

**'HUMAN RIGHTS IMPLEMENTATION AND COMPLIANCE: PROSPECTS FOR REALISING THE AU
CONVENTION ON INTERNALLY DISPLACED PERSONS IN UGANDA'**

**Submitted in partial fulfillment of the requirements of the degree LLM
(Human Rights and Democratisation in Africa)**

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DECLARATION

I, NICOLA WHITTAKER, declare that the work presented in this dissertation is original. It has not been presented to any other University or academic institution. Where the work of other people has been used or quoted, references are provided. This dissertation is presented in partial fulfillment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

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DEDICATION

To all who strive to ensure that human rights protections are realised in the lives of those who need them most.

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LIST OF ABBREVIATIONS

African Charter	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
APRM	African Peer Review Mechanism
AU	African Union
CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CRC	Convention on the Rights of the Child
DDMC	District Disaster-Preparedness Management Committee
DRC	Democratic Republic of Congo
GoU	Government of Uganda
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IDP convention	AU convention for the protection and assistance of internally displaced persons in Africa
IMTC	Inter-ministerial technical committee
JLOS	Justice Law and Order Sector
LRA	Lord's Resistance Army
MP	Member of Parliament
National Policy	Uganda's National Policy for Internally Displaced Persons (2004)
OAU	Organization of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs

PRDP	Uganda's Peace, Recovery and Development Program (2007)
UNHCR	United Nations High Commissioner for Refugees
UGX	Ugandan shillings
UPDF	Uganda Peoples' Defense Forces
US	United States of America
USAID	United States Aid

CHAPTER ONE

INTRODUCTION

1.1 Introduction

This research is inspired by Uganda's ratification of the AU Convention for the protection and assistance of internally displaced persons in Africa (the IDP Convention/the Convention), in addition to several other human rights conventions that it has ratified. The ratification of the IDP convention comes at a time when the African Commission has expressed its concern regarding Uganda's failure to fully implement its National Policy on IDPs.¹ It also comes at a time when Uganda has failed to fulfill its reporting obligations and has not domesticated some human rights conventions.² Where it has domesticated human rights conventions, compliance is a problem.³

This dissertation uncovers Uganda's prospects of realising the IDP Convention so as to prevent it from becoming another ghost instrument in Uganda. Harold Koh's transnational legal process theory of compliance as well as Uganda's practice in IDP protection is used to analyse Uganda's prospects of implementing and complying with the IDP Convention.

¹ See the African Commission's concluding observations on the 3rd Periodic Report of the Republic of Uganda at the 45th Session of the Commission (May 2009) http://www.achpr.org/english/other/Con_Observations/Uganda_3rd_rpt.pdf (accessed 6 October 2010).

² Uganda has not as yet submitted a periodic report to the ICESCR Committee regarding its implementation of the ICESCR as it is required to do so. See D M Chirwa 'An overview of the impact of the International Covenant on Economic, Social and Cultural Rights in Africa' http://www.communitylawcentre.org.za/clc-projects/socio-economic-rights/research/socio-economic-rights-international-and-comparative-law/socio-economic-rights-international-and-comparative-law-1/Socio-economic_rights_in_Africa.pdf (accessed 2 September 2010) at 11 and see The African Peer Review Mechanism: Republic of Uganda, APRM Country Review Report No. 7 January 2009 at 281 and 285 respectively.

³ I Mwanza 'How nations misbehave: compliance with human rights treaties in commonwealth Africa' (27 August 2003) 3 http://www.allacademic.com/meta/p62693_index.html (accessed 20 August 2010).

1.2 Background

Africa is home to more than 40% of the world's population of internally displaced persons (IDPs).⁴ IDPs, according to the Guiding Principles on Internal Displacement⁵, are persons or groups of persons who have been forced to leave their homes or places of habitual residence as a result of – or in order to avoid the effects of – armed conflict, situations of generalized violence, violations of human rights, natural disasters or human-made disasters, and who have not crossed an internationally recognised state border.⁶

In 1987 the Lord's Resistance Army (LRA) led by Joseph Kony began an insurgency against the Ugandan government. Following this and until 1996, people in Acholi in the North of the country fled their villages due to LRA attacks. The large-scale displacement that occurred, however, was in 1996 when the government forced civilians to move into protected villages as part of its 'protective villages' policy. Displacement then occurred again in both 2002 and 2004 when the army ordered all civilians who had remained in villages to move to government camps. These were called 'Operation Iron Fist' and 'Operation Iron Fist II'. IDP camps were repeatedly attacked by the LRA and although the army was deployed to protect the camps, the safety of IDPs was not secured.⁷

At the end of 2005, 1.8 million people in Uganda were living in IDP camps.⁸ In 2006, the Ugandan government declared that IDPs were free to move out of IDP camps. However, return has not been

⁴ Internal Displacement Monitoring Centre & the Norwegian Refugee Council 'Internal displacement: global overview of trends and developments in 2009' (May 2010) [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/8980F134C9CF4373C1257725006167DA/\\$file/Global_Overview_2009.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8980F134C9CF4373C1257725006167DA/$file/Global_Overview_2009.pdf) (accessed 3 August 2010).

⁵ UN OCHA The Guiding Principle on Internal Displacement (1998) <http://www.idpguidingprinciples.org> (accessed 3 August 2010).

⁶ See Guiding Principle 2 of Guiding Principles on Internal Displacement <http://www.idpguidingprinciples.org> (accessed 3 August 2010).

⁷ Uganda: returns outpace recovery planning (19 August 2009) [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C0C5A39A27DD6449C1257617004AA724/\\$file/Uganda_Overview_Aug09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C0C5A39A27DD6449C1257617004AA724/$file/Uganda_Overview_Aug09.pdf) (accessed 2 August 2010).

⁸ As above.

without its problems which include the lack of services in areas to which IDPs return, as well as difficulties in accessing return sites.⁹

In 2009, improved security in the north of the country resulted in the return of an estimated 1.4 million IDPs to their homes, including the return of 400 000 IDPs from camps in the Acholi, Lango and Teso regions of the country. In the Karamoja region, however, continued displacement occurred in 2009 where illegally armed Karimojong attacked villages and raided cattle. This resulted in a number of women and children fleeing the area in search of safety.¹⁰

The primary responsibility for protecting IDPs lies with the state.¹¹ In line with its responsibility, Uganda's 2004 National Policy for Internally Displaced Persons (National Policy) aims at addressing the needs of IDPs by providing humanitarian assistance and through overseeing their return, resettlement and reintegration. In 2007, the government also adopted the Peace, Recovery and Development Plan for Northern Uganda (PRDP). Earlier this year, it signed and ratified the IDP Convention.¹²

Before the IDP Convention, there was no international convention that addressed the specific needs of persons who had been displaced within the borders of a country. The 1951 UN Convention relating to the status of refugees and the 1979 OAU Convention governing the specific aspects of refugee problems in Africa only cater for the needs of persons who cross national borders. This gap in the protection of IDPs has now potentially been filled by the IDP Convention. The Convention requires 15 ratifications to come into force.¹³ It obliges governments to recognise that IDPs have specific vulnerabilities and needs. It identifies all causes of internal displacement, including displacement caused by conflict and natural disasters.

⁹ UNHCR 'A time between: moving on from internal displacement in Northern Uganda' (2010) 7 <http://www.unhcr.org/4baa0fd86.html> (accessed 5 September 2010).

¹⁰ n 7 above.

¹¹ Guiding Principle 3 provides that 'national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction'.

¹² n 7 above, 43.

¹³ See Article 17 of the IDP Convention.

The key challenge that now faces African governments following adoption of the IDP Convention is how to implement the Convention at national level.¹⁴ Amongst other things, the Convention requires: that state parties incorporate their obligations under the Convention into domestic law by enacting national legislation; that where necessary an authority be designated to co-ordinate the activities of IDPs; that appropriate strategies and policies on IDPs be adopted; and that early warning systems in areas of potential displacement be devised.

Thus, despite the positive step taken by Uganda in being the first country to sign and ratify the IDP Convention, what remains of concern is how to realise the commitments enshrined in the Convention at national level.

1.3 Problem statement:

'In short, enforcement is a glaring problem for the human rights regime.'¹⁵

Uganda has ratified several international and regional human rights instruments. However, it has failed in some instances to implement and comply with its obligations in terms of these instruments.¹⁶ This raises questions about the prospects of realising the IDP Convention. This challenge of implementation was expressed¹⁷ regarding the Guiding Principles on Internal Displacement which have had a significant impact on the willingness of governments to develop new laws and policies on internal displacement. The passing of legislation and the developing of policies however does not necessarily result in implementation, and serious gaps in implementation remain.¹⁸ No empirical study has documented whether laws and policies themselves improve protection for IDPs.¹⁹

¹⁴ P Kamungi 'Beyond good intentions: implementing the Kampala Convention'
<http://www.fmreview.org/textOnlyContent/FMR/34/Kamungi.doc> (accessed 3 July 2010).

¹⁵ DW Hill 'Estimating the Effects of Human Rights Treaties on State Behavior' (2010) Forthcoming in the *Journal of Politics* 4
https://myweb.fsu.edu/dwho6c/documents/Hill_JOP_Final.pdf (accessed 1 September 2010).

¹⁶ n 2 above.

¹⁷ S Collinson, et al 'Realising protection: the uncertain benefits of civilian, refugee and IDP status'
[http://www.reliefweb.int/rw/lib.nsf/db900sid/DKAN-7XYLQA/\\$file/ODI_HPG_28.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/DKAN-7XYLQA/$file/ODI_HPG_28.pdf?openelement) (accessed 20 September 2010).

¹⁸ Collinson et al (n 17 above).

¹⁹ Collinson et al (n 17 above).

The AU has engaged with internal displacement in conventions such as the African Charter on the Rights and Welfare of the Child and the Protocol on the Rights of Women in Africa.²⁰ However these engagements have had little impact, which according to Abebe²¹ indicates that ‘the problem of the African regional response to internal displacement is not a mere absence of binding legal instruments.’ Prior to IDP Convention, Abebe²² warned that because the problem of IDP protection cannot be associated entirely with the absence of a regional legal framework, a balance between standard setting and creating a favourable environment for the implementation of new standards needs to be struck.

Thus this study looks at practice in IDP protection in Uganda and theories of compliance in order to comment on Uganda’s prospects of realising the IDP Convention. This will inform relevant role players and it is hoped that this will help to prevent the IDP Convention from becoming a convention without impact.

1.4 Objectives:

This research explores the prospects of Uganda implementing and complying with the IDP Convention. The specific objectives are to:

1. Examine what influences state compliance with human rights instruments;
2. Analyse Uganda’s practice in the protection of IDPs; and
3. Determine Uganda’s prospects of implementing and complying with the IDP Convention.

1.5 Research questions:

This study poses and answers the following questions:

1. What influences a state to comply with international or regional human rights conventions at national level?
2. What is the practice in Uganda as regards IDP protection?

²⁰ A M Abebe ‘Legal and institutional dimensions of protecting IDPs in Africa’ (June 2009) 22 *Journal of Refugee Studies* 156 – 176.

²¹ Abebe (n 20 above).

²² Abebe (n 20 above).

3. What are Uganda's prospects of implementing and complying with the IDP convention?

1.6 Significance/contribution of study:

Much has been written on the importance of states becoming parties to regional and international instruments. This study aims to emphasise the fact that states' obligations do not stop there. Without implementation and compliance, ratification of human rights instruments is but a symbolic act. It aims to identify what influences a state's observance of regional and international human rights obligations as well as analyses Uganda's practice in protecting IDPs. This will steer the government and other role players in the right direction as to how to give practical effect to the IDP Convention.

1.7 Methodology:

The study requires desk research which involves library and internet research. An analytical approach is adopted for the section that looks at Uganda's prospects of implementing and complying with the IDP Convention in light of Uganda's practice in protecting IDPs and based on the transnational legal process theory of compliance.

