

**THE RIGHTS OF WOMEN AND CHILDREN AS INTERNALLY DISPLACED PERSONS:
THE CASE OF UGANDA AND THE DEMOCRATIC REPUBLIC OF CONGO (DRC)**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF
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BY

BERNARD MUGISHA

PREPARED UNDER THE SUPERVISION OF

PROF. JEAN-DIDIER BOUKONGU & DR. ATANGCHO NDJI AKONUMBO

AT THE

CATHOLIC UNIVERSITY OF CENTRAL AFRICA YAOUNDE CAMEROON

29 OCTOBER 2004

DECLARATION

I, Bernard Mugisha, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information obtained and used has been duly acknowledged in this dissertation.

Student: Bernard Mugisha

Signature: _____

Date: ----29 October 2004-----

Supervisor: Prof. Jean-Didier Boukongu

Signature: _____

Date: _____

Supervisor: Dr. Atangcho Ndzi Akonumbo

Signature: -----

Date: -----

DEDICATION

This dissertation is dedicated to my parents Mr. (R I P) and Mrs Macumu. You did inspire me to succeed in life, to work hard and to pursue the Legal Profession. I have now pursued a human rights career because of your sweat and tireless efforts. For moulding, guiding and selflessly supporting me I dedicate this work to you.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights (African Charter)
ACRWC	African Charter on the Rights and Welfare of the Child
ADF	Allied Democratic Forces
AFP	<i>Agence France- Presse</i>
AI	Amnesty International
AU	African Union
CAP	Consolidated Appeal Process
CRC	Convention on the Rights of the Child
CRS	Catholic Relief Services
DRC	Democratic Republic of Congo
FDA	Federal Democratic Alliance
FIDA	Federation of Women Lawyers Association
FOBA	Force <i>Obote</i> Back Again
GIA	Global and Inclusive Agreement
GOU	Government of Uganda
HIV/AIDS	Human Immune-deficiency Virus/Acquired Immune Deficiency Syndrome
HRW	Human Rights Watch
HSM	Holy Spirit Movement

ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political
ICD	Inter-Congolese Dialogue
ICESCR	International Covenant on Economic Social Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal For Rwanda
IDP	Internally Displaced Person
IECD	Integrated Early Childhood Development
IJRL	International Journal of Refugee Law
ILC	International Law Commission
IRIN	Integrated Regional Information Networks
ISS	Institute for Security Studies
LRA	Lord's Resistance Army
MNC	Multi-national Corporation
MOES	Ministry of Education and Sports
MONUC	United Nations Mission to Congo (DRC)
MTN	Mobile Telephone Network
NO	Number
NRA	National Resistance Army

OAU	Organisation of African Unity
PARA	Paragraph
PLE	Primary Leaving Examination
RCD ML	Congolese Rally for Democracy Movement for Liberation
RI	Refugees International
SCF	Save the children Fund
SPLA	Sudan Peoples' Liberation Army
STI	Sexually Transmitted Infection
UHRC	Uganda Human Rights Commission
UN	United Nations Organisation
UNEB	Uganda National Examinations Board
UNHCR	United Nations High Commissioner for Refugees
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Emergency
UNIFEM	United Nations Emergency Fund for Women
UNLA	Uganda National Liberation Army
UNOCHA	United Nations Office For the Coordination of Humanitarian Affairs
UNSC	United Nations Security Council
UPC	Congolese Patriotic Union

UPDA	Uganda Peoples' Democratic Army
UPDF	Uganda Peoples' Defence Forces
UPE	Universal Primary Education
USAID	United States Agency for International Development
USCR	United States Committee for Refugees
US-SL	United Nations Special Court for Sierra Leone

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CHAPTER 1 INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The problem of Internally Displaced Persons (IDPs) continues to grow, in magnitude and complexity, globally. But the problem is even bigger, in relation to Africa. According to the International Committee of the Red Cross (ICRC) World Disasters Report of 2003¹, of the world's total 25 million IDPs, 12.7 million are found in Africa². The Global IDP Project reports that of the 12.7 million, the Democratic Republic of Congo (DRC) accommodates 3.4million³ IDPs while Uganda hosts 1.6million⁴. Uganda and the DRC, therefore, accommodate nearly half of the population of IDPs in Africa. Thus the problem of IDPs is bigger than the refugee problem, yet the refugees have an international legal regime and a mechanism for monitoring and implementation⁵. The case of Africa is worse for several reasons.

The first is Africa's interminable conflicts and problems of governance.⁶ The Global IDPs Project reports that in the DRC, the number of IDPs has increased with the rate of armed conflict. The number of IDPs in the DRC was 400000 at the end of the war against the late *Mobutu* in May 1997.⁷ This number drastically reduced to 100000 when the war against *Mobutu* actually ended in May 1997. The invasion of the DRC by Uganda and Rwanda on 2 August 1998 caused fresh displacement of 600000 people⁸. The escalation of the war (with the involvement of Angola,

¹ World Disasters Report: Focus on Ethics in Aid' 2003 114

² According to the Report, Sudan, with 4000000 IDPs has the highest number, followed by DRC with 3.4, Uganda 1.6 and Algeria 1000000; see also 'Internally Displaced People World Map'; available at <<http://www.idpproject.org>>

³ 'Approximately 3.4 Million Displaced in DRC as of End 2003' <<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/1E2E82D4CDAD1F72C1256E27003239A8>> (accessed on 31 August 2004)

⁴ 'Uganda: More than 1.6 Million IDPs (June 2004)

<<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/07AFC6887B273101C1256D43005F1744>> (accessed on 5 September 2004)

⁵ The Convention Relating to the Status of Refugees 1951 (UN Treaty Series, vol; 189, No; 1-2545; the Convention entered into force on 22 April 1954) and the 1967 Protocol thereto provide for the protection of refugees on the international level; on the African continent the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 (UN Treaty Series, vol; 1001, No; 1-4691; the Convention entered into force on 20 June 1974) protects the rights of African refugees; see I Brownlie & S G Guy *Basic Documents on Human Rights* 112

⁶ K Annan 'The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa. Report of the UN Secretary-General on the Work of the OAU' (1998); reproduced in 10 *African Journal of International and Comparative Law* 53

⁷ U S Committee For Refugees (USCR) World Survey 1997; also available at <http://www.refugees.org/refugee_reports/1997.cfm> (accessed on 13 August 2004)

⁸ 'Uganda Rwanda Invasion Displaces More Than 600000 in DRC (September 1998)' <<http://www.idpproject.org>> (accessed on 31 August 2004)

Chad, Zimbabwe, Libya and Namibia) raised the number of IDPs to 3.4⁹. In Uganda, the phenomenon of internal displacement came to the fore with increased insurgency in the north and western parts of the country¹⁰. Although there was internal displacement in the early 1980s during the guerrilla war of *Yoweri Museveni* in the *Luweero* Triangle, it died down when the war ended in 1986¹¹. The insurgency of the Lord's Resistance Army (LRA) of Joseph *Kony* which started in 1987 has caused the major internal displacement in northern and recently, eastern Uganda. The LRA rebels attack, abduct, hack and maim civilians. Children and women are the majority victims of the LRA atrocities.¹² The civilians have been compelled to flee their homes to escape the rebels' wrath. The government forces have also driven civilians out of their homes into IDPs camps to save their lives. But the army also does this to deny the rebels chance to abduct the civilians into their ranks.¹³ According to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) the number of IDPs in northern Uganda doubled from 800000 to 1.6 in March 2004 due to increased attacks by the LRA rebels.¹⁴ UNOCHA also reports that the rebels increased their civilian attacks in Uganda as the army pursued them inside Sudan.¹⁵ Attacks by armed *Karimojong* cattle-thieves in eastern Uganda had caused the internal displacement of 120000 people in *Katakwi* district before these were 're-displaced' by the LRA invasion in June 2003.¹⁶ The defeat of the rebel Allied Democratic Forces (ADF) in 2000 almost

⁹ 'Approximately 3.6 Million Displaced as of End of 2003' (n 3 above); Angola, Zimbabwe, Namibia and Chad openly intervened in defence of the DRC against Uganda and Rwanda. Sudan and Libya covertly supported DRC as well

¹⁰ The insurgency in northern Uganda has been led by the rebels of the Lord's Resistance Army (LRA) led by Joseph *Kony*; it has existed since 1986; the insurgency in western Uganda broke out in 1996 when the Allied Democratic Forces (ADF) attacked from the DRC (then *Zaire*) and set up a rebel base in the *Rwenzori* Mountains; however in 2000 the Ugandan army defeated them and ended their insurgency; see 'Uganda: More Than 1.6 Million IDPs' (n 4 above)

¹¹ *Yoweri Museveni* (presently the President of Uganda) started a guerrilla war against the government of Milton *Obote* in February 1981 and captured power in January 1986; the *Museveni* insurgency caused much destruction and internal displacement in the central Uganda *Luweero* district and the death of more than 300000 civilians; for more details on the *Museveni* insurgency and the history of Uganda see generally Y K *Museveni* *Sowing The Mustard Seed* (1997) and M Mamdan *The Politics of State Formation* (1995)

¹² Countries in crisis; Donor alerts and field reports: Uganda; Donor Alert¹- 22 November 2003 available at <<http://www.unicef.org/emerg/index15767.htm>> (accessed on 6 October 2004)

¹³ 'Army Displaced 300000 People (July 2003) see also 'Abducted and Abused-Renewed Conflict in Uganda' HRW Report 15 July 2003 13; available at <<http://www.hrw.org/reports/2003/uganda0703/>> (accessed on 13 August 2004)

¹⁴ Report of Mid-Year Review of the Consolidated Appeals Process (CAP): Humanitarian Appeal 2004 for Uganda; 15 June 2004; available at <<http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/0064c6120c0149fc1256eac0059df23?OpenDocument>> (accessed on 10 October 2004)

¹⁵ See Report of Mid-Year Review of the CAP (n 14 above) 22; Sudan and Uganda signed a Protocol, in 2001, allowing the former to pursue the LRA rebels inside Sudan

¹⁶ The *Karimojong* warriors are traditional cattle keepers; but they have become a terror to their neighbours due to possession of small arms; they acquire arms from the Sudan Peoples' Liberation Army (SPLA) in exchange for cattle; they also had free access to arms when soldiers of deposed former President of Uganda *Idi Amin* (who was ousted in

completely brought to end the internal displacement in Western Uganda. According to UN OCHA there are presently only 200 IDPs in Western Uganda.¹⁷ This is testimony to how armed conflict takes a lion's share among the causes of internal displacement.

The second is bad policies related to deliberate displacement during development activities. In Uganda, the creation in 2000, of Mount *Elgon* National Park on the border with Kenya displaced a total of 4000 people.¹⁸ These have to date not been provided with alternative settlement. In the DRC the *Batwa*¹⁹ have been constant victims of government-caused internal displacement. The DRC regimes have progressively failed and /or refused to recognise the *Batwa* as a minority. This has kept the *Batwa* in the forests. When armed conflict breaks out, they fall victims. Refugees International (RI) reports that over 2000 internally displaced *Batwa* have been killed by rebels in the DRC on allegations of supporting or not, a particular rebel group or the government.²⁰

The third is natural disasters. In Uganda landslides on Mount *Elgon* caused the internal displacement of 4000 people in the districts of *Kapchorwa* and *Mbale*, in 2003.²¹ In the DRC, the volcanic eruption of Mount *Nyiragongo* on 17 January 2002 caused the death of 147 people and internal displacement of 120000 people who had been displaced into *Goma* town.²²

Despite the pathetic state of IDPs, there is no comprehensive legal regime that protects their rights. While the refugees have the 1951 Convention on the Status of Refugees, the IDPs have no international Convention or Covenant that comprehensively provides for their rights and creates a body that monitors the implementation or protection and promotion of their rights. The IDPs are left to the protection of the provisions of the Guiding Principles on Internal

1979) abandoned *Moroto* military barracks in north-eastern Uganda in 1979 and left the armoury open; see (n 5 above)

¹⁷ (n 13 above) 32

¹⁸ 'Creation of Wild Reserve Causes Displacement in Eastern Uganda' <<http://www.idpproject.org>> (accessed on 31 August 2004)

¹⁹ The *Batwa* (Pygmies) are, according to the Global IDP Project, approximately 70000 and exist in the DRC, Uganda, Rwanda and Burundi; see '*Batwa* "Pygmy" Population has been Displaced and Marginalized (2003-2004)'; available at <<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/6D15C7204787C2AAC1256E27003471B2>> (accessed on 13 August 2004)

²⁰ 'Forgotten people: the *Batwa* 'Pygmy' of the Great Lakes region of Africa'. RI Report 12 August 2003 available at <<http://www.refugeesinternational.org/content/article/detail/892/>> (accessed on 13 September 2004); see also 'Forgotten People: the *Batwa* 'Pygmy' of the Great Lakes region of Africa; One Year Later' 20 August 2004; available at <http://www.refugeesinternational.org/content/article/detail/3203/> (accessed on 14 September 2004)

²¹ 'Mbale and slides affect soil' *The New Vision* 24 January 2001 see <<http://www.newvision.co.ug/detail.php?mainNewsCategoryId=&newsCategoryId=39&newsId=47238>> (accessed on 13 August)

²² 'Affected Populations in The Great Lakes Region' UN OCHA Report 28 February 2002; available at <<http://www.reliefweb.int/library/documents/2003/ocha-glr-15aug.pdf>> (accessed on 9 October 2004); according to this report, the volcanic eruption of Mount *Nyiragongo* on 17 January 2002 destroyed 15 % of *Goma* Town and created 100000 refugees who fled to Rwanda in addition to re-displacing 120000 IDPs who had taken refuge there

Displacement (the Guiding Principles)²³ and the domestic provisions of various countries (if any) and favourable interpretations of the various human rights instruments. This entails a problem in that the displaced persons are left with no clear or automatic source of redress in the event of violations of human rights. Also, since the internally displaced are uprooted within their own countries, the problems of state sovereignty and interference compound to leave the IDPs in a terribly vulnerable state in relation to the protection of their rights²⁴.

