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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**Regional Approaches to the Governance of Internally Displaced Persons: A Case
Study of the African Union in Kenya**

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Master of Arts in International Conflict Management**

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DECLARATION

This Research Project is my original work and has not been presented for any other academic award in any institution of learning.

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This Research Project has been submitted for examination with my approval as university supervisor.

Signed_____

Date_____

DR. OCHIENG KAMUDHAYI

DEDICATION

I wish to dedicate this project to my late uncles Nick and Joseph whose daily advice to me was to get educated to the highest possible levels and never give up. Posthumously, I share the joy of successful completion with them and value the support they gave me during their lifetime for were it not because of them I may not have come this far.

**‘A great person is made by great support received from great
People of great inspirations’**

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LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	African Commission on Human and Peoples Rights
AIDS	Acquired Immunity Deficiency Syndrome
APRM	African Peer Review Mechanism
ASEAN	Association of South East Asian Nations
AU	African Union
CIPEV	Committee Investigating Post Election Violence
CLMV	Cambodia, Laos, Myanmar Vietnam
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
FAO	Food and Agricultural Organization
HDR	Human Development Report
HIV	Human Immuno Virus
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of Red Cross
IDMC	Internal Displacement Monitoring Centre.
IDPs	Internally Displaced Persons
IGAD	Intergovernmental Authority on Development
IGOs	Intergovernmental Organisations
INGOS	International Nongovernmental Organisations
IOM	International Organisation for Migration
MSP	Ministry of Special Programmes
NATO	North Atlantic Treaty Organisation

OCHA	Office for the Coordination of Humanitarian Affairs.
PEV	Post Election Violence
ROs	Regional Organizations
R2P	Responsibility to Protect
UN	United Nations
UNAMIR	United Nations Armed Mission in Rwanda
UNESCO	United Nations Educational Scientific and Cultural Organisation
UNHCR	United Nations High Commission for Refugees
UNDP	United Nations Development Programme
UNICEF	United Nations Children Education Fund
US	United States
WFP	World Food Programme
WHO	World Health Organisation.

ABSTRACT

The study analyses regional approaches to the governance of internally displaced persons as a special category of people who require unique protection and humanitarian intervention owing to the fact that they have not crossed borders thus cannot be effectively governed by international legal regimes on refugee governance. The study was inspired by the realization that the African Union has pioneered Internally Displaced Persons (IDPs) Governance by putting in place a regional convention on protection and assistance to IDPs out of the realization that the continent has large numbers of internally displaced persons who require a structured regional intervention if their protection is to be effective.

The study is guided by the principle that countries individually and collectively have a responsibility to protect IDPs that is centralized on the universality of human rights, the theory of legal and moral obligation to help those who have been systematically displaced, structurally dispossessed and functionally abused, regardless of their position on the globe. The choice of the African Union is largely informed by the conflict systems theory which underscores how conflicts can be regional and thus unique in that context and the realization that most internal displacements in Africa are as a result of the conflicts in the continent.

The study applied both qualitative and quantitative approaches while using key informant interviews, focus group discussions and it equally gathered data through individual questionnaires. Identification of respondents was done through a non-probabilistic sampling of a cross section of stakeholders in the area of IDP governance including victims themselves, policy makers and humanitarian workers that included those working for local and international NGOs.

The study set to test the following hypotheses, (i) H- AU approaches to internal displacement does not protect IDPs which is the negative hypothesis (ii) H₁-African Union as regional organization is effective in the protection of IDPS and its governance which is the positive hypothesis (iii) H₂-African Union as a regional organization tries to protect IDPs but is ineffective which is null hypothesis.

The study findings confirmed both the negative and null hypothesis, which calls for the establishment of a legal and structural framework by AU to try and improve IDP governance among its member states by urging them to ratify and domesticate the African Union convention for the Protection and assistance of Internally Displaced Persons.

In conclusion, the study acknowledges that regional approaches undertaken through regional bodies to protect and improve IDP governance have not been effective and therefore recommends a number of steps to be taken to realize the same albeit with a lot of legal and political challenges. That despite AU pioneering the same, it is only real commitment by member countries that will realize tangible results in this area. The study also recommends academic focus to be given to this area to distinguish it from refugee governance because mixing the two has been largely responsible for the invisibility of the IDPs governance in policy and academic research.

CHAPTER ONE

Regional Approaches in Internally Displaced Persons Governance

1.1 Introduction and Background to the Study

Africa is characterized by perennial political, economic, cultural and social conflicts. Such conflicts throughout time displace large populations. Where such displacements occur, some victims cross borders and become refugees while others remain within the national boundaries of the affected countries and remain IDPs.

While refugees enjoy considerable protection under the United Nations Convention on Refugees (UNHCR) and institutions constituted under this convention, Internally Displaced Persons (IDPs) are left at the mercy of the individual states and humanitarian organizations. The closest International, Regional, Sub-regional or national attempts to protect IDPs are haphazard, non-binding and without proper guiding principles. As such, IDPs occupy a precarious legal position as they are not refugees and at the same time not ordinary citizens. Their situation requires special intervention over and above normal citizens. African Union has pioneered the establishment of a binding legal framework for IDP governance. This is the African Convention on the Protection and Assistance of Internally Displaced Persons in Africa also known as The Kampala Convention. In spite of the effort, only twenty states have ratified the convention and its implementation remains to be seen. Kenya as a country has not ratified the Convention despite having a legal and policy framework on IDP protection.

Kenya enacted The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act ¹ on 31st December 2012 with the effective date

¹ The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012

being February 18th 2013. Despite the enactment, the implementation remains a challenge. It is therefore clear that indeed IDP governance remains a problematic issue at the international, regional and national levels.

Internal displacement in Kenya began before the colonial period as communities fought to occupy strategic areas in the country. During the colonial period, more people were displaced as colonialists appropriated what would later to be the white highlands and other strategic areas of the country.

According to Africa Centre for Open Governance, a study of Commissions of Inquiry in Kenya 2012, even after independence, internal displacement continued with large scale ones being registered in 1992, 1997 ethnic clashes and during the 2007 – 2008 post election violence in Kenya².

While sporadic interventions have been forthcoming from international, regional and sub-regional organizations to sort out the political crises occasioned by the ethnic clashes, the plight of IDPs has remained largely unaddressed³. This has been attributed to several factors among them, lack of commitment to policies and legislation to protect IDPs both at the national, regional and international levels and lack of effectiveness by the said organizations to handle the same.

1.2 Statement of the Research Problem

Due to perennial conflicts and natural disasters, internal displacement continues to occur. This has caused humanitarian crisis in various parts of the world. While humanitarian agencies have tried to intervene in certain cases to protect IDPs, the same hasn't been structured due to lack of legal and policy frameworks. Regional organizations

² According to Africa Centre for Open Governance, a study of Commissions of Inquiry in Kenya 2012

³ Commission of Inquiry into Post Election Violence, 2008.

have tried to intervene and offer assistance to countries embroiled in conflict. However, IDPs are often forgotten. The African Union recognizing this has put in a place a convention to guide its approaches in this field and improve the impact of its intervention measures.

The AU has intervened in various areas of conflicts within the African continent yet conflicts continue to bedevil the continent resulting in large numbers of IDPs. In governing this area, a proper regional legal and institutional framework on the approaches used as well as commitment would be required of the AU. While scholars have widely written on AU interventions in conflict areas very little has been written with regard to approaches that AU as a regional body has used to intervene in the governance of IDPs among member states.

This study therefore seeks to answer the following question, is the AU's regional approaches and intervention effective in addressing protection of IDPs in Africa? The question is significant because there is a knowledge gap in this area because most scholars and researchers have only focused on AU's interventions in conflict generally with little attention being given to IDPs as a distinct group.

1.3 Objectives of the Research

The main objective of this research is to interrogate regional approaches in the protection of IDPs. The specific objectives include;

- To investigate the effectiveness of AU Convention on the Protection and Assistance to Internally Displaced Persons.
- To discuss ways of strengthening regional organizations in dealing with IDPs.

- To examine internally Displaced Persons in Kenya after 2007/2008 post election violence.

1.4 Literature Review

Over time, scholars have written extensively on the concept of internal displacement, human security and their enforcement by different regimes. Aware of this, this research specifically looks at the work of other scholars with a view to showing that much scholarly work has not gone into examining the role of AU and the approaches it has used in the protection of IDPs, more so from a governance position. Less written about is how such approaches have been used by AU in Kenya which has experienced serious internal displacement of its populations. The literature review has therefore been structured to cover the issue of definitions of contested concepts closely linked to internal displacement as well as AU's approaches to IDP governance.

1.4.1 The Issue of Definitions

The issue of IDP governance is one that is a much contested beginning with the definition itself. According to The Guiding Principles on the Protection of IDPs, Internally displaced persons are 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 State border.

Closely linked to IDP governance yet so distinct is the issue of refugee governance. According to the 1951 Convention relating to the Status of Refugees, a refugee is defined as;

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.."⁴

This distinction is crucial since IDPs have often been lumped together with refugees when it comes to humanitarian intervention yet their situation is completely unique. Of late, it has also been difficult to discuss IDPs without talking about Human security as an emerging paradigm for understanding global vulnerabilities whose proponents challenge the traditional notion of national security by arguing that the proper referent for security should be the individual rather than the state. Human security holds that a people-centered view of security is necessary for national, regional and global stability.

Equally, it is impossible to discuss IDP governance without discussing conflict because IDPs are largely a product of conflict. According to (Waltz 1959), this is a situation in which groups compete for particular goals which are not compatible. It is therefore a dispute among groups whereby a struggle ensues as each group tries to outdo the other well aware that a win-win situation is impossible⁵. Other scholars have also defined conflict as confrontation between groups of clashing interests or groups driven by dominance over opportunities. Closely tied to this is conflict prevention. According to

⁴ United Nations Convention on Refugees

⁵ Waltz Kenneth, *Man, the State and War: A Theoretical Analysis*. New York: Columbia University Press, (1959).

Adebayor Adedeji, ⁶conflict prevention refers to intervention measures that are normally taken to ensure that conflicts do not occur or become destructive in the event that they occur. He says the other element of conflict is conflict management which refers to measures undertaken to mitigate the consequences of an ongoing violent conflict with the intention of reducing its destructiveness and any harmful extension to other areas.⁷

Protection of IDPs cannot therefore be discussed in isolation. The concept of human security is thus crucial in this respect. Various scholars have written on this and other closely linked concepts.

According to Kian Tadjbakhsh ⁸, there are seven challenging questions on the concept of human security and the security of IDPs specifically. On September 13, 2005 at a conference and in a presentation entitled, "Human Security: 60 minutes to Convince", a discussion held at UNESCO he highlighted the seven key questions. In this discussion, he raised the following key questions thus:

Can there be an agreement on definitions? Without a consensus on the definition of human security and internal displacement, it will be difficult to implement and decide on a common human security program for victims.⁹ Today, there is an agreement that human security should be taken from a people-centered more than a state-centered approach, but as mentioned above, the definition or scope of human security is still vague.

⁶ Adebayor Adedeji, *Comprehending and Mastering African Conflict, the Search for Sustainable Peace and Good Governance*, Macmillan, (1998).

⁷ Adebayor Adedeji, *Comprehending and Mastering African Conflict, the Search for Sustainable Peace and Good Governance*, Macmillan, (1998).

⁸ Tadjbakhsh Kian, *The Promise of the City: Space, Identity and Politics in Contemporary Social Thought* (Berkeley and Los Angeles: University of California Press 2001),

⁹ Kian Tadjbakhsh, *Social Capital: Trust, Democracy and Development* (Tehran: Shiraz Publishers 2005, in Persian).

The second question is who is responsible for implementation? Much discussion today has been in regards to the approach of human security to internal displacement, but with little emphasis on who is in charge of implementing it. Many states and regional organizations have adopted it as a foreign policy tool but it has mostly been disregarded as a domestic policy on development and human rights. Also, people seem to be absent in the process of human security and protection of IDPs. People are not passive recipient of security, or victims of its absence, but active subjects who should contribute directly to identifying and implementing solutions to security problems. There also lies the lack of mandate for International Nongovernmental Organizations (INGOs) to act in times of need. The genocide in Rwanda and to a certain degree the acts, which occurred and currently continuing to occur in Darfur, seem to point to this direction. The lack of the strong political will to act in times of dire need has been cited by former UN-Secretary General Kofi Annan as a major speed bump to eliminating immediate security threats. AU faces this challenge in its quest to protect IDPs¹⁰.

The third question is about the priorities and trade-offs. Which of the many threats that exist deserves the most attention? There is no prioritization or hierarchy today on which issues are more important than others. This can cause difficulties in establishing goals and directing resources on specific solutions to immediate problems.

The other crucial question according to Kian ¹¹ is whether there can be a true inter-sectoral agenda that can be implemented. Are players including AU ready or able to create inter, or better yet, intra-sectoral interventions. There needs to be more focus on relationships, how an intervention can positively or negatively affect other areas and how

¹⁰ Ibid

¹¹ Kian Tadjbksh, *Social Capital: Trust, Democracy and Development* (Tehran: Shiraze Publishers 2005, in Persian).

these effects can improve the human security intervention approach for IDPs and other victims of conflict. However, as idealistic as these sounds, the question is how AU and other regional organizations will implement this when there is a "lack of interdisciplinary approaches among donors and governments of member states. Once again this also raises the issue of the scope of security and approaches in intervention. Under current status quo it is primarily states and INGO's that are the primary actors in any security crisis and internal displacement matters, whereas it is the individuals of the states that are actually at harm. While NGO's and other humanitarian organizations do raise efforts to focus on individuals, there is still a massive gap between the two¹². This study also seeks to establish how the regional approaches by AU seek to bridge this gap.

The other vital question is how the international community, regional bodies and states can better understand conflicts and the resulting internal displacement. It is important to understand conflicts and internal displacement in order to resolve and prevent them, and it is easiest to understand conflict and resulting internal displacement during times of conflict, both to address conflict prevention and for rebuilding and reconstruction in post conflict-stages. Today, it is questionable how well institutions really understand conflict.

Also regularly asked by scholars is how can we improve our understanding of it, how can we best implement human security and address internal displacement and not do harm? In the past, when human intervention was taken in countries such as the former Yugoslavia, Somalia and Rwanda, some scholars have argued that more harm was done than benefit. Interventions must therefore be better targeted, implemented, monitored, and coordinated to decrease dependency, power and patronage of certain groups.

¹² Ibid

Something must be done to ensure that future interventions do not cause harm, but the question now is how.¹³

From the foregoing, it can be argued that the concept of human security and intervention in cases of internal displacement is one that is very unsettled and several issues regarding it still remain contested. The grounding of the concept and effectiveness of intervention measures in cases of internal displacement remain controversial while state responsibility continues to be elusive as humanitarian intervention has been disturbing. This therefore needs further research discourse so that the salient features, crucial ingredients and effectiveness can be universally settled.¹⁴

1.4.2 Regionalism and Regional Approaches

According Hurrell, for any researcher to grasp multiple dimensions of the complex nature of regionalism, four distinct perspectives or roads to the study of regionalism have to be travelled¹⁵. The four roads in his view will broadly follow four key questions.

Accordingly, the phenomenon of regionalism in the first part of this study discusses the reasons for setting up or joining regional organizations (ROs). Secondly, the study aims to find out why institutions are designed in specific ways. The third perspective on regionalism looks at how domestic factors influence state behavior on the regional level, more so the question of sovereignty. Lastly, the fourth approach seeks to determine and explain the impact of regional organizations on their member states. This

¹³ ¹³ Adebayor Adedeji, *Comprehending and Mastering African Conflict, the Search for Sustainable Peace and Good Governance*, Macmillan, (1998).

¹⁴ Ibid

¹⁵ Hurrell, A. 1995. *Explaining the Resurgence of Regionalism in World Politics*. *Review of International Studies*, 21(4), 331–358.

we pursue to see how the same may have influenced AU's effectiveness in IDP protection and governance.

1.4.3 Regions, Regionalism, and Regional Organization

In travelling the roads to regionalism, it is necessary to lay the groundwork of the crucial concepts employed in this research study. According to Hurrell and Sbragia¹⁶ already the term region itself is a contested concept. A basic understanding is that regions are constituted by groupings of territorial units in geographical proximity, constituting a spatially bound and contiguous area. Yet, the study of regionalism inevitably touches upon the more contested elements of regions. Nye¹⁷ asserts that indeed, apart from signifying a geographic space, the term is also charged with a political dimension. Therefore, to obtain political, social, and/or economic importance, a region must display a certain degree of mutual interdependence including offering solutions to common problems. IDP governance is a common problem among AU member states.

According to Bhagwati, Mansfield and Milner, while scholars from an economic background tend to reduce regions to integrated market places this is often misleading.¹⁸ This study looks at regions as political ideas and administrative units as well as governance units. As such, we conceptualize the idea regionalism along the idea that regions are socially constructed, spatial ideas, which follow concepts of community and society, units to which IDPs belong.

¹⁶ Supra note 12

¹⁷ Nye, J. S. 1968. Comparative Regional Integration: Concept and Measurement. *International Organization*, 22, 855–880.

¹⁸ Bhagwati, J. 1993. Regionalism and Multilateralism: An Overview, in *New Dimensions in Regional Integration*, edited by J. de Melo and A. Panagariya. New York: Cambridge University Press, 22–51.

This includes shared aspects of cultural identity (for example, religion and language), which foster a common socio-cultural understanding of a region. This is informed by the fact that cases of displacement and the governance of the same is the same across the African continent. According to Langenhove, regions stem from a two-fold process: they are imagined and they are created in an institutional way. Consequently, different understandings of regions have influenced the institutional design of ROs as well as the degree of cooperation and integration among its member states as well as its efficacy in handling a myriad of issues including internal displacement of persons.¹⁹

This study looks at the conceptualization of regionalism as a state led project based on intergovernmental negotiations and treaties²⁰. Breslin and Higgott, Gamble and Payne hold this view.

According to Börzel, most scholars would agree that regionalism includes processes and structures of region-building in regard to closer relations on economic, political, security and socio-cultural level.²¹ This clearly distinguishes regionalism from processes of regionalization, which describe an increase of intra-regional social and economic interaction of private actors.

The observable outcome of regionalism can take different forms, ranging from cooperation to integration. The latter means a transfer and pooling of sovereignty rights to a third body, usually a regional organization.²² The crucial question that arises here is

¹⁹Bach, D. C. 2005. The Global Politics of Regionalism: Africa, in *Global Politics of Regionalism. Theory and Practice*, edited by M. Farrell, B. Hettne and L. van Langenhove. London: Pluto Press, 171–186.

²⁰Breslin, S. and Higgott, R. 2000. Studying Regions: Learning from the Old, Constructing the New. *New Political Economy*, 5(3), 333–352.

²¹Börzel, T. A. and Risse, T. 2003. Conceptualizing the Domestic Impact of Europe, in *The Politics of Europeanization*, edited by K. Featherstone and C. M. Radaelli. Oxford: Oxford University Press, 57–80.

²²Ibid

whether AU member states have pooled and surrendered their sovereignty to the regional body more so in issues of intervention in IDP governance.

In order to be classified as a regional organization, regional bodies need to have more than two member states in geographical proximity, have exclusive membership and serve multiple purposes. IDP governance is among the multiple purposes.

According to De Lombaerde et al, regions can be formed on three spatial levels: (1) on supra-national level by a group of neighboring states; (2) on sub-national level by territories forming an entity within an existing state; and (3) on cross-border level by sub-national territories²³. This research focuses on regions above the national level and regional organizations composed of sovereign states.

This is the case with AU. However, even geographic proximity is relative when one considers the existence of ROs like APEC and the Arctic Council. Also, ROs can be built upon a common cultural background, like the League of Arab States. Consequently, single-purpose arrangements like PTA s, military alliances (for instance NATO) or organizations such as OPEC are excluded in our conceptualization.

Researchers have generally researched on the AU's intervention measures in conflict areas in Africa. However, the issue of AU's intervention with regard to IDPs as an area of research remains a grey area. Specific reference to the case of displacement in Kenya remains even more unresearched thus providing a knowledge gap. This study seeks to bridge this knowledge gap.

²³ De Lombaerde, P., Söderbaum, F., Van Langenhove, L. and Baert, F. 2010. The problem of Comparison in Comparative Regionalism. *Review of International Studies*, 36(3), 731–753.

1.4.4 African Union's Approaches

With half of the world's internally displaced persons, Africa is the continent most affected by crises of internal displacement. While the Commission on Refugees and Displaced Persons in 1999 had welcomed the Guiding Principles, there remains a need for the Guiding Principles to be better known throughout the organization and the continent.

According to Mayanja (2008)²⁴ The Economic Community of West African States (ECOWAS) an affiliate of AU has called on its member states to disseminate and apply them. A ministerial declaration of the Intergovernmental Authority on Development (IGAD) also an affiliate of AU has called the principles a "useful tool" in development of national policies on internal displacement. Evidence for the acceptance of the Guiding Principles can be found at all levels of the international community. Several governments, in particular Angola, Burundi, Liberia, Uganda, Peru and Turkey , have made explicit references to the Guiding Principles in their strategies, policies or even laws on internal displacement.²⁵ Regional and Sub regional intergovernmental organizations have rallied behind the Guiding Principles.

In September 2005, the Heads of African States and Governments unanimously recognized the Guiding Principles on Internal Displacement as an important framework for the protection of internally displaced persons in the World. A further commitment has been made by the African Union to resolve and redress this deplorable situation given the increasingly significant challenges created by the phenomenon of internal displacement

²⁴ Both ECOWAS and IGAD have both embraced the guiding principles on internally displaced persons as useful in IDP governance. However, the fact that they are not binding renders them almost useless. Until they become binding, their usefulness might not be seen.

²⁵ Mayanja Macrine, *The Guiding Principles and the Challenges of Forced Displacement in Africa: The Response of the African Union 1998*.

in Africa by taking a further step to develop and pass an African Convention for the Protection and Assistance of Internally Displaced Persons.

In order to tackle the problem of internal displacement, the AU Executive Council adopted the resolution EX.CL.Dec 127 (V) of July 2004 in Addis Ababa, Ethiopia requesting the Commission to work with its Partners and Stakeholders, to ensure that internally displaced persons are provided with an appropriate legal framework which would guarantee their adequate protection and assistance²⁶.

This was yet followed by another decision, EX/CL/Dec. 284 (IX) and EX/CL. Dec 289 in Banjul, the Gambia, in June 2006²⁷ calling on the Commission to expedite efforts at finalizing the Draft legal Framework on the Protection and Assistance of Internally Displaced Persons. UNHCR closely assisted the Commission in different ways towards the success of the adoption of the Convention which was adopted by Heads of State and Government at the AU Special Summit on Refugees, Returnees and Internally Displaced Persons in Africa in Kampala, Uganda in April 2009.

The Convention became a historical document for Africa owing its mechanism for the protection and assistance of IDPs and the first of its kind to address the challenges faced by the Continent. In addition, the Convention was the first instrument in the world introduced by a regional intergovernmental organization to officially codify the rights of IDPs in instruments. The Convention has attempted to have clear definitions of the concepts of IDPs with special emphasis on women, children and aged persons.

²⁶ AU Executive Council adopted the resolution EX.CL.Dec 127 (V) of July 2004 in Addis Ababa, Ethiopia

²⁷ AU Executive Council adopted the resolution EX.CL.Dec 284 (IX) of June 2006 in Banjul, Gambia.

The objectives defined in the Convention are to: (a) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions. (b) Establish a legal framework for preventing internal displacement, where possible, and protecting and assisting internally displaced persons in Africa (c) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences. (d) Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons. (e) Provide for the respective obligations, responsibilities and role of armed groups, non-state actors and other relevant actors, including non-governmental organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons. Again here, we only see scholars tracing the development of the legal and policy frameworks without going specific on how AU as a regional body has used the same to approach the IDP issue in the continent despite numerous cases of conflict ad massive internal displacement which dots the continent.²⁸

The Convention defines the Rights and Obligations of the African Union permits effective intervention during crises as stipulated in the AU Constitutive Act²⁹. Also, the Convention takes into consideration the issue of internal displacement resulting from other factors apart from conflicts and stresses the need for the issuance of identity cards to displaced persons in order to enable them to exercise their rights and obligations, and to have access to developmental projects as well as compensation for returnees according

²⁸ The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

²⁹ Africa Union Constitutive Act

to the international standards. The Convention finally prepares the ground for the States Parties to monitor and follow-up all the different elements contained in the legal framework and to report measures taken for the implementation of this instrument.

The African Convention on the Protection and Assistance of Internally Displaced Persons³⁰ among other things identifies strategic priorities in the area of IDPs protection, partnerships and other key development issues. What is required of states now therefore is a speedy ratification and domestication of this convention by state parties.

At the international level in September 2005, heads of states assembled in New York for the World Summit and unanimously adopted language according to which they recognized the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolved to take effective measures to increase the protection of internally displaced persons. However while recognition of the principles is a step in the right direction, governments need to move swiftly to the implementation stage of this guiding principles to minimize further suffering of IDPs.

Again from the foregoing, a lot of effort to legislate and formulate policy is seen with AU and other INGOs however how effective this convention is remain unresearched because it is relatively new.

³⁰ The African Convention on the Protection and Assistance of Internally Displaced Persons, 2009

1.4.5 African Union's Support to Sub-Regional Organizations as an Approach to IDP Governance

According to Deng ³¹the African Union has several sub regional organizations affiliated to it within the African continent. In most cases, union has used these affiliates for intervention in conflict and resulting internal displacement .One such affiliate is The Intergovernmental Authority on Development (IGAD) which operates in Eastern Africa thus relevant to the Kenyan case study.

The Intergovernmental Authority on Development (IGAD) was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD) which was founded in 1986³². The recurring and severe droughts and other natural disasters between 1974 and 1984 caused widespread famine, ecological degradation and economic hardship in the Eastern Africa region³³.

Although individual countries made substantial efforts to cope with the situation and received generous support from the international community, the magnitude and extent of the problem argued strongly for a regional approach to supplement national efforts. So initially this was to be the mandate of IGAD though this was later to change as it ventured into other areas including AU supported conflict resolution programmes.

