

**HELPLESS WITHIN BORDERS: THE CASE FOR ADEQUATE INTERNATIONAL  
HUMAN RIGHTS PROTECTION FOR IDPS IN NORTHERN UGANDA AND THE  
DARFUR REGION OF SUDAN**

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## DECLARATION

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

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## TABLE OF CONTENTS

Declaration	i
Table of contents	ii
Acknowledgments	v
List of acronyms	vi
CHAPTER ONE: INTRODUCTION	1
1.1 Background to the study	1
1.2 Problem statement	3
1.3 Research questions	4
1.4 Objectives of the study	5
1.5 Literature review	5
1.6 Significance of the study	8
1.7 Limitations of the study	8
1.8 Methodology	9
1.9 Overview of the chapters	9
CHAPTER TWO: THE INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF IDPS	11
2.1 Introduction	11
2.2 The international legal framework for the protection of IDPs	11
2.2.1 International human rights law	12
2.2.2 International humanitarian law	13
2.2.3 International refugee law	14
2.2.4 The Guiding Principles on Internal Displacement	14
2.3 The institutional framework for the protection of IDPs	17
2.3.1 The Representative of the Secretary-General on IDPs	18
2.3.2 The United Nations High Commission for Refugees	19
2.3.3 The UN Office for the Coordination of Humanitarian Affairs	20
2.3.4 The Office of the Emergency Relief Coordinator	20

2.4	Conclusion	21
CHAPTER THREE: AN APPRAISAL OF THE PRACTICAL REALITIES IN THE PROTECTION OF IDPS IN SUDAN AND UGANDA		22
3.1	Introduction	22
3.2	Internal displacement in Uganda	22
3.2.1	Causes of internal displacement	23
3.2.2	Legislative and policy framework on IDPs	24
3.2.3	Human rights abuses against IDPs	25
3.2.3.1	Personal security and integrity/physical protection	26
3.2.3.2	Children’s rights	27
3.2.3.3	Women becoming victims of sexual violence	28
3.2.3.4	Access to basic socio-economic needs	28
3.2.4	Judicial remedies	29
3.2.5	Prospects of return	29
3.3	Internal displacement in Sudan	30
3.3.1	Causes of internal displacement in Darfur	30
3.3.2	Legislative and policy framework on IDPs	31
3.3.3	Human rights abuses against IDPs	32
3.3.3.1	Personal security and integrity/physical protection	32
3.3.3.2	Violence against women	33
3.3.3.3	Children’s rights	33
3.3.3.4	Access to basic necessities	34
3.3.4	Prospects of return	34
3.3.5	Judicial remedies	34
3.4	International response to the internal displacement in Sudan and Uganda	35
3.4.1	Humanitarian assistance	35
3.4.2	Regional developments in the protection of IDPs in Sudan and Uganda	36
3.4.2.1	The African Union	36
3.4.2.2	The African Commission on Human and People’s Rights	37
3.4.2.3	The Khartoum Declaration (IGAD)	37
3.5	Conclusion	37

CHAPTER FOUR: TOWARDS ADEQUATE PROTECTION OF IDPS IN SUDAN AND UGANDA: WHICH WAY FORWARD?	38
4.1 Introduction	38
4.2 Adoption of a human rights based approach to the protection of IDPs	38
4.2.1 Adoption of a legally binding instrument on IDPs	39
4.2.1.1 Proposed form for the Convention on internal displacement	40
4.2.2 Assign principle responsibility to one operational agency for all situations of internal displacement	41
4.2.3 Greater reliance on civil society organisations	42
4.2.4 IDPs should be allowed to exercise the option to seek asylum outside the country	43
4.3 Protection at national level	43
4.3.1 Conflict resolution	43
4.3.2 Avoid prolonged stay in camps	44
4.4 International responsibility for the protection of IDPs	44
4.4.1 Deployment of peacekeeping forces	45
4.4.2 Regional efforts	46
4.5 Conclusion	46
CHAPTER FIVE: GENERAL CONCLUSIONS	47
5.1 Introduction	47
5.2 Internal displacement remains a challenge	47
5.3 Internal displacement is inextricably linked with human rights abuses	47
5.4 Internal displacement in northern Uganda	47
5.5 Internal displacement in the Darfur region of Sudan	48
5.6 State sovereignty	48
5.7 International response	49
5.8 Durable solutions	49
5.9 Ending displacement	50
BIBLIOGRAPHY	51

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## LIST OF ACRONYMS

ACHPR	African Charter on Human and People's Rights
AU	African Union
BCPR	Bureau for Crisis Prevention and Recovery (UNDP)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Eliminations of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
ERC	Emergency Relief Coordinator (UN)
EXCOM	Executive Committee of the High Commissioner's Programme (UNHCR)
IASC	Inter-Agency Standing Committee (UN)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IGAD	Inter-Governmental Authority on Development
IHRL	International Human Rights Law
IHL	International Humanitarian Law

JEM	Justice and Equality Movement
LRA	Lord's Resistance Army (Uganda)
SLA	Sudan Liberation Army
SPLM/A	Sudan Peoples Liberation Movement/Army
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner for Human Rights
UPDF	Uganda Peoples Defence Forces

## CHAPTER ONE: INTRODUCTION

### 1.1 Background to the study

Internally displaced persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.<sup>1</sup>

Internal displacement emerged in recent years as one of the most pressing humanitarian, and human rights issues facing the international community.<sup>2</sup> With nearly 25 million people uprooted within their own country by conflicts and human rights violations, internal displacement is one of the great tragedies of our time. The global crisis of internal displacement which affects 52 countries across all continents has unfolded, although largely unnoticed by the general public. International public attention continues to focus more on refugees, that is people who crossed international borders after fleeing their homes. By comparison, IDPs have received much less attention by the international community, the media and the donors although their number is nearly twice as high, and their plight is often even worse than that of refugees.<sup>3</sup>

Notably, Africa is the worst hit by the phenomenon of internal displacement as more people are affected on the African continent than in the rest of the world put together. At the end of 2003, Africa was home to an estimated 13 million of the world's 25 million IDPs. The Sudan with its 4 million, hosts the highest number of IDPs in Africa, followed by the DRC with 3 million. In Uganda, the number of IDPs nearly doubled during 2003 to reach 1.2 million by the end of the year.<sup>4</sup> Other African countries that are badly affected by internal displacement include Angola, Liberia, Cote d'Ivoire, Somalia, Central African Republic, Rwanda, Burundi, and Congo Brazaville.<sup>5</sup>

The main types of displacement in Africa are development-induced displacement and conflict-induced displacement, however the latter is the focus of this study. Internal displacement in Africa is mainly caused by conflicts often resulting from struggles for political and economic

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<sup>1</sup> The United Nations Guiding Principles on Internal Displacement (1998) Paragraph 2.

<sup>2</sup> Deng Francis in foreword to Marc Vincent and Refslund Sorensen (eds) *Caught Between Borders: Response Strategies of the Internally Displaced* (2001) xiii.

<sup>3</sup> The Global IDP Project *Internal Displacement: A Global Overview of Trends and Developments in 2003* p.4

<sup>4</sup> The Global IDP Project (n 3 above) 12.

<sup>5</sup> The Global IDP Project (n 3 above) 12.

power or control over the natural resources between rival groups.<sup>6</sup> Once uprooted from their habitual environment, the IDPs remain among the most vulnerable groups in most conflict areas.<sup>7</sup>

Although the role of international organisations in providing humanitarian assistance to the IDPs has grown, the concept of state sovereignty still poses a daunting barrier to assuring their safety and fundamental rights. IDPs remain under the formal protection of their own state, even though officials of that state may have deliberately caused their displacement.<sup>8</sup> The international legal enforcement mechanisms are not strong enough to stimulate state responsibility, and IDPs often fall in a vacuum where state responsibility for their welfare is derogated due to the loss of control of vast areas of a country.<sup>9</sup>

Notably, the meaning of “Protection” in this study goes beyond humanitarian assistance through the provision of food, medicine and shelter to include measures that ensure respect for the physical safety and the human rights of the IDPs.

Protection of IDPs falls squarely within the international human rights regime, as there is an inextricable link between human rights abuses and displacement.<sup>10</sup> Refugees and IDPs face human rights abuses at all levels of displacement, however no separate refugee-like legal system exists to protect IDPs.<sup>11</sup> In my view, IDPs are particularly vulnerable because of a lack of a strong legal framework applicable to their protection and a lack of a clear lead agency on IDPs.<sup>12</sup> Consequently, they continue to suffer gross human rights violations including extra-judicial executions, unlawful killings, torture, rapes, abductions, destruction of villages and property, looting of cattle and property, and the destruction of the means of livelihood of the population attacked.<sup>13</sup> Certainly the widespread and grave violations of basic human rights that IDPs suffer therefore reveal that adequate and consistent protection remains a major gap in the

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<sup>6</sup> The Global IDP project (n 3 above) 13

<sup>7</sup> Global IDP project (n 3 above) 13.

<sup>8</sup> Fitzpatrick Joan (ed) (2002) *Human Rights Protection for Refugees, Asylum Seekers and IDPs: A Guide to International Mechanisms and Procedures*. P.5

<sup>9</sup> Bennet Jon 'Internal Displacement in Context: The Emergence of a New Politics' in Wendy Davies (n 8 above).

<sup>10</sup> Refugees International 'Human Rights and Displacement' (2003), available at <<http://www.refugeesinternational.org>> (accessed on 9/8/2004)

<sup>11</sup> Nils Geissler, 'The international Protection of Internally Displaced Persons', (1999), in Fitzpatrick Joan M (n 11 above).

<sup>12</sup> Refugees International (n 10 above)

<sup>13</sup> Amnesty International 'Darfur: Rape as a weapon of war: Sexual Violence and its Consequences (2004), available at <<http://www.amnesty.org>> (accessed on 20/8/2004)

national and international response. How could an international response improve the human rights situation?<sup>14</sup>

In Northern Uganda, increased international attention is yet to produce signs of an end to one of the world's most brutal humanitarian crises, which has displaced approximately 1.6 million people. Human rights abuses against the IDPs in Northern Uganda are committed in the context of a 17-year-old warfare between the Uganda Peoples Defence Forces (UPDF) and the Lords Resistance Army (LRA).<sup>15</sup>

In the Sudan, the conflict in Darfur has resulted into today's "worst humanitarian crisis".<sup>16</sup> Over 1.2 million people are facing continuing human rights violations at the hands of the government-backed Janjaweed militia, who often operate alongside the government forces.<sup>17</sup>

It is against this background therefore that this study seeks to make a case for adequate international human rights protection for the IDPs in Northern Uganda, and the Darfur region of Sudan.

## 1.2 Problem statement

The rise in the number of IDPs in Sudan and Uganda is in no small part, due not only to states' incapacity to protect their own people, but also to a direct attack by states on selected communities, or on insurgent groups. In Sudan, there is a large amount of information pointing to the responsibility of the Sudanese government in the human rights violations committed against the IDPs in Darfur.<sup>18</sup> In Uganda, the majority of the displaced harbour considerable anger towards the government for having forced them out of their homes and then being unable to protect and provide for them,<sup>19</sup> and in many cases being guilty of violations of their rights.

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<sup>14</sup> See Helle Daniel, 'Enhancing the Protection of Internally Displaced Persons' in Davies Wendy (ed) (1998) *Rights Have no Borders: Internal Displacement Worldwide*, Norwegian Refugee Council / Global IDP Project.

<sup>15</sup> In December 2003, the UN Secretary General for Human Affairs, Jan Egeland described the humanitarian situation in Northern Uganda as the "Worst forgotten and Neglected in the Whole world", and in March 2004, Darfur was described by the then UN Humanitarian Coordinator in Sudan, Mukesh Kapila, as the World's "greatest humanitarian Crisis"

<sup>16</sup> Amnesty International (n 13 above)

<sup>17</sup> Amnesty International, '1.2 Million IDPs at Risk in Darfur' available at <<http://www.amnesty.org>> (accessed on 20/82004)

<sup>18</sup> Amnesty International (n 13 above)

<sup>19</sup> Refugee Law project working paper No. 11 'Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda' (2004) 25.

The problem is aggravated by the facts that IDPs have no specific set of international instruments or a Convention in their favour, and there is no dedicated UN agency to turn to.<sup>20</sup> The concept of state sovereignty still takes centre stage, and IDPs remain under the ‘protection’ of their own states, which in many cases are responsible for their plight.<sup>21</sup> International humanitarian assistance is limited to the provision of basic necessities like food, shelter and medicine, while measures that ensure respect for the physical safety and the human rights of IDPs remain inadequate.

The Guiding Principles on Internal Displacement particularise general human rights principles to the situation of the internally displaced, however they have no binding authority, and therefore do not bind states, neither are they enforceable by the IDPs.<sup>22</sup> Currently, reliance is placed upon international humanitarian law and the existing international human rights law,<sup>23</sup> but international humanitarian law only applies in situations of armed conflict.<sup>24</sup>

Consequently, this study proceeds from the presumption that the governments of Sudan and Uganda have failed to protect the IDPs within their jurisdictions, hence the need for stronger international protection. The study is aimed at addressing the specific problem of the lack of adequate international human rights protection for the IDPs from the time of displacement, to the time displacement ends.

Emphasis of the study is placed on displacements resulting from armed conflicts, because these are the most rampant and most problematic in Africa. Darfur and Northern Uganda are the particular focus of this study because they are the most affected regions in Africa today.<sup>25</sup>

### 1.3 Research questions

The study is premised on the preliminary assumptions that the governments of Sudan and Uganda have failed to protect the IDPs within their territories, and that the continued plight of IDPs especially in Darfur and Northern Uganda is attributed to the lack of adequate international

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<sup>20</sup> Bennet Jon (n 9 above).

