
Displaced Persons in South Sudan – Whose Responsibility to Protect?

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HNDFEN001

A minor dissertation submitted in *partial fulfilment* of the requirements for the award of the degree of Master of Philosophy in
Justice and Transformation

Faculty of the Humanities

University of Cape Town

2016

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Abstract

There have been severe shortcomings in the protection of internally displaced persons (IDPs), and gaps in research with academic and legal focus remaining on refugees instead. These gaps are revealed and correspondingly explored in this thesis through a case study analysis of South Sudan.

The main objective of this thesis is to expose the overall protection discrepancies facing IDPs, and the need to re-address international responsibility to protect in cases where national authorities are unable or unwilling to do so. The lack of a clear definition, legal status and institutional framework at an international level is shown to have an adverse impact on protection. The case study of South Sudan is introduced through an overall analysis of key events and displacement trends. Evidence in support of the main argument is presented through an analysis of the injustices and human rights violations facing IDPs in South Sudan. The roles of the two major providers of protection in South Sudan – the national authorities and the international community – are evaluated to ultimately show how a more flexible approach must be adopted by the international community in such cases.

Overall, this thesis seeks to bring the displaced in South Sudan to the forefront of the debate about who is responsible for their protection.

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Acknowledgements

Insight and understanding of the complexities of the case of South Sudan could not have been possible for this discussion without key conversations with those I have had the privilege to interview, specifically Lauren Hutton and Orly Stern.

I would also like to thank Jean Henderson-Howat and Harley Hengiston for proof-reading, as well as a special thanks to Margie Buchanan-Smith for ongoing support, advice and insight into the region.

A slightly ad-hoc acknowledgement goes to the mountains and trails in and around Cape Town. It is while running these trails that my mind has formulated many of the arguments and ideas expressed in this thesis, and without such runs the challenge of writing such a piece of work would have been far greater.

My final acknowledgement is to my supervisor, Dr. Helen Scanlon who has assisted me throughout the process, and offered invaluable support during my time at UCT.

Acronyms

AMIS	AU Mission in the Sudan
AU	African Union
CAR	Central African Republic
CCCM	Camp Coordination and Camp Management cluster
CPA	Comprehensive Peace Agreement
DDR	Disarmament, demobilisation and reintegration
DRC	Democratic Republic of the Congo
GAM	Global acute malnutrition
GBV	Gender-based violence
GDP	Gross domestic product
GNU	Government of National Unity
GRSS	Government of the Republic of South Sudan
HRW	Human Rights Watch
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IGAD	Intergovernmental Authority for Development
IHL	International humanitarian law
IOM	International Organisation for Migration

IPC	Integrated Food Security Phase Classification
LRA	Lord's Resistance Army
MSF	Médecins Sans Frontières
NGOs	Non-governmental organisations
OAU	Organisation for African Unity
ODI	Overseas Development Institute
PoC	Protection of Civilian
R2P	Responsibility to Protect
SAF	Sudanese Armed Forces
SPLA	Sudan People's Liberation Army
SPLA/M	Sudan People's Liberation Army/Movement
SPLA/M-IO	SPLA/M-in-Opposition
SSP	South Sudanese pound
UN	United Nations
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Fund
UNMIS	UN Mission in Sudan
UNMISS	UN Mission in South Sudan
UN OCHA	UN Office for the Coordination of Humanitarian Affairs
UNPOL	UN Police
US	United States
USD	US Dollar
WASH	Water, Sanitation and Hygiene
WFP	World Food Programme
WHO	World Health Organisation

CHAPTER I: Introduction

1.1 INTRODUCTION AND MOTIVATION

Throughout the world internally displaced persons (IDPs) bear the brunt of endless hardships – such as conflict, authoritarian regimes and food and livelihood insecurities – and yet they receive minimal official attention and protection. IDPs have been described by former United Nations (UN) Secretary General, Kofi Annan to be ‘among the most vulnerable of the human family’, with internal displacement cited as ‘the great tragedy of our times’,¹ and a ‘microcosm of broader challenges facing the state and international system’.²

The responsibility for protecting IDPs is a contested and forgotten topic as refugees continue to capture the international community’s attention. This is in spite of the fact that globally the number of IDPs overshadows the number of refugees. In mid-2014, the UN High Commissioner for Refugees (UNHCR) documented the number of refugees at 13 million, while the number of IDPs stood at 26 million,³ and by the end of 2014, 38 million people had been forcibly displaced within their own country.⁴ Despite the fact that the number of IDPs has significantly surpassed that of refugees, they still do not benefit from the ‘luxury’ of a single UN agency dedicated to their case, or international treaty.⁵ Instead IDPs are officially the responsibility of national authorities. Therefore, as this thesis argues, there is an undeniable need to re-address the responsibility to protect IDPs, debunking the view that the question over who is responsible to protect IDPs is outdated.⁶

¹ Kofi Annan, quoted in: OCHA, ‘Guiding Principles on Internal Displacement’, 1998, <http://www.unhcr.org/43ce1cff2.html> [Accessed: 7 November 2015].

² Francis Deng, ‘The international challenge of state failure’, in Adekeye Adebajo and Helen Scanlon (eds.), *A Dialogue of the Deaf* (Fanele: Auckland Park, 2006), p. 112.

³ These represent lowest estimates of refugees and IDPs ‘of concern’ to UNHCR.

UNHCR, ‘Figures at a Glance’, 2015, <http://www.unhcr.org/pages/49c3646c11.html> [Accessed: 13 November 2015].

⁴ Protracted crises in the DRC, Iraq, Nigeria, South Sudan and Syria accounted for 60 per cent of the increased displacement.

IDMC, ‘Global Overview 2015: People internally displaced by conflict and violence’, May 2015, p. 7, <http://www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf> [Accessed: 1 November 2015].

⁵ For more context on the debate over the need for a single UN agency assisting IDPs, see: David Lanz, ‘Subversion or Reinvention? Dilemmas and Debates in the Context of UNHCR’s Increasing Involvement with IDPs’, *Journal of Refugee Studies*, vol. 21, no. 2, 2008, pp. 198-199, <http://jrs.oxfordjournals.org/content/21/2/192.short> [Accessed: 9 February 2016].

⁶ A view expressed by some practitioners and scholars.

This reality is clearly seen in South Sudan where around one in every eleventh person is internally displaced.⁷ South Sudan is a unique and desperate case framing the critical question ‘whose responsibility is it to protect IDPs?’ It is the world’s newest country with a history of conflict that re-erupted in December 2013. The government is young and militarised, showing minimal attention to the protection of its civilians.⁸ Infrastructure is limited and food shortages typical. The international community’s interest is wavering and its influence weak.⁹ Mass generational displacement has been inflicted by decades of conflict in which the respective government has been a major actor, and yet, as protection is not guaranteed under international law, such authorities are still cited as the primary protectors of IDPs.

1.2 THESIS STRUCTURE

The first three chapters, including this introductory chapter, provide an overview of the main issues and themes as well as justification for the importance of asking the question as to who should be responsible for the protection of IDPs in South Sudan. The latter two chapters use this background analysis and evidence to assess how national authorities and the international community have provided protection to IDPs in South Sudan, and the extent to which protection efforts have been flawed.

A theoretical review of the literature on displacement and an understanding of the legal discourse at an international and regional level is analysed in the remainder of Chapter 1. Following the methodology and limitations of this study this chapter explains key concepts and definitions; outlines the existing framework protecting IDPs and introduces the debate between the responsibility to protect versus state sovereignty. This background reveals the gaps in protection efforts and responsibilities shown towards IDPs.

⁷ A rough estimate using World Bank data on 2014 population figure (11.91 million) and UNHCR data on number of IDPs (1.6 million) in August 2015.

World Bank, ‘South Sudan: Country at a Glance’, <http://www.worldbank.org/en/country/southsudan> [Accessed: 9 April 2016]; UNHCR, ‘South Sudan: Factsheet’, August 2015, <http://www.unhcr.org/524d878b9.html> [Accessed: 9 April 2016].

⁸ A point argued in Chapter 4.

⁹ A point argued in Chapter 5.

Chapter 2 introduces the case study of South Sudan and considers the extent and history of displacement, emphasising the uniqueness of this case. The issue of internal displacement in South Sudan dates as far back as Sudan's independence from Britain in 1956.¹⁰ While this thesis primarily focuses on the timeframe from independence in July 2011 to December 2015, South Sudan's history of conflict has greatly contributed to the large number of displaced civilians, and so must be taken into account. In order to fully analyse and appreciate the role of both the international community and Government of the Republic of South Sudan (GRSS) in protecting IDPs, an understanding of the nature of their interventions as well as the background to key events is essential. Ultimately Chapter 2 provides the background information necessary to support the argument that greater protection and attention to the case of IDPs in South Sudan is needed.

Evidence verifying the need for increased protection is presented in Chapter 3, considering the human rights violations and injustices facing IDPs and protection of specific vulnerable groups, notably women and children. Without understanding the injustices IDPs face,¹¹ questions concerning who should be responsible for their protection have no real validity. This chapter also introduces evidence supporting the argument that national authorities contribute towards the injustices faced by IDPs, and are therefore defying their responsibility to provide protection. Discrepancies between mandate and expectation, and between principles and practice are emphasised when comparing the reality of the day to day situation faced by many IDPs with what is outlined in key legal documents, such as the Transitional Constitution of the Republic of South Sudan (henceforth Constitution of South Sudan) (2011)¹² and the Universal Declaration of Human Rights (1948).¹³

¹⁰ Matthew LeRiche and Matthew Arnold, *South Sudan: From Revolution to Independence* (C. Hurst & Co.: London, 2012).

¹¹ Current definitions on 'injustice' are vague; defined by the Oxford Dictionary as: 'lack of fairness or justice' or 'an unjust act or occurrence'. For the purposes of this thesis, and as suggested in much literature, injustice includes violations of human rights; gender inequalities and the absence of sufficient legal protection.

¹² GRSS, 'Transitional Constitution of the Republic of South Sudan', 2011, [http://planipolis.iiep.unesco.org/upload/South%20Sudan/South%20Sudan Transitional constitution 2011.pdf](http://planipolis.iiep.unesco.org/upload/South%20Sudan/South%20Sudan%20Transitional%20constitution%202011.pdf) [Accessed: 8 May 2016].

¹³ It must be noted, that at the time of writing, South Sudan had not ratified any core international or regional human rights treaties. However, South Sudan is bound by requirements of international human rights law, including many if not all of the rights set out in the Universal Declaration of Human Rights. For more information, see: UNMISS, 'Conflict in South Sudan: A Human Rights Report', 8 May 2014, p. 11, <https://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf> [Accessed: 26 February 2016].

The responsibility to protect IDPs ultimately falls upon national authorities. However, this norm is questioned in cases such as South Sudan where the state is in no position to be the primary protector of the millions displaced. Chapter 4 considers the theoretical responsibilities and expectations, versus the practical reality of the situation in South Sudan, expanding the main question in considering who can and who will protect IDPs. Notions of state sovereignty versus Responsibility to Protect (R2P) principles are put into context in the case study, arguing that the protection of the individual and human rights are more important than the sovereignty of an individual state. This chapter presents the central argument that national authorities should not be relied upon to protect when they are – as in the case of South Sudan – (i) a newly founded and fragile state, (ii) a major player in the civil war and (iii) themselves perpetrators in displacement and violations of IDPs.

Protection provided to IDPs by the international community is a contested topic. On the one hand, weaknesses in the legal definition and protection of rights allow certain justification for the absence of protection. However, on the other hand, the reality of the situation is that the international community is ultimately not living up to what they should be doing in protecting IDPs, with reference to R2P, with problematic discrepancies between mandate and reality. Arguing that the international community should play a more direct role in protecting IDPs – given South Sudan’s unique circumstances – Chapter 5 addresses three critical questions. Firstly, what *should* the international community be doing in South Sudan? This question considers the core mandate of the UN Mission in South Sudan (UNMISS) and level of protection provided at a policy and strategic level, drawing on previously considered R2P literature. Secondly, what *have* the international community done in protecting IDPs in South Sudan? Levels of protection, and the reality of the situation on the ground is assessed, focusing on the question of protection versus provision in Protection of Civilian (PoC) sites, as well as the gaps in protection being provided to IDPs outside PoC sites. The final question considers how the international community is internally and externally hindered in protecting IDPs. Internal factors hindering protection efforts – including state regulations, infrastructural challenges and ongoing conflict – show how the South Sudan case is

UN, ‘Universal Declaration of Human Rights’, 10 December 1948, <http://www.un.org/en/universal-declaration-human-rights/> [Accessed: 12 April 2016].

distinctive. Externally, the international focus on refugees as opposed to IDPs is shown when considering how the refugee crisis in Europe has drawn international attention away from the critical situation in South Sudan.

The conclusion draws together the main ideas, reiterating the argument that protection responsibilities must be less myopic and should be re-addressed in a case such as South Sudan, where national authorities are unable to protect IDPs. The most important argument is the overarching need to reconsider the plight, and therefore the needs and status, of IDPs in order to ensure their protection.

1.3 METHODOLOGY AND LIMITATIONS

Research design

As a desk-based qualitative study, reports published by the UN, international and national non-governmental organisations (NGOs) and other research institutions on the situation in South Sudan, and IDPs in particular, make up the primary source of data and research for this thesis. Key arguments are then explored through academic writings on the overall issue of displacement and protection to provide a theoretical and contextual understanding. Interviews with experts in the field provided first-hand experience and insights into some of the main issues. As this is an emerging issue, the literature reviewed is mainly recent and emerging publications, and therefore published articles and reports as opposed to books.

Due to difficulties in reaching the field and the very nature that is this a mini thesis only three interviews with key individuals across the field were conducted. These interviews included an NGO fieldworker who chose to remain anonymous; Orly Stern, a conflict, human rights and international law consultant and Lauren Hutton, a political analyst.

It must be recognised that research and analysis of displacement requires an in-depth understanding of the aspirations, needs and direct accounts of those most affected.¹⁴ Due to

¹⁴ Lucy Hovil, 'Protecting some of the people some of the time: Civilian perspectives on peacekeeping forces in South Sudan', *International Refugee Rights Initiative*, December 2015, p. 12,

the severe and violent nature of the conflict, and limited access to South Sudan, research for this thesis is based on written primary (specifically legal principles and acts) and secondary sources. Research is supported by interviews with experts in the field. As the situation in South Sudan is constantly changing, research and analysis is predominately dated from independence in July 2011 to December 2015.

Key legal documents evaluated include: UN Guiding Principles on Internal Displacement (1998), The Universal Declaration of Human Rights (1948), Convention Relating to the Status of Refugees (1951), Organisation for African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009), UNHCR mandate (1951), Cartagena Declaration on Refugees (1984), Responsibility to Protect (R2P) Principles (2005), The Constitutive Act of the AU (2000), Comprehensive Peace Agreement (CPA) (2005), Constitution of the Republic of South Sudan (2011), UNMISS mandate (2011).

Limitations

The subject of displacement is extensive and the situation in South Sudan is complex; therefore, there are areas that this thesis does not have the capacity to address. For instance, key to protection of IDPs is their rights relating to return, resettlement and reintegration;¹⁵ however, as South Sudan is arguably not at this stage at the time of writing these protection issues are not addressed in this discussion. The focus of this thesis is protection efforts by national authorities and the international community; although it is recognised that other players and dynamics exist (such as the role of the opposition in the civil war) there is limited capacity for extensive discussion of these issues. Furthermore, the importance of the peace talks must be recognised, in terms of how they treat the plight of IDPs, but this too is an additional and complex area that is beyond the scope of this thesis.

<http://reliefweb.int/sites/reliefweb.int/files/resources/civilian%20perspectives%20on%20unmiss.pdf> [Accessed: 13 January 2016].

¹⁵ OCHA, 'Guiding Principles on Internal Displacement', section. V.

While this thesis focusses on the case study of IDPs in South Sudan, it is important to recognise other cases where IDPs have faced a lack of protection and marginalisation. Rosenberg considers cases such as Peru, Cambodia, Sudan and the Democratic Republic of the Congo (DRC) where the lack of a clear UNHCR mandate affected IDPs.¹⁶ Meanwhile, reports from the Forced Migration conference in 2003 look at different case studies from Kenya, Angola, Colombia, Palestine and Sri Lanka.¹⁷ Phil Clark further argues that large-scale population movements have become a symptom and cause of armed conflict in the Great Lakes region.¹⁸ It is important to understand that many of the challenges facing IDPs in South Sudan, and examples given in the following discussion are not necessarily unique to this case. For instance, evidence from Northern Uganda and Syria indicates other contexts where national authorities are incapable of protecting civilians, and where they are key actors in perpetrating violence and displacement.¹⁹ That the myopic nature of international responses are not exclusive to this study is also demonstrated by the case of Syria, where the general focus of the international community tends to be on refugee flows, for example into Europe, insofar as they are seen as a direct threat.²⁰ All of this indicates the wider relevance of the issues around IDP protection, considered in this thesis in relation to South Sudan.

¹⁶ Matthew Rosenberg, 'Refugee Law and the Displacement Loophole', *Hertfordshire Law Journal*, vol. 2, no. 2, 2004, https://www.herts.ac.uk/_data/assets/pdf_file/0005/38642/HLJ_V2I2_Rosenberg.pdf [Accessed: 7 November 2015].

¹⁷ Forced Migration Review, 'Researching Internal Displacement: State of the Art', Conference Report: Trondheim, Norway, 7-8 February 2003, <http://www.fmreview.org/FMRpdfs/Supplements/TrondheimConf.pdf> [Accessed: 4 January 2016].

¹⁸ Phil Clark, 'Bringing Them All Back Home: The Challenges of DDR and Transitional Justice in Contexts of Displacement in Rwanda and Uganda', *Journal of Refugee Studies*, vol. 27, no. 2, 2014, <http://jrs.oxfordjournals.org/content/27/2/234.abstract> [Accessed: 7 November 2015].

¹⁹ In Northern Uganda the government policy of forced displacement drove around 1.7 million people (90 per cent of the total Northern Ugandan population) into 200 IDP camps. IDMC note the lack of government protection in Syria: 'The Syrian authorities have not only failed to protect civilians from or during displacement, but their deliberate targeting of non-combatants has also been the main cause for their massive displacement'.

UN, 'Consolidated Appeal for Uganda 2006', UN OCHA, 30 November 2005 cited in: Clark, 'Bringing Them All Back Home', p. 242; IDMC, 'SYRIA: Forsaken IDPs adrift inside a fragmenting state', 21 October 2014, <http://www.internal-displacement.org/assets/library/Middle-East/Syria/pdf/201410-me-syria-overview-en.pdf> [Accessed: 6 November 2015].

²⁰ As of June 2015, the European Commission noted almost 4 million refugees, 7.6 million IDPs and 12.2 million Syrians in overall need of humanitarian assistance out of a population of around 23 million. However, much of the recent literature and focus has been on refugees while IDPs remain marginalised. For instance, UNHCR has responded through its continued inter-agency co-ordination role in protection and community services for IDPs providing essential humanitarian assistance for 'extremely vulnerable individuals and families including resettlement programmes', this wording of the protection mechanisms indicates the extent to which these are aimed at the most vulnerable and therefore many IDPs are ignored.

European Commission, 'Emergency Response Coordination Centre (ERCC) – ECHO Daily Map | 09/06/2015 Syria - IDPs and refugees', June 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/ECMDM_20150609_Syria_IDPs.pdf [Accessed: 6 November 2015]; Country Meters, 'Syria Population', 3 March 2016, <http://countrymeters.info/en/Syria> [Accessed: 4 March 2016]; UNHCR, '2015 UNHCR country operations profile - Syrian Arab Republic', 2015, <http://www.unhcr.org/pages/49e486a76.html> [Accessed: 6 November 2015].

1.4 DEFINITIONS AND CRITICAL CONCEPTS

The 'displacement of people' includes IDPs as well as refugees.²¹ As a whole, it refers to 'the forced movement of people from their locality or environment and occupational activities'.²² It differs from migration in the sense that displaced populations are forced to leave their homes as a result of a sudden impact, such as earthquakes, floods, threat or conflict. They are usually in need of relief operations and often have the intention of returning home.²³ Migration, on the other hand, is voluntary. It typically involves more individual social assistance, legal protection and personal support, as the decision to migrate tends to be less immediate.²⁴ Population displacement resulting from development is an additional type of displacement. This is where development either directly removes people from their homes, or it indirectly forces people to leave due to loss of livelihood.²⁵

The definitions of 'IDP' and 'refugee' are outlined to show key distinctions and provide evidence of the dominant focus on refugees as opposed to IDPs. Definitions of 'human rights' and 'protection' provide background for the following discussion, and an understanding of what IDPs fail to receive. In support of these definitions is the definition of 'forcibly displaced' and 'forced migration'.

Internally displaced persons

Up until the 1990s, the definition of IDPs had negative connotations; being explained as people who fled their homes, but were not refugees.²⁶ The first 'official' definition, which is used in this thesis, comes from the UN Guiding Principles on Internal Displacement (1998), defining IDPs as:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or

²¹ WHO, 'Environmental health in emergencies: Displaced People', http://www.who.int/environmental_health_emergencies/displaced_people/en/ [Accessed: 25 April 2016].

²² UNESCO, 'Glossary: Displaced Person/Displacement', <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/> [Accessed: 25 April 2016].

²³ IFRC, 'Complex/manmade hazards: displaced populations', <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/definition-of-hazard/displaced-populations/> [Accessed: 25 April 2016].

²⁴ *Ibid.*

²⁵ UNESCO, 'Glossary: Displaced Person/Displacement'.

²⁶ Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge University Press: Cambridge, 2004), pp. 1-2.

human-made disasters, and who have not crossed an internationally recognised state border.²⁷

This definition is similarly used in the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009) (henceforth referred to as the Kampala Convention).²⁸ Three important aspects of this definition, as outlined by Mridula Phukan and Päivi Koskinen, are: (i) the coercive or involuntary nature of the movement; (ii) the fact that such movement takes place within the boundary of the same country and (iii) the major causes of displacement.²⁹ It is also important to note the descriptive nature of this definition: describing the factual situation of a person being uprooted within his or her country as opposed to being given special legal status or rights as provided to refugees.³⁰

The lack of legal clarity about the status of IDPs is the main criticism of existing definitions as challenges arise over how the definition can be meaningfully applied in operational and policy contexts.³¹ Koskinen argues that this is due to certain rights not being fully addressed, such as the right to safe return and the right to housing and property restitution.³² Matthew Rosenberg further maintains that the lack of a clear set of laws is rooted in the unclear definition of IDPs.³³ The International Committee of the Red Cross (ICRC) points to the fault of this definition being too broad, arguing that it is 'not readily applicable for operational purposes'.³⁴ The Internal Displacement Monitoring Centre (IDMC), on the other hand argues that current definitions are at fault for 'pigeon-holing' people into categories that are unrealistic in operational terms.³⁵ Meanwhile, Erin Mooney exposes the vulnerability faced

²⁷ OCHA, 'Guiding Principles on Internal Displacement', p. 1.

²⁸ AU, 'Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (Kampala Convention), 2009, p. 2, <http://www.unhcr.org/4ae9bede9.html> [Accessed: 8 February 2016].

²⁹ Mridula D. Phukan, 'Internally Displaced Persons and their Protection', *International Journal of Scientific and Research Publications*, vol. 3, no. 7, 2013, <http://www.ijsrp.org/research-paper-0713/ijsrp-p1946.pdf> [Accessed: 22 December 2015]; Päivi Koskinen, 'Internally Displaced Persons and the Right to Housing and Property Restitution', *Institute for Human Rights*, 2005, <http://www.abo.fi/media/24259/report23.pdf> [Accessed: 24 July 2015].

³⁰ Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern', *Refugee Survey Quarterly*, vol. 24, no. 3, 2005, <http://www.brookings.edu/~media/research/files/articles/2005/9/fall-humanrights-mooney/9.pdf> [Accessed: 6 September 2015]; Global Protection Cluster, 'Handbook for the Protection of Internally Displaced Persons', *UNHCR: Global Protection Cluster Working Group*, 2006, <http://www.unhcr.org/4c2355229.pdf> [Accessed: 27 July 2015].

³¹ IDMC, 'IDMC Strategy: 2015-2020, Global Knowledge for informed action on internal displacement', *Norwegian Refugee Council*, December 2015, p. 7, <http://www.internal-displacement.org/publications/2015/idmc-strategy-2015-2020> [Accessed: 25 April 2016].

³² Koskinen, 'Internally Displaced Persons and the Right to Housing and Property Restitution'.

³³ Rosenberg, 'Refugee Law and the Displacement Loophole'.

³⁴ Alain Aeschlimann, 'Protection of IDPs: an ICRC view', *ICRC Forced Migration Review*, October 2005, <https://www.icrc.org/eng/resources/documents/article/other/protection-article-011005.htm> [Accessed: 8 February 2016].

³⁵ IDMC, 'IDMC Strategy: 2015-2020', p. 7.

by IDPs, not recognised in the definition, stating: 'IDPs suddenly find themselves stripped of their means of survival'.³⁶ Such definitional limitations emphasise the significant challenges faced by IDPs, and so the importance in assessing who should be responsible for their protection.

Following on from the lack of definitional clarity is the need to gain a comprehensive understanding of the root causes of displacement. In arguing that '[d]isplacement is a symptom of its causes', Francis Deng suggests how displacement is rooted in deeper structural problems.³⁷ The IDMC similarly notes the importance of understanding the root causes and complex patterns of displacement in order to: (i) respond better to displaced people's protection and assistance needs; (ii) prevent crises which cause families to risk their lives in pursuit of safety and (iii) minimise the likelihood of secondary displacement.³⁸ The main causes of conflict-related displacement discussed in this thesis are internal conflicts, communal violence, violations of human rights and human-made disasters.³⁹ Arguing that, 'behind each crisis of internal displacement lies an opportunity to undertake structural reforms to make all citizens feel a sense of belonging on equal footing with their compatriots', Deng reiterates the importance of a having a continuing conversation about IDPs.⁴⁰

When defining and discussing IDPs there is a need to avoid the danger of victimising and homogenising them. John Borton, Margie Buchanan-Smith and Ralf Otto argue that '[i]t is time for this debate about the categorisation of IDPs to be properly aired and to be resolved within the humanitarian sector'.⁴¹ Donald Steinberg likewise stresses the importance of

³⁶ Mooney, 'The Concept of Internal Displacement', p. 15.

³⁷ Francis Deng, Opening Remarks to 'Researching Internal Displacement: State of the Art' Conference Report, *NTNU and Forced Migration Review*, 2003, p. 7, <http://www.fmreview.org/FMRpdfs/Supplements/TrondheimConf.pdf> [Accessed: 5 September 2015].

³⁸ IDMC, 'Understanding the root causes of displacement: towards a comprehensive approach to prevention and solutions', Briefing Paper, *Norwegian Refugee Council*, 8 December 2015, p. 1, <http://www.internal-displacement.org/assets/publications/2015/20151208-root-causes-displacement.pdf> [Accessed: 25 April 2016].

³⁹ Must be recognised that internal displacement is also due to natural disasters and economic displacement, however this thesis primarily focusses on conflict-related displacement. For more information on how climate change and natural disasters affect displacement, see: Liz Heimann, 'Top 10 of 2015 – Issue #7: Climate Change and Natural Disasters Displace Millions, Affect Migration Flows', *Migration Policy Institute*, 10 December 2015, <http://www.migrationpolicy.org/article/top-10-2015-issue-7-climate-change-and-natural-disasters-displace-millions-affect> [Accessed: 3 May 2016].

⁴⁰ Deng, Opening Remarks to 'Researching Internal Displacement: State of the Art', p. 7.

⁴¹ John Borton, Margie Buchanan-Smith and Ralf Otto, 'Support to Internally Displaced Persons: Learning from Evaluation. Synthesis Report of a Joint Evaluation Programme', *Sida*, 2005, p. 11, <http://www.sida.se/publications> [Accessed: 23 May 2015].

viewing IDPs as more than victims, arguing they are ‘an essential piece of the puzzle in making and building sustainable peace’.⁴² Lucy Hovil contextualises this point by considering the repatriation of IDPs and refugees, arguing that ‘in trying to promote protection, narrow approaches to repatriation effectively limit or compromise [humanitarianism]’ through ‘de-humanises[ing] the process’.⁴³ These points emphasise the need for such a dialogue on the protection of IDPs, as in the current climate there is a danger that IDPs are viewed in isolation from larger issues that need to be resolved, and so there is less incentive to meet their needs.

Refugees

It is essential to recognise the distinctions between a refugee and an IDP, reiterating why this question remains valid and why more research is needed on IDP protection. While these two categories of persons share many similarities, notably the element of forced displacement,⁴⁴ there exist key differences in the levels of protection they receive. Such discrepancies, which are discussed in the literature, evident in legal recognition and enhanced through the vulnerabilities IDPs face, support the argument that there is a growing need to review protection priorities.

