

**EMERGING LEGAL CHALLENGES IN INTERNATIONAL LAW:
INTERNALLY DISPLACED PERSONS (IDPs) AND THE NEED
FOR PROTECTION**

**BY
JOSEPH K. MAGUTT**

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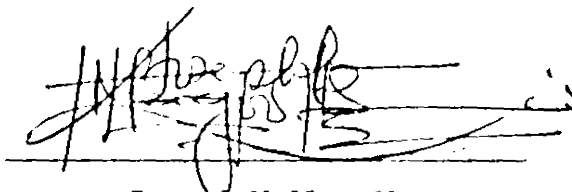
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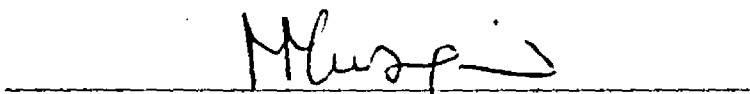
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This dissertation has been submitted to the Institute of Diplomacy and International Studies with my approval as the University Supervisor.



Dr. Makumi Mwagiru

Institute of Diplomacy and International Studies

08 February 2005

Date

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When Archimedes, the great Greek philosopher said, "Give me a proper stand point, and I will move the earth", he was patently saying that even with the mightiest of individual effort or strength, we can all achieve or realize our efforts in life only with the help and the support of others, who would put us on 'the proper stand point'. I salute many a great people who have contributed in my life and in my quest for more knowledge. In recognizing their contribution I am however constrained and humbled to say, that this is, perhaps not the most ideal place to express my gratitude for the great many things they have done.

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Joseph Magutt

University of Nairobi

July 2004

DEDICATION

With great humility I have dedicated this work to my mother. My teacher and a great Kenyan, she taught me to keep my eyes on the ultimate prize. For her mountain-moving-faith, everything has simply been possible! And for her sacrifice, struggle and patience she does not deserve less.

Mother, this is for you!

Joseph Magutt

University of Nairobi

July 2004

ABBREVIATIONS AND ACRONYMS

HEWS	Humanitarian Early Warning System
IASC	Inter-Agency Standing Committee
IGAD	Inter-Governmental Authority on Development
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
LRA	Lord's Resistance Army
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NIF	National Islamic Front
OAU	Organization of African Unity
OCHA	Office of the Coordinator of Humanitarian Affairs
OLS	Operation Lifeline Sudan
OSCE	Organization for Security and Cooperation in Europe
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations, Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children Fund
WFP	World Food Programme

ABSTRACT

This dissertation will appreciate that internal displacement having assumed epidemic proportions is the greatest human rights and humanitarian challenge to international community after the refugee crisis experienced in the second-half of the twentieth Century.

While it will be noted that, although the problem of internal displacement is complex in nature, it will also on the other hand be argued that the suffering of IDPs is fundamentally compounded by the absence of internationally recognized legal status, the obsession with the notion of sovereignty by governments, and the apparent lack of any clear mechanism for international protection or intervention. This study will make a strong case for international protection for internally displaced persons. It will be argued that while substantial legal norms in international law can in principal be invoked in the protection of IDPS, they nonetheless fail to provide sufficient protection. In doing so, the study will analyse international human rights law with a view of determining the extent to which it meets basic protection needs of IDPs and conclude that there are inherent gaps and grey areas that merit attention.

By using a case study of Sudan this study will demonstrate the gravity of internal displacement and show that the suffering experienced by IDPs is as grave or even worse than that of refugees who are protected by international law. In concluding the study will suggest measures of dealing with internal displacement and agree that although conflict primarily accounts for the largest percentage of internal displacement; there are nonetheless other factors to the problem and hence the need for a broad framework of strategies and solutions.

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CHAPTER ONE

LEGO-POLITICAL AND INSTITUTIONAL CHALLENGES IN SITUATIONS OF INTERNAL DISPLACEMENT

1.0.0 INTRODUCTION: THE RESEARCH PROBLEM

At the end of the 20th Century and at the dawn of the 21st Century, the international community is confronted with yet another serious challenge – the global crisis of mass internal displacement. As a predominantly post-Cold War phenomenon, internal displacement has assumed epidemic proportions and has “emerged as one of the great human tragedies of our time.”¹ Estimated at twenty five million world wide, a figure far higher than the estimated seventeen million refugees,² the internally displaced are the “the single largest at-risk population in the world.”³ Occasioned by armed conflicts, internal strife, and systematic violation of human rights, prevalent in many countries in the post-Cold War era; internal displacement has dispossessed and subjected the victims into a state of insecurity, destitution and utter indignity. They are often:

¹ Remarks of Kofi Annan, Secretary General, United Nations, Preface in R. Cohen and F.M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington D.C.: Brookings Institution, 1998).

² United Nations Centre for Human Rights, *Human Rights and Refugees*, Fact Sheet No. 20, June 1993, p.1. See also W. Davis (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, Norwegian Refugee Council/global IDP Survey, 1998. It is however important to note that the numbers of internally displaced persons has been fluctuating from time to time either due to factors that prompt fresh displacement or due to intervention measures such as resettlement and integration programmes.

³ D. Korn, *Exodus within Borders: An Introduction to the crisis of Internal Displacement* (Washington, D.C.: Brookings Institution, 1999), p.2

⁴ W. Davies (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, op.cit., p.1.

Murdered, starved, raped, enslaved, arrested, tortured, forcibly conscripted, forced to provide labour, made to move repeatedly, deprived of medical care, denied identity documents and abused in other ways.⁴

Besides these graphical images, the crisis of internal displacement, not only raises human rights and humanitarian concerns but also threatens the security and stability of countries, regions, and through a chain effect, the international system of which they are an integral part.⁵ Inevitably therefore, the issue of internal displacement has emerged as a subject of international concern and is indeed a problem that cannot be ignored or simply swept under the carpet.

Whereas it is true that the conditions experienced by internally displaced persons are in every respect similar or even worse to those of refugees, it is evident that they are not protected under the refugee law, yet no international legal and institutional framework has been established specifically for their protection. As it is, the border-crossing requirement for protection as stipulated in refugee law automatically denies or excludes those displaced, but who remain within the borders of their countries. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol gives the international community under the aegis of the United Nations High Commissioner for Refugees (UNHCR), the legal and institutional basis to provide protection to refugees. No such similar

⁵ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case studies of Internally Displaced*, (Washington D.C.: Brookings Institution, 1998), p.1.

⁶ D. Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement*, op.cit., p.2.

organization is specifically mandated to intervene on behalf of internally displaced persons. Even the International Committee of the Red Cross (ICRC) is only mandated to protect civilians in clearly recognized situations of armed conflicts⁶ and can only operate with the consent of the authorities in control.⁷ At best therefore operations aimed at providing protection and assistance to internally displaced persons has often remained *ad hoc*, selective and inadequate.⁸ Typically, they are "carried out case by case with each agency doing what it believes it can and should do."⁹

Uprooted, bereft of security, homeless and deprived of other fundamental human rights, the IDPs, perhaps more than any other group of people today embody undeniable human suffering and vulnerability. These disturbing conditions are even made worse in situations where governments are known to be the source of persecution but have blocked the departure or escape of the victims, leaving them in the lurch as 'state captives,' while those attempting to flee are sometimes massacred at the borders. In spite of these atrocities, international response to the plight of internally displaced persons, largely remain within the context of relief supplies rather than reflective of human rights concerns. Indeed, this explains why some of the affected governments have

⁷ R. Cohen and F.M. Deng (eds.), *The forsaken People: Case Studies of Internally Displaced*, op.cit., p. 8.

⁸ W. Davies (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, op.cit p.3.

⁹ D.A. Korn, *Exodus: Within Borders: An Introduction to the crisis of Internal Displacement*, op.cit., p.3.

been very keen in seeking international relief assistance than they are responsive to human rights protection.¹⁰

Sovereignty, and the related principles of territorial integrity and non-interference - jealously guarded by states regrettably remain wanting when those under their jurisdiction are deprived of protection and subjected to inhuman conditions. Indeed, this principle has been and perhaps will continue to pose a great challenge to the international community particularly in situations of human rights concerns, humanitarian intervention and in seeking to resolve crises of civil strife largely responsible for internal displacement. It will be noted however that the relevance of absolute sovereignty has been put to test in the light of the notion of the universality of human rights and a growing acceptance of the fact that events taking place within a state are a legitimate subject of international concern and that when governments fail to meet their obligation, they should be held accountable.¹¹ In effect governments should not plead such principles in the event of a breach or failure of their jurisdictional responsibilities. Thus in the interest of internally of displaced persons, a government has an obligation to offer the necessary protection. If not, it risks sacrificing its claim to sovereignty over them and thus the need for international framework of protection.

¹⁰ See W. Davies (ed.), *Rights Have No Borders: World Wide Internal Displacement*, op.cit., p.3.

¹¹ See R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p.4.

Sudan, a country whose successive regimes have failed to realize peace has had to endure with internal war for well over a quarter a century is distinguished for producing "more internally displaced persons than any other country in the world – approximately four million."¹² Thus as the worlds cradle of displacement, responsible for the most brutalized and traumatized IDPs, the Sudan presents a uniquely grave picture of internal displacement and thus a compelling case for investigation. Rationalizing its action under the mantra of state sovereignty and territorial integrity, successive Sudanese regimes have albeit fierce international criticisms continued to interfere with the flow of international humanitarian supplies to internally displaced persons, particularly in the Southern region.

The grim picture of the internally displaced cannot therefore be overemphasized. It calls for unprecedented local, regional and international efforts towards their protection. This study will seek to advance this goal.

AIMS AND OBJECTIVES OF THE STUDY

1.1.0 Aims of the study

Broadly, this study seeks to point out the magnitude of the IDP suffering, examine international response and contend that in the light of inadequate or lack of international protection particularly where governments have failed, there

¹² R. Cohen and F.M. Deng (eds.) *The Forsaken People: Case Studies of Internally Displaced*, op.cit., p.2. See generally P.A. Nyong'o (ed.), *Arms and Daggers in the Heart of Africa: Studies on Internal Conflicts* (Nairobi: Academy Science, 1993).

is a compelling need for a comprehensive international framework for their protection and assistance.

1.1.1 Objectives of the study

- a) To examine the extent to which internally displaced persons are protected under the present international law and point out inherent gaps or weaknesses in the law.
- b) To demonstrate the need for international legal, institutional and other practical measures in the search for effective protection for the internally displaced.
- c) To demonstrate using the case of Sudan the grave situation of internally displaced persons.

1.2.0 JUSTIFICATION OF THE STUDY

The rationale of this study is underpinned on dual fronts: that of policy and academic significance.

The crisis of internal displacement reverberates worldwide and can no longer be ignored by the international community. Indeed, it is one of the greatest challenge to the international community after the refugee phenomenon witnessed in the second half of the 20th Century. Any effort therefore aimed at seeking to understand the problem and suggest remedial measures deserve a consideration.

While the internally displaced just like refugees suffer massive violation of human rights including persecution, which in effect makes the plight of both similar in all respects, it is evident however that the former has no specific regime or institution for its protection vis-à-vis the latter. The *ad hoc* assistance and protection from humanitarian organizations and other general protections afforded under international law remain insufficient. Bereft of security and other fundamental human rights violated, the IDPs have therefore become a deprived lot. They are:

Denied their birthright – the right of citizens to be protected by their own governments – [and] are regarded as aliens in their own land.¹³

This grave picture is typified in the Sudan situation where the suffering experienced by internally displaced persons has forced many to cross borders. This situation calls for an understanding of the problem and to propose appropriate measures towards the protection of this category of persons. Through a critical evaluation of the failures and problems encountered by local and international NGOs, UN agencies and governments in situations of internal displacement, the study hopes to identify practical strategies and policy measures vital in the protection and assistance of internally displaced persons. Similarly, by examining the status of IDPs in various situations of displacement and by identifying rights relevant to their protection, the study will point out why international law has failed to offer effective protection and propose relevant

¹³ B. Frelick., "Aliens in their Own Hand: Protection and Durable Solutions for Internally Displaced Persons" *World Refugee Survey*, 1998, p. 30.

legal and other practical measures towards addressing the problem. On the academic level, it is hoped that the study would generate valuable information - important in answering or addressing pertinent questions and inspiring further investigations on the subject. Through the examination and evaluation of the complex terrain of pertinent issues, which touch and concern IDPs, the study seeks to contribute to the debate on the subject.

1.3.0 LITERATURE REVIEW

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This section of the study will examine literature on internally displaced persons and other relevant materials that will be useful in guiding this study.

The predicament and the challenge internally displaced persons pose to the international community, is no less acute than the refugee crisis that confronted Europe in the aftermath of the Second World War. Cohen and Deng¹⁴ note that during this period the mass exodus of populations out of their countries drew international attention prompting the need for an institutional and legal framework to protect this category of persons. They note that humanitarian concerns as, well as reasons of practical political, economic, and strategic interest, made it imperative to establish a system of international protection and assistance for refugees. The creation of the United Nations High Commissioner for Refugees in 1951 and the adoption of the Convention Relating to Status of Refugees was designed to protect persons forced from their homes owing to a

¹⁴ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit.,p.2.

well-founded fear of persecution, and to seek permanent solutions to their plight. Although most governments comply more or less readily with their obligations under these agreements, Cohen and Deng¹⁵ observe that in the recent years however state, actions have caused a steady erosion of refugee protection, and UNHCR has been impeded at times from carrying out its mandate to protect refugees where state authority has collapsed. They however note that although the existing normative and political framework makes it possible for UNHCR to intercede on behalf of refugees neither UNHCR nor any other international humanitarian agency has a similar legal basis for intervening to protect internally displaced populations. They further observe that the International Committee of the Red Cross (ICRC) is mandated to protect civilians in war zones, 'but by no means are all internally displaced to be found in war zones, and even when they are, the ICRC can operate only with the consent of the governments or rebels, which may refuse entry.'¹⁶ In the absence of an international humanitarian agency specifically assigned to provide protection and assistance to the internally displaced, Cohen and Deng note that two alternative methods have evolved in dealing with the resulting gap:

The various United Nations humanitarian agencies operating each according to its mandate, with their efforts in principle coordinated at the headquarters level by the UN's emergency relief coordinator and in the field by resident representatives/coordinators; or a lead agency assigned to deal with the emergency and charged with overall responsibility for the displaced and other affected populations.¹⁷

¹⁵ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op.cit.,p.8.

¹⁶ Ibid.

¹⁷ Ibid.

They note that in the former Yugoslavia and Tajikistan, the UNHCR played the lead role where in the former, the UNHCR was designated by the UN Secretary-General to assume the lead agency role, with responsibility not only for refugees – its traditional mandate - but also for internally displaced persons and other victims. Similarly in the case of Tajikistan, UNHCR agreed, in the absence of a resident or humanitarian coordinator, to play the lead role in assisting and protecting both refugees and internally displaced persons returning to their homes, until it turned these responsibilities over to the ICRC, and the Organization for Security and Cooperation in Europe (OSCE).¹⁸

In the same vein Aga Khan *et al.*,¹⁹ in addressing institutional efforts in the protection and assistance to IDPs note that, the inter-agency operations have been unsystematic. They attribute this to the fact that no single UN agency is specifically mandated to protect and assist internally displaced persons. They in retrospect echo Cohen and Deng's views by pointing out that although UNHCR concern is traditionally limited to refugees properly defined, the institution has sometimes at the request of the UN Secretary-General, the UN General Assembly or the affected state been involved in the protection of internally displaced persons. On this note they observe that such requests have commonly occurred when IDPs are found within the proximity of UNHCR's operation. They are quick

¹⁸ Ibid.,p.9.

¹⁹ S. Aga Khan *et al.*, *Refugees: Dynamics of Displacement: A Report for the Independent Commission on International Humanitarian Issues*, (London and New Jersey: Zed Books, 1986) pp.120-123.

to point out however, that because of this kind of assistance, the matter has sometimes been politicized to mean the *de facto* extension of the UNHCR's mandate, and thus the agency has had to cautiously engage itself in matters of internal displacement. Consequently, protection and assistance to internally displaced persons has therefore commonly proceeded on an *ad hoc* basis. Their principal observation is that the assistance by the international community to the internally displaced has been channeled not through the UN system but through the Red Cross. It is important to note however that for effective intervention in situations of internal displacement there is a strong need for cooperation and coordination among involved organizations and other actors.

On factors that have spurred or catapulted the problem of internal displacement into becoming an international agenda or concern, Cohen and Deng²⁰ note that the runaway numbers of internally displaced persons beginning in the early nineties could not escape the attention of the international community. The prevalence of internal conflict in the post Cold War era they note had given rise to more than twenty million IDPs by 1997 from reported forty countries. In the same vein they, note that the international preoccupation with preventing refugee flows has contributed to increased attention to internal displacement problem. They note that with the demise of the Cold War the, political advantage that inspired many states to accept refugees lost its meaning resulting in limited

²⁰ See R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit.,pp.3-5.

entry of refugees not only to Western countries but also to other parts of the world who became less recipient because of large numbers of refugees. To this end they note the international community has been compelled to address the problem of the internally displaced so as to discourage them from fleeing their countries. By the same token Cohen and Deng observe that the telecommunication revolution has played a key role in bringing the plight of IDPs into international attention. The televised images for instance in 1991 of hundreds of thousands of trapped Kurds in Iraq mobilized world attention into intervening. Another important factor in bringing internal displacement to world attention they, note is the collapse of the Cold War regime. In this regard they observe that when superpowers were engaged in proxy wars for example in Afghanistan, Angola, and El Salvador, the internal displacement produced by these struggles received little or no attention. It was until these geopolitical struggles waned they observe, that the plight of those caught within their borders because civil wars and other forms of internal strife came into full view and were "recognized as requiring international humanitarian attention."²¹ They note that the end of Cold War has accelerated the notion that events taking place within a state are a legitimate subject of international concern that would prompt forced intervention in situations of clear human rights violations or humanitarian crisis. This commitment was particularly witnessed in Iraq when the Security Council sanctioned intervention on behalf of internally displaced

²¹ Ibid.,p.4

persons on grounds that massive flows of refugees were a threat to international peace and security. It will be noted in this regard that such actions are normally reached at in, wanting circumstances where humanitarian organizations have failed to access internally displaced persons, either as a result of insecurity or deliberate obstruction by states and non-state actors. In Sudan the character of internal displacement undeniably reflects this state of affair. Criticisms brought forward against the government for its lack of commitment and indifference to the plight of IDPs has for long remained a major concern.²² Rebels too have been fiercely criticized for fettering with access to IDPs in their area of control. In response however the UN in 1989 through hard diplomatic bargaining persuaded the government and the rebel forces to pave way for Operation Lifeline Sudan, a programme that enabled the international community to provide desperately needed relief to displaced and other persons throughout that country.²³ Finally Cohen and Deng observe that the international attention to the phenomenon of internal displacement owes much to the realization that peace and reconstruction in war-torn countries depend partly on the effective reintegration of displaced persons. They point out that in countries that have suffered devastating civil strife like Cambodia, Angola, El Salvador, Afghanistan, it 'became impossible to

²² See for example, M. Bradbury, "Sudan: International Response to War in the Nuba Mountains." *Review of African Political Economy*, No.77, Vol.25, September, 1998.

²³ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit.,p.4

design development plans without taking into account the situation of returning refugees and internally displaced persons.²⁴

On IDPs, sovereignty and human rights, Davies²⁵ observes that at a conceptual level and in the UN's search for consensus on the issue – the term IDP reinforces sovereignty, for it upholds the fundamental responsibility of governments towards their citizens. She asserts that human rights should be part of the definition of sovereignty, rather than in opposition to it. She further notes that in the context of internal war the debate on protection of internally displaced persons fundamentally revolves around two sets of potentially contradictory concerns: first, ensuring international protection of human rights and upholding state responsibilities; and second, legal provisions for the protection of IDPs and the state's capacity to apply those provisions. This view is given reinforcement by Steiner and Alston²⁶ who observe that although the term 'sovereignty' continues to be used in international legal practice, its referent in modern international law is quite different. They strongly argue that it is the people's sovereignty that is protected rather than the sovereign's sovereignty. In putting premium on sovereignty and not human rights, they disagree with the old or absolute concept of sovereignty where even scrutiny of human rights without the permission of the sovereign could arguably constitute a violation of sovereignty -

²⁴ Ibid.,p.5

²⁵Wendy Davies (eds.), *Rights Have No Borders: World Wide Internal Displacement*, op.cit.,p.23.

²⁶ See Henry Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, (Oxford: Clarendon, 1996), pp.158-9.

by its 'invasion' of the sovereign's *domaine reserve*.²⁷ Emphatically they point out that:

In its modern sense, the object of protection is not the power base of the tyrant who rules directly by naked power or through the apparatus of a totalitarian political order, but the continuing capacity of a population freely to express and effect choices about the identities and policies of its governors.²⁸

This view is shared by the OAU Report on Assistance and Resolving the Problem of Internally Displaced Persons in Africa,²⁹ which strongly affirms that states are squarely held responsible for the prevention of internal displacement, for the provision of effective protection and assistance to internally displaced persons.

Noting that, the notion of sovereignty has been abused by state authorities the Report points out that there was a need to rethink or re-conceptualize the traditional notion of this concept. This observation recommends that indeed sovereignty should be seen in the light of the duty by states to protect and respect the rights of their citizens, rather than as vehicles to perpetrate the abuse. Frelick³⁰ in this respect takes a radical view and states that sovereignty *per se* is not the problem rather it is sheer indifference from the international community in coming up with effective strategies or mechanisms of addressing the problem. To win the political will of the international community, he rightly

²⁷ Ibid.

²⁸ Ibid.

²⁹ OAU Report on Assistance and Resolving the Problem of Internally Displaced Persons in Africa, (Khartoum), December, 1998, pp.5-6.

³⁰ See B. Frelick, "Aliens in their Own Land: Protection and Durable Solutions for Internally Displaced Persons" *World Refugee Survey*, 1998, pp. 30-39.

notes that, there should be a clear definition³¹ linking internally displaced persons to lack of protection. He further argues that sovereignty should be defined in the context of human rights protection and notes that:

Even if the binding international legal instruments are lacking, there is widely shared palpable gut feeling that no space is sovereign where egregious human rights violations occur.³²

In the same vein, the OAU Report points out that in situations where IDPs are under the control of rebel groups or even in sections of a country where state structures have disintegrated; those non-state actors which hold the claim of control over these people have an obligation to protect them and to facilitate their reintegration into their communities. The Report further asserts that the non-state actors should provide unimpeded access to IDPs especially with regard to humanitarian action. Evidently, this tone is predicated on the backdrop of the recent efforts by the UN to hold individuals responsible and accountable for war crimes and any other crime against humanity.