The office of the United Nations High Commissioner for Refugees (UNHCR) has sometimes at its own discretion rendered humanitarian aid to IDPs.²⁵ But considering that this is done at the discretion of the UNHCR, it is not difficult to see how the plight of the IDPs is not well taken care of.

While internal displacement generally violates the rights of males and females, the manner in which it violates the rights of internally displaced women and children is unique. The available statistics indicate that women and children constitute the majority of the population of the IDPs in Uganda and the DRC²⁶. The argument that there are already provisions in place for the protection of the rights of women and children in the ICCPR, the ICESCR, the CRC, CEDAW should not be allowed to stand any ground. Even the Guiding Principles are inadequate. For instance the Guiding Principles provide that displaced women should be involved in the process of relocating persons who are displaced by the authorities²⁷. In relation to AIDS, the Guiding Principles state that efforts shall be undertaken to control the spread of contagious diseases²⁸. But the Guiding Principles are totally silent on the rights of women in relation to HIV/AIDS

²³ The Guiding Principles on Internal Displacement were compiled by the UN Secretary-General's Representative on Internal Displacement Francis Deng in 1997 and submitted to the UN Commission on Human Rights (UNCHR) pursuant to UNCHR resolution 1997/39; see UN Doc; E/ CN; 4/1998/53; see report of the Representative of the Secretary-General

on Internal Displacement of 1998 available at <<http://www.unhcr.ch/Huridoca.nsf/TestFrame/d2e00c61b70263ec125661e0036f336e?OpenDocument>> (accessed on 14 October 2004); the first Secretary-General's Representative on Internal Displacement, Francis Deng was appointed by the UN Secretary-General in 1992 pursuant to a request by the UN Commission on Human Rights (UNCHR); see <<http://www.oHChr.org/english/issues/idp/index.htm>> (accessed on 31 August 2004); and on 21 September 2004 the Secretary-General appointed Deng's successor Walter Kalin; 'Secretary General Appoints New Representative on Internal Displacement'; available at <http://www.idpproject.org/weekly_news/weekly-news.htm#1> (accessed on 15 October 2004)

²⁴ For instance the OAU Charter of 1963 was bedevilled with provisions that emphasized state sovereignty at the expense of human rights; it can in fact be argued that such were the bottlenecks that hampered the possibility of foreign intervention in Rwanda to stop the 1994 Genocide; see purpose 1 (c) of article 2 and principles 1, 2 and 3 of the OAU Charter on non-interference in the internal affairs of African States and respect for the sovereignty and territorial integrity of each State; for more details on sovereignty and non-interference in the internal matters of African States see generally J N Gino *The OAU: An Analysis of Its Roles* (1989)

²⁵ See the UNHCR Guidelines on Internally Displaced Persons

²⁶ 'Countries in Crisis; Donor alerts and Field Reports: Uganda; Donor Alert'- 22 November 2003 (n 12 above)

²⁷ Principle 18(3) of the Guiding Principles

²⁸ Principle 19 (3) of the Guiding Principles

infection and caring for the sick in conditions of internal displacement. The Global IDP Project reports that in the DRC, internally displaced women, girls and girl children are vulnerable to HIV infection and cannot protect themselves.²⁹ Internally displaced women retain their domestic roles of providing for the family including caring for the sick. This takes place in the camps of displaced persons as well. For instance the right of women to protection against HIV infection is not catered for.

Above all, internally displaced women retain their maternal function of childbearing. The Global IDP Project reports that between 1999 and 2003 20000 children were born in IDPs camps in Uganda. It is easy to imagine how stressful it is for internally displaced women to conceive, endure the pregnancy and give birth in conditions of internal displacement. The Global IDP Project reports that in the DRC more than 50000 children were born in conditions of internal displacement between 1998 and 2003. Women also remain the providers of sexual satisfaction to their husbands during internal displacement. In the eastern Ugandan town of *Soroti* a man, in October 2003, battered his wife for 'failure to satisfy him sexually' in a make shift camp.³⁰

The right of women to protection against violence needs more serious consideration in relation to internal displacement. The Global IDP Project reports that some international peacekeepers have participated in violence against internally displaced women and girl children in the DRC.³¹ This is duplicated by acts of sexual violence like rape. But Human Rights Watch (HRW) also reports that many internally displaced girls have fled their temporary homes in the DRC to escape systematic rape at the hands of rebels and militia in the DRC.³²

In the case of children, the Guiding Principles provide for availability of education during displacement.³³ But how it specifically applies to internally displaced children and especially in conditions of insecurity like in northern Uganda and eastern DRC, is not well spelt out. The Global IDP Project reports that many internally displaced children in the DRC have failed to

²⁹ 'IDPs Are More Exposed To HIV/AIDS Infection As A Result of the Conflict (2001-2003)' <<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/B75AF2B478238B87C1256ADA0054C19C> (accessed on 10 September 2004); see also 'HIV/AIDS Prevalence 20% in Certain Regions' *Integrated Regional Information Networks* (IRIN) 5 November 2003; available at <http://www.irinnews.org/Aidsreport.asp?ReportID=2702&SelectRegion=Great_Lakes> (accessed on 10 September 2004)

³⁰ Complaint received by the writer at the Uganda Human Rights Commission (UHRC) *Soroti* Regional Office on 18 October 2003, (Complaint No; UHRC/S/354/2003)

³¹ 'Investigation of Sexual Abuses allegedly Committed by UN peacekeepers (July 2004)'; available at <<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/56D4952C89C05CDCC1256F2D005167BB>> (accessed on 16 October 2004); See also; '*RDC: La difficile enquête de la MONUC sur des allégations de violences sexuelles par des casques bleus*' 28 July 2004 ; available at <<http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/c06b5bfd042e994985256ee0005955d9?OpenDocument>> (accessed on 18 October 2004)

³² 'The War Within the War: Sexual Violence Against Women and Girls in Eastern DRC' (June 2002)

³³ Principle 23; para; 2

continue with education.³⁴ In northern Uganda half the population of internally displaced children failed to sit for their Primary Leaving Examinations (PLE) in 2001 and 2002.

Internally displaced children are the main targets of abduction by rebels in northern and (recently) eastern Uganda. Just between February 2002 and November 2003, the LRA rebels in northern and eastern Uganda abducted 12000 internally displaced children. The rebels turn these children into the worst killers by forcing them to witness killings and raping of their colleagues.

Thus the situation of women and children as weak members of the internally displaced populations and the greatest sufferers of the inhuman conditions of internal displacement remains unchanged.

1.2 RESEARCH QUESTIONS

The research questions that this study investigates are, thus:

1. Does the present international human rights regime adequately identify the special rights of internally displaced women and children?
2. Have the governments of Uganda and the DRC, despite massive internal displacement, identified the unique rights of internally displaced women and children?
3. Are there sufficient protection measures for the rights of internally displaced women and children at national and international levels?

1.3 HYPOTHESES

The hypotheses of this study are thus the following:

1. There is an obligation to identify and acknowledge the rights that specially accrue to women and children as part of internally displaced populations.
2. The rights of internally displaced women and children are, in relation to the rights of internally displaced men, unique.
3. Even if a comprehensive international regime for the protection of the rights of IDPs is created, it remains crucial to have specific mechanisms for the protection of the rights of internally displaced children and women.

³⁴Democratic Republic of Congo: Addressing the Present and Building a Future'; Amnesty International (AI) Memorandum to the DRC transitional government of national unity, armed groups and foreign governments involved in the DRC conflict, and the international community; 27 November 2003; available at <<http://web.amnesty.org/library/Index/ENGAFR620502003?open&of=ENG-COD>> (accessed on 10 September)

4. The traditional position of women and children in African societies and families in particular, must be considered when undertaking efforts to provide for the protection of the rights of women and children as internally displaced persons.

1.4 OBJECTIVES

The objectives of this study are hence:

1. For academic purposes: To enable scholars and human rights activists have an insight into the problem of internal displacement and specifically how it violates the rights of women and children.
2. To clearly identify the rights that specifically accrue to women and children as members of the internally displaced population. This study will demonstrate that there is a big difference between the rights of displaced children and women, on one hand, and the rights of men, on the other.
3. To demonstrate that the rights of displaced women and children need special attention as they relate to the situation of weak members of society.
4. To stress that in all attempts to create a comprehensive legal regime for the protection of the rights of displaced persons, special attention must be paid to the situation of women and children.
5. To stress that the displacement of women and children serves to worsen their situation since they are always a vulnerable group. This is in relation to the patriarchal family and societal systems that still exist in Africa. These patriarchal systems perpetuate male dominance. They result in accepted situations of abuse of human rights of women and children. The bases of this situation are norms and customs of various societies.
6. To come up with recommendations as to what can be done to have the rights of displaced women and children fully recognised and protected. This could be by way of an international legal regime that can be enforced like any other treaty-based system.

1.5 LITERATURE REVIEW

The situation of IDPs has generated significant literature. Several articles and books have been written on the broad subject of internal displacement. Some writers have also written on specific areas within the area of internal displacement. International law is also not totally silent on internal displacement.

The Second Additional Protocol to the Geneva Conventions creates some protection for women and children in non-international armed conflicts. It calls on belligerents in such conflicts not to

commit acts of indecent assault, rape and enforced prostitution against women. It also calls on belligerents not to recruit children into armed hostilities.³⁵

The Guiding Principles provide that displaced women should be involved in relocation plans when displacement is a result of the actions of competent authorities. They also provide that special care should be taken when dealing with weak displaced persons like children, the elderly, the sick, pregnant women and the disabled. In the area of education the Guiding Principles provide that displaced children shall be facilitated and given access to basic education.

The Ugandan Draft Policy on Internal Displacement (Uganda Draft Policy) attempts to adopt the rights of IDPs as contained in the Guiding Principles. It creates Protection Committees and Disaster Management Committees and procedures for hearing complaints of violations of the rights of IDPs.

*Fitzpatrick*³⁶ generally identifies the rights that IDPs have. She argues that they can also enjoy the rights contained in other instruments like the right to protection against torture as contained in the Torture Convention. She also illustrates the possibility of an IDP to file a communication.

Cox and *Harland*³⁷ explore the effectiveness of the international legal structures in the protection of the rights of displaced persons. They also analyse the various rights that accrue to displaced persons in a broad sense. They also put forward a case analysis of situations of displaced persons for purposes of illustrating actual trends in the dynamics of displacement.

*Oloka-Onyango*³⁸ tackles the situation of internally displaced women in Africa. He combines, in his analysis, the situation of both internally displaced and refugee women. To him the international regime is also affected by the patriarchal systems that keep women in an inferior position to men. He points for instance that the 1951 Refugee Convention does not mention 'gender' or 'sex'. He equally finds the African Refugee Convention insufficient in the area of gender equality and that the same applies to the African Charter on Human and Peoples' Rights. To him the Guiding Principles on Internal Displacement are highly inadequate as a tool of human rights protection.

³⁵ Article 4 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (10 June 1977); see; Protocols To The Geneva Conventions of 12 August 1949; the International Committee of the Red Cross (ICRC) 1997

³⁶ *The Human Rights of Refugees, Asylum –Seekers and Internally Displaced Persons: A Basic Introduction* (2002) 5-7

³⁷ 'Internationalised Legal Structures and The Protection of Internally Displaced Persons' in J Fitzpatrick (2002) *The Human Rights of Refugees, Asylum-Seekers and Internally Displaced Persons* 521

³⁸ 'Forced Displacement and The Situation of Refugee and Internally Displaced Women in Africa' (1998) 5 NO. 1 *East African Journal of Peace and Human Rights* 2; *Oloka-Onyango* also presented a paper entitled 'Gender and Conflict In Contemporary Africa: Engendering the Mechanisms for the Promotion of Human Rights and Conflict Resolution' at a conference organised to commemorate the 30th bi- annual FIDA International Conference in Kampala Uganda; he reiterated in this paper the nature of patriarchal family and societal systems that perpetuate exploitation and oppression of women

*Stavropoulou*³⁹ makes a general illustration on the right not to be displaced. She also is of the view that the rights of IDPs are catered for by the provisions that exist in the numerous available human rights instruments.

*Cohen and Deng*⁴⁰ put forward the plight of IDPs the world over and describe the humanitarian crisis of internal displacement as 'monumental'. They decry the absence of a specific legal regime for the protection of the rights of IDPs and a body to monitor compliance with such mechanisms. They invite states to incorporate provisions of the Guiding Principles into their legislative frameworks.

*Gingyera-Pinyewa*⁴¹ provides figures related to displacement. He contends that Africa has in fact performed well in dealing with problems of refugees and displaced persons considering her meagre resources and governance problems. He condemns the international community for having a discriminatory approach in delivering humanitarian assistance.