The obvious difference between IDPs and refugees is that the latter have crossed an international border, while the former remain within the borders of their country of nationality.⁴⁵ IDPs are therefore under the jurisdiction of their national authorities, with the assumption that they will primarily receive protection from their own government.⁴⁶ However, as iterated by Mooney, IDPs must not be simply viewed as ‘internal refugees’ because internal displacement is far broader than the refugee concept.⁴⁷ Catherine Phuong further explains this point, noting that internal displacement is linked to the refugee problem as it constitutes a preliminary step towards external displacement.⁴⁸ However, it is

⁴² Speech by Donald Steinberg, ‘A Seat at the Table: The Role of Displaced Persons in Peace Talks and Peacebuilding’, *ICG*, 2007, <http://www.crisisgroup.org/home/index.cfm?id=5263&l=1> [Accessed: 23 May 2015].

⁴³ Lucy Hovil, ‘Hoping for peace, afraid of war: the dilemmas of repatriation and belonging on the borders of Uganda and South Sudan’, *UNHCR*, no. 196, November 2010, p. 2, <http://www.unhcr.org/4cf5018b1.html> [Accessed: 25 January 2016].

⁴⁴ Phuong, *The International Protection of Internally Displaced Persons*, p. 37.

⁴⁵ Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, (Rowman & Littlefield: Lanham, 2002), p. 327.

⁴⁶ Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, p. 327; Deng, Opening Remarks to ‘Researching Internal Displacement: State of the Art’.

⁴⁷ Mooney, ‘The Concept of Internal Displacement’.

⁴⁸ Phuong, *The International Protection of Internally Displaced Persons*, p. 2.

fundamental to recognise specific characterisations and problems of internal displacement that cannot be solved by traditional methods of protection used in the refugee context.⁴⁹

The London Declaration of International Law Principles of IDPs (2000) outlines the legal discrepancies shown towards IDPs, in comparison to refugees, stating that:

[I]n contrast to refugees, who are protected and assisted by many global and regional legal instruments and who may thus enjoy comparative safety in the countries of asylum or resettlement, as well as the protection and assistance by many international organisations, both governmental and non-governmental, internally displaced persons lack such safety, protection and assistance.⁵⁰

As refugees do not benefit from the protection of their state of origin, they are granted international protection under the 1951 Convention Relating to the Status of Refugees, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.⁵¹

Such legal marginalisation facing IDPs, in comparison to refugees, is also noted in the scholarly literature. Koskinen states that the concept of 'refugee' is closely linked to two issues: (i) being outside one's own country and (ii) having fled due to well-founded fear of persecution.⁵² Therefore, while both parties are forced to leave their homes, refugees receive a 'special status', which IDPs do not. Rosenberg further notes that while a refugee may travel a fraction of the distance covered by an IDP, it is the actual act of passing over an international

⁴⁹ *Ibid.*

⁵⁰ The London Declaration of International Law Principles on Internally Displaced Persons, *International Journal of Refugee Law*, vol. 12, no. 4, 2000, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/intjrl12&div=62&id=&page> [Accessed: 8 May 2016].

⁵¹ Also important to note that while these conventions exist, they appear to be being ignored by some European governments, for more information and analysis, see: HRW, 'Europe's Refugee Crisis: An Agenda for Action'. December 2015, p. 1, https://www.hrw.org/sites/default/files/report_pdf/europes_refugee_crisis_an_agenda_for_action-high_res.pdf [Accessed: 3 May 2016]; Rajesh Makwana, 'The Global Refugee Crisis: Humanity's Last Call for a Culture of Sharing and Cooperation', *Counter Punch*, 16 March 2016, <http://www.counterpunch.org/2016/03/16/the-global-refugee-crisis-humanitys-last-call-for-a-culture-of-sharing-and-cooperation/> [Accessed: 3 May 2016]; Susan Fratzke, 'Not Adding Up: The Fading Promise of Europe's Dublin System', *Migration Policy Institute*, March 2015, <http://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system> [Accessed: 3 May 2016]. UNHCR, 'Convention Relating to the Status of Refugees', 1951, <http://www.unhcr.org/3b66c2aa10.html> [Accessed: 8 May 2016]; OAU, 'Convention Governing the Specific Aspects of Refugee Problems in Africa', 1969, <http://www.refworld.org/docid/3ae6b36018.html> [Accessed: 8 May 2016]; Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, p. 310; Flavia Zorzi Giustiniani, '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, no. 2, 2011, p. 348, <http://djilp.org/wp-content/uploads/2011/08/5-Zorzi-Giustiniani.pdf> [Accessed: 9 February 2016].

⁵² Koskinen, 'Internally Displaced Persons and the Right to Housing and Property Restitution'.

boundary that allows them the legal documented rights IDPs lack.⁵³ Deng similarly points out that IDPs and refugees face comparable issues in terms of causes and needs, and yet IDPs have no international agency protecting them.⁵⁴

Phuong, who agrees with such points in principle, argues however against the establishment of a separate legal definition for IDPs, maintaining that such a status would constitute a major challenge to the principle of state sovereignty.⁵⁵ Along these same lines, there exists concern amongst legal analysts that extending protection to IDPs might result in the denial of asylum to those persons able to flee international borders.⁵⁶ Phuong expands this statement citing some refugee commentators who believe that the IDP concept holds an 'implicit and dangerous logic', only serving to divert attention from the refugee problem.⁵⁷ Phuong outlines a valid concern, namely that if IDPs received similar status as refugees in their country of origin then there would be a greater incentive for refugee-receiving states to contain refugee flows within the countries of origin.⁵⁸ This thesis, however, argues that these concerns are outdated as not only do the number of IDPs significantly surpass refugees,⁵⁹ but the vulnerabilities and marginalisation they face are greater, and so there is an undeniable need for a more binding international treaty to protect them.

IDPs are also circumstantially more vulnerable than refugees, often being forced to remain close to or becoming trapped in the zone of conflict; they may be caught in the crossfire and are at risk of being used as pawns, targets or human shields by the belligerents.⁶⁰ Displaced populations in general suffer significantly higher rates of mortality than the overall population, as they remain at high risk of physical attack, sexual assault and abduction, and

⁵³ Rosenberg, 'Refugee Law and the Displacement Loophole'.

⁵⁴ Deng, Opening Remarks to 'Researching Internal Displacement: State of the Art'.

⁵⁵ Phuong, *The International Protection of Internally Displaced Persons*, pp. 26-27.

⁵⁶ Kirsten Zaat, 'The Protection of Internally Displaced Persons in Sudan: Applying international law at the field level', *The Journal of Humanitarian Assistance*, 2006, <https://sites.tufts.edu/jha/archives/25> [Accessed: 6 August 2015].

⁵⁷ Phuong, *The International Protection of Internally Displaced Persons*, p. 5.

⁵⁸ *Ibid.*, p. 4.

⁵⁹ As figures above indicate: In mid-2014, UNHCR documented the number of refugees at 13 million, while the number of IDPs stood at 26 million, and by the end of 2014, 38 million people had been forcibly displaced within their own country. UNHCR, 'Figures at a Glance'; IDMC, 'Global Overview 2015', p. 7.

⁶⁰ Khalid Koser, 'Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building', *Brookings-Bern Project*, 2007; Norwegian Refugee Council (ed.), *Internally Displaced People: A Global Survey* (2nd ed.) (Earthscan Publications Ltd: Sterling, 2002), <http://www.brookings.edu/research/reports/2007/09/peaceprocesses> [Accessed: 6 September 2015]; OHCHR, 'Questions and Answers about IDPs', <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Issues.aspx> [Accessed: 25 April 2016].

are often deprived of adequate food, shelter and health services.⁶¹ IDPs specifically tend to be subjected to heightened vulnerability during the period of displacement and face greater risk than refugees when returning due to a lack of effective monitoring mechanisms.⁶² This can lead to secondary displacement, as seen in South Sudan, where many IDPs are forced to leave their places of refuge due to spreading violence and/or seasonal challenges.⁶³

Reasons behind why there are a greater number of IDPs than refugees must also be noted. IDMC outline key reasons for this trend to be increasingly more civilians being targeted during conflict; the lack of international interest and intent to fully address the needs of IDPs and challenges of achieving durable solutions to internal displacement.⁶⁴ Additional issues such as tighter borders and the overall increase in civil wars are also accountable for this trend.⁶⁵

An additional point to note – emphasised by David Lanz – is that in many contemporary emergencies and conflicts it is almost impossible to distinguish between people who have crossed an international border and those who have not.⁶⁶ Lanz subsequently argues that a more pragmatic approach based on humanitarian necessity should be adopted by the UNHCR, and the international community more generally, as opposed to rigid normative criteria.⁶⁷ This argument is of much importance to the discussion in this thesis as South Sudan presents a case where such flexibility should be adopted in the protection of IDPs.

Overall, there has been a long tradition of prolific research on refugees, but much less research attention given to IDPs. While this thesis recognises the increasing numbers of refugees in both South Sudan and worldwide, much of the rationale and need for further research on IDPs relates to the fact that IDPs do not enjoy the same protection as refugees, yet are far more numerous.

⁶¹ OHCHR, 'Questions and Answers about IDPs'.

⁶² Mooney, 'The Concept of Internal Displacement'; Koser, 'Addressing Internal Displacement in Peace Processes'; Norwegian Refugee Council (ed.), *Internally Displaced People: A Global Survey*.

⁶³ IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', 9 July 2014, pp. 6-7, <http://www.internal-displacement.org/assets/library/Africa/South-Sudan/pdf/201407-af-southsudan-overview-en.pdf> [Accessed: 22 February 2016]; South Sudan Protection Cluster, 'Protection Trends Analysis: January-May', no. 2, May 2014, p. 12, <http://reliefweb.int/report/south-sudan/south-sudan-protection-cluster-protection-trends-analysis-may-2014> [Accessed: 1 February 2016].

⁶⁴ IDMC, 'IDMC Strategy: 2015-2020', pp. 6-8.

⁶⁵ For more information and examples, see: IDMC, 'Global Overview 2015', p. 7 and p. 40.

⁶⁶ Lanz, 'Subversion or Reinvention', p. 192.

⁶⁷ *Ibid.*

Human rights

The protection of IDPs cannot be effectively discussed without a clear understanding of human rights. The phrase ‘human rights violations’ is used in this thesis to illustrate the injustices IDPs face. The links between the protection of IDPs and human rights – arguably a form of protection in their own right – must also be recognised.⁶⁸

Carol Pavlish and Sao-An Ho stress the need to move beyond the characterisation of human rights outlined in philosophical and legal literature, namely moral, legal and political norms.⁶⁹ Instead, human rights should be understood to include commitments in ‘social ethics and public reasoning’ that through political and social advocacy lead to social change.⁷⁰ Up until the 1970s – under the Universal Declaration of Human Rights (1948) – human rights fell into two categories: the ‘first generation’ of human rights of civil and political rights⁷¹ on the one hand; and the ‘second generation’ of economic, social and cultural rights⁷² on the other.⁷³ Karel Vasak argues that this first generation comprised of ‘negative’ rights, and the second generation ‘positive’ rights that required action by the state.⁷⁴ Likewise, Pavlish and Ho argue that the first generation imposes certain obligations on governments to restrain themselves, and their citizens, from activities violating human security and dignity.⁷⁵ Meanwhile, the second generation aims to achieve certain social outcomes and obligate governments to provide education, health care and adequate living standards to citizens.⁷⁶

The ‘third generation’ of human rights – initially presented by Vasak in 1979 – are central to this discussion insofar as they introduce key rights often omitted to IDPs.⁷⁷ These include the

⁶⁸ Phuong, *The International Protection of Internally Displaced Persons*, p. 5.

⁶⁹ Carol Pavlish and Sao-An Ho, ‘Displaced Persons’ Perceptions of Human Rights in Southern Sudan’, *International Nursing Review*, 2009, p. 417, <http://onlinelibrary.wiley.com/doi/10.1111/j.1466-7657.2009.00739.x/abstract> [Accessed: 6 January 2016].

⁷⁰ Amartya Sen, 2006 cited in Pavlish and Ho, ‘Displaced Persons’ Perceptions of Human Rights in Southern Sudan’, p. 417.

⁷¹ Including those primarily defined in the International Covenant on Civil and Political Rights (ICCPR).

⁷² Consisting mainly of those specified in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁷³ Karel Vasak, ‘A 30-year struggle: The sustained efforts to give force of law to the Universal Declaration of Human Rights’, *The Unesco Courier*, November 1977, p. 29, <http://unesdoc.unesco.org/images/0007/000748/074816eo.pdf#48063> [Accessed: 2 March 2016].

⁷⁴ *Ibid.*

⁷⁵ Pavlish and Ho, ‘Displaced Persons’ Perceptions of Human Rights in Southern Sudan’, p. 417.

⁷⁶ *Ibid.*

⁷⁷ Carl Wellman, ‘Solidarity, the Individual and Human Rights’, *Human Rights Quarterly*, vol. 3, no. 2, 2000, pp. 639-644, http://muse.jhu.edu/journals/human_rights_quarterly/v022/22.3wellman.html#FOOT1 [Accessed: 2 March 2016].

right of people to self-determination, peace, development and humanitarian assistance, the role of environmental law and the rights of minority groups.⁷⁸ John Mubangizi and Carl Wellman, however, contest these rights, arguing that Vasak's theory of solidarity rights should be discarded.⁷⁹ Nevertheless, Wellman still notes the importance of human rights being an international responsibility, therefore suggesting that the protection of IDPs should similarly be an international responsibility.⁸⁰ The 'fourth generation', the 'rights related to genetic engineering' have been referred to by Adrian Cornescu as the 'rights of future generations', belonging to 'humanity as a whole'.⁸¹ Such rights, however, are not relevant to this discussion.

The most important definition of 'human rights' for this discussion comes from the South Sudanese themselves. Participants in Pavlish and Ho's research study on displaced persons in Southern Sudan in 2009,⁸² describe human rights as:

[A] web of intersecting obligations, claims, relations, positions and conditions. Rights were larger than expected privileges and expanded beyond perfunctory responsibilities. Rights connoted relationships that created social conditions in which health and human rights could flourish. Respect and equality were the central tenets of these relationships.⁸³

Significant for this discussion is the reference to the creation of 'social conditions', where 'health and human rights' can 'flourish', as evidence later demonstrates that these rights are not enjoyed by the majority of IDPs in South Sudan, therefore, pointing to the need for greater protection of IDPs so that these rights can be respected.

Protection

The definition of 'protection' is outlined to help understand exactly what the international community and/or national authorities are expected to provide to IDPs. The challenge in

⁷⁸ Karel Vasak, 'Pour une troisième génération des droits de l'homme', in: C. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles* (Martinus Nijhoff Publishers, ICRC: Geneva, The Hague, 1984).

⁷⁹ For additional criticisms of the third generation of human rights, see: John C. Mubangizi, 'Towards a new approach to the classification of human rights with specific reference to the African context', *African Human Rights Law Journal*, vol. 4, no. 1, 2004, <http://www.ahrlj.up.ac.za/mubangizi-j-c> [Accessed: 2 March 2016]; Wellman, 'Solidarity, the Individual and Human Rights'.

⁸⁰ Wellman, 'Solidarity, the Individual and Human Rights', p. 657.

⁸¹ Adrian V. Cornescu, 'The Generations of Human's Rights', *Masaryk University*, 2009, http://www.law.muni.cz/sborniky/dny_prava_2009/files/prispevky/tvorba_prava/Cornescu_Adrian_Vasile.pdf [Accessed: 2 March 2016].

⁸² Study published prior to independence, when South Sudan was known as Southern Sudan.

⁸³ Pavlish and Ho, 'Displaced Persons' Perceptions of Human Rights in Southern Sudan', pp. 423-424.

defining what is meant by ‘protection’ is discussed in much of the literature. Phuong argues that this contributes to problems encountered when dealing with internal displacement, with no international legal instrument defining precisely what IDP protection means or involves.⁸⁴

Françoise Bouchet-Saulnier stresses the importance of not confusing the notion of protection with that of physical security, breaking the definition of protection into three parts. Firstly, it means ‘recognizing that individuals have rights and that the authorities who exercise power over them have obligations’; secondly, ‘defending the legal existence of individuals, alongside their physical existence’; thirdly, ‘attaching the juridical link of responsibility to the chain of assistance measures that guarantee the survival of individuals’.⁸⁵ Phuong similarly defines the two elements of IDP protection to include physical safety and the protection of human rights.⁸⁶ She outlines the five core needs of IDPs to be: security; food, shelter and health care assistance; family reunification; livelihoods and education; and, finally, assistance in returning.⁸⁷ The working definition used in this discussion is adopted from the ICRC, and incorporates these points. Henceforth in this thesis, protection:

- (i) [...] includes efforts to prevent or put a stop to actual or potential violations of IHL and other relevant bodies of law or norms.
- (ii) [...] relates firstly to the causes of, or the circumstances that lead to, violations – mainly by addressing those responsible for the violations and those who may have influence over the latter – and secondly to their consequences.
- (iii) [...] includes activities that seek to make individuals more secure and to limit the threats they face, by reducing their vulnerability and/or their exposure to risks, particularly those arising from armed hostilities or acts of violence.⁸⁸

Such distinctions are important, emphasising the need to provide more than simply physical protection to IDPs.⁸⁹

Forcibly displaced and forced migration

The umbrella terms forcibly displaced and forced migration are widely used concepts in the study of internal displacement. In 2016, UNHCR stated: ‘[E]very minute 24 people leave

⁸⁴ Phuong, *The International Protection of Internally Displaced Persons*, pp. 118-119.

⁸⁵ Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, p. 308.

⁸⁶ Phuong, *The International Protection of Internally Displaced Persons*, p. 120.

⁸⁷ *Ibid.*, pp. 40-41.

⁸⁸ ICRC, ‘ICRC Protection policy: Institutional Policy’, *IRRC*, vol. 90, no. 871, September 2008, p. 752, <https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf> [Accessed: 7 March 2016].

⁸⁹ An important point reviewed in Chapter 5, when considering the need to provide humanitarian provision to IDPs as well as protection.

everything behind to escape war, persecution or terror’, and summarised that it is these people who are forcibly displaced. They categorise forcibly displaced persons as: refugees, asylum seekers, IDPs, stateless persons and returnees as forcibly displaced.⁹⁰ Forced migration ‘refers to a migratory movement in which an element of coercion exists’.⁹¹

1.5 EXISTING FRAMEWORK OF PROTECTION

Legal protection of IDPs

The legal rights, or lack thereof, granted to IDPs form the backbone of this discussion. This thesis questions the legal norm that the responsibility to protect IDPs lies with national authorities, and so it is essential to understand the extent to which IDPs are protected under international and regional norms.

There is overall agreement in the literature that the level of protection for IDPs has been insufficient thus far. While there has been increased focus on the human rights and laws protecting IDPs since the 1990s, it was not until 2004 that the first inclusive, independent academic study on the international protection of IDPs was published by Phuong.⁹² Suspicion existed, and to an extent still does, that development of the IDP concept is part of a wider political agenda undermining refugee protection.⁹³ However, the central thesis of Phuong’s study is that internal displacement should be placed within a human rights framework, addressing the reality of internal displacement as a separate category; and that such approaches should not undermine refugee protection.⁹⁴ Kirsten Zaat and Colin Harvey acclaim Phuong’s work as a ‘notable exception’ and ‘a substantial contribution to the literature on internal displacement’ respectively.⁹⁵ This discussion follows similar arguments

⁹⁰ See: UNHCR, ‘Categories of Displaced People’, <http://www.un.org/en/events/refugeeday/background.shtml> [Accessed: 18 November 2016] for definitions on each of these categories.

⁹¹ IOM, ‘Key Migration Terms’, <https://www.iom.int/key-migration-terms#Forced-migration> [Accessed: 16 November 2016].

⁹² Phuong, *The International Protection of Internally Displaced Persons*.

⁹³ Colin Harvey, ‘Book Review: Catherine Phuong, *The International Protection of Internally Displaced Persons*’, *International Journal of Refugee Law*, vol. 14, no. 4, December 2005, p. 824, <http://ijrl.oxfordjournals.org/content/17/4/823.full.pdf+html> [Accessed: 3 March 2016].

⁹⁴ Phuong, *The International Protection of Internally Displaced Persons*.

⁹⁵ Zaat, ‘The Protection of Internally Displaced Persons in Sudan’, p. 2; Harvey, ‘Book Review’, p. 826.

reaffirming the importance of refugee studies and protection, yet also signalling the need for a greater international focus on IDPs.

Legal status and protection under international law

The legal status granted to IDPs remains limited. IDPs are described as ‘a final category of persons suffering distress through involuntary movement’ and ‘obviously do not qualify as stateless or for refugee status’.⁹⁶ Bouchet-Saulnier notes that ‘IDPs do not constitute a distinct legal category and therefore do not benefit from any specific protection under international law’.⁹⁷ Harvey similarly makes the crucial point in arguing, with reference to IDPs, that ‘[h]uman suffering can be sidelined for the sake of the integrity of the overall legal and political system’.⁹⁸

International human rights law⁹⁹ protects IDPs insofar as it applies to all individuals without distinction in almost all circumstances; it is the only source of legal protection ensuring that the human rights of IDPs are respected.¹⁰⁰ Human rights law is especially applicable in situations which cannot be qualified as armed conflict and therefore international humanitarian law (IHL)¹⁰¹ cannot apply.¹⁰²

The importance of ensuring the human rights protection of IDPs is emphasised by Zaat, with reference to the case of Sudan;¹⁰³ Koskinen, in specifically noting the human rights of IDPs¹⁰⁴ as well as the UNHCR, in recognising the significant forms of deprivation faced by IDPs.¹⁰⁵ However, it is more difficult to ensure individuals’ human rights are protected when people

⁹⁶ T.W. Bennett and J. Strug, *Introduction to International Law* (Juta & Co. Ltd: Cape Town, 2013) p. 209.

⁹⁷ Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, p. 159.

⁹⁸ Harvey, ‘Book Review’, p. 824.

⁹⁹ Main human rights instruments of relevance to the discussion include the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Convention on the Elimination of Discrimination Against Women (1979) and the Convention of the Rights of the Child (1989).

¹⁰⁰ Phuong, *The International Protection of Internally Displaced Persons*, p. 42.

¹⁰¹ Main provisions of IHL found in the four Geneva Conventions of 1949 and their two additional Protocols of 1977.

ICRC, ‘Geneva Conventions and Commentaries’, <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions> [Accessed: 8 May 2016].

¹⁰² Phuong, *The International Protection of Internally Displaced Persons*, pp. 42-43.

¹⁰³ Zaat, ‘The Protection of Internally Displaced Persons in Sudan’.

¹⁰⁴ Koskinen, ‘Internally Displaced Persons and the Right to Housing and Property Restitution’.

¹⁰⁵ Global Protection Cluster, ‘Handbook for the Protection of Internally Displaced Persons’.

are in transit. When refugees lose specific human rights protection from their own government, they are covered by a special regime of protection established by the 1951 Convention.¹⁰⁶ The protection of IDPs' human rights, on the other hand, is significantly reduced while they are on the move. They cannot benefit from the special regime of protection created for refugees, as they remain within their own country's borders,¹⁰⁷ hence reaffirming the need to review current policy.

IHL offers protection to IDPs as civilians if displaced due to conflict.¹⁰⁸ The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) grants protection to 'protected persons'; however, refugees are specifically noted as falling within this group while IDPs are not.¹⁰⁹ Article 49 is more specific, prohibiting displacement of civilians during armed conflict.¹¹⁰ Such protection is acclaimed by scholars and practitioners. For instance, Alain Aeschlimann states that '[t]he most important needs are addressed and there are no significant gaps in the legal protection of IDPs'¹¹¹ – a view that runs counter to the main arguments in this thesis. Similarly, the UNHCR claim:

If displacement occurs, IDPs, like all other civilians, are entitled to protection and assistance, as required. Parties to a conflict have a duty to allow humanitarian access and assistance to civilian populations in need.¹¹²

However, due to the lack of a permanent legal instrument protecting IDPs, the UNHCR's protective role is reliant on the goodwill of states.¹¹³ Claims that IDPs are already adequately protected are further challenged by the evidence that has been cited on the legal status of IDPs, and by practical examples given later in this thesis.

UN Guiding Principles on Internal Displacement

¹⁰⁶ Convention and Protocol Relating to the Status of Refugees (1951 and 1967).

¹⁰⁷ Phuong, *The International Protection of Internally Displaced Persons*, p. 44.

¹⁰⁸ Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, p. 159.

¹⁰⁹ ICRC, 'Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War', 1949, <https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> [Accessed: 12 November 2015].

¹¹⁰ ICRC, 'Geneva Convention (IV)', Art. 49 stating: 'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive'.

¹¹¹ Aeschlimann, 'Protection of IDPs'.

¹¹² Global Protection Cluster, 'Handbook for the Protection of Internally Displaced Persons'.

¹¹³ Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, pp. 159-160.

The 30 UN Guiding Principles on Internal Displacement (1998) were compiled by Francis Deng – the first UN Special Rapporteur on the Human Rights of IDPs and South Sudanese ambassador to the UN (at the time of writing) – with the aim of consolidating and clarifying displaced persons’ rights.¹¹⁴ They are arguably the cornerstone of IDP legal protection despite having been adopted almost two decades ago in 1998. The Principles are not binding as in a treaty; however, they are based on, and reflect existing standards of international law, which are binding, and are drawn from human rights and humanitarian law instruments.¹¹⁵ Key features include principles that: (i) identify rights and guarantees relevant to the protection of IDPs; (ii) provide protection against arbitrary displacement; (iii) offer a basis for protection and assistance during displacement and (iv) set forth guarantees for safe return, resettlement and reintegration.¹¹⁶ However, while this section recognises the accomplishments of these principles, the fact that they are ‘guiding principles’, and not binding as in a treaty remains a hindrance to IDP protection.

In his opening remarks at a conference on internal displacement in 2003, Deng cites the development of this framework for protecting and assisting displaced persons as a major achievement. He argues that a treaty would have taken decades to approve, while the Guiding Principles are a ‘soft law’, covering all phases of the problem, including how to prevent, respond to and assist displacement.¹¹⁷ Deng describes the Guiding Principles as ‘a normative framework’ that meet the protection and assistance needs of IDPs.¹¹⁸ Phuong likewise points to three gaps in the previous normative framework of protection that the Guiding Principles seek to fill: (i) the norms of humanitarian law are only applicable during armed conflict; (ii) certain provisions only apply to specific categories of persons and (iii) where relevant legal norms do exist they may only be binding on certain actors.¹¹⁹ She also applauds Deng as a ‘catalyst’ for drawing international and national attention to the issue of internal displacement’.¹²⁰ This latter point is critical to this discussion as while the world’s

¹¹⁴ *Ibid.*, p. 160.

¹¹⁵ Global Protection Cluster, ‘Handbook for the Protection of Internally Displaced Persons’, p. 32; Phuong, *The International Protection of Internally Displaced Persons*, p. 74.

¹¹⁶ Global Protection Cluster, ‘Handbook for the Protection of Internally Displaced Persons’, pp. 33-34.

¹¹⁷ Deng, Opening Remarks to ‘Researching Internal Displacement: State of the Art’, pp. 5-7.

¹¹⁸ Francis Deng, ‘Foreword’ in Norwegian Refugee Council (ed.), *Internally Displaced People: A Global Survey* (2nd ed.), (Earthscan Publications Ltd.: Sterling, 2002).

¹¹⁹ Phuong, *The International Protection of Internally Displaced Persons*, pp. 48-49.

¹²⁰ *Ibid.*, p. 9.

attention may have finally turned towards IDPs in the late 1990s, their protection rights – more than 20 years later – remain limited.

Roberta Cohen points to three main reasons why the experts drafting the Principles did not propose a treaty dealing with the IDP issue. Firstly, there was minimal governmental support for the development of a legally binding treaty on a subject as sensitive as internal displacement.¹²¹ Zaat argues that this is largely due to the fact that the Principles allows states to opt out of their application where it is felt such standards are too high to apply to a given situation.¹²² Secondly, as argued by Deng, treaty-making could take years or even decades, delaying the implementation of urgently needed assistance to millions of IDPs caught up in ongoing emergencies.¹²³ Finally, it was argued that sufficient humanitarian and human rights law already existed.¹²⁴

The fact that the Principles were adopted in 1998 yet, at the time of writing, there is still no official treaty indicates the legal omission facing IDPs. An additional weakness of the Guiding Principles is that the mandate is limited as Special Representatives have no direct protection or assistance functions towards the IDPs.¹²⁵ While the Principles have been accepted by many states, they remain a soft law, and states are not formally bound by them.¹²⁶ In order to make them effective governments must incorporate them into national domestic laws and policies on displacement – ¹²⁷ an optimistic ambition for a government engulfed in the reality of civil war.

Regional level protection

Attempts to provide legal protection and recognition of IDPs at a regional level must not be overlooked. Africa holds nearly half the world's IDP population, with 11.4 million IDPs as of

¹²¹ Roberta Cohen, 'Strengthening Protection of IDPs: The UN's Role', *Georgetown Journal of International Affairs*, vol. 7, no. 1, winter/spring 2006, pp. 102-103, <http://www.jstor.org/stable/43133666> [Accessed: 3 February 2016].

¹²² Zaat, 'The Protection of Internally Displaced Persons in Sudan', p. 2.

¹²³ Cohen, 'Strengthening Protection of IDPs', pp. 102-103.

¹²⁴ *Ibid.*

¹²⁵ Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, p. 160.

¹²⁶ Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa', pp. 350-351.

