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Internally Displaced People: The
Political Paradigm and Legal
Solutions in the African Context.

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DEDICATION

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ABBREVIATIONS

ADF	Allied Democratic Front
ARLPI	Acholi Religious Leaders Peace Initiative
ASEAN	Association of Southeast Asians Nations
AU	African Union
CPA	Concerned Parents Association
DRC	Democratic Republic of Congo
ECOMOG	Economic Community Monitoring Group
GoU	Government of Uganda
GUSCO	Gulu Support the Children Organisation
HSMF	Holy Spirit Movement Front
ICRC	International Committee of the Red Cross
IDP(s)	Internally Displaced Person(s)/Person(s)
IGAD	Inter-Governmental Authority on Development
ILO	International Labour Organisation
IOM	International Organisation for Immigration
KICWA	Kitgum Concerned Women's Association
LAS	League of Arab States
LRA	Lord's Resistance Army
NGO	Non Governmental Organisation
NRA	National Resistance Army
NRC	Norwegian Refugee Council
NRM	National Resistance Movement
OAS	Organisation of American States
OAU	Organisation of African Unity
OSCE	Organisation for Security and Cooperation in Europe
SPLA	Southern Sudan People's Liberation Army
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children Fund
UNITA	União Nacional para a Independencia Total de Angola
UPDF	Uganda People's Defence Forces
WFP	World Food Programme
WHO	World Health Organisation

CONVENTIONS/TREATIES AND OTHER INSTRUMENTS

African Charter on Human and Peoples' Rights, 1986
African Charter on the Rights and Welfare of the Child, 1999
American Convention on Human Rights, 1969
American Declaration of the Rights and Duties of Man, 1948
Cartagena Declaration on Refugees, 1984
Conditions of Service Men Regulations, 1993
Conditions of Services (Officers) Regulations, 1993
Constitution of the Republic of Uganda, 1995
Constitutive Act of the African Union, 2000
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987
Convention on the Elimination of Discrimination Against Women, 1981
Convention on the Rights of the Child, 1989
Convention Relating to the Status of Refugees, 1951
Draft National Policy on Internally Displaced Persons: (Policy and Institutional Framework) of the Republic of Uganda, 2003
Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949
ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989
International Convention on the Elimination of All Forms of Racial Discrimination, 1966
International Covenant on Civil and Political Rights, 1966
International Covenant on Economic, Social and Cultural Rights, 1966
National Resistance Army (NRA) Statute, 3/92
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969
Optional Protocol to the Convention on the Rights of the Child, 2000
Optional Protocol to the International Covenant on Civil and Political Rights, 1966
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977
Rome Statute of the International Criminal Court, 1998
Second Optional Protocol to the International Covenant on Civil and Political Rights, Aimed at the Abolition of the Death Penalty, 1989
The Addis Ababa Document on Refugees and Forced Population Displacements in Africa, 1994
The Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights, 1988
UN Guiding Principles on Internal Displacement, 1998
United Nations Charter, 1945
Vienna Declaration and Programme of Action, United Nations General Assembly, 1993

1 CHAPTER ONE: INTRODUCTION

1.1 BACKGROUND

At least 25 million people spread over 52 countries are displaced by violence and persecution but remain within the borders of their own countries. While the primary responsibility for protecting and assisting Internally Displaced Persons/People (IDPs) rests with States, the scope and complexity of this contemporary phenomenon requires the concerted action of a wide range of humanitarian, development and political actors.¹

The plight of IDPs not only poses a humanitarian challenge but also threatens the security and stability of countries, regions, and through a chain effect, the international system of which they are an integral part. As portions of a country, or an entire country, fall into disarray, neighbouring countries are forced to bear the brunt of refugee flows and cope with the resulting substantial political and economic disruptions. The tragedy of internal displacement reflects a breakdown within a society, in which both fundamental human rights and freedoms, and economic and social development are gravely compromised. Both the communities left behind by the displaced and the areas where the displaced find refuge are severely disrupted, with long-term political and economic consequences.²

Violence and instability often spread through entire regions, thus pleading for regional and international responses, not only because of humanitarian and human rights concerns but also because of the collective interest in regional stability and global peace and security. Of the world's populations at risk, internally displaced persons tend to be among the most desperate. They may be forcibly resettled on political or ethnic grounds or find themselves trapped in the midst of conflicts and in the direct path of armed attack and physical violence, forced conscription, and sexual assaults. Uprooted from their homes and deprived of their resource base, many suffer from profound physical and psychological trauma. They are most often deprived of shelter, food and health services in comparison to other members of the population.

Access to internally displaced population is complicated by the different manifestations of displacement. In some countries, internally displaced persons cluster in camps or settlements, which may be reachable to outside assistance. In other countries, they may disperse so as to avoid identification, which makes access more difficult. Or they may merge into local

¹ UN OCHA: Internal Displacement Unit. Available online at <http://www.reliefweb.int/idp/> information accessed 17th October 2003.

² Roberta Cohen and Francis M. Deng (eds.): *The Forsaken People: Case Studies of the Internally Displaced*, Brookings Institution Press, Washington, D.C., 1998, Chapter One, pp.1-2. Available online at <http://brookings.nap.edu/books/0815715137/html/1.html#pagetop>

communities, where gaining access to them may require the development of special community-based approaches.

When persons are displaced by conflict or political causes, governments are often less willing to protect and assist these internally displaced populations. Even those that invite international assistance may be suspicious of efforts that reaches out to all sides in a conflict. More problematic, are governments that deliberately bar or try to obstruct humanitarian assistance, which they often see as strengthening their opponents and undermining their own authority, especially if administered in insurgent areas. Some may not want to admit that insurgent groups control parts of their territory or that the central government is unable to provide for all its citizens. Or, they may want to conceal the extent to which their own policies or actions have contributed to war on grounds of defending their national sovereignty.³

Protection problems are endemic to the plight of internally displaced persons. They arise not only as a cause of flight, but also during displacement and in the search for durable solutions.

Internally displaced persons do not forfeit their inherent rights because they are displaced; they can invoke various provisions of human rights and humanitarian law to protect their rights. At the same time, existing international law does not contain guarantees that explicitly mention internally displaced persons. It is often difficult for governments, international organisations, NGOs and the internally displaced themselves to determine clearly which guarantees are applicable in a specific situation.⁴

1.2 OBJECT AND PURPOSE OF THE STUDY

This thesis will endeavour to look at international legal standards relevant and most applicable to IDPs, with focus on the content and limits to the rights of IDPs. It will provide basic understanding of the internal displacement issue, evolution of the current system and options for providing protection and assistance at the national level. Also, to be addressed are the current international coordination mechanisms for managing programmes on behalf of the internally displaced. The appropriate protection roles of international agencies, regional and national mechanisms during and after displacement have also been examined. The thesis is aimed at drawing the attention of the international community, in addressing the plight of IDPs in Africa, and particularly in Uganda.

³ Roberta Cohen, and Francis M. Deng: *Masses in Flight: The Global Crisis of Internal Displacement*, Brookings Institution Press, Washington D.C., 1998 pp.1-2, 5. Available online at <http://brookings.nap.edu/books/0815715110/html/2.html#pagetop>

⁴ *Ibid*, Chapter Three: Legal Framework, pp. 73.

1.3 SIGNIFICANCE AND SCOPE OF THE STUDY

This study is based on the IDP situation in Uganda and specific examples have been drawn from the three most affected areas within the country.

It is envisaged that the findings of this thesis will provide information to institutions that are engaged in IDP issues. For comparative purposes, it will also provide information and contribute literature to academia engaged in the study of IDPs, thus adding data to the already existing wealth of knowledge on IDP protection. This thesis should also serve as a reminder for governments, in particular the Government of Uganda (GoU), of its obligations under existing international laws that pertain to IDP protection. For the IDPs, the findings should serve as an advocacy tool against actions by their governments and non-state actors.

1.4 METHODOLOGY

The methodology of this thesis has consisted in the analysis of already existing bibliography and documentation on IDPs available at the Raoul Wallenberg Institute Library and web resources of Norwegian Refugee Councils', Global IDP Project (www.idpproject.org), Brookings-CUNY Project on Internal Displacement (www.brook.edu/fp/projects/idp/idp.htm), United Nations office for the Coordination of Humanitarian Assistance (OCHA), Internal Displacement Unit, Reliefweb (www.reliefweb.int), United Nations High Commissioner for Refugees (UNHCR) (www.unhcr.ch). In addition, international, regional and national human rights, humanitarian and refugee law conventions applicable to internal displacement have been analysed.

Field research was also employed, where I spoke to various officials including; the Assistant Commissioner for Disaster Preparedness in the Office of the Prime Minister-Disaster Preparedness and Refugees (OPM), Field Coordinator UN OCHA-Uganda, Head of Sub-office WFP-Gulu, Chairman District Disaster Management Committee (DDMC) in Gulu, and IDP representatives, to acquaint myself with developments (if any) and the nature of displacement in Uganda. I also visited Amuru IDP camp in northern Uganda, Gulu district.

1.5 STRUCTURE

Chapter two addresses the origin of the UN Guiding Principles on Internal Displacement, which are acknowledged as the current “legal” framework for IDP protection. Although not a binding document, the Principles have gained international standing and authority, because they reflect and restate international conventions in the fields of Human rights, Humanitarian and Refugee Law. It also discusses the need for an IDP definition, and the development of the Guiding Principles.

Chapter three relates to internal displacement under international law, examining the instruments under which IDP rights are protected namely the; UDHR, ICCPR, CAT, the Fourth Geneva Convention and II Additional Protocol to the Geneva Conventions. This chapter will also look at the institutions that have assumed humanitarian coordination and IDP protection roles that is; Representative of the Secretary-General on IDPs, UN OCHA, UNHCR, UNICEF, and ICRC among others. The contribution of the international organisations has been analysed, focusing on the initiatives and developments at the international level to address the IDPs. Gaps in the international protection regime are also discussed.

Chapter four addresses the regional responses to IDPs in Africa, detailing the causes and patterns of internal displacement. Issues of state sovereignty in relation to internal displacement have been pointed out as an impediment to the effective response to internal displacement in Africa; so is the lack of resources and expertise at the regional level to address displacement. Initiatives existing at regional level have also been discussed.

Chapter five focuses on internal displacement in Uganda. The causes and patterns of displacement in the three greatly affected regions of Uganda have been identified. Obligations under International and National laws, applicable to the Government of Uganda and the insurgents are highlighted. Initiatives undertaken by the Government of Uganda, International and NGO responses, particularly the organisations working with IDP related issues in northern Uganda have also been discussed. A case study of Amuru IDP camp is included in this chapter.

Chapter six suggests durable solutions to the IDPs plight and makes recommendations to the international and regional communities, Government of Uganda and other stakeholders in addressing internal displacement.

2 CHAPTER TWO: DEFINITION OF INTERNALLY DISPLACED PERSONS (IDPs)

2.1 ORIGIN OF THE UN GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The idea for the UN Guiding Principles on Internal Displacement (hereinafter Principles and/or Guiding Principles) emerged from a study undertaken by a team of international lawyers at the request of the Representative of the Secretary-General.⁵ Both the UN Commission on Human Rights and the General Assembly requested that the Representative to explore the extent to which existing international law provides adequate coverage for internally displaced persons.

Internally displaced persons were generally understood to mean those forcibly uprooted from their homes by armed conflict, internal strife, violations of human rights, and human-made and natural disasters, but who remained within the borders of their own countries.

The completed study, entitled *Compilation and Analysis of Legal Norms*⁶ and presented to the Commission at its 1996 session, examined international human rights law, humanitarian law, and refugee law by analogy, and the extent to which each meets the basic needs of the internally displaced. While it found that existing law provides a good deal of coverage for the internally displaced, it also found significant areas in which the law fails to provide sufficient protection.⁷

Among normative gaps, one could cite the lack of a right to restitution of property lost during armed conflict. There were also ‘application gaps’ where existing legal norms did not apply in all situations, and were binding only on a limited number of actors, or protected only limited categories of civilians. Among these, one could mention that human rights law is binding only upon governments and not on non-state actors, and that in some situations, the intensity of conflict is below the threshold of humanitarian law, while at the same time allowing governments to derogate from human rights provisions, often key to the survival of internally displaced people.

⁵ The Representative of the Secretary-General on Internally Displaced Persons was appointed in 1992. The emphasis in the mandate was and remains to establish a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions including, where required, recommendations on the ways and means of improving protection.

⁶ Francis M. Deng, Representative of the Secretary-General on Internally Displaced Persons: *Compilation and Analysis of Legal Norms*, United Nations, New York and Geneva, 1998.

⁷ Roberta Cohen: *The Development of International Standards to Protect Internally Displaced Persons*, in *Human Rights and Forced Displacement*, by Anne Bayefsky and Joan Fitzpatrick eds. Klumer Press, 2000.

Similar weaknesses exist where only segments of the population are entitled to the protection provided by the law, such as indigenous peoples (ILO Convention 169) or ‘protected persons’ (Geneva Conventions). There are also ‘ratification gaps’, where a person is without the protection afforded by international law because the government in question has not ratified the relevant instrument.⁸

To remedy the gaps identified, the Compilation and Analysis suggested that any future restatement of the law should include a specific prohibition against the forced return of internally displaced persons to places of danger. It called for specific protection for internally displaced women and children. It also, urged clarification of and restrictions on the lawful detention of internally displaced persons in closed camps. It further recommended the articulation of a right to restitution or compensation for property lost as a consequence of displacement in situations of armed conflict, and recognised the need of the displaced persons for personal identification, documentation and registration. It indicated the need to recognize an explicit obligation of governments to accept offers of humanitarian assistance and to protect relief workers, including their transportation and supplies. Its findings clearly pointed the need to restate the general principles of protection in more explicit detail and to address the gaps in the law in order to enhance protection for the internally displaced.⁹

2.2 WHY DO WE NEED A DEFINITION?

Internally displaced people share problems and characteristics specific to their situation that need to be delineated. Up to now, the protection and assistance needs of internally displaced persons have often been overlooked and cannot be addressed if the beneficiaries themselves and the nature of their situation is not defined.¹⁰

Although the displaced are frequently forced to flee their homes for the same reasons as do refugees, the fact that they remain within national territory means that they cannot qualify as bonafide “refugees”, entitled to the special protection regime accorded to refugees under international law. Moreover, their presence within national territory means that their own government bears primary responsibility for meeting their protection and assistance needs.

⁸ Wendy Davies: Rights have no borders: Internal Displacement Worldwide. See Chapter 3: Daniel Helle: Enhancing the protection of internally displaced persons: General observation on internal displacement. Available online at

http://www.nrc.no/global_idp_survey/rights_have_no_borders/helle.htm

⁹ Roberta Cohen: Masses in Flight: Supra note 3.

¹⁰ Global IDP Project of the Norwegian Refugee Council, Module One: A Definition of Internally Displaced Persons. pp. 9. Available online at

http://www.idpproject.org/training/nrc_modules/new/module_1.pdf

It is important to acknowledge that there are several ways of describing an internally displaced person, and that each description fulfils a different purpose. The definition presented in the Guiding Principles is generally acknowledged to be the current UN definition. This definition is rather descriptive as opposed to a legal definition.

2.3 THE DEVELOPMENT OF THE GUIDING PRINCIPLES¹¹

A body of principles was decided upon as the most realistic possibility for IDP protection. The Commission on Human Rights requested the Representative of the Secretary-General on Internal Displacement to develop an "appropriate framework" based on the Compilation and Analysis, but it carefully avoided the term "legal" framework in making its request. A glut of international instruments on different subjects could already be found before the world body. Better implementation of existing law rather than a new instrument was, considered essential.

There was, nonetheless, general agreement that the norms applicable to the internally displaced should be consolidated into one document. Both international organizations and NGOs argued for a compact, useable document to guide their work in the field with the internally displaced. A body of principles, it was felt, could also help governments to develop national law for the protection of internally displaced persons. Whereas a myriad of provisions could be found in international human rights and humanitarian law and in refugee law by analogy, too often, it proved difficult to clearly determine which guarantees applied in a specific circumstance. An authoritative document of the rights of the displaced would help resolve this problem.

The restatement of the law through principles, it came to be agreed, could reinforce and strengthen existing protections. Restatement could also address the gaps and grey areas in the law identified in the Compilation and Analysis. Fears that the principles would have the effect of discriminating against other groups were also allayed. A body of principles tailored to the needs of the internally displaced would seek to ensure that internally displaced persons, like others, are protected and their unique needs acknowledged and addressed.

At the same time, it should be emphasized that a body of principles does not create a new legal status for internally displaced persons. The internally displaced, being within their own countries, enjoy the same rights and freedoms as other persons in their countries. There are certain needs, however, that internally displaced persons have by virtue of their displacement, which the principles seek to address. Since displacement often breaks up the immediate family, it cuts off important social and

¹¹Roberta Cohen: *Masses in Flight*: Supra Note 3.

cultural community ties; terminates stable employment relationships; precludes or forecloses formal educational opportunities; deprives infants, expectant mothers and the sick of access to food, adequate shelter or vital health services; and makes the displaced population especially vulnerable to acts of violence, such as disappearances, rape and attacks on their encampments. Too often, the displaced fall into a vacuum of responsibility within the state and are targeted and subjected to persecution and harassment. Therefore the Principles are requisite to address their special needs by identifying the rights and guarantees relevant to their protection.