On the legal status of individuals in international law, Wallace³³ contends that although individuals have limited international legal personality, contemporary

³¹ In reaction to the UN's Secretary general working definition of IDPs, which among other defines the internally displaced as persons forced to flee their homes as a result of natural or man-made disasters, Frelick contends that it is inappropriate. He argues that for this definition to include persons displaced by natural or man-made disasters is improper because some of these people may not necessarily be targets of any sort or at risk of abuse. He however, cautions that it is unfortunate that some governments have seized these disasters as opportunities to persecute estranged communities or groups of people. Frelick's concern in this regard is instructive on the need for an acceptable framework or criteria for identifying or defining IDPs in respect to protection. See Frelick, "Aliens in their Own Land: Protection and Durable Solutions for Internally Displaced Persons," in *World Refugees Survey*, op.cit., pp.30-39.

³² Ibid.p.30.

international law increasingly recognizes that they possess both international rights and duties. She attributes this development to the awareness and growth of human rights in the last fifty years. She further notes in this regard that a subject of international law owes responsibility to the international community and enjoys rights; the benefits of which may be claimed and which if denied, may be enforced to the extent recognized by the international legal system. Shaw³⁴ shares this view and reiterates that the legal status of individuals in international law is closely bound to the rise in the international protection of human rights. He notes that whereas the long standing notion is that only states and possibly international organizations are the subjects of international - there is generally accepted shift that the essence of international law has been the ultimate concern for human beings as manifested in the natural law origins of classical international law. He however notes that the growth of positivist theories, especially in the nineteenth Century, obscured this development and emphasized the centrality and even exclusivity of the state. He further observes that in recent years, more attention has been given to various expressions of the concept of collective rights - although he notes it is difficult to extricate or maintain a differentiation between individuals and collective rights. He notes for instance that the right, such as to life or freedom of expression are fundamentally individual, while the right to freedom of assembly or to manifest

³³ See Rebecca M.M. Wallace, *International Law* (London: Sweet and Maxwell, 1992), pp.58-72.

³⁴ See M.N. Shaw, *International Law* (Cambridge: Cambridge 1997), pp. 182-209. For similar discourses see also, I. Brownlie, *Principles of Public International Law* (Oxford: Clarendon, 1990) p.595 and A. Cassese, *International Law in a Divided World* (Oxford: Clarendon, 1986), p.75.

one's own religion are individual rights expressed collectively. The purely collective rights he notes are such as: right to self-determination or the physical protection of a group such as through the prohibition of genocide or the right of a minority to enjoy their own culture. In view of these observations it can therefore be postulated that because human rights 'derive' from the inherent dignity of the human person³⁵ internally displaced persons both as individuals and collectively therefore deserve protection. This insight is instructive to this study when an IDP properly defined is one deprived of protection.

Human Rights Watch (Africa)³⁶ takes a brief look at the extent to which the internally displaced receive international legal attention and notes that rights and guarantees relevant to their protection are addressed in existing law. Important legal instruments in this regard are for example the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Others include those legal instruments, which apply to specific protection concerns such as those relating to rights of women and children and protection against torture and racial discrimination among others. It will be noted in this regard however that rights relevant to

³⁵ J. Donnelly and R.E. Howard (eds.), *International Handbook of Human Rights* (New York: Greenwood, 1987), pp. 1-4:1. This insight is reinforced by B. Lewis in his observation that "internationally recognized human rights rest on the premise that all individuals simply because they are human beings have certain basic rights that they are entitled to enjoy equally", See C.W. Kegley, Jr. and E.R. Wittkopf (eds.), *The Global Agenda: Issues and Perspectives* (New York: McGraw-Hill, 1995), p.198.

³⁶ Human Rights Watch, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*, June 1997, pp. 20-27. Note that this feature will be dealt with extensively in Chapter Six of this study.

protection of internally displaced persons albeit, insufficient are provided both under human rights and humanitarian law.

On prevention of internal displacement particularly in Africa the Deng Report recommends that a multifaceted approach should be put in place so as to encompass:

Eliminating poverty and promoting sustainable development; ensuring respect for human and minority rights; establishing equitable and democratic forms of government; encouraging the peaceful resolution of disputes, ending social injustice and averting the growth of ethnic or communal antagonisms.³⁷

In view of this recommendation the Report further emphasizes that these efforts should be addressed at the national, regional and international level with the involvement of major powers in areas of conflict resolution and the general efforts of promoting peace, security and democracy. Emphasis is particularly placed on the OAU to actively engage itself in areas of human rights and conflict resolution so as to curb rampant internal displacement. It further notes that the OAU should come up with a plan of action for the internally displaced.

1.3.1 A BRIEF ASSESSMENT OF THE LITERATURE

It emerges from the literature that the crisis of internal displacement and its implications has increasingly become a major concern to the international community particularly in the last one decade. Consequently, the United Nations

³⁷ See. F.M Deng, *International Displacement in Africa*. A Report of the Bookings Institutions – UNHCR – OAU Workshop, (Addis Ababa), October, 1998, pp. 8-9.

especially from the early nineties has been prompted to work out modalities to address the problem, although no legally binding framework and institutional solutions have been realized. What comes out clearly from the literature is the need for a protection-oriented definition for the internally displaced. There is a strong desire to establish a clearly defined criteria for determining which internally displaced people most needed protection vis-à-vis those whose government accepts the responsibility to protect them and are able to do so, and those found within or outside government controlled areas and who cannot receive protection. The concern is that the definition of an internally displaced person should be guided, inspired and tied to a criteria based on lack of protection so as to enable the international community to intervene on their behalf and to hold *de jure* or *de facto* authorities responsible.

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The literature tends to shy away from addressing the imperative of a separate legal apparatus for the IDPs or even expanding the refugee law to protect them. It appears that the UNHCR particularly is at a crossroads, unable to resist the temptation to protect and assist the IDPs, yet has no *de jure* mandate over them. Its *ad hoc* engagement with internally displaced is principally limited to relief assistance and little with the legal concerns.

There is a general concern that the notion of state sovereignty and hence the claim of unparalleled jurisdiction over its subjects has notoriously and

deliberately been invoked by affected governments to the extent that it has frustrated international efforts in seeking to protect internally displaced persons. However, there is a growing international consensus to rethink and reconceptualize the notion within the framework of respect of human rights of citizens so as to allow international intervention in the event of human rights abuse. Finally, what emerges from the literature is that the present international legal regime does not provide adequate basis for the protection of internally displaced persons and thus there is a compelling need for international strategies to addressing their specific needs. It is this concern that this study will seek to address itself to.

1.4.0 THEORETICAL FRAMEWORK

This study is anchored on two theoretical frame works: the natural law approach and the functionalist school.

1.4.1 NATURAL LAW

Many ideas and principles of international law today are rooted in the notion of natural law and the relevance of ethical standards to the legal order such as the principles of non-aggression and human rights.³⁸ Natural law emphasizes the human dignity and the supremacy of reason with an affirmation of the immorality (though not necessarily the invalidity) of law contrary to right reason

³⁸ M.N Shaw, *International Law*, op.cit., p.44.

and the eternal law of God.³⁹ Although its basic precepts can be traced back to the classical times, the modern influence of natural law theory owes much to the theistic writings of St. Thomas Aquinas. This theistic view of the law was however infused with secular and rationalistic approach by Hugo Grotius's work of the seventeenth Century. It is to be noted however that the rise of positivism in the 18th Century resulted in the decline of natural law as a theory of international law until its reemergence in the 20th Century at the height of the Second World War atrocities. The Nazi atrocities particularly drew international concern on human rights, culminating in yet another theorization of a higher law in the face of unjust state (positive) law.

The natural law school espouses the key role of the individual in international law. It postulates that all human beings regardless of their status are subject to a higher authority each endowed with a unique individual identity separate from the state.⁴⁰ It upholds the importance of the dignity and natural rights that inhere in all human beings by virtue of their humanity.⁴¹ This means that human rights do not necessarily require any positive recognition, or the signing and ratifying by a state of a human rights instrument as an obligation to safeguard and protect the rights of those under its jurisdiction. The upshot is that natural

³⁹ Ibid. pp.43-44.

⁴⁰ Scott Davidson, *Human Rights* (Buckingham and Philadelphia: Open University Press, 1980), p. 27.

⁴¹ S. Kavan, "Human Rights and International Community" In J. Mayall (ed.), *The communication of States: A Study of International Political Theory* (London: George Allen and Unwin, 1982), p.130.

law binds all men and women and provides a standard for evaluating human practices, including political practices. A regime therefore that transgresses the natural law is "guilty of serious crimes and in severe instances, loses its moral and political legitimacy."⁴²

Opposed to the natural law ideals is the Positivist School of thought. Positivism questions the possibility of the individual being a subject of international law and regards the state as the sole subject of international law. It also contends for a clear distinction between domestic and international law as two separate entities, each with distinct characteristics. Although positivism diminishes the notion of individuals having international rights and duties it nevertheless points out that such benefits could be realized by invoking the state. Consequently, in situations where individuals derive benefits under international law, they indeed do so, not by virtue of a right which international law provides them but by reason of a right appertaining to the state of which the individual is a citizen.⁴³

From the foregoing it can be said that natural law theory has the merit of providing a basis for a system of law which is allegedly superior to the law of the state and to which appeal may be made if it appears that the latter is unjust, arbitrary or oppressive.⁴⁴ This was particularly confirmed in the wake of the

⁴² J. Donnelly and R.E. Howard (eds.). *International Handbook of Human Rights*, op.cit.,p.2.

⁴³ E. Laughterpacht, *International Law* (vol.2) (Cambridge: Cambridge University Press, 1975), p.489.

⁴⁴ S. Davidson, *Human Rights*, op. cit., p.29.

barbarous excesses both prior to and during the Second World War, where a revived natural rights movement fronted the drafting of the major international human rights instruments.⁴⁵ It is to be noted however, that although human rights had their origin in natural law, it took a system of positive law to provide a definite and systematic statement of the actual rights, which people possessed.⁴⁶

In the search for human rights protection for internally displaced persons, the natural law theory is thus suitable in guiding this study. Importantly, it postulates that all human beings have inherent natural rights by virtue of humanity and that these rights do not necessarily need positive action (legislation) for recognition. In addition, the natural law school entitles international protection to the internally displaced in the event of a failure or inadequacy of domestic protection.

1.4.2 FUNCTIONALISM

Functionalism as an approach to world order owes much to the works of its early proponent David Mitrany and later to Haas, Lindberg and Nye.⁴⁷ The basis of argument underpinning this school of thought is that form should follow function. Hence the needs of the function to be met or performed are the underlying foundation on which transaction patterns, systems or organizations come into

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ J. Dougherty and R. Pfaltzgraff, *Contending Theories of International Relations* (3rd ed.), (New York: Harper Row, 1990), p.10.

form or are created. In the light of challenges, which stretch beyond state resources or capability, the theory posits that there was need to pool relevant expertise, which would assume functional organization. Such institutions, according to the functionalists, emerge when states fail to provide security and other general human welfare. Since these institutions are not politically motivated or influenced by state agents they would effectively respond to human problems and attend to their welfare. In the functionalist thought, sovereignty, national exclusivism, and other forms of arbitrary fragmentation of the globe are viewed as anachronistic and dangerous.⁴⁸ What follows is that individuals, groups and sometimes governments will work and cooperate⁴⁹ in solving problems of common interest.

Internal displacement as a global problem requires local, regional and international responses in the form of cooperation and collaborative efforts of states, UN agencies and NGOs in securing protection and assistance for internally displaced persons. In this regard, regional initiatives such as the OAU's Mechanism for Conflict Prevention, Management and Resolution, which has among its aims anticipating and defusing conflicts that cause displacement,⁵⁰ merit strong support. In the same vein, it is to be noted that such other similar

⁴⁸ T.A. Coloumbis and J.H. Wolfe, *Introduction to International Relations: Power and Justice* (New Jersey: Prentice Hall, 1982), 291-293.

⁴⁹ P. Taylor and J.R. Groom, "Functionalism and International Relations" in Groom and Taylor (Eds.), *Functionalism: Theory and Practice in International Relations* (London: University of London Press, 1975), pp. 1-7:2.

⁵⁰ See R. Cohen and F.M. Deng (eds), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p.432.

organizations as the Organization for Security and Cooperation in Europe (OSCE) has been active in humanitarian activities and in promoting the protection of human rights among its member states in situations of internal displacement. In the functionalist thought, the relationship between parties and their common interest is reflected in the Cobweb model as opposed to the Realist thought, which places emphasis on competition and conflict as principal, if not the dominant feature of international politics.⁵¹ Indeed in the former framework, the world society is a network of closely interconnected relations enabled by the removal of state barriers as manifested in functional organizations.

A synthesis of the central tenets and beliefs of the functionalist School gives the necessary guidelines to this study. The School questions the claim of state sovereignty when security and welfare is not provided for citizens, and advocates the need for international collaboration and co-operation in order to provide these. By the same token this school postulates that these (security and maximization of welfare) are best achievable through autonomous institutions free or less of state interference. These insights will be instructive and instrumental to this study in the search for protection of internally displaced persons.

⁵¹ J. Dougherty and R. Pfaltzgraff, *Contending Theories of International Relations*, op.cit., p. 432.

1.5.0 HYPOTHESES

- a) The widespread violations and abuse of the basic human rights of the internally displaced is a failure by state authorities to protect citizens within their borders.
- b) The lack of adequate international legal and/or no institutional framework for the protection of internally displaced leaves them as the single largest unprotected population of the present time.
- c) The concern for "reliefism" or humanitarian supplies *per se* by international and local organizations rather than for a comprehensive approach has served to protract the problem of internal displacement in Sudan.

1.6.0 RESEARCH METHODOLOGY

This study will adopt two broad approaches in carrying out the research: that of primary and secondary modes of collecting data. The secondary method will involve library research on published and unpublished, but authoritative literature materials in the form of books, UN and OAU Reports, recognized journals, periodicals, magazines, news papers, seminar papers and other literature that may be interpreted to be of relevance to the study. On the other hand, primary information will be sourced through extensive interviews with officials of selected UN agencies, international and local NGOs, and religious organizations. Similarly, interviews will be conducted among individual experts in international law and

human rights activists. Additionally, random interviews could be conducted among the internally displaced in Sudan.

1.7.0 CHAPTER OUTLINE

This study will constitute seven Chapters:

CHAPTER ONE

This is the research proposal – constituting the: research problem, aims and objectives of the study, justification of the study, literature review, theoretical framework, hypothesis, and the research methodology.

CHAPTER TWO

This chapter will examine the doctrine of humanitarian intervention and its place in the post-Cold War unilateral and multilateral efforts in dealing with humanitarian crises, genocide and mass violation of human rights in the face of sovereignty.

CHAPTER THREE

This is an analysis of international human rights law with a view of determining the extent to which it meets the basic protection needs of internally displaced persons. In so doing, it will identify inherent weaknesses and gaps in the law and contend that while in principle the law addresses some of these needs it nonetheless fails to provide sufficient protection.

CHAPTER FOUR

This section of the study will examine internal displacement in Sudan (1983 – 98). It will seek to demonstrate the grave picture and/or the suffering that is characteristic of IDPs and examine international response.

CHAPTER FIVE

This chapter will seek to find out and analyze the underlying shortcomings or limitations of international law in the protection of internally displaced persons and critically examine key and/or arising issues from the Sudan study of internal displacement.

CHAPTER SIX

This section will discuss practical strategies and solutions in dealing with internal displacement.

CHAPTER SEVEN: CONCLUSIONS

As a conclusion this chapter will reflectively tie up pertinent aspects of the study.

CHAPTER TWO

HUMANITARIAN INTERVENTION: SOVEREIGNTY AND HUMAN RIGHTS

2.0.0 HUMANITARIAN INTERVENTION

The Westphalian Peace of 1648, which brought to an end a protracted European war, is credited for the inception of the notion and development of modern state system. The peace settlement separated the powers of the church and state and lent to the nation-state the implications of immutability, inviolability, perfection and transcendence formerly reserved only to the church at the time. This realist approach to nation-state prompted the need for independent states each to enjoy sovereignty over a given territory and to pursue their interests free of outside interference in their internal affairs.¹ Now embedded in the United Nations Charter the concept of absolute state sovereignty has however gradually and steadily lost ground of its original meaning and has attracted new interpretation in the face of new world development. The global reach of technology, the strong role played by emerging non-state actors for instance, and the universalization of human rights jurisdiction have in different contexts diminished the 'venerable' concept of sovereignty and hence her erstwhile pervasive, monopolistic attributes. It is to be noted in this regard that:

While sovereignty was steadily eroding in the post –1945 era, the principle of nonintervention held steadfast, at least as far as UN action was

¹ Dorinda G.S Dallmeyer, 'National Perspective on International Intervention: From the Outside Looking In; in Donald C.F. Daniel and Bradd C. Hayes (eds), *Beyond Traditional Peacekeeping* (London: Macmillan 1995), p. 21, See also Henry J. Steiner and Philip Alston, *International human Rights in Context: Law, Politics, Morals*, (Oxford: Clarendon, 1960), pp.148-50.

concerned. With Security Council nearly deadlocked throughout the cold war period, there was few invocations of Chapter VII and peacekeeping forces intervened only with the consent of the parties involved..... Yet at the same time state behaviour conveniently ignored this stricture. It was in the arena of unilateral interventions, primarily though not exclusively conducted by the two superpowers that exceptions to the principle of non-intervention were elaborated.²

The redefinition of the world order corollary to the collapse of the Cold War and subsequent easing or thawing of the deadlock in the Security Council, has significantly altered the approach in dealing with global humanitarian crisis. New opportunities to develop a theory or framework of justifiable international intervention have been inspired or necessitated. On the other hand the legacy of unilateral intervention, however mixed its blessing might be, now serves as a menu of options for defining the scope of international actions, and particularly the concept of 'humanitarian intervention'.³

The demise of the Cold War has therefore precipitated tremendous effects on the international system. It has redefined the dynamics of international relations, questioned certain traditional standards in international law and has in effect ushered new challenges to the United Nations. The unqualified ideo-economic and political patronage enjoyed by satellite or strategic states that was characteristic of the bi-polar regime have been redefined if not totally abandoned. To this end the importance attached to state sovereignty and the

² Ibid., p.22

³ Ibid. For insights on the difficulties faced in defining the concept of humanitarian intervention, see Jarat Chopra and Thomas G. Weiss, 'Sovereignty is No Longer Sacrosanct: Codifying Humanitarian Intervention', *Ethics and International Affairs*, 6(1992), p.103.

principle of non-interference have diminished or has been reconceptualised to legitimize external 'intrusion' in internal affairs of a state particularly in situations of compelling human rights and humanitarian concerns. This shift in paradigm by international community from a rather conscientious approach to a more direct intervention is underlined on the notion of the universality of human rights and indeed the growing acceptance of the idea that events taking place within a state are a legitimate subject of international concern.⁴ It is to be noted however that whereas the question of human rights abuse was until fairly recently regarded as sensitive and clouded with apathy and sometimes nominal protest by international community; its pervasive nature in the post-cold war era, attendant to ethno-religious conflicts, oppressive regimes, the struggle for national identity and self-determination have attracted direct international action.

Despite the long experience of intervention both in the pre-and post-Charter history, the concept has remained controversial to the extent of attracting suspicion and criticism particularly if there is no overwhelming consensus and need for such action. Humanitarian intervention could be understood to mean unilateral or multi-lateral undertaking to alter or maintain the status quo of a country's internal affairs, usually to restore order and protect the human rights of those affected. More broadly however Dallmeyer, notes that besides the physical crossing of borders the term 'intervention' has variously been used in the context

⁴ R. Cohen and F.M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington D.C.: Brookings Institution, 1998), p.4.

of: retaliatory economic sanctions, economic conditionality, intelligence gathering, cutting diplomatic relations, destabilization of foreign governments, counter terrorism, democratization, support to end civil war, protection of human rights, and humanitarian intervention to allay mass suffering.⁵ Indeed, it is that deliberate, coercive or dictatorial interference by an outside party or parties in the jurisdictional sphere of an independent political community, the act of which therefore abrogates or diminishes (if without the consent of that country) sovereignty. It should however be understood that such interference is generally prohibited by international law and is only permissible in certain defined but compelling situations. The prohibition set forth in article 2 (4) of the United Nations Charter and which has assumed the status of a customary rule of international law forbids the exercise of armed force "against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."⁶ This principle however is not absolute and may be subject to certain qualifications and exceptions as indicated or reflected in Chapter VII of the Charter. Hoffman in this respect notes that in practice the Security Council (in dealing with the principle of non interference and the ban on the use of force) has finessed or approached the problem by stating for example in the case of the mistreatment of the Kurds

⁵ Dorinda G. Dallmeyer, 'National Perspective on International Intervention: From the Outside Looking In,' in D.C.F. Daniel and Bradd C. Hayes (eds), *Beyond Traditional Peace keeping*, op. cit., pp 20-21. See also E. B. Haas, 'Be aware the slippery slope: Notes toward the Definition of Justifiable Interventions, in Laura W. Reed and Carl Kaysen (eds), *Emerging Norms of justified Intervention* (Cambridge: American Academy of Arts and Science, 1993), p.66.

⁶ Antonio Tanca, *Foreign Armed Intervention in Internal Conflict* (Dordrecht: Martinus Nijhoff, 1993), p.18.

constituted a "threat to international peace" and security even though its nature is internal.⁷

The practice of unilateral intervention carried out in the past by powerful states often driven by perceived national 'interest' and not necessarily compelling human right humanitarian needs have however attracted criticism and painted the darker side of the action. Weiss observes that blatant rationalizations and hidden agendas historically have characterized such interventions – epitomized by Japan's 1931 invasion of Manchuria and Germany's of Czechoslovakia in 1938, both undertaken in the name of humanitarianism.⁸ Similarly the overthrow of the Pol Pot regime in Kampuchea (1978), and the Tanzania overthrow of the government of Idi Amin Dada in Uganda (1979) clearly put the doctrine of humanitarian interventions on the spotlight inviting mixed international reactions. The use of military forces against the two governments of Kampuchea and Uganda may have raised questions of legitimacy. But as to whether they were purely motivated by human rights protection - there is nonetheless unequivocal agreement that the two countries at the time suffered immense and appalling human rights violation that the 'world could not sit and watch'. Although the United Nations openly condemned the intervention and later the occupation of Kampuchea, even though it put an end to a genocidal policy - the case of

⁷ Stanley Hoffmann, 'Out of the Cold: Humanitarian Intervention in the 1990s', in Charles W. Kegley, Jr. and Eugene R. Wittkopf (eds.), *The Global Agenda: Issues and Perspectives* (New York: McGraw-Hill, 1995), p.202.