This study finds the above literature highly inadequate in relation to the protection of the rights of internally displaced women and children. As already pointed out the Guiding Principles are inadequate and so are the other international instruments. The Uganda Draft Policy is totally silent on the special rights of internally displaced women and children. It also does not create any mechanism for the specific protection of their rights. The literary works of the above authors do not centre in depth on the rights of women and children as internally displaced persons. While *Oloka-Onyango* presents a case for the rights of internally displaced women, he totally excludes children, yet children go with women in having the worst of the conditions of internal displacement. Thus the rights of women and children as internally displaced persons remain unattended to. There is thus no precise literature on the specific problem presented by this study.

This study intends to make findings relevant to the problem and use the literature it will come up with, to convince the reader and all stakeholders of the need to focus on the special rights of internally displaced women and children.

1.6. RELEVANCE OF THE STUDY

This study is hence relevant because:

The problem of displacement remains formidable especially in Africa. It is exacerbated by Africa's continuous conflicts and bad policies that are taken and effected in the name of development.

³⁹ 'On the Right not Be Displaced' (1998) 5 NO. 1 *East African Journal of Peace and Human Rights* 91

⁴⁰ *Masses in Flight: The Global Crisis of Internal Displacement* (1998) 3

⁴¹ 'Refugees and Internally Displaced Persons in Africa on the Eve of the 21st Century' (1998) 5 NO. 1 *East African Journal of Peace and Human Rights* 45

Women and children remain the worst victims of internal displacement. This is so because in real life women and children are vulnerable. Thus adding on internal displacement is too much for them.

There is still no international enforceable mechanism by which the protection of the rights of IDPs and in particular women and children can be ensured. This leaves such rights at the mercy of the states within which the internal displacement occurs.

1.7 METHODOLOGY

Findings for this study have been got through various methods. Use has been made of secondary sources by way of library research and analysis of reports that touch on the subject matter. Internet sources have been used to attain the relevant latest information on the matter. Focus has been made on specific areas of IDPs in the selected countries of this research.

1.8 LIMITATIONS

The subject of internal displacement is vast. This study focuses on the specific rights of women and children that should be identified acknowledged and taken care of by the duty-bearers when dealing with the problem of internal displacement. Although many African countries experience the problem of displacement, this study is restricted to the cases of Uganda and the Democratic Republic of Congo. These two countries have had a big share of the problem of internal displacement owing, especially, to armed conflict.

This study is, thus, geographically restricted to Uganda and the DRC and the specific areas within these countries that have been affected by internal displacement.

The study, will in temporal terms, analyse the problem of internal displacement only from the time of its commencement. Thus, in Uganda it will date back to 1986 and the DRC back to 1996.

This study only and specifically analyses the situation of IDPs and not displaced persons in general terms. This implies that it excludes refugees and all people who cross the international borders.

1.9 CHAPTERISATION

This chapter is basically chapter 1 of the study. Chapter 2 will comprise of analyses of who an IDP is and the magnitude of the problem of internal displacement in Uganda and the DRC. This will also entail identification of the causes of internal displacement in both countries.

Chapter 3 will identify and critically analyse the rights of women and children as IDPs. This analysis will focus on the conditions prevailing in Uganda and the DRC.

Chapter 4 will come up with detailed and comprehensive recommendations as to what can be done to attain the acknowledgement, protection and enforcement of the rights of women and children that arise out of internal displacement.

Chapter 5 will have a suitable conclusion to the study. It will show whether the findings of the study prove its hypotheses.

CHAPTER 2

2 THE CONCEPT OF 'INTERNALLY DISPLACED PERSON' AND PATTERNS OF INTERNAL DISPLACEMENT IN UGANDA AND THE DRC

2.1 Introduction

This part of the Chapter will explore the meaning of an IDP. This will involve analysis of the International and national perceptions. The causes of internal displacement in Uganda and the DRC will be identified. Also, the patterns of internal displacement, in both countries will be discussed. The position of internally displaced women and children in the patterns and causes of internal displacement in Uganda and the DRC shall be discussed.

2.2 The Concept of 'Internally Displaced Person'

At present, it is only the Guiding Principles that expressly offer a definition of an IDP. They define an IDP as a person:

[W]ho has been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.⁴²

The Uganda Draft Policy on Internal Displacement possesses a duplicate definition of the one in the Guiding Principles. The DRC has no policy on internal displacement but its Interim Constitution provides for emergency protection. The definition brings out distinct features of an IDP. The first is that he/she is physically forced or obliged to flee out of his/her home or place of habitual residence. This is due to unbearable situations of armed conflict, generalised violence, human rights violations or natural or human-made disasters. But the IDP remains in his/ her country. The IDP is, thus, fundamentally different from a refugee for he/she does not cross an international boundary. The definition of an IDP implies that an IDP can become a refugee upon crossing of an international border⁴³.

⁴² Para; 2 Introduction: Scope and Purpose

⁴³ For instance the Rwandese refugees who were massacred in Burundi in *Gatumba* camp on 13 August 2004 were formally IDPs in the DRC; they crossed into Burundi where they were massacred by suspected *Hutu* rebels; see 'Renewed Tensions in Eastern DRC following the Massacre of Tutsi Congolese Refugees in Burundi (August 2004)' available at

<<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/5F2DDA6C152B596CC1256B83005AEC00>> (accessed on 16 October 2004)

Although the Guiding Principles are the only international human rights document that defines an IDP, the definition they offer is sufficient to explain the concept.⁴⁴

2.3 Patterns of Internal Displacement in Uganda and The DRC

The patterns of internal displacement in Uganda and the DRC are closely related to the causes of internal displacement. This part of the chapter will analyse the patterns of internal displacement by differentiating between IDPs created by armed conflict, natural disasters, government policy and any other factor.

2.4 Patterns of Internal Displacement in Uganda

The patterns of internal displacement in Uganda can be distributed into two areas, namely, internal displacement in northern Uganda and internal displacement in eastern Uganda. In northern Uganda there is internal displacement whereby civilians out of fear flee from their homes and IDPs created by the UPDF when it creates the so-called 'protected villages'. In eastern Uganda there are IDPs created by natural disasters, attacks from the *Karamojong* warriors, IDPs created by GOU development policy and recently (June 2003) IDPs created by the LRA invasion.

2.4.1 Internal Displacement in Northern Uganda

The internal displacement in northern Uganda therefore comprises of situations of voluntary internal displacement and forced internal displacement.

2.4.1.1 Voluntary Internal Displacement

The voluntary internal displacement in northern Uganda occurs when the civilians out of fear of LRA rebel attacks are obliged to flee their homes into places that are relatively safer. This is an example of how IDPs are 'obliged' to flee their places of residence as envisaged by paragraph two of the Guiding Principles. IDPs that have been 'obliged' to flee their homes are the predominant in northern Uganda.

As already mentioned, the present number of IDPs in Uganda is slightly over 1.6 (in fact 1609744). Of the total, northern Uganda hosts 1279239. The district of *Gulu* alone has 438,639 IDPs.⁴⁵

⁴⁴ W Kalin *The Guiding Principles: Annotations* (2000) 28

⁴⁵ 'Uganda IDPs' map by district'; available at

<<http://www.reliefweb.int/w/map.nsf/wByCLatest/42085A5EA387D11685256EA00065E88BC?Opendocument>>

(accessed on 7 October 2004) (annexed)

The district of *Pader* has 279,526⁴⁶ while *Kitgum* hosts 267,078⁴⁷. *Lira* district has a combined total of 293996⁴⁸ IDPs for both municipality and local camps. The number of IDPs in northern Uganda is commensurate to the level of armed conflict there. Camp populations range from 60,000 to fewer than 2,000 in the smallest sites, which include churches, public buildings and hospitals. An unspecified number of displaced are staying with relatives. Since 1986 the LRA rebels have attacked, abducted, hacked and maimed civilians especially children. According to the Global IDP Project a total of 28000 children have been abducted since 1986 with half of them being abducted between June 2002 and May 2004.⁴⁹ Rebels also stage road ambushes and attack homes. The civilians have thus been forced to flee from their homes and seek protection near hospitals, churches and schools or towns.

2.4.1.2 Government- created IDP Camps

The government has also initiated the movement of civilians from their homes into IDPs camps. The government calls this controversial process the creation of 'protected villages'. While the governments insists that it drives civilians into IDPs camps to protect them, many people look at it as a way to deny rebels recruitment. In September 1996 the government embarked on the creation of 'protected villages'.⁵⁰ The Uganda Peoples' Defence Forces (UPDF) announced that it had begun creating 'protected villages'. Army units participated in moving civilians from their homes to the 'protected villages'. This army –created internal displacement has been ongoing.

In October 2002, the UPDF issued an order requiring all 'law-abiding citizens in the abandoned villages of *Gulu*, *Pader* and *Kitgum* districts to vacate with immediate effect....'This evacuation order displaced more than 300000 civilians.⁵¹ The civilians were bound to flee quickly because the Army said that forty-eight hours after the order, any person found in the abandoned villages would be presumed to be a rebel.

This has generated debate. The authorities under Protocol II of the Geneva Conventions can initiate displacement.⁵² But the Protocol expressly prohibits displacement for reasons related to

⁴⁶ 'Uganda IDPs Map by District' (n 45 above)

⁴⁷ As above

⁴⁸ As above

⁴⁹Uganda: Increased International Attention Has Yet to Produce Concrete Results for the Displaced' <<http://www.db.idproject.org/Sites/idpSurvey.nsf/wViewSingleEnv/UgandaProfile+Summary> > (accessed on 13 September 2004)

⁵⁰ 'Internally Displaced People Regard Camps as Traps' <<http://www.idproject.org> > (accessed on 4 October 2004)

⁵¹ 'Army Displaced 300000 (July 200)' <org> (accessed on 15 September 2004). See also 'Abducted and Abused- Renewed Conflict in Uganda' Human Rights Watch Report 15 July 2003 available on <<http://www.hrw.org>>

⁵² Article 17 (1) of Protocol II of the Geneva Conventions (Protocol Additional To the Geneva Conventions of 12 August 1949, And Relating To the Protection of Victims of Non-International Armed Conflicts of 8 June 1977) provides that 'the displacement of civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be

the conflict. It appears to be within 'reasons related to the conflict' to evacuate civilians to avoid their recruitment by the rebels. However this can also be said to be within what the Protocol prohibits. Evacuating civilians to avoid their recruitment by rebels arguably brings the matter into the armed conflict and hence a serious humanitarian issue. The Guiding Principles provide that 'prior to the decision requiring the displacement of persons, the authorities shall ensure that all feasible alternatives are explored in order to avoid displacement altogether'.⁵³ Although the civilians have not been happy with government evacuation, they have complied and both the international and national communities have not voiced serious opposition to the government action.

2.4.2 Internal Displacement In Eastern Uganda

The internal displacement in eastern Uganda has four parts: One caused by the *Karimojong* warriors, one caused by natural disasters, one caused by government policy and recently, one caused by the LRA invasion.

2.4.2.1 Internal Displacement Caused by *Karimojong* Warriors

The *Karimojong* warriors are a Nilo-hamitic group of people that live in north-eastern Uganda.⁵⁴ Their occupation is predominantly cattle keeping. They believe that all cows on earth belong to them and it is normal to them to carry out cattle-raids in their neighbouring communities or amongst their clans.⁵⁵ They have become more problematic to their neighbours due to their possession of firearms. They acquire the firearms from the SPLA in exchange for cows.⁵⁶ They first had access to guns in 1979 when the defeated soldiers of then President *Idi Amin* abandoned *Moroto* army barracks with the armoury open.⁵⁷ The greatest sufferers of the *Karimojong* armed raids are the *Itesots*—a tribe that occupies the districts of *Soroti*, *Kumi*, *Katakwi* and some parts of *Kaberamaido*. Before the LRA rebels invaded eastern Uganda in June 2003, there were a total of 88000 IDPs in the district of *Katakwi* which directly borders

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'; para; 2 thereof provides that 'civilians shall not be compelled to leave their own territory for reasons connected with the conflict'

⁵³ Principle 7 para; 1

⁵⁴ 'Tackling small arms in Eastern Africa and the Greater Horn'; Meeting Report—Institute for Security Studies (ISS) <<http://www.iss.org.za>> (accessed on 6 October 2004)

⁵⁵ See (n 49 above)

⁵⁶ 'The impact of small arms on the population: a case study of kitgum & kotido Districts' Assessment Report written for OXFAM GB Uganda, Kampala By Action for Development of Local Communities(ADOL); available at <<http://www.smallarmsnet.org/docs/saaf10.pdf> > (accessed on 11 October 2004)

⁵⁷ See (n 55 above)

Karamoja.⁵⁸ These IDPs had fled the numerous armed raids of the *Karimojong* warriors. The *Karimojong* warriors kill, rape women and sometimes abduct children when they carry out cattle-raids. In the worst ever raid, of the total killed 17 IDPs, 8 were children and 6 were women when the *Karimojong* attacked *Ngariam* camp in *Katakwi* on 23 September 2001.⁵⁹ The people's only alternative hence has been to flee to IDPs camps.