2.4 THE UN GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The Guiding Principles incorporate elements of three branches of public international law in a single document: international humanitarian law, human rights law, and refugee law. They do not assign special rights to IDPs under international law but simply restate already existing rights. The purpose of the document is neither to modify nor to replace existing law, as is clearly stated in *Principle 2, paragraph 2*:

"These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. (...)"¹²

Although the Guiding Principles can thus be viewed as falling within the province of soft law, they contain numerous rules that form part of treaty law and that are, therefore, legally binding.

The application of the Principles is to;

"Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border."¹³

¹² UN Guiding Principles on Internal Displacement, UN document E/CN.4/1998/53/Add.2. Section I: General Principles, principle 2, Para 2.

¹³ Ibid: Introduction: Scope and Purpose, Para 2 not a legal definition of internally displaced persons. Becoming displaced within one's own country of origin or country of habitual residence does not confer special legal status in the same sense as, say, becoming a refugee does. This is because the rights and guarantees to which internally displaced persons are entitled stem from the fact that they are human beings and citizens or habitual residents of a particular state. See Guiding Principles on Internal Displacement: Annotations, by Walter Kalin. Available on line at http://www.asil.org/study_32.pdf

This is the broadest definition in use at the international or regional level. Since internal displacement is a descriptive term, and not a legal designation, it can be broad. The definition contains the two crucial elements of internal displacement, coerced movement and remaining within one's national borders. It also includes the major causes of displacement, but its use of the qualifier, "in particular," makes clear that internal displacement is not limited to these causes alone, so as not to exclude future situations that might need special attention.

The definition in the Guiding Principles in comparison to that contained in the Analytical Report of the Secretary General on Internally Displaced Persons:

The definition incorporated in the UN Guiding Principles on Internal Displacement, clearly or vastly improves the 1992 definition.¹⁴

Particularly because it drops problematic language such as "*suddenly or unexpectedly in large numbers*", and adds language, such as "*places of habitual residence*", so that the focus is broader than the home per se. It is more nuanced and realistic description of the causes of displacement, because it includes as IDPs not only persons directly forced to flee but also persons obliged to leave to avoid generalized violence and human rights abuses.

While the definition does not confer any legal status upon the persons covered, it serves to specify the document's field of application. Laudable though this endeavour may be, it does, however, entail the risk of diminishing the scope of the protection to which the civilian population is entitled. Indeed, in an armed conflict, internally displaced persons form part of the civilian population — whether the population in question is displaced or not. According to the definition, some people might not qualify as internally displaced persons if the reasons for their displacement are unclear. This means that the Guiding Principles might not cover them, but they would be entitled to protection under international humanitarian law. The Guiding Principles endeavour to counter this shortcoming by stipulating, in Principle 1, that internally displaced persons are on an equal footing with the rest of their country's population. Care must however be taken not to leap to conclusions when interpreting the definition of internally displaced persons. The definition is somewhat arbitrary, and so are overall statistics regarding internally displaced persons.

¹⁴ Analytical Report of the Secretary General on Internally Displaced Persons, UN doc E/CN.4/1992/23, 14 February 1992, Para. 17. "Persons who have been forced to flee their home "*suddenly or unexpectedly*" in large numbers as a result of armed conflict, internal strife "*systematic*" violations of human rights or natural or manmade disasters, and who are within the territory of their own country".

The definition focuses in large part on persons who, if they were to cross a border, would qualify as refugees, both under the OAU Convention¹⁵ and the Cartagena Declaration,¹⁶ and arguably, in many cases, under the narrower definition of the Refugee Convention¹⁷ as well.

2.5 UGANDA'S DRAFT NATIONAL POLICY ON INTERNAL DISPLACEMENT

In consultation with the UN OCHA UNIT, Mr Francis M. Deng, and the Government of Uganda¹⁸ a National Policy on internal displacement (herein referred to as the Policy) is being drafted. The Policy seeks to protect Ugandan citizens against displacement and to protect and assist IDPs during displacement, return, resettlement or local integration. It also seeks to prevent displacement. The policy does this by clearly defining the roles and responsibilities of Government institutions, humanitarian organisations, donors, the displaced community and other stakeholders, and also spells out the rights of IDPs. The Policy moves away from the controversial 'protected villages' to a more dignified approach based on the UN Guiding Principles on Internal displacement. And also puts large emphasis on finding durable solutions to the plight of the displaced.¹⁹

Uganda's policy on IDPs will not only secure the protection of IDPs, but will also ensure consistency with the Constitution of Uganda²⁰ and the UN Guiding Principles on internal displacement.²¹

The definition²² of an IDP is drawn extensively on the UN Guiding Principles definition, which, as already discussed above, has its own strengths and weaknesses. The Policy creates institutions²³ to address IDPs

¹⁵ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session, Addis Ababa, 10 September 1969, entered into force 20 June 1974 U.N.T.S No.14691.

¹⁶ Cartagena Declaration on Refugees, Adopted at a colloquium held at Cartagena, Colombia 19-22 November 1984. See Annual Report of Inter-American Commission of Human Rights 1984-85, OEA/Ser.L/1166, doc.10, rev, at 190-193.

¹⁷ Convention Relating to the Status of Refugees, Geneva, 28 July 1951, 189 U.N.T.S 150 entered into force 22 April 1954.

¹⁸ The Office of the Prime Minister (OPM), the displaced and the country team embarked on formulating a national policy on IDPs. The Ministry of Disaster Preparedness and Refugees, acts as the main coordinating body for IDP relief and rehabilitation in Uganda

¹⁹ UN OCHA/IDP Unit 3 April 2002, p.2.

²⁰ The Constitution of the Republic of Uganda, promulgated in October, 1995, Uganda Printing and Publishing Corporation, Entebbe, 1995. Available online at <http://www.government.go.ug/constitution/index.php>

²¹ Global IDP Database, Section: National and International Responses. Available at www.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/4870F22B1AABB4FAC1256C4F0056838A

²² The Draft National Policy on Internally Displaced Persons: (Policy and Institutional Framework) of the Republic of Uganda July 2003: *Preamble* pp. 6

²³ Ibid: Chapter Two.

as opposed to the Guiding Principles, which assume that government institutions are already in place. It clearly spells out the roles and responsibilities of these institutions in addressing internal displacement.

Countries affected by internal displacement sometimes develop national IDP legislation or decrees defining who is entitled to special assistance and protection by the state. Such a person maybe granted emergency assistance in the form of food rations, immediate access to health care and temporary shelter. National IDP legislation generally affords specific legal rights of assistance and protection for those who fall within the definition, while the Guiding Principles simply use the definition to identify vulnerable groups in need of special attention by the national and international community.

2.6 CONCLUSION

The Guiding Principles fill a major gap in the international protection system for the internally displaced. By setting forth the rights of the internally displaced and the obligations of governments and insurgent forces, the Principles are a means of holding authorities accountable for the way they treat internally displaced persons. In particular, they provide guidance to states faced with the phenomenon of internal displacement; to other authorities, groups and persons when dealing with the displaced; and to inter-governmental and non-governmental organizations when addressing internal displacement. Furthermore, they enable displaced communities to advocate for their own rights.

Although not a binding document, the Guiding Principles have already gained international standing and authority. The Principles, which have been widely circulated,²⁴ should increase international awareness of the legal standards relevant to the internally displaced. The main challenge then will be implementation of the principles. Since there is no monitoring body to oversee compliance with the principles, a global effort will be needed in which UN agencies, regional organizations, international and local NGOs, and the displaced themselves are involved. Over time and with sustained use, advocacy of the Guiding Principles could change the way in which governments and insurgent groups deal with internally displaced populations.

The task therefore shifts from defining the internally displaced to establishing criteria to determine who among them are of particular concern to the international community. Once such criteria exist, the international community then needs to determine the acceptable solutions to their plight.

²⁴ The Guiding Principles have been translated in the following languages; English, French, Spanish, Portuguese, Arabic, Chinese, Russian, Turkish, Serbian and Croatian, Albanian, Burmese, Sqaw Karen, Georgia, Tamil, Sinhala, Tagalog, Cebuano, Maquindanaon, Rutoro, Swahili, Swahili (DRC), Abkhaz, Armenian, Azeri, Indonesian, Luo, Somali, Kirundi. Available at <http://www.idproject.org/training.htm>

In short, there is need for reference points indicating when internally displaced persons start, and when they stop, being of particular concern to the international community.

3 CHAPTER THREE: INTERNATIONAL INSTITUTIONAL SET UP AND LEGAL FRAMEWORK FOR PROTECTION OF IDPs

3.1 INTROUDCTION

The unresolved issues of UN mandate and institutional responsibility for internal displacement continue to constrain the international response. The lack of a binding legal framework explicitly addressing the issue of IDP protection, similar to the 1951 Refugee Convention, has in the past often been cited as a reason for the inadequate response. Complementarity's between human rights law and humanitarian law provides enhanced protection of displaced persons and is discussed in detail below.²⁵

3.2 IDP PROTECTION IN RELATION TO HUMAN RIGHTS, HUMANITARIAN AND REFUGEE LAW

3.2.1 INTERNATIONAL HUMAN RIGHTS LAW

It is well established that all individuals are endowed with basic human rights as inherent attributes of human dignity, which are recognised and protected by international law. States, in turn, are obliged to ensure respect of these universally recognised human rights, which are essential to the survival, dignity and well being of all persons subject to their jurisdiction.²⁶ In this regard, Articles 55 and 56 of the Charter of the United Nations mandate all States Members of the United Nations to protect human rights of all individuals.²⁷

Human Rights Law consists of a large number of instruments addressing general and specific human rights. The most important among them are:

- Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT)²⁸
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁹

²⁵Global IDP Project: Complementarity between key instruments of international law. International human rights and humanitarian law merged into one operational instrument: the UN Guiding Principles on Internal Displacement. By Bjorn Petterson, pp. 3-9. Available online at http://www.irinnews.org/webspecials/idp/pdfs/legal_complimentarity_2002.pdf

²⁶Internally Displaced Persons: Supra note 7, para 13, pp. 5.

²⁷United Nations Charter, 26 June 1945, 59 Stat. 1031,T.S. 993, entered into force 24th October 1945.

²⁸Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 51* at 197, United Nations document A/39/51 (1985), entered into force 26 June 1987.

- Convention on the Elimination of All Forms of Racial Discrimination (CERD)³⁰
- Convention on the Rights of the Child (CRC)³¹
- International Covenant on Civil and Political Rights (ICCPR)³² and its two Optional Protocols.³³ The two international covenants on civil/political rights and economic, social, cultural rights make up the basis for many of the more thematic and specialised human rights conventions. The right to life and freedom from torture are some of the most important civil rights, while the right to vote is an example of an important political right. States are expected to implement these rights as soon as they become party to the covenant.
- International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁴ The implementation of the ICESCR often requires resources to improve access to food, health care, and housing for example, which are not at hand in many countries. The implementation of these rights is therefore likely to be progressive and often in close collaboration with the international community. However, State parties to this covenant have the obligation to prioritise vulnerable groups and to take steps to the maximum of their available resources to realise all the rights covered by this covenant.
- Universal Declaration of Human Rights (UDHR). The UDHR has not been signed and ratified by States, but it is considered

²⁹Convention on the Elimination of Discrimination Against Women, adopted by the General Assembly resolution 34/180, *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 46*, at 193, United Nations document A/34/46 (1980), reprinted in 19 I.L.M 33 (1980), entered into force 3 September 1981.

³⁰International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York, 7 March 1966, 660 U.N.T.S. 195, entered into force 4 January 1969.

³¹Convention on the Rights of the Child, adopted by General Assembly resolution 44/25, *Official Records of the General Assembly, Forty Fourth Session, Supplement No. 49*, at 166, United Nations document A/44/49 (1990), reprinted in 28 I.L.M 1448 (1989), entered into force 2 September 1990.

³²International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI) adopted 16 December 1966, *official Records of the General Assembly, Twenty-first Session, supplement No. 16*, at 52, document A/6316 (1967), entered into force 23 March 1976.

³³Optional Protocol to the International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI) adopted 16 December 1966, *Official Records of the General Assembly, Twenty First Session, Supplement No. 16*, at 59, United Nations document A/6316 (1966), 999 U.N.T.S.302, entered into force 23 March 1976; Second Optional Protocol to the International Covenant on Civil and Political Rights, Aimed at the Abolition of the Death Penalty, General Assembly resolution 44/128 adopted on the 15 December 1989, *Official Records of the General Assembly Forty-fourth Session, Supplement No. 49 at 206*, United Nations document 14668, 999 U.N.T.S entered in force 11 July 1991.

³⁴International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200 A (XXI), adopted 16 December 1966, *official Records of the General Assembly, Twenty-first Session Supplement No.16*, at 49, United Nations document A/6316 (1967), 993 U.N.T.S 3, entered into force 3 January 1976.

interpretation of the human rights articles in the UN Charter (Art. 55-56), which has become somewhat of a constitution for the international community. The UDHR could therefore be seen as binding on UN member states.

In addition to the international human rights instruments developed by Member States of the United Nations, a number of regional human rights instruments developed by respective regional intergovernmental bodies exist, some of them are;

- American Declaration of the Rights and Duties of Man (American Declaration)³⁵
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, (Protocol of San Salvador)³⁶
- The African (Banjul) Charter on Human and Peoples' Rights (African Charter)³⁷
- The American Convention on Human Rights (American Convention)³⁸
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention)³⁹ and its Protocols, and the European Social Charter.⁴⁰

States generally owe human rights to individuals. States party to the UN conventions have the obligation to respect, protect and fulfil the rights included in the human rights conventions and in the UDHR. Consequently, only state agents, and sometimes individuals acting on the instigation of or with the consent or acquiescence of public officials, are said to violate human rights. On the other hand, violent acts committed by private individuals would normally be classified as common crimes and would therefore fall under the Criminal Code of a particular country. Some exceptions apply to these traditional concepts of human rights exist. For

³⁵ American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States, Bogota, Colombia, 1948, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82, doc: 6, rev. 1, at 17 (1992)

³⁶ The Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights, "Protocol of San Salvador", signed at San Salvador on 17 November 1988 at the eighteenth regular session of the General Assembly, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82, doc. 6, rev. 1, at 67 (1992)

³⁷ African (Banjul) Charter on Human and People's Rights, OAU document CAB/LEG/67/3 rev. 5, reprinted in 21 I.L.M. 58 (1982), entered into force 21 October 1986

³⁸ American Convention on Human Rights, signed at the Inter America Specialised Conference on Human Rights, San Jose, Costa Rica, 22 November 1969, entered into force 18 July 1978, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V/II.82, doc. 6, rev. 1, at 25 (1992).

³⁹ The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, 213 U.N.T.S 221 (1950), entered into force 1 January 1955

⁴⁰ European Social Charter of 18 October 1961, 529 U.N.T.S 89; entered into force 26 February 1965.

example, the Prevention and Punishment of the Crime of Genocide explicitly applies to individuals, whether they are state agents or not.

Like any other human beings, IDPs are beneficiaries to the protection afforded by these human rights instruments mentioned above.

3.2.2 INTERNATIONAL HUMANITARIAN LAW

International Humanitarian law regulates the conduct of hostilities and seeks to protect the victims of armed conflict by striving to ensure protection of non-combatants from the effects of war and to limit the use of certain methods of warfare.

The main instruments of IHL comprise of the four Geneva Conventions of 12 August 1949⁴¹ and their two additional protocols⁴². The fourth Geneva Convention is explicitly dedicated to the protection of civilians and therefore contains important protection provisions applicable to internally displaced persons. The fourth Convention, *Article 3*⁴³ dealing with internal conflicts and the treatment of persons taking no active part in the hostilities is particularly relevant to IDPs. The content of *Article 3* is developed in more detail in the *II Additional Protocol on Protection of Victims of Non-International Armed Conflicts*. In the *II Additional Protocol*, particular attention should be paid to *Article 17*, which explicitly prohibits the displacement of the civilian population “unless the security of the civilians involved or imperative military reasons so demand”. Also, from the *IV Geneva Convention* it is clear that persons evacuated for their own protection have the right to be returned as soon as possible. This is because internal displacement so often occurs in situations of internal armed conflict.

IHL applies to Contracting Parties to the Geneva Conventions and the Additional Protocols. In addition, armed opposition groups (as citizens of a country which is a Contracting Party to the conventions) are also bound by international humanitarian law, particularly *Article 3*, Common to the four

⁴¹Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85; Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (hereinafter Fourth Geneva Convention). These four Geneva Conventions entered into force 21 October 1950.

⁴²Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted 8 June 1977, entered into force 7 December 1978, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted 8 June 1977, entered into force 7 December 1978, 1125 U.N.T.S. 609.

⁴³The rules contained in Article 3 are considered as customary law and represent a minimum standard from which the belligerents should never depart.

Geneva Conventions. Armed opposition groups fulfilling certain minimum conditions regarding military capacity and capacity to implement IHL are also bound by the *II Additional Protocol on Protection of Victims of Non-International Armed Conflicts*.⁴⁴

The 1998 Rome Statute of the International Criminal Court⁴⁵ provides for individual responsibility for war crimes committed in internal or international conflicts.

There is a wide consensus that the key provisions of these treaties, which are designed to protect the victims of all armed conflicts, have acquired the status of rules of general or customary international law binding on all states. These treaties being particularly applicable for IDP protection place an obligation on states to observe and protect rights that accrue to IDPs as any other citizen.

