

**INTERNATIONAL PROTECTION OF INTERNALLY
DISPLACED PERSONS: AN ANALYSIS OF INTERNATIONAL
INITIATIVES AND STATE PRACTICE**

BY

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**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE
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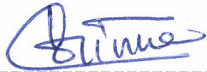


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DECLARATION

I, Corinne NZIYUMVIRA, do hereby declare that this is my original work and has not been submitted and is not currently being submitted for a degree in any other University

SIGNED



This thesis is submitted for examination with my approval as University Supervisor.

SIGNED



DEDICATION

To Armand, Olivia, Sacha and Paloma

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ABSTRACT

The end of the Cold War and the surge in civil wars during the last two decades have led to the emergence of internal displacement as one of the most challenging issue faced by the international community in the area of human rights and humanitarian assistance. In contrast to refugees who are provided with special protection under international law by the 1951 UN Convention, as well as a dedicated international organization in charge of protecting their specific rights, internal displaced persons have remained largely ignored by national governments and the international community.

In recognition of the emerging international responsibility to protect and assist persons uprooted and at risk within the boundaries of their own countries, roughly twice the number of refugees, the United Nations Guiding Principles on Internal Displacement were developed in 1998. Meant as a useful point of reference in drafting national legislation for the protection and assistance of internal displaced persons, the Guiding Principles reflect and are consistent with international human rights law and humanitarian law, but are not binding upon states.

This thesis examines the effectiveness of international legal and institutional framework for the protection of internally displaced persons and assesses state implementation of national policies based on the UN Guiding Principles, using Uganda as a case study.

The concept of sovereignty in the context of internal displacement is reviewed in light of recent developments and debates on this critical issue. In particular, the study takes the position that in as much as internal displacement is a consequence of the abuse or violation of human rights, the same is the legitimate concern of the international community and sovereignty cannot be used as a defence against international action to protect the internal displaced persons.

This study argues that incorporating the Guiding Principles in domestic legislative or legal framework does not guarantee effective compliance with the Principles. The real

test comes in how these policies that are sound on paper are applied in practice and how far governments succeed in protecting the rights of internal displaced persons. The need for effective monitoring and accountability mechanisms at local, national, regional and international levels is therefore required to ensure effective implementation of the Guiding Principles in emergency settings.

CHAPTER ONE

INTRODUCTION

1.1 Background of the study

The situation of internally displaced persons is probably one of the most controversial and polarizing issues of our times in the area of international humanitarian law and human rights as it confronts national sovereignty with the notion of global responsibility, requiring enormous resources and innovative institutional and legal frameworks.

According to the 1998 UN Guiding Principles on Internal Displacement, internally displaced persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.¹

Uprooted from their homes by violent conflicts, gross violation of human rights, natural disasters or development projects, IDPs suffer during their flight, while they are displaced and even when they are resettled. Their basic needs in terms of food, health, water, and shelter are hardly met. Excess mortality and continued human

¹ Francis M. Deng, Guiding principles on Internal Displacement: Report of the Representative of the Secretary-General, U.N.Doc. E/CN.4/1998/53, 11 February 1998.

rights abuse are observed among IDPs and the most affected are children, women and the elderly.

Causes and effects of displacement are often similar for IDPs and refugees but international law does not recognize IDPs as refugees; it defines refugees as only those who have crossed international borders and thus lost the protection of their own country. Refugees are given special protection under international law by the 1951 UN Convention Relating to the Status of Refugees.² IDPs that are displaced within their own country do not have a special status in international law because national authorities are supposed to be responsible for their protection. Because of this lack of international legal recognition, IDPs remain without international protection. Besides, unlike the case of refugees, there is no specific international agency which has a mandate to protect IDPs.

In the 1990s, in recognition of the relative neglect of the emerging issue of internal displacement which accounted for twice the number of refugees in the world, the international community, under the aegis of the UN, sought to clarify the legal position of IDPs in terms of existing international human rights and humanitarian law through the development and adoption of the 1998 UN Guiding Principles on Internal Displacement.³ The Guiding Principles on Internal Displacement are a non-binding instrument deriving from other international instruments within the field of human rights, humanitarian law and refugee law. They constitute a guideline for

² The Convention was adopted by the UN Conference on the Status of Refugees and Stateless Persons at Geneva on 25 July 1951.

³ <http://www.internal-displacement.org> accessed on 24/04/2007.

governments and international humanitarian organizations for assistance and protection of IDPs. According to Principle 3 (1) of the Guiding Principles, “national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”.

Since the adoption of the Guiding Principles on Internal Displacement, the United Nations has focused on urging national governments to incorporate the provisions contained in the Guiding Principles into domestic legislation. A growing number of states, such as Angola, Burundi, Colombia, Peru, Sri Lanka, the Philippines, Uganda, and United States,⁴ have adopted national legal or policy frameworks for the protection of IDPs, based on the Guiding Principles. However, the level of implementation and effectiveness of these legal and policy provisions in providing assistance and protection to IDPs is yet to be critically assessed.

Africa is the region worst affected by internal displacement with more than 13 millions IDPs.⁵ Ongoing conflicts, opposing governments, and rebel movements are the main causes of displacement. In the early years of the Organization of the African Union (OAU), displacement in Africa was mostly focused on the plight of refugees. This concern led to the adoption of the Convention Governing the Specific Aspects of Refugee Problems in Africa in 1969,⁶ and the set up of a Bureau for Refugees as part of the OAU institutional structure. Delays in providing a clear legal and institutional framework for IDPs might have been caused by the need to uphold provisions of the

⁴ <http://www.internal-displacement.org> accessed on 24/04/2007.

⁵ Ibid.

⁶ Preamble of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.

OAU Charter, particularly those related to the non-interference in the affairs of other Member States. However, more attention was given to IDPs in 1990 through the African Charter on the Rights and Welfare of the Child,⁷ which includes a brief reference to internally displaced children. Despite the fact that the Constitutive Act of the African Union⁸ is conducive to the protection of internally displaced persons, the African Union does not have a specific legal instrument for the protection and assistance of IDPs. However, the adoption of a decision by the African Union of a legal instrument on IDPs would demonstrate that there is political will to promote the effective protection of IDPs in Africa

On the other hand, The Great Lakes Protocol,⁹ adopted in 2006 by the eleven States in the Great Lakes region of Africa, represents in this context a major development in providing a comprehensive legal framework aimed at protecting and assisting IDPs. An interesting feature of this regional instrument is that it provides a legal and binding basis for the domestication of the Guiding Principles into national legislation by Member States.

⁷ Article 23 (4) of the African Charter on the Rights and Welfare of the Child.

⁸ Constitutive Act of the African Union.

⁹ Protocol on the Protection and Assistance to Internally Displaced Persons adopted by the Member States of the International Conference on the Great Lakes Region in 2006.

1.2 Problem statement

When refugees cross an international border they lose the protection of their own country. However, they have a special status under international law provided by the 1951 UN Convention Relating to the Status of Refugees, while IDPs are supposed to be protected by national authorities. At the institutional level, the protection of refugees' rights is supervised by the United Nations High Commission for Refugees (UNHCR), while no single international agency is mandated to intervene on behalf of IDPs. For many years, the plight of IDPs has been ignored both by national authorities and international organizations. Furthermore, attempts by the international community to intervene in favor of IDPs have often been met with resistance since it has been considered as a violation of national sovereignty. Article 2 paragraph 7 of the UN Charter affirms that the UN and its Members are prohibited from intervening in matters which are essentially within the domestic jurisdiction of any state. States wishing to block humanitarian assistance abuse the principle of sovereignty, which becomes an obstacle to the protection of IDPs rights.

Given the similarities in the causes and consequences of internal displacement and refugee situations, the issue that arises is what international legal and policy frameworks exist for the protection of IDPs. The Guiding Principles establish the rights of IDPs and provide guidance to states and non- state actors in carrying out their mandate of providing protection and assistance to IDPs, but are not binding upon states. The most effective way to ensure state compliance with the Guiding

Principles, therefore, is for states to incorporate the principles into their domestic legislative framework.¹⁰ However, States enjoy a wide latitude of discretion in the determination of the provisions of the Guidelines to be incorporated into national legal and policy frameworks, with the consequence that there are bound to be a lot of disparities in the nature and scope of protection accorded by States to IDPs. While the incorporation of the Guiding Principles in national legislation provides an important legal basis for the protection of IDPs, the question of implementation remains unresolved. Do States have the political will and adequate resources to implement an effective legal or policy framework? Indeed, the effective protection of IDPs is often constrained by unclear policy formulation, inadequate resources and the absence of enforcement mechanism. However, given the attendant violation of human rights that accompanies the IDPs situations, should the international community, under the aegis of the UN, negotiate and adopt a binding legal instrument for the protection of IDPs?

1.3 Research objectives

The objectives of the study are as follows:

1. To examine the international and regional legal and institutional framework for the protection of IDPs.
2. To analyze state obligations for the protection of IDPs with reference to Uganda.

¹⁰Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, Human Rights Brief, Winter 2006 on www.reliefweb.int (accessed on 22/04/2008).

1.4 Justification for the study

The displacement of people within their own countries as a result of conflict or natural disaster is a matter of growing concern worldwide and particularly in Africa. Roughly, twice the total number of refugees and IDPs have no special status under international law, contrary to refugees who enjoy international legal protection. While a number of countries have developed laws and policies on internal displacement following the adoption of the Guiding Principles, the challenges of state implementation of international laws and policies on protection of IDPs remain critical.

As one of the most challenging and complex humanitarian issues of our times, with devastating effects on societies, the interest of the topic lies in the challenges it poses on international and national legal frameworks. As a result of conflict and natural disaster, most African nations will be confronted at one point or another with an IDP crisis. Sadly, in the majority of cases, they will not have the adequate institutional and legal framework to address their needs.

1.5 Research questions

This study seeks to address three basic questions, that is:

1. What are the international standards and regional initiatives for the protection of IDPs?
2. To what extent is sovereignty an obstacle to an effective international protection of IDPs?

3. To what extent is state implementation of international policy and legal provisions on protection of IDPs effective? Uganda will be used as a case study to answer this question

1.6 Hypotheses

This study is based on the following hypotheses:

1. International community is unable of adopting a binding legal and institutional framework for the protection of IDPs.
2. State sovereignty is a barrier to an effective international protection of IDPs.
3. States lack the political will and resources to provide effective protection of IDPs.

1.7 Theoretical and conceptual framework

IDPs rights are normally covered by national laws of the country of which they are citizens. However, the state which has the responsibility to protect them is, in most cases, the cause of the displacement, particularly in conflict situations. Furthermore, in many cases, it does not fulfill its duties and responsibilities to respond to the needs of IDPs and implement effective strategies to end displacement, as a result of conflicting interests and priorities. It therefore becomes critical to address the following questions: How does a state become compliant with respect to human rights protection, particularly in the context of IDPs, and what should be the enforcement mechanisms? Is there need for a binding legal enactment at the national and international level to enforce compliance?

The philosophy of human rights addresses questions about the existence and legal status of human rights. Do they exist independently of legal enactment or are they just moral norms? To answer these questions, we look at the natural and positivist law schools which, contrary to other schools, make a fundamental distinction between moral rights and legal rights in order to understand the basis and potential application of human rights.

From a natural law perspective, human rights exist prior to and independently of legal enactment. People are born with natural rights as human rights are inherent in human beings. The central concept in natural law is the dignity and worth of each human being. If human rights existed only because of enactment, their availability would be conditioned on domestic and international political developments.¹¹

From the legal positivism perspective, a legal right is a right that enjoys the recognition and protection of the law and the only higher law is created by governments and must be obeyed. A legal right cannot be said to exist prior to its passing into law. Enactment in national and international law provides the conditions for human rights to be guaranteed and protected. At the national level, human rights norms are guaranteed and protected through legislative enactment or judicial decision.¹² At the international level, human rights norms are incorporated in treaties negotiated and adopted by States.

¹¹ <http://plato.stanford.edu/entries/rights-human/> (accessed on 17/11/2007).

¹² Ibid.

The best rationale of existence for human rights, and particularly IDPs rights would be the combination of the two schools of thought. From a natural law theory, the protection of IDPs is equal to human rights which are inherent and do not require to be codified in a legal instrument for them to be observed and implemented by States. Besides, from the positivist school of law point of view, the codification of IDPs rights gives more precision and standards of level of implementation to which individual States can be held accountable. These are the two reasons why natural law theory and positivist law theory are the preferred working theories for this study. Theoretical framework is therefore based on these two schools of jurisprudence which are the guiding frameworks for this study.

1.8 Literature review

The international protection of IDPs is a relatively recent concern of the international community because the plight of IDPs was traditionally viewed as a matter of domestic jurisdiction to be left to the authorities of the local States. It is only over the last decade or so that the plight of IDPs became a concern of the international community, as a human rights issue, basically because the situation was caused or largely contributed to by their States of nationality.

Whereas there is a lot of literature on human rights generally, there is a dearth of literature on the specific plight of IDPs. However, this review, which is not exhaustive, will attempt to highlight the major legal issues surrounding the protection of IDPs as discussed by the few texts available on the subject.

Simon Bagshaw, in *Developing a Normative Framework for the Protection of Internally Displaced Persons*,¹³ demonstrates the advantages of “soft law”, i.e., non binding instruments, in comparison with international treaties or conventions. The author analyses the limitations of treaty making in the context of human rights protection. The first set of shortcomings relates to the treaty making process which is typically lengthy and complicated due to conflicting interests and agendas among negotiating states, difficulties in coordination, problems of normative inconsistency both within and between instruments, and a lack of expertise in the drafting process. The second type of challenges relates to the limited implementation of most treaties on human rights protection. The author notes that while most observers agree that the UN has reached a significant high level of human rights standard setting activities through treaties and conventions, more emphasis is now required on implementation where progress remains limited. The author makes the case for alternative non binding standard setting and presents the Guiding Principles on Internal Displacement as a flexible, yet effective, advocacy tool to improve treatment of IDPs.

However, the analysis fails to recognize that effective implementation of soft law such as the Guiding Principles on Internal Displacement is more challenging than international treaties and conventions, precisely because it does not give rise to binding obligations for states. Indeed, while the Guiding Principles have been widely

¹³ Simon Bagshaw, *Developing a Normative Framework for the Protection of Internally Displaced Persons*, (Transnational Publishers, N.Y., 2005).

adopted by a number of states, effective implementation in most cases remains challenging.

In *The International Protection of Internally Displaced Persons*,¹⁴ Catherine Phuong argues that the issue of internal displacement is not merely a humanitarian problem, but needs to be discussed within a wider human rights context. The author explores the conceptual similarities and differences between refugees and internally displaced persons and concludes that internally displaced persons do not require a specific legal status under international law. She also examines the UN's understanding of the IDP issue and, in doing so, explores the implications of a human rights approach to the problem of internal displacement on the nature of institutional responses to that problem. Phuong finally looks at the problem of internal displacement within a broader conceptual framework, looking at sovereignty and intervention, and how a human rights approach to the problem of internal displacement requires a reconceptualisation of these two concepts. However, although Catherine Phuong analyses the legal status and the application of the Guiding Principles on internal displacement, she does not discuss the challenges encountered in their implementation.

In *Masses in Flight*,¹⁵ Roberta Cohen and Francis M. Deng analyze the causes and consequences of internal displacement and provide an in-depth review of the

¹⁴ Catherine Phuong, *The International Protection of Internally Displaced Persons*, (Cambridge University Press, 2004).

¹⁵ Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, (Brookings Institution Press, Washington D.C., 1998).

international legal and institutional framework related to IDPs. The study provides a platform to introduce the Guiding Principles which were presented to the 1998 session of the UN Commission on Human Rights. It also examines the institutional strengths, weaknesses and constraints faced by humanitarian and development agencies, emphasizing the lack of coordination between actors and the inadequate expertise and capacity in addressing IDPs needs.

The authors offer a set of strategies and recommendations aimed at improving response to emergency needs using a comprehensive approach and stressing the importance of preventing displacement.

The review provides an in-depth understanding on the causes and effect of internal displacement, as well as the context surrounding the emergence of the UN Guiding Principles on Internal Displacement. However, the authors covered in the review do not sufficiently address the challenges of implementing effectively national legislation inspired from the UN Guiding Principles.

In *The Forsaken People: Case Studies of the Internally Displaced*,¹⁶ Roberta Cohen and Francis M. Deng have put together case studies of the causes and plight of internally displaced persons from selected countries in Africa, Europe, Asia, and Latin America. In the great majority of the countries, the predominant cause of displacement is conflict among different ethnic groups or between governments and

¹⁶ Roberta Cohen and Francis M. Deng (eds.), *The Forgotten People: Case Studies of the Internally Displaced* (Brookings Institution Press, Washington, D.C., 1998).

minorities of a different race, language, culture or religion. In relation to Africa, the continent with the largest number of internally displaced persons, civil conflict combined with poverty and the desperate need for outside assistance are more widespread than anywhere else. In Rwanda and Burundi, genocide and genocidal acts feature prominently as the causes of the massive uprooting of populations. In Liberia, displacement is related to the collapse of the state, while in the Sudan the continent's longest running civil war has produced more internally displaced persons than any other country in the world.

The contributors to this volume call for a greater role for the international community in mediating internal conflicts, the main cause of displacement. Regional approaches are also suggested, especially where the resolution of conflict in one country can directly influence the settlement of conflict in another.

Overall, the case studies discussed by the contributors illustrate the difficulties encountered by humanitarian agencies in operating in a framework of state sovereignty and the related principles of territorial integrity and non-interference in the internal affairs of states.

Marc Vincent and Birgitte Refslund Sorensen, in *Caught Between Borders, Response Strategies of the Internally Displaced*,¹⁷ have put together information on the methods and networks that internally displaced persons have evolved for coping with the

¹⁷ Marc Vincent and Birgitte Refslund Sorensen (eds.), Caught Between Borders: Response Strategies of the Internally Displaced (Pluto Press, London, 2001).

experience of displacement from their home villages as a result of war, natural or man-made disaster or generalized violence. The two editors have used case studies from different countries in Africa, Asia, Latin America and Europe, to identify cross-cultural patterns of coping strategies, examine the effectiveness of the strategies, and to highlight the extent to which the strategies are dependent upon culture or the experience of displacement.

Although the case studies do not discuss either the legal or policy responses to the plight of internally displaced persons, they illustrate the ways that individuals, families and communities respond to the crisis of displacement, thereby providing invaluable information to assist international agencies in the formulation of their relief plans focus from the perspective of assisting the displaced population to help themselves. The case studies focus on the ability of internally displaced persons to adapt to the experience of displacement, a dimension of the crisis of internal displacement that is quite often overlooked. Internally displaced persons still retain the capacity to make substantial contributions in shaping their own lives. They cannot fully depend on their governments because, in many cases, the governments have been either direct instigators or collaborators of displacement.

This study confronts the provisions contained in international legal and policy instruments with the challenges of implementation on the ground. In so doing, the study draws from the above literature while identifying the gaps that need to be addressed in order to meet the challenges of enactment and implementation of legal

and policy frameworks for the protection of IDPs. Besides, it is now ten years since the adoption of the UN Guiding Principles were adopted and since the publication of the seminal *Masses in Flight*. Between then and now, a number of developments have taken place at the national and regional levels that the study addresses regarding the plight of internally displaced persons.

1.9 Research methodology

We have undertaken this study by reviewing and analyzing both primary and secondary data: Primary data such as international instruments from which the Guiding Principles are derived. We analyzed the Guiding Principles as well.

Secondary data were collected from institutions or organizations involved in protecting and assisting IDPs. These data sources include: findings of research conducted in IDP settings, other publications such as journal and newspaper articles focusing on protection and humanitarian assistance of IDPs.

The situation of IDPs in Northern Uganda was used as a case study to illustrate the nature and extent of national initiatives for the protection of IDPs. Uganda was, until very recently, one of the “forgotten emergency” facing the humanitarian community. The current IDP situation, with over 1.4 million displaced people, Africa’s third largest after Sudan and DRC, is largely a product of the twenty-year insurgency in northern Uganda by the Lord’s Resistance Army (LRA).¹⁸

¹⁸ <http://www.reliefweb.int> accessed on 24/04/2007.

The situation of Ugandan IDPs has been considered as a case study for this research because of their significant size and the long duration of their status as IDPs. Nearly 90% of the population in Northern Uganda has been living in camps for more than 20 years, which makes them the oldest IDPs in Africa. The adoption of *The National Policy For Internally Displaced Persons*¹⁹ based on UN Guiding Principles by the Uganda Government constitutes another important opportunity to assess the implementation and the effectiveness of national policies based on the Guiding Principles.

This case study focuses on the returning process of internally displaced persons, through human rights lens. The findings of the field research are based upon non-structured interviews conducted in Kampala and Gulu with representatives of local government, UN agencies and NGOs as well as a group of 15 IDP families held in the PABO IDP camp located some 20 kms North of Gulu town between 4 August and 13 August 2008.

Finally, we relied on the internet to collect valuable documentation on the topic to supplement the above sources of data and information.

¹⁹ Uganda National Policy For Internally Displaced Persons.

1.10 Limitations to the study

Limited resources both in time and finances were a handicap in this study, particularly during the field research. Thus, the study cannot claim to cover all the relevant literature, perspectives and arguments on internal displacement.