¹²⁷ *Ibid.*

the end of 2014.¹²⁸ In response to such acute displacement on the continent, as well as the lack of any international 'hard' laws protecting IDPs, the AU Executive Council worked towards drafting a treaty in 2004, specifically focussing on IDPs.¹²⁹ This indicates recognition of, and response to the weakness of international law on IDPs.

In October 2009, the Kampala Convention was adopted by the AU Special Summit of Heads of State and Government.¹³⁰ The Convention recognises the rights of IDPs as outlined in the UN Guiding Principles, describing this as 'an important international framework for the protection of internally displaced persons'.¹³¹ However, it also recalls 'the lack of a binding African and international legal and institutional framework, specifically for the prevention of internal displacement and the protection of and assistance to internally displaced persons'.¹³² This is therefore an important document emphasising the recognition, at an AU level, of the need to reassess the legal status as well as protection obligations towards IDPs. Flavia Giustiniani argues that the Convention sends 'an important message' to the international community in showing that Africa intends to deal with IDPs in a much more 'serious and proactive manner',¹³³ a point supported by the arguments in this thesis.

Stephane Ojeda acclaims the Kampala Convention, describing it as 'the first internal displacement specific convention covering an entire continent'.¹³⁴ He further argues that it goes beyond IHL treaties in ensuring that forced displacement is actually prevented.¹³⁵ In 2011, Giustiniani wrote that the Convention was 'a tremendous achievement and a beacon of hope for [...] people in Africa internally displaced'.¹³⁶ Similarly to Ojeda, she argues that the Convention 'represents even further progress' and is of particular importance in the sense that it was negotiated by affected states themselves.¹³⁷ The IDMC also argue that it was a

¹²⁸ IDMC, 'The national responsibility to protect internally displaced people: The Kampala Convention'. Workshop Report: 8-10 December 2014, p. 4, <http://www.internal-displacement.org/assets/publications/2015/201505-af-national-responsibility-to-protect-idps-kampala-convention-workshop-report-en.pdf> [Accessed: 3 March 2016].

¹²⁹ Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa', p. 350.

¹³⁰ Stephane Ojeda, 'The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects', *Refugee Survey Quarterly*, vol. 29, no. 3, 2010, p. 58, <http://rsq.oxfordjournals.org/content/29/3/58.full.pdf+html> [Accessed: 9 February 2016].

¹³¹ AU, 'Kampala Convention', p. 2.

¹³² *Ibid.*

¹³³ Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa', p. 350.

¹³⁴ Ojeda, 'The Kampala Convention on Internally Displaced Persons', pp. 58-59.

¹³⁵ *Ibid.*, p. 66.

¹³⁶ Giustiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa', p. 347.

¹³⁷ *Ibid.*, pp. 352-353.

‘monumental achievement’.¹³⁸ However, flaws still remain with questions over implementation as well as issues with countries not signing or ratifying the Convention. As of January 2016, out of the 54 AU member states, 35 had signed the Convention and only 22 had ratified it.¹³⁹ South Sudan is among the states which have not ratified the Convention.¹⁴⁰

Regional efforts working to improve the legal protection of IDPs are notable to this discussion as they represent an additional channel whereby IDPs can seek protection, therefore, introducing important questions over whether regional bodies should be considered key players in the protection of IDPs. The efforts of regional bodies, such as the AU, in improving the legal standing of IDPs also reveal gaps in international law and efforts at protection, additional evidence supporting the argument that the international community must take greater steps in ensuring the protection of IDPs.

Institutional framework of protection

In order to understand who should be responsible for IDPs’ protection, a background to the institutional framework offering such protection must be understood. The flaws in this framework reiterate the need for renewed attention.

Key to this discussion is the fact that the primary responsibility to protect IDPs lies with the national authorities of the country, and the role of international actors is to reinforce and not to replace national responsibility.¹⁴¹ The foundations of this norm are, however, questioned in the South Sudan case, reinforcing the argument that there is an overall need to review the protection responsibilities and efforts shown towards IDPs.

In 2006, UNHCR outlined 12 national responsibilities in situations of internal displacement. These include: (i) preventing displacement and minimising its adverse effects; (ii) raising

¹³⁸ IDMC, ‘The Kampala Convention two years on: time to turn theory into practise’, 8 December 2014, <http://www.internal-displacement.org/sub-saharan-africa/kampala-convention/> [Accessed: 8 February 2016].

¹³⁹ André M. N. Renzaho, *Globalisation, Migration and Health: Challenges and Opportunities*, (Imperial College Press: London, 2016), p. 60.

¹⁴⁰ Other states also with a high number of IDPs not having ratified the Convention include Somalia, Sudan, the DRC and Burundi.

Renzaho, *Globalisation, Migration and Health: Challenges and Opportunities*, pp. 60-61.

¹⁴¹ Global Protection Cluster, ‘Handbook for the Protection of Internally Displaced Persons’.

national awareness about the problem; (iii) collecting data on the number and condition of IDPs; (iv) supporting training on the rights of IDPs; (v) creating a legal framework upholding the rights of IDPs; (vi) developing a national policy on internal displacement; (vii) designating an institutional focal point on IDPs; (viii) encouraging national human rights institutions to address internal displacement; (ix) ensuring that IDPs participate in decision making; (x) supporting durable solutions; (xi) allocating adequate resources to address internal displacement and (xii) cooperating with the international community when national capacity is insufficient.¹⁴² Out of these, important responsibilities to note for the purposes of this thesis are the right to create a legal framework and the focus on human rights. The main argument in this thesis is that such responsibilities are not being upheld at a national level, and that there is a need for solid contingency plans when national authorities are incapable of effective protection.

The UNHCR is the main international actor mandated to protect IDPs. In addition, the World Food Programme (WFP) has a mandate to provide emergency food relief, but this mandate is limited in that it specifically mentions refugees while IDPs fall under those in 'other emergency situations'.¹⁴³ This section focusses on the developing mandates and work of the UNHCR in representing the institutional framework for the protection of IDPs on an international scale. Additional actors involved with IDPs also include the ICRC, the International Organisation for Migration (IOM)¹⁴⁴, UN Children's Fund (UNICEF), UN Office for the Coordination of Humanitarian Affairs (UN OCHA), the World Health Organisation (WHO), and international and national NGOs.¹⁴⁵ The need to review and reform the institutional framework to offer greater protection to IDPs, when national authorities are incapable of doing so, is emphasised in this section.

The initial mandate of the UNHCR, adopted in 1951, was only concerned with the protection and assistance of refugees emerging in the wake of World War II, and the huge refugee crisis

¹⁴² *Ibid.*, p. 10.

¹⁴³ WFP, 'Mission Statement', <http://www.wfp.org/about/mission-statement> [Accessed: 23 April 2016].

¹⁴⁴ The IOM was officially recognised as a related UN organisation in July 2016 (after this thesis was initially drafted). This is a significant turning point in international recognition of IDPs, however is not considered in this discussion as it is out with the timeframe considered. See: IOM, 'IOM Becomes A Related Organization to the UN', July 2016, <http://www.iom.int/news/iom-becomes-related-organization-un> [Accessed: 18 November 2016].

¹⁴⁵ Important to note this list is not exhaustive.

Phuong, *The International Protection of Internally Displaced Persons*, p. 76.

facing Europe.¹⁴⁶ In arguing that it was ‘conceived as an agency to safeguard the rights of foreigners whose countries of origin were no longer willing or able to protect them’, Lanz emphasises the narrowness of the mandate in failing to represent IDPs.¹⁴⁷ Erika Feller, however defends UNHCR’s original mandate, maintaining that while the Statute does not refer explicitly to IDPs, Article 9 – in allowing the High Commissioner to ‘engage in such activities [...] as the General Assembly may determine’ – indirectly encourages its involvement in situations of internal displacement.¹⁴⁸ Maria Camilleri similarly defends UNHCR’s initial mandate and conventions,¹⁴⁹ arguing they were established ‘during an era when conventional war was the standard’.¹⁵⁰

The Cold War was a turning point with an increase in the number of IDPs due to change in the nature of warfare from inter to intra state conflict. Since the end of the Cold War mass displacement has increasingly been caused by the very governments supposedly responsible for the protection of civilians.¹⁵¹ The role of the UNHCR, and its mandate has therefore evolved to consider and protect IDPs as well as refugees.¹⁵² In 1972 (with reference to IDPs in Sudan), the General Assembly authorised UNHCR to provide assistance to ‘refugees and other displaced persons’.¹⁵³ Since 1972, the mandate has been further extended to IDPs, covering not only 1951 Convention refugees,¹⁵⁴ but also refugees as defined in the 1969 OAU Convention¹⁵⁵ and the 1984 Cartagena Declaration,¹⁵⁶ returnees and stateless persons.¹⁵⁷

¹⁴⁶ UNHCR, ‘History of UNHCR’, <http://www.unhcr.org/pages/49c3646cbc.html> [Accessed: 8 March 2016].

¹⁴⁷ Lanz, ‘Subversion or Reinvention’, p. 194.

¹⁴⁸ Erika Feller, ‘UNHCR’s role in IDP protection: opportunities and challenges’, *Forced Migration Review*, 2006, p. 11, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/07.pdf> [Accessed: 8 March 2016].

¹⁴⁹ Referring here to Geneva Conventions of 1949 and additional protocols of 1977.

¹⁵⁰ Maria Camilleri, ‘Refugees in all but name? Should UNHCR’s mandate offer protection to IDPs?’, *NTNU and Forced Migration Review*, Conference Report, 2003, p. 23, <http://www.fmreview.org/FMRpdfs/Supplements/TrondheimConf.pdf> [Accessed: 5 September 2015].

¹⁵¹ Camilleri, ‘Refugees in all but name? Should UNHCR’s mandate offer protection to IDPs?’, p. 23.

¹⁵² Lanz, ‘Subversion or Reinvention’, p. 196.

¹⁵³ UN General Assembly, ‘Resolution 2956: Assistance to Sudanese refugees returning from abroad’, 12 December 1972, para. 2, <http://www.un.org/documents/ga/res/27/ares27.htm> [Accessed: 21 April 2016].

¹⁵⁴ For this definition of ‘refugee’, see: UNHCR, ‘Convention Relating to the Status of Refugees’, Art. 1(A), p. 14.

¹⁵⁵ Extended the definition of ‘refugee’ to include IDPs: ‘The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.’

OAU ‘Convention Governing the Specific Aspects of Refugee Problems in Africa’, Art. 1.2, p. 3.

¹⁵⁶ Art. III (9) ‘express[ing] its concern at the situation of displaced persons within their own countries. In this connection, the Colloquium calls on national authorities and the competent international organizations to offer protection and assistance to those persons and to help relieve the hardship which many of them face.’

UNHCR, ‘Cartagena Declaration on Refugees’. 1984, <http://www.unhcr.org/45dc19084.html> [Accessed: 8 May 2016].

¹⁵⁷ See the 1954 Convention Relating to the Status of Stateless Persons.

Phuong, *The International Protection of Internally Displaced Persons*, p. 80.

UNHCR supported IDPs in 15 operations from 1971 to 1991, and by the end of the Cold War internal displacement was at the 'centre of the international community's attention'.¹⁵⁸ The limitations of such operations have, however, been noted with Lanz arguing that in most cases the programmes protecting IDPs were linked to programmes for refugees in the context of repatriation or post-conflict reconstruction schemes.¹⁵⁹ This point is critical in understanding where UNHCR's priorities lie.

The 'cluster approach' was instituted in 2006 intended to strengthen the overall coordination of humanitarian assistance, and address gaps.¹⁶⁰ Such gaps include UNHCR's failure to manage the wide-range of responsibilities necessary for the protection of IDPs.¹⁶¹ It covers situations of internal displacement whereby the Inter-Agency Standing Committee (IASC)¹⁶² brings together UN and non-UN partners to work in collaboration on providing protection and assistance to IDPs.¹⁶³ In recognising the growing pressure for a more concerted response by the international community to IDP needs, the new approach intended to 'address response gaps in the context of a reinforced partnership among the United Nations system, governments, the Red Cross movement and non-governmental organizations (NGOs)'.¹⁶⁴ This included addressing response gaps in relation to IDPs.

Cohen makes the pertinent argument that there is a need for UN reform to 'encourage greater national and international involvement with IDPs', and 'it is time for the UN to act on the ideals upon which it was founded'.¹⁶⁵ This is the main argument of this thesis, namely that the response of the international community must shift when national authorities fail to provide protection and welfare to their citizens.¹⁶⁶ This section draws attention to the weaknesses in the international framework in the protection of IDPs as there is still no single

¹⁵⁸ Lanz, 'Subversion or Reinvention', p. 196.

¹⁵⁹ *Ibid.*

¹⁶⁰ UNHCR Standing Committee, 'UNHCR's Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations', 8 June 2006, <http://www.unhcr.org/44892fc82.html> [Accessed: 8 March 2016].

¹⁶¹ Lanz, 'Subversion or Reinvention'.

¹⁶² The primary mechanism for the co-ordination of humanitarian assistance made up of the Emergency Relief Co-ordinator, the heads of major relief and development organisations, NGO umbrella groups and the Red Cross/Red Crescent movement.

¹⁶³ Lanz, 'Subversion or Reinvention', pp. 199-200; Feller, 'UNHCR's role in IDP protection', p. 12.

¹⁶⁴ UNHCR Standing Committee, 'UNHCR's Expanded Role', p. 3.

¹⁶⁵ Cohen, 'Strengthening Protection of IDPs', p. 101.

¹⁶⁶ *Ibid.*, p. 102.

UN agency working to protect IDPs, thus pointing to the need for a review of the current institutional framework.

The mandate and principles of the International Criminal Court (ICC) offers an interesting and relevant comparison to those of the UNHCR. Article 17 of the Rome Statute states that:

[T]he Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is *unwilling* or unable genuinely to carry out the investigation or prosecution;¹⁶⁷

What is notable is the fact that the ICC is an institution that rests on the principle of only coming in where the state is unable or *unwilling* to intervene – a principle UNHCR could adopt to further assist IDPs.

1.6 RESPONSIBILITY TO PROTECT VERSUS STATE SOVEREIGNTY DEBATE

Central to any discussion on the protection of IDPs is the debate between responsibility to protect versus respect for state sovereignty. Deng describes it as ‘a national crisis of identity which leaves a vacuum of responsibility’.¹⁶⁸ This section considers both the international and the regional responsibilities to protect civilians alongside key arguments defending state sovereignty.¹⁶⁹ While state sovereignty is a recognised normative framework, in looking at the relevant literature one of the main arguments of this thesis is introduced: that the responsibility to protect the individual is of greater importance than the sovereignty of an arguably corrupt and irresponsible government.

¹⁶⁷ The ICC, ‘The Rome Statute of the International Criminal Court’, 1998, <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf> [Accessed: 18 November 2016].

¹⁶⁸ Deng, Opening Remarks to ‘Researching Internal Displacement: State of the Art’, p. 5.

¹⁶⁹ While discussion on this debate in this thesis is limited in relation to the IDP question, the extensiveness and evolution of this debate, since coming to the forefront over conflict in Libya, and continuing to play a role in Syria must be noted. For more context on wider discussion, see: Gareth Evans, ‘From Humanitarian Intervention to the Responsibility to Protect’, *ICG*, 31 March 2006, <http://www.crisisgroup.org/en/publication-type/speeches/2006/from-humanitarian-intervention-to-the-responsibility-to-protect.aspx> [Accessed: 3 February 2016]; Daniel Silander, ‘R2P—Principle and Practice? The UNSC on Libya’, *Journal of Applied Security Research*, vol. 8, issue 2, 2013, <http://www.tandfonline.com/doi/abs/10.1080/19361610.2013.765340> [Accessed: 3 February 2016]; Ramesh Thakur, ‘R2P after Libya and Syria: Engaging Emerging Powers’, *The Washington Quarterly*, Spring 2013, https://twq.elliott.gwu.edu/sites/twq.elliott.gwu.edu/files/downloads/twq_Spring2013_Thakur.pdf [Accessed: 3 February 2016].

International responsibility to protect

The need to review the responsibilities to protect individuals on an international platform arose after UN peacekeepers failed to protect civilians in the 1990s.¹⁷⁰ As stated in the 2000 Report on the Panel on United Nations Peace Operations (henceforth referred to as the Brahimi Report), '[n]o failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor.'¹⁷¹ By conservative estimates, around 1.5 million civilians were killed while peacekeepers were in Angola (1991-1995), Somalia (1992-1995), Rwanda (1993-1996) and Bosnia (1992-1999).¹⁷²

Some years later, the idea of the responsibility to protect was adopted at the UN's 2005 World Summit.¹⁷³ Published by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, the R2P report outlined two basic principles:

- (i) State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself;
- (ii) Where a population is suffering serious harm [...] and the state itself is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.¹⁷⁴

Beyond this, five factors of the R2P report, of central importance to the discussion on the protection of IDPs include: (i) the prevention of armed conflicts; (ii) the protection of civilians in armed conflict; (iii) the strengthening of judicial systems to end impunity; (iv) information analysis and early warning and (v) swift and decisive action, including military intervention.¹⁷⁵ It is important to note here what the state is expected to do to be respected for such

¹⁷⁰ Alex J. Bellamy and Charles T. Hunt, 'Twenty-first century UN peace operations: protection, force and the changing security environment', *International Affairs*, vol. 91, no. 6, 2015, p. 1279, <http://onlinelibrary.wiley.com/doi/10.1111/1468-2346.12456/abstract> [Accessed: 3 February 2016].

¹⁷¹ UN Secretary General, 'Report on the Panel on United Nations Peace Operations' (Brahimi Report), 2000, p. ix, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/55/305 [Accessed: 10 February 2016].

¹⁷² For more context and information on these cases, and others illustrating the failure of UN peacekeeping in the 1990s, see: Alex J. Bellamy and Paul D. Williams, *Understanding Peacekeeping*, (Polity Press: Cambridge, 2010), pp. 104-111; Evans, 'From Humanitarian Intervention to the Responsibility to Protect'; Max W. Matthews, 'Tracking the Emergence of a New International Norm: The Responsibility to Protect and the Crisis in Darfur', *Boston College International and Comparative Law Review*, vol. 31, issue. 1, 2008, p. 139, <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1042&context=iclr> [Accessed: 5 May 2016].

¹⁷³ Alex J. Bellamy, 'Realizing the Responsibility to Protect', *International Studies Perspectives*, vol. 10, issue. 2, 2009, p. 111, <http://onlinelibrary.wiley.com/doi/10.1111/j.1528-3585.2009.00365.x/abstract> [Accessed: 10 February 2016].

¹⁷⁴ ICISS, 'The Responsibility to Protect', December 2001, p. XI, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/57/303 [Accessed: 10 February 2016].

¹⁷⁵ Musifiky Mwanasali, 'Africa's Responsibility to Protect', in Adekeye Adebajo and Helen Scanlon (eds.), *A Dialogue of the Deaf* (Fanele: Auckland Park, 2006), p. 89.

sovereign status, and where and when the international community can step in. Such factors are essential in subsequent arguments indicating where the international community and national authorities failed to adequately protect, therefore accentuating the gap between expectations and reality.

One of the resounding notions behind the 2001 R2P report is the movement away from a state sovereignty oriented approach, towards a human-rights oriented approach with a focus on individual human beings as opposed to state interests.¹⁷⁶ Thomas Weiss states: 'The notion that human beings matter more than sovereignty radiated brightly, albeit briefly, across the international political horizon of the 1990s'.¹⁷⁷ These notions are further indicated in the three pillars the R2P rests on; paraphrased from the Outcome Document of the 2005 UN World Summit:

- (i) The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
- (ii) The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
- (iii) The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations.¹⁷⁸

Alexander Betts similarly points out that:

[I]nternational recognition of the plight of refugees and IDPs has been at the heart of the gradual shift away from absolute and unconditional state sovereignty toward recognition of the need for states to earn sovereignty through their respect for human rights'.¹⁷⁹

Such a shift is of great importance to this discussion; however the reality of how far these principles are applied in practice remains under question.

Annan, nonetheless, draws links between the R2P Principles and the notion of 'sovereignty as responsibility'.¹⁸⁰ While recognising the fundamental need for 'collective action', and the

¹⁷⁶ Brian Barbour and Brian Gorlick, 'Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims', *Oxford University Press*, 2008, p. 537, <http://ijrl.oxfordjournals.org/content/20/4/533.abstract> [Accessed: 9 February 2016].

¹⁷⁷ Thomas G. Weiss, 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *PRIO*, vol. 35, no. 2, 2004, p. 135, <http://sdi.sagepub.com/content/35/2/135.abstract> [Accessed: 10 February 2016].

¹⁷⁸ UN General Assembly, '2005 World Summit Outcome', para. 138-140, <http://www.un.org/en/preventgenocide/adviser/pdf/World%20Summit%20Outcome%20Document.pdf#page=30> [Accessed: 10 February 2016].

¹⁷⁹ Alexander Betts, *Forced Migration and Global Politics*, (Wiley-Blackwells: Oxford, 2009) p. 44.

¹⁸⁰ Mwanasali, 'Africa's Responsibility to Protect', p. 91.

need to 'come together to bring about far-reaching change', he reiterates the importance of state sovereignty, stating:

Sovereign States are the basic and indispensable building blocks of the international system. It is their job to guarantee the rights of their citizens, to protect them from crime, violence and aggression, and to provide the framework of freedom under law in which individuals can prosper and society develop. If States are fragile, the peoples of the world will not enjoy the security, development and justice that are their right. Therefore, one of the great challenges of the new millennium is to ensure that all States are strong enough to meet the many challenges they face.¹⁸¹

In later writings, Annan considers the practises of R2P on the ground in Darfur in 2007, arguing, '[i]t was not a true humanitarian intervention upholding the Responsibility to Protect'.¹⁸² In its resources, mandate and intent it was not able to meet the fundamental challenge of protecting the people of Darfur from the gross violations of human rights they endured.¹⁸³ Ultimately of great significance to this discussion, he affirms, through the Darfur example, how sovereignty cannot and should not get in the way of protection.¹⁸⁴

There was a surge of criticism of the R2P principles, claiming they defied state sovereignty and were a Northern imposed initiative at the expense of the global South. Certain states expressed worry about the close association of R2P with 'humanitarian intervention', and that these principles would be used as a justification for invasion.¹⁸⁵ For instance, at the 2005 World Summit, President Robert Mugabe of Zimbabwe and Prime Minister Abdullah Ahmad Badawi of Malaysia, among others, cautioned the R2P concept of stronger countries potentially defying the sovereignty of weaker countries. Mugabe stated:

Concepts such as "humanitarian intervention" and the "responsibility to protect" need careful scrutiny in order to test the motives of their proponents. [...] We need to avoid situations where few countries, by virtue of their privileged positions, dictate the agenda for everybody else. We have witnessed instances where the sovereignty and territorial integrity of small and weak countries have been violated by the mighty and powerful, in defiance of agreed rules of procedures and the provisions of the United Nations Charter.¹⁸⁶

¹⁸¹ Kofi Annan, 'In larger freedom: towards development, security and human rights for all', Report of the Secretary-General, *UN General Assembly*, 21 March 2005, pp. 5-6, http://www.preventionweb.net/files/13545_13545A592005SGReportInLargerFreedom.pdf [Accessed: 4 March 2016].

¹⁸² Kofi Annan, *Interventions: A Life in War and Peace*, (Allen Lane: London, 2012), p. 131.

¹⁸³ *Ibid.*, p. 132.

¹⁸⁴ *Ibid.*, p. 133.

¹⁸⁵ Bellamy, 'Realizing the Responsibility to Protect', pp. 112-113.

¹⁸⁶ Statement by President Robert Mugabe to the High-level Plenary Meeting of the General Assembly, New York, 14 September 2005, <http://www.un.org/webcast/summit2005/statements/zim050914eng.pdf> [Accessed: 4 March 2016].

Badawi expressed similar concerns that ‘any intervention must give due recognition to Charter principles pertaining to sovereignty, territorial integrity and non-interference.’¹⁸⁷ From an academic standpoint, Weiss also critiques the concept, arguing that it is not innovative enough and will only really succeed with the backing of the United States (US).¹⁸⁸ He contextualises this point in considering the moral shift after the events of 11 September 2001, claiming ‘[t]he new focus became rules of the game for pre-emptive war and fighting terrorism’.¹⁸⁹

Deng introduces a key dilemma between international assistance and state sovereignty, stating:

People who are marginalised or dispossessed fall into that vacuum. Where do they turn but to the international community? And yet, when they do so, they are confronted with the obstacle of sovereignty.¹⁹⁰

This dilemma is illustrated in reference to UNHCR, whereby in maintaining the ‘non-political’ nature of its mandate, UNHCR’s efforts to provide effective protection can put the agency into direct conflict with government entities.¹⁹¹ Camilleri presents the case of Yugoslavia in 1995 to illustrate this point. Following UNHCR’s efforts to provide effective protection putting the agency into direct conflict with government entities, Yugoslavia enabled Serb forces to flout the UN Security Council Resolution establishing Srebrenica as a safe haven and to subsequently murder 8 000 Muslims.¹⁹²

Notable to this discussion is the issue of what is to happen when the government has failed to protect its citizens and needs foreign assistance to provide such protection.¹⁹³ Brian Barbour and Brian Gorlick expand this, considering the problem that agencies seeking to help IDPs have to obtain permission from a state that is often the same political authority responsible for the displacement and/or abuse.¹⁹⁴ This point is of central importance to the

¹⁸⁷ Statement by Prime Minister Abdullah Ahmad Badawi to to the High-level Plenary Meeting of the General Assembly, New York, 14 September 2005, <http://www.un.org/webcast/summit2005/statements/malaysia050914eng.pdf> [Accessed: 4 March 2016].

¹⁸⁸ Weiss, ‘The Sunset of Humanitarian Intervention?’, p. 149.

¹⁸⁹ *Ibid.*, p. 136.

¹⁹⁰ Deng, Opening Remarks to ‘Researching Internal Displacement: State of the Art’, p. 5.

¹⁹¹ Camilleri, ‘Refugees in all but name? Should UNHCR’s mandate offer protection to IDPs?’, p. 23.

¹⁹² *Ibid.*

¹⁹³ Deng, ‘The international challenge of state failure’, pp. 124-125.

¹⁹⁴ Barbour and Gorlick, ‘Embracing the ‘Responsibility to Protect’’, p. 562.

case study of South Sudan, and emphasises how the protection of civilians matters more than the sovereignty of a dysfunctional and conflict-engulfed state.

In response to much of the criticism, UN Secretary General, Ban Ki-moon argues that R2P ‘speaks to the things that are most noble and most enduring in the human condition’.¹⁹⁵ Bellamy acclaims the adoption of the R2P principles as ‘[o]ne of the few real achievements of the UN’s 2005 World Summit’, and defends them as having the potential to make a great deal of difference.¹⁹⁶ Barbour and Gorlick also support the principles, making specific reference to IDPs, arguing R2P ‘presents an excellent opportunity to fill gaps often experienced by refugees and internally displaced persons’.¹⁹⁷ They further suggest it opens up the possibility for the adoption of a legal framework for the protection of IDPs.¹⁹⁸ However, while the achievements in opening dialogue are commendable, the practice may be flawed, with examples such as Darfur revealing fundamental weaknesses and dilemmas of R2P at an international level.¹⁹⁹

Regional responsibility to protect

In 2005, Annan suggested that regional organisations, such as the AU, should receive greater assistance in the protection of IDPs, stating that ‘[o]ther priorities include [...] ensuring better protection of internally displaced people. Regional organizations, particularly the African Union, should be given greater support’.²⁰⁰ While there is no AU legal document that explicitly mentions their responsibility to protect, it is central to the AU mandate. Article 3(h) of The Constitutive Act of the AU (2000) states:

¹⁹⁵ Ban Ki-moon, ‘Secretary-General Defends, Clarifies ‘Responsibility to Protect’ at Berlin event on ‘Responsible Sovereignty: International Cooperation for a Changed World’, *UN Press Release*, 15 July 2008, <http://www.un.org/press/en/2008/sgsm11701.doc.htm> [Accessed: 10 February 2016].

¹⁹⁶ Bellamy, ‘Realizing the Responsibility to Protect’, p. 111.

¹⁹⁷ Barbour and Gorlick, ‘Embracing the ‘Responsibility to Protect’’, p. 555.

¹⁹⁸ *Ibid.*

¹⁹⁹ For more information and analysis on the case of Darfur (and other more recent cases, such as CAR, Côte d’Ivoire, the DRC and Mali), indicating flaws in R2P, see: Bellamy and Hunt, ‘Twenty-first century UN peace operations’; Matthews, ‘Tracking the Emergence of a New International Norm’; Hugo Slim, ‘Dithering over Darfur? A preliminary review of the international response’, *International Affairs*, vol. 80, issue. 5, October 2004, <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2346.2004.00420.x/abstract> [Accessed: 5 May 2016]; Bellamy,

‘Realizing the Responsibility to Protect’.

²⁰⁰ Annan, ‘In larger freedom’, p. 5.

