought it closer to the idea of ‘superiority.’²³⁶ A sovereign was regarded as the holder of ultimate power according to this point of view. The Westphalian international system also regards the state as the holder of ultimate power. The meaning of sovereignty is attributed to independence, which in turn denotes state autonomy in relation to internal affairs and external relations.²³⁷ The classic definition of this concept in international law was given by Judge Max Huber:

²³² Donnelly J ‘Human rights and state sovereignty’ at 8 and 9 at <http://mysite.du.edu/~jdonnell/papers/hrsov%20v4a.htm> accessed on 26-04-2010.

²³³ Donnelly as above at 8.

²³⁴ National sovereignty has been defined as a nation’s right to exercise its own law and practices over what is deemed as its territory; See Keren M and Sylvan D (ed.) *International intervention: sovereignty versus responsibility* 2002 at 1.

²³⁵ Keren 2002 as above.

²³⁶ Paarsivita M ‘Internationalisation and stabilization of contracts versus state sovereignty’ *British Yearbook of International Law* 1990 at 331.

²³⁷ Abiew 1999 as above at 1.

Sovereignty in the relations between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state²³⁸

On a separate incident sovereignty was defined as:

A state that is subject to no other state and has full and exclusive power within its jurisdiction without prejudice to the limits set by applicable law.²³⁹

It should be noted that the above definitions of sovereignty, regard the sovereign as supreme, but this supremacy is limited in modernity's international society and the welfare of citizens and nationals of a particular domain. A sovereign according to the above definitions can exercise his sovereignty to the exclusion of any other state as long as such exercise of sovereignty does not undermine or interfere with the recognized individual and human rights of his subjects. Where violation happens as already stated above, the sovereign's 'sovereignness' will be scrutinized.

On a different note, the concept has also been extremely interpreted to fulfill the whims of those relying on it. Bodin and Hobbes coined the term to reflect their perception of an urgent need for internal order.²⁴⁰ This conception later influenced several centuries of internal politics and law but was also relied on by a number of absolute monarchies. Sovereignty has often been misused as a tool for the powerful whose legitimacy or claim over a certain domain was based on an assumed direct or indirect divine or historic authority, but most probably not on the consent of the masses.²⁴¹ This position describes the sovereign as a direct agent of God, and in some communities it was extended to confer god-like recognition over sovereigns. In line with this argument, the sovereign was above the law, or was the law itself, he was immutable and unquestionable. Early European public law, and international law, was meant to serve this very purpose. It achieved this by protecting from legal scrutiny certain events that were later enshrined as matters 'solely within the domestic jurisdiction of a

²³⁸ *Island of Palmas* case Permanent Court of Arbitration, April 4th 1928 UN Reports of International Arbitral Awards, Vol. 2, 829 at 838 quoted in Abiew 1999 as above.

²³⁹ *Wimbledon* case Permanent Court of International Justice Series A No. 1 1923 at 25 quoted in Abiew 1999 as above.

²⁴⁰ Abiew 1999 as above.

²⁴¹ This is not very identifiable with Hobbes's covenant of the Multitude; see Hobbes T *Leviathan* Forgotten Books, 1976 (Original version M Oakesshott ed. 1946) quoted in Reisman M 'Sovereignty and human rights in contemporary international law' *The American Journal of International law* 1990 Vol. 84. No. 4 at 867.

particular state.²⁴² Thus if one political power entered the territory of another sovereign for whatever reason, without his permission, his sovereignty was regarded as having been violated, and in such circumstances his will, which was the only relevant will was offended.²⁴³

In similar light, post independence African states and African leaders are very comfortable, or have rather been too quick in raising the flag of sovereignty to justify the commitment of atrocious acts against their citizens.²⁴⁴ Most African countries still insist on institutionalizing a form of ‘frozen’ state sovereignty that they inherited from their colonial masters at independence.²⁴⁵ This form of state sovereignty is not a national sovereignty that is acquired through popular citizenry. It is rather a sovereignty to silence, and dis-empower masses, a sovereignty whose territory is made up of marginalized people who are irrelevant to the functionality of central state power.²⁴⁶ This form of sovereignty was implemented to facilitate the colonial state, to subjugate local subjects, and ironically African leaders seem comfortable maintaining such power relations with their citizens.

‘Traditional’ sovereignty entitles states to claim ‘non-interference’ when it comes to their internal affairs, including matters involving the treatment of their people. Ironically, despite the internal nature of such affairs, international human rights are meant to address such matters. This has among other things raised the concern that these rights are a challenge to state sovereignty.²⁴⁷ Thus sovereignty and rights, especially the human rights paradigm are seen as being fundamentally opposed. The new discourse of human rights has led many theorists to argue that the legitimacy of governments should be based on their being both non-aggressive and minimally just.²⁴⁸

²⁴² Under article 15(8) of the Covenant of the League of Nations, if the council found a dispute between any two parties ‘to arise out of a matter which by international law is solely within the domestic jurisdiction of that party’ the council would refrain from making any recommendations as to its settlement. See League of Nations Covenant Art 15 para. 8 quoted in Reisman 1990 as above at 867.

²⁴³ Reisman 1990 as above.

²⁴⁴ Deng 2010 as above at 2.

²⁴⁵ Deng 2010 as above.

²⁴⁶ Deng 2010 as above.

²⁴⁷ Reismann 1990 as above at 867.

²⁴⁸ Cohen J ‘Rethinking human rights, democracy and sovereignty in the age of globalisation’ *Political Theory* 2008 Vol. 36 No. 4 at 578.

Basically, the post-Westphalia state has to exercise a sociology of rights in order for it to gain legitimacy not just from its citizens, but the international community as well.²⁴⁹ It has also been argued that the international community has the default obligation to protect and enforce basic human rights.²⁵⁰ Some theorists have gone as far as construing ‘minimal democracy’ as a basic human right.²⁵¹ This is partly because it is regarded as a requirement for justice and partly because it is deemed conducive for peace and respect for other human rights.²⁵² In fact international law has prescribed criteria for appraising conformity of internal state governance with international standards of democracy.²⁵³ Effective implementation of such instruments is what constitutes the basis and evidence of popular or responsible sovereignty.²⁵⁴

How states treat their nationals on their own territory has become a legitimate and increasingly regular and important topic. States and other international actors are free to use most ordinary policy instruments as long as this does not involve imposition of threats or force to influence national human rights practices. But the international community has, with very few exceptions and under limited circumstances, no significant role in the enforcement of human rights. As a general norm, states do not have a right or responsibility to implement or enforce the human rights of foreigners on foreign territory, and the international supervision of national implementation in those territories. There is however considerable international monitoring involved, and human rights treaties and conventions sometimes

²⁴⁹ Deng 2010 as above at 2.

²⁵⁰ Reisman 1990 as above at 868; See Article 21(3) of the Universal Declaration of Human Rights of 1948 GA Res. 217 A (III), UN Doc. A/810, at 71 (1948).

²⁵¹ Reisman 1990 as above at 868.

²⁵² Reisman 1990 as above at 866; See also Cohen 2008 as above at 578.

²⁵³ See the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, GA Res. 1904 (XVIII) (Nov. 20, 1963); International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 UNTS 195; International Convention on the Suppression and Punishment of the Crime of Apartheid, GA Res. 3068 (XXVIII) (Nov. 30, 1973); Convention against Discrimination in Education, Dec. 14, 1960, 429 UNTS 32; Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, June 29, 1951, 165 UNTS 303; Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/180 (Dec. 18, 1979); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA Res. 36/55 (Nov. 25, 1981); Convention concerning Forced or Compulsory Labour, June 28, 1930, 39 UNTS 55; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 3452 (XXX) (Dec. 9, 1975); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46 (Dec. 10, 1984); Code of Conduct for Law Enforcement Officials, GA Res. 34/169 (Dec. 17, 1979); and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34 (Nov. 29, 1985); as well as other numerous conventions on social welfare, marriage and the family and cultural rights. See also Resolutions adopted by the General Assembly during its 20th Session, 20 UN GAOR Supp. (No. 14) at 53-65, UN Doc. A/6014 (1965), (series of resolutions adopted on non-self-governing territories).

²⁵⁴ Buchanan A *Justice, legitimacy and determination* 2004 quoted in Cohen 2008 as above at 578.

require periodic reports, but this does not mean interference with state sovereignty.²⁵⁵ Human rights claims still to a large extent are influenced by geographical limitations as opposed to common argument, and may be as appropriately addressed to the broader international community, as they are to a nation state's sovereign. As long as those claims involve implementation, enforcement, or legal remedy, which to a large extent remains within the domain of states exercising their prerogative within their own territories.²⁵⁶

Ardent proponents of sovereignty have nevertheless blamed human rights for diluting the concept.²⁵⁷ But care has to be taken before raising such arguments. Just because human rights are universal does not necessarily translate them into being opposed to the supreme authority of states. The international human rights regime has in no way made states less sovereign than they were fifty years ago. It is acceptable that contemporary human rights constrain the freedom of action of states, but they are totally compatible with 'westphalian sovereignty.'²⁵⁸ States still retain final authority over human rights issues arising within their domain, state authority to implement and enforce human rights has not been lost or transferred to other actors, with the exception of Europe.²⁵⁹ In fact states have managed to re-define, de-limit, and contain human rights and other rights by being party to instruments that limit their sovereignty, eventually domesticating their use and affirming the authority of the state as the source of such rights.²⁶⁰

The rights that are defined or described by international treaties and conventions are embedded in national systems, and the obligations spelt out are obligations placed upon states towards their nationals (or people under their territorial jurisdiction). The dominant understanding of sovereignty has been reshaped, but not changed, it remains thriving. There is nothing that is surprising about this attempt to respect the sovereignty of states in the construction of international human rights law. International society remains to a large extent made up of sovereign states. International law to a large extent is implemented and enforced nationally. Human rights have simply been incorporated into the established state based

²⁵⁵ Donnelly as above at 8.

²⁵⁶ Donnelly as above at 8.

²⁵⁷ Donnelly as above.

²⁵⁸ Donnelly as above.

²⁵⁹ Europe has a regional system that has encompassed these duties on a regional scale, so such matters are not entirely state responsibility.

²⁶⁰ Donnelly as above at 9.

system of international law and politics.²⁶¹ Human rights are meant to be, and are in most instances embedded within state sovereignty.

But having said that, sovereignty is no longer a stagnant concept, it has transformed over time to encompass ‘popularity’ and participation. The concept of a state and its autonomy has also faced some changes since the international community was granted more involvement.²⁶² For the regime of internal displacement in Africa to be effective, this ‘mature’ form of sovereignty has to be implemented within the continent. There is an urgent need for African states to be responsible to their people, for it is only through responsible sovereignty that internal displacement can be addressed. But there is one problem with popular or responsible sovereignty, it relies on the will of states, states still retain the final choice to be responsible. Where they are unwilling, despite the efforts of the international community, human rights will not be implemented or enforced locally. When one looks at how African states operate, they have re-defined the new sovereignty. They are party to instruments that limit their sovereignty, some have even domesticated these instruments. But they have failed or refused to use these instruments to affirm the authority of a state as source of rights for people (especially people they have ceased or refused to regard as members and subjects).²⁶³

2.5.2.4 Membership and internal displacement

The process of displacement being discussed here has a lot to do with the politics of membership. In relation to this are rights that arise as a result of membership, as well as rights that are denied due to a failure to conform to deserve such membership. How does one conceptualize the proper sub-set of human rights in terms of the membership principle? How does this relate to the issue of internal displacement? It has been suggested that it is better to go about this ex- negativo.²⁶⁴ Thus one should not come up with a list of individual rights that fair membership entails. Instead one should proceed by establishing the threshold of radical violation of the membership principle that indicates not the absence of political

²⁶¹ Donnelly as above.

²⁶² Reisman 1990 as above at 867.

²⁶³ In countries where internal displacement has been experienced, various international treaties and conventions have been signed and at times ratified. Constitutions that have adopted Bill of Rights are in place, yet gross violations of such rights are carried out on the ground. How the international community managed the monitoring and implementation of these instruments is still vague.

²⁶⁴ Cohen 2008 as above at 586.

participation, dissent or concern and respect, but rather absolute non belonging.²⁶⁵ Such violations in the context of phenomena relating to internal displacement in Africa include discrimination and victimization of certain groups on the basis of their belonging to a politically incorrect ethnic group, or tribe or religious sect or racial group.

This discrimination is ironic because one does not have the choice to even opt out of the tribe or ethnic group they are born into, or religion they practice or race they belong to. It should be noted that political membership is about inclusion, and to treat some categories of citizens as ‘no-counts’, whose existence can completely be ignored, yet over whom the state continues to rule, is equivalent to treating them as outsiders, or as mere things.²⁶⁶ Such violation of the membership principle leaves internally displaced persons desperate, for they still fall within the territory of the state that excludes them. At the same time, this ‘territoriality’ makes it hard for them to access international assistance.

Because membership being discussed here relates to membership to a sovereign state, such membership is not voluntary. This means one does not have an option of deciding where they would want to belong, or an opportunity of opting out of their nationality. This being the case, non violation of the principle of membership under such circumstance should, in addition to ‘popular sovereignty’ be made a requirement for deciding whether the government is properly providing for the basic human rights of its people and whether it is a legitimate government.²⁶⁷ The issue becomes under what circumstances can other states regard the membership principle as having been violated so radically to an extent that harsh sanctions or military intervention may be called for without inviting the charge of intolerance, and liberal imperial imposition? What negative state action and violations of its own should justify international enforceable legal human rights?

Under international law it has been provided that if a state engages in mass extermination (ethnic cleansing), mass expulsion (displacement), massive crimes against humanity including virtual exclusion or enslavement of particular categories of citizens, the particular state forfeits the claim to represent these groups.²⁶⁸ Where policies or exclusive actions or ‘separatist’ laws basically claim or act in a manner that can be interpreted to mean the

²⁶⁵ Cohen 2008 as above.

²⁶⁶ Cohen 2008 as above.

²⁶⁷ Cohen 2008 as above.

²⁶⁸ Cohen 2008 as above at 587.

targeted groups are no longer members of the political or cultural communities the sovereign forfeits his sovereignty over such group.²⁶⁹

These practices violate individual moral rights, but they also encourage the politics of exclusion and destruction for which the machinery of human rights was set up to redress.²⁷⁰ By denying not a particular set of rights entitling one to practice citizenry,²⁷¹ but rather the right to have rights (moral rights) within a state, the government forfeits the claim to speak for and the right to forcefully rule the groups it excludes and oppresses. It breaks down the relationship it has with its citizens, which relationship guarantees its sovereignty in relation to the particular group of people and also in relation to other states regarding this particular group of people. These actions neutralize the sovereignty of the particular state with regard to the group of people it has excluded and international human rights and international law provide that the community of states should be able to fall in and provide for such people.²⁷² This argument is highly related to the cause for the evolution of the ‘sovereignty as responsibility’ and ‘responsibility to protect’ doctrine and is the basis of international intervention and protection on behalf of IDPs and other vulnerable populations.²⁷³

2.5.2.5 Re-conceptualizing African sovereignty in light of responsibility to protect

In essence ‘responsible sovereignty’ is the political and intellectual basis of the doctrine of ‘responsibility to protect’.²⁷⁴ Traces of this view can be found in the Universal Declaration of Human Rights (UDHR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and People’s Rights among others. All these documents have referred to the will of the people as a basis for government authority.²⁷⁵ This can be interpreted to mean that state sovereignty should not be legitimized entirely by virtue of a specific government maintaining control over a specific territory.

²⁶⁹ See the case of South Sudan, the Kurds in Iraq, apartheid South Africa, and Bosnian Serbs.

²⁷⁰ Cohen 2008 as above at 587.

²⁷¹ For instance freedom of expression or right to vote.

²⁷² Cohen 2008 as above at 587; See the Genocide Convention and the Statute of the International Criminal Court. Both have the effect of defining and outlawing crimes against humanity, ethnic cleansing and severe forms of discrimination that amount to enslavement.

²⁷³ Cohen 2008 as above at 587.

²⁷⁴ Bellamy A ‘Realizing the responsibility to protect’ *International Studies Perspective* 2009 Vol. 10 at 111.

²⁷⁵ Deng 2010 as above at 4.

Rather, legitimacy of a sovereign must additionally be derived from the will of the people within its control, not as a result of duress or fear instilled, but as a result of respect for its sovereign existence.²⁷⁶ According to these three basic human rights documents for Africa, the people must have a say in the way the state is run, especially in matters relating to their human dignity, fundamental freedoms, and human rights. A sovereign government that is responsible, in turn has a ‘responsibility to protect’ its people and additionally to accept their will in terms of governance fundamentals.²⁷⁷

The international Commission on Intervention and State Sovereignty (ICISS) in its report on the ‘responsibility to protect’ re-conceptualized sovereignty as follows:

...Sovereign states have the primary responsibility for the protection of their people from avoidable catastrophe, from mass murder, rape, starvation...but when they are unable or unwilling to do so, the responsibility must be borne by the wider community of states²⁷⁸

The above evolution of the concept of sovereignty has not been drastic enough to re-conceptualize the notion completely. Rather, the definition of sovereignty has strongly metamorphosed to reiterate, reassert and re-emphasize the obligations and duties of collective sovereign states towards the protection and upholding of citizens’ and residents’ rights.²⁷⁹ In the 1990s, the then UN Special Representative on Internally Displaced Persons, Francis Deng and Roberta Cohen, a senior fellow at the Brookings Institution, through tireless work to protect vulnerable populations caught within borders, developed the concept of ‘sovereignty as responsibility’.²⁸⁰ In 1999 Koffi Annan the then Secretary General of the United Nations, reiterated the concept when he challenged the international community to develop a way of reconciling the analogous principles of sovereignty and fundamental human rights.²⁸¹

²⁷⁶ See Universal Declaration of Human Rights (1948) Art 21 (3), the International Covenant on Economic, Social and Cultural Rights (1966) Art 1 and The African Charter on Human and People’s Rights (1990) Art 20 (1).

²⁷⁷ See Deng F et al. (eds.) *Sovereignty as responsibility: conflict management in Africa* 1996 at 1.

²⁷⁸ International Commission on Intervention and State Sovereignty (ICISS) *The responsibility to protect* 2001 at 6.

²⁷⁹ Deng 2010 as above at 3.

²⁸⁰ See Deng and Cohen 1998 as above at 24; Deng F ‘The impact of state failure on migration’ *Mediterranean Quarterly* 2004 Vol. 15 No. 4 at 17; Korn D and Weiss 2006 as above at 17.

²⁸¹ Bellamy 2009 as above at 111; See also Annan K Annual Report of the Secretary General to the General Assembly, September 1999 at 20.

The Canadian government responded to the challenge, in turn it created the International Commission on Intervention and State Sovereignty (ICISS).²⁸² Through the commission's advocacy, the doctrine of 'responsibility to protect' was eventually adopted by the United Nations World Summit in 2005.²⁸³ World leaders at this summit unanimously declared the responsibility that all states have with respect to protecting their citizens from genocide, war crimes, crimes against humanity, and ethnic cleansing. Additionally an undertaking was made to assume collective action in cases where national authorities 'are manifestly failing to protect their populations'.²⁸⁴ The United Nations Security Council reaffirmed 'responsibility to protect' through Resolution 1674 in April 2006 and pledged its commitment adopt appropriate measures where necessary to operationalize the doctrine.²⁸⁵

The principle of responsibility to protect emphasizes that the international community has a duty to prevent, a duty to react and a duty to rebuild. This is a revolutionary way of conceptualizing sovereignty in order to introduce a culture of national and international accountability. The doctrine is basically a mobilization tool to effect timely reaction to humanitarian crises.²⁸⁶ The failure of the United Nations troops present in Rwanda to act and protect millions of people during the 1994 genocide resulted in an international outcry for the re-evaluation of relevant international norms. It has now been accepted that the idea of sovereignty must be respected as a basis for relations between states, however measures should be taken to prevent and halt humanitarian emergencies such as genocide and mass displacements.

At times such initiatives to prevent and halt humanitarian crises have been confused with endorsement of the notion of enforced military intervention under the guise of humanitarian programs. As much as the creators of responsibility to protect argue that such was not the intention, the line between the two concepts is very narrow.²⁸⁷ Such misconceptions have been the basis for contention against the responsibility to protect doctrine. Proponents of responsibility to protect argue that it is not a basis for humanitarian or military humanism, but then what is it? Responsibility to protect is very closely linked to humanitarian

²⁸² Bellamy 2009 as above.

²⁸³ Bellamy 2009 as above.

²⁸⁴ United Nations World Summit A. /60/L. 1, September 20, 2005, para. 139.

²⁸⁵ Bellamy 2009 as above at 111.

²⁸⁶ Policy Advisory Group 'Africa's responsibility to protect' Seminar Report 23-24 April 2007 Somerset West, South Africa at 7.

²⁸⁷ Bellamy 2009 as above at 117, 118.

intervention, whether forceful or not. It has been argued that it has the potential to be abused and result in unilateral forceful intervention for individual state interest.²⁸⁸ These constant misgivings towards the principle on the basis of its close relationship with humanitarian intervention have been the basis of lack of consensus internationally to operationalize it.²⁸⁹

To limit the unauthorized abuse of the principle, the requirement for Security Council authorization should be strengthened.²⁹⁰ Before intervention of any kind takes place, there should be authorization that the step is a collective attempt by states to rectify a situation of mass atrocities and genocide.²⁹¹ The most common argument raised against strict adherence to Security Council authorization is that the United Nations has in some cases failed to timely pass resolutions for intervention due to procedural and political bureaucracy.²⁹² This has had the effect of leaving victims of internal disturbances, wars or ethnic cleansing protectionless.²⁹³ In cases where arguments relating to the timeliness of such resolutions are raised, regional hegemons should step in and take steps to protect innocent civilians.²⁹⁴ The key here is that it is more likely for states to accept decisions from their own regional or sub-regional groups and chances are it is still a collective initiative and not foreign enough to threaten the territorial integrity of the particular state.²⁹⁵ African initiatives such as AMISOM, the proposed African standby force and sub-regional brigades such as ECOMOG and EASBRIG are but a few examples of regional peacekeeping initiatives that advance protection to civilians under the principle of responsibility to protect.

The development of a regional peacekeeping capacity will also take off the pressure of waiting for and relying on western peacekeepers who are dwindling in numbers as western states continuously seem reluctant to contribute peace keeping capacity to strategically insignificant regions. Circumstances are worsened by the pre-occupation of western states with non-UN missions such as those embarked on in Iraq, Afghanistan and the Balkans. It seems there is a disconnect between states that mandate peace operations, by advocating for

²⁸⁸ For instance the situation that occurred in Iraq and Afghanistan.

²⁸⁹ Bellamy 2009 as above at 112, 113.

²⁹⁰ Bellamy 2009 as above at 112.

²⁹¹ Bellamy 2009 as above at 117, 118.

²⁹² Bellamy 2009 as above at 112.

²⁹³ Failure of the international community to timely halt the Rwandan genocide in 1994 is a case in point.

²⁹⁴ This was the basis of ECOWAS's intervention in Liberia and Sierra Leone.

²⁹⁵ Bellamy 2009 as above at 121.

responsibility to protect and those that actually contribute troops to UN operations.²⁹⁶ This has among other things added pressure on African states to build capacity for peace keeping, but it has at the same time raised the realization that discriminatory intervention by western states does and is bound to take place under the guise of responsibility to protect.²⁹⁷ This doubt can be neutralized by initiating collective regional responses as opposed to entirely relying on western intervention as already stated above.

2.6 (Re) constructing forced displacement and protection in Africa

The issue of protection during forced displacement, and internal displacement in particular has been over the years approached from a legal perspective. Most of the efforts to address the issue took the form of legal definitions of the concept, legal descriptions of who fell within and eventually legal provisions with regard to how these populations could be protected and assisted.²⁹⁸ Displacement has been regarded a vulnerability in itself without taking into consideration other factors that might have led to displacement forging itself as a coping strategy.²⁹⁹ This means that whenever displacement is addressed, only one aspect of the problem is being dealt with, that is, mobility of populations within borders and the resulting consequences. Time has not been taken to question other underlying vulnerabilities that in themselves are causes as well as effects of displacement. These factors are what make IDPs more susceptible and vulnerable. They include religion, ethnicity, gender, age, occupation and other aspects of identity.³⁰⁰

The law has a tendency of coping with what it cannot understand or comprehend by defining and de-limiting. The phenomenon of forced displacement is a result of broken identities and fractured governance. It is a result of territorialized societies and disturbances of collective identities that disrupt one's sense of place.³⁰¹ But it should be noted that as humans in Africa, a sense of place and identity is not necessarily vexed in a defined geographical position that is highlighted by border gates and administrative authorities. A sense of place comes from

²⁹⁶ Bellamy 2009 as above.

²⁹⁷ Bellamy 2009 as above.

²⁹⁸ Darcy and Collinson 2009 as above at 42.

²⁹⁹ Darcy and Collinson 2009 as above.

³⁰⁰ Darcy and Collinson 2009 as above.

³⁰¹ Schechter 2000 as above at 1.

collective and common cultural practices, language, communal sharing, friendship, and a sense of identity such as religion, ethnicity and gender.³⁰²

The breakdown of these social identities coupled with their politicization and scramble for, or lack of resources, bad governance and external influences have resulted in what we now describe as internal displacement. It was an anomaly, a cultural predicament that had to be defined, de-limited and labeled in-order to be understood, but also more importantly in-order to be controlled by the law.³⁰³ But after numerous repetitive legal definitions and legislations, after various legally backed interventions, the problem of displacement still prevails in Africa.³⁰⁴ Displaced persons are a conception of broken identities and fractured societies, but they are also conceptions of international protection regimes, victims of the limits, fractures and gaps within the law.³⁰⁵ Repairing the broken realities of these populations in Africa will need the law and much more. It will require addressing displacement through legal and other disciplinary approaches that can permeate into the cracks of society, preferably disciplines that have evolved from the society itself and have been used to repair our African societies so many years before law arrived.

2.6.1 Complementing internal displacement frameworks: African worldviews

The introduction of references to Africa requires me to place such method or reference within certain constructs. Yet limiting such a widely practiced and un-codified phenomenon is to deny it its life and uniqueness. Current African ways of life and practices cannot be referred to as exclusively indigenous, customary, informal or traditional. They are neither specifically cultures or religions nor forms of justice.³⁰⁶ African worldviews are all the above, referring to them as ‘traditional’ limits their life in time and might signify their astaticism within certain political, economic, or social circumstances. But African ways of life are nothing but stagnant, they change, adapt, and conform.³⁰⁷ Traditions that existed in pre-colonial Africa for instance, can hardly be found in existence in the same form. They have been influenced by foreign cultures, colonization, modernization, globalization and conflict. Yet they still

³⁰² Schechter 2000 as above.

³⁰³ Schechter 2000 as above.

³⁰⁴ Schechter 2000 as above.

³⁰⁵ Schechter 2000 as above.

³⁰⁶ Huyse L *Traditional justice and reconciliation after violent conflict: learning from African experiences* 2008 International Institute of Democracy and Electoral Assistance IDEA at 7.

³⁰⁷ Huyse 2008 as above.

remain loyal to Africa and maintain their African identities even though one cannot regard them as strictly ‘traditional’.³⁰⁸

At the same time referring to them as indigenous means that they belong to certain groups that are the original dwellers of the continent. But this is not the case the continent has evolved and invited and included so many other cultures. They are neither exclusively customary, because at present they have permeated unintentionally into other areas of the modern state and been transposed by Africans everywhere they go. Yet calling them informal or non-state also is a limitation since they have been applied in formal arenas of law and state practices intentionally and unintentionally.³⁰⁹ Yet they remain unacknowledged and attempts to define them have limited their application into areas they might prove useful. In this study for the sake of accuracy I shall call them African worldviews. For they represent to the world what African eyes see and ears hear.

This brings me to the question, why suggest additional reliance on African worldviews, when there are legal systems providing for the protection of internally displaced persons in Africa? The answer to this is that law in itself is not comprehensive enough to provide protection to internally displaced persons within the Great Lakes region. Law is an elitist political tool that excludes those who cannot access it due to failure to conform to its pass-key requirements such as education, language, court and legal fees. At the same time law is associated with government, tyranny, and seen as foreign and an imposer. This makes any process resulting from or related to law very suspicious. This view is compounded in areas where governments have failed to respond to problems faced by the general masses or where the same governments are responsible for broad violations of their national’s rights including acts of displacement. Such suspicions by the general population, consequently distort perceptions over the degree of effectiveness of government led processes.

It is in consideration of such skewed perceptions over government led protection initiatives that community initiated processes should be allowed to foster. Government can facilitate the development of such process, for it is the same communities that decide when and how they shall heal, most of the time without government’s initiatives. Government can offer support and infrastructure for this to happen, but society should play a big part in determining how

³⁰⁸ Huyse 2008 as above at 7 and 8.

³⁰⁹ For instance, the Gacaca system in Rwanda is a hybrid of traditional systems and legal mechanisms.

this happens. Law has a top-down approach, and the argument here is that for it to effectively trickle to the communities it is meant to provide for, does not only take time but sometimes proves to be an impossible task, a bottom-top approach should be allowed to take place.

People affected by conflicts are mostly found in rural areas of Africa. A majority of such groups are neither elite, educated nor do they have access to political mechanisms. Under such circumstances law serves as a bridge that can easily be erected to create connections and relations between the society the law is meant to heal, issues faced by such society (including post conflict systems, to prevent, protect or reintegrate communities) and governments and other responsible organs who are expected to carry out the process of protection and reconstruction. There is one glitch to such bridges, they need to take into account societal underpinnings, for without them law still has cracks, which though insignificant in appearance, are capable of eventually leading to the crumble of the bridges built. Cultural substance and referential frames must conform to the paradigm they are meant to serve in order to be effective and comprehensive.

Where state mechanisms do not seem sufficient or have failed dismally to protect, legal frameworks set up eventually with the aid of the international community will still have cracks as far as protection and attainment of durable solutions is concerned.³¹⁰ These legal and institutional protection frameworks can be complimented by community structures. Such structures and values can be a good source of protection for internally displaced persons. The issue of displacement has to be addressed within a broader humanitarian strategy which takes into account needs of the people involved as a whole.³¹¹ For long term resolution of displacement, steps that strengthen civil society and promote conflict resolution as well as reconciliation within different cultural, ethnic and religious groups are capable of contributing to effective protection of displaced groups, and eventually safe return, and reintegration.³¹²

African society has on its own over years created ways of coping with such protection gaps before the creation of states and during state failure to protect society. These institutions and

³¹⁰ Scharf W 'Non-State justice systems in Southern Africa: How should Governments respond?' Institute of Criminology, University of Cape Town at 6 <http://www.gsdrc.org/docs/openDS35.pdf> visited on 28-10-2011.

³¹¹ Bagshaw and Paul 2004 as above at 86.

³¹² Bagshaw and Paul 2004 as above at 87.

practices, include African indigenous justice, African philosophies of redemption, African humanism, African religious theism, Ethics of forgiveness, African legal systems and other general values. They can be relied on to bring comprehensiveness to the international and state-centered frameworks for protecting people against, during and after displacement as well as resolving conflicts and violations that occur during such time. They are also capable of providing strong backdrops for reconciliation, and reintegration. It is only after including and applying such deep rooted, community based primordial and living practices that one can say that the needs of the people as a whole have been taken into account and displacement in Africa has been addressed comprehensively.

2.6.1.1 African Humanism

In Africa there is a *bantu* saying that states that *umuntu ngubuntu ngabantu* which loosely translated means a person's humanness is determined by other people, or how one treats other people and how they react to that treatment.³¹³ Rights in the African culture are not determined individually, they are rather regarded as communal and are distributed on the basis of age, experience, and sometimes sexual orientation. In some instances, one's social role may determine theory correlative rights and duties.³¹⁴

It should be noted that the application of African humanism (*ubuntu, botho or obuntu*) is very vast, it extends to other aspects of social relations such as religion and social justice. It should be noted that African humanism emphasizes the longing to 'be', rather than to have.³¹⁵ It is this emphasis that makes Africans less self centered and more involved with the communities they originate. Under such circumstances it would seem more difficult to isolate, segregate and promote self interests which justify oppression and victimization of others. In the African sense there are no 'others', it is impossible to have 'others' when 'we all are'.

The traditional African has shrines, but not churches or temples, and his faith in Supreme Beings finds expression in social relationships, in music, in his art and craftwork, in the cultivation of the soil and so on. To meet the eternal spirit in all objects and all humans is to be emancipated. Our ancestral spirits

³¹³ Others regard this as the philosophy of 'I am because we are; See John S Mbiti 'African religions and philosophy' 1970 at 141 quoted in Cobbah J 'African values and human rights: An African perspective' *Human rights Quarterly* 1987 Vol. 9 No. 3 at 320; This has also been referred to as *ubuntu* in Southern Africa, or *obuntu* in Eastern and some parts of Central Africa.

³¹⁴ Cobbah 1987 as above at 323.

³¹⁵ Cobbah 1987 as above at 320-322.

teach us through proverb, folk tale, and song the wisdom on how to conduct ourselves in order to realize the Supreme Being as a vital force in our relationships with things and beings.³¹⁶

‘Ubuntu’ is an ancient African philosophy concerned with the notion of communalism ‘I am because we are and because we are therefore I am’, which was, and still is driven by beliefs such as truth, justice and compassion. This philosophy discourages discrimination on the basis of race, colour, creed, economic affluence, social status, gender, nationality, or legal status. The theory is based on an assumption that it is the same life that flows through every member of the human race and one cannot therefore discriminate between one human being and the other. The philosophy even goes as far as defending other beings such as animals, nature, and the environment.

