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Course of International Organizations and Human Rights

The protection of Internally Displaced Persons in Africa: analysis of legal frameworks and States' practice

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SUMMARY

Although the number of internally displaced persons has constantly increased, the issue of internal displacement has become part of the international agenda only during the last decades. Africa has been reported as the most affected region in the world by internal displacement, and it is also the only continent to have established a binding legal instrument for the protection of its internally displaced. The aim of this research is to analyze how the protection of internally displaced persons has been addressed by both international and regional legal instruments, with a particular focus on the African context and its States' practice.

The first chapter deals with the process that led to the descriptive definition of internally displaced persons, highlighting its features but also its differences with the refugee definition. The chapter also addresses the phenomenon of internal displacement in the African context, analyzing its historical roots, the several different causes of displacement that affected Africa in the last years and the latest statistics about the spread of the phenomenon.

The second chapter examines the legal frameworks governing the protection of the displaced. It begins with an overview of existing norms of both humanitarian, human rights and refugee law which are applicable to the protection of displaced persons. It then highlights inadequate and adequate protection areas, addressing the legal instruments and institutional projects that have been drafted and established to fill the protection gap. Drawing on the Guiding Principles on Internal Displacement and the Cluster Approach at the UN level, along with the Great Lakes Pact and the AU's Kampala Convention at the African level, the chapter analyzes how the legal protection of the internally displaced has been addressed and how it has been implemented both from the international community and from African regional organizations. Particular relevance is given the Kampala Convention, being the first legally binding instrument ever conceived for the protection of the displaced and a possible model for an international binding legal framework in the future.

The third chapter gives an analysis of three sub-Saharan States and their commitment towards the protection of displaced persons at national level. In this regard, the chapter draws from the history of displacements in Uganda, Nigeria and Ethiopia and their respective national policies to address internal displacements on national territories.

INTRODUCTION AND RESEARCH DESIGN

Given the relatively recent emergence of the issue of IDPs protection, this work aims at understanding how the international community and African organizations had developed legal frameworks to cope with the issue of displacement. This is also the rationale behind the choice of the research question that is how the legal protection of IDPs in Sub – Saharan Africa has been addressed by the UN system and African regional organizations, with particular reference made to the AU's commitment to internal displacement.

It is with the end of the Cold War that internal displacement became a subject of international concern, when a shift in States' attention towards the protection of their citizens occurred. Several factors contributed to the growth in the attention on the issue of the displaced, including the rising number of IDPs in the world. Contrary to the trend experienced by refugees at the end of the 1990s and beginning of 2000, the number of IDPs has witnessed a sharp rise between 1982 and 2008, increasing from 1.2 to 26 million. However, the new international trend of containment policies towards refugees is perhaps the main political reason to explain the increase in attention on the issue of IDPs. Indeed, contrary to the policies of openness of the Cold War, when refugees were accepted by States that offered them shelter against one or the other political block, an increasing tendency in preventing IDPs from becoming refugees was reported, hence, from crossing an internationally recognized State border. The direct consequence of these restrictive measures was a greater emphasis on the protection of the displaced within their State of origin and therefore a discouragement to seek asylum abroad.

There have been several attempts to define the internally displaced. The first definitions of IDPs were proposed in 1989, as a suggestion by the UN Secretary General, drawing elements from both the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration. From that moment, the two distinctive elements characterizing the category of IDPs were clear: the forced nature of the movement and remaining within the State's national borders, distinguishing IDPs from refugees. The first proposal of a working definition was made by the UN Secretary General Boutros-Ghali in the 1992 Analytical Report. The Representative of the Secretary-General on IDPs, Francis Deng, then refined the original definition adding important changes and adjustments. The newly drafted definition became part of the 1998 UN Guiding Principles on Internal Displacement, widely recognized as a fundamental instrument addressing the plight of internal displacement at the international level.

As for the regional context of this research, the Sub-Saharan African region has been reported as one of the most affected areas in world by the plight of IDPs. Conflict and violence are reported as primary causes of internal displacement, covering different forms of conflicts,

including internal conflicts, civil wars, situations of generalized violence, internal strife or occupation. Internal displacement however does not just happen in conflict scenarios, as people can be displaced also for natural and human made disasters and as a result of development projects.

The issue of the protection enjoyed by the internally displaced has been the subject of many reports. Deng's conclusions show that despite the existence of some areas in which the needs of the displaced are fully addressed by existing international norms, there are still some gaps in the legal protection of IDPs. As a result, to fill this protection gap, the Guiding Principles were adopted at the UN level, building upon International Humanitarian Law norms, Human Rights and Refugee Law which are applicable to IDPs. The Principles are regarded as the international minimum standard for the protection of IDPs and they address all the different phases of the displacement phenomenon: the initial phase, the displacement itself and the final resettlement. At the African level, the Kampala Convention was adopted in 2009 by the AU in order to overcome the shortcoming of the UN Guiding Principles and to address the issue of internal displacement in the specific context of the African region. It has been argued that the greatest contribution that the Kampala Convention has given to the protection of IDPs is transforming what was soft law under the provisions of the Guiding Principles in a hard law instrument. Among the other contributions, the AU Convention is the first binding treaty ever conceived in the world specifically designed to the protection of IDPs.

Concerning the theoretical framework, the type of reasoning that is applied to this work is a deductive reasoning. The text starts from the analysis of general legal frameworks, both at the international level with the UN Guiding Principles and then at the regional AU level with the Great Lakes Pact and the Kampala Convention, and then it finishes with in depth analysis of three case studies, namely Uganda, Nigeria and Ethiopia, each of them with different displacement and legal backgrounds.

The level of explanation of this study is a meso level since it focuses on issues dealing with African institutions, International Organizations and internally displaced analyzed as a group. Finally, the vision of reality that has been chosen is the comprehension approach, because the aim of the research is to understand how the issue of legal protection and assistance of the displaced is addressed by international, regional and national institutions.

Concerning the variables, the dependent variable of this research are the internally displaced persons in the African continent. There have been several attempts to find a definition for the internally displaced. The first definitions of IDPs were proposed in 1989, as a suggestion by the UN Secretary General. Today, as the broadest definition at the international level is part of

the 1998 UN Guiding Principles on Internal Displacement, that define IDPs as: “[...] *persons or group 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 conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”.

As for the independent variables, among the most influential ones there are regional and international legal norms concerning the protection of IDPs, including international norms, principles and legal instruments, given the importance of the legal frameworks in the protection of IDPs both at the global and at the regional level. The choice is given by the prominent role that International Law, including Human Rights Law and International Humanitarian Law, has in granting the protection of the displaced in world. Therefore, one of the main parts of the research concerns a comprehensive analysis of the content of the UN Guiding Principles on the protection of IDPs, that have been widely recognized as a fundamental instrument for addressing the plight of internal displacement at the international level. Moreover, since the last part of the research is focused on African States’ legal practice, the text relies also on others legal instruments dealing with the African context, such as the Kampala Convention developed in 2009 by the African Union, Great Lakes Pact developed by the International Conference On The Great Lakes Region in 2006 and then three national instruments, namely the 2004 Ugandan National Policy for Internally Displaced Persons, the 2012 Nigerian National Policy on Internally Displaced Persons and the 2017 Durable Solutions Strategy of the Somali Regional Government of Ethiopia.

The case studies selected for the research are Uganda, Nigeria and Ethiopia. Historically, Uganda has been one of the first African countries to be committed in the protection of IDPs. Its 2004 National Policy makes Uganda one of the few countries in the world to have an *ad hoc* instrument drawing on the UN Guiding Principles. The country’s leading position on the issue of internal displacement is also reflected in the ratification of various legal instruments, including the 2006 Great Lakes Protocol, and subsequently with the first ratification to the Kampala Convention, whose preparatory works were hosted by Uganda itself.

Nigeria has been subject to a harsh period of displacement due to terrorism, caused by terrorist activities of Boko Haram, that triggered the internal displacement of 2.2 million persons, the majority of which in Borno State. In addition, natural disasters are also a major cause of displacement in Nigeria, in particular flooding in high population density areas, causing 600,000 IDPs during 2018. However, contrary to Uganda’s historical commitment for the protection of the displaced, Nigeria has struggled for the development of an IDP national policy.

Ethiopia is one of most recent countries to have been severely affected by new conflicts and displacement crisis. Since the beginning of last year Ethiopia is the country with the largest number of new IDPs for armed conflict. Its 2017 Strategy has been positively welcomed by many institutional actors, both at the national and international level, and has been useful as a future blueprint for other Ethiopian regions.

Given the meso level of analysis, the research relies mostly on documents and statistical data coming from databases. The research will set its temporal dimension from the period of the Cold War, when the issue of internal displacement emerged for the first time, but more exactly from 1998, when the UN Human Rights Commission adopted the Guiding Principles, until today with the latest data available.

CHAPTER I

INTRODUCTION ON THE ISSUE OF INTERNAL DISPLACEMENT

A. A phenomenon of international concern: displacement as a global agenda

Although the issue of internal displacement entered the international agenda only during the 1990s, the plight of the internally displaced is not a new phenomenon. After the end of WWII, Greece was one of the first countries to ask the United Nations General Assembly (UNGA) for international assistance for their internally displaced citizens after the civil war. A similar situation was brought before the UNGA by the Indian and Pakistani governments after the territorial partition of India in 1947. However, despite these claims from States were on the rise, the issue of Internally Displaced Persons (IDPs) remained limited to the assistance rather than the protection field. Another defining moment was the so called “*good offices*” protocol in the 1970s, through which the United Nations High Commissioner for Refugees (UNHCR) took some responsibilities in the protection of IDPs, going beyond the assistance approach provided by the 1951 Refugee Convention (Orchard 2010: 288 ff.).

One of the first major events that brought the international attention over a large-scale displacement was the end of the civil war in Sudan in 1972. In that occasion, after the Addis Ababa Agreement, the UNHCR was requested to provide assistance to the refugee population as well as to the displaced inside the States’ borders, thus employing this yet uncommon expression (Phuong 2004: 3 ff.). However, besides the Sudanese experience, it is with the end of the Cold War that internal displacement became a subject of international concern. Actually, the protection of the internally displaced received few international relevance during the Cold War. It is only in the 1990s that there was a shift in States’ attention towards the protection of their citizens.

As the tension between the two major international powers came to an end, several factors contributed to the growth in the attention on the issue of the displaced, including the rising number of IDPs in the world (Cohen, Deng 1998: 3 ff.). Contrary to the trend experienced by refugees at the end of the 1990s and beginning of 2000, the number of IDPs has witnessed a sharp rise between 1982 and 2008, increasing from 1.2 to 26 million (Orchard 2010: 282). Several historical circumstances contributed to that rise producing large-scale displacements, among them: the 1991 crisis in Iraq affecting the Kurds; the conflicts and tensions emerged after the dissolution of the former Yugoslavia and Soviet Union; the rise in number of new intrastate, versus interstate, wars in the post-Cold War era (Loescher 2016: 9 ff.). The analysis

of those numbers contributed to the belief that this crisis was rapidly worsening and therefore in need for an international solution. Another factor that contributed was the improvement in the field of telecommunications and new media that helped the IDPs plight having a larger audience. Examples of these situations are the broadcasted images of the 1985 Ethiopian famine, the Sudan drought and related mass displacements and the 1991 displacements of Kurds fleeing from Iraqi persecution (Cohen, Deng 1998: 3 ff.).

However, the new international trend of containment policies towards refugees is perhaps the main political reason to explain the increase in attention over the issue of internal displacement (Phuong 2004: 4 ff.). Indeed, contrary to the distinctive policies of openness of the Cold War period, when refugees were accepted by States that offered them shelter against one or the other political block, an increasing tendency in preventing internally displaced from becoming refugees was reported, hence, from crossing an internationally recognized State border (Phuong 2004: 4 ff.). The direct consequence of these restrictive measures was a greater emphasis on the protection of the displaced within their State of origin and therefore a discouragement to seek asylum abroad (Cohen, Deng 1998: 3 ff.). The side effect of this shift in policy was that some countries started to use the excuse of the IDP status and the concept of “internal flight alternative” to disregard to principle of *non-refoulement* (Cohen, Deng 1998: 3 ff.).

Still, along with the political reason, the humanitarian aspect played a pivotal role in bringing attention over the issue of the displaced. The humanitarian crises that affected significant numbers of internally displaced during the 1990s contributed to raise awareness over the provision of assistance and protection not only of refugees but also IDPs that were living in the same depriving situations (Phuong 2004: 7 ff.). This deeper understanding of the problem, also thanks to the advocacy of Non-governmental Organizations (NGOs) and Civil Society Organizations (CSOs), led to two UN sponsored conferences: the 1988 International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED), held in Oslo, which urged the UNGA to take initiative in the creation of an *ad hoc* protection mechanism for IDPs (Orchard 2010: 288 ff.), and the 1989 International Conference on Central American Refugees (CIREFCA).

The Gulf War and the subsequent wave of displacements and the involvement of UN in other crisis situations, for instance in Sudan in 1989 and Somalia in 1992, drew the attention further on the inadequate response provided by the UN system in case of a sudden humanitarian crisis, paving the way for the development of new effective responses for the protection of IDPs (Orchard 2010: 290 ff.).

B. The notion of displacement

1. Defining Internally Displaced Persons

a. The Refugee definition as a guidance

The status of displaced persons, being them inside or outside their country of origin, is defined by international legal instruments. In order to fully explore the process that brought to a descriptive definition of the internally displaced, the analysis should start from the first legal instrument of this kind (Sansculotte-Greenidge 2014: 181). The 1951 Convention on Refugees was the first legally binding instrument to define a special category of displaced, adopted after the Second World War. It aims at extending and regulating the protection granted to refugees and to revise and consolidate previous instruments.

At first, the Convention had both a temporal and a geographical limitation, as provided for in art. 1 (B): referring to the temporal limitation, the Convention applied to all the events that occurred before 1st January 1951; as to the geographical limitation, it allowed States to make a resolution or a declaration in which they could recognize asylum seekers only to people coming from Europe. However, it was just a possibility, not mandatory, so States could go further and recognize protection to everybody.

These limitations were overcome by the additional Protocol, which was adopted in 1967, even if not all States have ratified it, therefore they still apply the limitations.

According to the 1951 Convention, a refugee is anyone who:

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of persecution 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”¹.

Art. 1 (A) point 2 of the Convention sets out the key elements of the definition of a refugee. The first element is the well-founded fear of being persecuted for reasons of race, religion,

¹ Article 1 (A)(2) of the Geneva Convention.

nationality, or membership. According to the Article, it cannot be a fear in general terms, clear elements in order to demonstrate such a fear should emerge. These reasons are exhaustive, there are no other conditions, however they must be interpreted in the broadest sense. The second condition is that the asylum seeker must be outside his country and this is what makes in essence a refugee different from an IDP, as a consequence if the person is still inside his country he cannot be considered as a refugee and he is called an IDP. The third and final element is that he must be unable or unwilling to come back to his country.

The Convention however does not give the right to be granted asylum, neither the State has an obligation to give asylum. Still, once the conditions are met, the recognition has a declaratory value, meaning that the conditions are substantial, they are inherent to the asylum seeker.

Some have argued that, as far as internally displaced people are concerned, they would fall under the refugee definition if they left their country, as reflected for instance by the UNHCR approach (Phuong 2004: 29). However, it should be highlighted how the 1951 Convention has been used as a guidance, rather than an exact model, in the drafting process to define IDPs. Indeed, the refugee definition does not consider all the situations specific to the nature of internal displacement, therefore it would have provided only a very narrow approach to define IDPs. On the contrary, rather than the 1951 Convention, other instruments appear to be more suited to make a comparison, as the broader definitions provided by the 1969 OAU Convention and the 1984 Cartagena Declaration (Phuong 2004: 29).

b. Three approaches for defining IDPs

There have been several attempts to categorize the internally displaced according to different approaches. One of them sets out a tripartite categorization, mirroring three alternative notions of internal displacement (Taddele Maru 2014: 65 ff.).

The first approach is the widest one and encompassed in the IDP definition all types of internal displacements, including also those who move for economic reasons, that move both forced and voluntary. However, this conceptualization seems to undervalue the forced, intrinsic, nature of displacement, during which the displaced has few or no agency in this respect. If all types of internal migrants were included in the IDPs definition, then such a definition would have lost its legal nature, becoming rather an economic notion.

The second approach includes in the definition of IDPs all the displaced as a consequence of conflicts and violence, therefore excluding other causes of displacement, as natural and man-made disaster induced displacement and also displacement induced by development. Many share this approach (Stavropoulou 1996: 549 ff.; Nair 2001: 5 ff.; Kiessling 2006: 6 ff.), relying

on the capacity of the State to protect and assist its citizens in the event of such disasters, contrary to what happens in conflict situations. Still, although the will and ability to protect by the State is worth considering, attention should be given to the vulnerable situation in which the displaced are found. Moreover, another aspect not to be underrated is the nature of the displacement, if voluntary or forced, that leads to extremely different scenarios, in which the specific needs of the displaced should prevail. This approach has been said to be consistent with the definition in the 1951 Convention, which does not explicitly provide grounds for the refugee status in the event of disasters. Parallelism can be drawn also with reference to the London Declaration of International Law Principles on IDPs, which provides for legal status only to the displaced in a refugee-like situation, meaning facing human rights violations and abuses, therefore excluding those displaced by disasters, that instead have to deal only with social or economic consequences (Taddele Maru 2014: 68).

The third approach to a definition of IDPs includes all the forms of displacements, including conflict and violence, disasters and development. This categorization draws on the fact that the IDP status is not determined by the type of event that caused the displacement, but rather the situation of vulnerability that such an event has triggered to the displaced (Taddele Maru 2014: 68).

c. Problems of a legal definition of IDPs

Although refugees and the displaced may share a very similar situation of vulnerability and violation of rights, the hypothesis to merge the two definitions seems inadvisable. However, even in the opposite case, the formulation of a distinct *legal* definition for IDPs seems unwise, at least for some (Phuong 2004: 26 ff.). Formulating a new separate *legal* definition would never be wide enough to comprehend all the cases affecting the internally displaced, thus having the effect of excluding rather than being comprehensive. A reason supporting that position relies upon the potential danger that a *legal* definition would entail, for instance giving priority to some groups rather than others, that share in practice the same vulnerable situations, but without falling under a specific legal category. Instead of relying on artificial, legal definitions, one should consider the existence or not of violation of basic human rights. Moreover, if a specific legal status were granted to IDPs there would be also a challenge to the principle of State sovereignty.

The problem of the internally displaced, by definition, is internal to the States' authority and therefore it is a matter of States' sovereignty. In this respect, Francis Deng, after being appointed as Representative of the Secretary-General for IDPs, proposed a notion of

sovereignty based on a positive approach, also known as “sovereignty as responsibility”. According to Deng’s theory, a State is sovereign on its territory as long as it is able to fulfil its responsibility for the protection of its citizens and those under State jurisdiction. Usually, States meet those responsibilities, however, in the cases in which they cannot, for lack of resources or capacities, they should accept assistance from the international community. However, the situation of the States experiencing the plight of IDPs is much more complex than the theory. In the context of internal conflicts, many cleavages arise between the victims and who should have authority over their assistance and protection. Unfortunately, the result is that the victims are often persecuted or ignored by their own national authorities and their only source of assistance comes from the interest of the international community.

An alternative to the formulation of a *legal* definition for IDPs, according to Catherine Phuong, could be that of an *operational, descriptive* definition (Phuong 2004: 28 ff.), the second being more focused on the assistance and protection aspect of the phenomenon rather than aimed at establishing a new legal regime.

d. The drafting steps: towards a descriptive definition

The UN faced the issue of IDPs definition for the first time in 1977, when Francis Deng, High Commissioner for Refugees made a speech to the Executive Committee of the High Commissioner’s Programme, stating that:

“This distinction leads me to another fundamental question, i.e. the distinction between a refugee and a displaced person. Judging from the relevant resolutions of the General Assembly, a displaced person would appear to be one who, while not fulfilling strictu sensu the refugee eligibility criteria, is in a situation analogous to that of a refugee. Additionally, it is felt by some that persons who do not cross an internationally recognized border should be treated as displaced persons. Here again, there is need for clarification”².

Even though in that occasion no clear answers were provided, the need for precision in the use of terminology clearly emerged. The very first definitions of the displaced were proposed in 1989, as a suggestion by the UN Secretary General, drawing elements from both the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration. For the African context, in the

² Opening Statement by Prince Sadruddin Aga Khan, United Nations High Commissioner for Refugees, Executive Committee of the High Commissioner’s Programme, 28th session, Geneva, 4 October 1977.

occasion of the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa, the UN Secretary General defined internally displaced persons as:

“Persons who have been forced to abandon their home or their normal economic activities, while remaining inside their countries of origin, because their lives, security or freedom have been threatened by generalised violence, armed conflicts, internal upheavals, or similar events seriously disturbing the Public order”³.

As for the Central American scenario, it was stated that:

“Although there is no generally accepted definition, displaced persons have been considered as those who have been obliged to abandon their homes or usual economic activities, while remaining within their countries, because their lives, security or liberty have been threatened by widespread violence or prevailing conflict. Their need for protection and assistance is at times as great, if not greater, than that of the refugees who have left the country”⁴.

From that moment, although an official definition was still missing, the two distinctive elements characterizing the category of the internally displaced were clear: the forced nature of the movement and remaining within the State’s national borders, distinguishing IDPs from refugees (Cohen, Deng 1998: 16; Mooney 2005: 10).

Despite several attempts to find a definition had already been made, it took until the 1990s to have a deeper discussion upon the definition of IDPs. The first draft proposal of a working definition was made by the UN Secretary General Boutros-Ghali in the 1992 Analytical Report, then revised in 1998, which defined IDPs as (D’Orsi 2012: 77):

“[...] persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflicts, internal strife, systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country”⁵.

³ UNGA, *Report of the Secretary-General*, A/44/520, 44th session, 28 September 1989, para. 72.

⁴ CIREFCA, *Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America*, January 1990, para. 67.

⁵ Commission on Human Rights, *Analytical Report of the Secretary-General on Internally Displaced Persons*, E/CN.4/1992/23, 14 February 1992, para. 17.

This definition, drawing from the broader refugee definitions used in the African and Central American contexts, provides grounds for the status of IDPs not only in the event of armed conflicts situations or violation of human rights, but also in case of disasters, being them natural or man-made ones. Still, if on one hand this definition appears to be wide enough to comprehend as many situations as possible, on the other hand it has been strongly criticized for being too narrow. The major criticism regarded its temporal and numerical limits (Cohen, Deng 1998: 17; Phuong 2004: 33; Mooney 2005: 11). It was pointed out how, using the wording “*suddenly or unexpectedly in large numbers*”, would exclude automatically several serious cases of displacements. The choice of referring to “*large numbers*” was due to the willingness to include mainly situations of mass displacement. However, although those situations are of major relevance for the phenomenon of displacement, they cannot limit the definition of IDPs to people fleeing in mass (PHUONG 2004: 33). For instance, there have been situations in which people moved in small groups, rather than in large numbers, in order to remain as discreet as possible, as in the case of Colombian IDPs (Cohen, Deng 1998: 17; Phuong 2004: 33; Mooney 2005: 11). The term “*forced to flee*” was also criticized, since there are cases in which populations are actually expelled or obliged to leave, instead of simply fleeing their homes, as in the case of Bosnian Muslims (Cohen, Deng 1998: 17; Phuong 2004: 33; Mooney 2005: 11). Taking the move from these criticisms, the Representative of the Secretary-General on IDPs, Francis Deng, has tried to refine the original definition adding important changes and adjustments. Giving an overview of the changes, starting from the beginning, “*persons*” was replaced by “*persons or group of persons*”; “*forced to flee*” modified in “*forced or obliged to flee or to leave*”; their “*homes*” has been replaced by “*homes or places of habitual residence*”; the criteria related to time and numbers have been delated; the sound wording “*in particular*” has been added before the list of possible situations leading to displacement as to provide a non-exclusive list of causes; at the end, “*who are within the territory of their own country*” has been replaced by “*who have not crossed an internationally recognized State border*”, by referring to the problems emerged after the dissolution of the former USSR and then of the former Yugoslavia and the related problems of distinguishing between IDPs and refugees in those contexts, introducing also the important element of State recognition on borders issues (Phuong 2004: 35).

The newly drafted *descriptive* definition became part of the 1998 UN Guiding Principles on Internal Displacement, widely recognized as a fundamental instrument for addressing the plight of internal displacement at the international level. The Principles define IDPs as:

“[...] persons or group 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 conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”⁶.

After its release, this definition has been recognized as the broadest ever conceived at the international level. Moreover, it reflects the descriptive, operational element, inherent to the definition of IDPs, instead of the legal nature specific to the refugee definition (Phuong 2004: 36).

Noteworthy is that the definition of IDPs provided by the Guiding Principles has been used, with the exact same wording, also in other legal instruments, namely the 2006 Great Lakes Pact and the 2009 Kampala Convention (Taddele Maru 2014: 146 ff.). Yet, the definition of IDPs of Article 1(k) in the Kampala Convention need to be read along with Article 5(4) and Article 10, dealing respectively with the protection and assistance of IDPs related to natural or human made disasters and with displacements induced by development projects (Taddele Maru 2014: 146 ff.).

e. When does displacement end?

The case of refugees presents some clear cessation clauses, but the same cannot be said for the internally displaced. Indeed, the 1951 Refugee Convention provides the reason why a person, once he has received asylum, may lose its recognition if some conditions are met. Notably, Article 1 (c), dealing with external conditions, provides for cessation clauses in the event of a reconnection with the State of nationality or when the circumstance of asylum ceases to exist. However, since the status of the displaced is not a legal one, it could be more difficult to determine when an IDP ceases to be internally displaced (PHUONG 2004: 36).

It has been pointed out how possible cessation clauses could include resettlement and voluntary return (Geissler 1999: 456). Resettlement refers to the movement of IDPs to resettle locally and permanently in an area of their country of origin different from their habitual place of residence, where they no longer face the risk of violations of human rights or other dangerous situations. Of course, the crucial element about this definition is the voluntary nature of the resettlement

⁶ Introduction, para. 2 of the Guiding Principles on Internal Displacement.

(Geissler 1999: 456). The case of return differs from the previous one because it entails the voluntary return to the previous home or place of habitual residence before becoming displaced. In either case, what is relevant is that the individual should no longer be in need for protection and assistance, meaning in the event in which his needs have been fulfilled (Geissler 1999: 456; Phuong 2004: 37).

2. IDPs and Refugees

a. Similarities and differences

Refugees and internally displaced share the involuntary nature of their movements. Differently from immigrants that decide to leave their places in search for new opportunities or economic reasons, both refugees and IDPs do not choose to move voluntarily and for this reason they fall under the category of forced migration (Sansculotte-Greenidge 2014: 180). In addition, another common feature of both IDPs and refugees regards their country of origin, in particular their unwillingness or inability to assist and protect their citizens, forcing them to seek for protection either within the State or in neighbouring countries (Loescher 2016: 3).

As regards the differences, the internally displaced must be distinguished in their definition from the other types of existing migrants, above all from refugees, mainly as four aspects are concerned.

Firstly, IDPs' movements remain inside their State of origin, therefore not crossing any internationally recognized State border (Koser 2011: 210); refugees on the contrary move across borders in neighbouring countries or even throughout continents to seek asylum (Loescher 2016: 3).

Secondly, IDPs are still citizens of the country in which they move, therefore they are entitled to the full rights usually granted to citizens, contrary to the limited rights owned by refugees and migrants (Koser 2011: 210). Refugees, for instance, lose their right to enjoy the protection that should be afforded to them by the State, and on the other side, they enjoy an *ad hoc* protection granted by the 1951 Refugee Convention (Majinge, Ache 2010: 417 ff.) and through UNHCR's tailored mandate (Loescher 2016: 3). Contrary to refugees, IDPs do not have a legal framework suited to their specific situation, even if most of the times they experience equal dramatic experiences as those of refugees (Majinge, Ache 2010: 419 ff.).

Thirdly, States have the primary responsibility as regards the rights owned by IDPs (Koser 2011: 210), as they remain under the supreme jurisdiction of the State of origin, contrary to the

role played by host States or by the international community in the circumstances affecting refugees and asylum seekers (Koser 2011: 210).

Lastly, the grounds on which the status of refugee should be granted are limited only to situations of persecution, instead of the wider list of causes that can be used in order to assess a situation of internal displacement, which includes also disasters and development projects (Taddele Maru 2014: 62 ff.).

It may also be added that IDPs will not necessarily be of concern of the international community, differently from what happens concerning the international protection granted to refugees. Indeed, if the State is willing and able to provide for the protection of its displaced and if it does not request for assistance, then there will be no concern from the international community (Mooney 2005: 14).

I. Three lines of approach for IDPs vs. Refugees governance

According to Taddele Maru, as regards the governance of refugees *vis-à-vis* IDPs, three approaches have emerged: the unified one, the separate one and the integrated one (Taddele Maru 2014: 94 ff.).

Proponents of the unified approach argue that the existing distinction of the two categories is artificial and unnecessary. In their opinion, IDPs and refugees share the same conditions of vulnerability, arising from the same situations and effects that forced movement cause them. Therefore, rather than providing protection to individuals on the basis of the definition in which they fall, we should focus on their factual needs and in doing so, avoiding the creation of disparities in terms of degrees of protection provided. As an example, India and Pakistan have been two major supporters of this concept on the governance of the two categories (Taddele Maru 2014: 94 ff.).

In accordance to the separate approach, the two different regimes, protecting refugees on one hand and IDPs on the other, should remain distinct. The main reason behind their thesis lies in the fact that abolishing the distinction between the two would result in lowering what has been achieved until now in terms of legal norms and standards. In particular, they deem that a unified regime would trigger a revision of the whole refugee regime, including a renegotiation of the 1951 Refugee Convention, that at the end will result in weakening the standards of protection granted to refugees and shifting the attention to an IDP regime, endangering the existing right to seek asylum (Taddele Maru 2014: 94 ff.).

As an alternative to both the previous theories, it could be argued that the governance of IDPs should be integrated with that of the existing Refugee regime, without this last one being

challenged. Supported by the UNHCR and by the Special Rapporteur on Refugees, IDPs and Asylum seekers from the African Commission on Human Rights, this approach calls for the integration of the two regimes protecting internal and external displacement, because if it were not the case, an IDP regime would be used as a mean to justify containment policies that would threaten the institution of asylum (Taddele Maru 2014: 94 ff.).

II. Towards a legal synthesis?

Luke Lee tried to advance the idea of a possible legal synthesis between the refugee regime and the IDPs' one. In his opinion, this synthesis would be possible by simply removing the border-crossing element present in the refugee definition (Lee 1996: 29 ff.; Phuong 2004: 24 ff.). Indeed, in his theory, the significance of this element derived directly from the historical circumstances that brought to the drafting of the 1951 Refugee Convention. In particular, the crossing of a border was placed as a precondition to be granted the refugee status merely because of the historical and political situation of the Cold War, during which the crossing of the Iron Curtain was of key importance (Lee 1996: 29 ff.; Phuong 2004: 24 ff.). Being now in the post-Cold War period, the element of border-crossing has hence become irrelevant. Actually, his main point in favor of the legal synthesis of the two regimes lies in the human rights area (Lee 1996: 29 ff.; Phuong 2004: 24 ff.). In his opinion, the fact of relying on borders as the basis for the distinction between refugees and IDPs, leads to unfair and unequal disparity of treatment in terms of standards of rights between the two categories. A solution to this artificial distinction could be to combine the two regimes into one single legal status, without using the element of border-crossing (Lee 1996: 29 ff.; Phuong 2004: 24 ff.).