2.4.2.2 Natural Disaster-based Internal Displacement

Landslides in the eastern district of *Mbale* have displaced some people. But this number is small (4000).⁶⁰ Landslides mostly occur in the Mount *Elgon* area on the border with Kenya.⁶¹ But in May 2003 severe landslides in *Mbale* killed two people and caused the displacement of 4000 persons.⁶² Although this has not been frequent; it remains a huge threat. Apart from the eastern Uganda landslides, natural disasters have not caused significant internal displacement in Uganda.

2.4.2.3 Government Policy-based Internal Displacement

In 2000 the Government of Uganda (GOU) announced that it had gazetted the Mount *Elgon* forest and turned into a game park. The residents were hence required to seek alternative residence. The GOU also promised to adequately compensate the affected persons and /or alternatively, expeditiously relocate them. This policy displaced a total of 4000 inhabitants of *Kapchorwa* and *Mbale* districts of eastern Uganda.⁶³ By June 2004 these people had not been adequately Compensated or relocated by the GOU. They are instead in IDPs camps in *Kapchorwa* and *Mbale*.⁶⁴

⁵⁸(n 38 above) See also UN Consolidated Inter-Agency Appeal for Uganda 2002, available at <<http://www.idpproject.org>>

⁵⁹ 'Inter and Extra Communal Violence in Karamoja' <<http://www.idpproject.org>> (accessed on 10 September 2004)

⁶⁰See (n 21 above); see also 'Landslides kill People in eastern Uganda' *Xinhua News Agency* 23 May 2003 19 ;also available at <http://www.news.xinhuanet.com/english/2003-05/23/content_399155.htm> (accessed on 4 October 2004); see also 'Effects of Land use Change on the Stability of Slopes on Mount Elgon Area, Mbale Eastern Uganda. A study of Landslides in the Manjia County'; research done by Mary Kitutu for *Katholieke Universiteit Leuven* November 2003; available at <<http://www.kuleuven.ac.be/geography/frg/staff/5214/index.php?lab=leg>> (accessed on 11 October 2004)

⁶¹ Recently there were reports that actually the mountain itself was going to erupt. This was after fumes were reported to be coming out; however experts have now confirmed that there will not be a volcanic eruption; this volcanic threat had compelled people to start fleeing; see 'Mount *Elgon* No Threat- Experts' *The New Vision* 17 September 2004; available at <<http://www.newvision.co.ug/news/elgon>> (accessed on 17 September 2004)

⁶²See (n 18 above)

⁶³See (n 14 above)

⁶⁴ 'Profile of Internal Displacement in Ngenge' <<http://www.ngenge.humanitus.org.net/about.htm>> (accessed on 11 October 2004)

2.4.2.4 Internal Displacement Caused by the LRA Invasion (June 2003)

The LRA rebels invaded eastern Uganda in June 2003. They sneaked out of the northern district of *Lira* and into the eastern districts of *Katakwi* and soon later, *Soroti* and *Kaberamaido*.⁶⁵ They immediately embarked on their usual atrocities: abductions, rape and killings. In the period June-September 2003, over 300 children were abducted by the LRA rebels in eastern Uganda, including the abduction of about 100 student girls of *Lwala* Secondary School in *Kaberamaido* on 24 June 2003 following a raid at the school.⁶⁶ AI reported that at least 15 of the girls might have crossed into Sudan where they could be at risk of sexual violence.⁶⁷ The LRA invasion caused the internal displacement of 400000 persons in the three districts of *Soroti*, *Kaberamaido* and *Katakwi*.⁶⁸

Thus, the patterns of internal displacement are closely connected to the causes. The majority of the IDPs are hosted where there is armed conflict.

2.5 Patterns of Internal Displacement in the DRC

The patterns of internal displacement in the DRC are, like in Uganda, closely connected to the causes. The IDPs are thus created by armed Conflict, natural disasters and government policy. As is the case with Uganda, the armed conflict-created IDPs are the predominant.

2.5.1 Armed Conflict-created IDPs

The DRC has virtually been at war since 1996. In November 1996, war broke out in eastern DRC (then Zaire) when then President *Mobutu Seseko* decree that all ethnic *Banyamulenge*⁶⁹ should go back to Rwanda. Instead, war broke out. The *Banyamulenge* then ganged up with other forces that were opposed to *Mobutu* and with help from Uganda and Rwanda pushed up to the DRC capital Kinshasa, which they captured in May 1997.⁷⁰ At the time of *Mobutu's* overthrow, there were 400000 IDPs in the DRC.⁷¹ After the war (May 1997) there were around

⁶⁵ AI Uganda Report Covering Events from January to December 2003; available at <<http://web.amnesty.org/report2004/uga-summary-eng>> (accessed on 12 October 2004)

⁶⁶ See (n 65 above)

⁶⁷ As above

⁶⁸ As above

⁶⁹ The *Banyamulenge* are ethnic *Tutsi* of Rwandese origin; they have lived in the DRC for more than 200 years

⁷⁰ The prominent leader of the anti-*Mobutu* forces was Laurent Desire *Kabila*; after the capture of *Kinshasa* in May 1997, he became the president of the *Zaire* and changed its name to 'Democratic Republic of Congo (DRC)'; *Kabila* was however on 16 January 2001 assassinated by one of his bodyguards in his palace; see 'DRC: Politics and History' <<http://www.iss.co.za/AF/profiles/DR Congo/Politics.html>> (accessed on 11 October 2004)

⁷¹ See (n 7 above)

100000 IDPs. This number shot up to 600000 when Uganda and Rwanda invaded the DRC on 2 August 1998.⁷² With escalation of the war (with the involvement of Angola, Zimbabwe, Namibia, Chad and Libya) and 5 years of armed conflict, the number of IDPs stood at 3.4million by the end of September 2004.⁷³ According to UNOCHA, North *Kivu* Province with 1,209,000 IDPs has the highest number followed by *Oriental* Province with 791,000, South *Kivu* 413,700, *Katanga* 412,000, *Maniema* 234000, Equatorial 168000, East and West *Kasai* 145000 and *Kinshasa* City 41000.⁷⁴ Women and children total up to 2,200,000 of the whole DRC internally displaced population.⁷⁵

Internal displacement arising out of the *Hema-Lendu* conflict is related to the wider conflict in the DRC. The *Hema* are a hamite community and pastoralists while the *Lendu* are *Bantu* and cultivators.⁷⁶ Although the two groups have traditionally had land disputes, their disputes never became bloody. The interests of rebel groups worsened the conflict between the two. Different rebel groups have been fighting for the control of mineral-rich areas of *Ituri* where *Bunia* is located and North *Kivu* Province where *Beni* and *Goma* are located. The *Hema* had the support of the Congolese Patriotic Union (UPC) of Thomas *Lubanga*, while the *Lendu* enjoyed the support of the Congolese Rally for Democracy Movement for Liberation (RCD ML *Kisangani*) of *Mbusa Nyamwisi*⁷⁷. Fighting between the two groups has been bloody and by the end of 2003 had displaced more than 200000 persons in the areas of *Ituri* and North *Kivu* and *Oriental* Provinces.⁷⁸ The fighting also has results in deaths of over 30000 persons.⁷⁹

There was an increase of approximately 700,000 IDPs in 2003, bringing the total of IDPs to 3.4 million. This was mainly due to the crisis in *Ituri* where up to a quarter of the four million inhabitants had fled to other parts of the province and to North *Kivu*. *Ituri* has largely remained under the control of rival militias despite the strengthening of the UN peacekeeping force the United Nations Mission in the Democratic Republic of Congo (MONUC) in July 2003.⁸⁰ Armed

⁷²See (n 8 above)

⁷³See (n 9 above)

⁷⁴ Consolidated Appeals Process (CAP) 18 November 2003: Humanitarian Appeal 2004 for Democratic Republic of the Congo; See also 'DRC: Distribution of IDPs by Province (July 99-end 2003)' available at <<http://www.idpproject.org>>

⁷⁵See (n 74 above)

⁷⁶'DRC: IRIN Focus on Hema-Lendu conflict' IRIN News 11 October 2004; available at <http://www.irinnews.org/report.asp?ReportID=20578&SelectRegion=Great_Lakes&SelectCountry=DRC> (accessed on 11 October 2004)

⁷⁷See (n 76 above)

⁷⁸'Violent Conflict Between the Hema and Lendu In Oriental Province Has Caused Major Displacement' <<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/10066F91BC17BD22C1568F20045828D>> (accessed on 17 September 2004)

⁷⁹See (n 78 above)

⁸⁰ As above)

groups have reportedly mixed with IDPs in camps in *Bunia* town, causing continuous security threats.

2.5.2 Natural Disaster-based Internal Displacement

The volcanic eruption of Mount *Nyiragongo* on 17 January 2002 killed 147 people and resulted in the internal displacement of 120000 persons who had been 'displaced' in *Goma*.⁸¹ This was a case of re-displacement. The eruption also destroyed nearly the whole of *Goma* Town.

Uganda and DRC have both had cases of 're-displacement'. In the DRC, the displacement of IDPs by the volcanic eruption of Mount *Nyiragongo* provides one example while the displacement of IDPs by the LRA invasion of eastern Uganda in June 2003 gives the other.

2.5.3 Government Policy-based Internal Displacement

Government policy-based internal displacement in the DRC centres on the situation of the *Batwa*. The *Batwa* are pygmies that reside in parts of DRC, Uganda and Burundi and according to Minority Rights Group International (MRG), number around 70000 – 80000.⁸² Successive governments in the DRC have failed and/or refused to fully recognise the *Batwa* as a marginalized group who have rights.

Starting in the late 1960s, with the establishment of the *Kahuzi-Biega* Forest in South *Kivu*, DRC, and still continuing today, international conservation groups have joined with national governments to forcibly expel pygmies from newly declared game parks and forest preserves. They are evicted from their homelands and offered neither compensation nor any other recourse. Homeless, they take up a marginalized status on the periphery of local communities.⁸³

It is a social taboo to share food, occupy the same bench and socialize with *Batwa* in public places.⁸⁴ While other citizens are issued birth certificates and identity cards free of charge, *Batwa* must undergo an involved bureaucratic process. Without these cards, it is difficult to enrol in schools and receive government-funded health care, which are otherwise guaranteed to other vulnerable people in the country.⁸⁵ In the DRC, many more *Batwa* are able to maintain their lives in the forests than in any other country in the Great Lakes region. However, these forests are popular among rebel groups and are often the battleground for the conflicts raging

⁸¹See (n 22 above)

⁸²See (n 19 above)

⁸³ As above

⁸⁴ 'Batwa: The forest is our home; when we leave the forest, or if the forest dies, we shall die. We are the people of the forest'; available at < <http://www.survival-international.org/pygmy.htm>> (accessed on 11 October 2004)

⁸⁵NGOs Call on African Commission to Question States on Minority and Indigenous Rights' <http://www.minorityrights.org/news_detail.asp?ID=184> 7 November 2003 (accessed on 11 October 2004)

there today. The *Batwa* have been accused of exchanging information, becoming spies, or joining an opposing side, and so often become victims of violence. AI recently reported cannibalistic incidents of armed groups killing the *Batwa* and forcing prisoners to eat the flesh. While some *Batwa* do join with rebel and government forces that can provide subsistence, many more are innocent victims of armed conflict.

The UN Emergency Fund for Women (UNIFEM) also denounced sexual mutilation and cannibalism by various armed groups against Pygmy women⁸⁶. Rape has been used allegedly used against many pygmy women in the DRC.

The above inhuman acts compelled more than 20000 *Batwa* to flee their homes in the forests of *Ituri* into IDP camps.

The patterns of internal displacement in Uganda and the DRC bear a significant semblance: Both are characterised by similar factors, namely; armed conflict; government policy and natural disasters. In both countries, armed conflict has played the biggest role. The LRA is headed by members of the previous national army, Uganda National Liberation Army (UNLA), which was defeated by the *Museveni*-led National Resistance Army (NRA) in 1988. The majority of these troops were *Acholi* people from the northern districts of *Gulu*, *Kitgum* and *Pader*. There is a long history of antagonism, dating back to colonial rule, between the *Acholis* and the southern-based elites who dominated the country before independence in 1962, and again since President *Yoweri Museveni*'s accession to power in 1986 n internal displacement. Also, in the DRC former *Mobutu* forces are involved in the armed struggle and have largely contributed to the proliferation of rebel groups. In both countries, women and children are the immediate victims of, and central, to the patterns of internal displacement.

2.6 Analysis of the Causes of Continuous Internal Displacement in Uganda and The DRC

This study analyses why the phenomenon of internal displacement has been continuous in Uganda and the DRC. In Uganda there has, particularly, been continuous and worsening internal displacement since 1986 to date. In the DRC, since 1996 internal displacement has also been on an upward trend.

2.7 Reasons for Continuous Internal Displacement in Uganda

Analysis of the reasons for the continuous and worsening internal displacement in Uganda will stretch back to 1986 when the present regime came to power. The internal displacement that started in 1986 has persisted to date.