3.2.3 INTERNATIONAL REFUGEE LAW

The key element in the definition of an internally displaced person is the fact that he/she has not crossed an international border, as opposed to refugees who by definition have left their country. Therefore, refugee law is not directly applicable to IDPs. However, given the similarities of the causes of flight, the living conditions in reception areas and the challenges faced during return and resettlement, refugee law provides important guidance in dealing with IDP issues. The most important source is the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.

The application of refugee law by analogy has clearly enriched the content of the Guiding Principles. One crucial concept borrowed from the refugee regime is the protection against forcible return of IDPs. Refugee law applies to State parties to the 1951 Convention relating to the Status of Refugees.

3.2.4 IMPORTANT GAPS IDENTIFIED IN HUMAN RIGHTS AND HUMANITARIAN LAW FILLED BY THE GUIDING PRINCIPLES

All fundamental human rights are of course applicable to internally displaced persons given that they have not crossed an internationally recognised border and continue as full-worthy citizens of their own countries. However, the Principles have taken the important step to explicitly state what some of the most important rights mean in relation to the particular situation of IDPs. In the Principles are the right to non-discrimination and the right to freedom of movement.

⁴⁴ See II Additional Protocol Art.1.1

⁴⁵ Rome Statute of the International Criminal Court, 17th July 1998, U.N. Doc. A/CONF.183/9. The Rome Statute entered into force on the 1 July 2002.

The risk of facing discrimination, as a displaced person is common to all IDP situations and, in addition to constituting a violation *per se*, has proven to be a very real obstacle to the fulfilment of other rights. IDPs are often seen with suspicion for having had to flee, for having lived in “enemy” controlled territory or simply because they come from a different ethnic, national or religious group than the host community. Therefore, the Guiding Principles address the issue of discrimination in three different Principles⁴⁶ explicitly highlighting IDPs’ right to freedom from discrimination. In this respect, Guiding Principle No.1⁴⁷ is particularly interesting given that it clarifies a grey area left by human rights and humanitarian law.

As a fundamental right, freedom from discrimination is guaranteed in both human rights and humanitarian laws. In their respective prohibition of discrimination, both these branches of international law list a number of conditions upon which discrimination cannot be based (race, sex, colour, language, religion, nationality, etc). Displacement does not appear among these conditions, but when listing the conditions, IHL and HR respectively include prohibition of discrimination based on “other similar criteria” and “other status”.

The Guiding Principles have therefore considered that a person’s condition as displaced is just as applicable and have included an explicit prohibition of discrimination against IDPs based on the mere fact that the person is displaced. This sends a clear message that discrimination impeding IDPs’ access to social services, schooling, the job market and public offices, for example, is intolerable.

As in the case of discrimination, human rights law guarantees individuals freedom of movement in a number of instruments⁴⁸. However, this right is subject to restrictions intended to protect national security, public order, public health and the rights of others. These restrictions have often been applied arbitrarily to groups of IDPs, giving the impression that some authorities do not consider IDPs as entitled to rights as other citizens. Displaced persons are sometimes arbitrarily prevented by military roadblocks from arriving in areas they (the IDPs) consider safe. Once in a camp or collective settlement, their right to leave the camp and go back is sometimes restricted. These limitations on the right to freedom of movement are often not based strictly on the criteria for legitimate restrictions but rather seem to reflect a generalised attitude among some authorities that vulnerable people have limited rights. The Guiding Principles have tried to

⁴⁶ Supra note 12: Principles no. 1, 4 and 22.

⁴⁷ Guiding Principle 1(1) ‘Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law, as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.’

1 (2) ‘These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.’

⁴⁸ Supra note 32 ICCPR Art 12.1 and UDHR Art 13.1

address this issue including not only the general right to freedom of movement enjoyed by all persons, including IDPs, but also specific movement rights, deduced from the general right. For example, the Principles explicitly state the right of displaced persons “to move freely in and out of camps or other settlements (Guiding Principle No. 14 (2)⁴⁹ and “to seek safety in another part of the country” (Guiding Principle No. 15(a)⁵⁰.

3.3 INTERNATIONAL ORGANISATIONS AND THEIR INVOLVEMENT WITH INTERNALLY DISPLACED PERSONS

3.4 INTRODUCTION

In recent years a broad range of humanitarian, human rights and development organisations have begun to provide protection, assistance and reintegration and development support to internally displaced populations. However, in the absence of strong coordination among these agencies or clear institutional responsibility for the internally displaced, the response has been highly uneven. Seven principal operational organisations play a role with internally displaced persons, the UN High Commissioner for refugees (UNHCR), the International Committee of the Red Cross (ICRC), the United Nations Development Programme (UNDP), the World Food Programme (WFP), the United Nations Children’s Fund (UNICEF), the World Health Organisation (WHO), and the International Organisation for Migration (IOM).⁵¹ Few organisations have the mandate, expertise, or capability to address protection problems. Nor is there consensus on the roles that human rights organisations, humanitarian and development agencies, or peacekeeping operations should play in providing protection.

3.4.1 THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

Of all the institutions dealing with the IDPs, the ICRC has the most well developed protection capability. It also has the clearest mandate to protect and assist victims of internal conflict, a substantial number of whom are internally displaced. An independent non-UN organisation, ICRC has overall statutory responsibility for promoting and ensuring respect for the

⁴⁹ Guiding Principle 14 (2), ‘In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.’

⁵⁰ Ibid, Article 15 (a), ‘Internally displaced persons have: (a) The right to seek safety in another part of the country.’

⁵¹ Robert Cohen: *Masses in Flight*: Supra note 3, Chapter four: Institutional arrangements, pp 128.

four Geneva Conventions (1949) and Additional Protocols (1977) in both international and non-international armed conflicts.⁵²

ICRC makes no distinction between protection and assistance activities. Although UN humanitarian and development agencies often contend that protection responsibilities will jeopardize their assistance role, ICRC has gained the acceptance of both governments and insurgent forces in carrying out joint protection and assistance activities. One of ICRC's organisational strengths is that its representatives extend protection on both sides in conflict situations and seek to reach those whom other humanitarian organisation cannot reach because of hazardous conditions or political obstacles.

ICRC's protection and assistance over a broad range of activities are: monitoring the implementation of the Geneva Conventions and Protocols among civilian populations, making representations to governments and non-state actors when violations occur, gaining access to and securing the release of detainees, evacuating civilians from situations of danger, creating protected areas, maintaining family links through tracing networks and exchange of Red Cross messages, facilitating arrangements for the creation of humanitarian space and cease-fires, lending its good offices to facilitate the establishment of hospital and safety zones, and providing material assistance needed for survival.

ICRC activities in Rwanda and Chechnya greatly benefited internally displaced persons in the area of both protection and assistance. ICRC's independence sometimes complicates its ability to work with other agencies in the field. Although its mandate necessarily limits the extent to which it can involve itself in UN affairs, the enormity of humanitarian emergencies makes collaborative work essential.

One aspect of ICRC policy that is viewed with reserve by some human rights organisations is its practice of keeping violations of humanitarian law confidential. This policy, they argue, does not always strengthen protection. They also point out that ICRC usually addresses its public appeals to 'all sides' in a conflict. In recent conflicts, however, notably in the former Yugoslavia and Rwanda, ICRC's public statements have exposed the egregious violations of particular sides. Nonetheless, ICRC generally exercises restraint in the face of serious abuse, and in respect of the principle of confidentiality, it does not transmit information to war crimes tribunals, as human rights bodies do. Although this policy of confidentiality often gains the organisation greater access than other groups, its reach is still limited. Not all states have ratified the Geneva Conventions and Protocols.

⁵² Statute of the International Committee of the Red Cross, of 21 June 1973, Article 4 (1) (c), & (d). The ICRC is active primarily in situations of armed conflict and internal violence. By seeking to assist all victims of armed conflict, it also works to prevent arbitrary displacement and to ensure protection of and assistance to internally displaced persons.

And the many states that have ratified them do not always give ICRC entry or admit that a non-international armed conflict is taking place on their territory. ICRC has not been allowed to assist internally displaced populations in Guatemala and Turkey, for example, even though conflicts in those countries have produced substantial numbers of internally displaced persons. Moreover, ICRC may be precluded from involvement when internal displacement is unrelated to warfare.

3.4.2 THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

UNHCR plays a broad role in addressing the problems of the internally displaced; it offers protection, assistance, and initial support for integration.⁵³

UNHCR has increasingly undertaken activities on behalf of the internally displaced as part of a comprehensive approach to address coerced population movements. While UNHCR's Statute makes no specific reference to internally displaced persons, it recognises in *article 9*, that the High Commissioner may, in addition to the work with refugees, "*engage in such activities...as the General Assembly may determine, within the limits of the resources placed at (her) disposal*". This article is the basis on which the General Assembly has authorised the Secretary-General to call upon UNHCR to undertake humanitarian assistance and protection activities on behalf of the internally displaced, provided certain specific conditions are met.⁵⁴

Because of the close links between refugees and internally displaced persons, UNHCR has also responded to the problem of internal displacement in many situations.

UNHCR has interpreted the General Assembly resolutions, and in particular resolution 48/116,⁵⁵ as providing the Organisation with a mandate to address the challenges of internal displacement in a flexible manner. Based on these resolutions, and on its operations experience, UNHCR developed internal

⁵³ Statute of the Office of the United Nations High Commissioner for Refugees, UN 1950. As UNHCR's mission statement puts it, 'UNHCR is mandated by the United Nations to lead and co-ordinate international action for the worldwide protection of refugees and the resolution of refugee problems.

⁵⁴ In 1993 the General Assembly recognised that UNCHR's activities could be extended to IDPs when both refugees and IDPs are so intertwined that it would be practically impossible or inappropriate to assist one group and not the other. Although refugees flee their country and the internally displaced remain uprooted within their national borders, the two groups share many common characteristics: like refugees, many IDPs have been forced to leave their homes because of fear of persecution, war and violence, and are in need of humanitarian assistance and protection. Also issues of return/reintegration apply to both groups.

⁵⁵ Office of the United Nations High Commissioner for Refugees, G.A. res. 48/116, 48 U.N. GAOR Supp. (No. 49) at 231, U.N. Doc. A/48/49 (1993).

policy directives in 1993 and 1997, defining the criteria for involvement in specific operations as follows:

- a) Specific request or endorsement from the Secretary-General or the competent principal organs of the United Nations;
- b) Consent of the concerned state or other relevant entity;
- c) Relevance of UNHCR's expertise and experience in protection, assistance and solution-oriented activities, and;
- d) Availability of adequate resources, access to the affected population, ability of UNHCR to maintain its institutional independence as a non-political and humanitarian organisation, and to intervene directly with the governments and parties concerned through its field presence.

The criteria and considerations outlined above do not automatically trigger UNHCR's involvement but reflect factors that need to be taken into account in deciding whether or not a situation is appropriate for UNHCR's involvement.

By virtue of its unique mandate and its global operations on behalf of refugees, UNHCR has acquired protection and solution-oriented skills and an operational capacity that can be put to effective use in certain situations of internal displacement. While the nature of UNHCR's involvement is related generally to the organisation's expertise and experience in the area of protection and solutions, the particular activities undertaken by UNHCR vary according to the specific situation and the needs of the persons concerned, ranging from reintegration assistance in Ethiopia and Somalia, to capacity building and the promotion and monitoring of human rights in Tajikistan, to co-ordinating protection and humanitarian assistance in former Yugoslavia.

Assisting the internally displaced as part of a reintegration operation for returnees is the most frequent way in which UNHCR becomes involved with internal displacement. Because UNHCR's activities on behalf of the internally displaced in the context of a repatriation operation are usually indivisible from its mandated protection and assistance activities for returning refugees, specific authorisation would not normally be a precondition for the organisation's involvement.

In contrast, where the link between an envisaged operation and refugee-related activities is weak, prior request or authorisation from the UN organs or the concerned state is a prerequisite for UNHCR's involvement with internally displaced persons. While recognising the difficulties of protecting the internally displaced in their own country, UNHCR nevertheless believes that activities with respect to internally displaced persons should not be

limited to the delivery of relief assistance, but should include a protection component.⁵⁶

3.4.3 THE UNITED NATIONS CHILDREN FUND (UNICEF)

UNICEF has become involved with IDPs through its efforts to provide to women and children in the areas of health care, nutrition, education, water, and sanitation. Although it views itself primarily as a development organisation, emergency situations now account for 25 to 28 percent of its activities. Initially, UNICEF was dismissive of identifying the IDPs as a category of persons in need. Their argument was that singling out the IDPs from the larger affected population would discriminate against others equally in need and cause inequity and conflict. Like other development-oriented organisations, it emphasised approaches that benefited entire communities and strengthened local capacities. UNICEF's growing involvement in emergency situations has stimulated the development of policies and programs for the IDPs.

Broadly speaking, protecting the rights of the child means ensuring the rights provided for in the Convention on the Rights of the Child. Protection of displaced children focuses, first, on shielding them from physical and psychosocial harm inflicted by others, such as violence, exploitation, sexual abuse, neglect, cruel or degrading treatment, or recruitment into military forces. Displaced status makes children especially vulnerable to each of these forms of abuse.

Second, protection refers to those actions that preserve the identity and cultural, linguistic, and inheritance rights of displaced children, since children removed from their home communities are at significant risk of losing these portions of their heritage.

Finally, the protection offered also entails providing or ensuring provision of the basic needs of children in terms of food, health and education.

By definition, UNICEF's mandate demands that it act whenever and wherever women and children-families-are vulnerable, whether they be refugees, displaced, affected by conflict, by inequity or by poverty. UNICEF can bring to the displaced populations its experience in capacity development, in community participation and in development of coping skills of children, parents, families and of communities required for survival, development and protection in situations of poverty and inequity, and in more extreme uses of violence and armed conflict.

⁵⁶ Roberta Cohen: *Masses in Flight*: Supra note 3, pp. 137-139.

3.4.4 WORLD HEALTH ORGANISATION (WHO)

WHO's involvement in situations of internal displacement is guided by its constitution,⁵⁷ which authorizes it, at the request of governments of the UN, to furnish aid in emergencies, act as the directing and coordination authority on international health work, and provide health services and facilities to special groups. In recent years these groups have been interpreted to include IDPs and refugees. In an effort to address emergencies more effectively, WHO in 1993 reorganised its Division of Emergency and Humanitarian Action. The Division's responsibilities include dispatching emergency teams to the field to assess the health needs of affected populations, providing technical guidance to governments in dealing with emergencies, coordinating emergency response, and training national staff in emergency preparedness.

3.4.5 UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

In 1990, the GA assigned the UN resident coordinator "the function of coordinating assistance to the internally displaced, in close cooperation with governments, local representatives for donor countries and the UN agencies in the field."⁵⁸ This step has aroused some resistance. As a rule, UNDP resident representative acts both as the senior UNDP official in a country and as the resident coordinator of the entire UN system. Within UNDP, some have questioned whether senior officials should be involved with issues other than development.

Nevertheless, the proliferation of internal conflicts, the increasing number of collapsed and emerging states, famine and drought have forced UNDP to rethink its traditional patterns of response. Since the mid-1980s, UNDP resident representatives have been called upon to assume key roles in coordinating emergency response. Moreover, UNDP officials in the field have had to deal with the adverse effects of such situations on economic development. Institutional tensions have also risen.

As development officials, resident representatives report to UNDP, whereas in their capacity as resident coordinators of emergency assistance, they report to the office of the ERC. This dual arrangement is problematic especially since UNDP "manages" the resident coordinator system and has created an emergency division of its own to lend support to resident coordinators. Another serious problem is that resident representatives generally have no expertise in emergency work. To remedy this, training has been introduced under a disaster management-training program, administered jointly by UNDP and the office of the ERC. A move has also been made to broaden the choice so that an individual other than the resident

⁵⁷ Constitution of the World Health Organisation, July 22 1946, Article 2.

⁵⁸ United Nations Development Programme, "Manual for the programming of UNDP Resources" (United Nations, April 1996) pt. III p.3. See Masses in flight, pp. 133.

representative can be selected as coordinator in a complex emergency situation.

The net effect of these efforts over the past several years has been greater acceptance by UNDP that some of its key officials will have to be substantially involved with humanitarian emergencies and play an important role with the internally displaced. UNDP officials, however, still tend to see internally displaced persons as part of a larger population affected by wars, failed states, droughts, and famines. They tend not to emphasize the organisation's relationship to this group, which requires not only material assistance but also protection from exposure to human rights abuses.

Indeed, most resident coordinators do not consider human rights and protection activities to be compatible with their responsibilities as resident representative of UNDP, in which position they work closely with governments on development programs. Despite the fact that protection is an integral part of coordinating assistance, their great concern is that by becoming involved with protection issues, they may exceed their mandate or even create grounds for expulsion. As a result, many resident coordinators are less than forthright with governments about protection problems confronting the internally displaced, while others have echoed the government's view that internal displacement is not a problem in their country and hence does not require international attention.

Great efforts need to be made to bridge the gap between UNDP's long-term development role in a country and its assistance to IDPs on an emergency basis.

UNDP has also been playing a pioneering role in area-based development, which seeks to ensure that in the aftermath of conflict, areas of return can effectively absorb displaced persons and returning refugees while sustaining the local population. In fact, UNDP sees its development work in the resettlement phase as one of its main roles with regard to the internally displaced, and it has undertaken reintegration programs in Bosnia and Herzegovina, Cambodia, Central America, Mozambique, and the Horn of Africa.