The objectives of the Union shall be to promote and protect human and peoples' rights in accordance with the African Charter on Human Peoples' Rights and other relevant human rights instruments,²⁰¹

Similarly, with reference to the use of force and intervention to uphold such responsibilities, Article 4(h) offers:

[T]he right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;²⁰²

Musifiky Mwanasali presents an example of attempted protection from the regional level in Darfur in 2004.²⁰³ While the soft mandate of the AU Mission in the Sudan (AMIS) recognised that the 'protection of civilian population is the responsibility of the Government of Sudan', it still noted the need to 'protect civilians whom it encounters under imminent threat and in the immediate vicinity'.²⁰⁴ Similarly to Annan, Mwanasali argues that the Darfur case is illustrative of what can go wrong with R2P concept, when rhetoric on international norms is not translated into robust action on the ground to uphold them, describing the case as 'mission impossible'.²⁰⁵ He further maintains that while AMIS was a symbol of an 'African solution to African problems', it was seriously flawed in demonstrating the limits of collective action.²⁰⁶

The R2P principles are important to this discussion in supporting the argument that South Sudan is an archetypal case demonstrating circumstances where the international community should step in and protect IDPs. However, discussion around these principles also illustrates the immense complications with notions of protection, and ultimately indicates how a report alone cannot significantly alter the practises and actions of the international community. Ingrid Breidlid and Jon Lie emphasise this point in questioning protection practices in general. They argue that the debate on the protection of civilians must raise the essential question as to whether the focus should remain on the UN's ability to protect, or if it should shift towards

²⁰¹ AU, 'Constitutive Act of the African Union', 2000, Art. 3(h), http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf [Accessed: 3 March 2016].

²⁰² *Ibid.*

²⁰³ Mwanasali, 'Africa's Responsibility to Protect', pp. 94-98.

²⁰⁴ AU, 'Communiqué of the Seventeenth Meeting of the Peace and Security Council', Addis Ababa, 20 October 2004, p. 2, http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/RO%20PSC%20PR%20Comm_XVII.pdf [Accessed: 4 March 2016].

²⁰⁵ Mwanasali, 'Africa's Responsibility to Protect', p. 95.

²⁰⁶ *Ibid.*, p. 97.

how the UN can act in enabling the national authorities to protect their own citizens.²⁰⁷ In contrast, Mwanasali takes note of the role of regional bodies, as well as the international community, yet stresses the prime responsibility as lying with national and local actors, with organisations such as the AU or UN playing an advisory and supportive role.²⁰⁸ R2P should be seen as a potential framework for IDP protection in cases where the state does not comply in ensuring the protection of its citizens.

1.7 CONCLUSION

This chapter provides context as to why the question concerning whose responsibility it is to protect IDPs needs to be asked. It ultimately argues that there is a need to re-address the protection responsibilities and efforts shown towards IDPs. The gaps in the literature are revealed in the fact that there still exists a certain degree of ambiguity over the definition of an IDP, while there is a great deal more assured discussion on refugees. Of much importance to the main argument is the limited legal status provided to IDPs, and coinciding arguments that greater legal rights are not necessarily required. One of the main debates in this thesis is whether protection should come from the international community, or national authorities; discussion on the R2P principles versus state sovereignty provides invaluable context here. The review of current literature provides the rationale for this thesis, as while there is increasing recognition for the protection of IDPs, the need to assess who should be responsible remains. Discussion on key literature and legal discourse shows that legally the protection of IDPs is the responsibility of the state, however as argued in the subsequent discussion, in reality this is rarely the case.

²⁰⁷ Ingrid Breidlid and Jon H.S. Lie, 'Challenges to Protection of Civilians in South Sudan: A Warning from Jonglei State', *Norwegian Institute of International Affairs, Security in Practise* 8, 2011, p. 40, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=131288> [Accessed: 4 February 2016].

²⁰⁸ Mwanasali, 'Africa's Responsibility to Protect', p. 108.

CHAPTER II: Background to South Sudan

2.1 HISTORY OF CONFLICT

South Sudan has faced a long history of violence, with civilians suffering huge atrocities as direct targets in the conflict.²⁰⁹ As stated by Wendy Fenton and Sean Loughnago, '[s]ince the country achieved independence from colonial rule in 1956, peace or the absence of civil war has been the exception rather than the rule'.²¹⁰ In summarising South Sudan's history of conflict, Hovil draws attention to the plight of the people of South Sudan stating:

All of the conflicts have reflected, at some level, the reality of people living on the peripheries, experiencing a second class form of citizenship, unable to participate meaningfully in the political governance of their country.²¹¹

The first civil war between the North and the South²¹² broke out on the eve of independence from Britain in 1956.²¹³ The goal was independence and an end to quasi-autonomy for Southern Sudan. The conflict resulted in around 500 000 deaths, 180 000 refugees and up to one million IDPs, before the Addis Ababa Agreement was finally reached ceasing hostilities in 1972.²¹⁴ However, this peace agreement did not last long and by 1983 fighting resumed between the Sudan People's Liberation Army/Movement (SPLA/M) and the Sudanese government, with the second civil war, dubbed the 'war of revolution' lasting until 2005.²¹⁵ Characterised by systematic targeting of civilians by both sides, this war left two million people dead, over four million internally displaced and at least 800 000 forced to flee as refugees.²¹⁶

²⁰⁹ Casie Copeland, 'Dancing in the Dark: Divergent approaches to improving security and justice in South Sudan', *Clingendael*, June 2015, p. 4; South Sudan Humanitarian Project, 'South Sudan Macro-Conflict Analysis: Informing Operating Assumptions of Humanitarian Action', Workshop Outcome Paper, July 2015, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/SSudan-Macro-Conflict-Analysis-July-2015.pdf> [Accessed: 18 January 2016].

²¹⁰ Wendy Fenton and Sean Loughna, 'The search for common ground: Civil-military coordination and the protection of civilians in South Sudan', *Humanitarian Policy Group*, December 2013, pp. 5-6, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8784.pdf> [Accessed: 20 January 2016].

²¹¹ Lucy Hovil, 'Darfurians in South Sudan: Negotiating belonging in two Sudans', *International Refugee Rights Initiative*, Working paper 7, May 2012, p. 1, <http://www.refugee-rights.org/Assets/PDFs/2012/DarfuriansinSouthSudanFINAL1.pdf> [Accessed: 26 January 2016].

²¹² Officially known as the Anya Nya war.

²¹³ LeRiche and Arnold, *South Sudan*, pp. 1-2.

²¹⁴ LeRiche and Arnold, *South Sudan*, pp. 1-2; Fenton and Loughna, 'The search for common ground', pp. 5-6.

²¹⁵ LeRiche and Arnold, *South Sudan*, pp. 1-2.

²¹⁶ *Ibid.*

The second civil war was Africa's longest civil war ending on 9 January 2005 with the signing of the CPA.²¹⁷ The CPA was heralded as a 'landmark peace agreement' in setting out benchmarks for achieving a just and sustainable peace, outlining a timetable by which the South was to hold a referendum on independence.²¹⁸ The CPA therefore attracted much international attention – as is discussed later in this chapter. There are multiple components of the CPA which have been deemed ineffective and, as later discussed, have subsequently contributed to post-independence challenges. Mahmood Mamdani described it as a 'shoddy' affair that was too rushed in order to speed up the birth of an independent South,²¹⁹ while UN officials and Sudan observers criticised the implementation for being selective and 'at times deliberately slow'.²²⁰ A notable flaw was the lack of an explicit solution for conflict in the border states such as South Kordofan and Blue Nile,²²¹ and so by June 2011 conflict there had resumed.²²² Lauren Hutton argues that many of the challenges facing South Sudan, and IDPs in particular stem from the way the CPA was constructed, as the main concern was limited to North-South relations, rather than addressing conflict and displacement within each country.²²³ Important to this discussion, the CPA also promised to:

Find a comprehensive solution that addresses the economic and social deterioration of the Sudan and replace war not just with peace, but also with social, political and economic justice which respects the fundamental human and political rights of all the Sudanese people.²²⁴

However, as this thesis continues to argue, the fundamental human and political rights of many IDPs have not been respected, and therefore the promise of respecting such rights of *all* the Sudanese people has not been satisfied.

²¹⁷ Fenton and Loughna, 'The search for common ground', pp. 5-6.

²¹⁸ *Ibid.*

²¹⁹ Mahmood Mamdani, 'South Sudan: No Power-Sharing Without Reform'. *New Vision: Uganda's Leading Daily*, 12 February 2014, http://www.newvision.co.ug/new_vision/news/1337617/south-sudan-power-sharing-reform [Accessed: 21 January 2016].

²²⁰ Ted Dagne, 'The Republic of South Sudan: Opportunities and Challenges for Africa's Newest Country', *U.S. Congressional Research Service*, Report R41900, 16 September 2011, p. 6, <http://www.fas.org/sgp/crs/row/R41900.pdf> [Accessed: 21 January 2016].

²²¹ Chapter III, 1.6 of the CPA only states that: 'The Parties agree that Nuba Mountains, Southern Blue Nile, Abyei and other war affected areas face serious needs to: (i) be able to perform basic government functions, (ii) establish and build civil administration and (iii) rehabilitate and reconstruct/construct the social and physical infrastructure in a post-conflict Sudan.'

UNMIS, 'Comprehensive Peace Agreement', 2005, <https://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf> [Accessed: 8 May 2016].

²²² Claudio Gramizzi and Jérôme Tubiana, 'New war, Old enemies: Conflict Dynamics in South Kordofan'. *Small Arms Survey*, HSBA Working Paper 29 April 2013, <http://www.smallarmssurveysudan.org/fileadmin/docs/working-papers/HSBA-WP29-S.Kordofan.pdf> [Accessed: 21 January 2016].

²²³ Lauren Hutton, interview, 2 February 2016.

²²⁴ UNMIS, 'Comprehensive Peace Agreement', Chapter I, 1.5.2.

The referendum in January 2011 resulted in 98.83 per cent voting for separation.²²⁵ Southern Sudan had however requested greater independence as early as 1954 at the second Juba Conference calling for an autonomous South within Sudan and, failing that, self-determination leading to possible independence.²²⁶ The fact that it took almost six decades of conflict, and the death and displacement of millions of civilians, before South Sudan was granted the opportunity to secede from the North, further indicates the extreme marginalisation, and failure to address fundamental grievances and the demands of the South Sudanese people.

South Sudan's referendum was surrounded by much hope and optimism. One citizen exclaimed: 'We want to show off Juba to the world. We are tired of war. Now we want to build',²²⁷ while an NGO report declared: 'If the feeling of 9 July continues, it is the dawn of an extraordinary era'.²²⁸ In his address at Independence Day celebrations in Juba, Ban Ki-moon expressed similar sentiments:

Today, we open a new chapter – a day when the people of South Sudan claim the freedom and dignity that are their birth right. Together, we welcome the Republic of South Sudan to the community of nations. Together, we affirm our commitment to helping it meet its many responsibilities as a nation.²²⁹

This statement also emphasises the international community's commitment to the new nation. However, such optimism was short-lived with violence continuing over border and oil disputes and the outbreak of civil war in December 2013.²³⁰

Initially sparked by a political dispute between President Salva Kiir, head of the ruling SPLA/M and former Vice President Riek Machar, leader of the SPLA/M-in-Opposition (SPLA/M-IO),²³¹

²²⁵ LeRiche and Arnold, *South Sudan*, p. 23.

²²⁶ Andrew S. Natsios, *Sudan, South Sudan, & Darfur: What Everyone Needs to Know* (Oxford University Press: Oxford, 2012), p. 40.

²²⁷ John Bol cited in Gregg Carlstrom, 'Celebrations in S Sudan but challenges ahead', *Al Jazeera*, 8 July 2011, <http://www.aljazeera.com/indepth/spotlight/southsudanindependence/2011/07/201178175428854580.html> [Accessed: 29 January 2016].

²²⁸ Safer World, 'South Sudan Monitor', July 2011, p. 2, <http://www.saferworld.org.uk/downloads/pubdocs/SSMJJuly2011.pdf> [Accessed: 2 February 2016].

²²⁹ Ban Ki-moon cited in Safer World, 'South Sudan Monitor', p. 2.

²³⁰ LeRiche and Arnold, *South Sudan*; South Sudan Humanitarian Project, 'Situational Analysis: Malakal POC Site', February 2015, p.1, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Malakal-Situation-Analysis-External-Version.pdf> [Accessed: 12 January 2016].

²³¹ Following Kiir's decision to devolve his cabinet and dismiss Machar.

the reasons for the outbreak of civil war are contested.²³² Some Western narratives, such as views presented in the media specifically by Daniel Howden and Richard Dowden,²³³ have been criticised by scholars for being too simplistic and ethnically focused.²³⁴ For instance, Jeremy Astill-Brown argues that the original causes of conflict are ‘more likely to be found in the personal rivalries in a multi-ethnic group of self-serving individuals within the elite’.²³⁵ Similarly, Douglas Johnston specifically notes the impact the decades of civil war had on triggering the outbreak of conflict in December 2013.²³⁶

Luka Biong Deng²³⁷ provides a thorough analysis breaking the issues that contributed to the outbreak of civil war into six main components: first, the unstable management of transition from civil war to peace in 2005, liberation to government and a united Sudan to an independent county; second, the SPLM leadership shock with the death of John Garang in 2005; third, the ‘curse’ of oil and liberation, as South Sudan was 98 per cent dependent on oil in 2013; fourth, the consequences of the poor implementation of the CPA with grievances buried and not adequately addressed; fifth, the weak institution of the SPLM – an issue considered in greater depth later in this discussion; finally, the trap of being, as referred to by Paul Collier, the ‘bottom billion’.²³⁸ The key factors here are the curse of liberation, the politics of natural resource revenue and land-locked resources with bad neighbours and a prolonged period of bad governance.²³⁹ Such an analysis indicates the complexity of the breakdown and challenges narratives that overstate the role of ethnicity in the outbreak of

²³² Brian Garst, ‘Stumbling Toward Peace in South Sudan’, *Center for Freedom and Prosperity*, August 2015, p. 1, http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Stumbling_Toward_Peace_in_South_Sudan.pdf [Accessed: 18 January 2016].

²³³ Daniel Howden, ‘How Hollywood cloaked South Sudan in celebrity and fell for the ‘big lie’’, *The Guardian*, 28 December 2013, <http://www.theguardian.com/world/2013/dec/28/reality-of-south-sudan-and-hollywood-stars> [Accessed: 25 April 2016]; Richard Dowden, ‘South Sudan’s leaders have learnt nothing from 50 years of independence in Africa’, *African Arguments*, 22 January 2014, <http://africanarguments.org/2014/01/22/south-sudans-leaders-have-learnt-nothing-from-50-years-of-independence-in-africa-by-richard-dowden/> [Accessed: 25 April 2016].

²³⁴ Douglas H. Johnson, ‘Briefing: The Crisis in South Sudan’, *African Affairs*, April 2014, pp. 2-3, <http://afraf.oxfordjournals.org> [Accessed: 3 February 2016]; Jeremy Astill-Brown, ‘South Sudan’s Slide into Conflict: Revisiting the Past and Reassessing Partnerships’, *Chatham House: The Royal Institute of International Affairs*, 2014, p. 8, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/20141203SouthSudanConflictAstillBrown.pdf> [Accessed: 27 January 2016].

²³⁵ Astill-Brown, ‘South Sudan’s Slide into Conflict’, p. 11.

²³⁶ Johnson, ‘Briefing: The Crisis in South Sudan’, pp. 2-3.

²³⁷ A former Minister in the Office of the President of South Sudan.

²³⁸ For more context on Collier’s notion of the ‘bottom billion’, see: Paul Collier, *The Bottom Billion*, (Oxford University Press: New York, 2008).

²³⁹ Luka Biong Deng at ODI talk, ‘South Sudan: the path for peace’, 1 February 2016, <http://www.odi.org/events/4331-south-sudan-path-peace> [Accessed: 2 February 2016].

conflict. This analysis also points to key factors making South Sudan a unique case with multiple challenges in forming a new state.

In December 2013, the conflict rapidly spread out of Juba engulfing much of Upper Nile, Jonglei and Unity with devastating effects.²⁴⁰ Øystein Rolandsen, Helene Glomnes, Sebatatso Manoeli and Fanny Nicolaisen state: 'It soon proved to be a disaster for the population, a threat to the integrity of the world's youngest state and an embarrassment and conundrum to the international community'.²⁴¹ Similarly to South Sudan's previous civil wars the violence has resulted in brutal targeting of civilians based on their location, ethnicity and gender, forcing hundreds of thousands to flee in search of safety.²⁴² It has been described as a 'crisis of protection' with an increasingly desperate humanitarian situation²⁴³ – as is analysed later in this discussion.²⁴⁴

This history of conflict in South Sudan presented in this chapter indicates how civilians have suffered for decades and demonstrates the instability and weakness of the newly formed government. As argued by Astill-Brown: 'The psychological damage to people – and to a country that was slowly shedding the spectre of civil war – is enormous.'²⁴⁵ South Sudan is the world's newest country, and is therefore unique in addressing the challenges of displacement, as the existing challenges facing national authorities in fulfilling their duties to protect are compounded by complications of the civil war in addition to being a newly emerging state with a nascent government. Such an understanding is crucial for the main discussion in questioning how the government is effectively able to protect and provide for the millions of IDPs.

²⁴⁰ Daniel Maxwell, Martina Santschi, Leben Moro, Rachel Gordon and Philip Dau, 'Researching livelihoods and services affected by conflict: Questions and Challenges Raised by a Large-Scale Humanitarian Operation in South Sudan', *Secure Livelihoods Research Consortium*, May 2015, p. 6, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Questions-and-Challenges-Raised-by-a-Large-Scale-Humanitarian-Operation-in-South.pdf> [Accessed: 12 January 2016].

²⁴¹ Øystein H. Rolandsen, Helene M. Glomnes, Sebatatso Manoeli and Fanny Nicolaisen, 'A year of South Sudan's third civil war', *International Area Studies Review*, vol. 18, no. 1, 2015, p. 87, <http://ias.sagepub.com> [Accessed: 3 February 2016].

²⁴² REACH, 'South Sudan: Displacement Trends Analysis', April 2015, <https://data.unhcr.org/SouthSudan/download.php?id=2032> [Accessed: 21 January 2016].

²⁴³ South Sudan Protection Cluster, 'Protection Trends Analysis: January-May', p. 3; Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict', p. 6.

²⁴⁴ It is important to note that the conflict is isolated to three states – Jonglei, Upper Nile and Unity – and therefore displacement is localised, and the situation in the three conflict affected states differs from the rest of the country. This point is important for the focus of this thesis as the needs, and therefore levels of protection can differ between humanitarian and developmental depending on whether the state is directly affected by conflict or not.

²⁴⁵ Astill-Brown, 'South Sudan's Slide into Conflict'.

2.2 DISPLACEMENT TRENDS

As the previous section outlines, South Sudan's war-torn history has resulted in mass displacement both before and after independence. At the dawn of independence, South Sudan had more IDPs than any other country in the world with up to 5.2 million at the end of 2010,²⁴⁶ and it was estimated that up to 80 per cent of South Sudan's population had been displaced at least once in the previous 15 years.²⁴⁷ Such figures did not decrease following independence; the UN reported 350 000 newly displaced people in January 2012.²⁴⁸ This figure was made up of those displaced due to on-going fighting in the border region of Abyei; fighting between SPLA and new militia groups in Unity and Upper Nile states; inter-tribal violence in Jonglei, Lakes, Unity and Warrap states and Lord's Resistance Army (LRA) attacks in Western Bahr el Ghazal and Western Equatoria states.²⁴⁹ The absence of baseline data must be noted here, with data limited to the newly displaced who have been registered and assisted, and figures (especially government figures) are an underestimate.²⁵⁰ Much of this is owing to ongoing hostilities; restrictions on movement of affected populations due to targeted violence; constraints provided by the physical environment (especially the rainy season) and safety risks; as well as the politicisation and militarisation of humanitarian assistance.²⁵¹ These very high displacement figures accentuate the extent to which the protection of IDPs is an issue that needs to be addressed in South Sudan.

Issues were further complicated with South Sudanese who had been displaced before their country's independence and were living in Khartoum. They were no longer considered IDPs, and so faced significant problems in obtaining identity as South Sudanese, nor could they

²⁴⁶ IDMC, 'South Sudan: New displacement adds to critical humanitarian situation in the country since independence', 26 June 2012, p.1, <http://www.internal-displacement.org/assets/library/Africa/South-Sudan/pdf/southsudan-overview-june2012.pdf> [Accessed: 21 January 2016].

²⁴⁷ Hovil, 'Hoping for peace', pp. 8-9.

²⁴⁸ UN OCHA, 'South Sudan: Consolidated Appeal', 2012, p. 1, https://docs.unocha.org/sites/dms/cap/cap_2012_south_sudan.pdf [Accessed: 22 January 2016].

²⁴⁹ UN OCHA, 'South Sudan', p. 1.

²⁵⁰ Chaloka Beyani, 'Report of the Special Rapporteur on the human rights of internally displaced persons: Mission to South Sudan', *Human Rights Council*, 2 May 2014, p. 15, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-33-Add3_en.doc [Accessed: 11 February 2016].

²⁵¹ *Ibid.*

easily get permits to remain in Sudan.²⁵² In November 2010, between the signing of the CPA and the eve of the referendum, approximately two million people returned to South Sudan, and by May 2012, the IOM were flying thousands of returnees back to Juba.²⁵³ Future challenges were predicted with an Overseas Development Institute (ODI) report warning of the 'impoverished and ill-prepared social and economic post-war environment'.²⁵⁴ This indicates the complexity and extent of the IDP situation in South Sudan even before the outbreak of civil war in 2013, pointing to both the potential for injustices faced by IDPs as well as difficulties in response, provision and protection.

Displacement figures have escalated since the outbreak of conflict in December 2013; UNHCR reported over 1.6 million IDPs in South Sudan in December 2015.²⁵⁵ Patterns of displacement are constantly changing, as many IDPs have been repeatedly displaced.²⁵⁶ Since the beginning of the latest civil war IDPs have been forced to leave their places of refuge, as fighting approaches or due to tensions with local communities.²⁵⁷ Seasonal flooding also poses a threat to thousands of IDPs who have already fled conflict and violence. This was seen in Fangak County, Jongeli State in March 2015 where an estimated 17 000 people were displaced due to flooding, many of whom had previously fled to escape fighting in Unity, Jonglei and Upper Nile.²⁵⁸ Secondary displacement is an important trend to note, emphasising the need for improved protection mechanisms. While all ten states in South Sudan have been affected directly or indirectly by displacement, population movements are unpredictable and difficult to track, hence the need for humanitarian response to be as

²⁵² IDMC, 'South Sudan New displacement adds to critical humanitarian situation in the county since independence', p. 7.

²⁵³ Hovil, 'Hoping for peace', pp. 8-9; Matthew Corrigan, 'The long road to Juba for displaced South Sudanese', *International Refugee Rights Initiative*, 31 July 2012, <http://www.refugee-rights.org/Focus%20on%20Africa/Darfur/08.01.12SouthSudan.html> [Accessed: 25 January 2016].

²⁵⁴ Sara Pantuliano, Margie Buchanan-Smith, Paul Murphy and Irina Mosel, 'The long road home: Opportunities and obstacles to the reintegration of IDPs and refugees returning to Southern Sudan and the Three Areas', Report of Phase II, *HPG ODI*, September 2008, p. 1, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3314.pdf> [Accessed: 26 January 2016].

²⁵⁵ UN OCHA, 'South Sudan: Humanitarian Snapshot (as of 31 December 2015)' 4 January 2016, <http://reliefweb.int/report/south-sudan/south-sudan-humanitarian-snapshot-31-december-2015> [Accessed: 21 January 2016].

²⁵⁶ This is due to a variety of compounding causes which are considered in greater detail later in the discussion. Brookings Institution, 'Durable Solutions to Internal Displacement in South Sudan: A Roundtable Discussion', *Brookings-LSE*, 14 November 2013, p. 1, <http://www.brookings.edu/~media/events/2013/11/14-south-sudan-durable-solutions/brookings-irc-south-sudan-roundtable-nov-2013.pdf> [Accessed: 22 January 2016].

²⁵⁷ South Sudan Protection Cluster, 'Protection Trends Analysis: January-May'.

²⁵⁸ Solidarités International, 'Rapid Assessment Report: TOCH, Fangak County, Jonglei State', 21 March 2015, p. 2, <http://reliefweb.int/sites/reliefweb.int/files/resources/SI%20Rapid%20Assessment%20Report%20-%20Toch%2021%20March%202015.pdf> [Accessed: 9 March 2016].

flexible as possible.²⁵⁹ Ultimately, the extent of internal displacement in South Sudan underlines the need for a study of this nature to address who should be responsible for protecting and providing for the displaced as well as to analyse the levels of protection in light of injustices faced.

Demographic data on IDPs in South Sudan only accounts for those in PoC sites,²⁶⁰ even though the majority of IDPs live outside these sites. Biometric registration data of IDPs in PoC sites from IOM²⁶¹ estimates that the majority are children²⁶² (60 per cent), and there is an overall greater proportion of women (55 per cent) to men (45 per cent).²⁶³ While the proportion of female to male children is virtually equal, adult females make up 62 per cent of the adult population, and males 38 per cent.²⁶⁴ The proportion of women to men in PoC sites is due to a number of factors with absent males reportedly herding cattle, supervising assets at home or engaged in the ongoing conflict.²⁶⁵ Family separation has also resulted in a large proportion of single female-headed households in displacement sites.²⁶⁶ These demographic points are relevant when considering the injustices IDPs face, specifically when looking at vulnerable groups. IDPs in South Sudan are not a homogeneous group, but highly diverse including those displaced by armed conflict, inter-communal and ethnic violence, human rights violations and natural disasters.²⁶⁷

Throughout South Sudan's history the trend in forced displacement includes those fleeing into neighbouring countries as well as refugees from neighbouring countries seeking refuge in South Sudan.²⁶⁸ In 2014, South Sudan was the fifth largest source country of refugees worldwide.²⁶⁹ Regional dynamics of displacement trends should be considered, as in many

²⁵⁹ IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', p. 5.

²⁶⁰ See section 5.2 for detailed explanation of PoC sites.

²⁶¹ Data from eight PoC sites (Juba PoC1, Juba PoC2, Juba PoC3, UNMISS Bor, Bentiu PoC, Malakal PoC, Melut PoC and Wau PoC) gathered between January 2015 and January 2016.

²⁶² Child defined as 0-17 years old.

²⁶³ IOM Registration Data, January 2015-January 2016, <http://www.iomsouthsudan.org/tracking/biometric> [Accessed: 4 March 2016].

²⁶⁴ *Ibid.*

²⁶⁵ REACH, 'South Sudan: Displacement Trends Analysis', p. 9.

²⁶⁶ *Ibid.*, p. 10.

²⁶⁷ Beyani, 'Report of the Special Rapporteur on the human rights of internally displaced persons', p. 15.

²⁶⁸ For instance, a number of Sudanese fled the first civil war into Northern Uganda, and then events in Uganda following the seizure of power by Idi Amin in 1971 led to Ugandans fleeing into Southern Sudan.

For more information, see: Hovil, 'Hoping for peace', p. 5.

²⁶⁹ UNHCR, 'UNHCR Global Trends: Forced Displacement in 2014', 2015, p. 14, <http://unhcr.org/556725e69.html> [Accessed: 9 March 2016].

ways crises in neighbouring countries are inextricably linked.²⁷⁰ At the end of November 2015, South Sudan was hosting 264 247 refugees from Sudan, the DRC, Ethiopia and the Central African Republic (CAR).²⁷¹ As noted by the IDMC: ‘All four countries are complex in their own right, but they cannot be looked at in isolation because when one fails, it has a domino effect on the political, socio-economic and humanitarian situations in the others’.²⁷² For instance, refugees spilling across borders add pressure on already limited resources, services and social networks; an issue further compounded when governments and the international community are already failing to protect IDPs in their own countries.²⁷³ The main focus of this thesis is on IDPs, and while such refugee flows are recognised, they are not included in the core analysis. However, this latter point opens up the central argument, in not only indicating additional challenges national authorities face in the protection of IDPs, but introducing valid questions on what the regional role should be in the protection of IDPs and refugees.

2.3 KEY PROTECTION ACTORS

The main protection actors considered in this thesis are national authorities (primarily the GRSS) and the international community (primarily UNMISS). A background to these two actors introduces later discussed challenges that impede the protection of IDPs in South Sudan, and demonstrate the dichotomy between the legal responsibilities of the national authorities, and the reality on the ground.

Government of South Sudan

Since the outbreak of the second civil war, the SPLA/M has been the primary political and military representative of the South, and formed the independent GRSS.²⁷⁴ Hutton describes it as ‘the single most influential determinant of access to political and economic power in

See section 5.3 for more data on South Sudanese refugees.

²⁷⁰ IDMC, ‘The Domino Effect: Why a wide lens is needed to address displacement in central Africa’, 21 July 2014, www.internal-displacement.org [Accessed: 5 January 2016].

²⁷¹ UN OCHA, ‘South Sudan: Humanitarian Snapshot’.

²⁷² IDMC, ‘The Domino Effect’.

²⁷³ *Ibid.*

²⁷⁴ Fenton and Loughna, ‘The search for common ground’, p. 5.