However, it should be highlighted how, even when sharing similar situations, internally displaced and refugees demand for different kinds of protection (Phuong 2004: 25). The former, being within their national State's borders, are subject to the jurisdiction and the protection of their country of origin. Therefore, the main responsibility to protect IDPs remain in the State's authority and the international community is given only a complementary role. On the contrary, in the case of refugees, they no longer enjoy their State's protection and can only rely upon the international protection granted to them, which resembles a surrogate, alternative, rather than complementary protection (Phuong 2004: 25).

b. The relevance of the border-crossing element: the case of Somaliland

Although some have tried to refute the relevance of the transboundary element in the context of the distinction between IDPs and refugees (Lee 1996: 30 ff.), still its importance cannot be denied.

Contrary to Lee's thesis, there have been cases in which the border-crossing was understood as the distinctive feature of the refugee status, even before 1951. When the time came to discuss the future 1951 Refugee Convention, States had the opportunity to express their views on the matter (Phuong 2004: 25). One of the strongest points came from the US Representative, that clearly rejected the possibility to include the issue of the internally displaced into the draft Convention. Her reasoning was based on the assumption that the two issues must be dealt separately, mainly because it was the responsibility of the State, rather than of the General Assembly, to deal with the problem of internal displacement. As a result, the discussion of the issue of IDPs was excluded from the 1951 Refugee Convention, that focused instead on those who had crossed an internationally recognized State border (Phuong 2004: 25).

However, set aside the unwillingness of the States to do so, the main reason behind the exclusion of IDPs from the Convention was the implicit principle of State sovereignty. Hence, the relevance of the transboundary element would result from one of the key principles of the modern history and of International Law, namely that of national sovereignty and the subsequent right of territorial integrity and non-intervention. Therefore, there is in fact a reason behind the distinction of the two definitions, namely the respect of these cardinal principles of International Law (Phuong 2004: 25).

In some situations, the relevance of borders is crucial and the distinction between IDPs and refugees becomes blurred. An example can be the case of the self-declared State of Somaliland, not recognized by the international community. Somaliland declared unilaterally its independence from Somalia on 18 May 1991 and proclaimed its existence as a full-fledged State along the former colonial borders of the British Somaliland protectorate. Since then, the newly established State in the north of the country had to face the arrival of thousands of displaced persons coming from the south and central Somali regions, facing an instable and violent internal situation due to the collapse of the central State. According to UNHCR, in 2016 there were as of 85,000 IDPs in Somaliland⁷, settled in 14 camps mainly in the capital city of Hargeisa (IDMC 2018). What is relevant is that the status of IDPs and of refugees is highly contested by the Somaliland's government. If on one hand International Organizations and UN

⁷ Canada: Immigration and Refugee Board of Canada, Somalia: Somaliland, including government structure, security, and presence of internally displaced persons (IDPs) from Somalia (2016-March 2018), 23 March 2018.

agencies, such as UNHCR, register them as internally displaced persons, on the other, the local government classify them as refugees. However, the recognition of those people as refugees by relevant international agencies would result in the implicit recognition of Somaliland as a State. The consequence of this uncertain situation has led to the failure to register and assist the displaced in the settlements (Amnesty International 2009: 9 ff.).

C. Dimensions, causes and trends of displacement in Africa

1. The legacy of the Cold War in Africa

Although the African continent played a minor role in the struggle between the two superpowers in the Cold War period, some of the most disruptive cases of internal displacements were affected by Cold War policies (Cohen, Deng 1998: 19 ff.; Korn 1999: 23 ff.).

The American and Soviet governments contributed to the emergence of several new internal conflicts affecting in particular African States: they had client governments or local movements that were provided with number of arms in order to fight for their cause and to establish control over a State. This was the origin of several proxy war in the context of the Cold War, mainly during the 1970s in Ethiopia and Somalia and throughout the 1980s in Angola and Mozambique (Cohen, Deng 1998: 19 ff.; Korn 1999: 23 ff.).

Soviet armaments contributed to the Somali invasion of Ethiopia at the end of the 1970s and again to the Ethiopian expulsion of Somali invaders; moreover, the USSR's support to the Ethiopian government of Mengistu Haile Mariam made a contribution to the decade-long war against Eritrea's independence pressures, which led to the displacement of thousands. In Mozambique and Angola, the Soviet Union supported with arms the governments to fight against insurgency groups supported by the United States in the case of Angola, and by South Africa in the Mozambican civil war. These conflicts resulted in the displacement of at least 5.7 million people in Mozambique and in more than 2 million in Angola (Cohen, Deng 1998: 19 ff.; Korn 1999: 23 ff.).

As for the US's involvement, the governments of Liberia and Somalia were supplied by US arms in the 1980s which contributed in the protraction in time of the corrupted and illegitimate regimes of Samuel Doe and Siad Barre; the end of the Cold War had the catastrophic effect of bringing those regimes to collapse, leaving the arms in the hands of ethnic clans (Cohen, Deng 1998: 20 ff.).

To conclude, it can be said that the African States that received the greatest arms supplies and were more aligned with one of the two superpowers were also those that were found to have experienced the highest numbers of displacements and suffering at war (Cohen, Deng 1998: 20 ff.).

Nowadays the Sub-Saharan African region (SSA) is one of the most affected areas in world by the plight of IDPs; it is possible to highlight several reasons for the increasing presence of IDPs in that region during the last years, notably the role played by armed conflicts in the area that more and more frequently have started to target civilians populations. As a consequence, Africa has a record with regards to conflict related displacements, which continues to be triggered by the struggle for resources, the never-ending presence of rebel militias which are fighting within their country's borders and the widespread traffic of arms. Notwithstanding the massive presence of conflict induced IDPs, the SSA is affected also by human and natural disaster induced displacement, with the tragical example of the Sudan drought in the 1980s, or, more recently, the heavy rains in Burundi or the floods in Kenya (D'Orsi 2012: 76).

2. Conflict and violence related displacement (CID)

From the 1990s onwards, a sharp growth of new internal conflicts was registered, caused by the notions of identity, ethnicity and religion. In all circumstances, civilians are frequently found to be used as instruments of war, being forcibly displaced, taken as hostages or deported for different purposes (Contat Hickel 2001: 699 ff.).

Conflict and violence are increasingly reported as primary causes of internal displacement, covering different forms of conflicts, including internal conflicts, civil wars, situations of generalized violence, internal strife or occupation, just to mention some. As a result, the CID notion refers to people who feel compelled to leave their home or habitual place of residence in order to seek protection in a safer part of their country; or they may be subject of eviction from their properties by actions or plans perpetrated by their State or by non-State actors (Ayalew 2015: 13 ff.).

Conflicts, besides being the cause of suffering, indiscriminate violence and abuse of human rights, are also the cause of situations of protracted displacement. In the event of an internal conflict, people fleeing from their lands and seeking protection elsewhere will not be able to return to their homes and properties for long periods of time. This, in turn, will have the adverse effect of generating new situations of tensions, for instance ethnic struggles in the hosting communities, undermining even more the overall stability of the affected country. Examples of these situations can be found in several African States: in the Gambella regions of Ethiopia,

protracted displacements have caused demographic changes beginning interethnic tensions between the IDPs present in the region and the communities that were hosting them (Taddele Maru 2014: 22 ff.).

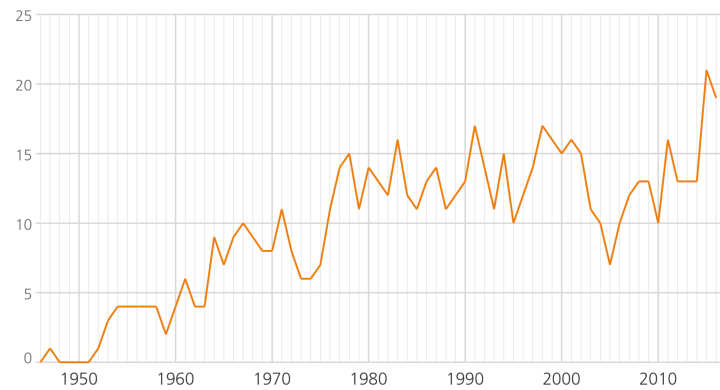
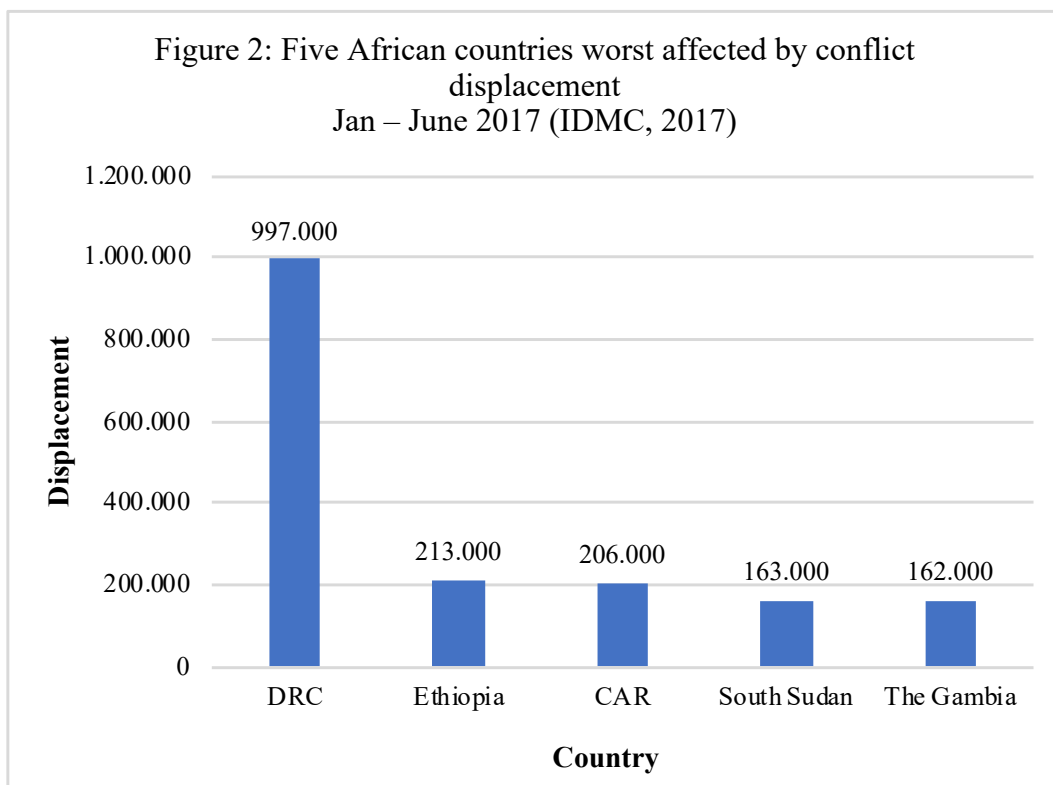


Figure 1: Number of armed conflicts in Africa, 1946 to 2016. (IDMC, 2017)

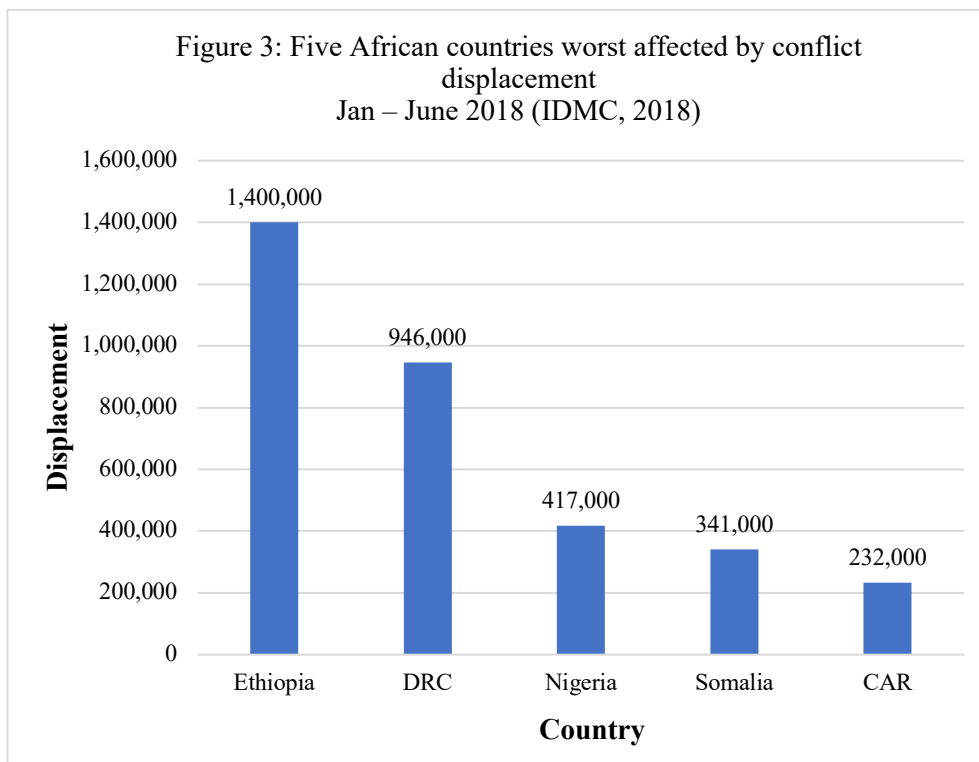
As Figure 1 shows, the number of armed conflicts in Africa changed over the years: remaining steady between the 1980s and 1990s, it declined after the end of the Cold War, particularly between 1998 and 2005. However, from that point onwards, the number increased constantly, in spite of some years of decline, reaching a peak in 2015 (IDMC 2017).

The impact of these conflicts can be highly disruptive over the stability of whole African regions and, combined with the lack of concrete possibilities of return, or resettlement measures, have the effect of rising the number of IDPs and situations of protracted displacement. According to some studies, a situation of displacement related to conflict can last as long as two decades. As far as the implications of a civil war are concerned, it would affect negatively several different parameters: life expectancy, infant mortality rate, the proportion of undernourished people, access to potable water, the rate of economic growth, per capita income and poverty, affecting not only the country itself but also neighboring countries (IDMC 2017).



At the end of 2016, there were 12.6 million IDPs in Africa, 3.9 million of which of new displacements. Among the new displacements, 2.8 million new IDPs related to conflict and violence were reported, representing 70 per cent of all new displacements, across 23 African countries. With that proportion, Africa accounted for 40 per cent of the world total amount of conflict related displacement (IDMC 2017).

As of 2017, in Sub-Saharan Africa there have been 5.5 million new IDPs related to conflict and violence in 29 countries, representing 46.4 per cent of the world total. As Figure 2 shows, the Democratic Republic of Congo resulted the worst affected country in the world by conflict displacement with 997,000 displacements, exceeding the whole total of 2016. CAR's presence of IDPs in 2017 quadrupled if compared with that of the previous year and Gambia experienced for the first time ever a high presence of displacement in the first part of the year due to constitutional crisis and military intervention (IDMC 2017).



Ethiopia is one of the countries to have been recently, severely affected by new conflicts and displacement crisis. In the first half of 2018, Ethiopia reported 1.4 million new displacements, the largest number of new IDPs for armed conflict, due to tensions in West Guji and Gedeo regions, together with spread violence near the borders of the Oromia and Somali regions. This situation erupted already last year, and then the crisis expanded in other parts of the country, triggering a massive humanitarian crisis in West Guji and Gedeo regions. These are areas already highly populated and this new influx of IDPs is putting pressure on basic social services. So, there is still an ongoing security issue, crisis of basic social services, and impossible returns to areas of origin. This number of new IDPs increased enormously if compared with the 213,000 displacements in the same period of 2017 (IDMC 2018).

DRC is one of the countries worst affected by IDPs on the continent if we consider prolonged crisis of IDPs, with 946,000 new displacements in the first half of 2018. Moreover, recently DRC had a new conflict that erupted in the Kasai province in 2016 that has continued since then, but also ongoing conflicts in the province of North and South Kivu. IDPs here suffer of lack of basic social services, no access to school for children, ongoing security threats to their personal safety, security and sexual violence (IDMC 2018).

3. Disaster related displacement (NDID and MDID)

Internal displacement does not just happen in conflict scenarios, people can be displaced also for natural and human made disasters. This root cause comprises both natural (NDID) and man-made disaster induced displacement (MDID). The first includes all natural disasters including floods, drought, tropical cyclones, storms, volcano eruptions, earthquakes and tsunami, to name a few. Instead, man-made disasters can refer to chemical or industrial disasters, collapses and failure of buildings (Ayalew 2015: 14 ff.).

All the different factors that can trigger a natural disaster-induced displacements have been categorized by Taddele Maru in four different categories: 1) Geophysical extreme hazards: they include a severe event connected to the earth, for instance an earthquake or a volcano eruption; 2) Hydro-meteorological extreme hazards: including atmospheric events like storms and floods; 3) Environmental insecurity: as desertification and droughts; 4) Significant permanent loss of State territory (Taddele Maru 2014: 116 ff.).

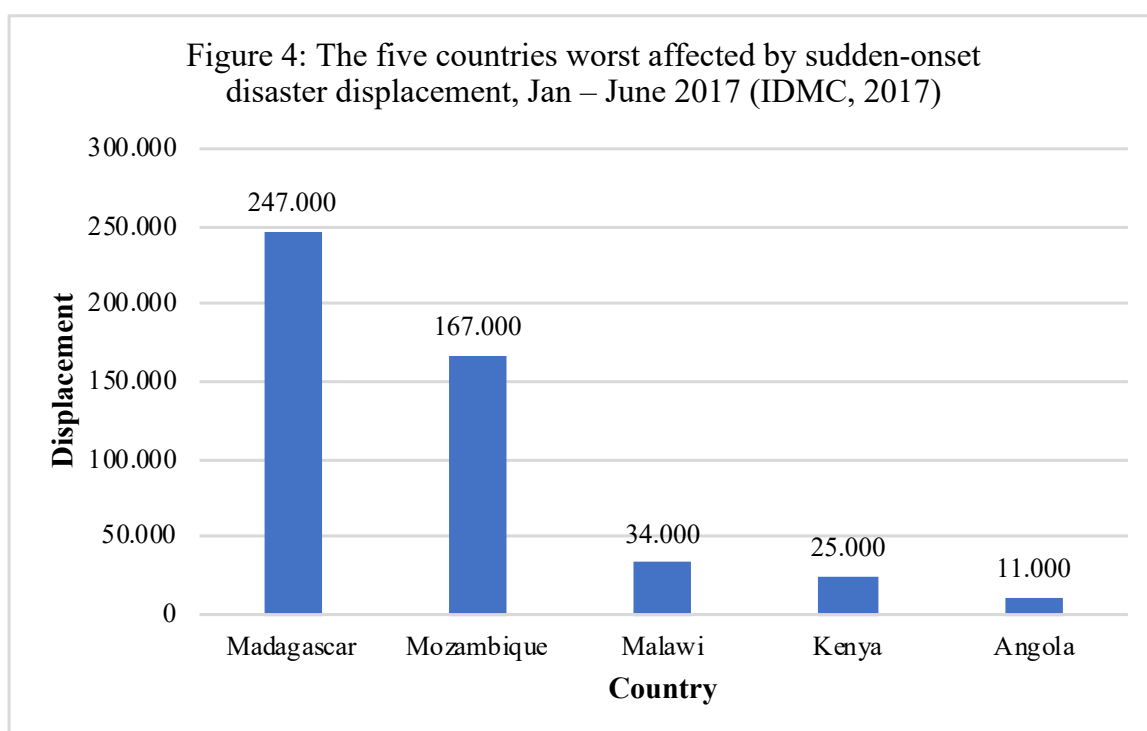
A specific relevance should be given to global warming, as it has been proved how for each 2 degrees Celsius of increasing temperature, it corresponds to 3.5 degrees Celsius in African warming (Renaud, Bogardi, Dun, Warner 2007). This would amount to millions of new displacements due to climate change-induced events, and with regards to Africa, this situation means new and more frequent droughts that will force the majority of farmers to flee their homes. The increased frequency of natural disasters in Africa has already been proved, having showed a 142 per cent of growth in the last ten years, and provisions say that in the next 70 years the displacements caused by floods will raise from 1 to 70 million of people (Taddele Maru 2014: 118).

However, according to regional trends, disaster displacement tends to affect more Asia, whereas conflict related displacement tends to be concentrated in Sub-Saharan Africa.

Even if natural or man-made disasters have been recognized as root causes of displacement and they have been included into several IDPs legal instruments as the Guiding Principles, there are authors moving some critiques to this inclusion. According to Geissler, victims of displacement due to armed conflicts face a worse situation than those displaced by natural or man-made disasters, falling in the field of socio-economic rights rather than a refugee-like situations (Geissler 1999: 455 ff.). Furthermore, when it comes to assistance and protection, in the case of a natural or man-made disaster States are more willing to accept and even request aid provided by the international community, leaving apart sovereignty issues (Geissler 1999: 456 ff.). Others provide a slightly different motivation not to include those displaced by natural disasters in the IDP definition, stressing the lack of the element of coercion in that type of

displacements. For them, since coercion is necessary to have a forced displacement and since this element can only be found in situations involving a State or an insurgent group, it follows that only human rights violations can amount to a displacement situation (Phuong 2004: 30 ff.). However, there are several examples proving that also displacements by natural disasters can trigger human rights violations, as reported by the 1992 Analytical Report (Phuong 2004: 30 ff.).

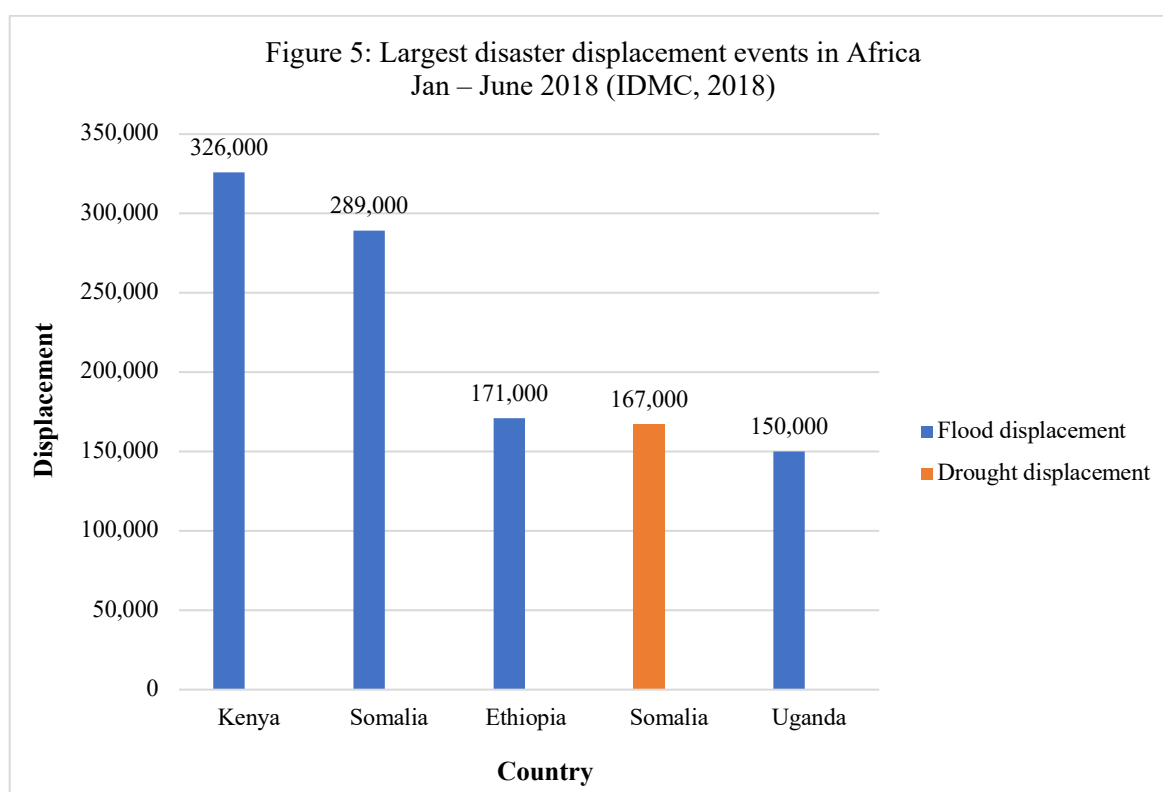
At the end of 2016, there were 3.9 million new displacements, 1.1 million of which of new IDPs related to sudden-onset disasters. The overwhelming majority of those displacements, exactly 977,000, were displaced by floods, accounting for over 90 per cent of all new displacements related to disasters (IDMC 2017).



With respect to 2017, the amount of new displacements in Sub Saharan Africa associated with disasters was of 2,561,000, that is 13.6 per cent of the global total. The five worst affected African countries by disaster related displacements were: Somalia 899,000, Ethiopia 434,000, Madagascar 248,000, Niger 189,000, Mozambique 170,000 (IDMC 2018). 2017 has marked the year in which, for the first time, data for IDPs associated with droughts was collected, in particular there were 1.3 million displaced, the majority of which in the Horn of Africa (IDMC 2018). Drought was the cause of the major part of the 434,000 Ethiopian IDPs; tropical cyclone Enawo caused 250,000 displaced people in Madagascar, causing landfall in the northern-eastern part of the country in March; flooding caused 189,000 IDPs in Niger; tropical cyclone

Dineo triggered the majority of 170,000 IDPs in Mozambique due to landfall in February, causing the damage of 100,000 homes and destroying most of crops in the affected area of Inhambane. Along with those disaster-related displacements, also other countries were hit by disasters: Nigeria 122,000, Uganda 95,000 and Malawi 84,000 (IDMC 2018).

If compared with 2016 data, the proportion of disaster-related displacement in 2017 followed a similar path, with most of them happening in East Africa, representing 53 per cent of the total, and with a new increasing measure in Southern Africa, accounting for 44 per cent of the African total.



Concerning the first part of 2018, as Figure 5 shows, Kenya was the country worst affected by a disaster displacement event, causing 326,000 new displacements affecting all 47 countries between April and May. The country was already hit by the disastrous outcome of the East African drought starting in 2015, and in 2018 was affected by one of the highest floods in the raining season, producing most of the damages on coastal areas where half of the population was forced to flee (IDMC 2018).

Somalia followed Kenya with 289,000 new displacements. Although being already the worst affected by the ongoing East African drought, the country was hit by a huge rainfall between April and May causing riverine floods in half of Somalia's regions, in particular in the Shebelle and Juba districts. Moreover, in the first part of 2018 the ongoing drought that between 2016

and 2017 already triggered more than 800,000 displacements, caused 167,000 new displacements. This sharp improvement of the drought situation is the result of the positive effects of the rich precipitation during the rainy season that improved the overall country scenario, even if some critical situations still remain in the Bay, Lower Shabelle and Bakool regions (IDMC 2018).

Ethiopia was affected in the same months by a severe rain, causing 171,000 new displacements in the Afar, Oromia, Somali and Southern Nations, Nationalities, and Peoples' Region (SNNPR).

Floods were also the cause of 150,000 new displacement in Uganda, where May Heavy rains triggered mass displacements in particular in the mountainous Eastern region. Fortunately, the displacements to seek protection in the valley were only temporary and the following month the majority of the displaced were able to come back (IDMC 2018).

4. Development induced displacement (DID)

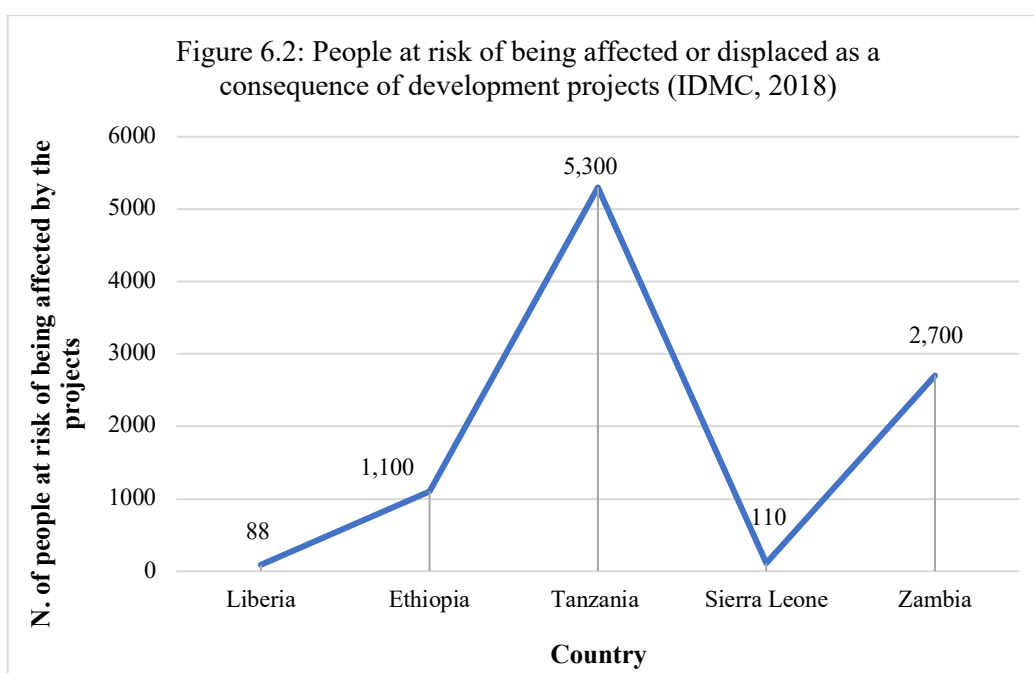
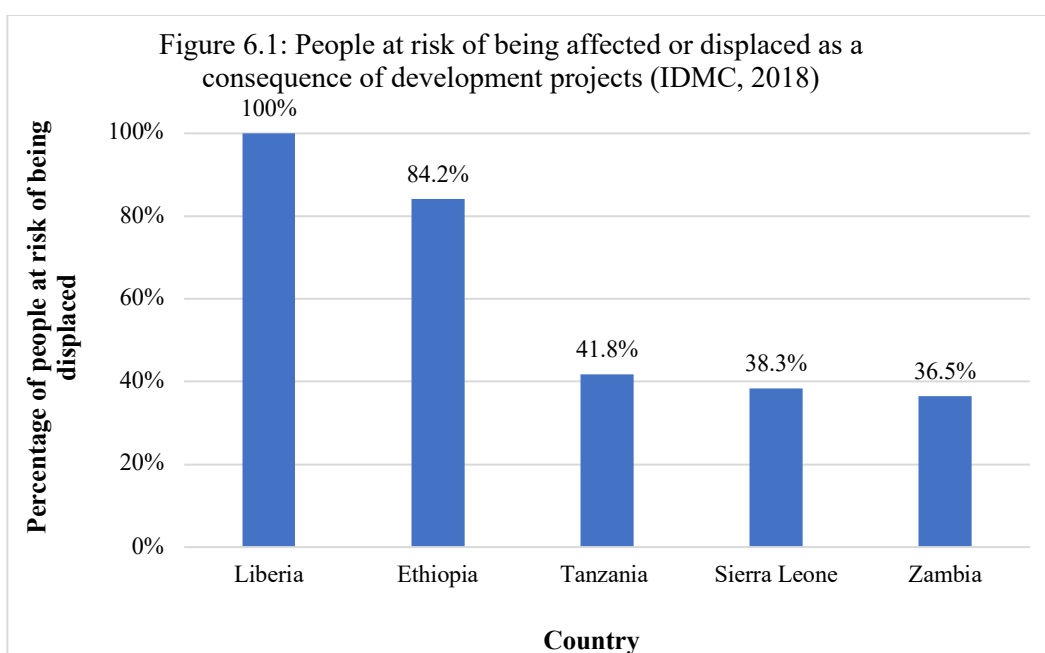
Contrary to displacement related to conflict and violence and disaster induced displacement, development as a cause of internal displacement is yet a very contested issue. Development induced displacement, according to Taddele Maru, comprises six causes: construction of dams, infrastructures, extractive industries, agricultural plantations, parks and other reserves and resettlement programs (Taddele Maru 2014: 113 ff.). Among them, extractive activities and mining are the main cause of development induced displacements in Africa (Taddele Maru 2014: 113 ff.). In particular, oil exploration and exploitation can cause displacements since the areas to be exploited are generally in marginal areas, distant from effective State's control. For instance, in South Sudan, nearly the total of the population, 95 per cent, living close to areas of oil exploitation have experienced displacement (Taddele Maru 2014: 114 ff.).