Thus it can be surmised that the continued observation of such a philosophy could create a balance between the ‘self’ and others’ as well as between the ‘internal’ and ‘external’ or the ‘I’ and the ‘others.’ Such a practice is actually the back-bone of the human rights movement and could be a good basis for advocating promotion of protection of the rights of the internally displaced in Africa.³¹⁷ If one can practice such a philosophy and even involve it in the human rights debates it could assist in rebuilding broken communities, especially the healing process and restorative justice in post conflict societies. When one discusses African worldviews we are basically dipping into the notion of ubuntu. Whether it is African religion, African forms of justice, ethics of forgiveness, redemption, there is a notion of ubuntu that will be found or that underlies all the above. Ubuntu is the African conceptual way of reasoning that is found within all African institutions and practices.

Within the South African post conflict scene, to heal society, re-build it and prevent any future break-down and displacements the Constitutional Court has gone to the extent of including notions of Ubuntu in its decisions. This way Ubuntu as a philosophy has been infused with law to fill up cracks in society. The Ubuntu jurisprudence that has been mainstreamed into law and precedent infuses primordial living African communitarian ways of thinking into daily legal reasoning. The result has been a rich jurisprudence that is

³¹⁶ Motsei M *The Kanga and the Kangaroo court: Reflections on the rape trial of Jacob Zuma* 2007 at 10.

³¹⁷ Motsei 2007 as above.

concerned with ‘we are’ as opposed to self interests of ‘I am’, a set of law that is concerned with people as a whole.³¹⁸

2.6.1.2 African perspectives on rights and entitlements

In the African sense rights have always existed, but modern scholars have had a predominant tendency to believe that rights in the African context were derived from western philosophies. It has been suggested on a number of occasions that the African approach towards rights, especially human and individual rights might be the perfect way to coin rights, especially when one considers communitarianism within the African context.³¹⁹ Through interaction, relations with visitors and sometimes impositions from the west, western concepts of individual rights have been transplanted into non western parts of the world. In Africa, for example African justice, African legal education eventually adopted western liberalism. At independence African countries transplanted the western views on rights and law into their new system. Most of the transplanting was done on a ‘copy and paste’ basis without taking into account the context in which these concepts would have to be applied. It should be noted that the adoption of these western liberal concepts did not come without some benefits, and one cannot entirely claim that some African perspectives did not require supplementation, but there are some elements of the African thought that are still useful.

The relationship between rights in the African sense and the current debate on human rights and rights of internally displaced persons in Africa might play a key role in directing this study to the existing problems of displacement and how they can be resolved. So far the concept of human rights in the westphalian sense has been relied on, but it would be much more interesting to delve into African concepts of rights and how these can be adopted in the African context, to solve African problems. Most of the documents relating to rights, especially human rights documents were coined at a time when most African countries were not afforded a chance to contribute. Consequently the cultural aspect of rights from an African perspective was not reflected, but this aspect might be very important in resolving

³¹⁸ See Cornell D and Muvangua N (eds.) *Ubuntu and the Law: African ideals and post-apartheid jurisprudence* 2011.

³¹⁹ Cobbah 1987 as above at 309.

the current problems facing African societies.³²⁰ An afro-centric view of society may provide a helpful input in re-assessing the rights and duties that a society owes to an individual and vice versa.³²¹

It has been realized that it is possible to enhance and magnify the concept of rights especially human rights by applying the worldview of African culture without necessarily resorting to the individualism of the west. The African system of rights is not based in self interest of an individual, rather it is more concerned with the collective survival of a community or society. It is this particular unique point of view that separates it from the western approach and sets it out as a perfect model for modern human rights. In a society where these views are prevalent, introduction of western individualism, self interest and other selfish approaches might have contributed a lot to existing conflicts, which are mostly based on selfish needs of individuals, groups, or government factions, trying to exist preferentially above the rest of the society, and gain access to more resources, more opportunities and so forth.³²²

Throughout out the course of his life, an African expresses his humanity in terms of his society. African communal structures are strongly based on reciprocity and family responsibility, and this is passed from one generation to another. This does not mean that there is no trait of 'self' in African societies, or that it is an entirely western concept, but within African societies it is diluted by a deeply embedded socialization and sense of 'we' resulting in a totally unique sense of 'self' varying from the one exuded in western societies.³²³ Cultural reactivists' viewpoints have been gaining a lot of support in human rights discussions. They have mostly advocated for a more solid foundation for modern rights, especially human rights. It has been stated on a couple of occasions that these rights should be based on a conception of man in a society.³²⁴ Of course conceptualizing human beings in society may translate into giving up the convenience of equality in nature, but it is

³²⁰ For example the Universal Declaration of Human Rights was adopted in Dec 1948 at a time when most of the population of Africa south of the Sahara was still under colonial domination, thus the General Assembly was influenced to a major extent by non Africans. The Declaration is by and large a product of western liberal ideologies; Cobbah 1987 as above 316.

³²¹ Cobbah 1987 as above at 331.

³²² Kgalushi K *Current perspectives on African philosophy-Ubuntu/Botho* 2001 quoted in Motsei 2007 as above at 9; where Dr Kgalushi tells a story about an American bishop who stopped by Johannesburg in 1957 and gave a sermon where he remarked that at the time when the East and West were fighting the cold war, Africa would be the savior of these countries from mutual destruction through its revival of humanness or *ubuntu*, it is this concept that saved Africa from getting totally enrolled in the war.

³²³ Cobbah 1987 as above at 325.

³²⁴ Cobbah 1987 as above.

necessary to deal with society in real terms, as it really exists in order to attain perfection at a national, regional and international level and to further issues of human dignity and human rights.

At the end of the day one wonders whether Africans need to modernize to become individuals in the western sense and whether the modern liberal state with its western traditions should be allowed to dilute the traditional African systems, especially those relating to rights.³²⁵ A lot of African problems seem to be deeply rooted, beyond the reach of human rights and international law regimes. Perhaps a different perspective needs to be taken in addressing these problems.

2.6.1.3 African perspectives on justice

Unlike the legal justice system, the African justice system is victim oriented. The goal of African justice is restoration of the victim and the reintegration of the offender into the community.³²⁶ As opposed to concentrating on punishing the victim and disregarding compensation, (not necessarily in monetary terms, but in the form of values and gestures that matter to healing such as an apology), the African justice system does not forget the victim. According to African worldview, humans err but they are not inherently bad, as opposed to the teachings of Hobbes and other philosophies of Westphalia. African justice always sees the potential of humans to redeem themselves. It sees today's perpetrator as tomorrow's victim. This means that if society punishes today's perpetrator it is inevitably punishing itself. Since the community in African perspectives is interrelated, punishing the perpetrator is also additionally punishing his family and subsequently punishing oneself. As a popular saying goes 'a child does not raise themselves, they are raised and guided by society', this goes to deduce that, if a child of society errs then it is also society's fault, and the child should be cautioned, taught the right values and forgiven.³²⁷

Throughout the process of justice, the African justice system ensures that both parties, the victim and the vector become part and parcel of the justice proceedings. It also ensures that both parties are satisfied at the end, something that rarely happens in mainstream legal

³²⁵ Cobbah 1987 as above at 324.

³²⁶ Elechi O, Morill S and Schauer E 'Restoring justice (Ubuntu): An African perspective' *International Criminal Justice Review* 2010 Vol. 2 No. 1 at 73.

³²⁷ Elechi 2010 as above at 74.

system. In African justice systems the victim's needs must be addressed otherwise, if one is disgruntled, they become tomorrow's offenders.³²⁸ Additionally, the perpetrator must also be satisfied with the corrective measures taken against him, otherwise if unsatisfied, he will not learn from the process or become a better person. If there has been a conflict, that has harmed and dislocated people, African forms of justice intend to restore the relationship and social harmony disrupted by conflict. In the course of facilitating African justice, an all inclusive approach is taken.³²⁹

All stakeholders have equal access to participation, representation, and presentation in the process, and this is what renders it more effective. The decisions reached are not made unanimously but through a consensus of both offending and victim parties and the community at large including respected elders. Justice making from an African perspective is not only concerned with punishing the victim or setting right the wrongs, it is also a learning opportunity for values to be re-examined. African justice mechanisms are additionally not external, the players and facilitators are the community itself. These include families of the parties involved, extended family, and people who are regarded to have authority or knowledge over the matter. But the main two actors are usually the victim and offender, as the community offers audience and acts as a buffer. Such invaluable systems of resolving societal fractures should be included in the protection frameworks set up to address internal displacement in Africa. They are capable of offering long-term, community oriented durable solutions to root causes of displacement.

2.6.1.4 African religion and reconciliation

African religion in this study refers to the 'indigenous' religion practiced by African people.³³⁰ This religion is believed to have evolved over time without specific founders or historical documentation.³³¹ It has been transposed and recorded through oral culture, proverbs, ritual formulas, prayers, creedal formulations and symbols. Beliefs in this religion are centered on monotheistic acknowledgements of God as the invisible creator of all things, to whom people pray and give praise names.³³² At the same time the ethics and morality of African religion are central in regulating social inter-relationships between the living as well

³²⁸ Elechi 2010 as above at 75.

³²⁹ Elechi 2010 as above.

³³⁰ Mbiti J 'Never break the pot that keeps you together' Peace reconciliation and African religion *Dialogue and Alliance* 2010 Spring/Summer Issue at 1.

³³¹ Mbiti 2010 as above.

³³² Mbiti 2010 as above.

as the dead.³³³ African religion is not specific to one particular place in Africa. Every African people have adopted their own way of expressing their indigenous religious beliefs. But there are similar features that allow one to collectively refer to African religion in the singular, whilst taking into consideration the non-existence of uniformity or centralized institutions in practicing such religion.³³⁴ African religion is deeply imbedded in the wholesome life and worldview of African people, but at the same time it does not delineate life into religious and secular components.³³⁵ It silently still dictates African ways of life by lying low within political, religious, economic, educational, historical and communicational transformation of Africa.³³⁶

In African terminology one is always advised ‘not to break the pot that keeps society together.’³³⁷ This is indicative of the importance that African values place upon unity, and peace. The colonization and shaping or re-shaping of African cultural and religious dignity was not attained without struggle on the part of the colonizers. This had the potential of leaving the revolting communities torn, punished and banished.³³⁸ Most of Africa gained back its independence between 1950 and 1994, but it did not regain its cultural and religious dignity entirely.³³⁹ To regain this Africa had to fight, and it was not a peaceful quick process. It was not a choice for our colonial masters to hand us back the identity they had hijacked from us, neither did they hand it back in its hijacked form. Africa was thus shaped and re-shaped through struggle, force and tyranny, and such violent legacies have gone on to affect Africa’s identity, its place and its politics. Such violent legacies are continuously signified through intense political changes, armed struggles, dissatisfaction with power, and failed democracies. Consequences of these fractures manifest through the flight of millions within and outside their countries.³⁴⁰

Yet what was left, what we regained is comparatively invaluable. It constitutes beliefs that remain alive within Africa’s political, social, economic, and religious spheres. These beliefs are embedded in our bodies, minds, souls and the whole society. These values should be used

³³³ Mbiti 2010 as above.

³³⁴ Mbiti 2010 as above.

³³⁵ Mbiti 2010 as above.

³³⁶ Mbiti 2010 as above.

³³⁷ Mbiti 2010 as above.

³³⁸ Mbiti 2010 as above.

³³⁹ Mbiti 2010 as above.

³⁴⁰ Mbiti 2010 as above.

and relied on to advance peace and reconciliation and help the African society to seal the wounds it has acquired. From an African religious perspective, peace and reconciliation are the basis on which society can flourish. Since we are dealing with African peoples, and most situations of displacement and protracted civil strife happen in peri-urban and rural areas of Africa. It is imperative to discuss African religions which though constituting a significant part of African life, have been ignored. African religion still embodies rich values of forgiveness, ethics of redemption, moralities of togetherness and a self of brotherhood that is highly relevant to the era of violence Africa is confronted with.

Religion is a unifying force and it is central to human kind's history. An African is a notoriously religious person.³⁴¹ Wherever an African is, there religion will be, whether it is Christian, Moslem or Traditional African religion.³⁴² In African traditional society, religion was the guardian of tradition. There is and still is a religio-cultural link that within African contexts is inseparable. Religion has within Africa been the standard of morality and the teacher of wisdom. It is the energizer and life giver, with various attributes of redemption, peace, forgiveness, survival and also a keeper of history and life lessons. It is very ironic that such a deeply religious continent is now laboring under ravages of conflict, injustices and wars, everything that African traditional religion prepared us to handle.³⁴³

Various institutions within a traditional African religio-cultural set up can be relied on to strengthen current protection frameworks because they were specifically meant to repair such ordeals. An African values life, respects death, God and mother earth. To an African whatever is deemed sacred is respected and upheld by the whole community. What was deemed sacred was defined by institutions that were meant to maintain the peaceful co-existence and settling of disputes, these institutions played an important role in averting conflicts, or minimizing their effects.³⁴⁴ These institutions include ancestor-hood, elders, religious leaders, covenants, songs, idioms and rituals or prayers for peace and reconciliation.³⁴⁵ Institutions of ancestor-hood were meant to exert certain levels of conformity within communities. These institutions were conduits for maintaining harmony in society. They promoted peace through their perceived effect on good and bad

³⁴¹ Kasomo D 'The position of African traditional religion in conflict prevention' *International Journal of Sociology and Anthropology* 2010 Vol. 2 No. 2 at 23.

³⁴² Kasomo 2010 as above at 24.

³⁴³ Kasomo 2010 as above.

³⁴⁴ Kasomo 2010 as above.

³⁴⁵ Kasomo 2010 as above at 25.

behavior.³⁴⁶ This forced the living to conform to certain moral values in order to maintain good relations with their ancestors. Such conformation does or would not allow experiences such as killing, or pouring of a kinsman's blood in conflict for it would anger the ancestors. And calamity would follow³⁴⁷

Elders are also an integral and important part of African systems of maintaining and promoting peace and harmony. Elders in society were ethical professionals and they were responsible for teaching, guidance and counseling on moral values. On the other hand religious leaders also were responsible for guiding the community, especially in issues relating to God, spirits and ancestors.³⁴⁸ Such leaders were responsible for teaching orally and through examples. Where inter-community wars arose, communities were disrupted and it was believed that this in addition, disrupted peace between peoples on earth and even within the spiritual realms and God's forces.

Religious leaders came in handy at this point because they maintained peace between the visible and the invisible world. This was ensured through processes such as offering sacrifices, and pouring libations. Additionally peace would be restored through prayers and solemn oaths. Such prayers for peace and reconciliation were proven acts of peace as opposed to speculation about it. Peace was initiated at a personal level between two or more persons, in the neighbourhood, community, and among tribes that may have been experiencing disputes.³⁴⁹ Peace within African communities is not taken for granted, African communities do quarrel, fight, and even injure one another, and African religio-cultural practices are set up to first acknowledge that society and people are not perfect, and to work within these imperfections to maintain peace and facilitate reconciliation.³⁵⁰ These institutions and practices can prove to be invaluable if employed to complement existing legal frameworks for the protection of internally displaced persons. In fact there are some existing post conflict areas in Africa where such mechanisms have been employed successfully to compliment legal initiatives for peace.³⁵¹ The key is to legitimize and uniformly employ

³⁴⁶ Kasomo 2010 as above.

³⁴⁷ Kasomo 2010 as above.

³⁴⁸ Kasomo 2010 as above.

³⁴⁹ Mbiti 2010 as above at at 5.

³⁵⁰ Mbiti 2010 as above.

³⁵¹ See the traditional mechanisms of *Gacaca* that were employed in post conflict Rwanda, the *Curandeiros* traditional healing that was employed in Mozambique, the *Mato Oput*, Cooling of the hearts and *Moyo Kum* (cleansing the body) that are being employed in Uganda. In places like Sierra Leone TRC Act, through article 7.2 provided for additional staged African reconciliation ceremonies

usage and marriage of these community practices to existing law to make protection comprehensive.

2.7 Conclusion

The study of IDPs is generally concerned with a group of people whose mobility is contained within the borders of their countries, most of the time, involuntarily. There are various explanations that have been offered as to why such phenomenon exists and of course there are more theories generated to provide for how such an anomaly could be addressed. A narrative on the historical and philosophical factors that are believed to have played a key role in defining and describing the evolution of the IDP category and subsequent responses to it has been made. Various causes of internal displacement have been highlighted, as well as conceptual clarification of the main concepts that make up the phenomenon. Discussions over theoretical approaches to address internal displacement and their limitations have also been made. It seems sovereignty is one of the main hindrances to initiatives for protecting internally displaced persons. At the same time steps have been taken to narrow the gap that sovereignty has created by adopting new theoretical trends to balance sovereignty such as the concept of sovereignty as responsibility which basically makes it an obligation for states to protect their own and where they fail, the concept of responsibility to protect has been born out of sovereignty as responsibility.

This new concept makes it an obligation for regional and international communities to intervene and protect nationals of a particular state where the state has refused or failed to provide such protection. Such concepts have re-defined the concept of sovereignty and in doing so have additionally de-limited the notion of intervention. The African Union as an African body has through its Constitutive Act participated in the re-definition and de-limitation of sovereignty and intervention as well. The effect of such initiatives has among other things, provided opportunity for stronger protection, by states, regional and the international community towards the internally displaced who were neglected by protection mechanisms as a result of falling within national borders.

where TRC commissioners sought assistance from traditional and religious leaders to facilitate resolving local conflicts, healing and reconciliation, and the Liberian TRC Act of June 2005 also went as far as providing for the employment of traditional mechanisms for conflict management.

These are very good and progressive initiatives, especially in ensuring prevention, protection and reintegration of internally displaced persons, but on their own they are left hanging. It has been established that unless, in addition, community oriented initiatives are included and infused into such progressive legal concepts. The marriage of African mechanisms of conflict resolution, reconciliation, healing, compensation and reintegration to legal mechanism of protection for the internally displaced will prove more comprehensive in addressing the issue of African displacement. This does not mean that there has been no attempt in existing IDP protection frameworks to do so. There have been such attempts, but mere mention of resort to community practices to adequately address internal displacement, does not translate into actual infusion and reliance on these community practices. In most instances legal instruments simply mention community processes without specifically providing for how facilitation of such practices can be made. In situations where community practices have been relied on, communities have done so independently, without support from their governments. The suggestion here is a collaborative approach between law and community practice in providing protection and durable solutions. This is because it seems applying one form of mechanism without the other has proven to have limitations.

CHAPTER 3: INTERNATIONAL RESPONSES TO INTERNAL DISPLACEMENT

*Even though the primary responsibility for the security and well being of internally displaced persons lies with their governments, when governments are unwilling or unable to provide protection and assistance to their citizens, or when there is no government at all, the international community is challenged to become involved.*³⁵²

3.1 Introduction

This study is aimed at realizing the level of comprehensiveness in existing protection mechanisms for internally displaced persons within the Great Lakes region. To achieve this it is imperative in this chapter to ascertain whether existing international law mechanisms provide adequate provision, coordination and subsequently, adequate protection, legally and institutionally for the internally displaced. Governments are first and foremost responsible for protecting their own, but sometimes it is these very governments that are responsible for displacing or tolerating the displacement of their citizens or are unwilling or unable to guarantee their basic rights.³⁵³ Such conditions have created a vacuum within internal displacement protection initiatives hence the need for international cooperation. Yet the UN and the international community's approach to the protection of internally displaced persons is still mainly *ad hoc* and initiated by personalities and individual convictions as opposed to institutional, system wide agenda. There is also inadequate, often un-collaborated political and financial support from UN headquarters and member states.³⁵⁴

Internally displaced persons are entitled to enjoy equally, and without discrimination, the same rights and freedoms under international and national law, as any other members of a

³⁵² UN Secretary Kofi Annan in Cohen R 'Some reflections on national and international responsibility in situations of internal displacement in Mishra O *Forced Migration in the Southern Asian Region: Displacement, Human Rights and Conflict Resolution*, Spring 2004 at 34; This is also the basis of the emerging international norm of Responsibility to Protect (R2P) which was first articulated by the International Commission on Intervention and State Sovereignty (ICISS) appointed by the government of Canada to further calls by the then United Nations General Secretary Kofi Annan.

³⁵³ Deng and Cohen 1998 as above at 74.

³⁵⁴ Bagshaw and Paul 2004 as above at 3.

particular country. Internally displaced persons do not relinquish their rights by virtue of being displaced. They can invoke these rights through existing human rights, humanitarian law as well as refugee law by analogy.³⁵⁵ These systems of international law in combination reflect local and international responsibility for the protection and assistance of internally displaced persons. Such responsibility has always existed within rules of international law, even though in a somewhat un-coordinated manner.³⁵⁶ This lack of coordination was problematic because international law for a long time did not contain explicit provisions for the exclusive protection of the rights of the internally displaced.³⁵⁷

3.2 emergence of international responsibility

After World War II the nature of conflicts ceased to be external and amongst states, and became internal, as various ethnic and religious sectors within countries struggled to seize power and self determine. At the same time, this was the era when most African states were gaining independence from their colonial masters. This newly found independence coupled with the fact that large superpowers such as the Former Soviet Union and the United States used developing countries as pawns during the cold war, led to an unprecedented internal turmoil.³⁵⁸ It has been stated that since the superpowers could no longer control the developing countries directly, the process had to be indirect though inciting internal wars and rivalry. This necessitated the economic independence of these states to remain held ransom by their former masters, or unknown third parties, who in turn benefited from the lack of peace, security and stability.³⁵⁹

As a result of these internal disturbances, the number of internal refugees began to rise. Between the late eighties and early nineties, the number of internally displaced persons worldwide exceeded that of refugees who happened to be well provided for by the international community. In the 1990s the gap in addressing the plight of internally displaced

³⁵⁵ Deng and Cohen 1998 as above at 74.

³⁵⁶ As citizens or habitual residents of a particular country, IDPs are entitled to full and equal protection under the State's national law, which should be compatible with the rules of international law. The challenge faced by the international community before the existence of a legal framework for IDPs was to identify the rights and guarantees scattered in the international law system that corresponded with the particular needs and protection risks that arose during internal displacement; IASC Handbook for the protection of IDPs 2010 as above at 30.

³⁵⁷ Deng and Cohen 1998 as above at 74.

³⁵⁸ Alao A 'The role of regional and sub-regional organizations in conflict prevention and resolution' *New Issues in Refugee Research* Working Paper No. 23 July 2000 at 5.

³⁵⁹ Alao as above.

persons began receiving attention.³⁶⁰ There are many reasons advanced concerning the surge in the attention provided by the international community towards internally displaced persons. The first reason was the one advanced above that the number of internally displaced persons had swelled dramatically. There is also the fact that the process of accessing internally displaced populations became much easier after the end of the cold war, when countries and the atrocities they committed were no longer shelved under the umbrella of one superpower or the other. Internationally, there was eventually less tolerance over events taking place within state borders and excuses such as strict sovereignty were slowly being discarded.³⁶¹

International human rights movements that had all along condemned the issue of ignoring states' internal affairs at the expense of obvious violations of human rights began to grow stronger. This was followed by the signing of vast human rights documents and declarations by states holding relevant states accountable for the violations of people's rights. This went to prove that indeed rights transcended borders.³⁶² Humanitarian organizations providing relief to populations, especially those stuck behind borders became stronger as well, especially after being backed by the international community. Humanitarian relief in times of conflict or disasters became internationally recognized, and seized being subjected to frontiers. Governments that denied their citizens this right were deliberately subjecting them to abuse,³⁶³ which could in turn be as a basis for international reaction.³⁶⁴

Under this auspice, the responsibility to protect (R2P) and policies such as sovereignty as responsibility were born.³⁶⁵ The intention was to reconcile the concept of sovereignty and international intervention by re-conceptualizing the notion of sovereignty from control to responsibility.³⁶⁶ The concept stipulates that states, on the basis of their sovereignty have a

³⁶⁰ Cohen 2004 as above at 2.

³⁶¹ Cohen 2004 as above.

³⁶² Cohen 2004 as above.

³⁶³ The reaction could be in the form of forceful military intervention, or soft intervention

³⁶⁴ See Security Council Resolutions for Somalia, Rwanda, Bosnia-Herzegovina and Azerbaijan.

³⁶⁵ When the first Human Rights RSG (Representative of the Secretary General) for the internally displaced was appointed, the framework he established was based on this philosophy, this was the guidance followed in adopting a framework for assisting and protecting internally displaced persons.

³⁶⁶ International Refugee Rights Initiative (IRRI) 'Some reflections on the legal and political mechanisms bolstering the responsibility to protect: the African Union and the Great lakes, Eastern, Southern and Horn of Africa sub-regional arrangements', 21st October 2008, at 21, at <http://www.refugee-rights.org/Focus%20on%20Africa/Great%20Lakes/PDFs/R2P%20RECs%20Discussion%20paper.1021008.pdf> accessed on 13-05-2012.

fundamental responsibility to provide life supporting protection as well as assistance to their citizens from avoidable catastrophes. Where they are unable or unwilling to do so, they are expected to request or accept external aid. Refusal or deliberate obstruction of such endeavors and any consequent mass risk of lives, provides the international community with a right and correlating responsibility to assert its concern in whatever form it deems fit.³⁶⁷

Responsibility to protect (R2P) expresses a commitment to protect starting with prevention, which entails among other things, addressing any underlying and direct causes of internal conflict and human made disasters. R2P is a continuous responsibility which runs through reaction and response to conflict and addressing crisis with the requisite measures.

Depending on the circumstances, reaction and response may include, sanctions, international prosecution, and in extreme cases military intervention whether by consent from the concerned state or otherwise.³⁶⁸ The last responsibility lies in re-building and assisting with post conflict or post crisis reconstruction and reconciliation by the wider community of states where the concerned state is unable, unwilling or has made such request.

Through this, a framework that has synthesized international refugee law by analogy, international humanitarian law, international human rights law and international criminal law has been adopted to provide for the internally displaced. In as much as a ‘melting pot’ of provisions could be found in these instruments, too often it was difficult to determine which guarantees applied in specific situations. A set of rules that were authoritative, whilst addressing gaps in the already existing international system became imperative. The Guiding Principles on Internal Displacement purport to bring together in one document all the relevant international law rules which are necessary for protection in situations of internal displacement. They do not only put them together, but also expand and make them more explicitly applicable.³⁶⁹ They set out the rights of IDPs and correlative responsibilities of states and other authorities towards them. The Guiding Principles cover protection from displacement, protection during displacement and also highlight on principles of

³⁶⁷ Cohen 2004 as above at 2.

³⁶⁸ International Refugee Rights Initiative (IRRI) 2008 as above at 1.

³⁶⁹ Training on the protection of IDPs ‘Guiding principles: legal origins and international obligations’ at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/D98A13C023DC877DC12571150046DEC3/\\$file/GP%20module%20handout%20legal%20origins.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/D98A13C023DC877DC12571150046DEC3/$file/GP%20module%20handout%20legal%20origins.pdf) accessed on 30 March 2012.

humanitarian assistance, as well as matters relating to return, resettlement and reintegration.³⁷⁰

3.3 International Legal framework

3.3.1 *Guiding Principles on Internal Displacement*³⁷¹

After the events that were outlined above, it became apparent that more serious steps had to be taken towards the protection of internally displaced persons. There were a couple of approaches suggested. The first one was creation of an independent regime to provide for internally displaced persons. The only problem with this approach was that it was very likely to offend the internationally recognized principle of state sovereignty. It was feared such approach would attract a lot of disagreement from some of the states, especially those with un-transparent human rights records. The second approach suggested an extension of the already existing refugee framework to cover internally displaced persons.

This approach also was problematic because factual circumstances within which the refugee regime worked did not always cover internally displaced persons, at least not without rendering the whole exercise redundant. This is because the Refugee Convention and other instruments that provided for the protection of refugees were meant to protect people who were forcibly removed or had to forcibly leave their states and seek refuge in other states. These are people who had in actual effect lost ties, or who had temporary or permanently severed ties with their states. The international community provided an independent regime to provide for them whilst in refuge in another state where they could not enjoy the benefits of citizenship. This is not the case with internally displaced persons, they are usually still within their own states.

The third approach is what was later endorsed by the international community. It suggested the creation of a set of Guiding Principles that synthesized relevant international human rights law, international humanitarian law and refugee law for specific IDP protection whilst addressing protection gaps within these existing laws.³⁷² These principles are soft law, thus in

³⁷⁰ Guiding Principles on Internal Displacement 1998 as above.

³⁷¹ Guiding Principles on Internal Displacement 1998 as above.

³⁷² See Principle 2(2) of the Guiding Principles on Internal Displacement 1998 as above.

as much as they outline the guidelines for protection against, assistance during and after displacement, they do not as a matter of principle make any imposition upon states. Exception to this arises only where states have included the Guiding Principles into their own domestic laws. This approach was also supplemented by the introduction of the collaborative and cluster arrangement of institutions that would provide for the protection and assistance to internally displaced persons, thus facilitating implementation of the principles.

The Guiding Principles, thirty in number cover a wide array of issues that IDPs face. They apply to three different circumstances, including tensions and general disturbances which are covered by human rights law; non-international armed conflict, covered by international humanitarian and human rights law, as well as interstate wars where humanitarian law applies exclusively.³⁷³ The principles provide guidance to all actors involved with the internally displaced including governments, NGOs and international organizations and non-state actors.³⁷⁴ The guidance provided covers all phases of displacement starting with prevention from arbitrary displacement, by specifically providing for the right not to be arbitrarily displaced.³⁷⁵

If respected and implemented by states, this provision is key to future successful and comprehensive protection for IDPs, for it covers a gap that international human rights law had failed to specifically provide for.³⁷⁶ The principles further provide for protection and assistance during displacement including the coverage of a full range of civil, political, economic, social and cultural rights such as protection from human rights abuses, freedom of movement, access to documentation, education, food and basic supplies, freedom to choose residence, freedom against forcible return, freedom for women to access health facilities including reproductive health, and rights for women, children, the disabled, the elderly, and persons with special attachment to land or any other vulnerable groups.³⁷⁷

³⁷³ Cohen R 'The development of international standards to protect internally displaced persons' *Human rights and forced displacement (ed.) Bayefsky A and Fitzpatrick J* Refugees and human rights series Vol. 4 2000 at 79.

³⁷⁴ Cohen R 'The Guiding Principles on internal displacement: an innovation in international standard setting' *Global Governance* Vol.10 2004 at 465.

³⁷⁵ Principle 6(1) (2) of the Guiding Principles on Internal Displacement 1998 as above.

³⁷⁶ Ngugi L 'Internally displaced persons: towards an effective international legal protection regime' *Unpublished LLM thesis* 2008 University of Cape Town at 58.

³⁷⁷ Cohen 2000 as above at 80; See Principle 10, 11, 12, 13, 14, 18 and 22, 23 of the Guiding Principles on Internal Displacement 1998 as above.

Lastly the principles provide for protection during return, resettlement and reintegration.³⁷⁸ They clarify IDP rights to return to their homes or places of habitual residences voluntarily in safety, dignity or if uncomfortable then an alternative to seek safety in another country is provided.³⁷⁹ This provision is very important because the IDP regime does not have a specific principle of *non-refoulement*. This has at times resulted in IDPs being forced to return to places they are not very comfortable.³⁸⁰ The principles also cater for the process of return by providing for the property rights of returning persons.³⁸¹ The provisions include the recovery of property and possessions lost as a result of displacement as well as compensation and reparations in circumstances where recovery has become impossible.³⁸²

The principles have been a source of guidance for various international, intergovernmental organizations and United Nations Agencies. Although the principles were disseminated as soft law, and hence are not binding in nature, they have been relied on by various aid organizations and NGOs such as the Norwegian Refugee Council, the International Commission of Jurists and the Refugee Policy Group. A growing number of national governments are also incorporating the principles into their national policies and legislation and other programs for dealing with internally displaced persons.³⁸³ They have also been endorsed by the General Assembly of the United Nations³⁸⁴ and the UN Commission on Human rights³⁸⁵ as generally acceptable guidance as far as the protection of the internally displaced is concerned.³⁸⁶ They have further been endorsed by UNHCR, ICRC, UNICEF WFP and a lot of other UN umbrella organizations.

³⁷⁸ See principle 28, 29 and 30 of the Guiding Principles on Internal Displacement 1998 as above.

³⁷⁹ Cohen 2000 as above at 81; Principle 28 of the Guiding Principles on Internal Displacement 1998 as above.

³⁸⁰ Principle 15(d) of the Guiding Principles on Internal Displacement 1998 as above; In Kenya and a few other countries it is questionable whether this principle was ever followed. 'Operation Rudi nyumbani' (operation return home) which was set up to facilitate the return of IDPs in Kenya left a lot of doubt about the application of this principle.

³⁸¹ Cohen 2000 as above at 81.

³⁸² Principle 29 (2) of the Guiding Principles on Internal Displacement 1998 as above.

³⁸³ Cohen 2004 as above at 467.

³⁸⁴ GA Res 60/1, 2005 World Summit Outcome Resolution adopted by Heads of State, 15 September 2005 Para 132 at

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/NO548760.pdf?openElement> accessed on 19 December 2011.