South Sudan.²⁷⁵ Emerging in the post-colonial era, the SPLA/M demanded equal rights through armed struggle.²⁷⁶ It was legitimised as the representative liberation movement of the South.²⁷⁷ However, its first manifesto, issued in July 1983, made it clear that the group identified itself as ‘revolutionaries’, fighting for recognition of the South as opposed to a separate state.²⁷⁸ Former leader John Garang argued that unity could only happen if ruling elites in Khartoum sincerely accepted full reform, otherwise separation would be inevitable.²⁷⁹ However, after Garang’s unexpected death in July 2005 the SPLA/M had to rediscover itself. Under the new leadership of Salva Kiir the focus of the SPLA/M shifted from working towards the revolutionary transformation of the Sudanese state as a whole towards the goal of simply achieving an independent South.²⁸⁰

There were high hopes for the SPLM immediately after secession: citizens believed it would deliver improvements in development and security once it held complete control of the country’s natural resources.²⁸¹ However, by the time of independence signs of autocracy were evident, although these indicators were excused as being necessary to meet the tight timetable for the implementation of the CPA.²⁸² The new GRSS showed early signs of resistance to any form of criticism, arguing that the new state would have a lot to learn.²⁸³

The biggest problem with the GRSS are the strong ties between the party and the military, and the transformation from an armed rebellion and liberation movement into a popular government never transpired.²⁸⁴ Further issues with the SPLM include the ‘big tent policy’ and corruption.²⁸⁵ In making the argument that ‘[n]owhere in Africa [...] has a liberation

²⁷⁵ Lauren Hutton, ‘South Sudan: From Fragility at Independence to a Crisis of Sovereignty’, *Clingendael*, March 2014, p. 10, <http://www.clingendael.nl/sites/default/files/South%20Sudan.pdf> [Accessed: 5 February 2016].

²⁷⁶ Hutton, ‘South Sudan’, p. 10.

²⁷⁷ *Ibid.*

²⁷⁸ LeRiche and Arnold, *South Sudan*, p. 63.

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*, pp. 115-116.

²⁸¹ Kate A. Knopf, ‘Fragility and State-Society Relations in South Sudan’, *The Africa Center for Strategic Studies*. Research Paper 4, September 2013, <http://reliefweb.int/sites/reliefweb.int/files/resources/ARP-4-EN.pdf> [Accessed: 29 January 2016].

²⁸² Astill-Brown, ‘South Sudan’s Slide into Conflict’, p. 4.

²⁸³ *Ibid.*

²⁸⁴ Le Riche and Arnold, *South Sudan*, p. 224; Hutton, ‘South Sudan’, p. 11.

²⁸⁵ Abraham A. Awolich, ‘The Unwarranted Carnage in South Sudan’, *The Sudd Institute*, Policy Brief, 13 February 2014, <http://www.suddinstitute.org/assets/Publications/Unwarranted-carnageAwolich.pdf> [Accessed: 29 January 2016].

movement transformed itself seamlessly into a national government',²⁸⁶ Christopher Clapham presents some of the main challenges facing post-secession South Sudan. These points, elaborated in Chapter 4, provide an introduction into why South Sudan is a unique case as a newly formed government facing serious challenges, and therefore unable to take on the responsibility of protecting IDPs.

The international community

The institutional framework provided by the international community for the protection of IDPs was touched upon in Chapter 1. There are a number of differing opinions on what constitutes the 'international community'. For the purpose of this thesis, the international community is represented by the UN, NGOs and, to an extent, donor governments.²⁸⁷

South Sudan's independence was of great importance to the international community, marking a change in dynamics in the Horn of Africa, and a potential new market.²⁸⁸ Their role in independence was also undeniable, with the Global Center for the Responsibility to Protect claiming that '[t]he independence of South Sudan represents one of the UN's proudest moments so far this century'.²⁸⁹ Ted Dagne also draws attention to the role of the US stating: 'For over two decades, the United States has been an important player in efforts to find a peaceful resolution to the crisis in Sudan and a major donor of humanitarian assistance to South Sudan'.²⁹⁰ Continued interest on the part of the US is demonstrated in the Obama Administration's new policy announced in October 2009, focussing on three priorities: an end to the conflict in Darfur; implementation of the CPA and ensuring Sudan does not become a safe haven for international terrorist groups.²⁹¹ While US assistance to South Sudan is undeniable,²⁹² such priorities nevertheless point to a certain ulterior agenda. Following

²⁸⁶ Christopher Clapham, 'From Liberation Movement to Government: Past legacies and the challenge of transition in Africa', *The Brenthurst Foundation*, Discussion paper 8, 2012, p. 3, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/Brenthurst-Discussion-paper-2012.08-From-Liberation-Movement-to-Government.pdf> [Accessed: 6 January 2016].

²⁸⁷ For further discussion on what constitutes the 'international community', see: Weiss, 'The Sunset of Humanitarian Intervention?', pp. 140-141; Barbour and Gorlick, 'Embracing the 'Responsibility to Protect'', pp. 226-557.

²⁸⁸ Astill-Brown, 'South Sudan's Slide into Conflict', p. 3.

²⁸⁹ Global Centre for the Responsibility to Protect, 'Statement on the Deteriorating Situation in South Sudan', 30 April 2014, <http://www.globalr2p.org/publications/298> [Accessed: 26 February 2016].

²⁹⁰ Dagne, 'The Republic of South Sudan', p. 8.

²⁹¹ *Ibid.*, p. 9.

²⁹² In 2012, the Obama Administration requested USD 518 million for FY2012; South Sudan is one of the major recipients of US assistance.

independence, a huge UN and NGO/INGO apparatus, mainly funded by Western donor governments, was put in place to support the government in transitioning from an autonomous region into a new state.²⁹³ Specific efforts were made to deal with the great numbers of immigrants, returning migrants and IDPs settling in Juba.²⁹⁴ The international community supported the CPA through the Troika, AUHIP and Special envoys that worked to prevent a full scale return to war between the North and South during the negotiating periods.²⁹⁵ However, political commitment was arguably not matched by effective international assistance policies – ²⁹⁶ a key point foreshadowing the international community's later, somewhat absent role in the protection of IDPs. Orly Stern describes South Sudan to have been a 'donor darling' in the years leading up to and immediately following independence.²⁹⁷ Hutton also criticises the focus of the international community at independence on secession, as opposed to long-term solutions to development and the IDP issue.²⁹⁸

It was paramount that international support did not end with the independence agreement. As stated by Astill-Brown, 'the international community must work to support a sustainable way out of conflict and towards an inclusive state'.²⁹⁹ However, the outbreak of conflict in December 2013 caught donors, and most of the wider international community, unaware. Despite the volatility of South Sudan, the crisis had not been foreseen. This marked an abrupt change in relations between most donor governments and the GRSS. Donors stopped a lot of their direct support to GRSS, and to building state institutions with the outbreak of the conflict. Much needed development programming was suspended in favour of humanitarian assistance to respond to the rapidly deepening humanitarian crisis.³⁰⁰ For instance, reports

Dagne, 'The Republic of South Sudan'.

²⁹³ Richard Grant and Daniel Thompson, 'The Development Complex, rural economy and urban-spatial and economic development in Juba, South Sudan' *Local Economy*, vol. 28, no. 2, 2013, p. 219, <http://lec.sagepub.com/content/28/2/218.abstract> [Accessed: 22 February 2016].

²⁹⁴ As of 2005 there was an estimated 87 000 IDPs in Juba with many deciding to settle post-independence.

For more information, see: Grant and Thompson, 'The Development Complex', p. 219.

²⁹⁵ Aegis Trust, African Centre for Justice and Peace Studies, African Peace Forum *et. al.*, 'Beyond the Pledge: International Engagement After South Sudan's Comprehensive Peace Agreement', 1 July 2011, <http://issat.dcaf.ch/Learn/Resource-Library/Policy-and-Research-Papers/Beyond-the-Pledge-International-engagement-after-Sudan-s-Comprehensive-Peace-Agreement> [Accessed: 13 April 2016].

²⁹⁶ *Ibid.*, p. 19.

²⁹⁷ Orly Stern, interview, 17 February 2016.

²⁹⁸ Hutton, interview, 2 February 2016.

²⁹⁹ Astill-Brown, 'South Sudan's Slide into Conflict', p. 3.

³⁰⁰ *Ibid.*, p. 2.

from March 2014 outline how fighting brought German development programmes to a halt a number of times, and funding remains a major challenge for donors.³⁰¹ Mareike Schomerus makes an additional crucial, albeit controversial point with reference to the response of the international community, claiming that they are ever comfortable engaging when they see peace, but helpless when they see war.³⁰² This demonstrates how initial enthusiasm was short-lived, and how the early optimism about the future of South Sudan was mis-placed.

Peace talks in South Sudan have been predominately conducted at a regional level, through the Intergovernmental Authority for Development (IGAD).³⁰³ However, following 15 months of peace talks led by special envoys from Ethiopia, Kenya and Sudan, there was a need for greater involvement by the international community.³⁰⁴ IGAD-PLUS was launched in June 2015, proposed as a 'bridge between an "African solution" approach and concerted high-level, wider international engagement'.³⁰⁵ Such involvement of the international community indicates a willingness to further support South Sudan, and a need for this support to bolster the regional efforts.

³⁰¹ Charlton Doki, Karin Zeitvogel, 'Germany Announces \$13 Million in Aid for South Sudan', *VOA*, 27 March 2014, <http://www.voanews.com/content/germany-aid-south-sudan-peace/1880750.html> [Accessed: 25 April 2015]; IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', p. 11.

³⁰² Mareike Schomerus at ODI talk, 'South Sudan: the path for peace', 1 February 2016, <http://www.odi.org/events/4331-south-sudan-path-peace> [Accessed: 2 February 2016].

³⁰³ Regional organisation for achieving peace, prosperity and regional integration in IGAD region (Djibouti, Ethiopia, Somalia, Eritrea, Sudan, South Sudan, Kenya and Uganda).

³⁰⁴ ICG, 'South Sudan: Keeping Faith with the IGAD Peace Process', Africa report no. 228, 27 July 2015, p. ii, <http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/south%20sudan/228-south-sudan-keeping-faith-with-the-igad-peace-process.pdf> [Accessed: 9 March 2016].

³⁰⁵ *Ibid.*

CHAPTER III: Injustices faced by IDPs in South Sudan

3.1 HUMAN RIGHTS VIOLATIONS

The very nature of being in a state of displacement – forced to flee– is a violation of a number of international and national human rights.³⁰⁶ This section considers where IDPs in South Sudan have faced violations of their first, second and most evidently, third generation of human rights.³⁰⁷

IDPs have had to adopt tactics to ensure their own protection during displacement and rely on strategies to be able move in an unconstrained and safe manner to reduce the risk of physical violence.³⁰⁸ Displacement, specifically in southern Unity, has subsequently been described by Cathy Huser as a ‘key auto-protection mechanism’.³⁰⁹ The concept of ‘auto-protection’ is central to this discussion describing cases where protection is not granted by national or international means and people are forced to generate their own means of protection. It has emerged as the central protection mechanism in South Sudan, especially in rural areas.³¹⁰ As Hutton iterates, South Sudan is not a country that has ever depended on outsiders – international or the government – as people have been forced to learn how to survive.³¹¹ However, with the sheer number of IDPs fleeing violence their ability to survive on their own is put under enormous strain.³¹² For instance, Elizabeth Nyaweche Duop Bohk, an IDP living in Bor PoC compared her old life and life in the camp: ‘I used to be a successful woman. [...] I was self-reliant. Here I am forced to live from the hand of others as if I were a

³⁰⁶ Specifically, Art. 17 and 25 of Universal Declaration of Human Rights; Art 28(1) and Art. 34 of the Constitution of South Sudan.

³⁰⁷ As outlined when defining ‘human rights’ in section 1.4; these include: (i) civil and political rights; (ii) economic and social rights and (iii) the right of people to self-determination, peace, development and humanitarian assistance, the role of environmental law and the rights of minority groups.

³⁰⁸ Cathy Huser, ‘Auto-Protection: Lived Experiences of Conflict-Affected People in southern Unity State, South Sudan’, *South Sudan Protection Cluster*, March 2015, <http://southsudanhumanitarianproject.com/reports/docr-501/> [Accessed: 12 February 2016].

³⁰⁹ *Ibid.*, p. 8.

³¹⁰ *Ibid.*, p. 8.

³¹¹ Hutton, interview, 2 February 2016.

³¹² Isabel Martins, ‘From Crisis to Catastrophe: South Sudan’s man-made crisis – and how the world must act not to prevent catastrophe in 2015’, *Oxfam GB*, October 2014, p. 4, <http://reliefweb.int/report/south-sudan/crisis-catastrophe-south-sudan-s-man-made-crisis-and-how-world-must-act-now> [Accessed: 3 February 2016].

child.³¹³ The overall lack of external protection enjoyed by IDPs is emphasised in the reliance on these auto-protection mechanisms.

As indicated in Chapter 2, it has been civilians who have borne the brunt of much of the violence, exacerbated by the sheer scale of displacement. Médecins Sans Frontières (MSF) reports civilian atrocities from before the civil war in the intercommunal attacks of 2011 and 2012 in Jonglei state. Reports of destroyed villages, negatively affected livelihoods and overall food insecurity accentuate many of the ongoing challenges and injustices facing the displaced in South Sudan.³¹⁴ A number of Human Rights Watch (HRW) reports indicate where civilians have been targets in the civil war and other conflicts, notably stating: 'South Sudan's new war is characterized by horrific attacks on civilians, often because of their ethnicity and presumed allegiances'.³¹⁵ It is important to understand where civilians have been targets in ongoing conflicts as this is one of the major reasons for growing displacement in South Sudan.

As outlined in international legislation,³¹⁶ national authorities are supposed to be the primary protector of IDPs. However, as previously mentioned, in many conflicts since the Cold War, governments and national authorities have in fact instigated many of the injustices and violations IDPs face, with IDPs often used in conflict as a shield for insurgent activities.³¹⁷ This is prevalent in the case of South Sudan; according to the IDMC, all parties to the conflict have committed 'serious human rights violations', 'grave breaches of international humanitarian law',³¹⁸ and are guilty of intentional targeting of civilians in using displacement as a 'tactic of war'.³¹⁹ Research undertaken by HRW finds that, since December 2013, forces from both sides have been responsible for crime, ranging from mass lootings and destruction of civilian

³¹³ Elizabeth Nyawech Duop Bohk quoted in: Stephanie Chang and George Padgett, 'Voices from Bor: Reflecting on a mental health and psychosocial support project at the Bor protection of civilians site in South Sudan', *IOM*, 2015, p. 10, <http://www.southsudan.iom.int> [Accessed: 22 February 2016].

³¹⁴ MSF, 'South Sudan's hidden crisis: How violence against civilians is devastating communities and preventing access to life-saving healthcare in Jonglei – November 2012', 2012, <http://www.msf.org/article/south-sudan-violence-hidden-crisis-jonglei> [Accessed: 25 January 2016].

³¹⁵ HRW, 'UN Human Rights Council: Council has to Condemn Abuses in South Sudan', Oral Statement Delivered Under Item 10, 25 June 2014, <https://www.hrw.org/news/2014/06/25/un-human-rights-council-council-has-condemn-abuses-south-sudan> [Accessed: 15 February 2016].

³¹⁶ See such analysis in section 1.5.

³¹⁷ Camilleri, 'Refugees in all but name? Should UNHCR's mandate offer protection to IDPs?', p. 23.

³¹⁸ IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', pp. 3-4.

³¹⁹ IDMC, 'The Domino Effect'.

property to ‘gruesome massacres’ and widespread targeting of civilians, often due to their ethnicity.³²⁰ Such research is supported by UNMISS stating that:

On the basis of the Human Rights Division’s documentation and investigation there are reasonable grounds to believe that violations of international human rights and humanitarian law have been committed by both parties to the conflict.³²¹

An additional issue is that the government has failed to provide accountability for serious human rights abuses, including forced displacement; instead leaders have pursued a ‘big tent’ strategy granting abusive commanders positions of power and *de facto* amnesty,³²² indicating how the priorities of national authorities do not lie with the protection of or provision for civilians.³²³

Conflict is not the only issue facing South Sudan; food insecurity and livelihood challenges also blight the daily lives of civilians, issues both caused and exacerbated by displacement. An NGO fieldworker cites local insecurity, since the signing of the CPA, as one of the country’s, and therefore citizens’, greatest challenges, with issues such as cattle raiding and revenge killings indicating the additional, and often overlooked aspects of the national crisis.³²⁴ He argues that evidence on the ground shows that the national crisis is creating new dimensions for old problems, indicating the importance of looking beyond the direct effects on the conflict onto underlying issues of food and livelihood insecurities.³²⁵

Driven by the civil war, South Sudan faces one of the world’s worst food crises which will not end while violence continues, or without greater international attention and pressure on key actors.³²⁶ The livelihoods of millions have been disrupted by violence and displacement with crops not being planted, livestock dislocated or stolen and traders fleeing.³²⁷ An estimated

³²⁰ HRW, ‘South Sudan: No Amnesty for Serious Crimes’, 8 June 2014, <https://www.hrw.org/news/2014/06/08/south-sudan-no-amnesty-serious-crimes> [Accessed: 24 February 2016].

³²¹ UNMISS, ‘Conflict in South Sudan: Human Rights Report’, 8 May 2014, p. 3, <http://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf> [Accessed: 24 February 2016].

³²² Elise Keppler, ‘Ending the Era of Injustice: Advancing Prosecutions for Serious Crimes Committed in South Sudan’s New War’, HRW, December 2014, pp. 1-2, <https://www.hrw.org/report/2014/12/10/ending-era-injustice/advancing-prosecutions-serious-crimes-committed-south-sudans> [Accessed: 16 February 2016].

³²³ These points are further developed in Chapter 4 in looking at the role of national authorities in protecting IDPs.

³²⁴ NGO fieldworker (chose to remain anonymous), interview, 12 February 2016.

³²⁵ *Ibid.*

³²⁶ Martins, ‘From Crisis to Catastrophe’, p. 2.

³²⁷ FAO, ‘Participatory Impact Assessment of FAO Emergency Distribution in South Sudan’, 2015, <http://www.fao.org/evaluation> [Accessed: 15 February 2016].

3.9 million people (34 per cent of the total population) faced severe food insecurity and malnutrition in September 2015, and food insecurity was a key factor for fleeing.³²⁸ According to data from the Integrated Food Security Phase Classification (IPC), displaced households face the greatest consumption gaps, with cases where consumption is reduced to as little as one meal per day consisting of only fish and water lilies.³²⁹ In December 2015, the IPC reported the general nutrition situation as ‘very critical’ – the worst of the five nutrition IPC classifications of global acute malnutrition (GAM) at 30 per cent and above – especially in Unity (an area with the highest number of IDPs).³³⁰ Such high levels of malnutrition are attributed to inadequate food consumption, morbidity, sub-optimal feeding practises, poor health and nutrition services and poor hygiene and sanitation environment.³³¹ While such figures are an improvement from the August to September analysis,³³² the situation is nevertheless dire and an indication of the severity of the crisis facing IDPs and South Sudanese citizens, who are in dire need of assistance.³³³ Food insecurity is indicative of overall suffering and human rights violations and injustices faced by IDPs, as everyone ‘has the right to a standard of living adequate for the health and well-being of himself and his family, including food...’.³³⁴

Beyond issues of food insecurity, human rights violations faced by IDPs in South Sudan include poor living conditions both in and outside PoC sites.³³⁵ Nyal, a rebel-held town in southern Unity, is a notable case where people face dire conditions. A pastor from Mayendit recalled

³²⁸ Either conflict or food insecurity was indicated by most IDPs as their reasons for fleeing to the sites. For more information on how food insecurity impacts displacement generally, see: Mooney, ‘The Concept of Internal Displacement’, p. 16.

Also important to note links between protection concerns and food insecurity as conflict prevents civilians from producing food and precludes humanitarians from delivering assistance – an issue considered in Chapter 5.

IOM, ‘IOM South Sudan: Consolidated Appeal: 2016’, IOM, January 2016, p. 2, <http://reliefweb.int/report/south-sudan/iom-south-sudan-consolidated-appeal-2016> [Accessed: 22 February 2016].

³²⁹ IPC, ‘Republic of South Sudan Full Report: August-September 2015’, *IPC The Republic of South Sudan*, September 2015, p. 2, <http://www.ipcinfo.org/ipcinfo-detail-forms/ipcinfo-resource-detail0/en/c/379476/> [Accessed: 4 May 2016].

³³⁰ IPC, ‘December 2015 Update – Communication Summary’, *IPC The Republic of South Sudan*, December 2015, p. 2, <http://www.ipcinfo.org/ipcinfo-detail-forms/ipcinfo-map-detail/en/c/379480/> [Accessed: 15 February 2016]; UN OCHA, ‘South Sudan: Humanitarian Snapshot’.

³³¹ IPC, ‘December 2015 Update’, p. 2.

³³² IPC, ‘Republic of South Sudan Full Report’.

³³³ Note that food insecurities and threat of famine is history repeating itself, as in 1998 South Sudan (then part of Sudan) had a severe famine which was also a product of fighting and subsequent human rights violations. For more information see: Skye Wheeler and Amy Braunschweiger, ‘Interview: The Unraveling of South Sudan’, *HRW*, 7 August 2014, <https://www.hrw.org/news/2014/08/07/interview-unraveling-south-sudan> [Accessed: 16 February 2016].

³³⁴ UN, ‘Universal Declaration of Human Rights’, Art. 25.

³³⁵ Living conditions in and outside PoC sites are further discussed with reference to the work of the international community in Chapter 5.

having to take his family to an island when there were multiple attacks, stating: ‘We hid in the grass with our nose just above the water’.³³⁶ In the PoC sites living conditions have been described as ‘very poor’ with overcrowding instigating health and mortality risks, as well as in some cases leading to tensions and sporadic outbreaks of violence.³³⁷ The basic human right of shelter is also lacking in many PoC sites – Skye Wheeler reports that when people first arrive they have very few options, and are often unable to get plastic sheeting to protect them from the weather.³³⁸

South Sudan reportedly has among the worst global health indicators with a large majority of the population, specifically the displaced, unable to access primary health care services.³³⁹ As of September 2015, 55 per cent of the health facilities in conflict-affected areas of Unity, Upper Nile and Jonglei were no longer functioning.³⁴⁰ Populations fleeing violence and displaced people are at greater risk of contracting malaria and waterborne diseases as a result of the lack of mosquito nets and reduced access to safe water, worsened sanitation and reduced access to health care.³⁴¹ For instance, in 2015 a cholera outbreak killed 46 people and a malaria epidemic killed more than 262 people in IDP sites alone.³⁴² IDPs are also identified³⁴³ as the most at risk of HIV infection.³⁴⁴ Such drastic healthcare conditions and human rights abuses indicate where the key protection needs of IDPs (as outlined in Chapter 1) are not being met, and so accentuate the need for greater action.

³³⁶ Pastor cited in: Jehanne Henry, ‘In South Sudan’s Brutal Chaos, Civilians in the Middle’, *HRW*, 23 December 2015, <https://www.hrw.org/news/2015/12/23/south-sudans-brutal-chaos-civilians-middle> [Accessed: 16 February 2016].

³³⁷ Eli Stamnes, ‘The United Nations Mission in the Republic of South Sudan (UNMISS): Protecting Civilians in a Volatile Environment’, *Norwegian Institute of International Affairs*, Policy Brief 24, 3 September 2015, pp. 2-3, <http://www.nupi.no/en/Publications/CRISTin-Pub/The-United-Nations-Mission-in-the-Republic-of-South-Sudan-UNMISS-Protecting-Civilians-in-a-Volatile-Environment> [Accessed: 3 February 2016]; Hannah Graham, ‘Hear it from the Children: South Sudan ‘We want to learn – even during war’’, *Save the Children*, 2015, <http://resourcecentre.savethechildren.se/library/hear-it-children-south-sudan-we-want-learn-even-during-war> [Accessed: 5 February 2016].

³³⁸ Skye Wheeler and Amy Braunschweiger, ‘Interview: Destruction and Rape in South Sudan’, *HRW*, 21 July 2015, <https://www.hrw.org/news/2015/07/21/interview-destruction-and-rape-south-sudan> [Accessed: 16 February 2016].

³³⁹ IOM, ‘IOM South Sudan: Consolidated Appeal: 2016’, p. 8.

³⁴⁰ UN OCHA, ‘Humanitarian Response Plan Jan-Dec 2016: South Sudan’, December 2015, <http://reliefweb.int/report/south-sudan/south-sudan-2016-humanitarian-response-plan-january-december-2016> [Accessed: 22 February 2016].

³⁴¹ MSF, ‘South Sudan’s hidden crisis’, p. 13.

³⁴² IOM, ‘IOM South Sudan: Consolidated Appeal: 2016’, p. 3.

³⁴³ Along with refugees, street children, soldiers, sex workers, men who have sex with men and tea sellers.

³⁴⁴ Nada Mustafa Ali, ‘Women and HIV/AIDS in South Sudan’, p. 117, in: Friederike Bubenzer and Orly Stern (eds.), *Hope, Pain & Patience: The Lives of Women in South Sudan* (Fanele: Auckland Park, 2011).

3.2 PROTECTION OF VULNERABLE GROUPS

It is important to recognise and understand the groups, namely women and children, who are particularly vulnerable to injustices and violations in South Sudan, as they make up the vast majority of IDPs.³⁴⁵ This reveals the social cost of the conflict and the extent to which it is the most vulnerable groups who are targeted, and thus require greater protection.³⁴⁶ The effect of displacement on the breakdown of social structures, norms and values indicates where particular assistance is required in reconnecting people with their sense of society, once peace has been established.³⁴⁷

Women

As women make up a large proportion of IDPs,³⁴⁸ it is paramount to understand the vulnerabilities they face. Research undertaken by the NGO Care International concludes that '[t]here are few places in the world where it is more dangerous or disempowering to grow up female than in South Sudan'.³⁴⁹ South Sudanese society is highly patriarchal with women experiencing isolation and discrimination as a result of their status in society.³⁵⁰ Friederike Bubenzer and Elizabeth Lacey argue that this is largely due to their limited access to education, perpetuating the lack of access to both economic independence and political engagement.³⁵¹ In 2013, it was estimated that 92 per cent of South Sudanese women could not read and write.³⁵² The majority of women and girls also face at least one form of gender-based violence (GBV) in their lives, an issue that is compounded as they tend to bear the primary responsibility to protect and provide food for their families.³⁵³ Such challenges are compounded when women face displacement. For instance, in some cases limited livelihoods

³⁴⁵ REACH, 'South Sudan: Displacement Trends Analysis', p. 9.

³⁴⁶ Frontier Economics, 'South Sudan: The Cost of War. An estimation of the economic and financial costs of ongoing conflict', *Frontier Economics*, January 2015, p. 19, <http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/south-sudan-cost-war.pdf> [Accessed: 13 January 2016].

³⁴⁷ *Ibid.*

³⁴⁸ See data on displacement trends in South Sudan in section 2.2.

³⁴⁹ Care, 'The Girl Has No Rights': Gender-Based Violence in South Sudan', *Care International*, May 2014, p. 3, <http://insights.careinternational.org.uk/publications/the-girl-has-no-rights-gender-based-violence-in-south-sudan> [Accessed: 16 February 2016].

³⁵⁰ Friederike Bubenzer and Elizabeth Lacey, 'Opportunities for Gender Justice and Reconciliation in South Sudan', *IJR*, policy brief no. 12, July 2013, <http://www.ijr.org.za/publications/pdfs/IJR%20Brief%20No%2012.pdf> [Accessed: 18 February 2016]; Pavlish and Ho, 'Displaced Persons' Perceptions of Human Rights in Southern Sudan', p. 416.

³⁵¹ Bubenzer and Lacey, 'Opportunities for Gender Justice and Reconciliation', p. 2.

³⁵² *Ibid.*

³⁵³ Care, 'The Girl Has No Rights': Gender-Based Violence in South Sudan', p. 8.

available to displaced women has led to sex work as a last resort; research undertaken by Jolien Veldwijk and Cathy Groenendijk found that many underage sex workers in Juba are IDPs.³⁵⁴

An NGO fieldworker noted the lack of men in the camps, triggering social structural issues as women in South Sudan are entitled to very little on their own; for instance they need a male to access land.³⁵⁵ Mary Nyajuaini Bikhan, an IDP in Bor PoC site, who has faced separation from her family throughout her life, underlines the suffering faced by displaced women stating: 'Women are suffering the most. [...] Many of the women lived in good situations. Now their husbands are fighting or dead and they remain alone with the children.'³⁵⁶ This demonstrates how structural issues exacerbate the vulnerability of women and points to the need for secure and gender specific protection mechanisms.

The situation of women has deteriorated further since the outbreak of conflict in December 2013, and GBV has become directly associated with IDPs' on-going struggle to meet their basic survival needs.³⁵⁷ From initial displacement women face challenges in having to flee with their children, and in some instances they are forced to leave some behind. Wheeler recalls a case where a woman tried to get her children across a river and two ended up drowning.³⁵⁸ Between April and September in Unity alone, it was estimated that over 1300 woman and girls were raped,³⁵⁹ and one woman interviewed by HRW described rape to be 'just a normal thing'.³⁶⁰ Jehanne Henry recalls one shockingly common story of a woman in Nyal describing

³⁵⁴ Jolien Veldwijk and Cathy Groenendijk, "If you can't use your hands to make a living..." Female sex workers in Juba, South Sudan', p. 92, in: Friederike Bubenzer and Orly Stern (eds.), *Hope, Pain & Patience: The Lives of Women in South Sudan* (Fanele: Auckland Park, 2011).