While there are some data that estimate the number of displaced by development from 15 to 20 million people every year (IDMC 2017), the picture is much more blurred when it comes to African statistics (Adeola 2016).

From an historical point of view, development projects have played a crucial role after the waves of decolonization of African States during the 1990s. Several African countries were interested by large-scale investments, especially for the construction of dams, seen as essential elements for the improvement of economic and social conditions. Those massive interventions are believed to have caused large influx of displacement, even if few or no data are available to prove this assumption. An example can be the making of the Egyptian Aswan High dam in the 1950s which is likely to have caused 100,000 IDPs from the Nubian tribe. Similar examples

can be found in Ghana in the 1960s, in Mozambique in the 1970s, in Nigeria in the 1980s and in Lesotho in the 1990s (IDMC 2017).

However, the African continent is characterized not only by development induced displacement caused by dams, but also from other infrastructural projects. Among them, in 2011 Kenya was affected by a displacement of more than 15,000 people whose places of residence were situated near the Wilson airport; in 2014, there were 2,000 IDPs in Egypt because of the Suez canal project; in 2015, in Nigeria, 10,000 people coming from the Lagos Badia East community were displaced for the construction of the local metropolitan and other national infrastructural projects (IDMC 2017).



Even though collecting data for this kind of displacement poses some crucial difficulties, estimates based on some analysis published by the World Bank on 115 world projects highlight that 19,000 people could be considered to be at risk of displacement in the near future (IDMC 2018).

CHAPTER II

LEGAL FRAMEWORK FOR THE PROTECTION OF IDPS: INTERNATIONAL LAW AND REGIONAL INSTRUMENTS

A. Overview of the applicable existing law to IDPs

Even though IDPs do not enjoy the protection of a single legal international instrument, they still can benefit from the protection deriving from both Human Rights Law (HRL) and International Humanitarian Law (IHL) (Silska 2015: 255). Giving that the main cause of internal displacement in the African context is related to conflict, hence the importance of protection coming from IHL and HRL instruments. On the other side, for displacement related to peace time situations, only HRL can apply (Phuong 2004: 42).

1. International Human Rights Law

The UN Commission on Human Rights (UN CHR) in its Resolution 1992/73 on IDPs first recognized the human rights dimension of internal displacement, therefore framing the issue of IDPs at the UN level into the framework of human rights (Silska 2015: 257).

Regarding the main instruments of HRL, they are (Phuong 2004: 42):

- 1948 Universal Declaration of Human Rights;
- 1966 UN International Covenant on Civil and Political Rights (ICCPR);
- 1966 UN International Covenant on Economic, Social and Cultural Rights (ICESCR);
- 1984 Convention against torture and other cruel, inhuman or degrading treatment or punishment;
- 1965 Convention on the prevention and punishment of the crime of genocide.

HRL is applicable to IDPs since it applies in all situations and towards all individuals, both in times of peace and in situations of armed conflicts. It is also applicable in situations of tensions, disturbances and disasters, that do not fall under the umbrella of armed conflicts but still can lead to violations of human rights of the displaced. Even if HRL can guide the treatment of IDPs in situations of internal tensions or disasters, it cannot provide an explicit protection of the displaced. Nevertheless, some specific rights of IDPs can still be derived from some general human rights principles, for instance a right against forced displacement can be inferred from the freedom of movement, provided in Article 13 of the 1948 Universal Declaration of Human

Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights (Cohen, Deng 1998: 78).

Concerning the most relevant HRL provisions for the plight of IDPs, they can include the prohibition of torture, cruel and degrading treatment, the right to possession of property, the right to home and family life, liberty of movement, the right to integrity and dignity of the person and the principle of non-discrimination, just to mention few (Silska 2015: 257 ff.).

As far as the role of the State in protecting IDPs is concerned, it bears both negative and positive obligations: in negative terms, the State is obliged by HRL not to displace and not to inflict inhuman treatment, while in positive terms, the State should provide sufficient material assistance and also prevent possible displacements caused by other non-State actors (Phuong 2004: 44).

However, notwithstanding the relevance of HRL for the protection of the displaced, there are some shortcomings in its implementation. The first one is the ratification problem, meaning if the State concerned has not ratified the relevant human right treaty. Still, even if the State has ratified the human right treaty, it can always apply some limitations clauses or derogations (Geissler 1999: 459). Limitation clauses allow States to legally restrict the applicability of some rights in particular circumstances, for instance for public security reasons. Derogation clauses, instead, gives the possibility to States to suspend the applicability of specific rights in a narrow set of situations, as allowed by Article 4 of the ICCPR (Cohen, Deng 1998: 79).

As a consequence, HRL cannot be considered as an instrument of adequate protection for internally displaced persons because many of those rights can be derogated in times of national emergencies or internal strife (Silska 2015: 256). Actually, only “core rights”, meaning *jus cogens* norms, cannot be derogated under any circumstances, according to ICCPR, they are: right to life (Article 6), freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 7), freedom from slavery or servitude (Article 8), right to be free of arbitrary detention (Article 11), prohibition of retroactive application of penal law (Article 15), right to recognition everywhere as a person before the law (Article 16), right to freedom of thought, conscience and religion (Article 18) (Silska 2015: 259).

Another shortcoming of HRL is the lack of an effective implementation mechanism, as the current reporting and complaint mechanism is not enough to provide a sound respect of human rights and protection to IDPs (Geissler 1999: 459).

In addition, HRL is not binding for insurgent forces. Indeed, contrary to IHL, HRL does not bind non-State actors as it is not yet clear if under International Law non-State actors can be held accountable for human rights violations under HRL regime (Zorzi Giustiniani 2011: 359).

As for the humanitarian assistance, contrary to IHL, HRL does not provide equal provision to accept humanitarian assistance, even if an exception to this rule can be found in Article 23 of the African Charter on the Rights and Welfare of the Child, which provides for the obligation to ensure that the child has access to humanitarian protection and assistance. However, even if such obligation does not exist for the State actors under HRL, if the State is unwilling or unable to provide such assistance it should not arbitrarily refuse an offer for a third party to provide relief (Zorzi Giustiniani 2011: 363).

In conclusion, there is no special mention of IDPs' rights in all HRL instruments; still, the internally displaced can enjoy those principles as applicable to all human beings. However, this protection was proved to be ineffective, mainly because of the possibility to apply derogations (Silska 2015: 260).

2. International Humanitarian Law

IHL regulates the means of war and the conduct of hostilities, applicable in situations of international or internal armed conflicts, and protects civilian populations and vulnerable groups. Being conflicts one of the main root causes for displacement, it is crucial to understand how IHL can provide protection to the internally displaced (Silska 2015: 260).

The sources of IHL are:

- Four 1949 Geneva Conventions;
- Two 1977 Additional protocols.

Even if IHL provides for a more comprehensive system of protection during international armed conflicts, it is during non-international, meaning internal, armed conflict that the vast majority of displacement situations occur. Moreover, it is becoming increasingly more uncommon to have international conflicts as nowadays the majority of conflicts around the world are internal (Phuong 2004: 45).

The legal provisions considering the displacement caused by international armed conflicts are the four 1949 Geneva Conventions and 1977 Additional Protocol I (Silska 2015: 260). In this regard, many norms of these provisions addressing the protection of non-combatants may be invoked by IDPs as well (Cohen, Deng 1998: 84). Moreover, even though many provisions are not applicable specifically to IDPs because they were thought for the protection of non-nationals of the State, there are still examples of IHL principles that IDPs can enjoy. In particular, in the second part of the Fourth Geneva Convention, Article 13 applies to all the

populations of the countries in conflict and part IV of Protocol I includes in its provision the category of civilians as a whole, without making distinctions between nationalities (Cohen, Deng 1998: 85).

As for the legal provisions regarding displacement caused by non-international armed conflicts, such as civil wars, the only applicable provisions in that event are Common Article 3 to the four Geneva Conventions and the 1977 Additional Protocol II. Common Article 3 provides the principal source of IHL for IDPs in case of internal armed conflicts, applicable to both State and armed forces (Zorzi Giustiniani 2011: 359). Nonetheless, as a principle of customary International Law, Common Article 3 is believed to bound States in any type of armed conflict, being it international or non-international (Silkska 2015: 261). It provides that all civilians should be treated with humanity and without discrimination (Phuong 2004: 45). In addition, it prohibits, without possibility of derogation, specific acts that would amount to serious violation of human rights, such as violence to life and person, mutilation, cruel treatment, torture and taking hostage. Moreover, it also prohibits direct attack to displaced civilians (Cohen, Deng 1998: 82).

Still, the relevance of this provision could be reduced by the absence of a clear definition of armed conflict, and by State practice claiming not to have an internal armed conflict, but rather mere tensions and disturbances (Geissler 1999: 460).

The 1977 Second Protocol, instead, relating to the protection of victims of non-international armed conflicts, even if with a higher threshold for application, provides for the protection of civilians from forced displacement, unless for safety or imperative military reasons.

IHL should grant protection to IDPs in several forms (Silkska 2015: 262). First of all, IHL provides for protection to all civilians, and as for the specific protection of IDPs, those instruments do contain some provision tailored to refugees or stateless persons, but no one specific to the internally displaced. However, IDPs can still enjoy the protection from indiscriminate violence provided by IHL, as part of the category of non-combatants (Silkska 2015: 261).

As for the forced displacement of civilians, under IHL it is prohibited only for illegitimate reasons. According to Article 17(1) of Additional Protocol II, it is still possible for the security of civilians involved or for military reasons.

Concerning humanitarian assistance, IHL is particularly relevant for IDPs because it provides some conditions under which humanitarian assistance can be provided. In the event of an international conflict, IHL provides an obligation for States to accept humanitarian assistance if they cannot provide sufficient assistance to their civilian population, according to Protocol I, Article 70 (Zorzi Giustiniani 2011: 361). In the event of an internal conflict, instead,

humanitarian action is more limited, as there are provisions only in Common Article 3, according to which an impartial humanitarian body (International Committee of the Red Cross - ICRC) may offer its assistance to the parties in conflict, and in Protocol II, Article 18 which gives the possibility to undertake relief actions if the civilians are suffering, with the previous consent of the State (Zorzi Giustiniani 2011: 362).

However, even with IHL there are some limitations that apply. Indeed, IHL instruments can apply only to situation of armed conflicts, therefore excluding all previous phases of tensions, in which displacement can occur and even other causes of displacement such as disasters.

3. Refugee Law

Even though the internally displaced, by fleeing their places of habitual residence, find themselves in a refugee-like situation, the protection coming from International Refugee Law is not directly applicable to them (Phuong 2004: 47). Indeed, Refugee Law is applicable only to the external dimension of displacement, meaning to those displaced that have crossed a State border and find themselves in the territory of a foreign country (Taddele Maru 2014: 82).

However, despite the direct inapplicability of the Refugee Convention, it represents still a relevant instrument and point of reference for comparison and analogy with the IDPs protection to draft new rules and instruments of protection specifically conceived for IDPs (Silska (2015: 263). A first example can be the provision of Article 33 of the 1951 Refugee Convention, establishing the principle of *non-refoulement*, which protects refugees from being returned to a country where they would face a threat of persecution. In a similar manner, it can be said that neither the internally displaced should not be forcibly returned in places where their life or freedoms would be at risk (Phuong 2004: 47). Moreover, in the hypothesis in which an IDP would seek asylum and protection abroad, it would benefit from provisions envisaged by Refugee Law (Silska 2015: 264).

There are also other circumstances in which Refugee Law can be useful for IDPs as well, for instance in its provisions regarding the principles in order to have a safe and voluntary return (Phuong 2004: 47), which can be translated also in the experience of return of the internally displaced, as well as general provisions laid down by the UNHCR Guidelines on Refugee Women and Children (Phuong 2004: 47 and Silska 2015: 263).

In spite of the relevance that Refugee Law can represent for IDPs, there are some situations in which some tensions among the two still arise. In particular, there are specific cases in which Refugee Law grants to refugees no more than an equal treatment accorded to aliens in a different country, meaning a treatment accorded to nationals of a foreign country (Cohen, Deng 1998:

85). In these event, if Refugee Law is applied as it stands to IDPs, they would be deprived of their rights as citizens of their country (Silska 2015: 263). This deprivation affects some rights enlisted in the 1951 Convention, namely: the acquisition of movable and immovable property (Article 13); right of association (Article 15); right to engage in wage-earning employment (Article 17); right to self-employment (Article 18); practice of liberal professions (Article 19); housing rights (Article 21); right to choose a place of residence and to move freely (Article 26).

B. Gaps in the protection

1. Areas of adequate protection

In the opinion of Geissler, in order to have an area of adequate legal protection in International Law there must be two alternatives prerequisites: the legal instrument must be ratified without possibility of reservation or the existence of a principle of customary International Law (Geissler 1999: 461). In particular, following his reasoning, HRL and IHL provide an adequate legal protection only with regards to two rights: right to life and personal security and right to personal integrity (Geissler 1999: 461).

In his *Compilation and Analysis*, Francis Deng identifies the relevant legal norms for the protection of the right to life of IDPs, defined as the most fundamental human right, in three different situations (E/CN.4/1996/52/Add.2).

The first situation regards tensions and disturbances or disasters, in which the relevant provisions are Article 3 on the right to life of the 1948 Universal Declaration and Article 6 (1) of the ICCPR. Even if those instruments allow for some forms of taking life in specific situations, as for death penalties provisions, arbitrary deprivation of the right to life is never permitted and derogations to the principle are never allowed, as affirmed in Article 4 (2) of the ICCPR.

In the second situation, that of non-international armed conflicts, it can be underlined that the right to life is non-derogable under all HRL treaties. Moreover, under IHL, Common Article 3 sets out the minimum standards of treatment for civilians during internal conflicts and other principles of International Customary Law explicitly prohibits attacks over civilians, as affirmed in RES 2444.

Finally, in situation of inter-State armed conflicts, Article 32 of the Fourth Geneva Convention applies, protecting internally displaced from being exterminated as protected persons in the hands of the parties to a conflict; moreover, the protection of civilians from direct and indiscriminate attacks is covered by Article 51 of Protocol I. As a consequence, it can be

concluded that IDPs have an adequate legal protection to their right to life and personal security deriving from the provisions established in International Law and any violations to this regime should not be considered as due to legal gaps, but rather due to a lack of effective implementation (E/CN.4/1996/52/Add.2: 20-26).

As for the right to personal integrity, Deng carries out the same reasoning. First of all, he states how the prohibition of torture, cruel, inhuman or degrading treatment or punishment is absolute for all the three situations, therefore no restrictions are ever allowed.

In situations of tensions, disturbances or disasters, Article 5 of the 1948 Universal Declaration applies, providing for the prohibition as a principle of customary law; the provisions of this article have been translated in Article 7 of the ICCPR, which protects personal dignity and integrity, and in Article 37 of the Convention on the Rights of the Child, both with no derogations allowed.

In situations of non-international armed conflict, HRL prohibitions are applicable, being them non-derogable. Moreover, more specifically, Common Article 3 which prohibits acts of violence and torture can be applied, together with Article 4 of Protocol II, IDPs are therefore protected during internal conflicts being them participants in the conflict or not.

In the last possible situation, namely during inter-State conflicts, apart from the applicability of HRL, Article 27 and 32 of the Fourth Geneva Convention are particularly relevant, affirming the prohibition to the use of violence and torture to protected persons, that is extended to all persons by Article 75 of Protocol I, including thus also IDPs.

To conclude, it can be said that the internally displaced are fully protected also concerning acts of violence and ill-treatment, including torture (E/CN.4/1996/52/Add.2: 32-34)-

2. Areas of inadequate protection

In his *Compilation and Analysis*, Deng also analyzed areas in which IDPs do not receive enough or adequate legal protection under International Law. Those areas concern mainly the right to personal liberty, the freedom of movement, the need for personal identification and documentation, the right to family reunification and the right to restitution or compensation (Geissler 1999: 462 ff.).

Concerning the right to personal liberty, when it comes to situations affecting internally displaced it is often violated, as IDPs are frequently subject to illicit practices such as detention in closed camps, hostage-taking, shielding, forcible recruitment and internment.

In situations of tensions, disturbances or disasters, Article 9 of 1948 Universal Declaration and Article 9 of the ICCPR affirm the right not to be subject of arrest or detention. However, those

provisions do not provide for absolute protection, as they allow limitation clauses as well as derogations in times of national emergencies. Moreover, for what concerns detention in closed camps, it constitutes detention under Article 9 of the ICCPR and it is considered legitimate as long as it is enforced in accordance with national legislation. Along with possible derogations under HRL instruments, even in situations of non-international armed conflicts the right to one's personal liberty is not adequately protected, as IHL contains no specific provision for detention. In fact, Common Article 3 does not provide for specific terms of protection for the deprivation of liberty rights of civilians; in addition, Article 5 of Protocol II implicitly allows the internment or detention of IDPs.

In situations concerning inter-State armed conflicts, Article 42 of the Fourth Geneva Convention allows detention for security reasons of aliens who are protected civilians in an armed conflict. As a consequence, a clear gap emerges for the protection of the right of personal liberty under International Law, in particular the conditions governing the legitimate detention of IDPs in closed camps are still blurred and a severe legal gap arises for provisions allowing for detention of IDPs in situations of internal armed conflict (E/CN.4/1996/52/Add.2: 39-42).

As for the freedom of movement, meaning the right to choose one's place of residence and to move freely in the territory, it is one of the most frequent violations to which internally displaced are exposed. According to HRL provisions, in situations of tensions, disturbances or disasters, Article 13 of the 1948 Universal Declaration as well as Article 12 of the ICCPR recognize the freedom of residence and movement of a person. Concerning individual or mass transfers of people within one country, there is no express provision involving this protection, therefore it can only be inferred from existing legal norms related to freedom of movement. In addition, Article 11 of the ICESCR provides for the right to housing, which is actually a non-derogable right, differently from the freedom of movement which is not absolute. Indeed, HRL allows for both limitation and derogation clauses under specific circumstances listed in Article 12 (3) of the ICCPR, which admits them in situations provided by law, for national security, reasons of public order or health and others.

In situations of non-international armed conflicts, since HRL instruments allows for derogations in times of emergencies, parties to the conflict can use this provision in order to suspend the freedom of movement. Moreover, for what concerns IHL, Common Article 3 does not provide any guarantee to the right or prohibition to forced displacement, however, Article 17 of Protocol II expressly prohibits forced movement of non-combatants unless for security or military reasons.

In situations of inter-State armed conflicts, it is the Fourth Geneva Convention which provides for the protection of the rights of protected persons including internally displaced. In particular,

Article 49 covers the movement of protected persons in case of occupation during an armed conflict. Consequently, being the protection coming from HRL derogable and inadequate during internal armed conflicts, the protection to the freedom of movement represents another legal gap for the protection of IDPs under International Law (E/CN.4/1996/52/Add.2: 57-60). Concerning the need for identification, documentation and registration, Article 2 and Article 6 of the 1948 Universal Declaration together with Article 16 of the ICCPR provide for the right to recognition as a person before the law, in situations of tensions, disturbances or disasters. Instead, for what concerns situation of non-international armed conflicts, Article 4 (2) of the ICCPR provides for the protection of the right to juridical personality in situation of national emergencies, thus recognizing the right to have legal personality before the law as absolute and non-derogable. However, IHL does not expressly recognize a specific right to documentation for internally displaced.

Finally, in situations of inter-State armed conflicts, Article 50 (2) of the Fourth Geneva Convention applies, claiming for the facilitation of the identification of children and registration of the parentage in situation concerning protected persons in an armed conflict. As a consequence, it can be said that existing norms of International Law do not adequately protect the specific need of the internally displaced in terms of identification and documentation (E/CN.4/1996/52/Add.2: 66-68).

Concerning the right to family reunion, in situations of tensions, disturbances or disasters, under Article 16 (3) of the 1948 Universal Declaration and Article 23 (1) of the ICCPR, family is defined as the fundamental unit of the society and therefore requiring special protection. In addition, special protection against interference in one's family affairs is set by Article 12 of the 1948 Universal Declaration and Article 17 of the ICCPR. Moreover, for what concerns family reunification, Article 10 and 22 of the Convention of the Right of the Child apply, even though most of the provisions are limited to reunifications across borders, and thus cannot apply to situations involving internally displaced.

In the event of non-international armed conflicts, IHL does not offer many provisions concerning family rights, as for instance those rights are not addressed by Common Article 3. In fact, only Article 4 (3) of Protocol II governs the steps to be taken to facilitate in all possible ways family reunification in times of internal armed conflicts.

For inter-State armed conflict instead, IHL sets out many applicable provisions, for instance Article 24 of the second part of the Fourth Geneva Convention, Article 26 of the Fourth Geneva Convention and Article 74 of Protocol I. In general, it can be said that International Law provides internally displaced for adequate protection of family needs, however, it must be underlined that it does not provide for reunification in situations of tensions, disturbances or

disasters and more protections should also be provided in the event of internal armed conflicts (E/CN.4/1996/52/Add.2: 71-76).

To conclude, concerning rights of property and possible restitution or compensation measures, if the right of property of IDPs is well addressed by HRL and IHL instruments, the same is not true for the right to restitution or compensation for loss of property due to displacement which is not adequately addressed by existing legal norms (E/CN.4/1996/52/Add.2: 71).

3. Four identified gaps: normative, applicability, consensus, ratification

Deng's conclusions show that, despite the existence of some areas in which the needs of the displaced are fully addressed by existing international norms, some gaps in the legal protection of IDPs still emerge. Those areas of insufficient protection can be classified in four main identified gaps: the normative gap, the applicability gap, the consensus gap and the ratification gap (Cohen, Deng 1998: 122 ff.).

A normative gap exists when the provisions guaranteed by International Law fail to provide any type of protection for the needs of IDPs and no specific norm exists. For instance, the absence of a right to restitution of property lost or a right to compensation for losses due to displacement (Cohen, Deng 1998: 122 ff.).

An applicability gap occurs when International Law does provide for a general norm, but this norm cannot be applied in every situation. An example could be the issue of applicability with non-State actors, when there is a gap in the protection of IDPs in the event of tensions, disturbances or disasters if the violation of the right was committed by non-State actors that are not directly bound by HRL instruments. Moreover, another issue is that of the applicability of IHL, given that, if a situation of violence falls under the necessary threshold to apply IHL and the State decides to derogate from the provisions of HRL, then IDPs could find themselves in a protection gap. In addition, in the event of an internal armed conflicts, IDPs are not fully protected against arbitrary detention because of a lack of protection from IHL and the possibility to derogate from HRL instruments (Cohen, Deng 1998: 122 ff.).

As for the consensus gap, it refers to those situations in which a general legal principle exists, but there is a lack of recognition of a corollary norm that would ensure the application in situations concerning the protection of IDPs. In particular, under this situation, legal principles dealing with the protection of IDPs can only be inferred from a general norm. Examples can be the prohibition of return to places of danger, that can be inferred only from prohibition of inhuman treatment and the issue of arbitrary detention, given the still unclear conditions to have a lawful detention of IDPs in closed camps (Cohen, Deng 1998: 122 ff.).

Finally, ratification gaps apply to those vacuums of legal protection coming from the lack of ratification by some States of relevant legal instrument such as human rights treaties or the Geneva Conventions and the additional Protocols (Cohen, Deng 1998: 122 ff.).

Apart from the four main gaps dealing with situations in which International Law failed to provide sufficient legal coverage, Deng identified also seventeen grey areas that should be improved in a future legal instrument to strengthen the protection of IDPs rights. They mainly dealt with: discrimination, in order to include the status of the IDPs when provisions require the notion of “other status”; forcible return to places of danger; gender-specific measures and specific rights for women and children; detention and restrictions to the preconditions to the lawful detention in closed camps; shielding; property related need and the right to restitution or compensation; rights to identification and documentation; family related rights (Korn 1999: 88).

4. Deng’s mandate as Special Rapporteur for IDPs

At the institutional level, inside the UN system, it was unclear how a solution for the issue of IDPs could be found. A major contribution in this sense came from a group of several NGOs, among which Friends World Committee for Consultation, the World Council of Churches, and the Refugee Policy Group, that decided to raise the problem before the CHR, in cooperation with the International Committee of the Red Cross (ICRC) and UNHCR (Orchard 2010: 290). The group called for the Commission to request the Secretary-General (SG) Boutros Boutros-Ghali an analytical report over the issue of IDPs, that was presented in 1992. The CHR then requested the SG to appoint an *ad hoc* figure in the position of Representative of the SG on the Human Rights of IDPs to fill the protection gap that was identified. The figure chosen by the UN officials in 1992 was Francis Deng, the former Sudanese Minister of State for Foreign Affairs, and the academic who first used the term “sovereignty as responsibility” (Orchard 2010: 290).

The first task that was attributed to Deng’s new mandate was to make a comprehensive analysis of the normative framework for the protection of IDPs, resulting in the 1996 Compilation and Analysis of Legal Norms applicable to IDPs, which will then lead to the drafting of the 1998 Guiding Principles on Internal Displacement (Phuong 2004: 8).

The second aspect of his mandate dealt instead with the institutional framework concerning the protection of IDPs. Among the different proposals suggested by Deng, the one that was actually implemented between 1998 and 2004 envisaged the establishment of an Internal Displacement Unit (IDU) within the United Nations Office for the Coordination of Humanitarian Affairs

(OCHA) to strengthen cooperation between the different UN agencies. However, the results fell short of expectations since the IDU was found not to have a significant impact in the UN system and so further institutional changes occurred. The IDU became an internal division of OCHA with a revised and more proactive role and the position of cluster leader for the assistance and protection of IDPs was assigned to UNHCR (Orchard 2010: 292 ff.).

C. Guiding Principles on Internal Displacement, 1998

1. Origin

Both the CHR and the UNGA, after the appointment of Deng as Representative of the SG on Internally Displaced Persons, asked him to carry out a study on the status of IDPs in International Law with the aim to provide an appropriate framework on how to improve their protection and assistance (Orchard 2010: 292 ff.).

Many criticisms upon this choice were issued, mainly pointing out how the drafting of a new body of principles could undermine the effective implementation of norms that already existed. However, it was underlined that regimes of protection tailored to specific vulnerable groups like women, child, or disabled already existed without lessening the protection of others, therefore the internally displaced would be likewise rightfully entitled to enjoy the protection of an instruments dealing with their particular needs (Korn 1999: 89).

As a consequence, between 1996 and 1997 two analyses were issued, one by the Austrian government in collaboration with Professor Mandred Nowak and the other by the American expert Robert Goldman. At the end of the process, in order to merge the two analyses Deng asked for help in working with the two groups to Walter Kälin, professor at the University of Bern (Orchard 2010: 292 ff.).

In 1998 the CHR received and adopted thirty Guiding Principles, contained in the Annex to ECOSOC Resolution n. E/CN.4/1998/53/Add. 2 (D'Orsi 2012: 84).

In the opinion of Roberta Cohen, there are four main reasons that can explain the reasons behind the emergence of the Guiding Principles (Koser 2011: 216). Firstly, the increasing awareness by the international community that the issue of IDPs was becoming gradually also a security issue, meaning that higher numbers of IDPs worldwide would have meant higher regional but also international degrees of insecurity. Secondly, the changing notion of sovereignty that provoked a shift in its understanding and the emergence of the concept "responsibility to protect". Thirdly, the new and rising weight of statistical data on displacement that showed an alarming growth in the numbers of IDPs. Finally, the asylum issue and its connection with the

displacement phenomenon, meaning that the more IDPs find a safe place for resettlement within their countries, the less potential refugees will seek asylum in host countries. All these factors, in the opinion of the author, contributed to the so called “emerging international responsibility” (Koser 2011: 216).

2. Content

The Guiding Principles are built upon a restatement of specific norms set out in HRL, IHL and Refugee Law which are applicable in the specific circumstances of the IDPs (Majinge, Ache 2010: 427 ff.). They are regarded as the international minimum standard for the protection of IDPs as they address all the different phases of the displacement phenomenon: the initial phase, the displacement itself and the final resettlement (D’Orsi 2012: 84).

The Principles consist of different thematic sections. Section one (Principles 1 to 4) deals with general provisions; it lays down the right of non-discrimination in Principle 1 and 4, it sets out the basis for its application to both States and non-State actors in Principle 2 and reaffirms the primary responsibility of the State in the protection of the displaced within their jurisdiction in Principle 3 (Schmidt 2004: 487). Moreover, for the protection of special categories such as children, expectant mothers, disabled and the elderly, the recognition of their special needs is provided in Principle 4 (Phuong 2004: 56 ff.).

Section two (Principles 5 to 9) is focused on the provisions related to the protection *from* displacement. Principle 6 is particularly relevant, as for the first time a right not to be arbitrarily displaced is expressed in a UN document (Phuong 2004: 56 ff.). Moreover, it can be said that the wording of paragraph 2, point b), of the same Principle, which refers to the prohibition of displacement in situations of armed conflict, is directly taken from Article 49.2 of the Fourth Geneva Convention, that was used as a reference for Principle 6 (Phuong 2004: 56 ff.). Principle 7 deals instead with the duties of authorities undertaking decisions of displacement, stating that, among others, they should ensure that all possible alternatives are explored, that all measures are taken to minimize the adverse effects of displacement and that a proper accommodation to the displaced must be provided (Schmidt 2004: 487).

Section three (Principles 10 to 23) deals with the protection *during* displacement. This section represents the largest part of the Guiding Principles and it sets out rights of utmost importance for IDPs, such as the right to life in Principle 10, right to dignity and integrity in Principle 11, right to liberty in Principle 12, prohibition of recruitment of displaced children in Principle 13, right to be protected from forcible return in unsafe areas, which is similar to the provision of *non-refoulement*, in Principle 15, right to family life in Principle 17, right to be recognized as

a person before the law in Principle 20, right to property in Principle 21, right to education in Principle 23.

Section four (Principles 24 to 27) is focused on humanitarian assistance. In particular, according to Principle 24 humanitarian assistance should be impartial and non-discriminatory. Moreover, Principle 25 recalls States' primary duty in providing assistance to IDPs, stating that the consent of the State to let humanitarian assistance access the internally displaced should not be arbitrarily withheld.

Finally, section five (Principles 28 to 30) deals with return, resettlement and reintegration in situations occurring *after* the displacement (Phuong 2004: 56 ff.). In this regard, Principle 28 sets out that the States should provide all the possible means to make voluntarily returns or resettlements possible.

Concerning the choice of how the Principles have been formulated, a clear criterion was followed, namely the restatement of the general norm in the first paragraph of each Principle, followed by a reformulation in the second paragraph of the same norm in order to highlight the specific application of such a norm to IDPs (Phuong 2004: 56 ff.).