Available funding should strengthen UNDP's ability to respond in a more timely and systematic manner to emergencies and to play a more substantial role in assisting IDPs. To do so effectively, resident representatives/coordinators will have to strengthen their advocacy role. They will need to persuade governments to integrate uprooted populations in their national development plans, challenge governments that try to manipulate and obstruct programs for the displaced, and to ensure that development programs do not serve to strengthen and legitimise governments that cause mass displacement. Working with uprooted populations will require a broader and more varied approach than UNDP's traditional one of working closely with governments on development programs.

3.4.6 WORLD FOOD PROGRAMME (WFP)

WFP, which handles one-quarter of the world's food aid, is the single largest provider of food commodities to IDPs. About 35 percent of the millions of persons WFP assists are IDPs, who now constitute WFP's largest category of beneficiaries.

Since neither WFP nor any other agency is specifically mandated to ensure that sufficient food is made available to IDPs, their needs can easily be overlooked. To improve the timeliness and quality of its emergency response, WFP has created rapid-response teams, stockpiled food and equipment, and strengthened its emergency collaboration with UN agencies, in particular UNHCR and UNICEF, and with NGOs. It has played a major role in meeting the needs of the IDPs in former Yugoslavia, Somalia and the Great Lakes region. And it has played the lead role in responding to the needs of the IDPs in Angola, Cambodia, Liberia, Mozambique, and Sierra Leone.

Although protection concerns per se fall outside WFP's mandate, WFP does negotiate access and safe passages for its food and personnel with governments and rebel forces in order to reach IDPs at risk, when governments or rebel forces have obstructed the delivery of food to IDPs.

WFP's mandate also extends food aid in support of return, reintegration, and post conflict rehabilitation. In such cases, food is provided on a food-for-work basis to generate employment and stimulate economic and social reconstruction. The strengthening of local capacities and mechanisms to cope with future crises is also an important part of WFP efforts. Although in the past WFP's primary focus has been development assistance, today refugee and emergency work count for as much as 70 percent of its \$1.8 billion budget⁵⁹.

The declining availability of resources for development assistance combined with the need to divert resources to emergency operations and the difficulty of undertaking development projects in countries affected by internal conflict have all markedly reduced the amount of assistance for development projects. This shift away from development also undermines emergency operations because lower levels of WFP development assistance in different countries reduce the amount of food from which supplies can be borrowed during emergencies.

⁵⁹ Roberta Cohen: *Masses in Flight*: Supra note 3, pp. 135.

3.4.7 INTERNATIONAL ORGANISATION FOR MIGRATION (IOM)

The main objective of IOM, a non-UN intergovernmental institution, is to help ensure the orderly movement of persons in need of migration assistance, whether displaced persons, refugees, or nationals. For IOM, the internally displaced fall within the broader category of “displaced persons” the organisation’s mandate covers. In fact, its constitution is unique in providing a mandate for “displaced persons” that is interpreted to encompass both those who migrate internally and internationally.

IOM’s migration assistance covers activities such as organising transport, evacuations, and returns; providing temporary shelter and other material relief; providing early warning and rapid analysis of migratory flows; developing national population information systems and censuses; and providing expert advice to governments on migration policies and laws. In addition, cooperation agreements between IOM and numerous member and observer states provide for migration assistance and protection to internally displaced persons.

IOM considers protection and assistance to be closely linked that by moving displaced persons out of danger and meeting their basic assistance needs it is providing de facto protection. It also believes that the presence of an international organisation may serve as a form of protection. In carrying out its activities, IOM considers itself bound by a number of constitutional safeguards and guiding principles. For example, when it provides transportation assistance, it insists upon the free and voluntary movement of persons. It also seeks to ensure that persons moved by the organisation are given the opportunity to re-establish their lives in dignity and self-respect. It further works to ensure that the human rights of internally displaced persons are respected in all its programs. Nonetheless, its activities raise protection and ethical concerns that need to be addressed both by IOM and by other organisations that engage in such work.

Organizing the registration of internally displaced persons, for example raises concerns about whether effective safeguards have been developed against potential government abuse for purposes of repression. Centralised census taking and the development of population information systems, although needed for statistical purposes, raise similar concerns. Transporting internally displaced persons can raise serious protection issues, particularly whether the movements are voluntary, whether transport could be perceived as complicity in forced relocations, and whether conditions are sufficiently safe to warrant return.

Increased collaborative monitoring with human rights bodies could help IOM ensure that attention is given to protection problems during the return and reintegration process. Similarly, increased safeguards may be needed

for activities such as the registration of IDPs, centralised census taking, and the development of population information systems.⁶⁰

3.4.8 REPRESENTATIVE OF THE SECRETARY GENERAL ON IDPs

The Representative of the Secretary-General is the only position within the UN system with a mandate from the Commission on Human Rights and the Secretary-General to focus exclusively on the problem of internal displacement and to address both protection and assistance.⁶¹

The representative is authorised to monitor displacement worldwide, undertake fact-finding missions, establish dialogues with governments, coordinate with humanitarian and human rights bodies, make proposals for increased legal and institutional protection, and publish reports for action by the Commission, the General Assembly, international organisations, and NGOs.

The position of the representative has evolved into one of a catalyst within the UN system, raising awareness of the human rights and protection problems of the internally displaced and stimulating improvements at the institutional level in the area of legal protection. Until his appointment, there was no systematic UN effort to report on and monitor the protection needs of internally displaced persons. No international official was charged with raising their protection problems with governments, other than on an ad hoc basis. Nor was any official charged with raising the problems of the displaced with international humanitarian and development agencies.

The position is a voluntary one, expected to be carried out on a part-time basis. The office has no operational authority and has limited staff support. The resources placed at the representative's disposal do not enable him to undertake systematic monitoring of situations of internal displacement or frequent visits to countries with serious problems of internal displacement.

The representative needs greater support from other UN departments and agencies in following up cases on internal displacement. The representative has to find effective ways of dealing with governments that have serious problems of internal displacement but seek to avoid scrutiny. At present, governments that wish to evade the attention associated with a fact-finding mission can do so with immunity, leaving countries with more cooperative governments to become the focus of the representative's attention. The representative's relationship to non-state actors also needs clarification and strengthening. The representative has been authorised to enter into dialogue with governments but has not been given explicit authority to establish direct contact with insurgent authorities, which under compelling and

⁶⁰ Ibid pp. 141.

⁶¹ Supra note 5.

appropriate humanitarian conditions, should be recognised as an indispensable aspect of the mandate. The representative has successfully managed to mobilize support from outside the UN particularly from academic, legal and NGO constituencies and from governments in support of his activities. However, the UN itself will have to assume a greater part of the burden and place at his disposal more substantial human and material resources if the representative is to carry out his mandate effectively.⁶²

3.5 GAPS IN THE INTERNATIONAL INSTITUTIONAL FRAMEWORK FOR IDP PROTECTION

When one reviews the large numbers of humanitarian, human rights, and development organisations that are now involved with the internally displaced, it becomes clear that capacities exist for dealing with internal displacement but that they are frequently not extensive enough or sufficiently honed to address the problem effectively.

Some organisations need increased capacity to deal with emergencies; others need more training and experience in working with uprooted populations; still others require expertise in protection work. At the same time, international organisations have shown themselves remarkably flexible in responding to situations of internal displacement. Some (such as UNHCR) have used their good offices to undertake activities on behalf of the internally displaced at the request of the UN Secretary-General or General Assembly. Others (for example, ICRC, UNICEF) have extended coverage to internally displaced persons when they fall within a broader category of concern, such as the victims of armed conflict, or women and children in need. Still others (for example, WHO, IOM) have broadly interpreted their own constitutions to encompass internally displaced persons. They have also developed expertise and innovative skills to reach and deal with persons displaced within the borders of their own countries. Nonetheless, the international response system is far from adequate. It is too selective, organisations working on behalf of the internally displaced are poorly coordinated, protection and human rights concerns are sorely neglected, and reintegration and development support receive insufficient attention.

Currently, no UN agency can be relied upon to respond to internal displacement in a predictable manner. Nor is there any international accountability when an agency denies coverage to internally displaced populations. Different agencies pick and choose the situations in which they will become involved, depending on their mandates, resources and interests. As a result, coverage is often limited and inconsistent. Often, UN agencies are reluctant to become involved when doing so could place them in direct conflict with governments they want to cooperate with.

⁶² Roberta Cohen: *Masses in Flight*: Supra note 3, pp. 156.

The absence of reliable international funding for the internally displaced also encourages international organisations to take a selective, case-by-case approach to this group. Unlike the funding for refugees, no overall funding exists for situations of internal displacement. Moreover, funding for humanitarian emergencies of which the internally displaced are a part is apparently declining.

No effective central point exists within the international system that routinely and rapidly assigns responsibility in situations of internal displacement. Agencies tend to go their own way and are not likely to become aware of the gaps that need to be addressed. However, agencies are not always inclined to subordinate their priorities to an overall plan. Duplication also becomes a problem. Moreover, the presence of so many agencies, donor organisations, and NGOs in an emergency often represents a serious drain on the limited resources of post-conflict states.

In many situations, security is as important a priority as food, but protection of physical safety often takes second place to the provision of food, medical care, and shelter. Government resistance is a major factor limiting international involvement with protection. But an equally important reason is that international human rights bodies are not yet fully operational and there is little consensus among other UN agencies as to what they should do about identifying, monitoring, and addressing the human rights and protection problems of internally displaced persons. If UN human rights bodies are too weak to participate effectively, many humanitarian and development agencies do not consider defending physical safety and fundamental human rights their central concern or function.

Political views could jeopardise the agency's impartiality, neutrality, and ability to provide humanitarian relief. Humanitarian and development agencies become involved in protection and in negotiating access to the internally displaced, particularly when they have gained the confidence of governments or non-state actors within the framework of providing assistance. But it is at this point that humanitarian and development agencies usually draw the line. Tensions, they argue, can arise between assistance and protection roles, and their first priority must be assistance. Others, however, maintain that protection should never be given a secondary position. Although intercessions can be diplomatically sensitive and politically risky or downright costly, they constitute the indispensable protective aspect of any relief operation, without which no lasting improvement in the condition of conflict victims can be assured.

As noted earlier, IDPs may return, or be forcibly returned, to areas without due attention to their safety or ability to reintegrate and the reintegration process in a country. As a result, humanitarian relief agencies have increasingly become involved in monitoring returns and providing reintegration assistance. However, many such people are ill-prepared for return and reintegration. In emergency situations, humanitarian activities focus primarily on meeting short-term needs. Education, training, and

income-generating activities are rarely available to IDPs; nor are sufficient efforts made to enable them to find land for farming to reduce their dependency on food aid. Successful reintegration generally depends on development aid to increase the absorptive capacity of return areas. Development agencies however, seldom have adequate funds for the rehabilitation and development of such areas. For the most part, their resources are expected to be allocated in cooperation with governments and used for regular development purposes. In many cases, governments prefer to use the limited development funds available to them for the benefit of nationals who are not displaced, rather than for the reintegration of uprooted populations. When rehabilitation and development project are designed and funded to benefit both the local population and uprooted persons, however, governments are often more responsive. Nonetheless, donors tend to treat relief and development as separate exercises and to compartmentalize funds for each. This has made it difficult to find funding for rehabilitation purposes, which often fall between the two. Development agencies are hampered by the lack of rapid and flexible procedures for disbursing rehabilitation funds. Instead they use many of the same procedures for emergencies as they do for regular development projects, which can take several years. In general donors are willing to allocate resources to emergency and disaster relief than to support the reconstruction and development of areas where IDPs, refugees and returnees should be integrated. Yet the return or resettlement of such populations and their reintegration are critical to reconstruction and to the process of reconciliation in war-torn societies. Moreover, if the process takes into account the inequities and schisms that led to breakdown in the first place, it can help prevent renewed conflict and displacement.⁶³

3.6 CONCLUSION

There is clearly a consensus within the human rights and humanitarian community regarding the importance of enhancing implementation of existing international law, rather than creating new instruments that might duplicate and distract the attention from existing norms. That was never the intention or the effect of the UN Guiding Principles. As we have seen, the Principles have rather strengthened and complemented the protection of displaced persons by interpreting and spelling out what existing norms mean for IDPs. By using the most IDP relevant provisions of both human rights and humanitarian law, certain protection needs have been better met in the Principles than if we were to use the isolated instruments separately. This complementarity is particularly evident in situations of armed conflict (the major cause of displacement) where it is necessary to be able to draw on both human rights and humanitarian laws.

Also, without creating new norms, the principles state both what the authorities should do and refrain from doing in order to give effect to a particular right. Such quite specific demands on the authorities have gained

⁶³ Ibid pp. 159-168

the Principles a more operational role than most general instruments, without providing ground for a concrete action plan for humanitarian programmes.

Increasingly, is the issue of the lack of an International Organisation charged with addressing internal displacement, apart from the Representative of the Secretary General which as discussed above has its own shortcomings. There are a number of organisations involved in numerous IDP issues. However with many gaps identified in their involvement with IDPs, there is need for the establishment of an organisation, specialised in IDP issues. Nonetheless caution should be placed in drawing such a conclusion, because of the obviously limiting factors of state sovereignty in internal displacement.

4 CHAPTER FOUR: REGIONAL RESPONSES (AFRICA)

4.1 INTRODUCTION

The situation of internally displaced persons typifies vividly the crisis of displacement in Africa today. Notwithstanding the magnitude of the problem, no single organization has a specific and comprehensive mandate to respond to the protection and assistance needs of internally displaced persons as a whole.⁶⁴

Because the burden of addressing emergencies cannot rest on the shoulders of the UN system alone, regional institutions are increasingly being expected to assume some of the responsibility in their own geographic areas. The knowledge and access they have in their regions make them likely candidates to become the first line of defence, the first to alert the international community of potential problems and the first to seek to avert and resolve crises. There is also considerable scope for their cooperation with international organisations, particularly in preventing situations of internal displacement and protecting victims.⁶⁵

At present, the regional initiatives remain at a rudimentary stage of development. Regional bodies such as the Organisation of African Unity (OAU) reborn as the African Union (AU)⁶⁶, the Organisation of American States (OAS), the Organisation for Security and Cooperation in Europe (OSCE), as well as the League of Arab States (LAS), and Association of Southeast Asian Nations (ASEAN) are not accustomed to dealing with humanitarian emergencies and massive displacement.

Many are simply not equipped with the political structures and resources to do so, while some are reluctant to interfere in what they deem the internal affairs of states. Almost all lack experience and expertise in addressing emergencies. Political rivalries within regional organisations are beginning, in varying degrees, to devote some attention to conflict prevention and to the problem of mass displacement.

⁶⁴ The Addis Ababa Document on Refugees and Forced Population Displacements in Africa. Adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa, 8-10 September 1994, Addis Ababa, Ethiopia. (Held in Commemoration of the twenty-fifth anniversary of the adoption of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the twentieth year of its entry into force), A/AC.96/839 Recommendation V: Internally Displaced Persons Para 18 pp. 11-12.

⁶⁵ Roberta Cohen: *Masses in Flight*: Supra note 3, see original text Chapter 6, pp. 213-223

⁶⁶ African Union was launched in Durban, South Africa, 9 July 2002. In general, The African Union objectives are different and more comprehensive than those of the OAU. The OAU served its mission and was due for replacement by a structure geared towards addressing the current needs of the continent. For more information, see the aims of the OAU and the objectives of the African Union, as contained in the Constitutive Act.

4.2 CAUSES OF INTERNAL DISPLACEMENT IN AFRICA⁶⁷

The African continent has more IDPs than the rest of the world put together – a total of just over 13 million by the end of 2002. In contrast, Africa's refugee population was estimated at approximately 3.6 million in 2002.

The magnitude of internal displacement in Africa reflects a worsening of armed conflicts during the 1990s – mostly internal in nature – that in 2002 affected more than one quarter of the continent's 53 countries. While several African countries saw political progress towards conflict resolution in 2002, in many cases the humanitarian situation for IDPs and other vulnerable populations actually deteriorated.

Many of the conflicts while intra-state have a regional dimension and are sustained by external factors. In the Democratic Republic of Congo, one factor that started and sustained the civil war that broke out in 1998 was plunder of the country's rich natural resources, including diamonds, gold and precious metals. The war embroiled at least five other countries in the region – Angola, Zimbabwe and Namibia supporting the government in Kinshasa, and Rwanda and Uganda supporting rebel movements.

Another common factor prolonging these and many other wars in Africa and thereby exacerbating situations of internal displacement is the exceedingly high availability of small arms and light weapons.

The forced displacement of civilians has been a strategy used by both government and opposition forces in various countries to achieve different military and economic ends: for example, in Angola by UNITA rebels in order to procure a workforce, and in turn by government forces in order to isolate UNITA; in Sudan a 'scorched earth' policy pursued by government forces to depopulate oil-rich areas; and in Burundi the government policy of re-groupement that relocated the largely Hutu population into camps guarded by government forces, purportedly for protection from attacking rebel groups.