CHAPTER TWO: CAUSES AND PLIGHT OF INTERNAL DISPLACEMENT OF PERSONS

2.1 Introduction

During the last twenty years, internal displacement has emerged as one of the most pressing humanitarian, human rights and political issue facing the international community. However, the phenomenon of internal displacement is not new and earlier pleas for international assistance with internally displaced persons had been sporadic. For example, according to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), in 1949, the Greek government, embroiled in a civil war, argued to the United Nations General Assembly that people displaced internally by war should have the same access to international aid as refugees, even if they did not need international protection. Even though willing, their own government could not necessarily meet their physical needs while recovering from occupation and dealing with internal conflict. India and Pakistan, both coping with the huge and violent population exchanges that followed the partition of the Indian sub-continent, made essentially the same point, and insisted that lack of legal protection was less of a problem for their internally displaced people than was sheer physical survival.¹

¹ Office for the Coordination of Humanitarian Affairs, Internal Displacement Unit, No refuge: The Challenge of Internal Displacement on www.migrationpolicy.org (accessed on 08/10/2008).

Recognition of internal displacement emerged gradually through the late 1980s and became prominent on the international agenda in the 1990s. The main reason for this attention was the growing number of conflicts causing internal displacement after the end of the Cold War. When the superpowers were engaged in proxy wars in Angola, Mozambique, El Salvador, or Afghanistan, no attention was paid to the internally displaced. It was only when these geographical struggles began to wane that the humanitarian dimension of the situation came into view and was recognized as requiring international attention.²

Since the end of the Cold War, regional disintegration and political instabilities have led to mass displacement of populations within the boundaries of their countries. In fact, the end of the Cold War meant, in many cases, an end to superpower support for states in the developing world. The loss of external backing revealed the weakness of a number of countries. Some governments could no longer control all sections of their populations or even of their armies, creating power vacuums that would quickly embroil many such states in internal conflict. These conflicts, in turn, created huge new displacements in places such as the eastern Democratic Republic of the Congo, Liberia and the former Yugoslavia.³ The end of the Cold War also opened new possibilities for assistance to the internally displaced, without fears of superpower retaliation.

Another reason for the interest in protecting people in their own countries arose out of a desire to prevent refugee flows. The attitude amongst Western States toward refugees has

² Roberta Cohen, Exodus Within Borders: The Global Crisis of Internal Displacement on www.unhcr.bg (accessed on 08/10/2008).

³ Supra Note 1.

changed considerably since the 1980s. A number of authors have analysed the sudden focus of international community on internal displacement and concluded that the increased attention to the issue was also motivated by changing attitudes to refugee protection during the 1970s and 1980s. Michael Barutciski, for example, has argued that for the governments of the industrialized states, the new interest in internal displacement results from the reluctance of host populations to have contact with refugees and a desire to deal with forced migration in terms of containment.⁴ Catherine Phuong adds that refugees had a more important strategic role to play during the Cold War era: welcoming refugees fleeing countries of the opposite bloc was a political act designed to demonstrate the failures of that political system in protecting its own citizens.⁵

The political advantage that had motivated many nations to accept refugees during the Cold War gave way, in the early 1990s, to a desire to limit their entry. Both Western governments and governments in other parts of the world began to demonstrate less willingness to accept large numbers of refugees, and instead focused their energies on the need to promote protection and assistance for those displaced within their countries. The decreasing number of refugees in the world today and the increasing number of internally displaced persons are inextricably connected.⁶ In fact, the scale of the problem can best be illustrated through figures provided by Marc Vincent and Birgitte Refslund Sorensen

⁴ Barutciski, Tensions Between the Refugee Concept and the IDP Debate, *Forced Migration Rev.* No. 311(Dec. 1998) in Simon Bagshaw, Developing a Normative Framework for the Protection of Internally Displaced Persons, (Transnational Publishers, NY, 2005), p.74.

⁵ Catherine Phuong, The International Protection of Internally Displaced Persons, (Cambridge University Press 2004), p. 3.

⁶ *Supra*, note 2.

in their book, *Caught Between Borders*.⁷ Between 1980 and 1990, the numbers both of internally displaced persons and refugees nearly tripled, to 22 million from 23 countries and about 17 million from 50 countries, respectively. From 1990, significant demographic changes took place in the two groups. While the estimated number of refugees declined from 1990 onwards, internal displacement increased sharply, peaking at 27 million in 32 countries in 1994.

One of the first situations of large-scale internal displacements to attract international concern was that of Sudan in the early 1970s. Following the 1972 Addis Ababa Agreement putting an end to a protracted civil war and which provided for the return and resettlement of refugees and internally displaced persons, the Economic and Social Council requested that UNHCR coordinate humanitarian assistance on behalf of these populations. It referred to “the assistance required for voluntary repatriation, rehabilitation and resettlement of the refugees returning from abroad, as well as of persons displaced within the country.”⁸

Beyond Sudan, internal displacement became a subject of increasing international concern at the end of the Cold War when political attitudes towards refugees changed. The extensive media coverage given to the intervention undertaken by a coalition of states led by the United States with the implicit authorization of the Security Council to protect Kurds in northern Iraq in the spring of 1991 brought international attention to the plight of the internally displaced. “Operation Provide Comfort” marked a turning-point

⁷ Marc Vincent and Brigitte Refslund Sorensen, *CAUGHT BETWEEN BORDERS, Response Strategies of the Internally Displaced*, (Pluto Press, London, 2001), p.1.

⁸ *Supra*, note 3, p. 7.

because it led to an increase of attention being paid by UN organs to the issue of internal displacement.⁹ During the first half of the 1990s, several other humanitarian crises of unprecedented scale and involving significant numbers of internally displaced persons appeared around the world in, for instance, the Great Lakes region (Rwanda, Burundi, Democratic Republic of Congo), the former Yugoslavia and, again, in Sudan. This demonstrates that the Kurdish episode was not an isolated incident.¹⁰

However, Simon Bagshaw argues that the major impetus behind international recognition of the problem of internal displacement lay not with states, but with a group of NGOs mobilized as a result of problems encountered in gaining access in the field to large numbers of so-called “internal refugees” in need of assistance and protection. Martin Macpherson of the Friends World Committee for Consultation (Quakers), Beth Ferris of the World Council of Churches (WCC) and Roberta Cohen of the Refugee Policy Group (RPG) raised the issue at the international level through meetings and conferences.¹¹

The advocacy efforts and direct involvement with internally displaced persons of the NGO community, but also with the small states such as Austria and Norway, have contributed to raising awareness of the problem of internal displacement at the Commission on Human Rights¹². Besides, sporadic and ad hoc responses to internal displacement from inter-governmental organisations began to evolve under the pressure of obviously inadequate responses to human suffering on a very large scale in Southern

⁹ Supra, note 5, p. 7.

¹⁰ Ibid.

¹¹ Supra, note 3, p. 79.

¹² Ibid., p. 72.

Africa and the Horn, in Cambodia, in Central America and elsewhere. In December 1988, in Oslo, the UN hosted the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED). This was the first UN initiative to raise the question of institutionalised assistance to internally displaced persons. The following year, The International Conference on Central American Refugees (CIREFCA) was held and raised also the issue of internal displacement.¹³

The international community's recognition of the magnitude of the crisis and the urgent need for action led the Secretary-General of the United Nations, at the request of the Commission on Human Rights, to appoint a representative on internally displaced persons. In July 1992, Francis M. Deng, senior research fellow in the Foreign Policy Studies Program of the Brookings Institution and former Sudanese diplomat, was appointed by then Secretary-General Boutros-Ghali as his representative on Internally Displaced Persons. His mandate was focused on studying the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent of the coverage accorded them within existing international institutional arrangements and ways in which their assistance and protection could be improved, including through dialogue with governments and other pertinent actors.¹⁴ In January 1998, the Representative, with the support of a team of legal experts, formulated the "Guiding Principles on Internal Displacement", which were presented to the Commission on Human Rights later that year.¹⁵

¹³ Simon Bagshaw, Developing a Normative Framework for the Protection of Internally Displaced Persons, (Transnational Publishers, N.Y, 2005), p. 72.

¹⁴ www.unhchr.ch (accessed on 17/11/2007).

¹⁵ Guiding Principles on Internal Displacement (UN Doc. No. E/CN.4/1998/53/add. 2 (1998)).

2.2 Definition of Internal Displacement

The expression “internally displaced persons” is of more recent usage. Until the late 1980s, there was no such standard term. Early references to internally displaced persons were made through the emergence of the expression “displaced persons”. This formula was first employed in the Sudanese context and was subsequently developed for the purposes of material assistance in cases where it was impossible to assist refugees only and not other populations in need. When the UN High Commissioner for Refugees asked the Executive Committee in 1977 to clarify the distinction between refugees and displaced persons, no clear answer was provided, although there seemed to be an understanding that refugees crossed international borders, whereas displaced persons did not.¹⁶

Following the Second World War, international efforts focused on creating laws and machinery to provide international protection to people who fled across borders because of persecution. The UN High Commissioner for Refugees was created and the refugee definition adopted in 1951. But the refugee definition did not extend to persons forcibly displaced and at risk within their own countries. Displaced persons who were unable to cross the border because of geographic barriers or because the fighting was too fierce or because they were too old, young or infirm to try, or because they wanted to stay in their

¹⁶ Supra, note 7, p. 14.

own countries, did not qualify for this international protection.¹⁷ They argue that the conceptualisation of the refugee problem upon which the definition is based is probably rooted in the political situation which prevailed at the end of the Second World War.¹⁸ As a result, the definition establishes that a refugee is a person who:

as a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.¹⁹

It has been argued that the refugee definition was drafted in such a manner so as to address the problem of political dissidents fleeing Communist states.²⁰ For the drafters of the Convention, the text was only concerned with the protection and assistance of a specific group of persons, those outside their country of origin. Internally displaced persons were excluded because they were under the protection of their states; it remains the primary duty of the state to protect its own population. The element of border-crossing constitutes then a crucial requirement in the refugee definition. It establishes a clear legal distinction between refugees and internally displaced persons. This has important implications for the nature of the protection which can be provided to refugees or internally displaced persons although they share many similarities. Another reason listed for the exclusion of internally displaced persons from the 1951 Convention is that it would constitute a violation of national sovereignty as the problems raised by internally displaced persons are invariably part of the internal affairs of the state. In contrast, the historical importance of the border-crossing element is imposed by what remain the

¹⁷ *Supra*, note 2, p. 1.

¹⁸ *Supra*, note 5, p. 16.

¹⁹ Article 1 (A) (2) of the 1951 Convention Relating to the Status of refugees.

²⁰ *Supra*, note 5, p.17.

cardinal principles of international law, namely, state sovereignty, and closely related principles of territorial integrity and non-intervention.²¹

The idea of deleting the border-crossing element from the refugee definition in order to create a fair human rights protection between refugees and internally displaced persons has been advanced by Luke Lee. The basis of his argument lies in the idea that the requirement of border-crossing has lost its relevance in the post-Cold War era and that it must be dropped in order to give states, international organisations, and NGOs the legal capacity to address the problem of internal displacement. He argues that a remedy for the existence of such inequality of protection would be to merge the two groups and create a single legal status.²² As Catherine Phuong correctly analyses, internally displaced persons remain within the jurisdiction of their own country and responsibility to protect and assist them should not be shifted entirely to the international community. The required protection must remain a complementary protection which exists in parallel with national protection, unless national protection is not available. In the case of refugees, the protection given to them is a surrogate protection for persons who have lost the protection of their country and are outside of its borders.²³

Another idea raised is the establishment of a separate legal definition of the internally displaced persons. Catherine Phuong states that a formal legal definition would never be comprehensive enough to cover the numerous situations which result in the internal

²¹ Supra, note 5, p.24.

²² Lee, L. T., *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*, in Catherine Phuong, *The International Protection of Internally Displaced Persons*, (Cambridge University Press, 2004), p. 25.

²³ Supra, note 5, p. 25.

displacement of persons. She adds that the danger of a legal definition would be to give priority to a certain group and create different standards of treatment when all groups are in the same material conditions: all should simply be treated as victims of human rights violations.²⁴ This position is adopted by some relief agencies.

In fact, there is an apparent unease within the humanitarian sector with the notion of internally displaced persons as a separate category. Some relief agencies, such as European Commission Humanitarian Office (ECHO) and the International Committee of the Red Cross (ICRC), believe that the separate identification of internally displaced persons is somehow at odds with the humanitarian principle that assistance should be determined by needs and needs only. They argue that there should be no separate identification of internally displaced persons when intermingled with other actual and potential vulnerable groups.²⁵ ICRC reserves the term “displaced persons” for those in greatest need of immediate life-saving assistance²⁶. This typically covers persons who have recently been displaced and are thus totally dependent on immediate support in order to survive. Its approach is oriented towards vulnerability than predefined categories. It is evident, however, that displaced persons are often particularly vulnerable and thus included among ICRC’s beneficiaries.

Although the issue of internal displacement has gained international prominence during the last eighteen years, a single definition of the term remains to be agreed upon.

²⁴ Supra, note 5, p. 26.

²⁵ John Borton et al., Support to Internally Displaced Persons: Learning from Evaluations (SIDA, Stockholm, 2005), p. 95.

²⁶ Ibid., p.99

Questions of who should be included in the category, whether it is a useful one, and the consequences of applying it in humanitarian interventions, are widely debated.

A first attempt at the definition of internally displaced persons was made by the UN Secretary-General Boutros Ghali in his Analytical Report in 1992, which defined internally displaced persons as “persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.”²⁷

In-depth research and contemporary movements of populations have demonstrated that some elements of the Secretary-General’s 1992 definition are not always characteristic of such movements. It was concluded that the definition should not be a quantitative one (fleeing in large numbers) and should not focus solely on situations which involve sudden mass displacement of populations in war-like conditions.²⁸

The most widely used definition of internally displaced persons is the one contained in the Guiding Principles on Internal Displacement as set out in the second paragraph of the introduction which states that:

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-

²⁷ Supra, note 5, p. 33.

²⁸ Ibid.

made disasters, and who have not crossed an internationally recognized State border.²⁹

The part of the 1992 definition which reads “who are within the territory of their own country” has also been modified to read “who have not crossed an internationally recognized border”. Such modification by the Special Representative was made necessary by the problems raised by the dissolution of states such as the former Soviet Union and the former Yugoslavia at the beginning of the 1990s at the time when the Secretary-General’s definition was devised. The dissolution of such states blurred the distinction between refugees and internally displaced persons. People who moved from one former republic of the federation to another had an unclear status due to the difficulties related to the recognition of the newly constituted states. The exact date when a state came into existence was not always easy to ascertain. It is interesting to note that the wording “internationally recognized border” is preferred to “international border”, thereby introducing the element of state recognition.³⁰

The two crucial features of that definition are coercion or involuntary movement and remaining within one’s national borders. According to Roberta Cohen, the definition tries to strike a balance between too narrow a framework that risks excluding people and one so broad that it could prove operationally unmanageable. It focuses primarily on people who, if they were to cross a border, would qualify as refugees, but it also includes people who would not qualify as refugees, those uprooted by natural and human-made disasters.

²⁹ Francis M.Deng, Guiding Principles on Internal Displacement: Report of the Representative of the Secretary-General; U.N.Doc. E/CN.4/1998/53(11 February 1998).

³⁰ Supra, note 5, p. 35.

The rationale for including these was two-fold, namely, first, they are internally displaced as a matter of fact and, second, governments have been known to respond to natural disasters by discriminating against or neglecting certain groups on political or ethnic grounds or by violating their human rights in other ways. This same reasoning applies to those arbitrarily displaced by development projects. Roberta Cohen adds, however, that persons who migrate because of economic reasons are excluded from the definition because in most cases the element of coercion is not clear.³¹

As Jessica Wyndham correctly states, the state of being displaced is a factual situation; it is not a legal status.³² According to the Guiding Principles, the provision of a definition of internal displacement is not meant to create or limit new rights or entitlements, but rather to acknowledge a factual situation. The internally displaced person's definition, unlike the refugee definition, does not confer legal status on the internally displaced. It is a definition that helps to identify who the displaced are and who may, therefore, need special assistance.

Since its formulation in 1998, the definition has received broad support, although questions have arisen about its application. Different organizations use different parts of it, applying it according to their expertise and mandates. Thus, UNHCR, in keeping with its mandate, deals only with those persons in the definition displaced by conflict and human rights violations, that is, those who would be refugees if they crossed a border.

³¹ Supra, note 2.

³² Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, Human Rights Brief, Winter 2006 on www.reliefweb.int (accessed on 22/04/2008).

And NGOs like the U.S Committee for Refugees, which publishes annual statistic on IDPs, counts only those displaced by conflict and human rights violations.³³

2.3 Causes of displacement

Although internal strife remains by far the most significant cause of conflict-induced displacement, causes of internal displacement are complex. Natural disasters, development projects, and extreme poverty also force movements of people.

During the past decade 1994-2004, the numbers of people affected by natural disasters continued to climb. An average of 250 million people per year were affected by disasters between 1994 and 2004. Over this period, the numbers of people affected by disasters in developing countries doubled, with Africa showing the greatest increase.³⁴ According to environmental experts, the long term effects of global warming and the resulting rising level of oceans will lead to an increase of internally displaced persons in unprecedented proportions.

However, some commentators do not consider people displaced by natural disasters, such as drought, floods, or earthquakes, as internally displaced persons. These authors emphasize the element of coercion which characterises forced displacement. They interpret coercion as requiring action by either by a government or by an insurgent group.

³³ Supra, note 2.

³⁴ www.internal-displacement.org, (accessed on 22/04/2008).

They thus refer only to human rights violations.³⁵ This position is justified by the fact that in the case of most natural or man-made disasters, states are generally willing to extend available internal resources and receive foreign assistance to help displaced persons. However, in some cases, the reluctance of the authorities to allow international relief into the country can indirectly trigger internal movements of population and or aggravate the consequences of a natural disaster. The key issue should be whether assistance and protection are made available by the state's authorities.³⁶

Although victims of natural-disaster are sometimes not counted among internally displaced persons, they receive more sympathetic attention and international aid than victims of development-induced displacement. Victims of development projects rarely enjoy such sympathy. Development is seen as a right to which all people should have access. But just as people have a right to development, they also have a right to be protected from development's negative effects.³⁷

Assessments sponsored by the World Bank have estimated that every year, since 1990, roughly 10 million people worldwide have been displaced by infrastructural development projects for a variety of reasons, such as water supply, urban infrastructure, transportation, energy, agricultural expansion, parks and forest reserves and population redistribution schemes.³⁸

³⁵ Supra, note 5, p. 30.

³⁶ Ibid.

³⁷ www.migrationinformation.org (accessed on 22/04/2008).

³⁸ www.internal-displacement.org, (accessed on 22/04/2008).

While development-induced displacement occurs throughout the world, two countries in particular, China and India, are responsible for a large portion of such displacements. The Narmada Sardar Sarovar Dam Project in India which is set to displace 127.000 people and the China's Three Gorges Dam Project which will displace upwards of 1.2 million people, have been widely written about.³⁹

Some governments and experts continue to argue against the inclusion of persons displaced by development projects in the definition of internally displaced persons on the grounds that such cases should not be of concern to the international community.⁴⁰ In most cases, the government helps with the relocation of the population displaced and even pays financial compensation to them, but this is not always the case. In some cases, projects are not decided in consultation with the local population and or minority groups suffer disproportionate levels of displacement.⁴¹ When development projects do not meet the standard of overriding public interest and forcibly displace poor, indigenous and marginalized groups without consultation, respect for their human rights or the provision of adequate resettlement or compensation, they certainly should be counted as internally displaced persons.⁴² Again, the central questions should be whether the government really offers assistance to the populations displaced by the development projects, whether there is discrimination in the decisions to relocate minority groups and, more fundamentally, whether such displacement can be described as "forced" or voluntary.⁴³

³⁹ www.chinaresettlement.com (accessed on 22/04/2008).

⁴⁰ Supra, note 2.

⁴¹ Supra, note 5, p. 31.

⁴² Supra, note 2.

⁴³ Supra, note 5, p. 31.

Given the complexity of causes inducing internal displacement, this study focuses on the predominant cause, that is, internal conflicts.

Internal, rather than international, armed conflict was a significant cause of internal displacement during the last decade, with a few notable exceptions, such as the wars between Israel and Lebanon-based Hezbollah in 2006 and between Ethiopia and Eritrea in 1998-2000.

Most cases of conflict-induced displacement have one element in common, that is, certain ethnic or minority groups in the society feel or are dispossessed by the national authorities and in the absence of national remedies, seek to reverse this through some form of political or cultural autonomy. Sometimes they even foment civil war to achieve their goals. Governments on the other hand, fearing the disruption of the state, seek to maintain control over the group and often repress them. In most cases, governments monopolised by or identified with one ethnic group to the exclusion or marginalization of others, result in civil conflict and mass displacement.⁴⁴

When internally displaced persons (IDPs) were first counted in 1982, 1.2million were found in eleven countries. By 1997 the number had soared to more than 20million in at least thirty-five countries.⁴⁵ Ten years later, in 2007, the Internal Displacement Monitoring Centre (IDMC) established in 1998 by the Norwegian Refugee Council and based in Geneva, which is the leading international body monitoring conflict-induced

⁴⁴ Supra, note 2.