Although it was pointed out by the drafters themselves that the Principles were developed by restating existing law, some have argued that certain Principles set out rights that go beyond existing law (Phuong 2004: 60 ff.). Phuong, for instance, argues that giving the fact that it is extremely difficult to distinguish between the merely restatement of already existing norms and the creation of new law, the drafters of the Guiding Principles have actually gone beyond existing principles. Examples can be found concerning the decision to apply the provision of *non-refoulement* also in situations of displacement, contrary to the general understanding of International Law according to which it would be applicable only in the event of a border-crossing. Moreover, she claims that by resorting to an extensive interpretation of applicable existing law, as in the case of Principle 29 dealing with restitution or compensation of property, the Principles can contribute to the development of new legal norms in the field (Phuong 2004: 60 ff.).

Regarding the main underpinnings related to the content of the Guiding Principles, it can be said that, unlike refugees, IDPs are individuals who have left their home, but not their country; they have the right to invoke all the rights and protections provided for all the citizens of their country and that it is not possible and even dangerous to apply them the protection granted to refugees, since it would diminish the rights that citizens normally enjoy (Koser 2011: 211).

3. Relevance and weaknesses

Although the Guiding Principles cannot be considered as a binding legal instrument, mainly because they were not ratified by States but rather drafted by experts, they have nonetheless been used by national, regional and international entities as the blueprint of their normative frameworks regarding the protection of IDPs, with the major example of the Kampala Convention in the African continent. Moreover, since they have been drafted as a restatement of previous principles of International Law, they could also be seen as to constitute minimum international legal standards for the protection of IDPs (Majinge, Ache 2010: 428 ff.).

The Principles could be regarded as an innovative instrument with an ambitious objective that can be particularly useful in the event of internal disturbances, meaning situations that fall behind the threshold that defines armed conflicts (Phuong 2004: 67 ff.). In addition, another distinctive feature is its practical aim, meaning that they have been conceived as a practical guide to be used on the ground not only by States dealing with internal displacement, but also by all the other relevant actors in the field, as well as used like a benchmark in order to assess the level of protection enjoyed by IDPs in particular contexts (Phuong 2004: 67 ff.).

Additionally, as for its acceptance at the international level, the Guiding Principles have been recognized by the World Summit Outcome Document as an important step in the protection of the internally displaced, and by the UN Human Right Commission that has strongly suggested States, UN agencies and other organizations to adopt the Principles (Majinge, Ache 2010: 429). However, apart from the relevant aspects, it is possible to highlight also some shortcomings that make the Guiding Principles weaker from a legal point of view. In the opinion of Phuong, there are some issues that have not been developed extensively enough in the drafting process of the Principles. For instance, the rights that should be granted to those who belong to minorities are only mentioned in Principle 9 and this would not amount to an adequate protection under International Law. Moreover, it was been pointed out how the issue of safe areas has not been stated at all in the whole instrument, therefore not exploring the possibility of the establishment of safe areas within a country in which internally displaced could have seek for refuge (Phuong 2004: 65 ff.). In addition, there is the evidence that the Guiding Principles fail in taking into account all the possible conditions that can result in displacement situations, as for example natural disasters.

Yet, it might be said that the biggest flaw in the Guiding Principles still remains its non-binding nature.

4. Domestic adoption, States' concerns and implementation mechanism

Despite not being negotiated and ratified by States, Deng and his successor Kalin have promoted a bottom-up approach to build States consensus to incorporate the Guiding Principles into their domestic legal frameworks. From a theoretical point of view, in the opinion of Koser, it is possible to highlight four main models of domestic adoption of the Principles (Koser 2011: 212): in the first, States implement a short instrument which simply adopts the Principles as in the case of Liberia; in the second event, States enact IDPs related laws and policies addressing a single cause of displacement, as in the case of Angola; in the third event, a State apply laws or policies in order to protect a single IDPs right and in the last example the State enforces a comprehensive law or policy addressing all possible causes of displacement, as in the case of Uganda. Moreover, there have been also several attempts to establish regional legal instruments to address the protection of IDPs through the incorporation of Principles, as for instance the Great Lakes Protocol and the Kampala Convention (Koser 2011: 212).

At present, drawing on the data from the Global Protection Cluster, there are a total of 13 African States that have adopted 20 IDPs-related laws or politics, over a period of time between 2000 and 2019. However, only 11 of those laws and policies expressly make reference to the Guiding Principles and only two of them use the Principles' definition of IDPs, even without specific reference to the document. Among the laws that make reference to the Principles two laws from Niger and Kenya clearly emerge. The 2018 *Projet de loi relative à la protection et l'assistance aux personnes déplacées internes au Niger*⁸, sets out a definition of IDPs which recognizes both conflict, disaster and development induced displacement as causes of displacement. In addition, it addresses all the different phases of displacement, including prevention measures, protection and assistance provisions, durable solutions and it recognizes the establishment of an institutional focal point, meaning the attribution of the mandate for IDPs related issues to a specific entity or group of entities and a funding mechanism to the identification of the resources to implement the law. The second example is the *Prevention, Protection and Assistance to IDPs and Affected Communities Act*⁹, enhanced by the Kenyan government in 2012, which provides as well a definition of IDPs addressing all the possible causes of displacement and the three phases of displacement, along with the provision of the institutional focal point, the funding mechanism and also a data collection mechanism provision.

⁸ National Legislative Bodies / National Authorities, Niger: *Projet de loi relative a la protection et a l'assistance aux personnes déplacées internes au Niger*, 2 December 2018, available *online*.

⁹ Kenya: Act No. 56 of 2012, *The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act*, 2012 [Kenya], 4 January 2013, available *online*.

As for the national polices that expressly mention the Guiding Principles, there are 12 examples from African national States practice. Following the chronological order, there is the 2000 Angolan Norms on the Resettlement of Displaced Populations¹⁰, the 2001 Resettlement Strategy of Sierra Leone (which uses the Principles' definition of IDPs, even if there is no specific reference to the Principles)¹¹, the 2004 Liberian Government National Community Resettlement and Reintegration Strategy¹², the 2004 Ugandan National Policy for Internally Displaced Persons¹³, the 2009 Sudanese National Policy for Internally Displaced Persons¹⁴, the 2012 Puntland Policy Guidelines on Displacement¹⁵, the 2013 Zambian Guidelines for the compensation and resettlement of internally displaced persons (which uses the Principles' definition of IDPs, even if there is no specific reference to the Principles)¹⁶, the 2015 Somaliland Internal Displacement Policy¹⁷, the 2015 Zambian National Resettlement Policy¹⁸, the 2017 South Sudanese National Framework for the Return, Resettlement and Reintegration of Displaced Persons¹⁹, the 2017 Ethiopian Durable Solutions Strategy of the Somali Regional Government of Ethiopia²⁰, the 2019 Somali Benadir Regional Administration Policy for Internally Displaced Persons and Returnees in Mogadishu²¹.

Along with the adoption process that reflects the acceptance that the Principles gained over time by States, the States' concerns that emerged throughout the whole drafting process cannot be understated. In fact, since the very first steps of the drafting process of the Principles many States expressed their skeptical views upon the implementation of the document. Particularly, developing countries showed themselves as uncommitted to the cause of displacement and

¹⁰ National Legislative Bodies / National Authorities, Angola: Decree Number 1/01, Norms on the Resettlement of Displaced Populations (2001), 5 January 2001, available online.

¹¹ National Legislative Bodies / National Authorities, *Sierra Leone: Resettlement Strategy, 2001*, 1 October 2001, available online.

¹² National Legislative Bodies / National Authorities, Liberia: Government National Community Resettlement and Reintegration Strategy (2004), 2 June 2004, available online.

¹³ National Legislative Bodies / National Authorities, *Uganda: National Policy for Internally Displaced Persons, 2004*, 1 August 2004, available online.

¹⁴ National Legislative Bodies / National Authorities, *Sudan: National Policy for Internally Displaced Persons (IDPs), 2009*, 1 January 2009, available online.

¹⁵ National Legislative Bodies / National Authorities, *Somalia: Puntland Policy Guidelines on Displacement, N.D.*, 2014, available online.

¹⁶ National Legislative Bodies / National Authorities, Zambia: Guidelines for the compensation and resettlement of internally displaced persons (2013), October 2013, available online.

¹⁷ National Legislative Bodies / National Authorities, *Somalia: Somaliland Internal Displacement Policy, 2015*, 10 September 2015, available online.

¹⁸ National Legislative Bodies / National Authorities, Zambia: National Resettlement Policy, 2015, 1 October 2015, available online.

¹⁹ National Legislative Bodies / National Authorities, South Sudan: National Framework for the Return, Resettlement and Reintegration of Displaced Persons (2017), February 2017, available online.

²⁰ National Legislative Bodies / National Authorities, Ethiopia: Somali Region Durable Solutions Strategy (Durable Solutions Strategy 2017/2020. The Durable Solutions Strategy of the Somali Regional Government of Ethiopia) (2017), October 2017, available online.

²¹ National Legislative Bodies / National Authorities, Somalia: Banadir Regional Administration & Municipality of Mogadishu: Internally Displaced Person & Refugee Returnees Policy, January 2019, available online.

sometimes even worried about the relevance that the Principles would have given to the issue of internal displacement (Phuong 2004: 71 ff.). For instance, several concerns emerged during the drafting of the UNHCR Resolution by the third committee of the UNGA, in which the Assembly underlined the relevance of the Guiding Principles for future developments at the UN level. Egypt found the statement made by the UNGA as unacceptable and called for a vote on the paragraph; moreover, in the occasion of the drafting of a new resolution on the protection of IDPs by the Third Committee of the UNGA, Egypt, together with Syria, expressed once again a criticism over the Principles, claiming that their drafting process did not involve any States representatives and asking for the establishment of an intergovernmental process in future developments (Phuong 2004: 71 ff.).

Still, while from the adoption process it is clear that the Guiding Principles enjoy on average a high level of acceptance and are well institutionalized at the national, regional and international level, the same cannot be said for their level of implementation. This mismatch between the institutionalization and implementation processes was analyzed by Orchard (Orchard 2014: 2), according to which there can be four main governmental scenarios dealing with implementation issues: in the first event, the State is able to adopt and implement in practice the IDPs related policies and laws, mirroring the relevant international position on the issue; in the second event, the State tries to adopt, but fails to implement the strategy due to lack of resources or internal opposition forces; in the third event, the State tries to adopt the national strategy for pressure or reputational reasons, but fails in the implementation process; in the last event, the State deliberately decides not to take any action in adopting or implementing a national policy (Orchard 2014: 33). As a consequence, Orchard argues that States fail to implement national strategies concerning Guiding Principles mainly for three reasons: firstly because they are unable to undergo the implementation process for lack of resources and capacities, due to the opposition coming from governmental or extra-governmental forces; secondly, States can decide to show their political commitment for the regime of protection proposed by the international community but only in a rhetoric way, without implementing the regime in practice; thirdly, as the last alternative, States could also be subject to pressures and advocacy actions by NGOs or international agencies in order to implement certain regimes, without then following the implementation process because of lack of true commitment (Orchard 2014: 35). He develops his thesis using the example of Uganda, which was at the forefront in developing and showing commitment to the regime of protection for IDPs. However, the government slowed down its support for the Guiding Principles for strategic reasons during the end of the '90s, when it tried to defeat the Lord's Resistance Army (LRA), an insurgency group in the country, through the displacement of thousands of civilians. It was only after some pressure

from the UN Security Council (UNSC) that Uganda took concrete steps to enhance its implementation of IDPs policies, among which establishing a joint monitoring mechanism and providing new resources to face displacement related issues (Orchard 2014: 38).

5. Development of Customary International Law based on the Guiding Principles

Given the widespread acceptance and application of the Principles through national laws and policies the question on how they could classify as a source of Customary Law emerged. Customary International Law is part of the primary sources of International Law and is derived on the basis of two elements: the objective element, meaning the general State practice and a more subjective element, also called *opinio juris*, meaning the legal imperative linked to a certain action which is accepted as law (Schmidt 2004: 496).

There are two different approaches on the relative weight that the two elements should have in the definition of Customary Law: the traditional and the modernist one (Schmidt 2004: 496). According to traditionalists, more relevance should be given to the objective element, hence to State practice, while according to modernists the *opinio juris* element is the principal one. Different sources can contribute to the identification of a State practice, namely State acts, official statements, national laws and policies, Courts' judgments and scholars' works (Schmidt 2004: 498). As for States acts, there are essentially three States that have recognized the Guiding Principles as an authoritative source of International Law, and they will be analyzed extensively in the next paragraph. However, the circumstance that the legal practice of just a few States is not yet enough in order to provide a widespread acceptance of the Principles constituting a source of International Law was pointed out (Schmidt 2004: 505). Still, future developments in terms of national applications will be fundamental for the acceptance of the Principles as source of International Customary Law.

Concerning official statements and votes expressed by States in the context of the UN system, it can be highlighted how fifty-five countries have expressed their support for Resolution 1998/50, by the UN CHR, that took note of the Guiding Principles (Schmidt 2004: 506). Despite the appreciation by many States at the UN level has contributed to the consolidation of the Guiding Principles as a useful tool for the protection of IDPs, however, at the moment no UN Resolution clearly declares the Principles as a source of International Customary Law. Therefore, it is not possible to assume a State practice recognizing the Principles as a source of International Customary Law only from the supportive statement of that State to a UN Resolution (Schmidt 2004: 506).

The lack of evidence to define the Principles as part of hard International Law should not diminish their potential as soft law (Schmidt 2004: 519). While the power of International Law has always been seen as a strong basis for a norm-generating mechanism, few attentions have been made over soft law power (Orchard 2010: 285 ff.). On the contrary, soft law has some great advantages compared to hard law. Namely, given its informal nature, more attention is given to the role played by NGOs and other relevant actors; with regard to State sovereignty, soft law has several positive aspects in promoting a compromise and expanding the range of possible arrangements in issue areas in which States would have reservations in creating hard law instruments; it represents a valid alternative when a hard law agreement is impossible to reach or to avoid loss of time when States are in an impasse; it has a great capacity in the phase of internalization of new norms into national legislations because States are provided a ready-made set of standards that can be easily adopted by States (Orchard 2010: 285 ff.).

a. Guiding Principles as International Law: State practice

Despite the soft law nature of the Principles, there are still some regional examples, in both the African and the American contexts, of countries that have adopted laws or policies considering them as part of International Law. The first evidence of this kind was the 2000 Angolan National Decree “Norms on the resettlement of the IDPs”²², that for the first time ever acknowledges in its preamble the Guiding Principles as establishing the general principles governing the treatment of the IDPs (Schmidt 2004: 499 ff.). Even if there is no explicit reference to it, it can be implied that Angola assumed the Principles as having an authoritative character (D’Orsi 2012: 90).

After the Angolan example, Burundi as well adopted a National Protocol in 2001 in order to create a permanent framework for the consultation on the protection of displaced persons²³ together with the assistance of the UN and others humanitarian organizations. In the preamble, the State clearly recognizes the binding nature of the Guiding Principles towards the international community, moreover the dissemination of the Guiding Principles was mentioned among the mandate of the new permanent body.

²² National Legislative Bodies / National Authorities, Angola: Decree Number 1/01, Norms on the Resettlement of Displaced Populations (2001), 5 January 2001, available *online*.

²³ National Legislative Bodies / National Authorities, Burundi: Protocol for the Creation of a Permanent Framework for Consultation on the Protection of Displaced Persons (CPF/PDP), 7 February 2001, available *online*.

The last African State that adopted a similar policy was Somalia, with a Policy regarding the IDPs protection in the municipality of Mogadishu²⁴, which among others legal frameworks, used the Principles as a source in the formulation of the policy.

Apart from the African region, one of the clearest national examples demonstrating the use of the Principles as part of International Law is the case of Colombia. In particular, three decisions of the Constitutional Court of Colombia²⁵ regarded the Principles as part of a set of supranational body of norms, together with the fact that the Principles have then been recognized as having the same legal status as the Colombian constitution (Schmidt 2004: 501 ff.).

6. Why the Guiding Principles rather than a treaty?

At that time there were several reasons that stopped the international community from negotiating a hard law instrument and, on the contrary, made it opt for a soft law instrument.

First of all, a new UN Resolution or a treaty regarding the field of human rights would have meant many obstacles and a time-consuming treaty-making process, while there was the necessity to adopt something that despite being less binding could have addressed the problem immediately (Koser 2011: 216). Indeed, among the priorities of Deng the necessity to fulfil his mandate as quickly as possible without causing any legal vacuum arose and, as a consequence, starting the negotiations for a binding treaty would have meant taking too many years to reach his objective (Schmidt 2004: 494 ff.). Moreover, beyond the issue of urgency, there was the uncertainty about the outcome of a possible treaty, for instance a lack of ratifications by the most affected States (D'Orsi 2012: 89) that would have been the subjects of further legal obligations about an issue traditionally conceived as domestic in nature (Abebe 2009: 157 ff.). Secondly, there was the feeling that it was too early to adopt a treaty where HRL and IHL were combined together (Koser 2011: 216). Moreover, there was a possibility that, if a new treaty was negotiated, some States might have taken advantage of the renegotiating process to jeopardize and undermine the existing legal protection calling for the removal of certain existing principles in International Customary Law (Schmidt 2004: 495).

Finally, the necessity to have a specific new treaty for IDPs was not promoted enough by the defenders of the initiative, conveying the message that the already existing norms of HRL and

²⁴ National Legislative Bodies / National Authorities, Somalia: Banadir Regional Administration & Municipality of Mogadishu: Internally Displaced Person & Refugee Returnees Policy, January 2019, available *online*.

²⁵ República de Colombia, Corte Constitucional, Sala Plena, Sentencia No SU-1150/2000; República de Colombia, Corte Constitucional, Sentencia T-327/01; República de Colombia, Corte Constitucional, Sentencia T-025/04.

IHL were enough for the protection of IDPs (D’Orsi 2012: 89) and ultimately indicating that there was no urgent need to negotiate a new binding treaty.

However, apart from these aspects, one of the main problems regarding a new international treaty concerning IDPs was the possible infringement of States sovereignty over internal affairs and the possibility that powerful States would take advantage of weaker States to intervene (Majinge, Ache 2010: 422 and Taddele Maru 2014: 84). The responsibility issue as a State priority was addressed several times by the United Nations, for example with a Resolution of the UNSC in 2010 stating that Chad had the primary responsibility for the safety and protection of its internally displaced persons (D’Orsi 2012: 82 ff.). Despite this being true, yet the question whether the protection of IDPs falls under the responsibility of the State or of the international community remains open; indeed, there are examples in which the concern of the international community was recognized, above all concerning natural disasters, as in the case of the African Union’s Peace and Security Council as well as in the 1984 Nicaragua Case, considered as a cornerstone in the International Law doctrine (D’Orsi 2012: 82 ff.).

One of the effects of the sovereignty issue over the development of the Principles was the employment of the “*new diplomacy*” approach, a new *modus operandi* concerning how the Guiding Principles have been negotiated. This new approach actually limited the participation and involvement of States representatives and their possibility to point out their prerogatives and national views. Instead, the Principles were formulated and supported autonomously through the efforts of several experts and NGOs, notwithstanding national positions that could have emerged during *ad hoc* inter-governmental initiatives (D’Orsi 2012: 82 ff.).

D. UN Cluster Approach, 2005

Given the fact that IDPs, apart from being affected by a legal gap, have also fallen in the so-called institutional protection gap, several UN Member States have committed themselves to adopt a new strategy to ensure greater predictability and success in humanitarian response scenarios involving the internally displaced.

In the context of the UN reform process of the humanitarian agenda, the “Cluster Approach” was adopted in 2005, and its aim was to identify the areas in need for implementation, to guarantee to the internally displaced also that their primary needs were satisfied and their protection in safe camps assured (Koser 2011: 213). One of the cornerstones of this reform project was essentially a new division of work and responsibilities between existing UN and non-UN humanitarian organizations, so as to coordinate efforts and provide full protection at every level, without leaving protection gaps or causing overlapping tasks. This new reform

provided for the establishment of nine clusters, each under the control of a specific organisation. The clusters are: Camp coordination and management, Early recovery, Emergency shelter, Emergency telecommunications, Health, Logistics, Nutrition, Protection, Water sanitation and hygiene.

UNHCR is the Global Cluster Lead Agency for three clusters: protection, shelter and camp management (Majinge, Ache 2010: 427). It was the head of the cluster protecting IDPs in five African pilot countries: Liberia, DRC, Uganda, Somalia and Chad (Koser 2011: 214).

Among the others, the United Nations Children's Fund (UNICEF) leads other three clusters: nutrition, water, sanitation and hygiene and education clusters; the United Nations Development Programme (UNDP) leads the early recovery cluster; the World Food Program (WFP) the emergency, food security and logistics clusters and the World Health Organization leads the health cluster²⁶.

However, this system revealed several weaknesses and flaws in situations of extreme humanitarian crises, such as the Haiti earthquake or the floods in Pakistan. As a result of these failures in the Cluster Approach, in 2011 the Inter-Agency Standing Committee (IASC) decided to implement a further reform, called the “Transformative Agenda” (TA), to better improve coordination and functions among the different clusters²⁷.

E. The African regional approach to the protection of IDPs

1. Great Lakes Pact, 2006: the sub-regional level

Africa was the first region in the world to promote the adoption and then to employ the Guiding Principles as the basis for the development of a regional instrument specifically designed to protect IDPs.

This interest from the African continent began at the sub-regional level with the organization of a workshop by the Organisation of African Unity (OAU) Commission of Refugees in 1998 and then in 2004 with the adoption of the Declaration on Peace, Security, Democracy and Development during the International Conference on the Great Lakes Region, which took place in Kenya (D’Orsi 2012: 86).

The Declaration was revised in December 2006 and entered into force in 2008, under the name of Pact on Security, Stability and Development in the Great Lakes Region²⁸, ratified by 11

²⁶ UNHCR, Emergency Handbook, The Cluster Approach, available *online*.

²⁷ UNHCR, Emergency Handbook, Transformative agenda, available *online*.

²⁸ International Conference on the Great Lakes Region, Pact on Security, Stability and Development in the Great Lakes Region, 14 and 15 December 2006.

States²⁹ sharing the commitment to implement the Guiding Principles in their national systems. The Pact was complemented with the adoption of 10 Protocols, two of which of major relevance for the issue of IDPs protection: the Protocol on the Protection and Assistance of Internally Displaced Persons (IDPs Protocol)³⁰ and the Protocol on the Property Rights of Returning Persons³¹ (Property Protocol) (D'Orsi 2012: 87).

Specifically, the Protocols compel signatory States to adopt and implement at the domestic level the content of the Principles. In addition, they underline the primary responsibility of the State in the protection of its internally displaced persons, in carrying out full controls on displacement situations and also in keeping updated statistical data on displacement. Finally, the Protocol provides for the establishment of a supervisory mechanism at sub-regional level to monitor the phenomenon (Abebe 2009: 166).

The Great Lakes Pact, together with its Protocols, reveal the existence of States parties' interest in the implementation of the Principles in the specific geographical area of the Great Lakes region (D'Orsi 2012: 86), and initiate a process of development, within the African continent, of a framework of protection for IDPs, laying the foundations for the establishment of a binding protection regime in the subsequent years (Juma 2012: 229).

2. Kampala Convention, 2009

a. The legislative history and the drafting process

Although the process leading to the Convention officially started in 2004, the Organization of African Unity (OAU), which was replaced by the African Union (AU) in 2002, has shown a strong interest in the issue of population movements since 1969, the year in which the OAU Refugee Convention was adopted. This date marks also, from a historical point of view, the beginning of what is called the African "open door policy", meaning that historical period characterized by an attitude of openness and solidarity among the African communities towards the waves of refugees caused by secession conflicts.

The situation changed dramatically during the 1970s and 1980s, when internal conflicts caused new problems of internal displacement that threatened the internal stability of many African States. This led to a shift of attention from an external to an internal focus in the State, which

²⁹ Angola, Burundi, Central African Republic (CAR), Chad, Democratic Republic of the Congo (DRC), Republic of Congo (also known as Congo-Brazzaville), Rwanda, Sudan, Tanzania, Uganda and Zambia.

³⁰ International Conference on the Great Lakes Region, Protocol on the Protection and Assistance to Internally Displaced Persons, 30th November 2006.

³¹ International Conference on the Great Lakes Region, Protocol on the Property Rights of Returning Persons, 30th November 2006.

is reflected in an approach of providing “African solutions to African problems”, and with greater interest in taking initiatives to create a legal framework for the protection of internally displaced persons (Zorzi Giustiniani 2011: 351 ff.). African States started to be more committed to the issue of IDPs and they gradually realized that the UN Guiding Principles were not enough for the protection of IDPs in Africa, firstly because of their non-binding nature and secondly because they did not provide any specific measure or solution to address the issue in the context of the African continent (Majinge, Ache 2010: 436).

In 1992 the AU launched its first resolutions concerning refugees and IDPs and then the issue was also taken in consideration during a meeting organised for the 20th anniversary of the 1969 OAU Convention on Refugees. A further step in this process of awareness raising there was in 1998, during a workshop that led to the adoption of the Khartoum Declaration. The Declaration marked an important step as it stressed the need to prevent the root causes leading to displacement situations, giving further impetus to the process that would have led the AU to opt for a binding treaty on the subject (Taddele Maru 2014: 29 ff.).

The process leading up to the adoption of the Kampala Convention started in 2004 when the AU Executive Council officially asked to start working on the development of a binding treaty for the protection of internally displaced persons specific to the African continent (Abebe 2009: 166 ff.). In June 2006 in Banjul, two decisions were adopted by the Executive Council of the AU asking to the AU Commission to go ahead with the process for a convention on IDPs, endorsing the Annotated Framework that was used as a basis for the Draft Convention (D’Orsi 2012: 97 and Taddele Maru 2014: 32). Since then, a number of meetings have taken place at various levels, including three meetings between government experts and representatives of States and four ministerial conferences taking place between the beginning of 2007 and the end of 2008 (Abebe 2009: 166 ff.). A crucial point among all the consultations clearly emerged at the beginning of 2009, during a meeting of the Executive Council of the Organization, which on that occasion decided to take a position on the subject by approving the Draft Convention previously proposed (D’Orsi 2012: 97).

Finally, the Convention was adopted on 23 October 2009 in Kampala, Uganda, under the name of African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also called the Kampala Convention, and it entered into force on 6 December 2012, after the ratification of the first 15 States. To date, the Convention has been signed by 40 and ratified by 28 States, the last of which was South Sudan, that ratified the Convention on 21 June 2019.

b. Main features and articles

I. Structure, objectives and articles

Concerning the structure of the Convention, it consists of a preamble of 15 points and a total of 23 articles. The Articles can be divided into two main sections: the first contains provisions concerning the issue of internal displacement in general, while the second one, called “final provisions”, deals with more procedural and institutional matters dealing with the implementation of the Convention (D’Orsi 2012: 97).

The Preamble to the Convention explains the reasons behind its conception. First of all, mention is made of the serious problem of internal displacement, which is also cause of persisting instability for African States. The text then recalls other reasons that led to the Convention, including the desire among African States to put an end to the root causes of the phenomenon, with particular attention to displacement due to conflict and violence, and also the commitment to find lasting solutions for displaced persons, through a new legal framework ensuring their protection. Then, the Preamble goes on recalling all the relevant treaties and conventions, including the 1948 Universal Declaration of Human Rights, the 1949 Geneva Conventions, the 1951 Convention relating to the Status of Refugees, and finally the rights of internally displaced persons deriving from the 1998 UN Guiding Principles, which are recognised as an important international legislative framework for the protection of IDPs. Finally, the preamble recalls the ultimate reason for drawing up the Convention, namely the absence of a binding treaty at the African level to ensure the prevention of the phenomenon and the protection of the displaced. In the opinion of Taddele Maru, it can be said that the Convention has four main objectives. The first objective of the Convention is to address the root causes and consequences of internal displacement. In particular, the Convention identifies and defines all possible causes of displacement and differentiates its several consequences and possible solutions. For example, a distinction must be made between solutions in the event of displacement caused by conflict, development and human disasters, which can be prevented and often eliminated, and the consequences of displacement caused by natural disasters, when the only possible solution is often adaptation. In all cases, the primary objective of the Convention is clearly the prevention of displacement (Taddele Maru 2014: 142 ff.).

The second objective is to establish a legal, political and institutional framework for the protection of IDPs. In this regard, States play a key role in enacting at national level the rights and obligations deriving from the Convention, through both laws, national policies and strategies, as provided for in Article 3. Among these measures there is also the establishment

of *ad hoc* resources and dedicated funds to assist internally displaced persons, aiming also at ensuring fair compensations or reparations for the damage suffered, as provided for in Article 11. This framework includes also the request to designate a national authority to coordinate assistance activities, as provided by Article 3, and early warning systems, risk reduction strategies and emergency measures, in accordance with Article 4 (Taddele Maru 2014: 142 ff.). The third objective is to clarify the obligations of the different actors involved. In addition to define all the rights of IDPs, the Convention provides also for obligations and duties for several actors during the various stages of displacement. In fact, although the States are clearly the most responsible in this respect, they are not the only ones with obligations. Indeed, the Convention clarifies how all States' obligations can also be applied to non-State actors and armed groups, but also to the AU itself, other International Organisations as well as NGOs, CSOs and other international or regional agencies and organisations. Finally, the Convention also provides for individual criminal responsibility in cases of arbitrary displacement, as provided for in Article 3 (Taddele Maru 2014: 142 ff.).

The fourth and last objective concerns the institutional mechanisms set out with the aim of monitoring the implementation of the Convention. Among the various measures provided for in the text, there are those aimed at eliminating the causes of internal displacement, those to prevent arbitrary displacement and those to mitigate the negative effects of displacement. The Convention also provides for mechanisms to monitor the effective implementation of the obligations arising from the text, both through cooperation dynamics, peer review mechanisms and legal review (Taddele Maru 2014: 142 ff.).

Concerning the main articles, Article 1 contains the definition of internally displaced person and provides three main causes of displacement: armed conflicts, situations of generalised violence, violation of human rights and natural or man-made disasters.

As for Article 3, it is clear how the Convention aims to fight the root causes of the phenomenon, for example by compelling States to refrain from arbitrary displacements of populations, or from creating situations of marginalisation and exclusion which could lead to more IDPs. Another important element of this Article concerns the responsibility of the actors that caused the displacement, including non-State actors. In addition, the Article calls on States to incorporate the obligations arising from the Convention into domestic law, with the possibility to designate a competent authority responsible for coordinating the protection of the displaced (Majinge, Ache 2010: 440).

Article 5 recognises first and foremost the primary responsibility of the State for the protection and humanitarian assistance of its internally displaced. However, it also recognises that in cases where a State alone is unable to do so, other States can cooperate and show solidarity with the

affected State, at the request of the State itself or of the Conference of States Parties. This provision is of fundamental importance when internal displacement affects African States that do not have a sufficiently strong government to manage and ensure adequate protection of displaced persons. As a last resort, the Article affirms that in the event that the State does not have adequate resources, it should require the intervention of International Organisations to ensure humanitarian response and their relief action should be rapid and unimpeded.

Article 8 concerns AU obligations, in particular that the Union has the right to intervene in the territory of a Member State, following a decision taken by the Assembly. The intervention must be carried out in accordance with Article 4 of the AU's Constitutive Act, meaning in cases of particularly grave circumstances, such as war crimes, genocide and crimes against humanity, in order to restore peace and security in the Member State.

