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 and19.

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 refuges, 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 refuges, 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 refuges, returnees and displaced persons 2008 as above at 10; The saying that 'when giants fights, 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.

23

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 border[85]

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 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 country[98]

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 border[99]

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 border[103]

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 loose 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 loosing '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 that 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 at1.
[153] Breytenbach 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 at106.
[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 were 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 at120.
[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 state[223]

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] Donnely 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 state[238]

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 '*sovereigness'* 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 states[278]

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 protection-less.[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, fork 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 at10.
[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 where 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 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 follow[347]

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 evolvement 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 is 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 were 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.