³⁸⁵ UN Office of the High Commissioner for Human Rights (UNOHCHR), Commission on Human Rights Res 1996/52, 19 April 1996, Para. 9; See also United Nations Commission on Human Rights Resolution 2003/1 of 23 April 2003; and United Nations General Assembly Resolution 58/177 of 22 December 2003.

³⁸⁶ Cohen 2004 as above at 469; Former UN Secretary General Kofi Annan, supported the principles and went on to call them one of the 'notable achievements' in the humanitarian area, he later encouraged states in his report to the Security Council, to observe the principles in situations of mass

The reason for this widespread acceptance of the principles includes the fact that they were developed in an all inclusive process of wide consultation with all relevant stakeholders. Therefore at some point or the other the above mentioned organizations were part of the consultative process that bore the principles. The other reason is based on a previous urgent need for a document to direct various organs of state and the international community on how to deal with internally displaced persons. The Guiding Principles happened to be the right answer to this urgent need. They represent minimum standards not only for assistance, but for the protection of internally displaced persons.³⁸⁷ Finally the careful diplomatic coining and terming of the principles reflected an effort to balance issues of humanitarian imperatives and sovereignty.³⁸⁸ In doing so the drafters of the principles managed to avoid sparking controversy around the issue of any purported interference with state sovereignty.³⁸⁹ The Guiding Principles reflect an effort throughout to balance state sovereignty with humanitarian obligations.

Whilst acknowledging that the primary responsibility for the displaced rests with their national governments,³⁹⁰ they also provide that aid from the international community and humanitarian organizations shall not be regarded as an ‘unfriendly act or an interference in a State’s internal affairs.’ Consent for international aid cannot, according to the principles, be ‘arbitrarily withheld’ especially in circumstances where the relevant authorities seem ‘unable or unwilling’ to provide the necessary assistance.³⁹¹

The same principles further provide that in the process of assisting IDPs, international and humanitarian organizations should pay attention to their protection needs as well as their human rights and if possible they should take an extra step to provide such.³⁹² This means that the idea of international organizations and other actors, just coming in to provide only ‘assistance’ is being discouraged. Assistance is expected to be comprehensive and integrate

displacements, and further recommended to the General Assembly and the Economic and Social Council to encourage member states to develop national laws and policies consistent with the Guiding principles; see Cohen 2004 as above at 478.

³⁸⁷ Principle 27 of the Guiding Principles on Internal Displacement 1998 as above.

³⁸⁸ See principle 3 and 25 of the Guiding Principles on Internal Displacement as above.

³⁸⁹ Cohen 2004 as above at 468.

³⁹⁰ Principle 3 and 25 of the Guiding Principles on Internal Displacement 1998 as above.

³⁹¹ Cohen 2004 as above at 467; Principle 25(2) of the Guiding Principles on Internal Displacement 1998 as above.

³⁹² Principle 27(1) of the Guiding Principles on Internal Displacement 1998 as above.

matters of protection as well. This is a good way of addressing the ‘well-fed dead’ expression that seemed to be an outcome of some humanitarian responses. The expression rendered the process of feeding people without addressing their protection needs very redundant.³⁹³

3.3.1.1 Reservations

The main reservation the principles faced was in the form of an initial outright disapproval from their official recognition by intergovernmental organizations, such as the United Nations.³⁹⁴ The main reason for this disapproval resulted from some criticisms raised by states that deemed the process of endorsement of the principles to have failed to include intergovernmental processes or negotiations. The principles were enacted independently by a panel of experts. This was initially okay for most governments considering the fact that the principles were not binding. When intergovernmental organizations became involved, most governments, especially those harboring large numbers of refugees and internally displaced persons became concerned. The basis of this concern was that, if the principles were officially endorsed, this would lead to their eventual enforcement and probably result in the dilution of the principle of sovereignty that some states were still holding onto dearly.³⁹⁵

In addition to the above reservations, the principles have faced numerous challenges including consequences of their non binding nature. However useful the principles seem to be, the need to reconcile them with state sovereignty left them toothless and hence states, international organizations or other actors cannot be held liable for violating them. Closely related to this is the lack of mechanism set up in place to ensure their proper implementation.³⁹⁶ In fact this concern was first raised by the then RSG of the human rights of IDPs. He stated that ‘while the Guiding Principles had a relatively good reception, this was done rhetorically. He pointed out that their implementation remained problematic and often rudimentary.’³⁹⁷ This means that for their provisions to be very effective or enforceable,

³⁹³ Cohen 2000 as above at 81.

³⁹⁴ The Commission for Human Rights and the United Nations General Assembly were initially cautious in receiving the principles, but later they embraced them and went as far as calling them ‘standards’ and ‘important tools’.

³⁹⁵ Cohen 2004 as above at 472; India, Egypt and Sudan seemed a lot worried initially about the recognition of the Principles in UN bodies and their growing usage internationally.

³⁹⁶ Phoung 2004 as above at 66.

³⁹⁷ UN Commission on Human Rights, Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Francis M Deng, UN Doc E/CN.4/2002/95, 16 January 2002 para. 98.

at some point parties will have to rely on the general norms from which such specific IDP rights were derived.

It has already been established that forced displacement did not initially invoke protection under international human rights instruments, or humanitarian law. But these instruments have proven to be useful since they contain general norms relevant to the protection of internally displaced persons.³⁹⁸ These instruments are the principal sources of existing standards for protection, and are basic foundations for future protections as well. To fully understand and most effectively use the Guiding Principles, it is imperative to discuss them within the broader framework of the international legal norms that constitute them and whose gaps they are designed to fill.

3.3.2 *International Humanitarian Law (civilian protection)*³⁹⁹

Humanitarian law is constituted of internationally accepted norms that are responsible for determining parameters within which warfare can be conducted by parties involved.⁴⁰⁰ This set of international law strives to offer protection to non-combatants, ex combatants and civilians from the effects of war, and to control or limit certain methods of warfare.⁴⁰¹ The notion that civilians should be distinguished from combatants, and the fact that the latter should be protected before and during armed conflict, predates even the establishment of the ICRC or the Geneva Conventions.⁴⁰² Hugo Grotius in the seventeenth century pioneered international law conceptions on laws of war, especially the issue of non-combatant immunity. As Grotius stated ‘rulers and commanders may respect the non-combatant because there are no practical military reasons why they should not do so, and because there are good religious and ethical reasons why they should.’⁴⁰³ This formulation by Grotius, led to a

³⁹⁸ Phoung 2004 as above at 13.

³⁹⁹ Section III of Guiding Principles on Internal Displacement 1998 as above.

⁴⁰⁰ Training on the protection of IDPs ‘Guiding principles: legal origins and international obligations’ as above.

⁴⁰¹ Aeschlimann A ‘Protection of IDPs: an ICRC view’ *Forced Migration Review* -1-10-2005 International Committee of the Red Cross at 1-4 at <http://www.icrc.org/eng/resources/documents/articles/other/protection-article-011005> visited on 26-08-2011.

⁴⁰² Keen D and Lee V ‘Civilian status and the new security agenda’ in Collinson S, Darcy J, Waddell N and Schmidt A (eds.) *Realizing protection: the uncertain benefits of civilian, refugee and IDP status* Humanitarian Policy Group (HPG) Report 28 September 2009 Overseas Development Institute (ODI) at 12.

⁴⁰³ Keen and Lee 2009 as above at 12; See Grotius H *The law of war and peace (De Iure Belli ac Pacis* 1625) reprinted 2004 at 30.

significant international humanitarian law principle that wars should be fought by just means and deliberate civilian casualties or displacements should be avoided.⁴⁰⁴

Failure to observe humanitarian principles, total disregard for applicable norms of engagement during wars and situations of generalized violence or conflict has resulted in the rise of a new crisis in international law. This notable crisis which has required humanitarian attention is the forcible freight of entire populations from their homes within their own states. Humanitarian law provides for the protection and assistance of vulnerable populations, including internally displaced persons in times of conflict and civil strife. The two Geneva Conventions of 1949 and their Additional Protocols of 1977 provide for the protection and assistance to the lives and dignity of victims of war and internal violence. They also provide for the prevention of human suffering by promoting and strengthening humanitarian law and universal humanitarian principles. International humanitarian law is relevant to the situation of internally displaced persons because armed conflict and situations of violence constitute the main causes of internal displacement of civilian population.⁴⁰⁵ The Geneva Conventions and their Additional Protocols spell out the principle that, in times of armed conflict, those not directly participating in the aggression are entitled to protection.⁴⁰⁶

Under international humanitarian law, everyone who is not a combatant is categorized as a civilian. In the case of international armed conflict, combatants are defined in international humanitarian law as ‘members of the armed forces of a party to a conflict (other than medical personnel and chaplains...). They have a right to participate directly in hostilities.’⁴⁰⁷ This means that other parts of the population, including people who are displaced should be distinguished from the combatants by both parties to the conflict, including government forces. They should not in any way be used as human targets to settle scores between two

⁴⁰⁴ International humanitarian law is more interested in the fact that war should entail just conduct, as opposed to concerning itself with issues such as the justifiability of war itself; See Article 51 of the Additional Protocol to the Geneva Conventions of 1977.

⁴⁰⁵ Ahlbrandt S *The protection gap in the international protection of internally displaced persons: The case of Rwanda* 2004 Working Paper 04/01 at 12.

⁴⁰⁶ Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 12 1949; Geneva convention relative to the treatment of prisoners of war of August 12 1949; Geneva convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea of August 12 1949; The Geneva convention relative to the protection of civilian persons in time of war of August 12 1949 (these are hereafter referred to as the Geneva Conventions); Protocol additional to the Geneva Conventions of August 12, 1949, and relating to the protection of victims of international armed conflicts (hereafter referred to as Protocol I); and Protocol Additional to the Geneva Conventions of August 12, 1949, relating to the protection of victims on non-international armed conflicts of 8 June 1977 (hereafter referred to as Protocol II).

⁴⁰⁷ Geneva Conventions Additional Protocol I of 1977 Art 43.

warring factions to a conflict,⁴⁰⁸ neither should they have to suffer un-proportionally from the consequences of the conflict.⁴⁰⁹ In this case internal displacement is regarded as an un-proportional, excessive and unfair combination of consequences of conflicts (in the case of conflict inflicted displacements) in relation to the ‘concrete and direct military advantage anticipated’ by all the parties involved in conflicts or generalized situations of violence that result in population displacement.⁴¹⁰ International humanitarian law requires the exercise of ‘precaution’ to minimize civilian casualties, and prohibits the use of ‘acts or threats of violence the primary purpose of which is to spread terror among the civilian population’⁴¹¹ Part of this prohibition may serve to curb the displacement of populations as a result of terror and threats of attack and abductions, not to mention rape and general acts of sexual violence which are prevalent in most areas facing the crisis of internal displacement.⁴¹²

The law governing internal conflicts is less developed than the body of law set up to deal with international conflicts. This is because the establishment of international humanitarian law reflected the prevailing political conditions of its time. States and their representatives who played a part in setting up international humanitarian law had a more vested interest in limiting conflicts between each other than curbing insurgencies or internal disturbances.⁴¹³ This can be seen in prevailing international humanitarian law protection reflected in the case of non-international conflict by Common Article 3 of the Geneva Conventions.⁴¹⁴ The article uses the less precise articulation of ‘persons taking no active part in hostilities’ as a determination of which part of the population qualifies to get protection under international humanitarian law during internal conflicts.⁴¹⁵ The section does not define such persons, or describe what constitutes taking part in hostilities either. It seems that the main interest was not vested in protecting persons internally affected by such conflicts because in most cases such persons were nationals of the other party to the conflict as opposed to being internal citizens.

⁴⁰⁸ The international humanitarian law principle of ‘distinction’ between combatants and civilians and between military and non-military targets.

⁴⁰⁹ Geneva Conventions Additional Protocol I Art 51 precludes any ‘attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof which would be excessive in relation to the concrete and direct military advantage anticipated’.

⁴¹⁰ Keen and Lee 2009 as above at 13.

⁴¹¹ Geneva Conventions Additional Protocol I 1977 as above Art 51.

⁴¹² Keen and Lee 2009 as above at 13.

⁴¹³ Keen and Lee 2009 as above.

⁴¹⁴ It is called common article 3 because each of the four Geneva Conventions reads exactly the same.

⁴¹⁵ Keen and Lee 2009 as above at 13.

Article 3, which is common to all the four Geneva Conventions, is applicable to armed conflicts of a non-international nature, the circumstances leading to internal displacement fall squarely within such provisions. The article prohibits violence to life and person, it further prohibits the taking of hostages, and specifically provides for the personal dignity of persons who find themselves in situations of armed conflict which is not of an international nature but happens to occur in the territory of one of the contracting parties.⁴¹⁶ The article does not specifically define what ‘armed conflict not of an international character’ means, but it excludes international armed conflicts from its application, and it also singles out conflicts that take place in the territory of one contracting party only; Common article 3 provides that,

In case of armed conflict not of an international character occurring in the territory of one of the high contracting parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, bounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion, or faith, sex, birth, wealth, or any other similar circumstances.

To this end the following acts are, and shall remain prohibited at any time in any place whatsoever with respect to the above mentioned persons:

violence to life and person in particular murder of all kinds, mutilation, cruel treatment and torture taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.⁴¹⁷

Common article 3 does not at any point make specific reference to the protection of civilian populations that do not take part in hostilities but are affected by them.⁴¹⁸ When it generally states ‘persons not taking part in hostilities’ it does not specify who such persons might be.

⁴¹⁶ Ahlbrandt 2004 as above at 12.

⁴¹⁷ Article 3 Common to the Geneva Conventions of August 12 1949 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

⁴¹⁸ Junod S ‘Additional Protocol II: history and scope’ *The American University Law Review* 1983 Vol. 33 No. 29 at 31.

Most of the provision provides for people who are former combatants, the sick or wounded, but what about civilian displaced populations? How are these provided for? There are no specific judicial guarantees and implementation clauses for protection. Other protection and assistance provisions are also not provided for by the article.⁴¹⁹ It is understandable that at the time of introducing common article 3 into the Geneva Convention, sovereignty had been a highly respected notion that could not be breached. The introduction of article 3 was an initial recognition by the international community of a need not only to protect victims of inter-state conflicts, but also those affected by non-international conflict taking place within the borders of their states. As progressive as this was, the intrusion in the form of common article 3 was very limited and succinct.⁴²⁰ This and other civilian protection gaps within the provisions of common article 3 of the Geneva Conventions have necessitated the re-visiting and supplementation of the provisions of this article. But the provisions of the article have nevertheless been considerable sources of protection norms to be included in the Guiding Principles.

Additional Protocol I to the Geneva conventions provides extra emphasis to the Geneva Conventions by further articulating protection of civilian populations from the effects of hostilities. The protocol requires combatants to distinguish themselves from the civilian population during their engagement in attacks or military operations or preparations for such.⁴²¹ This is meant to provide additional protection to innocent civilians who in the case of Africa are always caught between armed combatants or insurgencies and government forces or other warring parties. In cases of displaced populations caught behind enemy lines, or living within the frontlines of insurgent forces⁴²² distinction is hardly ever made. They are usually simply targeted as enemy combatants or sympathizers even when they do not actively participate or engage in combat.

This provision has proved to be hard to practically implement where the nature of the internal conflict involves abduction of civilians and forceful induction into militia. How does one distinguish between a civilian, a combatant and a forcefully inducted combatant? Do the forcefully abducted owing to the nature of the hostilities regard themselves as distinguishable

⁴¹⁹ Junod 1983 as above at 31.

⁴²⁰ Junod 1983 as above at 30.

⁴²¹ Additional Protocol I 1977 as above Art 44.

⁴²² Insurgents have been described as parties opposing government authorities in non-international armed conflict.

combatants? International humanitarian law has attempted to clarify such complex situations by recognizing the occasional complex nature of armed conflict where armed combatants cannot distinguish themselves. In such instances it provides that the person(s) will retain their status as combatants as long as they carry their arms openly.⁴²³

The provisions of article 3 common to the Geneva Conventions of August 12 1949 were further supplemented and substantiated in Additional Protocol II. The article specifically provides for the protection of victims of non international armed conflict.⁴²⁴ Article 17 is of particular importance because it explicitly prohibits the displacement of civilian populations, unless ‘security of the civilians is involved or imperative military reasons so demand.’ The article provides that:

The displacement of civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians is involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Movements of civilian populations that might eventually end up as forms of displacement are restricted by Protocol II. Guarantee for satisfactory conditions of living is provided to the civilian populations if movement becomes imperative, but any form of forceful expulsion for conflict related reasons is prohibited.⁴²⁵ Protocol II does not cover a scope similar to that one of common article 3. It is additionally only applicable in situations involving hostilities that have reached a certain level of intensity. It should be pointed out that any imperative military reasons provided as an excuse for the displacement of civilian population in article 17 cannot be justified by political motives. Displacement or forced movement should and can only be carried out in the interest of the general public and security of the civilians being moved. The nature of the article is wide and subject to multiple interpretations. If this open-ended nature of article 17 is not taken into account the gaps within the article can, and have been used

⁴²³ Additional Protocol I of 1977 additional Art. 44.

⁴²⁴ Protocol Additional to the Geneva Conventions of 1949 (Protocol II), *opened for signature* Dec. 12, 1977, *reprinted in* 16 int'l legal materials 1442 (1977) (hereinafter cited as Protocol II).

⁴²⁵ Article 17 of Additional Protocol II 1977 as above.

occasionally to displace populations in order to exercise more effective control over dissident ethnic groups.⁴²⁶

Provisions of article 17 of Protocol II apply only to states that are party to the Additional Protocol, and they apply only in circumstances of armed conflict involving official armed forces and armed dissident forces or any other form of paramilitary groups.⁴²⁷ But what is described as ‘dissidents’ should only include groups that have responsible command to exercise adequate control over part of a state’s territory to enable them to carry out sustained and concerted military operations that would call for the implementation of Protocol II.⁴²⁸ Because there are so many restrictions imposed upon the application of Protocol II with regard to internal conflicts, its application has a narrower threshold and is less likely than that of common article 3 which applies to all situations involving non-international armed conflict. The requirement of ‘substantiated territorial control by dissident armed forces’ is very relative in individual terrains and hard to prove.⁴²⁹ In some cases even where all the requirements for the declaration of an armed conflict are satisfied, states are usually reluctant to acknowledge that certain areas in their territory are under the control of dissidents, or that there is armed conflict or civil war at all.⁴³⁰ In such circumstances the uprooted populations are actually not protected by international humanitarian law because they fall through its application gaps on the basis of ‘definitional’ technicalities.⁴³¹

An additional source of protection from and during displacement found in the Guiding Principles can be found in article 49 of the Geneva Convention IV. The article provides more protection to uprooted and displaced populations in times of humanitarian crisis. The article

⁴²⁶ Training on the protection of IDPs ‘Guiding principles: legal origins and international obligations’ as above at 3.

⁴²⁷ Article 1 of Protocol II 1977 as above; Ahlbrandt 2004 as above at 13; Junod 1983 as above at 29.

⁴²⁸ In art 1 para 1 of Additional Protocol II it is provided that ‘ This Protocol...shall apply to all armed conflicts... which take place in the territory of a High contracting party, between its armed forces and dissident armed forces or other organized armed groups which, under a responsible command, exercise such control of a part of its territory as to enable them to carry out sustained and concerted military operations...’.

⁴²⁹ Article 1 para. 1 of Additional Protocol II 1977 as above.

⁴³⁰ Circumstances that are regarded as falling below the threshold of armed conflict, may involve internal strife which is most of the time characterized by or followed by civil war, internal disturbance, a state of serious political, religious, racial or social tension, the suspension of legal guarantees, recourse to emergency measures and procedures which might result in the ceasing of application of the rule of law, which in most cases is regarded as a guarantee to individual freedom under State Constitutions. These will eventually result in mass arrests, degrading inhumane treatment, disappearances, and eventually mass population displacements; Junod 1983 as above at 30.

⁴³¹ Ahlbrandt 2004 as above at 14.

provides that ‘...Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.’ The article deals with the return and reintegration aspect of internal displacement and is relevant to circumstances following the end of displacement.⁴³² International humanitarian law lastly addresses the issue of displacement by providing for the property rights of displaced persons. This provision is eventually reflected in the Guiding Principles in the III section. The provision is important for durably addressing displacement, because failure to address property rights has resulted in conflicts and further displacement upon return. Section IV of the Guiding Principles which is constituted of principle 24 to 27 is a reflection and explicit restatement of humanitarian law as provided above and has been tailored to specifically apply to the situation of internally displaced persons.

3.3.3 *International Human Rights Law*

In disturbances and other violent situations not covered by humanitarian law, international human rights law offers suitable recourse.⁴³³ Human rights are freedoms and entitlements that every individual should enjoy.⁴³⁴ International human rights law which happens to consist of both customary and treaty law, guarantees these rights and requires states to respect and fulfill their obligations to protect and realize the human rights of all persons within those states without discrimination of any kind.⁴³⁵ This includes prohibition of discrimination based on grounds of age, gender, ethnicity, language, religion, political or other opinion, as well as national or social origin, property, birth or other status, including discrimination on grounds of being or having been internally displaced.⁴³⁶

International protection based on the human rights regime is very relevant to the situation of internal displacement because displacement in itself raises a wide range of human rights issues.⁴³⁷ Internally displaced persons like any other human beings benefit or should benefit

⁴³² Training on the protection of IDPs ‘Guiding principles: legal origins and international obligations’ as above at 4.

⁴³³ Lavoyer J ‘Refugees and internally displaced persons: international humanitarian law and the role of the ICRC’ *International Review of the Red Cross* 1995 No. 305 at 162.

⁴³⁴ IASC Handbook for the protection of IDPs 2010 as above at 21.

⁴³⁵ IASC Handbook for the protection of IDPs 2010 as above at 21.

⁴³⁶ IASC Handbook for the protection of IDPs 2010 as above.

⁴³⁷ IASC Handbook for the protection of IDPs 2010 as above.

from protection offered by international human rights law without any distinction or discrimination. In circumstances that do not qualify as armed conflict, for instance situations involving internal strife or unrest, where humanitarian law cannot apply, the only form of legal protection left for internally displaced persons is human rights law.⁴³⁸ Human rights law is capable of offering legal protection in all phases of internal displacement, starting from its cause, prevention of the conditions for displacement, protection during displacement and eventually the search for solutions to displacement.

Human rights seem appropriate for circumstances of internal displacement because the fact of fleeing one's home is already a violation of certain rights under human rights law such as the right to security of a person, the freedom to choose one's residence and so forth. Very often factors that contribute to internal displacement in the first place are matters such as discrimination, armed conflict, generalized violence which in themselves constitute violations of human rights. Displacement, especially internally, results in a rapid change of status quo of individuals and increases vulnerabilities such as: health risks, lack of permanent residence and homelessness resulting from residing in inhabitable places; break down of social structures; separation of families resulting in women and children taking on non traditional roles and exposure to dangerous circumstances such as sexual violence. Forced removal from sources of income and livelihood may also be an independent vulnerability in itself as well as a further disruption of access to social amenities such as schools.

These increased vulnerabilities require an increased form of protection that the human rights regime is better equipped to offer.⁴³⁹ It sets out the obligations of states, which are first and foremost responsible to ensure the survival, well being and dignity of internally displaced persons. Although during the development of the human rights system, internally displaced persons were not taken into account as a specific category and forced displacement was not independently focused on, there are existing human rights instruments that contain general provisions that are of particular relevance to internally displaced persons.⁴⁴⁰ These general norms have been adapted and explicitly tailored for internally displaced people through Guiding Principles on Internal Displacement.

⁴³⁸ Ngugi 2008 as above at 32.

⁴³⁹ Ngugi 2008 as above at 33.

⁴⁴⁰ Ngugi 2008 as above at 34.

They include: The right to life, freedom of movement, the right to liberty, security, freedom from torture and cruel and inhuman punishment or degrading treatment, the right against slavery, prohibition of retrospective application of penal law and arbitrary interference with the family, home or privacy.⁴⁴¹ These rights can be found in the following human rights documents: The Universal Declaration of Human Rights (UDHR);⁴⁴² the International Covenant on Civil and Political Rights (ICCPR);⁴⁴³ the International Covenant on Economic, Social and Cultural Rights (ICESCR);⁴⁴⁴ the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);⁴⁴⁵ the Convention on the Prevention and Punishment of the Crime of Genocide;⁴⁴⁶ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);⁴⁴⁷ the Convention on Elimination of Discrimination Against Women (CEDAW);⁴⁴⁸ and the Convention on the Rights of the Child (CRC).⁴⁴⁹ All these existing human rights documents and the provisions therein that are relevant to the conditions of internal displacement have been synthesized together with other forms of international law, into one main document that is regarded as the international basis for the legal protection of internally displaced persons, the Guiding Principles on Internal Displacement.⁴⁵⁰

The original foundation of human rights was the United Nations Charter.⁴⁵¹ It is imperative to discuss its provisions as a source of general norms providing for the protection of IDPs. The Charter is the foundation treaty of the United Nations. It contains reference to the promotion of human rights, this reference is first seen in the preamble to the charter which states that:

We the people of the United Nations, determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small... have resolved to combine our efforts to accomplish these aims...

⁴⁴¹ Ahlbrandt 2004 as above at 10.

⁴⁴² GA Res 217 A (III) UN Doc A/810 (1948).

⁴⁴³ GA Res 2200 A (XXI) UN Doc A/6316 (1966) 999 UNTS 171, entered into force on 23 March 1976.

⁴⁴⁴ GA Res 2200, 21 UN GAOR Supp No. 16, 49 U.N Doc A/6316 (1966), 993 UNTS 3, entered into force on 3 January 1976.

⁴⁴⁵ GA Res 39/46 UN Doc A/329/51 (1984) 1465 UNTS 85 entered into force on 26 June 1987.

⁴⁴⁶ GA Res 260(III) UN Doc A/810 (1948) 78 UNTS 277, entered into force on 12 January 1951.

⁴⁴⁷ GA Res 2106 (XX) UN Doc A/6014 (1965) 660 UNTS 195, entered into force on 4 January 1969.

⁴⁴⁸ GA Res 34/180 UN Doc A/34/46 (1979) 1249 UNTS 13, entered into force on 3 September 1981.

⁴⁴⁹ GA Res 44/25 UN Doc A/44/49 (1989) 1577 UNTS 3, entered into force 2 September 1990.

⁴⁵⁰ Ngugi 2008 as above at 35.

⁴⁵¹ United Nations Charter of 1948.

The provisions of the preamble describe the main objective of the charter as well as the formation of the United Nations to be reaffirmation of fundamental human rights of all peoples without discrimination or distinction to ensure the promotion of human dignity, and self worth. It actually seems that in this small statement therein lay the basis of all subsequent human rights protection norms. The statement in the preamble is reinforced in article 1 of the charter which sets out the purpose of the United Nations as aiming to ‘achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all.’ An additional important reference to human rights which seems to apply directly to the situation of internally displaced persons can also be found in article 55 and 56 of the charter. Article 55 provides that the United Nations shall promote ‘universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. On the other hand, article 56 provides that ‘all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in article 55.’

The Universal declaration of Human Rights⁴⁵² was simply a more detailed human rights document, created at the eve of the second world war, as a way of addressing atrocities that had been committed by various nations before, during and after the war.⁴⁵³ Article 55 and 56 of the United Nations Charter provides that United Nations members will promote ...universal respect for, and observance of human rights and fundamental freedoms for all.⁴⁵⁴ The United Nations assumes responsibility and is charged and legally obliged to assume this responsibility by using means and taking measures deemed necessary to further this end.⁴⁵⁵ In line with this idea, in 1945 after the United Nations Charter had entered into force, it was recommended that the Economic and Social Council should immediately establish a Commission on Human Rights which would be tasked with preparing an international Bill of Rights.⁴⁵⁶

The Human Rights Commission deals with the elaboration of legal instruments that identify and define human rights, as well as maintaining and outlining procedures for

⁴⁵² GA Res 217 A (III) UN Doc A/810 (1948).

⁴⁵³ Robertson and Merrills 1996 as above at 27.

⁴⁵⁴ In as much as there are various sections in the Charter that provide for protection of human rights internationally, the basis of this protection can be found in Article 55 (c).

⁴⁵⁵ Robertson and Merrills 1996 as above at 27.

⁴⁵⁶ Robertson and Merrills 1996 as above.

implementation.⁴⁵⁷ A Universal Declaration of Human Rights was later adopted on 10th December 1948. It went on to clarify the duty of the human rights commission, the United Nations and the international community at large.⁴⁵⁸ This instrument has managed to lay down the widest protection norms that have been reflected in specific protection mechanisms for IDPs.⁴⁵⁹ The Declaration establishes the main civil, political, economic, social and cultural rights to which persons, including the displaced are entitled to without discrimination.

The Declaration was not a binding instrument in itself, but it gained binding force after its principles were reaffirmed numerous times by the United Nations and treaties as a reinforced international standard of principles that all states should observe.⁴⁶⁰ It has inspired various constitutions, regional human rights treaties and legislation and because of its widespread recognition, most of its provisions can now be regarded as part of customary international law.⁴⁶¹ This means that international human rights law has other sources of human rights norms that do not necessarily constitute treaty law and do not require ratification. Such norms have been accepted as binding upon all states through constant use and out of a sense of legal obligation. These norms bind all states as long as there is no express and persistent objection to such norms. These norms are non-derogative in nature.⁴⁶² A state might be regarded as having violated the provisions of customary international human rights law if it engages in genocide, slavery, torture, cruel inhuman or degrading treatment or punishment, arbitrary arrest and detention, or if it fails to exercise the presumption of innocence principle. As long as these acts are directed towards its citizens, whether internally displaced or not, the state will be violating human rights law.⁴⁶³

⁴⁵⁷ Robertson and Merrills 1996 as above.

⁴⁵⁸ Since the Declaration was adopted unanimously without a dissenting vote, it actually may be regarded as the highest authoritative interpretation of the United Nations Charter, even though it was initially not directly binding on the United Nations members, it strengthened the obligations of the Charter by making them more precise.

⁴⁵⁹ Ahlbrandt 2004 as above at 10; Robertson and Merrills 1996 as above at 27.

⁴⁶⁰ Robertson and Merrills 1996 as above at 29; See also the IASC Handbook for the protection of IDPs 2010 as above at 21.

⁴⁶¹ Robertson and Merrills 1996 as above at 29.

⁴⁶² Ahlbrandt 2004 as above at 10.

⁴⁶³ Ahlbrandt 2004 as above at 10;

3.3.3.1 The international Covenant on Civil and Political Rights and its optional protocols (UN/ICCPR)

At the time the Universal Declaration of Human Rights was being adopted under Resolution 217 (III) of 10th December 1948, it had also been decided that more work would be done with regard to the other two remaining parts of the International Bill of Rights. One of the initiatives included a covenant containing legal obligations to be assumed by states and co-relating implementation measures.⁴⁶⁴ The starting point in the when it comes to matters of forced displacement is article 12 of the covenant. The article specifically deals with the freedom of movement. It provides for liberty of movement and freedom to choose residence within a particular territory to ‘every one lawfully within the territory of a state.’ The article goes on to provide to ‘everyone’ the right to leave ‘any country’ including his own’ and it finally provides to everyone , the right not to be arbitrarily deprived of the right to enter one’s ‘own country.’⁴⁶⁵

The above rights provided by the covenant on civil and political rights can also be applied in the event of internal displacement, but these are rights applicable where one is regarded to be lawfully within the territory of a certain state. There is also no provision that such rights may not be derogated from. It should be noted that most of the time internal displacement occurs during times of ‘internal strife’ or the like. Under most of these circumstances, the state regards the circumstances as emergency situations and may mostly claim derogation from the application of this right.⁴⁶⁶ The final hindrance in implementation of this clause is that that this right is not specifically tailored for internal displacement situations it is simply a general norm.⁴⁶⁷

The Guiding Principles on Internal Displacement have addressed the gap within this provision by tailor making a similar provision for internally displaced persons and extending it explicitly within situations on internal displacement.⁴⁶⁸ The principles provide for the right to liberty of movement for internally displaced persons and freedom to choose residence. They also provide for the right of the internally displaced to move freely in and out of camps

⁴⁶⁴ Robertson and Merrills 1996 as above at 30.

⁴⁶⁵ Scheinin M ‘Forced displacement and the covenant on civil and political rights’ in Bayefsky A and Fitzpatrick J *Human Rights and forced displacement* Refugees and Human Rights Series Vol. 4 2000 at 66.

⁴⁶⁶ Scheinin 2000 as above at 67.

⁴⁶⁷ Scheinin 2000 as above.