⁸ Thomas G. Weiss, "On the Brink of a New Era? Humanitarian Interventions, 1991-94", in Donald C.F. Daniel and Bradd C. Hayes (eds.), *Beyond Traditional Peace Keeping*, op. cit., p.4.

Tanzanian intervention was however silently criticized in principle by few countries while a majority of the international community welcomed and soon recognized the newly installed government.⁹

On the other hand, Hoffman observes that in order to justify collective intervention there have been tendencies to "smuggle all humanitarian crises under the tent of threats to international peace and security" as the United Nations did for the first time in order to condemn and take measures against the apartheid regime in South Africa an issue whose potential for regional and international violence justified such an interpretation.¹⁰ In streamlining the benchmarks for humanitarian intervention the UN member states have however in more recent past underpinned such engagements on such reasons as egregious aggression, life-threatening suffering and human rights abuses:

They are moving in fits and starts away from a controlling paradigm in which state sovereignty served as an all-purpose rationalization for narrowly defined *raisons d'etat*. In the end, the global community is lurching toward a world in which many states and armed insurgents, as well as other nonstate actors, are challenging conventional notions of territorial sovereignty and insisting upon greater accountability.¹¹

Manifestly the firm decision taken by the United Nations in 1990 to counter the Iraq invasion against Kuwait (Resolution 678) and the subsequent 1991 action to define and dictate the terms of peace (Resolution 687) is a clear shift in the

⁹ Antonio Tanca, *Foreign Armed Intervention in Internal Conflict*, op.cit., p.111.

¹⁰ Stanley Hoffman, 'Out of the Cold: Humanitarian Intervention in the 1990s; in Charles W. Kegley, Jr. and Eugene R. Wittkopf (eds), *The Global Agenda: Issues and Perspectives*, op.cit.p.202.

¹¹ Thomas G. Weiss, 'On the Brink of a New Era? Humanitarian Interventions, 1991-94', in Donald C.F. Daniel and Bradd C. Hayes (Eds), *Beyond Traditional Peacekeeping*, op.cit.,p.5.

traditionally 'conscientious' world organization to a more robust and committed one in dealing with international humanitarian intervention. In the same vein the creation of safe havens in the aftermath of Gulf War "Operation Provide Comfort" for the Kurds in northern Iraq on humanitarian grounds under resolution 688 of the security council in 1991 demonstrated and clearly reaffirmed the commitment and hence legitimization of humanitarian driven-interventions. This shift in thought and action does represent monumental evidence of the growing importance in international relations of human rights vis-à-vis state sovereignty.¹² Suffice it to say that "humanitarian war is an oxymoron which may yet become a reality".¹³

The collapse of the Somalia government owing to intra-ethnic struggle for power which resulted to large numbers of deaths, mass violation of human rights and subsequent large numbers of internally displaced persons and refugees could not be ignored by the international community. The approval of intervention by the Security Council (Resolution 792) to facilitate humanitarian access by military force in 1992 was a clear international response to contain the situation. This development set the stage in 1993 for military operation unambiguously under the direct command and controls of the United Nations Secretary-General to enable humanitarian emergencies and the disarmament of warlords'. In the case

¹² Antonio Tanca, *Foreign Armed Intervention in Internal Conflict*, op.cit p.113. For more discussion on this see also, Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, op.cit.,pp.157-59.

¹³ Adam Robert, 'Humanitarian War: Military Intervention and Human Rights,' *International Affairs*, Vol. 69, No.3 (1993), p.429.

of Bosnia–Herzegovina, the Security Council did mandate member states to use ‘all measures necessary’ to protect humanitarian personnel and to coordinate lifesaving ministrations (Resolution 770), although these actions were not to be under the direct control of the UN Secretary-General.¹⁴ But following the polemics of illicit interpretation of the admittedly ambiguous texts of resolutions about Iraq, the Security Council specifically endorsed the enforcement by fighter planes from the North Atlantic Treaty Organization (NATO) of comparable no-fly zones in Bosnia-Herzegovina (Resolution 816). There followed an authorization to engage air strikes against Serbian forces besieging Muslim enclaves in Bosnia in order to protect the United Nations forces undertaking operations there (Resolution 836).¹⁵ In this regard, Weiss is rightly convinced that these precedents could provide teeth for international decisions when there is ‘sufficient will in the community of states to bite instead of just sneering’.¹⁶

2.1.0 ARGUMENTS FOR AND AGAINST HUMANITARIAN INTERVENTION

A plethora of arguments have been advanced, in support and against the ‘doctrine or notion of military humanitarianism’, with some scholars even arguing that the concept is a contradiction in terms. The restrictionist thought which draws much of its support from developing countries underpin their argument on

¹⁴ Thomas G. Weiss, ‘On the Brink of a New Era? Humanitarian Interventions 1991-94’, in Donald C.F. Daniel and Bradd C. Hayes (eds), *Beyond Traditional Peace keeping*, op.cit., p.6. See also Stanley Hoffmann, ‘Out of the Cold: Humanitarian Intervention in the 1990s’, in Charles W. Kegley, jr. and Eugene R. Wittkopf (eds.), *The Global Agenda: Issues and Perspectives*, op.cit., p.203.

¹⁵ Ibid., p.6

¹⁶ Ibid.

the fact that that the United Nations is fundamentally supposed to maintain and supervise international peace and security hence the prohibition of the use of force by states. By the same token this line of thought contends that if powerful states are given a free hand to take recourse to armed coercion or intervention based on ambiguous reasons it would provide a platform or basis for bullying and arms twisting of weaker states.¹⁷ On the other hand the proponents of humanitarian intervention broadly argue that it is not only permissible but legal to intervene to protect human rights because after all the united nations is founded on protection of human rights. They contend that the United Nations Charter article 2(4) cannot therefore be interpreted narrowly (where there is extreme human rights abuse) because "a genuine humanitarian intervention does not result in territorial conquest or political subjugation".¹⁸ The underpinning argument in this context is that the pursuit of humanitarian intervention endeavours neither territorial change nor is aimed at undermining the political establishment of a state and hence is not in contravention or inconsistent with the very dream of establishing the United Nations but is rather in conformity with the most fundamental peremptory norms of the Charter; and that it is indeed a distortion to argue that it is precluded by article 2(4).¹⁹

¹⁷ See Malcolm N. Shaw, *International Law* (Cambridge: Cambridge, 1994), p.802. For a criteria to guide against abuse of intervention see. Farooq Hassan, 'Real politik in International Law: After Tanzania-Uganda Conflict "Humanitarian Intervention" Reexamined', *Willamette Law Review*, 17 (Fall 1981), pp. 890-6.

¹⁸ F.R. Teson, *Humanitarian Intervention: An inquiry into Law and Morality* (New York: Transnational, 1988), p.131.

¹⁹ M. Reisman and M McDough, 'Humanitarian Intervention to Protect the Ibos' in Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University of Virginia, 1973), p.177.

Fearing against pontification and bullying by major powers many developing countries have invariably stuck to the mantra of state sovereignty to insulate themselves from foreign intervention or interference. These countries also argue that "intervention is messy – it is easier to get in than to get out" and that the Security Council's definition of "international peace and security" is now ambiguously pervasive and overarching to include almost any subject.²⁰ This being the case they contend that there are many places in the world where massive violations of basic rights can occur without jeopardizing international peace and security – unless if morally such actions or violations are deemed to be an international concern *ipso facto*, constituting such a threat. Hoffmann, in this regard notes that:

As of today a humanitarian crisis is a "threat to peace and security" only when the Security Council says so, and this raises a serious issue of consistency.²¹

He challenges the double standards by the Security Council and questions why there was military intervention in Somalia and not Sudan in a situation of famine. By the same token he questions the rationale for selective intervention in the case of assaulted Iraq Kurds and not Shiites both groups being a minority in the same country.²² This argument persuades Weiss, using Thucydides Melian

²⁰ Thomas G. Weiss, 'On the Brink of a New Era?' Humanitarian Interventions (1991-94): in Donald C.F. Daniel and Bradd C. Hayes (eds), *Beyond Traditional Peacekeeping*, op.cit.,p.6. For an understanding of the framework used by UN to maintain or restore international peace and security, see Chapter VII of its Charter.

²¹ Stanley Hoffman, 'Out of the Cold: Humanitarian Intervention in the 1990s,' in Charles W. Kegley, Jr. and Eugene R. Wittkopf (eds), *The Global Agenda: Issues and Perspectives*, op.cit.,p.202.

²² Ibid.

dialogue – where the strong do what they can and the weak do what they must, confesses that it may not be surprising that certain interventions are driven by geopolitical calculations and that even the Security Council “makes decisions to intervene not according to objective criteria but rather to what the international political traffic will bear.”²³ In regard he laments that:

Too many pleas for consistency or against inevitable selectivity amount to arguing that the United Nations should not intervene anywhere unless it can intervene everywhere.²⁴

On the other hand civilian humanitarians including the ‘very people working in the trenches in the front lines to alleviate suffering’ – are wary about robust UN interventions claiming that humanitarian intervention is a contradiction in terms. Their fears like that of the developing world is that there is an inevitable tendency of American dominance in multilateral military efforts which in effect is a “continuation of past US hegemony that rarely if ever, produced salutary results”²⁵

Emerging arguments also point out that humanitarian intervention is principally an act of treating symptoms or a firefighting mission and not a panacea to

²³ Thomas G. Weiss, ‘On the Brink of a New Era: Humanitarian Intervention (1991-94),’ in Donald C.F. Daniel and Bradd C. Hayes (eds.), *Beyond Traditional Peacekeeping*, op.cit.,p.7.

²⁴ Ibid.

²⁵ Ibid. For a discussion on the fears expressed by civilian humanitarians on military intervention, see also T. G. Weiss, ‘UN Responses in the former Yugoslavia: Moral and Operational choices,’ *Ethics and International Affairs*, Vol viii (1994), pp.1-22. That the United States remains committed to the policy of preponderance as the basis of its post-cold war grand strategy cannot be over emphasized. See for example E. Tyler, ‘US Strategy Plan Calls for Insuring No Rivals Develop’, *New York Times*, 8th March 1992, ps.A.14.

certain subtle intricacies and complexities of a situation. Hoffmann, in this context observes that:

If the humanitarian crisis is not a kind of one-shot affair – a famine that overloads the capacity of the local government to cope with it, or, as happened often before 1914, a threat to foreigners caught in the middle of a civil war or a revolution – but if it is, in fact “structural,” provoked either by the disintegration of a state or by the deliberate evil policies of a government, it becomes extremely difficult for the interveners to remedy the humanitarian disaster without addressing the causes that produced it. If they do not consider the causes, in order to stick to narrow humanitarian mandate – helping evictions – they may well be doomed to playing Sisyphus.²⁶

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He notes that humanitarian crises especially those that do pose real threat to regional and international peace and security are a product of embedded political flaws and complexities. He persuasively sums up this aspect by arguing that:

If the political causes are not removed, victims will remain in danger and the intervention will risk, at best, being no more than a band-aid, and at worst, becoming part of the problem.²⁷

Although humanitarian intervention is instrumental in halting genocide, mass violations of human rights and is arguably in counter productive to democratization process critics however, point out that it not only raises the levels of violence in the short run but also makes reconciliation more difficult in the longer term.²⁸

²⁶ Stanley Hoffman, 'Out of the Cold: Humanitarian Intervention in the 1990s', in Charles W. Kegley Jr and Eugene R. Wittkopf (eds), *The Global Agenda: Issues and Perspectives*, op.cit.,p.203.

²⁷ Ibid.

²⁸ Thomas G. Weiss, 'On the Brink of a New Era?: Humanitarian Intervention (1991-94)', in Donald C.F. Daniel and Bradd C. Hayes (eds.), *Beyond Traditional Peacekeeping*, op.cit.,pp.7-8.

The role of humanitarian intervention in a situation of internal displacement cannot therefore be over emphasized. As the world debates and grapples with the legal and institutional dilemma the plight of internally displaced persons has remained largely unresolved. When governments or other authorities engaged in genocide policy or simply does not have a capacity to handle a humanitarian crisis, the international community has the moral responsibility to intervene in order to correct the situation and hold the relevant authority accountable. International humanitarian intervention in the case of northern Iraq, Bosnia-Herzegovina and Somalia for instance, could therefore not have come at a better time.

Although in the case of Sudan direct military intervention was not engaged the Khartoum administration was however arm-twisted into softening its hard stance. Under international pressure both the Khartoum authorities and the southern rebels agreed to respect 'corridors of tranquility' through which Operation Lifeline Sudan (OLS) in 1989 accessed thousands of internally displaced persons threatened by starvation and diseases. Whatever the successes or the shortcomings associated with intervention there is however a need for global proactive engagement-strategies and measures to prevent potential genocide and other crime against humanity particularly as may be based on compelling early warning signs.

CHAPTER THREE

INTERNATIONAL HUMAN RIGHTS LAW RELEVANT TO THE PROTECTION OF INTERNALLY DISPLACED PERSONS

The traumatic experiences that follow internal displacement cannot be overstated. Besides these experiences, which occur in situations of armed conflict, internal strife and systematic violation of human rights; displacement in itself violates basic human rights. It results in broken families, disrupted social and cultural ties, unemployment, limited access or none to food, lack of shelter and health services, disruption of educational pursuits and increased vulnerability to related cruelties.

In the light of these, the question arises whether and how internally displaced persons are protected under international law particularly in situations where their own governments have failed. Although current international law does not contain guarantees that expressly address internally displaced persons; it should be noted however, that they do not forfeit their inherent rights because they are displaced.¹ Substantial legal norms in human rights and humanitarian law² can be invoked in the protection of their rights.

¹ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement* (Washington D.C.: Brookings Institution, 1998), p. 74.

² It is important however to note that humanitarian law is only applicable in situations of armed conflicts. Besides the customary laws of war contained in the Hague Regulations of 1907, the principal sources of humanitarian law are the four Geneva Conventions of August 1949 as well as Additional Protocols I and II of 1977.

This chapter will analyze international human rights law with a view to determining the extent to which it meets the basic protection needs of internally displaced persons.³ It will be argued that while current human rights law provides substantial coverage for the internally displaced, it nonetheless fails to provide sufficient protection. In doing so, efforts will be made to identify inherent weaknesses and gaps and offer suggestions to this effect. The analysis will be carried out against the backdrop of situations recognized by international law, namely situations of tensions and disturbances or disaster,⁴ non-international armed conflicts and inter-state armed conflicts. Human rights law is applicable in all these situations and thus it provides a useful approach to the analysis since, these situations cover cases of internal displacement extensively.

Because of its limited nature this study will address the most basic protection and assistance needs of internally displaced persons which include, equality and nondiscrimination, life and personal security, personal liberty, subsistence needs,

³ The analysis will also draw from the document of the Representative of the UN Secretary-general on internally displaced persons: *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, U.N. Doc E/C.N.4/1996/52/Add.2., December 5, 1995.

⁴ "Internal tensions and disturbances," In this study refer to situations which fall short of armed conflict, but involve the use of force and other repressive measures by government agents to maintain or restore public order. Salient examples in this regard, include riots, isolated sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; and violent ethnic conflict not amounting to hostilities. A situation of serious internal tension characteristically involves specific types of human rights violation such as large-scale arrests, and other large scale measures restricting personal freedom, administrative detention and assigned residence, large number of political prisoners etc. Disasters on the other hand, are either natural or human-made and which include floods, droughts, earthquakes, typhoons, famine or nuclear disasters.

personal identification and documentation, freedom of movement, property, family unity and education.

3.0.0 Non-Discrimination

The concept of equality before the law, equal protection of the law, and nondiscrimination form a cornerstone of international human rights law and have therefore been included in the Charter of the United Nations⁵. Specific grounds on which discrimination is prohibited in human rights law include, race, colour, sex, language, religion, political, or other opinion, national, or social origin, property, birth or other status.” Internally displaced persons in alien surroundings are often deprived or stripped of their security, property and social status and thus are particularly exposed and vulnerable to discriminatory treatment⁶. Various international and regional human rights instruments espouse the need for contracting states to equally protect the rights and freedoms of all persons without discrimination on any ground. Articles 2 and 7 of the Universal Declaration of Human Rights guarantees the Protection and freedoms for all, equality before the law, and equal protection of the law without discriminating on any ground. A similar guarantee is expressed in article 26 of the International Covenant on Civil and Political Rights (ICCPR). It provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect,

⁵ UN Charter, article 1, 13,55,76. See also, R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p. 93.

⁶ Ibid.

the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, ... birth or other status.⁷

In the same vein, these guarantees are further articulated in article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which obligates contracting states to guarantee the provided rights to all persons without discrimination of any kind as to race, colour etc. It would appear therefore, that the non-discrimination clauses discussed above prohibit discrimination against internally displaced persons on grounds of their 'status' and any other discriminatory conduct commonly associated with situations of displacement such as race, religion, political opinion etc. Also applicable to internally displaced persons are instruments, which guarantee against specific categories of discrimination such as race and gender. These instruments include: the United Nations Declaration on the Elimination of All Forms of Racial Discrimination;⁸ the Declaration on Elimination of all forms of intolerance and of Discrimination based on Religions or Belief;⁹ the Declaration on the Elimination of Discrimination Against Women;¹⁰ the convention in the Elimination of

⁷ The term "other status" in this and other instruments benefits a broader interpretation which include nationality, disability, youth, old age and which ostensibly protects the IDPs on the basis of their status as displaced persons. See for example, Marc Bossuyt, Guide to the "*Travaux préparatoires*" of the International Covenant on Civil and Political Rights (1987).

⁸ United Nations Declaration on the Elimination of All Forms of Racial Discrimination, proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963.

⁹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981.

¹⁰ Declaration on the Elimination of Discrimination Against Women, proclaimed by General Assembly resolution 2263 (XXII) of 7 November 1967.

Discrimination against Women¹¹ (CEDAW); the Convention Against Discrimination in Education¹² and the International Convention on the Elimination of All Forms of Racial Discrimination.¹³ Similarly, children, who form the most vulnerable group among IDPs are protected against discrimination under article 24 of the ICCPR and such other specific instrument as the World Declaration on the Survival, Protection and Development of Children and its Plan of Action.¹⁴

In situations of non-international (internal) armed conflicts, human rights law continue to apply in respect to guarantees of equal protection and prohibitions of discrimination. Similarly human rights law remains applicable in situations of inter-state armed conflict although there may be situations allowing for derogations.¹⁵

From the foregoing it is apparent that human rights law does not have explicit prohibition of discrimination against internally displaced persons because of their being displaced. Although many international and regional instruments have clauses, which require state parties to protect the rights and freedoms enshrined

¹¹ Convention on the Elimination of All Forms of Discrimination Against Women, ratified by 138 states on 1st January, 1995 (hereinafter CEDAW).

¹² UNESCO Convention against Discrimination in Education, adopted on 14th December 1960 by the General Conference of UNESCO.

¹³ International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (hereinafter CERD).

¹⁴ World Declaration on the Survival, Protection and Development of Children and Plan Action of Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s, 30 September 1990.

¹⁵ F.M Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms* (United Nations: New York and Geneva, 1998), p.16.

in those conventions without discrimination, they nonetheless do not offer an adequate basis for the protection of internally displaced persons. To this end, an international legal instrument should explicitly state that the term "other status" in non-discrimination clauses includes the status of internally displaced persons.¹⁶

3.1.0 Life and Personal Security

Whether in transit or in camps, the personal safety of internally displaced persons often remain insecure. Most serious are the dangers of individual and mass killings, including genocide and extra-judicial executions. This also include indiscriminate attacks, acts of terrorism and subjection to dangerous weapons like landmines. In countries such as Sudan, Rwanda, Angola, internally displaced persons have suffered and continue to suffer from such atrocities and hostilities.¹⁷

Central in human rights law is the protection of life as the most fundamental right. Internally displaced persons in situations of tensions and disturbances are therefore in principle covered against arbitrary or summary executions or any other similar acts that would deprive them of their lives. Article 3 of the Universal Declaration of Human Rights is firm on the right to life. This is further reaffirmed in article 6 (1) of the ICCPR, which states that: "every human being

¹⁶ Ibid. See also, Principle 1, of the *Guiding Principles on Internal Displacement*, (OCHA, 1998).

¹⁷ See generally, R. Cohen and F.M Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced* (Washington D.C.: Brookings Institution, 1998).

has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Additionally, article I of the American Declaration on the Rights and duties of Man¹⁸, article 4 (1) of the American Convention on Human Rights,¹⁹ article 2 (1) of the European Convention for the Protection of Human Rights and fundamental freedom²⁰ and article 4 of the African Charter on Human and Peoples Rights²¹all provide for the protection of life.

Emphatically, article 4 (2) of the International Covenant Civil and Political Rights (ICCPR), article 15 (2) of the European convention and article 27 (2) of the American Convention hold the right to life as non-derogable, not even in times of public emergency which threaten the life of the nation.²² To this end, therefore IDPs are generally protected against arbitrary and summary executions even in the most extreme cases or situations. Similarly, in circumstances where IDPs have fallen victim of genocide such as in the former Yugoslavia and Rwanda, it is understood to constitute a grave form of violation of the right to life. Article I of

¹⁸ American Declaration on the Rights and Duties of Man, adopted by the ninth International Conference of American States, Bogota, 1948. (herein after American Declaration).

¹⁹ American Convention on Human Rights, SanJose, 1969 (herein after American Convention).

²⁰ European Convention for the Protection of Human Rights and Fundamental Freedoms, November 1950 (hereafter European Convention).

²¹ F.M. Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, opcit., p.17.