IGADs major strategic approaches to the protection of IDPs supported by AU broadly include; Conflict Prevention Management and Resolution, in which Early Warning and establishment of Mediation structures are the major focuses, Enhancing Security Sector Program, and other cross-cutting peace and security related issues. As a

³¹ Supra

³² The IGADD Charter 1986

³³ The IGAD Charter 1996

matter of fact, those pillars have their foundations already run in the organization and include many aspects;³⁴(Okubo 2010)

According to Okubo, although, IGAD is not in a position to cover all member countries, its Conflict Early Warning Mechanism (CEWARN) has now reached the level where other RECs can also learn some experiences as it is the first to be established as a Regional EW Mechanism. Some of the achievements of the strategy period covering 2007-2011 include operationalization of the National Early Warning Units, Rapid Response framework has been developed and a Rapid Response fund. These programmes are AU supported.

1.4.6 AU, Early Warning as a Preventive Approach

Through CEWARN and CEWERU and IGAD, AU in partnership with several organizations namely Nairobi Peace Initiative Africa (NPI-A), Security Research Information Centre (SRIC), Amani Parliamentary Forum, Coalition for Peace in Africa (COPA) ECCOSSOC National Steering Committee (NSC), Tegla Loroupe Foundation, District Peace Committees, national focal point among many others AU monitored the situation preceding the 2007 general elections. During the period, mobilization on ethnic lines and balkanization of the country along political party lines and ethnic backgrounds was heavily reported (Peacenet report 2008). In Orange Democratic Movement Party (ODM) strongholds, individuals perceived to be sympathetic to the Party of National Unity (PNU) were threatened with eviction and vice versa. While indications of communities arming themselves were reported, AU did not have any systematic way of

³⁴ Okubo, Y. Dilema of Sovereignty in Intervention :The African Case, a paper Presented at the UN in New York on 18th October 2010

conveying this information or dealing with matter to forestall potential conflict and resultant development.

AU also appointed IGAD as the authorizing body for the implementation of Conflict Prevention, Management and Resolution (CPMR) Project in South and Eastern Africa and currently leading consultations, trainings and various other events aimed at promoting Conflict Prevention, Management and Resolution capacities in the Region. Simultaneously, with the support of AU, IGAD is in the process of establishing the IGAD Mediation Support Unit.³⁵ .Even then Deng and ilk don't make a mention of the protection of IDPs as part of what ought to be part of the management of conflict. It is worth noting that due lack of this mediation support unit, AU had no capacity to mediate in the Kenyan conflict.

Generally all Sub-regional organizations within Africa are being considered as building blocks of the African Union, and there is a memorandum of understanding between the AU and the sub regional organizations and that defines relations in peace and security in general. Major objectives of the MOU include: contribute to the full operationalization of the Africa Peace and Security Architecture (APSA), ensure regular information exchange on the activities of the parties to the MOU, and design ways by which peace and security related activities can be jointly implemented and be consistent with the principles of the Peace and Security Council (PSC) Protocol. It was also agreed to regularly review the contribution of each RECs and Regional Mechanisms in the areas of major pillars of APSA which include: Early warning, Regional and Continental, Panel

³⁵ AU Memorandum of Understanding with affiliate Sub regional organizations

of the WISE which calls for creation of Mediation structures, and Establishment of the Africa Stand by force ³⁶(Okubo 2010).

In general terms, the development and implementation of AU approaches depends up on the Regional Economic Communities, because without regional cooperation and commitment the approaches cannot be effectively implemented at continental level. In order to enhance relationship and interactions between the AU and sub regional organizations, a liaison office has already been established.

From the foregoing, it can be safely concluded in our Literature Review that whereas AU has made numerous efforts towards building structures to improving the security of its member states and managing conflicts in the member states, it has escaped the organizations priority to factor in IDPs and their protection in the various multipronged approaches which the organization has taken or intends to take. Scholars have equally been passed by this omission as the focus of their research has been focused on general intervention by AU in Conflict areas. In the Kenyan case AU appears either to have been a by stander with the biggest role played being election observers or that the same has not been researched on. Our research thus fills in this policy and academic void left by either Policy makers in AU or scholars who seem not to have done much in researching on the same.

1.5 Theoretical Framework

This study centers on realism as a theory to explain internal displacement and approaches used by regional organizations more so AU in the protection of Internally Displaced Persons and the protection of IDPs as seen in the theories explaining

³⁶ Okubo, Y. Dilemma of Sovereignty in Intervention :The African Case, a paper Presented at the UN in New York on 18th October 2010

regionalism. The study also looks at those with contrasting views to realism more so on the centrality of the state in the approaches used.

Scholars like Hans Morgenthau, E.H Carr and George Kennan³⁷ lead a group of scholars who look at the issue of protection of Internally Displaced Persons (IDPs) and approaches used from the realist lens. This realist lens is state centric in nature. To these scholars, the protection of citizens and thus IDPs and whichever approaches used is the work of the state and other actors have no role. For these scholars, security is looked at as the ability of the state to defend itself from external attack. At the individual level, realists see man as selfish and constantly fighting for survival. Survival is therefore about the fittest as the weak get eliminated by the ensuing competition which more often leads to conflict. In the Kenyan case, the incompatibility of goals more so on political power, land, inequitable distribution of resources can therefore be cited as part of what caused the conflict, subsequent displacement, death and destruction of property during the 2007/2008 post election violence.

Realists look at the world as a place full of competition and the search for military superiority. Stronger states therefore come on top as weak ones go to the bottom in terms of world hierarchy of nations.³⁸The realist scholars assume that the state is the principal actor in war and politics in general. To these scholars, the state is a unitary actor and once a decision has been made go to war or not, the state acts and speaks with one voice. There is therefore no other international or sub national groups or actors who can overturn or subvert the interest of the state.

³⁷ Hans Mogethau, *Politics Among Nations; The struggle for Power and Peace* New York, 1948, chapter one and two, pages 4-15

³⁸ Hans Morgenthau is the author of the book, *politics among nations, the struggle for power and peace* (1948)

Realists also argue that the state need to protect itself against enemies from within and from without. The question of individual rights and protection is thus peripheral.³⁹Nicolo Machiavelli in his book the Prince advances the position that the leader, otherwise according to him the prince needs to be mindful of his own security and that of the state and hence should use defensive as well as offensive tactics as the situation may demand. While Machiavelli lays emphasis on the leader and the state as the key referent objects of security, our study shows that the human being should be the referent point of security and that the state should exist to protect the security of its citizens and their well being in various areas hence human security as a concept is very central in this study. Our study also looks as sub regional organization more so IGAD as an organization formed by member states to pursue their interests.

Realists see human nature as the cause of conflict and thus displacement. In his book, *Man, the State and War*, Kenneth Waltz attributes conflict to the nature of man, which he avers, is conflictual. He also says that the pursuit of the so-called national interest by states is a further cause of conflict as interests clash. While Waltz paints the human nature as conflictual and our study agrees with him, man is also human and sometimes peace loving and not conflictual all the time. States all cooperate in several issues and are not entirely self minded as he wants to imply. This explains the humanitarian aid Kenya received towards IDP crisis as our study shows later on.

At the state level, states care about their own national interests and may not want to involve in matters which puts them at loggerheads with fellow states including IDP protection. Further, states approach the issue of security not from the point of Human

³⁹ Nicolo Machiavelli is a proponent of classical realism and looks at security through the realist lens. He has published two books, *The Prince* and *The Discourses*, which lay emphasis on the state as the central focus of security.

Security but from the traditional power maximization and military perspective. With regard to our research, IGAD members could be guided by this theory thus health, security, political security, personal security, environmental security, education security, community security and physical security of individuals be they IDPs or not is secondary. This explains lack of enthusiasm by IGAD in its approaches to protecting IDPs,

This theory is criticized by liberalist scholars like ⁴⁰Robert Dahl for laying emphasis on the state as if it is the only actor in matters of security and protection of the rights of individuals yet there are other actors like the individuals, non-governmental organizations, sub-regional organizations and communities which play a very central role in the protection of individuals. This theory also overemphasizes military threats to security yet there are other threats to security like internal displacement, poverty, disease, political instability, economic instability and environmental degradation among many others.

Realist scholars also make the dangerous assumption that the state is the only legitimate custodian of people's interests and while in the real sense, this is not necessarily true since in certain instances the state itself has been a threat to the same security and interest. A state that marginalizes its people or does not encourage equitable distribution of valuable resources is indeed a threat to the security of its citizens. According to Burzan the focus of security should be individual person who deserves security from the state and all other players.⁴¹

⁴⁰ Robert Dahl is a liberal theorist and a professor of political science at Yale and has written on expanded approach to security since 1962.

⁴¹ Barry, Buzan, *People States and Fear*, an aAgenda for International Security Studies in the Post Cold War 2nd ed Pearson Education Limited, 1991.

Policy makers are also not necessarily rational in decision making and therefore to insist that the decisions they make are rational and on behalf of the state. Sometimes policy makers make irrational decisions. Other times, the decisions so made are in personal interest and not state interest. In the recent years, theoretical assumptions on the concept of Human rights protection and human security, particularly the realist school have become increasingly challenged. This is because of transformation brought about by the post Cold War era and globalization in international relations.

Proponents of this theory like ⁴²Richard Ashley, Arnold Wolfers and Leonard Beaton fault the overemphasis on the state as far as protection of individuals are is concerned arguing that it is also a matter of communities, institutions and even individuals.

According to liberalists, the state is not necessarily the custodian of people's interests. In Africa for instance, the state is a threat to people's interests particularly in countries where economic resources are not distributed equitably⁴³.According to the proponents of liberalism, the policy makers are not necessarily rational in their actions due various idiosyncratic, systemic, societal and political level variables. They cannot therefore monopolize national securitization of issues.

This theory accepts that approaches to the protection of individuals needs to be expanded to include the role of non state actors. In broadening this concept, liberalists look at the emerging concept of human security which has the protection of individual rights at the centre. They pose three fundamental questions, thus: what security? Whose security? And security for what? They contend that the key in understanding protection

⁴² Richard Ashley, Arnold Wolfers and Leonard Beaton are proponents of the liberalist theory to security.

⁴³ Joseph Nye and L.B Krause, *Studying Security in Social Sciences, Slovekian and third world experience*, UNCTAD,(1975).

and security as concepts lies in the answer to these questions, which cannot be adequately addressed without bringing in the aspect of human security.

To liberalists, human security entails the freedom of the individual from fear, and from danger thus safety of material possession, feeling that oneself, family and friends are safe. Security and protection to liberalists is therefore the absence of threats on the general well being of the individual at all levels whether political, social, economic cultural or in other spheres of life.

While the liberal theory takes a holistic approach, it undermines the role of the state as the referent point in the security and protection of its citizens. The liberalists ought to appreciate that national security is crucial in the realization of human security because without having a properly functioning and secure state, it is not possible to realize human development and observance of human rights, which are key components of human security. The so-called communities and individuals on which liberalists lay emphasis exist within the state and therefore cannot be isolated from the state. Liberalists ought not to ask for a shift from national security to human security but a balance between the two, for the two are the same sides of a coin.

The study therefore looks at realism and liberalism as theories and how their key tenets affect the protection of IDPS and various approaches used by regional organization specifically African Union but with more focus on the former. Other sub theories like neofunctionalism and the concept of regionalism have also been exploited by the study.

1.6 Hypothesis

H₁ AU's approaches as a regional organization to internal displacement do not protect IDPs.

H₀-AU's approaches as regional organization is effective in the protection of IDPS and its governance

H₂-AU as a regional organization tries to protect IDPs but is ineffective

1.7 Justification

While scholars have written about the AU and the conflicts in its member states and the resulting internal displacement, focus has been largely on the conflict generally and AU's capacity in handling conflict. Little research has been done to look at the efficacy of AU in protecting IDPS more so in the context of governance. This research is thus aimed at bridging this knowledge gap by interrogating various approaches AU as a body has used towards this end.

From the literature review, there appears to be lack of clear policy in dealing with IDP issue. Even where there is policy, implementation still remains problematic .At the end , this research study has come up with practical recommendations on what legal and policy interventions may be required to strengthen the capacity of regional organizations more so AU in order to improve its capacity in the protection of IDPS.

Overall, this research therefore has both academic and policy value. It therefore adds value to existing knowledge as it equally improves the value of life.

1.8 Research Methodology and Design

This study was undertaken using the quantitative and qualitative methodologies. Because regional approaches to IDP governance is a new concept which is just beginning

to evolve with AU as a pioneer regional organization, there are no standard operational procedures, nor well defined qualitative research methodology for collection of a comprehensive list of features of the modality of how it is undertaken, and the analysis of the approaches by other regional bodies nor international best practices, a generalized quantitative methods were employed. The quantitative methodology was undertaken using generalized quantitative techniques.

The researcher used both descriptive and exploratory study methodologies. The exploratory research was utilized to provide the basic facts on regionalism and regional approaches. This design was chosen to enable the study take an open and flexible platform for diverse perspectives in the information collected since regional approaches to IDP governance is still evolving. The descriptive research was used to examine the current positions, and this consequently provided quantitative information that the study has summarized through statistical analyses and classified based on different certain and specific thematic areas.

1.8.1 Sampling Design

The study employed the non-probability sampling method of purposive or judgmental sampling because the sample selection was based on the study's research objective. The researcher undertook a snowball sampling process, which according to Goodman⁴⁴ is non-probability sampling technique where existing study subjects recruit future subjects from among their acquaintances. The study identified players in the field of IDP governance, victims of displacement and other policy makers who in turn

⁴⁴Goodman, Leo A, 'The Annals of Mathematics statistics', *Journal of Mathematics*, vol. 32, no. 1, 1961, pp. 148-170.

introduced the researcher to their acquaintances. Interviews were conducted using the face to face method and also through telephone calls.

1.8.2 Data Collection Tools and Instruments

The researcher undertook a desk review of documentations on the Regional approaches to IDP governance from established scholars, legal and policy instruments, working papers and presentations with general coverage on regional approaches and specific coverage on AU and the Kenyan case. Questionnaires were also administered orally. Key informant interviews through face to face interactions, telephone calls were thus conducted. Most of the interviews were conducted on a not-for-attribution basis to avoid negative repercussions on informants and the ones mentioned actually consented to the same. The researcher also, the undertook focus group discussions with groups through direct face to face and third party.

1.8.3 Data Analysis and Interpretation

In this study, the data analysis was done using both qualitative and quantitative approaches. The data was analysed using thematic method of analysis, ensuring the themes and indicators are causally related.

The themes were drawn from key aspects in this area of study of regional approaches. Arising from the interviews, congruent responses related to the same thematic area were grouped and summarized to reflect the understanding, grasp, appreciation and critique of AU and its regional approaches.

In summary, analysis has been undertaken by use of narratives as qualitative techniques. Data analysis has also been done quantitatively. Mixed methods have therefore been used so that emotions are captured since the issue of IDPs is an emotional

one. Quantitative techniques have been used to capture vital statistics to show the magnitude of the problem.

1.8.4 Scope and Limitations of the Study

The study has been carried out within a limited time span and with limited resources. These constraints may therefore have impact on the quality of the findings with regard to the level of accuracy. Since the interviews to informants were also structured and the sample size was obtained through non probability sampling, this may equally lower the level of accuracy. Further, victims of internal displacement are also emotional and some of their responses may have been influenced by these emotions. Further, Government officials and employees of interviewed agencies may also not have been very open due obligations on confidentiality and secrecy of their work. Overall the study still captures to scientifically accepted levels, the key tenets of the subject matter at hand.

1.9 Chapter Summary

The study is divided into five chapters. Chapter one covers introduction, problem statement, Statement of the research problem objectives of the study, research questions, hypothesis, justifications and a summary of literature review, the research methodology, data collection and data presentation.

Chapter two covers theoretical and conceptual framework which centres on the main theories and concepts which have guided the research and for this purpose realism, liberalism and neo-functionalism as theories have been used to elaborate on the concept of regionalism and regional approaches in IDP governance.

Chapter three covers the African Union's approaches to IDP governance in Kenya including the legal and policy framework on IDP's. The chapter also covers the national, regional and international approaches and frameworks dealing with the issue and what provision there are to protect IDPs. It therefore deals on the case study which is AU and Kenya.

Chapter four is on critical analysis of AU's regional approaches. As such it covers research design, sampling design and procedures, data collection instruments, data collection, data analysis and presentation of findings from interviews conducted and questionnaires administered.

Chapter five covers summary of major findings, conclusion based on the research objectives and hypothesis and recommendations of the study both at the academic and policy levels including recommendation on areas for further research

CHAPTER TWO

Conceptualization of Regionalism and Regional Approaches to IDP Governance

2.1 Introduction

In this chapter, the study looks at the origin of regionalism as a concept, its development overtime, and how AU as a regional organization came into being and its development overtime. As such, the research delves very deeply into AU's legal instruments albeit with a bias to the protection of IDP's. The study traces how IDP governance became a regional governance issue for AU and the meaning of regional approaches to IDP governance.

Today, the influence of regional organizations can be felt in every corner of the world. Fascinating institutional developments have taken place in recent years that have given new momentum to regional integration projects, with a visible impact on the lives of millions of people. Landmark instances of regional engagement by regional organizations and affiliated sub regional organizations included military intervention have been witnessed. Such were the cases for AU either directly or indirectly in Sierra Leone, Burundi, Somali, and Democratic Republic of Congo among others.

According to Hurrell, regional approaches refer to those measures, mechanisms, programmes put in place by regional bodies to handle thematic issues affecting their member states.⁴⁵ He however appreciates that this is still a developing area which must be looked at from the standpoint of why regional organizations are formed and why regionalism takes place. He notes that even South East Asia with more than 50 regional organizations already in existence, developments like these confront observers with a

⁴⁵ Hurrell, A. 1995. Explaining the Resurgence of Regionalism in World Politics. *Review of International Studies*, 21(4), 331–358.

new set of questions. For example, how can the emergence of regional organizations be explained? How can their institutions be studied? How can we account for member states' behavior? And what is their impact on the domestic level?⁴⁶

In this research and more so this chapter, we therefore look at a number of issues, which seek to address these and other related questions. We take the approach that regional organizations are an outcome of regionalism, which we understand as forms of regional institution building, ranging from international cooperation to highly legalized integration. We take the view that AU is not unique and its existence and approaches employed in IDP governance must be looked at from these perimeters.

To help structure this research, in this chapter, we propose four guiding questions, which provide a coherent and comprehensive framework for the conceptualization of regionalism. In this, we attempt to cover multiple dimensions of regionalism.

According to (Cai , Dieter 20, Pevehouse , Ribeiro Hoffmann and van der Vleuten and Thomas , a number of scholarly contributions to the new Regionalism debate published in recent years, tend to provide detailed analyses of specific aspects of regionalism or a single regional organization⁴⁷.

Similarly, this research focuses on AU but also contrasts it with multiple regional organizations in a comparative perspective. According to Cai et al, in the absence of a general theory on the development and effects of regional organizations, there is need to combine numerous theoretical and analytical approaches to the study of regionalism in one overarching research framework. In this approach, he departs from Warleigh-Lack

⁴⁶ Hurrell, A. 1995. Explaining the Resurgence of Regionalism in World Politics. *Review of International Studies*, 21(4), 331–358.

⁴⁷ Cai, K. 2010. *The Politics of Economic Regionalism. Explaining Regional Economic Integration in East Asia*. Basingstoke: Palgrave Macmillan.

and colleagues who advocate for a bridging of European Integration studies and the New Regionalism approach⁴⁸.

2.2 Genesis and Growth of Regional Organizations

To better understand how to conceptualize regionalism, first, the study analyzes the genesis and growth of regional organizations: when, how and why are they created, and what can be said about their developmental paths? Why do states choose to join or remain outside a regional organization? These are questions that have occupied the literature on regionalism for a long time. In particular, theories of European integration have influenced conceptualization of the drivers of regional integration. Liberal intergovernmentalism and neofunctionalism offer different accounts of why states form, join or leave regional organizations. For liberal intergovernmentalism, regional integration can be traced back to member states' preferences, which are in turn shaped by domestic actors.

Following the logic of liberal International relations theory, states are seen as transmission belts for societal interests and are the primary unit of analysis. Regional integration can then be understood as the result of bargaining processes between member states⁴⁹. Neofunctionalism, in contrast, puts emphasis on the concept of spillovers, elites, and supra-national actors (Haas 1958, 1961, Lindberg 1963)⁵⁰. For neofunctionalists, regional integration is driven by functional spillovers in the context of interdependence, cooperation in one field induces pressure to integrate in another, for example, as a result

⁴⁸ Warleigh-Lack, A. and Rosamond, B. Across the EU Studies–New Regionalism Frontier: Invitation to a Dialogue. *Journal of Common Market Studies*, (2010)

⁴⁹ Moravcsik, A. 1991. Taking Preferences Seriously: A Liberal Theory of International politics. *International Organization*, 51(4), 513–553.

⁵⁰ Haas, E. B. *The Uniting of Europe: Political, Social, and Economic Forces, 1950–1957*. Stanford: Stanford University Press.(1958)

of unintended consequences. Political spillover, on the other hand, occurs when domestic elites shift their attention to the level above the nation state, prompted by increasing transnational exchange or the belief that problems cannot be solved domestically. Additionally, supra-national actors are important for neofunctionalism as they become agents of integration.

2.3 Regionalism Theories

This study of regionalism centres on realism and liberalism as the main theories. Explaining internal displacement and approaches used by regional organizations more so in the protection of Internally Displaced Persons therefore leans largely on these theories in this study. The study therefore also looks at realism and those with contrasting views to realism more so on the centrality of the state in the approaches used.

As noted earlier in this study, Scholars like Hans Morgenthau, E.H Carr and George Kennan lead a group of scholars who look at the issue of protection of Internally Displaced Persons (IDPs) and approaches used from the realist lens. This realist lens is state centric in nature. To these scholars, the protection of citizens and thus IDPs and whichever approaches used is the work of the state and other actors have no role. For this scholars security is looked at as the ability of the state to defend itself from external attack and citizens are purely subjects of the state whose security is as secure as the state from external aggression.

At the individual level, realists see man as selfish and constantly fighting for survival. Survival is therefore about the fittest as the weak get eliminated by the ensuing competition which more often leads to conflict. In the Kenyan case, the incompatibility of goals more so on political power, land, inequitable distribution of resources can

therefore be cited as part of what caused the conflict, subsequent displacement, death and destruction of property during the 2007/2008 post election violence.

Realists look at the world as a place full of competition and the search for military superiority. Stronger states therefore come on top as weak ones go to the bottom in terms of world hierarchy of nations.⁵¹The realist scholars assume that the state is the principal actor in war and politics in general. To these scholars, the state is a unitary actor and once a decision has been made go to war or not, the state acts and speaks with one voice. There is therefore no other international or sub national groups or actors who can overturn or subvert the interest of the state.

Realists also argue that the state need to protect itself against enemies from within and from without. The question of individual rights and protection is thus peripheral.⁵²Nicolo Mahiavelli in his book the Prince advances the position that those leading the state, otherwise according to him the prince is only mindful of his own security and that of the state and hence should use defensive as well as offensive tactics as the situation may demand. While Machiavelli lays emphasis on the leader and the state as the key referent objects of security, our study shows that the human being should be the referent point of security and that the state should exist to protect the security of its citizens and their well being in various areas hence human security as a concept is very central in this study. Our study also looks as sub regional organization more so AU as an organization formed by member states to pursue their interests. Regionalism thus ought to shift its referent object from states to persons.

⁵¹ Hans Morgenthau is the author of the book, politics among nations, the struggle for Power and Peace, Newyork,(1948), pages 4-15

⁵² Nicolo Machiavelli is a proponent of classical realism and looks at security through the realist lens. He has published two books, The Prince and The Discourses, which lay emphasis on the state as the central focus of security.

At the state level, states care about their own national interests and may not want to involve in matters which puts them at loggerheads with fellow states including IDP protection. Further, states approach the issue of security not from the point of Human Security but from the traditional power maximization and military perspective. With regard to our research, AU members could be guided by this theory thus health, security, political security, personal security, environmental security, education security, community security and physical security of individuals be they IDPs or not is secondary. This explains lack of enthusiasm by AU in its approaches to protecting IDPs.

This theory is criticized by liberalist scholars like ⁵³Robert Dahl for laying emphasis on the state as if it is the only actor in matters of security and protection of the rights of individuals yet there are other actors like the individuals, non-governmental organizations, sub-regional organizations and communities which play a very central role in the protection of individuals. This theory also overemphasizes military threats to security yet there are other threats to security like internal displacement, poverty, disease, political instability, economic instability and environmental degradation among many others.

Realist scholars also make the dangerous assumption that the state is the only legitimate custodian of people's interests and while in the real sense, this is not necessarily true since in certain instances the state itself has been a threat to the same security and interest. Internally displaced persons in Africa for instance have been victims of state brutality and indifference A state that marginalizes its people or does not encourage equitable distribution of valuable resources is indeed a threat to the security of

⁵³ Robert Dahl is a liberal theorist and a professor of political science at Yale and has written on expanded approach to security since 1962.

its citizens. According to Burzan, the focus of security should be individual person who deserves security from the state and all other players.⁵⁴

Policy makers are also not necessarily rational in decision making and therefore to insist that the decisions they make are rational and on behalf of the state. Sometimes policy makers make irrational decisions. Other times, the decisions so made are in personal interest and not state interest.

In the recent years, theoretical assumptions on the concept of Human rights protection and human security, particularly the realist school have become increasingly challenged This is because of transformation brought about by the post Cold War era and globalization in international relations. Proponents of this theory like ⁵⁵Richard Ashley, Arnold Wolfers and Leonard Beaton fault the overemphasis on the state as far as protection of individuals are is concerned arguing that it is also a matter of communities, institutions and even individuals.

Another theory explaining regionalism is Liberalism. According to liberalists, the state is not necessarily the custodian of people's interests. In Africa for instance, the state is a threat to people's interests particularly in countries where economic resources are not distributed equitably⁵⁶.

According to the proponents of liberalism, the policy makers are not necessarily rational in their actions due various idiosyncratic, systemic, societal and political level variables. They cannot therefore monopolize national securitization of issues.

⁵⁴ Barry, Buzan, People States and Fear, an Agenda for International Security Studies in the Post Cold War 2nd ed Pearson Education Limited, 1991.

⁵⁵ Richard Ashley, Arnold Wolfers and Leonard Beaton are proponents of the liberalist theory to security.

⁵⁶ Joseph Nye and L.B Krause, Studying Security in Social Sciences, Slovekian and third world experience, UNCTAD,(1975).

This theory accepts that approaches to the protection of individuals needs to be expanded to include the role of non state actors. In broadening this concept, liberalists look at the emerging concept of human security which has the protection of individual rights at the centre. They pose three fundamental questions, thus: what security? Whose security? And security for what? They contend that the key in understanding protection and security as concepts lies in the answer to these questions, which cannot be adequately addressed without bringing in the aspect of human security. To liberalists, human security entails the freedom of the individual from fear, and from danger thus safety of material possession, feeling that oneself, family and friends are safe. Security and protection to liberalists is therefore the absence of threats on the general well being of the individual at all levels whether political, social, economic cultural or in other spheres of life.