⁴⁶⁸ See principle 14 and 15 of the Guiding Principles on Internal Displacement 1998 as above.

or other settlements.⁴⁶⁹ The displaced can under the principles seek safety in another part of the country, leave their country or seek asylum subject to the instructive principle similar to *non refoulment*.⁴⁷⁰

3.3.3.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁷¹

The ICESCR contains the most explicit and specific international legal provisions establishing economic, social and cultural rights.⁴⁷² It also represents one of the widest provisions available to the displaced with regard to the right to self determination.⁴⁷³ The covenant is one of the two hard law limbs of the Universal declaration of human rights. The other one being the above discussed International covenant on civil and political rights (ICCPR). The two covenants represent enforcement mechanisms of varying nature, even though they deal with norms that originate from the same document, the UDHR. The reason for this separate application was among other things influenced by the assumption that unlike civil and political rights, economic social and cultural rights were incapable of immediate implementation.⁴⁷⁴

Social and economic rights have additional limitations under international law. This is because the status of these rights varies depending on each country or region within which they are claimed as well as the resources and capabilities of such states.⁴⁷⁵ In every country the satisfaction of what is regarded as a basic right will depend on that country's communal context. The ICESCR has provided that the obligations of states to fulfill their obligations to their nationals are subject to the availability of resources and should be implemented

⁴⁶⁹ See principle 14 (1 and 2) of Guiding Principles on Internal Displacement 1998 as above.

⁴⁷⁰ See principle 15 of Guiding Principles on Internal Displacement 1998 as above.

⁴⁷¹ GA Res 2200A (XXI) 16 December 1966 entered into force on 3 January 1976.

⁴⁷² Chirwa D 'An overview of the international covenant on economic, social and cultural rights in Africa' at 1Community law centre at <http://www.communitylawcentre.org.za/clc-projects/socio-economic-rights/research> on 18-08-2011.

⁴⁷³ Article 1 of G.A Res 2200, 21 UN GAOR Supp No. 16, 49 U.N Doc A/6316 (1966), 993 UNTS 3 (hereinafter ICESCR).

⁴⁷⁴ Of course this view has been rebuffed, and in the context of Africa, it seems post independence African States promoted civil and political rights over social, economic and cultural rights; See Liebenberg S 'The international covenant on economic, social and cultural rights' *South African Journal of Human Rights* 1995 Vol. 11 at 359; Onyango O 'Beyond the rhetoric: Reinvigorating the struggle for economic, social and cultural rights in Africa' *California Western International Law Journal* 1995 at <http://www1.umn.edu/humanrts/africa/Oloka-Onyango/html> accessed on 28 March 2012.

⁴⁷⁵ Guariglia O 'Enforcing economic and social human rights' in Pogge T (ed.) *Freedom from poverty as a human right: who owes what to the poor?* 2007 at 346-347; See also Chirwa as above at 2.

progressively.⁴⁷⁶ It has been argued that this provision should not be interpreted at the expense of deferring efforts to ensure the enjoyment of rights specified in the ICESCR. Rather the obligation is for states, regardless of their level of national wealth, to act swiftly, to the maximum of their available resources to ensure the realization of rights in the ICESCR and fulfill at least “minimum core obligations”.⁴⁷⁷ It should be noted that the term ‘available resources’ refers to both domestic resources and any international assistance or cooperation made available to a state party.⁴⁷⁸

Economic, social and cultural rights become imperative in the case of internally displaced persons because of the situations that they find themselves in. Their most necessary survival needs include: food, water, emergency shelter, healthcare, education, and sanitation. These are basically what make up the essence of social economic rights.⁴⁷⁹ These types of rights make a specific claim in each case, for a certain demand to be satisfied with regard to matters such as food, or clothing, housing, medical care and other basic needs.⁴⁸⁰ This provision is of importance because it gives people within a state the freedom to choose their political status, and even determine their own economic, social and cultural development. Since IDPs are usually within the realms of their states, they should, by virtue of this article be afforded the above freedom and opportunities in whatever parts of the country they might have relocated to.

Article 11(1) of the covenant recognizes the right of everyone to an adequate standard of living, including housing. The right has been described as an equivalent to the right to ‘live somewhere in security, peace and dignity.’⁴⁸¹ This applies directly to the situation of IDPs and other displaced persons, who by virtue of disturbances have to leave their homes or places of habitual residence. The Committee on Economic, Social and Cultural Rights has stated that instances of forced evictions are prima facie also a violation of provisions of the covenant and can only be justified under circumstances that are exceptional and where such

⁴⁷⁶ See article 2 of the ICESCR 1966 as above.

⁴⁷⁷ Chirwa as above at 3; the “minimum core obligations” include the essential levels of rights such as basic nutrition, primary healthcare, shelter and basic education.

⁴⁷⁸ Chirwa as above at 3; General Comment No. 3 (fifth session, 1990) “The nature of state parties obligations” (article 2(1) of the ICESCR) paras. 13 and 14; see also article 22 of ICESCR General comment No. 2 (Fourth session 1990) “International technical assistance measures”.

⁴⁷⁹ Langford M (ed.) *Social rights jurisprudence: emerging trends in international and comparative law* 2008 at 3.

⁴⁸⁰ Guariglia 2007 as above at 346.

⁴⁸¹ See ICESCR 1966 as above; Stavropoulou M ‘On the right not to be displaced’ *East African Journal of Peace and Human Rights* 1998 Vol. 5 No. 1 at 92.

evictions have occurred in accordance with international law.⁴⁸² It should be noted that the right to internal movement, freedom from forced evictions as well as arbitrary interference with one's home are applicable to citizens and non-citizens alike.⁴⁸³ Additional protection against individual and mass expulsions of citizens is afforded by international customary law as found in the Universal Declaration of Human Rights which prohibits "arbitrary exile."

The substantive rights contained in the covenant which seem applicable to IDPs include the right to work,⁴⁸⁴ the right to protection and assistance of the family,⁴⁸⁵ the right to an adequate standard of living which includes adequate food, clothing, housing as well as continuous improvement of living conditions.⁴⁸⁶ Other relevant rights include having the highest standard of physical and mental health, which IDPs are usually lacking either as a result of psychological traumas associated with forced movement, violence involved in the process, rape, social stigma, or as a result of deprived physical health resulting from physical maiming, and lack of reproductive support among others.⁴⁸⁷ The right to culture provided in article 15 of the covenant is also relevant to the displaced, who usually loose social, cultural and traditional ties as well as values as a result of the displacement.

The issue of competing claims on which of these rights, civil and political, or economic, social and cultural are preferential has affected how the two covenants have been implemented in Africa. The consequences of these claims are highly relevant for displaced groups. In Africa the status of economic, social and cultural rights in relation to the civil and political rights have been contentious. The progressive nature of social economic rights leaves vulnerable groups like IDPs unprotected. Mostly because the situation IDPs find themselves in requires immediate reaction, as opposed to progressive realization.⁴⁸⁸ The marginalization associated with displacement compounds realization gaps for such rights as far as IDPs are concerned.

⁴⁸² Article of ICESCR 1966 as above.

⁴⁸³ Stavropoulou 1998 as above at 92.

⁴⁸⁴ Article 6 of ICESCR 1966 above; which among other things covers the right to choose work, and to vocational training and guidance.

⁴⁸⁵ Article 10 of ICESCR 1966 as above.

⁴⁸⁶ Article 11 of ICESCR 1966 as above.

⁴⁸⁷ Article 12 of ICESCR 1966 as above.

⁴⁸⁸ Ngugi 2008 as above at 44.

At the same time, promoting security for IDPs, which is a civil and political right is given prerogative in some cases, but this leaves one wondering, how protection can be offered if people are starving.⁴⁸⁹ There are also those cases where humanitarian organizations come in and offer aid and assistance, but disregard protection and security. This also leaves a gap, because being fed without protection is redundant.⁴⁹⁰ There is a need to balance the provisions of these two covenants, because the provision of civil and political rights, in the absence of social, economic and cultural rights is self defeating as far as IDP protection is concerned. The Guiding Principles on Internal Displacement have attempted to include the provisions of both covenants. The principles provide for both civil and political rights, as well as social, economic and cultural rights.⁴⁹¹

3.3.3.3 Other Human rights instruments relevant to IDPs

Other human rights instruments that are relevant and have been reflected in the Guiding Principles on Internal Displacement include: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴⁹² This convention defines and prohibits torture under all circumstances. It also provides that states cannot transfer a person to another state if there are grounds for believing that he or she will be tortured (*non-refoulement*).⁴⁹³ This principle is the main basis of refugee protection, and would have been ideal for IDP protection, but the circumstances of application are different. Seeing that IDPs are usually displaced within the borders of their own countries, it is hard to apply the principle even though the concept underlying its creation is relevant to IDPs as well. But the Guiding Principles on Internal Displacement have dealt with similar matters in principle 15 (d). The principle provides internally displaced persons with the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and or health would be at risk. Despite this provision it has become obvious that the provision is hardly implemented practically and the effect of this is the return of masses of formally displaced persons to areas they feel uncomfortable.⁴⁹⁴

⁴⁸⁹ Ngugi 2008 as above.

⁴⁹⁰ Cohen 2004 as above at 467; Ngugi 2008 as above at 44.

⁴⁹¹ See Section III of the Guiding Principles on Internal Displacement 1998 as above.

⁴⁹² (CAT) GA Res 39/46 of 10 December 1984, entered into force 26 June 1987, in accordance with article 27 (1) United Nations, Treaty Series, vol. 1465, at. 85, available at <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> accessed 10 April 2012.

⁴⁹³ IASC Hand book for the protection of IDPs 2010 as above at 22.

⁴⁹⁴ See return process such as 'operation rudi nyumbani' in Kenya where IDPs were without consultation obligated to leave areas they were seeking refuge and return to communities that had

The other relevant human rights instrument is the International Convention on the Elimination of All forms of Racial Discrimination.⁴⁹⁵ This convention prohibits racial discrimination, which happens in most cases when a person or a group is treated differently because of race, colour, descent, national origin, or ethnic origin with the aim of denying their human and fundamental rights.⁴⁹⁶ This convention is relevant to the circumstance of IDPs because when actual displacement takes place, there is usually a form of discrimination advanced against a certain communities. Such discrimination results in either their torture, or genocide or marginalization that eventually culminates in their displacement either by direct use of force or indirectly through fear of threats of such.⁴⁹⁷

Principle 6(2) (a) of the Guiding Principles on Internal Displacement lists the above factors as prohibited causes of arbitrary displacement. The Convention on the Prevention and Punishment of the Crime of Genocide⁴⁹⁸ is also closely related to the issue of internal displacement. This is because a good number of internally displaced persons are usually in that precarious situation because they are targeted victims of among others, systematic genocidal acts in their own countries. Hence any protection offered by the Convention would go far in offering protection to internally displaced persons as well as minimizing or addressing internal displacement through the prevention and punishment of the crime of genocide.⁴⁹⁹

The Convention on the Elimination of All Forms of Discrimination against Women sets a framework for national action for ensuring that women are treated equally to men. The convention protects their rights in all fields including, employment, education, and administration of property. The Convention also ensures that they are protected against threats aimed at their physical safety, rape and sexual exploitation. In situations of internal displacement, women are among the most vulnerable populations, they require extra care and protection. This Convention provides such forms of protection even though the protection

previously visited harm upon them. The effect of this operation was further displacement as IDPs as they sought safer places to relocate to.

⁴⁹⁵ Of 1965 (CERD).

⁴⁹⁶ IASC Handbook for the protection of IDPs 2010 as above at 22.

⁴⁹⁷ IASC Handbook for the protection of IDPs as above.

⁴⁹⁸ Of 1948 as above.

⁴⁹⁹ IASC Handbook for the protection of IDPs 2010 as above at 22; See principle 10 (a) of the Guiding Principles on Internal Displacement 1998 as above.

offered is not aimed specifically at displaced women. The Guiding Principles distinctly adapt such provisions and tailor them to the situation of internally displaced women.⁵⁰⁰

The Convention on the Rights of the Child⁵⁰¹ together with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography,⁵⁰² as well as the Optional Protocol on the Involvement of Children in Armed Conflict⁵⁰³ and the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,⁵⁰⁴ provide for the concerted protection of the rights and best interests of children (below the age of 18). These instruments require states to take reasonable measures to ensure protection, care, psychological recovery, and social reintegration of children affected by armed conflict including unaccompanied minors or separated children. The Optional Protocol on the Involvement of Children in Armed Conflict specifically prohibits compulsory recruitment of children and direct use of persons below the age of 18 in any situations of hostility.⁵⁰⁵

On the other hand, the ILO Convention on Child Labour obliges states to take all the necessary measures to eliminate the worst forms of child labour, including slavery, trafficking, prostitution or forced labour. It also covers the recruitment of children below the age of 18 into armed militia.⁵⁰⁶ These instruments are relevant in circumstances of internal displacement because once again, children below the age of 18 are vulnerable groups in such situations. They can easily be taken advantage of in circumstances where the social fiber has broken down as a result of displacement.⁵⁰⁷ These provisions have been explicitly tailored for situations involving internally displaced children through principle 11 (2) (a and b), 17 (3) and 13 (1) of the Guiding Principles on Internal Displacement.

Another vulnerable group that is easily affected by internal displacement and hence the requirement of specific protection is that of Indigenous and tribal people. Their rights are provided for in the Indigenous and Tribal Peoples Convention.⁵⁰⁸ The convention provides a

⁵⁰⁰ See principles 7 (d), 11(a and b), 20 (3) and 19 (20) of the Guiding Principles on Internal Displacement 1998 as above.

⁵⁰¹ 1989 (CRC) as above.

⁵⁰² Of 2000.

⁵⁰³ Of 2000.

⁵⁰⁴ ILO Convention No 182 of 1982.

⁵⁰⁵ IASC Handbook for the protection of IDPs as above at 23.

⁵⁰⁶ IASC Handbook for the protection of IDPs as above at 32.

⁵⁰⁷ IASC Handbook for the protection of IDPs as above at 23.

⁵⁰⁸ ILO Convention No 169 of 1989.

framework for ensuring that indigenous and tribal people enjoy equal rights to exist with other persons. Considering their special attachment to land, the convention specifically addresses the issue of their relocation, and ensures that when this has to happen it is done lawfully and provides for certain conditions and guarantees that offer them protection against arbitrary displacement.⁵⁰⁹ The Guiding Principles reflect a similar provision that is explicitly tailored for situations of internal displacement.⁵¹⁰

3.3.3.4 Critiquing human rights law

It has also been noted that when applied to specific situations involving internally displaced persons, human rights law can be critiqued. The right of some documents to be derogated from, especially during emergency times is a very contentious issue.⁵¹¹ Fundamental rights such as the right to life, and freedom, may not be derogated from at any given time. Rights that are in essence very useful to internally displaced persons, such as the right not to be subjected to arbitrary arrest and detention, the right to freedom of movement and the right to residence for instance, may be derogated from.⁵¹²

It is this distinction in human rights law that becomes imperative when highlighting the setbacks of the existing framework with regard to protection offered to internally displaced persons. It is important to note that internal displacement occurs predominantly in situations involving internal strife or armed conflict, which in most cases lead the existing governments to define the existing status quo as an emergency. In such circumstances it is acknowledged that internally displaced persons are subject to a higher risk over their personal safety than non-displaced persons.⁵¹³ This is because during displacements, the ‘emergency’ or security justification can always be raised by governments to suppress rights of individuals and at the same time derogate from guaranteeing their human rights. By virtue of being displaced IDPs are not even in a position to invoke their normal citizen rights, the prerogative to derogate weakens even the little protection in existence.

⁵⁰⁹ IASC Handbook for the protection of IDPs 1998 as above at 32.

⁵¹⁰ See principle 9 of the Guiding Principles on Internal Displacement 1998 as above.

⁵¹¹ In as much as the right to life and freedom cannot be derogated from, other rights such as the right against arbitrary detention (Guantanamo- Bay matters), unlawful or unsubstantiated detention, and the rights such as freedom of movement and residence can be limited. See Article 4 of ICCPR 1966 as above.

⁵¹² Ahlbrandt 2004 as above at 11; See article 4(2) of the ICCPR 1966 as above.

⁵¹³ Ahlbrandt 2004 as above.

The human rights system as it exists is by and large based on treaty or customary international law. This becomes problematic especially with reference to treaty law. When addressing issues of internal displacement difficulties manifest if the concerned states have yet to ratify the relevant treaties, or if they are party to the treaty, but have invoked limitation clauses or derogated from certain guarantees citing public emergency.⁵¹⁴ Derogation should not be used as an excuse to violate existing rights, it has been stated that even if states do invoke derogation clauses, they are still required to respect various fundamental and non-derogative human rights such as the right to life, the prohibition of torture and cruel inhuman or degrading treatment and punishment.⁵¹⁵

The other failure of the human rights system is that mass transfers, humanitarian and forced displacements which are a result of these conflicts, are not specifically addressed. It should be noted that a general norm (freedom of movement) does exist as provided for in article 12(1) of the ICCPR. Similar protections can be found in Article 13(1) of the UDHR as well as regional instruments, but no specific guarantees exist under human rights law to protect internally displaced populations against mass transfers or forced return to places regarded as potentially dangerous.⁵¹⁶ The Guiding Principles have adopted these general norms and specifically used and expanded their function, whilst clarifying grey areas so they could apply to internally displaced persons explicitly.⁵¹⁷

Implementation is also another setback when it comes to the application of human rights to situations of internal displacement. There is no efficient implementation mechanisms despite recent developments in attempts internationally and domestically bring violators of human rights to justice. The existing reporting and complaints systems do not effectively or specifically address the acute needs of internally displaced persons. The process of addressing violations is slow and not sufficient when it comes to compelling states to remedy most grave circumstances involving violations before, during and after internal displacement.

⁵¹⁴ Ngugi 2008 as above at 51.

⁵¹⁵ Article 4(2) of the International Covenant on Civil and Political Rights, 19 Dec 1966:999 *UNTS* (ICCPR); Geissler N, 'The International Protection of Internally Displaced Persons', *International Journal of Refugee Law* 1999 Vol. 11 No. 3 at 459.

⁵¹⁶ Ahlbrandt 2004 as above at 11; See the Compilation and Analysis of Legal Norms –Report of the Representative of the Secretary General, Mr Francis Deng submitted pursuant to the Commission on Human Rights Resolution 1995/57, Doc E/cn.4/1996/Add. 2, p. 58, 105.

⁵¹⁷ See principle 15 of the Guiding Principles on Internal Displacement 1998 as above.

The most problematic impasse so far is caused by the presence of non-state actors, who are leading violators next to states when it comes to internal displacement, because they are not bound by existing human rights law.⁵¹⁸

3.3.4 International Refugee Law

This is a branch of law that provides for the protection of refugees. Refugees are defined as people that are compelled to leave their habitual countries of residence across borders to another country to seek refuge as a result of fear of persecution. Over the years the definition of a refugee has altered, but the main content is the ‘border crossing’ factor. This law does not apply directly to situations of internal displacement, and in as much as there are numerous references to refugee law by analogy in the process of protecting IDPs, such references should be minimized.⁵¹⁹ Yet refugee law still mainly focuses on issues arising during displacement, this means that some of its principles can be instructive in matters of internal displacement. There are nevertheless key differences between the systems of law that are meant to protect refugees and those created to protect the internally displaced. The differences can be noted in the definitions adopted. Internal displacement is defined negatively in terms of international refugee law:

Unlike a refugee, a person fleeing from internal armed conflict does not seek to disestablish his ties of nationality or allegiance to his country on a temporary or permanent basis...His need for relief, and therefore temporary refuge, lasts only until his government can assure him de facto protection.⁵²⁰

While internally displaced persons are regarded as having much in common with refugees, the critical and most important distinction that sets them apart is that the former have not crossed an international border, and thus cannot formally claim the protection of international refugee law.⁵²¹ UNHCR has, despite these limitations, undertaken to protect internally displaced persons. The United Nations General Assembly through its various resolutions has over the years conferred special limited mandate on UNHCR to undertake humanitarian assistance and protection activities on behalf of the displaced provided certain conditions are

⁵¹⁸ Geissler as above at 459.

⁵¹⁹ IASC Handbook for the protection of IDPs 2010 as above at 21.

⁵²⁰ Ahlbrandt 2004 as above at 14.

⁵²¹ Ahlbrandt 2004 as above.

met.⁵²² Even though the UNHCR may undertake these activities in certain isolated cases, IDPs are not automatically entitled to the international protection of refugee law. Border crossing still remains a critical factor in the services they can get.

3.3.5 *International Criminal Law*

It should be noted that national authorities are first and foremost responsible towards the criminalization of any violations of international human rights and humanitarian law within their territories. They also have the responsibility to prosecute and take punitive measures against those responsible by bringing them before national courts or tribunals.⁵²³ The Rome Statute of the International Criminal Court (ICC)⁵²⁴ defines a number of crimes that are of international concern and which can be investigated and prosecuted by the Court, provided that the Court has jurisdiction over the particular violations. The Court has jurisdiction over the following acts, which in turn have direct or indirect effect on internal displacement: war crimes, these include grave breaches of the Geneva Conventions and serious violations of international humanitarian law covering a wide range of acts such as willful killing, torture and inhuman treatment; rape and sexual slavery; starvation of civilians; recruitment of children into armed forces or armed groups, or using them to participate in hostilities; launching attacks against civilians or civilian objects; and ordering the displacement of civilians; unless this is a requirement for the security of civilians or for military imperatives.⁵²⁵

The Court also has jurisdiction over crimes against humanity. This includes acts committed as part of a widespread or systematic attacks directed against civilians, whether this is done in times of war or peace. For instance acts of murder, extermination, enslavement, deportation or forcible transfer of population, arbitrary imprisonment or any other severe deprivation. Acts of rape and sexual violence, as well as persecution, enforced disappearance and other inhuman acts intentionally causing great suffering or serious injury to body or to

⁵²² Ahlbrandt 2004 as above.

⁵²³ IASC Handbook for the protection of IDPs 2010 as above at 31.

⁵²⁴ Statute of the International Criminal Court 1998 UN Doc A/CONF. 183/9; (ICC-hereafter referred to as the Court).

⁵²⁵ Article 8 of the Statute of the ICC 1998 as above; IASC Handbook for the protection of IDPs 2010 as above at 31.

mental or physical health also fall in this category.⁵²⁶ The last international criminal provision that is relevant to the protection of internally displaced persons relates to punishment for the crime of genocide. This involves any acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.⁵²⁷ This provision is of particular importance to IDPs because sometimes acts of displacement are usually a result of a population's attempt to flee causes or consequences of the crime of genocide, or genocidal tendencies. Where local and national governments fail to provide for their protection or provide punishment to the perpetrators of these violent crimes, international criminal law can be invoked through provisions of the Statute of the International Criminal Court.⁵²⁸

It should be noted that International criminal law is complementary to national law, this means that international courts such as the ICC, only exercise their jurisdiction where national courts are either unwilling or unable to prosecute and punish the crimes in question.⁵²⁹ *Ad hoc* Tribunals have also been established by the international community to deal with crises involving the violation of international human rights law and humanitarian law including situations involving internal displacement. These tribunals have based their mandates and subsequent decisions on existing rules of international criminal law.⁵³⁰ Matters dealt with in such tribunals range from matters involving genocide, crimes against humanity, as well as other war crimes which are usually the main causes of mass population movements resulting in among others, the crisis of internal displacement.⁵³¹ Guiding Principles on Internal Displacement reflect these provisions of international criminal law specifically to address situations of internal displacement. Principle 10 of the principles includes provisions for protection against murder, genocide, summary executions, enforced disappearance, starvation as a method of combat, using human beings as military shields, use of landmines, and so forth.⁵³²

⁵²⁶ Article 7 of the Statute of the ICC 1998 as above; IASC Handbook for the protection of IDPs 2010 as above at 32.

⁵²⁷ Article 6 of the Statute of the ICC 1998 as above; See also the 1948 Convention on the Prevention and Punishment of the Crime of Genocide as above.

⁵²⁸ IASC Handbook for the protection of IDPs 2010 as above at 32.

⁵²⁹ IASC Handbook for the protection of IDPs 2010 as above.

⁵³⁰ These tribunals include International the Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, which were established by the United Nations Security Council as well as hybrid tribunals such as the Special Court for Sierra Leone; See Article 7 (1)(d), 8(2)(e)(viii) of the Rome Statute of the ICC 1998 as above.

⁵³¹ IASC Handbook for the protection of IDPs 2010 as above at 32.

⁵³² Principle 10 of the guiding principles reflects article 7 of the Statute of the ICC.

3.4 Institutional frameworks: the collaborative response and cluster approach

Internal displacement usually follows or occurs during complex crises that are represented by total breakdown of state authority and this affects their willingness or ability to provide protection.⁵³³ Such emergencies require multidimensional responses including humanitarian, human rights, development, security, political as well as the cooperation of various actors nationally and internationally.⁵³⁴ The set back is that there is no one particular institution that is responsible for addressing the needs of internally displaced persons. Additionally, the scale and dynamics of such emergencies are usually beyond the capacity of one single agency.

It was realized that emergencies that breed internal displacement require action by multiple organizations even beyond the United Nations systems, including human rights humanitarian and development agencies, as well as national local and IDP communities themselves. During such circumstances an urgent need for joint collaboration and coordination became obvious.⁵³⁵ Such collaboration required teamwork that had to be based in various mandates, expertise and operational capacities involving a wide range of actors to ensure a comprehensive response.⁵³⁶ A collaborative system was initially set up to address this but it was not well coordinated because there were no clearly defined responsibilities. To bridge the gaps that arose and maintain coordination, the Inter Agency Standing Committee (IASC) comprehensively reformed the system and additionally adopted the cluster approach.

The cluster approach in addition to what is done by collaborative response ensures greater leadership and accountability in key sectors where gaps in humanitarian response have been identified.⁵³⁷ It is aimed at ensuring partnerships among humanitarian, human rights and development agencies. Both systems operate at global and country-levels and are applied to crises in natural disasters and complex emergencies.⁵³⁸ Under this approach agencies will be held accountable for specific aspects of the global and country-specific humanitarian

⁵³³ IASC Handbook for the protection of IDPs 2010 as above at 43.

⁵³⁴ IASC Handbook for the protection of IDPs 2010 as above.

⁵³⁵ IASC Handbook for the protection of IDPs 2010 as above.

⁵³⁶ IASC 'Implementing the collaborative response to situations of internal displacement: Guidance for UN humanitarian and or resident coordinators and country teams' September 2004 at 14 at <http://www.unhcr.org/refworld/pdfid/41ee9a074.pdf> accessed on 14-05-2012.

⁵³⁷ IASC Handbook for the protection of IDPs 2010 as above at 44.

⁵³⁸ IASC Handbook for the protection of IDPs 2010 as above.

response.⁵³⁹ Response by agencies is no longer a choice, but an obligation, hence HC in the field have a specific agency to turn to organize the relevant relief in times of crisis. It is hoped that such approach will not only improve predictability, timeliness and effectiveness, but will also strengthen collaborative approaches already existing with enhanced accountability.⁵⁴⁰

3.4.1 The role of the United Nations

As the nature of conflict changed from being interstate to in-state, so did the nature of response from the international community. With the increase of internally displaced persons worldwide, there seemed to be a gap in the existing system for providing protection and assistance. The international community has started showing an increased interest in taking responsibility for internationally displaced persons whenever the governments concerned are unable or unwilling to carry out their responsibilities.⁵⁴¹ The process of facilitating this was initially complicated because there is no single organization responsible for assisting the internally displaced. An initiative was made involving a wide range of human rights, humanitarian, and development organizations that took responsibility for providing aid and protection to the internally displaced within the limits of their mandates.⁵⁴² The process started in 1990 when the General Assembly through the General Secretary's recommendation assigned the United Nations Resident Coordinators the task of coordinating assistance to internally displaced persons in the field.

This was in the following year followed by the creation of the post of the Emergency Relief Coordinator (ERF) who was meant to improve the UN's response to emergency situations including those of the internally displaced persons.⁵⁴³ The ERC who is also the United Nations Under-Secretary on Humanitarian Affairs, is among other things responsible for the coordination of inter-agency humanitarian action, in complex emergencies as well as in natural disasters. Duties related to the above functions include advocating for protection and assistance, mobilizing political and financial support as well as briefing the Security Council

⁵³⁹ Bijleveld A 'Towards more predictable humanitarian responses Inter-agency cluster approach to IDPs' *Refugee Survey Quarterly* 2006 Vol. 25 Issue 4 at 31.

⁵⁴⁰ Bijleveld 2006 as above 31.

⁵⁴¹ The Brookings Institution, Refugee Policy Group Project on Internal Displacement 'Improving institutional arrangements for the internally displaced' 1995 at 2.

⁵⁴² Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above at 3.

⁵⁴³ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above at 2.

and engaging with governments, humanitarian agencies and other relevant actors.⁵⁴⁴ The Inter Agency Standing Committee (IASC) was established a year after the creation of the post ERC with the aim of supporting his work, it is actually chaired by the ERC.⁵⁴⁵ The IASC's purpose was to provide a forum that brought together the major United Nations and non United Nations humanitarian, human rights and development partners, NGO umbrella groups and the Red Cross or Red Crescent Federations. Its main role was to formulate policy, advocate and to ensure coordinated and effective humanitarian responses to complex emergencies and natural disasters.⁵⁴⁶

At the same time, as concerns over protection were increasing, the Commission on Human Rights requested the Secretary General to prepare an analytical report on internally displaced persons. In 1992 at the request of the commission, the Secretary General appointed a Representative (RSG) on the Human rights of Internally Displaced Persons. His responsibility was to focus specifically on the human rights aspect of internal displacement and also serve as an advocate for the internally displaced.⁵⁴⁷ In this same year the IASC created a task force on internally displaced persons. At the recommendation of the task force, the IASC decided in 1994 that the ERC would serve as the UN's reference point for any request for assistance and protection in situations of internal displacement. The Representative of the Secretary General for the internally displaced was further invited to participate in the work of the IASC.⁵⁴⁸ He is a standing invitee to the IASC's subsidiary bodies as well. He has participated actively and contributed in integrating protection concerns into international response mechanisms.⁵⁴⁹

The RSG's duties have since encompassed monitoring internal displacement worldwide, undertaking country missions, establishing dialogues with governments, collaborating with intergovernmental, regional and non-governmental organizations and making recommendations to improve international and regional institutional arrangements. He is

⁵⁴⁴ IASC Handbook for the protection of IDPs 2010 as above at 43.

⁵⁴⁵ IASC Handbook for the protection of IDPs 2010 as above.

⁵⁴⁶ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above at 2; United Nations GA Report of the Special Representative of the Secretary General on Internally Displaced Persons A/58/393 of 26 September 2003 at 14.

⁵⁴⁷ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above at 2.

⁵⁴⁸ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above.

⁵⁴⁹ Inter-Agency Standing Committee XXIIInd Meeting 'Protection on internally displaced persons: inter agency standing committee policy paper' December 1999 at 11 at <http://www.icva.ch/printer/doc0000008.HTML> accessed on 26-08-2011.

also responsible for assessing international legal protection, as well as publishing reports on which governments, the Commission, General Assembly and international organizations are expected to act.⁵⁵⁰ The RSG basically focuses on advocacy for IDPs, setting global protection standards, and making recommendations on how the application of existing instruments can be made more effective. These duties are mainly to facilitate means of assessing the extent to which protection, assistance and development needs of internally displaced persons are addressed at ground level. Additionally, during such missions the conversations that take place are later reflected in the RSG's reports and this serves to raise national and international awareness over areas that need attention. Lastly the findings provide the office of the RSG with advocacy tools as well as a platform to solicit support from IASC in implementing the recommendations adopted.⁵⁵¹

The IASC adopted the cluster approach in 2005 to bridge gaps that existed within institutional coordination. The system aims to facilitate a predictable, effective and accountable inter-agency response in protecting IDPs. It operates within the collaborative response mechanisms at both global and local levels.⁵⁵² Each cluster or sector is led by an international agency or organization with specific expertise in the area. The agency is usually accountable to the ERC and has the responsibility of ensuring predictable and effective inter-agency preparedness and response in this area.⁵⁵³ This cluster lead is responsible for chairing and coordinating the work of the relevant global cluster working group which involves all relevant international actors.

The existing cross cutting areas within which clusters are set up depend on capacities needed to respond to the internally displaced. These widely differ depending on the needs of the IDP's involved. In some circumstances food is predominantly needed, which immediately requires the attention of the WFP. In other circumstances women and children might be in dire conditions. This automatically calls for the attention of UNICEF. At times the internally displaced might be facing a potentially refugee generating situation, in which case the UNHCR will be encouraged to provide support.⁵⁵⁴ Protection of conflict generated IDPs is carried out by UNHCR, civilians affected by conflicts other than IDPs and those affected by

⁵⁵⁰ Inter-Agency Standing Committee XXIIInd Meeting 1999 as above.

⁵⁵¹ Inter-Agency Standing Committee XXIIInd Meeting 1999 as above.

⁵⁵² IASC Handbook for the protection of IDPs 2010 as above at 44.

⁵⁵³ IASC Handbook for the protection of IDPs 2010 as above.