⁴⁵ Roberta Cohen and Francis M. Deng, THE FORSAKEN PEOPLE, Case Studies of the Internally Displaced Persons. (Brookings Institution Press, Washington, D.C, 1998),p. 1.

internal displacement worldwide, estimated that the number of people internally displaced as a result of armed conflicts and violence passed the 26 million mark. It is the highest figure since the early 1990s, and marks a six per cent increase from the 2006 figure of 24.5million. The increase resulted from a combination of continued high level of new displacements (3.7million) and a lower level of return movements(2.7million) in 2007.⁴⁶

Africa is the continent worst affected by conflicts with almost half of the global internally displaced population (12.7 million) spread across 20 countries: Algeria, Senegal, Liberia, Cote d'Ivoire, Nigeria, Congo, Chad, Sudan, Central African Republic, DRC, Angola, Zimbabwe, Burundi, Rwanda, Uganda, Kenya, Somalia and Eritrea. In 2007, Africa generated nearly half of the world's newly displaced (1.6 million). Somalia (600,000) and the Democratic Republic of Congo (500,000) were the African countries worst affected by new internal displacement in 2007. The country with the largest internally displaced population in the world is in Africa, that is, Sudan. It has 5.8 million people forcibly displaced within its borders.⁴⁷ The year ended with the displacement of around 350,000 people in Kenya.⁴⁸ Across Africa, national contexts of poverty, adverse climate, and scarcity of resources, political instability, weak governance and justice systems are causes of conflict-induced displacement.

⁴⁶Global Overview of Trends and Developments in 2007 on www.internal-displacement.org (accessed on 22/04/2008).

⁴⁷ Ibid.

⁴⁸ Ibid.

In Latin America (Mexico, Guatemala, Colombia, Peru), conflicts forced millions of people, mainly indigenous or marginalised rural groups, from their homes over the past five decades. Colombia was, in 2007, the only country in the region with a growing internal displacement problem. Government forces and irregular armed groups forced more than 300,000 people from their homes during 2007. Colombia has the second-largest IDP population in the world after Sudan.⁴⁹

The largest percentage increase in the internal displacement population during 2007 was recorded in the Middle East where the rise of nearly 30 per cent was mostly due to the sectarian violence in Iraq. At the end of 2007, the Middle East was home to an estimated internally displaced population of 3.5 million spread in Iraq, Syria, Lebanon, Occupied Palestinian Territory, Yemen and Israel. In a number of countries, people were displaced in a context of regional political instability, poverty and underdevelopment.⁵⁰

Asia, too, saw an increase in the number of internally displaced persons in 2007. In Pakistan, 500,000 or more people were displaced following fighting between government forces and pro-Taliban militants. The government of Myanmar (Burma) continued its campaign against ethnic minorities which maintained the displacement of at least 500,000 people. Across Asia, the numbers of people displaced by conflict are spread in Afghanistan, Pakistan, Sri Lanka, Bangladesh, India, Uzbekistan, Turkmenistan, Nepal, Myanmar (Burma), The Philippines, Indonesia and Timor-Leste. People displaced in Asia by armed conflict and human rights violations tend to belong to the poorest and

⁴⁹Supra, note 46.

⁵⁰Ibid.

most marginalised groups, and they usually live as small-scale farmers or traders in rural areas. In addition to those forced to flee conflicts and human rights abuses, millions of people are displaced each year in Asia as a consequence of projects linked to urban development, the production of energy or natural resources extraction.⁵¹

In Europe, some 2.5 million people continued to be internally displaced, mainly in the Caucasus and the Balkans, but also in Turkey and Cyprus. Most of these people fled their homes 15 years ago as a result of conflict arising from rejected independence claims and territorial disputes. Countries with internally displaced persons in Europe are Turkey, Cyprus, Bosnia and Herzegovina, Croatia, Macedonia, Serbia, Georgia, Armenia, Azerbaijan and the Russian Federation.⁵²

As much as statistics can help to appreciate the size of the problem, they can be quite misleading as well. Disagreements over definitions and the absence of dedicated institutional resources mean that internally displaced persons are rarely counted. Only those receiving international or national assistance are usually counted while the rest continue to be vastly ignored. In most cases, internally displaced persons are not counted individually and often they are inaccessible to outsiders. Governments and insurgent groups, moreover, often understate the numbers of IDPs in order to deny the magnitude of the problem or increase the numbers in order to secure more humanitarian aid. There is also a lot of confusion in reporting as newspaper articles frequently give totals of

⁵¹Supra, note 46.

⁵²Ibid.

refugees when they mean IDPs and vice versa.⁵³ The number of internally displaced persons may be much higher than what is currently on record.

2.4 Plight of Internally Displaced Persons

Internally displaced persons not only outnumber refugees by far, but they also raise some of the most urgent human rights and humanitarian problems of our time and present a serious challenge to prevailing conceptions of sovereignty and intervention.⁵⁴ Although the role of international organisations in providing humanitarian assistance to the IDPs has grown, the concept of state sovereignty still poses a daunting barrier to assuring their safety and fundamental rights. IDPs remain under the formal protection of their own state, even though officials of that state may have deliberately caused their displacement. Internally displaced persons are victims of the gravest human rights abuses. They are exposed to extra-judicial executions, attacks, torture, rape, sexual assault, abductions and at the same time, they struggle to get access to the most basic necessities of life such as food, potable water, shelter and medical care. They also face specific problems linked to their displacement, such as lack of access to land, to livelihoods and breakdown of communities' social network. Governments, rebel forces, and, in some cases civilian members of the resident population, are responsible for those violations.

Internally displaced persons are at high risk across the globe. Women and children are the most vulnerable of internally displaced persons. Displaced women and girls are victims

⁵³ Supra, note 46.

⁵⁴ Supra, note 5, p. 1.

of sexual assault, rape and exploitation. They are also exposed to health risks due to their lack of access to reproductive and maternal health care in areas of displacement. Children are forcibly recruited by armed groups and are separated from their families. They lose access to education and are forced to work in order to survive.

National governments have the primary responsibility to protect and assist internally displaced persons under their jurisdiction. In the 2005 UN World Summit Outcome Document, heads of state and government explicitly accepted their responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and resolved to “take effective measures to increase the protection of internally displaced persons”.⁵⁵ Unfortunately, government response to conflict-induced internal displacement is, in most cases, inadequate to meet the needs of these populations. In fact, in many cases, national authorities are the authors of the displacement and may be unable or unwilling to assist and protect the internally displaced persons.

With governments in many countries unwilling or unable to assume their responsibility to protect their conflict-related internally displaced persons, the international community has increasingly become involved in responding to the challenges of internal displacement.⁵⁶ In other countries, such as India, Algeria, Pakistan, Rwanda and Zimbabwe, governments have severely restricted international involvement, insisting on

⁵⁵Supra, note 46.

⁵⁶Ibid.

the principle of state sovereignty and non-interference in what they refer to as domestic affairs.⁵⁷

Unlike refugees, internally displaced persons do not benefit from a specific international regime exclusively devoted to ensuring their protection and assistance. Instead they are subject to many actors involved in providing assistance, protection and development aid in a conflict situation, including UN agencies, human rights organisations, international and local NGOs.

The early 1990s were marked by a flurry of institutional developments within the UN that were intended specifically to strengthen and coordinate mechanisms of humanitarian assistance, including those dealing with internal displacement. In fact, “ Operation Provide Comfort” in Northern Iraq was a turning point for international activism and the debacles of the Somalia and Balkan wars highlighted the need for progress in developing international mechanisms for the protection of the internally displaced persons.⁵⁸ In 1990, the General Assembly assigned the role of coordinating assistance for the internally displaced to its country-level Resident Coordinators. When country-level coordinators proved to be inadequate, the General Assembly, in its landmark Resolution 46/182 (19 December 1991) created the post of Emergency Relief Coordinator (ERC), set up an Inter-Agency Standing Committee (IASC) of the operational UN agencies, and provided

⁵⁷Supra, note 46.

⁵⁸<http://ochaonline.un.org> (accessed on 22/04/2008).

for a secretariat to the ERC, which became the Department of Humanitarian Affairs (DHA) and later still the Office for the Coordination of Humanitarian Affairs (OCHA).⁵⁹

The IASC is composed of representatives from the key humanitarian and development agencies at the UN as well as a number of standing invitees, including ICRC, the International Federation of the Red Cross and Red Crescent Societies, the International Organization for Migration (IOM), the Office of the High Commissioner for Human Rights (OHCHR), the Special Representative on Internally Displaced Persons, three international NGO consortia (InterAction, the International Council of Voluntary Agencies, and the Steering Committee for Humanitarian response).⁶⁰ The ERC chairs the Inter-Agency Standing Committee (IASC) and is the head of the Office for the Coordination of Humanitarian Affairs (OCHA) which serves as the Secretariat for the IASC.⁶¹ One of the *raison d'être* of the IASC and the OCHA is to ensure that sufficient attention is being paid to internally displaced persons and other vulnerable populations who are not the central focus of any agency.⁶²

In 1992, when Dr Deng was appointed as the Special Representative on IDPs, he suggested three alternative institutional arrangements for dealing with the internally displaced persons, namely, the creation of a new agency for IDPs, the assignation of responsibility for IDPs to an existing agency or the development of a collaborative

⁵⁹ Supra, note 1.

⁶⁰ Supra, note 5, p. 103

⁶¹ Ibid.

⁶² Ibid., p. 104.

approach among the different relevant agencies coordinated by a central mechanism.⁶³ The political and financial infeasibility of the first option put its realisation into doubt. For the second option, it was suggested that the UNHCR should take up the responsibility given its expertise in providing protection to displaced populations, including IDPs. However, it was argued that the existing organisation did not have the capacity to take up responsibility for a group of people who outnumbered the global refugee population by several million. The third option thus became the preferred one in the international community, where many argue it is the best solution because it allows for a comprehensive and holistic response involving various agencies.⁶⁴

Under the collaborative approach, many different UN agencies on the ground are supposed to share the responsibility for protecting IDPs, they are working together under the Office for the Coordination of Humanitarian Affairs (OCHA). However, the problem is that agencies don't like to be coordinated and the collaborative approach is highly criticised for not working efficiently on the ground. There is no real locus of responsibility in the field for assisting and protecting IDPs. There is also no predictability of action, as the different agencies are free to pick and choose the situations in which they wish to become involved on the basis of their respective mandates, resources and interest.⁶⁵ Faced with the increased media exposure of the problem of internal displacement, the UN has reacted by creating new structures, namely, the Senior Inter-Agency Network and then the OCHA Internal Displacement Unit in 2002. In 2004, the

⁶³ Supra, note 57.

⁶⁴ Ibid.

⁶⁵ Roberta Cohen, Strengthening Protection of IDPs, the UN's Role, Winter/Spring 2006 on www.brookings.edu (accessed on 11/10/2008).

unit was upgraded to a Division. Its primary aim is to promote an improved inter-agency response to displacement situations and support the ERC in his role as coordinator of international responses to IDP needs.⁶⁶

In 2005, in response to the collaborative approach deficiencies, the ERC launched an independent Humanitarian Response Review of the global humanitarian system. Following the recommendations of the review, the cluster approach was proposed as a way of addressing gaps and strengthening the effectiveness of humanitarian response through building partnerships.⁶⁷

Under the cluster approach the different agencies are expected to carve out areas of responsibility based on their expertise and carry them out on a regular basis in emergencies.⁶⁸ Moreover, the cluster approach ensures predictability and accountability in international responses to humanitarian emergencies, by clarifying the division of labour among organisations, better defining their roles and responsibilities within the different sectors of the response.⁶⁹ Uganda is one of the countries where the UN implemented the cluster approach. This is discussed in the forth Chapter.

Another concern is that unlike refugees, internally displaced persons do not benefit from the specialised protection of international refugee law because they have not crossed an international border, but the causes of displacement and the experience of being displaced

⁶⁶ Catherine Brun, Research guide on internal displacement, on www.forcedmigration.org (accessed on 22'04'2008).

⁶⁷ www.humanitarianreform.org (accessed on 26/04/2008).

⁶⁸ Supra, note 64.

⁶⁹ Supra, note 61.

are often similar to those of refugees. The absence of effective international protection makes internally displaced persons particularly vulnerable to human rights abuses and neglect. The next chapter discusses about the international response to internal displacement, with particular emphasis on international legal framework for the protection of internally displaced persons.

CHAPTER THREE:

INTERNATIONAL POLICY AND LEGAL FRAMEWORKS FOR PROTECTION OF INTERNALLY DISPLACED PERSONS

3.1 Introduction

The concept of internal displacement needs to be distinguished from the concept of refugeehood. Refugees are covered by an “established” regime of protection, but internally displaced persons, because they remain within the borders of their states, cannot benefit from it.¹ Unlike refugees, who, once they cross a border, are provided protection pursuant to the 1951 Convention Relating to the Status of Refugees², the internally displaced receive no such protection from international law. And, unless their state consents, the internally displaced receive no assistance from the international community. Internally displaced persons must, therefore, seek aid from their own state because under existing international law, internal displacement remains an internal matter for that state to address. However, in many cases, it is the state itself that it is the cause of the internal displacement, and, even when it is not the case, it may be unwilling or unable to provide adequate protection and meaningful assistance.

¹ Catherine Phuong, The International Protection of Internally Displaced Persons, (Cambridge University Press 2004), p. 39.

² Preamble of the 1951 Convention Relating to the Status of Refugees.

In 1992, when the UN Secretary-General, at the request of the Commission on Human Rights, appointed Dr. Francis Deng as a Representative on Internally Displaced Persons, it asked him to work with a team of international legal experts in order to identify the extent to which international law addresses the protection and assistance needs of the internally displaced persons. Dr. Deng and his team prepared a “Compilation and Analysis of Legal Norms” relevant to the needs and rights of the IDPs and to the corresponding duties and obligations of states and the international community for their protection and assistance. The Compilation and Analysis was submitted to the Commission on Human Rights by the Representative of the Secretary-General in 1996.³

The Compilation examined three sources of international legal standards, that is, human rights law, humanitarian and refugee law. Most internally displaced persons are found in situations of armed conflict, hence the importance of international humanitarian law which regulates the conduct of hostilities. Internal displacement also occurs in times of peace (natural disasters) or internal strife during which humanitarian law is not applicable, whereas human rights norms remain applicable in almost all these situations. Therefore, applicable norms depend on the situation at hand, that is, situations of tensions and disturbances, disasters, non-international armed conflicts and international armed conflict.⁴ Refugee law, although generally inapplicable to internally displaced persons, can serve as a model for how certain issues may be dealt with in a future international

³ E/CN.4/1998/53/Add. 2, para 5.

⁴ *Supra*, note 1, p. 42.

instrument applicable to internally displaced persons.⁵ In fact, internally displaced persons find themselves in refugee-like situations in their own country, therefore refugee law may be applicable by analogy. For example, the provision contained in the 1951 Convention on non-refoulement⁶ can serve as a reference for internally displaced persons: like refugees, they should not be returned to places where their life or freedom would be threatened. What came out of the Compilation and Analysis of Legal Norms applicable to situations of internal displacement was a patchwork of various provisions drawn from several bodies of law, which demonstrates their considerable complementarities. However, despite the abundance of applicable norms, the protection is not complete. These provisions do not apply in all circumstances and some only apply to specific groups of persons. It is, therefore, difficult to determine in each case what applies when, and to whom.⁷

The Compilation and Analysis revealed also that while existing international law provides some protection for internally displaced persons, there are significant areas in which the law fails to provide an adequate basis for their protection and assistance.⁸ One example is the absence of a right to restitution of property lost (or compensation for its loss) as a consequence of displacement during armed conflict situations. Other gaps occur where a legal norm is not applicable in all circumstances. For example, because human rights law is usually binding on state actors only, internally displaced persons lack sufficient protection in situations of armed conflicts where violations are attributable to

⁵ E/CN.4/1996/52/Add. 2, para 7

⁶ Article 33 of the 1951 Convention Relating to the Status of Refugees.

⁷ Supra, note 1, p. 48.

⁸ E/CN.4/1996/52/Add.2, para 6.

non state actors. In addition, there are numerous areas where a general norm exists, but a corollary, more specific right relevant to the protection needs of internally displaced persons, has not been articulated. One example is the prohibition of inhuman return of internally displaced persons to situations of imminent danger. The Compilation found that the provisions of existing law are dispersed in a wide variety of international instruments which make them too diffused and unfocused to be effective in providing adequate protection and assistance for the internally displaced persons.⁹ It ultimately concluded that it is important to “restate general principles of protection in more specific detail” and address actual gaps in protection in a future international instrument on the protection of internally displaced persons.¹⁰

In response to the Compilation and Analysis and to remedy the deficiencies in existing law, the Commission on Human Rights and the General Assembly requested the Secretary-General to prepare an appropriate framework for the protection and assistance of the internally displaced persons.¹¹ This resulted in the elaboration of a set of principles that were finalised at an expert consultation in January 1998 and submitted to the Commission later that year as the Guiding Principles on Internal Displacement.¹² The Principles constitute the first international policy instrument to address the challenges of internal displacement of persons at the international level.

⁹ E/CN.4/1998/53/Add. 2, para 7.

¹⁰ E/CN.4/1996/52/Add.2, para 413.

¹¹ E/CN.4/1998/53/Add.2, para 8.

¹² Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights Resolution 1997/39, Addendum, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add. 2.

3.2 Legal Framework on IDPs

Unlike refugees, who, once they cross a recognized border, are protected by the Refugee Convention of 1951, there is no international legal instrument for the protection of internally displaced persons. There are only the Guiding Principles which constitute an innovative attempt to deal with the problem of internal displacement. The two instruments differ in their aims and in their nature. The 1951 Convention is concerned with rights which individuals acquire when they obtain refugee status, and seeks to achieve equality of treatment between them and the nationals of the country of asylum. The purpose of the Guiding Principles is not to create a legal status to which rights and obligations are attached. They are based upon a humanitarian approach rather than a legalistic one. The Refugee Convention is a legally binding instrument, whereas the other is a set of non-legally binding guidelines.¹³

When the Representative and his team of legal advisers began the process of developing the normative framework and the Guiding Principles, the possibility of drafting a treaty was not excluded. They, however, opted to prepare a non-binding document that would restate existing law in terms of the protection needed by the internally displaced persons. They concluded that in the light of the pressing need to address the tragic situation of internally displaced persons worldwide, drafting a treaty would take many years to negotiate and ratify. In addition to the urgency of the situation, there were other reasons why the Representative and his team decided against elaborating a treaty on internal

¹³ Report of the Representatives of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights Resolution 1997/39, Addendum, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2.

displacement. They were concerned that attempting to negotiate a treaty that draws from existing law, as the Guiding Principles do, would have given some states an opportunity to put into question some of the existing treaty provisions or to weaken customary law by expressing the opinion that some of its principles are no longer valid.¹⁴ Besides, they feared that the object and purpose of the treaty could be undermined should States take out reservations against the treaty.¹⁵ They thought also that it would be premature to attempt to create a treaty that combined areas of international human rights law with international humanitarian law in a single text. Finally, they believed that negotiating a new treaty was not absolutely necessary because existing treaties already implicitly provided rights to internally displaced persons.¹⁶

When the Representative began his work, it was far from clear how strongly and to what extent present international law protects IDPs. He knew from the beginning that international human rights law does not contain specific norms on IDPs but that most of its guarantees can be invoked by the displaced. He also knew that international humanitarian law applicable in times of armed conflict contains a few scattered provisions on the treatment of the displaced which, however, do not constitute a comprehensive legal regime for this group of persons. Finally, it was clear that international refugee law has a lot to say about persons in flight but only applies to those who, unlike internally displaced persons, have left their country of origin and crossed an international frontier. The study came to the conclusion that present international law

¹⁴ Supra note 15

¹⁵ Supra, note 1, p.124

¹⁶ Roberta Cohen, Exodus Within Borders: The Global Crisis of Internal Displacement, on www.unhcr.org (accessed on 08/10/2008).

contains sufficient protection for the specific needs of internally displaced persons in many areas, but that there are a number of limited gaps as well as certain grey areas where clarification was needed.¹⁷

The elaboration of the Guiding Principles was a collaborative and consultative process. Simon Bagshaw adds that the collaboration of a broad range of governmental, inter-governmental and non-governmental actors in the development of the Guiding Principles can lead to the elaboration of an instrument that may be broader in scope and more progressive in content. Furthermore, it can be more effective than a treaty in regulating the activities of states in the areas that it addresses, if reinforced by suitable measures and means of promoting and ensuring implementation.¹⁸ This assumption can be tested by reviewing the implementation of those Guiding Principles in countries where they have been adopted.

However, some governments are uneasy about the ways in which the Guiding Principles had been developed and are being used. In fact, when examining the drafting history of the Guiding Principles, it appears that it was mainly the Special Representative and his team of legal experts, and some NGOs that were the main actors in the process. The only states that really participated in the development of the Guiding Principles were Norway and Austria, which sponsored several meetings of legal experts.¹⁹ Certain developing countries, like Egypt, India and Syria, became nervous about the growing prominence given to the issue of internal displacement, especially since the formulation of the

¹⁷ www.brookings.edu (accessed on 19/09/2008).