⁸⁶ 'DRC: Cannibalism in Pygmy Women' *UN News Service* 4 November 2003 5

2.7.1 Persistence of Armed Conflict Especially in Northern Uganda

There is no doubt that the continuation of armed rebellion has played a major role in perpetuating internal displacement in Uganda. Northern Uganda, in particular, has suffered armed rebellion since 1986. Although since 1986 many rebel groups have sprung up against the regime of President Yoweri *Museveni*,⁸⁷ the LRA stands out as the most violent rebel group Uganda has seen. Members of the previous national army, UNLA, which was defeated by the Museveni-led NRA (now the Uganda People's Defence Force-UPDF) in 1988, head the LRA.⁸⁸ The majority of these troops were *Acholi* people from the northern districts of *Gulu*, *Kitgum* and *Pader*. There is a long history of antagonism, dating back to colonial rule, between the *Acholis* and the southern-based elites who dominated the country before independence in 1962, and again since President *Yoweri Museveni's* accession to power in 1986.⁸⁹

The LRA rebels attack, abduct, hack and kill civilians in a brutal way. Women and children are the worst victims of LRA rebel activity. The LRA, kidnaps children, brutalises them, and sends them out to slaughter, their friends and relatives. Some 28,000 children have been abducted and brutalised since this insurgency began.⁹⁰ The rebels' political objectives are unclear, but they seem bent on dismantling the camps where most of the IDPs live, seeing their inhabitants as tacit supporters of President *Yoweri Museveni's* government. The number of LRA attacks on IDP camps has increased since 2002 following the loss of the rebels' support bases in neighbouring Sudan. In what was the most vicious atrocity in nine years, the LRA massacred more than 300 IDPs in *Barlonya* camp in *Lira* district on 21 February 2004.⁹¹ Numerous other attacks, typically accompanied by massacres, rape, abductions and looting, have since followed across northern Uganda.

It is this situation that has compelled the populations of northern Uganda to stay in IDPs camps. It can hence be said that had the insurgency in Uganda (especially northern Uganda) been brought to a halt either by expeditious military means or a suitable peaceful political solution, the magnitude of internal displacement in Uganda would have drastically scaled down.

⁸⁷ Other rebel groups that have waged war against *Museveni's* regime are the Uganda Peoples Democratic Army (UPDA), Allied Democratic Forces (ADF), Force Obote Back Again (FOBA), Holy Spirit Movement (HSM) and Federal Democratic Alliance (FDA); see Y K Museveni *Sowing the Mustard Seed* (1997)

⁸⁸ Y K Museveni *Sowing The Mustard Seed* (1997) 210

⁸⁹ M Mamdan *The Politics Of State Formation* (1994) 83

⁹⁰ See (n 49 above)

⁹¹ 'Uganda: Barlonyo IDPs Camp death Toll reported to have Been 337' <<http://www.irinnews.org>> (accessed on 10 August 2004)

2.7.2 Spread of LRA rebel Activity to eastern Uganda (June 2003)

The LRA invasion of eastern Uganda only worsened the situation. As already mentioned there already were 88000 IDPs in the eastern district of *Katakwi* before the LRA invasion.⁹²

Karimojong raids had displaced these. The incursion of LRA rebels into the eastern districts of *Soroti*, *Katakwi* and *Kaberamaido* also brought the insurgency into the districts of *Apac* and *Lira* further south and east, and caused the displacement of around 400,000 people between August 2003 and May 2004.⁹³ The government and local authorities have created and armed local militias, called 'Arrow' and 'Rhino' groups, to counter the incursions.⁹⁴

However, the militarisation of young civilians risks to further increase simmering ethnic tensions between the Acholis who are often equated with the LRA, the *Iteso* (the overwhelming majority of the residents in *Soroti*, *Kaberamaido* and *Katakwi*) and the *Langi*. Arming the civilians could also create numerous security problems in an area that is faced with such lawlessness.

2.7.3 Pursuit of the Military Option by the GOU

The GOU has deliberately chosen to pursue a military solution to the northern insurgency. In spite of various half-hearted attempts – mostly under international pressure – to open dialogue with the LRA for a negotiated peace, the Ugandan government has confronted the problem in the north by military means. Any attempt at a peace process is further complicated by an apparent lack of will on the part of the rebels to engage in serious talks, as well as mutual mistrust.⁹⁵

In March 2002, with the consent of the Sudanese government, the Ugandan army launched a large-scale military offensive called "Operation Iron Fist" against the LRA's rear bases in southern Sudan.⁹⁶ This operation, which was re-launched in March 2004 under the code name 'Operation Iron Fist II', has aggravated an already complex conflict.⁹⁷ The deployment of a large part of the army in pursuit of the LRA in Sudan in March 2002 left the *Acholi* population in

⁹² See (n 38 above)

⁹³ See (n 65 above)

⁹⁴ 'Profile of Internal Displacement: Uganda; Compilation of the Information Available in the Global IDP Database of the NorwegianRefugeeCouncilAs of 7 July 2004' available on <[http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wCountries/Uganda/\\$file/Uganda+-July+2004.pdf](http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wCountries/Uganda/$file/Uganda+-July+2004.pdf)> (accessed on 12 October 2004)

⁹⁵ The only time when the GOU and the rebels engaged in serious dialogue was in 1995 under the brokerage of Betty *Bigombe* a former minister in the GOU; the talks however broke down when the GOU accused the rebels of treachery; see Y K Museveni *Sowing The Mustard Seed* (1997)

⁹⁶ 'Report Slams Global inaction on Northern Uganda'; available at <<http://www.alertnet.org/thefacts/reliefresources/109576429040.htm>> (accessed on 15 October 2004)

⁹⁷ See (n 96 above)

camps without adequate protection against the rebels. In response to increased military pressure in Sudan, the LRA forces have instead returned to Uganda heavily armed and initiated a spate of attacks and massacres in IDP camps.

Moreover, the start of operation Iron Fist II has only worsened the humanitarian crisis, despite the reported military successes. The northern Uganda problem could have been sorted out if the GOU seriously attempted to peaceably solve it. Although the LRA rebels do not appear to have the capacity to overthrow the GOU, it is their harmful attacks on civilians that must be handled urgently.

2.7.4 Availability of Small Automatic Fire Arms

This applies especially to the *Karimojong* warriors of northeastern Uganda. The proliferation of small automatic arms has contributed to the disintegration of traditional clan structures in which elders were able to exercise control over the younger generation. The introduction of automatic weapons has created a pattern of violence, which evidently goes beyond the search for water and pasture during the dry season.⁹⁸ Automatic weapons have given younger men the means and incentive to establish a reputation as brave warriors and build their own herds through mounting raids on other pastoral groups and neighbouring populations.

The *Karimojong* have had various sources of firearms. The first was in 1979 when they had free access to the armoury in *Moroto* barracks after the defeated soldiers of then President Idi Amin abandoned it.⁹⁹ They also acquire arms in exchange for cows, from the SPLA. Also, the whole border with Sudan comprises of corridors through which arms pass from Sudan, Eritrea and Somalia.¹⁰⁰ Attempts by the GOU to disarm the *Karimojong* in 2002 were hampered by the northern Uganda rebellion that called for the deployment of soldiers in southern Sudan. Still, disarming the *Karimojong* without closing their sources of the firearms serves no useful purpose.

Thus, the persistence of internal displacement has been mainly due to the failure to end the end the northern insurgency by either military or peaceful means. Failure to solve the *Karimojong* problem has duplicated the northern Uganda problem.

⁹⁸ The *Karamoja* region where the *Karimojong* live is semi-ari; it becomes very difficult for them to survive during the dry season as there is no pasture and water for their cattle; these are the times when they cross into neighbouring territories and carry out havoc; see (n 96 above)

⁹⁹ Information gathered by the writer during the 2002 disarmament of the *Karamoja* in *Moroto* north eastern Uganda; the *Karamoja* disarmament lost fire when in late 2002 soldiers were withdrawn to Sudan for 'Operation Iron Fist'; See 'Report Slams Global inaction on Northern Uganda (n 95 above)

¹⁰⁰ Report of the Representative Secretary-General on internally displaced persons; F. M. Deng 23 April 2004-Item 14 (c) E/CN.4/2004/77/Add.1 to the 60th Session of the UNCHR; available at <<http://daccessods.un.org/TMP4988069.htm1>> (accessed on 15 October 2004)

2.8 Analysis of the Reasons for the Persistence of Internal Displacement in the DRC

Analysis of the reasons for the persistence of internal displacement in the DRC will stretch back to 1996 when the war against *Mobutu* broke out. Like Uganda, the internal displacement that started then has persisted and worsened.

2.8.1 Armed Conflict

Armed conflict has engulfed the DRC since the 2 August 1998 invasion by Rwanda and Uganda. As already noted the escalation of the war (with the involvement of more countries) worsened the situation.¹⁰¹ It is no wonder that 5 years of armed conflict have resulted in 3.4million IDPs. The war in the DRC has involved various rebel groups fighting the government with foreign support or direct involvement of other states like Uganda and Rwanda. Economic interests have surely motivated the war in the DRC. Although belligerent states argued that they are in the DRC because of security concerns¹⁰², the evidence available suggests otherwise. The manner in which belligerent states have plundered and looted DRC resources has been terrible. According to the UN Security Council (UN SC) Interim Report on The Plunder and Exploitation of Natural Resources in The DRC:

[t]he foreign armies have consolidated their presence and the struggle over maintaining control of natural resources and territory has become a principle preoccupation. Conflict over the resources has a different complexion on either side of the ceasefire line. Foreign forces in the west, in concert with certain Congolese parties, have entrenched themselves and continue to pursue their economic interests in the natural resources of the DRC, while adopting a more discreet profile. Their activities may also include asserting a certain control over local economies.¹⁰³

Economic interests thus took the conflict to such a magnitude. Surely if it were not for economic interests a minimum of seven countries would not have been involved in the DRC conflict. According to *Oloka-Onyango* if the conflict in the DRC were to occur in another part of the world, it would have been called a 'world war'.¹⁰⁴

¹⁰¹ See n 9 above

¹⁰² Rwanda for instance argues that it invaded the DRC due to the presence of the *Interehamwe* militia who participated in the 1994 Rwanda Genocide that claimed the lives of 1000000 *Tutsis* and moderate *Hutus*; Uganda for its part, argued that it was in the DRC to fight the ADF rebels who since November 1996 were terrorising western Uganda; see A M Mangu 'The Conflict in the Democratic Republic of Congo and the Protection of Rights Under the African Charter' *African Human Rights Law Journal* 3 No; 1 (2003) 240

¹⁰³ UN SC 22 May 2002 paras; 35-37

¹⁰⁴ 'Gender and Conflict in Contemporary Africa: Engendering the Mechanisms for the Promotion of Human Rights and Conflict Resolution'; Paper presented at the African Women Lawyers Conference organised by the Federation of Women Lawyers Association (FIDA) Uganda on 9-11 *Kampala* Uganda

2.8.2 Presence of various Rebel Groups and Local Militia

The springing up of various rebel groups served to widen the scale and impact of the conflict in the DRC. Economic interests are the explanation of this phenomenon. Prior to the signing of the Global and Inclusive Agreement (GIA) by the Inter-Congolese Dialogue (ICD) in Durban South Africa, there were more than 21 rebel groups in the DRC.¹⁰⁵ This added to not less than seven countries makes an extremely explosive situation. The various rebel groups have not only fought the DRC government, but also among themselves. Even the states have also fought among themselves.¹⁰⁶ In fact the upsurge of violence that pushed the number of IDPs to 3400000 was the factional clashes that occurred in *Ituri* between the *Mai-Mai* militia¹⁰⁷ and the RCD forces in October 2003. These particular clashes caused a fresh displacement of 700000 persons and were accompanied by incidents of cannibalism and systematic sexual violence against women and girls. In 2003 alone, thousands of women were reportedly raped in the *Kivus*, *Maniema* and *Ituri* during inter-rebel clashes.

Local militia have played a role in exacerbating the security situation. The *Mai-Mai* and the *Banyamulenge*¹⁰⁸ take a lion's share in this aspect. The *Mai-Mai* have been openly involved in abuse of civilians' rights. In *Ituri* and South *Kivu* they have participated in sexual violence against women and children. The *Banyamulenge*, while not highly implicated in violations of civilians' rights, have been embroiled in clashes with other fighting groups. In March 2002 they were involved in fierce clashes with the Rwandan army in South *Kivu*. This clash resulted in the displacement of 20000 persons in the South *Kivu* province.¹⁰⁹

¹⁰⁵ See generally A M Mangu (n 101 above)

¹⁰⁶ Uganda and Rwanda, former close allies that went into the DRC allegedly for security concerns, thrice fiercely fought in the city of *Kisangani* in August 1999 and May 2000; although it is not clear why the two former close allies fought, it is widely known that access to mineral deposits was the cause; see A M Mangu (n 101 above)

¹⁰⁷ The *Mai-Mai* (meaning water in local DRC *Lingala* language) were mobilised by then President of the DRC Laurent Desire *Kabila* to fight the Uganda and Rwandese invaders in 1998; they traditionally used bows and arrows but presently they have firearms; see 'Zaire: IRIN Briefing' (University of Pennsylvania-African Studies Centre) available at <http://www.africa.upenn.edu/Hornet/irin_brf2287.html> (accessed on 12 October)

¹⁰⁸ The *Banyamulenge* acquired arms in 1996 when they rose up against the *Mobutu* regime; this was after they were expelled from DRC (then *Zaire*); see 'Zaire: IRIN Briefing' (n 107 above)

¹⁰⁹ See 'Zaire: IRIN Briefing' (n 107 above)

2.8.3 Availability of Weapons

The conflict in the DRC has attracted, and been worsened by, weapons. These weapons are supplied by the belligerent states. There have been reports that Multinational Corporations (MNCs) that have economic interests in the DRC have availed weapons to rebel groups to gain access to minerals, timber and other DRC resources. MNCs that have been implicated are the De Beers of South Africa, Mobile Telephone Network (MTN) and others.¹¹⁰ It is the possession of weapons that increases the potentiality of armed confrontation which is the chief cause of internal displacement.