²² In this respect, article 6(3) of the ICCPR states that “when deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any state party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide”.

the Genocide convention in this regard, declares genocide, committed at any time, to be an international crime.²³

From this analysis it is clear that the present international human rights law in principle and broadly, affords protection to internally displaced persons against violations of their rights to life and security in times of tensions and disturbances. The same can be said in situations of armed conflict in which the right to life and security in human rights law continue to apply because of their non-derogable nature. To this end therefore, frequent violations of these rights of the displaced are not necessarily due to legal gaps but shortcomings in the effective implementation of existing norms. This study however, suggests the need for explicit protection of internally displaced persons against indiscriminate or disproportionate attacks in all situations.

3.2.0 Personal Liberty

The personal liberty of internally displaced persons is often at risk, both during flight and upon relocation in camps. Indeed, besides:

The risks of being taken hostages, forcibly recruited, or abducted into slavery-like practices, the internally displaced often face internment in a compound or camp can subject an individual to administrative segregation in a separate cell or building within or outside the camp²⁴.

²³ R. Cohen and F.N. Deng (eds), *Masses in Flight: the Global Crisis of Internal Displacement*, op.cit., p.97.

²⁴ The right to fair trial and due processes of law is guaranteed in international law the breach of which therefore constitutes arbitrary detention, which is not compatible with international standards respecting liberty and security of persons.

All these happen notwithstanding the fact that no charges are preferred against the accused, or clearly defining the duration of such confinement or segregation, or even worse still not providing the necessary opportunity for the detainees to defend themselves or to question the legal ground of the detention. In the same vein, internationality displaced persons are sometimes considered to be part of the political opposition or counter-insurgency simply because they are on the run, have left their homes, or have been detained by warring forces in a situation of armed conflict.²⁵

Both article 9 of the Universal Declaration of Human Rights and Article 9 (1) of the ICCPR guarantee freedom for all against arbitrary arrest or detention in situations of tensions and disturbances. The latter article provides that:

everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law²⁶.

Further guarantees in this regard are substantially replicated in article 7 (1) of the American Convention, article I of the American Declaration, article 5 (I) of the European Convention, and article 6 of the African Charter.

²⁵ This picture is quintessentially reminiscent of the case of southern Sudan IDPs, who are perceived by the incumbent government as sympathetic and party to the rebels and thus have borne the brunt of all kinds of inhuman treatment. See chapter 5.

²⁶ See R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p. 98.

The right to one's liberty may under certain limited grounds be restricted²⁷ and is derogable under various human rights instruments. Nevertheless, the terms "arbitrary arrest or detention" have consistently been interpreted broadly as actions in accordance with domestic law or lawful in the domestic level but in violation of international standards respecting liberty and security of the person.²⁸ These international standards include, *inter alia* safeguards such as the right to be informed at the time of the arrest, of the reasons for the arrest and to be promptly informed of the charges; the right to be brought promptly before a judge; the right to trial within a reasonable time or to release; the right to take proceedings before a court to have the unlawfulness of the detention reviewed; and the right to compensation in the case of an unlawful arrest or detention.²⁹

The question whether detention in closed camps is permissible is particularly relevant for internally displaced persons. Under article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR), detention in a closed camp is only permissible if it is imposed "on such grounds and in accordance with such procedures as are established" by domestic legislation³⁰. Thus without a legal

²⁷ See article 9 (1) of the ICCPR, article 37 (b) of the ICRC, article 7 (2) of the American Convention, article 5 (1) of the European Convention, and article 6 of the African Charter.

²⁸ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p. 98. See also, Report of the Working Group on Arbitrary Detention, UN Doc. E/CN4/1992/20, January 1992.

²⁹ Ibid. See also ICCPR, article 9 (2) (5).

³⁰ See for example F.M. Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, op.cit., p.30.

basis, internally displaced persons should not be confined to a closed camp. In the same vein such detention must not be arbitrary, that is, it has to be reasonable and necessary in all circumstances.³¹ Thus, while certain restrictions of the liberty of internally displaced persons in the interest of their own security or for imperative public necessity purposes are admissible in exceptional cases, these restrictions should be kept as minimal as possible. Often, measures such as check points or curfews will be sufficient.³²

In this respect it can be said that the right to liberty can in principle be invoked by internally displaced persons. However, the preconditions of lawful detention of internally displaced persons in closed camps remain a grey area. Thus a relevant regime in this regard should clearly state that the IDPs have the right to liberty of movement and freedom to choose their residence and more particularly the right to move freely in and out of camps or other settlements.³³

3.3.0 Subsistence Needs

Whether resettled in camps or still in transit, internally displaced persons are often deprived of sufficient food, water, housing, clothing, health care and sanitation necessary for an adequate standard of living.

³¹ Ibid.

³² Ibid.

³³ See also, Principle 14 of the, *Guiding Principles on Internal Displacement* (OCHA,1998), op.cit.

3.3.1 Food, water, clothing and shelter

Article 25 (1) of the Universal Declaration of Human Rights and article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), explicitly provide for the right to adequate standard of living for everyone. The latter article recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing". This is further recognized in the Universal Declaration on the Eradication Hunger and Malnutrition,³⁴ which reaffirms the right of everyone to be free from hunger and malnutrition. These concerns are also mirrored in article 24 of the ICCPR, and article 27 of the Convention on the Rights of the Child, which articulates the rights of children, to adequate standard of living, including adequate nutrition. From another angle, practices that involve deprivation of food are seen to constitute international crimes as spelled out in article II (c) of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).

On the other hand, the Committee on Economic, Social and Cultural Rights has made clear in its general comments interpreting states' obligation under the ICESCR, that state parties bear a "minimum core obligations to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights."³⁵ It was stated that a:

³⁴ Universal Declaration on the Eradication of Hunger and Malnutrition, 17 December 1974, UNGA Resolution 3348 (XXIX).

³⁵ General Comments of the Committee on Economics, Social and Cultural Rights, No.3, (Fifth Session, 1990), U.N. Doc No. HRI/GEN/1/Rev.1, July, 1994. See also in this regard, F.M. Deng, *Internally Displaced persons: Compilation and Analysis of Legal Norms*, op.cit., pp.10-11.

State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant [unless it can] demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.³⁶

In the light of this view, the Committee further emphasizes that should a state party attribute its failure to meet or carry out these obligations, it should of necessity demonstrate maximum efforts in the use of the available resources, including international support. Indeed, such a statement has been interpreted as signifying that all states must provide at a minimum, subsistence needs to the population under all circumstances.³⁷ This view is clearly pronounced in Principle 18 (2), of the Guiding Principles on Internal Displacement, which provides that:

At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: food and portable water; shelter and housing; clothing and medical services.³⁸

In tying up this aspect therefore, it will be noted, that although international human rights law guarantees such rights which can be invoked by IDPs in all recognized situations, it remains that a relevant regime should specifically and explicitly address these issues with particular reference to their absolute and non-derogable nature; including the prohibition of starvation of civilian population as a form of political coercion.

³⁶ Ibid p. 35.

³⁷ Ibid.

³⁸ See OCHA, *Guiding Principles on Internal Displacement*, op.cit.

3.3.2 Health and Sanitation

Experiences of exhaustion, sickness and injuries are often rife among internally displaced persons, both during flight and even in camps. Infants, expectant mothers and the elderly are often the worst hit victims. Such persons would therefore require urgent and often long-term medical attention.

Article 25 (1) of the Universal Declaration of Human Rights guarantees the right to medical care and other related social services as a component to the right to a minimum standard of living. A similar proclamation is found in article 12 of the ICESCR, which is dedicated to the realization of the "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," obliging party states to the prevention, treatment and control of epidemic, endemic, occupational or other diseases and the creation of conditions which guarantee medical service and attention in situations of sickness. On the other hand, article 24(1) of the Convention on the Rights of the Child obligates state parties to ensure the right of the child with regard to the best attainable standard of health and health care facilities. As regards women, articles 12 and 14(2) of the Women's Convention (CEDAW) obligates state parties to ensure on the basis of equality and non-discrimination, that women receive adequate health care services. Similar concerns are also expressed in article 10 of the protocol of San Salvador³⁹ and article 15 of the African charter.

³⁹ Additional Protocol to the American Convention on Human Rights in the area of Economy, Social and Cultural Rights (Protocol of San Salvador), San Salvador, 17 November, 1988, (hereinafter Protocol of San Salvador).

It will be noted in this regard therefore, that internally displaced persons just like other citizens are in principle covered under international human rights law. However, a relevant regime in this respect should clearly address the special needs of IDPs with more emphasis on the health needs of women particularly in the areas of reproductive and psychological health care.⁴⁰

3.4.0 Protection of Movement-Related Needs

Internally displaced persons, just like other citizens have a right to choose their places of residence and to move freely within their own country. They should therefore be protected to this end. Similarly they need protection against forced relocation and, mass transfers. By the same token IDPs should also be afforded guarantees against forced return to places with conditions dangerous to their health and security. Consequently, they should be afforded the right to return voluntarily and in safety to their places of residence or to a safe place of their choice.

Article 13 (1) of the Universal Declaration of Human Rights and article 12 (1) of the ICCPR especially provide for freedom of movement and residence as long as such persons are legally within a territorial jurisdiction. The latter article states that "everyone lawfully within the territory of a state shall, within that territory

⁴⁰ See also Principle 19 of the *Guiding Principles on Internal Displacement* (OCHA), op.cit.

have the right to liberty of movement and freedom to choose his residence.⁴¹ Similar guarantees are to be found in various regional instruments⁴², which not only protect free movement but also guarantee free choice of residence and right to remain - thus a right not to be displaced. Similarly, article 16 (1) of the ILO Convention guarantees against removal or eviction of persons from their land, unless under exceptional circumstances and with free consent of the affected. It states that "the peoples concerned shall not be removed from the lands they occupy" unless "relocation of these peoples is considered necessary as an exceptional measure" and happens "with their free and informed consent."⁴³ It is to be noted however, that although the right to freedom of residence and movement can be limited under certain situations specified or provided by law, that is to protect national security, public order, public health or morals or the rights and freedom of others,⁴⁴ it nonetheless provides vital safeguards for the protection of internally displaced persons.

As regards return of internally displaced persons, there is a need to guarantee them the right to return voluntarily and in safety to their former habitual residence. In the same vein, IDPs need to be protected against forced return or relocation particularly to places deemed to be dangerous to their safety and/or

⁴¹ See R. Cohen and F.M Deng (eds.) *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p.104.

⁴² Article VIII of the American Declaration, article 22 (1) of the American Human Rights Convention, article 2 (1) of the Fourth Protocol to the European Human Rights Convention, and article 12 (1) of the African Charter.

⁴³ F.M Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, op.cit., p.42.

⁴⁴ See article 12(3) of the ICCPR, and article 22(3) and 4 of the American Convention, and article 12(2) of the African Charter.

health. The Guiding Principles on Internal Displacement recognizes the need for competent authorities to put in place mechanisms, which provide voluntary and safe return of internally displaced persons to their homes or any other place of their choice. Principle 28 states that:

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced person to return voluntarily in safety and with dignity to their homes or places of habitual residence or to resettle voluntarily in another part of the country.⁴⁵

Other than such hortatory statements there is no general rule that affirms the right of IDPs to return to their original place of residence or to move to another safe place of their choice. Such a right can only in principle be inferred from freedom of movement or the right to choose one's residence. In the case of former Yugoslavia for example, this has been recognized in the Dayton Agreement which states in article 1(1) that not only all refugees but also all displaced persons have the right to freely return to their homes of origin. Thus the contracting parties are obliged to "create in their territories the political, economic and social conditions conducive to the voluntary return of refugees and displaced persons."⁴⁶

No human rights instrument expressly provides internally displaced persons with legal protection against being forcibly returned to places with unsafe

⁴⁵ OCHA, *Guiding Principles on Internal Displacement*, op.cit.

⁴⁶ Dayton Peace Agreement, *Agreement on Refugees and Displaced Persons*, Annex 7, (1996). See in this respect R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op cit., p. 106

conditions.⁴⁷ While it is true on the other hand that the refugee law protects against forcible return, it is nonetheless limited to persons who have fled their own country. Article 33 (1) of the Refugee Convention, sets forth the principle of non-refoulement, which protects a refugee against being returned forcibly to a country where she or he has good reason to fear persecution. A concept analogous to this principle should thus be extended to internally displaced persons.

It can be concluded that internally displaced persons are entitled to return to places of their habitual residence or homes as derived from the right to freedom of movement. Of concern however, is that, presently international human rights law, lacks express prohibition with regard to forcible return to areas imminent with danger in the same country. To this end, a model analogous to the principle of non-refoulement in situations of real danger should be extended to internally displaced persons.

3.5.0 Personal Identification and Documentation

Loss of personal papers and documentation is a common phenomenon during internal displacement. It also interferes with proper registration of such events as births and deaths. This in addition is not adequately solved by the registration done in camps and relocation sites as most IDPs are afraid of discriminatory

⁴⁷ Ibid.

implications corollary to being labeled an internally displaced. As a result, displaced persons are often deprived of the legal protection and privileges accorded to those who hold or are in possession of identifying documents.

Human rights law in situations of tensions, disturbances or disasters guarantee the right to a legal personality. Article 6 of the Universal Declaration of Human Rights firmly provides that everyone has the "right to recognition everywhere as a person before the law." In the same vein, article 2 of this instrument extends this protection to all without "distinction of any kind such as property or other status", which arguably covers the status of internally displaced persons. Similarly article 16 of the ICCPR further reaffirms the right to legal recognition of persons. Further commitments in this regard are also contained in the Convention on Consent to Marriage, Minimum Age for marriage and Registration of Marriages, Convention on the Rights of the Child and the Women's Convention (CEDAW). Article 8 of the Convention on the Rights of the Child in this respect commits state parties to "undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference". Should a child be deprived of his/her identity, the article further obligates concerned states to provide assistance and protection in "speedily re-establishing his or her identity."⁴⁸

⁴⁸ See F.M Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, op.cit, p.49.

In situations of non-international armed conflict, the right to legal personality is affirmed as non-derogable in times of national emergency as provided for in article 4 (2) of the ICCPR and article 27 (2) of the American Convention. Suffice it to say in this regard that even in emergency situations threatening the life of the state, the right to legal personality is expressly non-derogable.⁴⁹

An upshot of the above analysis in this respect thus reveals that human rights law does not expressly provide adequate protection to internally displaced persons with regard to personal identification, documentation and registration. A relevant regime should therefore clearly articulate the specific duties of states or non-governmental actors in meeting these needs in situations of displacement.

3.6.0 Property Related Needs

There is no gainsaying the fact that loss of property among the internally displaced is a common occurrence. Hostilities such as destruction or theft of crops and livestock, the bombing or burning of shelters and confiscation of private homes, prevalent especially in situations of armed conflict all amount to loss of property of the displaced. Because of their vulnerability, the IDPs need protection for the property taken with them or acquired during displacement. Equally they need restitution of property under occupation upon returning to their homes or compensation for the loss. Deng in this regard observes that:

⁴⁹ Ibid, p. 50

The legal protection of property in situations of tensions and disturbances is weak [and that] although article 17 of the Universal Declaration of Human Rights grants everyone the right to own property, alone or in association with others, and prohibits arbitrary deprivation of such property, no comparable right has been included in the ICCR or the ICESCR.⁵⁰

The sanctity of ownership of property is however further guaranteed in regional human rights instruments. Article XXIII of the American Declaration on the Rights and Duties of Man, provides that "every person has the right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home". Similar guarantees are further echoed in article 21 of the American Convention, article 1 of the First Protocol of the European Convention and article 14 of African Charter. This right can therefore be invoked in the protection of IDPs. It is to be noted however, that the right to own, possess or use property as provided in these instruments is not absolute and can be subject to certain limitations.⁵¹

Internally displaced persons return to their homes often find their properties destroyed, stolen or occupied by other people.⁵² This in itself is an obstacle to

⁵⁰ R. Cohen and F.M Den (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p. 108.

⁵¹ Such limitations stated for example in, article 29 (2) of the Universal Declaration of Human Rights include "the just requirements of morality, public order and the general welfare in a democratic society."

⁵² For example this was the case in the wake of the 1992 "ethnic or land clashes" in the Rift valley and other regions of Kenya. Regrettably however, property belonging to some of the internally displaced to date fall under illegal occupation. For an overview of these, see generally, KHRC, *Killing the Vote: State Sponsored, Violence and Flawed Elections in Kenya* (Nairobi: KHRC, 1998) or G.K Kuria, *Majimboism, Ethnic Cleansing and Constitutionalism in Kenya* (Nairobi: KHR, 1994).

the voluntary return and thus it raises fundamental questions in respect to the right to restitution of property lost as a consequence of displacement or compensation for its loss. "Although such a right is not explicitly recognized in international law there is a certain trend in international practice to accept such a guarantee."⁵³ The Inter-American Commission on Human Rights for example has recommended payment of just compensation to returning internally displaced persons for the loss of their property including homes, crops, livestock and other belongings.⁵⁴ Similarly in the case of Iraqi-occupied Kuwait the UN Security Council resolved to "create a Fund to pay compensation for claims" of those property damaged or destroyed by Iraq's occupation of Kuwait.⁵⁵ Further commitment in this regard is addressed in the Dayton Peace Agreement framework. Article 1 (1) (Annex 7) of this framework explicitly provides refugees and the internally displaced with "the right to have restored to them property of which they were deprived during the course of hostilities and to be compensated for any property that cannot be restored to them."⁵⁶ This development of recognition by the international community of a right of IDPs to restitution of property lost and compensation for its loss, in the light of the aforementioned precedents, would be of utmost importance in the norming of the IDP protection.

⁵³ R. Cohen and F.M Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p. 108.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ See Ibid. p. 109.

3.7.0 Family Unity

It is a common experience to find family and community members dispersed and separated with no information of the whereabouts of their relatives and other members of their community during displacement. Of fundamental importance therefore is to keep displaced families and/or culturally related communities together. If however, they are dispersed and separated from one another, they must be re-united within the shortest time possible particularly the children who are the most vulnerable members in the family.

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International human rights law recognizes the family as the core unit of the human society and which should be accorded special protection. Article 16 (3) of the Universal Declaration of Human Rights and article 23 (1) of the ICCPR provide that the family is the natural and fundamental group unit of the society and is entitled to protection by the very society and the state. These pronouncements also articulated in, article 10 (1) of ICESCR, which upholds the primacy of the family and need for protection thereof. Further, article 18 (1) of the African Charter recognizes the family as the natural unit and basis of society to be protected by the state and its physical health and moral needs be taken care of. This article further obligates states with the duty to assist the family as it is the custodian of morals and traditional values recognized by the community. Similarly children as part of the family enjoy special protection in many human rights treaties. Article 8 of the Convention on the Rights of the Child, commits

state parties to respect the child's right to maintain family relations and to provide appropriate assistance and protection in the case of unlawful deprivation of such relations. As regards the separation of a child from his or her parent (s) article 9 (4) of this Convention provides that:

Where such separation results from any action initiated by a state party, such as the detention, imprisonment, exile, deportation or death...of one or both parents or of the child, that state party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent members of the family unless the provision of the information would be detrimental to the well being of the child.⁵⁷

The Convention on the Rights of the Child further addresses the importance of family reunification in articles 10 and 22. It will be noted however, that these provisions are only relevant to reunification across international borders, and thus do not directly apply to internally displaced persons, and thus can only serve as a model for IDP protection regime.⁵⁸ It can be concluded therefore in this respect that although in principle international human rights law addresses the family – related needs of IDPs there is nonetheless a clear failure with regard to reunification of separated families. This legal gap should receive express attention in a future international instrument relevant to internally displaced persons.

⁵⁷ F.M. Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, op cit., p. 53.

⁵⁸ Ibid

3.8.0 Education

Internally displaced persons particularly children are often deprived of education for reasons which range from insecurity, lack of fees, and unavailability of or insufficiency of educational facilities in areas of temporary relocation. Allied to this, is the fact that, adult IDPs in this situation may also require specialized education for building self-reliance.

A wide range of international legal instruments, provide guarantees on the right to education for all on non-discriminatory basis. Article 26 (1) of the Universal Declaration of Human Rights proclaims the right to education for everyone and further states that basic education shall be compulsory and free. Further commitments in this regard are articulated in article 13 of the ICESCR, articles 28, and 29 of the Convention on the Right of the Child and article 18 of the ICCPR.

In a similar note, the UNESCO Convention against Discrimination in Education proscribes against discrimination at all levels of education.⁵⁹ Similarly article XII of the American Declaration on the Rights and Duties of Man, reaffirms the right to education for everyone as a bridge to descent life and a better standard of living and to make one a useful member of society. These commitments are

⁵⁹ Convention Against Discrimination in Education, adopted 14 December 1960 by the General Conference of the United Nations, Educational, Scientific and Cultural Organization.

further echoed in article 13 of the Protocol of San Salvador, article 2 of the First Protocol to the European Convention and article 17 (1) of the African Charter.

Specifically, article 2 of the First Protocol to the European Convention states that "no person shall be denied the right to education" and further requires states to respect the "right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. Agreeably therefore:

...the right to education can be invoked by internally displaced persons in all situations. Problems arise, however, from the fact that the displaced may have specific educational needs.⁶⁰

It will be concluded therefore in this regard, that although the right to education as enshrined or guaranteed by international human rights law, can be invoked by internally displaced persons, there is a clear need for a relevant regime to address the specific educational needs of the internally displaced. This should explicitly guarantee the right to education for the internally displaced children and articulate the possibility of adult education and training where necessary.

⁶⁰ R. Cohen and F.M Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit., p. 112.

CHAPTER FOUR

INTERNALLY DISPLACED PERSONS: CASE STUDY OF SUDAN (1983-98)

4.0.0 Conflict and Displacement: A Background Perspective

The enigma surrounding the Sudan conflict is deep-rooted, pervasive, devastating, intractable and indeed one of Africa's longest civil war. Its historical roots dates back to the pre-colonial times of the slave trade era,¹ during which time the north mainly of the Arab stock, incessantly raided the South of the black tribes for slaves and of precious valuables.

The conflict is also couched in colonial legacy of the British colonial rule (1899 – 1956), which laid a strong north-south dichotomy in socio - economic development. The Anglo-Egyptian rule concentrated its economic programmes on the northern and central Sudan, neglecting and thus in effect eclipsing other regions of the country particularly the southern. Closely associated with this rule were other policies which embraced the principle of divide-and-rule², and which thus apparently polarized the country into two: north and south.³

Since 1955, at the dawn of its independence, except for an eleven-year peace hiatus lasting from 1972 through 1983, the Sudanese civil war to the present has

¹ P.A. Nyong'o, (ed.), *Arms and Daggers in the Heart of Africa: Studies on Internal Conflicts* (Nairobi: Academy Science, 1993), p. 57.