Competition for scarce land and water resources has also triggered conflict, leading in turn to sometimes-massive displacement; in Somalia and Rwanda, for example, and to a lesser extent in Kenya. Severe drought conditions in the Horn of Africa in recent years have exacerbated internal displacement throughout the region. Internal displacement in some African countries has, to varying degrees, been linked to oil exploration and extraction – for example in Sudan, the Republic of Congo (Brazzaville) and Nigeria.

⁶⁷ A Global Overview of Internal Displacement by the end of 2002. Compilation of updated global and regional summaries, published by the Global IDP Project, (February 2003) pp. 13. Available online at http://www.idpproject.org/IDP_project/Global_regional_overviews_2002.pdf

A common problem in many African countries, despite the holding of multiparty elections, has continued to be the lack of good governance, transparency and accountability. In extreme cases, such as Somalia, there has been no functioning central government at all. Therefore, at the national level, there has in the majority of cases been a lack of recognition by governments regarding their obligations to provide internally displaced persons with the necessary protection and assistance.

Government response in some cases has exacerbated the plight of IDPs, as in Rwanda where the government 'villagization' process starting in 1996 aimed to move the entire rural population into grouped settlements supposedly to better provide basic services and access to land. Instead, living conditions in some of the resettlement sites were substantially worse than in the pre-war era. And in Uganda, the government's controversial policy of moving populations into 'protected villages' in some cases made IDPs even more vulnerable to rebel attacks.

4.3 STATE SOVEREIGNTY AND INTERNAL DISPLACEMENT IN AFRICA.

State sovereignty denotes the competence, independence, and legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without intrusions from other sovereign states.⁶⁸ These matters include the choice of political, economic, social, and cultural systems and the formulation of foreign policy. The scope of the freedom of choice of states in these matters is not unlimited; it depends on developments in international law, including agreements made voluntarily and international relations.

The concept of sovereignty is becoming understood more in terms of conferring responsibilities on governments to assist and protect all persons residing in their territories, so much so that if they fail to meet their obligations, they risk international scrutiny, admonition, and possibly condemnation and reprisals.⁶⁹ National sovereignty thus now requires a system of governance that is based on democratic popular citizen

⁶⁸ Max Huber, Arbitrator in the Island of Palmas Arbitration 22 AJIL (1928) 875, 'Sovereignty in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.'

⁶⁹ Prof. Severine M. Rugumamu: Discussion Paper: State Sovereignty and Intervention in Africa: Nurturing New Governance Norms. Submitted to the International Commission on Intervention and State Sovereignty (ICISS) Roundtable Maputo, Mozambique, March 10 2001. Instead of being perceived as a means of insulating the state against external involvement or scrutiny, sovereignty is increasingly being postulated as a "normative concept of responsibility." Available online at, <http://web.gc.cuny.edu/icissresearch/maputu%20discussion%20paper%20nurturing%20new%20norms.htm>

participation, constructive management of social diversities, respect for fundamental human rights, and equitable distribution of national wealth and opportunities for development. For a state to claim sovereignty, it must establish legitimacy by meeting minimum standards of good governance or responsibility for the security and general welfare of its citizens, and indeed, all those under its jurisdiction.

The balance between sovereignty and the protection of human rights ought to be succinctly underscored. It is now increasingly felt that the principle of non-interference within the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity. With the heightened international interest in universalising a regime of human rights⁷⁰, there is a marked and most welcome shift in public attitudes.

The limits on sovereignty are widely accepted; the UN Charter highlights the tension between the sovereignty, independence, and equality of individual states, on the one hand, and collective international obligations for the maintenance of international peace and security, on the other. Secondly, state sovereignty may be limited by customary and treaty obligations in international relations and law⁷¹.

States are legally responsible for the performance of their international obligations, and state sovereignty therefore cannot be an excuse for their non-performance. In recent decades, four more radical challenges to the notion of state sovereignty have emerged: continuing demands for self-determination, a broadened conception of international peace and security of state authority, and the increasing importance of popular sovereignty.

At independence in the early 1960s, most African leaders regarded the international community as a threat to their newborn and weak states. As a result, they practiced diplomatic behaviours and created regional institutions designed to protect sovereign states from external interference in the internal affairs. Rather than promote good governance by awarding sovereign rights to those regimes that effectively or responsibly administered a given territory, African diplomatic principles, epitomized by the OAU, accepted whatever regime occupied the presidential palace, regardless of how (or even whether) the regime governed. Over time, the principle of sovereignty

⁷⁰ Vienna Declaration and Programme of Action. World Conference on Human Rights, Vienna, 14-25 June 1993, United Nations, General Assembly, A/CONF.157/23. Para 5 'All human rights are universal, indivisible, and interdependent and interrelated'. Available online at

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

⁷¹ The Charter of the United Nations signed 26 June 1945, in San Francisco, at the conclusion of the UN Conference on International Organisation, and came into force on 24 October 1945. Refer to Articles 1-2 of the Charter.

as a basis for non-interference in the internal affairs of a state came under scrutiny.⁷²

The foreign exchange crisis due to oil price shock and declining terms of trade led to a debt crisis that forced many African States to accept structural adjustment and direct outside interference in economic policy in exchange for desperately needed international assistance. In due course, the international community added political accountability to the economic constraints imposed by structural adjustment.

Sovereignty was transformed further in the 1990s by non-state institutions that took an even-larger part in the affairs of the continent. In addition to the international financial institutions and organisations such as the UN, other organisations such as Amnesty International, Citibank, scientific organisations, OXFAM, Cable News Network, and the Catholic Church exerted an enormous influence on what once were matters of state policy.⁷³

The transformation of sovereignty has also been impelled by the humanitarian tragedies created by internal conflict. This has encouraged a new understanding of the role of governance in managing conflict in Africa. Indeed, the most important and devastating challenges in Africa relate to violent conflict within states.⁷⁴

African conflicts have their roots in the contentious process of state and nation building, the complex challenges of dignity and justice, governance, identity, and the competition for scarce resources. In many cases internal conflicts have caused vacuums of responsibility for ensuring the protection, assistance and comprehensive security of the domestic population. These vacuums call for international involvement to provide remedial protection and humanitarian assistance. Such involvement is constrained in part by conventional definitions of sovereignty, which place the burden of responsibility for a populace on the state itself.

To be legitimate, however sovereignty must demonstrate responsibility, which means ensuring a certain level of protection for the people. Most governments under normal circumstances do in fact discharge that responsibility. When they are unable to do so, they call upon the international community to assist. Under exceptional circumstances, when governments fail to discharge this responsibility and masses of their citizens become threatened with severe suffering and death, the international community should step in to provide the needed protection and assistance, even if the government of a state has not requested aid. Sovereignty,

⁷² Francis M. Deng and Terrence Lyons, eds: *African Reckoning: A Quest for Good Governance*, Brookings Institution Press, Washington D.C., 1998, pp. 1-3. Available online at <http://brookings.nap.edu/books/0815717830/html/index.html>

⁷³ Francis M. Deng, and others: *Sovereignty as Responsibility: Conflict Management in Africa*, Brookings Institution Press, Washington D.C., 1996, pp. 131.

⁷⁴ *Ibid.*

therefore, should be understood to have both an internal dimension that requires responsibility by the sovereign authority for the citizens within its jurisdiction and an external dimension that obligates the international community to protect and assist those citizens when the national leaders refuse or fail to act responsibly.⁷⁵

4.4 AFRICAN RESPONSES TO INTERNAL DISPLACEMENT

Unlike in other regions of the world, most notably Latin America, war-torn African countries generally lack a strong civil society that works to bring international attention to situations of internal displacement in their countries. Neither do the displaced themselves tend to organize themselves into self-help or advocacy groups.

Regionally, while bodies such as the African Union and the African Commission on Human and Peoples' Rights⁷⁶ have at various times called for an improved response towards internally displaced persons, little has been put into action. Regional and sub-regional forces have also been deployed to help restore peace and facilitate humanitarian assistance, sometimes in collaboration with the UN - the ECOMOG peacekeeping force in both Liberia and Sierra Leone - but often with limited success.

International humanitarian operations have been hampered not only by the limited access to internally displaced populations, but also by an overall dearth of donor funding.

The alarming increase in Africa's IDP population has prompted the AU to affirm that internal displacement is one of the most tragic humanitarian and human rights crises in Africa today.⁷⁷

The OAU/AU has nonetheless been cautious in its approach to the problem of internal displacement. Because one of its founding purposes is to promote respect for the sovereignty of African states⁷⁸, its members have been reluctant to take actions that can be construed as interfering in domestic affairs. Still, the limitations that these restrictions impose have become

⁷⁵ Ibid.

⁷⁶ Established by the African Charter on Human and Peoples' Rights, which came into force on 21 October 1986 after its adoption in NAIROBI (KENYA) 1981, by the Assembly of Heads of State and Government of the Organization of African Unity (OAU). The African Commission on Human and Peoples' Rights is charged with ensuring the promotion and protection of Human and Peoples' Rights throughout the African Continent.

⁷⁷ See Speech by H.E. President Joaquim Chissano at the opening of the AU Assembly, Maputo, 10 July 2003. Available online at http://www.africa-union.org/Official_documents/Speeches_%20Statements/HE_Joaquim_Chissano/Opening_speech_Maputo_10%20July.htm

⁷⁸ Constitutive Act: Adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government 11 July 2000 Loma, Togo, Article 3.

increasingly evident as massive killings; genocide and deliberate starvation have overcome countries and spilled over borders.⁷⁹

With the transformation of the OAU to the AU, issues relating to peace and security are handled by the newly created department, the Peace and Security Directorate, which is headed by a Commissioner for Peace and Security. Under this new set up of the Commission of the AU, the commissioner is assisted by a Director who acts as a chief operating officer, playing a central role in the day-to day management of the Directorate.

The Peace and Security Directorate seeks to provide an enhanced institutional capacity for achieving peace, security and stability in Africa, through proactive action and support to the efforts of AU Member States, within the framework of the larger African Union vision for a united, peaceful, stable and prosperous continent. Furthermore, it will facilitate and ensure a more effective, efficient cooperation and coordination of initiatives within the continent, as well as the Regional Conflict Resolution Mechanisms and other international initiatives. The overall objective of the Peace and Security Directorate is the maintenance of peace, security and stability through the coordination and promotion of African and other initiatives on conflict prevention, management and resolution within the context of the UN. The Directorate's specific objectives relate to; establishing an efficient early warning system supportive of rapid response by the Union; developing a common African defense and security policy; engaging in mediation and resolution of conflicts; enhancing the capacity of the AU, and contribute towards strengthening capacities of the stakeholders in conflict prevention, management and resolution.⁸⁰

4.5 CONCLUSION

If internal displacement is to be dealt with effectively, greater capacity for such endeavours will need to be developed at the regional level and a division of labour worked out with international organisations. Ideally, under a system of shared responsibilities regional organisations would be

⁷⁹ Non-interference in internal affairs, observed OAU Secretary-General Salim Ahmed Salim, (elected by the Assembly of Heads of State and Government for four year term in 1989, re-elected in 1993 and 1997), has been carried to "absurd proportions" in Africa. He called on the organisation to take the lead in promoting protection and assistance for internally displaced persons in cooperation with humanitarian and human rights organisations. He also advocated greater OAU involvement in the prevention of conflicts that give rise to mass displacement and in the strengthening of national and regional capacities.

⁸⁰ The Peace and Security Council is established under Article 2(1) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

the first to monitor potentially dangerous situations that threaten mass displacement. They would also be the first to intercede politically to avert a crisis and to alert the international community when there is insufficient regional capacity to deal with the problem. In the event of a full-blown conflict and large-scale displacement, regional bodies would collaborate with international organisations to ensure that humanitarian assistance and protection are provided. When military intervention is decided upon, regional bodies would be the preferred instruments, but their action would be sanctioned and monitored by the UN to ensure that it accords with the human rights and humanitarian principles in the Charter of the UN.⁸¹ Once the crisis is past, support for recovery and reintegration would become part of a regional framework, when appropriate.

No such system exists, however. Few regional institutions have the requisite capacities to play a role of such magnitude. They are still struggling to develop responses to humanitarian emergencies. Nonetheless, over the past years regional bodies have begun to take a more aggressive approach. In particular, attitudes have changed with regard to traditional notions of sovereignty and the principle of non-intervention in member states. Although respect for the sovereignty and integrity of member states remains critical to regional systems, the importance of heading off conflicts, reaching people in need, and holding governments accountable when they violate regional and international standards have gained increasing recognition.

The UN has warmly welcomed the involvement of regional organisations in conflict prevention and peacekeeping activities. But the regional role has to be more effectively supported and monitored to ensure that international standards are complied with, that powerful regional states do not subvert the undertaking, and that military forces receive training in how to deal with civilian population.⁸² The extent to which regional organisations and the UN can increase their cooperation should be closely examined. One means of promoting closer cooperation between regional and international bodies would be for the UN Secretary-General, and other senior UN officials such as the under-secretary-general for humanitarian affairs and the High Commissioner for human rights, to meet with the heads of regional organisations and discuss emergency response. The dynamics of population displacement require the involvement not only of the affected countries but also of those that surround them.

Much as the nostalgia about exclusive sovereignty still looms large in Africa, the global consensus towards a broad redefinition of sovereignty seems to be crystallizing rapidly. Substantively and institutionally, the new ground has been broken. The African continent is under tremendous pressure to perform the task of state and nation building in a human, civilized and

⁸¹ Human Rights Watch: Africa, Failing the Internally Displaced, pp.113-15.

⁸² Kofi Annan: "UN Reform: The First Six Weeks," Statement by the UN Secretary-General, New York, February 13, 1997.

consensual fashion, and to do all these functions in a participatory fashion. However, it was noted that the norms of civilized state behaviour seem to be in contradiction with the imperatives of nascent state building that not only sanction but also frequently require the use of violent means against otherwise recalcitrant domestic groups and individual citizens. The enormity of the challenge of state building in Africa can therefore hardly be overemphasized. In this regard, the continent needs every international support that can be marshalled to facilitate the building and nurturing of politically responsive and administratively effective states. The norms of democratic governance, human rights, and nation building should be integrated in all development cooperation arrangements and be provided with the requisite political and material support. Finally, it should be understood that these social processes are not only closely inter-related and mutually reinforcing but, most importantly they are riddled with a multiplicity of contradictions. Simplistic and, indeed, quick fixes should always be avoided.

Few African States have the means or operational capacity to launch large-scale relief operations or to maintain the rule of law in areas populated by large numbers of internally displaced persons. And humanitarian organizations often find a discrepancy in the level of resources available to assist internally displaced persons compared with those available for refugees.

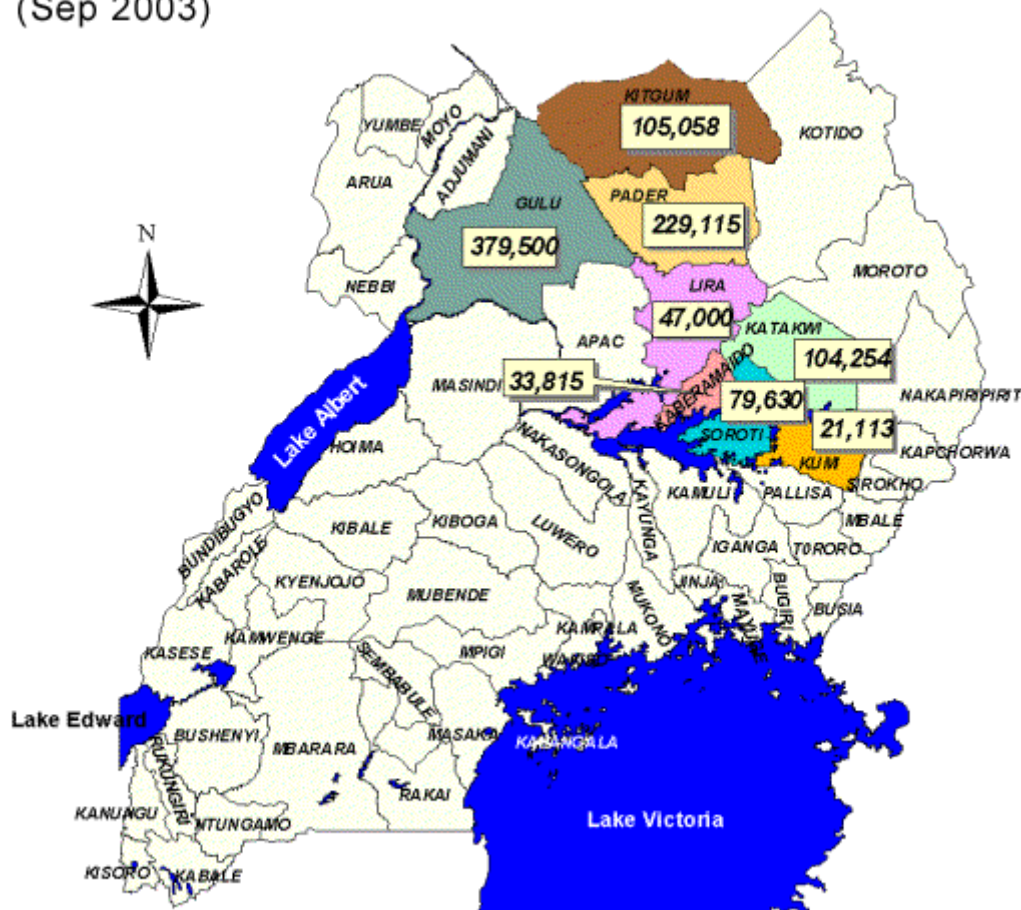
Regrettably, States and other actors in Africa have not always demonstrated a willingness to address the situation of the internally displaced in a concerted or humane manner. Indeed, a distinct lack of solidarity with the internally displaced has been witnessed in several African countries. In some cases, population displacements appear to have been deliberately provoked by States and other actors for the purpose of political, military, economic or electoral gain. And once displaced, the affected populations have too often been treated as enemies and subjected to further punishment, rather than as fellow citizens who are in need of protection, assistance and a solution to their plight. It has proven difficult to strengthen the system of protection in non-international armed conflicts on the face of the principles of state sovereignty.