1.8 Terminology:

Two related but distinct terms are used in this dissertation. The one is 'implementation' and the other is 'compliance'. The author examines the prospects of realising – that is both implementing and complying with – the IDP Convention in Uganda. The author adopts Raustiala and Slaughter's²³ distinction between and understanding of the two terms. According to them, 'implementation' is understood as 'the process of putting international commitments into practice: the passage of legislation, creation of institutions and enforcement of rules'. 'Compliance', on the other hand, is seen as referring to 'a state of conformity or identity between an actor's behavior and a specified rule'. Raustiala and Slaughter view implementation as a typically critical step in compliance, although do not see it as conceptually necessary or a sufficient condition for compliance.

²³ K Raustiala & A M Slaughter 'International law, international relations and compliance' in W Carlnaes, T Rissen & B Simmons (eds) *Handbook of international relations* (2008) 539.

Uganda's practice in implementing IDP protections, such as enforcing existing policies, is used to analyse its prospects of implementing the IDP Convention. Koh's transnational legal process theory of compliance is used to examine the prospects of Uganda complying with the Convention.

1.9 Literature review:

Writings on why states do or do not comply with human rights treaties based on various international relations and international law theories generally examine human rights treaties that are already in force and seek to understand compliance or lack of compliance.²⁴ There appear to be very few studies that comment on the prospects of compliance as a means of informing role players as to what can be done to ensure future compliance. Most studies are descriptive and not prescriptive in nature.²⁵ In addition, there appears to be no study that uses theories of compliance to examine IDP protections in treaties. This is most likely due to the lack of an international convention on IDPs prior to the IDP Convention. The majority of studies either employ empirical methods to examine core UN human rights treaties such as the CERD; the ICESCR; the ICCPR; the CEDAW and the CAT²⁶ or they draw on theories of compliance to examine environmental, arms control or war treaties.²⁷

²⁴ See generally O Hathaway 'Do human rights treaties make a difference?' (June 2002) 8 *The Yale Law Journal* and B Simmons 'Treaty compliance and violation' *Annual Review of Political Science* (2010) 13; there are however some studies that look at conventions that are not yet in force and what needs to be done in a state in order to implement the convention. But this is typically done in the absence of looking too at compliance theory and what needs to be done post implementation to ensure compliance. See for example H Onoria 'Legislative and policy measures in Uganda vis-à-vis practical challenges of compliance with AU anti-corruption convention' (2005) <http://www.apnacafrica.org/docs/Anti-Corruption%20Legislative%20and%20Policy%20Measures%20in%20Compliance%20with%20the%20AU%20Convention.pdf> (accessed 1 October 2010) which examines existing policies and legislation in Uganda and what is required in order to implement the AU anti-corruption convention.

²⁵ n 3 above.

²⁶ See for example C Heyns & F Viljoen 'The impact of the United Nations human rights treaties on the domestic level' (2001) 23 *No 3 Human Rights Quarterly* 483 – 535 who investigate the impact of six UN human rights treaties on human rights practices in 20 different countries and see also Cho S 'International Human Rights Treaty to Change Social Patterns - The Convention on the Elimination of All Forms of Discrimination against Women (2009) http://www.allacademic.com/meta/p_mla_apa_research_citation/4/1/6/0/4/p416042_index.html (accessed 10 September 2010) which analyses empirically whether ratification of CEDAW affects women's rights in a country.

²⁷ See WC Bradford 'International legal compliance: an annotated bibliography' (2004) http://papers.ssrn.com/so13/papers.cfm?abstract_id=577104 (accessed 6 August 2010) where Bradford surveys the literature on what he calls 'international legal compliance' (ILC) by listing and annotating over 100 writings on ILC. The survey reveals that a number of scholars have used theories of compliance to analyse arms control, war and environmental treaties.

With regards to the implementation of IDP protections, a documented workshop held in Kampala from 3-4 July 2006²⁸ analyses the implementation of the National Policy on Internally Displaced Persons from the perspective of over one hundred role players in the protection of IDPs. These include the perspectives of government officials, international agencies, researchers and IDPs themselves. It catalogues the problems being faced in implementing the National Policy on Internally Displaced Persons. A Refugee Law Project December 2008 publication²⁹ reviews the implementation of the Peace, Recovery and Development Programme and reveals a number of difficulties in implementing the programme. In addition, the Ugandan Human Rights Commission reports on the protection provided to IDPs in its annual reports. The reports document the challenges faced by IDPs in Uganda. However, none of these documents link implementation difficulties to the prospects of realising the IDP Convention.

In addition, there have been no studies that analyse the IDP Convention from the perspective of both implementation and compliance. This dissertation thus aims to fill these gaps.

1.10 Overview of chapters:

The dissertation begins with an introduction that sets the background for the research, this includes a background on IDPs in Uganda. Chapter two focuses on the factors that influence a state's observance of international or regional human rights conventions at national level. Chapter three analyses Uganda's practice in the protection of IDPs. Chapter four analyses Uganda's prospects of realising the IDP Convention in light of Uganda's practice in protecting IDPs as well as in light of Koh's theory of compliance. Chapter five provides a conclusion and sets out recommendations.

1.11 Scope and limitations:

It is not possible within the time and space provided in this dissertation to use more than one theory of compliance to analyse the IDP Convention. This dissertation therefore applies one theory of compliance that appears to be most appropriate in understanding and informing human rights compliance. This

²⁸ Workshop on the implementation of Uganda's National Policy for Internally Displaced Persons, Brookings Institution – University of Bern Project on Internal Displacement 3 -4 July 2006 http://www.brookings.edu/fp/projects/idp/conference/Uganda_Workshop2006_rpt.pdf (accessed 10 September 2010).

²⁹ Beyond Juba 'Is the PRDP politics as usual? Update on the implementation of Uganda's Peace, Recovery and Development Plan' Briefing Note No. 2 (December 2008) http://www.refugeelawproject.org/briefing_papers/RLP.BP0802.pdf (accessed 13 September 2010).

research is also confined to Uganda's practice in protecting IDPs from 2004 when Uganda's National Policy on IDPs came into force. It looks at IDP protection in Uganda in general rather than in terms of a specific region of the country. In addition, this dissertation looks at the IDP Convention as it stands and comments on the prospects of Uganda implementing and complying with the Convention; it does not critique the contents of the Convention but rather confines itself to what the prospects of implementing and complying with the Convention are.

CHAPTER TWO

THEORIES OF COMPLIANCE WITH HUMAN RIGHTS LAW

2.1 Introduction

What influences a state to implement and comply with human rights conventions at national level?

The factors that influence a state's compliance with human rights treaties are different from the factors that induce a state to comply with international law in general. As Henkin³⁰ puts it, human rights law is different to international law and there are differences in the character of its norms and the political forces that engender them, thus making the task of inducing compliance with human rights norms extremely difficult. There are, for example, no forces pressing compliance with human rights treaties because the state's duties and responsibilities are directed at its own citizens and non-compliance does not usually directly threaten other states.³¹ Therefore the temptation on states to violate human rights law is stronger than other international law.³² Compliance with human rights obligations may thus be more responsive to domestic factors such as a culture of constitutionalism and rule of law than to an international culture that induces a state to comply.³³

There are a number of theories that attempt to answer the question as to why states obey international law. The question as to why states obey human rights law in particular is still a relatively untapped area of the law.³⁴

The author has chosen Harold Koh's³⁵ transnational legal process theory of compliance as a theoretical framework within which to examine Uganda's prospects of realising the IDP Convention. This is based on

³⁰ L Henkin *International law: politics and values* (1995) 203.

³¹ O Hathaway 'Do human rights treaties make a difference?' (June 2002) 8 *The Yale Law Journal* 1938.

³² Henkin (n 30 above) 206.

³³ Henkin (n 30 above) 206.

³⁴ Hathaway (n 31 above) 1943 describes how international law and international relations theories on compliance with international law now seem to be meeting and scholars are combining both theories in order to provide a comprehensive model of compliance. However as she puts it 'compliance with and effectiveness of international human rights law remains a dark corner in which few have bothered to peer'.

its appropriateness for understanding and predicting human rights compliance. In the following section, a number of theories of compliance are analysed and their inappropriateness for explaining human rights law compliance is highlighted. Following this, Koh's theory is detailed as the theoretical framework for this dissertation and its appropriateness in understanding human rights compliance is underscored.

The theories of compliance are grouped below into international relations theories and legal theories. However, many of the latest legal theorist writings on compliance are now borrowing from international relations theories and vice versa.³⁶

2.2 International relations theories on compliance with international law and their inappropriateness for understanding human rights compliance

2.2.1 Rationalist theories

Rationalist theories of compliance see states as unitary, rational, self-interested actors that calculate costs and benefits of their actions in the international world order. Those rationalist theorists that see international law as having any effect at all on compliance suggest that enforcement and deterrence are the ways to prevent non-compliance. Realism and neo-realism are the rationalist theories that view international law as having little or no effect on compliance. Realists see compliance as either a coincidence or as a result of international power dynamics.³⁷ Rationalists see actions as driven by consequences. Therefore, courses of action that produce benefits are typically followed, be it material benefits such as wealth and income or non-material benefits such as power over others. Keohane³⁸ warns against the tendency to equate rationalism with materialism. The consequences of a rational altruist allocating donations to charity or a rational environmentalist choosing strategies that have positive environmental outcomes, says Keohane, do not amount to materialistic self-interest and thus illustrate his point that self-interest cannot be equated to materialism.

³⁵ H Koh 'Why do nations obey international law?' (June 1997) Vol. 106 No. 8 *The Yale Law Journal*.

³⁶ For comments on the recent trend of the overlap in these theories see Hathaway (n 31 above) 1943 to 1944.

³⁷ D Grossman & D Zaelke 'An introduction to theories of why states and firms do (and do not) comply with the law *Seventh International Conference on Environmental Compliance and Enforcement* 74-75
http://www.inece.org/conference/7/vol1/13_Grossman.pdf (accessed 25 August 2010)

³⁸ R O Keohane 'Rational Choice Theory and International Law: Insights and Limitations' (2002) 31 *The Journal of Legal Studies* 307.

What is clear, however, is that rationalist theorists view states as acting in self-interest and calculating the costs and benefits of their actions. According to Mwanza³⁹, this centrality of the cost-benefit calculation in rationalist theory is an inadequate framework for understanding compliance with human rights treaties. It is said to lead us to the conclusion that states will continue to comply poorly with human rights obligations due to the perceived lack of benefits in complying with human rights treaties.

2.2.2 Institutional theories

Institutionalism on the other hand sees a role for international institutions in facilitating co-operation, therefore compliance is viewed as strategic.⁴⁰ According to the institutionalist view (as with the instrumentalist view described below), states comply with international law as long as the reputational costs and sanctions that would result from non-compliance outweigh the costs of compliance.⁴¹ Thus, according to Hathaway, 'explaining compliance with human rights law is almost as daunting a task for institutionalist theory as it is for realist theory'.⁴² She goes on to say that according to the institutionalist view, compliance with human rights treaties must be explained as a result of self-interested behavior on the part of states who weigh up the costs and benefits of their actions. When it comes to human rights treaties, however, the benefits of compliance typically appear to be minimal whereas the costs are often great. Costs of compliance can involve putting into place legislative, administrative and judicial measures in order to give effect to a particular human rights treaty. According to Hathaway, therefore, countries will only be willing to bear such costs if there are threats of sanctions or if there is a threat of reputational harm. Here again she concludes that the likelihood of sanctions for human rights treaty non-compliance is rare and thus views reputation considerations as the answer as to why states do or don't comply with human rights treaties.⁴³

When applying this theory to human rights treaties that deal primarily with a state's own citizens such as the IDP Convention, reputation considerations appear to be an unsatisfactory explanation as to why

³⁹ n 3 above, 6.

⁴⁰ Grossman (n 37 above) 75.

⁴¹ Hathaway (n 31 above) 1951.

⁴² Hathaway (n 31 above) 1951.

⁴³ Hathaway (n 31 above) 1952.

states may comply. This therefore appears to be a weak basis on which to induce compliance or predict future compliance. Brewster⁴⁴ cautions against using reputation considerations to understand compliance and questions whose reputation is being referred to. She argues that the concept of reputation is often centered on the state and that this is problematic due to the fact that while the state lasts into the indefinite future, a government that makes decisions has a shorter time horizon. Thus she argues that reputation will not have an equal influence on all states.⁴⁵ She argues that because governments' time horizons are shorter than the time horizon of a state, governments may not necessarily be concerned with future reputational costs to the state.⁴⁶ According to Brewster, even if leaders manage to hold onto power for a long period of time, we should not assume that reputation concerns matter more to them than to those who hold power for a limited period. She argues that because there is always the possibility of a regime change, even in a dictatorship, the leader may view him or herself as having a short time horizon and therefore not be concerned about reputation.⁴⁷

Brewster's criticism fortifies the argument that focusing on reputation is inappropriate when explaining human rights compliance.