² *Ibid.* pp. 34 – 36.

³ The introduction of the 'Passport and Permit Ordinance' in 1922, by the British Colonial rule, which prevented free movement between the North and South has been widely blamed as one of the colonial root causes of the North-South rift.

left many civilians particularly from the southern regions dead and displaced. Indeed it is argued that the conflict related deaths in Sudan is larger than the fatalities suffered in current and recent conflicts in Bosnia, Kosovo, Afghanistan, Chechnya, Somalia and Algeria combined.⁴ Since 1983 alone, war-related casualties have been estimated at 2 million (in the south and Nuba mountains), a record 4 million internally displaced and an undeniable exodus of hundreds of thousands of refugees now scattered all over the world.⁵ Moreover, the ravages of the war have dealt devastating effects on the country with the south particularly plagued with ever increasing poverty, disease and famine. Tragically however, peace initiatives aimed at addressing this protracted conflict have not realized much.

The conflict in Sudan has assumed many faces. Characteristically, it is described or perceived firstly as, geographical or regional war - pitting the north against the south. Secondly, it is ascribed to religious intolerance: northerners are predominantly Muslims while southerners are overwhelmingly Christian or animist. Thirdly, the conflict has been depicted to be that of racial, ethnic and cultural differences. Northerners identify "themselves as Arab in culture if not race and African by presence,"⁶ depicting a contrast with the black African

⁴ See for example the US. Committee for Refugees, *Sudan: Personal Stories of Sudan's Uprooted People*, Washington DC., 1999.

⁵ Life and Peace Institute, *Hopes of the Horn: Conflict and Transformation in the Horn of Africa*, New Routes, Vol 4, 1999. p. 12.

⁶ P.A. Nyong'o (ed.), *Arms and Daggers in the Heart of Africa*, op.cit. p. 38.

southerners. Fourthly, it is that of ideological or political and Economic imbalance. Indeed:

It is about political and economic power: elite northerners have dominated the Sudan politically and economically since independence and continue to covet the south's natural resources; southerners seek their fair share of the political and economic pie (although some want independence)...⁷

Although these 'schools' provide invaluable insights on the nature and attributes of the conflict situation in the Sudan, it is important to clarify a few things. First, the portrayal of the conflict as regional may not be fairly accurate. This is particularly, because populations who are ethnically and culturally similar or close to those of southerners are to be found in such areas as the Nuba Mountains, which geographically may not qualify as Southern Sudan. Likewise, the racial or religious characterization of the conflict has been criticized on grounds that many Arabs (northerners) are not necessarily supporters of the hard line, overwhelmingly Arab-Islamic fundamentalist government and of the very fact that Southern ethnic groups have continually slaughtered themselves.⁸ Thurjell ties up the characterization of the Sudan conflict with her qualification that:

The parameters of the present conflict were built into the new and independent Sudan from the very start: access to political, economic and social power versus lack of access to such power, a developed and highly educated centre versus deliberately neglected, underdeveloped and uneducated peripheries.⁹

⁷ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, (Washington D.C.: Brookings Institution, 1998) pp. 139-40.

⁸ See generally, Amnesty International, *In Search of Safety: The Forcibly Displaced and Human Rights in Africa*, 20th June, 1997.

⁹ Thurjell, "Sermons of Sudan," *Hopes of the Horn: Conflict Transformation in the Horn of Africa*, in Life and Peace Institute, op. cit. p. 14.

The principal actors in the current Sudanese conflict are the central government and the key rebel group – the Sudan People’s Liberation Army. The former, which is under the rule of General Omar al-Bashir, came to power in 1989 through a military coup backed by a Muslim fundamentalist party – the National Islamic Front (NIF). This coup ousted the democratically elected government of Sadiq al-Mahdi, which at the time was making overtures for peace with the opposition forces through a National Constitution and Conference.¹⁰ Since its entry into power the military government has propagated the need for an Islamic State law, the *Sharia*, in lieu of the all-inclusive secular law. Its Islamic fundamentalist wing (NIF) under the leadership of Hassan al-Turabi on the other hand, has declared an all-out *jihad* (holy war) against all forces opposed to Islam¹¹ - an outright war therefore with the southern non-Muslim majority. This stance has continually festered the North-South standoff and further complicated the search for peace in Sudan.

On the other hand, the SPLA, a military wing of the Sudan People’s Liberation Movement (SPLM) under the leadership of John Garang is opposed to the islamization of the state law and advocates political power-sharing within a unified secular Sudan.¹² These demands however, have been a far cry in the wilderness. It is to be noted however in retrospect that, the break-up of ranks in

¹⁰ Ibid. p. 15.

¹¹ Ibid.

¹² R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 140.

the SPLA command in 1991 dealt a great blow to it, a factor that has since culminated in serious inter-ethnic fighting leaving many southerners dead and displaced.

While Sudan has suffered immensely from its own war, other factors *inter alia* drought, famine and disease have contributed to more deaths and displacement particularly in the southern sector. The effects of several droughts that have plagued Sudan from the early sixties have been devastating. Its adverse effects on agricultural activities have resulted in continuous crop failures. In the south the internecine fights among the rival rebel camps have aggravated this situation, a factor that has forced civilians to abandon farming activities and traditional grazing and fishing areas. Efforts by humanitarian organizations to intervene with relief supplies in the affected areas have been stymied by insensitive government policies, insecurity, and collapsed transport infrastructure – leaving hundreds of thousands of people starving, malnourished and displaced. On the other hand the epidemic scale of diseases experienced in the south has largely been attributed to a collapsed health infrastructure. Diseases such as sleeping sickness, Guinea worm infection and many other tropical diseases have reached alarming proportions particularly because of poor nutritional status of the populations and lack of health and immunization programmes.¹³

¹³ J. Hampton (ed.), *Internally Displaced People: A Global Survey*, Norwegian Refugee Council, 1998, p.86.

Since the focus of this study is to address the overwhelming need for international protection for the IDPS, the choice of Sudan as a case study has been prompted by its grave situation. First, it is exceedingly the world's leading producer of internally displaced persons. Secondly, the IDPs in the Sudan particularly in the south have been subjected to the most cruel and unbearable human rights violation with abject absence of government support or protection.

Hampton notes in this regard that:

The IDPs in Southern Sudan are virtually unprotected. Geography and politics keep them outside the country's legal framework. Where they are able, they drift to IDP camps in search of the meagre food and services provided, and come under the informal protection of the NGOs running the camps. This is a protection negotiated with the effective administration of the area, and can easily be lost when control of the area changes.¹⁴

Thirdly, international response to the whole crisis of conflict and displacement in the Sudan has not been outstanding. Cloaked in the principle of state sovereignty, the government is reported to have continually perpetrated the bombardment of civilians, tolerated the abduction and enslavement of displaced children and women; and forcibly relocated large numbers of IDPs to unsafe locations.¹⁵ Whereas the government has been on the receiving end, either proportionately or disproportionately for the suffering of its displaced civilians, the SPLA on the other hand has been widely criticized for interfering with

¹⁴ Ibid., p.86.

¹⁵ J. Hampton (ed.), *Internally Displaced People: A Global Survey*, Norwegian Refugee Council, 1998, p.86. See also R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced Persons*, op. cit. p. 141.

humanitarian supplies, kidnapping of relief workers and of conscripting young boys.

4.1.0 A SURVEY OF CONFLICT AND DISPLACEMENT SINCE 1983

Sudan, a country at war with itself has been ravaged by civil war at least for thirty-three since its independence.¹⁶ The tragedy however, is that, despite its massive destruction, displacement and deaths there is glaring evidence that it may not end soon unless the root causes of the conflict are addressed. The period between 1955 through 1972 marked the first phase of the Sudan conflict, with Southerners alleging economic exploitation and political repression. This situation however was quelled down with the signing of the Addis Ababa Agreement in 1972. A peace agreement which embraced the granting of regional autonomy to the south through the "Southern Provinces Regional Self-government Act,"¹⁷ and which indeed restored peace in the troubled country until 1983. The peace pact was to guarantee peaceful co-existence within the entire multiracial community. It outlined the need for respect of cultural and religious differences and the adoption of a special development strategy through which the South would have control over broad areas of government activities

¹⁶ Compare generally with, M. Mabry, "Out of Bondage." *Newsweek*, (New York), May 3, 1999. p. 19.

¹⁷ Life and Peace Institute, *Hopes of the Horn: Conflict Transformation in the Horn of Africa*, op. cit. p. 14.

of local taxation, education, social and economic development.¹⁸ Deng, a well-known Sudanese scholar in this regard remarks that this was:

The only time when the Sudanese from the North and South came close to mutual acceptance and respect, not as one people or society, but as different racial, ethnic, and religious groups that could live together in a unified country.¹⁹

When the Numeiry government reneged the peace framework in 1983 by revoking the south of its autonomy and by declaring Islamic *Sharia* as the only source of state law it culminated into yet another phase of civil war. It prompted rebel military officers from the South under the leadership of Colonel Garang to break ranks with the government, the grouping of which saw the inception of SPLA. The SPLA has since mobilized itself and engaged the government in a continuum of armed confrontation. For Garang and his movement the struggle was not for a federation or independence for the South, but rather a fight for "National Liberation" – a new united and secular Sudan.²⁰ A system of government based on power-sharing, equal distribution of wealth, and respect for the rights of the people within a unified Sudan.

Between 1985 and 1986 SPLA-related assaults in the south had displaced more than 50,000 civilians, with famine displacing other 100,000 in the Bahr al Ghazal

¹⁸ Ibid.

¹⁹ Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internal Displacement*.

²⁰ Ibid. p. 143.

²¹ The and Peace Institute, *Hopes of the Horn: Conflict Transformation in the Horn of Africa*, pp. 14-15.

and Upper Nile regions.²¹ In asserting his authority over the south, Sadiq al-Mahdi, during this period also armed his militia men, who then engaged in ruthless attacks on villages in Bahr al-Ghazal and Upper Nile, killing and displacing many civilians. By 1988, with the spread of civil war engulfing more parts of the country, killing and displacement had taken its toll. Ruiz notes that by this time:

SPLA tactics had evolved from localized ambushes in Northern Upper Nile Province to a full-blown capacity to threaten major district and provincial capitals.²²

The guerilla campaign enabled the SPLA to gain control of a larger part of Southern Sudan, resulting to more civilian displacement, most of whom sought refuge in government held regional capitals (Juba, Malakal, Wau) or in towns that had been captured by the SPLA.²³ During this time, more than 250,000 people in the Southern Sudan died of conflict-related famine.²⁴

Much of SPLA achievements in the South were realized in early 1990s. By 1991, it had further extended its control of the South prompting many displaced persons in these areas to return to their villages. The SPLA however was not to hold. In late 1991 it split into two. The Garang led SPLA mainly of the Dinka tribe and the Riek Machar led "Nasir" (SPLA-United) significantly non-Dinka. The

²¹ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 143.

²² Ibid. p. 145.

²³ Ibid.

²⁴ Ibid. p. 148.

genesis of the split has been blamed on a power struggle that had simmered for years within the SPLA leadership ranks. In particular however the split:

Came about as a result of a power struggle within the leadership, criticism of what dissidents described as Garang's authoritarianism, inter-ethnic animosity, and the effects on the SPLA of the fall of Ethiopia's Mengistu and the loss of the support Mengistu had provided.²⁵

It will be noted in this regard that while Garang advocated for a united and secular Sudan, the Riek Machar faction fronted a case for total independence or self- determination for the Southern Sudan.

Between 1991 and 1995, many civilians from across the ethnic divide in the south died and many got displaced as a result of the fighting between the two factions. It will be noted that the split in the SPLA ranks was a boon to the Sudanese military government. In 1992, it launched a military campaign on the SPLA controlled areas of the south, seizing some towns. The continued military attacks in the south between 1992 and 1993 resulted to more displacement of civilians in the Eastern Bahr al- Ghazal, the Upper Nile and the Equatoria regions.

Ruiz notes in this regard notes that by June 1993:

The population of Juba, [town], usually some 100,000 had swelled to as many as 250,000. An estimated 450,000 displaced were located elsewhere in Eastern Equatoria, and 220,000 others were located at the "Triple A Camps" (Ame, Aswa, Atepi) and at Mundri, Yambio, and other locations. The government offensive created an additional 50,000 internally displaced in the Kaya/Morobo area in August 1993; most of who

²⁵ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op.cit., p.151.

headed toward the Uganda border. Eventually, nearly 400,000 Southern Sudanese fled to Uganda and Kenya.²⁶

In 1994, a census on internally displaced, supported by USAID found that there were 1.5 million IDPs in Southern Sudan.²⁷ However, since 1995, this number changed to the worse as more southerners have continuously been displaced due to the SSIM/A (SPLA – United) – SPLA - Government internecine fighting.

4.2.0 REGIONAL IMPLICATIONS OF THE CONFLICT

The Sudan conflict has had internationalizing agents²⁸ and hence regional implications. It is one of the main producer of refugees in the Horn of Africa, with an estimated half a million refugees scattered among its neighbours: Uganda; Kenya; DRC; Ethiopia and Egypt. This number however will keep rising as long as permanent solutions to the conflict are not found. Notwithstanding the fact that the recipient countries have their own fair share of problems, the influx of refugees to these countries has created social tensions and strained the local resources.

On the other hand, the Sudan conflict just like other civil wars in the Horn is widely seen as one of the factors festering regional instability. Sudan and Uganda have frequently accused each other for training and arming insurgent groups in order to destabilize their respective governments. Such accusations

²⁶ Ibid. p. 152.

²⁷ Ibid. p. 153.

²⁸ For an understanding of the agents that internationalizes internal conflicts, see for example, M. Mwagiru, *Conflict: Theory, Processes, and Institutions of Management* (IDIS, UoN, 1999).

however cannot be dismissed because the wind has been gathering dust. Reports indicate that the Sudanese military government has been harbouring, training and arming members of the Lord's Resistance Army (LRA), an insurgent group opposed to the Kampala government. Indeed in 1995, the LRA with the support of Sudanese soldiers attacked several villages in Northern Uganda leaving at least 250 people dead and property pillaged.²⁹ This attack prompted the Uganda government to break the long strained diplomatic ties with the Khartoum administration. Backed by Khartoum government the LRA has continuously launched a series of raids in northern Uganda including the worst 1996 massacre of Sudanese refugees.³⁰ On the other hand, the Uganda government evidently has been an outstanding sympathizer and supporter of SPLA in the region.

In the same vein, the NIF backed government of Sudan has been widely accused of engineering the growth and spread of Islamic fundamentalism among the liberal governments of its neighbours. The rise of Islamic fundamentalism in Egypt, albeit with government efforts to suppress it, is widely blamed on the Sudan government. Groups of this allegiance have been accused of masterminding terrorist attacks on both local and foreign nationals in order to undermine and destabilize the incumbent Hosni Mubarak's government.

²⁹ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 160.

³⁰ Ibid.

Similarly, Ethiopia has had cold diplomatic relations with Sudan especially after the attempted Sudan backed assassination of the Egyptian President, Hosni Mubarak while attending an OAU summit in Addis Ababa in the mid nineties.³¹ Indeed since that incident the Ethiopian government has continually pressed through the OAU and UN for the extradition of the suspects from Sudan.

In addition relations between Sudan and Eritrea have not been rosy either. Founded on mutual security concerns, the tense relations have culminated to the breaking of diplomatic ties between the two countries. Eritrea has accused Sudan for hosting and aiding the Eritrean Islamic Jihad insurgents against its government, while on the other hand Sudan has accused Eritrea for doing the same in supporting SPLA.³²

It will also be argued, that the Sudan has become the corridor or avenue for smuggling illegal firearms into the doorsteps of its neighbours. Although it is widely believed that small firearms into Kenya for instance, have predominantly originated from Somalia, Sudan cannot be an exception, particularly with the "scenario of loose or irresponsible handling of firearms in Southern Sudan." These firearms, which often fall in the wrong hands, have catapulted security concerns, especially in the Kenya urban centres where these firearms are used for criminal activities.

³¹ Ibid.

³² Ibid. See also M. Mwagiru, *Conflict: Theory, Processes and Institutions of Management*, (IDIS:UoN, 1999), p.56.

In terms of regional trade Sudan has so to speak experienced uneasy trade relations particularly with her southern neighbours because of her current repressive policies on the South. A more recent case is the public condemnation and plans to resist by Kenya's parliament the government's bid to import oil from Sudan - now widely christened "bloody oil". The underpinning argument is firstly that the oil, which is extracted from the South, has not benefited the local communities; instead it has caused them more misery through displacement. Secondly, it is widely argued that the returns from oil exports have been used by the incumbent regime to finance arms acquisition, which subsequently, is used to shell and bombard the Southerners.³³

Peace initiatives to resolve the Sudanese conflict have been unflagging. This being the case however, it would appear that efforts in this direction have over years become fatigued. International actors, governments, the Organization of African Unity, the sub-regional Inter-governmental Authority on Development (IGAD) and prominent personalities such as the former US President Jimmy Carter, have all contributed towards resolving this conflict.³⁴ The IGAD group of countries – which comprise Kenya, Ethiopia, Eritrea, Uganda, Somalia and Sudan itself have however received international acclamation, and support in the recent

³³ See *The East African Standard*, "The Big Issue", (Nairobi) Monday, August 20 2001, p.1-8. See also *The Daily Nation*, "MPs for Boycott of Oil From Sudan", (Nairobi) March 20 2001.

³⁴ Life and Peace Institute, *Hopes of the Horn: Conflict Transformation in the Horn of Africa*, op.cit. p. 13.

past for their peace initiative. Such international support is manifested for example through the "Friends of IGAD" support group, comprising the United States, Italy, Canada, Norway and the Netherlands,³⁵ who have bestowed confidence in IGAD in its efforts to resolve the conflict. Indeed, the IGAD adoption of the "Declaration of Principles" in 1994, a framework for the peace negotiations is widely accepted by most actors as the 'most promising way forward for the official high-level peace process.'³⁶ Critics however, have been fast to point out that the IGAD – sponsored peace process has been without momentum and not all-inclusive as it has so far focused on the government and SPLA for peace talks ignoring other equally aggrieved and interested parties. It is to be noted in the same breathe however, that the IGAD brokered peace negotiations has since suffered a major set back with the rejection by the Sudanese military government particularly because of the thorny issues of self-determination for southerners and the necessity to separate religion from state politics as proposed solutions to peace in the 1994 Declaration of Principles. Peace negotiations between the two parties are however going on.

4.3.0 ANALYSIS OF THE CHARACTERISTICS OF DISPLACEMENT IN SUDAN

It cannot be gainsaid that the scale of displacement in the first phase of the Sudanese conflict was of alarming proportions. By 1972, at the start of the

³⁵ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 161.

³⁶ Life and Peace Institute, *Hopes of the Horn: Conflict Transformation in the Horn of Africa*, op. cit. p. 13.

cease-fire there was an estimated half a million internally displaced persons and 180,000 refugees all from southern Sudan ³⁷as the most affected region. The period that followed up to 1982 and which was marked by relative peace however enabled these displaced persons to return to their places of origin. By 1989 however, the official government records placed the number of internally displaced at 1.8 million, a figure that had increased to 2 million³⁸ by 1991. Majority of the displaced were southerners and the drought-affected Western Sudan.

As at mid 1996, the figure had shot to an incredible number of 4 million IDPs. Ruiz in this regard notes that during that period:

Some 1.8 million [IDPs] were living in and around Khartoum in the north, several hundred thousand were located in the South Kordofan and South Darfur, and 1.5 million remained within the Southern Sudan. Some 600,000 were in areas under SPLA and SSIM control in the Southern Sudan, including 235,000 in the Bahr al-Ghazal region, 125,000 in the Upper Nile region, 110,000 in Equatoria West of the Nile, and 120,000 in Equatoria east of the Nile. An estimated 250,000 [of them] were living in the Southern Sudan's largest city Juba... held by the government but surrounded by SPLA.³⁹

This scale of humanitarian crisis indeed merited unprecedented humanitarian intervention, both from the government and the international community.

³⁷ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 154.

³⁸ This is a 1995 UN estimate, reported by Human Rights Watch in 1996.

³⁹ H.A. Ruiz, "The Sudan: Cradle of Displacement," in R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op.cit. p. 155.

Government and International Response to the Human Rights and Humanitarian Crisis

4.3.1 The Government's Response

The position of the incumbent Sudan government and that of its successive predecessors towards the internally displaced has remained wanting. Indeed the government has interminably received fierce of criticism both locally and internationally for doing little or nothing at all in providing protection and assistance to the internally displaced persons. By the same token, the Khartoum military regime is accused of blatant indifference with regard to ending the war, a factor largely responsible for displacement. As a party to the conflict, the Sudan government is noted for its inhuman activities of shelling camps for the internally displaced and blocking or interfering with flow or delivery of relief supplies. In the same vein, the Khartoum government is on record for obstructing independent groups from gathering relevant information useful in humanitarian aid emergency and in planning. Suffice it therefore to say that:

At best, the government has clearly failed to create the 'enabling environment' to facilitate the delivery of humanitarian aid, as laid down in the international conventions to which it is a signatory. At worst, it is held responsible for creating famine conditions, for war crimes and genocide.⁴⁰

⁴⁰ Mark Bradbury, "Sudan: International Response to War in the Nuba Mountains," *Review of African Political Economy*, No. 77, Vol. 25, September 1998, p. 468.

This view takes into account the fact that such acts considered crimes against humanity are punishable under international law and which the United Nations has recently enforced.

The systematic and sustained campaigns of human rights abuse in the Sudan are of immense proportions as attested by independent human rights reports. The worst of such recent campaigns are those on the Nuba and the South Kordofan regions.⁴¹ The military government is on record as engaging or at least tolerating such egregious activities, as slave trade and slavery, sale and trafficking of children and child labour ⁴² and a plethora of human rights abuse which disproportionately afflicts the IDPs. But, while the Government suffers a larger share of the blame with regard to human right abuse, the SPLA on the other hand, has been criticized for being party to this human misery.