Article 9 deals with the obligations of States Parties with regard to protection and assistance during displacement. Among other provisions, the Article highlights that States should pay particular attention to situations involving internally displaced with special needs, including unaccompanied children, expectant women, the elderly and persons with disabilities. In addition, the Article recognises the right of internally displaced persons to seek safety in a different part of the State and to be protected from forced returns to places where their lives would be at risk. The States also have an obligation to ensure the respect for the freedom of movement, the choice of the place of residence of the displaced, to take all possible measures to ensure family reunification, the respect for property rights and political and civic rights in participating in decisions concerning their protection and assistance.

Article 10 deals with displacement situations caused by projects and affirms that States should avoid in every possible way that projects, by both public and private actors, could lead to internal displacement. If there are no feasible alternatives, the State must ensure that the actors involved inform and consult all persons who are likely to be displaced and also that these actors put in place socio-economic and environmental impact assessments.

Article 11 refers to obligations on States regarding returns, integration and relocation. The Article affirms the fundamental task of States to seek lasting solutions that promote sustainable returns that are primarily voluntary and that take place in situations of safety and dignity. Noteworthy is that the final decision on these movements is left at the prerogative of the displaced person, who must make a free and conscious decision on the possibility of whether to return to his place of origin, or to reintegrate locally or in a different part of the country.

Article 12 deals with the important issue of compensation. The States are compelled to establish a legal framework allowing the payment of fair compensations or, alternatively, reparations for the damage suffered as a result of displacement. The Article also specifies a particular case,

that of natural disasters, where the State is held responsible for making reparations if the State concerned was not able to ensure the protection of displaced persons during the natural disaster. Article 13 concerns the registration and personal documentation of displaced persons. In particular, States are invited to keep an updated register with personal data of all internally displaced present on their territory and under their control. In addition, States are required to provide IDPs with documents relevant to the enjoyment of their rights and to facilitate the release of such documents if they need to be issued again or if they have been lost. Lastly, Article 14 deals with the establishment of a Conference of States Parties to monitor the implementation of the Convention.

II. The contribution of the Convention

It was underlined that the greatest contribution that the Kampala Convention has given to the protection of IDPs is transforming what was soft law under the provisions of the Guiding Principles in a hard law instrument (Dieng 2017: 273).

Among the others major contributions that the Convention has made to the protection of IDPs is the fact that it is the first binding treaty ever conceived at the global level specifically designed to the protection of internally displaced persons. Africa can therefore be considered as the only continent on the front line for legal advancement on this issue. The Convention is also relevant because it provides for the first time a clear list of rights and obligations of the displaced and of relevant actors, being them State or non-State actors. In this regard, the State plays a key role within the Convention because of the positive conception of sovereignty, meaning that the State has primary responsibility for the internally displaced as long as they occupy its territories or are under its jurisdiction (Majinge, Ache 2010: 438). Indeed, unlike the Guiding Principles in which the primary focus was on the rights of the internally displaced, the Convention takes a radically different approach, giving priority to the State perspective, with the State as the main responsible in the prevention of the issue of internal displacement (Dieng 2017: 275).

The Convention is also a turning point in terms of definitions. According to the definition provided for in the Convention, there must be four conditions for an individual to be considered as an IDP. In that definition, the Kampala Convention goes a step further compared to the mainstream causes of displacement such as armed conflicts and human rights violations, including also causes connected with climate change and displacement due to projects, in accordance with Article 5 and 10 (Majinge, Ache 2010: 439). If until then the tendency was not to give sufficient consideration to the issue of internal displacement caused by development

projects, the Convention changes this trend with Article 10, which expressly provides this cause of displacement. The Convention is clear also in designating States as responsible for possible internally displaced due to development projects, being them both public and private ones; States are obliged to respect a number of guarantees with regard to possible internally displaced and to prevent, as far as possible, the launching of projects that could lead to internal displacement (Zorzi Giustiniani 2011: 355 ff.). Moreover, if the final text of the Convention is compared with the draft text, it is possible to see that further improvements have been made, in particular by firstly removing the reference to the size of the projects, which initially included only large-scale projects, as provided also by the Guiding Principles, and secondly eliminating the urgent public interest among the possible reasons for carrying out a project causing displacement (Zorzi Giustiniani 2011: 355 ff.).

Another innovative element in the Convention is the role given to the AU. Indeed, although it is clearly specified that the primary responsibility for protection rests with the States, in some particular circumstances, responsibilities will also be attributed to the AU, as provided for in Article 8. This Article provides that the Organisation shall play both a coordinating role and a possible replacement of the State in exceptional events. The coordinating role shall be carried out with direct support to the State concerned through cooperation in the assistance and protection of displaced persons, but also in the allocation of the necessary resources and in the relationships with the various stakeholders. Concerning the replacement of the State in carrying out its tasks, this possibility is provided for in the AU's Founding Act in the event that international crimes have been committed (Zorzi Giustiniani 2011: 355 ff.).

The issue of humanitarian assistance and the possibility of humanitarian access provided for in Article 5 of the Convention is another innovative aspect introduced by the Convention. This provision is a novelty for international HRL in comparison with the past, since the issue of humanitarian access was traditionally reserved for IHL and therefore for situations of armed conflict. While IHL requires States to accept access on humanitarian grounds in the event of international conflicts, this obligation is not provided for in peaceful situations, meaning in the context of HRL. Article 5 could therefore represent a significant change on the subject, in so far as it provides that States should facilitate humanitarian action without impeding the passage of humanitarian personnel and also expressly provides that States should request humanitarian assistance from International Organisations in cases where they do not have sufficient resources to ensure the assistance of their internally displaced (Zorzi Giustiniani 2011: 355 ff.). Unlike the Guiding Principles, that provided for the primary role to States in delivering protection and humanitarian assistance to IDPs, without any explicit obligation on other actors, in the

Convention cooperation from other States or non-State actors can be invoked by the State itself or by the Conference of States Parties (Dieng 2017: 277).

The Convention also makes a further contribution to the protection of internally displaced, namely with the need to ensure durable solutions, which is reflected in the right to return provided for in Article 11. The right to return to one's country of origin is a provision of International Law, but which applied mostly to refugees. In the case of IDPs, however, this right had never been officially recognised by the international community, although it could be deduced from other HRL instruments. The innovative element of the Convention is not only the provision for this right, but also that of listing its characteristics and modalities, such as the fact that return should always be voluntary, achieved in safety and with respect for human dignity and lastly, organized (Zorzi Giustiniani 2011: 355 ff.). In this regard, a difference can be made with the Guiding Principles, that although recognizing the importance of the right to return, they did not specify who was responsible for the implementation of that right. The Convention, instead, expressly provides for an obligation on States, therefore identifying for the first time the duty bearers in this context (Dieng 2017: 278).

III. Causes of internal displacement: the issue of "lack of development"

As already stated, the Convention provides for three main causes of displacement, namely situations of violence, including armed conflicts and violations of human rights, natural and man-made disasters, and lastly development-induced displacement (Taddele Maru 2014: 148). In particular, Article 10 of the Convention mentions development projects as one of the possible causes that can lead to internal displacement. However, it must be said that the draft text of the Convention presented a broader list of causes, including the lack of development, that were then removed in the final version. Although the drafters were in favor of the inclusion of this cause of displacement, most States participating to the negotiation process, with the exception of Uganda, opposed the inclusion and they decided to eliminate this provision at the end of the debate (Taddele Maru 2014: 150).

As this is a very sensitive issue, various approaches have emerged on the subject, including the view of those who see positively the decision to remove this element from the Convention (Zorzi Giustiniani 2011: 356 ff.). From this point of view, the element of lack of development would not take into account the two core elements in the definition of IDPs, meaning the presence within one's national borders and the involuntary nature of the movement. In fact, generally those who decide to move from underdeveloped place of origin looking for more developed areas would do so *voluntarily* and not *involuntarily* as provided for by the definition.

Moreover, there was no provision in the draft text for further clarification on the meaning of lack of development, such as indicators or thresholds to identify an underdeveloped situation. In addition, this cause of displacement is not even present nor in the Guiding Principles neither in the Great Lakes Protocol, probably because its inclusion would have made the definition too vague and its practical legal application too difficult to enforce (Zorzi Giustiniani 2011: 356 ff.). In fact, as some scholars have pointed out, it is difficult in this regard to think of a part of the African continent that is potentially not affected by lack of development. Moreover, it is not necessary to speak of internal displacement for people who decide to move to reach more developed places, one could in fact speak simply of internal mobility rather than internal displacement. As a consequence, since those who move for lack of development are not necessarily forced to move, these people should not fall under the definition of IDPs, because if they were included then this definition would become economical or sociological in the meaning rather than legal, as well as potentially ineffective and impossible to enforce (Taddele Maru 2014: 152).

IV. The issue of “non-State actors” responsibility

Apart from providing that the State should not violate the provisions of the text, the Convention also provides for an additional role of the State, that is to guarantee that these provisions are respected also by non-State actors. By non-State actors, the Convention mainly refers to both armed and unarmed actors, especially multinationals corporations and other private economic actors. The fact that so much consideration is given to the activities carried out by multinationals corporations mirrors the numerous events of resources exploitation on African soil that have caused serious displacements. States are therefore obliged to ensure that such companies do not infringe human rights of local populations during the exercise of their economic activities, as provided for in Article 3 and 10 of the Convention (Taddele Maru 2014: 187). Furthermore, the inclusion of the issue of the accountability of multinationals corporations recognizes the growing awareness that States are no longer the only ones accountable for internal displacements (Majinge, Ache 2010: 440).

The issue becomes more complex as for the responsibility of armed groups, who have no legal status that recognize them as such and who are often hostile to the government of the territory in which they are fighting. What is relevant in these cases is that, although it is controversial to ascertain their accountability as a group, the members of an armed group are individually responsible from a criminal point of view. The relevant provision contained in the current Convention is a compromise with former Article 6 of the draft Convention, that was specifically

meant to the responsibility of armed groups, entailing even the recognition of their legal personality. This Article was later removed during the drafting of the current Article 7, which states that no legal status should be granted to such groups but only affirms the individual criminal responsibility of its individual members. Indeed, during the drafting of the Convention, many States opposed to the position presented in the draft, stating that even the mere reference to armed groups within the text, regardless of the context, would have meant their implicit recognition. As a result, these States opposed this wording, calling for an explicit provision stating that the States parties to the Convention had no intention of recognizing or legitimizing the existence of such armed groups. The result of this process is that while the Convention reflects the will of States parties not to recognize the legitimacy of armed groups, on the other hand, the text entrusts direct obligations to armed groups and non-State actors. As a consequence, the position expressed by the Convention is to assign responsibility and obligations for the protection and assistance of IDPs to any actor that has an effective control over the territory in which displacement occurs, including non-State actors and armed groups, while not recognizing their legitimacy and legal status (Taddele Maru 2014: 238).

c. Between reluctance and acceptance: why the States Parties adopted a binding treaty?

Although the outcome of the drafting process ended successfully with the adoption of the Convention, the drafting history of the Kampala Convention has not always been homogeneous. Indeed, during the process many difficulties emerged. In particular, some African States were found to be unwilling to sign an instrument that was considered as unnecessary, since the issue of IDPs was seen as an exclusively internal issue, dealing as such with the sovereignty of the States (Majinge, Ache 2010: 437 ff.).

In this regard, the States that played a crucial role were most of all those subjects to serious internal displacement situations. These States became progressively aware of the impossibility of preventing and eliminating the phenomenon if they remained isolated and, therefore, without cooperation both at the African level, but also at the level of the international community.

In addition, the link with the role of armed militias and armed groups in internal displacement became clear. Especially in some African States, there are situations where large parts of the territory are under the effective control of armed militias, hostile to the sovereign State; these militias have therefore the possibility of recruiting among the displaced in the territories under their control. Consequently, the States experiencing these dynamics had many interests to be in favour of a collective legal framework addressing the issue, being in their primary interests to exert their prerogatives and control over such groups (Majinge, Ache 2010: 437 ff.).

Finally, one of the reasons that led to the adoption of the Convention concerns neighbouring States. These States had an interest in addressing the problem of displacement as an internal issue to their neighbouring countries, with the aim of reducing the burden of possible cross-border movements within their States and thus facing new waves of refugees (Majinge, Ache 2010: 437 ff.).

In conclusion, it can be said that the fact that the States decided to adopt the Convention confutes the theory according to which it was neither possible nor desirable to reach a consensus for a binding instrument specific for the protection of IDPs. Indeed, the Convention clearly shows that African States, albeit on different grounds, had an interest in adopting this Convention and in establishing a clear legal framework for the internally displaced, making a clear distinction from the protection enjoyed by refugees, without necessarily seeing the protection of one of them diminished (Majinge, Ache 2010: 437 ff.).

d. Possible model for an international legal framework

The Kampala Convention has been defined several times as an unprecedented instrument in the history of the protection of IDPs. Indeed, it has the merit of being the first legally binding instrument at the African level, that at the same time has galvanized the role of the international community on the subject. Moreover, another important element is the historical moment in which its adoption took place, that is, a moment when the States became aware of their individual inability to cope with the displacement, therefore deciding that the new Convention would be grounded on a basis of shared solidarity between States Parties. Among its provisions, several ones were considered revolutionary, first of all the role of primary responsibility that is given to the State, those that hold the greatest burdens and obligations within the Convention, in full respect of their national sovereignty on this issue. But, in addition to this, another essential point is the concept of international accountability, not only of State actors, but also the recognition of obligations of non-State entities, finally acknowledged as actors who can likewise cause displacement (Majinge, Ache 2010: 448 ff.). Furthermore, it should not be underestimated that various provisions of the Convention have contributed to the development of several norms and standards of International Law, including the right of voluntary return of displaced persons, the absolute prohibition of forced returns and arbitrary displacements, but also the right of displaced persons to receive reparation or compensation measures for the damage suffered, as well as their right to be consulted and to participate in the decision-making processes affecting their situation. This contribution includes also the innovative definition of the causes that can lead to displacement, with the introduction of development projects and

climate change, which is increasingly causing droughts or floods problems, forcing several villages to displace and seek security in other parts of the region (Taddele Maru 2014: 325). Moreover, another merit of the Convention was to prove the actual possibility to reach a wide consensus among States for the creation of a binding legal document, being this one of the main concerns widely expressed by the international community when it comes to the possibility of negotiating an international binding legal framework on IDPs (Majinge, Ache 2010: 445 ff.). Therefore, considering all the innovative elements of the Convention with respect to the development of International Law, and the strong motivation of African States to reach a consensus on its adoption, it can be said that the Convention has all the potential to be considered in the future as a model for the adoption of an internationally binding instrument, taking into account also another element of utmost importance, meaning the fact that the number of IDPs has now overtake that of refugees (Majinge, Ache 2010: 449 ff.).

e. Ratification, implementation and control mechanism

The issue of ratification is governed by Article 16 of the Convention, which is contained in the second section of the text, reserved for more operational rather than substantial matters. According to this Article, the Convention entered into force in November 2012 after the ratification by 15 States Parties as required by the text. Following that date, AU's authorities have committed themselves to promote the ratification process among other States Parties to the Organization, calling, among other things, on the Member States to the Great Lakes Pact to ratify the Convention collectively. In this regard, a key role is played by the Conference of States Parties, which monitors the compliance with the Convention and closely supervises States in their individual implementation processes. Today, seven years after the entry into force of the Convention, 40 States have signed and 28 have ratified the text (Taddele Maru 2014: 274).

On the matter of ratification, the text provides for two possibilities, namely denunciation and reservation, governed respectively by Articles 19 and 21 of the Convention. A denunciation is a unilateral act of a State Party revealing a willingness to withdraw from an international treaty, thereby interrupting the application of its obligations under that treaty. In accordance with Article 19, the procedure to be followed by the State in the communication of the denunciation is a written notification to the AU Commission setting out the reasons for such a decision. Such denunciation will take effect one year after the AU Commission has received the notification (Taddele Maru 2014: 274).

On the other hand, a reservation indicates a State's willingness not to accept certain clauses of a treaty or to accept them with modifications, or according to a different interpretation. However, not all reserves are admissible, as provided for in the Vienna Convention on the Law of Treaties, according to which only the reservations that do not infringe the objectives and purposes of the Convention are eligible. This limit is also expressed in Article 21 of the Convention (Taddele Maru 2014: 274).

Concerning the implementation and domestication of the Convention, an Action Plan was launched in 2010 with the aim of improving and speeding up the process of implementation of the Convention provisions at the State level. According to this Plan, State Parties were requested to commit to the implementation of new national laws, or to the amendment of pre-existing laws on the same subject. However, although some African States had already implemented national laws or strategies for the protection of IDPs, a problem of coordination caused their inefficacy. Indeed, these States often had different entities or ministries dealing with the issue of displacement, without a clear distinction between the different tasks, which also led to a problem of lack of accountability among these entities. Consequently, precisely in order to solve this institutional problem and the lack of coordination between the entities involved, the Convention expressly provides, in Article 3, the States Parties to designate a single entity exclusively dealing with the issue of internal displacement (Taddele Maru 2014: 276).

I. The Single entity provision

Article 3, second paragraph, letter b), specifies that States that already have a specific IDPs entity are not obliged to name a new one. However, what is relevant under the Article is that all States, both those without and those with an entity, should designate only one single entity. This single entity has the key role to act as a point of coordination for all the activities dealing with the topic of the internal displacement. In addition to its coordinating role, its main functions include the mobilization of resources for projects relating to the protection and assistance of IDPs. From this point of view, the role played by the single entity reflects the UN Cluster Approach, as the agency designated by the State must play the role of coordinating all the other actors involved in the protection of IDPs, pertaining to various thematic areas, including migration, justice, health, education, politics, security, and many more. In addition to these tasks, the single entity is also mandated to represent an intermediary between the State and all other relevant organizations with which the State could interface, including AU authorities and various UN agencies (Taddele Maru 2014: 278).

II. Conference of State Parties (CSP): dispute settlement mechanism and amendment procedures

The establishment of a Conference of States Parties is provided for and governed by Article 14 of the Convention. According to this Article, the Conference serves as an institutional mechanism to monitor the implementation of the Convention's provisions. In addition, its tasks include facilitating and improving cooperation and mutual support between the States Parties to the Convention. However, in addition to these tasks, the Conference has also a role in the potential procedures for amending the Convention. In particular, the Convention would have the power to examine and decide on amendment procedures (Taddele Maru 2014: 281).

The amendment or revision procedures are governed by Article 18, which provides for the possibility for States Parties to submit proposals for the amendment and revision of the Convention. The procedure provides that proposals should be submitted in writing to the Chair of the AU Commission, which in turn has the mandate to communicate the proposal to all other States Parties within 30 days after the reception. At this point, the task of examining the proposal on its merits is assigned to the Conference of States Parties that, upon advice of the AU Executive Board, has one year to examine the proposal. This is when, if the proposal is accepted, amendments or revisions need to be voted by simple majority voting, among the States present and voting. If the proposal is adopted, the amendments would enter into force 30 days after the deposit of the 15th State ratification (Taddele Maru 2014: 281).

In addition to this task during amendment procedures, the Conference of States Parties has also a key role in dispute settlements. Pursuant to Article 22, disputes arising between States concerning the interpretation or application of the Convention must be resolved at firstly amicably, through a direct consultation between the States concerned. If a friendly resolution is not possible, the dispute must be presented to the Conference, which will decide by consensus or the African Court of Justice and Human Rights will assume an adjudicatory role once the dispute has become operational (Taddele Maru 2014: 281).

CHAPTER III

CASE STUDIES

1. Uganda

1. Historical overview on displacement in Uganda

The first displacement events within Uganda were reported in 1893, during the formation of the modern nation, when because of conquest wars many people were displaced. Other key displacements were documented in the Idi Amin period in the 1970s, during the 1980s civil war and then between the 1990s and 2000s when serious displacements were caused by the second civil war in the North of the country (Kamara, Cyril, Renzaho 2017: 3 ff.).



Figure 7: Conflict- induced internal displacement in Uganda (IDMC, 2012)

During the dictatorial regime of Idi Amin, thousands of people were forced to evacuate and seek refuge in camps where they did not receive adequate protection³². Throughout the 1990s, as a reaction to the harsh suppression against the Acholi minority by the Amin dictatorship, the

³² The Republic of Uganda, The National Policy for Internally Displaced Persons, August 2004.

Lord's Resistance Army (LRA) a new military force emerged with the aim of defending the rights of the Acholi minority in the North of the country. However, the LRA, under the control of military and spiritual leader Kony, has perpetrated over the years countless crimes, being also condemned by the International Criminal Court in 2005 for the commission of crimes against humanity. Among the hardest displacements is that of 2003, when the military raids of the LRA in the districts of Teso and Lango caused more than 1,600,000 IDPs³³.

The LRA is known for its bloody opposition to government forces that in some events have even tried to react forcefully with several operations, the most famous being known as Iron Fist, when in 2002 the Ugandan army launched a major offensive against the LRA, worsening the crisis of the displaced in the North. Over the years, it has been reported that about 90% of the Northern population have been displaced at least once due to the conflict between the government and the LRA (Miller 2007: 78). The effects of the LRA presence on the territory are devastating, inhabitants of those areas have stopped farming for fear of the many destructive incursions of rebel forces. Moreover, IDPs hosted in camps organized by the State are living in very poor conditions and receive little physical protection from possible attacks (Deng 2004: 58). The insecurity within the camps has often reached such high levels to create the tragic phenomenon known as “night commuters” when children, for the fear of kidnapping at night, move away from the camps to seek refuge in neighboring villages, especially in Gulu, and then return to the camps the next morning (Deng 2004: 58).

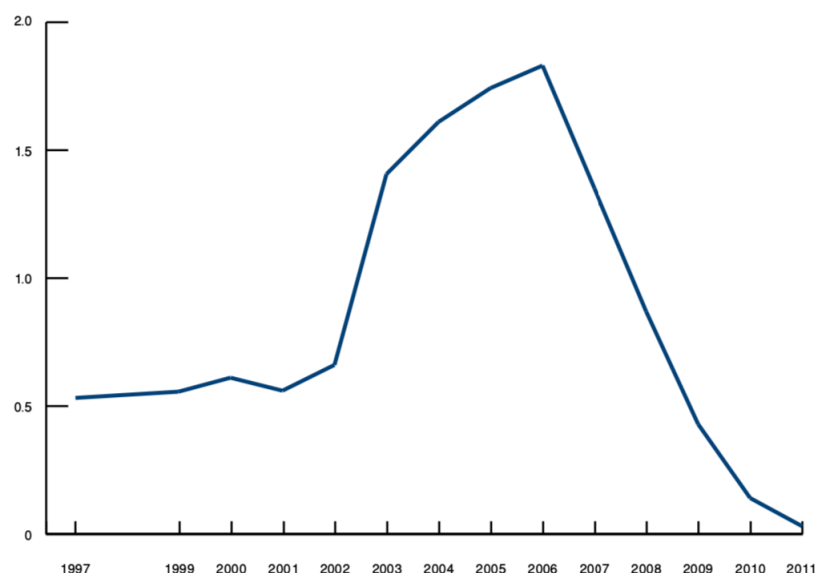


Figure 8: Conflict-induced displacement in Uganda, in millions (IDMC, 2012)

³³ *Ibidem.*

In addition to the phenomenon of night commuters, the conflict in the North has also triggered another phenomenon that characterizes the issue of internal displacement in Uganda, that of urban IDPs. Indeed, over the years, between 300,000 and 600,000 people in order to avoid being forced to live in the so-called “protected villages” organized by the government, chose instead to flee from war and look for a safer place in cities, becoming urban IDPs. Unfortunately, the issue of their protection is very controversial and poses several challenges, firstly because these people, unlike IDPs living in camps, are not registered and therefore there is no precise estimate of their numbers or their personal information. Moreover, since these urban IDPs often decide to live on the margins of the poorest urban centers, a problem of recognition arises, on how to distinguish them from the poor who, nevertheless, live in the same conditions. Simply because they chose an urban center to settle, it is often thought that those people have already reached a sustainable and durable situation and would therefore be excluded from the definition of IDP. Too often the result of this confusion between the conceptual categories and the difficulty in the recognition results is the fact that urban IDPs are essentially ignored by the central government, that prefers to concentrate its assistance in supporting IDPs in official camps (Dolan, Refstie, Okello 2010: 32 ff.).

Although conflicts and violence are among the main causes of displacement in Uganda, they are not the only ones. Indeed, Uganda is also known for its serious problems of displacement caused by other triggers, such as cattle rustling in Karamoja, Katakwi and Pader, but also natural disasters, including mainly landslides, especially of Mount Elgon and the Rwenzori mountains, and the frequent floods in the River Nile basin in northern Uganda³⁴. Among the most serious landslides of recent years there is the one occurred in 2010 when the Eastern part of Mount Elgon collapsed causing 5,000 displacements³⁵.

³⁴ Republic of Uganda, Office of the Prime Minister, Department of Disaster Preparedness and Refugees, (2004), « Uganda: National Policy for Internally Displaced Persons ».

³⁵ Refugee Law Project (2012), « From arid zones into the desert: the Uganda National IDPs Policy Implementation 2004-2012 », *Working Paper* n. 23.

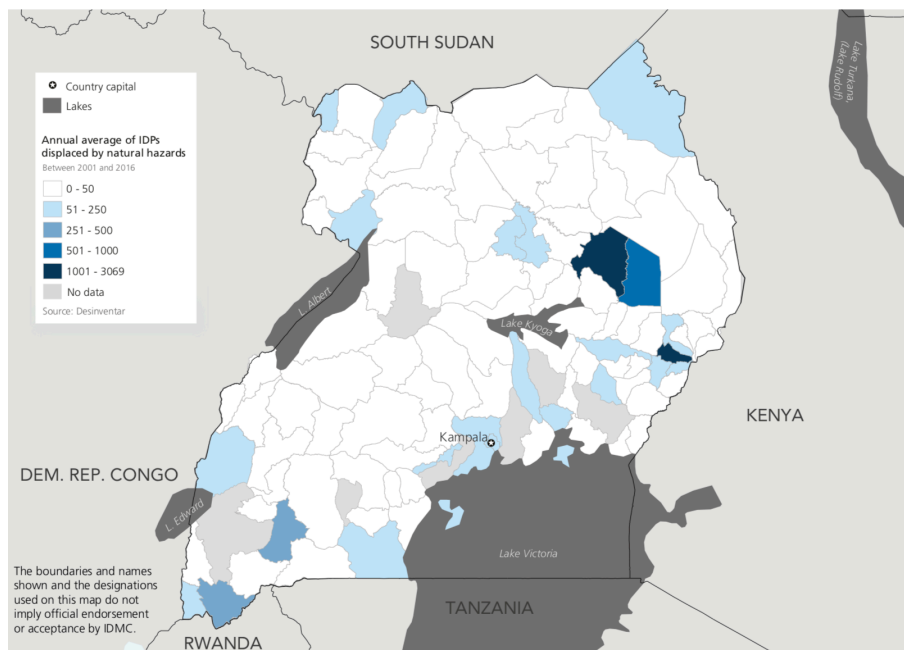


Figure 9: Map of displacement risk associated with sudden-onset disasters in Uganda based on recorded events (IDMC, 2017)

Concerning data, the latest numbers on conflict and violence displacements, updated as of 31 December 2018, report that in 2018 there were 9,000 new internal displacements and a total of 32,000 displaced during the year (IDMC 2019). Among the new displaced, there are 6,000 refugees forced to move from a refugee camp in Adjumani due to conflict between tribes, 2,900 displaced because of land conflicts in Amuru and Adjumani and 100 for the same reason in Nwoya. In general, compared to the previous year's figures, there was an increase in the number of new displacements during 2018, due in particular to the displacement of the refugee camp and land conflicts (IDMC 2019).

As regards the number of displaced persons due to natural disasters, the result is much more serious, with 164,000 new displacements in 2018, mainly due to a flood in May 2018 that affected 20 districts in the North-East of the country causing approximately 150,000 new IDPs (IDMC 2019).

2. National commitment towards IDPs: 2004 National Policy for Internally Displaced Persons in Uganda

Historically, Uganda has been one of the first AU members to be committed in the protection of IDPs. The National Policy adopted in 2004, designed specifically for the protection and assistance of the IDPs, illustrates this national engagement, making Uganda one of the few countries in the world to have an *ad hoc* instrument deriving from the UN Guiding Principles.

The country's leading position on the issue of internal displacement is also reflected, for instance, in the ratification of various legal instruments, including the 2006 Great Lakes Protocol, and subsequently with the first ratification to the Kampala Convention, whose preparatory works were hosted, not surprisingly, by Uganda itself.

During 2004, Francis Deng, the former Representative of the Secretary-General on IDPs, made a field visit to Uganda to realize how critical the situation was, in particular in certain areas in the North of the country, at the heart of the civil war. In this visit, Deng was particularly impressed by the dramatic situation in which the children were forced to survive, being often affected by the night commuters' issue. Concerned by the serious situation, Deng expressed his concerns to the Inter-Agency Standing Committee, calling for measures to be taken at international and national level to stop the crisis (Deng 2004: 58).

The adoption of National Policy on IDPs is also the result of this visit and the subsequent international pressure, that prompted national authorities to take a decisive step towards the protection of the internally displaced.

The text of the National Policy consists of five main chapters preceded by an introductory preamble and a glossary. In the introductory part, the legal basis is recalled, drawing on pre-existing principles of IHL and HRL, as well as any provisions coming from national laws. Moreover, the preamble introduces a key element with regards the content of the text, namely that the Policy aims to specify the roles and responsibilities not only of the government itself, but also of humanitarian agencies and other actors involved in the issue. It introduces the principle according to which IDPs should enjoy the same rights as any other citizen in the country, as guaranteed by Ugandan national laws. In particular, the government commits itself to prohibits arbitrary displacement, to promotes the search for lasting solutions to the causes of displacement and to facilitate voluntary returns. It is important to note that the glossary clarifies the definition of IDPs used in the text, that is, the same definition of the Guiding Principles.

The first chapter specifies the objectives of the text, namely, to minimize the phenomenon and the resulting effects, to promote coordinated response mechanisms, to provide assistance for the realization of safe and voluntary returns and to promote the development of recovery mechanisms. The chapter then lists which international and regional legal instruments have guided the implementation of the policy, mentioning the 1981 African Charter of Human Rights, the 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the 1984 Convention against Torture and

the 1989 Convention on the Rights of the Child, as well as the 1998 United Nations Guiding Principles on Internal Displacement and the 1949 Geneva Conventions³⁶.

The second chapter deals with institutional aspects, roles and responsibilities. The key element of the chapter is the establishment of a Lead Agency for the protection and assistance of IDPs, and its role is assigned to the Office of the Prime Minister, Department of Disaster Preparedness and Refugees (OPM/DDPR). This agency is responsible for all the issues dealing with internally displaced, including coordinating and supervising the activities of the other ministries involved. The chapter also provides for the creation of other entities, including the Intra-Ministerial Policy Committee (IMPC), established by the Prime Minister, with the aim of formulating policies and coordinating activities between the central, district and lower levels; another entity foreseen by the Policy is the Inter-Agency Technical Committee (IATC), with the role of planning and coordinating the activities of the various ministries, government offices, but also private sector actors, United Nations, international and non-governmental organizations. The role of the IATC in particular is to coordinate the various government policies, including proposals for legislative initiatives on the protection of IDPs. The last body designed at the national level is the Human Rights Promotion and Protection Sub-Committee (HRPP). Instead, at the district level, the Policy provides a District Disaster Management Committee, defined as the lead agency for the protection of the displaced at the district level. In this regard it is interesting to note that for its constitution the Policy requires that two IDPs, a man and a woman, should be part of the Committee in order to represent all the IDPs present in the district. Under its supervision, other sub-committees are established, namely, the District Human Rights Promotion and Protection Sub-Committee for IDPs, and the Sub-County Disaster Management Committee³⁷.