<sup>21</sup> Deng M Francis, ‘Flocks Without Shepherds: The International Dilemma of Internal Displacement’ in Wendy Davies(ed) *Rights Have no Borders:Internal Displacement Worldwide* (1998).

<sup>22</sup> Walter Kalin ‘How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework’ (2002) The Brookings –CUNY Project on Internal Displacement.

<sup>23</sup> For example the definition of “a refugee” under Article 1A (2) of United Nations Convention Relating to the Status of Refugees (1951) only covers people who are already outside their countries of origin.

<sup>24</sup> Cohen R and Deng M Francis *Masses in Flight: The Global Crisis of Internal Displacement*, (1998) 75.

<sup>25</sup> See statistics by the Global IDP Project (n 3 above)

human rights protection. The following questions will be used in investigating the foregoing assumptions:

1. Why and how have the governments of Uganda and Sudan failed to protect IDPs?
2. What efforts have been made to protect the rights of IDPs in Darfur and Northern Uganda and apply humanitarian law?
3. How effective is the existing international legal and institutional framework for the protection of IDPs?
4. What is lacking in the existing legal regime, and where is the law silent in the protection of IDPs?
3. What is lacking in the current international response to the protection for IDPs?
6. Who should be responsible for the protection of IDPs in Darfur and Uganda?
7. What is the way forward towards adequate protection of the IDPs in Darfur and Uganda?

#### **1.4 Objectives of the study**

The main objective of this study is to make a case for adequate international human rights protection as the most viable option for the protection of IDPs in the Sudan and Uganda.

Other objectives include:

- i) To evaluate the problems that are pertinent in the protection of IDPs in Sudan and Uganda.
- ii) To assess the adequacy of the existing international legal regime in the protection of IDPs in Uganda and Sudan.
- iii) To analyse the impact of the inadequate legal protection on the problem of IDPs.
- iv) To show that the Sudan and Uganda have got peculiar problems that exacerbate the problem of IDPs and therefore need specific attention.
- v) To demonstrate that the Sudan and the Ugandan governments have largely failed to protect IDPs.

#### **1.5 Literature review**

Due to the magnitude of the problem, the international protection of IDPs is an issue that has of recent drawn the attention of many writers. Uganda and Sudan in particular have been the focus of many writers, however much of the writings have taken the form of reports, with no emphasis

on international human rights protection as the way forward. Nevertheless, available literature on internal displacement as a whole cannot completely be ignored if a meaningful study of the problem of IDPs in Uganda and Sudan is to be made. Hence following is a study of some of the reviewed literature:

Francis M Deng makes a very important contribution to the study of internal displacement in the form of the Guiding Principles on Internal Displacement (1998), which apart from being the most comprehensive document on the normative framework on internal displacement provide the definition of IDPs as seen earlier.<sup>26</sup>

Roberta Cohen is of the view that though not a legally binding document, the Guiding Principles reflect and are consistent with existing international human rights and humanitarian law, and that in restating existing norms, they also seek to address grey areas and gaps.<sup>27</sup>

Walter Kalin argues first that, the preparation of a treaty or even a General Assembly Declaration would not have been a realistic option when it came to protecting IDPs. Second, that despite their non-binding character, the Guiding Principles are not without legal significance.<sup>28</sup>

Cohen and Deng together provide a comprehensive analysis of the causes, and consequences of internal displacement, and the current legal and institutional framework for addressing the problem of internal displacement. While discussing the legal framework, they particularly point out that although IDPs are entitled to the protection provided by international human rights and humanitarian law, it is often difficult for governments, organisations and the displaced themselves to identify the guarantees that apply in specific situations. Most importantly, the study defines “Protection” to mean taking measures to ensure respect for the basic human rights of the IDPs, particularly their safety and dignity.<sup>29</sup>

Barutciski emphasises that a clear distinction should be drawn between refugees and IDPs, and points out that the kinds of rights granted to refugees would not make sense for displaced persons who are still in their country of origin. He suggests that for the protection of IDPs, an appropriate approach should be twofold: development of fair interventionist principles (that

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<sup>26</sup> The Guiding Principles on Internal Displacement (n 1 above).

<sup>27</sup> Roberta Cohen 'The Guiding Principles on Internal Displacement: A New Instrument for International Organisations and NGOs' Forced Migration Review (1998) 2.

<sup>28</sup> Walter Kalin (n 22 above).

<sup>29</sup> See Cohen and Deng (n 24 above)

necessarily affect IDPs) and, in case their application fails, preservation of the possibility for cross-border flight and external refuge.<sup>30</sup>

The work edited by Marc Vincent and Birgitte Refslund Sorensen is very important because in addition to exposing the plight of IDPs, through various case studies from all over the world, it provides an insight into the strategies employed by the IDPs in responding to the challenges that confront them from the time of their displacement.<sup>31</sup>

Of critical importance is the recent work of the Global IDP project, in as far as it gives the latest global and regional patterns of internal displacement in terms of numbers of IDPs per region, while considering the causes and impact of displacement on the affected persons.<sup>32</sup> The Global IDP project concluded elsewhere that the welfare of IDPs has become the subject of international attention because the governments legally accountable for their care and protection are often unable or even unwilling to act on their behalf, and that in many cases, the government in question is at least partly if not wholly responsible for the displacement of its citizens, a conclusion that is at the centre of this research.<sup>33</sup>

Fitzpatrick has also edited a book that that is an important addition towards the international human rights protection of IDPs. The work acknowledges the compelling need for the international human rights protection of IDPs, but specifically addresses enforcement of IDP rights through prosecution for war crimes and crimes against humanity in international criminal tribunals.<sup>34</sup>

Oloka Onyango also recognises that internal displacement has for long been an issue of particular conceptual and practical difficulty for the international community. He adds that in the African context, when married to the serious issues of human rights violations, state sovereignty and the process of nation state transformation, the issue gains in magnitude.<sup>35</sup> However his article concentrates on internally displaced women, though in the African context.

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<sup>30</sup> Barutciski M 'Tensions Between the Refugee Concept and the IDP Debate' Forced Migration Review No. 3, December 1998.

<sup>31</sup> Marc and Refslund (n 2 above).

<sup>32</sup> Global IDP Project (n 3 above)

<sup>33</sup> The Global IDP project *Internally Displaced People: A Global Survey* (2002) 3.

<sup>34</sup> Fitzpatrick (n 9 above)

<sup>35</sup> Oloka Onyango J (1998) 'Forced Displacement and the Situation of Refugee and Internally Displaced Women in Africa' East African Journal of Peace and Human Rights, Vol 5.

Daniel Helle concludes that the widespread and grave violations of basic human rights that IDPs suffer reveal that adequate and consistent protection remain a major gap in the national and international response.<sup>36</sup> This conclusion is of significance to this study in as far as it recommends adequate and consistent protection of IDPs.

Deng M Francis also states that while refugees have an established system of international protection and assistance, those who are displaced internally fall under the domestic jurisdiction and responsibility of the state, without there being specific legal or international bases for their protection and assistance.<sup>37</sup> Such conclusion in my opinion makes a case for specific international human rights protection for IDPs.

### **1.6 Significance of the study**

The problem of conflict induced displacement is one of the greatest challenges in Africa today, and there is an urgent need for measures to be taken to contain it. Sudan and Uganda particularly remain a challenge in this respect because IDPs in these countries are suffering gross human rights violations. This study is therefore of great significance to the extent that it proposes the way forward for the protection IDPs, which is through adequate international human rights protection, specifically physical protection and respect for human rights. The study also discusses the causes and consequences of internal displacement in Uganda and Sudan, the importance of which can not be overemphasised.

### **1.7 Limitations of the study**

The study of the human rights protection of IDPs is a very wide and current one encompassing a wide range of issues that would require extensive research and analysis, which could not be done due to the limitation in the number of words for the dissertation. Therefore the study only highlights the most important issues on the need for international human rights protection for the IDPs without exhausting all the details. Although the problem of internal displacement is wide spread in Africa, only Uganda and Sudan are used as case studies, because they are among the African countries that are worst hit by the problem.

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<sup>36</sup> Helle (n 14 above)  
<sup>37</sup> Deng (n 21 above).

Secondly, the research was done in Egypt, which is not one of the case studies. Therefore most of the information was obtained through library research and correspondences via e-mail. The fact that the issue of internal displacement in Uganda and Sudan, particularly in the Darfur region is still ongoing has placed a particular challenge because debates change, and there are new developments on a daily basis. Scarcity of current academic writings on Darfur also served as a challenge.

## **1.8 Methodology**

Heavy reliance has been placed on the library and desk research methodology in accomplishing this study. This has entailed use of primary and secondary sources of information. The primary sources include international conventions and other instruments relevant to IDPs, where as the secondary sources include textbooks, journals, available statistics on IDPs and Internet research.

## **1.9 Overview of the chapters**

The study is a unique overview of the law, theory and practice on the protection of internally displaced persons done in 5 chapters:

Chapter one contains the general introduction, which will incorporate the background, problem statement, objectives, hypothesis, literature review, limitations and methodology used for the study.

Chapter two gives an overview of the international legal framework for the protection of IDPs. It involves an analysis of the international legal regime on IDPs like the guiding principles on internal displacement in a bid to assess their adequacy in the protection of IDPs. The chapter also explores the existing institutional framework for the protection of IDPs, like the office of the Representative of the Secretary-General on internal displacement, the UNHCR, and the office of the Coordinator for Humanitarian Affairs (OCHA).

Chapter three contains an appraisal of the practical realities in the protection of IDPs in Sudan and Uganda. It explores the causes and consequences of internal displacement, and gives reasons for the need for international human rights protection for IDPs essentially premised on states' failure to protect the IDPs. The chapter also highlights the form of protection in issue, for example the right to personal security and integrity, women becoming victims of sexual and

domestic violence, socio-economic rights like access to food, clean water, health care, housing, and judicial remedies.

Chapter four gives short and long term recommendations on the way forward for the protection of IDPs in Sudan and Uganda. The chapter proposes the adoption of a human rights approach to the protection of IDPs, and emphasises that international assistance should expand beyond provision of basic necessities to include physical protection, and ensuring respect for human rights. Consequently, the study mainly advocates for a specialised international instrument for IDPs, greater reliance on civil society organisations to uphold human rights and assigning responsibility for IDPs to an existing UN agency.

**Chapter five** contains the conclusions of the study, based on the research findings.

## CHAPTER TWO: THE INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF IDPS

### 2.1 Introduction

The question of how IDPs are protected under international law against human rights violations is not merely one of academic interest, as displacement in itself contradicts basic human rights guarantees. The debate on IDP protection revolves around two sets of potentially contradictory concerns: (a) ensuring international protection of human rights and upholding state responsibilities, and (b) legal provisions for the protection of IDPs and the states' capacity to apply those provisions.<sup>38</sup> To this end, it is imperative to explore the adequacy of the existing international legal norms and institutions as basic components for the protection of IDPs.

Consequently, this chapter examines the applicability of international human rights law, international humanitarian law and refugee law to internal displacement, and considers the extent to which each meets the protection needs of the IDPs. The chapter also gives an overview of the institutional framework for the protection of IDPs.

### 2.2 The international legal framework for the protection of IDPs

Despite not being beneficiaries of a specific convention, IDPs are protected by various bodies of law, principally national law, and human rights law and, if they are in a state experiencing an armed conflict, international humanitarian law.<sup>39</sup> IDPs, like all other citizens, have rights, the entitlement to which they have not lost by virtue of having been displaced.<sup>40</sup> IDPs are nationals of the state in which they are displaced, hence they are entitled to the full protection of the national law and the rights it grants nationals without any adverse distinction.<sup>41</sup> However because governments frequently cause or tolerate internal displacement and are unwilling or unable to guarantee basic rights and meet the needs of their internally displaced citizens, it is important to ascertain whether international law provides adequate protection for these persons.<sup>42</sup>

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<sup>38</sup> Bennet (n 9 above).

<sup>39</sup> International Committee of the Red Cross (ICRC) 'Legal Protection of Internally Displaced Persons' (2002), available at <<http://www.icrc.org>> (accessed on 10/5/2004)

<sup>40</sup> Helle (n 14 above).

<sup>41</sup> ICRC (n 37 above).

<sup>42</sup> Cohen and Deng (n 24 above).

## 2.2.1 International human rights law (IHRL)

IHRL, which is applicable both in times of peace and in situations of armed conflict, provides protection for IDPs. It aims both to prevent displacement and to ensure basic rights should it occur, the latter being the concern of this study. For example the right to personal safety, as well as the rights to food, shelter, education and access to work offer vital protection during displacement.<sup>43</sup>

Presently, IHRL is embedded in the international bill of rights which essentially comprises of the Universal Declaration on Human Rights (UDHR),<sup>44</sup> and several international human rights instruments primarily including, the International Covenant on Civil and Political Rights (ICCPR),<sup>45</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>46</sup> the Convention Against Torture (CAT),<sup>47</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>48</sup> and the Convention on the Rights of the Child (CRC).<sup>49</sup> Within the African region, the basic human rights instrument is the African Charter on Human and Peoples' Rights (ACHPR).<sup>50</sup>

While it is argued that there are no specific forms of legal protection that could be granted to IDPs that do not already exist in international law,<sup>51</sup> it is submitted that the existing international binding instruments fail to articulate rights like the right to not be forced to return or resettle, and the right to personal identification documents, which are essential for the protection of IDPs.<sup>52</sup> With such important omissions in the existing law, there is a need for a specific legally binding instrument for IDPs.