4.3.2 International Response

The international response, to the Sudan humanitarian crisis may generally be described as one that goes in fits and starts. Compounded by less media coverage and a government, which has not been keen in seeking international support, the country has had to sometimes bear its own burden. The problem is further associated with the fact that the NIF backed government has strained diplomatic relations with the Western countries particularly because of its poor

⁴¹ Ibid. p. 467.

⁴² See generally M. Mabry, "Out of Bondage," op. cit. pp. 18-21.

record of human rights and its perceived association with international terrorism.⁴³ The Khartoum administration has been accused by the west for supporting and harbouring terrorists and for its inclination to developing chemical weapons. These accusations have however been rebutted, with the Khartoum government alleging that the west, particularly the United States is waging a campaign against her guided by self interests.

Drought and conflict-related displacement and the famine, which followed particularly in the south and western parts of Sudan from early 1980s through to 1988 however, compelled international humanitarian efforts into the Sudan. Notable organizations during this period were the Norwegian People's Aid (NPA) and the World Vision whose humanitarian operations in spite of the risks were extended to the rebel-held zones.⁴⁴ Despite the humanitarian efforts in these zones thousands of IDPs perished either because of the untimely arrival of the relief supplies or because of the immense risks involved in reaching out to them. Ruiz, in this regard rightly observes that, other than a few NGO activities "the world long ignored the humanitarian emergency in the Sudan"⁴⁵ even in the face of clear indicators on how grave the situation was. In regard to the situation in the Nuba Mountains, (the worst hit area), Mark Bradbury notes that although there is critical human rights and humanitarian crisis in this area the

⁴³ Life and Peace Institute, *Hopes of the Horn: Conflict Transformation in the Horn of Africa*, op. cit. p. 15.

⁴⁴ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 157.

⁴⁵ Ibid.

"international community has failed to secure access to defend the rights and entitlements"⁴⁶ of the Nuba particularly in areas not under the government control. While he appreciates the recent efforts by the international community in warning the Khartoum government of its human rights record, he is quick to point out that it should further take or enforce legal action against the perpetrators of war crimes against the Nuba population.

Significant and coordinated international response towards the Sudan humanitarian crisis however began in 1989, with the launching of Operation Lifeline Sudan (OLS) by the United Nations.

4.3.3 Operation Lifeline Sudan (OLS)

The creation of Operation Lifeline Sudan came at a time when Sudan was facing its most difficult time - engulfed in severe famine, devastated by internecine civil war, and with little international support. Indeed there was an urgent need for concerted humanitarian efforts to avert a major human catastrophe. As a United Nations humanitarian arm in the Sudan, the OLS is charged with offering assistance and in protecting war-affected civilians and which by extension attends other deserving cases. In establishing the OLS the cooperation and support of the warring parties (government and SPLA) was sought under agreed humanitarian principles which would enable humanitarian assistance: neutrality;

⁴⁶ M. Bradbury, "Sudan: International Responses to War in the Nuba Mountains," *Review of African Political Economy*, op. cit. p. 468.

transparency and accountability; and the provision of assistance on the basis of need.⁴⁷ In the spirit of OLS agreements (formally signed in 1994), the government and SPLA agreed to establish what was called "corridors of tranquillity" through which OLS relief would pass safely⁴⁸ in order to reach as many war-affected populations as possible.

As a coordinating humanitarian umbrella in the Sudan, OLS brought together the efforts of various UN agencies: UNICEF; WFP; UNDP; and related international humanitarian organization such as the ICRC plus other international NGOs. OLS humanitarian efforts were immediately realized. Barely three months after its inception in 1989, it had delivered about 16,000 tons of food aid in southern Sudan than what had been delivered since 1983 through 1988.⁴⁹ The record time within which OLS saved many lives won it international acclaim and it was thought for a while that it would serve as a model for other humanitarian efforts in war-plagued countries. However, by 1990 OLS had begun experiencing major logistical problems and its efforts was, further hampered by Al-Bashir's intransigent military government. Indeed in 1990, the government is reported to

⁴⁷ Ibid. pp. 468 – 469.

⁴⁸ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 147.

⁴⁹ See for instance, J.M. Burr and R.O. Collins, *Requiem for the Sudan: War, Drought, and Disaster Relief on the Nile* (Boulder: Westview, 1995).

have bombed OLS relief sites and in 1991 it indefinitely "suspended all OLS Programmes staged out of northern Sudan."⁵⁰ On the whole Hiram argues that:

OLS's failure to remain a neutral, effective tool for assisting all displaced Sudanese is largely due to the international community's lack of commitment and staying power and its timidity in challenging governments.⁵¹

Indeed such lack of commitment was manifested in the recent past when donors drastically reduced their support pledges for OLS under the banner excuse that the UN should rationalize or reform OLS's operations - making it cost effective through restructuring and cost recovery.⁵² Meanwhile as the OLS humanitarian campaign in the Sudan is politicized both by the government and SPLA and even the international community, more human suffering and deaths will continue in this drought and war-ravaged part of the world.

4.4.0 A CLOSER LOOK AT THE RELIEF CAMPS AND AFFECTED AREAS

4.4.1 The Situation in Khartoum

By 1996 the inhumane conditions subjected to the internally displaced in Khartoum was unbearable. Of the 1.8 million relocated here and its vicinity the majority did not have even the barest shelters, except for self-innovated "huts" out of dumped industrial packaging materials. This situation was aggravated by the government's systematic segregation, and outright marginalization with the

⁵⁰ Roberta Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 149.

⁵¹ Ibid. p. 159.

⁵² Janie Hampton (ed.), *Internally Displaced People: A Global Survey*, op. cit. p. 86.

care of the international community. Indeed the government abandoned its responsibility of providing the IDPs with the most essential needs and services, such as health services and education – these being protected rights of individuals under international law.⁵³

In a 1995 report by African Rights on the Khartoum situation, it pointed out that the IDPs in this area other than being oppressed by their government, were also discriminated and "ostracized"⁵⁴ by the local majority (Northerners), and that while this was alarming no sustained international efforts were foreseeable with regard to their protection and assistance. The United Nations in this regard, has been criticized for its failure through the OLS for tolerating the severe and inhumane conditions subjected to the IDPs in Khartoum as one of the largest concentration points in Northern Sudan. Indeed the UN (OLS) is said to have by "connivance" and dictates of the Khartoum government concentrated its humanitarian role in Southern Sudan and conveniently ignored the displaced in the northern sector. While this "deal" was to merely sustain the UN-government relations (at least to enable the continuity of humanitarian programme), it nonetheless saved many lives of the displaced in the south. Serious intervention

⁵³ The right to medical care and necessary social services is protected under article 25 of the Universal Declaration of Human Rights as part of the right to an adequate standard of living. Similar commitment is also expressed in article 24(1) of the Convention on the Rights of the Child. Likewise, the right to education for everyone is guaranteed in article 26(1) of the Universal Declaration of Human Rights and article 13(1) of the International Covenant on Educational, Social and Cultural Rights (ICESCR) which recognizes the right to education on a non-discriminatory basis.

⁵⁴ African Rights, "Sudan's Invisible Citizens: The Policy of Abuse against Displaced People in the North," London, 1995, pp. 1-2.

on behalf of the IDPs is therefore required in the north, particularly in the government-controlled camps of Nuba Mountains and Khartoum.

4.4.2 The Situation in Bahr al – Ghazal

The Bahr al-Ghazal region of the southern Sudan presents a grim picture of the internally displaced persons. In comparison to other IDPs in the southern Sudan they have disproportionately suffered from acute shortage of food supply. In 1998, at a time when Bahr al Ghazal region was experiencing severe famine, the situation was even made worse when the government imposed a flight ban to the region. Human Rights Watch in this regard notes that:

The government exacerbated the dire situation by slapping a flight ban on all U.N relief planes for the entire Bahr al Ghazal region on "security grounds" for an undetermined length of time.⁵⁵

The government imposed the ban notwithstanding the fact that not all areas in the Bahr al-Ghazal where the IDPs were found were inaccessible by road. This move prompted public protest from OLS who had confirmed fast "deteriorating condition of internally displaced populations"⁵⁶ in this region. Regrettably the situation has remained more or less the same.

4.4.3 The Situation in Equatoria

The IDP situation in Equatoria region Deep South Sudan presents a varied picture. Majority of the internally displaced, in the West Bank of the Nile River,

⁵⁵ Human Rights Watch, *Famine in Sudan 1998: The Human Rights Causes* (New York: Human Rights Watch, February 1999), pp. 86-87.

⁵⁶ Ibid.

except those of the Manglalore camp (principally of the Dinka ethnic group), are found in areas, not too distant from their homes and their communities and/or ethnic groups.⁵⁷ Principal humanitarian assistance to the IDPs in the West bank of the equatorial region is through a network of international organizations, among them the Norwegian People's Aid, the American Refugee Committee, the World Vision, International Rescue Committee, Mediciens san Frontieres/Holland and Action Africa in Need.⁵⁸ Humanitarian efforts by these NGO's were however, significantly disrupted between 1995 and 1996 due to insecurity and unbearable rise in transport costs. The insecurity problem was particularly due to the continuous fighting in northern Uganda, which served as an opening or an inlet for relief aid through Kenya to the western equatoria and Bahr al-Ghazal regions. Inaccessibility through Uganda was further compounded by the Sudanese Army's blocking of direct access from Uganda to western equatoria.⁵⁹ This followed therefore that, the trucks carrying the relief aid had to traverse northern Zaire (DRC) in order to access western Equatorial and Bahr al- Ghazal, and thus significantly affecting the transport cost. Insufficient funding to the NGOs during this period also hampered with their efforts to finance self-sustaining agricultural projects aimed at reducing over reliance on handouts by the IDPs.

⁵⁷ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 162.

⁵⁸ *Ibid.*, pp.162-163.

⁵⁹ *Ibid.*

On the other hand, the IDPs in eastern Equatoria (east of the Nile River), mainly of the Bor Dinka ethnic group have suffered repeated displacement, for instance the 1991 ethnic inspired attack by the Nuer and the 1992 military assault.⁶⁰ Ruiz, notes however that since 1993 when the Bor Dinka east of the Equatorial received agricultural support, their over reliance on food aid steadily changed to that of less-dependence. But that since there is still general insecurity, coupled with insufficient rains in the region, relief presence as a lifeline to this population cannot be overruled.⁶¹

4.4.4 Forced Displacement in the Nuba Mountains

The displacement in the centrally placed Nuba Mountains has continued unabated since 1985. The Nuba people, numbering over one million, with diverse dialects and almost equally divided between Christians and Muslims, have continually been the target of the government, in what the African rights have termed "genocide by attrition."⁶² Suspected or perceived as supporters or accomplices of the SPLA, the Nuba community has been subjected to constant attack from the government and government-backed militia – the *Murahileen*.⁶³ The State-sponsored killing of unarmed civilians, maiming, raping of women, subjection to hunger and disease and forced relocation as reported by

⁶⁰ See, Human Rights Watch/ Africa, *Civilian Devastation: Abuses by All Parties in the War in Southern Sudan* (New York: Human Rights Watch, June 1994).

⁶¹ Hiram A. Ruiz, "The Sudan: Cradle of Displacement," in R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*. op cit. pp. 163-164.

⁶² African Rights, *Facing Genocide: The Nuba of Sudan*, July 1995, p.137.

⁶³ Ibid. p. 61.

independent monitors⁶⁴ is seen as the epitome of human rights violation. According to Human Rights Watch, the government's strategy in the Nuba Mountains is to "starve the estimated 400,000 civilians in SPLA areas, presumed to be the SPLA support base, out of their traditional lands"⁶⁵ and into forced relocation in government garrison towns – the "Peace Camps."⁶⁶ The declaration of a *jihad*⁶⁷ against the Nuba Mountains by the government in 1992 further degenerated the already pathetic situation. The Government military raided the Nuba villages, destroyed and forced thousands into controlled camps. Indeed in 1992 alone, there were an estimated 143,000 displaced Nuba who had been forcefully relocated by the government in some eighty nine "Peace Camps," while tens of thousands sought refuge in SPLA controlled areas.⁶⁸ African Rights has expressly deplored the conditions in these peace camps. It notes that in the camps, torture and ill treatment are rampant and that it is not uncommon to find government soldiers subjecting women and girls to sexual abuse.⁶⁹ In addition, it is widely believed that the so-called peace camps, which ring garrison towns, are

⁶⁴ Amnesty International, African Rights, Pax Christi-Netherlands and other human rights groups have continuously condemned the wanting state of human rights in Sudan

⁶⁵ Human Rights Watch, *Famine in Sudan 1998: The Human Rights Causes*, op. cit. p. 7.

⁶⁶ The African Rights has described the "Peace Camps" as concentration camps in the true sense of the word where rural population is forcibly concentrated for easy control by the government and where their political and cultural identity can be changed.

⁶⁷ African Rights, *Facing Genocide: The Nuba of Sudan*, op. cit. pp. 109-114. See also, M.

Bradbury, "Sudan: International Responses to War in the Nuba Mountains," *Review of African Political Economy*, op. cit. p. 465.

⁶⁸ R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. p. 167.

⁶⁹ African Rights, *Facing Genocide: The Nuba of Sudan*, op. cit. pp. 242-277.

mere "human shields," a strategy by the government to discourage direct SPLA assaults.⁷⁰

International relief programme in the Nuba Mountains has continually concentrated only on the government side, leaving the SPLA – controlled areas out. Human Rights Watch, notes that the government has further proceeded to prevent "UN efforts to conduct even a needs assessment in SPLA areas," despite its promise in 1998 to the United Nations Secretary-General guaranteeing such exercise.⁷¹ It therefore notes that:

The result of the government siege and flight ban is that only a handful of agencies operate modest programs in the Nuba Mountains. The programs are irregular and exposed to much greater risk than OLS programs because they operate "illegally" and all flights into the rebel areas are under threat of government attack⁷²

Despite this desperate situation and the genocide inclined cruelties against the Nuba community there has been an apparent, though disturbingly, near absence of international intervention. Ruiz in a nutshell and rightly so, notes that:

The government has not permitted OLS assistance in the Nuba Mountains, and the UN has never challenged the government's position. Cease-fires have excluded the Nuba Mountain region. IGAD has failed to include the issue of the Nuba Mountains on its agenda.⁷³

⁷⁰ Ibid. p. 243.

⁷¹ Human Rights Watch, *Famine in Sudan, 1998: The Human Rights Causes*, op. cit. p. 168.

⁷² Ibid. p. 169.

⁷³ H. Ruiz, "The Sudan: Cradle of Displacement," in R. Cohen and F.M. Deng (eds.), *The Forsaken People: Case Studies of Internally Displaced*, op. cit. pp. 167-168.

In the light of these omissions or failures there is therefore an urgent need for international intervention to avert a deepening human catastrophe not only for the displaced Nuba but the entire population.

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CHAPTER FIVE

ANALYSIS OF THE SHORTCOMINGS OF INTERNATIONAL LAW IN THE PROTECTION OF IDPs AND ISSUES ARISING FROM THE SUDAN INTERNAL DISPLACEMENT

5.0.0 Shortcomings of International Law in the Protection of IDPs

Chapter Three analyzed the legal norms relevant or applicable to the protection and assistance of the internally displaced persons. While it was found that vast norms are applicable to IDPs, there nonetheless remain areas in which international law fails to provide an adequate basis for their protection. But then does the abundance of applicable norms permit a feeling that internally displaced persons are protected by international law? Are more legal prescriptions, required or simply better implementation of existing international legal instruments? These are issues that have been debated yet, the resounding conclusion is that there is a clear need for protection of internally displacement persons. It should be noted however in this regard that in some of these areas the, suffering experienced by internally displaced persons "clearly indicate lack of willingness on the part of the authorities to observe and implement existing obligations rather than lack of clarity about or absence of relevant norms."¹

Consequently:

¹ W. Davies (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, Norwegian Refugee Council/Global IDP Survey, 1998. pp. 42 – 43.

It would thus be wrong to assume that because there is no specific regime for internally displaced people, there is no legal basis for their protection.²

Questions may arise as to the usefulness of approaching the problem of internal displacement, through law, and particularly by referring to legally binding international legal instruments. Key to appreciating this approach is the understanding that the non-observance of international obligations may entail loss of credibility and support on the part of other actors or the population itself, and that the relevant authorities therefore often have an interest in discharging their duties.³ On the other hand it will be noted that internally displaced persons, like other citizens have inalienable rights, the entitlement of which are not lost by virtue of having been displaced. Knowledge and understanding of the law, is therefore a prerequisite for its proper application. Indeed it should be noted that adherence to international law by states would by itself considerably reduce the millions of internally displaced persons and refugees. Fundamentally law provides guidance on how internally displaced people should be treated both during displacement and afterwards. On the other hand reference to legally binding obligations serves to strengthen advocacy on behalf of internally displaced persons towards authorities and, not "least empowers IDPs themselves, rather than designating them as a group receiving charitable aid."⁴

² Ibid.

³ Wendy Davies (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, op.cit, p.40

⁴ Ibid. p.41.

This chapter will critically assess the inherent and underlying legal weaknesses or shortcomings in international law, with a view to determining why it has failed to afford sufficient protection to internally displaced persons. In addition this section will examine key issues and lessons that can be drawn in situations of internal displacement with reference to the Sudan study.

Several categories of legal shortcomings in human rights law emerge with respect to affording sufficient protection to internally displaced persons.

5.0.1 Normative Gaps

This is where international law fails to provide any protection for the legitimate needs of internally displaced persons. This occurs in situations where there are no explicit norms to address identifiable needs of the internally displaced.⁵ Although they are few, they do nonetheless exist. A good example in this regard, is the outright lack or absence of a right to restitution of property lost as a consequence of displacement during internal or international armed conflict or to compensation for its loss.

5.0.2 Applicability Gaps

These occur where existing legal norms do not apply in all circumstances, are binding only on a limited number of actors, or protect only limited categories of

⁵ F.M. Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms* (New York and Geneva: United Nations, 1998), p. 77.

These cases are numerous. Since human rights law is binding only on States and not non-State actors, the IDPs in this case will be deprived of protection in situations of tensions and disturbances particularly if non-State actors perpetrated violations. Insufficient protection also occurs in:

Situations where the intensity of conflict is below the threshold of humanitarian law, while at the same time allowing governments to derogate from human rights provisions, often key to the survival of internally displaced people.⁷

Derogation is particularly common where governments declare a state of emergency. Another shortcoming in this respect with regard to protection of IDPs is the fact that there are no explicit safeguards against arbitrary detention in situations of internal armed conflict, since these guarantees are not provided in humanitarian law, yet on the other hand, human rights law may be derogated from owing to the seriousness of a conflict.

Consensus Gaps

Shortcomings in the law, although less serious in a strictly legal view, occur where a general norm exists but a corollary, more specific right has not yet been formally and formally recognized that would ensure implementation of the norm in areas of particular need to internally displaced persons.⁸ An example here is the prohibition of forcible return to situations of

(ed.), *Rights Have No Borders: World Wide Internal Displacement*, op. cit., p. 43.

Internally Displaced Persons: Compilation and Analysis of Legal Norms, op. cit., p.

imminent danger, implicit in the prohibition of inhuman treatment, and where it has been recognized that it is inhuman to return a person to a country in which he or she will face torture or death or related violations of human rights.⁹ Although the case law refers to return across international borders, which in essence reflects the protection of refugees, there is no such similar guarantee for internally displaced persons. To ensure the protection of IDPs against forcible return to conditions of danger and persecution, a prohibition of inhuman return of these persons should be articulated.¹⁰ Another example where a specific right for the IDPs has not been articulated but where there is a general norm, is in the area of equality and non-discrimination, where various instruments proscribe, among other distinction or discrimination on the basis of 'other status'. Although this could broadly be interpreted to include the IDPs, there is nonetheless a need to explicitly state that the term "other status " in non-discriminatory clauses includes the status of internally displaced persons.¹¹ Similar weakness is also found in the prohibition of arbitrary detention. Although this is a recognized international standard, the preconditions of lawful detention of internally displaced persons in closed camps however remain unclear. These preconditions should thus be clearly spelt out.

⁹ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, D.C.: Brookings Institution, 1998), p. 123.

¹⁰ Ibid.

¹¹ F.M. Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, op. cit., p. 16.

It can be concluded therefore in this respect that, although it is possible to infer specific legal rights from existing general norms; as discussed in chapter two, the protection of internally displaced persons would indeed be strengthened if these specific guarantees were clearly articulated.

5.0.4 Ratification Gaps

These gaps are prevalent. They result in a vacuum of legal protection for internally displaced persons in States that have signed but not ratified (or neither signed nor ratified) key human rights treaties or even the Geneva Conventions of 1949 and their Additional Protocols. In essence therefore these, States are not bound by the provisions of these instruments except to the extent that the treaties have attained the status of customary law.¹² In Africa, Asia and South America for instance, a number of countries have not ratified key international human rights instruments although they could be signatories.

Despite these glaring weaknesses and gaps in the present international law, questions however have been raised against the development of a new set of legal norms applicable only to internally displaced persons. Although legitimate, "most of these concerns point to risks that an elaboration of specific norms might entail rather than questioning the idea as such."¹³ Particularly it has been argued that a normative framework specifically tailored to meet the needs of the

¹² D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement* (Washington, D.C.: Brookings Institution, 1999), p. 88.

¹³ W. Davies (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, op. cit., p. 46.

internally displaced could result in discriminating against other groups who are equally vulnerable. Of concern here is the “legitimacy of providing preferential protection to a distinct group”¹⁴ which may not be afforded to others in the same situation of vulnerability. Other concerns also point at the risk of detracting attention from the existing obligations and in essence therefore undermining existing law.¹⁵ However, in the drafting of the Guiding Principles on internal displacement, which so far is a comprehensive normative framework for the protection of IDPs, these questions were put into consideration. Korn in this regard notes that:

In answer to these objections, it was pointed out that situations abound in international law for special protection of disadvantaged groups – whether refugees, minorities,...populations, the disabled, or women and children. ...guiding principles tailored to the needs of the internally displaced would not discriminate against others but would ensure internally displaced persons are protected and their unique needs addressed. Guiding principles were needed to make...existing visions of law more explicit, fill gaps and illuminate gray areas, and bring together in one place the whole of law applicable to the internally displaced.¹⁶

In the light of the underlying shortcomings or weaknesses in present international law, and in view of the non-binding legal status of the Guiding Principles; it is expected however that the latter could attain authority through constant use and hence help create the moral and political climate necessary for protection of internally displaced persons while avoiding confrontation with

¹⁴ Ibid.