5 CHAPTER FIVE: INTERNAL DISPLACEMENT IN UGANDA

5.1 CAUSES AND PATTERNS OF DISPLACEMENT IN UGANDA

Separate armed conflict in northern and southwestern areas as well as violent looting and cattle raids in the east have caused internal displacement in Uganda since the mid-1990s. Three major sub-contexts of internal displacement exist in Uganda each of them with its own characteristics.

Internally-Displaced Persons (IDPs) in Uganda
(Sep 2003)



FEWS NET/Uganda, September 2003;
Source of Information: UN OCHA, UN WFP

More than 840,000 IDPs according to WFP working figures (May 2003)⁸³

- 395,000 IDPs reside in 32 camps in Gulu District

⁸³ Affected population figures are of variable accuracy due to the rapidly changing situation as well as the varying quality of information sources.

- 241,000 people in 20 camps in Pader District
- 100,000 people in 8 camps in Kitgum District
- 47,000 in the main town of Lira district

5.1.1 DISPLACEMENT RELATED TO THE ALLIED DEMOCRATIC FORCES (ADF) IN THE WEST AND SOUTHWEST

The Rwenzori range in the southwest (border zone with Zaire/DRC) has been historically plagued by uncontrolled armed elements. The situation deteriorated since 1996, due to cross-border attacks by the ADF beginning in 1996-up to mid 2001 causing displacement of local populations, limited access to land, insecurity, and collapse in purchasing power, family income assets and morals. The southwestern district of Bundibugyo bore the brunt of the ADF attacks and had the largest number of IDPs in the region, which peaked at 120,000 in the year 2000.⁸⁴ In less isolated districts of Kabarole and Kasese, increased security has led to the return of significant numbers of IDPs since early 2000, with some 36,000 remaining in displacement in September.

To date Bundibugyo is reported as the only district with IDPs in southwestern or Rwenzori region. Though no comprehensive assessment has been under taken most IDPs in Kasese and Kabarole districts either returned home or integrated into the community.⁸⁵ Security has improved and military escorts are only occasionally required. Though the current slow trickle of the IDPs to their homes in all three districts is encouraging, a single attack would send all IDPs returning to the camps; as occurred previously. As long as there are no significant improvements with regard to security and territorial control on the Congolese side of the border, internal displacement will continue to plague the population of this region.⁸⁶

5.1.2 DISPLACEMENT CAUSED BY THE LORD'S RESISTANCE ARMY (LRA) IN THE NORTH AND RECENTLY EASTERN UGANDA

The people of Northern Uganda bordering the Sudan, notably the Acholi of the two largest districts Gulu, Kitgum, and now Pader district have had an adversarial relationship with the central power in Uganda. Populations on both sides of the Sudanese border often have been used in attempts by the respective governments and their allies to destabilise each other.

The LRA's main force has since the 1990s been based in southern Sudan, where it received protection and support from the authorities in apparent

⁸⁴ UN OCHA, July/August 2002.

⁸⁵ Ibid.

⁸⁶ Internal Displacement in Uganda: A review of UN Strategic Coordination. Report of the UN OCHA – Senior Adviser on IDPs', Work visit to Uganda, 14-28 June 2000, pp. 4.

retaliation for the Ugandan Government's support of the southern Sudan People's Liberation Army, (SPLA) which operates from Ugandan territory.⁸⁷

In the recent months the LRA have extended their operation from north of the country to east.⁸⁸

Since 1986, the area has been the theatre of armed rebellion by the Holy Spirit Movement Front (HSMF) and its successor LRA, against the government of Yoweri Kaguta Museveni.⁸⁹ From the beginning, the LRA's principal tactic has been to target the civilian population of Acholi-land terrorizing the community and creating paralysing despondency. In its attacks, it characteristically kills, maims, rapes, loots, burns homes, destroys crops, and most traumatically-abducts civilians, especially children. In 1996, governmental forces embarked on the strategy of relocating the local population into 'protected villages'. Whatever the degree of force behind these relocations and their legality in terms of international law, it is clear that they led to dramatic changes in the demographic and socio-economic set up of the area. And it is unlikely that the people of Acholi will resume "their old way of life" as insecurity persists, and they continue to be dependent on international assistance.

5.1.3 DISPLACEMENT CAUSED BY KARAMOJONG PASTORALISTS IN EASTERN UGANDA.

The northeastern Karamoja area bordering the Sudan and Kenya has been a traditional theatre of raids by cattle rustling tribes (Karamojong, Turkana, Pokot). The Karamojong carry their raids westwards into the centre of the country.⁹⁰ The raiding has taken on the character of military confrontations, with destabilising effects beyond the border districts and the displacement of increasing numbers of persons.

The situation in the affected areas of eastern Uganda, was particularly bad during the first months of 2000. Although the situation normalised to some extent by end 2000, about one third of the population in the Katakwi district, remained two years later displaced and housed in poorly equipped IDP camps.⁹¹ In December 2001, the government finally initiated a disarming

⁸⁷ Willet Weeks, Independent Consultant: Pushing the Envelope: Moving Beyond 'Protected Villages' in Northern Uganda. Submitted to the UN OCHA, New York, March 2002, pp. 2.

⁸⁸ KAMPALA, June 17 2003 (AFP) - Suspected rebels from the LRA have expanded their operating area beyond northern Uganda, with a weekend attack on a district in the country's east, AFP interview with army spokesman Major Shaban Bantariza.

⁸⁹ Yoweri Kaguta Museveni became President of Uganda on 26th January 1986, after leading a successful five-year guerrilla struggle against the regimes of Milton Obote and Tito Okello. After promulgation of the 1995 Constitution of the Republic of Uganda, the first presidential elections were held in May 1996 with Museveni registering a landslide victory; he was re-elected to presidency in March 2001.

⁹⁰ On the districts; of Katakwi, Soroti, Kumi, Kitgum and Lira.

⁹¹ UN OCHA, 28th February 2000.

exercise of the Karamojong. However, as voluntary disarmament was met with only limited success, the Ugandan army begun forcibly disarming the Karamojong in February 2002.

Each of the displacement crises in Uganda has its own actors, cause and characteristics. However there exist common elements. These include...

- (i) The influence of regional politics on each of these crises which makes it difficult, if not impossible, to find durable solutions and to embark on effective bottom-up peace building.
- (ii) The situation of the crisis districts at the economic periphery of the country; the rural character of displaced camps; problems of access to land for the displaced populations and of social neglect in IDP camps.
- (iii) The historical pattern of cross-border insecurity throughout the region and, as a consequence, typical patterns of abuse such as the abduction of civilians, especially children, inequalities and tensions between IDPs, local residents and refugees.⁹²

5.2 OBLIGATIONS UNDER INTERNATIONAL AND NATIONAL LAWS

The obligations and duties that exist for both the Government of Uganda (GoU) and armed groups under international human rights and humanitarian law and armed groups under international humanitarian law provide a framework for discussion of human rights abuses. Human rights abuses by one side, no matter how gross, do not provide legitimacy to abuses by the other side. Looking at human rights abuses in relation to an objective set of legal standards is thus the first step towards breaking the circle of violence.

All parties to the war in northern Uganda are bound by the fundamental principles of international humanitarian law.⁹³ *Article 3*, common to all four *Geneva Conventions*, extends protection to "*persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause...*" It requires that at minimum such persons be treated humanely and prohibits "*at any time and in any place whatsoever*" certain acts including violence to life and person, in particular, murder of all kinds,

⁹² Internal Displacement in Uganda: Supra note 79.

⁹³ Uganda acceded to the Geneva Conventions of 12 August 1949 on 18 May 1964 and to the two Additional Protocols on 13 March 1991. IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 entered into force 21 October 1950. Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, adopted 8 June 1977, entered into force 7 December 1978, 1125 U.N.T.S. 609.

mutilation, cruel treatment and torture, the taking of hostages and humiliating and degrading treatment.

Additional Protocol II to the *Geneva Conventions*, which relates to the protection of the victims of non-international armed conflicts, develops and supplements the provisions of *Common Article 3*, and creates obligations for all parties to a conflict. It also defines prohibited acts, some with a specific focus on the civilian population. For example, in addition to the acts banned by *Common Article 3*, *Article 4* of *Additional Protocol II* prohibits slavery and slave trade in all its forms, rape and pillage. *Article 13* states that the civilian population as well as individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this, the Article prohibits making civilians the objects of attack and bans acts or threats of violence the primary purpose of which is to spread terror.

Article 17 prohibits the forced movement of civilians. This, however, is not an absolute prohibition because it allows for forced movement where the party to the conflict can show that the security of the civilians involved or imperative military reasons so demand. In an important clause, the article goes on to define positive obligations, stating "*should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition*".⁹⁴

The general intention of *Article 17* is to prohibit forced movement except in the most exceptional situations and to ensure that if it does take place certain safeguards are implemented for the physical protection of civilians affected. In fact, such displacements are all too often considered as measures falling within the range of military operations, and all too often civilians are uprooted from their homes and forced to live in difficult or even quite unacceptable conditions.⁹⁵ *Article 49 IV Geneva Convention* further imposes an obligation to have persons evacuated transferred back to their homes as soon as hostilities in the area in question have ceased.

In addition, as a state party the government is also bound by the more complex and far-reaching set of legal principles enshrined in international human rights law. Uganda has ratified or acceded to all the major international human rights treaties and is accordingly bound by them.⁹⁶ The

⁹⁴ Amnesty International: Uganda: Breaking the circle: protecting human rights in the northern war zone. AI INDEX: AFR 59/001/1999 17 March 1999. Available online at <http://web.amnesty.org/library/Index/ENGAFR590011999?open&of=ENG-UGA>

⁹⁵ Yves Sandoz, Christophe Swinarski, Bruno Zimmerman, eds: Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949. International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva 1987, Para 4847, pp. 1471.

⁹⁶ International Covenant on Civil and Political Rights, 21 June 1995; 1st Optional Protocol to the ICCPR, 14 November 1995; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 3 November 1986; International Covenant on

*International Covenant on Civil and Political Rights (ICCPR)*⁹⁷, allows the derogation of certain rights in the context of an officially declared public emergency that threatens the life of the nation (as long as the derogation is not inconsistent with other international legal obligations). Uganda has not declared a public emergency in northern Uganda and has not made any derogation from the *ICCPR*. Further, specific rights, including those prohibiting arbitrary killings and torture, cannot be derogated from, even in times of war. The *African Charter on Human and Peoples' Rights*,⁹⁸ the most important regional human rights instrument, does not allow derogation.

Both the Lord's Resistance Army and the Ugandan government are in violation of international standards prohibiting the recruitment and use of children as soldiers. Uganda is also in violation of its national laws, which establish eighteen as the minimum age for recruitment into the armed forces.⁹⁹

The *Additional protocols to the Geneva Conventions*, which are part of international humanitarian law, prohibit all recruitment of children under the age of fifteen or their use in hostilities. This standard is binding on both governmental and non-governmental forces and is now considered customary international law.¹⁰⁰ Under the *Statute for the International Criminal Court*, ratified by Uganda on June 14, 2002, such recruitment is also considered a war crime.¹⁰¹

On May 6, 2000, Uganda acceded to the *Optional Protocol to the Convention on the Rights of the Child* on the involvement of children in armed conflict. The *Optional Protocol* sets eighteen as the minimum age for all forced recruitment or conscription, and for participation in hostilities. Under *Article 3* of the Protocol, Uganda has also made a binding declaration

Economic, Social and Cultural Rights, 21 January 1987; UN Convention on the Rights of the Child, 17 August 1990; UN Convention on the Elimination of All Forms of Discrimination against Women, 22 July 1985; African Charter on Human and Peoples' Rights, 10 May 1986; African Charter on the Rights and Welfare of the Child, 21 October 1994.

⁹⁷ The ICCPR covers a whole range of rights; Art 6 right to life, Art 7 protection against torture and cruel inhuman and degrading treatment, Art 9, 14 and 15 protection against arbitrary arrest due process of the law, Arts 18, 19, 20 & 22 freedom of religion, opinion, assembly and association, are of particular interest for IDP protection.

⁹⁸ The African Charter on Human and Peoples' Rights entered into force on 21 October 1986. Uganda ratified on 10 May 1986, See Article 4

⁹⁹ The National Resistance Army (NRA) Statute 3/92, the Conditions of Service Men Regulations 1993, and the Conditions of Services (Officers) Regulations 1993. Refer to Human Rights Watch Publication VI. Legal Standards. Available online at <http://www.hrw.org/reports/2003/uganda0303/uganda0403-05.htm>

¹⁰⁰ 1977 Additional Protocol II to the Geneva Convention, Article 4 (3), states that "children who have not attained the age of fifteen years shall neither be recruits in the armed forces of groups nor allowed to take part in hostilities"

¹⁰¹ Article 8 (2) (b) (xxvi) and Article 8 (2) (e) (vii), Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, adopted July 17, 1998, entered into force July 1, 2002.

affirming eighteen as its minimum age for any voluntary recruitment into its armed forces. This declaration states,

The Government of the Republic of Uganda declares that the minimum age for the recruitment of persons into the armed forces is by law set at eighteen (18) years. Recruitment is entirely and squarely voluntary and is carried out with the full informed consent of the persons being recruited. There is no conscription in Uganda.¹⁰²

The *Optional Protocol* also places an important burden upon nongovernmental armed forces such as the LRA. *Article 4* states that "armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen." States Parties must take measures to prevent such recruitment and use, including criminalizing such practices.

The *Protocol* also places obligations on the government to assist in the rehabilitation and reintegration of former child soldiers. It states in *Article 6* that States Parties shall "take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social integration."

Uganda is also party to the *African Charter on the Rights and Welfare of the Child*, a regional treaty that came into force in 1999. The Charter states that a "child" is anyone below eighteen years of age, and that "States parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child."¹⁰³

Both the LRA and the government of Uganda must take immediate steps to comply with international law by ending all recruitment of children under the age of eighteen, demobilizing or releasing all children from their ranks, and facilitating their rehabilitation and reintegration into society.¹⁰⁴

The *Guiding Principles on Internal Displacement* sets out the rights of internally displaced persons and the obligations of governments and armed opposition groups in all phases of displacement. Although the *Guiding Principles* are not a legally binding instrument, they bring together the

¹⁰² Binding declaration deposited with the United Nations Secretary- General at the time of Uganda's accession to the *Optional Protocol*, May 6, 2000.

¹⁰³ *African Charter on the Rights and Welfare of the Child*, Article 22 (2), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999.

¹⁰⁴ Human Rights Watch: Uganda: Stolen Children: Abduction and Recruitment in Northern Uganda, Vol. 15, No. 7 (A) March 2003. Available online at <http://www.hrw.org/reports/2003/uganda0303/uganda0403-05.htm#TopOfPage>

essential principles of international humanitarian law, international human rights law and international refugee law in one document with the intention of reinforcing and strengthening existing legal provisions.¹⁰⁵ They provide a practical guide to the rights of internally displaced people tailored specifically to their needs.

Chapter four of Uganda's 1995 Constitution¹⁰⁶ enumerates the Protection and Promotion of Fundamental and other Human Rights and Freedoms. In this Chapter, the Constitution recognises that fundamental rights and freedoms are rights of every individual by virtue of being human. These rights must be recognised, upheld, protected and respected by all persons, organs and agencies of government. The Uganda Human Rights Commission is established under this Chapter as the main body responsible for promoting and protecting the rights of the people. The rights laid down in this Chapter are also called the *Bill of Rights*. Some important Articles to note in this Chapter are *Article 22* Protection of the right to life, *Article 24* respect for human dignity, this article provides protection from any form of torture, cruel inhuman or degrading treatment or punishment, *Article 25* protection from slavery, servitude and forced labour, *Article 26* right to property, *Article 37* right to culture and *Article 45* Additional Rights although not specifically mentioned in the Constitution and are contained in Declarations and Conventions at national, regional and international level, but accrue to Ugandans.¹⁰⁷

International and national legal obligations clearly state that the reason for displacement should be absolutely required and not be discriminatory or exceptional and in specific circumstances such as a tactic in warfare. Where it takes place the extent should be proportional to the situation and basic physical needs availed by the government.

5.3 INITIATIVES UNDERTAKEN BY THE UGANDAN GOVERNMENT IN RESPONSE TO INTERNAL DISPLACEMENT

5.3.1 1994 PEACE TALKS

In 1994, peace talks were held between Joseph Kony (self acclaimed leader of the LRA) and the National Resistance Movement (NRM). Betty Bigombe, then Minister of Pacification of the North, facilitated these talks. Bigombe's efforts very nearly came to fruition. These talks ended badly when President Yoweri Kaguta Museveni suddenly announced that he was giving the LRA

¹⁰⁵ Recent Trends in Protection and Assistance for Internally Displaced People, *Internally displaced people: A Global Survey*, Earthscan Publications Limited and the Norwegian Refugee Council, London, 1998.