Furthermore, IHRL as it stands today is dispersed in various instruments as seen above, each having a separate body to ensure its implementation.<sup>53</sup> This therefore makes the law difficult as a

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<sup>43</sup> See the International Convention on Social, Economic and Cultural Rights (ICESCR) adopted by General Assembly Resolution 2200A (XXI) of 16/12/1966, for details on socio-economic rights provided for under international human rights law.

<sup>44</sup> UDHR, adopted and Proclaimed by General Assembly Resolution 217 A (III) of 10/12/1948.

<sup>45</sup> ICCPR, adopted by General Assembly Resolution 2200A (XXI) of 16/12/1966.

<sup>46</sup> ICESCR, adopted by General Assembly Resolution 2200A (XXI) of 16/12/1966.

<sup>47</sup> CAT, adopted by General Assembly Resolution 39/46 of 10/12/1984 .

<sup>48</sup> CEDAW, adopted by General Assembly Resolution 34/180 of 18/12/1979.

<sup>49</sup> CRC, adopted by General Assembly Resolution 44/11/1989.

<sup>50</sup> ACHPR, adopted by the OAU 27/6/1981.

<sup>51</sup> Barutciski (n 20 above) 13.

<sup>52</sup> The UN Guiding Principles on Internal Displacement provide for these rights, however, the principles are not legally binding.

<sup>53</sup> For example the ICCPR under article 28 establishes the Human Rights Committee as its monitoring body, and the Committee on Economic, Social and Cultural rights established in 1987 is monitoring body of the ICESCR.

source of reference for the enforcement of IDP rights, as one would have to have knowledge of all the instruments to know their rights, and appear before various bodies to have the rights enforced.

IHRL as it stands today generally binds only states, not non-state actors, such as insurgents. This therefore makes the law inadequate for the protection of IDPs as many human rights abuses are committed by non-state actors. Accountability by non-state actors for human rights abuses therefore is of crucial importance in the protection of IDPs, and can only be achieved through new legislation.

Notably, it is often argued that a major weakness with IHRL is that it may be restricted or derogated from.<sup>54</sup> It should however be noted that non-observance of obligations may entail loss of credibility and support on part of other actors or the population itself, and that the relevant authorities often have an interest in discharging their obligations.<sup>55</sup>

## **2.2.2 International humanitarian law (IHL)**

IHL is the body of rules which, in war time protects people who are not or are no longer participating in the hostilities. Its central purpose is to limit and prevent human suffering in times of armed conflict. The rules of IHL are to be observed not only by governments and their armed forces, but also by armed opposition groups and any other parties to a conflict.<sup>56</sup> The principle instruments of IHL are the four Geneva Conventions of 1949 and their two additional protocols of 1977, which cover humanitarian issues directly arising from international and non-international armed conflicts.<sup>57</sup>

Therefore if IDPs are in a state that is involved in an armed conflict then, provided they are not taking an active part in the hostilities, they are considered civilians and as such, are entitled to protection afforded to civilians.<sup>58</sup> Once respected, the general rules of IHL can protect IDPs, for example those prohibiting parties to a conflict from targeting civilians, the prohibitions on starvation of the civilian population and on the destruction of objects indispensable to its

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<sup>54</sup> Cohen and Deng (n 24 above) 75.

<sup>55</sup> Helle (n 14 above).

<sup>56</sup> ICRC document 'International Humanitarian Law' available at <<http://www.icrc.org>> (accessed on 10/5/2004).

<sup>57</sup> See Protocol Additional to the Geneva Conventions of 12/8/1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Protocol Additional to the Geneva Conventions of 12/8/1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) of 8/6/1977 respectively .

<sup>58</sup> ICRC document (n 39 above)

survival, and the rules requiring parties to a conflict to allow relief consignments to reach civilian populations in need.<sup>59</sup>

A major weakness of IHL vis a vis the protection of IDPs is that in some situations of tensions and disturbances short of armed conflict, humanitarian law is not applicable.<sup>60</sup> Consequently, IDPs who are not in areas of armed conflict can not be protected by IHL. In this respect therefore, IHL can not be said to be apposite for the protection of all IDPs.

### **2.2.3 International refugee law**

The starting point of international refugee law is that human rights violations have already occurred and that victims have already fled their country of origin. The objective is to convince an asylum state to respect minimal standards for certain foreigners who do not benefit from some other national protection.<sup>61</sup> The international refugee legal regime comprises of the 1951 convention relating to the status of refugees<sup>62</sup>, the 1967 protocol relating to the status of refugees<sup>63</sup>, and in the African region, the 1969 Convention governing the specific aspects of refugee problems in Africa.<sup>64</sup>

Although some principles of refugee law may be applicable by analogy, the strong and effective protection accorded to refugees under the refugee conventions can not apply directly to IDPs even though their conditions are similar.<sup>65</sup> For example a refugee is defined among other aspects as a person who is outside the country of his nationality.<sup>66</sup> For this reason, international refugee law can not be said to apply to IDPs because the latter have not left their country of origin.

### **2.2.4 The guiding principles on internal displacement**

The United Nations Guiding Principles on Internal Displacement were prepared in response to a request of the UN Commission on Human Rights (UNCHR) to the Representative of the Secretary-General on Internal Displacement to develop an appropriate normative framework for

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<sup>59</sup> See for example chapters II and III of Protocol I (n 56 above).

<sup>60</sup> Cohen and Deng (n 24 above) 75.

<sup>61</sup> Barutciski (n 30 above) 13.

<sup>62</sup> United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T 6223, 189 U.N.T.S 137.

<sup>63</sup> Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T 6223, 606 U.N.T.S 267.

<sup>64</sup> Convention Governing the Specific Aspects of Refugees Problems in Africa 1001 U.N.T.S, 45, 1969.

<sup>65</sup> Cohen and Deng (n 24 above)75.

<sup>66</sup> See article 1A(2) of the 1951 Convention (n 62 above).

the protection and assistance on IDPs.<sup>67</sup> The request was prompted by the conclusions of an elaborate study by a team of legal experts entitled 'Compilation and Analysis of Legal Norms', which concluded that while existing international law covers, albeit in a dispersed manner, many aspects of particular relevance to IDPs, there are many areas in which the law provides insufficient legal protection owing to inexplicit articulation or normative and other kinds of gaps.<sup>68</sup> One example of a normative gap is the fact that no international instrument contains an express right not to be forced to return.<sup>69</sup>

The guiding principles constitute the only international instrument specific to the needs of IDPs, and they incorporate elements of three branches of public international law in a single document: international humanitarian law, human rights law, and refugee law.<sup>70</sup> They thus consolidate into one document all the international norms relevant to IDPs, otherwise dispersed in many different instruments.<sup>71</sup>

The introduction to the principles provides a definition of IDPs as seen in the previous chapter,<sup>72</sup> and according to Roberta Cohen, that is the broadest definition of IDPs in use at the international or regional level.<sup>73</sup> The principles cover the three phases of the normative needs and rights of IDPs: to be protected from arbitrary displacement, to have access to protection and assistance during displacement, and to be assured of durable solutions through safe return and reintegration or alternative settlement.<sup>74</sup> They identify many human rights that IDPs have under existing international law and provide a few new ones.<sup>75</sup> Among the rights included are the rights to respect and dignity of person, life, food, health, recognition before the law, property, education, religion, thought, conscience, assembly, association, and some rights provided under international humanitarian law. New additions include the right not to be arbitrarily displaced, the right to personal identification documents, and the right not to be forced to return or resettle.<sup>76</sup>

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<sup>67</sup> UN Document E/CN.4/1998/53/Add.2.

<sup>68</sup> Deng M Francis 'Compilation and Analysis of Legal Norms', Report of the Representative of the Secretary-General on Internally Displaced Persons, E/CN.4/1996/52/Add.2.

<sup>69</sup> Goldman K Robert 'Codification of international rules on internally Displaced Persons: An Area Where Both Human Rights and Humanitarian Law Considerations are Being Taken into Account' (1998) International Review of the Red Cross no. 324, p.467-480, also available at <<http://www.icrc.org>> (accessed on 6/7/2004).

<sup>70</sup> Lavoyer Jean-Phillipe 'Guiding Principles on Internal Displacement' (1998) International Committee of the Red Cross no. 324, p.467-480, also available at <<http://www.icrc.org>> (accessed on 6/7/2004).

<sup>71</sup> Roberta Cohen 'The Guiding Principles on Internal Displacement: Anew Instrument for International Organisations and NGOs' Forced Migration Review, August 1998, 2 p.31.

<sup>72</sup> Guiding Principles on Internal Displacement, Paragraph 2.

<sup>73</sup> Cohen (n 26 above) 31.

<sup>74</sup> Deng (n 21 above) .

<sup>75</sup> Doebbler Curtis 'The Human Rights of Internally Displaced Persons in Sudan' (1999) available at <<http://dcrregistry.com/bbs/welcome.htm>> (accessed on 11/8/2004)

<sup>76</sup> See principles 6, 20 and 15 of the Guiding Principles on Internal Displacement respectively.

Section I of the principles spells out the general principles. Principle 3 for example restates the fact that states have the primary responsibility of protecting IDPs. Better still the Principles are based on the principle of non-discrimination, which is a cornerstone of both human rights and humanitarian law.<sup>77</sup> Section II deals with protection against displacement, for example under principle 5, states are required to prevent and avoid conditions that may lead to displacement. Of particular importance is the prohibition of arbitrary displacement, based on *inter alia* unjustified large-scale development projects, or ethnic cleansing.<sup>78</sup> Section III deals with protection during displacement by restating the rights of IDPs. The Principles also place special emphasis on women and children as particularly vulnerable groups in the displacement phenomenon.<sup>79</sup>

A crucially important provision in the Guiding Principles is the stipulation of the right of all persons to leave their country, and seek asylum in another country.<sup>80</sup> Principle 15 reaffirms what is tantamount to the principle of non-refoulement, in as far as it specifically protects IDPs against forcible return to or resettlement in any place where their life, safety, liberty or health would be at risk.<sup>81</sup>

The guiding principles cover humanitarian assistance under section IV, and emphasise that this is to be carried out with impartiality, and without discrimination. There is the right of international actors to provide such assistance, and under principle 26, persons engaged in humanitarian assistance, their transport and supplies should be respected and protected. The last section of the Guiding Principles deals with return, resettlement and reintegration of IDPs.<sup>82</sup>

Note however that the guiding principles are neither a binding treaty nor a declaration adopted by the General Assembly after negotiations of the text by the member states, but a set of non-binding guidelines.<sup>83</sup> Some of the reasons advanced for the preference for non binding principles as opposed to a treaty include:

- 1) That treaty making in the area of human rights has in general become very difficult today.
- 2) That there is no guarantee the treaty will be successful, for example states may fail to ratify the treaty.

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<sup>77</sup> Lavoyer (n 70 above).

<sup>78</sup> See principle 6 of the Guiding Principles.

<sup>79</sup> See Principles 4, 13, 19 and 23 of the Guiding Principles.

<sup>80</sup> See principles 2 and 15.

<sup>81</sup> Lavoyer (n 70 above).

<sup>82</sup> Principles 28, 29 and 30 of the Guiding Principles.

<sup>83</sup> Kalin (n 22 above).

- 3) That to draft a treaty that combines human rights and humanitarian law is probably premature.
- 4) That to negotiate a new treaty was not really necessary as existing treaties already cover, at least implicitly the rights of IDPs to a large extent.<sup>84</sup>

It is however submitted that the above reasons portray mere pessimism and speculation and it is unfortunate that they form the basis for the failure to come up with a specific and legally binding international instrument for the protection of IDPs.

An obvious disadvantage of the non-binding nature of the guiding principles is the fact that the states cannot be held accountable if they disregard them and that they cannot be invoked in legal proceedings at the domestic level.<sup>85</sup> Therefore states' compliance with the guiding principles is purely voluntary, and in my opinion the principles are of insignificant importance to the IDPs for as long as they are not legally enforceable.

Referring to legally binding obligations also strengthens advocacy on behalf of the IDPs towards the authorities and, not least, empowers the IDPs themselves, rather than designating them as a group receiving charitable aid.<sup>86</sup> Therefore the need for a legally binding instrument specifically dealing with IDPs like the guiding principles need not be overemphasised.

### **2.3 The institutional framework for the protection of IDPs**

Regarding the institutional aspects of the international response for providing protection and assistance to IDPs, the Representative of the Secretary-General on IDPs recalled that three options had been considered:

- (a) The creation of a special agency for the internally displaced
- (b) The designation of an existing agency to assume full responsibility for the internally displaced
- (c) Collaboration among the various relevant agencies.<sup>87</sup>

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<sup>84</sup> Kalin (n 22 above).

<sup>85</sup> Kalin (n 22above).

<sup>86</sup> Helle (n 14 above).

<sup>87</sup> Deng M Francis (2002) 'Specific Groups and Individuals: Mass Exoduses and Displaced Persons' Report of the Representative of the Secretary General on Internally Displaced Persons, submitted pursuant to Commission on Human Rights resolution 2001/54.