⁵⁵⁴ IASC Handbook for the protection of IDPs 2010 as above at 45.

disasters are protected by UNHCR or OHCHR or UNICEF. Camp coordination and camp management falls to UNHCR when conflict is involved and IOM when it's a consequence of disaster. Early recovery is addressed by UNDP as the cluster lead. Technical areas such as emergency shelter are addressed by UNHCR and IFRC depending on whether it is displacement resulting from conflict or disaster. Other technical areas such as health, water and sanitation, nutrition, education and agriculture are covered by WHO, UNICEF, Save the children and FAO respectively. Common services such as logistics and emergency telecommunications fall under WFP and UNHCR. Food and refugee sectors to which clear accountabilities already existed are covered by WFP and UNHCR respectively.⁵⁵⁵

3.4.1.1 United Nations Organization for Coordination of Humanitarian Affairs (UNOCHA)

This office was originally known as the Department of Humanitarian Affairs (DHA). In 1991 the UN made it clear that there was a need to bring together international, humanitarian and development agencies dealing with displaced persons for effective coordination.⁵⁵⁶ There were delays in the dissemination of aid and assistance, it also seemed difficult for the *ad hoc* system to work with so many organizations trying to help the same group of people whilst employing different approaches and disagreeing every step of the way. It was observed that even within the United Nations agencies themselves it was time consuming for any agreement to be made regarding the acceptable coordination arrangements concerning either division of responsibility, plan of action, or dissemination on ground.⁵⁵⁷

The Department of Humanitarian Affairs was eventually created by the Secretary General after the above mixed efforts to address internal displacement.⁵⁵⁸ The Emergency Relief Coordinator was nominated to be its head. This was followed by the creation of the Inter Agency Standing Committee which was composed of all heads of major United Nations,

⁵⁵⁵ IASC Handbook for the protection of IDPs 2010 as above.

⁵⁵⁶ This was achieved through a General Resolution in December 1991, and subsequently led to the creation of the post of Emergency Relief Coordinator at the Under-Secretary level.

⁵⁵⁷ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above at 35.

⁵⁵⁸ In 1992, with a mandate of coordination and leadership among those providing humanitarian assistance in complex emergency situations as well as natural disasters; providing services that maximize the efficient use of resources for humanitarian assistance such as consolidating and managing information including needs assessments, preparation for interagency appeals, financial tracking of donor response, maintenance of centralized data bases, early warning services and training programs; acting as the focal point for advocacy on humanitarian concerns, and for maximizing opportunities for preventive action, for securing access to people affected by conflicts; ensuring that emergency relief contributes to future development and that development plans incorporate measures for disaster mitigation, preparedness and prevention.

humanitarian and development agencies.⁵⁵⁹ It operated as one of the mechanisms for the DHA's coordinating role and was chaired by the Emergency Relief Coordinator.⁵⁶⁰ Other responsibilities of the Emergency Relief Coordinator included the Central Emergency Revolving Fund, as well as the Consolidated Appeals Process.⁵⁶¹ The DHA succeeded in some matters but failed to deliver in a lot others.⁵⁶² In 1997 the DHA was replaced by a more compact office of the 'Coordinator for Humanitarian Affairs', which is mainly involved with policy development and coordination functions in support of the Secretary General; advocacy of humanitarian issues with political organs, specifically the Security Council and Coordination of humanitarian emergency response.⁵⁶³

At the country level, the United Nations Coordinator (HC) is responsible for ensuring the smooth coordination of humanitarian affairs, including but not limited to the protection and assistance of internally displaced persons in dire emergency situations at the country level. The HC is in most cases appointed by the Emergency Relief Coordinator (ERC) in consultation with the Inter Agency Standing Committee (IASC). In limited number of cases, the United Nations Resident Coordinator (RC) who usually happens to be the most senior United Nations official in a particular country can also be designated as the HC. In countries that are affected by displacement, where the HC has not yet been appointed, the RC is responsible for ensuring an effective international response to any internal displacement crisis that arises in the area.⁵⁶⁴

The responsibilities of the HC are as follows: ensuring that protection gaps are addressed; promoting respect for human rights and humanitarian law and for the Guiding Principles on Internal Displacement; advocating with national authorities and other actors for promotion of respect for humanitarian principles including unrestricted access to IDPs; promoting gender

⁵⁵⁹ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above at 35; Ahlbrandt 2004 as above at 29.

⁵⁶⁰ Brookings Institution Refugee Policy Group on Internal Displacement 1995 as above; the purpose of the agency was to create a forum to discuss policy matters in the humanitarian area and to serve as the mechanism for delegating responsibility for internal displacement to different UN agencies to ensure that both assistance and protection needs were being addressed. This was further complimented by the creation of the IASC Task force in 1992 which was created to strengthen information exchange on IDPs. In 1994 the IASC designated the Emergency Relief Coordinator as the 'reference point' for requests for assistance and protection in situations of internal displacement.

⁵⁶¹ Ahlbrandt 2004 as above at 29.

⁵⁶² It was criticized with regard to its work on IDPs because despite having been confirmed as the focal point for IDPs it accorded very little attention to them and was often reluctant to assign responsibilities to other agencies in the field; See Ahlbrandt 2004 as above at 30.

⁵⁶³ See Ahlbrandt 2004 as above at 31.

⁵⁶⁴ IASC Handbook for the protection of IDPs 2010 as above at 47.

mainstreaming and women's rights at the policy, planning and implementation levels and; mobilizing resources for humanitarian response.⁵⁶⁵ In the process of carrying out the above responsibilities the HC and, or RC works with and in consultation with relevant organizations on the ground including NGOs and the International Red Cross and Red Crescent Movement. This coordination is facilitated by an Inter-Agency humanitarian team, created to bring such actors together.⁵⁶⁶ The team in consultation with relevant partners decides on the specific country coordination arrangements which are supposed to be similar to those adopted at the international level. For purposes of support and in the process of extending coordination capacities of the HC and or RC, OCHA field presence is usually required. Whether the presence is in the form of a humanitarian advisor or something more concrete is dependent on the request of the RC or HC. This might also be a result of the recommendation of the ERC.⁵⁶⁷

3.4.1.1. (i) OCHA and the Inter Agency Internal Displacement Unit/Division

The internal displacement unit is a non-operational inter-agency unit within the office for the coordination of humanitarian affairs. It was officially launched by the UN Secretary General in January 2002.⁵⁶⁸ The OCHA-IDP unit is based at OCHA-Geneva offices, but it also has a liaison in the office of the ERC in New York.⁵⁶⁹ The name of the unit was changed to 'IDP Division' it was also re-structured.⁵⁷⁰ The unit is staffed by people seconded from various UN agencies and humanitarian and development partner institutions including UNDP, UNHCR, IOM, UNICEF, a consortium of NGOs as well as staff from the office of the Representative of the Secretary General on IDPs (RSG).⁵⁷¹

The Division is responsible for providing advice and support on issues of internal displacement to the Emergency Relief Coordinator (ERC), and the director of the Division

⁵⁶⁵ IASC Handbook for the protection of IDPs 2010 as above.

⁵⁶⁶ IASC Handbook for the protection of IDPs 2010 as above at 48.

⁵⁶⁷ IASC IDP policy package 2004 as above at 7.

⁵⁶⁸ McNamara D 'The mandate of the emergency relief coordinator, and the role of OCHA's Inter-Agency internal displacement division' *Refugee Survey Quarterly* 2005 Vol. 24 Issue 3 at 65.

⁵⁶⁹ Sites E and Tanner V 'External evaluation of OCHA's internal displacement unit' *OCHA IDP UNIT* 21 January 2004 at 7.

⁵⁷⁰ In 2004 it was re-named the Inter Agency Internal Displacement Division; See McNamara 2005 as above at 65.

⁵⁷¹ IASC IDP policy package 2004 as above at 41.

reports directly to the ERC.⁵⁷² The unit is also responsible for providing technical expertise as well as advisory support to UN country teams in the field and undertaking country missions to fulfill this obligation.⁵⁷³ The purpose of establishing the Division has mainly been to ensure effective support and implementation of the collaborative response to situations of internal displacement as well as maintaining effective application of the IASC policy package.⁵⁷⁴ The Division was intended to support the ERC in promoting predictable and coordinated response to internal displacement.⁵⁷⁵ The IDD does not necessarily involve itself with all countries battling with internal displacement crisis. At the recommendation of the ERC, the division is usually requested to focus on a limited number of selected countries where the collaborative response is considered inadequate.⁵⁷⁶ The level of inadequacy is determined after taking into consideration focal areas of protection or assistance having gaps in a particular country.⁵⁷⁷

After a certain criteria has been applied by the division to determine the effectiveness of the collaborative response, and where the response has been proved to be inadequate, the IDD (Internal displacement division), may intervene. The intervention may include deployment of IDP advisors to provide advise, specifically on protection issues and coordination support to HCs and/ or RCs and country teams. Intervention may also be in the form of deployment of missions to assist the HCs and /or RCs and country teams in the process of either developing or refining already existing IDP strategies and making sure that they are effectively implemented. Intervention may also take the form of making recommendations to the ERC for an improved international response to situations of internal displacement. Lastly, intervention may take the form of providing training to heads of OCHA offices on the content and implementation of IASC policy package. Intervention may also include provision of advocacy on specific issues relating to IDPs as well as any other efforts to raise awareness among donors and obtain their increased engagement in the crisis of internal displacement.⁵⁷⁸

⁵⁷² Sites and Tanner 2004 as above at 7.

⁵⁷³ Sites and Tanner 2004 as above; the unit has under taken more than 20 country missions since its establishment, including the missions it has undertaken on behalf of the inter-agency.

⁵⁷⁴ IASC IDP policy package 2004 as above at 41.

⁵⁷⁵ IASC IDP policy package 2004 as above at 5.

⁵⁷⁶ McNamara 2005 as above at 66.

⁵⁷⁷ IASC IDP policy package 2004 as above at 41.

⁵⁷⁸ IASC IDP policy package 2004 as above.

In addition to the above efforts by the internal displacement division to intervene in specific countries, it also is responsible for maintaining a watching brief on other current and emerging situations of internal displacement.⁵⁷⁹ Where it is clear that a crisis of internal displacement is arising or on-going, the division directly, or OCHA together with other partners engaged in the response to internal displacement, may provide *ad-hoc* support. Such response is of course subject to the availability of resources as well as the urgency of the crisis.⁵⁸⁰

3.4.1.2 UNHCR and internal displacement

The UNHCR's engagement with internally displaced persons dates as far back as the 1970s during its operations in Bangladesh and Indochina. Over the years the role of the UNHCR has gradually changed in response to the constant changing nature of humanitarian crises. The agency became more prominent in the 1990s after involving itself with humanitarian activities in areas such as Somalia, Iraq, the Balkans as well as Liberia, and other states in Africa.⁵⁸¹

The UNHCR seemed to be well equipped to deal with internally displaced persons from the on set. The reasons for this included the fact that the agency's protection expertise and its operational experience were regarded as the best means by which the international system could ensure a more consistent, reliable and accountable response to the needs of internally displaced persons.⁵⁸² This confidence in the UNHCR was further compounded by the fact that UNHCR seemed to already have a special interest in the protection and welfare of persons forcibly displaced by either persecution, situations of general violence, conflicts or massive violations of human rights. This could have been interpreted largely to mean UNHCR could also be responsible for all those 'internally displaced persons' who but 'for the border crossing' factor would have had a claim for international protection.⁵⁸³

⁵⁷⁹ OCHAs IDP Unit 'The Internal Displacement Unit-OCHA' *FMR 20* at 44 at www.reliefweb.int/idp/docs/references/UnitEvaluationJan2004.pdf accessed on 12-11-2011.

⁵⁸⁰ IASC IDP policy package 2004 as above at 41.

⁵⁸¹ Zard M 'Towards a comprehensive approach to protecting refugees and internally displaced persons' in Bayefsky A (ed.) *Human Rights and refugees, internally displaced persons and migrant workers: essays in memory of Joan Fitzpatrick and Arthur Helton* 2006 at 44.

⁵⁸² Zard 2006 as above at 46.

⁵⁸³ Inter Agency Standing Committee (IASC) 'Protection of internally displaced persons' *Inter-Agency Standing Committee Policy Paper* December 1999 at 17.

There is a major similarity between groups of internally displaced persons and refugees especially with regard to the causes and consequences of their displacement and humanitarian needs.⁵⁸⁴ This operational and needs based similarity is recognized by the UNHCR Statute in article 9 which is the legal basis for the UNHCR's activity with IDPs. The article provides that the High Commissioner may in addition to working with refugees "engage in such activities ... as the General Assembly may determine within the limits of the resources placed at (his or her) disposal."⁵⁸⁵ On the basis of this article, and over a long period of time, a series of General Assembly Resolutions have acknowledged UNHCR's particular humanitarian expertise and encouraged its involvement in situations of internal displacement. An additional important contributing factor was UN General Assembly resolution 48/116 (1993) which set out important criteria to guide UNHCR's decisions on when to intervene on behalf of the internally displaced. These resolutions, together with article 9 of the UNHCR Statute, provide the legal basis for UNHCR's action on behalf of the internally displaced persons.⁵⁸⁶

It should be noted that according to the criteria adopted in 1993 at the General assembly, with regard to clarifying UNHCR involvement with IDPs, it is specified that consideration must be made for the agency to assume primary international responsibility for IDPs only where there is a direct link with its basic refugee activities. This specifically involved return circumstances where refugees are mingled with IDPs, or where there is a significant risk that IDPs would eventually become a refugee problem.⁵⁸⁷ In addition to advocating on behalf of internally displaced persons, and mobilizing support for them, the UNHCR provides protection and assistance to internally displaced persons after certain conditions are met. First there has to be specific authorization from the UN Secretary General or other competent principal organs of the United Nations.⁵⁸⁸

⁵⁸⁴ IASC 1999 as above.

⁵⁸⁵ Statute of the Office of the United Nations High Commissioner for Refugees G.A Res. 428 (V) adopted 14 December 1950, annex at art. 9 (hereafter referred to as the UNHCR Statute). There were also several other resolutions in the Economic and Social Council authorizing UNHCR involvement in specific humanitarian activities (G.A Res. 47/105 specifically referred to UNHCR activities with respect to IDPs).

⁵⁸⁶ Protection of internally displaced persons IASC 1999 as above at 18.

⁵⁸⁷ Ahlbrandt 2004 as above at 21; Such situations include circumstances where IDPs are present or are returning in same areas as refugees, or areas in which refugees are expected to return.

⁵⁸⁸ IASC 1999 as above at 18.

Additionally, since internal displacement usually affects and involves internal affairs of a state, the consent of a particular state must be obtained. Where there are other parties involved in the conflict resulting in displacement, they might have to be involved as well.⁵⁸⁹ There must be a possibility of accessing the affected population as well as adequate security for UNHCR personnel and other partners for effective operation. There has to be clear set degrees of responsibility and accountability. Additionally, provisions to intervene directly with all parties involved must be made, especially when it comes to matters of protection. Lastly the availability of resources to carry out such operations is of paramount importance.⁵⁹⁰

It has to be taken into account that UNHCR is not traditionally mandated to deal with matters involving internally displaced persons. It has for decades operated outside the realms of international and national politics and traditional refugee law was more humanitarian in content. In as much as this original mandate can be revisited to accommodate internally displaced persons, the operational involvement of the UNHCR depends on considering that its participation should not compromise the non-political and humanitarian nature of the mandate. Its activities in the field of prevention must complement its international protection responsibilities and maintain consistency with international human rights and humanitarian law while at the same time making sure that the institution of asylum is not undermined.⁵⁹¹

The nature of UNHCRs involvement in the matter of internal displacement varies depending on the phase of the displacement. It also depends on the degree to which internal displacement is linked to the refugee problem, and the ‘complimentarity’ of the mandates and expertise of other agencies present or contemplating presence in the area. Issues such as political and operational environment including security considerations can also dictate or restrict UNHCR activities. There is also a need to recognize the importance of co-operation and collaboration based on complementary mandates involving other UN agencies as well as the Emergency Relief coordinator (ERC) and other relevant government and non-governmental organizations.⁵⁹²

⁵⁸⁹ IASC 1999 as above.

⁵⁹⁰ IASC 1999 as above.

⁵⁹¹ Ahlbrandt 2004 as above at 21; stated by the UNHCR Executive Committee; See Barutciski 1998 as above at 3.

⁵⁹² IASC 1999 as above at 18.

The main objective of the office of the UNHCR with regard to internally displaced persons is to improve their protection and promote solutions to their plight. The agency has tried to achieve this objective through international presence, monitoring as well as interventions and other assistance attempts. In the case of Africa UNHCR has been involved with internally displaced persons mostly in post-conflict reintegration operations for returnees.⁵⁹³ It should be noted though that the agency has been mostly instrumental in cases involving mixed populations of returnees constituting other forced populations such as refugees and internally displaced persons as well.⁵⁹⁴ In as much as great good seems to have been done by the UNHCR, its work has not been done without hardship, critique or even hesitation on the part of the agency itself.

3.4.1.2 (i) Critiquing UNHCR

There have been a lot of debates centered on whether the agency should be solely responsible for internally displaced persons, and whether any duties it performs on behalf of the internally displaced do not in any way affect the asylum regime. Critics of UNHCRs involvement with internally displaced persons advance a number of arguments. It has been stated that a broadened application of the mandate of the agency to include in-country protection contradicts the agency's original mandate.⁵⁹⁵ There is also a camp that subscribes to the notion that the idea of an increased interest in in-country protection is simply an attempt by asylum states to curb refugee influxes, lastly it has been contended that UNHCR is incapable of successfully providing comprehensive protection to groups of displaced persons within their countries of origin.⁵⁹⁶

The arguments advanced above have some merit to them. This can be evidenced by situations where the UNHCR has found itself in dilemma after extending aid to groups of internally displaced only for borders to be closed on any other groups of internally displaced

⁵⁹³ Bijleveld 2006 as above at 30.

⁵⁹⁴ IASC 1999 as above at 19; For instance, in Bosnia and Herzegovina and in Tajikistan the UNHCR complimented its protection monitoring role with measures to strengthen national protection. For example it built the capacity of national legal and judicial institutions, local NGOs and community groups in cooperation with international governmental and non-governmental organizations. The search for solutions to situations of internal displacement has required UNHCR to cooperate with international conflict resolution processes, for instance in the Balkans and the Caucasus. Following these protection and solution-oriented strategy, UNHCR has managed to phase out situations of internal displacement in areas such as Tajikistan and some parts of Northern Iraq.

⁵⁹⁵ Bijleveld 2006 as above at 29.

⁵⁹⁶ Ahlbrandt 2004 as above at 22.

persons intending to seek asylum. There are countries that have taken advantage of the situation to minimize their asylum responsibilities.⁵⁹⁷ What further compounds operational matters is that UNHCR staff are mostly conversant with refugee law, but not the core principles of international human rights law, or international humanitarian law.⁵⁹⁸ This makes it difficult to operate within a country because these are the main legal principles relied on for in-country protection.⁵⁹⁹

The process of protecting refugees differs from measures that have to be taken to protect internally displaced persons, especially the lack of clarity in existing legal framework as well as lack of enforcement of states' failure to adhere to the existing peace-meal framework.⁶⁰⁰ Lastly there are many impediments resulting from the legal, administrative and political nature of dealing with groups of people that are still within their states of origin which are characterized by red-tape policies as well posing an increased danger to personnel on the ground, not to mention lack of resources.⁶⁰¹ As a result of the above concerns and impediments, UNHCR has been cautious in approaching and providing aid and protection to internally displaced persons. This can be noted from the varying levels of provision of assistance to refugees versus IDPs.⁶⁰²

3.4.1.3 IOM (The International Organization for Migration)

This is a migration organization, which is responsible for providing a broad range of services to individuals, including transport and other basic needs such as food, shelter and supplies. In the process of providing the above mentioned services the organization offers a form of protection to internally displaced persons. IOM is particularly responsible for organizing transport and the whole process of evacuations and returns; providing temporary shelter and

⁵⁹⁷ This situation happened in Bosnia when UNHCR took on an expanded role to protect within borders, again it happened in the Kosovo conflict of 1999, and in Afghanistan in 1994 where the UNHCR tried to manage camps for the internally displaced in Jalalabad, only for the Pakistan government to respond by imposing strict requirements for Afghans, and restricting asylum in Pakistan and stating that the creation of UN camps in Jalalabad constituted a safe haven for fleeing Afghans and an alternative to seeking asylum in Pakistan; See Zard M 2006 as above at 49.

⁵⁹⁸ Bijleveld 2006 as above at 29.

⁵⁹⁹ Ahlbrandt 2004 as above at 22.

⁶⁰⁰ The existing international framework internationally is the UN Guiding Principles, these principles are soft law, they cannot be enforced and are dependent on the discretion of states for application, they are also in most cases not even disseminated, and the internally displaced are not even aware that there is a document they can rely on at least for claiming some measure of protection.

⁶⁰¹ Ahlbrandt 2004 as above at 22; Bijleveld 2006 as above at 29.

⁶⁰² Ahlbrandt 2004 as above at 22.

other material relief; providing early warning and emergency analysis of migratory flows; developing national population information systems and censuses as well as providing expert advice to governments on migration policies and laws.⁶⁰³ IOM is also involved in carrying out projects dealing with reintegration and vocational training and assistance of IDPs in long term settlement. The organization has concluded bilateral cooperation agreements with various governments which specifically provides for the IOM to get involved in assisting internally displaced persons.⁶⁰⁴

3.4.1.4 UNICEF (United Nations children's Education Fund)

Other organizations involved in the cluster approach include UNICEF which specifically deals with providing protection to children that happen to be internally displaced as well. UNICEF ensures that the rights that are provided for in the Convention on the Rights of the child are upheld. Protection for displaced children focuses preferentially on protecting them from physical and psychosocial harm inflicted by others including violence, exploitation, sexual abuse, neglect, cruel or degrading treatment as well as possible recruitment into military forces.⁶⁰⁵ It should be noted that the mandate of UNICEF is to protect children, but in the case of internally displaced children, their status renders them even more vulnerable to each of the above forms of abuse. The protection role of UNICEF entails protection in the wide sense. This involves attempts to preserve the identity and cultural value and inheritance rights of internally displaced children, because sudden movement from communities, threatens the loss of the children's heritage.⁶⁰⁶ It also includes the traditional role of protection which entails the provision of basic needs to children in the form of food, health needs, and education.

The mandate of UNICEF specifies that the organization is responsible whenever and wherever women and children are in need. Such groups of women and children may include refugees and or displaced persons, affected by conflict, by inequity as well as poverty.⁶⁰⁷ UNICEF is especially useful to the population of the internally displaced because it has experience in capacity development, community participation as well as development of

⁶⁰³ IASC 1999 as above at 24.

⁶⁰⁴ IASC 1999 as above at 24.

⁶⁰⁵ IASC 1999 as above at 19.

⁶⁰⁶ IASC 1999 as above at 19.

⁶⁰⁷ IASC 1999 as above at 19.

coping skills for children, parents, families as well as communities which is imperative for the survival, development and protection of displaced communities in situations of violence, armed conflict or extreme poverty.⁶⁰⁸

UNICEF is also experienced and capable of providing support in matters involving maternal and child healthcare, education, water supply, sanitation and promotion of durable solutions to internal displacement through the creation of self-help capacities at the family level.⁶⁰⁹

UNICEF also plays a part in reintegration of communities, especially provision of assistance to unaccompanied children and re-unification with their families, prevention of recruitment of these children into militia and other armed groups, and demobilization and re-integration of children that were already recruited into militias.⁶¹⁰ The role of UNICEF in the area of child protection is strengthened by the Convention on the rights of the child, which promotes UNICEF's advocacy and protection roles with regard to children in the widest range of difficult circumstances, especially when internal displacement is involved since it places greater obligations on the state of the child and family.⁶¹¹

3.4.1.5 WFP (World Food Program)

The World Food Program (WFP) is mandated to provide food aid to the world's most vulnerable and food insecure populations. In recent years this mandate has extended to cover IDPs as well. The WFP has taken responsibility in providing food and assistance to IDPs not only during the displacement phase, but also during the process of return, resettlement, reintegration and post conflict recovery.⁶¹² WFP activities in relation to IDPs include the engagement in negotiations on access and safe passage of humanitarian supplies, including food. These negotiations are conducted either with governments, or non-state actors. Access to internally displaced persons, includes, but is not limited to provision of assistance and protection. It additionally involves access to regular and systematic needs assessments and follow-up monitoring by the WFP.⁶¹³

⁶⁰⁸ IASC 1999 as above at 19.

⁶⁰⁹ IASC 1999 as above at 19.

⁶¹⁰ IASC 1999 as above at 19, 20.

⁶¹¹ IASC 1999 as above at 20; see also Convention of the Rights of the Child 1989 as above.

⁶¹² IASC 1999 as above at 20.

⁶¹³ IASC 1999 as above.

3.4.1.6 WHO (World Health Organization)

The World Health Organization plays a key role in supporting national authorities to strengthen health services as well as improving health care for the general population, including internally displaced persons. The Constitution of WHO mandates it to ‘provide or assist in providing, upon the request of the UN, health services and facilities to special groups’ which include IDPs.⁶¹⁴ Provision of assistance to IDPs by WHO, is totally dependent on the presence of a WHO country office in the particular country. This ensures that there is a permanent presence by the organization before, during and after emergencies. The country office can be supported during a crisis depending on the needs by the regional office concerned, while WHO headquarters ensures the coordination with other agencies and donors, as well as facilitating technical backstopping from relevant WHO programmes. Normally WHO does not provide health care directly, it operates through local or international health care providers. WHO can involve itself with provision of assistance at various phases, including during the emergency phase, where it participates in the assessment of the health situation, by identifying the health needs of IDPs and bringing them to the attention of national authorities, other UN agencies as well the donor community.

It also can give technical assessment which serves as a basis for advocacy relating to the protection of IDPs either to the national authorities or the international community. WHO also fosters and facilitates the involvement of national authorities in the provision of health care to IDPs and supports them in coordinating with other national and external agencies available. Lastly, when the integration phase approaches, WHO, together with other UN agencies, assists national authorities and NGOs to ensure that IDPs are reintegrated. It also ensures that they are provided the same level of health services as the rest of the population. This necessitates the formulation of health plans for IDPs which are integrated into long term strategies and can promote equitable and sustainable healthcare systems for the all population.⁶¹⁵

⁶¹⁴ IASC 1999 as above at 21.

⁶¹⁵ IASC 1999 as above at 22.

3.4.1.7 UNDP (United Nations Development Program)

The General Assembly⁶¹⁶ assigned UNDP resident representatives, in their capacities as UN resident coordinators of humanitarian relief, the duty of coordinating assistance for IDPs.⁶¹⁷ The organization's role in long term development was to a large extent regarded by resident coordinators as being incompatible with its ability to address displacement especially in emergency situations.⁶¹⁸ As a result of these concerns, and government objections to combining human rights, humanitarian and development issues, the UNDP nowadays seems more inclined to involve itself with IDPs only when rehabilitation and development activities begin to take place.⁶¹⁹

UNDP has an important role in the resettlement of internally displaced persons. During the displacement stage, it is easy for IDPs to attract aid and support, but they are most vulnerable in the return and re-settlement stage.⁶²⁰ UNDP's sustainable human development role becomes more effective and necessary wherever the target-ability of internally displaced persons fades especially in: facilitating joint planning of various interventions well ahead to ensure that development activities are comprehensively harmonized with relief; supporting the development of the communities that the displaced have been integrated into; implementing rehabilitation programs in the displaced communities of return in order to facilitate their sustainable reintegration and; providing local capacity building support to local entities to enable them to take an active role in the reintegration and resettlement

⁶¹⁶ Through Paragraph 7 of Resolution 44/136 of 27th February 1990.

⁶¹⁷ In 1988, through Resolution 43/116 of 8th December 1988, the General Assembly called upon the Secretary General to follow up on the need for an international mechanism to coordinate relief programs for internally displaced persons. It was then announced in 1989 by the Secretary General that UNDP resident representatives, citing the capacity of resident coordinators, would be the focal point for coordinating relief to the internally displaced (report of the Secretary General, A/44/520, of 28th September 1989, at 19; Ahlbrandt 2004 as above at 31.

⁶¹⁸ Ahlbrandt 2004 as above; The UNDP was not given protection responsibilities as such, hence it was not equipped to deal with emergencies, further, the organization's development responsibilities require it to work continuously closely with governments. This meant that coordinating assistance to IDPs in emergency situations and raising protection or human rights concerns placed the organization in an awkward relationship with the governments it worked with. Most coordinators feared overstepping their boundaries considering the sensitivity surrounding the politics of internal displacement; See Report of the Representative of the Secretary-General on Internally Displaced Persons to the Commission on Human Rights at its 51st session, Doc .E/CN.4/1995/50, para. 159.

⁶¹⁹ Ahlbrandt 2004 as above at 32; See Note by the Secretary General on field representation of the United Nations system organization: a more unitary approach. Doc A/49/133/Add, of 22nd April 1994.

⁶²⁰ More attention tends to be paid to them whilst in camps or shelters, but once they are absorbed into communities, or decide to return to their original communities, support seems to waiver, and they are forgotten' IASC 1999 as above at 17.

process.⁶²¹ UNDP plays an important role in assisting the resident coordinators to provide support to IDPs during the displacement phase. It assists in linking rehabilitation activities to emergency and humanitarian relief, as well as providing support to joint planning among international and local actors to ensure that the needs of IDPs are not forgotten after the displacement phase is over.⁶²²

3.4.2 *International Commission of the Red Cross (ICRC)*

The ICRC was founded in 1863 and has to date been mandated by the community of states under the Geneva Conventions and in recognition of its long standing practical experience to ‘work for the faithful application of international humanitarian law’.⁶²³ Of all institutions that have been included in the cluster approach to provide for internally displaced persons, the ICRC has the clearest mandate to protect and assist victims of internal conflict, who happen to largely or most complexly constitute the internally displaced.⁶²⁴ The ICRC is a private, non-UN organization with an overall statutory responsibility for the application of international humanitarian law including the Geneva Conventions and their Additional Protocols in situations of international and non-international armed conflict.⁶²⁵

3.4.2.1 ICRC mandate

The ICRC has recently expanded its role especially in issues concerning the protection and assistance of civilians in non-international armed conflict. The basis of this protection is in initiatives to deal with internal conflict to which the Geneva Conventions do not apply. This can be drawn from the Statutes of the International Red Cross and Red Crescent Movement. On the basis of these Statutes, the ICRC may provide services to governments in order to protect civilians exposed to internal strife, many of whom happen to be internally displaced persons.⁶²⁶

⁶²¹ IASC 1999 as above.

⁶²² IASC 1999 as above.

⁶²³ Lavoyer 1995 as above at 162.

⁶²⁴ The Brookings Institution Refugee Policy Group Project on Internal Displacement 1995 as above at 19

⁶²⁵ The Brookings Institution Refugee Policy Group Project on Internal Displacement 1995 as above.

⁶²⁶ The Brookings Institution Refugee Policy Group Project on Internal Displacement 1995 as above.

It should be noted that out all the institutions that are equipped to provide for the internally displaced, the ICRC is the only one that does not make a distinction between protection and assistance.⁶²⁷ This distinction has been invoked numerous by aid humanitarian and development organizations, that are not ready to provide the former for fear of this affecting their assistance role. ICRC has gained acceptance by both government and insurgent forces in carrying out its joint assistance and protection mandates.⁶²⁸ The reason why the organization has managed to operate in both instances successfully is because its representatives extend protection to both sides of the conflict, whilst seeking to reach those who other humanitarian organizations cannot reach because of the nature of the dangerous security risks or political restrictions.⁶²⁹

The ICRC mandate is intended to take responsibility for people who happen to be victims of conflict, whereas the United Nations is mainly responsible to governments. ICRC also has the benefit of the capability to delegate its work in the field to other organizations or government based humanitarian sectors.⁶³⁰ This makes it easy for the organization to operate in areas where other organizations can not reach, either by lack of capacity or due to lack of integrating factors.⁶³¹ The protection role of the ICRC involves monitoring the implementation of the Geneva Conventions and Protocols with regard to civilian populations, making representations to governments and non-state actors when violations occur, gaining access to and securing release of detainees as well as facilitating the release or evacuation of civilians from dangerous situations, creating protected areas, establishing tracing networks and arranging for the creation of humanitarian ceasefires.⁶³²

The Federation of the Red Cross and Red Crescent works for inspiring, facilitating and promoting all humanitarian activities carried out by its member national societies to improve the situation of most vulnerable people. The federation directs and coordinates international

⁶²⁷ Kelenberger J 'The ICRC's response to internal displacement: strengths, challenges and constraint' *International Review of the Red Cross* 2009 Vol. 91 No. 875 at 475.

⁶²⁸ The Brookings Institution Refugee Policy Group Project on Internal Displacement 1995 as above at 20; Ahlbrandt 2004 as above at 27.

⁶²⁹ This willingness to operate in areas that are regarded as dangerous was noted in situations such as those of Somalia in 1990-91, when the UN absented itself and the ICRC assumed the main responsibility for delivering aid to the Somalis, including masses of internally displaced people.

⁶³⁰ Such as the Red Cross and Red Crescent.

⁶³¹ Kellenberger 2009 as above at 479.