¹⁸ *Supra*, note 1, p.17.

¹⁹ *Ibid.*, p. 71

Guiding Principles. They recalled that the Guiding Principles had not been negotiated on or agreed upon in any intergovernmental forum. In order to alleviate some state concerns, the Special Representative has held meetings with those governments which were uneasy about the ways in which the Guiding Principles had been developed and were being used.²⁰

3.2.1 United Nations Guiding Principles on Internal Displacement

According to the Representative, the purpose of the Guiding Principles is to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights laws and international humanitarian law. They restate the relevant principles applicable to the internally displaced, which are now widely spread out in existing instruments, clarify any grey areas that might exist, and address the gaps identified in the Compilation and Analysis.²¹ Whereas the application of the provisions identified in the Compilation depended on the nature of the situation encountered, the Guiding Principles seek to provide guidance at all times. They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.

²⁰ Supra, note 1, p.72.

²¹ E/CN.4/1998/53/Add.2, p. 2, para 9.

Section I (Principles 1-4) of the Principles sets forth “General Principles”, which establish that internally displaced persons are to enjoy the same freedoms as other persons in their country and to be free from discrimination. Section I, Principle 2, makes it clear that the Principles apply to state and non-state actors alike by providing that “the Principles shall be observed by all authorities, groups and persons irrespective of their legal status.”

Section II (Principles 5-9) addresses the issue of protection against displacement. Principle 6 provides that “Every human being shall have the right to be protected against being arbitrarily displaced.” Principle 7 sets forth the duties of “authorities” in undertaking a lawful displacement, including, among other things, that the “authorities undertaking such displacement shall ensure, to the greatest extent possible, that proper accommodation is provided to the displaced.”

Section III (Principles 10-23) concerns the provision of protection during displacement. The principles in this section attempt to “restate the applicable human rights” and then specify “what these rights mean in a situation of displacement.” Principle 15 for example, establishes the right of internally displaced persons to be protected against forcible return to any place where “their life, safety, liberty and/or health would be at risk” and, as such, is similar to the principle of non-refoulement contained in the 1951 Convention.²² The principle of non-refoulement served as a reference for internally displaced persons. In fact, it has been recognized that it is inhuman to send a person to a country where he or she will face torture, death or another serious human rights violations. However, as this

²² Article 33 of the 1951 Convention Relating to the Status of Refugees.

only applies to cross-border movements, a prohibition of inhuman return of internally displaced persons to dangerous areas within their own country needed to be articulated. Therefore, Principle 15 was established and it is in line with the spirit of the principle of non-refoulement. Like refugees, internally displaced persons should not be forced to return to places where their life or freedom would be threatened. Thus, this appears to be one area in which the Principles go beyond merely restating and reflecting international law and seek to create new law.²³ Principle 17 provides that “every human being has the right to respect of his or her family life”, which, according to the annotations to the Principles, “reflects the principles common to the international human rights and humanitarian law that the family as the fundamental unit of society is entitled to protection.” Principle 17 further provides that “to give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.”

Section IV (Principles 24-27) relates to the provision of humanitarian assistance to internally displaced persons. Principle 24 specifies that all humanitarian assistance shall be provided “impartially and without discrimination.” Principle 25 sets forth the duties of a state regarding humanitarian assistance. It begins by stating that the “primary duty” for providing humanitarian assistance to internally displaced persons “lies with national authorities.” It further provides that international humanitarian organizations have the “right to offer their services of assistance to the internally displaced and that such offers shall not be regarded as an “unfriendly act or an interference in a state’s internal affairs.”

²³ Schmidt, Patrick L, Process and Prospects for the U.N. Guiding Principles on Internal Displacement to become customary international law: a preliminary assessment, on <http://findarticles.com> (accessed on 02/05/2008).

Moreover, Principle 25 provides that a state's consent shall not be arbitrarily withheld, "particularly when authorities concerned are unable or unwilling to provide the required assistance."

Finally, section V (Principles 28-30) addresses the issues of return, resettlement, and reintegration in the post-conflict or post-displacement phase. Principle 28 provides that authorities have the primary duty to establish conditions and to provide the means to allow internally displaced persons "to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle in another part of the country."

The recent internal displacement in Kenya is an interesting case to illustrate the importance of this provision. On May 5, 2008, the Kenyan government launched Operation "Rudi Nyumbani" (Return Home), aimed at returning thousands of men, women, and children to their homes, which they fled in the violent aftermath of the December 2007 elections. However, on May 8, 2008, the provincial commissioner for Rift Valley province announced that all displaced persons camps in the province would be closed within three weeks. Since the announcement, there have been mounting reports of forced returns and inadequate services once people reach their homes.²⁴ Many displaced persons have been driven out of camps without food or shelter and many have gone back to the camps or simply set up informal camps closer to their home areas because their homes are still not safe. As Georgette Gagnon, Africa Director at Human Rights Watch, states that there is no voluntary return program with a deadline, internally

²⁴ www.hrw.org (accessed on 11/10/2008).

displaced people have the right to return voluntarily, when they feel safe, not when it suits the government.²⁵

As Catherine Phuong states, the drafters of the Guiding Principles took an ambitious approach to the issue of protection for the internally displaced by trying to cover all of its aspects. Protection for internally displaced persons has been interpreted as involving protection from displacement, during displacement and after displacement, which is very broad by comparison with what is usually meant by refugee protection. The Guiding Principles would apply at all times and to all internally displaced. They provide guidance not only to states but also to all authorities, groups, which shows that the drafters sought the widest possible scope of observance for the instrument.²⁶ The drafters were also not supposed to go beyond what is contained in existing international law and seek to create new law.

Nevertheless, in some cases, the Guiding Principles provide for what may qualify as the counterpart of non-refoulement. No provision in international law prohibits the return of internally displaced persons to dangerous areas, as the prohibition of non-refoulement currently only applies to cross-border movements, but as such a prohibition was included in the Guiding Principles.²⁷ Principle 15 (d) prohibits the forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk. The provisions on humanitarian assistance may also be considered to go beyond those contained in the Geneva Conventions which are limited to humanitarian access.

²⁵ www.hrw.org (accessed on 11/10/2008).

²⁶ *Supra*, note 1, p. 58.

²⁷ *Supra*, note 1, p. 61.

Articles 59 to 61 of the Fourth Geneva Convention refer to occupied territories only. Principle 25(2) of the Guiding Principles emphasizes that “consent shall not be arbitrarily withheld”. Another example of a Guiding Principle that may go beyond the existing legal position is the right of restitution of property. No explicit provision guaranteeing the right of restitution of property has been formulated in the main human rights instruments namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights.²⁸

The Guiding Principles represent the first international document of its kind, specifically tailored to address and meet the needs of internally displaced persons. However, even though they are based on existing international human rights law and humanitarian law, they themselves do not constitute a binding instrument. States, as well as other actors, or even international organisations, are not legally bound to respect them and cannot be held liable for violating them.²⁹

3.2.2 Legal Status of the Guiding Principles on Internal Displacement

The legal status of the Guiding Principles is confusing. On the one hand, it is clearly a non-binding instrument to which state consent to be bound has never been expressed. On the other hand, the Guiding Principles are a restatement of binding norms contained in

²⁸ Supra, note 1, p.64.

²⁹ Supra, note 1, p. 66.

existing international treaties and/or customary international law.³⁰ Patrick L. Schmidt states that even though the Principles are not binding law, they still may exert influence on state behaviour as so called “soft law”.

“Soft law”, a term purportedly coined by Lord McNair, refers to instruments and norms that do not give rise to binding obligations but which have certain legal effects or significance nonetheless.³¹ Similarly, Baxter refers to soft law instruments as those which “deliberately do not create legal obligations but which are intended to create pressures and to influence the conduct of states and to set the development of international law in new courses.”³²

With regard to the promotion and protection of human rights, the majority of human rights instruments adopted under the auspices of the United Nations actually fall within the category of soft law instruments. Coming under a variety of titles, such as declarations, standard minimum rules, guidelines, codes of conduct and basic principles, such instruments are, for the most part, adopted or endorsed by a resolution of a UN organ, generally, though not exclusively, the General Assembly and as such constitute non-binding “recommendations”. Examples of soft human rights are numerous, one of them is the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) (1948).³³ According to Bagshaw, non-binding instruments are often adopted as a precursor to the conclusion of formal treaties. The soft

³⁰ Supra, note 1, p. 73.

³¹ Supra, note 33, p. 99.

³² Baxter, *International Law in Her Infinite Variety*, 29 ICLQ (1980) in Simon Bagshaw, supra, note 33, p.99.

³³ Supra, note 33, p. 101.

law stage sets out general principles while subsequent hard law stage defines these rights and the obligations inherent in order to realize them, as well their limitations and restrictions, in more specific detail. The most obvious example of this is the adoption of the Universal Declaration of Human Rights in 1948, followed by the adoption and opening for signature and ratification of the two International Covenants in 1966.³⁴

Some authors advance several reasons to explain the choice of soft law over hard law. Dinah Shelton observes that the emergence of soft law may be accounted for by the fact that it can generally be adopted more rapidly because it is non-binding, that is to say that it may substitute for hard law “when no agreement on hard law can be achieved or when recourse to hard law form would be ineffective (less progressive norms or less likelihood they would be acceptable in the national political arena)”. Furthermore, soft-law making allows for more active participation of non-state actors, permitting them to play a role that is possible only rarely in traditional law-making processes.³⁵ Abbot, Kenneth W, Sindal and Duncan argue that soft law offers many of the advantages of hard law, avoids some of the costs of hard law, and has certain independent advantages of its own. Importantly, because one or more of the elements of legalization can be relaxed, softer legalization is often easier to achieve than hard legalization. This is especially true when the actors are states that are jealous of their autonomy and when the issues at hand challenge sovereignty.³⁶

³⁴ Supra, note 33, p.101.

³⁵ Shelton, Law, Non-Law and the Problem of “Soft Law” in Simon Bagshaw, supra, note 33, p. 102.

³⁶ www.accessmylibrary.com (accessed on 19/09/2008).

However, some authors are less enthusiastic about soft law. For example Arangio-Ruiz has condemned states for taking advantage of the concept, for using it “for their own public opinion and ‘international’ public opinion and for other states too, in order to make peoples and states feel that certain problems are being taken care of at an international level while they are in fact not being taken care of at all”. While conceding that in certain instances the adoption of soft law may represent a first step towards the possible adoption, “through further adequate steps”, of hard law, this does not, however, “justify recourse to soft law devices on the part of states in order to cover up unwillingness to achieve more substantial law-making results”³⁷ Danilenko cautions against the use of the soft law approach lest one call into question the foundations of international law: “By undermining the established notion of law as a body of rules having a special obligatory quality deriving from legal validity, the soft law approach presents a fundamental challenge to the entire international legal structure. There is a serious danger that the normative confusion and uncertainty resulting from definitional manipulations will only erode the concept of legal obligation and weaken the authority of law within the international community.”³⁸

According to Kälin, soft law is recommendations that rest on the consensus of states and thereby assume some authority that may be taken into account in legal proceedings, but whose breach does not constitute a violation of international law in the strict sense, and thus does not entail state responsibility. He states that unlike declarations, resolutions or recommendations by international organizations, the Guiding Principles have not been

³⁷ Arangio-Ruiz, Comments in Cassese and Weiler, *id.* at 82 in Simon Bagshaw, *supra*, note 33, p. 100.

³⁸ G.M, Danilenko, Law-Making in the International Community 20-21 (1993) in Simon Bagshaw, *supra*, note 33, p. 100.

negotiated by states, thus, do not constitute typical soft law. They are even softer than soft law because they have been written by a group of well-intentioned legal experts who simply do not have the power to create law.³⁹

However, despite taking the form of a soft law document, the Guiding Principles have been surprisingly influential in shaping how countries and international organizations regard and treat internally displaced persons. Experience has shown that some governments and domestic courts are ready to use the Guiding Principles in a legal sense insofar as they incorporate them into domestic law or policies.⁴⁰

As Hannah Entwisle rightly states, if the overall objective is to ensure greater protection for internally displaced persons, we are left with the question as to whether formally binding law is essential. Does it matter if the Guiding Principles ever reach a state of “law”?⁴¹

According to Hannah Entwisle, a legal positivist, who equates law with formal bindingness, will contend that a norm must be legal to ensure compliance. However, various legal positivists acknowledge that a norm’s bindingness does not predict compliance. For example, whereas Ratner and Packer give examples of both hard and

³⁹ www.brookings.edu (accessed on 19/09/2008).

⁴⁰ Ibid.

⁴¹ Hannah Entwisle, “Tracing Cascades: The Normative Development of the UN Guiding Principles On Internal Displacement”, 19 Georgetown Immigration Law Journal 369 (2005).

soft law having the same persuasive value, Abbott and Sindal note that soft law may be more effective than hard law in certain contexts.⁴²

Entwisle adds that from a transnational legal process perspective, Koh argues that domestic internalization of the norms into binding law should be the ultimate objective. From this perspective, the creation of a legally binding norm is both a symbol that the norm has been fully internalized by the State, and creates a right that individuals could seek to enforce in court. The fact that a norm is not binding internationally may make the internalization process of the norm more difficult. For example, a state may feel justified in not responding to the norms in a pinch, which is particularly relevant within the context of internal armed conflict.⁴³

As Walter Kälin states, whether or not a normative framework for the treatment of internally displaced persons is or becomes a reality, is much more dependent on the actual acceptance and use of the Guiding Principles than on their legal form.⁴⁴

3.2.3 Rules of Customary International Law

After treaties, the Statute of the International Court of Justice lists the second source of international law as “international custom, as evidence of a general practice accepted as

⁴² Hannah Entwisle, “Tracing Cascades: The Normative development of the UN Guiding Principles On Internal Displacement”, 19 Georgetown Immigration Law Journal 369 (2005).

⁴³ Ibid.

⁴⁴ www.brookings.edu (accessed on 19/09/2008).

law”.⁴⁵ Customary international law is comprised of two essential elements: the objective element of the general practice of states, and the subjective element of “accepted as law” meaning that states engage in a practice out of a sense of legal obligations, or what is known as *opinio juris*.

The principal source of evidence of a state’s practice can be found in published material, including reports of actions taken by the state, statements by the state’s representative at various fora, state laws and judicial decisions.⁴⁶

State practice to date regarding the Guiding Principles on Internal Displacement can be demonstrated by the state acts of some countries such as Angola, Burundi, Uganda, Liberia, in Africa; India and Sri Lanka in Asia; Azerbaijan, Bosnia and Herzegovina, Georgia, Russia, Serbia and Turkey in Europe; and Colombia and Peru in Americas, regarding national law and policy, as well as judicial pronouncements based on the Guiding Principles.⁴⁷ It can also be demonstrated by statements in support of the Principles made by various governments in the United Nations.⁴⁸ However, this is not yet enough evidence to conclude that the Principles have become customary international law. Besides, it has been a short time since the Principles were promulgated in 1998 to assess their status as customary international law. The process for creating customary international can be very long particularly if acts, to be considered as state practice, must

⁴⁵ Statute of International Court of Justice, art.38.

⁴⁶ *Supra*, note 15

⁴⁷ *Ibid*.

⁴⁸ Simon Bagshaw, Developing a Normative Framework for the Protection of Internally Displaced Persons, (Transnational Publishers, N.Y, 2005), p. 149.

be taken by a significant number of states and not rejected by a significant number of states. In addition, the second custom requirement which is *opinio juris* is not met: States acts must occur out of sense of obligation. However, even though some countries have accepted the Principles as authoritative in their national legislation or national court decisions, the Principles are still guidelines of conduct on how to assist internally displaced persons and not binding norms of law. They do not represent a legal obligation. The future acts of states, particularly with higher concentration of internally displaced persons, regarding the Principles, will be important for the development of the Principles as customary international law. Currently, there are no rules of customary international law addressing the plight of IDPs. What we have are rules of customary international law dealing with issues of human rights. Until and unless there is wide acceptance and implementation of the Guiding Principles, there will be no rules of customary international law. If the Guiding Principles are accepted and implemented, they may mature in rules of customary international law.

3.2.4 General Principles

Article 38(1)(c) of the Statute of the International Court of Justice lists “the general principles of law recognized by civilized nations” as a source of law to be applied by the Court.⁴⁹ The function of the general principles is to assist when treaties and the customary international law fail to offer a needed international rule. They can be used to fill the gap.

⁴⁹Statute of the International Court of Justice,art.38(1)(c)

There are no general principles of law applicable to IDPs as IDPs have not been regarded as the concern of international community, they are the concern of a territorial state. If there is any principle applicable, those are principles peculiar to a territorial state as each state has to come up with its own principles for addressing IDPs within its territory.

3.2.5 Judicial Pronouncements

Judicial decisions are another source of international law.⁵⁰ However, there are no judicial decisions referring to the Guiding Principles on Internal Displacement from international tribunals, such as the International Court of Justice, the European Court of Human Rights. Judicial decisions are found nevertheless at the national level.

In 2000, Colombia's highest Court declared that the inhumane living conditions of the country's IDPs were unconstitutional and ordered the authorities to take action.⁵¹

Colombia's internal armed conflict is the longest running in Latin America, a complex conflict which has been fought primarily between left-wing guerillas and Colombian armed forces and right-wing paramilitaries but also involving drug traffickers, landowners and other legal and illegal interests. Displacement has been endemic feature of the 40-year-long conflict. The Colombian government estimates that there are 1.8

⁵⁰ Statute of the International Court of Justice, art.38(1)(d).

⁵¹ www.reliefweb.int (accessed on 11/10/2008).

million IDPs but CODHES, the country's leading NGO advocate for IDPs argues that over 3 million people of a total of some 44 million are internally displaced.⁵²

Since the adoption of the 1991 Constitution, Colombia has developed a large body of jurisprudence with regard to human rights. Among the constitutional mechanisms to ensure the effective exercise of human rights is "accion de tutela", a petition procedure which allows individuals to seek protection of fundamental rights in the courts. A tutela is a complaint that any citizen can bring before any judge in order to seek an immediate judicial injunction against actions or omissions of any public authority that they claim violates their constitutional fundamental rights. Courts must hand down a ruling within ten days of receiving a petition.⁵³

Since 1997 the Court has addressed individual tutela cases submitted by IDPs who invoke specific fundamental rights, including rights to non-discrimination, life, access to health and education services, minimum income, housing and freedom of movement. From its first decisions the Court acknowledged the existence of a humanitarian crisis. As more and more IDPs took up cases, by 2003 the Court had dossiers submitted by over a thousand IDP families.⁵⁴

The Court delivered judgement T-025/04 in January 2004 after reviewing 108 cases. It formally declared that IDPs' inhumane living conditions needed to be addressed by all of the competent authorities. It noted that "due to action or omission by the authorities in

⁵² www.reliefweb.int (accessed on 11/10/2008).

⁵³ Ibid.

⁵⁴ Ibid.

providing displaced population with optimum and effective protection, thousands of people suffer multiple and continuous violations of their human rights.” The Court took into account that the displaced population included a high number of persons to whom the constitution affords special protection, elderly persons, female heads of household, pregnant women, children, members of indigenous and Afro-Colombian communities and persons with disabilities. The Court noted that the violations of their rights were not attributable to the actions or omissions of a single authority but were due to deep-seated structural failures. The Court may order the adoption of remedies that benefit not only plaintiffs in an individual tutela action but also other persons who share the same situation, in this case, the entire displaced population in the country. The Court issued orders for remedying the budgetary and administrative capacity shortfalls and established minimum mandatory levels of protection of IDPs’ rights that were to be secured in an effective and timely fashion. In August 2005, it further declared that actions taken since the ruling were insufficient and issued additional orders for correcting the response.⁵⁵

Although the Court’s unprecedented action was justified primarily by the need to enforce constitutional rights, the members of the Court also sought justification from international law. The Colombian Constitution provides that fundamental rights must be interpreted in the light of international human rights. The Court relied heavily on the Guiding Principles on Internal Displacement and used them as interpretative guidelines to determine the exact scope of the rights of IDPs and the extent of the state’s obligations to promote them.⁵⁶

⁵⁵ www.reliefweb.int (accessed on 11/10/2008).

⁵⁶ Ibid.

The government initially conveyed certain misgivings but has now explicitly committed itself to abiding by the Court's decision and to ensuring the entire apparatus of the Colombian state complies with its orders. Funding for IDPs programmes has been significantly increased. Permanent evaluation mechanisms are being put in place, including a set of targeted result indicators to measure progress in realizing IDPs rights.⁵⁷

Furthermore, the Court has recently drawn attention to delays in the adoption of the measures required to overcome the unconstitutional state of affairs. The Colombian government has recently filed a new report, as required by the Court, indicating how it plans to address it. The Court has had to opt between imposing sanctions, fines or imprisonment of negligent officials, or continuing to order gradual advances towards fulfillment of IDPs' rights. The Court has chosen the latter and has made substantial progress. There are those who have asked the Court to declare public officials in contempt of Court. Not only is its credibility at stake but so too are the prospects of Colombia's IDPs finally achieving their constitutional rights.⁵⁸

⁵⁷ www.reliefweb.int (accessed on 11/10/2008).