¹⁰⁶ The Constitution of the Republic of Uganda: Supra note 21.

¹⁰⁷ Human Rights Focus (HURIFO): Between Two Fires: The Human rights situation in 'protected camps' in Gulu District. February 2002, pp.12-15.

seven (7) days to put down their weapons and turn themselves over to the government. Within the three days of this announcement the LRA had once again begun attacking. The UPDF deployed in all main trading centres through out Gulu, Kitgum, and Pader Districts and continued to engage in low-intensity battles with the LRA until February 1996, when the latter, buttressed by alleged arms and logistics from Khartoum, escalated its attacks against Acholi communities. By July 1996, the LRA had attacked numerous locations throughout Gulu in what appeared to be a campaign to breed fear amongst the population and to force the UPDF to respond in a more forceful and imprecise manner. There followed numerous incidents of Acholi citizens being caught up in ‘friendly fire’ or of being interrogated and accused of being LRA collaborators.¹⁰⁸

5.3.2 1996 GOVERNMENT POLICY ON CREATION OF ‘PROTECTED VILLAGES’

In Gulu district, the establishment of the ‘protected villages’ followed a decision by the military authorities in 1996.¹⁰⁹ The sites were formed purportedly to protect the civilian population from rebel attacks and abduction. Although each site is located where the Uganda Government Army, the UPDF, have a detachment or barracks, the people have still suffered sporadic attacks from the LRA rebels.

In Kitgum/Pader, villages were more often established as a result of the flight by rural residents following LRA attacks in 1995-97. These villages evolved more spontaneously, with people moving near trading centres and military cantonments in search of security.

The ‘protected villages’ were created as a means of isolating the civilian population from the LRA, in order to protect it from the LRA attack while reducing the ability of the LRA to strengthen itself through looting and abductions and preventing the LRA from receiving active assistance from the protection of the population.

The intention of clearing the villages to become battlefields for the fighting forces has seemingly failed and instead provided a central target where the rebels could find all they want as well as endanger the civilians’ lives whenever an attack on the camps is launched. Today it looks like the prime failure of the camp system is that the ‘protected camps’ offers little protection while providing no livelihood for inhabitants’ much less self-

¹⁰⁸ Internally Displaced People: Global Survey 2002. A Global Overview of Internal Displacement, Norwegian Refugee Council, (NRC), 26 September 2002, available online at <http://www.reliefweb.int/w/rwb.nsf/0/73cbe6109243c30285256c400067aa32?OpenDocument>

¹⁰⁹ The decision to create the ‘protected camps’ was officially announced by the President of Uganda and Commander in Chief of the Uganda Armed Forces, Lt. Gen. Yoweri Kaguta Museveni, to the Parliamentary Committee on the Presidential and Foreign Affairs on the 27th September 1996.

sufficiency. A secondary concern is that they are vulnerable not only to ongoing attacks and depredations by the LRA, but also to abuse by the Army and individual soldiers. The LRA attacks on the camps still continue.¹¹⁰

International law allows that people should be moved for their own safety or for imperative military reasons.¹¹¹ While the establishment of the 'protected Villages' may have been justifiable on grounds of military exigency in 1996, their prolongation into 2003 would seem to be inconsistent with international humanitarian principles.¹¹²

Despite this mass movement, with all the disruption and destitution that have accompanied it, the residents of these 'protected villages' do not in fact feel protected. Attacks have continued on a regular basis, and small poorly armed and trained units that are assigned to each village, usually without communications or access to mobile reinforcements, find themselves helpless to respond. In all too many cases, the military are themselves the source of insecurity, committing acts of brutality and lawlessness against the civilians.¹¹³

In relation to displacement, international legal principles are clear on the following. First, it cannot be discriminatory. Second, it may only be undertaken exceptionally and in the specific circumstances provided for in international law. Displacement of civilians cannot, for example, be used as a tactic in warfare. Third, these circumstances can be assessed on the basis of necessity and proportionality. In other words, the situation must be such that displacement is absolutely required. Fourth, displacement should last no longer than is absolutely required. Fifth, all persons are protected against genocide, murder, summary or arbitrary executions, abduction and all other acts that violate the rights to life, dignity and liberty. Such acts would include direct or indiscriminate attacks on unarmed civilians, rape, torture and cruel, inhuman or degrading treatment. Lastly, governments are obliged to make provision for the basic physical needs of displaced persons.

Based on these principles, should the circumstances be such that international law allows displacement there is an obligation on states to demonstrate that they are taking reasonable steps, first, to keep it to a minimum and, secondly, to create the situation in which it can be brought to

¹¹⁰ HURIFO: Between Two Fires: Supra note 100 at pp. 2-3.

¹¹¹ See discussion above on Article 17 of the Protocol II at pp. 50.

¹¹² Significant improvements in the security situation in both the north and the west during 2001 prompted the Ugandan authorities to encourage IDPs to go home, and to formulate plans for the dismantling of the protected camps. In the north, however, the relative tranquillity did not last long. In June 2002, the LRA, under intense pressure from the Ugandan army's Operation Iron Fist being conducted in southern Sudan with approval from Khartoum, slipped back into northern Uganda. A subsequent intensification of attacks on IDP camps has caused renewed patterns of mass displacement and put to hold plans for the resettlement of IDPs.

¹¹³ Willet Weeks: Pushing the Envelope: Supra note 80 at pp. 2.

an end as quickly as possible. If over a reasonable period of time there is little sign that the state or other parties are moving forward on these issues, the degree to which the authorities are entitled to compel displacement is put in doubt.¹¹⁴

The arbitrary nature and prolongation of the forced encampment of the majority of the people of Acholi-land, and the lack of clarity on the circumstances under which they may or may not leave the 'protected villages', for example to pursue agricultural activities in their home areas, would seem to stand in contradiction of a number of core personal freedoms and inconsistent with international humanitarian law.¹¹⁵ There is anxiety among the people of Acholi to return to their homes, which is also supported by the Guiding Principles,¹¹⁶ however, as long as insecurity continues to prevail the IDPs are placed in a precarious situation.

5.3.3 UGANDA-SUDAN RELATIONS

Efforts to end the war in northern Uganda have been intertwined with the wider dynamics of hostility between the governments of Uganda and Sudan and war in south Sudan. Each government has accused the other of violating the common frontier and supporting the other's insurgents. Diplomatic relations between the two states were severed in 1995, allegedly because of Sudan's support for the Lord's Resistance Army (LRA) in retaliation for the government of Uganda's participation in the Sudanese government's war against the Sudan People's Liberation Movement/Army (SPLM/A). In early 1999, the governments of Sudan and Uganda signed the Nairobi Peace Accord, chaired by the then Kenyan President Daniel Arap Moi and overseen by the Carter Centre.¹¹⁷

The establishment of diplomatic relations between Sudan and Uganda, the release of prisoners of war, the exchange of envoys by Kampala and Khartoum, the cessation of support by Sudan for the LRA and an expressed willingness to use military action against them, as well as increased control of the Sudan-Uganda border, have all impacted on and curtailed rebel activity and movement. The improvement of Sudan-Uganda relations was further developed during the January 2002 Inter-Governmental Authority on Development (IGAD) summit in Khartoum, where, in a meeting between the two leaders, both pledged to cease support for rebel groups. Sudan's President Bashir had already announced his Government's withdrawal of

¹¹⁴ Uganda: Breaking the circle: Supra note 87

¹¹⁵ UN Guiding Principles on Internal Displacement of 1998, Principle 6, for full citation see note 16

¹¹⁶ Supra note 106 also see, Principle 14 of the UN Guiding Principles.

¹¹⁷ Restoring relations between Uganda and Sudan: The Carter Centre process, Conciliation Resources, Accord. The peace accord was signed in Nairobi 8 December 1999, with commitments by both the Sudanese and Ugandan Governments to stop its support for the LRA and guarantee the safe return of the abducted Ugandan children held in rebel camps in Sudan, there has been lack of political will on both sides to implement the Peace Accord. Available online at <http://www.c-r.org/accord/Uganda/accord11/resorting.shtml>

support to the LRA in August 2001, and President Museveni, in his first visit to Sudan since 1995, countered this with an announcement of Uganda's suspension of assistance to the SPLM/A in southern Sudan, claiming this had initially been in self-defence against the Sudan-supported Kony rebels, and had taken the form of 'moral support' and humanitarian assistance in the past rather than military aid. With the approach of the traditional season for SPLM/A attacks approaching, it remains to be seen whether the positive trend in Uganda-Sudan relations will continue.¹¹⁸

After the attacks in the USA on 11 September 2001, the US State Department declared the LRA, among others, a terrorist group. With the global scene largely dominated by the anti-terrorist campaign in the last months of 2001, prospects for a peaceful resolution to the conflict appeared to recede. The Ugandan government publicly demanded a military solution to the LRA problem. Museveni visited Sudan in January 2002 for the IGAD meeting, and at a pre-summit meeting with Bashir both presidents pledged support for the war on terrorism.¹¹⁹

5.3.4 OPERATION IRON FIST

In an effort to end, once and for all, the 15 year conflict in northern Uganda, in March 2002 the Government of Uganda launched 'Operation Iron Fist', a determined military campaign to root out Joseph Kony's LRA by taking the war into southern Sudan, the LRA's military and logistical base.¹²⁰

President Museveni's visit to Sudan January 2002 for the IGAD meeting, like the earlier visits of President Bashir to Kampala in 2001, signalled a marked improvement in bi-lateral relations. Towards the end of January 2002 there were reports of a significant UPDF military build up in Northern Uganda and speculation grew that a move to attack the LRA inside Sudan was imminent.¹²¹

A recent agreement was signed by the Ugandan and Sudanese governments, which gave the UPDF authorisation to sweep through broad swathes of Sudanese territory in pursuit of the LRA. During the 'operation', which begun on the 28th March 2002, the UPDF overran 5 base camps in southern Sudan, and by 29th March had captured a cache of arms worth just over US \$ 2 Million, according to Bantariza Shaban (army spokesman).¹²²

¹¹⁸ UN OCHA, 28 February 2002, p.31 available online at <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/B47804DC7DCEE961C1256D43005B086C>

¹¹⁹ ACCORD 2002, "Implementing the 1999 Nairobi Agreement". Available online at <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/B47804DC7DCEE961C1256D43005B086C>

¹²⁰ Barney Afako: Operation Iron Fist: What Price for Peace in Northern Uganda? African Rights, 9 May 2002.

¹²¹ ACCORD 2002, Supra note 112.

¹²² Barney Afako: Operation Iron Fist: Supra note 113

“Operation Iron Fist”, the military operation underway to root out the LRA, has yielded few results and destroyed the security of civilians in both Sudan and Uganda. Consequently the civilian population has been left without adequate protection while the Ugandan army is concentrated on the pursuit of the LRA in Sudan. The current crisis shows the high cost of the collective failure to protect the civilian population (including IDPs) and the urgency for international action without further delay. The hunt of the LRA rebels into Sudan has flashed them back into Uganda where they have continued to commit atrocities on the innocent people of northern and now eastern Uganda.

5.3.5 DRAFT NATIONAL POLICY ON INTERNAL DISPLACEMENT

The Office of the Prime Minister and the Department of Disaster Management, nominally responsible for the internally displaced, with the encouragement of the OCHA office and the country team, embarked on formulating a national policy on IDPs. The National Policy and Institutional Framework on Internal Displacement moves away from the controversial 'protected villages' to a more dignified approach based on the *UN Guiding Principles on Internal displacement*. The policy also puts large emphasis on finding durable solutions to the plight of the displaced.¹²³ This was originally being part of an effort by the Government of Uganda to facilitate the return of displaced persons to their homes in the northern region in view of the relatively calm state of affairs that had been present.

An issue that arises in this regard is; since the Draft Policy is extensively drawn from the *UN Guiding Principles*, which have continually been regarded as soft law, and thus their application and implementation limited, what new dimensions in the field of IDP protection will it introduce?

5.3.6 AMNESTY LAW

The *Amnesty Act*¹²⁴ is not limited to the LRA or to the conflicts in Acholi-land. It provides for “*an Amnesty for Ugandans involved in acts of a war-like nature in various parts of the country*”. It further provides that persons who have engaged in armed rebellion will, upon the fulfilment of the reporting conditions and upon making a statement “*renouncing and abandoning war and rebellion*” “*shall not be prosecuted or subjected to any form of punishment for participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion*”. While the Act applies to all the several wars and rebellions that have afflicted Uganda in recent years, it has particular importance in the Acholi situation, since it is

¹²³ UN OCHA/IDP Unit, 3 April 2002, pp.2 available on line at: <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/4870F22B1AABB4FAC1256C4F0056838A>

¹²⁴ The Amnesty Act was promulgated on 21st January 2000.

seen as providing a powerful incentive for LRA fighters to desert and return home. To date, the high hopes raised by the Act have not been realized. For one thing the Act provides that the Amnesty is to be administered by a Commission whose function is to monitor programmes of demobilisation, reintegration and resettlement, as well as to co-ordinate and promote activities of sensitisations, reconciliation, and dialogue.¹²⁵

A factor hindering the performance of the Amnesty Commission is the inadequate funding and facilitation for implementing the priority actions for amnesty. Particularly resettlement of reporters, sensitisation and counselling. The national framework for coordination and implementation of amnesty is not yet fully functional. Potential reporters such as LRA fighters do not have easy access to information on the amnesty. The government needs to increasingly allocate more funds to the amnesty process. There are also allegations that some of the former abductees have been recruited by the UPDF as home guards.¹²⁶

5.3.7 CHILD COMBATANTS

The appropriate reintegration and rehabilitation of child combatants has rightly been a central concern of the agencies working in the Acholi area. UNICEF and other international agencies, churches, NGOs and donor missions have put considerable effort into ensuring that these are matters handled in ways consistent with international standards. The GoU and the UPDF share these concerns, and as a result, procedures have been devised and implemented for dealing with minors who are taken prisoners in the course of skirmishes or who emerge from the bush. Such children are in the first instance taken to a military barracks for debriefing and screening. These procedures are presently being performed in a segregated unit in Gulu barracks, where provision is made for access by outside agencies, for recreation, and for education. Upon their release by the military, the children are turned over to one of several NGO-operated residential programmes, where they receive counselling and some form of education or vocational training prior to being returned to their homes and families. While some human rights observers question the appropriateness of the transit through the barracks, the system is generally seen by the agencies involved as operating reasonably smoothly and in the overall best interest of the children concerned.¹²⁷

¹²⁵ Willet Weeks: Pushing the Envelope: Supra note 80 pp. 16.

¹²⁶ Reports that the Ugandan army is recruiting children for the anti-LRA campaign have been strongly denied by the Ugandan government. For more information see; Human Rights Watch Report: Abducted and Abused: Renewed Conflict in Northern Uganda, Chapter V, July 2003 Vol. 15, No. 12 (A). Available online at <http://www.hrw.org/reports/2003/uganda0703/>

¹²⁷ Pushing the Envelope: Op cit note 118 at pp. 17

5.3.8 DISARMAMENT OF THE KARAMOJONG PASTORALISTS

The Parliament of Uganda approved the law to disarm the Karamojong in March 2000, which law required the government to disarm the Karamojong and remove them from neighbouring districts within six to 12 months. And also called for the deployment of the army at strategic points along Karamoja's border with neighbouring districts. The UPDF launched a forcible disarmament operation in Karamoja after the expiry on 15 February of a month's grace period, which followed an earlier government deadline for the Karamojong to surrender illegally held weapons. President Yoweri Museveni had offered an amnesty for those who surrendered their weapons during a visit to the area in December 2001. In exchange for the weapons, the government promised investment and development projects for the area, and to deploy security personnel in security zones along the borders with neighbouring districts and neighbouring countries to guarantee the protection of the Karamojong from invasion by other tribes.¹²⁸

Among the issues raised in the disarmament process was the vulnerability the Karamojong people would be exposed to in particular attack from the other cattle rustling tribes.

5.3.9 ARMING THE MILITIA IN EASTERN TESO REGION

The Ugandan government has said that its technique of arming militia groups in the eastern Teso region is succeeding in weakening the Lord's Resistance Army (LRA) rebel group.

Using guns procured from the Ugandan military, the 'Arrow Boys' (a rag-tag bunch of angry vigilantes) have relentlessly hunted down Uganda's LRA rebels. Enraged and determined, many of them have lost their own children to LRA attacks in the last three months.

Uganda's involvement of local militia groups in its war against the LRA has received mixed reactions, with some Members of Parliament and international observers fearing it could be creating future warlords. They say the government's effort to militarise eastern Uganda is a repeat of mistakes already made in the north of the country.¹²⁹

5.4 CASE STUDY OF AMURU IDP CAMP IN GULU

¹²⁸ ReliefWeb: Uganda Disarmament exercise leads to clashes in Karamoja. Available online at <http://www.reliefweb.int/w/rwb.nsf/0/a755247d696db34049256bc1000e21ff?OpenDocument>

¹²⁹ ReliefWeb: Uganda: Army supports using militia to fight rebel group. <http://www.reliefweb.int/w/rwb.nsf/0/12011b7d258696e649256d9c001bf4ee?OpenDocument> Pushing the Envelope: Moving Beyond 'Protected Villages' in Northern Uganda, Prepared by Willet Weeks, Submitted to UNOCHA, New York, March 2002, pp. 2.