While the liberal theory takes a holistic approach, it undermines the role of the state as the referent point in the security and protection of its citizens IDPs included. The liberalists ought to appreciate that national security and conflict resolution are crucial in the realization of human security of IDPs because without having a properly functioning and secure state, it is not possible to realize human development and observance of human rights, which are key components of human security and therefore IDP governance. The so-called communities and individuals on which liberalists lay emphasis exist within the state and therefore cannot be isolated from the state. Liberalists ought not to ask for a shift from national security to human security in totality but a balance of the same knowing well that states have national interests.

2.4 Regionalism as an Alien Concept to AU

Niemann⁵⁷ argues most theories explaining the road to regionalism, although developed in the European context, can inspire the study of regionalism in general. Mattli⁵⁸ argues that to account for the importance of functional pressures as well as governments decision-making, it is useful to distinguish between demand and supply factors driving regionalism. The demand side follows the logic of economic gains, by assuming that economic integration is likely to require increasingly sophisticated safeguards, namely integrated governance. However, demand is necessary, but not sufficient for integration. On the supply side, Mattli further argues that actors need to establish commitment institutions to minimize violations of cooperation rules, and that success depends on the existence of a paymaster country willing and able to bear distributional costs. Our research is therefore not limited to theories of regional integration. Especially when we seek to understand why third states decide (not) to join a regional organization, it is informative to consider arguments from other parts of International Relations theory. Could this explain Morocco's non membership of AU?

According to Mattli, it could. Classic explanations here are neorealism which has its focus on security concerns that could stimulate regional cooperation or conflict and neoliberal institutionalism, which highlights the importance of economic interdependence according Schimmelfennig and Sedelmeier.⁵⁹ This may explain why AU's agenda of Panafricanism largely remain a boardroom issue. Africa realized that it is better off

⁵⁷ Niemann, A. 1998. The PHARE Programme and the Concept of Spillover: Neofunctionalism in the Making. *Journal of European Public Policy*, 5(3), 428–446.

⁵⁸ Mattli, W. 1999. *The Logic of Regional Integration. Europe and Beyond*. Cambridge: Cambridge University Press.

⁵⁹ Schimmelfennig, F. and Sedelmeier, U. 2002. Theorizing EU Enlargement: Research Focus, Hypotheses, and the State of Research. *Journal of European Public Policy*, 9(4), 500–528.

handling the IDP issue from a continental point of view thus the guiding principles and the Convention.

To account for the enlargement of ROs, there is a range of rationalist arguments regarding the costs and benefits of accession to a RO Institutional Design. A second central point of this road is the institutional design of regional organizations. Given the striking similarities but also differences that can be observed between organizations, it is immensely useful to explore different ways of characterizing and accounting for them. Contributions in this model use three main concepts and explanatory approaches: the Rational Design of International Institutions (RDII), the legalization concept, and the diffusion concept aiming at a more process-oriented account for the institutional design of international organizations.

Originally developed by Koremenos, Snidal, and Lipson⁶⁰, the RDII can be employed to categorize and map international organizations while at the same time pointing out factors capable of explaining differences and similarities. Rooted in rational-choice theory, the trio identifies five dimensions of international institutions: membership, scope, centralization, control, and flexibility. The independent variables accounting for the specific institutional design are distribution and enforcement problems, the number and asymmetries of actors, and uncertainties about behavior, the state of the world, and other actors' preferences. Acharya and Johnston⁶¹ however criticize this classification. To them, other than put emphasis on the rational-choice bias of RDII, emphasis ought to be put on the role of norms and legitimacy. Also, they aver

⁶⁰ Koremenos, B., Lipson, C. and Snidal, D. 2001. The Rational Design of International Institutions. *International Organization*, 55(4), 761–799.

⁶¹ Acharya, A. and Johnston, A. I. 2007. Comparing Regional Institutions: An introduction, in *Crafting Cooperation: Regional International Institutions in Comparative Perspective*, edited by A. Acharya and A. I. Johnston. Cambridge: Cambridge University Press, 1–31.

that there are other independent variables potentially in the position to explain the nature of cooperation. This position is also advanced by Duffield⁶² who is also another critique of RDII.

2.5 Concepts, Issues, Approaches and Cases in Regionalism

Abbott, Keohane, Moravcsik, Slaughter, and Snidel have added the concept of legalization to the study of international organizations⁶³. Legalization, as the name indicates, focuses primarily on the analysis of legal documents creating formal institutions and giving them obligations. It thereby allows for a more differentiated comparison of specific types of policy fields or of international organizations. The legalization concept measures three distinct characteristics of international and regional organizations: precision meaning that rules unambiguously define the conduct they require, authorize, or proscribe; obligation describes the extent to which actors are legally bound by arrangements; and delegation addresses the degree of authority of independent third parties “to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules.”⁶⁴ This explains why the AU has the Constitutive charter, the convention among other legal and policy documents to handle various thematic issues including IDP governance.

According to Abbott⁶⁵ and his ideological colleagues, mapping differences and similarities is, however, only the first step of analysis. In a second step, the specific forms of institutional designs need to be explained. Although the three approaches and general IR as well as regional integration theory provide explanatory factors, the concept of

⁶² Duffield, J. S. 2003. The Limits of “Rational Design.” *International Organization*, 57(2), 411–430.

⁶³ Abbott, K. W., Keohane, R. O., Moravcsik, A., Slaughter, A.-M. and Snidal, D. 2000. The Concept of Legalization. *International Organization*, 54(3), 401–419.

⁶⁴ Ibid

⁶⁵ Ibid

diffusion is a fruitful framework that specifically addresses institutional design according to Levi-Faur⁶⁶ who introduces the concept of diffusion to this debate. He defines diffusion as a process in which “the adoption of innovation by member(s) of a social system is communicated through certain channels and over time and triggers mechanisms that increase the probability of its adoption by other members who have not yet adopted it

According to Campbell, Di Maggio and Powell and Henisz et al, Jepperson and Meyer, sociological institutionalism has developed three analytical mechanisms to describe processes of institutional diffusion: through international coercion, emulation or mimicry⁶⁷ of member States’ behavior in ROs. Third, it is worth to examine how member states act within regional organizations and what explains their behavior. More precisely, this research question focuses on factors that determine the level of commitment to, and compliance with regional initiatives. Compliance in this regard means that member states follow the rules set at the regional level, for example, by implementing decisions on time.

For AU, this would be conceptualized to mean the extent to which the constitutive charter, the guiding principles the convention and other legal and policy documents are being followed. Commitment goes beyond these duties, indicating a preference to deal with problems at the regional level. Thus, the concept of commitment is linked to voluntary decisions, whereas compliance is determined by member states’ capabilities or willingness. We thus in our later chapters interrogate whether AU member states are committed to IDP protection and governance.

⁶⁶ Levi-Faur, D. 2005. The Global Diffusion of Regulatory Capitalism. *Annals of the American Academy of Political and Social Science*, 598, 12–32.

⁶⁷ Campbell, J. L. 2004. *Institutional Change and Globalization*. Princeton: Princeton University Press.

According F Goldstein et al, the level of regional commitment can be influenced by the structure of the domestic political system, for example, the regime type. Although there exists an extensive body of literature on democracy in Africa, Asia, and Latin America, relatively little research has been conducted on the effects that regime types might have on the international level, in particular, characteristics of national politics.⁶⁸In this research, we look at whether level of democratization has any influence on AU's effectiveness in IDP governance.

With regard to compliance, the question as to why states sign agreements and make commitments that they do not fulfill is a subject of debate. One approach focuses primarily on enforcement: from this perspective compliance is best achieved by means of monitoring and sanctions, because defection is seen as a result of states' cost-benefit calculations. On the other hand, there is the managerial approach which puts more emphasis on domestic aspects: capabilities rather than choices have to be considered to explain the degree of compliance according to Simmon and Tallberg.⁶⁹

Thus, both compliance and commitment at the regional level are connected to the domestic polity dimension. This is not to say, however, that those structural factors completely determine member states' behavior. Other sub-fields of IR studies should also be considered. On the one hand, from a neorealist perspective, security interests and power politics are expected to be strong factors shaping member states' decisions. Especially in the area of regional security policies, such as military interventions, these

⁶⁸ Goldstein, J. O., Kahler, M., Keohane, R. O. and Slaughter, A.-M. 2001. Response to Finnemore and Toope. *International Organization*, 55(3), 759–760.

⁶⁹ Tallberg, J. 2002. Paths to Compliance: Enforcement, Management, and the European Union. *International Organization*, 56(3), 609–664.

arguments do yield a great deal⁷⁰ of explanatory power. The constructivist strand of IR literature, on the other hand, emphasizes the role of regional identities and norms, in effect widening the analytical focus beyond the domestic level according to Choi and Caporaso, Van der Vleuten and Ribeiro Hoffmann⁷¹.

2.6 Effects of Regionalism on Member States

Being a member of a regional organization carries obligations on member states AU member states can therefore not escape this. This research study considers the effect of ROs on their member states; how this can be studied at the regional organizations and domestic levels? Although the effects of international and regional processes at the domestic level had already been conceptualized in 1970s, Gourevitch says⁷², it is only recently that the second relevant literature has been applied to regional organizations and their relationship to member states. This necessarily poses questions about the independent actor quality of international organizations. According to him not every RO has a high form of centralization or delegation.⁷³ In fact, most ROs remain firmly in the hands of their member states. One of the crucial questions therefore is whether AU is a hostage of the member states taking into account the fact that the states remain sovereign.

Featherstone and Radaelli, Olsen, Vink and Graziano⁷⁴ argue that a regional organization on the domestic level are the concepts developed in the so-called new institutionalism debate. This position is shared by Börzel and Risse. Again, rational

⁷⁰ Supra note 38

⁷¹ Choi, Y. J. and Caporaso, J. A. 2002. Comparative Regional Integration, in Handbook of International Relations, edited by W. Carlsnaes, T. Risse and B.A. Simmons. London: Sage, 480–499.

⁷² Gourevitch, P. 1978. The Second Image Reversed: The International Sources of Domestic Politics. *International Organization*, 32(4), 881–912.

⁷³ Ibid

⁷⁴ Featherstone, K. and Radaelli, C. M. (eds). 2003. *The Politics of Europeanization*. Oxford: Oxford University Press.

choice approaches compete with sociological-based approaches for explanatory power. The rational choice strand of new institutionalism is concerned with the ways in which changes in the political opportunity structure lead to a domestic redistribution of power⁷⁵. In contrast, sociological institutionalism holds that the process of regional integration can involve cognitive changes, through the proliferation of regional norms, values, and ideas. The approach taken by AU according to these authors therefore is a proliferation of these aspects. Sociological institutionalism looks at the possibility that regional norms and collective understandings exert adaptation pressure, and impact on the behavior of political actors according to March and Olsen⁷⁶.

Building on the above, the study's analysis in this research offers explanations for the complex processes of regionalism, regional approaches to IDP governance and seeks to point out possibilities for further research. Placing the individual case study of AU and Kenya in the broader context of our thematic framework allows for an original view not only on the theories themselves, but also on the global state of regionalism.

2.7 AU's Road to Regional Approaches

AU and its member states have committed themselves to several legal and policy instruments which impose obligations and responsibility on them with regard to approaches towards protecting IDPs. The 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and

⁷⁵ Börzel, T. A. 2012. Comparative Regionalism: European Integration and Beyond, in Handbook on International Relations, edited by W. Carlsnaes, T. Risse and B. A. Simmons. London: Sage.

⁷⁶ March, J. and Olsen, J. P. 1989. Institutions: The Organizational Basis of Politics. New York: Free Press.

the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa are such instruments in beside other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions.⁷⁷

Member States of the African Union have adopted democratic practices to adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments. IDPs, are covered under these instruments thus failure by AU or member states would constitute a violation of their rights.

Internally Displaced Persons also have inherent rights as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons. AU state parties gave their commitment to this principles even though they were not binding

⁷⁷ The 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa.

thus a very serious step towards the regional approaches. In this case, they gave their commitment to their primary responsibility and commitment to respect, protect and fulfill the rights to which internally displaced persons are entitled, without discrimination of any kind.

In consolidating its approaches, AU renewed its commitment to cooperate with other international Organizations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended to it by the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations, coordination mechanism. The AU also appreciated the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organizations, in conformity with the laws of the country in which they exercise such roles and mandates.⁷⁸

While debating to establish a legally binding instrument in Kampala in 2012, the state parties to AU constitutive Act noted with concern the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons reaffirmed the historical commitment of the AU Member States to the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in

⁷⁸ Executive Council of the African Union Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh.

Addis Ababa, to the effect that that the specific needs of internally displaced persons (IDPs) such as protection and assistance should be addressed through a separate legal instrument, and to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions, respectively and that there was need to have a Convention for the Protection and Assistance of Internally Displaced Persons⁷⁹ which the body has since established and continues to be ratified by AU member states . It can therefore be seen that AU's regional approaches to IDP governance have developed over time and have a long history founded on international and regional legal and policy instruments.

2.8 Internal Displacement as a Regional Governance Issue, AU and the 2007/2008

Post Election Scenario in Kenya

Displacement severely affects the physical, socio-economic and legal safety of people and should be systematically regarded as an indicator of potential vulnerability. Secondly is the fact that such movement takes place within national borders.

Unlike refugees, who have been deprived of the protection of their state of origin, IDPs remain legally under the protection of national authorities of their country of habitual residence. IDPs should therefore enjoy the same rights as the rest of the population. The international Guiding Principles on Internal Displacement remind national authorities and other relevant actors of their responsibility to ensure that IDPs' rights are respected and fulfilled, despite the vulnerability generated by their displacement.

⁷⁹ AU Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004

Regional bodies and international bodies have made attempts to ensure that IDPs are protected. In so doing, internationally, guiding principles on the protection of IDPs while in certain regional bodies, conventions have been passed. The AU which is a subject of this study is one such regional organization that has one such convention. Nationally, countries have also come up with policies and legislation to address the same yet very little has been achieved. This makes the protection of IDPs a governance issue at national, regional and International levels.

2.9 Conclusion

In this chapter, our research has ably shown why counties form regional organizations and the road to realizing the same. The study has also defined what regional approaches are and their evolution over time. We have also shown the background to internal displacement including global, regional and national standpoints. We have seen that though originally alien, AU has embraced regionalism and regional approaches in various thematic areas. The various legal and policy approaches by AU have also been traced to old regional and international commitments codified by various legal and policy instruments and how the same sit with AU's regional approaches. In the next chapter, the study looks at the case study, AU and the approaches in Kenya's case of internal displacement. The study also looks at the legal and policy framework available for AU with regard to IDP governance and the application in the Kenyan case.

CHAPTER THREE

African Union Approaches to Internally Displaced Persons Governance in Kenya

3.1 Introduction

In this chapter, our research focuses on the case study which is the AU's interventions in Kenya, legal and policy frameworks relevant to the Governance of IDPs at the national levels, continental and international levels and how the same were applied or not applied. As such, the research looks at the displacement in Kenya, Conflict Prevention, Management and Resolution capacities in the region, Kenyan legislation relevant to IDPs, the AU intervention, the AU convention on the same and whether the same has been effective in the protection of IDPs in conflict situations. A big focus has been given to the massive displacement which took place after 2007-2008 has and has been taken as the turning point in IDP governance in the country and regionally.

Internal displacement in Kenya has been described as a historical problem which has been exacerbated by the lack of a comprehensive legal and policy framework to, at the least recognize who an IDP is and where responsibilities of protecting them lie⁸⁰. As a result, the Kenyan Government has in most instances responded to the problem in an ad hoc and needs-based manner as opposed to a rights-based one that is premised on internationally accepted human rights standards.⁸¹

Following the devastating impact of the 2007/08 post-election violence in which over 1,300 persons were killed and over 600,000 others internally displaced, the Kenya Government, through the Ministry of State for Special Programmes (MoSSP) and in

⁸⁰ Face to face interview with a programme officer at Kenya Human Rights Commission conducted on 8th December 2013 in Nairobi Kenya..

⁸¹ Chaloka Beyani, UN Special Rapporteur on the Human Rights of IDPs, behind the scenes, lessons learnt from developing national policy framework on internal displacement in Kenya the Refugee Consortium of Kenya and the Danish Refugee Council (Great Lakes Civil Society Project Report, pp1, 2009).

collaboration with humanitarian and non-state actors, embarked on the development of an IDP Policy. This policy was intended to help the Government better prevent instances of internal displacement, to provide enhanced protection and assistance to internally displaced persons (IDPs) and to promote the achievement of durable solutions for IDPs. This initiative later transformed into the development of legislation on internal displacement (IDP Bill, 2012) now an Act of Parliament⁸².

According to Beyani⁸³, the Kenyan experience is a commendable one, in that it has benefited to a great extent from the immense support and collaboration from the Government. That is not to say that it has not had its fair share of challenges nor that it has not been without good fortunes. The process to Beyani is an important one which could inform future advocacy strategies on policy development and is also a means of reflection for those who have been involved in the process. The study commissioned by the Refugee Consortium of Kenya and the Danish Refugee Council (Great Lakes Civil Society Project) sheds light, as signatories to the African Union Convention on the Protection and Assistance to Internally Displaced Persons (Kampala Convention) seek to domesticate this Convention to which the statutory instrument in Kenya is a vital tool.⁸⁴

3.2 History of the African Union as a Regional Organization

This study focuses on the approaches used by AU to intervene in internal displacement in Kenya. It is therefore crucial to first understand AU as an organization. The African Union is a geo-political entity almost covering the entirety of the African continent, with Morocco being the exception. Its origins are the Union of African States,

⁸² Telephone interview with a member of the Secretariat responsible for drafting IDP policy in Kenya conducted in Nairobi Kenya on 12th October 2013.

⁸³ Ibid

⁸⁴ The African Union Convention on the Protection and Assistance to Internally Displaced Persons (Kampala Convention)

an early confederation that was established by Kwame Nkrumah in the 1960s, as well as subsequent attempts to unite Africa, including the Organisation of African Unity (OAU), which was established on May 25, 1963, and the African Economic Community in 1981.

A lecturer and a policy consultant argued that the OAU in particular did little to protect the rights and liberties of African citizens from their own political leaders, often dubbing it the Dictators' Club⁸⁵. The idea of creating the AU was revived in the mid-1990s under the leadership of Libyan head of state Muammar al-Gaddafi: the heads of state and government of the OAU issued the Sirte Declaration⁸⁶ (named after Sirte, in Libya) on September 9, 1999 calling for the establishment of an African Union. The Declaration was followed by summits at Lomé in 2000, when the Constitutive Act of the African Union was adopted, and at Lusaka in 2001, when the plan for the implementation of the African Union was adopted. During the same period, the initiative for the establishment of the New Partnership for Africa's Development (NEPAD) was also established.⁸⁷

The first attempts to create a politically unified state encompassing the whole of the African continent were made by European colonial powers in the 19th century, intent on harnessing the vast natural resources and huge amount of manpower the continent had to offer to their Empires. However, the strong rivalry between European powers such as Great Britain, Belgium, France, Italy, Germany, Spain, and Portugal, meant the reality soon dawned that no one nation was powerful enough to outdo all the others, and take

⁸⁵ Face to Face interview with a lecturer and policy analyst at a leading University in Kenya Conducted on 14th August 2013 in Nairobi.

⁸⁶ Sirte Declaration of September 1999

⁸⁷ Face to face Interview with a former Nepad programme officer conducted on 10th November 2013 in Nairobi Kenya.

complete control of the continent⁸⁸. Instead, they carved the continent up between them, scrambling for control of as much territory as possible, and attempting to prevent their rivals from obtaining favourable regions. The European powers essentially maintained control of their territories as colonies until the second half of the 20th century, when changes in European policy and thinking, led to releasing of control over their African colonies, and the creation of independent nations across the continent took place between the 1950s and 1970s.

According to historians, regionalization under OAU and AU was also the Union of African States which was a short lasting union of three West African states, in the 1960s. These were Mali, Ghana, and Guinea. This union was Marxist politically, and was led by such African revolutionaries as Kwame Nkrumah of Ghana and Sékou Touré of Guinea, who was president of Guinea. On November 23, 1958, a Ghana-Guinea Union was formed with a flag like that of Ghana but with two black stars. In May 1959 it was announced that the Union would be renamed Union of African States with a flag like that of Ghana with as many black stars as there were members. In April 1961 Mali joined this union, so the flag then had three stars. The Union fell apart in 1962, when Guinea started to reach out to the United States, against the acquaintance of their Socialist partner, the U.S.S.R.. Later OAU was established on May 25, 1963. It was disbanded on July 9, 2002 by its last chairperson, South African President Thabo Mbeki and replaced by the African Union.

⁸⁸ Face to face interview with a professor of History at the University of Nairobi, a leading University in Kenya.

3.3 Vital statistics on IDPs, the Situation in Kenya and Globally and Impact of Internal Displacement on Internally Displaced Persons

Internal displacement is a large global phenomenon in the post Cold War period. Whereas there is no universal definition of IDPs, the various definitions highlights two major elements namely; the coercive or otherwise involuntary character of movement. It mentions some of the most common causes of involuntary movements, such as armed conflict, violence, human rights violations and disasters. These causes give no choice to people but to leave their homes and deprive them of the most essential protection mechanisms, such as community networks, access to services and livelihoods⁸⁹.

According to an informant working with International Organization for Migration displacement severely affects the physical, socio-economic and legal safety of people and should be systematically regarded as an indicator of potential vulnerability. Secondly is the fact that such movement takes place within national borders⁹⁰.

Unlike refugees, who have been deprived of the protection of their state of origin, IDPs remain legally under the protection of national authorities of their country of habitual residence. IDPs should therefore enjoy the same rights as the rest of the population. The Guiding Principles on Internal Displacement remind national authorities and other relevant actors of their responsibility to ensure that IDPs' rights are respected and fulfilled, despite the vulnerability generated by their displacement.

⁸⁹ Report of the Commission Investigating Post Election Violence in Kenya (CIPEV) ,2008.

⁹⁰ Telephone interview with an employee of IOM working Nairobi Kenya who closely followed the Issue of internal displacement in Kenya and collected data for the institution conducted in Kenya on 12th December 2013.

The issue of IDPs is said to be controversial due to the debate over definitions, and to the methodological and practical problems in counting. The number of IDPS around the world is estimated to have risen from 1.2 million in 1982 to 14 million in 1986. At the end of 2001, there were estimated to be 22 million IDPS worldwide, today, the population of IDPs is estimated to be over forty million although this is likely to be a controversial figure. The largest IDP populations are found in Colombia, the DRC, Iraq, Sudan and Turkey each with IDP populations of over one million. Colombia has over 2 (possibly 3) million IDPs according to the UNHCR, due to the war between the government, the FARC, the AUC and other armed groups.⁹¹

The Democratic Republic of Congo has almost 1.5 million IDPs due to the Second Congo War, mostly in the eastern provinces. Iraq has over 2.5 million IDPs due to forced displacement during Saddam Hussein's regime, and fighting between the Multi-National Force and Iraqi insurgent groups. Sudan has 5 - 6 million IDPs due to decades of civil war in the south and the Darfur conflict in the west. Turkey has over a million IDPs in its southeast provinces due to decades of conflict between the government and PKK rebels. Kenya has 250,000 - 700,000 IDPs due to the violence that rocked the country after the 2007 elections.⁹²

It has been estimated that between 70 and 80% of all IDPs are women and children. Internal displacement is thus a complex phenomenon that disproportionately affects African countries. The problem of IDPs is however not unique to Africa neither is it a new problem. It is just recently that IDPs have been recognized as needing special

⁹¹ Data obtained from Refugee Consortium of Kenya and Danish Refugee Council, Non Governmental Organizations working in the fields of Refugee and IDP governance December 10, 2013

⁹² Telephone Interview with A programme officer working at The Federation of Women Lawyers in Kenya, February 2014

protection above and beyond other citizens of country as reflected in the Guiding Principles on Internal Displacements⁹³.

Since IDPs have not crossed borders, they have no assured source of protection and assistance. The international refugee regime, a complex network of institutions, laws and agreements set up after the Second World War, had as its aim the protection of persons forced to seek asylum on the territory of a foreign state. The United Nation High Commissioner for Refugees (UNHCR) and the⁹⁴

UN convention on refugees of 1951 sought to protect persons outside their country of origin. Excluded from this arrangement, in keeping with traditional notions of sovereignty, were those forced from their homes that remained under the jurisdiction of their own governments. It was expected that their governments would provide for their well-being and security. In fact, when governments failed to do so or deliberately subject their displaced populations to starvation and other abuses, the international community basically stood by. As late as 1988, international organizations and NGOs watched while a quarter of a million people died in the Sudan for lack of food and emergency supplies.⁹⁵

Civil wars have been major causes of internal displacement. They divide countries along racial, ethnic, linguistic, or religious lines and do not resolve themselves easily or neatly. When states are monopolized by or identified with one ethnic group to the exclusion or marginalization of others, displaced persons easily fall into a vacuum of responsibility in the state. In Burundi, for example, the Tutsi-dominated army did not

⁹³ Information obtained from Cradle, the Children's Foundation, an NGO which has hosted several conferences on international nature on the protection of Children during conflict and international Displacement.

⁹⁴ UN convention on refugees of 1951

⁹⁵ Interview with a director at Amnesty international on what ails the world and AU in Conflict resolution and intervention, March 5 2014.

provide protection for internally displaced Hutu. In the Sudan, the Arab, Muslim government of the north was directly engaged in persecuting the non-Arab, non-Muslim population of the south, 4 million of whom became displaced.

With democratic and pluralistic governments few and far between, most internally displaced persons cannot rely upon their governments. It should be noted that even when the governments allow in international aid to their displaced populations, they often remain suspicious of such efforts. They fear that the assistance will undermine their own authority. For this reason, governments are often unwilling to allow humanitarian organizations to mount cross-border operations or to negotiate with the rebel forces. This has been the case in the Sudan where international Aid organizations are being ejected.