⁶³² Plattner D 'The legal framework of international relief in situations of armed conflict' *Comite International De La Croix-Rouge* 26 March 1992 Meeting on conflict and international relief in contemporary African famines at 5.

assistance of the movement to victims of natural and technological disasters, to refugees and displaced people as well as those in health emergencies. It acts as the official representative of its member societies in the international field. The national Red Cross and Red Crescent Societies act as auxiliaries to the public authorities of their own countries in the humanitarian field and provide various services.⁶³³

Under the International federation of the Red Cross and Red Crescent Societies it becomes easy to disseminate aid and protection to internally displaced persons. The main reason for this is that in most countries there are already existing national branches of the Red Cross and Red Crescent. These become useful in times of crises because they contribute to matters such as early warning systems through information sharing, building national and local standby capacity, mobilizing local, national and international emergency relief, as well as promoting respect for humanitarian principles through dissemination and training. These societies also become more useful because they are already mandated to be in the vicinity of the humanitarian crises sometimes even before the crises begin. They are acquitted to local demands and practices, they also are capable of being in the area throughout all displacement phases until solutions are attained.⁶³⁴ Despite these achievements and the unique approaches that the ICRC has adopted to access the internally displaced whilst maintaining good relationships with governments, there are significant obstacles that the organization still faces because of its policies.⁶³⁵

3.4.3 Non governmental organizations (NGOs) and International organizations (IOs)

This sector is largely involved in the process of protecting and assisting IDPs. At an operational level, humanitarian NGOs usually work with IDPs in various areas worldwide.⁶³⁶ These operational humanitarian NGOs do not specifically aid only the IDP population, they generally aim to provide support as part of an overall relief effort or sometimes work as implementing partners for various UN agencies. There are various NGOs and IOs involved in the protection and assistance of IDPs. These include: The Norwegian

⁶³³ IASC 1999 as above 23; the services include provision of disaster relief, health as well as social programmes

⁶³⁴ IASC 1999 as above.

⁶³⁵ The ICRC operates under confidentiality policies and its neutral independent status; See The Brookings Institution Refugee Policy Group Project on Internal Displacement 1995 as above at 21.

⁶³⁶ The areas that have benefited from a wide array of NGO support, include, the Former Yugoslavia, the great lakes region, the Balkans, and the South America.

Refugee Council (NRC), Through its Internal displacement monitoring centre (IDMC), The Danish Refugee Council (DRC), the Citizenship Rights in Africa Initiative (CRAI), Minority Rights Group International (MRGI), Centre for Housing Rights, Women's Commission for Refugee Women and Children (WCRWC) as well as organizations such as CARE and IRIN.

It should be noted that in the process of offering protection, NGOs respond to the needs of IDPs and vulnerable people based on their mandates and expertise. They can be instrumental in the implementation of the collaborative approach of protecting IDPs. NGOs are better suited and located to collect and provide information on protection and assistance to IDPs. They are capable of operating in areas where the government or other international organizations are incapable of penetrating either because of location, or because of lack of trust from the locals, and the IDPs themselves.⁶³⁷ Their response capacity is better because they are usually already located in areas of crisis even before the crisis occurs, and they mostly employ local people who are conversant with among other things, the language, culture, and way of life of the people in the particular area.

The process of displacement marginalizes IDPs and takes away their voices. NGOs are a contributing factor to IDPs regaining their voices, as well as negotiating and making sure that IDPs participate and are consulted as far as integration programmes are concerned. NGOs are capable of providing data and information on IDPs which might not be easily available to other organizations. They are best informed about the conditions of IDPs because they have on ground and constant access to the group. They also have a unique way of accessing quantitative and qualitative data before and after displacement, hence their ability to provide detailed information. They can facilitate access to IDPs on behalf of international organizations as well as national human rights organizations (NHRIs).⁶³⁸ These visits, consultations and external relations between IDPs and NHRIs or international organizations might prove beneficial when it comes to including the needs of IDPs in facilitation of long term durable solutions as well as reintegration and development programmes.

⁶³⁷ Training on the protection of IDPs 'The collaborative response to situations of internal displacement' IDMC-Norwegian Refugee Council as above at 3; Beau C 'Protecting IDPs: what NGOs can do to support NHRIs' Global IDP Project of the Norwegian Refugee Council APF/Brookings-Bern Regional Workshop on National Human Rights Institutions and Internally Displaced Persons Colombo-Sri-Lanka 25th October 2005 at 1.

⁶³⁸ It should be noted that at times physical access is possible, but most IDPs communities have suffered grave human rights injustices and violations, mostly at the hands of governments and people in positions of authority. The access referred to here is psychological and social access, which might require trust and can easily be gained by NGOs who the displaced regard as neutral.

Lastly NGOs are capable of providing quasi-judicial mechanisms for IDPs. During times of displacement it is generally difficult for populations to access protection from judicial systems such as the police, and courts, sometimes even the NHRIs. NGOs provide the necessary external support needed under the circumstances. This might include the development of programmes providing legal advice and services to the vulnerable populations. NGOs have also played an essential role under circumstances of vulnerability by directing individual cases from IDPs to relevant NHRIs and eventually the international arena.⁶³⁹ They have also been instrumental in monitoring the implementation of the recommendations made accordingly.⁶⁴⁰

3.4.4 Peace keeping Operations and Integrated Missions

An additional sector that has contributed to the protection of internally displaced persons but has not been given credit is the peacekeeping sector. Peace keeping operations play an important role in protection of civilians including displaced persons. Security Council resolutions have provided for the protection of civilians generally and in specific country situations.⁶⁴¹ International and regional peacekeeping missions have been forefront in contributing to the protection of civilians as well as taking over specific protection duties in respect of displaced populations.⁶⁴²

The United Nations integrated peace missions have been a new approach to addressing complex conflicts and post conflict situations. Such an approach brings together within a specific country various components relating to political, military, human rights, gender, development and rule of law as well as humanitarian activities. The integrated peace keeping approach also is usually not led by a military commander, rather it is under the guidance of the United Nations Deputy or Special Representative of the Secretary General. Such missions have been deployed in Afghanistan, Burundi, Central African Republic, Cote d'Ivoire, the Democratic Republic of Congo and the Darfur region of Sudan among others.⁶⁴³

⁶³⁹ In Africa this might include the submission of cases to the African Commission, or sub-regional judicial bodies.

⁶⁴⁰ Beau C 2005 as above at 4.

⁶⁴¹ See Security Council Resolution 1265 (1999), as well as Resolution 1296 (2000) and Resolution 1674 (2006).

⁶⁴² IASC handbook for the protection of IDPs 2010 as above at 53.

⁶⁴³ IASC handbook for the protection of IDPs 2010 as above at 55.

When it comes to matters of internal displacement, where countries are suffering from massive displacements that result in or threaten to result in increased instability and serious protection concerns, peace keeping missions provide protection and assistance to displaced populations and facilitate durable solutions to the plight of the displaced. Peacekeeping missions have carried out protection roles through providing physical protection involving patrols around IDP camps,; improving the conditions in which humanitarian assistance is provided; establishing humanitarian corridors; assisting to facilitate safe, voluntary and sustainable return of refugees, and IDPs; contributing to the promotion and respect of human rights situation in the country and contributing to the efforts to bring those responsible for the serious human rights violations to justice.

Finally they have been responsible for assisting in strengthening the rule of law, the implementation of a transitional justice strategy and the development of a legal framework, after consultation with relevant authorities. Peace keeping operations have also been responsible for providing training to local police, armed forces, as well as non-state armed groups on matters of human rights, international humanitarian law, IDP protection, child protection and prevention and response to sexual and gender-based violence.⁶⁴⁴

There have been various peace-keeping missions with protection mandates that have inadvertently provided protection to civilians, especially IDPs. These include MONUC in the DRC, UNAMID in Darfur, UNAMIS in Sudan and UNAMIL in Liberia. In missions such as the one in DRC the United Nations Security Council made the protection of civilians a priority when the mandate was extended in December 2009.⁶⁴⁵ The renewed mandate allowed MONUC to use force to ensure protection of civilians including contributing to the improvement of the security conditions in which humanitarian assistance is provided, as well as assisting the voluntary return of refugees and IDPs. Such peace keeping forces have over the years participated in the work of the protection cluster as field teams. They have worked closely with humanitarian, protection and development actors to provide security. Their presence in areas of conflict have minimized or prevented attacks by armed groups on IDPs and humanitarian actors. They have further cooperated with humanitarian actors to develop

⁶⁴⁴ IASC handbook for the protection of IDPs 2010 as above.

⁶⁴⁵ See UN Security Council Resolution 1906 (2009).

contingency plans for possible displacement, resulting in the deployment of patrols in areas of risk.⁶⁴⁶

3.4.5 Global protection cluster working group (PCWG)

This is ideally the main forum for the operational coordination of ‘protection’ activities in humanitarian action at the global and local level. It is chaired by UNHCR and includes aspects of protection in most of the above discussed humanitarian, human rights as well as development and peace keeping agencies. The PCWG is responsible for setting up standards and policies on matters such as protection, identification and dissemination of good practices as well as supporting the development of strengthened protection capacity. The PCWG has over the years provided operational field support to humanitarian country teams in countries that have the cluster system as well as those that do not.

The PCWG has accomplished this by among other things, undertaking support missions to assist country teams in identifying protection gaps and developing strategies for response; providing guidance and support for mainstreaming human rights, age, gender and diversity and HIV/AIDS; supporting advocacy on protection; providing technical support and policy advice on protection issues; strengthening the protection capacity of humanitarian actors and other stakeholders, including national and local authorities as well as affected populations through the provision of training programmes; lastly it provides support in processes of addressing specific protection concerns in specific countries, and participates in resource mobilization for protection activities.⁶⁴⁷

Protection is a complex matter, to adequately facilitate it the PCWG’s responsibilities are two-fold, it is responsible for specific areas of responsibility, as well as focal point agencies. The PCWG is responsible for the coordination of following focal points under the global protection cluster: rule of law and justice (UNDP/OHCHR), prevention and response to gender-based violence (UNFPA/UNICEF), protection of children (UNICEF), mine action (UNIMAS), as well as land, housing and property rights (UN-HABITAT). The PCWG basically ensures that issues of protection are incorporated into the work of all clusters and

⁶⁴⁶ IASC handbook for the protection of IDPs 2010 as above at 56; In DRC the protection cluster together with MONUC have developed a training booklet for peacekeepers with guidance on specific measures to protect civilians at risk.

⁶⁴⁷ IASC handbook for the protection of IDPs 2010 as above at 46.

sectors through encouraging clusters or sectors to establish focal points for protection; offering technical expertise and advice to other cluster or sectors, as well as to individual agencies, organizations and governmental counterparts.

It has also provided support and facilitated participation in joint assessments and analyses, as well as supporting monitoring and evaluation exercises. Other inputs of the PCWG have included participation in meetings of other cluster or sectors and involvement of other cluster representatives in meetings of the protection cluster. It also convenes joint meetings or workshops among various clusters or sectors on themes of common concern as well as maintaining regular dialogue and sharing information necessary for promotion of protection activities.⁶⁴⁸ At the local level the above mentioned protection arrangements translate into protection clusters or sectors at the country level. This is most of the time achieved by establishing a protection working group at country level to ensure that gaps are bridged, and partnerships are built to improve protection response as well as accountability and effectiveness. Such cluster initiatives have been observed in counties like Uganda, Liberia, DRC and recently were applied Kenya to address internal displacement.

3.5 Conclusion

Internal displacement has emerged as one of the great tragedies of this century. In its wake it has left millions of people homeless and vulnerable trapped within their national borders. This has in turn created a challenge for the international community in terms of adopting ways to respond to a crisis that is essentially internal in nature. Numerous attempts to assist the displaced have been made, but in line with these attempts protection is also essential and has to be provided comprehensively by involving humanitarian, human rights as well as development agencies and local agents.⁶⁴⁹ The challenge lies in the harmonization of such attempts at an international level and how such attempts can be translated into implementation on the ground.

In the process of addressing these dilemmas direction and support was drawn from already existing international legal frameworks that were constituted with general norms that could

⁶⁴⁸ IASC handbook for the protection of IDPs 2010 as above at 47.

⁶⁴⁹ Annan K (Former UN Secretary General) 'Preface' to Deng and Cohen 1998 as above at 'introduction'.

offer protection to internally displaced populations. Such frameworks include international human rights law, international humanitarian law, refugee law as well as international criminal law. General norms found within these frameworks have been helpful but they lack practical efficacy as far as IDPs are concerned because they are not meant to specifically address situations of internal displacement. The consequence of such generality has resulted in IDPs falling through protection gaps when such norms have been applied.

To address the situation the newly appointed Representative of the UN Secretary General on the rights of IDPs facilitated the adoption of a set of Guiding Principles which among other things were a restatement of existing general norms of international law from which IDP protection could be deduced. These principles tailored these norms to the specific situations of internal displacement and expanded their application to explicitly address such conditions. The Guiding Principles have been instrumental in providing for assistance and protection of internally displaced persons worldwide. Even though they are only soft law, they have received international recognition and have been incorporated into regional and national laws thus attaining a binding character in some cases.

Despite such widely acclaimed usage, protection of internally displaced persons still remains a contentious issue. The principles have not been accepted without resistance. Their soft law nature has rendered them useless in conditions where states have been unwilling. The constant need to balance them with state sovereignty has meant less protection for the displaced they are meant to protect. There is also the problem of disseminating the principles, in most situations IDP communities and civil society have not been equipped to receive or raise awareness about the principles. The dissemination and practical application of the principles including their adoption has in most cases depended on the efforts of individuals as opposed to a system wide initiative, this has a negative implication in situations where there are no groups or individuals driven enough to support and initiate the adoption and usage of the principles.

Another raging issue is implementation of the principles, there is no specific institution set up to facilitate the implementation of the principles. Efforts that exist are ad hoc and sometimes highly uncoordinated. The collaborative response system was set up to address this lack of coordination by bringing together all institutions that deal with humanitarian and human rights crises including internal displacement. Such approach has been effective to an extent in

the sense that systems such as the IASC, the office of the ERC and the Inter Agency-Internal Displacement Division (IA-IDD) were set up within it and they have played a significant role in setting up guidance policies and increasing awareness over protection issues faced by IDPs.⁶⁵⁰

Yet the system has been ridden by absence of inconsistent coordination, unaccountability and lack of specific institutional responsibility giving rise to humanitarian gaps in protection of IDPs.⁶⁵¹ To bridge these gaps in humanitarian response an additional response mechanism in the form of cluster based approach has been introduced. Under this system sectoral responsibilities have been assigned to specific agencies.⁶⁵² The approach is aimed at ensuring a more predictable, effective and accountable inter-agency response for the protection of IDPs in key sectors where gaps have been identified.⁶⁵³ The approach also singles out protection as a key humanitarian activity in critical need of strengthened coordination and response. The Global protection cluster working group (PCWG) is the main forum set up to coordinate protection activities in all cross sectoral humanitarian activities and agencies.

At the same time there are numerous challenges this system still faces, such challenges consequently make comprehensive IDP protection problematic. The effective functionality of the cluster approach depends on interdependence and complementarity of all the agencies involved. This requires close cooperation, communication and accountability.⁶⁵⁴ If one of the relevant agencies fails to function, the effect is distributed throughout the whole system and some agencies will be forced to perform additional duties.⁶⁵⁵ Additionally there is misunderstanding and miscommunication in terms of interpretation of responsibilities between so many stakeholders to an extent that some responsibilities are lost in translation and cannot be reflected on the ground.⁶⁵⁶ The clusters have also in some cases failed to integrate local partners effectively leaving them to operate in isolation and fragmentation in certain countries thus minimizing their effectiveness.

⁶⁵⁰ McNamara 2005 as above at 69.

⁶⁵¹ IASC *Implementing the collaborative response to situations of internal displacement* September 2004 at 5.

⁶⁵² McNamara 2005 as above at 31.

⁶⁵³ There are sectors such as food and refugees that were well provided for and hence have less humanitarian response gaps

⁶⁵⁴ Bijleveld 2006 as above at 32.

⁶⁵⁵ Bijleveld 2006 as above.

⁶⁵⁶ Bijleveld 2006 as above.

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

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

Former South African President Thabo Mbeki

4.1 Introduction

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

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

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

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

The 'spaghetti Bowl' of regional organization membership within and around the Great Lakes⁶⁵⁸

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

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

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

4.2 Theorizing regional-ism

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

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

⁶⁶⁰ Lee 2002 as above at 3.

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

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

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

4.2.1 Neo-liberalists

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

⁶⁶² Lee 2002 as above at 4.

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

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

⁶⁶⁵ Guraziu 2008 as above at 6.

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

4.2.2 Neo-Marxists (draw mainly on imperialism)

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

4.2.3 Neo-realist

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

⁶⁶⁶ Guraziu 2008 as above at 7.

⁶⁶⁷ Guraziu 2008 as above.

⁶⁶⁸ Gurazio 2008 as above.

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

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

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

⁶⁷⁰ Guraziu 2008 as above at 6.

⁶⁷¹ Guraziu 2008 as above.

⁶⁷² Guraziu 2008 as above.

⁶⁷³ Guraziu 2008 as above.

4.2.4 African consciousness (*Pan Africanism*)

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

4.2.4.1 Background to Pan-Africanism and African regional efforts

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

⁶⁷⁴ Legum C *Pan Africanism: a short political guide* 1965 at 14.

⁶⁷⁵ Legum 1965 as above.

⁶⁷⁶ Geiss I *The Pan African movement* 1968 at 3.

⁶⁷⁷ Geiss 1968 as above.

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

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

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

⁶⁷⁸ Nye J Pan Africanism and East African integration 1966 at viii.

⁶⁷⁹ Geiss 1968 as above at 421.

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

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

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

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

⁶⁸¹ Khadiagala G 'Governing regionalism in Africa: themes and debates' *Policy Brief* 2008 No. 51 at 2.

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

⁶⁸³ Fawcett as above at 7.

⁶⁸⁴ Fawcett as above at 4.

⁶⁸⁵ Fawcett as above.

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

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

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

4.2.4.3 Africa's regionalism, sovereignty and responsibility to protect

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

⁶⁸⁶ Khadiagala 2008 as above at 2 and 3.

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

⁶⁸⁸ Khadiagala 2008 as above at 2.

government.⁶⁸⁹ A state that fails to observe the above may face among others, political and economic sanctions.⁶⁹⁰ The African Union's Constitutive Act, has shifted from focusing on the doctrine of the original Organization of African Union (OAU), which was non-interference to non-indifference in cases involving genocide, crimes against humanity and war crimes.⁶⁹¹ A co-relating duty has been placed upon states themselves to request intervention from the Union in order to restore peace and security where they are incapable of doing so themselves.⁶⁹² What has been achieved by this step is the re-conceptualization of the concept of absolute sovereignty exercised by members of the African Union and based in the African Charter of the Organization of the African Unity of 1963.⁶⁹³ This re-conceptualization has further made it necessary to re-assert the self determination doctrine which in effect demands for the respect of people's sovereign rights over a state's sovereignty. As Depaigne puts it:

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

The acknowledgement of responsibility to protect by African governments has evolved substantially especially after the Rwandan Genocide of 1994. Sub-Saharan countries, with the exception of Zimbabwe⁶⁹⁵ were significantly avid supporters of the adoption of resolution 1674⁶⁹⁶ which reaffirmed the UN World summit provisions regarding the doctrine of responsibility to protect.⁶⁹⁷ Countries like Rwanda insisted on the 'necessity of collective R2P', whilst Benin 'signaled its full support' and Tanzania endorsed R2P insisting that 'when governments fail or are unable to offer such protection, we should have a collective

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

⁶⁹⁰ African Union Constitutive Act 2000 Art 23 (2).

⁶⁹¹ African Union Constitutive Act 2000 Art 4(h).

⁶⁹² African Union Constitutive Act 2000 Art 4(j).

⁶⁹³ Kioko 2003 as above at 807.

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

⁶⁹⁵ Bellamy 2009 as above at 113.

⁶⁹⁶ On April 28 2006.

⁶⁹⁷ Bellamy 2009 as above at 114.

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

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

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

⁶⁹⁸ Bellamy 2009 as above.

⁶⁹⁹ Bellamy 2009 as above at 114, 115.

⁷⁰⁰ Policy advisory group 2007 as above at 20.

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

⁷⁰² Policy advisory group 2007 as above at 20.

⁷⁰³ Policy advisory group 2007 as above at 21.

⁷⁰⁴ Policy advisory group 2007 as above.

⁷⁰⁵ Policy advisory group 2007 as above.

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

4.2.4.4 African initiatives to intervene

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

⁷⁰⁶ Policy advisory group 2007 as above.

⁷⁰⁷ Policy advisory group 2007 as above.

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

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

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

The African Union Assembly which is the supreme organ⁷¹¹ of the Union was responsible for deciding on aspects of intervention as provided by article 4 (h). It provides that intervention should take place in respect of war crimes, genocide, and crimes against humanity. The Protocol amending the Constitutive Act, in addition to provisions of article 4 (h), provides for intervention where there are ‘any serious threats to legitimate order or to restore peace and security to the Member State of the Union upon the recommendation of the Peace and Security Council (PSC)’.⁷¹² This provision of the amending protocol allows the PSC to make recommendations to the Union’s Assembly to intervene where the necessary provisions for intervention do not apply but the circumstances require it.⁷¹³

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

⁷¹¹ Article 6 of the African Union Constitutive Act of 2000 as above.

⁷¹² Kioko 2003 as above at 815.

⁷¹³ These necessary conditions being genocide, war crimes and crimes against humanity.

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

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

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

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

4.3.1 The OAU/AU and (internal) displacement

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

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

⁷¹⁷ It was created in 1968.

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

⁷¹⁹ UNHCR Press 2006 as above.

⁷²⁰ 1969.

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

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

The Commission was established under article 30 of the African charter⁷²¹ and is charged through article 45 with three major functions, including the promotion of human and people's rights, protection of such rights as well as the interpretation of the African charter.⁷²² The ACHPR allows NGOs to have observer status and is mandated to cooperate with African and international institutions in promoting and protecting human and people's rights.⁷²³ This mandate extends to discussions and concerns involving even IDPs. Additionally the ACHPR has on a couple of occasions received submissions dealing with complaints over arbitrary displacement. This means it is a genuine forum for addressing matters of internal displacement on the continent and should act as or is the only monitoring and enforcement mechanism for the African IDP convention.⁷²⁴ NGOs or other concerned persons or groups may bring complaints to the commission involving violations of human rights through or as a result of displacement.⁷²⁵ One function of the ACHPR as already stated above includes monitoring of state parties' implementation of their human rights obligations as set out in the African charter.⁷²⁶

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

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

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

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

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

⁷²⁵ Article 45 (2) of African Charter 1981 as above.

⁷²⁶ Article 62 of the African Charter 1981 as above.

⁷²⁷ Article 62 of the African Charter 1981 as above.

⁷²⁸ See Article 14 (4) of Kampala IDP Convention 2009 as above.

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

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

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

⁷²⁹ AU-ECOSOCC and IDMC 2010 as above at 21.

⁷³⁰ AU-ECOSOCC and IDMC 2010 as above.

⁷³¹ AU-ECOSOCC and IDMC 2010 as above.

⁷³² Nyanduga 2006 as above at 6.

⁷³³ Nyanduga 2006 as above.

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

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

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

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

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

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

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

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

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

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

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

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

⁷⁴⁰ See article 31(1) of the African Charter 1981 as above.

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

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

⁷⁴³ ACHPR Resolution on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, 7th December 2004 at http://achpr.org/english/info/rdp_res1.html accessed on 21-01-2012.

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

⁷⁴⁵ Nyanduga 2009 as above.

⁷⁴⁶ Nyanduga 2009 as above.

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

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

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

⁷⁴⁷ Nyanduga 2009 as above.

⁷⁴⁸ Nyanduga 2009 as above.

⁷⁴⁹ Nyanduga 2009 as above.

⁷⁵⁰ See more information on the Special Rapporteur at www.achpr.org/english/info/index_rdp_en.html accessed on 15-04-2012.

⁷⁵¹ AU-ECOSOCC and IDMC 2010 as above at 22.

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

⁷⁵³ Abebe 2010 as above.

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

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

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

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

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

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

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

⁷⁵⁷ AU-CCAR 2005 as above at 2.

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

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

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

⁷⁵⁹ AU-ECOSOCC and IDMC 2010 as above at 22.

⁷⁶⁰ AU-ECOSOCC and IDMC 2010 as above.

⁷⁶¹ AU-CCAR 2005 as above at 5.

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

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

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

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

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

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

⁷⁶⁴ Fontaine P ‘The governance of the refugee problem in Africa: a research agenda’ *Refugee Survey Quarterly* 2006 Vol. 25 Issue 4 at 3.

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

⁷⁶⁶ African Union structures as above.

⁷⁶⁷ AU-ECOSOCC and IDMC 2010 as above at 26.

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

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

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

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

⁷⁶⁸ AU-ECOSOCC and IDMC 2010 as above.

⁷⁶⁹ AU-ECOSOCC and IDMC 2010 as above; African Union structures as above.

⁷⁷⁰ African Union structures as above.

⁷⁷¹ AU-ECOSOCC and IDMC 2010 as above at 26.

⁷⁷² African Union 'Political Affairs Department' at http://www.africa-union.org/Structure_of_the_Commission/depPOLITICAL%20AFFAIRS%20DIRECTORATE.htm accessed on 12-03-2011 at 1.

⁷⁷³ African Union: Political Affairs Department as above at 2.

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

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

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

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

⁷⁷⁴ See African Union 'Humanitarian affairs, refugees and displaced persons division (HARDP)' at http://www.africa-union.org/Structure_of_the_Commission/Political%20Affairs/x/Humanitarian%20Affair.pdf accessed on 14-05-2012.

⁷⁷⁵ AU-HARDP as above at 4.

⁷⁷⁶ Tigere and Amokhobu 2005 as above at 53.

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

African Union legal Mechanisms

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

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

⁷⁷⁷ Tigere and Amokhobu 2005 as above.

⁷⁷⁸ Tigere and Amokhobu 2005 as above.

⁷⁷⁹ Tigere and Amokhobu 2005 as above at 49.

⁷⁸⁰ Tigere and Amokhobu 2005 as above.

⁷⁸¹ Tigere and Amokhobu 2005 as above.

⁷⁸² Tigere and Amokhobu 2005 as above.

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

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

In October 2009, at the Special Summit on Refugees, Returnees and IDPs, the African Union adopted the first ever binding legal framework providing for the protection of internally displaced persons worldwide.⁷⁸³ The convention has been described as ground breaking⁷⁸⁴ and a landmark legal⁷⁸⁵ contribution to the evolving protection framework for IDPs.⁷⁸⁶ The convention is a comprehensive legal document covering all phases of displacement from prevention, to protection, assistance and durable solutions.⁷⁸⁷ It also embraces all causes of internal displacement including armed conflict, generalized violence, violations of human rights, natural or human made disasters and development projects.⁷⁸⁸ Additionally the convention recognizes the distinctive African circumstances hence recognizing harmful practices as a cause of displacement as well.⁷⁸⁹

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

⁷⁸³ The African Convention on IDPs 2009 as above.

⁷⁸⁴ News and Media 'New treaty for internally displaced persons in Africa', UN Office, Geneva, 23 October 2009 at http://www.unog.ch/website/news_media.nsf/httpNewsByYear_en7BC75F3CB532CE63C125765800371677?OpenDocument accessed on 12 March 2012.

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

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

⁷⁸⁷ Abebe 2010 as above at 45.

⁷⁸⁸ AU-ECOSOCC and IDMC 2010 as above at 13.

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

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

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

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

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

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

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

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

⁷⁹⁴ Article 2 of AU IDP Convention 2009 as above.

⁷⁹⁵ Article 3 (d) of AU IDP Convention 2009 as above.

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

⁷⁹⁷ Abebe 2010 as above at 44.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸⁰⁷ Article 7(1) of the AU IDP Convention 2009 as above.

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

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

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

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

⁸¹² Chikwanha 2009 as above at 3.

⁸¹³ Abebe 2010 as above at 49.

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

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

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

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

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

⁸¹⁶ AU-ECOSOCC and IDMC 2010 as above at 15.

⁸¹⁷ Abebe 2010 as above at 51.

⁸¹⁸ Articles 9(2)(i), 11(4) 11(5) and 12.

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

⁸²⁰ Article 14 (4) of AU IDP Convention 2009 as above.

⁸²¹ Article 14 (4) as above.

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

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

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

⁸²² Article 14 of AU IDP Convention 2009 as above.

⁸²³ Abebe 2010 as above at 52.

⁸²⁴ Abebe 2010 as above.

⁸²⁵ Abebe 2010 as above.

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

⁸²⁷ Abebe 2010 as above at 53.

⁸²⁸ Article 17(1) of the AU IDP Convention 2009 as above.

⁸²⁹ 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 7th February 2012 at <http://www.africa-union.org> accessed on 21-01-2012.

⁸³⁰ Abebe 2010 as above at 54.

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

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

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

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

⁸³¹ Abebe 2010 as above at 52.

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

⁸³³ Abebe 2010 as above at 41.

⁸³⁴ Abebe 2010 as above at 52.

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

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

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

Rwandan genocide of 1994, followed by political instability in the Democratic of Congo.⁸³⁸ In November 2004, under the auspices of the African Union and the United Nations, the IC/GLR inaugural summit was held in Dar es Salaam.⁸³⁹ It was marked by the signing of the Dar es Salaam Declaration on Peace, Democracy, Security and Development in the Great Lakes region⁸⁴⁰ by leaders of the core countries.⁸⁴¹ This was followed by the Nairobi Summit in December 2006, where a regional Pact on Security, Stability and Development was signed.⁸⁴² The Pact entered into force on the 21 June 2008, after ratification by eight, member states.⁸⁴³

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

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

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

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

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

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

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

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

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

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

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

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

4.3.2.1 Regional Programmes of action

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

⁸⁴⁶ IDMC and IRRI, IDP guide 2008 as above at 10.

⁸⁴⁷ Chikwanah 2009 as above at 4.

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

⁸⁴⁹ Chikwanha 2009 as above at 4.

⁸⁵⁰ International refugee rights initiative (IRRI) 2008 as above at 9.

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

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

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

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

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

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

⁸⁵⁴ The GLR Protocol on the property rights of returning populations 2006.

⁸⁵⁵ IDMC and IRRI, IDP guide 2008 as above at 41.

⁸⁵⁶ ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 1.

⁸⁵⁷ ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 3.

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

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

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

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

⁸⁵⁸ ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 6.

⁸⁵⁹ ICGLR Sub Programme 1, Project 4.1.1 2006 as above.

⁸⁶⁰ ICGLR Sub Programme 1, Project 4.1.1 2006 as above.

⁸⁶¹ IDMC and IRRI, IDP guide 2008 as above at 41.

⁸⁶² ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 8.

⁸⁶³ ICGLR Sub Programme 1, Project 4.1.1 2006 as above at 3.

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

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

4.3.2.2 IC/GLR Protocols relating to internal displacement

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

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

⁸⁶⁵ IDMC and IIRI, IDP guide 2008 as above at 41.

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

⁸⁶⁷ IDMC and IIRI, IDP guide 2008 as above at 11.

⁸⁶⁸ IDMC and IIRI, IDP guide 2008 as above at 12.

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

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

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

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

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

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

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

⁸⁷² Kalin 2007 as above at 3.

⁸⁷³ At www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html; See article 6 of the Great lakes IDP Protocol 2006 as above.

⁸⁷⁴ Kalin 2007 as above at 3.

⁸⁷⁵ Article 6(3) of Great lakes IDP Protocol 2006 as above.

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

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

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

⁸⁷⁶ (6)(4)(c).

⁸⁷⁷ IDMC and IRRI, IDP guide 2008 as above at 14.

⁸⁷⁸ 3(3).

⁸⁷⁹ 3(10).

⁸⁸⁰ Guiding Principles on Internal Displacement 1998 as above at 18 and 25.

⁸⁸¹ 3(8).

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

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

⁸⁸⁴ Cernea 2006 as above at 6.

displacement may be lawfully permitted.⁸⁸⁵ The protocol requires in addition to provisions of the Guiding Principles, governments obtaining a free and informed consent from the people to be displaced⁸⁸⁶ as well as the participation, particularly by women IDPs in the planning, and management of their relocation as well as their return and reintegration or resettlement.⁸⁸⁷ The protocol also progressively addresses the needs of host communities, especially in terms of burden sharing when it comes to assistance and support in providing and accommodating IDP populations, as well as extending such assistance and protection to host communities where need be.⁸⁸⁸

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

The protocol has also provided for the issue of registration of IDPs, even though the consequences of this provision are self defeating at times. On one hand registration is important and useful for accessing services and rights, on the other hand, depending on the nature and reasons for flight, registration is almost like ‘signing a persecution list’. Some IDPs fear giving away their whereabouts and being identified. Others feel that by registering they are signing up for special treatment which might alienate them from the rest of the poor but undisplaced population constituting the host communities within which they live⁸⁹² At times the procedures of registration may even be highly manipulated to an extent that

⁸⁸⁵ Article 5 of the Great lakes IDP protocol 2006 as above.

⁸⁸⁶ Article 5(3) of GLR IDP protocol 2006 as above.

⁸⁸⁷ Article 5(6) of the GLR IDP Protocol 2006 as above.

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

⁸⁸⁹ Article 3(9) of GLR IDP Protocol 2006 as above.

⁸⁹⁰ IDMC and IIRI guide 2008 as above at 16.

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

⁸⁹² IDMC and IIRI, GLR guide 2008 as above at 16.

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

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

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

⁸⁹³ IDMC and IRRI, GLR guide 2008 as above at 16.

⁸⁹⁴ Article 68 of the Dar es Salaam Declaration 2004 as above.

⁸⁹⁵ IDMC and IRRI, GLR guide 2008 as above at 17.

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

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

⁸⁹⁸ 4(1)(h) of GLR IDP Protocol 2006 as above.

⁸⁹⁹ IDMC and IRRI, GLR guide 2008 as above at 17.

⁹⁰⁰ 4(1)(j) of GLR IDP Protocol 2006 as above.

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

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

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

⁹⁰¹ IDMC and IRRI, GLR guide 2008 as above at 31.