The third chapter deals with more substantive issues, with general provisions on relevant issues for the displaced, including security, freedom of movement, the prohibition of arbitrary displacement, the issue of voluntary returns and family reunification. The paragraph on security states that the primary responsibility for ensuring the security of the internally displaced lies with the Uganda Peoples Defence Forces. These forces have the task of maintaining order among internally displaced communities and in places where the displaced decide to resettle, and to ensure protection on areas and camps in which the displaced reside, but also to ensure their safe return.

³⁶ Republic of Uganda, Office of the Prime Minister, Department of Disaster Preparedness and Refugees, (2004), « Uganda: National Policy for Internally Displaced Persons ».

³⁷ *Ibidem*.

On the freedom of movement, the Policy expresses the objective that all displaced persons shall enjoy that freedom and that they should have access to all areas of the country with economic and social activities, but also to ensure that all IDPs have the freedom to choose their place of residence and to be able to move freely within and outside the camps.

On the prohibition of arbitrary displacement, the text specifies the conditions under which this prohibition must be respected, including policies aimed at altering ethnic, religious or racial composition, during armed conflict, and in unjustifiable large-scale development projects.

For voluntary returns and resettlement measures, the government itself assumes the primary responsibility for ensuring that the return of displaced persons is carried out in accordance with certain conditions, namely it should be voluntary, in safety and in dignity. In particular, displaced persons cannot be forced to return to areas of the country where their life and freedom may be at risk and before the decision is taken, they must also be provided with all the information necessary to make an informed choice upon their return.

For legal status, identification and registration issues, the Policy requires that competent authorities, specifically local governments, should provide the displaced with all necessary documents for the enjoyment of their rights, and in the event that these documents have been lost, in issuing them without unfavorable conditions or with the payment of fines.

As far as property rights are concerned, a prohibition on arbitrary deprivation of displaced persons' property is established. Moreover, local governments should in every possible way protect the property left behind by the displaced against theft and occupation; if there is a return or a resettlement and it is not possible to recover the land of the displaced, the government must take the responsibility to allocate some land to the displaced.

The Policy provides also that, for families separated by displacement, family reunification measures should be taken as soon as possible, especially in cases where children are involved. In the event that reunification for children is not possible, the State authorities will be responsible for the respect of their rights.

Finally, the latest provision in chapter three relates to issues of food security, shelter, clothing, education, health, access to water and sanitation, resettlement kits, rehabilitation of infrastructure, graduated tax and environment³⁸.

The fourth chapter concerns the role of national and international development and humanitarian agencies, specifically, a key role for the Uganda Red Cross Society (URCS) is established, as a supplementary role to government capacities in the settlements of IDPs. It is also emphasized that, unlike other non-governmental organizations, the Red Cross is an entity

³⁸ *Ibidem*.

established by act of Parliament, and its roles and responsibilities are defined by law. The paragraph also points out that cooperation between the various organizations is a crucial element in mobilizing both technical and financial assistance. Moreover, the responsibility for drawing up Memorandum of Understanding with humanitarian and development agencies shall lie within the OPM/DDPR³⁹.

The fifth and final chapter concerns the diffusion of public information related to internal displacement, the transmission of which must be promoted and not hindered, by the Ministry of Information. The OPM/DDPR, together with government authorities and humanitarian agencies, must also advocate on behalf of the displaced, by translating for instance the Guiding Principles into local languages and ensuring that they are broadcasted through all available media⁴⁰.

Following the adoption of National Policy in Uganda, several reports on its implementation were published and numerous meetings and workshops were organized. In particular, among the most relevant there was a workshop organized by the Brooking institution, following a visit by Kalin in 2006. The aim of the meeting was to take stock of how policy provisions had been implemented in practice and to identify best practices and major challenges to its implementation⁴¹. As regards the implementation issue, the meeting referred the results of an analysis carried out by the Refugee Law Project during the same year. According to this study, among the main problems emerged in the implementation of the Policy, there would be a problem of coordination between the various levels of implementation envisaged by the Policy, namely the central and the district levels. Moreover, at the local level, the results showed little clarity as to practical responsibilities between the different governmental entities⁴². In the conclusion of the workshop, the participants jointly stated some common points to improve the situation in Uganda, including greater dissemination of the Policy to encourage its understanding and implementation, more consultation of representatives of displaced persons to take better account of their needs, improved presence of civilian police forces controlling the camps, better resource allocation system and lastly a more effective judicial system in solving disputes related to land and property issues (Miller 2007: 78).

The unsatisfactory results of the implementation and work of local governments can be explained by the fact that in the same period Uganda was chosen as a pilot country to implement the UN Cluster Approach. Indeed, the IASC decided to include Uganda in the project, together

³⁹ *Ibidem*.

⁴⁰ *Ibidem*.

⁴¹ Workshop on the Implementation of Uganda's National Policy for Internally Displaced Persons, *Background Paper*, Kampala, Uganda 3-4 July 2006.

⁴² *Ibidem*.

with other countries, which resulted in local governmental actors that had to cope with a large number of humanitarian actors in their territories involved with the implementation of the UN-led project (Mukwana, Ridderbos 2008: 21 ff.) Again, one of the problems that arose regarding the action of the Cluster Approach was basically a problem of coordination between the UN officials and local governments, as its role and responsibility in the project was yet unclear. In addition, it was highlighted that, in order to be effective, greater coordination between actors had to be complemented by a participatory approach, meaning respecting the roles and priorities of local communities and the interests of the national government (Huber, Birkeland 2007: 72). Meanwhile, the continuous attacks between the LRA's forces and the government army that were persecuting the North of the country were diminishing. From 2006 onwards, a process that will lead to the achievement of some truces between the forces on the field will start, allowing also the implementation of policies aimed at the recovery of Northern territories from the conflict. From this point of view, the most far-reaching project was the Peace Recovery and Development Plan launched in 2007 following a two-year negotiation phase (Santner 2013: 87 ff.). With this plan, the Government of Uganda committed itself for a period of three years to a phase of recovery and stabilization of the territories in the North including all the main stakeholders involved in recovery activities.

The project consisted of four strategic objectives to be achieved through fourteen detailed programs. The first objective is the consolidation of State authority in the North, to be achieved through six programs: an initiative facilitating peace agreements between the parties; the improvement of the political aspect, the legal services and the state of prisons; the rationalization of the auxiliary forces and the improvement of the role of local government. The second strategic objective concerns the reconstruction and strengthening of local communities, to be carried out with three programs: the first concerning humanitarian assistance, the second focusing on the issue of return and resettlement of the internally displaced and the third on the consolidation and development of communities. The third strategic objective aims at revitalizing the economic aspect of the society through three programs: the improvement of production and marketing activities, the rehabilitation of relevant infrastructure and improvement of the urban context and finally the management of the environmental and natural resources. The final objective concerns peacebuilding and reconciliation measures between the participants involved in the conflict, complemented by two programs: the first dealing with public information, education and communication measures and the second with the reintegration of former combatants⁴³.

⁴³ Republic of Uganda, Office of the Prime Minister (2007), « Peace, Recovery and Development Plan For Northern Uganda (PRDP), 2007-2010 ».

The Plan has its area of application not only in the territories specifically hit by the LRA offensives, but in the Northern region as a whole. Furthermore, its implementation has been harmonized and complemented by another target-specific project implemented by the Government of Uganda, namely the Action Plan on Poverty Eradication. From an institutional point of view, its control was entrusted to the Ministry of State for North Uganda, with the main coordinating role delegated to the Office of the Prime Minister. In addition, an *ad hoc* Unit was set up at central government level to supervise the coordination and implementation of the project (Santner 2013: 87 ff.).

In 2008, the United Nations High Commissioner for Human Rights published a report addressed to the UN Human Rights Council, in order to provide an update on human rights respect, especially in the North of the country⁴⁴. Overall, the report shows a general improvement of the situation in the North, reporting more than 550,000 IDPs in the Lango area who have managed to return to their countries of origin. Even in the Teso region, the majority of the internally displaced appear to have returned to their original districts, while a different situation affected the areas of Amuria and Katakwi, where most of the displaced persons were still registered in camps due to the still unstable situation at the end of 2007⁴⁵. The text, in one of its main elements, speaks of an important right for the internally displaced, namely the right to free movement, affirming the importance to ensure that displaced persons can make an independent and informed choice to achieve a lasting solution to displacement, including to return to their place of origin, to resettle in another part of the country or to integrate with the host community where displacement occurred⁴⁶. The document makes also explicit reference to the government's Plan for Peace, Recovery and Development of the Northern areas of the country. Specifically, in the context of the protection of human rights, two key objectives are mentioned in this regard: strengthening the State authority by consolidating the civilian police forces and the judiciary system and, secondly, reinforcing respect for the rule of law, through the implementation of processes to consolidate peace and the reconciliation⁴⁷.

⁴⁴ UN (2008), « Annual Report Of The United Nations High Commissioner For Human Rights And Reports Of The Office Of The High Commissioner And The Secretary-General », *Report of the High Commissioner for Human Rights and follow-up to the World Conference on Human Rights, Addendum**, *Activities of the Office of the High Commissioner for Human Rights in Uganda*, A/HRC/7/38/Add.2.

⁴⁵ *Ibidem*.

⁴⁶ *Ibidem*.

⁴⁷ *Ibidem*.

2. Nigeria

1. Historical overview on displacement in Nigeria

In recent times, Nigeria has been subject to several waves of displacement, due mainly to internal conflicts arising from clashes among ethnic and religious communities. However, the bloodiest period of displacement coincides with an internal crisis due to terrorism, that has been going on for ten years. The huge numbers of IDPs in Nigeria are in fact largely caused by terrorist activities of the group known as Boko Haram which is active mainly in the North of the country⁴⁸.

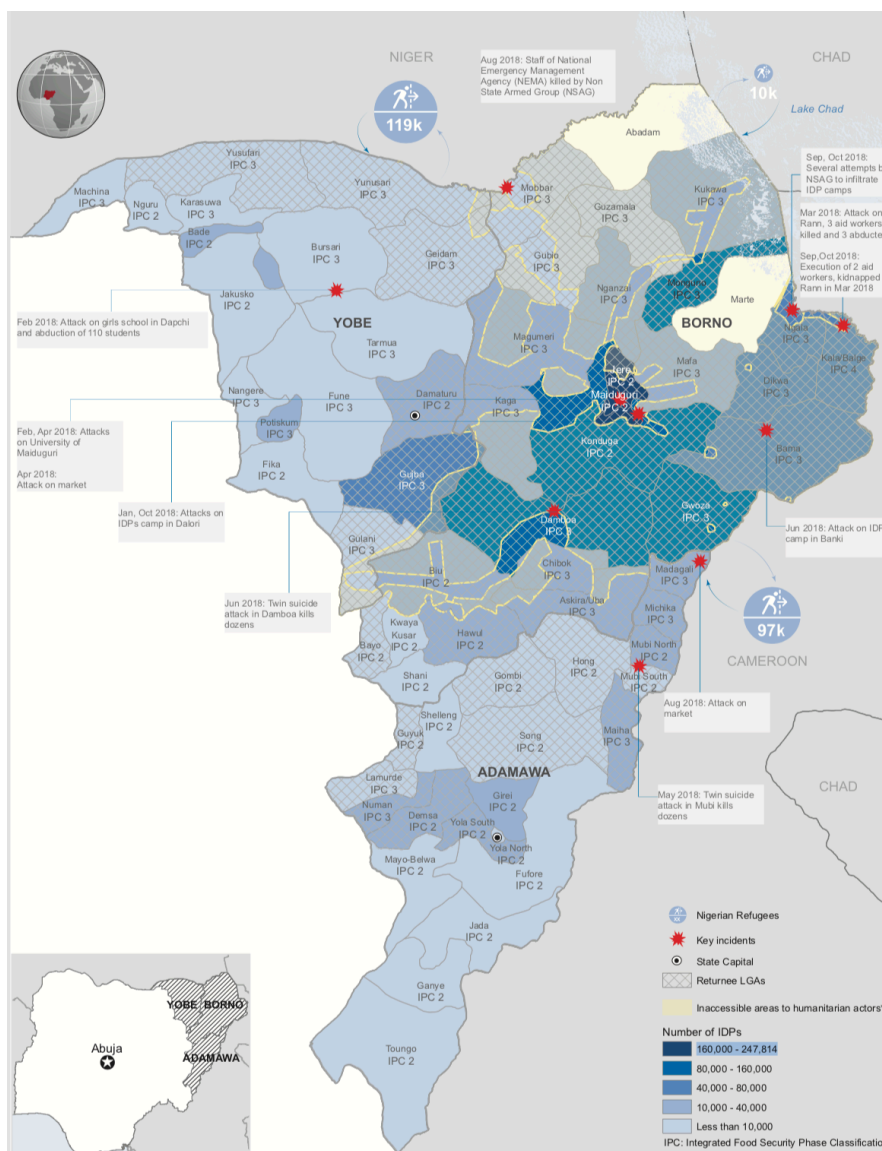


Figure 10: Nigerian regions most affected by internal displacement in 2018.

(UN OCHA, 2019)

⁴⁸ UN (2017), « Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Nigeria », *UN document, A/HRC/35/27/Add.1*.

the end of 2018. Of all IDPs in the country, 80% of the total are present only in the Borno State. The violence resulting from the conflict affects mainly civilians, that result to be victims of all kinds of abuses and violations of the most basic human rights. Among these, IDPs have often been victims of attacks targeting IDPs camps, such as with the camp's attacks in Dalori and Banki, in 2018 (UN OCHA 2018).

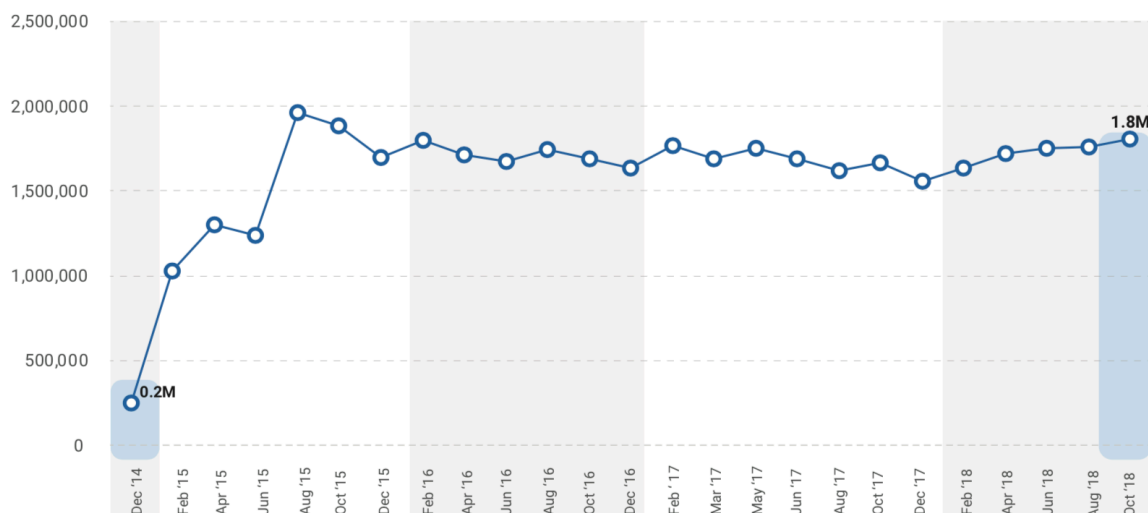


Figure 12: Number of displaced persons, Dec 2014 – Oct 2018 (UN OCHA 2019)

Most of the Nigerians internally displaced have found refuge in one of the official camps for displaced persons set up by the government. However, many of these camps are in a very serious situation of congestion, which does not allow the proper use of basic services, causing situations of disease and protection issues for the most vulnerable groups. Moreover, the displaced persons who have decided not to stay in displaced camps but in host communities are often inaccessible for humanitarian agencies (UN OCHA 2018).

According to the UN OCHA report, the problem of camps is an issue that falls within the scope of the protection crisis, especially for vulnerable groups. Violent dynamics in the camps can emerge, with girls being sexually exploited in order to have access to food or to move freely in and out of the camp and boys who can be recruited by armed groups or victim of forced labor (UN OCHA 2018). Another serious issue with camps is that, since the initial years of the conflict, their structures and services have remained substantially unchanged, while the number of IDPs has gradually increased, causing problems of overcrowding (UN OCHA 2018).

Although Boko Haram has caused deplorable violence and uninterrupted displacements over the past ten years, Nigeria is also affected by other serious causes of displacement. In particular, according to IDMC data, during 2018 there were 541,000 new displacements due to internal struggles between communities and between farmers and pastoralists intensified by ethnic and

religious tensions, in particular in the zone that includes the Middle Belt States, that is the passage zone connecting the Christian States in the South with the Muslim States in the North (IDMC 2019).

In addition, natural disasters are also a major cause of displacement in Nigeria, in particular flooding in high population density areas, causing 600,000 IDPs during 2018, hitting almost the whole of Nigerian territory with severe floods (IDMC 2019).

2. National commitment towards IDPs: 2012 National Policy on Internally Displaced Persons in Nigeria

The alarming numbers of internal displacements have led the government of Nigeria to take measures towards the adoption of a national Policy on the protection of the internally displaced. The first step was taken by the National Commission for Refugees, that in 2003 published a first draft of the measures to be taken. Subsequently, the Federal Government of Nigeria established a National Committee with the aim of drafting a national Policy. The process then continued in 2008, when the Vice President gave the task to the newly established Committee to finalize the draft Policy with particular reference to the content of its implementation measures. The result of this mandate was a series of recommendations by the Committee, published in 2009 and approved by the President in the same year. This passage is of particular relevance because, in addition to approving the recommendations that broadened the mandate of the policy, they also had the effect of changing the name and mandate of the National Refugee Commission, that since 2009 started to include also the protection and resettlement of IDPs. Following a comment on Section 6 of the text by the Federal Executive Council, a Technical Working Group consisting of representatives of various stakeholders in the sector was established, with the aim of working on the advice of the Council and adapting the Policy to the Kampala Convention. Such a complex and time-consuming process has caused a considerable delay in the adoption. The final text was presented to the government in 2011 and adopted in 2012, although its entry into force is still under discussion⁵¹.

The first chapter of the Policy introduces the issue of displacement within the Nigerian context, focusing on both the causes and the effects of displacement on the IDPs themselves and on host communities. In particular, the chapter mentions among the main causes of displacement the violent conflicts caused by ethnic or religious tensions between communities, but also natural causes, such as disasters due to flooding or oil extraction, and lastly, also a further trigger for

⁵¹ Federal Republic of Nigeria (2012), « Nigeria: National Policy on Internally Displaced Persons ».

displacement is mentioned, namely the extreme poverty and lack of equal access to basic services. With regard to the impact of displacement, the text affirms that it causes a situation of extreme vulnerability for IDPs who find refuge in neighboring areas, where they often suffer from lack of access to essential services. This situation makes the most vulnerable groups particularly exposed to situations of insecurity and abuses. On the host community side, displacement causes considerable pressure on their basic services, that suffer from overcrowding caused by the presence of IDPs. This pressure often leads to a growing tension between the two communities, which often prevents IDPs from being fully integrated in the host community. The chapter concludes with a glossary of key terms, including the definition of arbitrary displacement, displacement caused by conflict, development projects and disasters, both natural and man-made, as well as the definition of IDPs which is drawn from the text of the Kampala Convention⁵².

The second chapter concerns the policy approach, its models, objectives and mission. The adoption of a human rights-based approach and its main instruments is emphasized, stating that the policy will refer as much as possible to pre-existing legal instruments, including conventions, treaties, principles and HRL and IHL instruments, although a prevailing role is given to the Kampala Convention and the UN Guiding Principles.

The ambitious objective of the policy is to address all causes of internal displacement, all groups affected by internal displacement, including the most vulnerable ones, to address all the needs of displaced persons, including protection and assistance, covering all the phases of the displacement process, including subsequent steps to ensure sustainable and durable solutions, involving all levels of government, including the State, the federal and local levels, reaching all affected areas ensuring access to humanitarian actors and respecting all rights of the displaced, protecting first of all those guaranteed by the Nigerian Constitution.

As for the guiding principles which inspired the drafting of the Policy, the text refers to a list of fundamental principles, including respect for State sovereignty, gender equality, participation and accountability. Humanitarian principles include instead the principle of humanity, neutrality, impartiality and non-discrimination, independence and protection from all forms of suffering and abuse⁵³.

Chapter three is devoted to the rights and obligations of displaced persons. The core rights include the right not to be arbitrarily displaced, the right to protection and assistance during and after the phase of displacement, and the right to voluntary return, local integration or resettlement. After that, the text focuses on a range of rights of vulnerable groups within the

⁵² *Ibidem.*

⁵³ *Ibidem.*

category of internally displaced, including the rights of displaced children, displaced women, displaced persons with disabilities, displaced people affected by HIV and displaced elderly people⁵⁴.

Chapter four deals with the roles and responsibilities of government, humanitarian actors, host communities and armed groups. The State is recognized as the main responsible actor for the protection of the displaced, with the obligation to respect, protect and fulfil the IDPs rights, without discrimination. As regards the obligations of humanitarian actors, they must act in accordance with the law and the guiding principles, as well as in compliance with codes of conduct and operational procedures. For host communities, both their rights and duties are listed. As for the rights, these are socio-economic rights, the right to life and property, adequate compensation, food security, safe environment and health. Among the responsibilities, ensuring security for the displaced in the community, the promotion of an harmonious integration between groups, without discrimination or exploitation of their condition of being displaced, ensuring access for humanitarian actors to provide assistance to displaced, enabling displaced persons to express freely their ethnicity, religion, or political beliefs without being excluded or for any reason discriminated or targeted, and finally allowing the free movement of displaced within or outside the community.

As for the obligations of armed groups, there is the absolute prohibition of causing arbitrary displacement, preventing displaced persons from living in dignified conditions, hampering their right to move freely, recruiting or using child during hostilities, take hostages, establishing human trafficking or sexual exploitations, attacking or targeting humanitarian personnel or their material⁵⁵.

The fifth chapter deals with implementation policies and strategies and consists of several key points. The first provides for broader strategies that include the prevention of internal displacement, the protection and assistance of IDPs during displacement, the post-displacement rehabilitation period and strategies for return, resettlement or local integration. The second point focuses on achieving sustainable solutions to internal displacement, while the third point deals with coordination of the various institutional mechanisms and consists of the designation of a focal point institution, coordinating the problems related to the phenomenon and the implementation of the policies envisaged, the establishment of areas of coordination, the designation of sector coordination leads with their respective responsibilities, including the involvement of other agencies and humanitarian actors, the establishment of appropriate humanitarian coordination mechanisms, coordination with national and local authorities,

⁵⁴ *Ibidem.*

⁵⁵ *Ibidem.*

State's institutions, civil society actors and other relevant actors, development of participatory and community-based approaches, emergency preparedness, monitoring and reporting techniques and resource allocation⁵⁶.

The last chapter deals with the financial aspect, monitoring evaluation and Policy review procedures. The Policy provides for different funding mechanisms: the first is a joint humanitarian funding mechanism for emergencies or very serious disasters, the second is a quick appeal mechanism for allocating funds rapidly, the third are grants and loans from International Organizations and the last one are individual mechanisms of humanitarian agencies or institutions.

Specific responsibilities for the State are foreseen for the monitoring and evaluation of the Policy, that must ensure the practical implementation of the treaties, periodic publication of reports on the situation of internal displacement and impact assessment, the development of a five-year policy implementation framework and the conduct of periodic assessments on targets achievement⁵⁷.

The text of the Policy must be recognized as an important step in Nigeria's history in protecting the rights of the displaced, being the first instrument ever adopted by the government on this issue. In addition, it contains a very broad definition of internal displacement that includes all possible causes for displacement, including natural or human-made disasters. However, there are many critical elements that could negatively affect its objectives and the overall contribution to the phenomenon of displacement (Ezeanokwasa, Kalu, Okaphor 2018).

The first aspect that has been criticized is also the most essential for the effectiveness of the policy, specifically the financial aspect. Indeed, it can easily be deduced from the text that there is no direct funding mechanism dedicated to the implementation of policy. Instead, the text provides only appeal mechanisms to donor agencies or loans from International Organizations and provides as the only direct source of funds a so-called "seed fund". The seed fund should be a fund included in the Joint Humanitarian Funding Basket that aims to start operations of vital importance that have not been otherwise funded. But what is critical is the lack of clarity about the definition of seed fund and around what should amount to a critical operation. All these uncertainties about the financing aspect lead to the conclusion that unless direct and dedicated funds are made available for the Policy in the future, it can only fail in its objectives (Ezeanokwasa, Kalu, Okaphor 2018).

The second element that has been deemed to be unsuccessful is the response model based on the collaborative approach. This approach, as provided for in the text, does not envisage the

⁵⁶ *Ibidem.*

⁵⁷ *Ibidem.*

designation of a single agency as the lead monitoring institution. Indeed, the focal coordinating institution foreseen by the text, despite being the highest office in this regard, has only a coordinating role. In addition, the coordinating Committee to be established by the focal coordinating institution would be composed not only of governmental but also of external departments and, as a result, there would be an accountability issue. Consequently, the use of the collaborative approach within the context of internal displacement in Nigeria would be unsuccessful as it does not provide for a single institution acting as a pivotal leader, it does not allow predictability of action and does not provide for clear and distinct mandates between the different entities in the Committee. For these reasons, it is advisable that in the future a reform of the text should be approved, with the designation of a single lead agency for the implementation of the policy and thus the rejection of the collaborative approach (Ezeanokwasa, Kalu, Okaphor 2018).

The last element that has been seriously questioned is the right of internally displaced persons to integrate into host communities. This right would be difficult and even potentially dangerous to be implemented. The reason for this criticism arose from the fact that the Nigerian society is highly tribal and based on the belonging to different communities, therefore most of the times communities cannot accept the inclusion of external members. This provision could therefore lead IDPs to find themselves in difficult situations or even at the center of tribal struggles that could put them in danger. Therefore, a potential reform of the text should include more efforts to ensure the return of the displaced to their original homes or communities, rather than the possibility of integration into host communities (Ezeanokwasa, Kalu, Okaphor 2018).

3. Ethiopia

1. Historical overview on displacement in Ethiopia

Ethiopia has been affected by internal displacement since the 1990s, when the first clashes between Ethiopia and Eritrea began. Although Eritrea gained independence from Ethiopia in 1993, a number of critical issues remained unsolved between the two States, including a territorial dispute over some regions at the border. The war that broke out in the early 2000s caused the displacement of about 400,000 people and the death of more than 100,000 (Reliefweb 2005). The crisis was halted only few months later, when a ceasefire was signed and a demilitarized strip at the border was established, allowing many families to return to their places of origin.

In addition to conflicts and violence related displacements, Ethiopia has experienced also displacement due to drought, a phenomenon that has been recurring in some parts of the country, including the Afar region, since the 1980s. Drought problems, but also more recent floods events, cause every year the displacement of entire villages that found their entire livelihood on pastoral activities (Reliefweb 2005).

According to IDMC data, in 2018 Ethiopia has been the country with the highest number of new displacements due to conflict and violence in the world, with 2,895,000 new displacements. Most of the displacements were recorded in the Oromia and Gedeo areas between April and June 2018 due to ethnic conflicts and clashes for scarcity of resources. Moreover, throughout 2018, the conflict which begun in 2016 at the border between the Somali and Oromia regions continued, causing the displacement of almost 150,000 people in a short time (IDMC 2019). As regards displacements caused by natural disasters, Ethiopia in 2018 had 296,000 new displacements due mainly to flooding in the Somali region of the country (IDMC 2019).

As reported by the latest data by OCHA, in 2019 in Ethiopia there are a total of 3.19 million IDPs and displaced persons who have been returned to their places of origin. The majority of displacements events stems from the conflict at the interregional border between the Oromia and Somali regions, that has led to the displacement of almost one million people, most of whom are rural pastoralists (UN OCHA 2019).

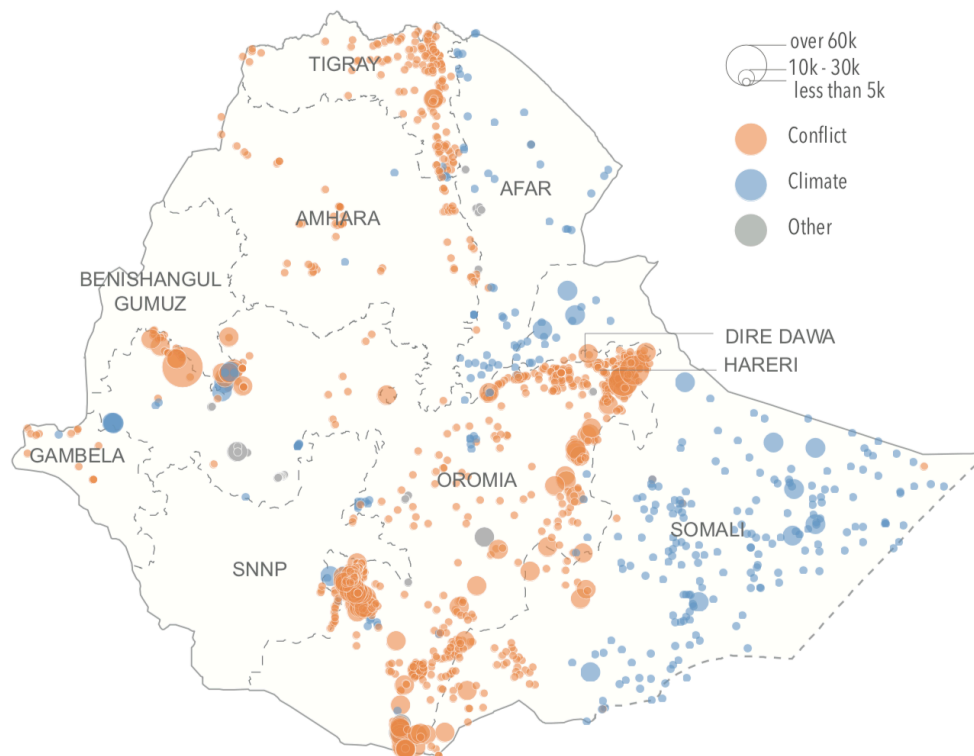


Figure 13: Sites hosting Internally Displaced Persons in Ethiopia (OCHA, 2019)

Almost half of the total of more than three million IDPs were displaced during the last year, a third were displaced since 2017 and the remaining part since before 2017. Furthermore, when looking at the composition by age, it is possible to see that the majority, almost 60%, representing 1.88 million displaced persons, are children under the age of 18. If analyzed according to the type of shelter, it can be observed that 38% of the total of the displaced have found refuge in host communities or in families, 33% have opted for spontaneous settlements, 9% were hosted in collective reception centers and the remaining part in dispersed settlements, *ad hoc* camps and transit centers (UN OCHA 2019).