There is also the challenge of IDP identification. In some countries, IDPs do not congregate in accessible camps or settlements but disperse so as to avoid identification. Many displaced Hutus in Burundi, for example, hid in forests, making it difficult to reach them. Or in other countries, the displaced may merge into local communities, where gaining access will require programs that extend to the entire community. In Liberia, for example, as many as three-quarters of a million displaced fled to the capital, Monrovia, blending in with the rest of the city, whose population nearly tripled in size during the civil war.⁹⁶

It needs to be underscored that the impact of internal displacement extends beyond those displaced to disrupt whole communities and societies. The areas left behind and the areas to which the displaced flee often suffer damage. In Rwanda, the World Bank estimates that the damage done to national parks and forests will have long-term

⁹⁶ Internal Displacement Monitoring Centre, Internal Displacement Global Overview 2011,2012 available at www.internaldisplacement.org.

economic effects. In Angola and Liberia, the overloading of urban infrastructure has hastened its deterioration. African countries with significant internally displaced populations are among the poorest countries in the world.

Conflict and displacement also spill over borders into neighboring countries. Internal displacement is not only human rights and humanitarian issue but also a political and security one. The Great Lakes region of Africa is a good example of how conflict and displacement in one country inflame the situation in others and lead to large refugee flows and military invasions of other countries. Similarly, in the Horn of Africa and West Africa, conflict and internal displacement can quickly spill over borders and help destabilize neighboring countries⁹⁷.

3.3. 1 The IDP Situation in Kenya

In Kenya, internal displacement started noticeably during colonial period when populations were displaced by colonialists to create room for white settlers in the white highlands. The other source of displacement was through natural disasters. However, the two multiparty elections of 1992 and 1997 brought with them unprecedented displacement in the history of Kenya owing to the accompanying violence.

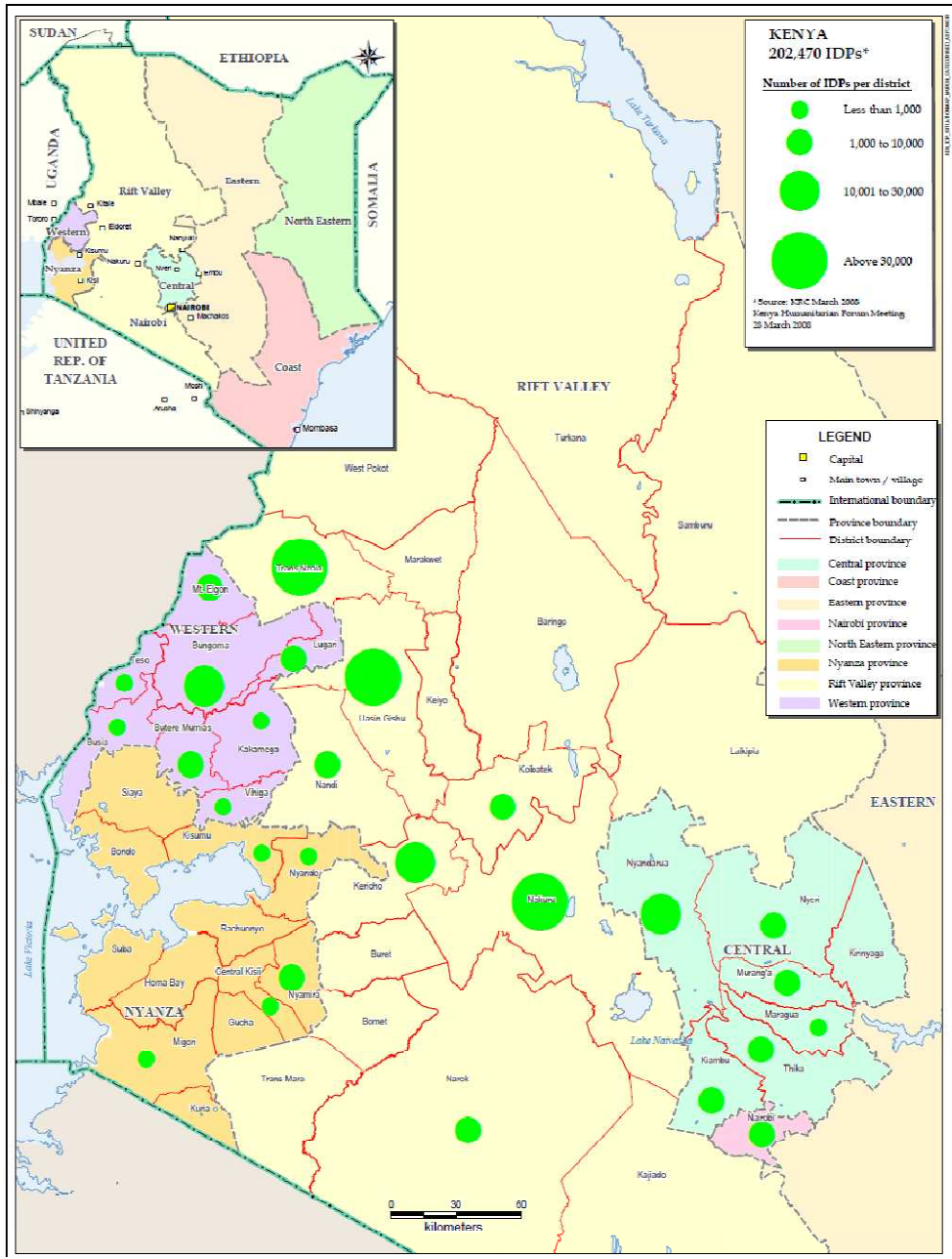
After to 2007 general elections, a worse situation was experienced. Our study gives specific focus to 2007 post election displacements. To date, Kenya still has high IDP populations in camps across the country. IDPs are spread across the country with the largest numbers being found in Central and Rift valley provinces. The map below shows the distribution of IDPs across the country as at March 2008⁹⁸.

⁹⁷ Interview with A Foreign Diplomat working as a conflict attaché in Kenya conducted on 8th October 2013

⁹⁸ Face to face interview with a former top provincial administrator who worked in the Kenyan resettlement programme operation rudi nyumbani from 2008 to 2012 on 12th October 2013

Map 1: The IDP distribution and situation map as at September

The map actually shows that there is high concentration of IDPs in Central and Rift Valley provinces of Kenya.



Source: UNHCR

Internal displacement has therefore been a permanent feature of Kenya history from colonial times onwards. Starting with the eviction of natives from their ancestral land to make way for settlers in colonial Kenya to recent violent evictions accompanying the 1992, 1997 and 2002 election, IDPs have been a constant feature of the country's political landscape. Even before the 2007 General Elections there was already a problem of population displacement as a result of the following factors amongst others: a) Pre-election violence in Molo district; b) Border and land disputes in places like the Sondu which is the confluence of three districts i.e. Nyamira, Nyando and Kericho occupied by the Kisii, Luo and Kipsigis respectively; c) Cattle rustling and banditry in the Pokot/Transzoia, Transzoia / Marakwet District border; and d) Natural disasters such as drought in large parts of Northern Kenya that often lead to conflicts over natural resources like water leading to displacement.⁹⁹

These multiple causes of displacement make it very difficult to come up with accurate statistics concerning causes of displacement, gender, age, social and economic standing. This in turn makes it difficult for the government to devise comprehensive policies and interventions to deal effectively with IDPs. Government statistics however indicate that there were 350,000 persons displaced as a result of post election violence after the 2007 elections.

According to the Waki report¹⁰⁰ on the post election violence (2008), some of the IDPs have suffered successive displacements as a result of previous election related violence. Several witnesses who testified to the commission said that they had suffered multiple evictions in 1992, 1997, 2002 and 2007. Internal displacement therefore has

⁹⁹ Interview with a former provincial Commissioner in Kenya on the 20th of October 2012

¹⁰⁰ Report of the Commission Investigating Post Election Violence in Kenya 2008

been a permanent feature of the conflicts in Kenya that have accompanied the transition from a single party to a multi party system.

The election related 1992 and 1997 “ethnic” clashes resulted in displacement of thousands of people. According to the Kiliku Report, an estimated 54,000 people were displaced in the 1992 clashes. The Justice Akiwumi led Commission, which was appointed in 1998 to inquire into the tribal clashes that rocked the country since 1991 did not make any findings as to the number of persons displaced as a result of the clashes either in 1992 or 1997.¹⁰¹

The internal displacements following the widespread violence that hit the country after the announcement of the 2007 presidential election results were, however, unprecedented in terms of the number of victims and the widespread nature of the phenomenon. While previous conflicts led to internal displacements concentrated in the multi ethnic regions of Western, Rift Valley and Coast, the 2007 post election violence resulted in massive country wide forced displacements, which were urban as well as rural in contrast to the past.

3.4 International Response to the IDP Phenomenon: A Historical Perspective

The proliferation of internal conflicts in the 1990s gave rise to new interest in the phenomenon of internal displacement. At the beginning of the new millennium, an estimated 25 million people were internally displaced as a result of armed conflict and human rights violations. An additional 20-25 million were said to be displaced as a result of natural disasters (¹⁰²UNHCR 1999). During the course of the last decade, in response

¹⁰¹ Data obtained from a Commission report on ethnic clashes in Kenya during 1992 and 1997 general elections

¹⁰²UNHCR Report on the Status of Refugees and Internally displaced persons (1999)

to the gravity and increasing seriousness of the problem, the international community has responded with the development of new legal and institutional frameworks.

In the absence of express legal or normative standards applicable to the internally displaced, ¹⁰³Dr Francis Deng, the UN Secretary-General's Representative on Internally Displaced Persons, developed the Guiding Principles on Internal Displacement, based on international human rights, humanitarian and refugee law. Although not a binding instrument, the Guiding Principles have become an essential reference for all those dealing with the issue of internal displacement. At the institutional level, rather than creating a new agency for the internally displaced or assigning responsibility to an existing agency, the international community opted instead for a collaborative approach to internal displacement which would draw upon the mandates and expertise of the UN's humanitarian and development agencies and other organizations in responding to the protection and assistance needs of the internally displaced. Concerns as to the effectiveness of this approach led to the creation in July 2000 of the Senior Inter-Agency Network on Internal Displacement charged with identifying ways in which the collaborative approach could be made to work more effectively.

Among its recommendations was the establishment of the Internal Displacement Unit within the UN Office for the Coordination of Humanitarian Affairs. The Unit's aim was to ensure a predictable and concerted response among all concerned actors to the problem of internal displacement. Taking into account the variety of needs of IDPs, the Unit identified and highlighted gaps in the humanitarian response to displacement

¹⁰³Deng, Francis. Report presented to the UN Commission on Human Rights in 1998 by Francis Deng, Representative of the UN Secretary General on Internally Displaced Persons. UN Document No. E/CN.4/1998/53/Add.2 (1998).

situations. Within this mandate, there was a broad range of activities required to address IDPs' assistance and protection needs¹⁰⁴.

In 2003, the Unit undertook two studies, which sought to analyze the effectiveness of the international response to the IDP problem. Based on the findings of the study and following consultations with the UN Senior Inter-Agency Network on Internal Displacement, the Unit redefined its objectives and activities for 2004, identifying four key goals: to improve predictability and transparency in international response to internal displacement, increase system-wide accountability for IDPs, improve confidence in and implementation of the collaborative approach at the field level and increase protection of IDPs.¹⁰⁵

The non-binding nature of these principles is a major weakness that many writers and even the UN itself have not addressed. Discourse on this matter thus needs to focus on moving towards giving the principles a binding force. This would put the IDP governance at par with refugee governance, which is regulated and conducted under convention and the subsequent national statutes of contracting states¹⁰⁶.

3.5 Impact of Internal Displacement on Victims in Kenya

Internal displacement in Kenya had several impacts on the displaced persons. Specifically, many aspects which constitute human rights were violated and the situation was worsened by ethnic based settlements in the camps.

¹⁰⁴ Ibid

¹⁰⁵ UN Senior Inter-Agency Network on Internal Displacement Report 2004

¹⁰⁶ Face to face interview with an expert on international humanitarian law and diplomacy held on 10th November 2013.

First, there was violation of security rights, which created feeling of fear, and insecurity, which is heightened by the fact that the perpetrators of the violence got away with impunity. Even those purported to have taken part in the burning of the Kiambaa church have been set free. No visible action has been taken to overcome non-punishment of perpetrators and obstacles to resettlement. Insecurity worsened due to the influx of firearms and other crude weapons¹⁰⁷.

According to CIPEV 2008, there was also ill-treatment of the IDPs. The minimum standards of treatment for displaced people were not respected in Kenya. Those in camps were forcefully resettled with the government issuing ultimatums, beating up or subjecting victims to police brutality like was the case in Nakuru. Laxity by the administration to facilitate their return and inadequate security made them vulnerable to physical assault from xenophobic aggression.

There was also Lack of access to legal aid to the IDPs who required the same. The causes of displacement and obstacles to resettlement have not been adequately addressed. There was a lack of political will at the top level to resolve land disputes, one of the root causes that led to displacement. The government kept on telling them to go back to their farms, forgetting that the initial problem that caused them to flee had not been dealt with. Some displaced persons have not been resettled or compensated. Some have also been declared squatters by the government in spite of having formal proof of having bought their farms. Displaced people are also not able to afford lawyers to represent them in court. There are also many loopholes in the Kenyan judicial system due to corruption and political interference. Key government officials often talked of their hands being 'tied' whenever the IDP problem was raised. This created a culture of silence on this very

¹⁰⁷ CIPEV Report 2008

sensitive issue. The situation of IDPs in Kenya was particularly desperate because of official blindness to their needs, and because Kenya has escaped keen international attention because of more serious refugee-generating conflicts in neighbouring Horn of Africa countries and the Great Lakes region¹⁰⁸.

Further, some communities were discriminated since some communities were associated with particular political parties, CIPEV found out that displaced people from these communities faced discrimination, as seen in the size of plots allocated at Moi-Ndabi resettlement scheme. They were also unable to purchase land or start business ventures because they were denied licences, swindled or otherwise frustrated.

There was also violation of the right to own property. This was and has also been very rampant as those, whose property was looted, destroyed or 'grabbed' and those too scared to start afresh lost this right. In some regions of the Rift Valley, tensions between pastoralists or with agriculturalists narrowed economic possibilities because not just anyone could keep cows. Some pastoralists believed and still do that all cattle belong to them. To avoid trouble, a large majority of displaced agriculturalists and agro-pastoralists stopped rearing animals. This translated into poor nutrition for their children and a shrunken resource base for the family¹⁰⁹.

Violation of the right to adequate housing is another consequence caused by internal displacement in Kenya. During displacement, large numbers of people were forced into small structures, causing congestion and overcrowding. This made it impossible to enjoy adequate living conditions, especially in relation to housing,

¹⁰⁸ Report of the Commission Investigating Post Election Violence in Kenya (CIPEV) otherwise popularly known as Waki Report 2008.

¹⁰⁹ Interview with an informant whose property was burnt and Children dropped out of school due to the post election chaos of 2007/2008 conducted on 8th February 2014.

sanitation and water supply. What is worrying is that many years after displacement, there are displaces still living under deplorable conditions in IDP camps.

Displacement has also caused Violation of the right to education among school going children and other schooling adults. Forced displacement and insecurity disrupted children's education as they led to the closure of schools, or migration to zones without schools. In North Rift, 35 primary schools were closed as people moved to the escarpments, hence robbing a whole generation of much-needed education. In South Rift, existing schools were reluctant to accommodate the children of displaced persons, while others had no teachers, classrooms or learning resources. Some children were also too traumatized to go to school, also raising the issue of their right to health. For most displaced families, education was not a priority issue at that moment as they sought basic survival¹¹⁰.

Massive Child labour was also been experienced as IDPs had multitude economic problems. Around the IDP camps, children were identified as working as house helps to supplement their parents' incomes. Others worked as tea pickers in the tea growing regions.

As concerns survival and sustenance, most IDPs left their homes with nothing except the clothes on their back. The situation was aggravated during the height of the violence when basic services were not available and the supply lines were blocked. The IDPs depended mainly on relief food and basically had no way of earning a living. During the initial stages of the violence, there were concerted efforts by both local and international NGO's and well wishers to provide food, water and other basic needs to the residents in IDP camps. However, as the violence subsided, the burden of providing

¹¹⁰ Ibid

sustenance to the IDPs was left mainly to the Government and the Kenya Red Cross. The IDPs complained that the food rations were drastically reduced¹¹¹.

However on the 4th February 2008, the Kenya National Dialogue and Reconciliation mediated by H. E Kofi Annan with the Panel of Eminent African Personalities issued a statement, which set out, amongst others, immediate measures to deal with the humanitarian crisis gripping the country. The statement set out the framework for dealing with displaced persons, which laid emphasis on the final goal of the National Dialogue, and Reconciliation as one aimed at achieving sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights. This it was thought would go a long way to address the above violations experienced by IDPs. This was the first observable level of intervention by the AU.

As a consequence of the election violence and as already seen elsewhere highlighted above, it can be summarized that the conflict in Kenya during 2007-02008 caused loss of life, injuries, loss of property and housing, school dropout, violation of dignity to the person among many others.

3.6 From Draft IDP Policy to an Act of Parliament, Analysis of the Kenyan Journey

The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 was passed in 2012¹¹². The Act recognizes that displacement in Kenya is a complex historic issue that has multiple causes: the major ones being, political instigation, resource based conflicts, natural disasters, some triggered by climate change and unfavourable environmental conditions, development

¹¹¹Face to face interview with a Government of Kenya officer who worked for the the Ministry of special programmes Conducted on 10th March 2014 in Nairobi.

¹¹² The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012.

projects and projects to preserve the environment. The statute is meant to provide a durable solution to the IDP problem by providing an institutional framework that both protects the displaced and restores them to their normal life. The statute promises to tackle IDPs' problems in a holistic way by resolving the problems of the displaced and taking care of IDPs from displacement to the time they return or are fully resettled elsewhere including restoring their lives.

The Act is an important step of the Government to implement its obligations assumed under international and regional law, assumed with the ratification of the Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons, including the adoption and implementation of the UN Guiding Principles on Internal Displacement as well as the African Union's Convention for the Protection and Assistance to Internally Displaced Persons in Africa (the Kampala Convention). It builds on efforts and experiences of the Government and other stakeholders in addressing the rights and needs of internally displaced persons in its attempts to prevent future displacement.

The efforts that eventually resulted in this statute were initiated by the National Network for the Internally Displaced Persons (IDPs) in Kenya, an advocacy group working across all eight provinces in Kenya which came up with recommendations for a policy that formed the basis of a bill which is now the statute. Founded in 2003, the Network has grown in membership from a small group of victims of the politically-instigated violence of the 1990 multi party elections to a national network including IDPs that were a result of the 2007 post-election violence and other victims from other causes of displacement—social and economic. The IDPs Network is managed by an elected

leadership compromising of national and regional representatives. The main objective of the IDP Network is to advocate for the protection of IDPs and ensure their participation in national matters.¹¹³

For many years, the Kenya Human Rights Commission (KHRC) and the IDPs Network among other stakeholders have sustained the monitoring, research, documentation and advocacy on the protection of, assistance to, and justice for IDPs in Kenya. In 2007 a Taskforce on IDP was formed. At the beginning this did not involve any government agency. The organizations that started it included the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR) and other local civil society and NGO groups such as the Kenya Human Rights Commission (KHRC), the Kenya National Commission on Human Rights (KNCHR) and the Protection Working Group on Internal Displacement (PWGID)¹¹⁴. A Working Group was formed to establish an IDP policy and map a way out.

Initially, the Working Group had planned for a conference in 2007 to inform the policy but it was postponed to February 2008. As we know, the meeting could not be held in February 2008 due to the post-election violence (PEV). The meeting was delayed as the same agencies organizing it had to deal with the new displacement caused by the 2007 PEV. The Kenya Humanitarian Forum was formed to coordinate IDP related issues following the 2007 post election chaos. It was during the handling of these PEV IDPs that a need to have a policy that would address IDP problems and provide a durable solution

¹¹³ Face to face interview with a leader of the National Network for Internally Displaced Persons in Kenya conducted on 10th January 2014.

¹¹⁴ Protection Working Group on Internal Displacement (PWGID) Report 2008 pp 18

for their plight was found necessary. This led to the formation of Protection Working Groups on Internal Displacement to provide for the IDPs in camps. An IDP Steering Committee and an IDP Advocacy working Group was formed. It was this group that spearheaded the drafting of the National Policy on IDPs.

In July 2009, the first stakeholders' forum was called which discussed most issues about IDPs. In this Forum the government was represented by PS of MOJCA and PS Ministry of Special Programs. The stakeholders in this meeting formed a small committee tasked with the drafting of the IDP national policy. In the drafting the committee had Assistance from Geneva. The UN Special Rapportuer on the Protection of the IDPs provided them with expertise on drafting and other technical assistance. In March 2010 the committee circulated their draft to a bigger working group where amendments were done. In November 2010 the bill was amended to align the policy with the provisions of the new constitution. In December the cabinet sub-committee reviewed the document and was submitted to the Ministry of Special Programs on March 16.

3.7 AU's Response to Internal Displacement in Kenya

After the ad hoc response by the au appointed panel of imminent persons to the Kenyan crisis, the union realized that without a proper framework of dealing with IDPs, not much may be realized .Consequently, the union passed several legal and policy documents to anchor IDP protection. As such African Union Convention for the protection and Assistance of Internally Displaced Persons in Africa (AU Convention, 2009) were passed.

Article 1(k-L) of the African Union Convention for the protection and Assistance of Internally Displaced Persons in Africa (AU Convention, 2009); Article 1 of the

Guiding Principles on Internal Displacement (1998); Article 1 of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (2006) defines internally displaced persons.

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

3.7.1 AU's Legal and Policy Framework on IDPs

Unlike the case of refugees, there was initially no international operational treaty which applies specifically to IDPs. Recognizing the gap, the UN Secretary-General, Boutros-Ghali appointed Francis Deng in 1992 as his representative for internally displaced persons. Besides acting as an advocate for IDPs, Deng set out in 1994, at the request of the UN General Assembly to examine and bring together existing international laws which relating to the protection of IDPs. The result of this work was the document,¹¹⁵ Guiding Principles on Internal Displacement.

The Guiding Principles lay out the responsibilities of states before displacement – that is, to prevent displacement – during and after displacement.¹¹⁶ They have been endorsed by the UN General Assembly, the African Commission on Human and People's Rights (ACHPR) and by the signatories to the 2006 Pact on Security, Stability and

¹¹⁵ Guiding Principles on Internal Displacement gives a general guidance on how internally displaced persons are supposed to be handled.

¹¹⁶ The principles have been endorsed by the UN General Assembly, the African Commission on Human and People's Rights (ACHPR) and by the signatories to the 2006 Pact on Security, Stability and Development in the Great Lakes Region, which include Sudan, DRC and Uganda.

Development in the Great Lakes Region, which include Sudan, DRC and Uganda. The Guiding Principles, however, are non-binding. As Bahame Tom Nyanduga,¹¹⁷ Special Rapporteur on Refugees, IDPs and Asylum Seekers in Africa for the ACHPR states, “the absence of a binding international legal regime on internal displacement is a grave lacuna in international law.”

In September 2004, the Secretary-General of the UN showed the continuing concern of his office by appointing Walter Kälin as his Representative on the Human Rights of Internally Displaced Persons. Part of his mandate includes the promoting of the Guiding Principles.

At the national level, unlike refugees who are governed using The Refugee Act, Kenya initially had no legal regime at the national level governing at the IDPs. There was also no policy to govern this matter. Intervention therefore was haphazard and uncoordinated with reliance largely on the ordinary legislation protective of ordinary citizens despite the fact that IDPs are a special category of citizens requiring special attention and thus special legislation. Kenya has however passed The Protection of Internally Displaced Persons and Affected Communities Act 2012 despite not having not ratified the AU Convention on the same.

3.7.2 The Guiding Principles on Internal Displacement as a Building Block to AU Convention

According to Deng, the Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance

¹¹⁷ Nyanduga, Bahame Tom, "The challenge of internal displacement in Africa" . Forced Migration Review 21. <http://www.fmreview.org/FMRpdfs/FMR21/FMR21full.pdf>. Retrieved on 2012-04-24, April 2012.

during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law¹¹⁸.

The Principles were developed over several years pursuant to the resolution in 1992 by the Commission on Human Rights and reinforced by subsequent resolutions of both the Commission and the General Assembly. The principles are divided into five sections each dealing with specific concerns to the IDPs. Section one is on general principles dealing with the rights and freedoms, legal matters of IDPs, and their treatment by the nation state. Principle one states that IDPs shall enjoy in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. Principle 3 states that nation states have the duty and responsibility to provide humanitarian assistance to internally displaced persons within their jurisdiction.

Section two is on principles relating to protection from displacement. Principle six talks of the right to be protected against being arbitrarily displaced from his/her home of habitual residence. Principle eight states that displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Section three is on principles relating to protection during displacement. Principle ten says that nation- states shall protect the life of IDPs against genocide, murder, arbitrary executions and Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death. Principle eleven emphasizes that every human being has the right to dignity and physical, mental and

¹¹⁸ Deng, Francis, *The guiding principles on internal displacement*", E/CN.4/1998/53/Add.1, February 11. New York, NY: United Nations, New York: United Nations, 1998.

moral integrity. Principle fourteen, guarantees internally displaced persons the right to liberty of movement and freedom to choose his or her residence.

Section four is on principles relating to humanitarian assistance. Principle twenty four of this section which is the first principle under this section states that all humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination and should not be diverted for political or military reasons.

Section five is on principles relating to return, resettlement and reintegration Principle twenty eight in particular states that competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.¹¹⁹

These principles if implemented by nation states and regional organizations and strictly adhered to, a lot of ground shall have been covered in ensuring the protection of IDPs and their general governance both nationally and internationally. States should therefore move to make this principles part of their domestic legislation.

According to a leading researcher on international law, the principles remain largely unknown among the populace and are not appreciated as their impact remains unfelt.¹²⁰

¹¹⁹ Ibid

¹²⁰ Telephone interview with a leading researcher in International Law cited above.

3.7.3 The African Union Framework and IDP Governance, from Guiding Principles to a Convention

As seen earlier The African Union was formed in 2000 as a successor to the Organization of African Union (OAU).¹²¹ In its constitutive charter, the AU lists as one of its key priorities, the promotion of security and ensuring stability. In so doing it meets its wider mandate as envisaged in the United Nations Charter. Specifically to IDPs, the AU did adopt a convention in Kampala Uganda on the 23rd of October 2009. Since then, a record 53 countries from Africa have ratified and deposited instruments of ratification or accession with the AU secretariat. This is way above the 15 member states whose accession and ratification is required for the ratification to take place. This convention is known as African Union Convention for the Protection and assistance of Internally Displaced Persons.¹²² In the preamble, the Convention specifically underscores the gravity of the issue of IDPs in Africa and attributes continuing instability and tension for African states.