In summary, the above factors have perpetuated the phenomenon of internal displacement in both Uganda and the DRC. Attempts at remedying the situation must take them in consideration.

2.9 Conclusion

This Chapter has brought to the fore the situation of internal displacement in Uganda and the DRC. It has shown that armed conflict is the major cause of internal displacement in both Uganda and the DRC. From the onset, women and children form the bulk of the IDPs especially with respect to abduction in northern and eastern Uganda and sexual violence in the DRC. It has also shown that some of the causes of internal displacement (like child abduction in northern and eastern Uganda and sexual violence in the DRC) are the direct violations of the rights of internally displaced women and children.

¹¹⁰See (n 100 above)

CHAPTER 3

3 A CRITICAL ANALYSIS OF THE RIGHTS OF INTERNALLY DISPLACED WOMEN AND CHILDREN IN UGANDA AND THE DRC

3.1 Introduction

This Chapter identifies and analyses the specific rights of internally displaced women and children as it is happening or has happened in the various establishments of IDPs in Uganda and the DRC. It will show that the rights of internally displaced women and children are unique and different from those of internally displaced men and that they require special identification and protection. It will also illustrate that nothing is being done to protect the specific rights of internally displaced women and children.

3.2 The Rights of Internally Displaced Women and Children in Uganda

This study identifies the rights that belong to internally displaced women and children in the settings of internal displacement, both, in northern Uganda and eastern Uganda.

3.2.1 The rights of Women *vis- a- vis* Maternal Functions

Internally displaced women retain their roles of motherhood and childbearing. It has been mentioned that between 1999 and 2003, 20000 children were born to internally displaced women in camps in Uganda. The stress that women go through in the whole process of conception, pregnancy and delivery in conditions of internal displacement is unimaginable. Women must have children even in the worst conditions. This is part of the patriarchal family systems in Africa. These patriarchal family systems place women below men and turn women into slaves of their sex.¹¹¹ Although the Guiding principles state that certain IDPs like children and expectant mothers shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs¹¹², they do not specify how this is to be done. The Guiding Principles also provide for special attention to the health needs of women including reproductive health care.¹¹³ But surely, how this is to be done and enforced in

¹¹¹ M Agosin (ed) *Women, Gender and Human Rights: A Global Perspective* (2001) 2; see also *Venia Magaya v Nakayi Shonhiwa Magaya*- Judgment No; S C 210/98/Civil Appeal No;635/92 of the Supreme Court of Zimbabwe (unreported)

¹¹² Para;2 Principle 4

¹¹³ Para;2 principle 19

conditions of internal displacement is not provided. The Uganda Draft Policy¹¹⁴ is silent on how the situation of expectant internally displaced women is to be catered for. It only duplicates Principle 19 of the Guiding Principles whose inadequacy has been shown. There are less than 10 hospital facilities that are available to the sixty IDPs camps in northern Uganda and less than 5 to the thirty IDPs camps in eastern Uganda.¹¹⁵ The health system in most of the rural camps has collapsed, health workers have moved to safer areas, and expectant mothers are not attended to adequately. Diseases like malaria, diarrhoea and acute respiratory infections proliferate. Lack of water and sanitation facilities in the camps are another major cause of concern. In IDP camps in *Gulu*, there is an average of 2,700 persons per water point, and 85 per cent of the displaced have no access to public latrines¹¹⁶

The conditions in the IDPs camps of eastern Uganda are no better. Two health centres were serving the camps in *Katakwi*¹¹⁷. Internally displaced women who conceive and deliver obviously deserve more sophisticated and visible attention, bearing in mind the uncertainties of internal displacement, including attacks from the LRA rebels.

3.2.2 The Right of Children to Adequate, Dignified and Comfortable Sleep: The Case of Children 'Night Commuters' in Northern and Eastern Uganda.

The insurgency in northern and eastern Uganda has created the so-called 'night commuters'.¹¹⁸ These, mostly children who regularly move from insecure areas into safer town centres in the evening to spend the night on verandas and the streets or in public buildings, present a clear indication of insecurity in the camps and an ever-deteriorating security situation.¹¹⁹ The number has reached a total of 45,000 per night in the towns of *Gulu*, *Kitgum*, *Lira* and *Pader*.¹²⁰ Of the

¹¹⁴ The Uganda Draft Policy on Internal Displacement was compiled by the Ministry of Disaster Preparedness in 2002 and updated in January 2003 ; considering that it is to date a 'Draft Policy' it is easy to appreciate how the situation of IDPs is pathetic in Uganda

¹¹⁵ See (n 65 above)

¹¹⁶ Catholic Relief Services (CRS) Report on Water & Sanitation Survey in IDP Camps 31 January 2004 available on <<http://www.idpproject.org/Uganda/profiles>> (accessed on 12 September 2004)

¹¹⁷ See (n 116 above)

¹¹⁸ Term used by the United Nations Children's Emergency Fund (UNICEF) to describe the thousands of internally displaced children that trek to the urban centres to spend nights on the verandas and in empty buildings to escape abduction and death at the hands of LRA rebels; see 'A Snapshot - the Night Commuters of Northern Uganda' 28 May 004; available at

<<http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/57bf748c1437a97549256ea5000ae163?OpenDocument>> (accessed on 16 October 2004)

¹¹⁹ 'A Snapshot – the Night Commuters of Northern Uganda' (n 118 above)

¹²⁰ 'A s above

total, the number of children 'night commuters' is more than 35000.¹²¹ The sight of children sleeping on the veranda in the open and coughing throughout the night is unbearable. In this context, the Guiding Principles are not very helpful and although they provide for special care and assistance to children especially unaccompanied minors¹²², they do not anticipate the above scenario. The Uganda Draft Policy is totally silent on the above situation despite the problem being a living matter in Uganda. This situation virtually affects children's upbringing and welfare. Commenting on the suffering the internally displaced children of northern Uganda have suffered in this regard, the World Food Programme (WFP) Country Director of Uganda had this to say:

[t]o see those children lying on the ground, packed together in their hundreds, filling rooms and tents, with some even out in the open..., children are the fodder of this conflict. Tens of thousands have been forced to kill, fight and bear the children of soldiers. Hundreds of thousands are raised in camps. And the night commuters are growing up in a state of constant fear. It is the most vulnerable that carry the burden of violence and these kids are carrying it directly into the future.¹²³

In a situation where children are born and raised in IDPs camps, it can be imagined how such children grow up devoid of basic facilities of dignified life, socially, economically and morally. Such children lose almost all values for life and have no future. It has for instance been found out that most of the children who are rescued by the UPDF from the LRA rebels (former internally displaced children who were abducted by the LRA rebels) cannot comfortably stay in IDPs camps and have instead, very often, escaped back into LRA rebel ranks. Although the GOU has attempted to offer counselling and psychosocial support to such traumatised children, it is not enough and not conducted in a systematic manner. It has instead been left to humanitarian organisations. And since there is no international body that is specifically mandated to protect and /or observe the protection of the rights of IDPs and since IDPs remain in their country, the particular effect this has on internally displaced children is not difficult to see.

3.2.3 The Right of Internally Displaced Women and Girl Children to Protection Against Sexual and Gender-based Violence

An analysis of the issue of children 'night commuters' brings out the problem of sexual and gender-based violence against women, girls and girl children. In a situation where women and girl children have to scramble for sleeping space on the verandas and empty buildings in the towns, the possibility that they face sexual abuse and harassment is immense. Other rampant protection concerns in the camps are sexual exploitation, rape, early marriages, and child

¹²¹ As above

¹²² See (n 112 above)

¹²³ 'Uganda: Top WFP Official Calls for end to Tragedy in Northern Uganda' <<http://www.irinnews.org>> (accessed on 14 August 2004)

prostitution. The UN OCHA reports that there have been numerous cases of rape, child marriages, unwanted child pregnancies and child prostitution among girls and girl children 'night commuters' in northern Uganda.¹²⁴ This is due to the uncontrolled interaction they have with members of the opposite sex during 'night commuting'.

Sexual and gender-based violence also takes place in the camps. Rape which has become a weapon of armed conflict¹²⁵ is perpetrated by the LRA rebels. For instance most of the 60 wives that LRA rebel leader Joseph *Kony* allegedly has are former internally displaced girl children that were abducted by the rebels.¹²⁶

The phenomenon of 'night commuters' reached eastern Uganda when the LRA invaded the area in June 2003. The internal displacement arising out of the *Karimojong* raids (which were the predominant cause of internal displacement prior to the LRA invasion) was not accompanied by 'night commuting'. This is because the *Karimojong* attack settlements that have cattle and abducting persons is not their serious motive. But with the LRA invasion in June 2003, the eastern town of *Soroti* became the destination of 'night commuters'. The majority of 'night commuters' are also children. Incidences of rape and sexual violence have been highly reported among the 'night commuters'. Sexual violence against women, girls and girl children is common in IDPs camps. In October 2003 a man grievously assaulted his wife for failure to sexually satisfy him in an IDPs camp.¹²⁷ The man could not listen to the woman's pleas that there was no privacy at all. Although violence against women and children is internationally outlawed, the specific situation of internal displacement is not catered for.

3.2.4 The Right Of Internally Displaced Children To Protection Against Abduction: The Case of Child Abduction in Northern Uganda

Eighty per cent of the LRA reportedly consists of abducted internally displaced children, many of whom have been converted in the most brutal ways into extremely violent fighters. The rebels force abducted children to kill and watch beatings, rape and the slaughtering of friends and relatives. Disobedience is likely to result in the children falling victim to the same fate. According to the UN Emergency Relief Coordinator, since the beginning of the conflict in 1986, a total of more than 28,000 internally displaced children have been abducted, 12,000 of them taken between June 2002 and May 2004. Some 4,500 were reportedly fighting for the LRA as of July

¹²⁴ 'Mid-Year Review of the Consolidated Appeals Process (CAP): Humanitarian Appeal 2004 for Uganda' 15 June 2004 (n 14 above)

¹²⁵ G Prunier *The Rwanda Crisis, 1959-1994: History of A Genocide* (1995) 254; for more information on rape as a weapon during armed conflict, see *The Prosecutor v Jean-Paul Akayesu* - International Criminal Tribunal for Rwanda Genocide (ICTR)-157-1998

¹²⁶ See (n 14 above)

¹²⁷ See (n 30 above)

2003¹²⁸. This brings to light another absurd thing. The UPDF does not kill LRA rebels during armed combat. It kills abducted former internally displaced children. In the words of *Oloka-Onyango* this scenario is a vicious circle of destruction whereby abducted children come back and kill their colleagues and relatives and also get killed by the army.¹²⁹ Although both international law and the Ugandan legislation prohibit the forcible or any kind of recruitment of children into armed conflict,¹³⁰ the specific scenario of the LRA is not taken care of.

3.2.5 The Right to Life of Internally Displaced Women and Children

Women and children are the majority of the IDPs population in Uganda.¹³¹ They have also been the main victims of violence perpetrated by the rebels. LRA rebels have on numerous times attacked IDPs camps and killed persons. For instance four camps were attacked in May 2004 alone, and 125 people killed; many women and children clubbed to death. Others were burned alive in their huts.¹³² In the infamous *Barlonyo* massacre of February 2004, of the 337 IDPs killed, more than 200 were women and children.¹³³ The rebels in particular killed the children by smashing their heads onto trees and other hard objects.¹³⁴ Women and children are not swift enough to save their lives.

The same has happened in eastern Uganda. *Karimojong* raids that were the major cause of internal displacement in eastern Uganda prior to the LRA invasion of June 2003 occurred in IDPs camps. Women and children were the majority killed in the dangerous *Karimojong* attack on *Ngariam* IDPs camp in *Katakwi* district on 23 September 2001. In this attack, out of the seventeen killed, 8 were women and 6 children.¹³⁵ Both national and international law protect the right to life.¹³⁶

But the particular case illustrated above requires more sophisticated attention. This is more so in the case of internally displaced children. In fact compared to the women, the internally

¹²⁸ United Nations Security Council (UN SC), Press Briefing on Uganda by Emergency Relief Coordinator 14 April 2004; available at <<http://www.un.org/News/briefings/docs/2004/OCHABriefing.doc.htm>> (accessed on 16 September 2004)

¹²⁹ See (n 104 above)

¹³⁰ See arts; 1 and 2 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000); art; 22 of the African Charter on the Rights and Welfare of the Child (1990) (see I Brownlie & G S Guy) and article 34 of the 1995 Constitution of the Republic of Uganda (Constitution of Uganda)

¹³¹ See (n 26 above)

¹³² See (n 128 above)

¹³³ See (n 91 above)

¹³⁴ As above

¹³⁵ See (n 59 above)

¹³⁶ See art; 6 of the International Covenant on Civil and Political Rights (ICCPR) 1966, article 4 of the African Charter on Human and Peoples' Rights (ACHPR) 1981, article 22 of the Constitution of Uganda and article 17 of the DRC Interim Constitution

displaced children of northern Uganda have had the worst. The UN Emergency Relief Coordinator (Jan *Egeland*) had the following to say about the children northern Uganda during the UN SC press briefing:

The conflict in Northern Uganda is characterised by a level of cruelty seldom seen elsewhere. It pits not just adults but also children against one another, and excludes vast swathes of the population from participation in any semblance of development. No one knows how many people have died as a result of the conflict, but every day schools, homes, villages and families are destroyed; yet more people are abducted, enslaved, beaten, raped, and made to fight for the rebels. Most of these abductees are children... Look into the eyes of a child who has been repeatedly brutalised, tortured or raped, as I did when I visited Northern Uganda, and you will never forget what you find there. This abuse of children is one of the most serious in the world. It calls for urgent and concerted action.