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

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

(ii) The protocol on the rights of returning populations

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

⁹⁰³ Kalin 2007 as above at 4.

⁹⁰⁴ Kalin 2007 as above.

⁹⁰⁵ Kalin 2007 as above.

⁹⁰⁶ Kalin 2007 as above at 3 and 4.

⁹⁰⁷ Kalin 2007 as above at 2.

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

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

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

⁹⁰⁸ IDMC and IRRI, GLR guide 2008 as above at 18.

⁹⁰⁹ IDMC and IRRI, GLR guide 2008 as above.

⁹¹⁰ IDMC and IRRI, GLR guide 2008 as above.

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

⁹¹² IDMC and IRRI, GLR guide 2008 as above at 19.

⁹¹³ IDMC and IRRI, GLR guide as above.

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

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

⁹¹⁴ Article 4(3)(c) of GLR Property Protocol 2006 as above.

⁹¹⁵ Article 4(3)(b) of GLR Property Protocol 2006 as above.

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

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

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

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

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

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

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

⁹²⁰ Article 5 of the GLR Property Protocol 2006 as above.

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

⁹²² Article 5(4) of GLR Property Protocol 2006 as above.

⁹²³ IDMC and IRRI, GLR guide 2008 as above at 23.

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

(iii) The protocol on the prevention and suppression of sexual violence against women and children⁹²⁴

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

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

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

⁹²⁶ Art 9 of GLR Sexual Violence Protocol 2006 as above.

⁹²⁷ Art 5(1) of GLR Sexual Violence Protocol 2006 as above.

⁹²⁸ Art 6 of GLR Sexual Violence Protocol 2006 as above.

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

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

4.3.2.3 Follow up mechanisms

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

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

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

⁹³⁰ IDMC and IRRI, GLR guide 2008 as above at 31.

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

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

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

⁹³¹ IDMC and IRRI, GLR guide 2008 as above at 33.

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

⁹³³ IDMC and IRRI, GLR guide 2008 as above at 32

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

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

4.3.2.4 A regional coordination committee

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

⁹³⁴ IDMC and IRRI, GLR guide 2008 as above.

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

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

⁹³⁷ ICGLR framework for durable solutions 2006 as above at 7.

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

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

4.3.3 *The East African Community (EAC)*

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

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

⁹³⁹ Report of civil society consultation on African Union 2009 as above at 13.

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

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

original East African Cooperation was first formed in 1967 as the East African Commission and collapsed in 1977 as a result of irreconcilable government policies.⁹⁴² The new EAC was re-established through the Tripartite Commission for Cooperation on November 13 1993, and the community treaty came into force in 2000, the institution was launched in 2001.⁹⁴³ It was originally comprised of Kenya, Uganda and Tanzania, recently Rwanda and Burundi have been incorporated. The process of regional cooperation in this region was designed to proceed in three stages. The first stage was creating greater mobility (people integration); then market integration and finally integration into a single political unit. Despite these ambitious plans, the process of integration is lagging behind. Integration of people has not even been achieved because mobility is highly limited. Member states are still responsible for the forcible repatriation and none response to the issues facing most forced migrants within the region. Displacement is still a largely observed phenomenon and most countries seem to promote the regional policy of security over citizenship rights or forced displacement. This is rather disappointing for a regional institution that initially seemed committed to integration. The role of integration acting as an additional layer of protection to the forcibly displaced in the region seems far-fetched from the EAC's viewpoint.⁹⁴⁴

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

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

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

⁹⁴³ Onyango 2005 as above.

⁹⁴⁴ Report of civil society consultation on African Union 2009 as above at 11.

⁹⁴⁵ Report of civil society consultation on African Union 2009 as above.

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

The EAC Development strategy 2006-2010 reinforces the above position and further provides for development of strategies towards the promotion and protection of human rights in East Africa.⁹⁴⁸ A regional Bill of Rights has been advocated and process for its adoption is already under way⁹⁴⁹. It is envisaged that it will be enforced by the forthcoming African Court of Justice and Human Rights. Additionally there has also been advocacy for the expansion of the jurisdiction of the East African Court of Justice whose mandate is purported to expand from addressing economic matters to including good governance, security and human rights including issues of forced displacement.⁹⁵⁰ The Draft East African Bill of Rights is also expected to be an operational code for this court in matters involving human rights.⁹⁵¹

⁹⁴⁶ International refugee rights initiative (IRRI) 2008 as above at 5.

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

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

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

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

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

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

4.3.3.1 Pitfalls of EACJ as a human rights court

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

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

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

⁹⁵³ See article 27(1) of the EAC Treaty 2000 as above.

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

⁹⁵⁵ Maina 2008 as above at 301.

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

A person who has been forced to leave their home or place of habitual residence for reasons such as natural or man-made disasters, including religious or political persecution or war, but has not crossed an international border⁹⁵⁷

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

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

⁹⁵⁶ Maina 2008 as above at 210.

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

⁹⁵⁸ Article 3 of the East African Bill of Rights 2009 as above.

⁹⁵⁹ Article 12 of the East African Draft Bill of Rights 2009 as above.

⁹⁶⁰ Article 29 of the East African Draft Bill of Rights 2009 as above.

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

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

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

⁹⁶¹ International refugee rights initiative (IRRI) 2008 as above at 5.

⁹⁶² International refugee rights initiative (IRRI) 2008 as above at 6.

⁹⁶³ International refugee rights initiative (IRRI) 2008 as above at 6.

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

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

4.3.4 The Intergovernmental Authority for Development (IGAD)

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

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

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

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

⁹⁶⁶ International refugee rights initiative (IRRI) 2008 as above at 5.

⁹⁶⁷ International refugee rights initiative (IRRI) 2008 as above at 5.

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

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

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

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

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

⁹⁷⁰ Ayalew 1999 as above at 103.

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

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

⁹⁷¹ Ayalew 1999 as above.

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

⁹⁷³ Alao 2000 as above at 18.

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

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

In the process two significant initiatives related to these objectives have already emerged. First, in furthering the appraisal of structures and mechanisms for conflict early warning, IGAD implemented a Conflict Early Warning Response Mechanism (CEWARN) in 2000. The mechanism has a mandate to receive and share information concerning potentially violent conflicts as well as their outbreak and escalation in the IGAD region. It also undertakes analysis of the information and formulates options for early response.⁹⁷⁷

CEWARN is developing gradually and its initial focus has been on pastoralist conflicts, specifically collecting data and analyzing conflicts in the ‘Somali cluster’ and the ‘Karamoja cluster.’ CEWARN is clearly relevant to the prevention aspect of internal displacement.⁹⁷⁸ It holds a great promise as a platform for collection of data and information exchange including IDPs in the future.⁹⁷⁹

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

⁹⁷⁵ International refugee rights initiative (IRRI) 2008 as above at 12.

⁹⁷⁶ International refugee rights initiative (IRRI) 2008 as above.

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

⁹⁷⁸ International refugee rights initiative (IRRI) 2008 as above at 12.

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

⁹⁸⁰ Abebe 2009 as above at 16.

⁹⁸¹ See Khartoum Declaration of 2003; See also Abebe 2009 as above at 16.

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

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

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

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

⁹⁸² See Abebe 2009 as above at 16.

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

⁹⁸⁴ Olonisakin 2000 as above at 4; Alao 2000 as above at 19.

⁹⁸⁵ Olonisakin 2000 as above.

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

⁹⁸⁷ Olonisakin 2000 as above at 4.

⁹⁸⁸ Olonisakin 2000 as above; Alao 2000 as above at 20.

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

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

⁹⁸⁹ Alao 2000 as above at 20.

⁹⁹⁰ Alao 2000 as above.

⁹⁹¹ Olonisakin 2000 as above at 4; Alao 2000 as above at 20.

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

⁹⁹³ Alao 2000 as above at 21.

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

⁹⁹⁵ Olonisakin 2000 as above at 5.

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

4.5 Conclusions

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

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

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

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

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

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

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

⁹⁹⁷ Kalin 2007 as above 4.

⁹⁹⁸ Kalin 2007 as above.

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

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

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

¹⁰⁰⁰ Kalin 2007 as above at 5.

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

¹⁰⁰² Kalin 2007 as above at 5.

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

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

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

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

¹⁰⁰⁴ Kalin 2007 as above at 5.

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

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

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

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

¹⁰⁰⁶ Lomo 2006 as above at 24.

¹⁰⁰⁷ Lomo 2006 as above.

¹⁰⁰⁸ Lomo 2006 as above.

CHAPTER 5: FRAMEWORKS FOR NATIONAL RESPONSIBILITY IN ADDRESSING INTERNAL DISPLACEMENT: THE CASE OF KENYA AND UGANDA¹⁰⁰⁹

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.¹⁰¹⁰ 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.

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

¹⁰¹⁰ 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.¹⁰¹¹ 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.¹⁰¹² 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.¹⁰¹³ The number of IDPs has since declined to about 9.7 million IDPs within 21 countries in Africa.¹⁰¹⁴ Africa had at some point about 40 percent of the internally displaced worldwide, this constituted half of the

¹⁰¹¹ 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.

¹⁰¹² 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.

¹⁰¹³ 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.

¹⁰¹⁴ 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.¹⁰¹⁵ Out of all African countries, 17 were reported to have legislation or policies specifically addressing internal displacement.¹⁰¹⁶ 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.¹⁰¹⁷ 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.¹⁰¹⁸ As of April 2010 there were at least 4,345,275 IDPs,¹⁰¹⁹ by October 2011 this figure had decreased to 4,033,884 internally displaced persons in Eastern Africa.¹⁰²⁰

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.¹⁰²¹ According to UNHCR Burundi's Refugee fact sheet, of October 2011, the IDPs were initially put at 156,167.¹⁰²² 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

¹⁰¹⁵ IDMC March 2011 as above at 9.

¹⁰¹⁶ 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 populacoes 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.

¹⁰¹⁷ IDMC March 2011 as above at 10.

¹⁰¹⁸ 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 7th February 2012 at <http://www.africa-union.org> accessed on 21-01-2012.

¹⁰¹⁹ 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.

¹⁰²⁰ 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 accessed 25-04-2012.

¹⁰²¹ IDMC December 2011 as above at 37.

¹⁰²² 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.¹⁰²³ The working group on internal displacement created in 2010 is currently undertaking IDP profiling in 122 sites across 15 provinces in the country.¹⁰²⁴

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 2009.¹⁰²⁵ IDP statistics have since decreased to 1,709,278.¹⁰²⁶ 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 23¹⁰²⁷ 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.¹⁰²⁸

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 2009.¹⁰²⁹ 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

¹⁰²³ IDMC 2009 country report Burundi at www.internal-displacement.org; OCHA-SROEA 2010 report as above at 5.

¹⁰²⁴ OCHA-SROEA October 2011 as above at 4.

¹⁰²⁵ OCHA DRC, September 2009 at 5.

¹⁰²⁶ OCHA DRC, *RDC Synthèse IDPs au 03 November 2011*.

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

¹⁰²⁸ OCHA DRC 2011 as above at 4.

¹⁰²⁹ 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.¹⁰³⁰ 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.¹⁰³¹

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.¹⁰³² 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.¹⁰³³ 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.¹⁰³⁴ 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.¹⁰³⁵ This brings the figure of internally displaced people in Kenya to about 309,200.¹⁰³⁶ The Kenyan government, through the Ministry of State for Special Programmes (MoSSP) continues to offer assistance to IDPs awaiting final resettlement.¹⁰³⁷ 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

¹⁰³⁰ UNHCR Kampala 2010, Humanitarian update, March.

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

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

¹⁰³³ '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

¹⁰³⁴ OCHA Kenya, 'Kenya Humanitarian situation', April 2010.

¹⁰³⁵ OCHA-SROEA October 2011 *ibid* at 5.

¹⁰³⁶ 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.

¹⁰³⁷ 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.¹⁰³⁸

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.¹⁰³⁹ 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.¹⁰⁴⁰ 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.¹⁰⁴¹

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

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

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

¹⁰⁴¹ 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.¹⁰⁴² 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.¹⁰⁴³ 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.¹⁰⁴⁴ 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.¹⁰⁴⁵ 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.¹⁰⁴⁶ 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.¹⁰⁴⁷ Frameworks set up by governments to address internal displacement also should take into account the needs of the displaced comprehensively. This involves

¹⁰⁴² Brookings framework for national responsibility 2005 as above at 6.

¹⁰⁴³ 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.

¹⁰⁴⁴ Brookings framework for national responsibility 2005 as above at 9.

¹⁰⁴⁵ Brookings framework for national responsibility 2005 as above.

¹⁰⁴⁶ Brookings framework for national responsibility 2005 as above at 10.

¹⁰⁴⁷ 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.¹⁰⁴⁸

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.¹⁰⁴⁹ 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.¹⁰⁵⁰

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.¹⁰⁵¹ 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

¹⁰⁴⁸ Brookings framework for national responsibility 2005 as above.

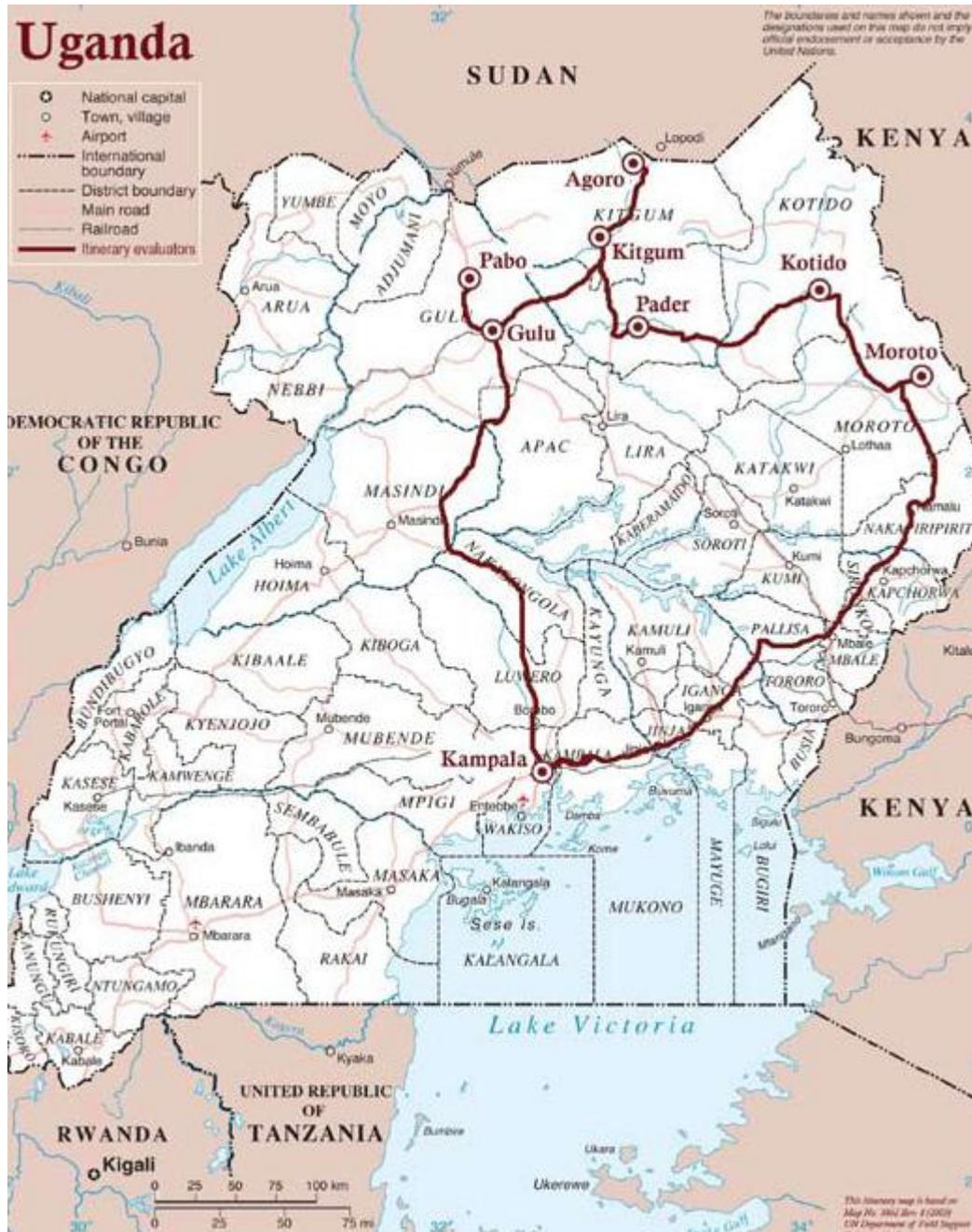
¹⁰⁴⁹ Brookings framework for national responsibility 2005 as above.

¹⁰⁵⁰ Brookings framework for national responsibility 2005 as above.

¹⁰⁵¹ 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.

organizations are requested by government, or allowed to go in, negotiate and attain access in order to offer material and physical protection to IDPs.¹⁰⁵²

5.4 Evolution of internal displacement in Kenya and Uganda



1053

¹⁰⁵² Brookings framework for national responsibility 2005 as above at 11.

¹⁰⁵³ Steets J and Grunewald F *Cluster Approach Evaluation Phase 2: Uganda country study* 4th Nanusry 2010 Global Public Policy Institute (GPPI) and GROUPE urd at 6; This map represents the general circumference of the area affected by internal displacement in Uganda.

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.¹⁰⁵⁴ 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),¹⁰⁵⁵ a party led by the King of Buganda, Kabaka Mutesa II.¹⁰⁵⁶ 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 1971-1979.¹⁰⁵⁷ 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 1985.¹⁰⁵⁸

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

¹⁰⁵⁴ 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.

¹⁰⁵⁵ Meaning Kabaka only.

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

¹⁰⁵⁷ Kemirere 2007 as above at 81.

¹⁰⁵⁸ Kemirere 2007 as above at 84-85.

¹⁰⁵⁹ 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.¹⁰⁶⁰ 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.¹⁰⁶¹ The conflict involved five multifaceted rebellions and this was one of the reasons why it was circular and has prolonged for so long.¹⁰⁶² 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.¹⁰⁶³

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.¹⁰⁶⁴ 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

Tutajua ebooks Kampala at 7 at

http://www.ebooks.tutajua.com/chapter.php?tutcom_ebooks_chapter_id=1&ebooks_book visited on 24-11-2011.

¹⁰⁶⁰ Lomo, Nagagga and Hovil 2004 as above at 4.

¹⁰⁶¹ Lomo, Nagagga and Hovil 2004 as above at 5.

¹⁰⁶² Lomo, Nagagga and Hovil 2004 as above at 4.

¹⁰⁶³ Bareebe 2007 as above at 7.

¹⁰⁶⁴ 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.¹⁰⁶⁵ 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.¹⁰⁶⁶ 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.¹⁰⁶⁷ 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.¹⁰⁶⁸ 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 1991.¹⁰⁶⁹ 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

¹⁰⁶⁵ Lomo, Nagagga and Hovil 2004 as above at 4.

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

¹⁰⁶⁷ This happened before in 1983 in the 'Luwero triangle' when about 750,000 people, this time in Luwero 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.

¹⁰⁶⁸ Lomo, Nagagga and Hovil 2004 as above at 7.

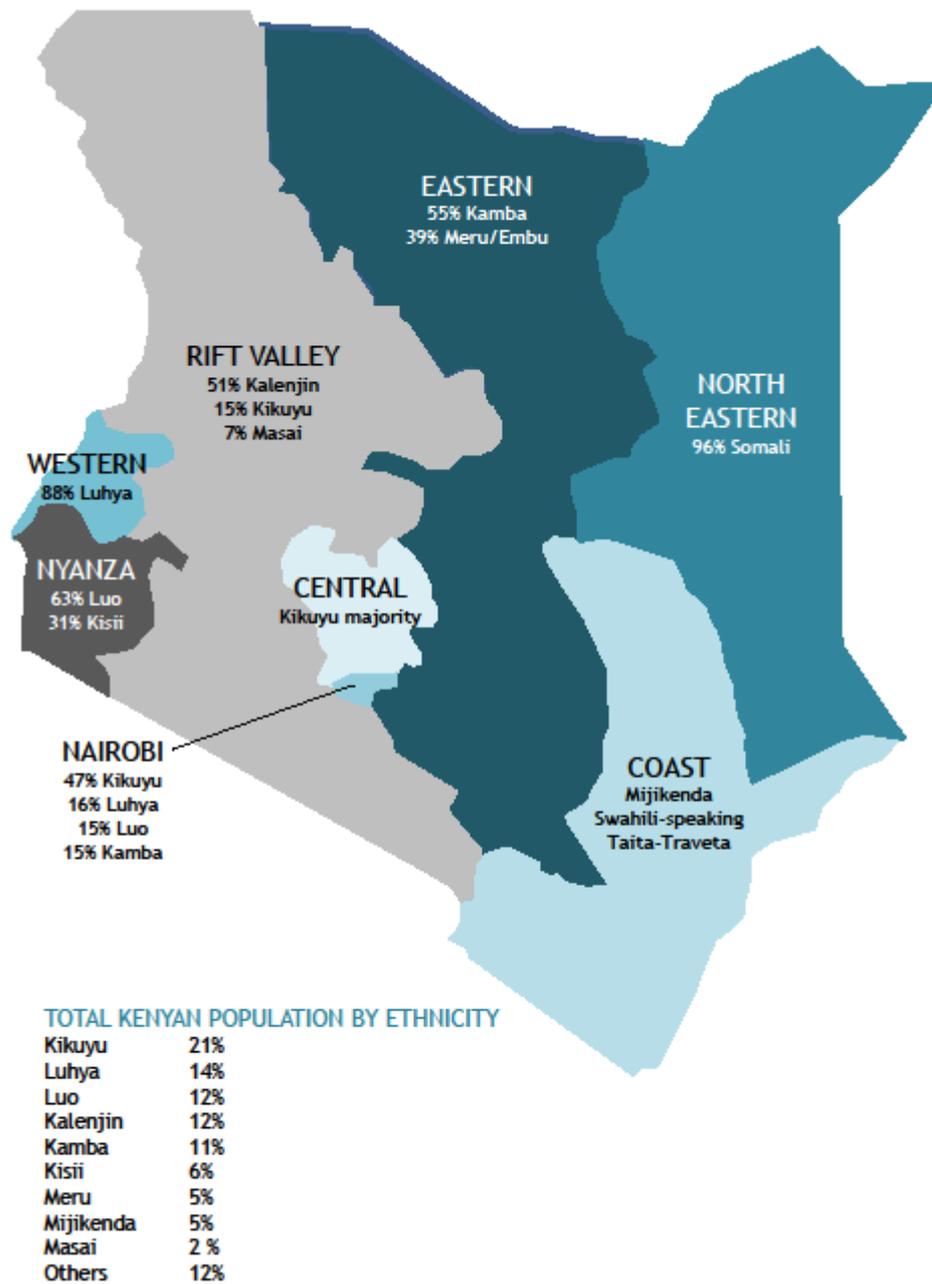
¹⁰⁶⁹ The Sentinel Project for Genocide Prevention 'Preliminary assessment: the risk of Genocide in Kenya' Current to September 2011 (Revised) at <http://thesentinelproject.org/wp-content/uploads/Kenya-Risk-Assessment-2011.pdf> accessed on 23-11-2012.

tribal violence that would affect the nation immensely.¹⁰⁷⁰ 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.¹⁰⁷¹ 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.

¹⁰⁷⁰ 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.

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



1072

¹⁰⁷² 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.¹⁰⁷³ 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.¹⁰⁷⁴

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.¹⁰⁷⁵

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

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

¹⁰⁷⁴ Kamugi 2009 as above at 348.

¹⁰⁷⁵ 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.¹⁰⁷⁶ 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.¹⁰⁷⁷ 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.¹⁰⁷⁸ Others claim that land is simply used as an incentive in the quest for political power through ethnocentric antagonism.¹⁰⁷⁹ 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.¹⁰⁸⁰ 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.¹⁰⁸¹ The last card to be dealt was to label pro-democracy efforts as an apocalyptic force that would lead to chaos in multiethnic Kenya.¹⁰⁸² 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.

¹⁰⁷⁶ Kamugi 2009 as above at 348.

¹⁰⁷⁷ Kamugi 2009 as above.

¹⁰⁷⁸ Kamugi 2009 as above.

¹⁰⁷⁹ Kamugi 2009 as above.

¹⁰⁸⁰ Kamugi 2009 as above at 345-364 at 347,348.

¹⁰⁸¹ Kamugi 2009 as above 348.

¹⁰⁸² 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.¹⁰⁸³ 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 1960.¹⁰⁸⁴ 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.¹⁰⁸⁵

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.¹⁰⁸⁶ 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.¹⁰⁸⁷ 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

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

¹⁰⁸⁴ 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.

¹⁰⁸⁵ Kanyinga 2009 quoted in Kamugi 2009 as above at 349.

¹⁰⁸⁶ Kanyinga 2009 as above at 328.

¹⁰⁸⁷ 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.¹⁰⁸⁸ 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.¹⁰⁸⁹ 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.¹⁰⁹⁰ 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.¹⁰⁹¹

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.¹⁰⁹² 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.¹⁰⁹³ Internal displacement in Kenya is a complex multifaceted phenomenon that has varying intertwined, interlinked and often overlapping cyclic causes and consequences. It is

¹⁰⁸⁸ 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.

¹⁰⁸⁹ Osamba 2001 as above at 93.

¹⁰⁹⁰ Osamba 2001 as above at 94.

¹⁰⁹¹ Osamba 2001 as above at 106.

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

¹⁰⁹³ 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.¹⁰⁹⁴

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.¹⁰⁹⁵ 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.¹⁰⁹⁶ 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.¹⁰⁹⁷

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.¹⁰⁹⁸

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.¹⁰⁹⁹ The issue of internal displacement in Uganda has also been fuelled by irresponsible,

¹⁰⁹⁴ Kamungi 2009 as above at 328, 348.

¹⁰⁹⁵ Kamungi 2009 as above at 348.

¹⁰⁹⁶ Kamungi 2009 as above at 345.

¹⁰⁹⁷ Kamungi 2009 as above.

¹⁰⁹⁸ Lomo and Hovil 2004 as above at 11.

¹⁰⁹⁹ 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.¹¹⁰⁰

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.¹¹⁰¹ 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.¹¹⁰² 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.¹¹⁰³

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.¹¹⁰⁴ 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.¹¹⁰⁵ 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.¹¹⁰⁶

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

¹¹⁰⁰ Nagagga, Lomo and Hovil 2004 as above at 4.

¹¹⁰¹ Nagagga, Lomo and Hovil 2004 as above.

¹¹⁰² Osamba 2001 as above at 90.

¹¹⁰³ Osamba 2001 as above at 98.

¹¹⁰⁴ Osamba 2001 as above at 101.

¹¹⁰⁵ Osamba 2001 as above at 102.

¹¹⁰⁶ Osamba 2001 as above at 98.

both stood against their Muslim counterparts.¹¹⁰⁷ 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.¹¹⁰⁸ 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.¹¹⁰⁹

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.¹¹¹⁰ Eventually they were the ones who largely engineered the rebellions (maumau) against the colonial government.¹¹¹¹ 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.¹¹¹²

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.¹¹¹³ 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

¹¹⁰⁷ Babugura 2007 as above at 85.

¹¹⁰⁸ Kemirere 2007 as above.

¹¹⁰⁹ Kemirere 2007 as above.

¹¹¹⁰ Osamba 2001 as above at 90.

¹¹¹¹ Osamba 2001 as above at 89.

¹¹¹² Osamba 2001 as above.

¹¹¹³ 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.¹¹¹⁴ 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.¹¹¹⁵

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.¹¹¹⁶ 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.¹¹¹⁷

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.¹¹¹⁸ 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.¹¹¹⁹ 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

¹¹¹⁴ Osamba 2001 as above.

¹¹¹⁵ KHRC and IDP Network 2011 as above at 8.

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

¹¹¹⁷ Brookings framework for national responsibility 2005 as above at 5 and 6.

¹¹¹⁸ Brookings framework for national responsibility 2005 as above at 12.

¹¹¹⁹ 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.¹¹²⁰

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.¹¹²¹ In Kenya on the other hand, the Ministry of state for special programmes is responsible for addressing matters of internal displacement.¹¹²² 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.¹¹²³ It should be noted that return in itself is not as much a durable solution as it is a physical process.¹¹²⁴ 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.¹¹²⁵

In Kenya, attempts to prevent any possible future displacement seem non-existent.¹¹²⁶ The very nature of displacement patterns in Kenya depend on the absence or ill preparedness of such attempts.¹¹²⁷ 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.¹¹²⁸ 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

¹¹²⁰ Brookings framework for national responsibility 2005 as above.

¹¹²¹ Ugandan National IDP Policy 2004 as above.

¹¹²² Kenyan Draft National IDP Policy 2010 as above.

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

¹¹²⁴ IASC Uganda in-country self assessment 2006 as above.

¹¹²⁵ IASC Uganda in-country self assessment 2006 s above.

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

¹¹²⁷ Kamugi 2009 as above at 348.

¹¹²⁸ KHRC and IDP Network 2011 as above at 46.

within the country.¹¹²⁹ 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.¹¹³⁰

In 2008 the government of Kenya, the UNHCR and other stake holders started the protection and shelter clusters.¹¹³¹ 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.¹¹³² The cluster was renamed as the National Protection Working Group on Internal Displacement (PWGID).¹¹³³ 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.¹¹³⁴

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.’¹¹³⁵ 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

¹¹²⁹ KHRC and IDP Network 2011 as above.

¹¹³⁰ 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 accessed on 26-10-2011.

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

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

¹¹³³ 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, 18th January 2011.

¹¹³⁴ 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.

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

addressed.¹¹³⁶ Lastly the PWGIDs acted as focal points for early warning and coordination mechanisms during the 2010 referendum period.¹¹³⁷ 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.¹¹³⁸ 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.¹¹³⁹

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.¹¹⁴⁰ These include training all relevant government actors such as civilian, police or military institutions on human rights and humanitarian law principles concerning IDPs.¹¹⁴¹ Additionally, the implementation of national laws, policies, programmes and reports of relevance to internal displacement is also highlighted as a necessity in preventing displacements.¹¹⁴² 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.¹¹⁴³

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.¹¹⁴⁴ 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

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

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

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

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

¹¹⁴⁰ Kenyan Draft IDP Policy – 'Introduction' 2010 as above.

¹¹⁴¹ Kenyan Draft National IDP Policy 2010 as above.

¹¹⁴² Kenyan Draft National IDP Policy 2010 as above.

¹¹⁴³ Kenyan Draft National IDP Policy 2010 as above.

¹¹⁴⁴ Kenyan Draft National IDP Policy 2010 as above.

available, through legal aid and mobile clinics.¹¹⁴⁵ 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.¹¹⁴⁶ 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.¹¹⁴⁷ 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.¹¹⁴⁸ 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.¹¹⁴⁹ Enmity and disputes, especially ethnic ones within communities should not be polarized, but rather resolved and if possible through local dispute resolution and reconciliation.¹¹⁵⁰

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.¹¹⁵¹ Deterrent measures including avoiding precipitating natural hazards, through processes such as deforestation should also be taken by the government.¹¹⁵² 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

¹¹⁴⁵ Kenyan Draft National IDP Policy 2010 as above.

¹¹⁴⁶ Kenyan Draft National IDP Policy 2010 as above.

¹¹⁴⁷ Kenyan Draft National IDP Policy 2010 as above at 7.

¹¹⁴⁸ Kenyan National IDP Policy 2010 as above.

¹¹⁴⁹ Kenyan National IDP Policy 2010 as above.

¹¹⁵⁰ Kenyan National IDP Policy 2010 as above at 8.

¹¹⁵¹ Kenyan National IDP Policy 2010 as above.

¹¹⁵² Kenyan National IDP Policy 2010 as above.

accountable locally. Some laws have been passed but their functionality is questionable.¹¹⁵³ 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.¹¹⁵⁴ 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.¹¹⁵⁵

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.¹¹⁵⁶ This should include contingency planning, arranging effective disaster management mechanisms in areas at risk, and setting up information dissemination strategies to populations at risk.¹¹⁵⁷ 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.¹¹⁵⁸ 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.¹¹⁵⁹

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.¹¹⁶⁰ 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.¹¹⁶¹ 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

¹¹⁵³ KHRC and IDP Network 2011 as above at 51.

¹¹⁵⁴ KHRC and IDP Network 2011 as above.

¹¹⁵⁵ KHRC and IDP Network 2011 as above.

¹¹⁵⁶ Kenyan Draft National IDP policy 2010 as above at 12.

¹¹⁵⁷ Kenyan National IDP Policy 2010 as above.

¹¹⁵⁸ Kenyan National IDP Policy 2010 as above.

¹¹⁵⁹ Kenyan National IDP Policy 2010 as above.

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

¹¹⁶¹ Government of Kenya, Ministry of State for Special Programmes as above.

and how they were addressed or failed to be addressed.¹¹⁶² 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.¹¹⁶³ 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.¹¹⁶⁴

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.¹¹⁶⁵ The policy also defines early warning as the provision of relevant information on potential or actual disasters in advance.¹¹⁶⁶ There have been steps taken in the process of disaster risk reduction through the establishment of a National Policy on Disaster Preparedness and Management.¹¹⁶⁷ A national platform for disaster risk reduction was also set up in accordance with the Hyogo Framework of Action.¹¹⁶⁸ 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.¹¹⁶⁹ 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.¹¹⁷⁰ The Draft National Policy on Disaster Preparedness¹¹⁷¹ provides that all districts must additionally have a DDMC (District Disaster Management Committees) which have been renamed as District

¹¹⁶² Government of Kenya, Ministry of State for Special Programmes as above.