Equally, the state parties to this convention do restate their commitment to international conventions signed under the auspices of the United Nations which guarantee a wide range of rights for individuals and also spell out various responsibilities that state parties are expected to meet specifically the state parties recommit themselves to the 1981 African Charter on Human and People's Rights and generally a wide range of international human Rights law instruments. In Article 2 of the convention, the state parties commit to promote and strengthen regional and National measures to prevent,

¹²¹ The African Union Constitutive Charter Preamble.

¹²² African Union Convention for the Protection and assistance of Internally Displaced Persons in Africa. Pp 2. In the preamble, the Convention specifically underscores the gravity of the issue of IDPs in Africa and attributes continuing instability and tension for African states. The states al

mitigate and prohibit root causes of internal displacement as well as provide for durable solutions. They also commit to establish a legal framework for preventing internal displacement and for assisting internally displaced persons in Africa. The convention also envisages solidarity, co-operation and promotion of durable solutions and cooperation between the state parties in order to combat displacement and address its consequences. Participation by Non State Actors is also envisaged in the convention.

The presence of a huge number of internally Displaced persons in Africa who continue to live in inhuman conditions with little or no intervention therefore flies in the face of this convention more so Article 8 of the Convention which provides for intervention subject to a decision by the National assembly as passed in accordance with Article 4 of the AU's constitutive Act. There are many examples in Africa where this non intervention is evident. From Rwanda, Kenya, Uganda, Republic of Sudan, Libya, Ivory Coast, Nigeria among any other countries. The story of suffering and non intervention is one that remains the same.¹²³

With half of the world's internally displaced persons, Africa is the continent most affected by crises of internal displacement. While the Commission on Refugees and Displaced Persons in 1999 had welcomed the Guiding Principles, there remains a need for the Guiding Principles to be better known throughout the organization and the continent.

¹²³ Wulf, H., 2009, 'The Role of Regional Organisations in Conflict Prevention and Resolution' in Still Under Construction: Regional Organisations' Capacities for Conflict Prevention, ed. H. Wulf, INEF Report, no. 97, Institute for Development and Peace, University of Duisburg-Essen, Duisburg, pp. 5-19

Like noted earlier by Mayanja ¹²⁴The Economic Community of West African States (ECOWAS) has called on its member states to disseminate and apply them. A ministerial declaration of the Intergovernmental Authority on Development (IGAD) has called the principles a useful tool in development of national policies on internal displacement.

Evidence for the acceptance of the Guiding Principles can be found at all levels of the international community. Several governments, in particular Angola, Burundi, Liberia, Uganda, Peru and Turkey, have made explicit references to the Guiding Principles in their strategies, policies or even laws on internal displacement.¹²⁵ Regional and Sub regional intergovernmental organizations have rallied behind the Guiding Principles including IGAD. The signing of the convention is therefore a serious progress from the guiding principles which formed the foundation for a policy and legal framework to protect IDPs.

In September 2005, the Heads of African States and Governments unanimously recognized the Guiding Principles on Internal Displacement as an important framework for the protection of internally displaced persons in the World. A further commitment has been made by the African Union to resolve and redress this deplorable situation given the increasingly significant challenges created by the phenomenon of internal displacement in Africa by taking a further step to develop an African Convention for the Protection and Assistance of Internally Displaced Persons.

¹²⁴ Both ECOWAS and IGAD have both embraced the guiding principles on internally displaced persons as useful in IDP governance. However, the fact that they are not binding renders them almost useless. Until they become binding, their usefulness might not be seen.

¹²⁵ Mayanja Macrine, *The Guiding Principles and the Challenges of Forced Displacement in Africa: The Response of the African Union* 1998.

In order to tackle the problem of internal displacement, the AU Executive Council adopted the resolution EX.CL. Dec 127 (V) of July 2004 in Addis Ababa, Ethiopia requesting the Commission to work with its Partners and Stakeholders, to ensure that internally displaced persons are provided with an appropriate legal framework which would guarantee their adequate protection and assistance¹²⁶. This was yet followed by another decision, EX/CL/Dec. 284 (IX) and EX/CL. Dec 289 in Banjul, the Gambia, in June 2006¹²⁷ calling on the Commission to expedite efforts at finalizing the Draft legal Framework on the Protection and Assistance of Internally Displaced Persons. UNHCR closely assisted the Commission in different ways towards the success of the adoption of the Convention which was adopted by Heads of State and Government at the AU Special Summit on Refugees, Returnees and Internally Displaced Persons in Africa in Kampala, Uganda in April 2009. The Convention became a historical document for Africa owing its mechanism for the protection and assistance of IDPs and the first of its kind to address the challenges faced by the Continent.

In addition, the Convention was the first instrument in the world introduced by a regional intergovernmental organization to officially codify the rights of IDPs in instruments. The Convention has attempted to have clear definitions of the concepts of IDPs with special emphasis on women, children and aged persons.

The objectives defined in the Convention are to: (a) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions. (b) Establish a legal framework for preventing internal displacement, where possible, and protecting and

¹²⁶ AU Executive Council adopted the resolution EX.CL. Dec 127 (V) of July 2004 in Addis Ababa, Ethiopia

¹²⁷ AU Executive Council adopted the resolution EX.CL. Dec 284 (IX) of June 2006 in Banjul, Gambia.

assisting internally displaced persons in Africa. (c) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences. (d) Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons. (e) Provide for the respective obligations, responsibilities and role of armed groups, non-state actors and other relevant actors, including non-governmental organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

The Convention defines the Rights and Obligations of the African Union which enables effective intervention during crises as stipulated in the AU Constitutive Act¹²⁸. Also, the Convention takes into consideration the issue of internal displacement resulting from other factors apart from conflicts and stresses the need for the issuance of identity cards to displaced persons in order to enable them to exercise their rights and obligations, and to have access to developmental projects as well as compensation for returnees according to the international standards. The draft Convention finally prepares the ground for the States Parties to monitor and follow-up all the different elements contained in the legal framework and to report measures taken for the implementation of this instrument.

The African Convention on the Protection and Assistance of Internally Displaced Persons¹²⁹ among other things identifies strategic priorities in the area of IDPs protection, partnerships and other key development issues. What is required of states now therefore is a speedy ratification and domestication of this convention by state parties.

¹²⁸ Africa Union Constitutive Act

¹²⁹ The African Convention on the Protection and Assistance of Internally Displaced Persons, 2009.

At the international level in September 2005, heads of states assembled in New York for the World Summit and unanimously adopted language according to which they recognized the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolved to take effective measures to increase the protection of internally displaced persons. However while recognition of the principles is a step in the right direction, governments need to move swiftly to the implementation stage of this guiding principles to minimize further suffering of IDPs. Again from the foregoing, a lot of effort to legislate and formulate policy is seen with AU and other INGOs with very minimal visibility of IGAD as a sub regional Organization.

3.8 Approaches to IDP Governance by AU in Kenya

Because there is no universal legal and policy framework to guide IDP governance and interventions in their cases, there hasn't been a uniform approach to the same. Consequently, there have been two commonly used approaches to this phenomenon, namely: the collaborative and the cluster approach.

The collaborative approach has been embraced by AU. AU continuously seeks the help of multiple UN agencies in intervening in the protection and assistance to IDPs. This approach shares the responsibility for protecting and assisting IDPs among the UN agencies, i.e. UNHCR, UNICEF, WFP, UNDP, and Office of the High Commissioner for Human Rights, the inter-governmental organization IOM, the ICRC and International NGOs. Coordination is the responsibility of the UN Emergency Relief Coordinator and the Humanitarian Coordinator in the country concerned all of which AU seeks their support. They are assisted by the Inter-Agency Displacement Division which was created

in 2004 and is housed in the UN Office for the Coordination of Humanitarian Affairs (OCHA).

The original collaborative approach has come under increasing criticism. Roberta Cohen (1998, 2006) argues that nearly every UN and independent evaluation has found the collaborative approach deficient when it comes to IDPs. To begin with, there is no real locus of responsibility in the field for assisting and protecting¹³⁰ there is also no predictability of action, as the different agencies are free to pick and choose the situations in which they wish to become involved on the basis of their respective mandates, resources, and interests. In every new emergency, no one knows for sure which agency or combination thereof will become involved¹³¹.

In 2005, there was an attempt to fix the problem by giving sectoral responsibilities to different humanitarian agencies, most notably with the UNHCR taking on the responsibility for protection and the management of camps and emergency shelters.

The other common approach in IDP governance is the cluster approach. This approach operates on two levels: the global and local. At the global level, the approach is meant to build up capacity in eleven key 'gap' areas by developing better surge capacity, ensuring consistent access to appropriately trained technical expertise and enhanced material stockpiles, and securing the increased engagement of all relevant humanitarian partners. At the field level, the cluster approach strengthens the coordination and response capacity by mobilizing clusters of humanitarian agencies (UN/Red Cross-Red Crescent/IOs/NGOs) to respond in particular sectors or areas of activity, each cluster

¹³⁰ Cohen, Roberta (Winter/Spring). "Strengthening Protection of IDPs: The UN's Role" , Georgetown Journal of International Affairs.. Retrieved on 2012-04-23. p. 106, 2006

¹³¹ Cohen, Roberta and Deng, M. Francis eds, *Masses in Flight -- The Global Crisis of Internal Displacement*. Washington D.C: Brookings Institution Press, 1998.

having a clearly designated and accountable lead, as agreed by the HC and the Country Team. Designated lead agencies at the global level both participate directly in operations, but also coordinate with and oversee other organizations within their specific spheres, reporting the results up through a designated chain of command to the ERC at the summit.

However, lead agencies are responsible as ‘providers of last resort’, which represents the commitment of cluster leads to do their utmost to ensure an adequate and appropriate response in their respective areas of responsibility. The AU convention on Protection and Assistance to IDPs contemplates a central coordination agency regionally and among member states to undertake the issue of intervention. AU approaches are therefore a hybrid of the two¹³².

The non-binding nature of these principles is a major weakness that many writers and even the UN itself have not addressed. Discourse on this matter thus needs to focus on moving towards giving the principles a binding force. This would put the IDP governance at par with refugee governance, which is regulated and conducted under convention and the subsequent national statutes of contracting states.

3.8.1 Sovereignty and State Responsibility in IDPs protection

At the core of the IDP problem lie fundamental and unresolved questions regarding the scope of humanitarian action and the limitations of sovereignty questions that are being actively debated by governments, international agencies, and non-governmental organizations (NGOs). Efforts to define more clearly the legal status of IDPs gained momentum in January 2000, when then US ambassador to the United

¹³² Interview with a senior employee o Kenya Red Cross , January 5th 2014

Nations ¹³³Richard Holbrooke argued that there was no meaningful difference between a refugee and someone who is internally displaced. He made an impassioned plea that policy makers should not let the bureaucratic euphemisms and acronyms allow us to ignore these people. While Holbrooke's call to action helped spotlight the plight of IDPs, it also fueled academic debate.

Some governments resist equating refugees with IDPs, citing the fundamental principle of national sovereignty around which the international system is organized. Nevertheless, Holbrooke's declarations may signal the approach of the end of the era in which states could hide human rights abuses behind the cloak of sovereignty. Deng while expanding upon Max Weber's critique of sovereignty as a facade introduced the idea that in order to be legitimate, a government must demonstrate responsible sovereignty

Therefore, sovereignty cannot be used as a justification for the mistreatment of populations ¹³⁴. Further, sovereignty, in order to be meaningful, must include accountability not only to the domestic constituency but also to the international community. Deng argues that this assumption is in fact inherent in sovereignty, for the concept implies an international system that imposes responsibilities on the state.

Moreover, since the domestic constituency may lack the political power to hold the Government accountable, ultimate responsibility falls upon the international community who have the responsibility to protect (Deng 2000).Deng however should have described the structure.

¹³³ Richard Holbroke, sovereignty as a cover' paper presented to the UNHCR in January 2000.

¹³⁴ Deng, Francis. Report presented to the UN Commission on Human Rights in 1998 as Representative of the UN Secretary General on Internally Displaced Persons. UN Document No. E/CN.4/1998/53/Add.2 (1998).

3.8.2 The African Convention on Protection and Assistance to Internally Displaced Persons in Africa (The Kampala Convention)

On December 6, 2012, the world's first regional treaty on internal displacement came into force. Adopted in Kampala, Uganda during an October 2009 Special Summit of Heads of State and Government on Refugees, Returnees and Internally Displaced Persons in Africa, the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa (the "Kampala Convention") has been signed by thirty-six African states and ratified by several others.¹³⁵

The Kampala Convention's entry into force continues Africa's remarkable history of legal leadership on forced migration. The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa dramatically expanded the protection afforded to those forced to flee African countries.¹³⁶ The Kampala Convention is an equally significant and sorely needed advancement, given that in 2011, more than 9.7 million people were internally displaced across twenty-one sub-Saharan African countries, representing one third of internally displaced persons ("IDPs") around the world.¹³⁷

¹³⁵ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa [Kampala Convention], Oct. 22, 2009 (entered into force Dec. 6, 2012), *available at* <http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>. The Convention has been ratified by Benin, Burkina Faso, Central African Republic, Chad, Gabon, Gambia, Guinea-Bissau, Lesotho, Nigeria, Niger, Sierra Leone, Swaziland, Togo, Uganda, and Zambia.

¹³⁶ Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45.

¹³⁷ Internal Displacement Monitoring Centre, Internal Displacement Global Overview 2011 (Apr. 2012), *available at* www.internal-displacement.org/publications/global-overview-2011

This Insight provides a brief introduction to the Kampala Convention, highlighting the particular contributions the Convention makes to advancing norms on arbitrary displacement and accountability for internal displacement.

3.8.3 Advancing Protection for IDPs under the Convention

The Kampala Convention builds on a number of soft law frameworks on IDPs, the most influential being the 1998 Guiding Principles on Internal Displacement.¹³⁸ Developed by the Representative of the United Nations Secretary-General on Internally Displaced Persons, the Guiding Principles draw on international human rights and humanitarian law, and refugee law by analogy.

They address the rights and needs of IDPs at every stage from the prevention to the resolution of displacement, and have been widely endorsed, including by the General Assembly,¹³⁹ the Security Council,¹⁴⁰ the Human Rights Council,¹⁴¹ and by Heads of State and Government at the 2005 World Summit.¹⁴²

The Guiding Principles have been integrated into the practice of major humanitarian organizations and laws and policies in at least 20 countries,¹⁴³ and are the

¹³⁸ UN E.S.C. Res. 1998/53, U.N. Doc. E/CN.4/1998/53/Add.2, Annex, *available at* <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e> [hereinafter Guiding Principles]; *see also* International Conference on the Great Lakes Region, Protocol to the Pact on Security, Stability and Development in the Great Lakes Region the on the Protection and Assistance to Internally Displaced Persons (Nov. 30, 2006).

¹³⁹ For example, at the 2005 World Summit, 192 Heads of State and Government unanimously recognized the Guiding Principles as an “important international framework for the protection of internally displaced persons.” (G.A. Res. 60/L.1, 132, U.N. Doc. A/RES/60/L.1 (Sept. 16, 2005)), and the General Assembly has not only welcomed “the fact that an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them as a standard” but also encouraged “all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement” (*see* G. A. Res. 62/153, 10, U.N. Doc. A/RES/62/153 (Mar. 6, 2008)).

¹⁴⁰ [*See* S.C. Res. 1286, U.N. Doc. S/RES/1286 (Jan. 19, 2000)].

¹⁴¹ *See* H.R.C. Res. 6/32, U.N. Doc. A/HRC/RES/6/32 (Dec. 14, 2007); H.R.C. Res. 14/6, U.N. Doc. A/HRC/RES/14/6 (June 23, 2010).

¹⁴² World Summit Outcome, G.A. Res. 60/1, 132, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

¹⁴³ Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, 42, U.N. Doc. A/67/289 (Aug. 10, 2012); *see also*, Brookings-LSE Project on Internal Displacement, IDP Laws and Policies Index.

centerpiece of the international “normative framework” on IDPs. Critically, the Guiding Principles stress that states bear primary responsibility for protecting and assisting IDPs within their jurisdiction.¹⁴⁴

The Kampala Convention similarly underlines states’ primary responsibility for IDPs. Indeed, many of the Convention’s substantive provisions are incorporated directly, or with minor amendment, from the Guiding Principles. The Kampala Convention’s definition of “internally displaced person,” for instance, mirrors the Guiding Principles, which identify 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 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.¹⁴⁵

After setting out this and other relevant definitions (Art. 1), the Convention’s objectives (Article 2) and general obligations (Article 3) are outlined. These form the backdrop for more detailed obligations on the prevention of displacement (Articles 4, 10); protection and assistance during displacement (Articles 5-9); displacement caused by development projects (Article 10); the resolution of displacement (Article 11); remedies for those affected by displacement (Article 12); documentation for IDPs (Article 13); and a number of procedural matters (Articles 14 to 23).

¹⁴⁴ Guiding Principles, *supra* note 60, Principle 3(1).

¹⁴⁵ *Ibid.* 58 (“Introduction: Scope and Purpose”); Kampala Convention, *supra* note 57, art. 1(k).

3.8.4 Normative Advances in the Kampala Convention

The Annotations to the Guiding Principles emphasize that they merely reflect pre-existing norms of international human rights and humanitarian law.¹⁴⁶ The Kampala Convention is likewise underpinned by these areas of law, and in particular by regional instruments such as the African Charter on Human and Peoples' Rights and the Great Lakes Protocol.¹⁴⁷ However, in a number of key areas, the Kampala Convention moves beyond these standards to significantly advance international norms on internal displacement.

3.8.5 Arbitrary Displacement and the Convention

One of the Convention's most notable contributions is the detailed elaboration of the right to be protected against arbitrary displacement. Article 4(4) outlines this right in detail; identifying acts deemed a violation of that right. The scope of coverage is extremely broad, including displacement due to discrimination, armed conflict, generalized violence and human rights violations, "harmful practices,"¹⁴⁸ unnecessary evacuations, or collective punishment.

The prohibition of arbitrary displacement is not, in and of itself, new to international law. The Fourth Geneva Convention prohibits "individual or mass forcible transfers" as a grave breach.¹⁴⁹ The Statute of the International Criminal Tribunal for

¹⁴⁶The Guiding Principles "restate in more detail those legal provisions that respond to the specific needs of internally displaced persons and spell them out in order to facilitate their application in situations of internal displacement." See Walter Kalin, *Annotations to the Guiding Principles*, 38 *Stud. in Transnat'l Legal Pol'y* 6 (2008) [hereinafter *Annotations*]; see also *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General Submitted Pursuant to United Nations Commission on Human Rights Resolution 1995/57, U.N. Doc. No. E/CN.4/1996/52/Add.2 (Dec. 5, 1995).

¹⁴⁷ Allehone Abebe, *The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope and Enforcement Challenges*, 29 *Refugee Surv. Q.* 28, 42-45 (2010).

¹⁴⁸ Kampala Convention, *supra* note 1, art. 4(4)(e). "Harmful practices" are defined as "all behavior, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education." See *id.* art. 1(i).

¹⁴⁹ Geneva Convention (IV) Relative to the Protection of Civilians in Time of War art. 49, Aug. 12, 1949, 75 U.N.T.S. 75. This also extends to non-international armed conflicts. *Id.* art. 85(4); see also Protocol

Yugoslavia prohibited “unlawful transfers,”¹⁵⁰ and the Rome Statute lists forcible transfers of population as an act that may qualify as a crime against humanity.¹⁵¹ However, in outlining the right to protection from arbitrary displacement, the Kampala Convention goes beyond these existing delineations and their reflection in the Guiding Principles.¹⁵² [For example, the provisions laid out in Article. 4(d) and (e) are significant innovations that capture displacement “caused by generalized violence or violations of human rights” and displacement “as a result of harmful practices.” These provisions, clearly influenced by human rights law, have no counterpart in other IDP frameworks to date.¹⁵³ Indeed, they fill a potential gap in international law generally.

In order to trigger the prohibition on arbitrary displacement, violations do not have to be “widespread” (as with crimes against humanity), nor do these acts need to take place in armed conflict (as in the case of international humanitarian law). These provisions represent a very broad approach to the prevention of forced migration, one intended to capture any arbitrary displacement, in all circumstances. Indeed, Article 4(h) provides the catchall in case any situations are left out. Any arbitrary displacement due to an “act, event, factor, or phenomenon of comparable gravity” not justified under international law is also prohibited.

Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 17, June 8, 1977, 1125 U.N.T.S. 609.

¹⁵⁰ Statute of the International Criminal Tribunal for the Former Yugoslavia art. 2(g), *available at* http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

¹⁵¹ Rome Statute of the International Criminal Court art. 7(1)(d), July 17, 1998, 2187 U.N.T.S. 90, *available at* <http://untreaty.un.org/cod/icc/statute/rome.htm>.

¹⁵² Guiding Principles, *supra* note 4, Principle 6.

¹⁵³ Harmful practices, in particular, is an important concept in African human rights law. *See, e.g.*, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, July 11, 2003, *available at* <http://www.africanunion.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>

To be sure, arbitrary displacement is not strictly a “crime” under the Kampala Convention. In general, the Convention frames arbitrary displacement as a harm against which all persons have a right to be protected. However, Article 4(6) does oblige states parties to “declare as offenses punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.”¹⁵⁴ Concomitant obligations in other provisions demand that states parties “ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law.”¹⁵⁵

3.8.6 Increasing Accountability for Internal Displacement

Beyond demanding increased responsibility for acts of arbitrary displacement and displacement due to conflict, the Kampala Convention strengthens accountability for internal displacement in several important ways.

The Convention stresses that primary responsibility for protecting and assisting IDPs rests with the state parties. However, in countries such as the Democratic Republic of Congo, Sudan, Nigeria, and Mali, non-state actors are directly involved in causing internal displacement. At the same time, a wide range of actors may join national authorities in responding to internal displacement, including host communities, non-governmental organizations, and United Nations agencies. The Convention therefore also addresses not only the obligations and accountability of states parties, but also of a range of other actors including the African Union, humanitarian agencies, and non-state armed groups. For example, in the case of armed groups, the Kampala Convention applies international humanitarian norms relating to the protection of civilians and humanitarian

¹⁵⁴ Kampala Convention, *supra* note 1, art. 4(6).

¹⁵⁵ *Ibid.* art. 3(1)(g).

personnel to the IDP context. Armed groups are to be prohibited from hampering, attacking, or impeding humanitarian personnel involved in assisting IDPs.¹⁵⁶ The Convention also addresses the accountability of multinational corporations and private military or security companies.

Article 3(1) (h) demands that states ensure the accountability of these groups for acts of arbitrary displacement or complicity in such acts, while Article 3(1) (i) requires that non-state actors be held accountable when “the exploration or exploitation of economic natural resources leads to displacement. These provisions clearly go beyond traditional, state-focused international human rights law, yet given the central role of such actors in many contemporary internal displacement crises, this bold approach increases the Convention’s relevance.

The Kampala Convention’s expansive approach to remedies for displacement may also strengthen efforts to ensure accountability for internal displacement. Discussions of remedies for IDPs have typically focused on the loss of housing, land, and property (“HLP”) as the central harm associated with displacement, and have promoted property restitution as the preferred form of redress for refugees and IDPs.¹⁵⁷ In contrast, the Kampala Convention takes a much broader approach. Article 12 requires that states “provide persons affected by displacement with effective remedies,¹⁵⁸ including “just and fair compensation and other forms of reparations, where appropriate in accordance with international standards.¹⁵⁹

¹⁵⁶ Ibid. art. 5(1).

¹⁵⁷ See Kampala Convention, *supra* note 1, art. 5(7), (10).

¹⁵⁸ See Guiding Principles, *supra* note 60, Principle 29; and generally United Nations, Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) (known widely as the “Pinheiro Principles”), available at <http://2001-2009.state.gov/documents/organization/99774.pdf>.

¹⁵⁹ Kampala Convention, *supra* note 57, art. 12(1).

The damages for which IDPs may seek redress may therefore include not only HLP losses, but also physical, mental, and other types of harms. In addition, the Convention deepens the pool of potential claimants; as they are affected by displacement, members of host and return communities could also seek remedies under Articles 12(1). The Convention also indicates in Article 12(3) that a “State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters¹⁶⁰.” However, whether and to what extent these remedies are accessible in practice remains to be seen.

3.8.7 Beyond the Convention

Despite the important achievement that the Kampala Convention represents, a number of challenges remain. The effective implementation of the Kampala Convention is undoubtedly the greatest challenge faced by the states parties and their international backers. The increased protection provided to IDPs under the Kampala Convention hinges on national enforcement, which requires well-tailored implementing legislation and strong support for the institutions charged with enacting these commitments. Continued efforts are also required to encourage more African governments, particularly those grappling with internal displacement situations, to sign and ratify the Convention, ensuring that this landmark legal achievement is translated into landmark gains for IDPs in practice.

¹⁶⁰ Id. art. 12(2).

3.9 AU and the Kenya's Post-Electoral Crisis

Post-election rioting in Kenya began in December 2007 through to January 2008¹⁶¹. It led to bloodshed and United Nations Secretary-General (UNSG) Ban Ki-moon displacement on a massive scale. Beyond the despair and anger over poverty, corruption, and the need for political change in the face of a fraudulent election, the riots also revealed the underlying tensions between ethnic groups that had been fueled by the presidential campaign. According to Mwiandi, these tensions culminated in a clash between supporters of Raila Odinga, Kenya's main opposition leader, and those of Mwai Kibaki, the incumbent president then¹⁶².

According to Thakur, Kenya which was once viewed as a relative haven of stability in the Horn of Africa, faced ethnic violence, a growing humanitarian crisis, economic disruption, and unresolved questions about its future political direction. The violence resulted in more than 1,300 deaths, at the hands of security forces and in violent ethnic clashes, as well as approximately 600,000 internally displaced persons (IDPs)¹⁶³. United Nations Secretary-General (UNSG) Ban Ki-moon characterized the post-election ethnic clashes in Kenya as an issue concerning of the Responsibility to Protect (R2P), a relatively new principle that imposes the duty to halt mass violence. Mr. Ban took diplomatic steps to address the violence by encouraging mediation efforts by former UNSG Kofi Annan under the auspices of AU. The crisis in Kenya was the first time that

¹⁶¹Johannes Langer The Responsibility to Protect: Kenya's Post-Electoral Crisis, *Journal of International science* 2011.

¹⁶² Sheila Mwiandi, "Moving Beyond Relief: The Challenges of Settling Kenya's Internally Displaced," *USI Peace Briefing* (August 2008), <http://www.usip.org/publications/moving-beyondrelief-the-challenges-settling-kenyas-internally-displaced>.