However while UN officials in charge of internal displacement insist on the “collaborative approach”,<sup>88</sup> which aims for international bodies working on IDP issues to collaborate through existing structures, rather than handing responsibility for IDPs to an existing UN agency or a new agency in the provision of aid to IDPs, many NGOs are sceptical about the viability of this approach in practice.<sup>89</sup>

To implement the collaborative approach, a number of institutional mechanisms were put into place to facilitate inter-agency cooperation on behalf of the displaced with a view to addressing the persistent gaps in coordination and protection. At the country level, the humanitarian coordinator (HC) is charged with facilitating coordination among the UN agencies and the NGOs. This official is often the same person appointed as the UN resident coordinator (RC). At headquarters level, the Emergency Relief Coordinator (ERC), who is also the Under-Secretary-General for Humanitarian Affairs and the chairperson of the Inter-Agency Standing Committee (IASC), is charged with overseeing the HCs and ensuring that the collaborative approach is working worldwide. A number of other headquarters level institutions have had an important part to play, including the IASC and the IASC working Group, the Senior Inter-Agency Network on internal displacement and the OCHA-IDP Unit.<sup>90</sup>

### **2.3.1 The Representative of the UN Secretary-General on Internally Displaced Persons**

In response to the growing international concern about the large number of IDPs and their need for assistance and protection, the Commission on Human Rights in 1992 requested the UN secretary-General to appoint a representative on IDPs.<sup>91</sup> Accordingly, Mr. Francis M Deng was appointed to this position during the same year.<sup>92</sup>

The main elements of the representative’s mandate include visits to countries affected by displacement and the review and evaluation of existing international institutions and international law to determine the degree to which they provide an adequate basis for the protection and

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<sup>88</sup> For example the former emergency Relief Coordinator, Kenzo Oshima stated that the collaborative approach remains the only practical and realistic approach. See Global IDP Project Report (n 2 above)

<sup>89</sup> Global IDP Project report on the parallel meeting on IDPs held in Geneva on 10/4/2003 entitled ‘Internally Displaced Persons: Accountability, Coordination and Protection Seen as Challenges’ (29/4/2003), available at <<http://www.idpproject.org>> (accessed on 13/3/2004)

<sup>90</sup> Deng M Francis ‘Specific Groups and Individuals: Mass Exodus and Displaced Persons’ Report of the Representative of the Secretary-General on Internally Displaced Persons, E/CN.4/2004/77 para 23.

<sup>91</sup> Commission Resolution 1992/73.

<sup>92</sup> Deng (n 87 above) 3.

assistance needs of those who are internally displaced. The representative was also mandated to formulate appropriate recommendations to improve the response to IDPS' needs.<sup>93</sup>

Notably, the Representative of the Secretary-General is the only position within the UN system with a mandate from the Commission of Human Rights and the Secretary-General to focus exclusively on the problem of internal displacement and to address both protection and assistance. The office has evolved into one of catalyst within the UN system, raising awareness of the human rights and protection problems of the IDPs.<sup>94</sup> However, the office is a voluntary one, expected to be carried out on a part time basis. The office has no operational authority and has limited staff support. Worse still, the resources placed at the Representative's disposal do not enable him to undertake systematic monitoring of situations of internal displacement or frequent visits to countries with serious problems of internal displacement.<sup>95</sup>

### 2.3.2 The United Nations High Commission for Refugees (UNHCR)

Of all the UN agencies, UNHCR plays the broadest role in addressing the problems of the internally displaced.<sup>96</sup> UNHCR is not entrusted with specific legal competence for IDPs.<sup>97</sup> However article 9 of the UNHCR statute in effect provides that in addition to its work with refugees, the High Commissioner may engage in such activities as the General Assembly may determine within the limits of the resources placed at his or her disposal. This provision therefore has been the basis for UNHCR's intervention with IDPs, and the basis upon which the General Assembly has, on several occasions either authorised the High Commissioner to act on behalf of or expressed support for actions already taken by UNHCR in respect of IDPs.<sup>98</sup>

Note however that the various authorisations to UNHCR by the General Assembly and the Executive Committee of the High Commissioner's Programme (EXCOM) do not amount to *carte blanche* for UNHCR involvement in issues of internal displacement. The approach taken by the General Assembly underscores the need for flexible responses without providing UNHCR with any obligatory or automatic responsibility for IDPs.<sup>99</sup>

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<sup>93</sup> Helle (n 14 above).

<sup>94</sup> Cohen and Deng (n 24 above) 156-157

<sup>95</sup> Cohen and Deng (n 24 above) 157

<sup>96</sup> Cohen and Deng (n 24 above) 157.

<sup>97</sup> McNamara Dennis 'UNHCR's Protection Mandate in Relation to Internally Displaced Persons' in Wendy Davies(ed) *Rights Have no Borders: Internal Displacement Worldwide* (1998).

<sup>98</sup> McNamara (n 97 above).

<sup>99</sup> McNamara (n 97 above).

Furthermore, UNHCR's involvement with IDPs is circumscribed by a combination of policy, legal and operational considerations which have served as benchmarks for its role in this area. In essence, UNHCR will only get involved with IDPs in situations where there is a clear link with refugee or returnee populations, or where there is the potential for internal displacement to develop into external refugee movements. UNHCR's involvement also depends on the request of the UN Secretary-General or the General Assembly, the consent of the government and other parties to the conflict, and assurances of adequate funding, full access to the displaced, and staff security. However, UNHCR's involvement with IDPs should never undermine the right of IDPs to seek and enjoy asylum.<sup>100</sup>

### **2.3.3 The United Nations Office for the Coordination of Humanitarian Affairs (UN-OCHA)**

In December 1991, the General Assembly adopted Resolution 46/182, designed to strengthen the UN's response to both complex emergencies and natural disasters. In addition it aimed at improving the overall effectiveness of the UN's humanitarian operations in the field, hence the creation of the OCHA office. Pursuant to a decision by of the Secretary General, the Internal Displacement Unit (IDU) was established within the office for Coordination of Humanitarian Affairs (OCHA) in 2002. The main objective of the unit is to promote system wide improvements in the response to the needs of the IDPs as well as to provide targeted support to specific country situations. The main areas of work focus on protection of IDPs, field support, capacity building/training and advocacy/public information.

The creation of an IDP Unit within the OCHA in 2002 was a small but positive step forward which "of course does not solve all problems".<sup>101</sup> The Unit's mandate is to promote system wide improvement in response to IDPs through both enhancing institutional arrangements with the UN system and its partners.

### **2.3.4 The Office of the Emergency Relief Coordinator (ERC)**

The growing need to coordinate the UN humanitarian assistance led the General Assembly in 1991 to create the post of the ERC at the Under-Secretary-General level.<sup>102</sup> Following two international conferences on uprooted populations in 1988 and 1989, in 1990, the General

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<sup>100</sup> McNamara (n 97 above).

<sup>101</sup> Kenzo Oshima in report by the Global IDP Project (n 2 above)

<sup>102</sup> General Assembly 'Strengthening the coordination of Humanitarian Emergency Assistance of the UN' A/Res/46/182, UN December 1991.

Assembly assigned to resident coordinators the function of coordinating assistance to IDPs in the field. The following year, it created the post of the ERC to promote a more rapid and coherent response to emergency solutions.<sup>103</sup> In his 1997 UN reform program, the Secretary-General reaffirmed the role of the ERC as being responsible for ensuring that protection and assistance for IDPs are addressed.<sup>104</sup>

It is the responsibility of the ERC to develop policy and advocate for humanitarian causes within the UN system, coordinate emergency response, and give counsel to the Secretary-General, particularly when human rights issues are before the Security Council.

Other agencies involved in the protection of IDPs include the ICRC, UNDP, WFP, UNICEF, WHO and IOM. However in the absence of strong coordination among these agencies or clear responsibility for the internally displaced, the response has been highly uneven.<sup>105</sup>

## **2. 4 Conclusion**

An examination of the IHRL, IHL and refugee law reveals that while existing law provides substantial coverage for IDPs, there are significant areas in which it fails to provide an adequate basis of protection and assistance. Besides, the provisions of the existing law are too diffuse and unfocused to be effective in providing adequate protection and assistance for the internally displaced people.<sup>106</sup>

Notwithstanding the formation of the formal structure for ensuring collaboration, the international community's response to internal displacement has remained problematic. The effectiveness of the international humanitarian response is severely limited by a lack of coordination and leadership among the UN agencies and other organisations on the ground. As a result, international efforts to address the assistance and protection needs of the internally displaced are often characterised by a piecemeal approach and a lack of strategy,<sup>107</sup> as shall be seen in chapter three.

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<sup>103</sup> Cohen and Deng (n 24 above) 127

<sup>104</sup> Cohen and Deng (n 24 above).75.

<sup>105</sup> Cohen and Deng (n 24 above) 127

<sup>106</sup> UNHCR Division of the international protection (1996) 'International Legal Standards Applicable to the Protection of IDPs: A reference manual for UNHCR staff.

<sup>107</sup> Refugee Law project (n 19 above).

## CHAPTER THREE: AN APPRAISAL OF THE PRACTICAL REALITIES IN THE PROTECTION OF IDPS IN SUDAN AND UGANDA

### 3.1 Introduction

As mentioned earlier, “Protection” in this study goes beyond humanitarian assistance through the provision of food, medicine and shelter to include measures that ensure respect for the physical safety and the human rights of the IDPs. Like all human beings, IDPs enjoy human rights that are articulated by international human rights instruments.<sup>108</sup> At national level, fundamental human rights are applicable to IDPs given that they have not crossed an internationally recognised border and continue as full-worthy citizens of their own country.<sup>109</sup>

Therefore once displaced, individuals should in theory continue to enjoy the same human rights as the rest of the population. In practice however, this is rarely the case. Displacement by its very nature generally entails the deprivation of many human rights.<sup>110</sup> This chapter therefore seeks to give an appraisal of the practical realities in the protection of IDPs in the Darfur region of Sudan and Northern Uganda.

### 3.2 Internal displacement in Uganda

There are several categories of IDPs in Uganda, but the most extreme category in terms of acuteness of the causes of displacement are those uprooted as a result of armed conflict.<sup>111</sup> Currently there is an ongoing war between the Uganda Peoples Defence Forces (UPDF) and the Lord’s Resistance army (LRA) in Northern Uganda, and widespread displacement is perhaps the most visible impact of this 18 year old conflict.<sup>112</sup> Despite its magnitude and devastating consequences for the affected populations, this war has been largely neglected outside of the country, and has indeed been referred to as a “forgotten crisis”.<sup>113</sup> According to Larry Thompson,

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<sup>108</sup> Office of the UN Commissioner for Human Rights ‘Displacement: Issues in Focus’ available <<http://www.ohchr.org>> (accessed on 10/8/2004)

<sup>109</sup> Bjorn Pettersson ‘International Human Rights and Humanitarian Law Merged into one Operational Instrument: The United Nations Guiding Principles on Internal Displacement’ (2002)

<sup>110</sup> Cohen and Deng (n 24 above) 78.

<sup>111</sup> Lomo Zachary ‘The Legal and Policy Framework Governing the Gender Dimensions of Internal Displacement in Uganda’, paper presented to the Expert Meeting, Gender Dimensions of Internal Displacement, UNICEF House June 1-11.

<sup>112</sup> Refugee Law Project Working Paper (n 18 above) 25.

<sup>113</sup> Deng (n 90 above)

Uganda's progress and Museveni's favourable international image have obscured the growth of a long and bloody civil war with the LRA in northern Uganda.<sup>114</sup>

### 3.2.1 Causes of internal displacement

Over 1.4 million people are currently displaced within the districts of Gulu, Kitgum, Pader, Lira, Apac, Soroti, Katakwi, Kaberamaido and Adjumani.<sup>115</sup> This increment is alarming compared to the reported figure of 650,000 IDPs in July 2002,<sup>116</sup> and there are two main reasons for this phenomenon. First is the intensive military action by the LRA directed against the villagers. The second is the implementation by the government of a policy of putting people in camps "protected villages." This has included incidents in which the UPDF has violated human rights to enforce movement.<sup>117</sup>

While the conflict in general is seen to have been the cause of the displacement, the majority of people on the ground did not see the LRA attacks per se as the direct cause of flight. Instead, it has been the government policy of moving people into "protected villages" that was the most common explanation given for the widespread displacement.<sup>118</sup> The Ugandan government in 1996 ordered significant parts of the population of the northern districts into camps at a 48-hour notice as part of a strategy to separate them from the rebels.<sup>119</sup>

Since the war began, the number of IDPs has risen and fallen according to events.<sup>120</sup> For example a relative calm in the area in 1999 allowed for the return of a number of displaced persons, but escalated LRA attacks at the beginning of 2000 have since forced an increasing number of persons to seek refuge in the so-called "protected Villages" established by the government, or alternatively in the towns of Gulu and Kitgum.<sup>121</sup> In March 2002, the UPDF launched an offensive against the LRA forces in the southern Sudan code-named "operation Iron Fist", which was intended to decisively defeat the LRA. However, the operation was not successful, and as a result, the LRA intensified attacks and abuses against the civilians, further

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<sup>114</sup> Thompson Larry 'Forgotten People: Northern Uganda' (July 2003) available at <<http://www.refugeesinternational.org>> (accessed on 5/7/2004)

<sup>115</sup> Refugee Law Project (n 19 above) 25.

<sup>116</sup> Deng (n 5 above)

<sup>117</sup> Amnesty International 'Breaking The Circle: Protecting Human Rights in the Northern War Zone' (1999) Document on Uganda, available at <<http://www.amnesty.org>> (accessed on 5/3/2004)

<sup>118</sup> Refugee law Project (n 19 above) 25.

<sup>119</sup> Global IDP project (n 3 above) 13

<sup>120</sup> Amnesty International (n 117 above)

<sup>121</sup> Deng (n 5 above) para 18.

deepening the displacement crisis. Districts like Kotido, Moyo, Lira and Apac that had never been attacked have since been attacked,<sup>122</sup> hence causing massive flights.