⁵⁸ Ibid.

3.3 Recommendations and Resolutions of International Fora

Many of the statements by various governments in connection with the Principles occurred within the context of the United Nations. The Commission on Human Rights was the first UN body to consider the Guiding Principles in 1998.

The developments in the General Assembly are particularly significant for the acceptance of the Principles given that the composition of the General Assembly reflect the entire membership of the United Nations. In 1998 Resolution 53/128 on The Rights of the Child, the General Assembly urged governments to pay particular attention to the situation of refugees and internally displaced children.⁵⁹ At the same session, the General Assembly adopted Resolution 53/125 on the Office of the UN High Commissioner for Refugees in which it reaffirmed its support for the role of UNHCR in providing humanitarian assistance and protection to internally displaced persons subject to certain criteria and noted the relevance of the Guiding Principles.⁶⁰ The following year, gain in the context of the resolutions on UNHCR, the General Assembly reiterated its support for the role of the Office in providing assistance and protection to internally displaced persons and underlined the continuing relevance of the Guiding Principles.⁶¹ Two years later, the General Assembly noted with appreciation that UN agencies, regional and non-

⁵⁹A/RES/53/128 (1998).

⁶⁰A/RES/53/125 (1998).

⁶¹A/RES/ 54/146 (1999).

governmental organizations were making use of the Principles in their work and encouraged the further dissemination and application of the Principles.⁶²

Views on the Principles expressed within and by the Security Council are also significant given its primary position in the hierarchy of UN political bodies. In its Resolution on the ongoing violence and insecurity in Burundi marked by increased attacks by armed groups on the civilian population in and around the capital, the Security Council noted that the United Nations agencies, regional and non-governmental organizations, in cooperation with host governments, are making use of the Guiding Principles on Internal Displacement, *inter alia*, in Africa.⁶³

Although all these resolutions are supportive of the Principles, they don't declare that the Principles are international law. Rather, they appreciate the use of the Principles and encourage the further dissemination and application of them.

Individual agencies have also undertaken activities towards disseminating and promoting the Principles. To facilitate their wide dissemination, the Office for the Coordination of Humanitarian Affairs (OCHA) published the Principles in booklet form in English, French, Spanish and Portuguese. It has also posted electronic versions of the Principles in these and other language versions on the Internet. UN High Commissioner for Refugees' (UNHCR) Division of International Protection disseminated the Principles to all UNHCR field offices. The UN Children's Fund (UNICEF) disseminated the Principles to the field

⁶² A/RES/ 54/167 (2000).

⁶³ S/RES/1286 (2000).

and includes them in all its publications on internally displaced persons. Similar efforts have been undertaken by International Organization for Migration (IOM) and International Committee of the Red Cross (ICRC). The Office of the High Commissioner for Human Rights (OHCHR) also shared the Principles with all staff, encouraging their use, especially by field staff.⁶⁴ In this regard, it will be useful to assess the results on the ground of that campaign of disseminating and promoting the Principles.

3.4 Legal Obligations Imposed on States to Protect Internally Displaced Persons

Internally displaced persons are citizens or residents of their own country. They retain all the rights and freedoms under domestic law that all other citizens enjoy. They must seek aid from their own state. Often, however, it is the state itself that is the cause of the internal displacement, and, even when it is not the cause, it may be unwilling or unable to protect the internally displaced or provide them with meaningful assistance. The international community wishing to address the plight of IDPs in a state which is unwilling or unable to protect its internally displaced persons confronts the obstacle of state sovereignty.

3.4.1 State sovereignty and internal displacement

State sovereignty has repeatedly been offered as the reason that internally displaced people have remained beyond the reach of international aid. The corollary of sovereignty

⁶⁴Supra, note 33, p. 151.

is non-intervention in the internal affairs of a state. The UN Charter says “Nothing in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State...”⁶⁵ Under the UN Charter, only self-defence⁶⁶ or grave threats to international peace and security can justify a breach of national sovereignty.⁶⁷ The principle of non-intervention was by no means universally observed in the Cold War period. When intervention did take place, the justifications invoked related primarily to article 51 (the self-defence clause) of the UN Charter. Even in cases of massive violations of human rights leading to enormous refugee flows, including the Indian invasion of East Pakistan in 1971, the Vietnamese invasion of Cambodia in 1978 and the Tanzanian invasion of Uganda in 1979, the intervening states preferred to cite self-defence as the basis of their action.⁶⁸

It was not until the end of the Cold War that the international community began in a concerted way to try to assist and protect people uprooted and at risk in their own countries. Internally displaced persons, those forced from their homes by civil war, generalized violence and human rights violations who remain within their countries, became a leading entry point for international humanitarian action. As former UN Secretary-General Javier Perez de Cuellar observed in 1991, “We are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defence

⁶⁵ Article 2 (7) of the UN Charter.

⁶⁶ Article 51 of the UN Charter.

⁶⁷ Chapter VII of the UN Charter.

⁶⁸ Office for the Coordination of Humanitarian Affairs, Internal Displacement Unit, No refuge: The Challenge of Internal Displacement on www.migrationpolicy.org (accessed on 08/10/2008).

of the oppressed in the name of morality should prevail over frontiers and legal documents.”⁶⁹

However, where international intervention is needed to protect and assist internally displaced persons in a specific situation, one inevitably asks on what legal basis this intervention can be undertaken. There have been some arguments that a right to use force for humanitarian purposes has emerged in customary international law. Recent years have witnessed a growing tolerance for various forms of humanitarian intervention. In the post-Cold War era, states have intervened to protect civilians in places such as northern Iraq, Somalia, Bosnia and Herzegovina and Kosovo. Despite increasing state practice, humanitarian intervention has not yet been clearly established as a right under international law.⁷⁰ The UN Charter did not resolve the dilemma, calling as it did for both the promotion of human rights internationally⁷¹ and respect for non-interference in internal affairs⁷².

The principle of sovereignty has traditionally been used to protect states against external interference by more powerful states, but it is being renegotiated. The principle of non-intervention has been modified by the development of international human rights law since the Second World War.⁷³ For decades, human rights advocates had been championing the view that the rights of people transcend frontiers and that the international community must hold governments to account when they fail to meet their

⁶⁹ www.brookings.edu (accessed on 15/09/2008).

⁷⁰ *Supra*, note 1, p. 220.

⁷¹ Articles 55 and 56 of the UN Charter.

⁷² Article 2(7) of the UN Charter.

⁷³ *Supra*, note 1, p. 213.

obligations. Indeed, since the UN's adoption of the Universal Declaration of Human Rights in 1948 and subsequent human rights treaties, an evolution in thinking began to take place from a strictly state-centered system in which sovereignty was absolute to one in which the behaviour of states toward their own citizens became a matter of international concern and scrutiny.⁷⁴

As IDPs moved to the center stage in international debates about how to protect persons caught up in internal conflicts, the Representative of the Secretary-General, Dr. Francis Deng, early on in his appointment, had to tackle the issue of sovereignty, which is often the main challenge to dealing with problems of internal displacement. He developed the concept of sovereignty as responsibility which recast sovereignty as a form of state responsibility to one's displaced population. If a state does not want international involvement with its IDPs, it should provide for the security and well being of its population. It stipulates that governments have the principal responsibility to provide life-supporting protection and assistance for their own citizens. But if governments are unable to fulfil their responsibilities to their citizens, they are expected to request and accept outside offers to aid. If they refuse or deliberately obstruct access and put large numbers at risk, the international community has a right and even a responsibility to assert its concern. International involvement in such cases can range from diplomatic dialogue to negotiation of access, to political pressure, to sanctions or in exceptional cases, to military intervention.⁷⁵ Sovereignty must mean accountability to one's population and

⁷⁴ www.brookings.edu (accessed on 15/09/2008).

⁷⁵ Ibid.

also to the international community in the form of compliance with international human rights and humanitarian agreements.

The Guiding Principles on Internal Displacement have as their foundation the concept of sovereignty as responsibility. They assert that primary responsibility for the displaced rests with their governments, but that the international community has an important role to play when governments fail to discharge these responsibilities.⁷⁶

The discussion on sovereignty as responsibility has been taken a step further by the International Commission on Intervention and State Sovereignty (ICISS). Responding to the challenge of intervention and state sovereignty from the UN Secretary-General, Kofi Annan, Canada's Prime Minister Jean Chrétien announced the establishment of the International Commission on Intervention and State Sovereignty during the United Nations Millennium Summit in September 2000.⁷⁷ The Commission's mandate was to promote a comprehensive debate on the relationship between intervention and sovereignty, with a view to fostering global political consensus on how to move from polemics towards action within the international system. The final Report of the Commission, "The Responsibility to Protect", is the culmination of twelve months of intensive research, world-wide consultations and deliberations. It pulled together the work of the ICISS in a concise document encapsulating the Commissioners' views on intervention and state sovereignty and their recommendations for practical action.⁷⁸

⁷⁶ Principle 25 of the Guiding Principles on Internal Displacement.

⁷⁷ www.iciss.ca (accessed on 11/10/2008).

⁷⁸ Ibid.

The World Summit Outcome document formally endorsed the responsibility to protect in 2005. The document asserts that states are expected first and foremost to protect their own populations, but if they are unwilling or unable to do so, and their citizens are subject to genocide, ethnic cleansing, war crimes and crimes against humanity, then responsibility shifts to the international community, which is expected to take collective action.⁷⁹

In fact, in 2004, the UN Secretary-General High-level Panel on Threats, Challenges and Change affirmed that “Whatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of state sovereignty, today it clearly carries with it the obligation of a state to protect the welfare of its own people and meet its obligations to the wider international community. But history teaches us all too clearly that it cannot be assumed that every state will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbours. And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community...”⁸⁰

The “responsibility to protect” concept reflects the view that when large numbers of people are in desperate need of the basic necessities of life, their situation goes beyond being an internal matter and becomes one in which the international community must play a role. There is, however, no international consensus on how to apply the responsibility to protect. In fact, the responsibility to protect is often mistakenly equated

⁷⁹ www.brookings.edu (accessed on 15/09/2008).

⁸⁰ Ibid.

with military intervention without sufficient thought being given to the diplomatic, humanitarian, political and economic measures that need to precede more robust action.⁸¹ In cases where military action is needed, there is as yet no agreed upon criteria for when to use force in humanitarian or human rights emergencies, nor does a ready UN capacity for enforcement exist. Moreover, the World Summit Outcome document doesn't indicate what road to take if the Security Council fails to act. In the case of Darfur, many sub-Saharan African governments strongly defended the responsibility to protect concept but international divisions in the Security Council have made strong collective action on Darfur difficult to achieve. Sudan is often presented as the responsibility to protect worst "test case", with governments like Myanmar and Zimbabwe following closely behind.⁸²

However, as Catherine Phuong states, the concept of responsibility to protect may appear less threatening than that of sovereignty as responsibility to the extent that, instead of focusing on the possibility of forfeiture of sovereignty, it introduces the idea of residual responsibility to protect which would lie with the broader community of states. She adds that more emphasis could have been put on the fact that to provide protection often requires the capacity and willingness to use force against those who commit abuses against civilians, with all the risks associated with such action.⁸³

Nonetheless, concepts of sovereignty as responsibility and the responsibility to protect remain far ahead of international willingness and capacity to enforce them. Assuring

⁸¹ www.brookings.edu (accessed on 15/09/2008).

⁸² Ibid.

⁸³ Supra, note 1, p. 219.

action by the international community to assist and protect civilians inside countries and hold their governments to account will remain a major challenge for the twenty-first century.⁸⁴

However, a growing number of governments like Turkey, Azerbaijan, Georgia, Uganda, Ivory Coast, Colombia, Nepal and others are now ready to cooperate with the international community in addressing conflict and displacement in their countries. In fact, most countries today allow some form of access to their displaced populations, and some even welcome international engagement, including peacekeepers and humanitarian workers.⁸⁵

Although the Guiding Principles currently do not represent binding international law, they unquestionably represent an extremely relevant and powerful tool in shaping the political and legal debate on how to assist the millions of internally displaced persons in the world. Local, regional and international organizations are using the Principles as a basis for addressing the problems of the internally displaced.

The next chapter discusses the role played by regional organizations, particularly African sub-regional organizations, in the promotion and application of the Guiding Principles on Internal Displacement.

⁸⁴ www.brookings.edu (accessed on 15/09/2008).

⁸⁵ *Ibid.*

CHAPTER FOUR:

AFRICAN REGIONAL INITIATIVES ON PROTECTION OF INTERNALLY DISPLACED PERSONS

4.1 Introduction

The burden of addressing situations of internal displacement can not depend only on international organizations, regional bodies are being expected to ensure that adequate protection and assistance are provided. Walter Kalin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, emphasized the value of a regional approach, pointing out that “Regional cooperation enables States to increase their capacity to run reliable early warning mechanisms and disaster prevention and mitigation systems.” It can also “channel the lessons learned by countries coping with internal displacement into the creation of sound policy at the national and regional levels.”¹ Regional organizations are now playing an increasingly important role in the promotion and application of the Guiding Principles on Internal Displacement.

In the Americas, the Representative of the Secretary-General shared the Principles with the Inter-American Commission on Human Rights of the Organization of American States (OAS) and its rapporteur on internally displaced persons. In June 2004, the OAS General Assembly adopted a resolution that recognized that the protection of internally

¹ www.brookings.edu, accessed on 16/06/2008.

displaced persons has been reinforced by the identification, reaffirmation and consolidation and specific standards, in particular the Guiding Principles. Noting that a number of states in the hemisphere are using the Guiding Principles, the General Assembly urged member states to consider the Guiding Principles when designing public policy with regard to internal displacement.²

In Europe, the Organization for Security and Cooperation in Europe (OSCE) has recognized the Principles as a useful framework in addressing internal displacement. The Parliamentary Assembly of the Council of Europe recommended that the Committee Ministers urged its member states concerned, in particular, Turkey, Azerbaijan, Serbia and Montenegro, Bosnia and Herzegovina, the Russian Federation, Georgia, Cyprus, Armenia, Croatia, Moldova and the “ former Yugoslav Republic of Macedonia” to review their legislation with a view to bringing it in line with the Guiding Principles on Internal Displacement, to ensure that the legislation in force relating to displaced population is fully implemented, in particular at local level. It recommended also to systematically use the Guiding Principles as a basis for their present and future policies and programmes in support of internally displaced persons.³

In Asia, a regional conference on internal displacement was held in Bangkok, February 22-24 /2000, at the invitation of the Representative of the U N Secretary-General on Internally Displaced persons, Francis M. Deng. Participants came from 16 Asian and other countries included representatives of national human rights commissions, academic

² AG/RES/2055 (XXXXIV-O/04).

³ Parliamentary Assembly Recommendation 1631 (2003).

and research institutions, local, regional and international non-governmental organizations, media and international organizations. Participants found that the two forms of internal displacement of critical concern in Asia are conflict-induced displacement and development-induced displacement. The Guiding Principles on Internal displacement were considered applicable to both kinds of displacement and to have clear validity in the Asian context. Conference participants welcomed the Guiding Principles, noted the positive contribution they could make in promoting protection and assistance, and urged their observance by all concerned parties, governments, insurgent groups, humanitarian and development organizations, financial institutions, multinational corporations and NGOs. In future, additional guidelines might be needed with greater specificity to land issues and compensation. Since international law was not specific on these points, the Guiding Principles did not cover them in depth, but the Principles constituted a valuable point of departure for the further development of the law in this regard.⁴

At the African level, in an effort to better address the problem, the First Regional Conference on Internal Displacement in West Africa was convened in Abuja, Nigeria from 26-28 April 2006. West Africa has been heavily affected by displacement. Internal conflicts based on ethnic tensions and rivalries, political instability, disputes over the control of natural resources, natural disasters, poverty, food insecurity and the imperatives of development have all resulted in significant population displacement both within and between countries.⁵ The extent and complexity of internal displacement in

⁴ www.brookings.edu (accessed on 11/10/2008).

⁵ Ibid.

West Africa provided the impetus for the First Regional Conference on Internal Displacement in West Africa. Participants noted the chronic lack of comprehensive and reliable data. Information on the number and location of the displaced and research on the causes of displacement, the risks and vulnerabilities faced by the displaced and their specific protection needs are vital for devising response strategies. However, in West Africa such data either does not exist or is collected by diverse groups, often with differing priorities, who produce conflicting information.⁶ Further challenges that were identified included, namely, the lack of institutional capacity and adequate resources at the national level, a lack of coordination among stakeholders which often led to duplication of efforts, insufficient inclusion of IDPs themselves in decision making, and the need to address root causes and find durable solutions.⁷ Among the recommendations made by the participants were the wider dissemination of the Guiding Principles on Internal Displacement within the Economic Community of West African States (ECOWAS) sub-region and formulation of national laws derived from them, inter-regional dialogue on internal displacement, particularly among national human rights institutions.⁸

In September 2003, ministers of the Inter-Governmental Authority on Development (IGAD), representing Djibouti, Eritrea, Ethiopia, Kenya, Somalia, the Sudan and Uganda adopted the Khartoum Declaration on internally displaced persons, which took note of the Guiding Principles as a useful tool for developing and evaluating appropriate national policies and legislation on internal displacement and noting also that the Principles

⁶ www.brookings.edu (accessed on 11/10/2008).

⁷ Ibid.

⁸ Ibid.

compile the existing international law related to internal displacement.⁹ In the Khartoum Declaration, member states of IGAD agree, among others, to cooperate in encouraging the development of comprehensive national policies on internal displacement, pledge and urge all concerned actors to provide humanitarian access to internally displaced persons for humanitarian organizations and to protect the safety and security of humanitarian workers. They also urge all authorities in the IGAD region to continue to ensure the full participation of all segments of the displaced populations, in particular women and children, in decision-making on issues which affect their rights and welfare, including voluntary return, reintegration, local integration, resettlement and peace building programmes.¹⁰

Some 2.9 million of IDPs in Africa are found in countries of the Southern African Development Community. The highest numbers are in the Democratic Republic of the Congo and Zimbabwe, where IDPs are in critical need of humanitarian assistance and protection. In an important step towards addressing the humanitarian crisis, the first seminar on internal displacement in the Southern African Development Community (SADC) region was held in Gaborone, Botswana on 24-26 August 2005 to examine the phenomenon of internal displacement in the region and discuss ways to improve national, regional and international responses. The meeting was hosted by the Government of Botswana and co-sponsored by the Brookings Institution-University of Bern Project on Internal Displacement, the Representative of the U N Secretary-General on the Human Rights of Internally Displaced Persons and the United Nations High Commissioner for

⁹ www.brooking.edu (accessed on 11/10/2008).

¹⁰ Khartoum Declaration on Internally Displaced Persons In the IGAD Sub-Region (2003), on www.brooking.edu (accessed on 11/10/2008).

Refugees (UNHCR).¹¹ Among the recommendations made by the seminar to SADC governments were the development of national laws and policies on internal displacement and the promotion and dissemination of the Guiding Principles on Internal Displacement. The seminar also called upon SADC and other African regional organizations to appoint focal points on internal displacement, promote wide dissemination and use of the Guiding Principles on Internal Displacement, develop regional approaches to the problem, exchange best practices, and support the capacity of African institutions to research and participate in decision-making forums on displacement issues.¹²

The issue of displacement in armed conflict is particularly important in Africa. Nearly 13 million people were currently internally displaced within 19 countries as a result of conflict alone. This means that about half of the displaced of the world live on the African continent. This figure did not comprise those displaced by natural disasters. Many governments are facing huge challenges in trying to find appropriate solutions to the plight and the suffering of the displaced, particularly the vulnerable groups among their populations.¹³

This research focuses on African major developments on internal displacement given that Africa has taken the lead. Africa is moving from mere declarations to binding treaty law. The Great Lakes Protocol on the Protection and Assistance to Internally Displaced

¹¹ www.brookings.edu (accessed on 16/06/2008).

¹² Ibid.

¹³ www.africafiles.org (accessed on 15/09/08).

Persons has been adopted and the African Union is in the process of drafting a binding instrument on internal displacement.

4.2 The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons

About half of the internally displaced persons of the world today live on the African continent and about half of these internally displaced persons are in the Great Lakes region. Sudan alone accounts for more than 5 million internally displaced persons, followed by Northern Uganda with until recently 1.7 million and the DRC with 1.1million.¹⁴ In 2000 the United Nations Security Council, through its resolutions 1291 and 1304¹⁵, called for an International Conference on peace, security, democracy and development in the Great Lakes region. Later that year the International Conference on the Great Lakes region was established.¹⁶

The International Conference on the Great Lakes region groups eleven countries, namely, Angola, Burundi, Central African Republic, Congo (Republic of), Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia. There are also co-opted countries, which are Botswana, Egypt, Malawi, Mozambique, Namibia and Zimbabwe.

¹⁴ <http://www.internal-displacement.org> (accessed on 16/06/2008).

¹⁵ S/RES/1291 (2000), S/RES/1304 (2000).

¹⁶ www.icglr.org (accessed on 16/06/2008).