Many of the IDPs wish to return to their homes because they feel there is no protection at the camps, they are better off at home. Besides having them all herded in camps exposes them to LRA attacks.¹³² There is currently relative peace in northern Uganda but the biggest question is what security checks are in place should the LRA return to terrorise the people of northern Uganda.

5.4.2 SOCIAL AND ECONOMIC CONSEQUENCES OF ENCAMPMENT

Social problems: like prostitution, illiteracy especially of the girl child, moral degradation, loss of culture, destitution and idleness, poor sanitation, inadequate access to clean water, inadequate health facilities, prevalent increase in HIV/AIDS rates continue to affect the IDPs of northern Uganda.

Political: lack of freedom of expression and association, mainly because the people in the war torn area of northern Uganda have lost confidence in the government who for the last seventeen years has failed to devise positive measure to end the war in northern Uganda.

Economic: there is abject poverty because people can not access their fields due to the insecurity and are dependent on food rations from humanitarian agencies; there is also land exhaustion because of over cultivation on the pieces of land that are accessible.

A large mass of land is under-utilized. Geographically northern Uganda is the largest region covering 35 percent of the total land surface in Uganda followed by central 25 percent, western 23 percent and eastern 16 percent. However, it is the least populated region with an estimated population of 5.4 million in 2002, lower than the other regions. This and many other factors have led to large tracts of land remaining unused or under-utilised compared to other parts of the country where land pressure is escalating resulting into land fragmentation and land conflicts. This land offers enormous potential for economic development.¹³³

Poverty remains significantly high in northern Uganda despite numerous targeted interventions. While insecurity may be the most important factor explaining this phenomenon, it is plausible that there are other broader social political and economic inequalities that may account for the observed

¹³² Interviews held with residents of the camp indicate a decline in the attacks and atrocities committed by the LRA probably because of their recent shift of the LRA operation to the eastern region of the country.

¹³³ Ministry of Finance, Planning and Economic Development, Office of the Prime Minister, and Office of the President: Post-conflict Reconstruction: The Case of Northern Uganda. Discussion Paper 7 (Draft) April 2003, pp. 8. Available online at http://www.worldbank.org/ug/cg03/CG_2003_GoU_northern_Uganda.pdf

regional inequalities. But the time is also right for looking beyond the ravages of the war to start thinking about reconstruction and rehabilitation.

It has been established as a fact that war in the North is the most important factor explaining the low development. Evidence also seems to indicate that, not only the North is affected but the war is a significant factor reducing the pace of development of Uganda as a whole. Generic international research suggests that during a civil war, the rate of growth of GDP per capita is typically reduced by 2.2 percent per annum. The conflict in the North is continuing to cost the economy in a number of ways such as direct military expenditure; loss of lives, physical assets, food, internal displacement and loss of will to produce, disruption of social service delivery, poor maintenance of economic infrastructure, higher costs of transport resulting in exaggerated prices of basic needs such as kerosene, health care costs have increased with HIV/AIDS on the rise, poor living conditions, poor nutrition, injuries and mutilation, loss of tax revenue and foreign exchange from foregone sales of cash crops and tourism; low productivity, poorly educated and paid labour force, reduced cultivation, poor technologies, considerable out migration; environmental degradation and mismanagement; disruption of cross border trade; loss of investment opportunities; negative effects on neighbouring districts/regions-spill over costs.¹³⁴

5.5 INTERNATIONAL AND NGO RESPONSE IN NORTHERN UGANDA

UN OCHA publishes a monthly update that provides the latest information about protection issues and subsistence needs of the internally displaced in Uganda it also spearheads the humanitarian coordination process, *Carter Centre* is involved in the peace initiatives between Uganda and Sudan. *WFP*¹³⁵ distributes food to 40 scattered IDP camps in northern Uganda with army escorts; *UNICEF* in collaboration with *World Vision* distributes tents and other non-food items; it also spearheaded the well-focused and sustained campaign to secure the release of over 5000 children still unaccounted for following their abduction from Northern Uganda. With a number of organisations set up to receive formerly abducted children as they return. Some organisations like *CPA (Concerned Parents Association)*, *GUSCO (Gulu Support the Children Organisation)*, *World Vision Uganda*, *KICWA (Kitgum Concerned Women's Association)* and *ACORD* among others reintegrate and reconcile formerly abducted children and their communities. *Red Barnet* and the *International Rescue Committee* in addition to their programmes support the local NGOs in attaining their goals of rehabilitating formerly abducted children. Adolescents of this affected sub region have been promoted directly by *Women's Commission for*

¹³⁴ Ibid at pp.15

¹³⁵ WFP provides emergency food aid to drought-affected persons, refugees and internally displaced persons (IDPs) to ensure their nutritional status is maintained.

http://www.wfp.org/country_brief/indexcountry.asp?country=800

Refugee Women and Children, an International Organisation based in the USA. WHO¹³⁶ distributes medical kits in Gulu, Kitgum and Pader and requesting funding to address cholera, meningitis, female hygiene and malaria particularly affecting IDPs. ICRC¹³⁷ provides non-food items and registers newly the displaced.

Chiefs and elders are working tirelessly for a peaceful resolution of the conflict in northern Uganda.¹³⁸ *Acholi Religious Leaders' Peace Initiative (ARLPI)*¹³⁹ has thrown itself into a task of seeking a negotiated peaceful end to the conflict. Religious leaders have worked closely with traditional leaders and enjoy the trust of the community. They command considerable moral authority and have shown themselves to be effective mediators and powerful advocates for dialogue.¹⁴⁰

5.6 CONCLUSION

Addressing protection concerns is relevant and necessary at all stages of internal displacement. The widespread and grave violations of basic human rights that internally displaced people are exposed to reveal that adequate and consistent protection remain a major gap in the national and international response. If tailored to the particular needs of internally displaced people, this response is likely to be improved.

In this light, a specific legal framework is a useful means of stimulating relevant actors to protect IDPs from being exposed to violence and other types of abuses. It must also be emphasised that there is no inherent contradiction between more legal prescription and better implementation of existing law; providing clarity of existing obligations is a means to ensure better implementation. To this end, a major challenge will be to ensure that the Guiding Principles are widely disseminated to the field, so that internally displaced people, organisations working on their behalf and government officials in affected countries can in a simple manner seek guidance on how to address the relevant problems. So is the need to encourage the GoU to embark on the peaceful resolution of the conflicts in the country.

¹³⁶ World Health Organisation: Uganda. Available online at, <http://www.who.int/country/uga/en/>

¹³⁷ The ICRC in Uganda. Available online at, <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/uganda?OpenDocument>

¹³⁸ Barney Afako: Pursuing Peace in Northern Uganda. Lessons from Peace Initiatives, Commissioned by, Civil Society Organisations for Peace in Northern Uganda (CSOPNU), prepared by, Kampala November 2002, pp.12.

¹³⁹ Formed in 1997, an inter-faith network that brings together, in particular, the hierarchies of the Catholic Church, the Church of Uganda (Anglican Commission) and the leadership of the Muslim minority in the area.

¹⁴⁰ Willet Weeks: Pushing the Envelope: Supra note 80 at pp. 14-15.

6 CHAPTER SIX: RECOMMENDATIONS

6.1 INTRODUCTION

The primary responsibility to ensure the protection of all its nationals belongs to the State as a duty and responsibility flowing from sovereignty. States should uphold the rights provided for under international and national law in favour of internally displaced persons. Particularly the right to life, not to be arbitrarily relocated, and to be able to return to their habitual places of residence. In addition, both States and non-state entities involved in armed conflicts are bound to abide by the human rights and humanitarian law principles and norms, the observance of which would ensure the protection of internally displaced persons.

The challenge facing the Government of Uganda, the insurgent groups (in particular the LRA) and Ugandan civil society is to break the circle of human rights abuses and for the international community to find ways to help facilitate positive action.

There is need for all parties involved in humanitarian activities to gain access to the displaced so as to cater for their needs. This type of access for humanitarian purposes should not be considered as impinging on sovereignty of States.

6.2 TO THE INTERNATIONAL COMMUNITY

The International Community should express strong concern to the Uganda Government about human rights violations by the UPDF and LRA in northern Uganda, about the inadequate protection of internally displaced persons and about the systemic failure of the criminal justice system in the north. The international community should call for investigation into allegations of human rights violations by soldiers, and exert pressure on both the GoU and the LRA to embark on dialogue as a means of resolving the armed conflict.

Contribute the necessary funds for the assistance of the at-risk population of northern Uganda. Encourage the government of Uganda and the UPDF to provide proper security for relief and humanitarian activities in northern Uganda as needed, and not on the basis or condition of payments in cash or kind to the UPDF for fuel, food, and other items.

The international community should convey to the LRA that the abduction of children and the deliberate and mass unlawful killing of unarmed civilians constitute war crimes. In particular, governments: should investigate persons who claim to be linked to the LRA, especially those who claim to be part of its leadership, for their own direct involvement in human

rights abuses and to assess whether or not there are grounds for bringing them to justice outside Uganda.

The various human rights mechanisms of the UN human rights system can also play an important role. First, they can provide further objective commentary on the human rights situation. Secondly, they can help draw international attention to the continuing problem of human rights. Thirdly, they can make recommendations to all parties on action to take to secure improved protection, effectiveness will be enhanced if they cooperate with each other to address human rights issues in an integrated and planned manner.

6.3 REGIONAL

Peace and stability in the Continent are a precondition for economic and social development of Africa. Therefore, the need to continue to seek sustainable solutions to the establishment of peace, security and stability in the Continent in order to direct attention to the development and consolidation of democracy arise. The borders must be regarded as links that unite people(s). Mistrust and rivalry in Africa must give way to spontaneous fraternity and co-operation between neighbours united by history and culture and with a common future of prosperity. It is important that Africa as a continent continue to reflect and investigate the causes of conflicts within states and coup d'états. One-way of achieving this would be to promote the involvement of people(s) in the processes of conflict prevention, building the economy and culture. One of the major factors in promoting a culture of peace is the adoption of an inclusive approach. In a culture of peace each citizen participates in the production of the common good, be this material, intellectual or spiritual.

Investigate and report on human rights abuses in northern Uganda and widely circulate the findings to African Union members. Work with and support the East African community and the Intergovernmental Authority on Development in discussions on solutions for human rights abuses in northern Uganda.

6.4 TO THE GOVERNMENT OF UGANDA

There is an urgent need for central government to define the protection of human rights in northern Uganda as a national priority. Unless the Government at the highest level makes a decisive and integrated effort to address the political and institutional issues that lead to impunity for perpetrators, the vicious circle of human rights abuse is unlikely to be broken. In addition, institutional practice that has led to human rights abuse has to be identified and measures taken to ensure that abuses do not continue.

Efficient mechanisms should be put in place to enable victims and their families to have their experiences publicly and officially acknowledged. Reporting mechanisms should be designed to ensure legal action can be taken and reporters of abuse are protected.

There is a need for decisive action to create and implement a coordinated program of action by the UPDF, the police, the Ministry of Justice and the courts to address human rights violations by soldiers and police officers in northern Uganda. This includes taking preventative action, addressing institutional failings in the justice system and providing resources for the implementation of action programs.

The Uganda Human Rights Commission (UHRC)¹⁴¹ has an important and potentially powerful role to play in respect of human rights. It could fulfil the need for a vigorous, independent body with the capacity to follow up reports of human rights abuses in order to ensure that action is taken.

Government in collaboration with civil society should work towards developing a long-term plan for conflict resolution and rehabilitation in northern Uganda which includes establishing respect for human rights and confronting the legacy of past human rights abuse. Give the human rights situation in northern Uganda urgent and immediate attention in a manner that sends the unequivocal message that action must be taken by the UPDF, the police, government departments, civil society and the people of northern Uganda.

The Uganda Government and civil society together need to arrive at an agreement based on international and national legal principles about what mechanism of accountability might be appropriate. They should also agree on what forms of sanction or punishment should follow, again within the framework of international human rights principles.

There is little sign that the government itself is prepared to take the lead in setting up a negotiated peace process. There is equally little sign that the LRA would be prepared to respond if it did. Statements by the LRA remain aggressive. The large-scale abuse of human rights continues to characterize its military action.

With specific reference to child protection issues the government should immediately end all recruitment of children into the Local Defence Units or UPDF and ensure that all individuals recruited in the future are at least, eighteen so as to conform to obligation undertaken under various instruments already discussed in the substance of this thesis. Investigate allegations of recruitment of former LRA abductees while they are at the barracks. Promptly bring those responsible for child recruitment to justice; identify and demobilize all children currently serving in the LDUs or UPDF;

¹⁴¹ Mandated under the Constitution of the Republic of Uganda, Chapter 4 articles 51-58, Supra note 20.

instruct the UPDF and security personnel to take all possible steps to protect children from abduction by the LRA; when fighting the LRA, make all feasible attempts to minimize child casualties (since the LRA force comprises mainly of children formerly abducted); transport children as quickly as possible from outlying barracks in the districts to the Child Protection Units.

Provide satisfactory conditions, such as spelled out in the U.N. Guiding Principles on Internal Displacement, of shelter, hygiene, health, safety and nutrition for internally displaced persons. And where the magnitude of the problem exceeds its capabilities, the government should call on the international community to perform these humanitarian functions.

Ensure protection for existing IDP camps and, except for extreme circumstances of insecurity, allow those who wish to leave the camps to do so (there is anxiety among the people of Northern Uganda to return to their homes because being cramped up in the IDP camps has not served to their best interests). The civilians are prone to attacks due to the inadequate security provided and there is increased dependency on assistance provided by humanitarian agencies.

The forced displacement of hundreds of thousands of people in northern Uganda has been characterized by the violation of human rights and international humanitarian law. The context of the extreme violence of the LRA and the serious obstacles to providing effective protection in villages, the question "should camps exist" in Gulu and Kitgum is unanswerable. People have the right to expect their government to protect them. Under Article 13 of *Additional Protocol II* to the *Geneva Conventions* the authorities have the obligation to provide that protection. Camps may be a mechanism for providing it, however in the analysis above there is clearly insufficient security availed to the IDPs, I would be very hesitant to suggest return because the bigger problem to deal with is the disbanding the LRA who have been the cause of insecurity in Northern Uganda.

Further, there are no circumstances under international humanitarian law that allow the use of attacks on unarmed civilians or other abuses to be used as a method of compelling people to move: if people wish to return to the countryside to cultivate they should not be prevented from doing so and should not be subjected to attack or harassment by the UPDF. The authorities are obliged under international humanitarian law to ensure that physical conditions within camps are satisfactory. This means, ensuring that food supplies satisfy the nutritional needs of camp populations, which there is clean water and adequate sanitation facilities, and that medical facilities are available. A key demand of people within camps is that they should be able to cultivate: the authorities should investigate how land for cultivation can be made available in ways that guarantee security and respect communal land ownership. Further, a generation of children in northern Uganda is not able to receive a full education: the authorities should seek ways of providing for the educational needs of children, taking complete

account of the LRA's practice of attacking vulnerable schools in order to abduct children.

Support, cooperate with, and create a conducive environment for the proper functioning of an internationally led human rights monitoring body on northern Uganda. Facilitate and support the work of human rights NGOs in the war-affected parts of northern Uganda.

Rebuilding justice in northern Uganda is part of the process of creating conditions for peace. In part this means establishing a functioning criminal justice system. Finding agreement around how to deal with the legacy of bitterness created by past human rights abuses by all sides in order to move forwards. This is not something to be left to future post-war reconstruction but an intrinsic part of bringing the war to an end.

6.5 TO THE SUDAN GOVERNMENT

The Sudan Government has come under pressure from governments and UN officials to take action against human rights abuses by the LRA by stopping the provision of arms, supplies and bases for the armed group as long as it continues to abuse human rights. To honour its obligations under international humanitarian and human rights law, including the UN *Convention on the Rights of Child* and the *Slavery Convention*, by taking action to prevent human rights abuses, including the forcible abduction of children; ensure that all non-governmental entities within the borders of Sudan over which the government has power, including the LRA, fully observe Article 3, common to all four *Geneva Conventions*.

6.6 TO THE LORD'S RESISTANCE ARMY

Immediately stop abducting children; end all killing, torture and sexual abuse of children; release all abductees remaining in captivity. Cease attacks on civilians and civilian objects. If there is any clear political motive behind the move they have taken to wage war against the government, they should openly declare such motive.

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20. ReliefWeb: Uganda: Disarmament exercise leads to clauses in Karamoja. (year and webpage)

21. Human Rights Watch: Abducted and Abused: Renewed Conflict in Northern Uganda, July 2002 Vol. 15, No 12 (A). Available online at <http://www.hrw.org/reports/2003/uganda0703/>

WEB RESOURCES

Brookings-CUNY Project on Internal Displacement
www.brook.edu/fp/projects/idp/idp.htm

Norwegian Refugee Council's, Global IDP Project www.idproject.org

United Nations office for the Coordination of Humanitarian Assistance (OCHA); Internal Displacement Unit, Reliefweb www.reliefweb.int

United Nations High Commissioner for Refugees (UNHCR) www.unhcr.ch

OTHER INFORMATION

Map of Internal Displacement in Uganda

Map of IDP camps in Gulu district, northern Uganda.