### 3.2.2 Legislative and policy framework on IDPs

Uganda has a sufficient legal framework in place for the protection of the rights of IDPs. The 1995 Constitution contains a comprehensive bill of rights providing for civil and political rights, as well as economic, social and cultural rights.<sup>123</sup> Article 20 (1) for example stipulates that fundamental rights and freedoms of the individual are inherent and not granted by the state, and imposes legal obligations on all organs and agencies of government to uphold and promote the rights and freedoms enshrined in the Constitution. Of critical importance is article 50 which gives *locus standi* to any person or organisation to institute proceedings in courts of law on behalf of persons whose rights have been violated. The Penal Code Act of Uganda also criminalises acts like defilement and rape, which are essential for the protection of IDPs.

However the practice is that the government of Uganda is in constant breach of its own laws, and the legal practitioners and civil society also seem disinterested in the IDP issue. For example there are very few private lawyers operating in Northern Uganda, and the people are too poor to afford legal representation anyway. There are also very few Ugandan human rights organisations working in areas affected by internal displacement.<sup>124</sup>

At the international level, Uganda is a party to all the essential international human rights treaties including the ICCPR, the ICESCR, the CAT, the CRC, the CEDAW, and the CERD, plus all the protocols thereto. The country is also a party to international humanitarian law instruments, including the four Geneva Conventions of 1949 and the two additional protocols thereto.<sup>125</sup>

Uganda has also made some developments in creating policies for the protection of IDPs. First was the creation of the department of refugees and disaster preparedness in the office of the prime minister and the appointment of a cabinet minister thereto. This department has the primary responsibility for IDPs within government, and it is supported by other departments, NGOs and the United Nations.<sup>126</sup>

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<sup>122</sup> Deng (n 5 above) para 18.

<sup>123</sup> For details of the rights provided for, see chapter 4 of the Constitution of the Republic of Uganda.

<sup>124</sup> Lomo (n 111 above)

<sup>125</sup> Lomo (n 111 above)

<sup>126</sup> Deng M Francis 'Profiles in Displacement: Mission to Uganda' (2004) Report of the Representative of the Secretary-General in Internally Displaced Persons, E/CN.4/2004/77/Add.1

Another positive development has been the process of drafting a national policy based on the Guiding Principles on Internal Displacement.<sup>127</sup> The Policy broadly seeks to protect Ugandan citizens against displacement and to protect and assist IDPs during displacement, return, resettlement and local integration. The policy does this by clearly defining the roles and responsibilities of the government of Uganda, humanitarian organizations, donors, the displaced community and other stakeholders, and spelling out the rights of IDPs. While IDPs are Ugandans and should thereby enjoy same rights accorded to all Ugandans, government recognizes the hardship the IDPs face, and therefore in formulating the policy on IDPs, efforts have been made to clearly articulate the rights of IDPs with the view to mitigate their sufferings.<sup>128</sup>

However, more than two years after the process of developing the national IDP policy was initiated, the draft has still not been endorsed by the government. The delay therefore puts into question the government's political will to address the crisis.<sup>129</sup>

There is also an amnesty law in place which provides for rehabilitation and reintegration into civilian society of former LRA combatants.<sup>130</sup> This law is looked at as an incentive for ending the conflict, and many former rebels have surrendered, some of the most notable being Brigadier Banya and Major Ochan Lwete. Government has also sought peace negotiations through the "presidential peace team", though these have largely failed because of president Museveni's insistence on the military option.<sup>131</sup>

Note however that there has been little progress on identifying durable solutions for those displaced in the north of the country<sup>132</sup>- a major shortfall in the protection of IDPs.

### 3.2.3 Human rights abuses against IDPs

Despite the existence of sufficient legal and policy frameworks, protection of IDPs in Uganda has fallen short of the national and international obligations of the state, and is not reflective of the policy framework of the country, as IDPs continue to suffer gross human rights abuses. A day in

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<sup>127</sup> Deng M Francis 'Internally Displaced Persons in Uganda: A Forgotten Crisis' (2004) FMR 19, p. 58.  
<sup>128</sup> Global IDP Project 'Uganda: National Policy on IDPs Not Yet Adopted By The Cabinet' (July 2004) <<http://www.db.idpproject.org/Sites/idpSurvey.nsf>> (accessed on 23/9/2004)  
<sup>129</sup> Global IDP Project, 'Uganda: Increased International Attention Has Yet To Produce Concrete Results for the Displaced' (2004) available at <<http://www.idpproject.org/sites/idpsurvey.nsf>> (accessed on 16/9/2004)  
<sup>130</sup> Deng M Francis (n 126 above) para 34.  
<sup>131</sup> Deng (n 126 above) para 36  
<sup>132</sup> Deng (n 126 above) para 36

the life of an IDP has none of the things associated with a normal family life like safety, privacy, liberty, a sense of ownership and even basic necessities like food.<sup>133</sup>

Millions of IDPs affected by the northern conflict are accommodated in a number of camps established by the government where they are in dire need of humanitarian assistance and protection.<sup>134</sup> Not only are the camps inadequately protected, but also living conditions there are chronically bad. As one religious leader commented, “The IDP camps are a death warrant to the people. There is hunger, disease, insecurity, and malnutrition”<sup>135</sup> An almost complete break-down of social structures and social support systems accompany the collapse of basic public services, access to food and livelihood opportunities. Despair, apathy, feelings of dependency and uselessness, lack of privacy and humiliations have ensued displacement, and crime and abuse of alcohol and drugs are on the rise.<sup>136</sup>

### **3.2.3.1 Personal security and integrity/ physical protection**

The combination of poor physical protection and the rebels’ tactic of deliberately attacking the camps continue to inflict tremendous suffering on the IDP population. Despite public statements by the government and the army that they are firmly committed to protect the IDPs and fight the LRA, the recent spate of massacres and attacks on the camps is another tragic reminder of a manifest failure to do so.<sup>137</sup>

The number of LRA attacks on IDP camps has increased since 2002 following the loss of the rebels’ support bases in Sudan. The LRA is reported to have attacked 16 of the 35 existing IDP camps in Gulu, Kitgum and Pader between June and September 2002 alone.<sup>138</sup> In what was the most vicious atrocity in 9 years, the LRA massacred some 300 IDPs in Barlonya camp in February 2004. Numerous other attacks, typically accompanied by massacres, rape, abductions, and looting have since followed across northern Uganda.<sup>139</sup> Four camps were attacked in May 2004 alone and 125 people killed; many women and children were clubbed to death. Others were burned alive in their huts, had their food stocks destroyed, and their children abducted.<sup>140</sup>

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<sup>133</sup> Bamaturaki Musinguzi ‘Uganda’s Camps: Children Will Curse Us’, article published in The East African Newspaper issue of 16-22/11/2003

<sup>134</sup> Deng (n 127 above) para 33.

<sup>135</sup> Interview with religious leader, Gulu 7/10/2003.p.25

<sup>136</sup> Refugee Law Project working paper (n 19 above) p 27.

<sup>137</sup> Norwegian Refugee Council ‘Uganda: Mass Displacement to Unprotected Camps’ available at <<http://www.reliefweb.org>> (accessed on 8/8/2004)

<sup>138</sup> Refugee Law Working Paper (n 106 above) 25

<sup>139</sup> Global IDP Project (n 129 above)

<sup>140</sup> Global IDP project (n 129 above)

There have also been reports of abuses against the IDPs committed directly by government troops.<sup>141</sup> Consequently, many of the displaced harbour considerable anger towards the government for having forced them out of their homes and then having been unable to protect and provide for them.<sup>142</sup> Normally only a handful of government soldiers are assigned to protect a camp hosting approximately 20,000 IDPs.<sup>143</sup> Observers note that the soldiers are normally located in the centre of the camps, thereby leaving the perimeter unsecured and the camps thus remain exposed to attacks by the LRA.<sup>144</sup>

[T]he UPDF are also being seen as incompetent in their ability to provide protection. It is claimed that the UPDF only intervened in 33 out of 456 attacks by the LRA between June and December 2002.<sup>145</sup> Such apparent negligence and incompetence, reinforced by stories of abuse against civilians, has created a climate of fear and distrust towards the UPDF. Each child abducted, each home looted, and every family member killed, is viewed by the communities as further proof that the government is not protecting them.<sup>146</sup>

An additional source of concern is the increasing number of unrecognised camps emerging throughout northern Uganda. In Gulu district alone, there are over ten camps which have not been recognised by the authorities, although IDPs were reportedly forced into these camps by the Ugandan army. The large majority of these unofficial camps do not have access to humanitarian assistance, and in case of attacks, the army and the district authorities have waived their responsibility to protect them.<sup>147</sup>

### **3.2.3.2 Children's rights**

Like in other situations of armed conflict, the children in northern Uganda continue to be the main victims of the conflict.<sup>148</sup> The LRA kidnaps children, brutalises them and sends them out to slaughter their friends and relatives. Some 28000 children have been abducted, nearly half of

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<sup>141</sup> Deng M Francis (n 126 above)

<sup>142</sup> Refugee Law Project working paper (n 18 above)

<sup>143</sup> Deng (n 127 above) para 58.

<sup>144</sup> Deng (n 126 above) para 25.

<sup>145</sup> Refugee Law Working Paper (n 19 above) 30

<sup>146</sup> Refugee Law Working Paper (n 19 above) 30

<sup>147</sup> Global IDP Project (n 129 above)

<sup>148</sup> Otto A.A James in a paper on the situation in the North presented on behalf of Civil Society Organizations to the Representative of the UN Secretary General on IDPs found on <<http://www.ligi.ubc.ca>> (accessed on 24/11/2003)

them in the two years up to may 2004.<sup>149</sup> The LRA has also been abducting children to act as child soldiers, porters or sex slaves.<sup>150</sup>

Perhaps the most shocking barometer of the perilous security conditions in the north is the phenomenon of the so-called “night commuters” numbering up to 45,000 children. In order to protect their children from abduction by the LRA, parents send them to sleep in the Gulu, Kitgum and Pader town centres every night. While in the towns, children sleep in the streets, in hospital compounds or at sites provided by humanitarian agencies.<sup>151</sup>

Regarding basic primary education, difficulties in introducing free primary education in Uganda have been compounded by the problems of displacement. Firstly few, if any, of the school infrastructures were designed to cope with the influx of 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.<sup>152</sup>

### **3.2.3.3 Women becoming victims of sexual violence**

Adolescent girls and women are regularly sexually harassed and at times sexually assaulted. Older female captives of the rebels are forced to become “wives” of senior commanders and are subjected to rape, unwanted pregnancies and the risk of sexually transmitted diseases, including HIV and Aids.<sup>153</sup> According to the Women’s Commission for Refugee Women and Children, some of the women and girls reported that some of the boys, as well as the UPDF were armed and used weapons to frighten them and coerce them into sex.<sup>154</sup>

### **3.2.3.4 Access to basic socio-economic needs**

Food stocks are scarce, water supply is severely insufficient, sanitation is very poor and the provision of health and education services is minimal. Fear of the LRA, and the forced encampment stops people from farming, the economic mainstay of livelihoods in the area, hence

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<sup>149</sup> Global IDP Project (n 129 above)

<sup>150</sup> Deng (n 126 above).

<sup>151</sup> Deng (n 126 above)

<sup>152</sup> Global IDP Project (n 129 above)

<sup>153</sup> Westcott Kathryn, ‘Sex Slavery Awaits Ugandan Schoolgirls’ (2004) BBC News online, available at <<http://news.bbc.co.uk>> (accessed on 22/10/2004)

<sup>154</sup> Women’s Commission for Refugee Women and Children ‘No Safe Place To Call Home: Child Adolescent Night Commuters in Northern Uganda’ (2004) available at <<http://www.db.idpproject.org/sites/idpproject/Db/idpsurvey.nsf>> (accessed on 15/8/2004)

making the IDPs purely dependant on aid.<sup>155</sup> The health system in most of the rural camps has collapsed, and health workers have moved to safer areas. Diseases like malaria, diarrhoea and acute respiratory infections proliferate. 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 latrines. The congestion in the camps combined with an acute shortage of latrines increases the risk of faecal contamination of ground water and ensuing cholera outbreaks. There is a latrine count of 50 persons per latrine, compared to the minimum emergency standard of 20 persons, and approximately 12,000 people share a borehole and two dilapidated protected springs.<sup>156</sup>

According to a household survey conducted from June 2002 to July 2003 by the Save the Children UK in conjunction with the prime minister's office, those considered to be well off in the camps subsist on US\$ 25-50 cents considerably below the minimum national standards of 1\$ per day, and the general camp population can not afford to make an investment of 5,000-10,000 Ug.Shs.

### **3.2.4 Judicial remedies**

The symptoms of institutional failure in Uganda include the failure to deal with human rights violations when they arise. An important consequence is that few people have confidence that the police or the courts will deliver justice. Many people take it as given that human rights violators will walk free. Some argue that this is further evidence of official disinterest at the level of the central government in solving the problems that underlie the war. Justice, they say, is neither a possibility for people in the north, nor a priority for those in high authority.<sup>157</sup>

### **3.2.5 Prospects of return**

The few reported return movements have taken place mostly in the eastern districts following improved security and rainfall. In most of the other affected districts, frequent attacks, lootings, killings, rapes and abductions make any return movements highly unlikely in the near future.<sup>158</sup> Even with increased efforts by the UPDF to defeat the rebels, villagers maintain that it is still not safe to return because the war is not over.<sup>159</sup>

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<sup>155</sup> Deng (n 127 above) 58.