The International Conference on the Great Lakes region's main objective is to bring all the countries of the region together, for them to dialogue and agree on a strategy to bring peace and prosperity to the Great Lakes region.¹⁷

Member States of the International Conference on the Great Lakes region, deeply concerned that the magnitude of the phenomenon of internal displacement is continuing on such a large scale, that it is necessary to address the plight of internally displaced persons and to eliminate the root causes of their displacement in the Great Lakes region, adopted The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons in 2006.¹⁸

The Great Lakes Protocol establishes the scope of the responsibility of states for the protection of internally displaced persons, outlines the applicable principles of protection and assistance, and lays out obligations for the Member States of the International Conference on the Great Lakes to adopt and implement the Guiding Principles on internal displacement. It covers not only conflict induced displacement, but also displacement caused by natural disaster and induced by development projects. The Protocol is also innovative as it puts a particular emphasis on implementation by providing model legislation on the implementation of the Protocol as well as regional action programmes for the protection, assistance and search for durable solutions for displaced population and communities that host them.

¹⁷ www.icglr.org (accessed on 16/06/2008)

¹⁸ Preamble of The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (2006).

The Great Lakes Protocol provides a legal basis for the domestication of the Guiding Principles into national legislation by Member States. Article 6 of the Protocol obliges states parties to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to the internally displaced persons in the Great Lakes Region, to use the “Annotations of the Guiding Principles on Internal Displacement” as an authoritative source for interpreting the application of the Guiding Principles and to enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems.

Article 6 further addresses the content of such legislation by providing that it shall prescribe the procedures for relocation in the context of development projects and, more generally, specify the organs of government responsible for providing protection and assistance to internally displaced persons, disaster preparedness and the implementation of the legislation incorporating the Guiding Principles.¹⁹ Finally, states have to ensure the effective participation of internally displaced persons in the preparation and design of such legislation.²⁰

Given that the Guiding Principles do not by themselves establish binding obligations, the Great Lakes Protocol represents a specific development that addresses the lacunae of a legal framework aimed at protecting and assisting internally displaced persons. This is a very innovative approach to how states should deal with soft law in their attempts to strengthen the protection of the rights of IDPs. Here, it is the international legal

¹⁹The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, art.6(4).

²⁰Ibid. art 6(5) (2006).

agreement adopted at a sub-regional level that makes incorporation of the Guiding Principles into domestic law an obligation.²¹ While in 2005 Secretary-General Kofi Annan called on States to promote the adoption of the Guiding Principles on Internal Displacement through national legislation, the drafters of the Protocol went one step further and made the incorporation of the Guiding Principles into domestic law an obligation.²²

However, the provisions of the Protocol alone would not be sufficient to find durable solutions for internally displaced persons in the region. The many political obstacles to durable peace, security and development will also need to be addressed. Furthermore, the document lacks monitoring mechanisms as well as mechanisms to hold member states accountable in situation of non compliance.

4.3 African Union Draft Treaty to Protect Internally Displaced Persons

The African Union is historically committed to resolving the general problem of displacement in Africa. Initially, the commitment was more apparent towards refugees. Thus the Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted in 1969.²³ The provisions of the Charter of the OAU, particularly those related to the non-interference in the affairs of other Member States, prevented approaches to the protection and assistance of internally displaced persons. However, the commitment of the OAU was evident in 1990 through the African Charter on the Rights and Welfare of the Child which includes a brief reference to

²¹ www.brookings.edu (accessed on 16/06/2008).

²² Ibid.

²³ Organization of African Unity Convention on the Specific Aspects of Refugee Problems in Africa, 1000 UNTS 46 (1969).

internally displaced children. Article 23 (4) stipulates that “ The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.”²⁴

The commitment of the African Union, the successor of the OAU, to address the plight of internally displaced persons is inherent in its founding legal instrument. In fact, the principles of the 2000 Constitutive Act of the African Union establish obligations that are more conducive to the protection of internally displaced persons. Among these are the promotion and protection of human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant instruments²⁵, and the promotion of cooperation in all fields of human activity to raise the living standards of African peoples.²⁶ Besides, the objectives of the African Union establish a stronger legal foundation for the protection and assistance to internally displaced persons. In fact, the Union has the right to intervene in a Member State pursuant to a decision reached by the Assembly in respect of grave circumstances, namely, war crimes, genocide, and crimes against humanity,²⁷ the right of a Member State to request intervention from the Union in order to restore peace and security²⁸, and respect for the sanctity of human life and the rejection of impunity, amongst other things.²⁹

²⁴ Article 23 (4) of the African Charter on the Rights and Welfare of the Child, OAU doc. CAB/LEG/24.9/49 (1990).

²⁵ Constitutive Act of the African Union, art.3(h).

²⁶ Ibid., art.3(k)

²⁷ Ibid., art.4(h)

²⁸ Ibid., art.4 (j)

²⁹ Ibid., art.4(o)

Institutionally, the African Union Political Affairs Department has six different branches and among them the Humanitarian Affairs, Refugees and Displaced Persons Division. Based on the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the Humanitarian Affairs, Refugees and Displaced Persons Division has been involved in monitoring the situation of refugee and other displaced persons on the continent. The Division's profile goes beyond that of the previous Bureau for Refugees under the OAU, and its mandate is central to working out an appropriate legal framework for the protection and assistance of internally displaced persons.³⁰

While the framework of the Constitutive Act of the African Union is conducive to the protection of internally displaced persons, the African Union does not have a specific legal instrument for the protection and assistance of internally displaced persons. This poses an imbalance in the African Union's commitment to resolve the problem of internally displaced persons considering that at least a legal framework exists for the protection of refugees in Africa. In July 2004, the Executive Council of the African Union decided to request the Commission of the African Union to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance.³¹

In 2006, the African Union initiated a process to adopt a Convention focused specifically on the rights of internally displaced persons. To date a draft text has been discussed

³⁰ www.africa-union.org (accessed on 16/06/2008).

³¹ African Union, Decision on the Situation of Refugees, Returnees and Displaced Persons, Executive Council Decision EX/CL/Dec.127.

among a Group of Experts drawn from African Union member states and including representatives of various UN agencies. The adoption of the Convention which will be the first binding international instrument of its kind would send an important signal to the rest of the world about the seriousness with which Africa, home to around half of the global total of internally displaced persons, considers the issue.³²

From the analysis of the revised draft 1 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the following comments can be made:

Article 1(1) stipulates that “Internally Displaced Persons also means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of large-scale development projects, [or lack of development] and who have not crossed an international recognized state border”. This definition is innovative as it covers also people displaced by lack of development. The Draft scope is wider than that of the Guiding Principles. However, a group of international NGOs who has reviewed the draft text argues that the conventional boundary between IDPs and internal migrants would be blurred by including “lack of development” in a definition of internal displacement. They add that the number of those considered as IDPs in Africa would be dramatically multiplied. They propose to amend references to displacement stemming from “lack of development” and address instead displacement caused by discriminatory policies

³²www.fidh.org (accessed on 12/06/2008).

resulting in a lack of development and violations of economic, social and cultural rights of particular groups or those living in particular areas³³.

Similar to the Great Lakes Protocol, the African Union revised draft 1 lacks a clear monitoring mechanism as well as mechanisms to hold member states accountable in situation of non compliance. The Convention should outline in more detail the responsibilities of states for monitoring and ensuring adherence to the Convention. States should submit public reports to the African Commission on Human and Peoples' Rights on the measures they undertake. It would be also useful for the Convention to establish institutional mechanisms for coordinating protection and assistance to internally displaced persons in Africa.

Regional bodies are taking important initiatives in the protection and assistance of internally displaced persons. Both the Great Lakes Protocol and the elaboration by the African Union of a legal instrument on internally displaced persons show that the issue of internal displacement in Africa is taken seriously. However, while regional bodies have an important role to play in elaborating legal frameworks based on the Guiding Principles on Internal Displacement, their efforts in this regard should be supplementary to efforts at the national level. In this connection, several countries have incorporated the Guiding Principles in their domestic law and policies, but little is known about their implementation. The real test comes in how policies that sound good on paper are applied in practice and how far governments succeed in protecting the rights of internally displaced persons.

³³ www.fidh.org (accessed on 11/10/2008).

The next chapter focuses on state implementation of international policy and legal provisions on protection of internally displaced persons by Uganda which is used as a case study for this research.

CHAPTER FIVE:

STATE IMPLEMENTATION OF INTERNATIONAL POLICY AND LEGAL PROVISIONS ON PROTECTION OF INTERNALLY DISPLACED PERSONS: A CASE STUDY OF UGANDA

5.1 Introduction

The scale of displacement within Uganda is the third largest in the world. The conflict between the Lord's Resistance Army (LRA) and the Government of Uganda has uprooted between 1.7 and two million people, mainly in northern Uganda during the last two decades. Armed Karamojong cattle rustlers have also caused additional displacement.¹ In 2003, the situation in Northern Uganda was described by the United Nations Under-Secretary-General for Humanitarian Affairs, Jan Egeland as "the biggest forgotten, neglected humanitarian emergency in the world today"²

The Government of Uganda is one of the few in the world to have adopted a national policy to uphold the rights of internally displaced persons, based on the UN Guiding Principles. In an effort to address the negative effects of the displacement, the Government of Uganda, in August 2004, approved the National Policy for Internally Displaced Persons to ensure adequate assistance to and protection of IDPs in Uganda.³ The policy defines both the assistance and protection areas of concern for the IDPs and

¹ www.brookings.edu/idp (accessed on 15/9/08).

² www.reliefweb.int (accessed on 22/09/08).

³ The National Policy For Internally Displaced Persons(2004).

the coordination mechanisms to ensure a collaborative approach in the implementation of the response to those concerns at national and district levels.

The purpose of this case study is to assess the level of implementation of the Uganda National Policy for Internally Displaced Persons with a particular emphasis on challenges and constraints encountered in providing protection and assistance to IDPs. As the Representative of the Secretary-General, Walter Kalin, observed, “The work of a policy cannot stop at its adoption. In order to enhance the protection of internally displaced persons, it must also be effectively implemented... The political will to set priorities, cooperate and coordinate will be critical in implementing the policy and upholding the human rights of IDPs.”⁴

5.2 Historical Background to Internal Displacement in Uganda

The conflict in northern Uganda has lasted 21 years and caused the displacement of an estimated 1.7 million people. Since 1986, after the National Resistance Army/Movement (NRA/M) led by current President Yoweri Museveni seized power, various groups in northern Uganda have fought the central government. As Museveni established his government in Kampala, soldiers of the previous deposed government fled to their homelands in northern Uganda and eventually formed the Uganda People’s Democratic Army (UPDA) in an effort to win back power from the NRM government. Members of the UPDA also included former Idi Amin troops, Acholi politicians, and others angered by Museveni’s ascendance to power through force, after breaking a power-sharing

⁴www.brookings.edu (accessed on 15/09/2008).

agreement he had signed in Nairobi with General Tito Okello, Uganda's former president and Acholi leader. Moreover, a long history of antagonism exists between the Acholi people of northern Uganda and southern-based elites who dominated the country before independence in 1962.⁵

As a result of a peace deal signed between the NRM government and the UPDA in 1988, an amnesty process allowed the majority of UPDA soldiers to join Uganda's national army or take positions within Uganda's ruling NRM party. Yet significant suspicions remained amongst the Acholi regarding the central government in Kampala and this suspicion and lack of trust contributed to the eventual forming of the Lord's Resistance Army (LRA).⁶ The LRA, initially a popular uprising known as the Holy Spirit Movement led by Alice Lakwena, has fought a low level guerrilla war in an ostensible effort to overthrow President Museveni, restore order and legitimacy to Uganda, rebuild the Acholi nation and culture and generally provide a spiritual cleansing of the nation by ensuring that Uganda is ruled in accordance with the biblical ten commandments. Lakwena succeeded in building a substantial force, partly consisting of old UPDA, which had some success until it was routed in 1987 in Jinja. Lakwena fled into exile, but the struggle was carried on, first by her father Severino Lukoya and, since 1989, by a cousin named Joseph Kony.⁷

Based in southern Sudan, the LRA has directly engaged the Ugandan Army and terrorized the Acholi, its own people, viewing them as government collaborators. Acholi

⁵www.internal-displacement.org accessed on 15/09/2008).

⁶Ibid.

⁷www.internal-displacement.org (accessed on 15/09/2008).

are also attacked for supplies and fresh child recruits; the LRA has abducted over 20.000 children to serve as rebel fighters and sexual slaves.⁸

While the actual conflict in northern Uganda started in 1986, the current displacement crisis in northern Uganda began in 1996 when the government forced civilians into “protected villages”. In fact, over the course of the conflict, the LRA has carried out a multitude of atrocities against the civilian population, including abduction, rape, torture and forced conscription. As rebel activity increased, the Ugandan government sought to separate civilians from the rebels in order to reduce the LRA’s ability to benefit from suspected collaborators and to clear the territory in northern Uganda for unimpeded military operations.⁹ Yet, in its efforts to isolate the LRA, the policy of forced encampment has dramatically increased the vulnerability of the population in northern Uganda and entrenched sentiments of political and social marginalisation felt by the Acholi community. On occasion, the government indiscriminately used mortars and helicopter gunships as a means to force civilians into protected villages.¹⁰

In October 2002 the displacement crisis was exacerbated due to an order issued by the Ugandan military stating that all those civilians remaining in “abandoned villages” had 48 hours to move to government camps. During that time the IDP population nearly doubled from 500,000 in early 2002 to almost 800,000 by the end of 2002. The order came as a result of the Ugandan military’s large-scale military offensive entitled “Operation Iron Fist”. The LRA responded by returning to northern Uganda where it

⁸ <http://yaleglobal.yale.edu> (accessed on 24/4/2007).

⁹ www.internal-displacement.org (accessed on 15/09/2008)

¹⁰ Ibid.

carried out an increased amount of abductions, killings and lootings. The area of displacement also expanded during this period as the LRA moved eastwards into the Teso sub-region of eastern Uganda.¹¹

The north-eastern region of Teso has also been affected by large-scale internal displacement, mainly caused by inter-clan fighting among semi-nomadic pastoralist Karamojong warriors. The cyclical violence in Karamoja is deeply rooted in a long history of neglect by colonial and post-colonial authorities, shrinking access to land for pasture, and successive years of drought. This inter-clan fighting, consisting of series of raids carried out using small arms, followed by retaliation attacks, has spread throughout the Teso Region and spilled over the Kenyan border. The Government of Uganda has responded to the widespread armed criminality through an aggressive forced disarmament operation launched in 2006. During these operations, government soldiers surround villages in the middle of the night, and at day break force families outside while their houses are searched for weapons. Recognizing the legitimate interest of the government of Uganda in restoring law and order in Karamoja, a number of human rights organizations have expressed serious concerns over human rights violations committed during the search disarmament and other law enforcement operations.¹² Additionally, the insecurity created by the Karamojong raiders have forced people in the neighbouring districts to flee their habitual residences to secure areas for fear of their lives and property.¹³

¹¹www.internal-displacement.org (accessed on 15/09/2008).

¹²www.hrw.org (accessed on 04/10/2008).

¹³www.internal-displacement.org (accessed on 15/09/2008).

5.3 Status and Living Conditions of Internally Displaced Persons in Uganda

Since June 2006, the Government of Southern Sudan has initiated a peace process between the LRA and the Government of Uganda. Despite the fact that LRA leader Joseph Kony has not signed the Final Peace Agreement, improved security has meant that many IDPs have moved out of their original camps. The situation remains fragile, however, and many of the displaced keep a foot in two places, one in the original camp or transit site and one in their home land, in case security deteriorates.¹⁴

The table below presents a trend analysis of IDP movements in Uganda since 2005:

UPDATE ON IDP MOVEMENT (Source: Inter-Agency Standing Committee in Uganda)

Region	District	Dec-2005		June-2008				
		Original Camp pop	Original Camp pop	%	Transit Sites pop	%	Returnees Pop	%
Acholi	Gulu/Amuru	453,359	215,121	47%	128,247	28%	109,991	24%
	Kitgum	310,140	73,947	24%	150,019	48%	86,174	28%
	Pader	339,369	89,161	26%	182,021	54%	68,187	20%
	Total	1,102,868	378,229	34%	460,287	42%	264,352	24%
Lango	Lira	350,828					350,828	100%
	Oyam/Apac	115,275					115,275	100%
	Total Lango	466,103					466,103	100%
West Nile	Adjumani	54,460	12,000				42,000	
Toro/Bunyoro	Masindi	67,000	55,746				1,104	
Teso	Katakwi	70,534	14,000	20%	1,000	1%	49,000	69%
	Amuria	72,417	18,000	25%	5,000	7%	49,417	68%
	Total Teso	142,951	32,000	22%	6,000	4%	98,417	69%
Grand Total		1,833,382	477,975	26%	466,287	25%	871,976	48%

The table above indicates that only 48% of IDPs have returned to their original home, while 26% of them remain in the original IDP camps and 25% in transit camps.

¹⁴www.refugeesinternational.org (accessed on 15/09/2008).

Before analysing the transition currently underway in northern Uganda, it is useful to understand the issue around the end of displacement.

Currently, there is no consensus as to when to stop considering someone as an internally displaced person. Since identification as an IDP does not confer a special status under international law, there is no cessation clause as for refugees. For some organizations, internal displacement ends only upon the reversal of displacement, that is, upon IDPs' return to their place of origin. In many cases such return can occur only when the causes of displacement have been resolved. However, because return is not always possible or even desired by IDPs, this can lead to a situation where internal displacement holds little prospect of ever ending and, instead, is an identity passed down from one generation to the next, which can impede their integration and even undermine their rights. At the other extreme, internal displacement may abruptly be deemed to have ended. It may, for instance, be in the interest of a government to claim there are no longer any IDPs in the country in an effort to give the appearance of a return to normalcy and to direct international scrutiny elsewhere. Or, resources may dictate who is considered an IDP, with displacement ending when funding ends. To end specific actions for IDPs prematurely may lead to some IDPs' particular protection needs being neglected, without having found a durable solution.¹⁵

¹⁵When Displacement ends, A Framework For Durable Solutions, on www.brookings.edu (accessed on 15/09/2008).

Three types of durable solutions to internal displacement commonly exist, namely, return to the place of origin, local integration in the areas in which IDPs initially take refuge or settlement in another part of the country, the latter two being termed “resettlement” by the Guiding Principles on Internal Displacement.

In order to be considered durable, they must be based on three elements, that is, long-term safety and security, restitution of or compensation for lost property, and an environment that sustains the life of the former IDPs under normal economic and social conditions.¹⁶

At the height of displacement in northern Uganda, 2 million people were either in camps or in locations other than their areas of origin. Since the government of Uganda and the rebels of the Lords Resistance Army/Movement (LRA/M) announced their intention to negotiate a peaceful end to the 21 year old conflict in northern Uganda, and particularly since the signing of the Cessation of Hostilities on 23 August 2006, there has been a gradual improvement in the security situation in the greater northern Uganda and to a limited extent in eastern Uganda. As a result of this, a substantial reduction of reported IDP numbers has been observed as the government was keen to portray the emergency situation as nearly ended. In November 2006, the Office of the Prime Minister commissioned return assessment officers to investigate IDP return intentions, but in reality they also in some cases strongly encouraged people to leave the original camps.

¹⁶www.internal-displacement.org (accessed on 15/09/2008).

Rhetoric by the Government of Uganda calling for the IDPs to return home now is becoming increasingly strong. Officials have issued Camp Phase-out Guidelines, which include plans for the gradual demolition of abandoned huts. However, most have only moved into transit sites closer to their areas of origin rather than returning home. Such movements raise questions, such as what constitutes “home” in a displacement context, and whether return to parishes within proximity to ancestral lands constitutes a durable solution. Despite the fact that the transit sites constitute a practical alternative for the IDPs, the majority of IDPs expressed a desire to go to their pre-displacement locations rather than hopping from one form of camp to another.

The following section analyses the implementation of the Ugandan national policy on the returning process of IDPs.

5.4 Analysis of State Policy and Legal Framework on Internal Displacement

The reference document on IDPs today is the Guiding Principles on Internal Displacement, but they are not binding upon states. This document addresses the specific needs of internally displaced persons worldwide. It identifies rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

The most effective way to ensure state compliance with the Guiding Principles, therefore, is for states to incorporate the principles into their domestic policy and legal frameworks.

Uganda is one of the countries worst-affected by internal displacement and it is also one of the first countries in the world to have adopted a national policy aimed at upholding the rights of its internally displaced population.

In an effort to enhance governmental and humanitarian agency response to the humanitarian crisis of internally displaced persons in Uganda, the Government of Uganda invited the Representative of the Secretary-General on Internally Displaced Persons, Francis M. Deng, to visit Uganda from 10 to 16 August 2003. At that time, Representative Deng expressed grave concerns about the humanitarian situation in the North, stating that the situation of IDPs was one of the most serious humanitarian crises in the world today. After consulting with government and concerned stakeholders, he made broad recommendations on improving the conditions of IDPs. At roughly the same time, the Ugandan government determined there was a need for a coherent, formalized national policy on internal displacement. In his report, Mr Deng called upon the government of Uganda to “adopt, as a matter of priority, its draft policy on internal displacement and ensure that it is quickly and effectively implemented, including by mobilising needed resources to address the needs of the internally displaced.”¹⁷

In August 2004, the First Deputy Prime Minister and Minister for Disaster Preparedness and Refugees signed the National Policy on Internally Displaced Persons which was adopted by the Cabinet prior to its official launch in February 2005 in Kampala and Gulu. The choice of developing an IDP policy instead of adopting a law was probably

¹⁷www.internal-displacement.org (accessed on 15/09/2008).

motivated by the need to have a flexible and easier instrument to adopt, implement and amended according to situations.