2.2.3 Instrumentalist theories

Instrumentalist theories of compliance specify variables in understanding why states comply. These include, as in the case of rationalist and institutionalist theories, the cost of compliance. These theories view all societies as the same and nation-states as the main players when it comes to compliance. Thus, according to Koh,⁴⁸ these theories can be used to explain issues such as arms control which have effects inter-state but have '...thus far shown relatively little explanatory power in areas such as human rights...'.⁴⁹

⁴⁴ R Brewster 'The Limits of reputation on compliance' (2009) International Theory: Harvard Law School public law and legal theory working paper series No. 09-37 at 325.

⁴⁵ Brewster (n 44 above) 326.

⁴⁶ Brewster (n 44 above) 326.

⁴⁷ Brewster (n 44 above) 327.

⁴⁸ Koh (n 35 above) 2649.

⁴⁹ Koh (n 35 above) 2649.

2.3 International law theories on compliance

2.3.1 Chayes' managerial model

Normative theories focus on the normative power of rules, the power of ideas and legal obligations and the influence of shared discourse on states' interests. Normative theories thus suggest a co-operative approach to maintaining compliance. One normative theory is that of Thomas Franck, another is that of Abram and Antonia Chayes.⁵⁰

Chayes' managerial approach of treaty compliance posits that nations obey international rules because they are persuaded to comply by the dynamic that is created by the treaty regimes to which they belong. According to this model, compliance with treaties comes about due to a process of discourse among the parties, the treaty organisation and the wider public. The Chayeses seek to uncover why certain treaties succeed as far as treaty compliance is concerned and why others do not. Their managerial model of compliance describes three factors that foster compliance: efficiency; national interest and regime norms. They explain that non-compliance with a treaty stems from ambiguity within the treaty; indeterminacy of treaty language; limitations on the capacity of parties to carry out their treaty undertakings as well as the time lag between a state's undertaking and its performance.⁵¹

In line with their management model of compliance, the Chayeses proffer that promoting compliance can be achieved through an interactive process of justification, discourse and persuasion. The model outlines that states can be persuaded to comply so as to uphold reputation and status within the international community. This is the 'new sovereignty' to which the Chayeses refer, where the state is viewed as an actor or member within the international system with a reputation to uphold.⁵² In order to bring about greater compliance, the Chayeses propose what they call 'instruments of active

⁵⁰ Grossman (n 37 above) 75.

⁵¹ Koh (n 35 above) 2635.

⁵² Koh (n 35 above) 2636.

management'. These include transparency, reporting and data collection, verification, monitoring and assessment.⁵³

This model too fits more neatly when applied to understanding compliance with international treaties as opposed to understanding compliance with human rights treaties. When it comes to compliance or non-compliance with human rights treaties, the attention of other states is unlikely to be engaged as the treatment of foreign citizens is viewed as outside of the interests of other states.⁵⁴ Thus, the incentive on states to comply with human rights treaties so as to uphold reputation and status is weak.

2.3.2 Franck's fairness model

Similar to the managerial model, the 'fairness approach' to understanding compliance also speaks of the state as an actor within the international community and therefore also views peer pressure and membership of 'the international club' as part of why a state complies. Franck⁵⁵ sees compliance as tied up with legitimacy, and legitimacy as being dependent upon state perceptions of whether the rules of international law were promulgated in accordance with a fair process.⁵⁶ This model presupposes that if a decision is reached through legitimacy and justice then it is less likely to be disobeyed.⁵⁷

Here again this theory of compliance is more appropriate to understanding compliance with international law generally rather than to understanding compliance with human rights law. Understanding the state as an actor within the international community does not adequately provide a model for understanding human rights compliance that most often concerns a state's internal affairs.

2.3.3 An appropriate theory: Koh: the transnational legal process

Koh highlights the importance of getting to the bottom of the question of why international law is sometimes obeyed and other times disobeyed. He emphasises the usefulness of being able to predict

⁵³ Koh (n 35 above) 2637.

⁵⁴ B Simmons 'Treaty compliance and violation' *Annual Review of Political Science* (2010) 13 at 288.

⁵⁵ T M Franck 'Fairness in international law and institutions' (1995) 7.

⁵⁶ Koh (n 35 above) 2642.

⁵⁷ Koh (n 35 above) 2645.

compliance with international law in amongst other disciplines human rights law.⁵⁸ Koh posits that the answer to why states obey international law cannot simply be due to interest as expounded by rationalist scholars or due to 'international society'. In his view, a complete answer to the question of why states comply needs to take account of what is termed 'the transnational legal process' where the importance of interaction within this process, interpretation of international norms and domestic internalisation of those norms are indicative of why nations obey international law.⁵⁹

Koh concedes that to claim that the process of interaction, interpretation and internalisation exists is not to say that the process always works. However he argues that just like doctors who had early successes in treating illnesses and used their knowledge to better understand and prevent future illnesses, lawyers should try to 'globalize the lessons of human rights enforcement.'⁶⁰

He explains the transnational legal process as one or more transnational actors provoking an interaction with another transnational actor which then forces an interpretation of a norm that causes the interpretation and internalisation of the norm into the other party's normative system.⁶¹ Transnational actors can be state actors but Koh explains that in the human rights arena, they are often organisations or individuals who mobilise popular opinion and political support within their countries and from abroad and bring about the development of a universal human rights norm.⁶²

The aim of the transnational process according to Koh is to bind the other party to obey the interpretation of the norm as part of its internal value set. Through continued transactions and through repeated participation in the process, the participants' interests and identities will be reconstituted.⁶³

Koh states that through interactions between governmental and non-governmental transnational actors within the transnational legal process, international norms are generated and interpreted and then

⁵⁸ Koh (n 35 above) 2600.

⁵⁹ Koh (n 35 above) 2599.

⁶⁰ H Koh 'How is international human rights law enforced?' (21 January 1998) Addison C. Harris Lecture, *Indiana Law Journal* Vol. 74 <http://www.law.indiana.edu/ilj/volumes/v74/no4/koh.pdf> (accessed 15 September 2010) 1399.

⁶¹ Koh (n 35 above) 2646.

⁶² Koh (n 60 above) 1409.

⁶³ Koh (n 35 above) 2646.

internalised domestically. If such internalisation is successful, these norms become determinants of why states obey.⁶⁴ Koh identifies the key factor in ensuring state compliance as the repeated participation in the transnational legal process. In particular, this involves repeating the cycle of interaction, interpretation and internalisation. Koh explains that the transnational legal process provides us with both a theoretical explanation as to why states obey international treaties as well as a plan for 'prodding nations to obey'.⁶⁵

The transnational legal process theory, unlike most other theories of compliance, can be used to explain and influence compliance with human rights. Koh posits that because treaty regimes are weak in the area of human rights and because governments are hesitant to comment upon other governments' abuses of human rights, the best strategies for compliance are vertical strategies of interaction, interpretation and internalisation.⁶⁶ When it comes to human rights treaties, we need to empower more actors to participate in the transnational legal process. As he puts it, there is an expanding role for intergovernmental organisations, non-governmental organisations and what he calls 'transnational norm entrepreneurs'.⁶⁷ According to Koh, these are people such as Nobel peace prize winner the Dalai Lama who seek to develop networks to discuss political situations at domestic, regional and international levels.⁶⁸

The first step of Koh's transnational legal process, interaction, involves transnational actors interacting with one another and posing pertinent questions. This involves enquiring as to how communities are formed, as well as how these communities intersect within the international human rights regime. Koh also asks what role lawyers and legal advisors play in ensuring that governments' policies conform to international legal standards and what role they play in urging governments to take a proactive approach in the protection of human rights.⁶⁹

⁶⁴ Koh (n 35 above) 2651.

⁶⁵ Koh (n 35 above) 2655.

⁶⁶ Koh (n 35 above) 2565.

⁶⁷ Koh (n 35 above) 2656.

⁶⁸ Koh (n 60 above) 1410.

⁶⁹ Koh (n 35 above) 2656.

Under the second step in the transnational legal process, interpretation, Koh says that the fora that are available for norm enunciation need to be identified or adapted or new fora need to be created. Here he gives the example of the creation of the International Criminal Tribunals for Rwanda and the former Yugoslavia in order to interpret norms of international criminal justice.⁷⁰

Thirdly, under the step of internalisation, Koh stresses that the best strategies for the internalisation of international human rights norms need to be identified. He distinguishes between social, political and legal internalisation. He outlines that social internalisation occurs when a norm acquires so much public legitimacy that there is widespread obedience to it. Political internalisation, on the other hand, involves acceptance of an international norm by policy adoption. Lastly, legal internalisation involves the incorporation of a norm into the domestic system through executive, legislative and judicial means.⁷¹

Koh refers to the Haitian refugees in the US and describes how the relationship between social, political and legal internalisation can be complex. Judicial internalisation of an international treaty norm in respect of refugees had not yet been achieved in the US but political internalisation was achieved through a reversal of the Clinton administration's policy with respect to Haiti. Another US example he cites is that of the CAT which was ratified by the US as well as incorporated into domestic legislation in the Torture Victim Protection Act. This was following human rights litigators promoting judicial incorporation of the norm against torture in the case of *Filartiga v Pena-Irala*.⁷²

A further example used by Koh to highlight the three step process of interaction, interpretation and internalisation is landmines.⁷³ He describes how despite the development and ratification of a landmine treaty, an international norm had not been developed and put into practice regarding landmines. The key step according to Koh came about in 1991 when there was a global campaign called the 'International Campaign to ban landmines' which resulted in the prohibition of the export of landmines by the US for one year.⁷⁴ Much support was received for the campaign by transnational actors such as Princess Diana and Pope John Paul II which ultimately resulted in the convention on the Prohibition of

⁷⁰ Koh (n 35 above) 2656.

⁷¹ Koh (n 35 above) 2657.

⁷² Koh (n 35 above) 2657.

⁷³ Koh (n 60 above) 1412.

⁷⁴ Koh (n 60 above) 1412.

the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction. This was ratified by over one hundred countries.⁷⁵ Koh emphasises the fact that the central actors in enforcing the norm against landmines were not government entities but rather non-governmental entities and individuals.⁷⁶

Koh highlights the important implications of the transnational legal process for theorists, activists and political leaders. For activists in particular he sees the role of international law as being greatly advanced if non-governmental organisations actively participate in, influence and enforce the transnational legal process by promoting the internalisation of international law into domestic norms.⁷⁷ He argues that ‘a lawyer who acquires knowledge of a body politic acquires a duty not simply to observe transnational legal process, but to try to influence it.’⁷⁸

2.4 Conclusion

From the above-mentioned discussion it is clear that Koh’s theory presents the most viable framework within which to analyse, predict and prod compliance with human rights instruments. Thus, the three step process of interaction, interpretation and internalisation is used to analyse Uganda’s prospects of complying with the IDP Convention. Uganda’s practice in implementing IDP protections is set out in Chapter 3 below and is used to comment on Uganda’s prospects of implementing the IDP Convention.

⁷⁵ Koh (n 60 above) 1413.

⁷⁶ Koh (n 60 above) 1413.

⁷⁷ Koh (n 35 above) 2658.

⁷⁸ Koh (n 60 above) 1416 – 1417.

CHAPTER THREE

UGANDA'S PRACTICE IN THE PROTECTION OF IDPs

3.1 Introduction

Uganda's practice in protecting IDPs is based on a number of policies, plans and programs that seek to address the needs of IDPs. This dissertation looks solely at the National Policy for IDPs due to its applicability to the country as a whole and the PRDP as a framework for programme implementation. Uganda does not have a legal framework designed specifically to protect IDPs – although legislation including the Constitution and the Land Act are of application – with protections contained primarily in policies, plans and programmes, which despite their non binding nature provide the government with important directions on how to give effect to IDP protections.