¹⁵ Ibid. p. 47.

¹⁶ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 89.

governments opposed to binding rules.¹⁷ Ultimately therefore Guiding Principles on internal Displacement could lead to the development of a binding legal instrument if such were to be considered necessary.¹⁸

5.1.0 CRITICAL EXAMINATION OF ISSUES IN THE SUDAN INTERNAL DISPLACEMENT

Chapter Four captured the historical factors leading to internal displacement in Sudan, examined the circumstances and characteristics of displacement, and the international response to the problem. It will be noted that the economic disparities and power struggle between north and south or indeed between the center and the periphery in general has been a major factor in the civil war. Conflicts that become protracted as in the case of Sudan often reflect a deep societal mal-justice, social-ills and economic inequalities that often occur when a state is monopolized and identified with dominant group or groups to the exclusion or marginalization of other groups.¹⁹ Unlike inter-state war, civil wars particularly those that divide countries along racial, ethnic, linguistic or religious lines as, is for example attributed to the Sudan conflict, do not resolve themselves easily. Often they recur and may persist for long periods resulting in mass internal displacement and refugee crisis.

¹⁷ Ibid., p.90.

¹⁸ Ibid.

¹⁹ R. Cohen and F.M. Deng (eds.). *The Forsaken People: Case Studies of Internally Displaced*, op.cit. p.5.

Analysis of the Sudan's internal displacement provides a case opportunity to capture the suffering and the dehumanizing conditions that the IDPs undergo. Consequently it calls upon the formulation of a model framework that puts premium on protection so that international response in situations of internal displacement should be comprehensive as possible – putting together humanitarian, human rights and development agenda. Wendy in agreement to this view agrees that:

If forced migration is intrinsically a human rights issue, what is required is a greater convergence of human rights and humanitarian norms backed by international sanctions and a willingness to follow through the logic of intervention, not least in the field of protection.²⁰

The Sudan question also demonstrates the importance of seeking political solutions to conflicts and eliminating conditions that cause displacement. This follows the argument that states involved in humanitarian efforts who prefer political disengagement, if the problem is political in nature, are essentially, not interested in understanding and solving the problem and hence their efforts often become palliative and short-term only to prolong the culture of relief supply. For salutary effects therefore humanitarian efforts such as that of Operation Lifeline Sudan (OLS) should constitute part of the larger strategy that seeks to achieve political solutions. There is need however to note as a caution that if humanitarian action is subordinated to political objectives it sometimes jeopardizes the relief efforts and put displaced persons at risk especially if the rivals become suspicious and deny access to their areas of control. Importantly

²⁰ Wendy Davies (ed.), *Rights Have No Borders: Worldwide Internal Displacement*, op.cit. p.27

therefore there is need to strike a balance between political and humanitarian goals so that assistance, while meeting humanitarian criteria, does not impede progress toward political solutions.²¹ From the Sudan experience therefore it can be argued generally that unless humanitarian aid is made conditional there is a tendency of the affected countries to prolong the suffering of the people by protracting conflict. Key therefore is a broader framework that encompasses resolution of conflicts and humanitarian efforts to prevent future displacement, as is the case in the IGAD brokered Sudan peace negotiation. Profoundly such peace efforts must address the fundamental causes of the conflict, including strengthening of democratic institutions, bridging economic disparities and protection of human rights especially of minorities and other disadvantaged groups.²²

The commitment of some governments in dealing with situations of internal displacement has been put on spot. In Sudan while hundreds of thousands of people were displaced and millions suffered drought and famine through the 1980s the government persistently denied that an emergency existed until when the situation had worsened in 1989. The media attention coupled with pressure by the international community compelled the government to acknowledge the problem and allow the international community to provide the needed assistance. It is also telling that when internal displacement occur due to natural

²¹ R. Cohen and F. M. Deng (eds), *The Forsaken People: Case Studies of Internally Displaced*, op.cit. p.11.

²² *Ibid.* p.12.

disasters and man-made disasters, such as drought or nuclear accidents afflicted governments are often willing to offer protection and assistance to victims with the support of the international community. But when on the other hand people are displaced by intra-state conflicts, governments are less willing to protect and assist their internally displaced persons. More problematic are governments that deliberately obstruct humanitarian assistance on the notion that if for instance it is administered on the insurgent-controlled areas it serves to undermine their authority and strengthen their opponents. The indifference by Khartoum administration to the suffering of the displaced in the south in the mid-eighties until there was an outcry from the international community clearly point out the length governments can go in an attempt to conceal policies that contribute to mass displacement.

Sudan provides a perfect opportunity to question the relevance of such increasingly 'anachronistic' notion as absolute sovereignty and non-interference in the internal affairs of states, which is often invoked by states as a resistance to international intervention. The case study of Sudan illustrates the devastating effect that governmental obstruction to international relief efforts can have. Resistance by the Sudan's government rationalized and defended on grounds of state sovereignty, caused the starvation and death of hundreds of thousands in the 1980s and severely limited in later years the international communities

efforts to assist millions of IDPs within that countries borders.²³ Operation Lifeline Sudan established with the consent of the Sudanese government in 1989, however opened relief corridors through which relief could be channeled to populations at high risk in South Sudan and government held territory. This illustrates the difficulties humanitarian agencies encounter in operating in framework of state sovereignty and the suspicions that their efforts to assist all sides to a conflict can arouse even on the part of the government that welcomed the international community. It should be noted however that there is a universally growing principle to the effect that, the concept of sovereignty cannot be dissociated from responsibility. Essentially therefore a state cannot claim the prerogatives of sovereignty unless its actions are in keeping with international standards of providing protection in situations of internal displacement. It cannot be gainsaid therefore that failure by states to meet these standards would legitimize the willy-nilly involvement of international community to remedy the situation. Evidently it can be drawn from the Sudan situation that, states whose citizens have their basic rights deprived deliberately either by obstruction or outright denial to access, "will and must expect diplomatic demarches, to political pressures, sanctions, or as a last resort, military intervention."²⁴

As to institutional arrangement the Sudan study demonstrates that the needs of internally displaced persons are more effectively addressed when one

²³ Ibid. p.5.

²⁴ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op.cit. p.7.

international agency is assigned responsibility for them in one emergency. OLS, which was a synergization of a number of relief efforts, enabled proper coordination of humanitarian delivery and in effect achieving much than would have been otherwise. It is instructive to also note in this breathe that in spite of difficulties encountered in Sudan the international community has generally demonstrated both the will and the capacity to handle situations of mass internal displacement. On the hand it should be noted that humanitarian organizations themselves cannot be expected to provide the kind of enhanced protection needed by displaced populations when armed forces – whether insurgent or governmental are intent upon doing harm to a particular population. The handicaps, suffered by various humanitarian agencies in Sudan was fundamentally as a result of lack of insecurity emanating both from the government and the insurgent forces. Such situations, therefore necessitates international military intervention as for example employed in Iraq in 1991.

CHAPTER SIX

DEALING WITH INTERNAL DISPLACEMENT: STRATEGIES AND SOLUTIONS

6.0.0 PREVENTIVE STRATEGIES

While it is important to appreciate the role of emergency relief in situations of internal displacement, it is certainly more important to appreciate the need for permanent solutions. National, regional and international efforts must be harnessed to address the various political, social and economic causes of internal displacement. Francis Deng in this regard is emphatic that these efforts or strategies must be broad and comprehensive. He rightly notes that:

Strategies to address mass displacement need to encompass prevention, protection, and political and economic solutions as well. They need to go beyond the mere fact of the existence of conflicts and human rights violations to their potential roots in identity crises within a nation, the denial of democratic liberties, and the deprivation of poverty and severe underdevelopment. The remedies designed should not only be a response to emergency needs but should seek to prevent the conditions that caused the problem.¹

He qualifies these views by stating that the "search for lasting solutions in turn becomes a form of prevention against recurrence"² of internal displacement.

¹ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement* (Washington D.C.: Brookings Institution, 1998), p. 240.

² *Ibid.*

This chapter intends to address possible preventive strategies and solutions to internal displacement crisis, particularly because, other than humanitarian assistance to the IDPs, practical solutions have not been thoroughly explored.

6.0.1 Early Warning and Information Systems

There must be a system that sounds the alarm and which therefore enables preventive strategy courtesy of: early-warning-early-action. Effective early warning system is essential in ensuring necessary pre-emptive and interventionary political or humanitarian measures, by local NGOs, governments, regional organizations and international community so as to forestall possible displacement of populations.

Although the United Nations in the recent past has been keen in establishing or developing a well coordinated early - warning system, much has not been realized as of yet. These efforts were seen particularly in 1991, when the UN General Assembly commissioned or gave the green light to the emergency relief coordinator to develop an early warning mechanism for humanitarian emergencies.³ This occasioned a UN interagency meeting in 1993 through 1994 – the Consultation on Early Warning of New Mass Flows of Refugees and Displaced Persons, which identified potential situations and forwarded warnings

³ Ibid. See also General Assembly, "Strengthening the Coordinator of Humanitarian Emergency Assistance of the United Nations," A/Res/46/182 (United Nations, December 19, 1991).

to the secretary-general and the heads of UN humanitarian agencies.⁴ However, the report was not comprehensive as it limited itself to listing potential locations or countries, without the imperative remedial action. This effort however has since enabled the United Nations Department of Humanitarian Affairs (DHA) to develop a current database on more than one hundred countries as a component of its Humanitarian Early Warning System (HEWS).

Integrating human rights bodies into the early warning system certainly enhances its efficacy. Of particular relevance is the, United Nations Human Rights Commission's rapporteur, which is useful in gathering ground information, important for early warning and plan of action. It is to be noted in this regard that the period (almost one year) to the Rwanda genocide, a Commission's special rapporteur warned of preparations to this effect and recommended swift and decisive measures to stave off the impending crisis. Unfortunately however, the report was not placed on the agenda of the early warning consultation or drawn to the attention of other elements of the United Nations.⁵ To avert the recurrence of such catastrophic events in future, Cohen and Deng are emphatic that the UN High Commissioner for Human Rights be empowered to forward reports of impending large-scale displacement and massive human rights violations to the attentions of the Security Council, with relevant

⁴ David A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement* (Washington, D.C.: Brookings Institution, 1999) p. 193.

⁵ *Ibid.* p. 94.

recommendation for international response.⁶ Since NGOs are known for their extensive field network, that is, they probably have the best 'feelers' to tell what is happening on the ground, they should be integrated into the United Nations early warning system. Vital information on existing or possible IDP crisis by human rights and humanitarian NGOs, if forwarded to the UN early warning mechanism will bolster proper international response.

The role of regional organizations in the early warning system is of critical importance. It has been argued that other than being slow in taking action, the UN deliberations sometimes do not reflect the actual situation on ground. Agreeably therefore, regional organizations who are geographically advantaged and more familiar with events on the grounds, should of necessity be strongly linked to the early warning system and even further be encouraged to develop their own capacities in this regard. An evaluation on the 1994 Rwanda tragedy for instance has revealed that the OAU possessed "virtually no capacity at all for early warning data collection and policy analysis."⁷ The OSCE and OAS on a regional level however have shown commitment in early warning, with OSCE establishing the post of High Commissioner on National Minorities, mandated

⁶ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 241.

⁷ Ibid. See also Synthesis Report, Vol.5 of , *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, Joint Evaluation of Emergency Assistance to Rwanda, (Copenhagen, March 1996).

with the responsibility of early warning on minority tensions that could degenerate into active armed conflict.

Whereas early warning systems have yielded good results in other areas, for instance in averting famine, the forecasting and thus the prevention of humanitarian crises, as a result of civil wars and gross violation of human rights has remarkably been slow. On the whole, the link between early warning and early action, fundamental for prevention, has been absent at both the international and regional levels.⁸

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Closely allied to early warning system is the need for proper information system, one with a capacity for collecting, processing and analyzing information on internal displacement. Deng⁹ in this regard observes that, the UN emergency relief coordinator (ERC) is the most suited candidate in overseeing an information system on internal displacement, particularly because it is a designate reference point for the IDPs. Indeed in 1997, the ERC is noted for its positive efforts to developing an information system that would consult widely upto the level of local NGOs. Alternatively he suggests that if the ERC's office fails in this efforts then, the UNHCR's Centre for Documentation, which is experienced in data collection with regard to displacement and research on

⁸ Ibid.

⁹ Ibid. pp. 242-243.

refugee matters can be entrusted with this task particularly because the UNHCR by extension has collected considerable data and information on IDPs.

Other than their flexibilities, NGOs importantly are less or free from political constraints or maneuvering, in contrast to intergovernmental organizations. This therefore gives them an advantage as a reliable source of data on internal displacement. One such NGO is the Norwegian Refugee Council, which in 1998 published a "global IDP survey" and which further, intends to develop a strong database on internal displacement in association with the UN's emergency relief coordinator. Ultimately therefore, an information system that reflects detailed worldwide information on IDP situation, will not only help in prevention strategies, but will also help in addressing protection and assistance at national, regional and international level.

6.0.2 Good Governance

The pro-activeness of State machinery in pre-empting displacement-related sources forms a strong basis for the prevention of internal displacement. There is need for States to put in place measures or mechanisms that are sensitive and responsive to human rights and racial, religious, ethnic and cultural differences or confrontation as these contribute largely to internal displacement. Good governance should also translate to popular democracy, proper management of the economy and more important ensuring equitable distribution of national

resources. Failure by governments to discharge their responsibilities to the satisfaction of citizens either because of a fundamental lack of capacity or because of lack of political will, has often affected the effectiveness of governance, making it difficult to prevent the occurrence of displacement.¹⁰

Since human rights encompasses the entire spectrum of universal norms – civil and political rights to economic, social and cultural rights to minority rights,¹¹ there is a strong need for governments to guarantee and protect them in order to safeguard against internal displacement. This is particularly so, because governments which create inequalities among their citizens and which perpetrate systematic violation of human rights are noted to be prone to and most affected with internal displacement. On the other hand governments should strive to regulate relations and promote tolerance among the various racial, religious and ethnic groups to avert the displacement of the minority.

International efforts in protecting the minorities however have been encouraging. The recent adoption by the UN of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities and such other similar commitments within the framework of the Council of Europe and the OSCE are both international and regional efforts directed at the

¹⁰ Ibid. p. 244.

¹¹ David A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 95.

protection of minorities, and which should serve as a guide for national legislation and practice.¹² On the other hand, recent international and regional mechanisms for resolving conflicts with minorities, though still nurturing, show considerable potential.¹³ The establishment of a working group in 1995, by the UN Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, to develop strategies for protecting minorities was a significant move in this direction.¹⁴ Deng,¹⁵ in this regard observes that such strategies should embrace measures of conflict resolution and management, as conciliation and mediation and a calibrated program of action in situations where dialogue does not yield desired results. He further notes that where group identities correspond to geographical areas, in cases such as that of southern Sudan, Chechnya and Iraq, the strategy would be to propose a considerable degree of autonomy, through a federal or confederal devolution of power.¹⁶ Other recommendations in this context also point at the need to train mediators both within states and in the United Nations so as to prepare and help them respond to conflicts involving national, ethnic, religious, and linguistic groups.¹⁷

¹² R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 245.

¹³ See for example, Hurst Hannum, "Minorities, Indigenous Peoples, and Self-Determination," in Louis Henkin J.L. Hargrove (eds.), *Human Rights: An Agenda for the Next Century* (Washington, D.C.: American Society of International Law, 1994), pp. 1-16.

¹⁴ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 245.

¹⁵ Ibid.

¹⁶ Ibid. See also F.M. Deng *et al*, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C: Brookings, 1996), p. 214.

¹⁷ Ibid. p. 246.

Central in good governance is the imperative need for effective national institutions. An independent judiciary not only ensures the enforcement or implementation of human rights protection, but also guarantees the right to seek redress over the violations that cause displacement. There is therefore a need to strengthen independent functioning of the judiciary and of training judges and law enforcement officers and other officials on the subject of human rights. The UN High Commissioner for Human Rights has in the recent past developed human rights training programmes for the mentioned groups of persons while on the other hand the OSCE has been keen on strengthening the judicial systems in several of its member countries.¹⁸

On the other hand, the strengthening of civil society at the grass roots offers another counterbalance against the kind of social unrest that produces displacement.¹⁹ This therefore necessitates the need to strengthen local NGOs because they are:

Usually the first to become aware of situations of poor governance that threaten displacement, and often they are the best judges of how to prevent them.²⁰

At the regional level, the OSCE has been on the forefront in strengthening the capacity of NGOs within its region particularly in the development of NGO

¹⁸ D.A. Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 97.

¹⁹ Ibid.

²⁰ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 248.

networks and by equipping their staff with the necessary knowledge to handle such matters as minority issues and displacement. Such commitment should therefore serve as a good example or model for other regional organizations particularly the OAU in whose jurisdiction displacement is the most rampant and indeed is the leading. The UN High Commissioner it should be noted has also been engaged in NGO capacity strengthening particularly in the area of human rights education. Korn²¹ however is keen to point out that it would be a mistake to assume that good governance can be imposed from outside. And that it would be equally mistaken to consider that little or nothing can or should be done to encourage its growth. To this end therefore there is need for concerted international, regional, governmental and NGO cooperation.

6.0.3 Strengthened Legal Protections

Most fundamental in protecting against unlawful displacement is the need to entrench a strong legal basis guaranteeing everyone the right not to be arbitrarily displaced. Such provisions, Korn²² observes should make explicit what is already inherent in international law, offer protection, and provide a basis for actions to prevent such displacement.

The Guiding Principles developed by the United Nations Secretary-General's Special Representative on Internally Displaced Persons, which provide

²¹ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of internal Displacement*, op. cit., p. 97.

²² Ibid.

comprehensive norms on internal displacement has been widely acclaimed as a major international groundbreaking effort. Based on existing international human rights and humanitarian law, these principles are to serve as international norms or standards to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs. Principle 6 of the Guiding Principles, prohibits against arbitrary displacement if for instance it is based on policies of apartheid, 'ethnic cleansing' or related practices aimed at or which may result in altering the ethnic, religious or racial composition of the affected population. Displacement caused by large-scale development projects in this principle is regarded as arbitrary when it is not justified by compelling and overriding public interests. Fundamentally, the Guiding Principles articulate the fact that displacement, shall not be carried out in a manner that violates the rights to life, dignity, liberty or the security of those affected.²³ Based on the Guiding Principles, future international legal instruments should explicitly guarantee the right not to be arbitrarily displaced.

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6.0.4 Need to Strengthen Regional and International Capacities in Conflict Prevention

There is a growing need for regional and international organizations to assume greater responsibility in conflict prevention in situations where national mechanisms have failed. They must therefore put in place contingency

²³ See R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacements*, op. cit., p. 250.

mechanisms or strategies to counter imminent conflicts. Although the United Nation's express mandate was initially limited to dealing with inter-state wars rather than internal conflicts, the notion seems to be changing particularly with the end of the cold war in the past one decade. It does not hurt therefore to say that the U.N has become more willing to intervene in serious internal conflicts, although it has hardly concerned itself with prevention.²⁴ The preventive deployment in 1993 of a U.N peacekeeping force to Macedonia, seen as an exception and which was successful was aimed at staving the spread of Yugoslav conflict into that country. However in the case of Burundi, the U.N did not act, despite the appeal by the secretary-general in 1995 for deployment of an international force to avert mass killings in that country.²⁵ Regrettably this was also the case in what ensued to genocide in Rwanda in 1994. It is also argued that the catastrophe that befell Somalia could have been averted if the United Nations had intervened early enough before the conflict started. There is therefore a need to strengthen the U.N in responding to impending conflicts particularly by supporting a rapid reaction force. Strong support should also be given to the UN's human rights machinery particularly in funding deployment of human rights field staff in preventive measures.

Efforts in conflict prevention at the regional level have been encouraging. Faced with many conflicts, the O.A.U particularly has developed a mechanism for

²⁴ David A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 99.

²⁵ Ibid.

conflicts prevention, management and resolution, which is designed to anticipate and defuse conflicts in Africa. As a result this would forestall possible mass killing and displacement. In Europe the OSCE has been on the forefront in justifying intervention on internal affairs of its' member States, based on human rights and humanitarian principles. Additionally, the OSCE has been deploying field staff within its' members with the aim of defusing tensions that would culminate to full blown conflicts. The efforts of regional organizations in conflict prevention, though encouraging, however have not been satisfactory. Firstly, they have sometimes not received sufficient co-operation and support from the United Nations.²⁶ It is noted for instance that the Rwanda genocide could perhaps have been contained if the UN had fully backed the OAU efforts of resolving the conflict. Secondly, they either lack resources or the will, and thirdly, they lack a standing enforcement capability.²⁷ These are some of the areas that should be addressed if the efficacy of regional organizations in conflict prevention and management is to be enhanced.

6.1.0 PROTECTION INTEGRATED WITH ASSISTANCE

Relief assistance to the IDPs unaccompanied by the imperative component of protection is not enough. Indeed, feeding and assisting displaced people "so that they can survive to be caught in the cross-fire of conflict and acts of ethnic

²⁶ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 252.

²⁷ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 100.

cleansing" can hardly be considered effective humanitarian action.²⁸ Protection to this end therefore should be a prerequisite for the efficacy of assistance.²⁹

In situations of internal displacement the concept of protection as discussed in Chapter three, derive from relevant or analogous legal standards contained in refugee, human rights and humanitarian law and in addition, from the activities of UNHCR and other organizations that pass as provision of protection.³⁰ The UNHCR particularly has had on *ad hoc* basis provided necessary protection to the IDPs. Its staff has:

Monitored the treatment of threatened minority groups, intervened with national authorities to request protective action, investigated and prosecuted specific cases, and helped governments provide personal documentation. In armed conflicts the agency has provided safe passage for civilians, relocated and evacuated them from conflict areas, assisted besieged populations, intervened to prevent the involuntary return of the internally displaced to areas of danger, and alerted governments and the public to human rights abuses.³¹

The ICRC in situations of armed conflict also undertakes similar activities in protecting civilians including the IDPs. Other than material assistance therefore, these efforts serve to protect the security and other fundamental human rights of the internally displaced.

²⁸ Ibid. p. 101.

²⁹ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p.255. See also, Jean-Luc Blondel, "Assistance to Protected Persons," *International Review of the Red Cross* (September – October, 1987), p. 453.