¹⁶³ United Nations Secretary-General (UNSG) Ban Ki-moon

the doctrine of responsibility to protect was invoked by the international community and remains as the sole case since the adoption of R2P at the 2005 World Summit.

3.9.1 The Responsibility to Protect and the Debate on Humanitarian Intervention

With the end of the Cold War, there was optimism that the United Nations Security Council (UNSC) could finally fulfill its designated role as outlined in Article 39 of the United Nations (UN) Charter to maintain or restore international peace and security. Thakur says that despite efforts to establish consensus on how to tackle humanitarian crises, humanitarian interventions caused divisive debates in academia, policymaking circles, and the general public¹⁶⁴. In the 1990s, the international institutions, Wheeler observes particularly the UN, were under a lot of pressure to extend their influence to tackle the humanitarian crises¹⁶⁵.

As a result, UN peacekeeping operations were dramatically increased, international criminal tribunals were set up, and the International Criminal Court (ICC) was established. Indeed, the expansion of UN activities after the Cold War was enormous and helped to improve preventive diplomacy as a tool to stop violent conflicts in the first place.

In fact, the end of colonialism, the rise of democratization, and the end of the Cold War led to an improvement of the global security climate¹⁶⁶. Nonmilitary actions such as economic or diplomatic sanctions have a greater advantage than forcible military

¹⁶⁴ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

¹⁶⁵ Andrew Mack, "Successes and Challenges in Conflict Management," in *Leashing the Dogs of War*, ed. Chester A. Crocker, Fen Osler Hampson, and Pamela Aall (Washington, DC: USIP Press), 521–533.

¹⁶⁶ Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* 81, no. 6 (2002): 100.

interventions, as these would do more harm than good¹⁶⁷. Despite the institutional developments in the 1990s, tragic atrocities around the world contradicted the naïve belief that international action would stop armed violence. Because of the notable failures in Somalia, Rwanda, and Bosnia, UN action in the 1990s was perceived “as too little too late, misconceived, poorly resourced, poorly executed, or all of the above.”¹⁶⁸

In case diplomatic efforts failed and violence was imminent, the moral and political need to act and protect the threatened population arose among the international community¹⁶⁹. For example, Bernard Kouchner, the cofounder of Médecins sans Frontières (MSF), argued that the right to intervene to protect endangered individuals in extreme circumstances and coercive policies is indispensable¹⁷⁰. However, the *right* to intervene was met with a lot of suspicion by countries in the global South; as scholars similarly argued that in fact a *mission civilisatrice* is carried out by powerful states and an intervention, by definition, is arbitrary and to many may even seem like neo-imperialistic efforts to control former colonies¹⁷¹.

In a typical humanitarian intervention scenario, an asymmetric power structure by the potential intervener is easily formed. Those who are to be protected probably have never asked for help or protection but will be dependent on the intervening power.¹⁷²

¹⁶⁷ Roberto Belloni, “The Tragedy of Darfur and the Limits of the ‘Responsibility to Protect’,” *Ethnopolitics* 5, no. 4 (2006): 328–329.

¹⁶⁸ Independent International Commission on Kosovo (IICK), *Kosovo Report* (Oxford: Oxford University Press, 2000).

¹⁶⁹ Edward Newman, *Humanitarian Intervention: Confronting the Contradictions* (New York: Columbia University Press, 2009), 190–191.

¹⁷⁰ Jeremy Sarkin, “The Role of the United Nations, the African Union and Africa’s Sub-Regional Organizations in Dealing with Africa’s Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect,” *Journal of African Law* 53, no. 1 (2009): 1–2.

¹⁷¹ Paul D. Williams, “From Non-Intervention to Non-Indifference: The Origins and Development of the African Union’s Security Culture,” *African Affairs* 106, no. 423 (2007).

¹⁷² Sarkin 2009, 18–19.

Thus, almost every aspect of humanitarian intervention is contested,¹⁷³ and the purity of the intervener's motives can be easily doubted and denounced as following their own hidden agendas behind the pretense of humanitarianism.¹⁷⁴

James Pattison argues that UNSC authorization is a necessary condition to make an intervention legal because absent a UNSC authorization, a humanitarian intervention will be deemed illegal, as it is not carried out on the basis of self-defense.¹⁷⁵ In turn, this behavior of the UNSC is dependent upon "ambiguous resolutions and conflicting interpretations"¹⁷⁶ of contested definitions, such as a threat to international peace and security. The AU found itself in a similar dilemma in the Kenyan case.

In the wake of the 1999 Kosovo crisis, humanitarian intervention became reconceptualized. The debate on humanitarian intervention that shaped the discussions in the 1990s shifted to a quest for reconciling an occasional need for armed intervention to protect vulnerable populations including IDPs but having in mind the principles of state sovereignty. The Independent International Commission on Kosovo (IICK) declared the NATO bombings illegal but legitimate.¹⁷⁷ The IICK argued that it was necessary to establish a set of criteria defining the threshold for the use of force in the absence of UNSC authorization so that in case the UNSC is deadlocked in resolving extreme humanitarian emergencies, an intervention will still be legitimate.

¹⁷³ Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," *Ethics and International Affairs* 20, no. 2 (2006a): 157–158.

¹⁷⁴ Kofi Annan, "In Larger Freedom: Toward Development, Security and Human Rights for All," *United Nations A/59/2005* (2005): 35.

¹⁷⁵ Ekkehard Strauss, *The Emperor's New Clothes? The United Nations and the Implementation of the Responsibility to Protect* (Baden-Baden: Nomos, 2009).

¹⁷⁶ Ekkehard Strauss, "A Bird in the Hand Is Worth Two in the Bush: On the Assumed Legal Nature of the Responsibility to Protect," *Global Responsibility to Protect* 1, no. 2 (2009): 293.

¹⁷⁷ *Ibid* Bellamy 2009, 5–8.

The 1999 NATO intervention reopened the debate on humanitarian intervention, and fueled the century-long debate on sovereignty, justice, human rights, and dignity. In a widely cited article in *The Economist* UNSG Annan claimed that. State sovereignty, in its most basic sense, is being redefined not least by the forces of globalization and international cooperation. The UN Charter today, brings more consciousness that its aim is to protect individual human beings.

The emergence of R2P can be traced to 2000. In this year, there was much hope as the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) was set up to finally resolve the dilemma between humanitarian intervention and state sovereignty. For a long time, the former was seen as an unjust interference into internal affairs of the global South, while the latter has been attacked by humanitarians as being used as a safe haven to commit atrocities against innocent civilians.

When the ICISS published its report on the Responsibility to Protect in December 2001, three pillars were developed: prevent, react, and rebuild¹⁷⁸. These three pillars of R2P have to be considered as an aggregate set of strategies forming a toolkit to tackle gross humanitarian emergencies, particularly genocide, war crimes, ethnic cleansing, and crimes against humanity.

According to Gareth Evans, co-chair of the ICISS, R2P has made four main contributions to the humanitarian intervention debate: (1) turning the focus of the debate from humanitarian intervention to a responsibility to protect people trapped in conflict situations; (2) developing a new understanding of sovereignty where the state does not

¹⁷⁸ Stahn 2007, 120. (cited above)

control but primarily protects its citizens; (3) setting up clear criteria of what the R2P, in practice, should mean, clarifying that it consists of much more than just military intervention; and (4) mandating that if coercive action is seen as necessary, it must be legal *and* legitimate.¹⁷⁹

Indeed, there was hope that the dichotomy between sovereignty and humanitarian intervention would be overcome by acknowledging human security and the non-exclusivity of state sovereignty¹⁸⁰.

It was important for R2P advocates to get their idea across to the global South, particularly to Africa, which had been shaken by the most conflicts.¹⁸¹ In 2003, the Constitutive Act of the newly set-up African Union (AU) drastically altered Africa's efforts concerning conflict management.¹⁸² Although the principle of non-intervention was reaffirmed in the Constitutive Act's Article 4(g), Article 4(h) provided the AU the right to intervene in a member state, in case grave circumstances like genocide or crimes against humanity should force the AU to do so.¹⁸³ Clearly, Article 4 is contradictory in its subclauses and has caused a lot of debate; viewed in a positive light, unilateral action is rejected while collective action of the AU is favored.¹⁸⁴

¹⁷⁹ Bellamy 2009, 6. (cited above)

¹⁸⁰ "Kenya," *Central Intelligence Agency (CIA) World Fact Book*, March 22, 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>.

¹⁸¹ *Ibid.*

¹⁸² "Report of CIPEV," *Commission of Inquiry into Post-Election Violence (CIPEV)*, October 15, 2008, pp. 31–32, <http://www.dialoguekenya.org/docs/PEVReport1.pdf>.

¹⁸³ Human Rights Watch (HRW), *Divide and Rule: State Sponsored Ethnic Violence in Kenya* (New York: Human Rights Watch, 1993), 71.

¹⁸⁴ Human Rights Watch (HRW), *Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya* (New York: Human Rights Watch, 2002), 21.

Thus, the idea of R2P has been supported by African states like South Africa, and the AU affirmed the acceptance of R2P several times; yet some African states like Zimbabwe, Libya, and Sudan remain cautious to this day about the R2P principle itself. In March 2005, UNSG Annan published his report, *In Larger Freedom*, in which he wrote, “While I am well aware of the sensitivities involved in this issue I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it.”¹⁸⁵ This dilemma was faced by AU in the Kenyan case making intervention difficult.

In September 2005, Mr. Annan opened the largest gathering of world leaders in history at the UN headquarters in New York. In the so-called “World Summit,” one of Mr. Annan’s main concerns was coming to an agreement about R2P because “at the end of his tenure, he wanted to witness the transition from principle to operational action.”¹⁸⁶ By the end of the summit, the Outcome Document, which explicitly endorsed R2P in paragraphs 138 and 139, was adopted with the consent of all heads of states. However, the principle of R2P was significantly watered down from the original ICISS proposal and was divided into two parts. First, the obligation of the state to protect those living within its own borders was stressed.

Proponents of R2P strongly underlined this point because the state itself holds primary responsibility for dealing with potential problems. The second part of R2P addressed the case in which a third-party state fails to protect its own citizens from the threat of mass atrocities within its borders or represents the cause of the threat itself.¹⁸⁷

¹⁸⁵ Dorina A. Bekoe and Jacqueline H. Wilson, “On the Issues: Kenya,” *United States Institute of Peace*, February 2008, <http://www.usip.org/publications/issues-kenya>.

¹⁸⁶ “From Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance,” *Human Rights Watch (HRW) 20(1A)* (March 2008): 13-17.

¹⁸⁷ John Githongo, “Fear and Loathing in Nairobi,” *Foreign Affairs* 89, no. 4 (2010).

The overall effect of the Outcome Document on R2P was therefore a “mixture of political and legal considerations, which reflects the continuing division and confusion about the meaning of the concept.”¹⁸⁸ The non explicit intervention by AU in the case of Kenyan IDPs could partly be attributed to this.

3.9.2 AU Interventions and the Responsibility during the 2007 Post-Election Crisis in Kenya

To understand the Kenyan 2007 election conflict, ethnic demographics are very important for the question of political power in Kenya. Kenya has 42 ethnic groups, none of which is a majority.¹⁸⁹ The Kikuyu comprise a 22 percent plurality. The Luo make up 13 percent of the population. Daniel Arap Moi, Kenya’s president from 1978 to 2002, was from the Kalenjin group (11 percent of the population), who were considered his supporters.¹⁹⁰ Political violence in Kenya has an ethnic dimension, much of which can be attributed to the fact that in rural areas, the population is relatively homogenous, which fuels thinking in ethno-geographic terms.

Thus, Kenyan politics is largely influenced by ethnicity. The ethnic connection and not the political program largely determines the vote in Kenya, as it is reflected in the 2007 power struggle of the Party of National Unity (PNU) and the Orange Democratic Movement (ODM)¹⁹¹ Before and after the first multiparty elections in 1992, the Kalenjin clashed with the Kikuyu, killing about 1,500 people and displacing 300,000.¹⁹²

¹⁸⁸ CIPEV 2008, 22–23.

¹⁸⁹ HRW 2002; HRW 2008.

¹⁹⁰ Adam Ashforth, “Ethnic Violence and the Prospects for Democracy in the Aftermath of the 2007 Kenyan Elections,” *Public Culture* 21, no. 1 (2009): 14.

¹⁹¹ Jacqueline M. Klopp, Patrick Githinji, and Keffa Karuoya, “Internal Displacement and Local Peace building in Kenya: Challenges and Innovations,” *United States Institute of Peace Special Report #251* (September 2010): 5.

¹⁹² Githongo 2010. (Cited above)

Also at the 1997 polls, ethnic violence in the Rift Valley and Coast Province took the lives of some 4,000 people and displaced 400,000¹⁹³. In both cases, politicians were implicated in the violence. It was only after President Moi decided not to run for another term that a fair multiparty election seemed feasible and real political change in Kenya became possible. Mr. Moi decided that Uhuru Kenyatta, the son of Kenya's first president, should run as his successor in the 2002 elections. Shortly before the elections, the two largest opposition parties formed the National Alliance Rainbow Coalition, led by Mwai Kibaki, a Kikuyu, and Raila Odinga, a Luo. Both realized that only in unity could they defeat the ruling Kenya Africa National Union (KANU). Together, they could rally enough supporters behind them. Kenyans in general were also losing patience with the single ruling party and were against a "hereditary" government.¹⁹⁴

The opposition swept to power and defeated KANU with a wave of grassroots support. However, Mr. Kibaki did not live up to the expectations of the electorate, as corruption persisted and the alliance fell apart after the long-promised constitutional revisions of 2005 failed to produce real power-sharing. This failure to deliver and live up to the promises brought strong resentment among Odinga supporters¹⁹⁵.

To Mr. Kibaki's credit, his administration had successfully delivered improvements in education, healthcare, access to water, and basic infrastructure in certain areas of the country. But a legacy of broken promises on the governance front, the failure to deliberately and transparently craft an inclusive administration, the rampant corruption

¹⁹³ Face to interview with a former member of Parliament in Kenya, 2013 December

¹⁹⁴ Jeffrey Gettleman, "Disputed Vote Plunges Kenya into Bloodshed," *New York Times*, December 31, 2007, <http://www.nytimes.com/2007/12/31/world/africa/31kenya.html>.

¹⁹⁵ Ibid.

of the state apparatus, and the ethnic insults hurled by leaders all contributed to creating a situation where recognition became more important than development in Kenya.¹⁹⁶

Moreover, Kenya has faced not only some of the starkest economic inequalities on earth, but also a growing politicization and proliferation of violence related to elections, the perception of historical marginalization of certain ethnic groups, and a disproportionately unemployed young population.¹⁹⁷ Additionally, targeted political violence during or after elections never had consequences for the perpetrators.

Accordingly, the common sense of justice became undermined and a culture of impunity grew among the Kenyan public.¹⁹⁸ All these factors certainly fueled the post-election riots in 2007. The Rift Valley Province, one of Kenya's seven administrative provinces at the time, in particular experienced much of the violence after the 2007 election cycle. This area has a long history of election-related violence, and the scars of that past violence had not completely healed.¹⁹⁹ In a pattern that is not only unique to Kenya, most efforts by NGOs, media, and international agencies focused on monitoring the election and campaign fraud, keeping an eye on voter registration for example. Meanwhile, less attention was given to the informal organization of violence before the elections that helped produce the infrastructure for mass violence when it became clear that the elections had been rigged.²⁰⁰

¹⁹⁶ Ibid Ashforth 2009, 11–12.

¹⁹⁷ Ibid Klopp, Githinji, and Karuoya 2010, 6.

¹⁹⁸ Ibid Ashforth 2009, 10.

¹⁹⁹ Jeremy Horowitz, "Power-sharing in Kenya," *Presentation at the Workshop on Political Inclusion in Africa, American University* (April 24–25, 2009): 5.

²⁰⁰ Elisabeth Lindenmayer and Josie Lianna Kaye, *A Choice for Peace? The Story of 41 Days of Mediation in Kenya* (New York: International Peace Institute, 2009).

The perceived arrogance of the political, bureaucratic, and commercial elite surrounding Mr. Kibaki had engendered an overwhelming nationwide sense of alienation, which amounted to a sense of exclusion and loss of dignity among the majority of Kenyans, who were not Kikuyu or from associated communities.²⁰¹ In the run-ups to the 2005 referendum and the 2007 election, some politicians from the administration perpetuated this perception by insulting minorities.²⁰²

During the election campaign, language comparable to that heard before the Rwandan genocide was used, describing outsiders as *madodoa*, a Swahili expression for “spots” that have to be removed or cleansed.²⁰³ Despite the fact that the time before and during the elections had been relatively peaceful, longstanding grievances were waiting to explode. In sum, the country was vulnerable to ethnic clashes because Mr. Kibaki was not able to live up his promises for all Kenyans, but rather delivered for his own ethnicity²⁰⁴.

Presidential elections in Kenya were held on December 27, 2007. Despite allegations of rigged results, the Kenyan electoral commission declared the incumbent Mr. Kibaki as the winner and the president was hastily sworn in on December 30, 2007.²⁰⁵ The last opinion polls before the elections saw Mr. Odinga ahead of Mr. Kibaki. Although Mr. Odinga was ahead of Mr. Kibaki as the results flowed in, when the national total was presented, Mr. Kibaki was suddenly in front. Mr. Odinga demanded a recount of the votes, but instead the electoral commission declared Mr. Kibaki’s victory. The

²⁰¹Ibid HRW 2008, 67.

²⁰²Ibid Horowitz 2009.

²⁰³Ibid Githongo 2010.

²⁰⁴Face to face interview with an aide to Kenya’s former Prime Minister and a coalition partner in Kenya’s post election coalition, January 2014

²⁰⁵Ibid ICISS 2001, 19–27.

chief EU observer of the elections announced, “the presidential elections were flawed.”²⁰⁶ Almost immediately, violence started to emerge from angry demonstrations aimed at the Kibaki government and its PNU supporters for stealing the election. The government responded by using excessive and calculated force, sometimes using police to intimidate the opposition, especially in the ODM strongholds in Kisumu and in parts of the Nairobi slums.²⁰⁷

As the violence escalated, some ODM politicians organized and used demonstrations to bargain for power. In some areas they also encouraged and organized violent displacement of PNU voters from opposition zones, such as Mount Elgon and Kuresoi.

It is crucial to note that in contrast to former cycles of violence, the emerging dynamics were much more like a civil war than the state-sponsored violence of the past.²⁰⁸ The violence resulted in more than 1,300 deaths and 300,000–600,000 IDPs both at the hands of security forces and through violent ethnic clashes. The violence came as a shock to many Kenyans and the international community, as Kenya was always known as a rather stable exception in a shaken region.²⁰⁹ In reality, however, such an assessment was ill judged. Calm was often seen as peace, and inactivity was regarded as stability—but many old underlying issues were fueling the conflict. Although elections in the 1990s resulted in violence, the 2007 crisis is commonly seen as Kenya’s worst post-independence political violence. International actors responded swiftly to the Kenyan

²⁰⁶ Ibid Hamburg 2010, 153.

²⁰⁷ “Secretary-General’s Press Conference in Nairobi,” *United Nations*, February 1, 2008, unofficial transcript, <http://www.un.org/apps/sg/offthecuff.asp?nid=1127>.

²⁰⁸ Ramesh Thakur, “Law, Legitimacy and United Nations,” *Melbourne Journal of International Law* 11, no. 1 (2010).

²⁰⁹ Lloyd Axworthy and Allan Rock, “R2P: A New and Unfinished Agenda,” *Global Responsibility to Protect* 1, no. 1 (2009): 55.

crisis, as it appeared to rise to the level of crimes against humanity, a level of violence that R2P is designed to prevent. Concerned by the prospect of heightened fragmentation, the AU launched mediation efforts to stem the tide of violence.

The response was also supported by the UN, Kenya's neighbours, key donors, and civil society. Nonetheless, respected personalities like Bishop Desmond Tutu or Ghanaian President John Kufuor, who was also the outgoing head of the AU, reached little progress on the ground and were not able to bring the two main political parties to the table.²¹⁰

It needed the negotiation team known as AU's Panel of Eminent Africans, led by former UNSG Annan, to arrive in Kenya on January 23, 2008, and come to a breakthrough. Finally, after almost 40 days of exhausting negotiations between Mr. Kibaki and Mr. Odinga, a deal was brokered in late February 2008.²¹¹ Thanks to the external diplomatic support, no more coercive measures were necessary and the alarming situation was defused by the conflicting parties themselves. In fact, the situation was perceived as so successful that Human Rights Watch referred to the diplomatic response "as a model of diplomatic action under the 'Responsibility to Protect' principles."²¹²

At the end of February 2008, a negotiated settlement was reached through the National Accord and Reconciliation Act (National Accord) consisting of four agenda items to address the roots of the post-election violence: (1) the implementation of constitutional reforms; (2) the establishment of a truth and reconciliation commission; (3) the establishment of an independent review committee to improve the election process;

²¹⁰ Roger Cohen, "African Genocide Averted," *New York Times*, March 3, 2008, <http://www.nytimes.com/2008/03/03/opinion/03cohen.html>.

²¹¹ Ibid.

²¹² Francis Fukuyama, *Nation-Building: Beyond Iraq and Afghanistan* (Baltimore, MD: Johns Hopkins University Press, 2006).

and (4) a commission of inquiry on the post-election violence meant to identify and prosecute perpetrators. The successful implementation of these agreements and resolution of the underlying tensions was key to breaking the cycle of violence.²¹³

On March 19, 2008, the Kenyan parliament voted to amend the constitution to provide for a prime minister and two deputy prime ministers and, subsequently, put the National Accord into law. By appointing Mr. Odinga as the prime minister, Mr. Kibaki provided his opponent with a long sought position in the government that had been promised after the 2002 elections. Thus, the National Accord deals with the key opposition grievance that the president has too much power.

Less overtly, the National Accord's coalition government somewhat neutralizes the charges that non-Kikuyu have been marginalized from power under the Kibaki regime. The international community praised the achievements, but John Githongo, a respected Kenyan anti-corruption activist, reiterates, "these coalitions are the result of democratic failures, not successes."²¹⁴

With the establishment of a coalition government on April 14, 2008, there was a need to transition from humanitarian relief to more permanent solutions for the IDPs. Their return from camps to their previous homes had significant political and economic implications for the new government. With this background of how the crisis took place and was addressed, the study now looks at how the R2P concept was applied to the Kenyan post-election crisis.

²¹³ Ibid Hamburg 2010, 205–207.

²¹⁴ Ibid., 214.

3.9.3 Kenya as the Pioneer R2p Case

For a long time, the international community claimed to give priority to early action and the development of the diplomatic capacity for an effective response to a conflict-prone situation. The responsibility to prevent, the first R2P pillar, is based on the idea that states have a responsibility to ensure that domestic tensions are addressed before they escalate.²¹⁵ States also have to provide certain dimensions of good governance (like transparency and the rule of law), health, broad participation, and economic development.²¹⁶ Failure by states to take action when mass violence occurs results in a transfer of responsibility to the international community.

UNSG Ban characterized the post-election ethnic clashes in Kenya as an R2P situation and took diplomatic and political steps to address the violence in early 2008. Contrary to the polite diplomatic language used by UN officials, Mr. Ban was blunt during a visit in Nairobi in February 2008: “The people and leaders of Kenya, particularly political leaders, have the duty, and the responsibility, to wake up and reverse this tragic path before it escalates into the horrors of mass killings and devastation we have witnessed in recent history.

I have come to emphatically reiterate my fullest support to Kofi Annan.”²¹⁷ The international community was fortunate that Kenyan authorities accepted regional and international involvement; consequently the intervention in sovereign affairs was not challenged, an issue usually contested with R2P skeptics. Additionally, R2P’s application to the Kenyan crisis did not involve any kind of sanctions or military interventions, which

²¹⁵ Dean. G. Pruitt and Sung Hee Kim, *Social Conflict: Escalation, Stalemate, and Settlement*, 3rd ed. (New York: McGraw-Hill, 2004).

²¹⁶ Ibid Hamburg 2010, 102–104.

²¹⁷ Ibid Klopp, Githinji, and Karuoya 2010.

meant that the UNSG could avoid politicizing the debate by invoking R2P as a solution even without the authorization of the UNSC, which would have easily politicized the debate.

In Kenya, Mr. Annan proved the value of outside engagement when he succeeded in preventing an escalation of post-election violence, an outcome that he saw as a successful example of R2P in action.²¹⁸ The success achieved by Mr. Annan shows that a joint undertaking by the UN and other multilateral and regional organizations specifically AU can be successful.

Without the joint effort, the parties would not have felt the pressure to come to the table and hammer out an agreement. Invoking R2P was important to demonstrate to the Kenyan political elite that the international community cares about the crisis in Kenya and stop the cycle of violence. Instead of brutal clashes and forced displacement, R2P mattered because it provided a diplomatic solution. Mr. Annan himself said “when you have ethnic violence, if you don’t mediate quickly, you get a hopeless situation.”²¹⁹

It took Mr. Annan some 40 days to convince both sides that there was no way either side could run the country without the other and that without an agreement the country would be in a political gridlock. Finally, Mr. Annan concluded proudly” When we talk of intervention, people think of the military. But under R2P, force is a last resort. Political and diplomatic intervention is the first mechanism. And I think we’ve seen a successful example of its application in Kenya.”²²⁰

²¹⁸ Ibid Cohen 2010. (Cited above)

²¹⁹ Benn Eifert, Edward Miguel, and Daniel N. Posner, “Political Competition and Ethnic Identification in Africa,” *American Journal of Political Science* 54, no. 2 (2010).

²²⁰ Ibid Mehta 2008, 7.(Cited above)

However, intervention, whether by military means or not, is only successful when it also establishes some form of a nation-building process that will prevent the area from becoming a security threat yet again.²²¹ The UN tries to maintain peaceful relations among states, but also addresses conflicts within states. The UNSC has diplomatic and non-coercive tools available such as mobilizing broad support for diplomatic efforts, fact-finding missions to raise visibility, and direct negotiations to prevent violence. Thus, the UN has the most advantages for preventing mass atrocities since “it can help with early, quiet diplomacy aimed at building a nation’s own capacity for acquiring necessary skills and institutions.”²²²

In case these efforts are not sufficient, successful humanitarian interventions need (1) sufficient political and economic but also military power as a backup; (2) enough financial resources; and (3) the perception that it is a legitimate prevention effort.²²³ Most important for the international community is to be prepared to take a pro-active stance in helping nations or groups in trouble rather than waiting for disaster to strike.