The reason for examining Uganda's practice in IDP protection to comment on its prospects of implementing the IDP Convention is based on a number of scholarly findings that suggest that treaty implementation and compliance are specific to the substance of a treaty and the rights enshrined therein⁷⁹. Therefore, Uganda's practice in protecting IDPs provides useful insight into its prospects for implementing the IDP Convention.

This chapter outlines the National Policy and the PRDP and discusses the implementation of the policy and the programme.

3.2 The National Policy for Internally Displaced Persons (August 2004)

The National Policy for Internally Displaced Persons (the National Policy) was developed in 2004. Its primary purpose is to address the needs of those people displaced by the conflicts in Uganda. It also mentions displacement caused by natural or human-made disasters.⁸⁰ The National Policy recognises that internally displaced persons enjoy all the same rights and freedoms under the Constitution of

⁷⁹ For example Hill (n 15 above) 22 examines three international treaties and their effects on state behavior and concludes that a treaty-specific model regarding the effect of a treaty on a state is required and that scholars should consider that the costs of complying with human rights treaties depend on the kind of rights in question; Mwanza (n 3 above) 42 also views the subject matter of the treaty as key in determining compliance with human rights treaties.

⁸⁰ See the background of the National Policy.

Uganda as other persons and shall not be discriminated against in the fulfillment of any of their rights and freedoms on the ground that they are displaced persons.⁸¹

The National Policy recognises the displacement that occurred in the districts of Gulu, Kitgum and Pader as a result of the ‘Holy Spirit Movement’ rebel group led by Alice Lakwena as well as Joseph Kony’s Lord’s Resistance Army. It recognises further displacement by the LRA in the Teso and Lango sub-regions, as well as death and displacement caused by the Allied Democratic Forces’ insurgency between 1994 and 2001 in the Rwenzori region.⁸² It recognises the internal displacement that has been taking place in Karamoja due to cattle rustling amongst other things, which displacement has also affected the neighbouring areas of Katakwi and Pader.⁸³

Under Chapter two of the National Policy,⁸⁴ the institutional arrangements, roles and responsibilities of various players are set out, with the Office of the Prime Minister’s Department of Disaster Preparedness and Refugees (OPM/ DPPR) designated as the lead agency for the protection and assistance of the internally displaced. The OPM/DPPR is tasked with supervising and ensuring that the responses of ministries, humanitarian agencies and development agencies are well co-ordinated in situations of internal displacement and that IDPs are provided with timely and effective protection.⁸⁵

The National Policy also provides for multi-sectoral planning mechanisms at national, district and sub-country levels in order to address protection and provision of humanitarian assistance to IDPs as well as an inter-ministerial policy committee to be set up by the Prime Minister. The inter-ministerial policy committee is responsible for policy formulation and overseeing matters relating to IDPs through the inclusion of many ministries including the Ministers of Local Government and Finance, Planning and Economic Development.⁸⁶

⁸¹ See the preamble to the National Policy.

⁸² See the background to the National Policy.

⁸³ See the background to the National Policy.

⁸⁴ National Policy, 10.

⁸⁵ See policy objectives, chapter 2 of the National Policy.

⁸⁶ National Policy, 11.

The National Policy provides too for the establishment of an inter-agency technical committee to coordinate the activities of ministers, government departments, the private sector, NGOs and the United Nations. Amongst other things, this technical committee is tasked with the preparation of plans and the mobilisation of resources in order to respond to the effects of internal displacement.⁸⁷ A human rights promotion and protection sub-committee as well as a district disaster management committee are also provided for in the National Policy in order *inter alia* to protect the rights of the displaced and to mobilise resources respectively.⁸⁸ Sub-county committees are also envisaged, in which chiefs are to play an important role.⁸⁹

Chapter three of the National Policy sets out the general provisions which relate to security; freedom of movement; protection against arbitrary displacement; voluntary return and re-settlement; legal status and identification and registration; property rights; family unification; food security; shelter; clothing; education; water and sanitation; resettlement kits; rehabilitation; tax and the environment.⁹⁰

Chapter four deals with national and international humanitarian and development agencies and designates the OPM/DDP as responsible for evaluating activities of such agencies in all matters related to the management of internal displacement.⁹¹

Chapter five of the National Policy deals with public information and provides that the OPM/DDPR should act as a repository and a conduit for all information relating to internal displacement and should play a primary role in advocacy and the dissemination of information.⁹²

3.3 Peace, Recovery and Development Plan (2007)

The Peace, Recovery and Development Plan for Northern Uganda (PRDP) is a comprehensive development framework that was formulated by the Government of Uganda in order to improve the

⁸⁷ National Policy, 12.

⁸⁸ National Policy, 14.

⁸⁹ National Policy, 17.

⁹⁰ National Policy, 19 - 26.

⁹¹ National Policy, 27.

⁹² National Policy, 30.

welfare of the population in Northern Uganda.⁹³ The key issues which the PRDP seeks to address are: supporting ongoing political dialogue; achieving peace and security in Northern Uganda; serving as an organizing framework to ensure better co-ordination; supervising and monitoring ongoing interventions and mobilising resources.⁹⁴

The PRDP came about through a consultative process in which the IMTC reviewed existing work done in the North including reports by the Uganda Bureau of Statistics, ministerial policy statements and reports from NGOs including USAID and the UNHCR. The IMTC also established a consultative process with ministries, local government and political leaders which resulted in a consensus on a strategy for Northern Uganda.⁹⁵ Workshops were held with MPs from Northern Uganda in order to share views.⁹⁶

The PRDP acknowledges the consequences that prolonged conflict has had on the North of the country. They include: weak institutions; a lack of law and order; the loss of life and assets due to atrocities committed during the conflict; population displacement; food insecurity; a disruption in the delivery of basic social services and an increase in poverty.⁹⁷ It acknowledges too the number of different processes that have been put in place nationally and internationally in order to improve security and economic conditions in the North.⁹⁸

The PRDP sets out a number of assumptions as a basis for assessing achievements. These assumptions include: the good faith and political will to end the armed hostilities by all parties; an improvement in the security situation; sufficient resources to pursue the PRDP objectives and capacity of district local governments and service providers to implement the PRDP.⁹⁹ In addition to these assumptions, the

⁹³ Republic of Uganda, Peace, Development and Recovery Programme 2007 – 2010 iii.

⁹⁴ PRDP, 29.

⁹⁵ PRDP, 19 – 20.

⁹⁶ PRDP, 20.

⁹⁷ PRDP, 24 - 26.

⁹⁸ PRDP, 26 – 28: national responses are categorized as ‘political and legal’; ‘security’ and ‘socio-economic’ and international responses are categorized as ‘political/legal’; ‘development’ and ‘humanitarian’.

⁹⁹ PRDP, 31 – 32.

PRDP recognises risks in the implementation of the programmes, including the risk of inadequate resources. It includes mitigation strategies as part of its implementation process.¹⁰⁰

The overall goal of the PRDP is to consolidate peace and security and to lay a foundation for recovery and development. This is to be achieved through four objectives: consolidating state authority; rebuilding and empowering communities; revitalising the economy and ensuring peace and reconciliation.¹⁰¹

Under the first objective of consolidating state authority, six programmes are outlined and have the sub-objectives of ensuring the cessation of armed hostilities; re-establishing law and order in communities; providing functional judicial and legal services and strengthening local government capacity.¹⁰² The six programmes deal with facilitating peace initiatives; enhancing prisons and the police; strengthening the judiciary and local government in the North and rationalizing auxiliary forces.¹⁰³ Some of the specific objectives under these programmes are to finance the Mine Action Program which was set up to reduce land mine accidents and provide support to land mine victims¹⁰⁴; to improve accessibility of police and protection services¹⁰⁵; to re-establish a functional legal and judicial system in the North that includes staffing of courts¹⁰⁶; to reduce overcrowding in prisons¹⁰⁷; to downsize existing auxiliary forces due to improvements in security¹⁰⁸ and to strengthen local government capacity.¹⁰⁹

Under strategic objective two, which is rebuilding and empowering communities, the PRDP identifies three sub-objectives which are improving the conditions and quality of life of displaced persons in

¹⁰⁰ PRDP, 34 – 35.

¹⁰¹ PRDP, 33 – 34.

¹⁰² PRDP, 33.

¹⁰³ PRDP, 36.

¹⁰⁴ PRDP, 40.

¹⁰⁵ PRDP, 44.

¹⁰⁶ PRDP, 45.

¹⁰⁷ PRDP, 49.

¹⁰⁸ PRDP, 52.

¹⁰⁹ PRDP, 55.

camps; completing the return of the displaced population and initiating community rehabilitation and development activities.¹¹⁰

Three programmes are to be carried out under this objective, which relate to emergency assistance to IDPs; return and resettlement; and empowering communities.¹¹¹ Some of the specific objectives under these programmes are to provide emergency services to war-affected populations¹¹² as well as to meet the needs of IDPs in order to improve their living conditions¹¹³ and to facilitate the voluntary return of IDPs.¹¹⁴

The provision of social services in areas of return is also identified as an objective of one of the programmes.¹¹⁵ Such services include the provision of basic education; the provision of safe water and sanitation services as well as healthcare services, including initiatives to address HIV/AIDS.¹¹⁶ Livelihood support programmes are also identified and are aimed at providing support to vulnerable persons to increase their capacities to sustain themselves.¹¹⁷

Under strategic objective three, which deals with the revitalization of the economy, three programmes are identified¹¹⁸ whose objective is promoting industrialisation in Northern Uganda amongst other things. This is envisaged to include, amongst other things, setting up a sugar industry in Gulu, Amuru and Adjumani Districts as well as setting up a bio fuel industry in the North establishing a fruit processing factory in the Arua District.¹¹⁹

¹¹⁰ PRDP, 33.

¹¹¹ PRDP, 36.

¹¹² PRDP, 56.

¹¹³ PRDP, 62.

¹¹⁴ PRDP, 63.

¹¹⁵ PRDP, 65.

¹¹⁶ PRDP, 65 – 72.

¹¹⁷ PRDP, 73.

¹¹⁸ PRDP, 36.

¹¹⁹ PRDP, 76.

Under objective four, which is peace building and reconciliation, there are four sub objectives. These are to increase access to information; to enhance counseling services; to reinforce mechanisms for local conflict resolution and to reinforce socio-economic reintegration of ex combatant populations.¹²⁰ Two programmes are to be implemented under objective four, the Public Information, Education and Communication and Counselling Programme and the Demobilisation and Re-integration of ex-combatants Programme. Some of the specific objectives within these programmes include counseling services such as for psychosocial trauma to those who need it and to ensure accountability and justice mechanisms are put in place.¹²¹ Socio-economic reintegration of all ex combatants seeking amnesty is also provided for.¹²²

The institutional framework of the PRDP provides that it is to be managed and co-ordinated under the Office of the Prime Minister.¹²³

3.4 Failures in implementation

Despite the protections provided for in both the National Policy and the PRDP, protections have not been fully implemented. Such failure in protecting IDPs is set out below under the following headings: urban IDPs, extremely vulnerable IDPs, provision of services and land issues.

3.4.1 Urban IDPs

The obligation to protect IDPs under the National Policy and the PRDP extends to all IDPs.

However, a number of reports¹²⁴ show that there is a lack of protection afforded to urban IDPs. The National Policy provides for protection of all IDPs irrespective of whether or not they have fled IDP camps or live in urban areas. Chapter 3 of the National Policy¹²⁵ enshrines the rights of IDPs to freedom

¹²⁰ PRDP, 33.

¹²¹ PRDP, 97.

¹²² PRDP, 101.

¹²³ PRDP, 103.

¹²⁴ See for example Beyond Juba 'Why being able to return should be part of transitional justice: urban IDPs in Kampala and their quest for a durable solution' (March 2010) Working Paper No. 2 and H Refstie 'IDPs redefined' unpublished Master's thesis, Norwegian University of Science and Technology, 2008.