<sup>156</sup> Global IDP Project (n 129 above)

<sup>157</sup> Amnesty International (n 117 above)

<sup>158</sup> Global IDP Project (n 129 above)

<sup>159</sup> BBC World Service News (26/9/2004)

### 3.3 Internal displacement in Sudan

Since the 1980s, the conflict ravaging Sudan has generated the world's largest internally displaced population. Over four million people have fled their homes to escape fighting between government troops, the Sudan People's Liberation Movement/ Army (SPLM/A) and several smaller militia groups. However while peace talks between the two main warring parties have progressed since July 2002, one of the worst crises in Africa has been unfolding in Darfur, Western Sudan.<sup>160</sup>

#### 3.3.1 Causes of displacement in Darfur

The conflict in Darfur, which has lasted for over 18 months, started in 2003 when two groups, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) rebelled against the government, saying they were not being given a fair share of the country's resources. The government then allegedly unleashed the Arab Janjaweed militia, arming them and giving them air support. The militias have since attacked and committed gross human rights violations against civilians in Darfur.<sup>161</sup> During the attacks men are killed, women are raped and villagers are forcibly displaced from their homes which are burnt, their crops and cattle, and their means of subsistence are also burnt or looted.<sup>162</sup> The killing of civilians in Darfur is to such an extent that it has been classified by many people as ethnic cleansing, where as others refer to it as genocide.<sup>163</sup>

At least one million people have become IDPs as a result of the conflict in Darfur.<sup>164</sup> Majority of the displaced live in spontaneous camps and settlements around the cities or large villages of Darfur, where they continue to be the target of attacks, killings, rapes and harassment by the Janjaweed whose presence is reported in the cities or at the periphery of the IDP camps.<sup>165</sup>

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<sup>160</sup> Global IDP Project 'Sudan: Over One Million More Displaced While Peace Talks Continue' (2004) available at <<http://www.db.idpproject.org/sites/idpsurvey>> (accessed on 15/9/2004)

<sup>161</sup> Global IDP Project (n 160 above)

<sup>162</sup> Amnesty International (n 13 above)

<sup>163</sup> Colin Powell during his testimony to the senate foreign relations committee on 9/9/2004 classified the Darfur crisis as genocide.

<sup>164</sup> Amnesty International (n 13 above)

<sup>165</sup> Amnesty International (n 13 above)

### 3.3.2 Legislative and policy framework on IDPs

At the national level, articles 20 to 34 of the Constitution of Sudan provide for several individual rights including the right to life, prohibition of torture and humiliation, freedom of movement and residence, right to enjoy one's culture, language and religion, right to earnings and property, including compensation for a taking of property, the right to raise a case of violations of one's rights before the Constitutional Court after having exhausted all executive and administrative remedies.<sup>166</sup>

At the international level, Sudan is party to several core human rights treaties, including the ICCPR, CERD, CRC, as well as the African Charter on Human and Peoples' Rights. Regarding international humanitarian law, Sudan is party to the Geneva Conventions Relating to the Protection of Civilian Persons in time of War (Fourth Geneva Convention).<sup>167</sup>

Regarding the policy framework, since 1988 the government of Sudan has developed several official IDP policy documents. In 1995 it set up the Humanitarian Aid Commission (HAC) which is responsible for managing protection and assistance to IDPs and in 2003 it also created a Ministry for Humanitarian Affairs. In 2002, the government revised its 1990 national IDP policy and committed itself to creating an IDP department within the HAC, as well as an IDP support fund.<sup>168</sup>

Neither of these initiatives however materialised, and the government's response to displaced people remains insufficient. The HAC has offered minimal assistance, and its early warning system appears to focus exclusively on natural disaster rather than man-made risk factors.<sup>169</sup>

In SPLM/A-controlled areas an IDP policy was also drafted in 2002. This was the outcome of a seminar and workshop facilitated by the UN and Brookings SAIS. Although the policy was still not endorsed as of March 2004, this was one of the first efforts to engage a non-state actor into assuming its responsibilities for protecting IDPs on the basis of international humanitarian and human rights law.

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<sup>166</sup> See articles 20, 23, 27, 28, and 34 of the Constitution of Sudan.

<sup>167</sup> Doebbler (n 76 above)

<sup>168</sup> Global IDP Project (n 160 above)

<sup>169</sup> Global IDP Project (n 160 above)

### 3.3.3 Human rights abuses against IDPs

After his visit to Darfur, Mr. Francis M Deng stated:

*I found a situation of persistent insecurity and human rights violations as the paramount concern of the displaced. While most of the displaced I spoke to expressed a desire to eventually return to their places of origin, they all strongly affirmed their unwillingness to return at this stage due to the prevailing situation of insecurity, mainly because of continued attacks by the so-called Janjaweed militia and other armed actors.*<sup>170</sup>

The IDPs are restricted in their movement by janjaweed groups who patrol outside the camps and settlements. Men do not leave the camps for fear of being killed, women who have ventured outside the camps in order to fetch the desperately needed wood, food or water, have been raped and harassed. Also some of the IDPs who spoke out against abuses during visits by foreign UN or government officials were killed by the janjaweed or arrested and held incommunicado by the government national security forces or the military intelligence. The internally displaced population is consequently being held in what amounts to virtual prisons, and is effectively being denied the right to freedom of movement.<sup>171</sup>

#### 3.3.3.1 Personal security and integrity/ physical protection

According to McNamara, there is a chronic lack of protection for Darfur's estimated 1.2 million IDPs.<sup>172</sup> The towns and villages in which most of the IDPs are currently located are under direct government control. The proximity of janjaweed military camps to villages and settlements where the displaced have gathered also renders the situation highly dangerous for the many IDPs.<sup>173</sup> The local authorities do not intervene and thereby are complicit with the janjaweed who rape and torture, kill and physically assault the displaced population. In one instance, the government of Sudan closed Kalma camp, west of Darfur to relief agencies following several security incidents. Note that the lack of international presence in the camp may have significant detrimental

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<sup>170</sup> UN Press Release 'UN Expert Says Comprehensive Settlement Needs To Address Root Causes of Displacement in Darfur and all Sudan' (August 2, 2004)

<sup>171</sup> Amnesty International (n 13 above)

<sup>172</sup> Relief web (30/8/2004) 'Darfur's Displaced Remain Traumatized and at Risk of Rape, Harassment-UN Official' available at <<http://www.reliefweb.int/w/rwb.nsf>> (accessed on 1/9/2004)

<sup>173</sup> Amnesty International (n 13 above)

implications for the protection of IDPs, as the presence of international relief workers to some extent deters abuse and attacks against civilians.<sup>174</sup>

### **3.3.3.2 Violence against women**

Violence against women is occurring in a context of systematic human rights violations against civilians in Darfur. Women have been summarily or indiscriminately killed, bombed, raped, tortured, abducted and forcibly displaced.<sup>175</sup> According to Amnesty International, rape and other forms of sexual violence are being used as a weapon of war in Darfur in order to humiliate, punish, control, inflict fear and displace women from their communities.<sup>176</sup> Francis M Deng also reported that he was particularly concerned about the many accounts and reports of persistent rape of women outside the camps, and emphasized the need to protect displaced women from gender-based violence.<sup>177</sup>

### **3.3.3.3 Children's rights**

For the children in Darfur, internal displacement threatens health, survival, education and social development. It was remarked by the experts at the IGAD conference on internal displacement that the highest malnutrition rates ever recorded were suffered by the internally displaced children in Sudan.<sup>178</sup> UNICEF also completed a child protection survey in Tawila, the report for which confirms many atrocities committed against children, including a very large number of rape cases. In one case, 41 school girls and teachers were gang raped by up to 14 men. There are also reports of massive abduction of children.<sup>179</sup>

Mortality rates in Darfur area far surpass the mark that aid agencies use to define a humanitarian crisis, which is one death per 10,000 people per day. In North Darfur, the rate is 1.4 deaths per 10,000 people per day, and in West Darfur it is 2.9. Diarrhoea is linked to 75 per cent of deaths among children under the age of five. Fever, respiratory diseases and injuries inflicted during violent attacks on villagers are other major causes of death.<sup>180</sup>

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<sup>174</sup> USAID 'Darfur- Humanitarian Emergency Fact Sheet' August 20 2004.

<sup>175</sup> Amnesty International (n 13 above)

<sup>176</sup> Amnesty International (n 13 above)

<sup>177</sup> UN Press Release (n 170 above)

<sup>178</sup> Report of the Representative of the Secretary-General on Internal Displacement on the Conference of Experts on Internal Displacement in the Inter-Governmental Authority on Development Sub-region (30/8-1/9/2003) E/CN.4/2004/77/Add.4.

<sup>179</sup> Report by the UN Darfur Task Force 11/3/2004)

<sup>180</sup> UNICEF document 'Death Rate Soars for Darfur Children' available at <<http://www.reliefweb.int/rwb.nsf>> (accessed on 30/9/2004)

#### 3.3.3.4 Access to basic necessities

According to the ICRC, lack of food, safe drinking water and basic health care are major problems faced by the displaced. People in Darfur are eating wild food, fruit seeds, grass seeds, small herbs traditionally used as supplements, but are now the only source of food available as well as grass hoppers.<sup>181</sup> The World Health Organisation (WHO) announced on August 17 that poor water and sanitation has led to more than 1000 cases of Hepatitis E/ jaundice in Darfur, an increase of nearly 400 cases since August 10.<sup>182</sup>

#### 3.3.4 Prospects of return

The Sudanese government continues to pressure IDPs to leave their makeshift camps and return to the homes they fled because of earlier attacks by the notorious janjaweed militias.<sup>183</sup> According to Deng, the displaced complained about the pressure some officials exerted upon them to return. Some IDPs were reported to have returned at one stage, but had again been displaced by attacks. The very few returnees found themselves in a very precarious and unsustainable situation, and in constant fear of attacks.<sup>184</sup> Landmines also pose a great challenge to the planning of the return process in Sudan, which is among the top ten countries worldwide most affected by mines.<sup>185</sup>

#### 3.3.5 Judicial remedies

In Darfur impunity strikingly reins for the grave abuses of not only international human rights and humanitarian law, but also the national laws of Sudan. For example article 149 of the Sudan Penal code criminalises rape, but no single member of the janjaweed or of the armed forces has been charged with committing rape.<sup>186</sup>

The courts in Sudan do not seem to be keen on human rights. In the case of *Abdelrahman Nugdallah, et al*,<sup>187</sup> seven judges Constitutional Division of the High Court of Sudan<sup>19</sup> decided that the National Security Act of 1994 takes precedence over the Constitution of 1998. The Court

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<sup>181</sup> IRIN news (30/7/2004) 'More Civilians Displaced in Continuing Attacks by Militias in Darfur' available at <<http://www.reliefweb.int/w/rwb.nsf>> (accessed on 1/9/2004)

<sup>182</sup> USAID factsheet (n 174 above)

<sup>183</sup> Relief web (30/8/2004)

<sup>184</sup> UN Press Release (n 170 above)

<sup>185</sup> Global IDP project (n 3 above) 114.

<sup>186</sup> Amnesty International (n 10 above)

<sup>187</sup> High court case no. 7/98 of 13 August 1998

argued that while the right to be free from arbitrary arrest and detention is enshrined in article 30 of the Constitution, the fact that it is expressly made subject to law allows them to apply the National Security Act as the law to which the constitutional right is subject.

The above decision effectively undermined the human rights in the Constitution and established an unfortunate precedent, which adversely affects the enforcement of the rights of IDPs.<sup>188</sup>

### **3.4 International response to the internal displacement in Sudan and Uganda**

The international response system in Sudan and Uganda is far from being adequate. It is too selective, organisations working on internal displacement are poorly coordinated, protection and human rights concerns are sorely neglected, and reintegration and development support receive insufficient attention.<sup>189</sup>

In Sudan for example, although governments around the world, together with regional organisations have condemned human rights violations in Darfur, their words have failed to translate into decisive action.<sup>190</sup> On July 30, 2004 the Security Council passed a resolution demanding that Khartoum disarms the Arab Janjaweed militia accused of committing atrocities against civilians in Darfur, or face possible political and economic sanctions. Human rights observers however pointed out that the Sudanese authorities have incorporated many of the Janjaweed militias into the regular forces, and hence making them protectors of the people they have been accused of harassing. The United States is currently pushing for a Security Council resolution to consider imposition of sanctions against Sudan, but other states are still opposed to the idea.<sup>191</sup>

#### **3.4.1 Humanitarian assistance**

Insecurity has seriously hampered humanitarian access to displaced persons.<sup>192</sup> In Sudan, the majority of newly displaced people in Darfur region were inaccessible to humanitarian organisations mainly due to the ongoing fighting in this area.<sup>193</sup> WFP continued to distribute food

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<sup>188</sup> Doebbler (n 10 above)

<sup>189</sup> Cohen and Deng (n 24 above) 159

<sup>190</sup> Amnesty International 'Sudan: Act Now to End the Human Rights Crisis in Darfur' available at <<http://www.amnesty.org/library/ENGAFR>> (accessed on 19/7/2004)

<sup>191</sup> Marc Carnegie 'US Revises UN Resolution on SUDAN, Presses for Vote' available at at <<http://www.reliefweb.int/rwb.nsf>> (accessed on 30/9/2004)

<sup>192</sup> The Global IDP Project *Internally Displaced People: A Global Survey* (2 edition) (2002) 9.