The objective of the Policy is to establish a national framework for the protection of IDPs. It explicitly states that IDPs have the right to request and receive protection and humanitarian assistance from national and district authorities.¹⁸ The Policy also provides a substantive starting point for advocacy, as it represents a written commitment by the government and an endorsed set of standards to which actors can hold the government accountable. Furthermore, the Policy is an acknowledgement that many civilians are internally displaced and that the government is responsible for their welfare. It therefore has the potential to bring attention and resources to IDPs, who have thus far been largely ignored and neglected.¹⁹

The Policy provides for the creation of a number of structures and procedures for its implementation. The Office of the Prime Minister, Department of Disaster Preparedness and Refugees (OPM/DDPR) is the lead agency and is to provide coordination for all institutional structures under the IDP Policy. The Inter-Ministerial Policy Committee (IMPC) is responsible for policy formulation and overseeing of internal displacement matters; the Inter Agency Technical Committee (IATC) is charged with planning and coordinating activities of the sectoral ministries, government departments, the private sector, NGOs and UN agencies. The Human Rights Promotion and Protection Sub committee(HRPP) is to work in collaboration with the Uganda Human Rights

¹⁸ National Policy for Internally Displaced Persons, Preamble, para 3.

¹⁹ www.internal-displacement.org (accessed on 15/09/2008).

Commission (UHRC) to monitor the respect for all the human rights of IDPs; the District Disaster Management Committee (DDMC) headed by the Chief Administrative Officer (CAO) whose work under the policy is to involve local governments in planning responses to internal displacement given their proximity to the effects and issues arising out of internal displacement; and the sub county management committee.²⁰

The national policy makes it clear that security of person and property is a fundamental entitlement of all IDPs. In addition it recognizes that IDPs have rights to freedom of movement, voluntary resettlement and return, family unification, food security, shelter, water and sanitation, clothing, education, health, resettlement kits, and a clean environment. IDPs shall be exempted from paying graduated tax.²¹ The policy recognizes the role and contribution of national and international humanitarian agencies and other voluntary organizations and professional bodies in providing support services to IDPs and local communities.²²

Although the transition from camps to homes is still in its initial stages, it is essential to assess the returning process for IDPs with a human rights-based approach using the National IDP Policy. Out of 1,833,382 IDPs of northern Uganda, an estimated 871,976 have returned to their villages of origin, 477,975 are still in their original camps and 466,287 are moved in transit areas.²³

²⁰ National Policy for Internally Displaced Persons, Chapter 2.

²¹ Ibid., Chapter 3.

²² National Policy for Internally Displaced Persons, Chapter 4.

²³ UNHCR Uganda, Uganda Briefing Sheet, July 2008.

The fundamental principle under the UN Guiding Principles is that “competent authorities have a primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons”²⁴

Section 3.4.1 of Uganda’s National Policy for Internally Displaced Persons and Principle 28 of UN Guiding Principles for Internally Displaced Persons state that internally displaced persons must be allowed to return “voluntarily, in safety and with dignity.” Section 3.4.4 of The National Policy for Internally Displaced Persons states that the “DDMCs together with other local authorities and representatives of the IDPs shall ensure that the return and resettlement of the internally displaced is voluntary”.

Section 3.4.1 of Uganda’s National Policy for Internally Displaced Persons adds that IDPs must not be compelled to return home until their safety and security are ensured. “Security” in this context would entail legal security, physical security, and material security. IDPs cannot be forced to return, especially if the security situation in their villages is poor.

Legal security in this context implies freedom from any kind of punishment or retribution upon return, potential amnesty to those implicated in the conflict, freedom from persecution of any kind, and full citizenship and enfranchisement rights. Section 3.4.6 of Uganda’s IDP policy speaks on this, stating, “Local authorities shall ensure that IDPs

²⁴ U.N Guiding Principles on Internal Displacement, Principle 28 (1).

who have returned... are not discriminated against as a result of their having been displaced”.

Physical security means freedom from physical harm. This includes both conflict-induced violence and unexploded ordinances present as a result of previous conflict. Physical security also means that returning IDPs must have access to food subsidies, and potable water as needed for survival until they can adequately provide for themselves.

Material security means returned IDPs must have access to adequate land, livelihood, clothing, and schools for children, health centres and other basic entitlements.

On assistance in return, resettlement and reintegration, section 3.14 of Uganda’s National Policy for Internally Displaced Persons speaks on this right, stating that returning IDPs will be provided with “resettlement inputs and tools, as well as tool kits to support construction and self-employment.”

Principle 28 of the United Nations Guiding Principles on Internally Displaced Persons and section 3.4.2 of Uganda’s National Policy for IDPs state that all actors must make “special efforts” to ensure the participation of internally displaced persons in all aspects of planning and implementation of return, resettlement and reintegration. These “right of participation” clauses cannot be overemphasized. Many displaced people have been repeatedly traumatized and disempowered in almost every way. As they rebuild their lives, they must actively participate in the decisions that will determine their future.

The Guiding Principles also emphasize that “competent authorities have the duty and responsibility to assist returned and or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation”²⁵

Section 3.6.3 of Uganda’s Policy for Internally Displaced Persons states that “Local government shall endeavor to assist IDPs to return, resettle, and reintegrate, by acquiring or recovering their land in accordance with the provisions of the Land Act of 1998. Where the recovery of land is not possible, Local Government shall endeavor to acquire and allocate land to the displaced families”. This clause is self-explanatory; government and other humanitarian actors have an obligation, as much as possible, to recover whatever property and possessions have been lost.

Section 3.15 of Uganda’s National Policy on Internally Displaced Persons states that “Government and Local Government shall rehabilitate social and economic infrastructure including health posts and health centres as well as market access roads and schools in camps, return and resettlement areas in full consultation with and participation of Internally Displaced Persons”. Again this clause needs little explanation. What should be emphasized is that the displaced people themselves must participate in all policy decisions and policy implementation.

²⁵ UN Guiding principles on Internal Displacement, Principle 29 (2).

5.5 Field research findings

Despite the existence of a national policy protecting the rights of internally displaced persons in line with the UN Guiding principles as well as a well decentralized administrative structure in charge of coordinating the assistance and protection of IDPs, interviews held with IDPs, aid agencies in Gulu and Kampala, as well as the review of relevant documentation, indicate the implementation of these key principles remains challenging:

5.5.1 Involvement and awareness of IDPS

According to field staff of relief organizations interviewed, the national policy on IDPs has been properly translated and disseminated among displaced populations to ensure their understanding and involvement in the process. However, IDPs interviewed in Pabo Camp seemed unaware about the policy and its provision. Other issues presented below suggest their involvement in organizing the returning process may not have been adequate either.

5.5.2 Voluntary Return

As security is slowly returning in most parts of the country, the government is intensifying pressure on IDPs to return home through various mechanisms and approaches, which could be considered as a violation of the National Policy for IDPs. The policy clearly states that the government commits itself to promote the right of IDPs to return voluntarily, in safety and dignity to their homes.²⁶ A few organizations interviewed have however expressed concerns over the issuance by the government of camp phase-out guidelines, which include the gradual demolition of huts, leaving little options for those wishing to remain in camp for one reason or another.

The Camp Phase Out Guidelines²⁷ issued in July 2008 by the Office of the Prime Minister outlines the broad procedures to be followed in promoting the three durable solutions foreseen by the Uganda National IDP Policy namely, voluntary return, settlement in the former camp, relocation to another part of the country.

Even though a number of provisions contained in the camp phase-out guidelines mention the need for participatory processes involving IDPs and local leaders with a particular emphasis on protection of extremely vulnerable individuals, the document lacks clarity and details for those choosing to settle in the former camps. In fact, key issues for durable solutions presented in the document seem to be limited to the return scenario.

²⁶ The National Policy for Internally Displaced Persons, Republic of Uganda, August 2004,(article 3.4.1).

²⁷ www.internal-displacement.org (accessed on 15/09/2008).

Concerns were also expressed by some Aid workers interviewed in Gulu over government radio broadcasts urging people to go home, which has been a source of anxiety among IDPs. In one NGO meeting attended in PABO, aid workers were asked to mark unoccupied huts for destruction, as required in the camp phase-out guidelines, an illustration that relief organizations are contributing to the pressure exercised on IDPs to return home. There is still however a great deal of skepticism among IDPs concerning the sustainability of peace in the region. On this issue, IDPs interviewed cited a lack of confidence in lasting peace in northern Uganda as the major cause of non return, especially for those whose home are close to the Sudanese border. Persistent security fears are essentially explained by rumors of a return of LRA rebels, the presence of landmines in some areas, the lack of a strong police presence in communities and rising local criminality. The District Disaster Management Chairman interviewed in Gulu confirmed the insufficient number of police forces and means of transport available to curb criminality and restore a sense of order and peace in the region.

When asked why some IDPs are returning home from camps, a majority of them argued that they are primarily responding to the government assertive return campaigns communicated over radio stations. Nevertheless, they still fear returning to their homes because of the trauma caused by the war, and psychological fear that insecurity may set in any time. In fact, most IDPs interviewed wish never to go back to their homes until Joseph Kony of the Lords Resistance Army is either killed or captured by Government forces. Some IDPs are also employing contingency arrangements, such as keeping one hut in the original camp and establishing another in the return areas in case of any

eventuality. The forced displacement that led to the formation of the camps which represented massive violations of citizens' rights must not be repeated in the dismantling of the camps.

5.5.3 Basic Services – Shifting Aid Agenda and Priorities

With mounting pressure on IDPs to return home both from the government and relief agencies, resources allocated to displaced camps are declining significantly. The shift from relief to development assistance which is currently prevailing, without consideration for the needs of remaining IDPs, represents as well undesirable pressure on displaced population to return to their homes against their will. These declining resources allocated to IDP sites have resulted in reduced provisions of basic services which may have contributed to outbreak of diseases in many cases. During the field research, an outbreak of Hepatitis E due to poor sanitation in camps was reported during an NGO meeting held in PABO camp in Gulu on 08/08/2008.

On the other hand, the lack of basic services in returning areas constitutes an additional reason for the majority of IDPs interviewed not to return. Due to the fact that people have been displaced for so long, social infrastructure such as water sources, health facilities, roads, schools have collapsed. For instance, numerous respondents talked of education as a key determinant of the decision to leave or to remain in the camps. Because most return sites do not have adequate facilities, some returning IDPs left their children at the camps, where they could access some form of education, while others decided to keep the whole

household in the camps. IDPs are also waiting for the last quarter of the year when grasses are high enough to put thatch on their huts. For extremely vulnerable people in the camps, such as the elderly and disabled, the need for assistance to build a hut on their land is delaying their ability to return.

Most relief organizations interviewed agree that recovery and development programmes in return areas have not been sufficiently responsive to the pace of returns in Northern Uganda. Low donor support for community-based recovery activities in return areas, representing less than 31% of funds requested in the 2008 Consolidated Appeal for Uganda²⁸ have left the various clusters without the means of implementing most of their transitional programming.²⁹ UNDP, the cluster lead agency for early recovery, has created a task force with the objective of addressing durable solutions for IDPs in early recovery. Its effectiveness is yet to be felt on the ground according to relief organizations interviewed.

The mobility of the population has also created a great deal of confusion and complexity between IDPs and returnees in the efforts of the government and relief organizations to respond effectively to their needs. A growing number of IDPs are retaining their huts in the camps to continue to access basic services, while at the same time attempting to settle back home and resume a normal life. Keeping track of these movements and ensuring a smooth transition of status from IDP to returnee has proved to be a challenge. The government and relief organizations are waiting for IDPs to return home before initiating

²⁸www.humanitarianappeal.net (accessed on 08/10/2008).

²⁹Ibid.

rehabilitation efforts in return areas, while most IDPs are reluctant to leave camps until adequate services (school, health centers, housing,..) are available in their original residential areas. These differences in expectation between IDPs on one hand and government and relief organizations on the other hand, reflect insufficient participatory processes in organizing the return of displaced populations in Northern Uganda.

According to relief staff interviewed in Gulu, most relief organizations are preparing to leave the area and transfer the monitoring of IDP movements and management of IDP camps to the government as part of their phase-out strategy. It remains unclear whether the government is sufficiently prepared to take over such responsibility, considering the limited resources allocated to the IDP issue. In any case, the transition from a UN led emergency relief effort to a government-driven process of recovery represents today the most critical challenge in addressing the IDP situation in northern Uganda.

5.5.4 Land Issues

The majority of the camp land is privately owned, a source of tension and conflict between two sets of competing rights: the right of landowners to reclaim their land and the right of IDPs settled in ceased land, who may wish to remain there in the absence of viable alternatives. IDPs interviewed cited land-related issues, particularly land for cultivation, among reasons for leaving the camps against their will. Land for cultivation around the IDP camps is subject to exorbitant land rental fees. It is considered as one of the main motivation for leaving the camps. On a related issue, the fate of deceased

relatives buried on the IDP sites, for displaced people willing to return home, has not been addressed by the government. Landlords of properties around the camps request IDPs to take remains of their relatives with them, but no assistance is being provided either by the government or relief agencies, according to IDPs interviewed.

For those wishing to settle permanently in camps, the situation is far more complex. Although the Camp Phase Out Guidelines issued by the Office of the Prime Minister in May 2008³⁰ includes provision accommodating the needs of IDPs wishing to be settled permanently in former camps as well as assistance to formalize their stay through the due process of the law, the mechanisms for land arbitration are not clearly spelled out to ensure effective protection of IDPs rights.

Once they return to their homes, IDPs are also confronted with land disputes. The majority of land in Northern Uganda is held by customary tenure enforced by traditional clan structures. With the breakdown of social order and cohesion caused by conflict and displacement, customary tenure can no longer regulate land disputes effectively.

These concerns expressed by IDPs interviewed reflect a couple of issues. On one hand, there seems to be a lack of sufficient attention by authorities and relief agencies on non humanitarian needs of IDPs while living in camps, regarding particularly a fundamental issue such as access to land for livelihood opportunities. On the other hand, it appears IDPs have not been properly involved in the returning process, which would have ensured their concerns are adequately addressed.

³⁰www.internal-displacement.org (accessed on 15/09/2008).

5.5.5 Institutional Arrangements

The field research reviewed the effectiveness of institutional arrangements in place, both at governmental and international levels, in providing assistance and protection to IDPs.

Until recently, the overarching constraint to improve protection and assistance to IDPs was the prevailing security situation. With the slow return of peace and security, the critical challenge, particularly at governmental level has been the limited resources allocated to the IDP issue.

At the governmental level, the institutional set up is governed by the National Policy for Internally Displaced Persons. Under the supervision and coordination of the Prime Minister- Department of Disaster Preparedness and Refugees (OP-DDPR), 3 Committees at national level, 2 Committee at district level and one committee at sub-county level are allocated responsibilities in the provision of assistance and protection of IDPs³¹. This well decentralized structure provides an adequate platform for coordination and monitoring the protection and assistance to IDPs. However, insufficient resources allocated to local structures at district and sub-county levels represent significant challenges in empowering them to play a lead role in the recovery effort, in partnership with international organizations.

³¹ The National Policy for Internally Displaced Persons, Chapter 2.

In July 2008, the Government of Uganda launched the Peace Recovery and Development Plan (PRDP) as a framework for rebuilding the north. There is however still some uncertainty among relief personnel interviewed on how the PRDP would be funded as no additional funding has been committed by the government.

At the international level, the cluster approach was formally adopted in January 2006 and initially entailed the establishment of four clusters: Early Recover led by UNDP, Health and Nutrition under the World Health Organization, Water and Sanitation led by UNICEF and Protection under UNHCR. Camp Coordination and Camp Management (CCM) which started out as a sub-cluster under the Protection cluster became a cluster in its own rights, also under UNHCR leadership.³² A protection strategy was developed by UNHCR in consultation with partners and featured two main components, namely, freedom of movement, which would ultimately allow IDPs to return voluntarily home, and improvement of living conditions in the camps.

According to the 2007 UNHCR Evaluation report on IDP operations, the cluster approach was introduced in northern Uganda without adequate involvement from all stakeholders, particularly implementing agencies and NGOs on the ground. It was perceived as a “Headquarter driven process” with unclear objectives. Furthermore, it lacked the necessary linkages with local government structures who felt by-passed by the new arrangement.³³

³² www.reliefweb.int (accessed on 08/10/2008).

³³ www.humanitarianreform.org (accessed on 08/10/2008).

Significant progress has been made since 2007. Sector working groups chaired by Local Government Heads of Departments and co-chaired by Cluster Leads have been set up and provide the adequate coordination and linkages between clusters and Local Government. During the interviews conducted in Gulu, some relief organization staff expressed however their concerns over frequent absence of local authorities in coordination meetings. The Cluster approach is credited to have maintained focus on the humanitarian crisis and led to a more coherent and consistent policy response from the UN and humanitarian community³⁴ Evidence on the ground suggest however that the cluster approach has been less successful in making the transition from relief humanitarian operations to recovery and development activities as explained above.

5.6. Analysis of findings

All stakeholders interviewed consider the IDP policy as a positive initiative from the Government. Most organizations providing assistance to IDPs in Uganda consider the IDP Policy as the reference document for their intervention. In fact, UN organizations and NGOs indicated that they use it for advocacy activities. One of the most important areas of success for the national IDP policy has been in promoting freedom of movement for IDPs, as a strategy for progressive and voluntary return to their homes. Through this initiative supported by UNHCR, IDPs were provided with the opportunity to move freely towards transitional sites and original lands, thus preparing conditions for a final return home. As explained above, this mobility has created a great deal of confusion in

³⁴ www.internal-displacement.org (accessed on 08/10/2008).

providing assistance to those IDPs willing to return home but who have maintained a presence in the camps to continue to benefit from basic services.

The Ugandan IDP policy could also be considered as a model for its well decentralized government structures at district and sub-county level in charge of providing leadership and coordination in the protection and assistance of IDPs. Such institutional arrangement ensures adequate oversight and ownership by local governments of humanitarian response, and contributes to the sustainability of relief interventions. In emergency settings, it is not unusual for governments to be left out in relief operations led by the international community. The Ugandan IDP policy puts central and local governments in the driving seat in the coordination of the relief effort. In reality, however, the District Disaster Management Committee lacks the adequate resources to play the leadership role described in the policy document. Up to now, the emergency relief effort has been mostly a UN led operation.

Apart from providing the adequate policy and institutional framework for the protection and assistance to IDPs, the national policy has in fact fallen short of expectations in terms of its effective implementation. Although it has been four years since the IDP policy was adopted, respondents are still inconclusive about its effectiveness and awaiting its full implementation. It seems that the findings of the IDP Policy reviews carried out in 2006 which³⁵ concluded that the policy was still new and implementing agencies were still adjusting, are still valid two years later.

³⁵ www.internal-displacement.org (accessed on 08/10/2008).

One critical area of concern in the implementation of the IDP policy concerns its ability to serve as an effective national protection system for IDPs. Despite the creation of a Human Rights Promotion and Protection Sub-Committee³⁶ the findings presented above reflect a lack of sufficient attention to IDP rights in terms of access to land, security, shelter, legal aid and other basic rights. The situation of IDPs remains precarious and deplorable with continued threats to physical security, lack of safe drinking water, health and education services in return areas. The considerable pressure imposed by the government for the return of IDPs without adequate social services available in return areas represent the gravest violation of IDP rights. The vague policy formulation and mechanism for the protection of IDP rights on the sensitive issue of land, particularly for IDPs wishing to remain in camps is another illustration of weak implementation of the National Policy on IDPs and its limited effect on the well being of IDPs.

From the research findings presented above, it remains unclear if the slow pace of implementation of the national policy is due to limited resources, a lack of political will or a combination of both. For a region historically neglected and marginalized from the rest of the country, the issue of equitable distribution of resources and budgetary allocation to respond to the needs of IDPs in Northern Uganda is yet to be addressed decisively. Due to inadequate funding provided by the government and the current international funding gap for recovery activities, the reconstruction of the north continues to be delayed, undermining the chances for IDPs to resume a normal life after two decades of a brutal conflict and forced displacement.

³⁶ The National Policy for Internally Displaced Persons, article 2.3.1.

The limited awareness and involvement of IDP communities in planning, implementing and evaluating relief and recovery programmes, may explain the apparent lack of accountability for the shortcomings identified in the implementation of the IDP Policy. The lack of effective enforcement mechanisms in the national IDP Policy which would allow IDPs to seek protection of fundamental human rights or redress when these rights have been violated, constitute an area requiring improvement.

With the development of the National Policy on IDPs and more recently the Peace Recovery and Development Plan, the Ugandan government is increasingly demonstrating an ability to draft excellent plans and policies on paper which are unfortunately poorly implemented.