¹²⁵ See 3.2 of the National Policy.

of movement and identifies this right as not only fundamental to the physical survival of all persons but also to the economic and social survival of all persons. However, the IDPs who have fled to urban areas appear to have been punished by the Government of Uganda (GoU) for exercising their right to freedom of movement in that they are falling outside of the net of aid that is provided to IDPs in camps and those who have returned to their villages.¹²⁶ No profiling exercise of urban IDPs has been carried out by the GoU and thus the needs of urban IDPs have not been adequately assessed.¹²⁷ Reports suggest¹²⁸ that the GoU fears urban IDPs due to their lack of institutionalisation which makes them difficult to control. They appear to blend in with other slum dwellers and thus it is reported that the government fears that by acknowledging them, this will lead to other slum dwellers demanding assistance.¹²⁹

According to some government officials and humanitarian representatives¹³⁰, IDPs in Kampala are said to have found ‘a durable solution’ to their problems. That is that they no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination.¹³¹ Urban IDPs, however, report¹³² having a number of specific assistance and protection needs linked to their displacement including facing discrimination in employment, in education and in interactions within their communities. In addition, they exhibit psychosocial vulnerabilities due to the traumatic events that resulted in their displacement.¹³³

¹²⁶ Beyond Juba ‘Why being able to return should be part of transitional justice: urban IDPs in Kampala and their quest for a durable solution’ (March 2010) Working Paper No. 2, 10.

¹²⁷ n 126 above, 10.

¹²⁸ n 126 above, 10.

¹²⁹ n 126 above, 10.

¹³⁰ n 126 above, 10.

¹³¹ n 126 above, 11.

¹³² n 126 above, 37.

¹³³ Beyond Juba ‘Violence, exile and transitional justice: perspectives of urban IDPs in Kampala’ (August 2009) Briefing Note 3 at 6 – 9.

3.4.2 Extremely Vulnerable IDPs

Extremely vulnerable persons, which include the elderly; persons living with disabilities; persons living with HIV/AIDS; the sick; child-headed families and children, are falling outside the net of protection.¹³⁴ This is despite Chapter 3 of the National Policy enjoining the state to provide protection to all IDPs without discrimination. Many IDPs that fall into the category of ‘extremely vulnerable persons’ continue to live in IDP camps due to their inability to return home on their own and face challenges with regards to accessing essential services within camps.¹³⁵

Elderly IDPs and those who are sick and have been left in camps are unable to rely on relatives who have returned to their villages. Relatives face their own challenges and are not able to shoulder the burden of the elderly and the sick.¹³⁶ One young conflict survivor expressed¹³⁷ the sentiment that as a vulnerable person himself it was impossible for him to care for another vulnerable person and that his vulnerabilities are compounded by having to care for his orphaned siblings.

In addition, IDPs who are HIV positive are reportedly rejected by their families due to the stigma that still surrounds the disease in Uganda and are thus left behind in camps with authorities assuming that communities will take care of them.¹³⁸

3.4.3 Provision of services

Despite the protections set out in Chapter 3 of the National Policy as well as the PRDP as regards the provision of social services to IDPs, they face difficulties in accessing services.

Food supply to IDPs in camps is largely provided by humanitarian agencies.¹³⁹ However, due to a reduction in food supplies by such agencies, IDPs are placed in a vulnerable position, requiring the

¹³⁴ 11th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda (2008).

¹³⁵ As above, 81.

¹³⁶ ‘Kampala accused of failing vulnerable IDPs’ (9 October 2009) <http://www.reliefweb.int/rw/rwb.nsf/db900sid/HHVU-7WNJ66?OpenDocument> (accessed 10 October 2010).

¹³⁷ As above.

¹³⁸ N 136 above.

¹³⁹ n 134 above, 76.

government to step in and find an alternative food source for IDPs.¹⁴⁰ A number of IDP camps and return sites are also reported as not having access to clean and safe water due to amongst other things boreholes having broken and there being general water scarcity.¹⁴¹

Access to adequate health care services is also reported¹⁴² as a problem for many IDPs who are plagued by illnesses such as malnutrition, malaria, HIV/AIDS and hepatitis. These illnesses are exacerbated by factors such as a lack of safe drinking water, poor sanitation and inadequate food supplies. Many health care centres to which IDPs have access are inadequately stocked with essential drugs.¹⁴³

Access to education is being hampered by the lack of physical school infrastructures in both camps and areas of return, where children often study outside and are interrupted by bad weather.¹⁴⁴ The lack of qualified teachers in areas of return also affects access to education.¹⁴⁵

In addition, access to shelter has been reported¹⁴⁶ as one of the biggest challenges facing returning IDPs. This is despite the obligation imposed on the government in terms of section 3.9 of the National Policy to ensure that all IDPs have access to adequate shelter. The GoU is in instances providing iron sheets to IDPs, but appears to be doing so on a selective basis, with many IDPs reporting not having received such iron sheets.¹⁴⁷

3.4.4 Land issues

Section 3.6.3 of the National Policy enjoins local governments to assist IDPs in acquiring or recovering their land in accordance with the Land Act 1998. Local government is further enjoined to endeavour to acquire and allocate land to displaced families, where recovery of land is not possible.

¹⁴⁰ n 134 above, 76.

¹⁴¹ n 134 above, 77.

¹⁴² n 134 above, 76.

¹⁴³ n 134 above, 78.

¹⁴⁴ n 134 above, 78.

¹⁴⁵ n 134 above, 79.

¹⁴⁶ n 134 above, 79.

¹⁴⁷ n 134 above, 80.

However, a number of areas of concern in the restoration and distribution of land to IDPs have been identified.¹⁴⁸ The first is the lack of information regarding government's intentions surrounding land.¹⁴⁹ A recent survey of the Acholi and Lango regions shows that 90% of the respondents had no knowledge of the contents of the Land Act which regulates acquisition and recovery of land as provided for in the National Policy. This lack of information as regards government's intentions surrounding land has led to high levels of mistrust over the land demarcation and registration process among IDPs.¹⁵⁰ Programmes need to be implemented to keep the public informed as regards the development of policies and strategies surrounding land issues. Education campaigns should be run so as to inform people on how to protect their rights as well as on the rules and procedures for restitution, compensation, resettlement and the formalization of rights.¹⁵¹

The second area of concern identified¹⁵² is the lack of capacity on the part of statutory and traditional dispute resolution institutions to respond to and contain land disputes and conflicts that erupt amongst IDPs. Statutory dispute resolution mechanisms under the Land Act cap 227 are reportedly¹⁵³ either lacking or not in place. Traditional dispute resolution mechanisms have been eroded due to years of displacement and their scope and role is reportedly diminishing.¹⁵⁴ However, such institutions remain important due to the centrality of customary tenure in Northern Uganda.¹⁵⁵ In addition, record keeping in the land offices is very poor with information in instances being incomplete.¹⁵⁶ There is thus a pressing need to realign customary and statutory institutions so as to provide for better mechanisms for dispute resolution and tenure security. Traditional institutions need to be regularized in a manner

¹⁴⁸ http://www.oxfam.org.uk/resources/learning/landrights/downloads/northern_uganda_land_study_acholi_lango.pdf (accessed 8 October 2010).

¹⁴⁹ As above, 3.

¹⁵⁰ n 148 above, 3.

¹⁵¹ n 148 above, 5.

¹⁵² n 148 above, 3.

¹⁵³ n 148 above, 3.

¹⁵⁴ n 148 above, 4.

¹⁵⁵ n 148 above, 4.

¹⁵⁶ n 148 above, 3.

similar to statutory institutions in order to create harmony between the two.¹⁵⁷ Alternative dispute resolution mechanisms such as mediation, conciliation and arbitration also need to be considered as alternatives for resolving potential disputes.¹⁵⁸

A third area of concern is the issue of compensation. Mechanisms need to be put in place for submitting and processing of land claims, and legal aid units need to assist in informing people of the procedures regarding compensation.¹⁵⁹ Although compensation for loss of land is not specifically provided for in the National Policy or PRDP, it is provided for in the IDP convention. This will be discussed in Chapter 4 below.

3.5 Reasons for implementation difficulties

A number of reasons have been proffered for the failures in protecting IDPs and implementing the National Policy and the PRDP.¹⁶⁰

As regards the National Policy, one reason is security. Despite the return process having begun in Lango and Teso, LRA incursions and Karimojong cattle rustlers continued to plague the Teso and Lango regions in 2008.¹⁶¹ The military disarmament exercises among the Karimojong have been criticized as ineffective.¹⁶² The Commander of Land Forces identifies challenges faced by the UPDF in implementing the National Policy including the high demand for return amidst continuing insecurity; weak infrastructure and recurring insurgencies amongst other challenges.¹⁶³

A further reason for the failure in implementing the National Policy has been identified as the lack of law and order. The police force reportedly¹⁶⁴ do not have sufficient resources in order to provide an

¹⁵⁷ n 148 above, 4.

¹⁵⁸ n 148 above, 4.

¹⁵⁹ n 148 above, 5.

¹⁶⁰ See n 28 above and n 29 above.

¹⁶¹ n 28 above, 10.

¹⁶² n 28 above, 10.

¹⁶³ n 28 above, 11.

¹⁶⁴ n 28 above, 10.

adequate presence in camps and insufficient resources are allocated to personnel, transport, fuel for vehicles and radio communication which hinders police activities.¹⁶⁵

The absence of an effective judicial system in the North also impacts upon the implementation of the National Policy.¹⁶⁶ Judicial institutions in the North have not been restored and a lack of access to justice therefore remains a problem with a backlog of cases pending before courts.¹⁶⁷ The absence of functioning judicial institutions has resulted in ill-equipped local council courts adjudicating matters.¹⁶⁸

Another reason for poor implementation is a lack of political will on the part of the GoU to implement the National Policy and PRDP and to create conditions in order to ensure their effectiveness. A reluctance to address the root causes of the conflict (which is discussed in detail at the end of this chapter) as well as a lack of government participation on committees – which are composed of both government and NGOs - responsible for implementing the National Policy poses challenges to successful implementation.¹⁶⁹ A more active role for line ministries on committees as well as in facilitating return has been suggested as a possible means for involving government, as well as using the Office of the Prime Minister to promote greater understanding of the National Policy and to foster the political and social will necessary to implement it. Government's over reliance at times on the international community and NGOs for the protection of IDPs is also reportedly hindering effective implementation.¹⁷⁰

An additional obstacle to implementation has been identified as lack of co-ordination and communication at various levels of government. The National Policy's failure to adequately address the co-ordination between central and local government and the lack of human and fiscal resources at the district level reportedly undermines the effective implementation of the National Policy.¹⁷¹ In addition,

¹⁶⁵ n 28 above, 12.

¹⁶⁶ n 28 above, 12.

¹⁶⁷ 'Only peace can restore the confidence of the displaced' Update on the implementation of the recommendations made by the UN Secretary-General's representative on internally displaced persons following his visit to Uganda, Second Edition (October 2006) 24 www.refugeelawproject.org/others/RLP.IDMC2.PDF (accessed 12 September 2010).

¹⁶⁸ n above, 25.

¹⁶⁹ n 28 above, 12.

¹⁷⁰ n 28 above, 13.

¹⁷¹ n 28 above, 13.

the National Policy's failure to make DDMCs accountable at the local level is a significant problem as well as the lack of sufficient engagement with communities as regards the contents of the National Policy.¹⁷²

Lack of resources and fiscal mechanisms are also implementation hurdles. The UPDF and the police amongst other role players describe the lack of resources as a hindrance to effective implementation. It is reported that at the district level, some DDMCs do not have operational budgets.¹⁷³

A number of difficulties have been identified in the implementation of the PRDP too, many of which coincide with the difficulties in implementing the National Policy. One difficulty is the Government's failure to commit the funds it initially undertook to the PRDP.¹⁷⁴ The GoU initially promised UGX 337.5 billion for the PRDP; however, reports now suggest that only UGX 97 billion will be spent.¹⁷⁵ It is suggested that this shortfall is due to the government's reluctance to increase funding levels under the medium term expenditure framework, which limits the Government's national spending in the interests of macro-economic stability. This reluctance appears to be based on the high cost of moving money away from non PRDP districts and sectors.¹⁷⁶

Secondly, the lack of capacity of the Office of the Prime Minister to perform monitoring and oversight functions of the PRDP is hindering implementation. The PRDP's implementation is placed in the hands of a co-ordination and management unit within the Office of the Prime Minister. However limited funding of this unit has meant that a year after the PRDP was put in place, the unit was not yet functional.¹⁷⁷

Thirdly, a lack of focus in PRDP projects and the effect of personal interests and corruption in projects are affecting implementation. Pilot projects are reported to have been implemented by the Gou but it is unclear as to why certain projects such as the Karamoja Integrated Development and Disarmament

¹⁷² n 28 above, 13.