Escalating conflicts can reach a point where both parties find the further use of confrontational tactics either unworkable or unwise.²²⁴ Preventive diplomacy has a range of measures available, among them good offices, facilitation, mediation, shuttle diplomacy, and multiparty engagement.²²⁵

²²¹ “ICC: Judges Approve Kenyan Investigation,” *Human Rights Watch (HRW)*, March 31, 2010, <http://www.hrw.org/en/news/2010/03/31/icc-judges-approve-kenyan-investigation>.

²²² Jeffrey Gettleman and Marlise Simons, “International Court Seeks Indictments in Kenya Vote Violence,” *New York Times*, December 15, 2010, http://www.nytimes.com/2010/12/15/world/africa/15kenya.html?_r=1&hp=&pagewanted=all.

²²³ Face to face interview with informant – December 2013

²²⁴ Face to face interview with informant conducted on 10th December 2013 using designed questionnaire

²²⁵ Face to face interview with informant conducted on 10th December 2013 using designed questionnaire

In the Kenyan crisis it was also the Kenyans themselves who had an influence in forcing the deal. Although outside pressure helped, leaders in business, media, law, and religion also worked hard for reconciliation.²²⁶ These combined efforts from the international community as well as from inside the country made the February 2008 pact possible and helped to discourage any kind of disintegration or further mass killing. Moreover, the inclusion of the opposition with the appointment of Mr. Odinga as Prime Minister, the drafting of a law to work against tribalism, the creation of panels to investigate the election and to draft a new constitution, and the implementation of a truth and justice commission to investigate historic and current political crimes, were an encouraging start²²⁷. Indeed, a new constitution passed in a public referendum by great majority in August 2010. It limits the power of the president and decentralizes the country, raising hope that inequalities will be better addressed in the future.²²⁸

The progress in Kenya's peacebuilding process can be measured by the scale of return and the success of (re)integration of the displaced. Yet, there are enormous gaps between current programs and policies and the actual peacebuilding interventions required. An example is the UN Peacebuilding Commission with a program in the Rift Valley, which has been criticized for being far too small to have an overall impact on the IDP situation in Kenya.²²⁹

Peacebuilding efforts in Kenya are rarely adequately analyzed and despite the recent recognition that displacement and peacebuilding must be dealt with in conjunction;

²²⁶ Face to face interview with informant conducted on 10th December 2013 using designed questionnaire

²²⁷ Face to face interview with informant conducted on 10th December 2013 using designed questionnaire

²²⁸ Face to face interview with informant conducted on 10th December 2013 using designed questionnaire

²²⁹ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

the two are often treated as conceptually and programmatically distinct.²³⁰ Only a fraction of IDPs can be considered returned or settled, and among those, many do not have adequate security and livelihoods, medicine and food, access to compensation and restitution, or improved relations with neighbors.²³¹ Some of the militia groups are informal and have political ties; challenges to demobilization exist, and these groups could be easily reactivated.

There was also evidence that these militia groups were gaining more autonomy and that arms were being stockpiled for the future elections.²³² Thus, the effort of the international community to help rebuild the country after its crisis, especially with regard to the IDPs, has been insufficient and violence might return with future elections.²³³

The government of Kenya's national policy on peacebuilding and conflict management only mentioned displacement in passing. While the United Nations Development Program (UNDP) has strengthened its peacebuilding efforts, they rely on exchanges and dialogue that often appeal to urban youth but often miss out on rural networks. Remote places like Kuresoi are not even reached, nor are all the key actors in communities affected by violence brought into the discussion.²³⁴ The drafted national policy on peacebuilding and conflict management notes that there is a need for a reform of the constitution, as well as of public service, police, and land policies; but such reforms often remain out of the discussions about peacebuilding. The current formulation process of a national internal displacement policy the Act and national land policy, which passed parliament in December 2009, provides openings for these dialogues at the local

²³⁰ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³¹ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³² Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³³ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³⁴ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

level. Particularly during election times, the situation in Kenya is easily prone to violence, as the political tensions are usually combined with an ethnic component.²³⁵ Countries like Kenya have to reengineer their constitution to undo the destabilizing concentrations of power and resources within narrowly based, elite-backed regimes.²³⁶ Kenya, for its part, successfully passed a referendum to implement a new constitution that amends the presidential system to include a prime minister. Moreover, the ICC seeks has indicted the persons thought to be mainly responsible for the post-election violence, an important step to end impunity.²³⁷ On December 15, 2010, the General Prosecutor of the ICC, Luis Moreno-Ocampo, named six Kenyan leaders as responsible for the violence and asked judges to charge them with crimes against humanity, including murder, rape, and torture. In fact, this is the first time that an ICC General Prosecutor stepped into a case on his own initiative, without a request from the home country or by the UNSC.²³⁸

Another dimension is the question of center and periphery of political power distribution, because often the capital is the all-dominating force. In an attempt to make the system fairer, the opposition has called for federalism; it is a demand reflecting the marginalization of regions of the country falling outside the incumbent ruling party's power base. Again, this is not just a Kenyan problem, but resonates across the continent. Yet, Kenya can serve as an example for other countries, like Guinea, Côte d'Ivoire, and Madagascar in 2010, in overcoming their political deadlock.

²³⁵ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³⁶ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³⁷ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

²³⁸ Telephone Interview with Policy Makers in the Government of Kenya, February 2014.

The R2P therefore toolkit implies not only the responsibility to prevent mass violence but also the responsibility to follow up on the intervention thus the responsibility to rebuild. The international community should make sure that a sustained follow-up takes place. Of course, it is the main responsibility of the local elites to guarantee coexistence and security otherwise nation-building ultimately will not work. However, achieving enduring peace as the ultimate goal also requires international support. As evident in the case of Kenya, it is indeed a challenging task. Long-term issues must be addressed, including the improvement of the political and economic conditions and the development of basic and effective legal institutions. Being effective is a question of political will, means, and capacity.

The international community has continuously and intensively debated about R2P, not least because many countries in the global South fear that it would threaten their sovereignty. The application of the R2P concept in the Kenyan post-election crisis was therefore particularly important because it has shown a way that military intervention is not involved. Although the ICISS and R2P advocates have argued for a long time that force would only be used as a last resort, R2P skeptics have maintained that an armed intervention is automatically implied by the R2P principle. Thus, Kenya helped as an example of a truly diplomatic intervention that settled the violence. This fact by itself is an important step for the acceptance of R2P by the international community at large. Furthermore, with the guidance of international actors, the two main Kenyan parties were pressured to work on a new constitution that represents the new realities of Kenya in the twenty-first century and avoids overconcentration of power in the hands of the president.

However, the application of R2P in the Kenyan case had severe weaknesses. First, the diplomatic efforts came too late; by the time they were implemented, hundreds of people were dead and hundreds of thousands were displaced. With an efficient early warning system, the international community would have been more aware of the ethnic clashes after the elections.

Additionally, influencing the presidential campaign that fueled ethnic hatred through hate speeches could have further helped in avoiding violence. Second, the international community did not insist on proper protection of IDPs, nor was it of great importance that was actually given the status of an IDP in Kenya. As a consequence, the rights of many displaced were not fulfilled and a lot of suffering occurred and further grievances arose.

Overall, the Kenyan crisis is not fully resolved, partially because of the situation of IDPs. There is the risk that despite all preventative measures a burst of violence may break out again with every election. Kenyan political leadership, the leadership of the AU and the international community are very much aware of the likelihood of the reoccurrence of violence. It depends on them to take on the responsibility to prevent it and avoid production of more IDPs.

3.10 Conclusion

Though AU registered positive impact generally in the Kenyan case with regard to stopping hostilities and negotiating an amicable power deal, IDP as group remained greatly affected as there were no specific measures geared towards their plight as a special group. The approaches applied by AU concentrated on power and political settlements by the protagonists. Recorded cases of intervention were mainly by

humanitarian agencies though AU is said to have requested them for such interventions. Noting that it was difficult to intervene without a framework, AU has passed the convention on IDP protection .The efficacy of this Convention however lies on future ratification and domestication of the same by AU member states followed by implementation. Unless this is done, IDP protection under AU may remain a pipe dream.

CHAPTER FOUR

Critical Evaluation of AU's Approaches to IDP Governance

4.1 Introduction

In this chapter, the research focuses on crucial practical data on IDPs, the impact of internal displacement on them and more importantly the peoples' take as to whether the African Union (AU) or its predecessor Organization of Africa Unity (OAU) as a regional organization has done anything with regard to the governance of internally displaced persons. As such, peoples' knowledge of Africa Union is interrogated and also what they see as its role with regard to IDP governance.

Further, people's knowledge of the AU convention on the protection and assistance of IDPs is also sought. As such, specific questions asked here include knowledge of AU, knowledge of its role, knowledge and opinion on the convention, whether or not AU is participatory and people driven among other pertinent issues. This has been done through direct structured interviews, telephone interviews and also by use of questionnaires. Displacement in Kenya during the 2007-2008 post election violence has been used as the point of reference to find out the nature and kind of intervention AU may have taken.

4.2 People's Opinions and Knowledge on the Existence of AU

According to an interview with, an Internally Displaced Person, displaced from Naivasha town in Rift Valley province of Kenya and currently residing in Nyanza province, specifically Kanyaluo location, Rachuonyo North District in Homa Bay County, Kenya, African Union only exists on paper and where it is effective, the same has been in protecting African leaders who themselves are behind some of the causes of conflicts which finally lead to internal displacement. In his view, it is therefore

impossible to expect a class of people who have caused displacement to come to the aid of those who have been displaced either as African Union heads of state through AU or as individual persons.²³⁹ Whether or not he is aware of the convention for the protection and assistance to IDPs, he says, this is news to many Internally Displaced Persons and they would wish to know more about it.²⁴⁰

An interview with an employee of the Refugee Consortium of Kenya who has been working on matters concerning refugees revealed that though the AU Charter and other subsequent instruments including the convention spells out good intentions by the regional body that is how far the same goes. She says, “Commitment by AU to IDP governance is not there. Africa is littered with displaced persons all over. From Sierra Leone, Liberia, Nigeria, Democratic Republic of Congo, Egypt, Mozambique, Rwanda, Uganda, Kenya and many other African countries, displacement of internal nature has remained a discourse which is never ending. African leaders and the African Union are yet to take any practical step to help in the plight of IDPs. Refugees are better off because of the United Nations Convention on Refugees and attendant structures like United Nations High Commission for Refugees which has international obligations on states to help in refugee governance. Because IDPs have not crossed international borders and remain within the jurisdiction of their countries, African leaders often cite sovereignty to escape international accountability.”²⁴¹

²³⁹ Interview with Obadiah Nege, an internally displaced person in Kisumu 31st June 2013.

²⁴⁰ Telephone interview with an internally displaced person from Kisumu on 31st June 2013.

²⁴¹ Interview with, Catherine Njoroge an employee of Refugee Consortium of Kenya, June 29th 2013 in Nairobi.

Many people who know about African Union, its mandate and the existence of the convention are the urban educated. The bulk of Internally Displaced Persons in Kenya and Africa don't know even about AU. Our governments have internal structures yes but they only focus on relief which is also not sufficient.²⁴² African Union is not helping at all. It is just but a club of leaders to protect one another.

Overall, Seventy eight percent of those interviewed and respondents to questionnaires were unaware of AU's existence with only twenty two per cent saying they knew about the regional organization. This low level of awareness about AU's existence shows that the regional organization is not being felt by the masses in member states who ideally should know the organization. This could be a pointer that governments of member states have not involved citizens on AU matters. The regional organization is therefore withdrawn from the people it is supposed to serve including IDP's whose protection is at the centre of AU's programmes. AU therefore needs to do more to make it be felt among the citizens of its member states.

²⁴² Interview with Linda Matama, a volunteer, Lutheran Relief Agencies, conducted on 5th June 2013 through telephone.

Figure 1: Percentages on citizens knowledge of AU

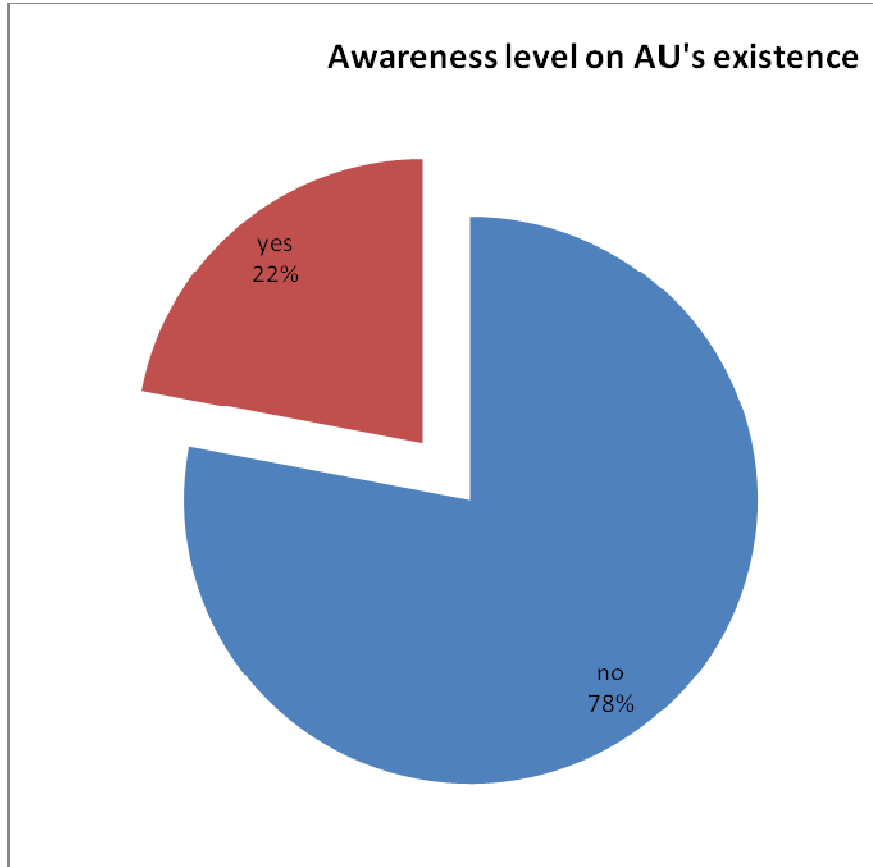


Figure one above shows the level of awareness of AU's existence among the citizens of AU member states which is not good for the organization.

It is worth noting that there are some organizations that are more visible than AU in Africa. In Egypt and Generally the Maghreb region for instance, recognition is given more to the Arab league than the African Union.²⁴³ The Arab League has done a lot with regard to relief work but nothing tangible on settling internally displaced persons and giving them fresh leave of life including a source of livelihood. It remains to be seen how the African Union and the state parties to the convention will move to implement the convention assuming they will domesticate it in the first place. Also without people

²⁴³ Interview with, a former Kenyan Ambassador to Egypt on 24th June 2013.

driven approach to the union's matters, very little success can be achieved. People don't approve of AU's agenda leave alone the membership of their countries to the Union. Above all, for AU to work not only in IDP governance but overall, Africa must democratize.²⁴⁴

AU remains largely unknown among the rural populace. It is known only by the urban elite. The rural poor only hear that their heads of state have traveled outside their countries to attend continental meetings. The objectives of AU remain unknown to them while the existence of the convention is not known even to the elites. AU has not done anything meaningful to its citizens.²⁴⁵

4.3 AU and Commitment to the AU Convention on the Protection and Assistance to IDPs

AU is known by Africans according to a commissioner with National Commission on Integration and Cohesion in Kenya (NCIC). The Problem is that it has not met its objectives and remains largely uncommitted to its charter and attendant obligations.²⁴⁶

The convention like many other AU legal instruments may just remain a beautiful piece of international instrument unless real commitment and faithfulness to its letter and spirit are met.²⁴⁷

The problem is not really about knowing AU as such it is largely about knowing what it should do and whether it has done the same. In my opinion AU is a club of Africa despots. It has served only to protect African leaders who are accused of offences, before

²⁴⁴ Interview with an IDP carried out on 1st July 2013.

²⁴⁵ Interview with Immaculate Mwaura, an IDP carried out on 1st July 2013.

²⁴⁶ Interview with, Samson Ojiayo, a former President, Bunge la Wananchi. Carried out on 1st July, 2013.

²⁴⁷ Oral Interview with Milly Lwanga, a former Commissioner with NCIC Kenya carried out on 3rd July, 2013.

international criminal court. They have convened severally to defend Omar AL Bashir, Sudanese President, Robert Mugabe of Zimbabwe and the other day Uhuru Kenyatta of Kenya. In all these gatherings nobody thinks about the IDPs. In fact in their quest for political power and desire to hold onto power, they cause conflicts and subsequently internal displacement. The convention is just paperwork on AU's shelves.²⁴⁸

The displacement in Rwanda was of untold magnitude. AU watched people being butchered, displaced and took little or no action. The convention is well intentioned. As to whether or not state parties will domesticate or implement it is a different matter.²⁴⁹

Knowledge on existence of AU, its objectives and the existence of the convention is very limited among the IDPs more than other group. An Internally Displaced Person currently living in Thika having been displaced from Nakuru said that they don't know that AU "thing." We only see Kenya Red Cross Society and sometimes chiefs who come to give us food and clothing.²⁵⁰

4.4 Knowledge of AU's Objectives

This research also sought to know whether or not people including IDPs know about the objectives of AU. As such, questionnaires and interviews were conducted amongst ordinary people, IDPs, administrators majorly in the provincial administration and also among NGOs and NGO workers.

The knowledge of AU's objectives was found be highest amongst NGOs and NGO workers and lowest amongst IDPs and ordinary people.

²⁴⁸ Interview with George Okumbe, a Kenyan Living in Rwanda conducted on the 5th July 2013 via telephone.

²⁴⁹ Interview with Robert Gerenge, an employee of the international committee of Red Cross in Rwanda conducted on 5th July 2013 via telephone

²⁵⁰ Interview with Mirriam Njoroge , an IDP on 4th July 2013 via telephone.

Figure 2. Knowledge of AU's objectives

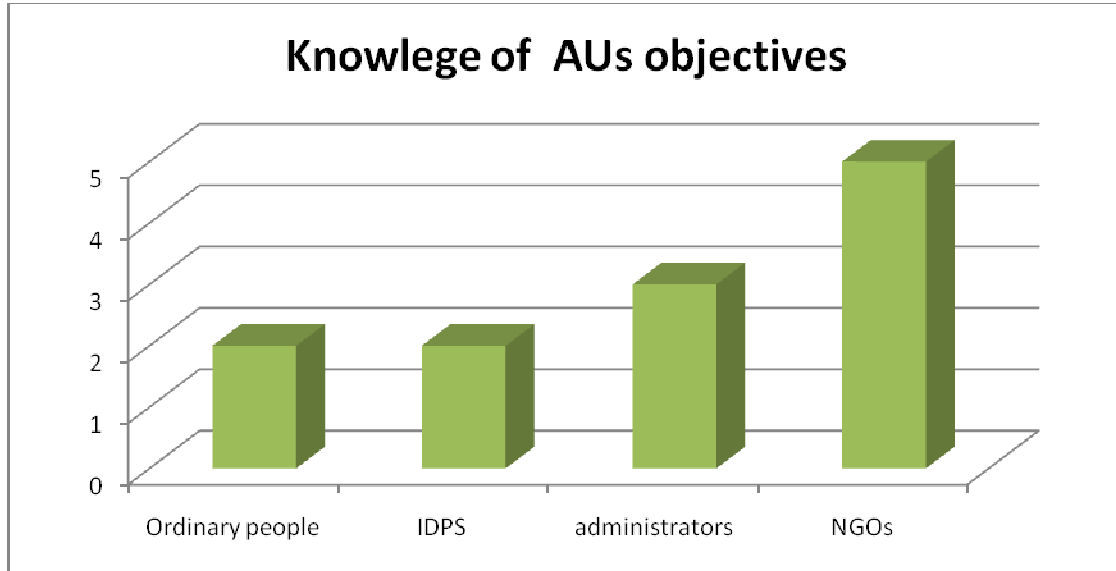


Figure two shows that IDP's Don't know much about AU's objectives thus would naturally not even expect it to intervene during cases of displacement. Administrators seem to know AU's objectives which shows the state centric nature of regional organizations. The high level knowledge of AU's objectives among NGO workers is largely due to their nature of work thus the need to form strategic partnership with AU in running programmes aimed anchoring IDP protection. This will strengthen the collaborative approach to IDP governance.

Miriam Njoroge also an IDP says that they only hear of AU when presidents travel out of the country to Adis Ababa. "Hiyo AU ni ya Marais si sisi," (That AU is for presidents not us).

It can thus be concluded that knowledge of AU, its objectives and the existence of the convention remains as varied as the respondents. Whichever way, the approval rates on the AU performance is also equally varied. The responses by ordinary people appear

to paint a very dismal performance of AU with regard to IDP governance besides other matters.

4.5 AU and Intervention

This research also sought to know what kind of interventions Kenyan IDPs received during the 2007/2008 post election violence and from which players. Most IDPs interviewed stated that shelter was the greatest intervention they received majorly in churches and tented camps provided by Kenya Red Cross. The respondents did not know or show awareness of any form of intervention by AU. They stated that they received a lot of humanitarian intervention from NGOs and other humanitarian organizations but not AU.

Figure 3. Forms of Intervention

Chart showing forms of intervention and levels of intervention.

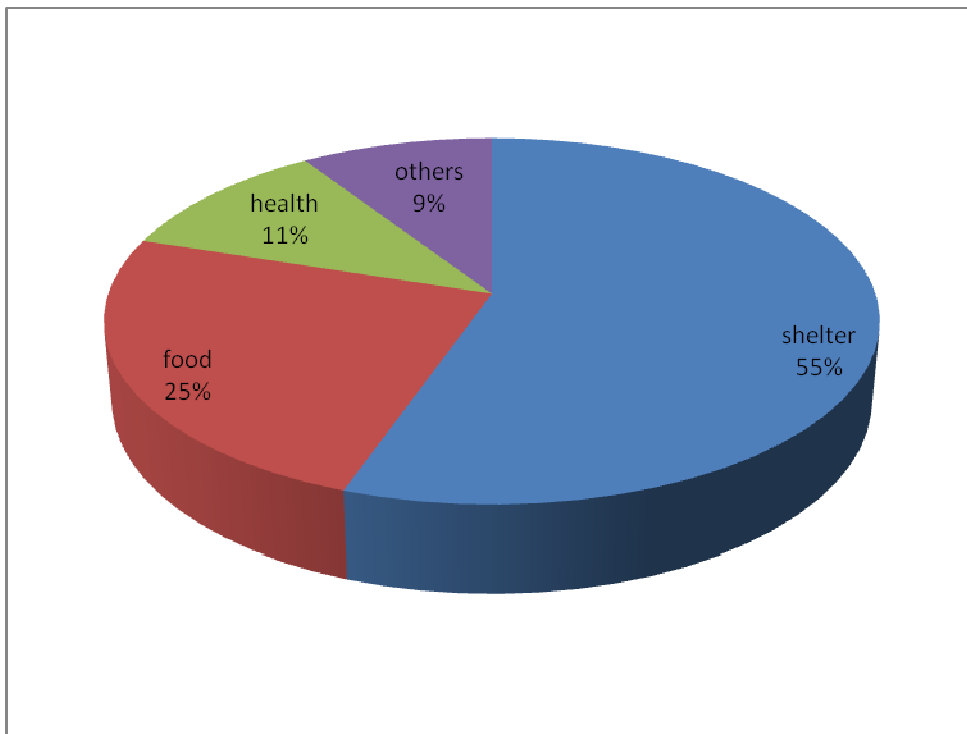


Figure 3 above shows the various areas in which IDP's received intervention from various quarters including NGO's. The largest form of intervention was in terms of shelter provision which stood at fifty five percent with food forming twenty five percent of the interventions. Several other areas requiring attention received minimum interventions. AU therefore ought to map out crucial areas that require intervention so that its approaches and partnerships with other state and non state actors can register the envisaged results.

The study also sought to establish whether AU was effective in its approaches and interventions in IDP governance. Interviews conducted on whether AU was effective in dealing with the IDP protection and assistance returned a negative verdict with ninety five percent of the respondents saying au was not effective with only five percent saying it was effective. Majority cited lack of intervention in the Kenyan case and many other African states as their reason.

Figure 4. Is AU committed to and effective in IDP governance?