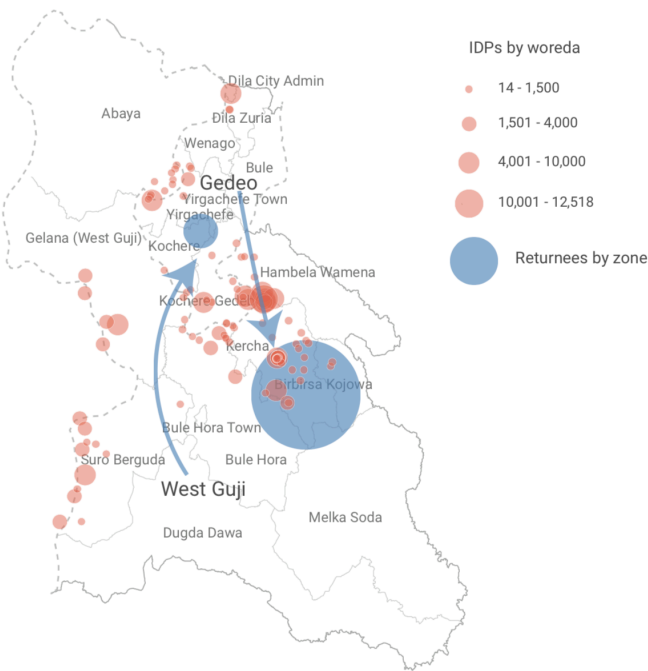


Figure 14: Returnees and IDPs in Gedeo and West Guji regions (OCHA, 2019)

As far as returns are concerned, these have been encouraged by a large government operation that since May 2019 has allowed many IDPs to return voluntarily and safely to their areas of origin, as well as providing for the closure of many IDPs sites. However, in 2019 there were also several episodes of secondary displacement, especially in the Eastern and Western areas of Wellega, due to precarious security situations in return areas. According to the latest data of May 2019, 320,000 IDPs in the Gedeo region have returned to West Guji region and other 20,000 have moved in the opposite direction, moving from West Guji to Gedeo (UN OCHA 2019).

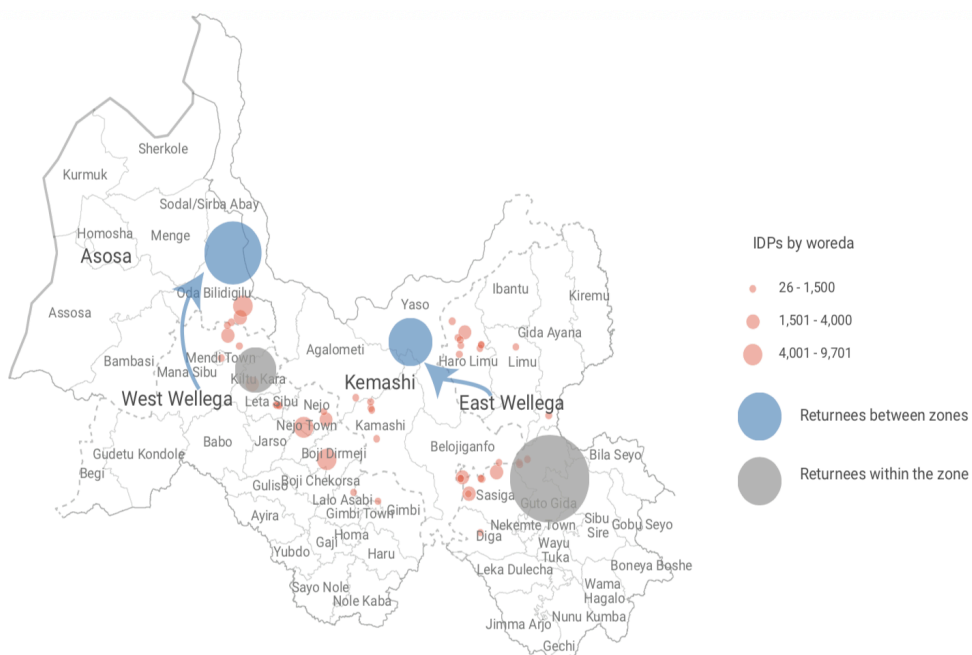


Figure 15: Returnees and IDPs in Wellega and Kemashi regions (OCHA, 2019)

For the Wellega region, 51,120 returnees returned from the West Wollega region to Benishangul Gumuz and there were further 24,000 returnees in the West Wollega area. For the Eastern zone of Wollega, instead, almost 90,000 internally displaced have returned to the origin zone of Oromia and another almost 27,000 have returned from the Eastern zone of Wollega towards the Kemashi region. This area has also been subject to secondary displacements, as some 1,000 returnees in the Kamashi region have preferred to move to the Sasiga woreda area after perceiving a lack of security in the return areas (UN OCHA 2019).

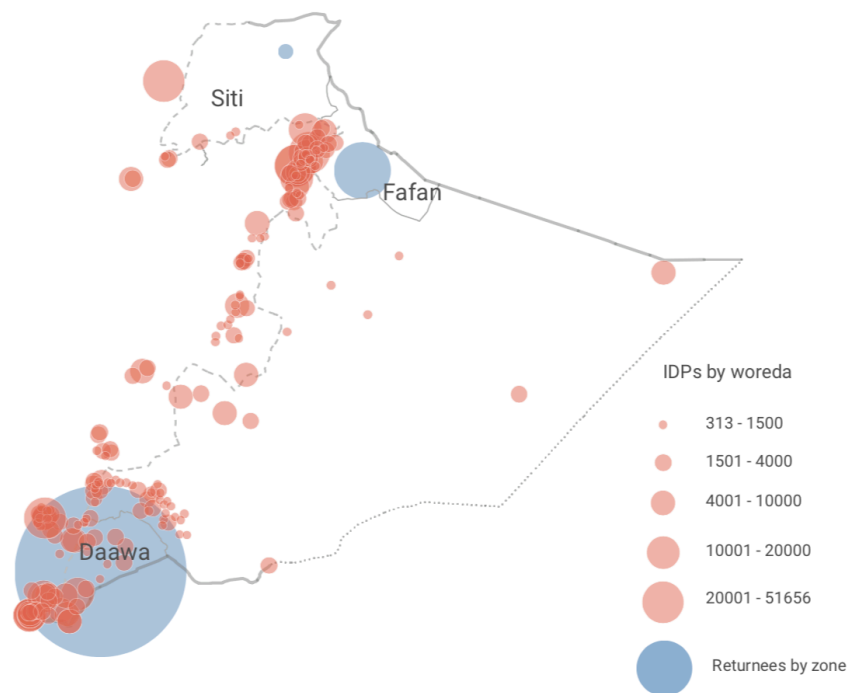


Figure 16: Returnees and IDPs in the Somali region (OCHA, 2019)

The Somali region of the country has seen more than 22,000 IDPs from the Daawa area returning to their places of origin, mainly moving from displacement places located at the border with the Oromia region. In addition, almost 2,000 returnees have been reported to have returned to the Fafan area (UN OCHA 2019).

2. National commitment towards IDPs: 2017-2020 Durable Solutions Strategy of the Somali Regional Government of Ethiopia

To cope with the increasing number of internal displacements, the Somali regional State of Ethiopia decided in 2014 to establish, with the support of the International Organization for Migration (IOM), a Working Group for Durable Solutions to the issue of displacement, with

the aim of combining the humanitarian and the development approach in the context of displacement. Until 2013, indeed, the only instruments that existed at the State level provided only a humanitarian approach based on the saving of human lives. These instruments, until 2013, included the Disaster Risk Management Policy and a Strategic Program and Investment Framework, although not directly addressing the issue of displaced persons (Habte, Kweon 2018: 40 ff.). One of the first tasks of the Working Group was to produce a review of displacement situations and a survey of the intentions expressed by displaced persons about their future. These consultations provided the basis for the draft text which was submitted for approval to the Somali regional authorities in August 2017. Subsequently, consultations were held at regional level on the draft text, which modified in some parts the text itself, that was finally adopted by the Somali regional government at the end of 2017, under the name of 2017-2020 Durable Solutions Strategy of the Somali Regional Government of Ethiopia⁵⁸.

The strategy specifies that, although it does not have a national or regional reference framework for the protection of IDPs, this still refers to important national and international instruments on the issue of displacement. The first instrument mentioned is the Ethiopian Constitution, with particular reference to its Articles 44 and 89, that explicitly refer to the internally displaced. Then, at the regional level, reference is made to the Kampala Convention and the 2017 IGAD Regional Strategy for Forced Displacement, for which Ethiopia was selected together with three other States as a pilot country for its implementation⁵⁹.

Thereafter, the strategy clarifies the cornerstones on which the Strategy reasoning is based. These include recognition of the primary responsibility for the role of the State in providing lasting solutions for internally displaced, the right of the displaced to make an informed and voluntary choice about the possible durable solutions to be taken, the role of the State in creating favorable conditions for lasting solutions ensuring physical, material and legal safety, the prohibition to encourage or to force displaced persons to return to areas where their life or physical security would be at risk, the compliance with the principle of participation, inclusion and non-discrimination, and many more⁶⁰.

The provisions of the text take into account many target groups, including displaced caused by drought, displaced caused by floods and other natural events, displaced due to conflicts, other categories of displaced persons and host communities. The first group includes all those people who become displaced due to drought. This situation mainly affects the population of rural pastoralists in the Somali area, which becomes destitute when all their animals die, forcing them

⁵⁸ Government of Ethiopia, IOM (2017) « Ethiopia: Somali Region Durable Solutions Strategy (Durable Solutions Strategy 2017/2020. The Durable Solutions Strategy of the Somali Regional Government of Ethiopia) ».

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*.

to move in different areas because of urgent need of survival. The third category, although involving fewer people, includes displaced persons due to flooding, landslides and other natural disasters that often result in displacements lasting more than a year. The fourth category, on the other hand, includes in particular the victims of the border conflict between the Somali and Oromia regions, who are forced to evacuate to different areas of the country. The next group brings together all displaced persons for other displacement reasons that are not specified in the text, where reference is also made to displaced persons for development projects, which will be supported following the principles set out in the Strategy. Finally, the importance of host communities is recognized in the text, promoting fair access to humanitarian assistance for both host communities and displaced populations, thus establishing a community-based approach to ensuring sustainable solutions⁶¹.

The Strategy provides for five intervention areas on which to invest funds and on which to focus the activities of key stakeholders. These are: planning for lasting solutions, building a factual basis, promoting best practices, supporting strategic dialogue and finally coordination and partnerships with relevant actors. For the implementation side of the strategy, some guiding principles will be followed, including the responsibility of the State, the centrality of the protection issue, the links between humanitarian and development actors, community participation, involvement and empowerment, gender issues and social inclusion⁶².

Overall, the Strategy has been positively welcomed by all institutional levels, both national and international, and has been useful as a future blueprint for other Ethiopian regions. However, at the moment it has not been translated into a wider and more effective national policy for the protection of IDPs, nor into other regional policies. Doubts also remain on how it should be implemented and how funds should be spent. Still, the Ethiopian government deserves acknowledgement for its commitment to other IDP projects, including the 2019 Strategic Plan to Address Internal Displacement for the return of displaced persons. Even in this case, however, some criticisms have emerged, such as reports mentioning some events where displaced would have been forced to return to their places of origin and that the government did not provide adequate assistance in areas of origin. Moreover, despite all the efforts made recently, the fact that Ethiopia is still among the countries that have not yet ratified the Kampala Convention cannot be disregarded (D’Orsi 2019).

Therefore, for the future it will be necessary to address many open questions, including first of all the ratification of the Kampala Convention, secondly a possible revision of the federal system of government that divides the Ethiopian territories along ethnic lines aggravating the

⁶¹ *Ibidem.*

⁶² *Ibidem.*

emergence of ethnic clashes and worsening the displacement situation, and lastly the drafting of a true national policy based on the experience of the Somali region Strategy in order to ensure adequate protection to IDPs throughout the national territory (D'Orsi 2019).

CONCLUSIONS

Some final considerations can be drawn from this research. As for the applicability of existing law for the protection of IDPs, even if there is no special mention of IDPs' rights in all HRL instruments, the internally displaced can still enjoy those rights as applicable to all human beings. However, this HRL's protection was proved to be ineffective, mainly because of the possibility to apply derogations. As for IHL instruments, they can apply only to situation of armed conflicts, therefore excluding previous phases of tensions, in which displacement can occur. Lastly, as for the protection deriving from Refugee Law, there are cases in which it grants to refugees no more than an equal treatment accorded to aliens in a different country. In these events, if Refugee Law is applied as it stands to IDPs, they would be deprived of their rights as citizens of their country.

It has been shown how HRL and IHL instruments are able to provide an adequate legal protection only with regards to two rights: right to life and personal security and right to personal integrity; while areas of inadequate protection concern the right to personal liberty, the freedom of movement, the need for personal identification and documentation, the right to family reunification and the right to restitution or compensation.

It is clear that the Guiding Principles adopted at the UN level represent an important first step in the process of awareness raising towards the protection of the internally displaced in the world. Although they cannot be considered as a binding legal instrument, they have been used by national, regional and international entities as a model for their normative frameworks. Moreover, since they have been drafted as a restatement of norms of International Law, they could also constitute minimum legal standards for the protection of IDPs. Moreover, given the widespread acceptance of the Principles through national laws and policies it has been argued if they could classify as a source of Customary Law. There are indeed some regional examples of countries that have adopted laws or policies considering the Principles as part of International Law and they are: the 2000 Angolan National Decree "Norms on the resettlement of the IDPs", the 2001 National Protocol in Burundi and the 2019 Somalian Policy regarding the IDPs protection in the municipality of Mogadishu. Nevertheless, the legal practice of just a few States is not yet enough in order to provide a widespread acceptance of the Principles constituting a source of International Law. However, the lack of evidence to define the Principles as part of hard International Law should not diminish their potential as soft law.

At the African level, several positive contributions made by the Kampala Convention were reported, mainly the conversion of soft law norms under the provisions of the Guiding Principles in a hard law instrument. In addition, the role of primary responsibility that is given

to the State, holding the greatest burdens and obligations, was emphasized. Another essential element in the Convention is the issue of international accountability, not only of State actors, but also the recognition of obligations of non-State entities, finally acknowledged as actors who can cause displacement. Furthermore, the research focused on the several provisions of the Convention that have contributed to the development of norms and standards of International Law, including the right of voluntary return of displaced persons, the absolute prohibition of forced returns and arbitrary displacements, but also the right of displaced persons to receive reparation or compensation measures for the damage suffered, as well as their right to be consulted and to participate in the decision-making processes affecting their situation.

Therefore, considering all the reasons for the importance of the Convention with respect to the development of International Law, and the strong motivation of African States to reach a consensus on its adoption, the Convention has proved to have all the potential to be considered as a model for the adoption of an internationally binding instrument in the future.

The State practice of three African States has then been analyzed. Uganda's national Policy revealed to be innovative and in line with the country's leading commitment for the protection of the displaced, however, some problems emerged in its implementation mainly because of a coordination issue between the levels of implementation, namely the central and the district levels. In this regard, some suggestions have been made, including greater dissemination of the Policy to encourage its understanding and implementation, more consultation of IDPs representatives to take better account of their needs, improved presence of civilian police forces controlling the camps, better resource allocation system and, lastly, a more effective judicial system in solving disputes related to land and property issues.

Concerning Nigeria, its Policy must be recognized as an important step in the country's history in protecting the rights of the displaced, as the first instrument adopted on this issue. However, some critical elements that could negatively affect its objectives and overall contribution to the issue of displacement were underlined. The first element that has been criticized is the financial aspect, as there is no direct funding mechanism dedicated to the implementation of the Policy. The second element that has been deemed to be unsuccessful is the response model based on the collaborative approach, which does not envisage the designation of a single agency as the lead monitoring institution. The last element that has been seriously questioned is the right of internally displaced persons to integrate into host communities, as this right would be difficult and even potentially dangerous to be implemented.

As for Ethiopia, its Strategy for the Somali region has been positively welcomed by all institutional levels and it will be useful as a future blueprint for other Ethiopian regions. Still, at the moment it has not yet been translated into a wider national policy, nor into other regional

policies. Doubts also remain on how it should be implemented. Despite this, the Ethiopian government deserves acknowledgement for its commitment to other IDP projects, including the 2019 Strategic Plan to Address Internal Displacement for the return of displaced persons. Finally, some open questions that need to be addressed in the future have been suggested, including first of all the ratification of the Kampala Convention, then a possible revision of the federal system of government that divides the Ethiopian territories along ethnic lines worsening the displacement situation, and lastly the drafting of a true national policy based on the experience of the Somali region's Strategy in order to ensure adequate protection to IDPs throughout the national territory.

BIBLIOGRAPHY

Scientific articles

Abebe A. M. (2009), « Legal and Institutional Dimensions of Protecting and Assisting Internally Displaced Persons in Africa », *Journal of Refugee Studies*, vol. 22, issue 2, pp. 155-176.

Adeola R. (2016), « What does Development-Caused Displacement Look Like in Africa? », *IDMC*, available *online*.

Asplet M.; Bradley M. (2012), « Strengthened protection for internally displaced persons in Africa: the Kampala Convention comes into force », *American Society of International Law*, vol. 16, issue 36.

Avery A. (2012), « "De lege ferenda": "sovereignty as responsibility" as a framework for international internally displaced persons law », *Oxford Monitor of Forced Migration*, vol. 2, No 2, pp. 27-31.

Ayalew T. (2015), « International response for protection of internally displaced persons: legal and institutional response for protection of conflict-induced internally displaced persons in Darfur and Somalia », Lap Lambert Academic Publishing.

Biegon J., Swart S. (2010), « The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa: a Panoramic View », *African Yearbook on International Humanitarian Law*, vol. 2009-2010, pp. 20-42.

Bukar B. A. (2012), « Nigeria needs to take responsibility for its IDPs », *Forced Migration Review*, (40), pp. 44-45.

Contat Hickel M. (2001), « Protection of internally displaced persons affected by armed conflict- concept and challenges », *International Review of the Red Cross*, vol. 83, No. 843, pp. 699-711.

D' Orsi C. (2012), « Strength and Weaknesses in the Protection of Internally Displaced Persons in Sub-Saharan Africa », *Connecticut Journal of International Law*; vol. 28, issue 73, pp. 73-114; ID (2019), « Ethiopia needs to act fast to solve its internal displacement problem », *The Conversation*.

Deng F. M. (2001), « The Global Challenge of Internal Displacement », *Washington University Journal of Law and Policy*, vol. 5, No. 141; ID (2004), « Internally Displaced Persons in Uganda – a forgotten crisis », *Forced Migration Review*, (19), p. 58.

Dieng A. (2017), « Protecting internally displaced persons: The value of the Kampala Convention as a regional example », *International Review of the Red Cross*, vol. 99, issue 904, pp. 263-282.

Dolan C., Refstie H., Okello M. C. (2010), « Urban IDPs in Uganda: Victims of institutional convenience », *Forced Migration Review*, (34), pp. 32-33.

Ekpa S., Nuarrual Hilal D. (2016), « Legal Issues and Prospects in the Protection and Assistance of Internally Displaced Persons (IDPs) in Nigeria », *Journal of Law, Policy and Globalization*, vol. 49, pp. 108-116.

Ezeanokwasa J. O., Kalu U. C., Okaphor F. E. (2018), « A Critique of the Legal Framework for Arresting the Threat of Internal Displacement of Persons to Nigeria's National Security », *African Journals Online*, vol. 9, No. 2.

Geissler N. (1999), « The International Protection of Internally Displaced Persons », in *International Journal of Refugee Law*, vol. 11, issue 3, pp. 451-478.

Habte B., Kweon Y. J. (2018), « Addressing internal displacement in Ethiopia », *Forced Migration Review*, (59), pp. 40-41.

Hassan M., Collins M. (2017), « Legal and Institutional Framework for the Protection Of Internally Displaced Persons: The Nigerian Case Study », *The Jury: Journal of Law Students Association of Nigeria University of Abuja*.

Huber J., Birkeland N. (2007), « The Cluster Approach in northern Uganda », *Forced Migration Review*, (29), p. 72.

Janmyr M. (2014), « Recruiting Internally Displaced Persons into Civil Militias: the Case of Northern Uganda », *Nordic Journal of Human Rights*, vol. 32, issue 3, pp. 199-219.

Juma L. (2012), « The Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention », *Law, Democracy and Development*, vol. 16, pp. 219-252; ID (2013), « Protection of Development-Induced Internally Displaced Persons under the African Charter: the Case of the Endorois Community of Northern Kenya », *Comparative and International Law Journal of Southern Africa*, vol. 46, issue 2, pp. 211-233.

Kälin W. (2006) « The future of the Guiding Principles on Internal Displacement », *Forced Migration Review*, Special issue: Putting IDPs on the map: achievements and challenges, pp. 5-6; ID (2008), « Guiding Principles on Internal Displacement: Annotations », *Studies in*

Transnational Legal Policy, No. 38, The American Society of International Law, Washington, DC.

Kälin W., Williams C. R., Koser K., Solomon A. (2010), « Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges », *Studies in Transnational Legal Policy*, No. 41, The American Society of International Law, Washington, DC.

Kamara J., Cyril S., Renzaho A. (2017), « The social and political dimensions of internal displacement in Uganda: Challenges and opportunities - a systematic review », *African Studies*, 76 (3), pp. 444-473.

Kiessling A. (2006), « The Internally Displaced in International Law – Do They Require Enhanced Protection? », University of Cape Town, Faculty of Law, pp. 6-7.

Koser K. (2011), « Internally Displaced Persons », in *Global Migration Governance*, Oxford University Press, ed. by Alexander Betts.

Ladan M. T. (2011), « Legal and Policy Imperatives for the Prevention, Protection, Assistance and Durable Solution to the Plight of Internally Displaced Persons (IDPs) in Nigeria », *African Yearbook on International Humanitarian Law*, vol. 2011, pp. 79-106.

Lee L. T. (1996), « Internally Displaced Persons and refugees: Toward a Legal Synthesis », *Journal of Refugee Studies*, vol. 9, pp. 27-42.

Loescher G. (2016), « Refugees and Internally Displaced Persons », *The Oxford Handbook of International Organizations*, Oxford University Press, ed. by Jacob Katz Cogan, Ian Hurd, Ian Johnstone.

Majinge C., Ache C. (2010), « International Law as a Mechanism to Advance the Rights of the Displaced in Africa: Examining the Role of the African Union Convention for the Protection and Assistance of the Internally Displaced Persons in Africa », *African Yearbook of International Law Online*, vol. 18, No. 1, pp. 413-449.

Mangala J. (2010), « Refugees and Internally Displaced Persons: From Humanitarian to Security Paradigm », in *New Security Threats and Crises in Africa: Regional and International Perspectives*, New York, ed. by Palgrave Macmillan.

McGoldrick C. (2005), « Internal displacement in Nigeria: An urgent challenge », *Forced Migration Review*, (23), pp. 50-51.

Miller J. (2007), « Uganda's IDP policy », *Forced Migration Review*, (27), p. 78.

Mooney E. D. (2005), « The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern », *Refugee Survey Quarterly*, vol. 24, issue 3, pp. 9-36.

Mujuzi J. (2012), « Rights of Refugees and Internally Displaced Persons in Africa », *The African Regional Human Rights System: 30 Years after the African Charter on Human and Peoples' Rights*, ed. by Manisuli Ssenyonjo.

Mukwana R., Ridderbos K. (2008), « Uganda's response to displacement: Contrasting policy and practice », *Forced Migration Review*, (Special Issue: Ten Years of the Guiding Principles on Internal Displacement), pp. 21-22.

Nobel P. (1982), « Refugee, law, and development in Africa », *Michigan Yearbook of International Legal Studies*, vol. 3, pp. 255-287.

Nunes R. (2017), « Protection of Internally Displaced Children and the Guiding Principles of Internally Displaced Persons », *The United Nations Convention on the Rights of the Child*, Leiden, The Netherlands, ed. by Ton Liefwaard, Julia Sloth-Nielsen.

Orchard P. (2010), « Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism », *Review of International Studies*, vol. 36, issue 2, pp. 281-303; ID (2014), « Implementing a Global Internally Displaced Persons Protection Regime », *Implementation and World Politics: How International Norms Change Practice*, Oxford University Press, ed. by Alexander Betts and Phil Orchard; ID (2016), « Regionalizing Protection: AU and ASEAN Response to Mass Atrocity Crimes against Internally Displaced Persons », *Global Responsibility to Protect*; vol. 8, issue 2-3, pp. 295-326.

Phuong C. (2000), « Internally displaced persons and refugees: conceptual differences and similarities », *Netherlands Quarterly of Human Rights*, vol. 18/2, pp. 215-229.

Ramcharan R. (2000), « The African refugee crisis: contemporary challenges to the protection of refugees and displaced persons in Africa », *African Yearbook of International Law*, vol. 8, pp. 119-159.

Romola A. (2017), « Boko Haram-induced displacement: a critique of Nigeria's implementation of the African Union Internally Displaced Persons Convention », *Comparative and International Law Journal of Southern Africa*, vol. 50, issue 1, pp. 41-55.

Rutinwa B. (1999), « How tense is the tension between the refugee concept and the IDP debate? », in *Forced Migration Review*, No 4, pp. 29-31.

Sansculotte Greenidge K. (2014), « Africa, refugees and internally displaced persons », *Handbook of Africa's international relations*, Routledge, Taylor & Francis Group, ed. by Tim Murithi.

Santner F. (2013), « Uganda's Policy for Internally Displaced Persons: a Comparison with the Colombian Regulations on Internal Displacement », *International Law: revista colombiana de derecho internacional*, No. 22, pp. 87-120.

Schmidt P. L. (2004), « The Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment », *Georgetown Journal of International Law*, vol. 35, pp. 483-519.

Silska M. (2015), « Protection of Internally Displaced Persons: An International Legal Obligation? », *Polish Yearbook of International Law*; vol. 34, pp. 249-271.

Stavropoulou M. (1996), « Forced Movement of Peoples », *ASIL Proceedings*, pp. 549-559.

Zorzi Giustiniani F. (2011), « New Hopes and Challenges For the Protection of IDPs in Africa: the Kampala Convention For the Protection and Assistance of Internally Displaced Persons in Africa », *Denver Journal of International Law and Policy*, vol. 39, issue 2, pp. 347-370.

Books

Cohen R., Deng F.M. (1998), *Masses in flight: The Global Crisis of Internal Displacement*, Washington D.C., Brookings Institution Press.

Korn D. A. (1999), *Exodus within borders: An introduction to the crisis of internal displacement*, Washington, D.C, Brookings Institution Press.

Phuong C. (2005), *The International Protection of Internally Displaced Persons* (Cambridge Studies in International and Comparative Law), Cambridge, Cambridge University Press.

Taddele Maru M. (2014), *The Kampala Convention and its contributions to international law: legal analyses and interpretations of the African Union Convention for the Protection and Assistance of Internally Displaced Persons*, The Hague, The Netherlands, Eleven International Publishing.

Official Documents

AU (2008), « Draft Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa », *African document*, Revision 1, POL/DIR/114(1114).

AU (2009), « Convention for the Protection and Assistance of Internally Displaced Persons in Africa », *African document*, Executive Council Decision on the Situation of Refugees, Returnees and Internally Displaced Persons in Africa, EX.CL/Dec.529 (XVI).

Federal Republic of Nigeria (2012), « Nigeria: National Policy on Internally Displaced Persons», *legislative document*.

Government of Ethiopia (2017) « Ethiopia: Somali Region Durable Solutions Strategy (Durable Solutions Strategy 2017/2020. The Durable Solutions Strategy of the Somali Regional Government of Ethiopia) », *legislative document*.

ICRC (1949), « Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) », *ICRC document*, 75 UNTS 287.

ICRC (1977), « Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) », *ICRC document*, 1125 UNTS 609.

Immigration and Refugee Board of Canada (2018), « Somalia: Somaliland, including government structure, security, and presence of internally displaced persons (IDPs) from Somalia (2016-March 2018) », *document*.

International Conference On The Great Lakes Region (2006), « The Pact on Security, Stability and Development For the Great Lakes Region », *ICGLR document*.

International Conference On The Great Lakes Region (2006), « Protocol on the Protection and Assistance to Internally Displaced Persons », *ICGLR document*.

OAU (1969), « Convention Governing the Specific Aspects of Refugee Problems in Africa », *African document*, 1000 UNTS 46.

OAU (1982), « African Charter on Human and Peoples' Rights », *African document*, CAB/LEG/67/3 rev.5, 21 I.L.M. 58.

OAU (1990), « African Charter on the Rights and the Welfare of the Child », *African document*, CAB/LEG/24.9/49/1990.

Republic of Uganda (2004), « Uganda: National Policy for Internally Displaced Persons », *legislative document*.

Republic of Uganda (2007), « Peace, Recovery and Development Plan For Northern Uganda (PRDP), 2007-2010 », *legislative document*.

UN (1948), « The Universal Declaration of Human Rights », *UN document*, 217 A (III).

UN (1951), « Convention relating to the Status of Refugees », *UN document*, Treaty Series, vol. 189, p. 137.

UN (1966), « The International Convention on Civil and Political Rights (ICCPR) », *UN document*, Treaty Series, vol. 999, p. 171.

UN (1966), « The International Covenant on Economic, Social and Cultural Rights (ICESCR)», *UN document*, Treaty Series, vol. 993, p. 3.

UN (1969), « Vienna Convention on the Law of Treaties », *UN document*, Treaty Series, vol. 1155, p. 331.

UN (2008), « Annual Report Of The United Nations High Commissioner For Human Rights And Reports Of The Office Of The High Commissioner And The Secretary-General », *Report of the High Commissioner for Human Rights and follow-up to the World Conference on Human Rights, Addendum*, Activities of the Office of the High Commissioner for Human Rights in Uganda*, A/HRC/7/38/Add.2.

UN (2017), « Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Nigeria », *UN document*, A/HRC/35/27/Add.1.

UNHCR (1998), « Guiding Principles on Internal Displacement », *UN document*, E/CN.4/198/53/Add.2.

UNHCR (2016), « Regulatory Frameworks on Internal Displacement: global, regional and national developments », *UNHCR / NRC / IDMC report*.

UN OCHA (2018), « Nigeria: 2019 Humanitarian Needs Overview », *report*.

UN OCHA (2019), « Ethiopia: IDP Situation Report », *report*.

UN OCHA (2019), « Ethiopia: 2019 Humanitarian Needs Overview », *report*.

Publications, Documents and Working Papers from Research Institutions and NGOs

Amnesty International (2009), « Human Rights Challenges: Somaliland Facing Elections », *report*, pp.10-11.

IDMC (2017), « Africa Report on Internal Displacement », *report*, p. 12.

IDMC (2017), « Africa Report on Internal Displacement, Facts and Figures », *report*.

IDMC (2017), « Expert roundtable on displacement caused by development - Thematic report », *report*.

IDMC (2018), « Mid-year figures, Internal Displacement in 2018 », *report*.

IDMC (2018), « Global Report on Internal Displacement 2018 New Displacement by conflict and disasters in 2017 », *report*.

IDMC (2019), « UGANDA Figure Analysis–Displacement Related to Conflict and Violence», *report*.

IDMC (2019), « NIGERIA: Figure Analysis–Displacement Related to Conflict and Violence», *report*.

IDMC (2019), « ETHIOPIA: Figure Analysis–Displacement Related to Conflict and Violence», *report*.

IDMC (2019), « 2019 Global Report on Internal Displacement (GRID) », *report*.

Refugee Law Project (2006), « Only Peace Can Restore the Confidence of the Displaced » *Report of the Launch*.

Refugee Law Project (2006), « Commentary on “Only Peace can restore the Confidence of the Displaced” », Given at the Public Hearing in the European Parliament Brussels, presented by Moses Chrispus Okello.

Refugee Law Project (2012), « From arid zones into the desert: the Uganda National IDPs Policy Implementation 2004-2012 », *Working Paper* n. 23.

Reliefweb (2005), « Ethiopia: Border war and ethnic clashes leave over 150,000 internally displaced », *situation report*.

Workshop on the Implementation of Uganda’s National Policy for Internally Displaced Persons, *Background Paper*, Kampala, Uganda 3-4 July 2006.