¹⁷³ n 28 above, 14.

¹⁷⁴ n 29 above.

¹⁷⁵ n 29 above, 4.

¹⁷⁶ n 29 above, 4.

¹⁷⁷ n 29 above, 6.

Programme were chosen for implementation over other projects.¹⁷⁸ It has been suggested that some projects – including the construction of a 25km road from Mbale to Bududa – have been prioritized due to the road serving the area of a government official’s home.¹⁷⁹

Fourthly, there are co-ordination and communication problems between national and local government with regards to the PRDP. Officials complain about the lack of communication between central government and local government in order to enable local government to incorporate the PRDP into their district plans. Officials report being confused as to the scope and purpose of the PRDP which hinders implementation.¹⁸⁰

Lack of knowledge at the grassroots level of the framework is also said to be hampering efforts at effective implementation.¹⁸¹

In addition to all the above-mentioned difficulties identified in the implementation of both the National Policy and the PRDP, the overall failure of the GoU to resolve the conflict in the North hampers the effective implementation of IDP protections. Deng¹⁸² emphasises the fact that internal displacement can only be solved by addressing the root causes of the conflict, and that as long as conflict prevails, respect for the human rights and fundamental freedoms of IDPs ‘will remain, almost by definition, elusive.’ The Final Peace Agreement between the GoU and the LRA has not been signed and the LRA continues to have a presence in DRC and Southern Sudan.¹⁸³ The GoU seems to favour a military solution to the conflict which to date has not resulted in successful resolution of the conflict.¹⁸⁴ Thus implementation of IDP protections without pursuing durable solutions to the conflict appears to be problematic. The

¹⁷⁸ n 29 above, 7.

¹⁷⁹ n 29 above, 7.

¹⁸⁰ n 29 above, 7.

¹⁸¹ n 29 above, 8.

¹⁸² F M Deng ‘The international protection of the internally displaced’ (1995) *International Journal of Refugee Law, Special Issue* 76 quoted in ‘Only peace can restore the confidence of the displaced’ Update on the implementation of the recommendations made by the UN Secretary-General’s representative on internally displaced persons following his visit to Uganda, Second Edition (October 2006) 39 www.refugeelawproject.org/others/RLP.IDMC2.PDF.

¹⁸³ n 167 above, 9.

¹⁸⁴ n 167 above, 11.

Brookings Institute¹⁸⁵ describes the finding of durable solutions for IDPs as being inextricably linked to peace building, and that if IDPs feel that they have suffered injustice then reconciliation becomes difficult. IDPs need to be included in political participation, and land disputes and economic rehabilitation need to be addressed in order for the return of IDPs to be sustainable.¹⁸⁶

3.6 Conclusion

The National Policy and the PRDP are in place in order to address the needs of IDPs in Uganda. Despite the protections contained therein, the National Policy and the PRDP are not being fully implemented at present. This is evident from the fact that extremely vulnerable groups and urban IDPs continue to face challenges. It is also evident from the fact that IDPs are not receiving adequate social services and that they continue to face difficulties in accessing land.

Such implementation failures are attributable to: the insecure environment in which the National Policy and the PRDP are being implemented; the lack of law and order in the North, including the absence of a judicial system; the lack of political will on the part of government; the lack of communication between local and national government; corruption; a lack of communication as regards the contents of the policy and the programme and a lack of the resources needed to give effect to the protections enshrined in the National Policy and the PRDP.

In addition, implementation of IDP protections is currently hampered by the failure of the GoU to fully address the root causes of the conflict, thereby failing to provide IDPs with durable solutions.

¹⁸⁵ http://www.brookings.edu/speeches/2007/0927_africa_kalin.aspx (accessed 10 October 2010).

¹⁸⁶ As above.

CHAPTER 4

ANALYSIS OF UGANDA'S PROSPECTS OF REALISING THE IDP CONVENTION

4.1 Introduction

This chapter analyses Uganda's prospects of implementing and complying with the IDP Convention in light of Uganda's practice in protecting IDPs as well as in light of Koh's transnational legal process theory. Grossman¹⁸⁷ has emphasised the importance of combining theory and empirical analysis so that policy and practice can be adjusted to ensure implementation.

This chapter begins with an overview of the IDP Convention. Thereafter, an analysis is provided of Uganda's prospects of implementing the Convention based on its practice in IDP protection and its prospects of complying with the Convention based on theory of compliance.

4.2 The IDP convention

4.2.1 The objectives of the convention

The IDP Convention¹⁸⁷ has five objectives that are set out in Article 2 of the Convention. These objectives are to strengthen regional and national measures in order:

- a) to prevent internal displacement and mitigate the effects thereof as well as provide durable solutions therefore;
- b) to establish a legal framework for preventing, protecting and assisting internally displaced persons in Africa;
- c) to establish a legal framework for co-operation and support between state parties;
- d) to set out obligations and responsibilities on state parties regarding the prevention of internal displacement and the protection of internally displaced persons; and

¹⁸⁷ Grossman (n 37 above) 78.

- e) to set out obligations and responsibilities for armed groups, non-state actors and other relevant actors with respect to the prevention of internal displacement as well as the protection and assistance of internally displaced persons.¹⁸⁸

4.2.2 Obligations on state parties imposed by the convention

Article three of the Convention sets out the general obligations on state parties in article 3 (1). Under this article, the general duties that fall on a state party to the Convention are: to refrain from and prevent arbitrary displacement; to prevent all types of marginalisation and exclusion that is likely to cause displacement; to respect humanitarian law regarding the protection of internally displaced persons; to ensure that non-state actors are accountable; to ensure assistance to those who have been displaced as well as to promote self-reliance amongst internally displaced persons.¹⁸⁹

Article 3 (2) of the Convention requires that the Convention be implemented domestically through enacting or amending relevant legislation on internally displaced persons; designating an authority to co-ordinate the activities of IDPs; co-operating with relevant agencies and organisations and adopting appropriate measures including policies on internal displacement. This section envisages that necessary funding for the protection and assistance of IDPs should be provided and that sustainable solutions to the problem of internal displacement should be pursued.¹⁹⁰

Article 4 of the Convention sets out the obligations of states to protect against displacement. These obligations include ensuring respect for international obligations under human rights and humanitarian law in order to prevent conditions that lead to displacement. State parties also have a duty to devise early warning systems in areas of potential displacement and to establish and implement disaster risk strategies and emergency management measures.¹⁹¹ The prohibited categories of arbitrary displacement are also set out in chapter 4 of the convention and include: displacement based on policies

¹⁸⁸ See article 2 of the Convention.

¹⁸⁹ See article 3 of the Convention.

¹⁹⁰ See article 3 (2) of the Convention.

¹⁹¹ See article 4 of the Convention.

of racial discrimination; displacement intentionally used as a method of warfare; as a form of punishment or as a result of harmful practices -which are defined in article 1 (j).¹⁹²

Article 5 sets out the obligations of the state that pertain to protection and assistance of internally displaced persons. Article 5 (1) affirms that the primary duty and responsibility for providing protection and assistance to the internally displaced lies with the state and must be carried out without discrimination of any kind. State parties have a duty to co-operate with one another in protecting and assisting IDPs upon the request of a concerned state.¹⁹³

The obligation on state parties to protect IDPs includes persons who have been displaced by natural disasters and climate change.¹⁹⁴ State parties are also obliged to co-operate with humanitarian agencies and to allow unimpeded passage of all relief consignments.¹⁹⁵

Article 9 of the Convention sets out the responsibilities of states during internal displacement. States have a duty amongst other things to prevent discrimination; genocide; arbitrary detention; abduction; cruel and inhumane treatment as well as sexual and gender-based violence and trafficking. State parties also have a duty to provide humanitarian assistance to the internally displaced as well as to care for those with special needs.¹⁹⁶

States also have a duty to prevent displacement that is caused by projects carried out by private or public actors. State parties need to undertake environmental impact assessments prior to undertaking projects.¹⁹⁷

In addition to the obligations on state parties to prevent displacement and protect IDPs during displacement, state parties also have obligations relating to the return, integration and relocation of IDPs. This is set out in Article 11 of the Convention which provides that states need to create satisfactory

¹⁹² See article 4 of the Convention.

¹⁹³ See article 5 of the Convention.

¹⁹⁴ See article 5 of the Convention.

¹⁹⁵ See article 5 (6), (7) and (8) of the Convention.

¹⁹⁶ See article 9 of the Convention.

¹⁹⁷ See article 10 of the Convention.

conditions for the voluntary return of IDPs and should include IDPs in the decision-making process of whether to return, to integrate or to relocate.¹⁹⁸ States' obligations regarding return also extend to taking measures in order to restore land to IDPs.¹⁹⁹

Article 12 of the Convention requires states to establish a legal framework for providing compensation as well as other forms of reparation to IDPs who have incurred damage as a result of internal displacement. Such reparation needs to be in accordance with international standards.²⁰⁰

State parties are required to assist IDPs by maintaining a register of all IDPs, and they need to issue relevant documents to IDPs including passports, marriage certificates and birth certificates where such documents have been lost or destroyed during displacement.²⁰¹

Measures for monitoring compliance with the Convention are set out in article 14 of the convention which provides that state parties must establish a conference of state parties in order to monitor and review the implementation and the objectives of the Convention. Such conference should be convened regularly and facilitated by the AU. State parties are also obliged to indicate the legislative and other measures taken to give effect to the Convention in their reports under article 62 of the African Charter as well as under the APRM where applicable.²⁰²

4.2.3 Obligations of other parties

Article 6 of the Convention sets out the obligations of international organisations and humanitarian actors as regards internal displacement; article 7 sets out the obligations of armed groups including detailing the activities they are prohibited from engaging in, and article 8 deals with the role of the AU.

¹⁹⁸ See article 11 (2) of the Convention.

¹⁹⁹ See article 11 of the Convention.

²⁰⁰ See article 12 of the Convention.

²⁰¹ See article 13 of the Convention.

²⁰² See article 14 of the Convention.

4.2.4 Final provisions of the convention

What are termed ‘final provisions’ are set out in the Convention from article 15 to 23 and include provisions relating to the entry into force of the Convention²⁰³, the amendment and revision of the Convention²⁰⁴ and the dispute settlement mechanisms.²⁰⁵

4.3 Analysis of Uganda’s prospects of realising the IDP convention

4.3.1 Prospects of implementing the convention based on Uganda’s practice in IDP protection

An analysis of implementing the IDP Convention based on Uganda’s practice in IDP protection is provided in two parts below. Firstly, general problems in implementing IDP protections that were set out in Chapter three are related to the specific article of the Convention that each problem is likely to impact upon. Secondly, overlapping obligations that are imposed on the state by both the IDP Convention and the policy framework for the protection of IDPs in Uganda are identified. Furthermore, the prospects of implementing such overlapping obligations are set out.

General problems and their likelihood to affect the implementation of the IDP Convention:

Uganda’s practice in IDP protection as set out in Chapter 3 above reveals a number of general problems in implementing the protections in the National Policy and the PRDP. The reasons for such problems are summarised in the table below and the article of the IDP Convention that each implementation difficulty is likely to impact upon is identified. Thereafter, an explanation of the table is provided.

²⁰³ See article 17 of the Convention which provides stipulates that the convention shall enter into force 30 days after the deposit of the instruments of ratification or accession by the fifteenth member state.

²⁰⁴ See article 18 of the Convention.

²⁰⁵ See article 22 which stipulates that disputes arising between parties as regards the interpretation of the convention shall be settled amicably through consultations between the parties and should this fail, should be settled by the African Court of Justice and Human Rights - the Conference of States parties has the power to settle disputes until such time as the court has been established.