³⁵⁵ NGO fieldworker (chose to remain anonymous), interview, 12 February 2016.

³⁵⁶ Mary Nyajuaini Bikhan quoted in: Chang and Padgett, 'Voices from Bor', p. 16.

³⁵⁷ Global Protection Cluster, 'GBV Sub-Cluster inputs for the South Sudan events at UN GA in September 2014', p. 2, <http://www.norway-geneva.org/PageFiles/737836/GBV%20Sub%20cluster%20inputs%20to%20the%20GA%20Sept%202014.pdf> [Accessed" 16 February 2016].

³⁵⁸ Wheeler and Braunschweiger, 'Interview: Destruction and Rape in South Sudan', p. 3.

³⁵⁹ South Sudan Protection Cluster, 'Protection Trends Analysis: July-September', no. 6, November 2015, p. 7, <http://reliefweb.int/report/south-sudan/south-sudan-protection-trends-no-5-april-june-2015-south-sudan-protection-cluster> [Accessed: 1 February 2016].

³⁶⁰ HRW, "They Burned it All" Destruction of Villages, Killings, and Sexual Violence in Unity State, South Sudan', 2015, p. 24, <https://www.hrw.org/report/2015/07/22/they-burned-it-all/destruction-villages-killings-and-sexual-violence-unity-state> [Accessed: 16 February 2016].

how soldiers had captured her and around 20 other women, forced them to walk for hours carrying looted goods and then raped many of them before eventually setting them free.³⁶¹

Women also face increased risk in IDP camps as large populations are congested in small spaces for long periods with little privacy.³⁶² Rates of domestic violence escalate with the breakdown of traditional structures, that previously played a role in regulating violence within families.³⁶³ The GBV protection services offered are limited with almost no safe-house facilities or places where women can be hidden and housed to remove them from further risk.³⁶⁴ Within PoC sites, women and girls are also regularly exposed to sexual violence as it is their responsibility to collect firewood, water and other supplies from outside the camps, because men are more at risk of being killed and abducted.³⁶⁵ They are also at risk inside camps, especially when using unlit latrines at night.³⁶⁶ This point is further investigated when looking at levels of UNMISS protection,³⁶⁷ but it is vital to recognise where additional protection is required.

Children

The crisis in South Sudan has become known as a 'children's crisis',³⁶⁸ as the majority of IDPs are children and youth.³⁶⁹ UNICEF argue that South Sudan is at risk of losing a generation of children who face violence, grave human rights violations, displacement and hunger.³⁷⁰ Save the Children report there to have been an estimated 800 000 children internally displaced within South Sudan from December 2013 to July 2015.³⁷¹ This discussion briefly considers three key effects the conflict and displacement has on children, to indicate where they need increased protection through the injustices they face.

³⁶¹ Henry, 'In South Sudan's Brutal Chaos', p. 1.

³⁶² IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', p. 6.

³⁶³ Orly Stern, 'Guidance Note on Safety and Security of Survivors of Gender Based Violence in Humanitarian Settings in South Sudan', *Global Protection Cluster*, June 2015, p. 4.

³⁶⁴ *Ibid.*

³⁶⁵ Martins, 'From Crisis to Catastrophe', p. 12.

³⁶⁶ Samer Muscati, 'South Sudan's War on Women', *HRW*, 5 August 2015, <https://www.hrw.org/news/2015/08/05/south-sudans-war-women> [Accessed: 16 February 2016].

³⁶⁷ See section 5.2.

³⁶⁸ UNHCR, 'South Sudan: A Children's Crisis', *UNHCR: Video Galleries*, 17 December 2014, <http://www.unhcr.org/pages/4ac9fdae6-page16.html> [Accessed: 12 April 2016].

³⁶⁹ See data on displacement trends in South Sudan in section 2.2.

³⁷⁰ UNICEF, 'Humanitarian Action for Children: South Sudan', 2016, http://www.unicef.org/appeals/south_sudan.html [Accessed: 22 February 2016].

³⁷¹ Graham, 'Hear it from the Children'.

Displaced children are shown to be especially vulnerable to the psychosocial stress of displacement, with family separation a common occurrence among IDPs.³⁷² Psychosocial distress as a result of ongoing violence and displacement is high among children, estimated to exceed 600 000.³⁷³ Mary Nyajuaini Bikhani illustrates the impact displacement and the continuation of violence has had on the children of South Sudan:

The children suffer the worst. We had hoped that those born during the years of Anyanya would lead normal lives. Instead, they are in the bush fighting, as their fathers and grandfathers fought before them. My own son was born in 1994 and is now on the front line, struggling for our survival. If we were not at war, perhaps my son would be studying for his degree right now. It is sad to think of what might have been. If the government would follow the course of democracy instead of violence, our children could be in school. Instead, we are at war.³⁷⁴

The use of child soldiers in South Sudan has been an ongoing issue in the decades of conflict. The UN OCHA estimates that between 15 000 to 16 000 children have been recruited by armed actors in South Sudan.³⁷⁵ Key to this discussion are the reasons for children, especially boys, joining armed forces. Wheeler notes the poor conditions in PoC sites in the UN Bentui base, with many children joining due to flooding in the base or the promise of food and money.³⁷⁶ Other children have faced forced recruitment outside UNMISS bases, for instance in December 2014 and January 2015, HRW confirmed 11 cases of children being taken by Johnson Olony's forces³⁷⁷ from outside the UN base,³⁷⁸ again indicating inadequate levels of protection – in providing both physical security and livelihood provision for IDPs.

³⁷² IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', pp. 6-7.

³⁷³ South Sudan Protection Cluster, 'Protection Trends Analysis: April-June', no. 5, July 2015, p. 9, <http://reliefweb.int/report/south-sudan/south-sudan-protection-trends-no-5-april-june-2015-south-sudan-protection-cluster> [Accessed: 1 February 2016].

³⁷⁴ Mary Nyajuaini Bikhani quoted in: Chang and Padgett, 'Voices from Bor', p. 16.

³⁷⁵ UN OCHA, 'Humanitarian Response Plan Jan-Dec 2016: South Sudan', p. 5.

³⁷⁶ Skye Wheeler, "'We Can Die Too' Recruitment and Use of Child Soldiers in South Sudan', *HRW*, 2015, pp. 30-31, https://www.hrw.org/sites/default/files/report_pdf/southsudan1215_4.pdf [Accessed: 24 December 2015].

³⁷⁷ Johnson Olony, from the Shilluk ethnic group, was one of a group of at least four commanders in the rebel South Sudan Democratic Movement/Army group who rebelled against South Sudan's then semi-autonomous government in 2010. In 2013, Olony agreed to an amnesty deal with the GRSS and was integrated with his senior commanders in the SPLA when the civil war began in December 2013. Until defecting from the GRSS in April 2015 and fighting GRSS forces, Olony was a key ally for the government, helping secure Malakal town and surrounding area. During the conflict, forces under his control have recruited hundreds of child soldiers from the town of Malakal and surrounding areas.

Wheeler, "'We Can Die Too'", pp. 36-37.

³⁷⁸ *Ibid.*, pp. 36-39.

The third major effect of displacement and conflict on children in South Sudan is the lack of education they have received. In May 2015, the GRSS ratified the UN Convention on the Rights of the Child, whereby '[s]tates Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity'.³⁷⁹ However, the ongoing conflict has forced nearly 400 000 children out of the classroom, and one in every three schools has been destroyed, damaged, occupied or closed.³⁸⁰ This figure is amplified when considering that even before the conflict there were critical gaps in education with only 10 per cent of children having completed primary education, and female enrolment in primary schools resting at only 33 per cent.³⁸¹ Nyambuoy Wal Tuony, an IDP in the Bor PoC site explains how her status as an IDP has interrupted her dream of becoming a surgeon, as she cannot study beyond primary education due to there being no secondary school or access to formal education in the camp.³⁸² The challenges facing South Sudan in the future are exacerbated by the overall lack of education, which has worsened since the outbreak of conflict in December 2013.

³⁷⁹ OHCHR, 'Convention on the Rights of the Child', 1990, Art. 28, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [Accessed: 8 May 2016].

³⁸⁰ Graham, 'Hear it from the Children'; UN OCHA, 'Humanitarian Response Plan', p. 5.

³⁸¹ Graham, 'Hear it from the Children'.

³⁸² Nyambuoy Wal Tuony quoted in: Chang and Padgett, 'Voices from Bor', p. 20.

CHAPTER IV: NATIONAL RESPONSIBILITY

4.1 THEORETICAL RESPONSIBILITIES OF THE GRSS

This chapter reviews the specific legal rights of IDPs, in considering the responsibilities and expectations beholden upon the GRSS in the protection of IDPs. Relevant articles from the Constitution of South Sudan are initially analysed, followed by key UN Guiding Principles and finally the international community's expectations of the of the GRSS.

Transitional Constitution of the Republic of South Sudan

Looking beyond international legislation, the GRSS is also obligated to protect IDPs under its own Constitution. Article 11 grants every person 'the inherent right to life, dignity and the integrity of his or her person which shall be protected by law'.³⁸³ In a situation of displacement, and facing multiple injustices and violations, this right to life, dignity and integrity is not the reality for the majority of South Sudanese citizens, let alone the displaced. For instance, Mary Nyajuaini Bikhhan, an IDP in Bor PoC site feels that 'we aren't like other people. Our lives are full of pain'.³⁸⁴ Chapter 3 provided evidence of such violations.

Article 34 grants '[e]very citizen the right to have access to decent housing'.³⁸⁵ However, the very circumstance of being displaced is in itself an infringement of this right. Finally, Article 59, specifically addressing IDPs, constitutes the Council of States to 'monitor the repatriation, relief, resettlement, rehabilitation, reintegration of returnees and internally displaced persons'.³⁸⁶ Evidence of the government's failure to support resettlement can be seen through the extent to which IDPs face secondary displacement.³⁸⁷ The fact that the GRSS, itself an actor in the conflict, fails to adhere to its own Constitution gives little hope that it would be likely to observe international principles and expectations, and thus protect IDPs as a sovereign state should.

³⁸³ GRSS, 'Constitution of South Sudan', Art. 11.

³⁸⁴ Mary Nyajuaini Bikhhan quoted in: Chang and Padgett, 'Voices from Bor', p. 16.

³⁸⁵ GRSS, 'Constitution of South Sudan', Art. 34.

³⁸⁶ *Ibid.*, Art. 59.

³⁸⁷ As discussed in section 2.2 on displacement trends.

UN Guiding Principles on Internal Displacement

As the 'national authority', the legal responsibility to protect IDPs, as outlined in the UN Guiding Principles, lies with the GRSS. Principle 3.1 states: 'National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction'.³⁸⁸ More specifically, Principle 25.1 iterates the need to provide humanitarian assistance to IDPs.³⁸⁹

Additional principles outline what IDPs must be protected against: atrocities which the GRSS can actually be held accountable for. For instance, Principle 10.1 calls for protection against genocide, murder, executions and forced disappearances;³⁹⁰ Principle 10.2 the protection of IDPs specifically;³⁹¹ Principle 11 against rape and terror; Principle 12 grants the right to liberty and Principle 13 states that '[i]n no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities'.³⁹² These principles are significant illustrators of the legal responsibilities of the GRSS as a sovereign state. However, given previous evidence of the human rights violations committed against IDPs it can be argued that the GRSS not only fails to adhere to the Guiding Principles in terms of protecting IDPs as the sovereign state, but out rightly defies them. This raises questions about whether such principles are a mere 'paper tiger'.

³⁸⁸ OCHA, 'Guiding Principles on Internal Displacement', principle 3.1.

³⁸⁹ OCHA, 'Guiding Principles on Internal Displacement', principle 25.1 states that: 'The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities'.

³⁹⁰ OCHA, 'Guiding Principles on Internal Displacement', principle 10.1 states that: Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

³⁹¹ OCHA, 'Guiding Principles on Internal Displacement', principle 10.2 states that: Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favor or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

³⁹² OCHA, 'Guiding Principles on Internal Displacement'.

Expectations of GRSS from the international community in South Sudan

A central issue concerning the protection of IDPs in South Sudan is that, despite the inherent challenges and actions facing the state, the international community still expects and bestows the primary responsibility of IDP protection on the GRSS. Such expectations fall into two categories: the legal responsibility, and the moral and ethical responsibility.

Following a visit to South Sudan in November 2013, UN Special Rapporteur on the human rights of IDPs – Chaloka Beyani – underlined the national legal responsibility to protect IDPs. He stated that: ‘The protection of civilian population is first and foremost a responsibility of the Government, and that must, however, be exercised with care to not do harm to the population’.³⁹³ Ban Ki-moon similarly stressed that: ‘[T]he Government must assume responsibility for the protection of all its citizens’.³⁹⁴ The IDMC likewise argues that the GRSS has ‘struggled to fulfil their primary responsibility’ of granting assistance and protection to IDPs.³⁹⁵ At a regional level, the AU also exerts pressure on the GRSS, maintaining that ‘[w]hile the region and the continent [...] should spare no efforts to end the tragedy unfolding in South Sudan, the South Sudanese parties bear primary responsibility for achieving this objective’, and that ‘[i]t is high time that they live up to their commitments.’³⁹⁶ While the legal obligations of the state are clear, the reality of this expectation that the state will take primary responsibility for the protection of IDPs, when it is party to conflict must be questioned.

Beyond the undeniable legal responsibility, ethically and morally the responsibility to protect IDPs lies with the state. This point is elaborated and affirmed by the Global Centre for the Responsibility to Protect, stressing the responsibility of ‘[b]oth the government of South Sudan and SPLA I/O’ in protecting civilians ‘regardless of ethnic identity or political affiliation’.³⁹⁷ This is a valid argument given the extent of targeting on an ethnic basis, and

³⁹³ Chaloka Beyani quoted in: OHCHR, ‘“Protection of South Sudan’s internally displaced needs to be up front” – UN rights expert says’, *Display News*, 15 November 2013,

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13998&LangID=E> [Accessed: 11 February 2016].

³⁹⁴ UN Secretary General, ‘Report of the Secretary-General on South Sudan’, *UN Security Council*, 6 March 2014, p. 18, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/158 [Accessed: 26 February 2016].

³⁹⁵ IDMC, ‘The Domino Effect’.

³⁹⁶ AU, ‘Report of the Chairperson of the Commission on the Situation in South Sudan’, *AU Peace and Security Council 515th Meeting at the Level of Heads of State and Government*, 13 June 2015, p. 6,

<http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/African-Union.-Report-of-the-Chairperson-of-the-Commission-on-the-situation-in-South-Sudan-June-2015.pdf> [Accessed: 19 January 2016].

³⁹⁷ Global Centre for the Responsibility to Protect, ‘Statement on the Deteriorating Situation in South Sudan’.

selective protection.³⁹⁸ Similar sentiments are expressed by IDPs themselves. One woman in a PoC site in Malakal, who saw five members of her family killed by government forces before fleeing to the camp, said, ‘it is not the responsibility of the peacekeepers to offer security to the people staying outside the camp, it is the government that must stop fighting and offer us security and protection’.³⁹⁹ Morally and ethically, the GRSS should be protecting and not threatening its civilians. However, as this is not happening, the response from the international community must be more flexible, and also more robust, in order to ensure the protection of IDPs is upheld. Such a response should be guaranteed regardless of the sovereignty of the state, when that state is, itself, a protagonist in the civil war and causing displacement in the first place.

The ‘official’ responsibilities of the GRSS offer a simplistic answer to the main research question of who *should* be responsible for the protection of IDPs in South Sudan. However, the reality of South Sudan is not so simple, indicating that the government *cannot* be relied upon as the sole protector of IDPs.

4.2 WHAT THE GRSS HAS DONE IN PRACTICE TO UPHOLD RESPONSIBILITIES

The reality of the situation in South Sudan offers little optimism on the levels of protection IDPs are likely to receive from the state. As previously mentioned, the key question is not who *should* protect, but who *can*, and who *will* protect IDPs. Evidence provided in Chapter 3 is developed in this section considering GRSS attempts and ability to protect. The two timeframes of, first, independence through to the outbreak of conflict in December 2013, and the period of civil war, since December 2013, are analysed separately before drawing the conclusion that there are stark gaps between expectation and reality in South Sudan, demonstrating the need for alternative means of protection for IDPs.

³⁹⁸ Selective protection seen when protection is only ensured for certain groups.
Hutton, interview, 2 February 2016.

³⁹⁹ PoC resident, woman, Malakal PoC 4 November 2015, cited in: Hovil, ‘Protecting some of the people some of the time’, p. 18.

Challenges facing the new state

South Sudan is a unique case as it is the world's youngest country. Therefore, national authorities obliged to be the primary protector of IDPs are simultaneously facing challenges in establishing a new and independent state. With the huge influx of displaced people returning to South Sudan from the North at independence, the nascent government encountered challenges of protection from the offset.

The difficulties faced by liberation movements establishing peaceful governments were touched upon when introducing the SPLM in Chapter 2. Important to note are the legacies of liberation, and inherent challenges previous liberation movements faced when forming a solid democratic government in the wake of conflict and/or a liberation struggle.⁴⁰⁰ This was very much the case in South Sudan where the government developed out of a liberation movement with no real democratic elections or opposition. Hutton argues that this caused a crisis of legitimacy with the party becoming conflated with the state.⁴⁰¹ This raises the question as to whether a single-party, centralised state can be expected to uphold the duties required to protect IDPs.

Some of these challenges facing the transformation from a liberation movement into democratic government can be attributed to the failure of the CPA in not fully addressing democratisation and governance issues.⁴⁰² With short-term targets, the CPA failed to recognise crucial longer-term issues and problems, such as inequality, discrimination, injustice, impunity and corruption within South Sudan.⁴⁰³ Two notable failures were not fully completing the disarmament, demobilisation and reintegration (DDR) programme, and the fact that the SPLM was the only party at the table.⁴⁰⁴

DDR in South Sudan was controversial due to different priorities, needs and commitments between donors, implementing agencies, the GRSS and the SPLA. While international actors pushed for DDR, the GRSS was not able to overcome the necessity of inclusion of other

⁴⁰⁰ Clapham, 'From Liberation Movement to Government', p. 4.

⁴⁰¹ Hutton, 'South Sudan'.

⁴⁰² *Ibid.*, p. 10.

⁴⁰³ Fenton and Loughna, 'The search for common ground', p. 5.

⁴⁰⁴ Hutton, 'South Sudan', p. 17; Hutton, interview, 2 February 2016.

movements in the SPLA as a ‘vehicle for political and economic accommodation’.⁴⁰⁵ The DDR programme had two phases. The first was completed: aiming to reduce the risk of return to conflict, it decreased the SPLA and Sudanese Armed Forces (SAF).⁴⁰⁶ Meanwhile the second, with the overall strategy to transform and downsize the armed forces, was never fully completed due to the outbreak of conflict in 2013.⁴⁰⁷ The GRSS’ unwillingness to downsize the army and completely demilitarise contributed to the formation of a militarised state, raising questions about the likelihood of that state to protect the displaced.

The second issue for the CPA – that the SPLM was the only party at the table – meant that there has never been a democratic, political process in South Sudan.⁴⁰⁸ This raises the fundamental question as to whether such an autocratic governing body should be entitled to the privileges of state sovereignty, and the subsequent responsibilities of protecting IDPs.

The limitations of the CPA mean that since independence extremely close ties between the state and the military have remained. As seen across Africa,⁴⁰⁹ the SPLA and other security institutions are almost all populated by former military personnel with the security sector dominating across all sectors.⁴¹⁰ Astill-Brown, for instance argues that South Sudan is more of a military with a country, as opposed to a country with a military.⁴¹¹ This furthers question the capacity for such a militarised government to protect its civilians.

The national response, albeit limited, in providing relief and engaging in the return process of IDPs from the North before the latest civil war must be noted. The GRSS encouraged and assisted with the initial return phase from February 2007 in order to increase population

⁴⁰⁵ Hutton, ‘South Sudan’, p. 17.

⁴⁰⁶ Jairo Munive, ‘Invisible Labour: The Political Economy of Reintegration in South Sudan’, *Journal of Intervention and Statebuilding*, vol. 8, no. 4, 2014, <http://www.tandfonline.com/doi/pdf/10.1080/17502977.2014.964451> [Accessed: 20 January 2016]; HSBA, ‘DDR in South Sudan’, *Small Arms Survey*, 9 July 2013, <http://www.smallarmssurveysudan.org/fileadmin/docs/facts-figures/ddr/HSBA-DDR-in-South-Sudan.pdf> [Accessed: 20 May 2015].

⁴⁰⁷ Margarita Yakovenko, ‘Roadblocks to a Professional Security Sector in South Sudan’, *Security Sector Reform Resource Center*, 13 August 2014, <http://www.ssrresourcecentre.org/2014/08/13/roadblocks-to-a-professional-security-sector-in-south-sudan/> [Accessed: 26 February 2016].

⁴⁰⁸ Hutton, interview, 2 February 2016.

⁴⁰⁹ For more information and context on liberation movements transforming into autocratic, militarised governments in Africa see: Clapham, ‘From Liberation Movement to Government’.

⁴¹⁰ Astill-Brown, ‘South Sudan’s Slide into Conflict’, p. 9.

⁴¹¹ *Ibid.*

numbers in time for the census in April 2008.⁴¹² For instance, prior to independence, in Northern Bahr el Ghazal (an area of electoral significance) the GRSS worked with the Government of National Unity (GNU) in Khartoum and with the UN to organise assisted return for the high number of IDPs in the region.⁴¹³ However, effective response was hampered by a lack of comprehensive data and understanding of displacement, as well as governance and logistical challenges resulting from the vast size of the country.⁴¹⁴ This can be seen in the fact that less effort was made by national authorities in areas such as Southern Kordofan, where, prior to independence, it was reported that in almost every village ‘people felt let down by both the government and international agencies’.⁴¹⁵ The second wave of returns following independence was more rushed and chaotic straining national and state-level structures in terms of services, infrastructure and governance.⁴¹⁶ While a certain degree of support to returnees was provided by national authorities, there is little evidence of protection these IDPs received. As a result, land disputes and conflicts between returning IDPs and host communities were not uncommon before independence.⁴¹⁷ Therefore, despite some effort in assisting and ensuring the protection of IDPs following independence, the later lethal combination of a militarised, autocratic and young government meant that successive protection was not provided by national authorities.

Role of GRSS in civil war

The role of the GRSS in the civil war is key to analysing the national authority’s approach towards protection of IDPs in South Sudan: in short, the GRSS has failed, both indirectly and directly, in its responsibility to protect IDPs. Notable *indirect* factors include the volatile relationship between national authorities and the international community as well as the overall priorities, particularly spending, of the GRSS. The previously discussed *direct*

⁴¹² Marisa O. Ensor, ‘Displaced Youth’s Role in Sustainable Return: Lessons from South Sudan’, *IOM*, March 2013, p. 15, http://publications.iom.int/system/files/pdf/mrs_47_6nov.pdf [Accessed: 29 February 2016].

⁴¹³ Pantuliano *et. al.*, ‘The long road home’, p. 5.

⁴¹⁴ IDMC, ‘South Sudan: Greater humanitarian and development efforts needed to meet IDPs’ growing needs’, p. 9.

⁴¹⁵ Pantuliano *et. al.*, ‘The long road home’, p. 30.

⁴¹⁶ Ensor, ‘Displaced Youth’s Role in Sustainable Return’, p. 18.

⁴¹⁷ Land ownership is an additional issue which was not adequately addressed in the CPA exacerbating this challenge and need for protection to those affected. Pantuliano *et. al.*, ‘The long road home’, p. 27.

violations against IDPs undertaken by the state are further assessed in relation to how the GRSS disregards its responsibilities to protect IDPs.⁴¹⁸

From the outset of independence, the relationship between the GRSS and the international community was delicate. On the one hand the GRSS required international support to facilitate the extension of the state, but on the other they needed autonomy from international intervention to pursue their own internal and external agendas.⁴¹⁹ The fine line between required international support and respect for South Sudan as a sovereign state continues to challenge discourse around the question of who should protect IDPs. This is particularly seen in the difficult workings between the GRSS and the UN over the protection of civilians. Hutton outlines this challenging relationship with the GRSS as one of the fundamental problems faced by UNMISS, as the founding assumptions of the mission was that the GRSS was willing and able to work with the UN in the protection of civilians.⁴²⁰ Furthermore, since the outbreak of violence in 2013, relations between the GRSS and the international community became increasingly volatile as donors were no longer willing to work directly with government institutions in providing aid for state building, infrastructure projects, service delivery, governance and capacity building.⁴²¹ Relations have therefore been characterised by an increasing lack of trust on both sides.⁴²²

Central to the lack of protection shown by national authorities towards IDPs is the government's physical inability to provide protection, illustrated in its spending priorities. The majority of the SPLM's revenue is spent on military security, and so they do not have the resources to provide civilian security, with NGOs providing many of the services the government is supposed to provide.⁴²³ In 2014, South Sudan had the second largest military

⁴¹⁸ Examples of such violations are initially outlined in section 3.1.

⁴¹⁹ Lauren Hutton, 'Prolonging the agony of UNMISS: The implementation challenges of a new mandate during a civil war', *Clingendael*, July 2014, p. 10, <http://www.clingendael.nl/sites/default/files/Prolonging%20the%20agony%20of%20UNMISS%20-%20Lauren%20Hutton.pdf> [Accessed: 4 February 2016].

⁴²⁰ *Ibid.*, p. 19.

⁴²¹ Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict', p. 18.

⁴²² This is further considered in relation to the limitations the international community face in protecting IDPs in section 5.3.

Ibid., p. 19.

⁴²³ NGO fieldworker (chose to remain anonymous), interview, 12 February 2016; Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict', pp. 20-21.

expenditure in the world as a percentage of GDP at 9.3 per cent.⁴²⁴ The 2015/2016 budget speech further illustrates these priorities. Despite promises to ‘prioritise spending on those activities that will alleviate and reverse the negative impacts of conflict and lay the foundations for achieving peace’,⁴²⁵ the Minister of Finance and Economic Planning stated that 45 per cent of the entire budget (SSP 4,602 million)⁴²⁶ would be allocated to the Security Sector,⁴²⁷ while only SSP 94 million⁴²⁸ to the Social and Humanitarian Affairs.⁴²⁹ Included in the latter allocation is ‘protection of vulnerable groups’,⁴³⁰ therefore the fact that so little is allocated to the protection of IDPs indicates the government’s misdirected priorities. Furthermore, in the same paragraph, the humanitarian support provided by donor partners is outlined, whereby it was estimated that the UN provided over USD 1 600 million in 2014.⁴³¹ Fiscal evidence therefore suggests that the GRSS is almost entirely relying on international support to protect vulnerable groups such as IDPs, as the UN contributed 100 times more in humanitarian support in 2014 than was budgeted by the GRSS. Such expectations of humanitarian aid, and the ‘need narrative’ existed before independence undermining direct links between national authorities and human need.⁴³² Daniel Maxwell, Martina Santschi, Leben Moro, Rachel Gordon and Philip Dau ask the crucial question: ‘What happens if NGOs are not here? Would then the government start to provide services?’⁴³³ The need for international support, and the support that has already been provided is indicated.

It is difficult to uphold the argument that the GRSS should protect IDPs when they have been responsible for the very injustices and violations they are to be protected against.⁴³⁴ Hutton concludes that the government does not only play an intrinsic role in the marginalisation of

⁴²⁴ Sam Perlo-Freeman, Aude Fleurant, Pieter D. Wezeman and Siemon T. Wezeman, ‘Trends in World Military Expenditure, 2014’, *SIPRI*, Fact Sheet, April 2015, p. 7, <http://www.sipri.org/publications> [Accessed: 29 February 2016]; SIPRI, ‘Military expenditure by country as percentage of gross domestic product, 1988-2014’, *SIPRI Military Expenditure Database*, November 2015, http://www.sipri.org/research/armaments/milex/milex_database [Accessed: 29 February 2016].

⁴²⁵ David Deng Athorbei, ‘2015/2016 Budget Speech’ Presented to the National Legislative Assembly, 29 June 2015, para. 34, <http://www.grss-mof.org/wp-content/uploads/2015/10/Budget-Speech-2015-16.pdf> [Accessed: 29 February 2016].

⁴²⁶ At the time of writing, one USD converted to around six SSP, and so SSP 4 602 million amounts to around USD 754 million.

⁴²⁷ Athorbei, ‘2015/2016 Budget Speech’, para. 62.

⁴²⁸ Around USD 15 million.

⁴²⁹ Athorbei, ‘2015/2016 Budget Speech’, para. 63.

⁴³⁰ *Ibid.*

⁴³¹ *Ibid.*

⁴³² Maxwell *et. al.*, ‘Researching livelihoods and services affected by conflict’, p. 9.

⁴³³ *Ibid.*, p. 22.

⁴³⁴ See section 3.1 for examples of GRSS’ role in human rights violations during the civil war.