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CHAPTER I: INTRODUCTION ON THE ISSUE OF INTERNAL DISPLACEMENT

A. A phenomenon of international concern: displacement as a global agenda

It is with the end of the Cold War that internal displacement became a subject of international concern, when there was a shift in States' attention towards the protection of their citizens.

As the tension between the two major international powers ended, several factors contributed to the growth in the attention on the issue of the displaced, including the rising number of IDPs in the world. Contrary to the trend experienced by refugees at the end of the 1990s and beginning of 2000, the number of IDPs has witnessed a sharp rise between 1982 and 2008, increasing from 1.2 to 26 million. However, the new international trend of containment policies towards refugees is perhaps the main political reason to explain the increase in attention over the issue of IDPs. Indeed, contrary to the policies of openness of the Cold War, when refugees were accepted by States that offered them shelter against one or the other political block, an increasing tendency in preventing IDPs from becoming refugees was reported, hence, from crossing an internationally recognized State border. The direct consequence of these restrictive measures was a greater emphasis on the protection of the displaced within their State of origin and therefore a discouragement to seek asylum abroad.

B. The notion of displacement

There have been several attempts to find a definition for the internally displaced. The first definitions of IDPs were proposed in 1989, as a suggestion by the UN Secretary General, drawing elements from both the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration. From that moment, the two distinctive elements characterizing the category of IDPs were clear: the forced nature of the movement and remaining within the State's national borders, distinguishing IDPs from refugees. The first proposal of a working definition was made by the UN Secretary General Boutros-Ghali in the 1992 Analytical Report. If on one hand this definition appears to be wide enough to comprehend as many situations as possible, on the other hand it has been criticized for being too narrow. The major criticism regarded its temporal and numerical limits. Taking the move from these criticisms, the Representative of the Secretary-General on IDPs, Francis Deng, has tried to refine the original definition adding important changes and adjustments. The newly drafted definition became part of the 1998 UN Guiding Principles on Internal Displacement, widely recognized as a fundamental instrument addressing the plight of internal displacement at the international level.

Refugees and IDPs share the involuntary nature of their movements. Differently from immigrants that decide to leave their places in search for new opportunities or economic reasons, both refugees and IDPs do not choose to move and for this reason they fall under the category of forced migration. As for the differences, IDPs must be distinguished in their definition from the other types of migrants, above all from refugees, mainly as four aspects are concerned. Firstly, IDPs' movements remain inside their State of origin, therefore not crossing any internationally recognized State border. Secondly, IDPs are

still citizens of the country in which they move, therefore they are entitled to the full rights usually granted to citizens. Thirdly, States have the primary responsibility as regards the rights owned by IDPs, as they remain under the supreme jurisdiction of the State of origin. Lastly, the grounds on which the status of refugee should be granted are limited only to situations of persecution, instead of the wider list of causes that can be used in order to assess a situation of internal displacement, which includes also disasters and development projects.

However, it should be highlighted how IDPs and refugees demand for different kinds of protection. The former, being within their national State's borders, are subject to the jurisdiction and the protection of their country of origin. Therefore, the main responsibility to protect IDPs remain in the State's authority and the international community is given only a complementary role.

C. Dimensions, causes and trends of displacement in Africa

Nowadays the Sub-Saharan African region is one of the most affected areas in world by the plight of IDPs. Conflict and violence are reported as primary causes of internal displacement, covering different forms of conflicts, including internal conflicts, civil wars, situations of generalized violence, internal strife or occupation. Internal displacement does not just happen in conflict scenarios, people can be displaced also for natural and human made disasters. All the different factors that can trigger a natural disaster-induced displacement have been categorized in four different categories: 1) Geophysical extreme hazards; 2) Hydro-meteorological extreme hazards; 3) Environmental insecurity; 4) Significant permanent loss of State territory. Contrary to displacement related to conflict and violence and disaster induced displacement, development as a cause of internal displacement is yet a very contested issue. Development induced displacement comprises six causes: construction of dams, infrastructures, extractive industries, agricultural plantations, parks and other reserves and resettlement programs. Among them, extractive activities and mining are the main cause of development induced displacements in Africa.

CHAPTER II: LEGAL FRAMEWORK FOR THE PROTECTION OF IDPS: INTERNATIONAL LAW AND REGIONAL INSTRUMENTS

A. Overview of the applicable existing law to IDPs

Even though IDPs do not enjoy the protection of a single legal international instrument, they still can benefit from the protection deriving from both Human Rights Law (HRL) and International Humanitarian Law (IHL).

HRL is applicable to IDPs since it applies in all situations and towards all individuals, both in times of peace and in situations of armed conflicts. Even if HRL can guide the treatment of IDPs in situations of internal tensions or disasters, it cannot provide an explicit protection. As regards the most relevant HRL provisions for the plight of IDPs, they include the prohibition of torture, cruel and degrading treatment; the right to possession of property; the right to home and family life; liberty of movement; the right to integrity and dignity of the person, non-discrimination. However, notwithstanding the

relevance of HRL, there are some flaws in its implementation. As a consequence, HRL cannot be considered as an instrument of adequate protection because many rights can be derogated during national emergencies or internal strife.

IHL regulates the means of war and the conduct of hostilities, applicable in situations of international or internal armed conflicts, and protects civilians and vulnerable groups. The legal provisions covering the displacement caused by international armed conflicts are the four 1949 Geneva Conventions and 1977 Additional Protocol I. In this regard, many norms addressing the protection of non-combatants may be invoked by IDPs as well. As for the legal provisions covering the displacement caused by non-international armed conflicts, the only applicable provisions are Common Article 3 to the four Geneva Conventions and the 1977 Additional Protocol II. Common Article 3 provides the principal source of IHL for IDPs in case of internal armed conflicts, applicable to both State and armed forces. However, even with IHL there are some limitations that apply. Indeed, IHL instruments can apply only to situation of armed conflicts, excluding all the previous phases of tensions, in which displacement can occur.

B. Gaps in the protection

In his *Compilation and Analysis*, Francis Deng identified the relevant legal norms for the protection of the right to life and right to personal integrity of IDPs, defined as the most fundamental human right, in three different situations: tensions and disturbances or disasters, non-international armed conflicts and inter-state armed conflicts. IDPs are granted adequate legal protection to their right to life and personal security from the provision established in international law and possible violations to this regime should not be considered as due to legal gaps, but rather due to a lack of effective implementation. Moreover, it can be said that the internally displaced are fully protected also with regards acts of violence and ill-treatment, including torture. Deng also analyzed areas in which IDPs did not receive adequate legal protection. Those areas concern mainly the right to personal liberty, the freedom of movement, the need for personal identification and documentation, the right to family reunification and the right to restitution or compensation.

Deng's conclusions show that despite the existence of some areas in which the needs of the displaced are fully addressed by international norms, there are still some gaps in the legal protection of IDPs. Those areas of insufficient protection can be classified in four main identified gaps: the normative, the applicability, the consensus and the ratification gaps.

C. Guiding Principles on Internal Displacement, 1998

The Guiding Principles are built upon a restatement HRL norms, IHL and refugee law which are applicable to IDPs. Moreover, they are regarded as the international minimum standard for the protection of IDPs and they address all the different phases of the displacement phenomenon: the initial phase, the displacement itself and the final resettlement.

Although the Guiding Principles cannot be considered as a binding instrument, they have been used by national, regional and international entities as the blueprint of their

normative frameworks, with the major example of the Kampala Convention in Africa. Moreover, since they have been drafted as a restatement of principles of international law, they could also be seen as to constitute minimum international standards for the protection of IDPs. However, according to Phuong, there are some topics that have not been developed enough in the drafting process. For instance, the rights of the minorities, are only mentioned in Principle 9 and this would not amount to an adequate protection under international law. Yet, it might be said that the biggest flaw in the Guiding Principles still remains its non-binding nature.

D. UN Cluster approach, 2005

Given the fact that IDPs, apart from being affected by a legal gap have also fallen in the so-called institutional protection gap, several UN Member States have committed themselves to adopt a new strategy to ensure greater predictability in humanitarian response involving the internally displaced. In the context of the UN reform process of the humanitarian agenda, the “cluster approach” was adopted in 2005, whose aim was to identify the areas that needed to be implemented the most to guarantee to the internally displaced that their primary needs were satisfied. UNHCR is the Global Cluster lead Agency for three clusters: protection, shelter and camp management; it was the head of the cluster protecting IDPs in five African pilot countries: Liberia, DRC, Uganda, Somalia and Chad.

E. The African regional approach to the protection of IDPs

i. Great Lakes Pact, 2006: the sub-regional level

Africa was the first region in the world to promote the adoption and then to employ the UN Guiding Principles as the basis for the development of a regional law specifically designed to protect IDPs. This interest from the African continent began at the sub-regional level with the adoption of the Declaration on Peace, Security, Democracy and Development during the International Conference on the Great Lakes Region, which took place in Kenya. The Declaration entered into force in 2008, under the name of Pact on Security, Stability and Development in the Great Lakes Region. The Great Lakes Pact, together with its Protocols, reveal States parties’ interest in the implementation of the Principles in the specific geographical area of the Great Lakes, and initiate a process of development, of a framework of protection for IDPs, laying the foundations for the establishment of a binding regime.

ii. Kampala Convention, 2009

The process leading up to the adoption of the Kampala Convention started in 2004 when the AU Executive Council officially asked to start working on the development of a binding treaty for the protection of IDPs specific to the African continent. The Convention was adopted on 23 October 2009 in Kampala, Uganda, and it entered into force on 6 December 2012. To date, the Convention has been signed by 40 and ratified by 28 States.

It has been argued that the greatest contribution that the Kampala Convention has given to the protection of IDPs is transforming what was soft law under the provisions of the Guiding Principles in a hard law instrument. Among the other contributions, it is the first binding treaty ever conceived in the world specifically designed to the protection of IDPs. Although the drafting process ended successfully with the adoption of the Convention, during the process many difficulties emerged. In conclusion, the fact that the States decided to adopt the Convention confutes the theory according to which it was neither possible nor desirable to reach a consensus for a binding instrument specific for the protection of IDPs. Indeed, the Convention clearly shows that African States had an interest in establishing a legal framework for IDPs, making a clear distinction from the protection enjoyed by refugees, without necessarily seeing the protection of one of them diminished. Therefore, it can be said that the Convention has the potential to be considered as a model for the adoption of an internationally binding instrument.

CHAPTER III: CASE STUDIES

A. Uganda

The first episodes of displacement within Uganda were reported during the formation of the modern nation, in 1893, when due to wars of conquest many people were displaced. Other key displacement episodes were then documented in the Idi Amin period in the 1970s, during the 1980s civil war, then between the 1990s and 2000s serious displacements caused by the second civil war in the North of the country. Although conflicts and violence are among the main causes of displacement in Uganda, they are not the only ones. In fact, Uganda is also known for its serious problems of displacement caused by cattle rustling in Karamoja, Katakwi and Pader, but also by natural disasters, including mainly landslides, especially of Mount Elgon and the Rwenzori mountains and the frequent floods in the River Nile basin in northern Uganda.

Historically, Uganda has been one of the first AU members to be committed in the protection of IDPs. The National Policy adopted in 2004, designed specifically for the protection and assistance of the IDPs, exemplifies this national engagement, making Uganda one of the few countries in the world to have an ad hoc instrument deriving from the Guiding Principles.

Following the adoption of National Policy in Uganda, several meetings were organized. In particular, a workshop organized by the Brooking Institution, where participants stated some common points to improve the situation in Uganda, including greater dissemination of the Policy to encourage its implementation, greater consultation of representatives of IDPs to take better account of their needs, improved presence of civilian police forces in the camps, better resource allocation and lastly a more effective judicial system.

Meanwhile, from 2006, a process that will lead to some truces between LRA's forces and the government army in the North will begin, allowing also the implementation of policies for the recovery of Northern territories. The most far-reaching project was the 2007 Peace Recovery and Development Plan. With this plan, Uganda committed itself for three years to the recovery and stabilization of the North including all the main stakeholders involved. In 2008, the United Nations High Commissioner for Human Rights published a report making explicit reference to the government's Plan. Specifically, in the context of human rights protection, two key objectives are mentioned: strengthening the state authority by

consolidating the civilian police forces and the judiciary system and, secondly, reinforcing respect for the rule of law, through the implementation of processes to consolidate peace and the reconciliation.

B. Nigeria

In recent decades, Nigeria has been subject to several waves of displacement, mainly due to internal conflicts arising from clashes among ethnic and religious communities. However, the bloodiest period of displacement coincides with an internal crisis due to terrorism, that now has been going on for ten years. The huge numbers of internally displaced in Nigeria are in fact largely due to the terrorist activities of the group known as Boko Haram which is active mainly in the North of the country. Although Boko Haram has caused deplorable violence and endless displacements over the past ten years, Nigeria is also affected by other serious causes of displacement. In particular, according to IDMC data, during 2018 there were 541,000 new displacements due to internal struggles between communities and between farmers and pastoralists aggravated by ethnic and religious tensions, in the zone that includes Middle Belt states, that is the passage zone connecting the Christian states in the south with the Muslim states in the north. In addition, natural disasters are also a major cause of displacement in Nigeria, in particular flooding in areas with high population density, causing 600,000 internally displaced during 2018 and hitting almost the whole of Nigerian territory with severe floods.

The alarming numbers of internal displacements have led the government of Nigeria to take measures towards the adoption of a national policy on the protection of displaced. The final text was presented to the government in 2011 and adopted in 2012, although its entry into force is still under discussion. The text of the policy must be recognized as an important step in Nigeria's history in protecting the rights of the displaced, being the first instrument ever adopted by the government on this issue. In addition, as the first instrument ever adopted, it contains a very broad definition of internal displacement that in fact includes all possible causes for displacement, including natural or human disasters. However, several content have highlighted many critical points that could negatively affect its objectives and the overall contribution to the phenomenon of internal displacement. The first aspect that has been criticized is also the most essential aspect for the effectiveness of the policy, namely the financial aspect. Indeed, it can easily be deduced from the text that there is no fund mechanism dedicated to the implementation of policy. The second element that has been deemed to be unsuccessful is the response model based on the collaborative approach. This approach, as provided for in the text, does not envisage the designation of a single agency as the lead monitoring institution. The last element that has been seriously questioned is the right of internally displaced persons to integrate into host communities. This right would be difficult and even potentially dangerous to be implemented.

C. Ethiopia

Ethiopia has been affected by internal displacement since the 1990s, when the first clashes between Ethiopia and Eritrea began. Although Eritrea gained independence from Ethiopia in 1993, a number of critical issues remained unsolved between the two States, including a territorial dispute over some disputed regions at the border between the States. In addition to conflicts and violence related displacements, Ethiopia has experienced also

displacement due to drought, a phenomenon which has been recurring in some parts of the country, including the Afar region, since the 1980s. Drought problems, but also more recent floods episodes, cause every year the displacement of entire villages that establish their entire livelihood on pastoral activities. To cope with the increasing number of internal displacements, the Somali regional State of Ethiopia decided in 2014 to establish, with the support of international actors, a Working Group for Durable Solutions to the issue of displacement, with the aim of combining the humanitarian with the development approach in the context of displacement. Overall, the strategy has been encouraged by all institutional levels, both national and international, and has acted as a future inspiration for other Ethiopian regions. However, at the moment it has not been translated into a wider and more effective national policy for the protection of displaced persons, nor into other regional policies. Doubts also remain as to how it should be implemented and how the money should be spent. Still, the Ethiopian Government deserves acknowledgement for its commitment to other IDP projects, including the 2019 Strategic Plan to Address Internal Displacement for the return of displaced persons. Even in this case, however, some critical issues have emerged, such as reports mentioning some episodes where displaced would have been forced to return to their places of origin and the fact that the government did not provide adequate assistance in areas of origin. Moreover, despite all the efforts made recently, the fact that Ethiopia is still among the countries that have not yet ratified the Kampala Convention cannot be disregarded.

Therefore, for the future it will surely be necessary to address many open questions, including first of all the ratification of the Kampala Convention, secondly a possible revision of the federal system of government that divides the Ethiopian territories along ethnic lines aggravating the development of ethnic clashes and worsening the displacement situation and finally the drafting of a true national policy based on the experience of the Somali region in order to ensure adequate protection of the internally displaced throughout the national territory.

BIBLIOGRAPHY

Scientific articles

Abebe A. M. (2009), « Legal and Institutional Dimensions of Protecting and Assisting Internally Displaced Persons in Africa », *Journal of Refugee Studies*, vol. 22, issue 2, pp. 155-176.

Adeola R. (2016), « What does Development-Caused Displacement Look Like in Africa? », IDMC, available online.

Asplet M.; Bradley M. (2012), « Strengthened protection for internally displaced persons in Africa: the Kampala Convention comes into force », *American Society of International Law*, vol. 16, issue 36.

Avery A. (2012), « "De lege ferenda": "sovereignty as responsibility" as a framework for international internally displaced persons law », *Oxford Monitor of Forced Migration*, vol. 2, No 2, pp. 27-31.

- Ayalew T. (2015), « International response for protection of internally displaced persons: legal and institutional response for protection of conflict-induced internally displaced persons in Darfur and Somalia », Lap Lambert Academic Publishing.
- Biegon J., Swart S. (2010), « The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa: a Panoramic View », African Yearbook on International Humanitarian Law, vol. 2009-2010, pp. 20-42.
- Bukar B. A. (2012), « Nigeria needs to take responsibility for its IDPs », Forced Migration Review, (40), pp. 44-45.
- Contat Hickel M. (2001), « Protection of internally displaced persons affected by armed conflict- concept and challenges », International Review of the Red Cross, vol. 83, No. 843, pp. 699-711.
- D' Orsi C. (2012), « Strength and Weaknesses in the Protection of Internally Displaced Persons in Sub-Saharan Africa », Connecticut Journal of International Law; vol. 28, issue 73, pp. 73-114; ID (2019), « Ethiopia needs to act fast to solve its internal displacement problem », The Conversation.
- Deng F. M. (2001), « The Global Challenge of Internal Displacement », Washington University Journal of Law and Policy, vol. 5, No. 141; ID (2004), « Internally Displaced Persons in Uganda – a forgotten crisis », Forced Migration Review, (19), p. 58.
- Dieng A. (2017), « Protecting internally displaced persons: The value of the Kampala Convention as a regional example », International Review of the Red Cross, vol. 99, issue 904, pp. 263-282.
- Dolan C., Refstie H., Okello M. C. (2010), « Urban IDPs in Uganda: Victims of institutional convenience », Forced Migration Review, (34), pp. 32-33.
- Ekpa S., Nuarrual Hilal D. (2016), « Legal Issues and Prospects in the Protection and Assistance of Internally Displaced Persons (IDPs) in Nigeria », Journal of Law, Policy and Globalization, vol. 49, pp. 108-116.
- Ezeanokwasa J. O., Kalu U. C., Okaphor F. E. (2018), « A Critique of the Legal Framework for Arresting the Threat of Internal Displacement of Persons to Nigeria's National Security », African Journals Online, vol. 9, No. 2.
- Geissler N. (1999), « The International Protection of Internally Displaced Persons », in International Journal of Refugee Law, vol. 11, issue 3, pp. 451-478.
- Habte B., Kweon Y. J. (2018), « Addressing internal displacement in Ethiopia », Forced Migration Review, (59), pp. 40-41.
- Hassan M., Collins M. (2017), « Legal and Institutional Framework for the Protection Of Internally Displaced Persons: The Nigerian Case Study », The Jury: Journal of Law Students Association of Nigeria University of Abuja.
- Huber J., Birkeland N. (2007), « The Cluster Approach in northern Uganda », Forced Migration Review, (29), p. 72.
- Janmyr M. (2014), « Recruiting Internally Displaced Persons into Civil Militias: the Case of Northern Uganda », Nordic Journal of Human Rights, vol. 32, issue 3, pp. 199-219.

Juma L. (2012), « The Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention », *Law, Democracy and Development*, vol. 16, pp. 219-252; ID (2013), « Protection of Development-Induced Internally Displaced Persons under the African Charter: the Case of the Endorois Community of Northern Kenya », *Comparative and International Law Journal of Southern Africa*, vol. 46, issue 2, pp. 211-233.

Kälin W. (2006) « The future of the Guiding Principles on Internal Displacement », *Forced Migration Review*, Special issue: Putting IDPs on the map: achievements and challenges, pp. 5-6; ID (2008), « Guiding Principles on Internal Displacement: Annotations », *Studies in Transnational Legal Policy*, No. 38, The American Society of International Law, Washington, DC.

Kälin W., Williams C. R., Koser K., Solomon A. (2010), « Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges », *Studies in Transnational Legal Policy*, No. 41, The American Society of International Law, Washington, DC.

Kamara J., Cyril S., Renzaho A. (2017), « The social and political dimensions of internal displacement in Uganda: Challenges and opportunities - a systematic review », *African Studies*, 76 (3), pp. 444-473.

Kiessling A. (2006), « The Internally Displaced in International Law – Do They Require Enhanced Protection? », *University of Cape Town, Faculty of Law*, pp. 6-7.

Koser K. (2011), « Internally Displaced Persons », in *Global Migration Governance*, Oxford University Press, ed. by Alexander Betts.

Ladan M. T. (2011), « Legal and Policy Imperatives for the Prevention, Protection, Assistance and Durable Solution to the Plight of Internally Displaced Persons (IDPs) in Nigeria », *African Yearbook on International Humanitarian Law*, vol. 2011, pp. 79-106.

Lee L. T. (1996), « Internally Displaced Persons and refugees: Toward a Legal Synthesis », *Journal of Refugee Studies*, vol. 9, pp. 27-42.

Loescher G. (2016), « Refugees and Internally Displaced Persons », *The Oxford Handbook of International Organizations*, Oxford University Press, ed. by Jacob Katz Cogan, Ian Hurd, Ian Johnstone.

Majinge C., Ache C. (2010), « International Law as a Mechanism to Advance the Rights of the Displaced in Africa: Examining the Role of the African Union Convention for the Protection and Assistance of the Internally Displaced Persons in Africa », *African Yearbook of International Law Online*, vol. 18, No. 1, pp. 413-449.

Mangala J. (2010), « Refugees and Internally Displaced Persons: From Humanitarian to Security Paradigm », in *New Security Threats and Crises in Africa: Regional and International Perspectives*, New York, ed. by Palgrave Macmillan.

McGoldrick C. (2005), « Internal displacement in Nigeria: An urgent challenge », *Forced Migration Review*, (23), pp. 50-51.

Miller J. (2007), « Uganda's IDP policy », *Forced Migration Review*, (27), p. 78.

- Mooney E. D. (2005), « The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern », *Refugee Survey Quarterly*, vol. 24, issue 3, pp. 9-36.
- Mujuzi J. (2012), « Rights of Refugees and Internally Displaced Persons in Africa », *The African Regional Human Rights System: 30 Years after the African Charter on Human and Peoples' Rights*, ed. by Manisuli Ssenyonjo.
- Mukwana R., Ridderbos K. (2008), « Uganda's response to displacement: Contrasting policy and practice », *Forced Migration Review*, (Special Issue: Ten Years of the Guiding Principles on Internal Displacement), pp. 21-22.
- Nobel P. (1982), « Refugee, law, and development in Africa », *Michigan Yearbook of International Legal Studies*, vol. 3, pp. 255-287.
- Nunes R. (2017), « Protection of Internally Displaced Children and the Guiding Principles of Internally Displaced Persons », *The United Nations Convention on the Rights of the Child*, Leiden, The Netherlands, ed. by Ton Liefwaard, Julia Sloth-Nielsen.
- Orchard P. (2010), « Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism », *Review of International Studies*, vol. 36, issue 2, pp. 281-303; ID (2014), « Implementing a Global Internally Displaced Persons Protection Regime », *Implementation and World Politics: How International Norms Change Practice*, Oxford University Press, ed. by Alexander Betts and Phil Orchard; ID (2016), « Regionalizing Protection: AU and ASEAN Response to Mass Atrocity Crimes against Internally Displaced Persons », *Global Responsibility to Protect*; vol. 8, issue 2-3, pp. 295-326.
- Phuong C. (2000), « Internally displaced persons and refugees: conceptual differences and similarities », *Netherlands Quarterly of Human Rights*, vol. 18/2, pp. 215-229.
- Ramcharan R. (2000), « The African refugee crisis: contemporary challenges to the protection of refugees and displaced persons in Africa », *African Yearbook of International Law*, vol. 8, pp. 119-159.
- Romola A. (2017), « Boko Haram-induced displacement: a critique of Nigeria's implementation of the African Union Internally Displaced Persons Convention », *Comparative and International Law Journal of Southern Africa*, vol. 50, issue 1, pp. 41-55.
- Rutinwa B. (1999), « How tense is the tension between the refugee concept and the IDP debate? », in *Forced Migration Review*, No 4, pp. 29-31.
- Sansculotte Greenidge K. (2014), « Africa, refugees and internally displaced persons », *Handbook of Africa's international relations*, Routledge, Taylor & Francis Group, ed. by Tim Murithi.
- Santner F. (2013), « Uganda's Policy for Internally Displaced Persons: a Comparison with the Colombian Regulations on Internal Displacement », *International Law: revista colombiana de derecho internacional*, No. 22, pp. 87-120.
- Schmidt P. L. (2004), « The Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment », *Georgetown Journal of International Law*, vol. 35, pp. 483-519.

Silka M. (2015), « Protection of Internally Displaced Persons: An International Legal Obligation? », Polish Yearbook of International Law; vol. 34, pp. 249-271.

Stavropoulou M. (1996), « Forced Movement of Peoples », ASIL Proceedings, pp. 549-559.

Zorzi Giustiniani F. (2011), « New Hopes and Challenges For the Protection of IDPs in Africa: the Kampala Convention For the Protection and Assistance of Internally Displaced Persons in Africa », Denver Journal of International Law and Policy, vol. 39, issue 2, pp. 347-370.

Books

Cohen R., Deng F.M. (1998), *Masses in flight: The Global Crisis of Internal Displacement*, Washington D.C., Brookings Institution Press.

Korn D. A. (1999), *Exodus within borders: An introduction to the crisis of internal displacement*, Washington, D.C, Brookings Institution Press.

Phuong C. (2005), *The International Protection of Internally Displaced Persons (Cambridge Studies in International and Comparative Law)*, Cambridge, Cambridge University Press.

Taddele Maru M. (2014), *The Kampala Convention and its contributions to international law: legal analyses and interpretations of the African Union Convention for the Protection and Assistance of Internally Displaced Persons*, The Hague, The Netherlands, Eleven International Publishing.

Official Documents

AU (2008), « Draft Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa », African document, Revision 1, POL/DIR/114(1114).

AU (2009), « Convention for the Protection and Assistance of Internally Displaced Persons in Africa », African document, Executive Council Decision on the Situation of Refugees, Returnees and Internally Displaced Persons in Africa, EX.CL/Dec.529 (XVI).

Federal Republic of Nigeria (2012), « Nigeria: National Policy on Internally Displaced Persons », legislative document.

Government of Ethiopia (2017) « Ethiopia: Somali Region Durable Solutions Strategy (Durable Solutions Strategy 2017/2020. The Durable Solutions Strategy of the Somali Regional Government of Ethiopia) », legislative document.

ICRC (1949), « Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) », ICRC document, 75 UNTS 287.

ICRC (1977), « Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) », ICRC document, 1125 UNTS 609.

Immigration and Refugee Board of Canada (2018), « Somalia: Somaliland, including government structure, security, and presence of internally displaced persons (IDPs) from Somalia (2016-March 2018) », document.

International Conference On The Great Lakes Region (2006), « The Pact on Security, Stability and Development For the Great Lakes Region », ICGLR document.

International Conference On The Great Lakes Region (2006), « Protocol on the Protection and Assistance to Internally Displaced Persons », ICGLR document.

OAU (1969), « Convention Governing the Specific Aspects of Refugee Problems in Africa », African document, 1000 UNTS 46.

OAU (1982), « African Charter on Human and Peoples' Rights », African document, CAB/LEG/67/3 rev.5, 21 I.L.M. 58.

OAU (1990), « African Charter on the Rights and the Welfare of the Child », African document, CAB/LEG/24.9/49/1990.

Republic of Uganda (2004), « Uganda: National Policy for Internally Displaced Persons », legislative document.

Republic of Uganda (2007), « Peace, Recovery and Development Plan For Northern Uganda (PRDP), 2007-2010 », legislative document.

UN (1948), « The Universal Declaration of Human Rights », UN document, 217 A (III).

UN (1951), « Convention relating to the Status of Refugees », UN document, Treaty Series, vol. 189, p. 137.

UN (1966), « The International Convention on Civil and Political Rights (ICCPR) », UN document, Treaty Series, vol. 999, p. 171.

UN (1966), « The International Covenant on Economic, Social and Cultural Rights (ICESCR) », UN document, Treaty Series, vol. 993, p. 3.

UN (1969), « Vienna Convention on the Law of Treaties », UN document, Treaty Series, vol. 1155, p. 331.

UN (2008), « Annual Report Of The United Nations High Commissioner For Human Rights And Reports Of The Office Of The High Commissioner And The Secretary-General », Report of the High Commissioner for Human Rights and follow-up to the World Conference on Human Rights, Addendum*, Activities of the Office of the High Commissioner for Human Rights in Uganda, A/HRC/7/38/Add.2.

UN (2017), « Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Nigeria », UN document, A/HRC/35/27/Add.1.

UNHCR (1998), « Guiding Principles on Internal Displacement », UN document, E/CN.4/19 8/53/Add.2.

UNHCR (2016), « Regulatory Frameworks on Internal Displacement: global, regional and national developments », UNHCR / NRC / IDMC report.

UN OCHA (2018), « Nigeria: 2019 Humanitarian Needs Overview », report.

UN OCHA (2019), « Ethiopia: IDP Situation Report », report.

UN OCHA (2019), « Ethiopia: 2019 Humanitarian Needs Overview », report.

Publications, Documents and Working Papers from Research Institutions and NGOs

Amnesty International (2009), « Human Rights Challenges: Somaliland Facing Elections », report, pp.10-11.

IDMC (2017), « Africa Report on Internal Displacement », report, p. 12.

IDMC (2017), « Africa Report on Internal Displacement, Facts and Figures », report.

IDMC (2017), « Expert roundtable on displacement caused by development - Thematic report », report.

IDMC (2018), « Mid-year figures, Internal Displacement in 2018 », report.

IDMC (2018), « Global Report on Internal Displacement 2018 New Displacement by conflict and disasters in 2017 », report.

IDMC (2019), « UGANDA Figure Analysis–Displacement Related to Conflict and Violence», report.

IDMC (2019), « NIGERIA: Figure Analysis–Displacement Related to Conflict and Violence», report.

IDMC (2019), « ETHIOPIA: Figure Analysis–Displacement Related to Conflict and Violence», report.

IDMC (2019), « 2019 Global Report on Internal Displacement (GRID) », report.

Refugee Law Project (2006), « Only Peace Can Restore the Confidence of the Displaced » Report of the Launch.

Refugee Law Project (2006), « Commentary on “Only Peace can restore the Confidence of the Displaced” », Given at the Public Hearing in the European Parliament Brussels, presented by Moses Chrispus Okello.

Refugee Law Project (2012), « From arid zones into the desert: the Uganda National IDPs Policy Implementation 2004-2012 », Working Paper n. 23.

Reliefweb (2005), « Ethiopia: Border war and ethnic clashes leave over 150,000 internally displaced », situation report.

Workshop on the Implementation of Uganda’s National Policy for Internally Displaced Persons, Background Paper, Kampala, Uganda 3-4 July 2006.