REASON FOR IMPLEMENTATION DIFFICULTY	ARTICLE OF IDP CONVENTION LIKELY TO BE AFFECTED BY IMPLEMENTATION DIFFICULTY
Lack of law and order in the North as well as absence of a judicial system in the North	Article 3 (g); Article 7 (4) and Article 11 (4);
Lack of communication between central and local government	Article 3 (2) (d)
Lack of resources	Article 12; Article 3 (2) (d)
Failure to address root causes of the conflict	Article 2 (a); Article 3 (2) (e); Article 11 (1)
Lack of political will	Whole Convention
Corruption	Whole Convention

The lack of law and order in the North is likely to impact upon Article 3 (g); Article 7 (4) and Article 11 (4) of the IDP Convention. These articles require the following: that armed groups that violate the rights of internally displaced persons are held criminally responsible; that the state ensures that individuals responsible for displacement are held accountable and that the state establishes mechanisms and procedures for resolving property disputes of IDPs. Without a functioning and resourced police force and without an effective court system in the North, implementing these articles is likely to be problematic.

The lack of communication between central and local government is likely to impact upon the obligation of the state to adopt measures on internal displacement at both national and local levels as is required by Article 3 (2) (d) of the IDP Convention. This is due to the fact that central and local government's respective obligations cannot be carried out efficiently in the absence of communication regarding where responsibilities lie. The lack of communication is likely to result in either a duplication of functions or certain functions falling through the gaps.

The lack of resources to protect IDPs is likely to affect the obligation imposed on the state in Article 3 (2) (d) of the IDP Convention which requires the state, where possible, to provide the necessary funds to protect and assist IDPs as well as the obligation in Article 12 to provide compensation to internally displaced persons for damage incurred as a result of displacement. A 2007 survey conducted in Uganda²⁰⁶ funded by the World Bank revealed that in the Acholi and Lango regions 17% of the over 1000 respondents interviewed claimed to have lost their resources during the insurgency and over 70% reported wanting compensation for such losses. The then Minister for Relief and Disaster Preparedness, Musa Ecweru's reported response to the call for compensation was that such claims would be addressed by the PRDP.²⁰⁷ The PRDP's budgetary allocation for peace building and reconciliation, however, has been criticised²⁰⁸ as being insufficient. Okello and Dolan²⁰⁹ describe the PRDP as a 'three-legged table' with the missing or broken leg of the table being the fourth objective of peace building and reconciliation. Dolan²¹⁰ sees the fourth leg as 'missing' due to the small budgetary allocation, and 'broken' due to the fact that the focus on peace building and reconciliation is at a micro as opposed to a macro level. Dolan²¹¹ calls for a more extensive budget to support more expansive peace and reconciliation activities than those envisaged under objective four. Without such increased budgetary allocation, the blanket reliance by the GoU on the PRDP to address compensation claims is unlikely to result in the obligation to compensate imposed by the IDP convention being met.

The failure of the GoU to address the root causes of the conflict is likely to affect the implementation of Article 2 (a); Article 3 (2) (e) and Article 11 (1) of the IDP convention. These articles make reference to addressing the root causes of conflict and finding sustainable and lasting solutions.

²⁰⁶ 'IDPs seek compensation' 23 April 2008 *New Vision* <http://newvisionuganda.info/D/8/16/623870> (accessed 1 October 2010).

²⁰⁷ As above.

²⁰⁸ C Dolan 'Is the PRDP a three-legged table? Challenges for NGOs in moving from humanitarian and short term interventions to longer term approaches in light of the PRDP and conflict setting' (10 April 2009) http://www.beyondjuba.org/Conference_presentations/Is_the_PRDP_a_three_legged_table.pdf (accessed 20 September 2010)

²⁰⁹ As above.

²¹⁰ n 208 above.

²¹¹ n 208 above.

The problems of the lack of political will on the part of the government as well as corruption in implementing IDP protections are likely to undermine the implementation of the entire IDP convention if not addressed. The GoU needs to demonstrate that it is making a sincere effort to implement IDP protections and should be firm in its resolve in line with anti-corruption legislation to root out corruption in programmes for IDP protection.

Overlapping obligations and the prospects of implementation:

In addition to the general implementation problems regarding IDP protections experienced in Uganda and their likelihood to impact upon the implementation of the IDP convention, there are a number of specific obligations that are imposed on the state by the National Policy and the PRDP that are similarly imposed on the state by the IDP Convention. These overlapping obligations are: the obligation to register all IDPs; the obligation to restore land to IDPs; the obligation to designate an authority in order to co-ordinate the activities of IDPs; the obligation to provide social services to IDPs and the obligation to mobilise resources in order to protect IDPs.

These overlapping obligations are set out in table form below with reference to the section of the National Policy, PRDP and IDP Convention where the obligations appear, where after an explanation of the table is provided.

Overlapping obligation	National Policy / PRDP	IDP convention
Registration of IDPs / issuing IDPs with documents	2.4 (iv) and 3.5 of National Policy	Article 13
Land restoration to IDPs	3.6 (3) of National Policy	Article 11 (5)
Designation of authority to co-ordinate activities of IDPs	Chapter 2 of National Policy	Article 3 (2)(b)
Social service provision to IDPs	3.8 – 3.13 of National Policy and PRDP at 65	Article 9 and 11
Mobilisation of resources	PRDP at 29	Article 3 (2)(d)

As regards the registration and issuing of documents to IDPs, profiling of IDPs has taken place in Teso, Lango and Adjumani. However, larger urban areas such as Kampala, Jinja and Entebbe have been excluded from this profiling process²¹², as has been set out in detail in Chapter three above. Thus the ability of the GoU to meet these obligations in the absence of including all IDPs in profiling exercises appears weak.

Regarding the restoration of land to IDPs as has been set out in Chapter 3 above, a number of difficulties are being encountered in giving effect to this obligation, which at present is not being met by the government. The prospects of implementing this obligation in the IDP convention are therefore also low.

The obligation imposed on the state to designate an authority or body that is responsible for coordinating activities aimed at protecting IDPs has been met by the designation of the Office of the Prime Minister as the authority for the protection and assistance of IDPs – as provided for in the National Policy and the PRDP. However, the capacity of the Office of the Prime Minister to perform this role has been questioned.²¹³ The Norwegian Agency for Development Cooperation's 2008 appraisal of the PRDP²¹⁴ indicates that that OPM's limited staff and limited resources pose challenges and have led to delays in the PRDP's implementation, and that the effectiveness of the OPM in executing tasks appears to be affected by the lack of clarity on its co-ordination role - this co-ordination role is similarly envisaged in the IDP convention. The appraisal indicates further that it appears that the OPM has invested more time in programme planning than in articulating the PRDP and creating a partnership approach to its implementation, with the OPM taking on planning functions which should be left to sector ministries and for which the OPM does not have capacity.²¹⁵ Thus, formally, this overlapping obligation of designating an authority has been met, but whether it can address the purpose for which it was created – that is, co-coordinating activities aimed at protecting IDPs - is questionable.

²¹² Refugee Law Project 'A special bulletin on urban IDPs' (2008) <http://www.refugeelawproject.org> (accessed 10 September 2010).

²¹³ n 29 above.

²¹⁴ J Clausen, R Lotsberg, A Nkutu & E Nordby 'Appraisal of the Peace, Development and Recovery Plan for Northern Uganda' (21 November 2008) <http://www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109839> (accessed 10 October 2010) 35.

²¹⁵ As above.

Social service provision to IDPs is envisaged in the IDP Convention. States are enjoined to provide adequate humanitarian assistance to IDPs including the provision of food; shelter; medical care; sanitation and education, as well as any other necessary social services. As has been set out in Chapter 3 above, social service provision to IDPs in Uganda is at present lacking. IDPs are experiencing a number of difficulties in accessing such services and the GoU relies heavily on humanitarian agencies to assist in meeting this obligation. This raises doubts as to whether this obligation under the IDP Convention can be met by the GoU.

The mobilisation of resources in order to protect IDPs has also been problematic as set out in Chapter 3 above, and thus the likelihood of the state providing the necessary funds for protection and assistance of IDPs is low.

From the above analysis, it is clear that the prospects of implementing the IDP Convention based on Uganda's practice in protecting IDPs are poor. Failure to address these problems may undermine the objectives of the entire Convention.

4.3.2 Prospects of complying with the Convention based on Koh's transnational legal process theory

The IDP Convention is analysed below based on Koh's transnational legal process theory in line with the three steps set out in chapter two. These are: interaction; interpretation and internalisation. Under each step an assessment of Uganda's performance as well as what is required is detailed.

Even though the IDP Convention is not yet in force as the requisite fifteen ratifications are still awaited, it is timely to assess whether the transnational legal process as regards IDP protection is underway in Uganda. This is as a means of commenting on the prospects of Uganda complying with the Convention and informing future compliance.

In addition, Uganda is a party to the Great Lakes Pact which is made up of amongst other things ten protocols, one of which is the Protocol on the Protection and Assistance to Internally Displaced Persons. The Great Lakes Pact came into force on 21 June 2008 having been ratified by eight of the 11 countries in the great lakes region including Uganda. Article 6 of the IDP protocol to the Great Lakes Pact obliges states to adopt and implement the Guiding Principles on Internal Displacement and to enact national

legislation to domesticate them.²¹⁶ Uganda's domestic policy framework also requires expression to be given to the norm of IDP protection.

4.3.2.1 Interaction

Interaction among transnational actors involves transnational networks generating norms. The degree to which a particular issue such as the protection of IDPs is regulated by international norms – including treaty regimes and organizations – will, according to Stevens,²¹⁷ influence the effectiveness of a transnational network. That is, the ability of a transnational network to influence a state's policy and law in an area of high international institutionalisation should be more effective than in an area in which there is low or little institutionalisation.²¹⁸ The international institutionalisation of a particular issue may, according to Stevens, legitimise an advocated legal or policy change and allow access of transnational networks within a state.²¹⁹

Interaction among transnational actors globally has resulted in the generation of an international norm of IDP protection. This is evident from, amongst other things, the appointment in 1992 by the UN Secretary-General of a representative on Internally Displaced Persons.²²⁰ Thereafter in 1998, the UN Guiding Principles on Internal Displacement were developed.²²¹ In 2006, a framework for national responsibility regarding IDPs was drafted by the UN Secretary-General on the human rights of IDPs. In 2008, the Brookings Institute developed a manual for law and policy makers in order to guide states as to how to develop national laws and policies to address IDP protection.²²²

Thus, despite the absence of an international convention on the protection of IDPs until the IDP Convention, IDP protection has over the past two decades become an internationally institutionalised

²¹⁶ See Article 6 (3) of the Great Lakes Protocol on Internally Displaced Persons.

²¹⁷ C J Stevens 'The effectiveness of transnational networks: the puzzle of the Hissène Habré case' (25 August 2009) http://works.bepress.com/cgi/viewcontent.cgi?article=caleb_stevens (accessed 20 September 2010) 22.

²¹⁸ As above.

²¹⁹ Stevens (n 217 above) 23.

²²⁰ See <http://www.unhcr.org/3b5547444.html> (accessed 25 August 2010).

²²¹ See <http://www.idpguidingprinciples.org> (accessed 10 August 2010).

²²² See http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx (accessed 10 August 2010).

issue. Orchard²²³ describes the Guiding Principles on Internal Displacement as marking a norm with respect to the internally displaced and refers to the then UN Secretary-General Kofi Annan's statement in 2005 that the Guiding Principles are the 'basic international norm' for the protection of IDPs.

This international institutionalisation has indeed allowed transnational networks in Uganda to generate the norm of IDP protection locally, and as Koh puts it, ensure that government policies conform to international standards. This is evidenced by the fact that the National Policy, according to the Minister of Relief and Disaster Preparedness, Tarsis Kabwegyere, came about in Uganda through consultations with many transnational actors, including civil society.²²⁴ The Guiding Principles on Internal Displacement are referred to²²⁵ and captured²²⁶ in some instances in the National Policy.

In line with Koh's theory, therefore, all that is further required under this step of the transnational legal process is continued interaction.

4.3.2.2 Interpretation

Interpretation of the norm of IDP protection as described in Chapter 2 above involves, amongst other things, the creation of fora to ensure IDP protection or the use or adaption of existing fora.