The above summarises the tragedy of the internally displaced children that has gone on since 1986 in northern Uganda.

3.2.6 Children's Right to Quality Education

In Uganda there is Universal Primary Education (UPE) whereby the GOU pays for the education of four pupils in one family.¹³⁷ Difficulties in introducing free primary education in Uganda under the UPE policy have been compounded by the problems of internal displacement. Firstly few, if any, of the school infrastructures were designed to cope with the influx of internally displaced pupils. Secondly, because of the displacements of teachers and students, funds allocated under the UPE scheme do not reach approved destinations. The result is that an estimated 143,700 children or 23 per cent of school-age children are not at school. Moreover there is widespread lack of teaching materials and an acute shortage of teachers.¹³⁸ This is why the pupil-to-classroom ratio rose to as much as 234:1 in some schools¹³⁹. The insurgency itself implies that some internally displaced children do not have access to education facilities or cannot do their exams. In 2001 and 2002 half of the internally displaced children under UPE failed to sit for their UPE exams because of insecurity¹⁴⁰. More must be done to actualise what the Guiding Principles provide in relation to the education of internally displaced children.

The displacement of the population and schools has hence excluded large numbers of children from learning. Out of 620,000 school age children (6-12 year olds), an estimated 143,700 or 23% are not in school. More than 50% of the 1,200 primary schools in the 5 northern Uganda

¹³⁷ The UPE was started by the GOU in 1996 and its adoption came to the fore in the June 1996 presidential elections; for more information on UPE see YK Museveni *Sowing The Mustard Seed* (1987) 257

¹³⁸ US Agency for International Development (USAID), 5 May 2004, Uganda Complex Emergency Situation Report (FY 2004)

¹³⁹ See (n 94 above)

¹⁴⁰ As above

districts are internally displaced.¹⁴¹ The displacement and destruction of school facilities has led to overcrowding and poor health and sanitation. The classroom to pupil ratio ranges from 1:150 to well over 1:200. About 80% of *Pader* district children study under trees.¹⁴²

The result of internal displacement is also that the quality of education continues to be adversely affected and children cannot achieve optimum education. The teacher - pupil's ratio is on average 1:200 and as high as 1:300 in *Pader* district, compared to the national average of 1:55. The pupil to textbook ratio is on average 1:15 in the 5 affected districts, compared to the national target of 1:3.¹⁴³

Although there is now in place a policy called the Integrated Early Childhood Development (IECD)¹⁴⁴ for disadvantaged children especially those in conflict, plans for flexible funding arrangements and school facilities grants are not yet developed to support children in displaced schools. The IECD was introduced in IDP camps early in 2004 but its progress is very slow compared to the urgent needs of the internally displaced pupils.¹⁴⁵ The construction of temporary learning centres for children in *Gulu, Lira, Pader* and *Teso* continues to face the threat of rebel attacks.

Closely related to the above problems are matters of hygiene of the school environment in IDP camps. Absence of toilettes and urinals in IDPs camp schools make pupils vulnerable to water-borne diseases like dysentery. It was only in June 2004 that the Ministry of Education and Sports (MOES) constructed at least 150 five-stance pit latrines and provided 950 mobile latrines to the districts of *Lira, Gulu, Kitgum* and *Pader*, and at least 20 water tanks. In addition, sanitation pads were supplied to schools to improve attendance of girls in school. Nonetheless this has arrived so late considering that children have been in IDPs camps since 1986

It is no wonder then that poor performance of pupils in northern Uganda has been a trend. The MOES has openly blamed it on insecurity and the non-conducive learning environment in the region and promises to put up more temporary learning centres in IDP camps in an effort to reduce on crowding in the host schools.

Also there is unwillingness on the part of teachers to report to their posts in the rural areas even in *Lira, Soroti* and *Katakwi* districts where security has improved. Although the MOES and the education sector working groups in the various districts of northern Uganda are studying the issue with a view of finding ways of encouraging teachers to resume work,¹⁴⁶ it is almost a completely futile process. It is not easy to convince teachers to sacrifice their lives for the sake

¹⁴¹ As above

¹⁴² As above

¹⁴³ As above

¹⁴⁴ As above

¹⁴⁵ As above

¹⁴⁶ 'Large numbers of displaced children excluded from learning (June 2004)'

<<http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/4C234AD57C07D739C1256EB6004E95DF>>
(accessed on 15 October 2004)

of the pupils' education. In the districts of *Gulu*, *Kitgum* and *Pader*, a minimum of 30 schools have been closed or displaced.

Teachers in particular, with limited skills, have to cope with children in various phases of trauma caused by abduction, displacement and death or disappearance of relatives and friends. Re-displacement has curbed the ability of parents to provide basic scholastic material for children. Here, thus, is a situation whereby internally displaced children need both formal education and counselling or psychosocial support. None of the two is being adequately provided. It is easy to imagine the type of adults that will be born out of such continuous trauma.

3.3 The Rights of Internally Displaced Women and Children in the DRC

The study has identified the special rights of internally displaced women and children by analysing what happens in the internal displacement settings in eastern DRC where the internal displacement has taken place.

3.3.1 The Rights of Women *Vis a Vis* Maternal Functions

Internally displaced women in the DRC, like in Uganda, retain their natural maternal functions of child bearing. As already noted, a total of fifty thousand children were born between 1998 and 2003. The conditions under which internally displaced women conceive, endure the pregnancy and deliver in DRC are worse than those of Uganda. This is because in the DRC there are more problems of accessibility due to lack of roads. This means that access to health facilities like in the *Ituri* province is problematic. It can be imagined how internally displaced pregnant woman suffer during periods of pregnancy and delivery. Lack of access to medical facilities has raised female mortality at childbirth in the DRC to three times the average of other African nations, according to a World Health Organisation (WHO) report published in July 2001.¹⁴⁷ According to this report, the number of women dying as a result of pregnancy is three to five times higher than the African average. Under-nourishment, forced and economic prostitution, overwork for insufficient compensation, untreated ailments and the psychological strain of maintaining large families are exacting a terrible toll. Out of the 2.5 million babies born in an average year, 20% will not reach their first birthday. Infant mortality is 50% higher than the African average.¹⁴⁸

The special situation that pregnant and breastfeeding women go through in conditions of internal displacement clearly distinguishes between the rights of internally displaced women and

¹⁴⁷ 'DRC: Peace deals fail to improve the lives of 2.2 million IDPs' IRIN News 20 August 2004; available at <<http://www.idpproject.org>> (accessed on 18 September 2004)

¹⁴⁸ 'DRC: Condition of women, children has not improved' IRIN News 16 October 2002; available at <<http://www.idpproject.org>> (accessed on 18 September 2004)

men. Internal displacement therefore severely bites the women who must endure the above process as part of their societal and biological functions (and obligations).

3.3.2 The Right of Women, Girls and Girl Children to Protection Against Sexual Violence

The conflict in the DRC has caused great sexual abuse to women, girls and girl children. HRW reports that many girls and girl children have fled their homes in the DRC to escape systematic rape at the hands of the rebels and local militia.¹⁴⁹ In fact according to HRW some international peacekeepers have participated in violence against women, girls and girl children.¹⁵⁰ This particular report of HRW also states that rebels and local militia have perpetrated sexual violence against the *Batwa* to the extent of causing their death. This has mainly occurred in the *Ituri* forests where the *Batwa* live. Rape and abduction of women and girls, by armed groups continue to plague the southern *Lubero* region, North *Kivu* Province of eastern DRC.¹⁵¹

Although internal displacement is to say the least a terrible violation of a person's dignity, among a cluster of several other rights, it evidently is a nightmare for women, girls and girl children. While for instance men and boy children face other harms during internal displacement (like abduction) the specific case of sexual violence almost exclusively affects women, girls and girl children. Worse still, internally displaced women, girls and girl children face those other harms that threaten men and boy children.

3.3.3 The Right Of Women, Girls and Girl Children To Protection Against Sexually Transmitted Infection (STI)

The contraction of STI by women, girls and girl children in the DRC is a direct result of sexual violence. A significant number of women and girls are infected with sexually transmitted diseases through rape and for reasons such as stigma; do not seek treatment unless it is absolutely necessary. The large majority of rape victims interviewed by HRW officials¹⁵² had never received any medical treatment after the rape, and often did not even tell doctors about the rape when they gave birth. Social workers and medical staff confirmed that only a small minority of victims ever get any treatment. Thus, many relatively easily treatable sexually transmitted diseases remain untreated, some causing considerable pain and inconvenience to the woman, and some causing irreversible consequences. The most deadly disease that can be contracted through rape is HIV/AIDS. Not only are the lives of HIV-positive women and girls

¹⁴⁹See (n 32 above)

¹⁵⁰ See (n 31 above)

¹⁵¹ 'DRC: Rape, pillage continue to plague southern *Lubero*, North *Kivu* Province' IRIN 11 December 2003; available at <<http://www.idpproject.org>> (accessed on 18 September 2004)

¹⁵²See (n 149) above

shortened and their livelihood possibilities seriously impaired, but being HIV-positive or even being suspected of being positive adds to the stigma of rape to make for a double stigmatisation of these women and girls. The scarcity and high cost of HIV testing makes it more difficult for women who are not infected to demonstrate this to their husbands and families because of the patriarchal family systems that perpetuate women subordination.

Human rights organisations have also registered many cases of soldiers raping women.¹⁵³ In addition to mental and physical injury and the risk of pregnancy, rape victims are particularly vulnerable to contracting HIV because body tissues are more likely to be torn. There is a belief among fighters also, that sex with young girls will make them invulnerable against both HIV and other STI.¹⁵⁴

This study does not suggest that internally displaced women, girls and girl children do not have sexual desires or cannot fall in love voluntarily or are always raped. The point is that the whole situation of internal displacement creates terrible redundancy, especially in IDPs camps, which ultimately makes women, girls and girl children vulnerable in a number of ways. First, they are easy targets of men who can promise them help and assistance. Second, they may out of desperation engage in irresponsible sexual behaviour to forget their painful reality or to earn a living. Surely such is not a problem to internally displaced men, boys and boy children.

3.3.4 The Right Of Children To Protection Against Recruitment into Armed Conflict

The armed conflict in the DRC has resulted in the involvement of children in hostilities. Many internally displaced children have been forced into the conflict. According to OXFAM¹⁵⁵ and AI different parties to the conflict have recruited and /or forced more than 10000 children into the conflict. In *Ituri*, Save the Children Fund (SFC) said that it was difficult to escape the impression that the town of *Bunia* had been taken over by children, who were used by local militias to terrorise its residents.¹⁵⁶

¹⁵³ UN SC, Eighth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) (S/2001/572) 8 June 2001

¹⁵⁴ *Agence France-Presse* (AFP) 'Sexual violence a widespread weapon in The DRC' 13 November 2003, available at <<http://www.reliefweb.int/w/rwb.nsf/305799b16d2074285256830007fb33f/5e224df693c1840449256dde000179b91c?OpenDocument>> (accessed on 10 October 2004)

¹⁵⁵ 'No End in Sight: The human tragedy of the conflict in the Democratic Republic of Congo'; available at <http://www.reliefweb.int/library/documents/2001/oxfam_drc_06aug.pdf> (accessed on 16 October 2004)

¹⁵⁶ 'DRC: Has Bunia been Taken Over By Children?' SFC 9 June 2003; available at <<http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/48f93c526aa8aa8249256d40002f2bef?OpenDocument>> (accessed on 16 October 2004)

Girls too are recruited, and often suffer both sexual abuse and forced labour.¹⁵⁷ The forcible recruitment of internally displaced children into armed conflict, thus, perpetuates other human rights violations like forced sex and labour. It also implies that such children are denied education. While international law prohibits the recruitment of children into armed conflict, it remains to see how it protects internally displaced children from forcible recruitment by rebels and sometimes government soldiers in situations of warfare.

3.3.5 The Right to Life of Women, Girls and Girl Children

The DRC conflict has specifically caused the deaths of many internally displaced women, girls and girl children. Some have perished in combat. These are the ones who are forcibly recruited into the conflict by the parties. But forces to the conflict attack and systematically kill women, girls and girl children.

During 2002 and 2003, the UN reported unprecedented levels of violence by armed factions in eastern DRC, including cannibalism and systematic killings.

UNIFEM also denounced sexual mutilation and cannibalism by various armed groups against Pygmy women. Rebels and local militia in the *Ituri* forests killed pygmy internally displaced women and forced their colleagues to eat the mutilated bodies.¹⁵⁸

This is a unique scenario that must be confronted with new measures. Once again it shows the insufficiency of the available protection mechanisms, in relation to the rights of internally displaced women and children.