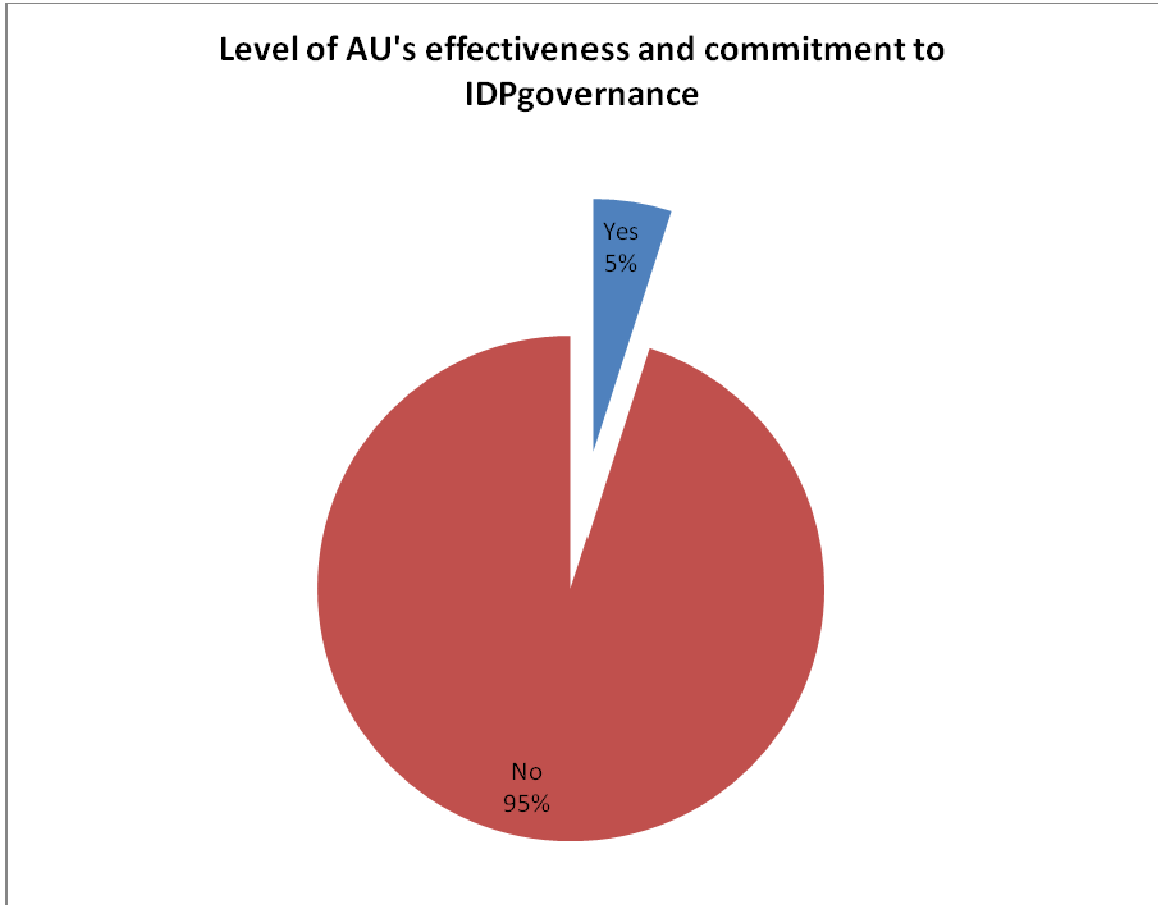
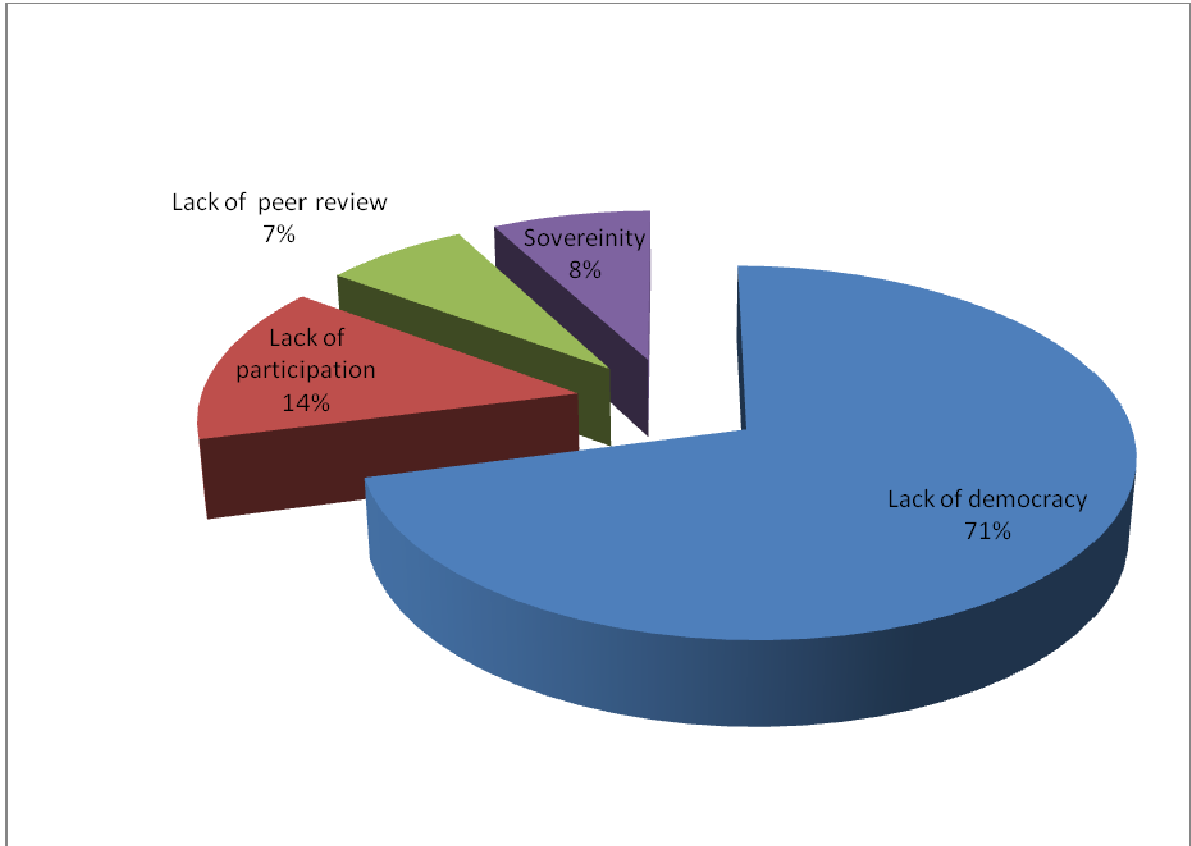


Figure four is actually a vote of no confidence on AU. The high percentage of respondents holding the opinion that AU is not effective shows that despite the good intention by AU and the policy and legal steps taken, AU not yet felt in the area of intervening in internal displacement. The AU thus needs to do a lot so that it can win the confidence of the populace that it means business in this area.

4.6 Reasons for AU's Ineffectiveness

This research also sought to know the reasons AU may not be effective in dealing with IDP governance and various responses were given ranging from lack of democratization to sovereignty of member nations. See figure four below.

Figure 5. Reasons for AU's ineffectiveness



Seventy one percent of the respondents felt that the AU was ineffective in the protection of IDPs and other forms of intervention because of lack of democracy among member states which often lead to bloody political competitions and unpopular policies which cause conflict thus displacement. Even after displacement, respondents felt that AU cannot effectively intervene because member states are led by despots who care the less about the plight of those they lead. AU has often cited Sovereignty for lack of intervention during internal displacement in member states. Only eight percent of the respondents felt this was a reason as most respondents thought this was a mere excuse to evade responsibility. Fourteen per cent of the respondents felt that lack of public participation was responsible for AU's dismal performance which significant considering

that citizen's knowledge of AU and its objectives is low. Some seven percent of the respondents thought that lack of peer review among au member states was responsible for AU's lack of commitment and effectiveness in this area. Though this percentage is low, peer review in thematic areas is likely to help African countries improve their governance and reduce conflict thereby reducing internal displacement.

Respondents felt that protection for internally displaced persons is different from that of refugees. Access may be problematic in internal conflicts and have to be secured. Safe havens may need to be created. Evacuations may be needed. Strong advocacy skills may be essential. Not many international organizations have this kind of experience or expertise. Only ICRC does, although increasingly UNHCR and other organizations have begun to focus more attention on providing protection to internally displaced populations through increased field presence, reporting of protection problems and joint advocacy. Intervention by humanitarian organizations would thus be a plus in this regard. It would thus be necessary to have increased humanitarian intervention at all levels but in coordination with regional bodies such as AU.

4.7 Conclusion

In this chapter, we have been able show that respondents and interviewees feel that AU is not effective and committed to IDP governance due to a myriad of factors. In the next chapter, we by way of recommendations prescribe legal and policy actions which may be required for AU to be effective in this regard based on the reasons cited by the respondents as contributing to lack of effectiveness of the approaches employed by AU in IDP governance.

CHAPTER FIVE

Summary of Key Findings, Recommendations and Conclusions

5.1 Introduction

This chapter provides the key findings of the study and suggests areas of further research. The chapter therefore deals with the summary of the study, conclusions, and recommendations emanating from the research with regard to IDP Governance regime. In this chapter, various measures that have been taken at the national, regional and international level to respond to the IDP governance issue are appreciated. Nevertheless, recommendations to make the same better are made with regard to academics, policy, legislation and institutional framework.

5.2 Summary of Key Findings

The study has drawn five key findings as outlined (i)The knowledge of AU and its objectives among the populace is very low (ii)AU is not committed to its objectives, legal and policy instruments and intervention in internal displacement among member states (iii) AU has intervened in cases of internal displacement using various approaches and forms of intervention. (iv) AU intervention measures in internal displacement are ineffective. (v) Several factors contribute to the inefficacy of AU's approaches to IDP governance.

5.3 Key Findings and Conclusions

The main objective of this research was to interrogate regional approaches in the protection of IDPs. A special focus was on the AU and internally displaced persons in Kenya during and after 2007/2008 post election violence in Kenya. On this objective, it

was found out that the AU used both the collaborative and cluster approach guided by its several policy and legal instruments.

The appointment of panel of African Eminent Persons to mediate the conflict leading to cessation of hostilities, humanitarian intervention through collaboration with humanitarian agencies is a reflection of this. Further technical support to IGAD and the Kenyan Government also confirms these approaches because out of these, Kenya developed an IDP policy and later an Act of Parliament on the same.²⁵¹ AU has also moved to legalize its intervention measures in IDP governance by establishing a convention The Protection of Internally Displaced Persons in Africa Convention which requires states to pass domestic legislation of a similar nature establishing a central national authority to deal with internal displacement victims .Surprising finding here is that common populace don't seem to know the existence and objectives of AU. This made the appreciation of the AU approaches among the victims low²⁵².We also found out that AU also employed the cluster and collaborative approaches using partners though this was not felt and largely, interventions felt were credited to NGOs.

Specific objective two was to investigate the effectiveness of AU Convention on the Protection and Assistance to Internally Displaced Persons.

On this objective, it was found that though AU had pioneered a regional Convention on IDP governance and that twenty African states had ratified the same, Kenya had not ratified the same despite having a national legislation to deal with the same issue. This made AU's intervention in Kenya problematic as Kenya has no obligation under the convention .Further, the convention became in force well after the

²⁵¹ See chapter three on the Protection and Assistance to IDPs and Affected Communities Act of Kenya 2012

²⁵² See Chapter four on people's knowledge of AU and AU objectives

displacement in Kenya and AU could only intervene depending on its Constitutive Charter and the guiding principles.

Generally, not much has been done after the convention was established and so far it remains a document of good intention. AU thus needs to lobby its member states to ratify and domesticate the convention. Additionally, AU needs to set aside resources to effect the convention.

Further, it was found out that lack of democracy, issues of state sovereignty, lack of resources, lack of commitment and corresponding institutional framework was undermining AU's intervention in cases of internal displacement under the convention and other authorizing and similar legal and policy instruments. As such, the convention was found to be ineffective in the Kenyan case and even other subsequent cases of internal displacement in Africa because of the abovementioned factors.

Given that the convention is more recent and has been ratified by just a handful of African states. Beside, very few countries have domesticated the convention. Both at the level UN and AU governments have appreciated their value but have done very little to operationalize them. This gives a marked difference with refugee governance where there is international conventions and domestic legislation for protection. Specifically to Kenya, there is a national legislation for the protection of IDPs but no corresponding institutional framework to take charge of implementation. They are therefore treated as ordinary citizens with any preference given being merely humanitarian. The study has found out that commitment to these instruments on IDP governance is lacking at all levels.

While humanitarian intervention would have helped the case of IDPs, the competing twin concepts of sovereignty and national responsibility have worsened the situation as most countries would look at intervention by regional bodies as an interference with its sovereignty. Worse still there is no single international agency charged with taking responsibility in looking at the plight of IDPs. The absence of this particular authority make IDP governance a quite grey area. Nonetheless the study has suggested recommendations in our last chapter as to academic, policy and legal measures which could be taken to remedy the situation.

Specific objective three was to discuss ways of strengthening regional organizations in dealing with IDPs.

On this objective, it was found that several factors account for lack of effectiveness of regional organization in dealing with the issue of IDPs ranging from lack of legal and policy framework, lack of democracy, lack of commitment by AU member states, issues of sovereignty and lack of resources. It was found that to strengthen regional organizations to deal with IDPs the above matters must be addressed. As such democratization of the African continent, more commitment towards measures aimed at protecting IDPs, putting in place laws to effect IDP protection and setting aside some resources towards this cause as well as abiding by the responsibility to protect doctrine were found to be some of the ways towards strengthening regional organizations to deal with IDPs. All the five key findings therefore pointed out these as the ways to strengthen regional governance of IDPs more so for the AU.

Specific objective four was to examine internally Displaced Persons in Kenya after 2007/2008 post election violence.

On this objective, our study established that there was serious displacement after the 2007-2008 post election violence accompanied by untold suffering. Life and property were lost, education rights were violated and so were environmental, health and other aspects of human security. While there were interventions at different levels, the same was largely uncoordinated and came majorly from non state actors. The AU only appealed to humanitarian organisations to intervene. AU majorly focused on finding a political solution to the electoral dispute which caused the post election violence in Kenya.

The IDPs in Kenya continue to suffer since their livelihoods have not been restored and resources allocated for their settlement still remain inadequate. Further, most of the IDPs have not healed despite measures aimed at reconciliation being put in place to ensure the same. The matter therefore remains largely unresolved and an intervention by AU even if belated will go a long way to help in this regard. Unless that is done, IDPs in Kenya will continue to have no faith in AU's regional and legal instruments aimed at intervening in their case.

While the Government of Kenya has enacted domestic legislation to address the plight of IDPs, the same was also found to be largely theoretical as no practical interventions have been realized so far except a few cases of resettlement and other forms of haphazard interventions. The Kenyan government therefore needs to put in place accompanying structures to implement the legislation. The Kenyan government should also review its position and ratify the African Convention on the Protection and

Assistance of Internally displaced persons in Africa. Only then would they owe a duty to AU to protect internally displaced persons within its borders besides preventing internal displacement. Overall AU therefore failed in its interventions to protect internally displaced persons in Kenya.

5.4 Hypothesis Testing

The study set to test the following hypothesis, (i) **H₁** AU's approaches as a regional organization to internal displacement do not protect IDPs.(ii)**H₀**-AU's approaches as regional organization is effective in the protection of IDPS and its governance (iii)**H₂**-AU as a regional organization tries to protect IDPs but is ineffective . Findings two and three confirm the negative hypothesis **H₁** that AU regional approaches don't protect IDPs because there is lack of commitment on obligations and general conflict resolution measures despite the fact that one of AU's objectives is to ensure peace and security through conflict resolution.²⁵³

Findings four and five overthrow the positive hypothesis that regional approaches by AU are effective in the protection of IDPs. Findings on this point at lack of effectiveness by the approaches employed by AU in IDP governance. The findings however confirm the hypothesis **H₂** that the approaches employed by AU in IDP governance are ineffective and require strengthening as discussed under objective three.

The study's analysis points out therefore that some approaches by AU don't protect IDPs at all while some do protect IDPs but even then are not effective and would require several measures to be taken to make them effective.

²⁵³ See chapter one on Hypothesis.

5.5 Conclusion

From our findings, internal displacement has had several negative impacts on populations and their security. Such impacts are social, political and economic in nature. The net effect of internal displacement is that it undermines human security of populations in its entirety. Issues of health security, education, personal security, environmental security, political security, social security political security and societal security cannot be guaranteed in case of internal displacement. In Kenya, the security of IDPs was much compromised and has not improved much despite the attempts to settle them. Regional approaches employed by AU did not help either.

Despite the strides that have been made in recent years towards addressing the issue of internal displacement, much work remains to be done. Protecting and, assisting the internally displaced remains one of the most complex issues facing regional, international and humanitarian organizations today, raising a whole host of legal, ethical, and practical difficulties. The AU has started on a good note but must go beyond its legal and policy frameworks to their real implementation.

Our study finds serious difficulties in IDP governance with regard to AU approaches in intervention. Whatever the case, prevention of internal displacement by addressing the root causes of displacement remain key to sorting out the IDP governance issue. While total eradication of internal is not possible, addressing the root causes will meaningfully reduce the levels of internal displacement.

Conflict prevention, management and resolution thus remain vital if is to be the above achieved. Indeed prevention remains the cheapest option in whatever circumstances and every state rich or poor has a stake and a role to play in conflict

prevention. Above all the call to save humanity is sacred and imposes upon every soul and conscience the responsibility of respecting humankind. The AU as the first ever regional body to develop a convention on IDP governance must therefore take measures to implement the letter and spirit of this convention.

In Kenya, the internal displacement that occurred after the 2007 elections caused injuries, deaths and massive destruction of property. While there was substantial humanitarian assistance, the same was undermined by the concept of sovereignty. The same was also uncoordinated as there is no central humanitarian organization specifically tasked to undertake the duty of protecting IDPs. The fact that Kenya still has IDPS in camps and that their resettlement has been unsatisfactory with those settled raising a myriad of issues raises questions on Kenya's ability and willingness to handle the matter. Like refugee governance, IDP governance needs to be legislated nationally, regionally and internationally. This will make IDP governance fall within a definite framework and be guided as such. Even then, commitments to such legislation and cultivating a culture of peace would be key if AU and its member states are to go beyond the convention. Kenya thus must go beyond its legislative policy framework on IDP governance and establish an institutional framework to implement the framework. The study concludes from the information and data analyzed that internal displacement indeed is a big issue which ought to attract national, regional and international attention both at the academic research level and policy intervention level. Regional approaches including those of AU must therefore be reviewed to ensure they are effective because that is not the case today.

5.6 Recommendations

5.6.1 Academic Recommendations

On the academic front, there is need for scholars to do further research on the role that regional organizations can play in IDP governance since it is a virgin area with AU being the first and only regional organization which has put in place a legally binding framework to protect and assist IDPs and affected communities in the form of a regional convention. Scholars must therefore look at the IDP issue as being distinct from general regional interventions in conflict.

5.6.2 Policy Recommendations

The issue of Regional IDP governance requires both short term and long term humanitarian, policy; legal and institutional interventions. To deal with the issue of IDP governance, a lot of legal, Policy and institutional measures need to be taken. Such measures could take national, regional and international directions. The AU and its member states including Kenya would therefore require both immediate and long term humanitarian, policy, legal and institutional interventions. This study thus recommends that beyond the guiding principles, the convention and the national legislations, corresponding institutional framework ought to be put in place to implement the provisions and actions envisaged by these frameworks.

Further, a definite locus of responsibility is needed in the field for the internally displaced. One operational agency on the ground similar to UNHCR should be tasked with monitoring the conditions of IDPs, identifying their assistance and protection needs, and working with a coordinating mechanism to promote a division of labour to address those needs. Attention needs to be focused on the physical security and human rights of

the population as well as on its needs for food, medicine and shelter. AU therefore needs to establish such an agency.

Given that in some situations, the only way to provide protection is to IDPs is through military and police action. In Africa, regional military intervention is notable. In 1990 in Liberia, the Economic Community of West African States (ECOWAS) through its military arm ECOMOG set up a safe haven for thousands of displaced persons in Monrovia and made possible the return of humanitarian agencies to the city. More recently in Sierra Leone, ECOMOG restored order in the capital and protected displaced and other populations. While it is true that in both cases, ECOMOG forces also looted, raped, and committed human rights violations, the record had a positive side from the point of IDP protection. In Kenya an AU member states which this study focuses on, rape and child molestation by security forces, was also experienced this study therefore recommends that the police force and the military among AU member states be trained to be able to handle IDPs and have better military discipline.

.Regional arrangements are very critical, especially since international intervention is often not forthcoming or problematic when it does take place. In the case of Kenya, the intervention during 2007-2008 was not satisfactory. Regional arrangements like AU, IGAD and EAC should be strengthened and there should be more partnerships and collaboration between them in intervening in conflict and humanitarian situations like the case of IDPs.

Early warning systems to conflict, be they national, regional or international should also be strengthened and professionalized so that they can monitor and inform

policy makers on the possibility of conflicts so that requisite policy decisions can be made to avert the said conflicts and hence avert the consequential displacement.

At the institutional level, an array of international humanitarian, human rights and development organizations have come forward to offer protection, assistance, and development aid to IDPs. Nonetheless, no organization has a global mandate to protect and assist the internally displaced. As a result, the system is ad hoc. Organizations basically pick and choose the situations in which they will become involved in on the basis of mandates, resources or other considerations. Thus, UNHCR deems about 5 million internally displaced persons out of a total of twenty to twenty five million to be of concern to the organization and only one million of these are in Africa.

To remedy the selectivity, the international system could be modified through an effective central point within the system to routinely and rapidly assign responsibilities to different agencies. However, there is no such point, although for the first time there is a vigorous UN Emergency Relief Coordinator who is taking the plight of IDPs seriously and is trying to strengthen coordination among UN agencies. There is thus need to have an effective central point to routinely and rapidly assign responsibilities to the different agencies of the UN, AU and national institutions with regard to IDPs.

Taking Kenya as a case in point, with, immediate measures to address the Humanitarian Crisis in the country need to be taken. There should be some assistance and encouragement of displaced persons who have not gone back to their homes to do so or go to other areas and to have safe settlement and security throughout since tribal tensions have not completely gone down. Adequate security and protection, particularly for

vulnerable groups, including women and children also be provided where camps still exist.

Provision of basic services for people in displaced camps should also be done by regional organizations and not only left to NGOs. Stakeholders should ensure that there is adequate food, water, sanitation and shelter within the affected communities, both those in displaced camps and those remaining in their communities or settled elsewhere until they are able to provide for themselves. Above this, the focus should be on immediate and conclusive resettlement.

In the Kenyan case, the Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of Post 2007 Election Violence established in Kenya should be operationalized expeditiously by establishing a bipartisan, multi-sectoral Board with streamlined procedures to disburse funds allocated for the course of IDPs. The management of this fund should also ensure close linkages with the ongoing national and international assistance by NGOs to enhance the effectiveness of delivery. It should particularly ensure that victims of violence in urban and rural areas are both not neglected in the implementation. Transparency and accountability in the use of the funds must be ensured to avoid corruption.

With regard to legislation, The Government of Kenya has enacted and clear legislation on the protection of internally displaced persons. What is now required is operationalization of the same. A further review of the implementation of the African Peer Review Mechanism for the period June 2006 – June 2008, in respect of promotion and protection of the rights of vulnerable groups including internally displaced persons, which equally recommended enactment of a legislation to govern the IDP regime in

Kenya should also be conducted to place in lessons learnt from the 2007 post election violence and the effects of the subsequent displacement.

The AU and The Governments of member states should also, through various poverty reduction programmes such as HIV/AIDS programmes and educational bursary funds focus on mainstreaming the vulnerable groups like IDPs, children orphaned by HIV/AIDS, the youth, women, the physically challenged, older persons and the ageing to participate fully in national development agenda. This calls for mechanisms to protect the rights of the vulnerable groups through enactment and implementation of policies and programmes aimed at empowering and protecting the rights of vulnerable groups, stepping up security and strengthening response capacity of law enforcement agencies in conflict prone areas, streamlining screening procedures and eliminating discriminatory screening practices among communities in the IDP camps and new areas of settlement.

The problem of IDPs has been with Africa and Kenya for ages and is not going to be wiped out with a magic wind. This study recommends that the issue be submitted to the relevant AU Commissions for follow up so as to address historical injustices and facilitate a forgiving dialogue between perpetrators and victims of the violence that caused internal displacement.

At whatever, level, the civil society should be incorporated in managing IDP governance since some directly work with IDPs and offer valuable information and humanitarian aid to the IDPs. It is thus the recommendation of this study that an all inclusive stakeholder coordinating body should be put in place at both, national, regional international levels so that a multi- pronged approach to the IDP issue is realized.

These recommendations answer the three key research questions which the study raised in chapter one which were; what regional approaches has AU employed in IDP governance and how effective have the approaches been in ensuring the protection of IDPs among its member states? What factors militate against AU in its quest to protect IDPs among its member states? What policy, legal and political interventions and approaches has been put in place or may be required to be put in place to improve AU's effectiveness in the protection of IDPS as a regional governance issue? The research questions have therefore been answered by the study.

This study concludes that the successful Regional governance of IDPs in Africa by AU will be based on three outcomes namely the safety of those displaced, restitution and return of property to the displaced and the creation of an economic, social and political environment that sustains them. There is clearly a consensus that unless the root causes that lead to internal displacement is resolved; the problem of displacement will continue to haunt Africa and the entire world for a long time. This study therefore recommends that a comprehensive academic and anthropological research be done so that the root causes of internal displacement be comprehensively analyzed and addressed within the context of regional IDP governance and not the generic way that has been the norm for researchers in the area of conflict.

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INTERVIEWS

Interview with an internally displaced person in Kisumu 31st June 2013.

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Interview with, a former President, Bunge la Wananchi. Carried out on 1st July, 2013.

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Interview with a Kenyan Living in Rwanda conducted on the 5th July 2013 via telephone.

Interview with an employee of the international committee of Red Cross in Rwanda conducted on 5th July 2013 via telephone

Interview conducted on 5th July 2013 interview with, an IDP from central Kenya on 4th July 2013 via telephone.

Interview with, a former Kenyan Ambassador to Egypt on 24th June 2013.

APPENDICES

Annex 1: Questionnaire

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

This questionnaire is intended to facilitate the study on “**Regional approaches to Internally Displaced persons, a case study of the African Union in Kenya.**’ The study is for academic purposes and is carried out as partial requirement of the award of Master of Arts degree in International Conflict Management. As a key stakeholder, you have been selected to provide crucial information that will facilitate the study. Your response will be treated with utmost confidentiality.

Thank you very much for your valuable time.

INDIVIDUAL / PERSONAL QUESTIONNAIRE

- (A) Name (optional).....
- Sex.....
- Occupation.....
- Age.....
- Nationality.....

(B) Questions on knowledge of Au

- 1. Have heard about African Union
 - a) Yes (b) No
- 2. If yes, what have you heard or known about it – briefly describe.

3. Do you know AU's objectives /purposes
(a) Yes (b) No
4. (a) If yes in 3 above, describe
(b) Do you think AU has discharged its mandate well?
5. Have you heard about IDPs?
(a) Yes (b) No
6. If yes in 5, what do you know about them.

(C) AU and Intervention in Idp Governance

7. Have you heard or do you know anybody who is an IDP who has been helped by AU or any AU affiliate body.
(a) Yes (b) No
8. If yes in 7 above, what was the help
(a) Evacuation
(b) Medical
(c) Housing
(d) Clothing
(e) Others- specify
9. Is your country a member of AU?
(a) Yes (b) No
10. If yes in 9 above, were you consulted?
(a) Yes (b) No

11. Have you heard about AU convention on the protection and assistance to IDPs?
(a) Yes (b) No
12. If yes in 11 above, is your country a signatory?
(a) Yes (b) No (c) I don't know
13. Has your country domesticated the convention?
(a) Yes (b) No (c) I don't know
14. Has the convention been implemented in your country?
(a) Yes (b) No (c) I don't know
15. Which of the following do you think affects AU most its attempt to perform in areas of IDP governance?
(a) Lack of Democratization
(b) Lack of People's participation
(c) Lack of Peer review
(d) Sovereignty
(e) Lack of legal and institutional framework
16. Overall, in your view were the regional approaches effective?
(a) Yes (b) No

Thank you very much once again.

Kennedy Mbara.