<sup>193</sup> Global IDP project (n 3 above) 13

by the road to the displaced people, but they faced problems. For example, armed people who had identified themselves as members of the SLA on several occasions looted food from WFP trucks.<sup>194</sup> In Uganda, lack of security along the roads has rendered many of the camps, especially those located far from the urban centres, almost inaccessible to the deliverers of vital food and other humanitarian assistance, except under military escort.<sup>195</sup>

The UN also reported that the government of Sudan had imposed additional bureaucratic obstacles that limit humanitarian access and relief agencies' capacity to respond to the emergency. For example the government denied access to an aircraft delivering relief supplies on the basis that the aircraft was more than 20 years old. Also an NGO already working in Darfur reported that one of its vehicles was denied customs clearance by the government of Sudan Humanitarian Aid Commission. Other NGOs reported delays in customs clearance for essential equipment.<sup>196</sup>

### **3.4.2 Regional developments in the protection of IDPs in Sudan and Uganda**

#### **3.4.2.1 The African Union (AU)**

In the case of Darfur, the Inter-Sudanese political talks on the crisis in Darfur have been going on in Abuja, Nigeria since 23/8/2004 under the auspices of the AU and with the support of the international community.<sup>197</sup>

The AU also has about 100 ceasefire monitors on the ground. There are currently 150 Rwandan troops and 150 Nigerian troops in Darfur under A.U. flag, whose job is to protect the monitors. Suggestions by the A.U. to increase the force and give it a peacekeeping mandate have on several occasions been rejected by the Sudanese government, which has said it is fully capable of dealing with the situation.<sup>198</sup>

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<sup>194</sup> International Information Programs 'UN Security council Demands Sudan Act To Protect Darfur', available at <<http://www.usinfo.state.gov>> (accessed on 10/8/2004)

<sup>195</sup> Deng (n 126 above) para 25.

<sup>196</sup> USAID Fact sheet (n 174 above)

<sup>197</sup> AU Press Release (28/8/2002), available at <<http://www.africa-union.org/DARFUR/homedar.htm>> (accessed on 24/9/2004)

<sup>198</sup> Deutsche Press Agentur article, available at <<http://www.reliefwebweb.int>> (accessed in 31/9/2004)

### 3.4.2.2 The African Commission on Human and Peoples' Rights

At its recent session in Banjul, Gambia, the Commission appointed Bahame Tom Mukirya Nyanduga of Tanzania as special rapporteur on refugees and IDPs in Africa. This is highly commendable because a regional approach to forcible displacement is critical for an effective solution to the many human rights issues involved.<sup>199</sup> Will this office enhance the protection of IDPs in Africa?

### 3.4.2.3 The Khartoum Declaration (IGAD)

In September 2003, at a conference on internal displacement in the IGAD sub-region, the IGAD ministers, representing Djibouti, Eritrea, Ethiopia, Kenya, Somalia, the Sudan and Uganda adopted the "Khartoum Declaration on Internally Displaced Persons in the IGAD Sub-Region" in which they "[took] note of the Guiding Principles on Internal Displacement as a useful tool for developing and evaluating appropriate national policies and legislation on internal displacement and noting also that the principles compile the existing international law related to internal displacement"<sup>200</sup>

## 3.5 Conclusion

From the above discussion, it is safe to conclude that the governments of Uganda and Sudan have largely failed to protect the IDPs within their territories, as the displaced continue to suffer gross human rights violations. Note however that behind statistics, concepts, and operational schemes are individual human beings, whether clustered in camps in large numbers, dispersed in the wilderness, submerged in communities of the equally needy, or otherwise hidden away from the limelight of international media attention and suffering silently in degrading isolation.<sup>201</sup> It is for this reason therefore that the international community should take immediate responsibility for the adequate protection these IDPs.

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<sup>199</sup> UNHCR press release 'Secretary-General's representatives Welcome Appointment of African Rapporteurs on Rights Defenders and Refugees and Internally Displaced' 14/6/2004.

<sup>200</sup> Deng (n 90 above) para 16.

<sup>201</sup> Deng M Francis 'Challenges in the Coming years', paper presented at the IDPs Symposium in Geneva 23-25 October 1995, published by the ICRC in 1996.

## CHAPTER FOUR: TOWARDS ADEQUATE PROTECTION OF IDPS IN SUDAN AND UGANDA: WHICH WAY FORWARD?

### 4.1 Introduction

The goal for the protection of IDPs should be an international response with an appropriate normative framework and institutional mechanism of response, one that is more predictable and comprehensive than at present, and especially one that brings together the humanitarian, political, peace keeping, human rights and development parts of the UN system.<sup>202</sup> Consequently, this chapter proposes long and short term recommendations on the way forward for the adequate protection of IDPs.

### 4.2 Adoption of a human rights based approach to the protection of IDPs

The international community usually limits its humanitarian assistance to providing food, medicine and shelter.<sup>203</sup> It is however important to emphasise that IDPs are not merely victims needing assistance, but holders of rights to whom duties are owed by both the national authorities and the international community.<sup>204</sup> This message was reinforced by the Inter-Agency Standing Committee through the adoption of a broad definition of “protection” for IDPs to encompass all activities aimed at full respect for the rights of the individual in accordance with the letter and the relevant bodies of law, that is to say international human rights law and international humanitarian law.<sup>205</sup>

In practice the organisations that dispense relief are not concerned about human rights, neither are they accountable for their policies and practices. NGOs are usually unwilling to risk being asked to leave the so-called liberated areas by calling attention to the human rights abuses that are going on all around them.<sup>206</sup> In one instance, the head of the Jesuit Refugee Service in Sudan remarked that he “he would have difficulty complaining to the commander of his area even if he knew three 14 year olds had been forcibly recruited by the SPLA.” Similar compromises are being made in Uganda by foreign humanitarian agencies, where all the organisations are clearly aware of the wide scale atrocities that are being committed against the

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<sup>202</sup> Deng (n 21 above)

<sup>203</sup> Cohen Roberta ‘The Role of Protection in Ending Displacement’ (2003) FMR 17.

<sup>204</sup> The OCHA Manual on Field Practice in International Displacement’, in O’Neil William G ‘A New Challenge for Peacekeepers: The Internally Displaced’ (2004)

<sup>205</sup> OCHA IASC policy paper series No. 2, ‘Protection of Internally Displaced Persons’ (2000) 4.

<sup>206</sup> Lomo (n 111 above)

population by government forces, but none of them has ever taken the Ugandan government to task for the violations it is allowing to be committed by its military.<sup>207</sup>

It is recommended therefore that the response to the IDP problem be extended beyond provision of basic necessities, to include actual physical protection and advocacy for respect for human rights. Human rights organisations must also expand their traditional role of monitoring, reporting, and advocacy through various practical measures in the field if they are to provide more protection on the ground.<sup>208</sup>

Viable recommendations in this regard include both long and short term measures. For long term measures this study emphasises protection of IDPs through a legally binding international instrument, assigning principle responsibility for IDPs to an existing UN agency and strengthening the civil society.

In the short run, the study proposes allowing IDPs to exercise the option to seek asylum outside their country of origin, conflict resolution (cease fire), adequate funding for NGOs dealing with IDPs, and deployment of peace keeping forces.

#### **4.2.1 Adoption of a legally binding international instrument on IDPs**

The purpose of developing a normative framework for the IDPs is to reinforce and strengthen existing protections. By restating rights in one coherent document, it becomes possible to consolidate those that otherwise would be too dispersed and diffuse to be adequate or effective. Restatement would also ensure that real gaps and grey areas in the law are addressed.<sup>209</sup> Referring to legally binding obligations also strengthens advocacy on behalf of IDPs towards the authorities, and empowers them, rather than designating them as a group receiving charitable aid.<sup>210</sup>

Notably, specific legally binding international instruments have enhanced the protection of other disadvantaged groups like the refugees, women and children, and have set standards for national legislations. International refugee law has set standards for the definition of refugees, for even countries that carry out their refugee status determination have adopted the 1951

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<sup>207</sup> Lomo (n 111 above)

<sup>208</sup> Cohen and Deng (n 24 above) 265.

<sup>209</sup> Cohen and Deng (n 24 above) 75.

<sup>210</sup> Helle (n 14 above)

Convention definition of a refugee.<sup>211</sup> Regarding children, the Convention on the rights of the child has set standards for national legislation, and has enhanced the protection of children's rights in many countries. In Uganda for example, the Constitution now recognises a child to be a person below the age of 18 years. The concept of best interests of the child found under the Children's statute in Uganda was also based on the CRC and The African Charter on the Rights and Welfare of the Child.<sup>212</sup>

As noted earlier, international human rights law does not generally bind non-state-actors, and there is therefore a need to create mechanisms through which non-state actors can be made accountable for their actions.

#### **4.2.1.1 Proposed form for the Convention on internal displacement**

The Convention should take the form of a treaty that is ratified by states and places specific direct obligations on states with regard to human rights. First and foremost, the Convention should contain a definition of IDPs. Failure in the protection of IDPs is partly due to the lack of a binding definition of an IDP.

The Convention should also incorporate the provisions of the UN Guiding Principles on Internal Displacement, and give them legally binding force. As seen in chapter two, the Principles are comprehensive, covering protection from displacement, protection during displacement, principles relating to humanitarian assistance and issues covering return, resettlement and reintegration. Consequently, legalising the provisions in the principles is a necessary step towards the protection of IDPs.

Significantly, the Convention should increase accountability of states and create accountability for non-state actors for human rights abuses against IDPs. States parties should undertake to adopt domestic legislation in line with the international Convention, and develop appropriate policies for the protection of the IDPs.

The concept of state sovereignty should be relaxed to allow for international intervention when need arises. International assistance could range from the provision of technical assistance and advisory services to relevant authorities, training and education for law enforcement officials and

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<sup>211</sup> The qualifications for refugee status under s.3 of the South African Refugees Act No. 130 of 1998 combines qualifications from both the OAU Convention on Refugees and the 1951 UN Convention on Refugees.

<sup>212</sup> See the 1996 Children's Statute of Uganda for details on the best interests principle.

civil society, through monitoring of the situation of the affected population, advocacy and lobbying on their behalf, right up to the deployment of peace-keeping troops.

While there seems to be a right to humanitarian assistance, the establishment of what might be called a right to humanitarian protection has not yet emerged to justify action in all situations.<sup>213</sup> The Security Council has implicitly recognised in several situations a duty on the part of certain states to accept international assistance by insisting that they allow immediate and unimpeded access by humanitarian organisations to the IDPs and other populations in need, but this has been in exceptional situations when it determines that there is a threat to international peace and security.<sup>214</sup> It is recommended therefore that the Convention contains an express recognition of the duty of states to accept humanitarian assistance.

Furthermore, the task of implementation of such a treaty should be provided for by the treaty itself, for example through establishment of a Committee to monitor its implementation.

#### **4.2.2 Assign principle responsibility to one operational agency for all situations of internal displacement**

Fundamental to the understanding of protection is the recognition that no humanitarian or human rights agency can protect all IDPs on its own. Consequently, agencies need to cooperate in protection work and have a sense of which is best placed to act in a particular moment and on a particular issue.<sup>215</sup>

While acknowledging the above fact, it is submitted that designating one operational agency as a focal point for the internally displaced will help direct more attention and care towards this group. According to case studies, it was found that when one agency is assigned principle responsibility for the internally displaced, as in Taji Kistan and the former Yugoslavia, greater attention is paid to their needs. However in cases where no one agency is so designated, as in Burundi, Liberia and Rwanda, the IDPs fail to receive adequate attention.<sup>216</sup>

Consequently, I propose that the UNDP is assigned principle responsibility for internal displacement because of the following reasons:

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<sup>213</sup> Cohen Roberta 'Masses in Flight: People Under Assault in Their Own Countries' Inaugural Lecture at the University of Missouri, January 16 2001.

<sup>214</sup> Cohen and Deng (n 24 above) 277.

<sup>215</sup> IASC document 'Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams (September 2004)

<sup>216</sup> Cohen and Deng (n 24 above) 172.

First of all, the UNDP has the mandate and a comprehensive policy on stronger and effective collaboration with civil society organisations.<sup>217</sup> One of the essential recommendations in this study is greater reliance on civil society organisations for the protection of IDPs. I therefore hold the view that a UN agency with the mandate to strengthen civil society is better placed to serve as a lead agency.

Secondly, UNDP is a development agency, and is more equipped to take care of the needs of the IDPs. The agency has already been involved in the response to IDP situations, and is well established in both countries. In Uganda, for example, UNDP has been actively responding to the conflict situation, and through its Bureau for Crisis Prevention and Recovery (BCPR), it is bound to reinforce its crisis prevention and recovery (CPR) capacity, strengthen national response and scale up the presence in the in the north of the country.<sup>218</sup> It has a number of pipeline projects such as those aimed at improving food security and the ongoing programme on private sector development, which have great potential to substantially assist in the development of sustainable livelihoods and an improved environment in the IDP camps and in the areas to which IDPs would eventually return.<sup>219</sup>

#### **4.2.3 Greater reliance on civil society organisations (CSOs)**

CSOs can play an important role by putting pressure on governments, promoting education and training, and providing information on violations. The modes they can employ include denunciation of violations of human rights, persuasion of governments to change their policies, and substitution, by acting where governments are unwilling or unable to do so. NGOs can also provide legal aid services, and carry out public interest litigation on behalf of the IDPs.

At the moment assistance to the IDPs is almost exclusively under the control of foreign organisations, which are not concerned about human rights.<sup>220</sup> Efforts should therefore be geared towards strengthening national NGOs to uphold the rights of the IDPs.