¹¹⁶³ Government of Kenya, Ministry of State for Special Programmes as above.

¹¹⁶⁴ Government of Kenya, Ministry of State for Special Programmes as above.

¹¹⁶⁵ Uganda IDP Policy 2004 as above.

¹¹⁶⁶ Uganda IDP Policy 2004 as above.

¹¹⁶⁷ Uganda IDP Policy 2004 as above.

¹¹⁶⁸ United Nations Uganda National Humanitarian Profile 2011 at 10

¹¹⁶⁹ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷⁰ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷¹ It has not yet been finalised it was scheduled for Cabinet approval on 11th 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.¹¹⁷² 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.¹¹⁷³

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).¹¹⁷⁴ 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.¹¹⁷⁵ Additionally the National Coordination and Operations Centre within the office of the Prime Minister (OPM-NECOC), deals with sudden unforeseen events and emergencies.¹¹⁷⁶ 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.¹¹⁷⁷

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.¹¹⁷⁸ 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.¹¹⁷⁹ A suggestion had been made concerning an emergency contingency fund to be administered by the department of Disaster Preparedness in the

¹¹⁷² Uganda IDP Policy 2004 as above.

¹¹⁷³ United Nations Uganda National Humanitarian Profile 2011 as above at 14.

¹¹⁷⁴ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷⁵ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷⁶ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷⁷ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷⁸ United Nations Uganda National Humanitarian Profile 2011 as above.

¹¹⁷⁹ United Nations Uganda National Humanitarian Profile 2011 as above at 15.

OPMs office, but that remains to be seen.¹¹⁸⁰ 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.¹¹⁸¹ 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.¹¹⁸² Part of such acknowledgment includes raising public awareness over the issue, establishing consensus and prioritizing efforts to address displacement at a national level.¹¹⁸³ The displaced population is supposed to be made part of such national priority, and involved in the process of addressing displacement.¹¹⁸⁴ 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.¹¹⁸⁵ This can be achieved through nation-wide concerted efforts of sensitization campaigns covering and involving all relevant government authorities.¹¹⁸⁶ 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.¹¹⁸⁷

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

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

¹¹⁸¹ Brookings framework for national responsibility 2005 as above at 13.

¹¹⁸² Brookings framework for national responsibility 2005 as above.

¹¹⁸³ Brookings framework for national responsibility 2005 as above.

¹¹⁸⁴ Brookings framework for national responsibility 2005 as above.

¹¹⁸⁵ Brookings framework for national responsibility 2005 as above.

¹¹⁸⁶ Brookings framework for national responsibility 2005 as above.

¹¹⁸⁷ 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.¹¹⁸⁸ 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.¹¹⁸⁹ 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.¹¹⁹⁰

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.¹¹⁹¹ The data collected must be gathered efficiently and inclusively taking into account age, gender, and other relevant indicators.¹¹⁹² 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.¹¹⁹³ 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.¹¹⁹⁴

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*.¹¹⁹⁵ 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

¹¹⁸⁸ 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.

¹¹⁸⁹ 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.

¹¹⁹⁰ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

¹¹⁹¹ Brookings framework for national responsibility 2005 as above at 14.

¹¹⁹² Brookings framework for national responsibility 2005 as above.

¹¹⁹³ Brookings framework for national responsibility 2005 as above.

¹¹⁹⁴ Brookings framework for national responsibility 2005 as above.

¹¹⁹⁵ Brookings framework for national responsibility 2005 as above.

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

Additionally efforts must be made to collect information about displaced persons who live within areas under direct control of insurgent groups.¹¹⁹⁸ 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.¹¹⁹⁹ 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.¹²⁰⁰ Data gathering and recording of numbers of the displaced should not jeopardize the security, protection and freedom of movement of the internally displaced.¹²⁰¹ 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.¹²⁰²

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.¹²⁰³ 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

¹¹⁹⁶ Brookings framework for national responsibility 2005 as above.

¹¹⁹⁷ Brookings framework for national responsibility 2005 as above.

¹¹⁹⁸ Brookings framework for national responsibility 2005 as above.

¹¹⁹⁹ Brookings framework for national responsibility 2005 as above.

¹²⁰⁰ Brookings framework for national responsibility 2005 as above.

¹²⁰¹ Brookings framework for national responsibility 2005 as above.

¹²⁰² Brookings framework for national responsibility 2005 as above at 15.

¹²⁰³ KHRC and IDP Network 2011 as above at 35.

Provinces of Kenya.¹²⁰⁴ It has been further reported that in some cases the number of IDPs in Kenya had decreased by 2004,¹²⁰⁵ while other reports claim it had increased again¹²⁰⁶ as time progressed.¹²⁰⁷ These statistics, at the time suggested that Kenya actually ranked 7th 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.¹²⁰⁸ 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.¹²⁰⁹ 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.¹²¹⁰ Additionally, 350, 000 people are accounted to have moved to about 118 camps nationwide and 331,921 IDPs sought refuge and reintegrated within communities.¹²¹¹

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.¹²¹² Similar situations of incoherent data and 'ghost IDPs' being registered have been numerous recorded.¹²¹³ It has been pointed out that the statistics in government reports of March 2010, July 2010 and January 2011¹²¹⁴ with regard to the number of people

¹²⁰⁴ 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.

¹²⁰⁵ 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.

¹²⁰⁶ 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.

¹²⁰⁷ 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.

¹²⁰⁸ KHRC and IDP Network 2011 as above at 35.

¹²⁰⁹ 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.

¹²¹⁰ KHRC and IDPs Network 2011 report as above.

¹²¹¹ KHRC and IDPs Network 2011 report as above.

¹²¹² KHRC and IDPs Network 2011 report as above at 35.

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

¹²¹⁴ 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.¹²¹⁵

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.¹²¹⁶ The table below summarizes statistics of post election displaced individuals and households by the government of Kenya.

¹²¹⁷ 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.¹²¹⁸ Another disturbing aspect of the data recording methodology is that there was an insufficient reflection of gender and generational aspects of IDP populations.¹²¹⁹ This made it impossible to determine how many

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

¹²¹⁵ KHRC and IDPs Network 2011 report as above at 35-36.

¹²¹⁶ 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.

¹²¹⁷ Government of Kenya, Ministry of State for Special Programmes, IDP status brief as of 3rd March 2010, 30th July 2010, and government public advertisement In *Daily Nation* Newspaper of January 7th 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).

¹²¹⁸ 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.

¹²¹⁹ KHRC and IDPs Network 2011 report as above at 36.

women, men, children, elderly, youth where within the IDP groups recorded.¹²²⁰ 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.¹²²¹ 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.¹²²² 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.¹²²³

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.¹²²⁴ 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.¹²²⁵ 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.¹²²⁶ 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.¹²²⁷

Additionally it has been observed that there is no effective system to track and monitor displacement.¹²²⁸ 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

¹²²⁰ KHRC and IDPs Network 2011 report as above.

¹²²¹ KHRC and IDPs Network 2011 report as above.

¹²²² KHRC and IDPs Network 2011 report as above.

¹²²³ KHRC and IDPs Network 2011 report as above.

¹²²⁴ KHRC and IDPs Network 2011 report as above at 55.

¹²²⁵ KHRC and IDPs Network 2011 report as above at 50.

¹²²⁶ KHRC and IDPs Network 2011 report as above.

¹²²⁷ KHRC and IDPs Network 2011 report as above at 36.

¹²²⁸ 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.¹²²⁹ 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.¹²³⁰

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.¹²³¹ After the introduction of the cluster protection system in Uganda in November 2005,¹²³² 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.¹²³³ 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.¹²³⁴ 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.¹²³⁵

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

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

¹²³¹ Uganda National humanitarian profile of 2011 as above.

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

¹²³³ 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.

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

¹²³⁵ 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.¹²³⁶ 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.¹²³⁷ 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).¹²³⁸ 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.¹²³⁹ 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.¹²⁴⁰

The only set back in the operations of the Working Group is that it did not pay enough attention to IDPs.¹²⁴¹ 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.¹²⁴² 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

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.

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

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

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

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

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

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

¹²⁴² 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.¹²⁴³ 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 143,000.¹²⁴⁴ 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.¹²⁴⁵ 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.¹²⁴⁶

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.¹²⁴⁷ 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.¹²⁴⁸ IDPs still in transit sites are about 52,359 in 282 transit sites in Acholi alone.¹²⁴⁹ These people are not in camps anymore, they have moved to areas close to their former homes, but have not yet settled back completely.

¹²⁴³ IDP Population update December 2010 UNHCR Sub-office Gulu.

¹²⁴⁴ IDP Population update Gulu 2010 as above.

¹²⁴⁵ 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.

¹²⁴⁶ 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 accessed on 10-05-2012.

¹²⁴⁷ IDP Population update Gulu 2010 as above.

¹²⁴⁸ IDP Population update Gulu 2010 as above.

¹²⁴⁹ 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.¹²⁵⁰ They had a population of about 26, 390 IDPs, while IDPs remaining in closed camps amounted to 46, 849.¹²⁵¹ 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.¹²⁵² 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.¹²⁵³

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.¹²⁵⁴ This is to ensure that in their dealings with the group, stereotypes are not displayed, rights are not infringed and entitlements are not withheld.¹²⁵⁵ 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.¹²⁵⁶ Training is additionally a way of government building its capacity and accountability as well as equipping itself to fulfill its responsibilities.¹²⁵⁷

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.¹²⁵⁸ Additionally, the military, police and other law enforcement officers who play an important role in ensuring protection should be included.¹²⁵⁹ Camp administrators, and officials tasked with humanitarian relief and the protection of the human rights of IDPs must also be trained

¹²⁵⁰ IDP Population update Gulu 2010 as above.

¹²⁵¹ IDP Population update Gulu 2010 as above.

¹²⁵² IDP Population update Gulu 2010 as above.

¹²⁵³ IDP Population update Gulu 2010 as above.

¹²⁵⁴ Brookings framework for national responsibility 2005 as above at 15.

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

¹²⁵⁶ Brookings framework for national responsibility 2005 as above at 15.

¹²⁵⁷ Brookings framework for national responsibility 2005 as above.

¹²⁵⁸ Brookings framework for national responsibility 2005 as above.

¹²⁵⁹ Brookings framework for national responsibility 2005 as above.

in order for them to keep abreast with the rights of people they are protecting.¹²⁶⁰ 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.¹²⁶¹ 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.¹²⁶² 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.¹²⁶³

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.¹²⁶⁴ 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.¹²⁶⁵ 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.¹²⁶⁶ In the scenario of Uganda, the Uganda peoples' army had a special role in the protection of all 'protected villages',¹²⁶⁷ 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.¹²⁶⁸

¹²⁶⁰ Brookings framework for national responsibility 2005 as above.

¹²⁶¹ Brookings framework for national responsibility 2005 as above.

¹²⁶² Brookings framework for national responsibility 2005 as above.

¹²⁶³ 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.

¹²⁶⁴ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 5.

¹²⁶⁵ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

¹²⁶⁶ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

¹²⁶⁷ 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.

¹²⁶⁸ 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.¹²⁶⁹ 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.¹²⁷⁰

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 2011.¹²⁷¹ 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.¹²⁷² 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.¹²⁷³

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.¹²⁷⁴ 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.¹²⁷⁵ In the case of Uganda similar training

¹²⁶⁹ 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.

¹²⁷⁰ UNHCR BO Kenya *Transition Concept Note* 2009 as above.

¹²⁷¹ UNHCR 'Kenya humanitarian emergency response plan' 2011 as above at 2.

¹²⁷² UNHCR 'Kenya humanitarian emergency response plan' 2011 as above.

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

¹²⁷⁴ UNHCR 'Kenya humanitarian emergency response plan' 2011 as above at 2.

¹²⁷⁵ 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.¹²⁷⁶

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.¹²⁷⁷ 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.¹²⁷⁸ 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.¹²⁷⁹ 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.¹²⁸⁰

Some countries have adopted legal instruments that address displacement in its entirety.¹²⁸¹ Others have adopted instruments that address a certain stage of internal displacement such as return and resettlement.¹²⁸² Whilst others have adopted Decrees or Regulations to complement already existing laws and address most urgent aspects of a displacement crisis.¹²⁸³ 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.¹²⁸⁴

¹²⁷⁶ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 15.

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

¹²⁷⁸ Brookings framework for national responsibility 2005 as above at 16.

¹²⁷⁹ Brookings manual for law and policy makers 2008 as above at 27.

¹²⁸⁰ Brookings manual for law and policy makers 2008 as above at 28.

¹²⁸¹ Uganda National Policy for IDPs 2004 as above.

¹²⁸² Angolan Norms on the Resettlement of Internally Displaced Populations 2001.

¹²⁸³ 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.

¹²⁸⁴ 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.¹²⁸⁵

United Nations resolutions have urged governments facing the internal displacement crisis to enact national laws in line with Guiding Principles.¹²⁸⁶ 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.¹²⁸⁷

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

¹²⁸⁵ Brookings framework for national responsibility 2005 as above at 16.

¹²⁸⁶ Brookings framework for national responsibility 2005 as above.

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

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

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.¹²⁹⁰ Other relevant laws include chapter 294 of the Amnesty law of 2000,¹²⁹¹ the Decentralization law as well as the Act establishing the Ugandan High Court Special Crimes Division.¹²⁹² 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.¹²⁹³

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

¹²⁸⁸ 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 31st December 2000).

¹²⁸⁹ 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.

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

¹²⁹¹ 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.

¹²⁹² 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.

¹²⁹³ 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 accessed on 24-04-2012.

¹²⁹⁴ Chap. 4 of Constitution of Kenya 2010 Revised edition, National Council of Law Reporting at www.kenyalaw.org accessed on 22-04-2012.

¹²⁹⁵ Article 27 of Kenyan Constitution 2010 as above.

¹²⁹⁶ Article 28 of Kenyan Constitution 2010 as above.

¹²⁹⁷ Article 38 of Kenyan Constitution 2010 as above.

residence,¹²⁹⁸ protection of rights to property¹²⁹⁹ socio-economic rights¹³⁰⁰ and rights of minorities and marginalized people.¹³⁰¹ 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 2008¹³⁰² 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,¹³⁰³ 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.¹³⁰⁴

Kenya also has the Conferment of Special Tribunal Jurisdiction Bill,¹³⁰⁵ 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.¹³⁰⁶ The Bill is mindful of both the basis of the Coalition Government Agreement of February 28th 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

¹²⁹⁸ Article 39 of Kenyan Constitution 2010 as above.

¹²⁹⁹ Article 40 of Kenyan Constitution 2010 as above.

¹³⁰⁰ Article 43 of Kenyan Constitution 2010 as above.

¹³⁰¹ Article 56 of Kenyan Constitution 2010 as above.

¹³⁰² Act no. 117 of 2008 NCKK.

¹³⁰³ Article of the National Cohesion and Integration Act as above.

¹³⁰⁴ 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 February 1, 2011.

¹³⁰⁵ Introduced on February 7th 2011.

¹³⁰⁶ 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.¹³⁰⁷

For decades, the Kenyan Government has carried out large-scale forced evictions especially in informal settlements, contravening international human rights standards.¹³⁰⁸ These forms of arbitrary evictions constitute what the Draft IDP policy of Kenya describes as internal displacement.¹³⁰⁹ 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.¹³¹⁰ The Kenyan Eviction and Resettlement Guidelines can also lend assistance to the national IDP framework.¹³¹¹ 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.¹³¹²

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.¹³¹³ 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.¹³¹⁴ 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

¹³⁰⁷ Article 2 of Kenyan Conferment of Special Tribunal Bill 2011 as above.

¹³⁰⁸ 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.

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

¹³¹⁰ Chap. 5 of Kenyan Draft IDP Policy, abridged version 2011 as above.

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

¹³¹² 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.

¹³¹³ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 2.

¹³¹⁴ 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.¹³¹⁵ 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.¹³¹⁶

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.¹³¹⁷ 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.¹³¹⁸

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.¹³¹⁹ Additionally, the IDP Policy provides for institutional arrangements, as well as the roles and responsibilities of relevant stakeholders.¹³²⁰ It also provides for specific IDPs rights that it is meant to protect.¹³²¹ The policy distributes responsibilities to national and international humanitarian and development agencies as well as intergovernmental organizations and the donor community by specifying

¹³¹⁵ OPM-DDMR ‘Operationalising the IDP Policy’ 2005 as above.

¹³¹⁶ OPM-DDMR ‘Operationalising the IDP Policy’ 2005 as above.

¹³¹⁷ 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.

¹³¹⁸ Uganda National IDP policy 2004 as above.

¹³¹⁹ 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.

¹³²⁰ Uganda National Policy for IDPs 2004 as above at 3-16.

¹³²¹ 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.¹³²²The 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).¹³²³In 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.¹³²⁴Subsequently 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,¹³²⁵ led the process of drafting a national policy on IDPs.¹³²⁶

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.¹³²⁷It 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.

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

¹³²³ 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.

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

¹³²⁵ 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 65th session of General Assembly UN-GA A/65/282 at 6.

¹³²⁶ Kenyan Draft National abridged IDP Policy 2011 as above at iv.

¹³²⁷ 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.¹³²⁸ 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,¹³²⁹ or as a result of natural or human made disasters such as floods and famine or to avoid human rights violations.¹³³⁰

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.¹³³¹ 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,¹³³² 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.¹³³³

¹³²⁸ Kenyan abridged Draft National IDP Policy 2011 as above at 3.

¹³²⁹ Such as the large scale displacement of people from the Mau Forest

¹³³⁰ Kenyan abridged Draft National IDP Policy 2011 as above at 3.

¹³³¹ 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.

¹³³² 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.

¹³³³ 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,¹³³⁴ the Kenyan Draft Human Rights Policy,¹³³⁵ Land policies of both Kenya¹³³⁶ and Uganda,¹³³⁷ the Kenya Draft National Cohesion and Integration policy,¹³³⁸ the Kenyan Disaster Management Policy,¹³³⁹ Uganda's Disaster Risk Reduction and Management Policy¹³⁴⁰ and the Kenya National Draft Policy on Peace building and conflict management.¹³⁴¹ Relevant plans of action include Kenyan Framework of Agenda for National Accord,¹³⁴² Uganda's Plan of Action for Teso and Lango,¹³⁴³ as well as Kenya's National Reconciliation and Emergency, Social and Economic Recovery,¹³⁴⁴ and Uganda's Poverty Eradication Action Plan,¹³⁴⁵ Uganda's Draft Disaster Preparedness Plan.¹³⁴⁶

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.¹³⁴⁷ 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.¹³⁴⁸ 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.¹³⁴⁹ 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

¹³³⁴ Adopted by the Parliamentary select committee on internal displacement in December 2011.

¹³³⁵ 2010.

¹³³⁶ 2010.

¹³³⁷ 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.

¹³³⁸ 2011.

¹³³⁹ 2009.

¹³⁴⁰ 2009.

¹³⁴¹ 2009.

¹³⁴² 2008.

¹³⁴³ See www.ugandaclusters ug/protection.htm as above.

¹³⁴⁴ April 2008.

¹³⁴⁵ First incepted in 1997.

¹³⁴⁶ 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.

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

¹³⁴⁸ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3.

¹³⁴⁹ Republic of Uganda IDP policy 2004 as above at 3.

Refugees (CDMR).¹³⁵⁰ 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.¹³⁵¹ These committees have brought together relevant actors concerned with internal displacement at different government levels.¹³⁵² 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.¹³⁵³ 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.¹³⁵⁴ 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.¹³⁵⁵

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.¹³⁵⁶ The DDMC is headed by the Chief Administrative Officer (CAO) who is usually the head of civil service in the district. The Resident District

¹³⁵⁰ Republic of Uganda IDP Policy 2004 as above at 4.

¹³⁵¹ Republic of Uganda IDP Policy 2004 as above at 5.

¹³⁵² OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 3.

¹³⁵³ Republic of Uganda IDP policy 2004 as above at 6.

¹³⁵⁴ 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.

¹³⁵⁵ 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.

¹³⁵⁶ 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.¹³⁵⁷ 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.¹³⁵⁸ 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.¹³⁵⁹ The institutions charged with this were the Human Rights Promotion and Protection Sub-Committee (HRPP-SC)¹³⁶⁰ and the District Human Rights Promotion and Protection Sub-Committee (D-HRPP-SC).¹³⁶¹ 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.¹³⁶²

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

¹³⁵⁷ Republic of Uganda IDP Policy 2004 section 2.4 as above at 11.

¹³⁵⁸ Republic of Uganda IDP Policy 2004 as above at 17.

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

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

¹³⁶¹ 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.

¹³⁶² Republic of Uganda IDP Policy 2004 as above at 10.

are responsible for reporting on progress of implementation of the IDP policy.¹³⁶³ 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.¹³⁶⁴

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.¹³⁶⁵ Many government district officials reiterated that even before the IDP policy came into effect, the task of disaster management was overwhelming in itself.¹³⁶⁶ 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.¹³⁶⁷ 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.¹³⁶⁸ The office came as a relief to most district officials who were overloaded with addressing their daily duties and addressing mass displacements additionally.

¹³⁶³ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above at 4.

¹³⁶⁴ OPM-DDMR 'Operationalising the IDP Policy' 2005 as above.

¹³⁶⁵ 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.

¹³⁶⁶ DANIDA and COTIR Report 2005 as above.

¹³⁶⁷ DANIDA and COTIR Report 2005 as above.

¹³⁶⁸ 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.¹³⁶⁹ 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.¹³⁷⁰ 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.¹³⁷¹ 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.¹³⁷² 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.¹³⁷³

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).¹³⁷⁴ Uganda was one of the first countries to be selected as pilot projects for the global humanitarian cluster approach.¹³⁷⁵ 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.¹³⁷⁶ 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

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

¹³⁷⁰ DANIDA and COTIR Report 2005 as above at 15.

¹³⁷¹ DANIDA and COTIR Report 2005 as above at 16.

¹³⁷² DANIDA and COTIR Report 2005 as above.

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

¹³⁷⁴ 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.

¹³⁷⁵ Steets and Grunewald 2010 as above at 16.

¹³⁷⁶ Steets and Grunewald 2010 as above at 16.

UNICEF), and the Health, Nutrition and HIV Cluster (headed by UNICEF).¹³⁷⁷ 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.¹³⁷⁸

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 2009.¹³⁷⁹ 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.¹³⁸⁰ By the end of 2006, the protection cluster had identified gaps within protection mechanisms that it set out to address.¹³⁸¹ 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.¹³⁸²

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.¹³⁸³ 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

¹³⁷⁷ Steets and Grunewald 2010 as above.

¹³⁷⁸ Steets and Grunewald 2010 as above at 17.

¹³⁷⁹ 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.

¹³⁸⁰ Steets and Grunewald 2010 as above at 17-18.

¹³⁸¹ 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.

¹³⁸² Uganda Human Rights Commission and IASC Protection Cluster as above.

¹³⁸³ 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.¹³⁸⁴

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.¹³⁸⁵ 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.¹³⁸⁶ 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.¹³⁸⁷ The protection cluster has thus taken over a lot more scope than it should have, and in the process protection gaps cannot be escaped.¹³⁸⁸

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.¹³⁸⁹ 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.¹³⁹⁰ 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.¹³⁹¹

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

¹³⁸⁴ Steets and Grunewald 2010 as above at 67.

¹³⁸⁵ Steets and Grunewald 2010 as above.

¹³⁸⁶ Steets and Grunewald 2010 as above at 66.

¹³⁸⁷ 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.

¹³⁸⁸ Steets and Grunewald 2010 as above at 67.

¹³⁸⁹ Steets and Grunewald 2010 as above.

¹³⁹⁰ Steets and Grunewald 2010 as above.

¹³⁹¹ 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.¹³⁹² Before the introduction of the cluster system, the main child protection coordination mechanism was made up of the National Psycho-Social Support Core Team.¹³⁹³ The team approached the issue of child protection very narrowly, by only focusing on promoting the psycho-social well being of the affected groups.¹³⁹⁴ 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 2005.¹³⁹⁵

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.¹³⁹⁶ The child protection cluster has been active since 2007 in Uganda until it was phased out at cluster phase out stage in end 2009.¹³⁹⁷ It worked very well because local mechanisms and the community were involved and thus given responsibility for their children from the onset.¹³⁹⁸ Additionally, child protection focal points were even appointed at a sub-county level, allowing local participation.¹³⁹⁹ 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.¹⁴⁰⁰ The sub-cluster also played a key role in supporting the establishment and coordinating the development of national associations such as the Uganda

¹³⁹² Steets and Grunewald 2010 as above at 68.

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

¹³⁹⁴ IASC Inter Agency Review Documentation Uganda 2008 as above.

¹³⁹⁵ IASC Inter Agency Review Documentation Uganda 2008 as above.

¹³⁹⁶ IASC Inter Agency Review Documentation Uganda 2008 as above at 1 and 2.

¹³⁹⁷ Steets and Grunewald 2010 as above at 68.

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

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

¹⁴⁰⁰ 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.¹⁴⁰¹ 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.¹⁴⁰²

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.¹⁴⁰³ 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.¹⁴⁰⁴ 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.¹⁴⁰⁵ For the remaining sub-clusters of child protection and GBV, handing over to concerned government bodies has been done.¹⁴⁰⁶ 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.¹⁴⁰⁷ 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.¹⁴⁰⁸ The

¹⁴⁰¹ Steets and Grunewald 2010 as above at 69.

¹⁴⁰² Steets and Grunewald 2010 as above.

¹⁴⁰³ Ugandan Human Rights Commission and IASC Protection Cluster as above at 4.

¹⁴⁰⁴ Ugandan Human Rights Commission and IASC Protection Cluster as above.

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

¹⁴⁰⁶ Ugandan Human Rights Commission and IASC Protection Cluster as above at 4.

¹⁴⁰⁷ Ugandan Human Rights Commission and IASC Protection Cluster as above.

¹⁴⁰⁸ 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 2009-2011.¹⁴⁰⁹ The GBV sub-cluster has been taken over by the GBV National Reference Group led by the Ministry of Gender, Labour and Social Development.¹⁴¹⁰

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.¹⁴¹¹ 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.¹⁴¹² 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.¹⁴¹³

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.¹⁴¹⁴ This stage is very challenging for the IDP population who are caught in between humanitarian needs and recovery sustenance.¹⁴¹⁵ 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.¹⁴¹⁶ 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

¹⁴⁰⁹ Ugandan Human Rights Commission and IASC Protection Cluster as above.

¹⁴¹⁰ Ugandan Human Rights Commission and IASC Protection Cluster as above.

¹⁴¹¹ Uganda Human Rights Commission and IASC Protection Cluster as above at 7.

¹⁴¹² Ugandan Human Rights Commission and IASC Protection Cluster as above at 8.

¹⁴¹³ Ugandan Human Rights Commission and IASC Protection Cluster as above.

¹⁴¹⁴ Ugandan Human Rights Commission and IASC Protection Cluster as above.

¹⁴¹⁵ Ugandan Human Rights Commission and IASC Protection Cluster as above.

¹⁴¹⁶ 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.¹⁴¹⁷

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.¹⁴¹⁸ 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).¹⁴¹⁹

The NCCC is to act as the platform for information sharing, consultation and coordination at the national, county and other administrative levels.¹⁴²⁰ It is to be made up of representatives from government ministries, relevant national bodies, IDP communities, civil society and the international community.¹⁴²¹ Other institutional actors provided for by the IDP draft policy include relevant ministries¹⁴²² 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.¹⁴²³ 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

¹⁴¹⁷ Uganda Human Rights Commission and IASC Protection Cluster as above at 9.

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

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

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

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

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

¹⁴²³ 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.¹⁴²⁴ 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.¹⁴²⁵ 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’,¹⁴²⁶ the Camp Coordination and Camp Management Cluster was phased out at the end of 2008.¹⁴²⁷

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.¹⁴²⁸ The terms of reference for the establishment of the protection cluster were meant to provide only for post

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

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

¹⁴²⁶ Return home.

¹⁴²⁷ 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’.

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

election violence IDPs.¹⁴²⁹ 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.¹⁴³⁰

5.11.2.1 National Protection Working Group on Internal Displacement (PWGID)¹⁴³¹

In 2009, the protection cluster transformed at a national level into the Protection Working Group on Internal Displacement (PWGID).¹⁴³² 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.¹⁴³³ 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.¹⁴³⁴ 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).¹⁴³⁵ 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.¹⁴³⁶

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

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

¹⁴³¹ 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.

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

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

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

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

¹⁴³⁶ 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.¹⁴³⁷ 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.¹⁴³⁸

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 2010.¹⁴³⁹ 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.¹⁴⁴⁰

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

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

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

¹⁴⁴⁰ 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.¹⁴⁴¹ 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.¹⁴⁴² The children sub-working group has been instrumental in the development of terms of reference for child protection within the PWGID.¹⁴⁴³ 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.¹⁴⁴⁴ 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.¹⁴⁴⁵ 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.¹⁴⁴⁶

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

¹⁴⁴¹ 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.

¹⁴⁴² 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.

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

¹⁴⁴⁴ 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.

¹⁴⁴⁵ UNHCR Report of the Eldoret protection working group, 2011 as above.

¹⁴⁴⁶ UNHCR Report of the Eldoret protection working group, 2011 as above.

to monitor the situation closely than any other working groups could.¹⁴⁴⁷ They have also been key contributors of ground information on the Mau forest evictions and the on-going land resettlement schemes for PEV IDPS.¹⁴⁴⁸ 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.¹⁴⁴⁹

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.¹⁴⁵⁰

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.¹⁴⁵¹ The PWGID is made up of more than thirty stakeholders from diverse industries.¹⁴⁵² 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.¹⁴⁵³ 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.¹⁴⁵⁴

¹⁴⁴⁷ UNHCR Report of the Eldoret protection working group, 2011 as above.

¹⁴⁴⁸ UNHCR Report of the Eldoret protection working group, 2011 as above.

¹⁴⁴⁹ UNHCR Report of the Eldoret protection working group, 2011 as above.

¹⁴⁵⁰ Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

¹⁴⁵¹ Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

¹⁴⁵² Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

¹⁴⁵³ Presentation at Kenyan National PWG on Internal Displacement 2011 as above.

¹⁴⁵⁴ 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.¹⁴⁵⁵ Many more are in transit sites and fear returning to their homes, a lot more have haphazardly integrated into the urban poor communities.¹⁴⁵⁶ 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.¹⁴⁵⁷ 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.¹⁴⁵⁸

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.¹⁴⁵⁹ 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.¹⁴⁶⁰ This oversight has had the effect of robbing displaced people their voice and belittles their enormous potential to, and

¹⁴⁵⁵ Operation ‘rudi nyumbani’ as above.

¹⁴⁵⁶ KHRC and IDP Network 2011 as above at 17.

¹⁴⁵⁷ Bagshaw and Paul 2004 as above at 86.

¹⁴⁵⁸ Bagshaw and Paul 2004 as above at 87.

¹⁴⁵⁹ Bagshaw and Paul 2004 as above.

¹⁴⁶⁰ Bagshaw and Paul 2004 as above.

contributions they have made in shaping their lives during and after displacement.¹⁴⁶¹ 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.¹⁴⁶² 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.¹⁴⁶³

In Kenya creation of the National IDP Network took place in 2003 with support from civil society actors working with IDPs at the time.¹⁴⁶⁴ 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.¹⁴⁶⁵ 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.¹⁴⁶⁶

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.¹⁴⁶⁷ These efforts are further diluted by inadequate and top-down peace building initiatives that do not trickle down to the ground.¹⁴⁶⁸ Peace initiatives that are capable of lasting must involve the communities themselves. They could take various

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

¹⁴⁶² Bagshaw and Paul 2004 as above at 86.

¹⁴⁶³ Bagshaw and Paul 2004 as above at 88.

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

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

¹⁴⁶⁶ 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.

¹⁴⁶⁷ KHRC and IDP Network 2011 as above at 46.

¹⁴⁶⁸ 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.¹⁴⁶⁹

In Uganda, After 20 years of war and displacement communities have slowly reintegrated and sought their own peace initiatives relying heavily on traditional mechanisms.¹⁴⁷⁰ 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.¹⁴⁷¹ 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.¹⁴⁷² 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.¹⁴⁷³

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

¹⁴⁶⁹ KHRC and IDP Network 2011 as above.

¹⁴⁷⁰ 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.

¹⁴⁷¹ Rose and Ssekandi as above.

¹⁴⁷² Rose C and Ssekandi as above.

¹⁴⁷³ 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 peace-meal, 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.¹⁴⁷⁴ 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.¹⁴⁷⁵

¹⁴⁷⁴ Kamugi and Klopp as above at 52.

¹⁴⁷⁵ 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.¹⁴⁷⁶ 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.¹⁴⁷⁷

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.¹⁴⁷⁸ 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

¹⁴⁷⁶ KHRC and IDP Network *ibid* at 50

¹⁴⁷⁷ KHRC and IDP Network 2011 as above at 52.

¹⁴⁷⁸ 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.

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.¹⁴⁷⁹ 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.

¹⁴⁷⁹ 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.

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