

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

By

Olivia Kokushubila Lwabukuna

**Submitted in fulfillment of the requirements for the Degree
Doctor of Laws (LL.D)**

At the Faculty of Law, University of Pretoria

May 2012

Prepared under the supervision of Professor Karin Van Marle

DECLARATION

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

Olivia Kokushubila Lwabukuna

AKNOWLEDGEMENTS

First and foremost I thank the Lord my God, for always being faithful and standing by me throughout. Secondly I thank my family and parents for venturing out of and journeying far and wide to give us a better education. I thank you for humbling yourselves so we could have a better life, for the values that you insisted and instilled in us, for never failing to keep a piece of home for us wherever we were. I want to thank my friends from home and away and from all the places I have been for building wonderful relationships with me and enjoying my idle sense of humour. To my Supervisor Professor Van Marle, thank you for believing in that girl that walked into your office with big dreams, for letting me dream, for being there for me in more ways than one, I thank you from the humblest part in me and I know even that is not enough. To my colleagues in the Department of Jurisprudence, thank you for letting me in and making me a part of the group, Baie Dankie!! To my housemates who shared with me those crazy late nights in the final months and made my journey seem normal even though it was far from that, thanks a lot Isolde and Yvonne, you are the best. Last but not least to sweets for giving me hope again, and making me realize the world had a few good deeds left in store for me, I thank you, you can never comprehend how much peace and happiness you have brought me.

DEDICATION

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

ACRONYMS

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

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

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

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

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

The Final part of the study looks at national attempts to address the problem of internal displacement. Kenya and Uganda are discussed and contrasted in depth whilst highlighting their similarities and differences in addressing internal displacement. Both countries have at one point or the other experienced internal displacement, although not necessarily on the same scale, dynamics, time frame or even severity. They both seem to have taken incredible steps to address the issue of internal displacement including drafting policies, laws as well as assigning responsibilities for the displaced to specific ministries of government. Internally displaced persons in both countries seem to be in the process of returning home, even though at very different scales, and not always necessarily as a durable solution. These two countries have been used as case studies for identifying the domestic process of addressing internal displacement as well as determining the degree of comprehensiveness of the frameworks set up to address internal displacement.

TABLE OF CONTENTS

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

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

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

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

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