Donor agencies should commit themselves to funding functional NGOs. For example in Uganda, the few human rights organisations working with IDPs are constrained because of lack of

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<sup>217</sup> UNDP Policy on Collaboration with Civil Society, 'Building Partnerships for Sustainable Development' available at <<http://www.undp.org/bcpr/pubinfo/news/uganda-article.htm>> (accessed on 5/10/2004)

<sup>218</sup> Ashraf-EI Nour 'BCPR Launches Effort to Support Internally Displaced Persons (IDP) in Uganda' <available at <http://www.undp.org/bcpr/pubinfo/news/uganda-article.htm>> (accessed on 5/10/2004)

<sup>219</sup> Ashraf-EI Nour (n 218 above)

<sup>220</sup> Lomo (n 111 above)

funding. In the Sudan, attempts to stabilise the humanitarian situation of millions of uprooted Sudanese and lay the foundations for recovery are seriously hindered by inadequate and untimely funding.<sup>221</sup>

#### **4.2.4 IDPs should be allowed to exercise the option to seek asylum outside the country**

The reality is that many IDPs do not have access to a border, or as is the case in northern Uganda, a safe border over which they could find refuge. Others have been discouraged from seeking safety across a border or have returned to their country of origin because of the conditions imposed on them in refugee camps. Others try to “hang on” at home, depending on the relief programmes made available by agencies that have an ideological commitment to supporting the continuing war.<sup>222</sup>

Note also that creating the unwarranted expectation that IDPs will be protected in safe areas not only jeopardises their security but their ability to seek asylum in foreign countries.<sup>223</sup> This has for example been the case in Uganda where the government has created “protected villages”, and lured the IDPs to stay in the camps for “security purposes”.

Governments and insurgent groups should therefore create safe borders to allow for the free outflow of displaced persons who want to seek asylum outside the country.

### **4.3 Protection at national level**

By advocating for adequate international human rights protection, this study does not suggest that states should ignore their responsibilities towards IDPs. On the contrary, the study advocates for enhancing the accountability of states through international mechanisms, as well as stronger complementarities between states and the international community in IDP protection.

#### **4.3.1 Conflict resolution**

The most important factor in IDP protection remains the restoration of peace and security. In Uganda, efforts must continue to find ways to overcome the disinterest in negotiations by the government and, in particular, the LRA, and engage both sides in a peace process that would

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<sup>221</sup> Global IDP project (n 160 above)

<sup>222</sup> Lomo (n 111 above)

<sup>223</sup> Cohen and Deng (n 24 above) 287.

create the necessary conditions for the effective protection and subsequent return of Uganda's displaced population.<sup>224</sup>

In Darfur, the most important and urgent appeal is for an immediate cease fire. The Government of Sudan should commit to the disarmament and control of the janjaweed militia and ensure that the targeting of civilians ceases immediately. Government should also ensure that all humanitarian personnel have full and unimpeded access to all areas of Darfur.

#### **4.3.2 Avoid prolonged stay in camps**

Apart from the question of sheer survival, the longer-term implications of living in IDP camps are of serious concern. Extended stays there have broken down community livelihoods and eroded traditional practices thereby undermining the authority of village social structure. Whereas prior to their displacement the IDPs lived self-sufficiently in their homes, the reliance on food aid is starting to create an attitude of dependency.<sup>225</sup>

Instead of keeping the displaced people in the camps, a parallel strategy of creating employment and income earning opportunities within and near the camps must be speedily initiated, even while food hand outs continue. In Uganda the emergency phase has been long and protracted, and this should not be used to delay development-oriented initiatives, such as training and livelihood support programmes, which would assist during the emergency, and, simultaneously, significantly contribute to the success of return, reintegration and recovery activities.

#### **4.4 International responsibility for the protection of IDPs**

Although the primary responsibility for ensuring the protection of human rights in Sudan and Uganda lies upon the governments, every government in the international community has a right to express concern about violations of human rights of any government anywhere in the world and to take lawful action to end such violations. This legal statement was given substantial support by the International Court of Justice in paragraph 33 of its opinion in the *Barcelona Traction, Light and Power Case (Belgium v. Spain)*,<sup>226</sup> where court stated that where the rights at stake are essential to the international community as a whole, "all States can be held to have a legal interest in their protection; they are obligations *erga omnes*." Such an interest may not be

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<sup>224</sup> The Global IDP Project (n 128 above)

<sup>225</sup> Ashraf El Nour (n 218 above)

<sup>226</sup> I.C.J.Reports 3 (1970)

accompanied by the jurisdiction of a particular forum, but it certainly entails the right of a state to publicly criticize another state, to begin a legal procedure where jurisdiction exists, and to take lawful retorsions against the violating state.

The obligation of the United Nations agencies and bodies is to promote and encourage universal respect for, and observance of respect for human rights. This obligation is unequivocally established in the UN Charter in articles 1 and 55. Article 55 makes the obligation of contributing to development and the promotion of human rights explicit for the UN. This article echoes the obligation already stated in article 1(3) of the Charter, which states that the organization has a specific obligation to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms without distinction as to race, sex, language, or religion.

Although the above obligation remains somewhat vague, it clearly imposes an obligation on the UN to take some sort of action to protect human rights.<sup>227</sup>

#### **4.4.1 Deployment of peacekeeping forces**

Deployment of peacekeeping forces in the conflict areas like Darfur is a useful step towards the protection of IDPs, as it may reduce human rights violations like killings, rape, abductions and torture, inhuman and degrading treatment or punishment.

More and more international military forces and civilian police are being given specific responsibilities for the protection of IDPs and as a result have developed “best practices” in dealing with IDPs.<sup>228</sup> In the past, the problem with peacekeeping has been that UN peacekeeping forces have been placed in situations with ongoing conflict but have not always been given the requisite resources, training and mandates needed to provide adequate protection.<sup>229</sup>

UN member states must therefore accelerate troop deployment to peace operations and the UN must simplify its procedures for procurement, logistics, financial and personnel to all troops to arrive much sooner in the peacekeeping theatre. The slow arrival of UN peacekeepers in Liberia and DRC for example heightened the dangers for IDPs.<sup>230</sup>

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<sup>227</sup> Doebbler (n 76 above).

<sup>228</sup> O’ Neil G William ‘A New Challenge for Peacekeepers: The Internally Displaced’ (2004) available at <<http://www.brookings.edu/fp/projects/idp>> (accessed on 30/8/2004)

<sup>229</sup> Cohen and Deng (n 24 above) 280.

<sup>230</sup> O’ Neil (n 228 above).

In Darfur, the government of Sudan should allow for a bigger AU peacekeeping force to protect the civilians. As Jan Pronk stated, “We need many thousands of African Union troops with a broad mandate, quick deployment, big numbers.”<sup>231</sup>

#### **4.4.2 Regional efforts**

The AU should take stronger proactive measures to prevent and intervene in conflicts across the continent. By taking constructive steps to ensure protection for civilians, the AU can play a key role in stemming conflicts in the region. The AU should for example push the Sudan government to allow for a bigger peacekeeping force.<sup>232</sup>

#### **4.5 Conclusion**

None of the above recommendations is a panacea to the protection of IDPs. The approach to the protection of IDPs should therefore be a multi-faceted one, involving both governments and the international community. There is need for immediate restoration of peace and security in Sudan and Uganda, and international assistance should be expanded to include physical protection and ensuring respect for human rights.

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<sup>231</sup> Somini Sengupta, 'UN Envoy Urges More African Peacekeepers in Sudan' *New York Times* (September 27, 2004), available at <<http://www.globalpolicy.org/security/peacekeeping>> (accessed on 15/10/2004).

<sup>232</sup> Peter Takirambudde 'African Union: Stem Conflicts by Ensuring Rights Protection' (July 2004) available at <<http://www.hrw.org>> (accessed on 10/8/2004)

## **CHAPTER FIVE: GENERAL CONCLUSIONS**

### **5.1 Introduction**

After an exploration of the law, theory and practice on the protection of IDPs in Uganda and Sudan, several conclusions emerge:

### **5.2 Internal displacement remains a challenge**

Internal displacement remains a crisis in 2004 and the response to it at both the national and international levels is inadequate, despite many years of international focus on the issue. The challenge to affected states and the international community is to combat both pessimism and complacency. Pessimism in the face of the daunting size of the crisis and the logistical, political, legal, bureaucratic and conceptual problems associated with it, and complacency in the face of the progress the international community has made in responding to the crisis.<sup>233</sup>

### **5.3 Internal displacement is inextricably linked with human rights abuses**

There is an inextricable link between human rights abuses and displacement, as IDPs face human rights abuses at all levels of displacement. Conflict, violence and fear of persecution lead to the initial flight from home areas. Movement in search of safety further exposes displaced persons to human rights abuses such as violence by armed factions and exploitation by officials.<sup>234</sup> Internal displacement is particularly tragic because of the physical, social and psychological dangers and indignities to which it exposes people. Whether the victims are forced into camps, choose to hide away in uncharted territory or merge into communities, internal displacement nearly always has a devastating effect on families, cultures, jobs, education, and security. In addition, it denies innocent people access to food, shelter and medicine and exposes them to all manner of violence.<sup>235</sup>

### **5.4 Internal displacement in northern Uganda**

With a GDP growth of more than 8% over the past three years, Uganda represents a “success story” in the minds of the world’s economic leaders and a glimpse of hope for other African

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<sup>233</sup> Deng (n 90 above) para 4.

<sup>234</sup> Refugees International ‘Human Rights and Displacement’ (2003), available at <<http://www.refintl.org/content/article/detail>> (accessed on 12/5/2004)

<sup>235</sup> Kofi Annan, in foreword to Cohen and Deng (n 24 above)

nations. However, this picture is in marked contrast to the realities in the Acholi region in the north of the country, where a violent conflict that shows little signs of abating has continued for 17 years. The situation has deteriorated over the last eighteen months, leading more people to flee their homes seeking refuge in other parts of the country. The number of IDPs has tripled since 2002 to an estimated 1.6 million people, making Uganda the country with the third largest displaced population in Africa, after Sudan, and the Democratic Republic of Congo.<sup>236</sup>

### **5.5 Internal displacement in the Darfur region of Sudan**

Since the rebels took up arms in Darfur in 2003, over one million people have fled systematic killings, the burning of villages and other human rights violations. Despite a short lived ceasefire in 2003 between the rebels and the government, counter-insurgency attacks, mainly by government-backed militias have continued unabated. Due to the ongoing fighting and restrictions by the authorities on humanitarian access to the region, majority of IDPs have not received any assistance.<sup>237</sup>

### **5.6 State sovereignty**

The principle of state sovereignty is still the cornerstone of international relations, despite significant modifications over the years in its application.<sup>238</sup> Therefore providing protection, assistance and development aid to IDPs requires a new framework for dealing with issues of sovereignty. Specifically, a more equitable balance is needed between the principle of non-intervention in internal affairs and the equally compelling obligation to provide humanitarian assistance.<sup>239</sup> While states should remain the primary protectors of IDPs, sovereignty can not be used as a justification for the mistreatment of populations. To be meaningful, sovereignty must include accountability not only to the domestic constituency, but also to the international community.<sup>240</sup>

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<sup>236</sup> Ashraf-El Nour (n 218 above)  
<sup>237</sup> Global IDP Project (n 160 above)  
<sup>238</sup> Deng (n 90 above) para 23.  
<sup>239</sup> Cohen and Deng (n 24 above) 275.  
<sup>240</sup> Cohen and Deng (n 24 above) 276.

## 5.7 International response

Internal displacement poses a challenge to the international community to develop norms, institutions and operational strategies for preventing such dislocation, addressing its consequences and finding durable solutions.<sup>241</sup>

*The overriding strategy in the international response must be to seek solutions that promote respect for human rights and democratic participation, combined with programs that guarantee economic access and opportunity for the displaced and other affected populations. Humanitarian assistance alone cannot be expected to stabilise dangerous situations or end violations of humanitarian and human rights standards and the internal conflicts they engender.*<sup>242</sup>

## 5.8 Durable solutions

When displacement is engendered by conflict as the case is in Uganda and Sudan, safe and viable returns or settlement can only be achieved through the restoration of peace accompanied by rehabilitation and development programs. Such solutions are costly and time consuming, but without them, there is little or no chance that the underlying causes of the conflict will be addressed, that displacement will be resolved, and that reconciliation, reconstruction and development will follow.<sup>243</sup>

In the case of Sudan, the conflicts that the country has been going through for decades signify a nation in painful search of itself and striving to be free from any discrimination due to race, ethnicity, religion or culture in any region. In view of this pervasive challenge, the country is called upon to transform itself and forge a new common and inclusive framework of national identity in which all Sudanese would find a sense of belonging as citizens with equality and dignity of citizenship. Resisting this unfolding reality would be imprudent, unsustainable and self-defeating. It is time for a genuine national dialogue toward a comprehensive peace, security and stability.<sup>244</sup>

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<sup>241</sup> Armacost H Micheal in Foreword to Cohen and Deng (n 24 above)

<sup>242</sup> Cohen and Deng (n 24 above) 284.

<sup>243</sup> Cohen and Deng (n 24 above) 284.

<sup>244</sup> UN Press Release (n 170 above)

## 5.9 Ending Displacement

Ending displacement will require greater international commitment to integrating human rights and protection concerns into return processes and to making sure that the organisations on the ground have the expertise, training and resources to carry out such activities. It will also require a commitment to providing longer-term support for the restoration of civil society, administrative systems, judicial institutions that can resolve property and land disputes, and the due process procedures to safeguard human rights.<sup>245</sup>

17,989 words (including footnotes, but excluding table of contents and bibliography).

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<sup>245</sup> Cohen (n 203 above)

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