IDPs, but the 'right to life [of IDPs has been] denied by government'.⁴³⁵ This chapter looks at three specific examples of how government has been responsible for violence against IDPs, thus supporting the argument that the protection of IDPs should not be left to such national authorities. Examples suggesting an outright dismissal of the protection of IDPs include (i) the lack of accountability following the April 2014 attack on the Bor PoC site; (ii) the SPLA attacks on civilians, triggering mass displacement in April and May 2015 and (iii) the attack on Malakal PoC site in February 2016.⁴³⁶ Violations and attacks against civilians and IDPs by the SPLA/M-IO have been equally destructive. However, the opposition do not hold the same supposed responsibilities as GRSS, and so such attacks are not analysed in this argument.

The killing by armed civilians of over 50 IDPs seeking sanctuary inside a Bor PoC site in April 2014 has been virtually unnoticed by national authorities, as no attempts were made to prosecute war crimes and potential crimes against humanity.⁴³⁷ HRW reports indicate that the attack on 17 April was carried out by a 'large group of Dinka youth and armed men, including some in government police and military uniforms', and it followed months of harassment of Nuer IDPs by government forces.⁴³⁸ Two factors make this event noteworthy to the argument that national authorities in South Sudan do not have the will or capacity to protect IDPs. Firstly, evidence suggests that government forces were directly involved in the attack. Secondly, the fact that South Sudan's judicial system does not currently have the capacity to prosecute crimes at this scale,⁴³⁹ raises questions how national authorities can be relied upon for the protection of IDPs.

The second event indicating how the national authorities have been culprits of displacement are the attacks on civilians in Bentiu, Unity. In January and February 2014 evidence suggested that government forces were responsible for destruction of civilian property, forcible displacement and civilian killings.⁴⁴⁰ One woman reported that '[t]hey came, pushed me in

⁴³⁵ Hutton, interview, 2 February 2016.

⁴³⁶ Appreciate that this falls outside the timeframe of discussion, however in being an event of great significance and relevance to the issue of the protection of IDPs it cannot be ignored.

⁴³⁷ HRW, 'South Sudan: One Year Later, Injustice Prevails', 10 December 2014, <https://www.hrw.org/news/2014/12/10/south-sudan-one-year-later-injustice-prevails> [Accessed: 1 March 2016].

⁴³⁸ HRW, 'South Sudan's New War: Abuses by Government and Opposition Forces', August 2014, pp. 54-55, https://www.hrw.org/sites/default/files/reports/southsudan0814_ForUpload.pdf [Accessed: 1 March 2016].

⁴³⁹ *Ibid.*, p. 4.

⁴⁴⁰ *Ibid.*, pp. 59-61.

and then set my house on fire'.⁴⁴¹ Similar attacks took place in April and May 2015 in central Unity where government forces reportedly 'killed, beat, and raped scores of civilians, particularly women, burned houses and food stocks in over two dozen small towns, villages, and settlements', subsequently causing widespread forced displacement.⁴⁴² This evidence further supports the argument that the protection of IDPs should not be primarily in the hands of the authorities who are responsible for the violence that causes displacement.

The attack on Malakal PoC site on 17 and 18 February 2016 illustrates the overall flaws in protection of IDPs in South Sudan.⁴⁴³ The attack resulted in over 18 deaths, 90 injured and the displacement of up to 26 000 people.⁴⁴⁴ A UN Security Council press release held accountable 'armed actors, including SPLA soldiers [...] including Government security forces' for the attack.⁴⁴⁵ Such evidence further reiterates the need to re-address the protection shown towards IDPs in South Sudan, particularly given the unsavory activities of national authorities. The three cases presented ultimately suspend any belief that the protection of IDPs can and will be provided by national authorities.

The GRSS' role in peace talks is an avenue in which they have had the opportunity, and have arguably made concerted efforts to fulfil their responsibilities in protecting IDPs. At the end of 2015, all ceasefire agreements, monitored by IGAD had been violated. This includes 23 January 2014 ceasefire agreement, the recommitment on 5 May 2014, the 'agreement to resolve the crisis' on 9 May 2014, as well as the August 2015 peace agreement.⁴⁴⁶ The August agreement was the first to call for a hybrid court with the authority to try genocide, war crimes, crimes against humanity and other serious crimes violating international and

⁴⁴¹ One woman cited in: *Ibid.*, p. 60.

⁴⁴² HRW, "They Burned it All", p. 2.

⁴⁴³ The role of the international community in this event is considered in Chapter 5, and is of equal significance to that of national authorities.

⁴⁴⁴ Sudan Tribune, 'UN Security Council, EU, Troika condemn Malakal attack', 20 February 2016, <http://www.sudantribune.com/spip.php?article58066> [Accessed: 12 April 2016].

⁴⁴⁵ UN Security Council, 'Security Council Press Statement on Malakal, South Sudan', 19 February 2016, <http://www.un.org/press/en/2016/sc12252.doc.htm> [Accessed: 12 April 2016].

⁴⁴⁶ IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', p. 10; David Deng, 'Truth and Dignity Commission: A Proposal to Reconcile the Many Truths of South Sudan from 1972 to the Present', *South Sudan Law Society*, Working Paper No. 3, August 2014, p. 2, <http://www.southsudannewsagency.com/news/press-releases/truth-and-dignity-commission-a-proposal-to-reconcile-the-many-truths-of-south-sudan> [Accessed: 1 May 2016]; UN Security Council, 'December 2015 Monthly Forecast', 25 November 2015, pp. 7-9, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2015_12_forecast.pdf [Accessed: 2 March 2016].

Sudanese law.⁴⁴⁷ As iterated by Ban Ki-moon: ‘The Government of South Sudan must step up to its responsibility and protect its population. [...] Respecting the terms of the peace agreement is not an option. It is a must.’⁴⁴⁸ The lack of attention towards, and respect for the peace agreements is further illustrative of the failure of the national authorities to play a role in protecting IDPs.

4.3 CONCLUSION

This chapter questions existing priorities in the debate between the responsibility to protect and the respect for state sovereignty. The main conclusions drawn from the case of South Sudan in terms of government responsibilities towards the protection of IDPs relate to the fact that there needs to be greater recognition of the challenges facing newly formed states, and of the atrocities committed by government actors. Firstly, the international community, and international legislation cannot expect a newly formed government to have the capacity to be the primary protectors of IDPs. Secondly, when national authorities are party to the conflict, and guilty of violating the human rights of IDPs, directly causing mass displacement and attacking IDPs, they cannot, realistically, be expected to fulfil their responsibility to protect those they directly violate. Thirdly, as the governing authority, the GRSS’s fundamental responsibility is to protect civilians, and so one must be cautious of exonerating the GRSS. However, ultimately the protection of IDPs is of greater importance than the state sovereignty of such a questionable government, and therefore does the GRSS have the right to state sovereignty? This case shows that the expectations of the international community are unrealistic, and so (as discussed in the following chapter) greater effort should be made on the part of the international community to protect IDPs.

⁴⁴⁷ Elise Keppler, ‘Hope for Justice for South Sudan’, *HRW*, 28 August 2015, <https://www.hrw.org/news/2015/08/28/hope-justice-south-sudan> [Accessed: 2 March 2016].

⁴⁴⁸ Ban Ki-moon, ‘Remarks at a press conference in Juba, South Sudan’, *UN News Center*, Speech in Juba, South Sudan, 25 February 2016, http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2945#.VtaU4sfwxxg [Accessed: 2 March 2016].

CHAPTER V: The Role of the International Community

5.1 WHAT SHOULD THE INTERNATIONAL COMMUNITY BE DOING TO PROTECT IDPS?

Officially the primary responsibility to protect IDPs lies with national authorities, however R2P literature underlines the responsibilities of the international community '[w]hen a population is suffering serious harm',⁴⁴⁹ (as IDPs in South Sudan undeniably are). This points to the question as to what the international community should be doing to protect IDPs. In reviewing whether the international community has done enough to ensure the protection of IDPs, the UN Guiding Principles on Internal Displacement as well as the UNMISS mandate and UN OCHA humanitarian response plan are considered as a framework outlining the aims of the international community in South Sudan. The gap between the commitment to protection at the policy and strategy level, and the reality of protection on the ground is revealed, endangering the lives of millions of IDPs.

The Guiding Principles outline key areas where the international community should be providing protection of IDPs. Important to this discussion is the protection of women and children called for in Principle 4.2;⁴⁵⁰ the right to education in Principle 23,⁴⁵¹ and the need for 'adequate'⁴⁵² standard of living in camps in Principle 18.⁴⁵³ Principle 25 is similarly

⁴⁴⁹ ICISS, 'The Responsibility to Protect', p. xi.

⁴⁵⁰ OCHA, 'Guiding Principles on Internal Displacement', principle 4.2 states: 'Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.'

⁴⁵¹ OCHA, 'Guiding Principles on Internal Displacement', principle 23 states:

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

⁴⁵² As outlined in Principle 18.2 this calls for: 'At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) Basic shelter and housing;
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.'

⁴⁵³ OCHA, 'Guiding Principles on Internal Displacement'.

noteworthy with regards to humanitarian assistance provided to IDPs. While it recognises that national authorities hold '[t]he primary duty and responsibility for providing humanitarian assistance',⁴⁵⁴ international humanitarian organisations nevertheless 'have the right to offer their services in support of the internally displaced'.⁴⁵⁵ As outlined in Chapter 4, national authorities carry the ultimate legal obligation to protect IDPs, however, these stated principles present fundamental expectations of what the international community should be doing to protect IDPs.

UNMISS' mandate in South Sudan is reviewed in two phases, indicating the shift in focus towards the protection of civilians following the outbreak of civil war. UNMISS was deployed in June 2011, created out of the UN Mission in Sudan (UNMIS).⁴⁵⁶ Established under UN Security Council Resolution 1996 it was originally envisaged as a peacebuilding mission; its initial mandate was to 'consolidate peace and security, and to help establish the conditions for development in the Republic of South Sudan'.⁴⁵⁷ The protection of civilians was more of a side-note, as outlined in paragraph 3(b) authorising UNMISS to '[s]upport the Government of the Republic of South Sudan in exercising its responsibilities for conflict prevention, mitigation, and resolution and protection of civilians'.⁴⁵⁸ This initial mandate was based on two optimistic assumptions which did not anticipate later challenges and on-the-ground realities faced by UNMISS: firstly, the government and national authorities would be willing parties in protecting human rights and enhancing civilian protection; secondly, in expecting that UNMISS would be able to provide protection throughout the country and not just within the PoC sites.⁴⁵⁹

Following the outbreak of civil war, the UN Security Council revised the mandate three times, each time increasing the protection responsibilities of UNMISS.⁴⁶⁰ In December 2013,

⁴⁵⁴ As previously discussed under the theoretical responsibilities of the GRSS, in section 4.1.

⁴⁵⁵ OCHA, 'Guiding Principles on Internal Displacement', principle 25.

⁴⁵⁶ Functioned from 2005 to support and monitor the implementation of the CPA.

⁴⁵⁷ Hovil, 'Protecting some of the people some of the time', p. 10; UN Security Council, 'Resolution 1996', 8 July 2011, para. 3, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1996\(2011\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1996(2011)) [Accessed: 18 March 2016].

⁴⁵⁸ UN Security Council, 'Resolution 1996', para. 3(b).

⁴⁵⁹ Stamnes, 'The United Nations Mission in the Republic of South Sudan (UNMISS)', p. 1; Michael Boyce and Mark Yarnell, 'South Sudan: A Nation Uprooted', *Refugees International*, 12 March 2015, p. 9, <http://www.refugeesinternational.org/reports/2015/9/30/south-sudan-a-nation-uprooted> [Accessed: 2 February 2016].

⁴⁶⁰ Rolandsen *et. al.*, 'A year of South Sudan's third civil war', p. 94.

Resolution 2132 extended the mandate,⁴⁶¹ ‘increase[ing] the overall force levels of UNMISS to support its protection of civilians and provision of humanitarian assistance’.⁴⁶² Then again in March 2015, Resolution 2206 noted UNMISS’ responsibility to protect civilians under humanitarian law in, ‘[r]eaffirming all its relevant resolutions on women, peace, and security, on children and armed conflict, and the protection of civilians in armed conflict’.⁴⁶³ It also emphasised the necessity of providing IDPs with humanitarian assistance and ‘ensuring that the basic needs of the population are met’.⁴⁶⁴ Resolution 2252, adopted in December 2015, reiterates the need for the international community to step up in protecting IDPs when national authorities are unable to do so, authorising UNMISS ‘to use all necessary means’:

- 8(a)(i) To deter violence against civilians [...] with particular attention to IDPs, included, but not limited to, those in protection sites and refugee camps [...] in particular when the Government of the Republic of South Sudan is unable or failing to provide such security;
- 8(a)(iv) To maintain public safety and security of and within UNMISS protection of civilian sites;
- 8(c)(i) To contribute, in close coordination with humanitarian actors, to the creation of security conditions conducive to the delivery of humanitarian assistance [...] in particular to IDPs and refugees;⁴⁶⁵

This series of revisions present an extensive mandate that effectively promised the full protection of IDPs by UNMISS.

The responsibility of the international community to protect is similarly outlined in the UN OCHA’s humanitarian response plan, recognising the ‘uniquely challenging operational environment’ in South Sudan.⁴⁶⁶ It subsequently puts protection at the centre of the plan, premised on the international community’s commitment to protect and assist ‘affected people’.⁴⁶⁷ This plan acknowledges the unique case of South Sudan, and therefore the need for a nuanced approach in protecting IDPs, which has been provided through PoC sites. Eli

⁴⁶¹ Expanded by an additional 5 500 troops and 440 police, originally at 7 000 military personnel and 900 civilian police.

⁴⁶² UN Security Council, ‘Resolution 2132’, 24 December 2013, para. 3, <http://unscr.com/en/resolutions/doc/2132> [Accessed: 8 May 2016].

⁴⁶³ UN Security Council, ‘Resolution 2206’, 3 March 2015, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2206%20\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2206%20(2015)) [Accessed: 8 May 2016].

⁴⁶⁴ *Ibid.*

⁴⁶⁵ Mission also enlarged by an additional 5 500 troops and 440 police.

UN Security Council, ‘Resolution 2252’, 15 December 2015, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2252\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2252(2015)) [Accessed: 8 May 2016].

⁴⁶⁶ UN OCHA, ‘Humanitarian Response Plan’, p. 7.

⁴⁶⁷ ‘Affected people’ includes including IDPs, host communities, refugees, children, the elderly, women and men. *Ibid.*

Stamnes argues that the mission ‘serves to shed light’ on the need for new thinking in relation to the protection of civilians by UN peace operations in volatile environments.⁴⁶⁸ Whether this new approach is effective is yet to be debated in this discussion, however, what is clear are the promises and mandate of the mission and of the international community as a whole.

5.2 WHAT HAS THE INTERNATIONAL COMMUNITY DONE IN PROTECTING IDPS?

On-the-ground evidence reveals flaws in the execution of the protection strategy. The level of protection provided by UNMISS, and other assisting parties in PoC sites, is initially evaluated and questions over exactly what constitutes protection are asked, as protection must go beyond physical security. The lack of protection provided to IDPs outside PoC sites is also considered, illustrating where UNMISS has failed to achieve its mandate. The achievements and efforts of the international and donor community are recognised, however it is ultimately demonstrated that the limitations outweigh the successes.

Protection versus provision within PoC sites

When fighting broke out in December 2013, UNMISS opened its bases to fleeing civilians for the first time, providing sanctuary in PoC sites.⁴⁶⁹ The PoC method of protection has become a defining feature of UNMISS’ activities, demonstrating the nuanced approach towards protection in South Sudan.⁴⁷⁰ These sites are not the same as the pre-planned ‘safe havens’ provided to civilians in the former Yugoslavia, Iraq and Rwanda in the 1990s, and should not be confused with regular IDP camps, which provide more substantial humanitarian assistance.⁴⁷¹ Instead, the PoC sites were initially meant to be a short term solution, providing

⁴⁶⁸ Stamnes, ‘The United Nations Mission in the Republic of South Sudan (UNMISS)’, p. 1.

⁴⁶⁹ Damian Lilly, ‘Protection of Civilian sites: a new displacement settlement?’, *Humanitarian Practice Network: Humanitarian Exchange*, no. 62, September 2014, <http://odihpn.org/magazine/protection-of-civilians-sites-a-new-type-of-displacement-settlement/> [Accessed: 18 January 2016]; Boyce and Yarnell, ‘South Sudan: A Nation Uprooted’, p. 7; Bellamy and Hunt, ‘Twenty-first century UN peace operations’, p. 1209; Stamnes, ‘The United Nations Mission in the Republic of South Sudan (UNMISS)’.

⁴⁷⁰ Hovil, ‘Protecting some of the people some of the time’; Bellamy and Hunt, ‘Twenty-first century UN peace operations’, p. 1209.

⁴⁷¹ Lilly, ‘Protection of Civilian sites: a new displacement settlement?’, p. 31; Stamnes, ‘The United Nations Mission in the Republic of South Sudan (UNMISS)’, pp. 2-3.

refuge in existing UN bases for civilians under immediate threat of physical violence.⁴⁷² The overall lack of contingency planning raises several challenges and issues.

The end goal of PoC sites is to provide physical security to IDPs from within UN bases, which to an extent has been achieved, undeniably saving many lives.⁴⁷³ However, as argued by Damian Lilly, the 'mission should only offer protection if it had the capacity to provide physical security.'⁴⁷⁴ Three key areas – violence within camps, vulnerabilities facing women and children and direct attacks on PoC sites – confirm where such physical security is not provided, indicating critical gaps in mandate versus reality over the protection of IDPs by the international community.

Violence and gangs have become a particular concern within the PoC sites, which are becoming sites of radicalisation.⁴⁷⁵ Since the latter half of 2014, IOM reported a significant rise in gang activity and violence due to the breakdown of social structures.⁴⁷⁶ Linked to this, are ethnic tensions, causing a number of IDPs to flee.⁴⁷⁷ For instance, IDPs from Malakal PoC site recall:

Nuer were going out of the camp, meeting with Nuer groups who told them to kill Dinka. They went back in, killed Dinka in front of peacekeepers. Pangas [machetes] were smuggled into the camp, they got you any time of the day.⁴⁷⁸

Malakal is the only major, multi-ethnic PoC, and so provides a critical case where ethnic tensions have erupted into violence within protection sites.⁴⁷⁹ These tensions are also seen between the Nuer and Shilluk communities, with one Shilluk community leader characterising the Shilluk hostility toward the Nuer as a 'cold war'.⁴⁸⁰ Such violence has adverse effects on UNMISS capacity to provide sufficient protection; for the first time UN Police (UNPOL) units

⁴⁷² Stamnes, 'The United Nations Mission in the Republic of South Sudan (UNMISS)', pp. 2-3; Lilly, 'Protection of Civilian sites: a new displacement settlement?'

⁴⁷³ Hovil, 'Protecting some of the people some of the time', p. 4; Bellamy and Hunt, 'Twenty-first century UN peace operations', p. 1209; Martins, 'From Crisis to Catastrophe', pp. 2-4.

⁴⁷⁴ Lilly, 'Protection of Civilian sites: a new displacement settlement?', pp. 32-33.

⁴⁷⁵ Hutton, interview, 2 February 2016.

⁴⁷⁶ IOM, 'IOM South Sudan: Consolidated Appeal: 2016', p. 18.

⁴⁷⁷ Bellamy and Hunt, 'Twenty-first century UN peace operations', p. 1209.

⁴⁷⁸ Focus group discussion with four displaced men, Juba, 19 October 2015 cited in: Hovil, 'Protecting some of the people some of the time', p. 21.

⁴⁷⁹ South Sudan Humanitarian Project, 'Situational Analysis: Malakal POC Site', p. 4.

⁴⁸⁰ Danish Refugee Council interviews, Malakal, Oct 2014, cited in: *Ibid.*

have to regulate internal security within an executive mandate, allowing them to detain and hand over suspects to national authorities.⁴⁸¹

The vulnerabilities of displaced women and children as detailed above,⁴⁸² are an additional example of inadequate physical protection provided by the international community in PoC sites. This is evident in the recruitment of child soldiers from within PoC sites, as well as in incidents of gender and sexual based violence faced by women in the sites.⁴⁸³

The overall physical weakness of PoC sites is revealed through the direct attacks on these sites. The two incidents of attacks on Bor PoC site in April 2014, and Malakal PoC site in February 2016⁴⁸⁴ directly point to the insufficiency of UNMISS protection. Stern argues this is ultimately due to the mission being understaffed and under-gunned, and thus unable to stand up against GRSS or SPLA/M-IO troops.⁴⁸⁵ Although both these incidents can be traced to the distinct lack of national protection, and instead direct violations from national authorities – as discussed in Chapter 4 – the cases also reveal the lack of security provided to IDPs in PoC sites by the international community. For instance, The Global Centre for the Responsibility to Protect noted the need for the UN to reinforce UNMISS following the April 2014 attack to ensure it has sufficient resources to patrol outside its bases.⁴⁸⁶ The vulnerability of PoC sites was also exposed in May 2015 in Melut when the site was struck by stray bullets and over 20 artillery shells.⁴⁸⁷ Therefore, despite the main objectives of UNMISS' PoC sites to provide physical protection to IDPs, these cases reveal that such protection has not been adequate.

Central to this discussion are issues of protection versus provision; while PoC sites have saved many lives, general living conditions within the sites remain an issue. As stated by one UN official in Malakal: 'The POC sites were a blessing and a curse' – making reference to the sites'

⁴⁸¹ Bellamy and Hunt, 'Twenty-first century UN peace operations'.

⁴⁸² See section 3.2.

⁴⁸³ Wheeler, "'We Can Die Too'"; Global Protection Cluster, 'GBV Sub-Cluster inputs for the South Sudan events at UN GA in September 2014'; IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs'; Stern, 'Guidance Note on Safety and Security of Survivors of Gender Based Violence in Humanitarian Settings in South Sudan'; Martins, 'From Crisis to Catastrophe'; Muscati, 'South Sudan's War on Women'.

⁴⁸⁴ Detail on these two attacks outlined in section 4.2.

⁴⁸⁵ Stern, interview, 17 February 2016.

⁴⁸⁶ Global Centre for the Responsibility to Protect, 'Statement on the Deteriorating Situation in South Sudan'.

⁴⁸⁷ Bellamy and Hunt, 'Twenty-first century UN peace operations'.

vulnerability towards violence versus concentration of IDPs making it 'easy to feed them'.⁴⁸⁸

A resounding criticism of PoC sites is the sense in which they are 'prison camps',⁴⁸⁹ and thus cause psychological suffering.⁴⁹⁰ One IDP in Bor PoC site described such challenges, stating:

Living in peace is hard in the PoC. We are a free people but here we are not free. We cannot move outside. We cannot move anywhere. We have been here for almost two years and although it is difficult, things are improving.⁴⁹¹

Humanitarian conditions within the PoC sites also remain an area of concern with poor living conditions in the camps.⁴⁹² IDPs themselves view the lack of humanitarian assistance as a greater problem than the lack of security. For instance, in Malakal a women reported having to feed her children with leaves from outside the camp; in Bor people had to burn plastic chairs and jerry cans in order to cook due to limited charcoal distribution.⁴⁹³ The importance of providing for IDPs within PoC sites is clear, as without sufficient humanitarian assistance IDPs are forced to seek alternative means of provision from outside the camps and so face greater danger.⁴⁹⁴

These humanitarian conditions tend to be due to the temporary nature of PoC sites, and also the lack of resources and funding to provide for the growing number of IDPs seeking refuge at UN bases.⁴⁹⁵ It is also important to recall that humanitarian assistance was not part of UNMISS's original mandate in South Sudan, with the later establishment of the Camp Coordination and Camp Management cluster (CCCM), with a wide-ranging membership of UN and NGOs, working to provide humanitarian assistance to IDPs.⁴⁹⁶

⁴⁸⁸ UN official in Malakal cited by: Simona Foltyn, 'UN bases in South Sudan are 'a blessing and a curse'', *The Guardian*, 26 April 2016, <http://www.theguardian.com/global-development/2016/apr/26/un-bases-south-sudan-malakal-attack-blessing-curse-unmiss> [Accessed: 28 April 2016].

⁴⁸⁹ Hutton, interview, 2 February 2016.

⁴⁹⁰ For instance, research in early 2014 revealed that 8 per cent of IDPs in Bor PoC site experienced psychosocial suffering, very often linked to the conditions of living in the PoC; referenced in: Chang and Padgett, 'Voices from Bor'.

⁴⁹¹ Malakal Bol Machar cited in: *Ibid.*, p. 12.

⁴⁹² As initially discussed in Chapter 3 – see for more evidence and examples.

⁴⁹³ Interviews with IDPs in PoC sites as cited in: Hovil, 'Protecting some of the people some of the time', pp. 16-17.

⁴⁹⁴ Such vulnerabilities particularly seen by women – see section 3.2 for examples.

⁴⁹⁵ Lilly, 'Protection of Civilian sites: a new displacement settlement?'; Stamnes, 'The United Nations Mission in the Republic of South Sudan (UNMISS)'.

⁴⁹⁶ Humanitarian agencies providing such assistance, include but are not limited to: WFP, FAO, UNICEF, IOM and various NGOs.

Lilly, 'Protection of Civilian sites: a new displacement settlement?'; Stamnes, 'The United Nations Mission in the Republic of South Sudan (UNMISS)'; IOM, 'Camp Coordination and Camp Management (CCCM)', 6 November 2015, <http://southsudan.iom.int/programmes/cccm> [Accessed: 31 March 2016]; IOM, 'IOM South Sudan: Consolidated Appeal: 2016', pp. 5-6.

The overall advantages and disadvantages of PoC sites should be considered. The sites themselves pose challenges to the mission with strains on resources and assets, concerns for safety and security of mission personnel as well as legal challenges.⁴⁹⁷ Limits in the number of UN soldiers that can be deployed beyond UNMISS bases is of no help to PoC sites,⁴⁹⁸ revealing problems with the lack of protection provided to IDPs outside the site – as is considered in the following section.⁴⁹⁹ The capacity of UNMISS to protect and provide for IDPs was aired in dialogue between the mission and MSF in December 2015, indicating the difficulties faced by the mission.⁵⁰⁰ An additional question is the next step, as the PoC sites cannot simply be closed down.⁵⁰¹ However, the hard work of the international community must also be recognised; UN OCHA states that '[d]espite the enormity of the challenges, humanitarian partners have worked tirelessly to reach people in need.'⁵⁰² For instance, UNPOL-led initiatives have improved security in both Bentiu and Juba.⁵⁰³ Assistance from organisations such as IOM must also be acknowledged in opening up clinics in PoC sites, as well as providing light base camps allowing relief workers to remain in areas of need for longer.⁵⁰⁴ The protection provided, and successful work done by UNMISS cannot be overlooked, however serious challenges still exist, compounded by the unrealistic expectation that national authorities will protect civilians.⁵⁰⁵

⁴⁹⁷ Stimson, Better World Campaign and Center for Civilians in Conflict, 'Protection of civilians by the UN peacekeeping mission in South Sudan', 27 August 2015, <http://civiliansinconflict.org/resources/pub/protection-of-civilians-by-the-un-peacekeeping-mission-in-south-sudan> [Accessed: 4 February 2016]; Boyce and Yarnell, 'South Sudan: A Nation Uprooted', p. 7; Hutton, interview, 2 February 2016.

⁴⁹⁸ As of March 2015, it was estimated that of the 11 400 military personnel assigned to UNMISS, only 3000 to 4000 can move beyond their bases at any one time.

⁴⁹⁹ Boyce and Yarnell, 'South Sudan: A Nation Uprooted', p. 9.

⁵⁰⁰ For more context, see: Sam Jones, 'UN accused of 'shocking lack of action over murder and rape in South Sudan', *The Guardian*, 17 December 2015, <http://www.theguardian.com/global-development/2015/dec/15/un-accused-of-shocking-lack-of-action-over-murder-rape-south-sudan> [Accessed: 23 December 2015]; Ellen M. Løj, 'In defence of the UN's role in South Sudan', 17 December 2015, Letter in *The Guardian*, <http://www.theguardian.com/world/2015/dec/17/in-defence-of-the-uns-role-in-south-sudan> [Accessed: 23 December 2015]; MSF, 'South Sudan: Crisis Update: Rape and killing in Unity state', 30 December 2015, <http://www.msf.org/article/south-sudan-crisis-update-december-2015> [Accessed: 19 January 2016]; MSF, 'South Sudan: Shocking Conditions Inside UN Camp in Malakal', November 2015, <http://www.msf.org/article/south-sudan-crisis-update-december-2015> [Accessed: 19 January 2016].

⁵⁰¹ Hutton, interview, 2 February 2016.

⁵⁰² UN OCHA, 'South Sudan: Humanitarian Snapshot'.

⁵⁰³ Boyce and Yarnell, 'South Sudan: A Nation Uprooted', p. 8.

⁵⁰⁴ For more context and information, see: IOM, 'UK Backs Lifesaving IOM Operations in South Sudan', *IOM Press Release*, 1 December, <https://www.facebook.com/sharer/sharer.php?u=http://southsudan.iom.int/media-and-reports/press-release/uk-backs-lifesaving-iom-operations-south-sudan> [Accessed: 22 February 2016]; IOM, 'New IOM Clinic Provides Critical Care for Displaced in Malakal', *IOM Press Release*, 8 December 2015, <https://www.facebook.com/sharer/sharer.php?u=http://southsudan.iom.int/media-and-reports/press-release/new-iom-clinic-provides-critical-care-displaced-malakal> [Accessed: 22 February 2016]; IOM, 'Light Base Camps Aid Humanitarian Response on South Sudan Frontlines', *IOM Press Release*, 9 February 2015, <https://www.facebook.com/sharer/sharer.php?u=http://southsudan.iom.int/media-and-reports/press-release/light-base-camps-aid-humanitarian-response-south-sudan-frontlines> [Accessed: 22 February 2016].