3.4 Conclusion

The above chapter has brought out cases that demonstrate the unique and special rights of internally displaced women and children in the internal displacement settings of Uganda and the DRC. It has shown that, really, internally displaced women and children urgently require special attention and protection.

¹⁵⁷ AI 'DR Congo: Children at War' Press Release; 9 September 2003; AI Index AFR 62/036/2003; News Service NO; 9; available at <<http://web.amnesty.org/library/Index/ENGAFR620362003?open&of=ENG-COD>> (accessed on 4 October 2004); but the full report (AI; Index: AFR62/034/2003) is available at <<http://web.amnesty.org/library/index/engaf620342003>> (accessed on 4 October 2004)

¹⁵⁸ AI, 'DR Congo: Addressing the present and building a Future' 27 November 2003 (n 34 above)

CHAPTER 4

4 TOWARDS IDENTIFICATION AND SPECIAL PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED WOMEN AND CHILDREN: RECOMMENDATIONS

4.1 Introduction

This chapter will come up with suggestions that exclusively relate to the specific case of internally displaced women and children as illustrated in the last chapter. It will invite stakeholders to go beyond what is presently available. This is because the findings in the last chapter have demonstrated the complete insufficiency of the present mechanisms in relation to the special protection that the rights of internally displaced women and children call for.

4.2 Involvement of Women and Children in Conflict-Resolution and Internal Displacement Mitigation

This study has demonstrated that armed conflict is the predominant cause of internal displacement. It has also demonstrated that women and children are the most affected generally, by armed conflict, and specifically by internal displacement. It is crucial that women and children be involved in the processes that aim at preventing, resolving and mitigating the effects of armed conflict and internal displacement. This is what *Oloka-Oyango* calls 'engendering the processes of conflict resolution and the effects of internal displacement'.¹⁵⁹ Failure to do this will undoubtedly perpetuate the suffering of women and children in both conflict and internal displacement. For instance, in the peace process in the DRC, not many women and children were involved. There were, surely, no representatives of internally displaced women and children involved in the peace negotiations.¹⁶⁰ The negotiations were restricted to the warring factions. It is this sort of exclusion of women and children from peace processes and internal displacement mitigation that ferments their suffering in both armed conflicts and internal displacement. Although the Guiding Principles provide that women should be involved in the process of displacement when the authorities initiate it,¹⁶¹ they do not say anything about peace processes. In a situation where according to Cohen internally displaced

¹⁵⁹ See (n 104 above) 7

¹⁶⁰ The DRC peace negotiations were held between the belligerent factions that made up the ICD; the peace negotiations resulted in the GIA of 17 December 2002 and the adoption of an Interim Constitution for the DRC on 6 March 2003; see generally A M Mangu (n 102 above)

¹⁶¹ Principle 17 paras; (b), (c), (d)

women and children are not even involved in the management of IDPs camps,¹⁶² involving them in peace-building and conflict resolution remains a myth. This study suggests that stakeholders should involve women and children in all peace initiatives and activities aimed at mitigating the effects of internal displacement. The Uganda Draft Policy should hence be amended to include internally displaced women and children on the various 'protection committees',¹⁶³ that it creates to protect the rights of IDPs.

4.3 Creation of Applicable and Effective International Legal regime

There is need to create an international legal regime that is highly adequate in as far as the protection of the specific rights of internally displaced women and children is concerned. It has been shown that the rights of internally displaced women and children are unique. It should not be argued that the rights of internally displaced women and children could be indirectly protected by the already existing various human rights instruments. This study has already shown that it is not possible. The suggestion is that the international community should move beyond the Guiding Principles. The Guiding Principles are not enforceable since they are 'soft law'¹⁶⁴. The international community should create an enforceable Convention that also creates a body that is responsible for the protection of the rights of IDPs. This study suggests that there should, in addition, be a specific Convention that identified and protects the rights of internally displaced women and children and creates a body for monitoring compliance with the provisions of such a Convention. It is such an enforceable legal regime that can compel states to take seriously the plight of internally displaced women and children.

4.4 Prosecution of Persons who Cause Internal Displacement

Humans cause internal displacement. This is by initiating armed conflict or developmental policies that result in internal displacement. This study recommends that persons who unreasonably cause the internal displacement of people should be prosecuted. Prosecuting persons who cause internal displacement helps women and children since they are the worst affected. This can be done at both the international and national levels. This study suggests that

¹⁶² R Cohen *Refugee and Internally Displaced Women: A Development Perspective* (1995) 2; see also R Cohen "Protecting Internally Displaced Women and Children" Paper presented to the IDP Project of the Brookings Institution; 8 June 1999; also available at <<http://www.nrc.no/globalidpsurvey/rightshavenoborders/cohen.htm>> (accessed on 17 September 2004)

¹⁶³ The Uganda Draft Policy creates various protection committees at the district and sub-county levels; see chap; 2 (c) 8 5 January 2003

¹⁶⁴ I Brownlie *Principles of Public International Law* (1998) 25

the Rome Statute of the International Criminal Court (ICC)¹⁶⁵ be amended to expressly include causing internal displacement as one of its triable offences. This would also mean that there is complementary jurisdiction to enable national courts try such an offence. The present situation where persons are not held responsible for causing internal displacement aggravates the situation and creates a sense of impunity among those whose activities cause internal displacement. Alternatively, the suggested international convention could create the offence of causing internal displacement and provide methods for its punishment. Truly, international law presently outlaws certain forced movements of persons. Article 1(b) of the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity¹⁶⁶ considers 'eviction by armed attack' to be a crime against humanity or war crime and so does the Charter of the International Military Tribunal and the Draft Code of Crimes against the Peace and security of Mankind¹⁶⁷. However, the above provisions are not enough, in relation to the rights of internally displaced women and children. This study suggests that all those whose actions unreasonably result in internal displacement should be punished. Besides, the study has illustrated the various ways in which the rights of internally displaced women and children are violated. These include sexual violence against internally displaced women and girl children and child recruitment. The UN Special Court for Sierra Leone (UN Special Court) has held that child soldier recruitment amounts to an international crime.¹⁶⁸ Such a precedent could set a good ground for prosecuting those who carelessly cause internal displacement, where crimes like child recruitment are easily perpetrated.

4.5 National Legislation

This study suggests that the concerned countries (Uganda and the DRC in particular and all other countries experiencing internal displacement in general) should expeditiously enact laws that specifically provide for the protection of the rights of internally displaced women and children. National policies are not enough. This study has explained that the Uganda Draft Policy has been in draft form since 2002 and never been concretised. The DRC, for its part,

¹⁶⁵ The Rome Statute of the ICC was adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court at Rome on 17 July 1998; see document A/CONF.183/9; the Rome Statute came into force on 1 July 2002; available in G Melander, A Gudmundur & L Holmstrom (eds) *The Raoul Wallenberg Institute Compilation of Human Rights Instruments* (2004) 551

¹⁶⁶ Article 1(b); see General Assembly Resolution 2391 (XXIII) of 26 November 1968; UN Treaty Series, vol; 754, No; 1-0823; the Convention entered into force on 11 November 1970; see G Melander, A Gudmundur & L Holmstrom (eds) (n 161 above) 545

¹⁶⁷ Text adopted by the International Law Commission at its 48th session, in 1996, and submitted to the UN General Assembly (UNGA) as part of the Commission's report covering the work of that session; the report (A/48/10); available at <<http://www.un.org/law/ilc/texts/dcodefra.htm>> (accessed on 12 October 2004)

¹⁶⁸ See *The Prosecutor of the Special Court v Sam Hinga Norman* Case No; SCSL-04-14-PT; available at <<http://www.sc-sl.org/Transcripts/CDF-066104.pdf>> (accessed on 13 October 2004)

presently does not even have a draft policy. The recommended piece of national legislation should in particular create a procedure for taking special care of pregnant internally displaced women, the composition of women in the management of IDPs camps, the availability of education to internally displaced children and above all, a process of lodging complaints or cases against displacement and other human rights violations that occur during internal displacement.

4.6 Conclusion

The realisation that internally displaced woman and children possess unique rights must precede effective protection of their rights. Effective measures must be put in place, in accordance with the findings of this study, so that the life, education and welfare of internally displaced women and children can be protected.

Chapter 5 GENERAL CONCLUSION

5 Towards a Test of the Hypotheses

The findings of this study have proved its hypotheses. The findings in chapter 3 of the study have demonstrated that there is an obligation to identify the rights of internally displaced women and children as part of internally displaced populations. By finding that the rights of internally displaced women and children are more severely affected by internal displacement than men, the study has proved that there is need for special protection of the rights of internally displaced women and children. By finding that the traditional position of women and children remains the same even in conditions of internal displacement (for instance the motherhood of women and their caring for the sick) and that it exacerbates their plight, the study proved that the traditional position of women and children as the weakest members of society must be borne in mind in all attempts to protect their rights as IDPs. What fundamentally remains is to convince all the stakeholders of the urgent need for the realisation and implementation of the findings of this study. It is only then that the objectives of this study could be fulfilled.

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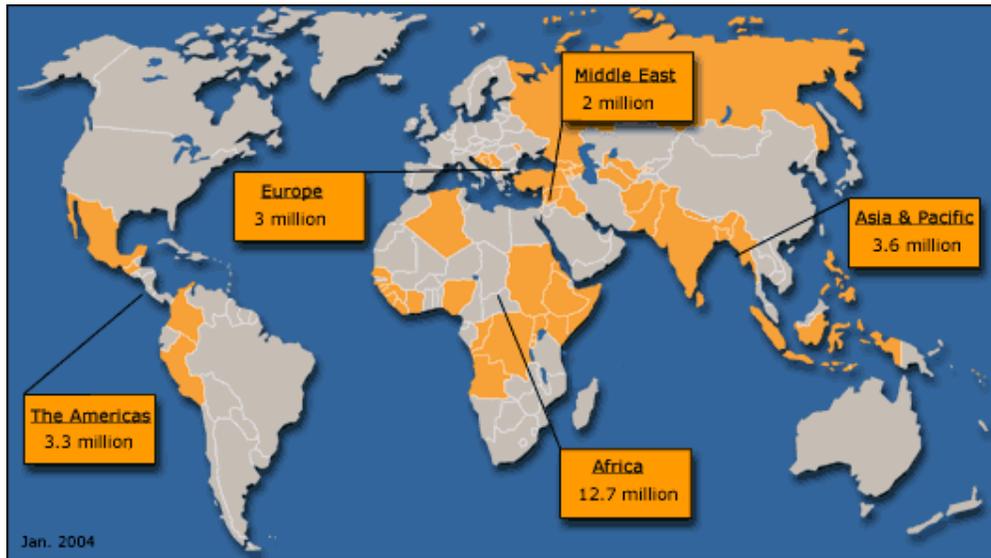
ANNEXES

1. Global Overview Map of IDPs (electronic)
2. Map of Uganda with IDPs' Figures in the Affected Districts (electronic)
3. Uganda Draft Policy on Internal Displacement 2003 (hard copy)
4. World Map of IDPs with Country Figures (electronic)

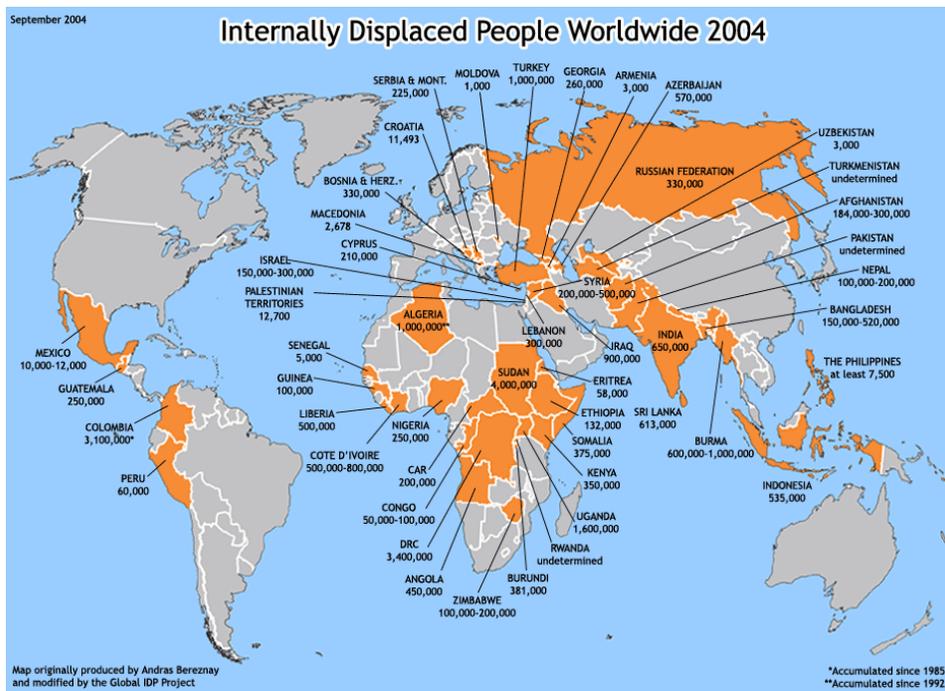
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ANNEXES

IDPs GLOBAL OVERVIEW



GLOBAL MAP OF IDPs WITH COUNTRY FIGURES



UGANDA MAP OF IDPs IN THE AFFECTED DISTRICTS