Globally, both the Inter-American Court of Human Rights as well as the European Court of Human Rights have interpreted the rights of IDPs.²²⁷ The Inter-American Court upheld the responsibility of Columbia for acts of displacement that came about due to actions of paramilitary and armed groups that resulted from Columbia's failure to act promptly to prevent displacement, as well as its failure to create conditions that would allow displaced persons to return to their homes. The Inter-American Court of Human Rights stressed the importance of the rights of displaced persons to freedom of movement.²²⁸

²²³ P Orchard 'Protection of internally displaced persons: soft law as a norm-generating mechanism' (2010) 36 *Review of International Studies* 282.

²²⁴ n 28 above, 4.

²²⁵ See National Policy Chapter 1 'Guiding Principles' and Chapter 5.1 (i).

²²⁶ For example Principle 20 of the Guiding Principles is captured in 3.5.1 and 3.5.2 of the National Policy.

²²⁷ C Beyani 'Recent developments: the elaboration of a legal framework for the protection of internally displaced persons in Africa' (2006) Vol. 50 no. 2 *Journal of African Law* 193.

²²⁸ Beyani (n 227 above) 193 citing the Inter-American Court's decision in *Case of Mapiripan Massacre v Columbia*, Judgment 15 September 2005.

The European Court of Human Rights also affirmed protection of displaced persons who were fleeing Russian military operations in Chechnya.²²⁹

On the African continent, the African Commission has held that displacement is unlawful, and that it constitutes a breach of the right to freedom of movement and the right to peace and security.²³⁰ The Commission viewed Mauritania as responsible for failing to prevent people from being forcibly evicted by armed groups.²³¹

In Uganda, the possibility of creating new fora in which the norm of IDP protection can be interpreted is provided for in the Agreement of Accountability and Reconciliation²³² that was concluded between the GoU and the LRA in 2007. Item 2.1 of the Agreement enjoins the parties to promote legal arrangements and measures for ensuring justice with respect to the conflict in the north. This includes, as is provided for in Item No. 3.1, traditional justice mechanisms. The Government of Uganda's Justice Law and Order Sector is the body that has been designated to design a traditional justice policy for the country. Whether or not traditional justice practices will be integrated into national justice structures or be implemented at local level is still unclear.²³³ However, the possibility of this new forum to interpret the norm of IDP protection amongst other norms is high, if such a forum is indeed put into place.

Existing fora in Uganda, such as the Constitutional Court, can also be used in order to interpret the norm of IDP protection. A key example of where a Constitutional Court has been used as a forum for the protection of the rights of IDPs is that of Colombia, which has one of the world's largest populations of IDPs.²³⁴

²²⁹ Beyani (n 227 above) 193 citing the European Court of Human Rights' decision in *Isayeva v Russia*, Judgment, 24 February 2005.

²³⁰ Beyani (n 227 above) 193 citing the African Commission's decision in *Malawi Association and Others v Mauritania*, Communication 54/91.

²³¹ Beyani (n 227 above) 193.

²³² Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan, June 2007.

²³³ Beyond Juba 'Tradition in transition: drawing on the old to develop a new jurisprudence for dealing with Uganda's legacy of violence' Working Paper No.1 (Revised Edition May 2010).

²³⁴ http://www.brookings.edu/papers/2009/11_judicial_protection_arango.aspx 1 (accessed 10 September 2010).

In Colombia, the constitutional mechanism to enforce human rights protection is called *acción de tutela* (the tutela procedure), which is a petition procedure that has been used by IDPs in order to protect their rights over a number of years.²³⁵ In 2004, following the Constitutional Court's review of over 100 tutela procedure files submitted by IDPs, the Court declared in decision T-025 of 2004 that the fundamental rights of the country's IDPs were being disregarded and that there was a gap between the country's IDP policy and the resources allocated in order to execute the policy.²³⁶ The Court identified the state's lack of institutional capacity and insufficient funds as the two main factors responsible for the state's inability to respond adequately to the needs of the displaced.²³⁷ The Court found that a number of rights of IDPs had been violated including the right to equality; to work; to social security and education. A number of awards were made including ordering authorities to adopt corrective policy measures.²³⁸

The enunciation and protection of the constitutional rights of IDPs in the decision T-025 of 2004 is described²³⁹ as having provided a common basis for dialogue among all actors, including NGOs, who are using the decision as the basis for their claims.

Interpretation of the norm of IDP protection is not yet underway in Uganda perhaps due to the lack of legislation formalising rights or due to the non-justiciability of socio-economic rights in Uganda²⁴⁰ resulting in the courts not being able to enforce provision of social services to IDPs or any of its citizens. However, other rights could be enforced through the courts successfully, and lessons from Columbia can be applied to Uganda in interpreting the norm of IDP protection.

The new fora described above should be created and utilised in Uganda and courts should be used to interpret the norm of IDP protection in order to meet this step of the transnational legal process.

²³⁵ (note 234 above) 8.

²³⁶ (n 234 above) 9.

²³⁷ (n 234 above) 9.

²³⁸ (n 234 above) 17 and 18.

²³⁹ (n 234 above) 21.

²⁴⁰ Socio-economic rights are contained in the Constitution of the Republic of Uganda (1995) under 'Directive Principles of State Policy' and are merely guiding principles.

4.3.2.3 Internalisation

Koh posits that the internalisation of a norm through the transnational legal process allows a state's institutions to develop in accordance with the norm, such that the state is then more likely to comply with the norm in the future.²⁴¹ As is set out above in Chapter 2, he distinguishes between social, political and legal internalisation – all of which are required in order to fully internalise a norm of protection.

Social internalisation occurs when there has been widespread acceptance of the norm such that it acquires public legitimacy and thus widespread obedience to it is fostered.²⁴² Sohoo and Stolz²⁴³ stress the important role that activists and social movements play in bringing about change. Social movements are viewed as having the ability to force governments to change as well as the ability to produce the changes necessary for social internalisation of new norms.²⁴⁴

There are many actors in Uganda who are working towards IDP protection. These include the UNHCR and OCHA who apply the 'cluster approach' in humanitarian protection. This entails defining the roles and responsibilities within the humanitarian community in order to strengthen accountability, predictability and effectiveness of international responses to humanitarian emergencies. UNHCR heads the global protection cluster regarding IDPs.²⁴⁵ The UNHCR's role in Uganda as regards IDPs was formalized in 2006 with the adoption of the cluster approach.²⁴⁶

The Refugee Law Project²⁴⁷ promotes and protects the rights of forced migrants in Uganda and conducts research and advocacy surrounding IDP issues. It also trains officials and other relevant stakeholders regarding the legal protections to be afforded to IDPs.

²⁴¹ Koh (n 35 above) 2654-2655.

²⁴² Koh (n 35 above) 2657.

²⁴³ C Sohoo and S Stolz 'Bringing theories of human rights change home' (2008) 77 *Fordham Law Review* 478.

²⁴⁴ As above.

²⁴⁵ H Refstie 'IDPs redefined' unpublished Master's thesis, Norwegian University of Science and Technology, 2008 50.

²⁴⁶ As above, 53.

²⁴⁷ See www.refugeelawproject.org (accessed 5 August 2010).

Political internalisation involves the adoption of policies in order to give effect to a norm. As has been detailed above, Uganda's National Policy provides a number of protections to IDPs.

Legal internalisation involves the incorporation of the norm into the domestic system through executive, legislative and judicial means. At present, no legislation has been enacted in order to provide for the legal internalisation of the norm of IDP protection. This is despite the fact that Uganda is a party to the Great Lakes Pact described above which requires domestic incorporation of the commitments enshrined therein. The Internal Displacement Monitoring Centre has even produced model legislation²⁴⁸ on the IDP Protocol to the Great Lakes Pact and thus Uganda's delay in domesticating the Pact is questionable.

The National Policy forms a solid basis for IDP protection and thus could, with some revisions be converted into legislation that will encompass the protections in the IDP Convention. However, there are some gaps in the National Policy when compared to the IDP Convention. As has been mentioned above, although the National Policy should be implemented without discrimination, urban IDPs are being excluded from protection. It may thus be necessary to provide for the needs of urban IDPs specifically in legislation. It also fails to adequately address coordination between central and local government. The Convention obliges states to implement early warning systems for displacement – which is not provided for in the National Policy. The Convention in addition obliges states to hold non-state actors responsible for displacement, which is not provided for in the National Policy and thus would need to be provided for in legislation.

Based on the above, the norm of IDP protection has in some instances been politically and socially internalised in Uganda. However, more needs to be done to ensure that the protections envisaged in policies occurs across the board, including the protection of urban IDPs. What is still required is legal internalisation and that gaps in the National Policy are addressed. Legislation that gives effect to the commitments enshrined in the Convention needs to be promulgated. This can either be done by adapting the National Policy or by borrowing from the model legislation drafted by the Internal Displacement Monitoring Centre.

²⁴⁸ See [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/2B0DC19C7EA61A3CC12572F7002CF5D8/\\$file/GL%20Model%20IDP%20Legislation%20Rev%202%20-%20En.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/2B0DC19C7EA61A3CC12572F7002CF5D8/$file/GL%20Model%20IDP%20Legislation%20Rev%202%20-%20En.pdf) (accessed 1 October 2010)

4.4 Conclusion and overall prospects of Uganda realising the IDP convention

Uganda's prospects of realising the IDP Convention based on its practice in IDP protection are poor. This is evidenced by the existing failures in implementing IDP protections. Thus, in the absence of addressing the reasons for the failures in protection, the picture is bleak. However, reasons for failures in implementation have been identified. Addressing these reasons should go a long way towards ensuring that protections are implemented.

Uganda's prospects of complying with the IDP Convention based on Koh's transnational legal process theory are also poor in the absence of there being internalisation of the norm of IDP protection through enacting legislation. On a positive note, however, the fact that there has been interaction among transnational actors regarding the norm of IDP protection and the fact that fora are in the process of being created for the interpretation of the norm bodes well for Uganda.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Summary of findings

This thesis found that the prospects of Uganda realising the IDP Convention are low.

Such finding is based on Uganda's practice in IDP protection, which is lacking in a number of areas. These include the lack of protection being afforded to urban IDPs; the failure to devote sufficient attention to extremely vulnerable IDPs; the failure to provide essential services to IDPs and the problem of redistributing land to IDPs. The reasons for such failures in protection are identified as being attributable to amongst others a lack of law and order in the north of the country; the lack of resources; the lack of political will in order to implement IDP protections and corruption; lack of co-ordination between central and local government; lack of communication of interventions at grassroots level and a lack of capacity in the Office of the Prime Minister.

The finding is also based on the transnational legal process theory which requires interaction, interpretation and internalisation of a norm in order to promote obedience to it. The fora for interpretation of the norm need to be created and utilised in Uganda, such as the Constitutional Court and alternative justice mechanisms. Uganda has not fully internalised the norm of IDP protection politically in that amongst other things its policies to do specifically cater for the needs of urban IDPs. In addition, there has not yet been legal internalisation of the norm of IDP protection and legislation needs to be promulgated in order to adhere to this step of the process.

5.2 Conclusion

This thesis examined the prospects of Uganda realising the IDP Convention. It began by setting out a number of theories of compliance and detailing why Koh's transnational legal process theory was chosen as a theoretical framework within which to examine Uganda's prospects of realising the Convention. Thereafter, Uganda's policy framework for IDP protection was set out and its practice in protecting IDP protection was analysed. Finally, the prospects of realising the IDP Convention were detailed based both on Koh's theory of compliance and based on Uganda's practice in IDP protection.

Prospects of implementing the IDP Convention are poor unless steps are taken to rectify the existing problems experienced by Uganda in the implementation of its IDP policies. Fora for interpreting the norm of IDP protection need to be utilised and the norm needs to be internalised through legislation.

5.3 Recommendations

To the Government of Uganda:

- Show a genuine commitment to ending the conflict in the North of Uganda through peaceful means, thereby providing durable solutions for IDPs;
- Address the hurdles to implementation and gaps in the National Policy and PRDP by allocating more funds to their implementation, rooting out corruption in projects, fostering communication between central and local government and improving access to justice;
- Internalise the obligations in the IDP Convention by passing new legislation;
- Conduct a profiling exercise of urban IDPs so as to assess their needs and afford them required protections;

To all transnational actors:

- Continue interacting in order to enhance the norm of IDP protection in Uganda;
- Continue applying pressure to the GoU to uphold its obligations to protect IDPs in terms of its policies and in terms of the IDP Convention.

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