³⁰ Ibid. p. 256. See also, F.M. Deng, *Internally Displaced Persons: Compilation and Analysis of Legal Norms* (New York and Geneva: United Nations, 1998).

³¹ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit, p. 101.

As mentioned earlier in this study, the Guiding Principles on Internal Displacement as a ground-breaking international effort brings together the relevant norms applicable to the protection of the internally displaced persons. Although not a legally binding document, the principles if effectively disseminated and promoted will serve to raise the necessary awareness of the rights of IDPs. The principles will also serve as a barometer through which the monitoring of the treatment of internally displaced persons can be done. Additionally, the principles can serve to strengthen advocacy work of relevant organizations on behalf of the internally displaced, and more importantly to provide reference to governments in drafting of laws pertaining to the protection of IDPs.

Protection activities for internally displaced persons may broadly fall under: community, national, and international levels.

6.1.1 Community-based Protection

Local community activities form the most fundamental source of protection for the IDPs. These activities become more important in situations where there is a total collapse of a government. Mechanisms for self-help, family reunification, civil defense, restoration of communal links, conflict mediation and reconciliation and reintegration are instrumental community-level efforts from which governmental and international efforts can build on in the protection and assistance of the internally displaced. In Somalia for instance, in the early

1990s, at the height of a serious civil war, local citizens initiated their own organizations to provide educational and health services, employment and to mediate disputes. Unfortunately however, when international assistance arrived in Somalia it did not fully capitalize and/or build on the already existing local efforts.³² Organizations formed by IDPs also help to enhance a sense of community from which they as a vulnerable and unprotected group can agitate for their protection. These efforts, and which must be supported by UN agencies, regional organizations and NGOs have been encouraging for instance in Colombia, Peru and the former Yugoslavia. Putting into account the views of the IDPs in designing and implementing programmes aimed at helping them thus is important because they understand better than anyone else their immediate protection and assistance needs. Further still, it also helps in ensuring that programmes undertaken by international humanitarian organizations do not unintentionally reinforce repressive authorities or perpetrate discriminatory practices.³³

6.1.2 National Protective Mechanisms

National response to internal displacement in many affected countries has sometimes been discouraging. In Kenya, Cyprus, Georgia and Croatia for

³² See Africa Watch, "Somalia, Beyond the Warlords: The Need for a Verdict on Human Rights Abuses," New York, March 7, 1993, pp. 20 – 22.

³³ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p.102.

instance, the governments have been accused of selective handling or treatment of IDPs, which favour certain ethnic groups. Positive efforts in this regard however, have been forthcoming in Sri Lanka where the government has demonstrated support in establishing effective state machinery in dealing with the IDPs. As a national preparedness measure, governments should establish effective national institutions, ensuring that they are adequately funded to respond to emergency humanitarian crises in this regard internal displacement. This would, by significant proportions reduce the need for international help which in most cases arrive too late. In addition, it is to be noted that the effectiveness of national institutions in the protection and assistance of IDPs can be enhanced with the support and monitoring of international organizations. These efforts are however realizable only if the affected countries have the political will to address the IDP problem. But in situations where there is total absence of an effective government there is need to devise other protection and assistance strategies not necessarily tied to State structures.

6.1.3 International Arrangements to Increase Protection

As noted earlier in this study, the most imposing problem in addressing the IDP issue at the international level is that there is a clear absence of responsibility locus. It has been proposed that an existing UN agency particularly the UNHCR be entrusted with the responsibility of the IDPs. Another alternative would be to designate an operational focal point for the IDPs in each complex emergency,

which would monitor their situation, develop strategies for ensuring their protection assistance, reintegration and development needs and directly address some of these needs by itself.³⁴ In this regard the UNHCR again, because of its vast experience with IDPs is rated as the most outstanding candidate. Other favoured candidates in this regard are the UNICEF and WFP and outside the UN the ICRC or the International Organization for Migration (IOM).

Korn³⁵ observes that, when there is no designated focal point, strong oversight by the resident coordinator or humanitarian coordinator in the field and the Inter-Agency Standing Committee (IASC) at the headquarters would be expected to ensure that agencies work effectively together. On the other hand, he notes that even in situations where there is a designated focal point, the resident or humanitarian coordinator and the IASC will be expected to closely monitor the situation to ensure that relevant agencies give the necessary support to the designated agency. To this end therefore, whether one agency is responsible or whether there is an interagency coordinated response to the IDPs problem, human rights protection should be addressed parallel with humanitarian aid.

From another perspective, international humanitarian presence among the IDPs and other populations at risk has become an important strategy of protection.

³⁴ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 263.

³⁵ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., pp. 103 – 104.

Other than the provision of relief, the physical presence of international humanitarian agencies and NGOs has helped in deterring possible human rights abuses and in ensuring security.³⁶ It is to be noted however in this regard, that international presence can significantly enhance protection, particularly in situations where there is cooperation between the government and the insurgent forces. In Sri Lanka for instance, study reports have indicated that, the mere presence of UNHCR in certain areas largely restrained the action of the combatant parties.³⁷

However, the mere fact of presence in many other instances has hardly assured protection for vulnerable civilians including IDPs, indeed violation of human rights and killings have sometimes continued undeterred in the presence of international agencies and NGOs. Korn observes that:

To be effective, presence must be active. It should include accompaniment, protective custody, neighbourhood patrols, protection watches, safe houses, intervention with authorities, and evacuations of those whose lives may be threatened.³⁸

These field-based protection strategies have routinely been engaged by such humanitarian actors, as the UNHCR and the ICRC, although increasingly there is a strong need for an operational human rights role. In the light of this

³⁶ This view has received the support of humanitarian activist, human rights bodies, and peacekeepers alike. See Umesh Palwankar, (ed.), *Report on the Symposium on Humanitarian Action and Peace-Keeping Operations, 22 – 24 June, 1994* (Geneva: ICRC, 1994), p. 104.

³⁷ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., pp. 264 – 265.

³⁸ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 104.

observation, human rights bodies must therefore expand their traditional role of monitoring, reporting, and advocacy and engage in more practical measures; as interceding with local authorities when protection problems arise, develop protection strategies in cooperation with humanitarian agencies and in alerting relevant UN agencies of protection problems they can not solve.³⁹ Such activities should also extend to monitoring and protection during return and settlement of IDPs. In essence therefore human rights organizations should not just be seen as mere bookkeepers of horrors.⁴⁰

6.2.0 DISPLACED CHILDREN AND WOMEN: NEED FOR SPECIAL ATTENTION

Although they constitute the majority of the internally displaced, women and children have largely not been attended to, particularly with regard to their special protection needs. This fact calls for special attention, which should translate to developing strategies to address their plight. For women their specific protection problems must first be identified. Besides the routine discrimination on the basis of their gender, internally displaced women are more vulnerable to rape and sexual abuse, and to sexual exploitation by corrupt officials especially during the delivery of assistance.⁴¹

³⁹ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., pp. 265 – 266.

⁴⁰ See M. Nowak, "Beyond Bookkeeping, Bringing Human Rights to Bosnia," *World Today*, Vol. 52 (April 1996).

⁴¹ See for instance F.M. Deng, "Internal Displacement in Africa," Report on the Brookings Institution – UNHCR – OAU Workshops (Addis Ababa), October, 1998.

The first important step in the protection and assistance of internally displaced women would be the collection and compilation of gender-specific information or data as a frequent assessment measure by humanitarian and development agencies in determining their conditions. Should serious protection problems be reported particularly in a large-scale, "special UN fact-finding mission would go out to evaluate the situation more fully and make recommendations."⁴² A good example in this regard is Liberia where in 1993 a UN interagency mission albeit once, was deployed specifically to look into the protection and assistance problems faced by displaced women and suggest remedial measures.⁴³

Relevant provision of UNHCR's guidelines on sexual violence and on the protection of refugee women should be borrowed by those humanitarian and development organizations engaged with IDPs. The guidelines are important since they outline various preventive measures for protecting displaced women especially in camps and settlements, which include for instance; the design of camps, placement of latrines, lighting and how far women have to go for firewood.⁴⁴ Emphasis is also placed on the need to ensure active women participation in camp administration and decision-making. Implementation and

⁴² R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 272.

⁴³ Ibid.

⁴⁴ Ibid. p. 273. See also, UNHCR, *Sexual Violence against Refugees: Guidelines on Prevention and Response* (Geneva, 1995); and UNHCR, *Guidelines on the Protection of Refugee Women* (Geneva, 1991).

advocacy of these measures should go along way in meeting the protection and assistance needs of internally displaced women.

Just like women, the special protection needs of internally displaced children oftenly get neglected. To address this issue, the UN secretary-general in 1997 appointed a special representative on children in armed conflict, which together with UNICEF will make assessments of the assistance and protection needs of children and develop strategies for addressing them.⁴⁵ UNICEF however, remains to play a key role on the ground in the protection and assistance of internally displaced children.

Measures toward the protection of internally displaced children against sexual violence, conscription and other related abuses discussed in Chapter Three, should also be the concern of other agencies. It is noted that, although legal protection for children are substantially covered in the present international law, these standards however, need to be widely known, understood, and implemented by national mechanisms and community structures as well as by the staff of international and regional organizations, NGOs, and peacekeeping forces.⁴⁶

⁴⁵ D.A. Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 108.

⁴⁶ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 275.

6.3.0 DEALING WITH SOVEREIGNTY

The question of sovereignty as mentioned earlier in this study, has invariably raised concern in efforts to assist and protect the internally displaced. On the basis of this principle some states are known to have interfered or obstructed international humanitarian intervention. This necessitates a more equitable balance between a State's sovereignty and the equally compelling obligation to provide protection and assistance to the internally displaced and other threatened populations.⁴⁷ The traditional notion of sovereignty should be reexamined. Rather than being used as a means of resisting internal or external scrutiny, it should be perceived in terms of the duty of all states to protect and respect the rights of their citizens and to promote international peace and security.⁴⁸ Effective sovereignty should imply a system of law and order that is responsive to the needs of the national population for justice and general welfare and not a justification for their mistreatment.⁴⁹ Sovereignty thus should be a concept of state responsibility rather than irresponsibility. Cohen and Deng in this regard observe that:

To be meaningful, sovereignty must include accountability not only to the domestic constituency but to the international community. This assumption is in fact inherent in sovereignty, for the concept implies an international system that imposes responsibilities on the State.⁵⁰

⁴⁷ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 109.

⁴⁸ F.M. Deng, "Internal Displacement in Africa," op. cit., p. 9.

⁴⁹ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 276.

⁵⁰ Ibid.

State governments must therefore oblige to international human rights and humanitarian standards in the provision of security and well being of those under their jurisdiction. Should:

[They] fail to meet their obligations to beleaguered populations, such as the internally displaced, they are expected to request outside assistance. Should they refuse to accept such assistance, the legitimacy of their sovereignty can be questioned and the international community should be expected to assert its concern and fill the vacuum created by the government's failure to discharge its responsibility.⁵¹

This view clearly:

Affirms that the international community has a right, possibly even the duty, to provide humanitarian relief, and in exceptional cases, to do so against the will of the government concerned.⁵²

A pointer in this regard is the United Nations commitment in the recent past to legitimize the establishment of relief corridors and cross-border operations to reach populations in need; including authorization, in some cases of the use of force to ensure the delivery of supplies.⁵³ The advocacy also is that states on their part have a duty to accept international humanitarian assistance.

Diplomatic persuasions or bargaining with obstructionist governments would be one of the strategies for gaining access to IDPs and other equally afflicted populations. Other measures have included political and economic sanctions. However, when mass starvation results from government obstructionism or from

⁵¹ Ibid.

⁵² Ibid. pp. 276-277.

⁵³ D.A. Korn, *Exodus within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 109.

government disintegration, direct and automatic international intervention has increasingly come to be expected and considered justified.⁵⁴ Unfortunately though, the international community has not demonstrated such fast commitment in efforts to prevent mass killings or genocide such as that experienced in Rwanda in 1994.

Direct involvement by the UN secretary-general with governments that obstruct urgently required humanitarian assistance is vital. In this regard:

The secretary-general and the heads of UN agencies should be prepared to intervene personally if necessary when States deliberately obstruct access or refuse it outright.⁵⁵

If backed by General Assembly resolutions and those of the Security Council, that is, in extreme situations, such efforts would certainly have a greater impact. A strong sense of a united front is required of UN agencies when dealing with governments, who have threatened expulsion of humanitarian staff or those bent to denying access to populations in need, IDPs included. They should explicitly state that their presence and efforts in a country are indivisible should a government threaten expelling one of them. Likewise, when governments deny entry to UN representatives and rapporteurs, as has, sometimes been the case, the secretary-general and the high commissioner for human rights should step

⁵⁴ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 277.

⁵⁵ D.A Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 111.

in. Such measures would range from quiet diplomacy to more public exposure, to ensure that the governments concerned extend invitations.⁵⁶

A more flexible approach is needed when dealing with weak, recovering or collapsed state authorities. The UN and its agencies and other NGOs should extend their negotiation to include insurgent groups if significant humanitarian assistance and protection efforts on behalf of IDPs and other threatened populations, are to be realized in all affected parts of the country.

6.4.0 FRAMEWORK OF SOLUTIONS

6.4.1 Resolving Conflicts

Strictly palliative responses to mass internal displacement, such as the provision of humanitarian assistance alone cannot be expected to stabilize dangerous situations.⁵⁷ Indeed they do not prevent further displacement nor refugee flight.

An exemplary case is that of Sudan.

As discussed earlier in this study, broad based measures in addressing the root causes of conflicts are required in order to prevent further occurrence of displacement. International response must always seek broad political resolutions to conflicts, than mere relief assistance. The IASC particularly should

⁵⁶ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 279.

⁵⁷ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 111.

be on the forefront in pressing for the resolution of conflicts when its members are called upon to provide assistance for the displaced generated by those conflicts.⁵⁸ Korn observes that:

When displacement is engendered by conflict, it is only through the restoration of peace accompanied by development programs that safe and viable returns or resettlement can be made possible. Moreover, to be effective, solutions for conflicts must promote respect for human rights and democratic participation and go hand in hand with programs to guarantee economic opportunity for the displaced and other affected populations.⁵⁹

This view presents a summary of a wide spectrum of essentials in addressing complex emergencies of internal displacement.

6.4.2 Return and Resettlement

Internally displaced persons have been victims of forced return or relocation to places where their safety is at risk or worse still to places they do not wish to reside. The Sudan government in this regard is on record for forcibly having moved displaced populations from Khartoum "to outlying areas where they are neither part of the urban community nor in their own natural setting."⁶⁰ Another serious case of forced return is that of Rwanda where the government in 1995 forcibly closed camps of the internally displaced. The refusal by many IDPs to move prompted excessive military force which, left many dead.

⁵⁸ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 285.

⁵⁹ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., p. 112.

⁶⁰ *Ibid.* See also F.M. Deng, "Internal Displacement in Context: Themes from Country Missions," Refugee Policy Group, Washington, D.C. Summer, 1995.

The Guiding Principles on Internal Displacement clearly stipulate that return by IDPs to their place of origin should be voluntary. Principle 28 states that internally displaced should "return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country." The application of this principle by relevant authorities would go along way in ensuring the protection of IDPs in accordance with international standards.

The provision of protection to IDPs upon return merits special concern. Even when conflicts have subsided and peace agreements have been signed, tensions and animosity could still arise particularly if the returnees find their homes, land and personal property in possession of others and no functioning judicial system to resolve disputes.⁶¹ Measures to address this problem are therefore vital. In the recent past however, international agencies, NGOs and peacekeeping forces have been instrumental in facilitating and monitoring IDP returns. Particular areas of their concern have been religious, racial and ethnic reconciliation and resolution of land disputes. The UNHCR in Tajikistan is noted for its efforts in physically accompanying IDP returnees to their homes. Similar efforts were also seen in Rwanda, when UN human rights field staff closely monitored among other security situations in areas of return. In Kenya however, the UNDP failed in its efforts.⁶²

⁶¹ Ibid. p. 112.

⁶² See Human Rights Watch/Africa, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya*, June, 1997.

Upon return IDPs are also faced with a more serious problem of landmines. In Mozambique alone, mines have killed a higher figure as 10,000 IDPs over the course of the return and resettlement programme.⁶³ Landmine-awareness campaigns mounted by humanitarian and human rights agencies and de-mining programs funded by World Bank are important efforts towards improving the security of IDPs in return areas. The Guiding Principles on the other hand explicitly prohibit the use of anti-personnel land mines as they pose great danger to IDPs and other civilians as well.

6.4.3 Integrating Relief with Development

Equally important in seeking solutions to internal displacement is the need for a strong link between relief and development. The traditional approach of separating relief assistance and development programmes has been found wanting particularly in situations where displacement crises are protracted. Of importance therefore is to develop necessary skills and capacities of the IDPs during the emergency stage so as to enable them become self-sustaining both during displacement and upon return to their places of origin. Korn in this regard points out that:

Rather than a sequential continuum, what is needed is a parallelism in which the provision of emergency assistance and the planning of development programmes take place simultaneously and in a mutually reinforcing manner.⁶⁴

⁶³ D.A. Korn, *Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*, op. cit., pp. 113-114.

⁶⁴ Ibid.

In this context, relief programmes should be designed to lay the foundation for development, while development-oriented programmes should be planned and initiated during emergency phase in order to foster self-reliance into rehabilitation programmes.⁶⁵ Notable efforts in this direction are the UNHCR's quick-impact projects (QIPs), which among other reintegration activities, supports small-scale business for both returning refugees and IDPs. In addition, the recent announcement by the World Bank of a Framework for World Bank Involvement in Post Conflict Reconstruction, and which enlists reintegration of IDPs as one of its commitment, is a promising initiative, which should merit support. Although these efforts are encouraging the World Bank and other development institutions however, need strategies to guide their involvement as they expand beyond traditional development activities.⁶⁶

⁶⁵ R. Cohen and F.M. Deng (eds.), *Masses in Flight: The Global Crisis of Internal Displacement*, op. cit., p. 290.

⁶⁶ Ibid. p. 291.

CHAPTER SEVEN

7.0.0 CONCLUSIONS

This study has examined the various aspects of internal displacement. It is now discernible that the phenomenon of internal displacement, being a crisis of a global scale and one of the greatest challenge to the international community, is a difficult and complex issue that does not lend itself to easy answers nor simple solutions.

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It has been revealed that internally displaced persons are exposed to widespread and grave violation of human rights and hence corroborating the hypotheses posited in Chapter One of the study premised on the malfunction of jurisdictional responsibilities and the gap or weakness in international response mechanism. Broadly, there are three fundamental weaknesses in the current body of international law that inhibit the protection of the internally displaced persons. First, the protection afforded to populations displaced beyond international borders under the 1951 Convention is only specific to this group of persons and cannot therefore be applied directly to internally displaced persons. Second, while populations who have been displaced in situations recognized by international humanitarian law (fully-fledged civil war) receive protection, those affected by other forms of conflict and violence do not benefit from this regime. And third, many of the rights and guarantees provided or identified in

international human rights law are subject to derogation by governments. Thus, while international law may in general demonstrate weaknesses, it is particularly inadequate in many situations of internal displacement.

The notion of sovereignty has been found to smother or indeed stymie international efforts towards the protection of internally displaced persons. Although, regarded as a cornerstone of international law there is however, a growing international consensus particularly, in the post-Cold War to contextualize this concept in the light of corresponding human rights protection. The challenge therefore is for the international community to reconcile the constraints implied in the concept of sovereignty, especially by emphasizing responsible exercise of sovereignty by states, and to providing appropriate international remedies for state failure to protect its citizens. In this respect the case of Sudan in this study has clearly demonstrated fundamentally two things: the height of IDP suffering and how states or authorities by invoking the principle of sovereignty and non-interference in internal matters can even worsen the situation, and the importance of humanitarian intervention in such situations.

Although it is now clear that internal displacement is unquestionably a central international agenda, opinion is however polarized as to whether there is any clear merit in establishing a specific normative and institutional framework or simply expanding the status-quo. The Guiding Principles on Internal

Displacement based and inspired by international human rights and humanitarian law and which although does not constitute a binding legal document nonetheless is a normative framework that identifies the rights and guarantees relevant to the protection of internally displaced persons. By restating and reinforcing the essential rights of IDPs, it is hoped, that these norms could help create the necessary moral and political climate needed for enhanced international attention and guide the action of international humanitarian and development agencies in situations of internal displacement and hold governments and rebel groups accountable for their action. Thus, whether the Guiding Principles will gain authority over time and contribute to a binding legal framework, it would have, lend an affirmation to the observation that there is no inherent contradiction in providing more legal prescriptions and articulation of existing obligations for better implementation of existing law. Similarly, the debate on creating an agency with exclusive mandate over the internally displaced has apparently elicited less international political enthusiasm. There is a clear sense of ambivalence by the international community to designate full mandate to an established institution in situations of internal displacement. What emerges though, is a generally agreed position that in the meantime there is need to engage collaborative approach so as to synergize existing international mandates and capacities and hence address the complex nature of internal displacement emergencies.

Since displacement is a microcosm of the problems that afflict the larger society efforts should not be narrowly limited to delivery of emergency relief. To be effective, strategies to address mass displacement need to be broader and comprehensive in approach particularly so as to address the root causes of internal displacement. These must include commitment to strengthening democratic institutions and the protection of human rights especially the rights of minorities and addressing land and property issues and the general economic disparities that often precipitate conflicts. Equally these efforts should integrate protection with assistance, focus on prevention, and be accompanied by political initiatives that seek to resolve conflicts; and the need to include plans for reintegration and development. As a global strategy the strengthening of national, regional and international response systems and capacities must therefore become one of the international community's highest priorities.

This study while provoking further thoughts or investigation has made a modest contribution and thus enhanced the debate on the need to protect internally displaced persons. Looking through the entire study, it is agreeable that the aims and objectives and the hypotheses set forth in Chapter One have buoyed and anchored the investigation in line with its ambitions: namely to challenge the capacity and/or competence of existing international legal and institutional structures and identify the weakness or indeed failure to afford protection to internally displaced persons. Similarly the analytical frameworks adopted by the

study have served their purpose; importantly they have informed the theme of the study and defined its operational framework. While the natural law embraces or indeed advocates the need for an international normative framework for internally displaced persons, the functionalist on the other hand calls for collective international and regional responsibility expressed through at least independent institutions to address the global crisis of internal displacement.

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