⁵⁰⁵ As outlined in section 4.1.

Protection provided to IDPs outside PoC sites

The focus of international protection for IDPs in South Sudan is almost exclusively on PoC sites, and yet only 10 per cent of IDPs live in these camps.⁵⁰⁶ The majority of IDPs live either in other IDP camp settings,⁵⁰⁷ or with existing host communities.⁵⁰⁸ One of the biggest flaws of UNMISS, and the PoC model in general, is the lack of protection provided to this vast majority of IDPs. As stated by one IDP in Bor PoC, '[t]hey tell us they can only protect us if we stay here. They say that if you go out far from the camp, we can't protect you.'⁵⁰⁹ There is therefore a desire for protection outside the sites not only for those who never reach a UN base, but also so that those already in the PoC can return home.⁵¹⁰

Furthermore, humanitarian support tends to be directed at PoC sites, and not IDPs in more remote locations. This is largely due to ease of delivery and security reasons.⁵¹¹ As a result of PoC sites becoming hubs for the delivery of humanitarian assistance, military protection efforts similarly focus on specific geographic areas and so civilians in these safe zones are often the only ones effectively protected.⁵¹² For instance, due to the relative ease of access to GRSS controlled areas such as Minghaman town in Lakes, humanitarian agencies have been working here since the start of the crisis, whereas in remote rebel-held areas such as Ganyiel, communities are cut-off.⁵¹³ In May 2015, there were only three NGOs present in Ganyiel – an area where food insecurity has been a challenge since before independence with 32 per cent of children reported to be malnourished in March 2015.⁵¹⁴ In many situations, the most

⁵⁰⁶ Stern, 'Guidance Note on Safety and Security of Survivors of Gender Based Violence in Humanitarian Settings in South Sudan', p. 1.

⁵⁰⁷ Which are often camps that have sprung up in remote areas where people have fled not under the auspices of UNMISS.

⁵⁰⁸ Stern, 'Guidance Note on Safety and Security of Survivors of Gender Based Violence in Humanitarian Settings in South Sudan', p. 8; IDMC, 'South Sudan: Greater humanitarian and development efforts needed to meet IDPs' growing needs', p. 1.

⁵⁰⁹ Interview with two PoC residents, men from Unity State, Bor PoC, 20 October 2015 cited in: Hovil, 'Protecting some of the people some of the time', p. 4.

⁵¹⁰ Hovil, 'Protecting some of the people some of the time', p. 17.

⁵¹¹ Bellamy and Hunt, 'Twenty-first century UN peace operations'; Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict'; Martins, 'From Crisis to Catastrophe'; South Sudan Humanitarian Project, 'South Sudan Macro-Conflict Analysis'.

⁵¹² Bellamy and Hunt, 'Twenty-first century UN peace operations'; Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict'; Martins, 'From Crisis to Catastrophe'.

⁵¹³ Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict', p. 7.

⁵¹⁴ Maxwell *et. al.*, 'Researching livelihoods and services affected by conflict', p. 7; Antony Loewenstein, 'South Sudan food crisis leaves people of Ganyiel desperate for a peace deal', *UNHCR RefDaily* (Originally published in *The Guardian online*), 26 March 2015, <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=551508ba5> [Accessed: 13 April 2016].

vulnerable people are outside PoC sites, and therefore receive little or no aid, and so the formerly mentioned food crisis, which is linked to the issue of displacement, continues.⁵¹⁵

In spite of the lack of protection provided outside PoC sites, the attempts that have been made by UNMISS, and other international organisations such as IOM, cannot be overlooked. The UNMISS PoC Strategy outlines protection activities along three tiers: protection through political process; protection from political violence and the overall establishment of a protective environment.⁵¹⁶ The need to consider the protection of IDPs outside PoC sites was also recognised by the Special Representative of the Secretary-General, Ellen Magrethe Løj stating, ‘we need to focus more on fostering a safe and secure environment outside the UN camps’.⁵¹⁷ IOM has similarly worked to provide assistance to IDPs in remote areas, with programmes such as Water, Sanitation and Hygiene (WASH), CCCM and the distribution of survival kit operations.⁵¹⁸ Nevertheless there are severe discrepancies between protection provided within and outside PoC sites. As the majority of IDPs live outside these sites, the need for the international community to extend their protection efforts is clear.

5.3 HOW IS THE INTERNATIONAL COMMUNITY HINDERED IN THE PROTECTION OF IDPS?

While evidence of an overall lack of protection of IDPs in South Sudan is undeniable, there are key factors hindering the work of the international community. In considering both internal hindrances and external deterrents, the negative influence of national authorities in the protection of IDPs and the uniqueness of the case of South Sudan is exposed. This section does not provide the international community with an alibi for their role in the lack of

⁵¹⁵ Martins, ‘From Crisis to Catastrophe’.

⁵¹⁶ Stamnes, ‘The United Nations Mission in the Republic of South Sudan (UNMISS)’, p. 3.

⁵¹⁷ Ellen Magrethe Løj cited in: Stamnes, ‘The United Nations Mission in the Republic of South Sudan (UNMISS)’, p. 3.

⁵¹⁸ For more information, see: IOM, ‘Humanitarian Update #60’, *IOM South Sudan*, 28 November – 6 January 2016, http://southsudan.iom.int/sites/default/files/IOM%20South%20Sudan%20Humanitarian%20Update%20%2360_0.pdf [Accessed: 22 February 2016]; IOM, ‘Humanitarian Update #59’, *IOM South Sudan*, 14-27 November 2015, <http://southsudan.iom.int/sites/default/files/IOM%20South%20Sudan%20Humanitarian%20Update%20%2359.pdf> [Accessed: 22 February 2016]; IOM, ‘IOM Aids Vulnerable Populations in Remote Areas of Jonglei, South Sudan’, *IOM Press Release*, 20 November 2015, <https://www.iom.int/news/iom-aids-vulnerable-populations-remote-areas-jonglei-south-sudan> [Accessed: 22 February 2016]; IOM, ‘Review of Survival Kits – South Sudan 2015: Was the modality of survival kit operations necessary?’, 8 January 2016, <http://southsudan.iom.int/sites/default/files/Survival%20Kit%20Monitoring%20Report%208%20January%202016.pdf> [Accessed: 23 February 2016].

protection shown towards IDPs. Rather it is illustrative of the practical difficulties in providing protection in South Sudan, as well as demonstrating where the international community arguably has an ulterior agenda on the issue of refugees and IDPs. Ultimately, the need to review the legal status and the needs of IDPs is discussed in order bring the protection of IDPs to the forefront of the international agenda.

Internal hindrances

As suggested in the previous chapter, in order to effectively protect IDPs in South Sudan, the international community requires support from national authorities and the GRSS. The need for such cooperation is reiterated by the AU Chairperson urging ‘the Government of South Sudan and all other stakeholders to extend full cooperation to UNMISS’.⁵¹⁹ However, the relationship between UNMISS and the GRSS was volatile from the outset, and even before independence relations between the SPLM and UN were tense.⁵²⁰ The unwillingness of the GRSS to work with UNMISS has adverse effects on the protection of IDPs. While it was initially assumed that state authorities would work in partnership with UNMISS to enhance civilian protection,⁵²¹ this was never really the case.⁵²² Following independence, the GRSS was supported with large amounts of international aid for state building, capacity building and infrastructural projects, and donors were working closely with the GRSS.⁵²³ However, since December 2013, the international community has grown increasingly cautious of providing direct budgets, and so relations between the GRSS and international agencies have been characterised by an increasing lack of trust on both sides.⁵²⁴

From the government side, such mistrust has had drastic consequences on the work of the international community as state restrictions hinder protection efforts. For instance, the passing of the NGO Bill in May 2015,⁵²⁵ was contentious with aid agencies fearing that the

⁵¹⁹ AU, ‘Report of the Chairperson of the Commission on the Situation in South Sudan’.

⁵²⁰ For more context and information, see: Hutton, ‘Prolonging the agony of UNMISS’, pp. 8-12.

⁵²¹ Argued and explained in section 4.1.

⁵²² Lamii Moivi Kromah, ‘Caught in the Middle: Civilian Protection in South Sudan’, *IPI Global Observatory*, 23 October 2014, <http://theglobalobservatory.org/2014/10/civilian-protection-south-sudan-poc-idps-html/> [Accessed: 3 February 2016].

⁵²³ Maxwell *et. al.*, ‘Researching livelihoods and services affected by conflict’, pp. 18-22.

⁵²⁴ *Ibid.*

⁵²⁵ The Bill regulates activities of NGOs through provisions such as imposing restrictions on hiring foreign employees and enforcing NGOs to register and sign individual ‘county agreements’ with the government.

legislation would monitor and restrict movement and assistance.⁵²⁶ This Bill is illustrative of how the GRSS has constrained the international community's work in South Sudan.

Most importantly for this argument, however, are examples where UNMISS, and the international community as a whole, have faced constant restrictions on movement throughout the country. Despite UN Guiding Principle 25 insisting that '[a]ll authorities concerned shall grant and facilitate the free passage of humanitarian assistance',⁵²⁷ both sides in the conflict are guilty of restricting access.. These are often imposed to advance military aims and ensure that attacks can be conducted without UN observation.⁵²⁸ They are also imposed by local troops or commanders acting outside central control, in an attempt to demand illegal payments or out of belligerence toward the mission.⁵²⁹ These government imposed restrictions indicate not only where the international community struggles in providing protection, but also supports the argument, that national authorities can be accountable for directly hampering the protection of IDPs.

There are also physical infrastructural hindrances, due to the unique nature of South Sudan as the world's newest and arguably one of the least developed countries. Many points discussed in Chapter 2 are relevant, showing how the history of conflict has left the country with little infrastructure. This has affected the work of international organisations as, due to the lack of tarred roads, many areas are only accessible by air, and during the rainy season only by helicopter.⁵³⁰ Such access constraints requiring the use of air transport have adverse effects in driving up the costs of delivering assistance and services.⁵³¹ Logistics are increasingly challenging for organisations in providing protection, especially to IDPs in

⁵²⁶ Justin Patinkin, 'Will NGO bill restrict aid efforts in South Sudan?', *IRIN News*, 13 May 2015, <http://www.irinnews.org/analysis/2015/05/13/will-ngo-bill-restrict-aid-efforts-south-sudan> [Accessed: 4 April 2016].

⁵²⁷ OCHA, 'Guiding Principles on Internal Displacement', principle 25.

⁵²⁸ Stimson *et. al.*, 'Protection of civilians by the UN peacekeeping mission in South Sudan'.

⁵²⁹ *Ibid.*

⁵³⁰ South Sudan has only 200 miles of paved roads, and during the rainy season 60 per cent of the country is cut off from road travel.

Boyce and Yarnell, 'South Sudan: A Nation Uprooted', p. 4; IOM, 'IOM South Sudan: Consolidated Appeal: 2016', p. 9; Martins, 'From Crisis to Catastrophe', p. 16; Richard Nield, 'South Sudan: The many barriers to aid', *Al Jazeera*. 15 December 2015, <http://www.aljazeera.com/indepth/features/2015/12/south-sudan-barriers-aid-151205114959758.html> [Accessed: 5 April 2016].

⁵³¹ UNHCR, 'Global Appeal 2015 Update: South Sudan', 2015, <http://www.unhcr.org/5461e6016.html> [Accessed: 5 April 2016].

remote areas. For instance, in Jonglei, Oxfam teams reportedly walk 12 hours through the bush to find where people are sheltering.⁵³²

The final major internal hindrance – that has been the centre of much discussion leading up to this section – is the civil war itself. The conflict is equally a cause of displacement as much as a hindrance to effective protection. For instance, Hutton argues that no long-term solutions can be implemented until there is peace and ‘at best the international community can/has put up a physical barrier until something else happens’.⁵³³ Similarly, Hovil stresses how UNMISS has been ‘overwhelmed by the scale of conflict’,⁵³⁴ as the civil war has revealed the shortcomings and weaknesses of UNMISS.⁵³⁵ Incidences such as lootings and attacks on PoC sites,⁵³⁶ as well as general logistical and security challenges facing donors hamper the effectiveness of response.⁵³⁷ Vulnerabilities facing staff and peacekeepers must also be considered. South Sudan ranks among the most dangerous places in the world for humanitarians, with violence against aid workers hindering protection efforts.⁵³⁸ An IOM Consolidated Appeal outlines the ‘increasingly negative sentiment toward international actors among officials and civilians, stemming from both negative media coverage and the declining economy’, citing the deaths of at least 43 humanitarian aid workers since the conflict began in 2013.⁵³⁹

To conclude, internal hindrances facing the international community must not be seen as excuses for the poor protection provided to IDPs, nevertheless the three main factors discussed do reveal serious challenges facing protection efforts. The complexity of this discussion is illuminated, as these factors expand the discussion to show the challenges facing not only those requiring *protection*, but also challenges in *protecting*.

⁵³² Martins, ‘From Crisis to Catastrophe’, p. 16.

⁵³³ Hutton, interview, 2 February 2016.

⁵³⁴ Hovil, ‘Protecting some of the people some of the time’, p. 12.

⁵³⁵ Hutton, ‘Prolonging the agony of UNMISS’, p. 19.

⁵³⁶ For instance, attacks outlined in section 4.2 and 5.2, as well as overall violations discussed in section 3.1.

⁵³⁷ Boyce and Yarnell, ‘South Sudan: A Nation Uprooted’, pp. 3-4.

⁵³⁸ IOM, ‘IOM South Sudan: Consolidated Appeal: 2016’, pp. 2-3; South Sudan Humanitarian Project, ‘Situational Analysis: Malakal POC Site’, pp. 6-8; Bellamy and Hunt, ‘Twenty-first century UN peace operations’, p. 1238; Nield, ‘South Sudan: The many barriers to aid’.

⁵³⁹ IOM, ‘IOM South Sudan: Consolidated Appeal: 2016’, pp. 2-3.

External focus

It is important to look beyond the South Sudan case and consider additional external factors that hinder the international commitment to protecting IDPs. The fickleness of the international community was mentioned briefly in Chapter 2,⁵⁴⁰ as interest in South Sudan notably faltered following independence. Opinion on international engagement in South Sudan is, however, varied. Research undertaken by Frontier Economics reveals that South Sudan is the second largest recipient of humanitarian assistance from the international community, after Syria.⁵⁴¹ Similarly, IDMC indicates that, while cases in the central African region⁵⁴² receive relatively little attention in comparison to countries such as Syria, the Philippines and Afghanistan, South Sudan has received the most attention in comparison to Sudan, CAR and the DRC.⁵⁴³ However, Richard Gowan points out where, for the most part of 2013, UNMISS was overshadowed by the problems facing other UN missions, notably the long-running operation in the DRC and newer force in Mali.⁵⁴⁴ While the attention and support South Sudan has received from the international community is considerable, it is important to realise that this has been relative to other countries in the region, and so the argument that the region as a whole gets somewhat neglected remains valid.

The refugee situation in Europe has exposed how some Western governments would prefer to keep displaced civilians inside the country, so they are not their official responsibility. As stated by Susan Fratzke, 'the nearly 1 million people who have arrived on Europe's shores in 2015 are but the tip of a much larger and growing displacement crisis'.⁵⁴⁵ There are far more IDPs within South Sudan, than refugees from South Sudan. For instance, there was a 0.4 per cent increase in the number of IDPs in South Sudan between November and December 2015 while the number of refugees fleeing South Sudan decreased by 1.5 per cent in these two

⁵⁴⁰ See section 2.4.

⁵⁴¹ Frontier Economics, 'South Sudan', p. 18.

⁵⁴² 'Central Africa region' defined in IDMC analysis to include: CAR, the DRC, Sudan and South Sudan.

⁵⁴³ IDMC, 'The Domino Effect'.

⁵⁴⁴ Richard Gowan, 'Diplomatic Fallout: Can the U.N. Rebuild its Force in South Sudan?', *World Politics Review*, 30 December 2013, <http://www.worldpoliticsreview.com/articles/13460/diplomatic-fallout-can-the-u-n-rebuild-its-force-in-south-sudan> [Accessed: 5 February 2016].

⁵⁴⁵ Susan Fratzke, 'Top 10 of 2015 – Issue #2: Displacement Reaches Record High as Wars Continue and New Conflicts Emerge', *Migration Policy Institute*, 17 December 2015, <http://www.migrationpolicy.org/article/top-10-2015-issue-2-displacement-reaches-record-high-wars-continue-and-new-conflicts> [Accessed: 5 May 2016].

months.⁵⁴⁶ This drop in the number of refugees leaving South Sudan suggests little assistance is provided to IDPs wishing to leave the country.

Regional displacement figures further support this argument. Figures suggest that the majority of refugees in Africa tend to remain on the continent,⁵⁴⁷ and in 2014, UNHCR reported that, overall, developing countries hosted 86 per cent of the world's refugees (10.1 million) – the highest number in more than two decades.⁵⁴⁸ Furthermore, as of December 2015, Ethiopia hosted the greatest number of South Sudanese refugees (226 193), followed by Sudan (184 668), Uganda (173 447) and Kenya (49 514).⁵⁴⁹ However, the UN International Migrant Stock only reported 179 South Sudanese entering Europe in 2015 out of a total of 634 613.⁵⁵⁰ This indicates that it is in the political agenda of international actors to keep IDPs as IDPs, or refugees in neighbouring countries, as opposed to assisting their movement to Europe. The European Commission recognised that '[t]he suffering of the people of South Sudan is beyond imagination',⁵⁵¹ and yet there is little welcome for South Sudanese refugees in Europe. Similarly, as global attention has zoomed in on the Syrian crisis and the refugee 'emergency' in Europe has attracted much funding, other refugee situations remain chronically underfunded.⁵⁵² Not all are in agreement with this point however; Hutton instead argues that aid has been provided to where people are displaced and so the international community do not have any ulterior agenda.⁵⁵³ Nevertheless, as Fratzke states: 'The scars of displacement, trauma, and nearly 60 million lives left in limbo in 2015 will be with the world for generations to come',⁵⁵⁴ reinstating the need for the international community (in this case

⁵⁴⁶ UN OCHA, 'South Sudan: Humanitarian Snapshot'.

⁵⁴⁷ Philip Verwimp and Jean-Francois Maystadt, 'Forced Displacement and Refugees in Sub-Saharan Africa: An Economic Inquiry', *World Bank Group*, Policy Research Working Paper 7517, December 2015, p. 4, <http://documents.worldbank.org/curated/en/2015/12/25673626/forced-displacement-refugees-sub-saharan-africa-economic-inquiry> [Accessed: 11 April 2016].

⁵⁴⁸ UNHCR, 'UNHCR Global Trends 2013', 2014, p. 2, <http://www.unhcr.org/5399a14f9.html> [Accessed: 11 April 2016].

⁵⁴⁹ UN OCHA, 'South Sudan: Humanitarian Snapshot'.

⁵⁵⁰ Also consider the fact that in total 630 214 South Sudanese migrants to 'developing regions', while 4 399 to 'developed regions'.

UN DESA, 'Trends in International Migrant Stock: Migrants by Destination and Origin, 2015', Table 16. Total migrant stock at mid-year by origin and by major area, region, country or area of destination, December 2015, <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml> [Accessed: 9 March 2016].

⁵⁵¹ Christos Stylianides, 'EU increases humanitarian aid to South Sudan by €20 million', *European Commission Press Release*, 21 December 2015, http://europa.eu/rapid/press-release_IP-15-6348_en.htm [Accessed: 4 March 2016].

⁵⁵² Fratzke, 'Top 10 of 2015 – Issue #2'.

⁵⁵³ Hutton, interview, 2 February 2016.

⁵⁵⁴ Fratzke, 'Top 10 of 2015 – Issue #2'.

Europe) to look beyond its immediate borders and interests and offer greater protection to the internally displaced.

5.4 CONCLUSION

This chapter reveals what the international community has done in providing protection to IDPs in South Sudan, as well as the varying degrees of protection. However, significant gaps in mandate and practice are evident, strengthening the argument that more needs to be done to ensure the protection of all IDPs, as it is as much the duty of the international community as it is the responsibility of the national authorities in the case of South Sudan. The discrepancies between mandate and reality must be reviewed and it is fundamental for the international community to step up and ensure protection of all IDPs, in light of the breakdown of governance in South Sudan. The main conclusion of this chapter is therefore that the mandate must be put into practice. As recognised in UN Security Council Resolution 2252, there is an undeniable need for additional protection which the GRSS is unable to provide, however such protection has only really been guaranteed for those in PoC sites. Without adequate humanitarian provision, protection efforts are obsolete. The hindrances facing the international community indicate the challenges in providing long-term protection without a solid peace agreement and an end to conflict.

CHAPTER VI: Conclusions

The protection of IDPs in South Sudan is a global issue that receives minimal attention. In the words of Kofi Annan:

We have challenged the argument that the lives and rights of individuals are an internal affair of state that is of no concern to outsiders. We have also told the dictators that sovereignty is no longer a shield behind which gross violations of human rights can be committed. You are responsible and you are accountable.⁵⁵⁵

This statement raises a number of key points addressed in this thesis. Cases such as South Sudan expose the need for the international community to do more to fulfil their duties and ensure the protection of *all* civilians when governments are incapable and unwilling to provide such protection.⁵⁵⁶ The theoretical debate over R2P versus state sovereignty is merely vapid conversation in the face of the injustices and human rights violations faced by IDPs whose needs are inadequately recognised in international law.⁵⁵⁷ This thesis argues that there is a need to look beyond state sovereignty in order to give better protection to IDPs and provide greater legal representation and assistance.

In reviewing the definitions of protection, as outlined in Chapter 1, in light of the case study of IDPs in South Sudan, the lack of adequate protection granted to them is stark. Evidence of the overall lack of protection for IDPs in South Sudan is exposed in Chapters 3, 4 and 5, resulting in the need for auto-protection mechanisms. The overwhelming lack of protection of IDPs is revealed in cases of civilians being targeted with violence; increased vulnerability of women and children; attacks on IDP camps; and the fact that 90 per cent of IDPs are not officially protected in UN PoC bases. Beyond physical protection, the inadequate humanitarian assistance provided to the displaced, high levels of food insecurity, livelihood challenges and poor living conditions for the majority of IDPs in South Sudan expose them to further risks, and are also indicative of the failure to protect. Having established how protection is deficient, three conclusions can be drawn from this discussion to reveal how the

⁵⁵⁵ Annan, *Interventions*, p. 133.

⁵⁵⁶ From this case of South Sudan, it is very clear that international priorities must adapt in guaranteeing protection to IDPs. However, as mentioned from the offset while discussing the limitations of this study, it is also important to consider that these same arguments apply to other cases where national authorities are a protagonist in conflict and displacement.

⁵⁵⁷ Important to note that reference to R2P versus state sovereignty debate in this thesis remains within the context of displacement, as the footnote (165) in section 1.6 previously discloses.

responsibility to protect IDPs in South Sudan ultimately lies with the international community when national authorities are incapable. There is a need to recognise, first, that a newly formed government does not necessarily have the capacity to be the primary protector of IDPs; secondly, that responsibility to protect ceases to be a purely internal matter when national authorities violate the human rights of IDPs and are party to the conflict that has displaced them in the first place, and thirdly, that the protection of IDPs is of greater importance than the principle of state sovereignty.

The extent to which IDPs remain a forgotten topic, overshadowed by refugee crises, and the apathy shown towards interminable conflict and displacement in lost corners of the globe such as South Sudan reinforces the central argument about the urgency for improved understanding of the plight facing IDPs in South Sudan. IDPs are globally overshadowed by refugees in all but statistics. This crucial point is explained in Chapter 1; the review of the literature as well as the legal and institutional framework shows that there is no specific UN agency for IDPs, nor any binding international treaty. Legislation at regional level remains weak and not ratified. The complexity of the South Sudan case and its relevant lack of geopolitical significance, means that the displaced are to a large extent ignored by the international community. The intensity of their plight is revealed through South Sudan's status as the world's newest country which has faced decades of conflict and generational displacement. In spite of the UN OCHA's humanitarian response plan, recognising the 'uniquely challenging operational environment',⁵⁵⁸ the international community still expects the GRSS to fulfil its protection duties.

This discussion has argued for greater respect to be given to the human rights of an individual than to state sovereignty; accordingly, it is the responsibility of the international community to protect IDPs in the circumstances of South Sudan. Flaws with, and challenges faced by the GRSS, as presented in Chapter 2 and developed in Chapter 3 and 4, indicate where the GRSS is incapable of fulfilling its duties as a sovereign state. This includes the GRSS' role in civil war; civilian targeting by all parties in conflict; attacks on PoC sites and overall violation of the human rights of the South Sudanese on all levels. Furthermore, the failure of the GRSS to

⁵⁵⁸ UN OCHA, 'Humanitarian Response Plan', p. 7.

adhere to its own Constitution, let alone international guidelines, demonstrates where responsibilities of state have not been met.

The ultimate conclusion drawn from this thesis is the need for the international community to adopt a more flexible approach towards displacement, being prepared to step in and provide protection where the national authorities have failed. While flexibility was shown to a certain extent in the opening up of UN bases to civilians fleeing in 2013, this only provides for ten per cent of IDPs. The current approach demonstrates the unrealistic, arguably naïve, expectations of national authorities on the part of the international community, outlined in Chapter 4. The question should be who *can* and who *will*, as opposed to who *should*, protect IDPs. Chapter 5 identifies the importance of using the mandate and putting it into practice. It reveals gaps between mandates and on-the-ground realities, with a certain degree of inconsistency on the part of the international community as well as the inability to adequately protect and provide for IDPs outside PoC sites.

The responsibility to protect refugees falls upon the international community, and therefore there is little reason why IDPs in a similar, if not worse, position should not receive similar status. The issue of displacement in South Sudan has been prevalent since before independence in 2011, and the fresh round of conflict, in December 2013, puts the issue into the spotlight. This case study of South Sudan clearly demonstrates the fundamental flaws of the current framework of IDPs, thrown into particularly sharp focus because of the challenges of a newly independent country with a nascent government and little infrastructure. IDPs should be given the protection they deserve at both national and international levels.

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INTERVIEWS

Lauren Hutton. Political analyst. 2 February 2016.

Orly Stern. Conflict, human rights and international law consultant. 17 February 2016.

NGO fieldworker (Chose to remain anonymous). 9 February 2016.

Annex A: Interview Documents

INTERVIEW QUESTIONS



Department of Political Studies

Guiding Interview Questions

Name of Researcher: Fenella Henderson-Howat

Project Title: The Protection of IDPs in South Sudan – Who is Responsible?

1. What has your experience been in South Sudan and the focus of your work?
2. What would you say are the greatest challenges facing South Sudan, IDPs in particular:
 - a. At independence, and before the outbreak of conflict in December 2013?
 - b. Since and therefore in light of the conflict?
3. In a broader sense would you agree that IDPs are one of the most marginalised groups, how? And how can this issue be sufficiently addressed?
4. With your own experience with livelihood issues how have you seen tensions between IDPs and host communities? And how do you think the international community has responded to this?
5. Experience of or witness to human rights violations within the IDP camps/PoC sites?
6. Would you agree that the responsibility to protect IDPs predominately lies with the national government?
7. Would you say that the approach and role of the international community in protecting IDPs has differed since independence in 2011? And why might that be? Do you think the international community has a particular interest in keeping IDPs as IDPs as opposed to refugees?
8. Issue of turf wars between organisations and how has this affected the protection of IDPs?
9. Approach and effort made by South Sudan in addressing this issue and how have they taken on their responsibility to protect IDPs as citizens of the country?
10. What are further avenues of research and areas where research has been done you would recommend pursuing for this project?

INFORMATION SHEET FOR PARTICIPANTS



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Faculty of Humanities
Department of Political Studies

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Name and contact details of researcher:

Fenella Henderson-Howat (Student number: HNDFEN001)

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0784322289

Working title of research project:

The Protection of IDPs in South Sudan – Who is Responsible?

Background and brief summary of project:

This MPhil thesis intends to look at the protection of IDPs in South Sudan within the timeframe from the referendum in January 2011 to December 2015. It will consider the injustices and human rights violations IDPs have faced and therefore evaluate the responsibilities of the international community and national government in the protection of IDPs.

Due to the contemporary nature of this study and the difficulties in gaining information on the situation in South Sudan, input from previous researchers and humanitarian workers in the field will hugely benefit the research.

Nature of research:

E-mail or skype based interviews and discussions with key individuals who have extensive knowledge on South Sudan or have worked in the field in the years leading up to and after independence in 2011. Such research will add to the case study based thesis.

What is involved:

Humanitarian workers and academics who have extensive knowledge and undertaken previous research on South Sudan, as well as those who worked in the field in the years leading up to and following independence.

Risks:

There are no risks involved.

Benefits:

Able to contribute in a valuable way to a Masters thesis on a topic that has not been widely researched to date.

Costs/payments:

There will be no costs incurred, and unfortunately no payments made for participation.