5.7 Lessons from the Uganda case study

As demonstrated by the case study of Uganda which adopted the Guiding Principles and incorporated them in its National Policy for the Protection of Internally Displaced Persons, the question should not be about the binding or non-binding nature of the Guiding Principles. The study showed that the implementation of the Ugandan National Policy is ineffective as a result of lack of adequate resources and/or political will. A critical area of concern illustrated in the case study of Uganda is the area of protecting the voluntary nature of return for IDPs, a fundamental right provided in the Guiding Principles and the National IDP policy, but which is often subject to intimidation, manipulation and pressure from external forces. As IDPs are practically always forced into displacement as a result of conflict, human rights abuse or natural disaster, they

should not be in addition subjected to forced return, when they consider that the conditions for return are not favorable.

The absence of clear mechanisms to hold the government accountable and seek redress when IDP rights are not upheld, constitutes a major obstacle in ensuring effective implementation of the national policy on IDPs. The need for an independent monitoring mechanism cannot be overemphasized to enhance accountability towards the fulfillment of IDP rights.

The case study of Uganda also illustrates the lack of consistent and comprehensive support of the international community in protecting IDP rights in line with the Guiding Principles. This is particularly evidenced in the limited financial support mobilized for the recovery efforts in return areas which is often the result of shifting focus and priorities of the aid community. The evolved concept of sovereignty which would prompt the international community to intervene anywhere governments are unable or unwilling to protect the well being of their populations, particularly in the context of internal displacement, carries a significant amount of responsibility in terms of resources to be mobilized by the international community. This may lead the largest contributors of international humanitarian efforts, most of whom are members of the Security Council, to be reluctant to challenge the principle of non-interference in internal affairs.

Similarly, making governments more accountable to the well being and rights of their citizens, and particularly IDPs, should come hand in hand with more international support

to enhance the governments' capacity to deliver on these rights. The case study of Uganda illustrates the little attention given to strengthening the capacity of local government to protect IDP rights.

CHAPTER SIX:

CONCLUSION AND RECOMMENDATIONS

6.1. Conclusion

Internal displacement is considered as the most pressing humanitarian, human right, political, and security issue facing the global community today. The scale of the problem, between 20 to 25 million persons displaced in their own countries, contrasts with the constraints and limitations associated with the provision of their protection.

Until the early 90's, the international legal norms, institutions and systems on humanitarian assistance were mostly dominated by the post-Second World War context where refugees constituted the most significant vulnerable category of populations. The explosion of civil wars following the end of the Cold War brought into view large numbers of persons uprooted inside their own countries, which soon outnumbered the number of refugees two to one or more in most humanitarian situations.

This study has attempted to assess the effectiveness of state and the international community's response to assume the emerging responsibility of protecting IDPs. The primary responsibility for protecting internally displaced persons rests with the states they belong to and not with the international community. As the internally displaced remain under domestic jurisdiction of their countries, the international community cannot

reach them without the country's consent. Intervention by the international community to address the plight of IDPs in a state which is unwilling or unable to protect them faces the obstacle of state sovereignty. However, there is an emerging international responsibility to protect and assist persons within their own countries which reflects new and evolving concepts of sovereignty.

This study examined the issue of internal displacement and sovereignty through a human rights approach. An evolving approach to the notion of sovereignty focuses on the idea of responsibility of the state to protect its population against massive violation of human rights. In fact, Deng's answer to situations of internal displacement is the concept of sovereignty as responsibility to one's displaced population.¹ The notion of responsibility is therefore proposed as a way of reconciling sovereignty and intervention. It is only by placing the debate within a human rights framework that intervention becomes justifiable.² If a state does not want international involvement with its internally displaced persons, it should provide for the security and well being of its population. If it fails to do so, it will be more likely to draw international attention to itself and intervention without its consent can be envisaged.

Sovereignty must mean accountability to one's population and also to the international community in the form of compliance with international human rights and humanitarian law. Individual's human rights can no longer be considered as a domestic matter and intervention will be justified in cases of massive violations of human rights. The

¹www.brookings.edu, accessed on 15/09/2008

²Catherine Phuong, *The International Protection of Internally Displaced Persons*, (Cambridge University Press, 2004), p.232.

discussion on sovereignty as responsibility has taken a step further and the “responsibility to protect” has been developed. This concept reflects the view that when large numbers of people are in desperate need of the basic necessities of life, their situation goes beyond being an internal matter and becomes one in which the international community must play a role. There is, however, no international consensus on how to apply this concept.

Unfortunately, this novel thinking on sovereignty and non-interference in internal affairs has been somewhat constrained by the lack of cohesion and consensus of the international community, and most particularly the UN Security Council on where, when, and how to intervene, as demonstrated in the case of Darfur. Despite the gross violations and atrocities committed over several years on the Sudanese IDPs, the government of Sudan is still dictating conditions on the form and size of intervention carried out by the international community.

Concepts of sovereignty as responsibility and responsibility to protect remain far ahead of international willingness and capacity to enforce them. Some countries still consider intervention as an interference of powerful countries in the affairs of weaker states. The UN is indeed often perceived as a tool of western power interests, particularly within the UN Security Council, which is undemocratically constituted and weighing in favor of powerful western states. Nevertheless the shift in thinking about sovereignty as responsibility and the responsibility to protect are major achievements in the area of global governance, much to the credit of the Guiding principles. In fact, a growing number of governments like Uganda others are cooperating with the international

community in addressing conflict and displacement in their countries. They allow some form of access to their displaced populations and welcome international humanitarian workers. In this case, sovereignty is not an obstacle to the protection of IDPs.

The study also looked at the nature of the Guiding Principles on Internal Displacement.

The decision taken by Dr. Deng and his legal team to develop a normative framework to address the plight of internal displaced populations instead of a binding instrument, has fuelled the debate around soft versus hard law. Dr. Deng and his team of legal experts decided early that a non binding document restating existing law and making it specific to the context of internal displacement would be more appropriate than an international convention which would take too much time to negotiate and lead to an uncertain outcome considering the complexity of negotiating a treaty.

Although not a legally binding document like a treaty, the Guiding Principles have gained considerable international recognition in a relatively short period of time. UN resolutions regularly refer to them as an important tool. Regional organizations use them as an authoritative document. UN humanitarian staff relies upon them as a framework and a growing number of governments have begun to incorporate the Guiding Principles into their national policies and laws on internal displacement.

The adoption by Uganda of a national policy dedicated to the rights and protection of IDPs is clearly a very positive step in addressing this critical issue. The low level of implementation of the Guiding Principles in Uganda and elsewhere, despite their

integration in local legislation is often perceived as a result of limitations of non binding law. However, it is quite clear that the implementation of a policy for the protection of IDPs is much more dependent on the actual acceptance and use of the Guiding Principles than on their legal form. In the Uganda case study, limited resources and /or lack of political will appear to be the most significant challenges in the implementation of the IDP policy.

More remarkable improvements are observed at the institutional level. The cluster approach appears to have adequately addressed the needs of IDPs during their period of displacement. The case study of Uganda shows however that greater focus on recovery efforts in a coordinated manner would be required to provide sufficient incentives for IDPs to return back home and abandon the dependency culture.

6.2 Recommendations

In the light of the conclusion above, the following recommendations are proposed:

1. IDP policies developed at national and regional levels should include clear accountability mechanisms requiring states to report regularly on the implementation of national policies protecting IDP rights. The case study of Uganda demonstrates the need to go beyond approving good policy documents which are not been effectively implemented and hold governments at national and local levels accountable to violations of rights provided by the national policy on IDPs.

2. The development of national policies on IDPs should be followed with detailed implementation plans with clear and adequate budgetary commitments from governments to ensure the policies will be sufficiently funded and effectively implemented. These implementation plans should clearly ensure that IDPs representatives are involved in all stages of the plan, from the planning process to implementation and evaluation.
3. On the same issue of resources which represent a significant constraint in Northern Uganda, the international community should provide a more consistent financial support to the protection and assistance of IDPs from emergency assistance in the camps to recovery and development efforts in return and resettlement areas. The current funding gap in Northern Uganda is undermining the recovery efforts in return areas and forcing IDPs to remain in camps.
4. More attention from the international community should be given to building the capacity of local governments to take ownership and responsibility for the implementation of the national policies on IDPs. The vast resources deployed by humanitarian organizations, in contrast with the very weak capacities of local authorities, undermine their authority and capacity to take over once aid agencies leave the area. As recovery and development activities replace progressively emergency assistance operations, the need to build local

capacity is urgent to promote sustainability and ownership. Local actors to be funded should include an independent monitoring body in charge of assessing and reporting on the level of compliance with the IDP policy, particularly regarding IDP rights.

5. National IDP policies should be accompanied with constitutional mechanisms to guarantee the effective exercise of human rights with provisions allowing IDPs and other vulnerable groups to seek redress in courts when their rights have been violated. The experience of Columbia, which is reputed to have one of the most progressive IDP legislation, should be used as a reference for other countries developing an IDP policy.

These recommendations should contribute to improve the protection and assistance of internally displaced persons particularly in countries where the challenge is neither related to a lack of policy or legal framework nor limited involvement by international actors but rather a lack of political will or adequate resources to implement national policies in IDPs.

ANNEXES

ANNEX 1: UN GUIDING PRINCIPLES ON INTERNAL

DISPLACEMENT

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

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

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

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

(a) Genocide;

(b) Murder;

(c) Summary or arbitrary executions; and

(d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances.

Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(b) Starvation as a method of combat;

(c) Their use to shield military objectives from attack or to shield, favour or impede military operations;

(d) Attacks against their camps or settlements; and

(e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement.

In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

(a) Pillage;

(b) Direct or indiscriminate attacks or other acts of violence;

(c) Being used to shield military operations or objectives;

(d) Being made the object of reprisal; and

(e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

(a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and

(e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons 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. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible,

competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

ANNEX 2: AU CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA

REVISED DRAFT 1

6TH JUNE 2008

Preamble

We, the Heads of State and Government of the Member States of the African Union;

CONSCIOUS of the gravity of the situation of internally displaced persons as a source of continuing instability and tension *for African states*;

ALSO CONSCIOUS of the suffering and specific vulnerability of internally displaced persons;

REITERATING *the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities*;

COMMITTED to *sharing* our common vision of providing durable solutions to *situations* of internally displaced persons by establishing an appropriate legal framework for their protection and assistance;

DETERMINED to *adopt measures aimed at preventing and putting* an end to the phenomenon of internal displacement by eradicating the root causes, *especially* persistent and recurrent conflicts, which have a devastating impact on human *life*, peace, stability, security, and development;

CONSIDERING the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

REAFFIRMING *the principle of the respect of the sovereign equality of States Parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter*;

RECALLING *the 1948 Universal Declaration of Human Rights, 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions*;

MINDFUL that Member States of the African Union have adopted democratic *practices* and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

RECOGNISING the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and **as** set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons;

AFFIRMING *our primary responsibility and commitment to respect, protect and fulfill the rights to which internally displaced persons are entitled to as citizens without discrimination of any kind;*

NOTING the specific mandates of international organizations and agencies within the framework of the United Nations' inter-agency *collaborative* approach to internally displaced persons, and the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence *as well as the mandates of non-governmental organizations, in conformity with the laws of the country in which they exercise such mandates;*

RECALLING the lack of an African and *international* legal and institutional framework specifically for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

REAFFIRMING the historical commitment of the AU Member States to the protection of and assistance to refugees and displaced persons and, in particular, the implementation *of Executive* Council Decision EX/CL/127 of July 2004 in Addis Ababa to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions;

CONVINCED that the present Convention for the Protection and Assistance of Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1 Definitions

For the purpose of the present Convention:

- a. "African Charter" means the African Charter on Human and Peoples' Rights;
- b. "African Commission" means the African Commission on Human and Peoples' Rights;
- c. "African Court of Human Rights" means African Court of Human and Peoples' Rights;
- d. **"African Court of Justice" means the African Court of Justice;**
- e. "Armed Groups" means **organized armed groups that are distinct from the armed forces of the state;**
- f. "AU" means the African Union;
- g. **"AU Commission" means the Secretariat of the African Union, which is the depository of the regional instruments;**
- h. "Child" means every human being below the age of 18 years;
- i. "Constitutive Act" means the Constitutive Act of the African Union;
- j. **"Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;**
- k. **"Internally Displaced Persons" means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;**
- l. **"Internally Displaced Persons" also means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of large scale development projects, [or lack of development] and who have not crossed an internationally recognized State border;**
- m. "Internal displacement" means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;
- n. **"Non-state actors" means private actors who are not public officials of the State, including other armed groups not**

referred to in article 1(e) above, and whose acts cannot be officially attributed to the State;

- o. "OAU" means the Organization of African Unity; and,*
- p. "Women" mean persons of the female gender, including girls.*

Article 2 Objectives

The objectives of this Convention are to:

- a. Promote and strengthen regional and national measures to prevent or mitigate, protect, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;*
- b. Establish a legal framework for preventing internal displacement, where possible, and protecting and assisting internally displaced persons in Africa;*
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;*
- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;*
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including non-governmental organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;*

Article 3
General Obligations *Relating to States Parties*

1. **States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.**
2. States Parties undertake to ***respect and*** ensure respect for the present Convention. In particular, States Parties shall:
 - a. **Refrain, prohibit, prevent *and protect, from*** arbitrary displacement;
 - b. Prevent political, ***social, cultural*** and economic exclusion and marginalisation, likely to cause displacement of populations or persons by virtue of their identity, religion or political opinion;
 - c. ***Respect and ensure*** respect for the principles of humanity and human dignity of internally displaced persons;
 - d. ***Respect and ensure*** respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
 - e. ***Respect and ensure*** respect for international humanitarian law regarding the protection of ***internally displaced persons***;
 - f. Respect and ***ensure respect for*** the humanitarian and civilian character of the protection of and assistance to internally displaced persons;
 - g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with ***applicable domestic and*** international criminal law;
 - h. Ensure the accountability of non-State actors, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
 - i. Ensure assistance to internally displaced persons by meeting their basic needs as well as ***allowing and facilitating*** rapid and unimpeded access by humanitarian organizations and personnel;
 - j. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a

basis for neglecting the protection of and assistance to internally displaced persons, ***without prejudice to other means of assistance***;

- k. Make provision for reparation including restitution ***where possible***, compensation, rehabilitation, satisfaction and guarantees of non-repetition for violation of the rights of internally displaced persons;
- l. Take necessary measures to find durable and sustainable solutions for internally displaced persons;

3. States Parties shall:

a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under ***international law as expressed*** in the United Nations Guiding Principles 1998 on Internal Displacement;

b. Designate an authority or body responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organizations or agencies, and non-governmental organizations [civil society], ***where no such authority or body exists***;

c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, ***taking into account the needs of*** host communities;

d. Provide, to the extent possible, the necessary funds for protection and assistance ***without prejudice to receiving international support***.

e. States Parties shall endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem internal displacement.

Article 4

Obligations of States Parties relating to Protection from Internal Displacement

1. States Parties shall ***respect and*** ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons.

States Parties shall provide persons affected by such displacement with effective remedies.

2. States Parties shall devise early warning systems in areas of potential displacement, take disaster risk reduction strategies, emergency and disaster management measures and, where necessary, provide immediate protection and assistance to internally displaced persons.

3. States Parties may seek the cooperation of international organizations or humanitarian agencies, non-governmental organizations, [civil society] and other relevant actors.

4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but **are** not limited to:

- a. Displacement based on policies of **racial discrimination** or **other** practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
- b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
- c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
- d. Displacement caused by generalized violence or violations of human rights;
- e. Displacement as a result of harmful practices;
- f. Displacement in cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- g. [Displacement induced by lack of development, inequality of well-being and neglect or inability to fulfill economic, social and cultural rights;]
- h. Forced evacuations in cases of natural or human made disasters or other causes **if the evacuations are** not required by the safety and health of those affected;
- i. Displacement used as a collective punishment;
- j. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.

5. States Parties shall **endeavour to** protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands.

6. States Parties shall declare as offences punishable by law acts of arbitrary displacement **that amount to war crimes or crimes against humanity** and shall investigate, prosecute and punish such offences.

Article 5

Obligations of States Parties relating to Protection and Assistance

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their *territory or* jurisdiction without discrimination of any kind.
2. States Parties shall **provide each other mutual support to protect and** assist internally displaced persons.
3. States Parties shall respect the *mandates* of the African Union and the United Nations, as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, *in accordance with international law*.
4. *Where maximum available resources are inadequate to enable States Parties to provide sufficient protection and assistance, they shall seek the assistance of international organizations and humanitarian agencies, non-governmental organizations, [civil society] and other relevant actors to protect and assist internally displaced persons. Such organizations may offer their services.*
5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, *in cooperation with international or agencies*.
6. States Parties shall facilitate relief action that is humanitarian and impartial in character and allow rapid and unimpeded *passage of all relief consignments, equipment and personnel* to internally displaced persons. States Parties *shall also enable and facilitate the role of local and international organizations and humanitarian agencies, non-governmental organizations, [civil society] and other relevant actors, to provide protection and assistance to internally displaced persons. States Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.*
7. States Parties shall uphold and respect the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.
8. *States Parties shall have regard to the right of internally displaced persons to peacefully request or seek protection and assistance, a right for which they shall not be persecuted, prosecuted or punished.*

9. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons; and not destroy, confiscate *or divert* such material.

10. Nothing ~~is~~ ⁱⁿ this Article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6

Obligations of Armed Groups relating to Protection and Assistance

1. *Armed* groups shall, *in accordance with international law, refrain from arbitrary displacement and* bear responsibility for providing protection and assistance to internally displaced persons in areas under their effective control, without discrimination of any kind.

2. *Armed* groups shall respect and ensure respect for international humanitarian law and refrain from committing acts that impair the enjoyment of human rights of internally displaced persons.

3. *Armed Groups shall take necessary measures to ensure that internally displaced persons are received without discrimination of any kind and live in satisfactory conditions of dignity, security, sanitation, food, water, health, and shelter; [and that members of the same family are not separated.]*

4. *Armed Groups shall not restrict the freedom of movement of internally displaced persons within and outside areas under their effective control.*

5. *Armed* groups shall in no circumstances recruit children or require or permit them to take part in hostilities.

6. *Armed* groups shall also *allow and facilitate passage of all relief consignments, equipment and personnel* to internally displaced persons in areas under their effective control.

7. *Armed* groups shall respect, protect, and not attack or otherwise harm humanitarian personnel *and* resources or other materials deployed for the assistance or benefit of internally displaced persons; *and not destroy, confiscate or divert such material.*

8. *Armed* groups shall respect and ensure the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such locations.

9. *Nothing in the present Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.*

Article 7
Obligations relating to the African Union

1. *The African Union shall have the right to intervene in a State Party in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity in relation to internally displaced persons.*

2. *The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement.*

3. *The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:*

- a. *Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;*
- b. *Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;*
- c. *Collaborate with international organizations and humanitarian agencies, non-governmental organizations, [civil society] and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.*
- d. *Cooperate directly with African States and international organizations and humanitarian agencies, non-governmental organizations, [civil society] and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;*
- e. *Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection*

and assistance accorded to internally displaced persons in Africa;
and,

- f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights in addressing issues internally displaced persons.

Article 8

Obligations of States Parties Relating to Protection and Assistance During Internal Displacement

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:

- a. **Discrimination** against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
- b. **Genocide, crimes against humanity, war crimes and other violations of international humanitarian law** against internally displaced persons;
- c. **Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance, or torture and other forms of cruel, inhuman or degrading treatment or punishment;**

d. **Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation, and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour, and human trafficking and smuggling; and,**

e. Starvation.

2. States Parties shall:

- a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind, and live in satisfactory conditions of safety, dignity, and security;
- b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary

social services, and **where appropriate**, extend **such assistance** to local and host communities;

- c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and **persons with disabilities or with communicable diseases**;
- d. Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate **psycho-social support** for victims of sexual and other **related** abuses;
- e. **Respect and ensure** the right to seek safety in another part of the **State** and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- f. **Guarantee** the **freedom** of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
- g. **Respect and maintain** the civilian and humanitarian character of the **places where** internally displaced persons **are sheltered and** safeguard such locations against infiltration by armed groups or elements, and disarm and separate such groups or elements from internally displaced persons;
- h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
- i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons **as well as in areas where internally displaced persons are located**;
- j. Take necessary measures to safeguard against environmental degradation in areas **where** internally displaced persons **are located**;
- k. States Parties shall **consult internally displaced persons** and **allow them** to participate in decisions relating to their protection and assistance.
- l. Take necessary measures to ensure that internally displaced **persons who are citizens** can **enjoy** their rights to public participation, particularly their right to vote and to be elected to public office; **and**,

m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.

3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, non-governmental organizations [civil society], and other relevant actors.

Article 9

Displacement caused by Development Projects

1. States Parties shall prevent displacement caused by development projects by public or private actors, except where such displacement is due to the construction of large scale development projects that are justified by compelling and overriding public interest because of their contribution to the sustainable development of the country or because they are in the interest of the people, including persons or communities displaced by such projects.

2. States Parties shall ensure that the planning and management of the relocation of persons displaced by large scale development projects shall be undertaken, as far as possible, with their full information, consultation and cooperation.

3. States Parties shall ensure that public or private actors shall explore all feasible alternatives before any development project is undertaken in order to avoid forced displacement altogether. States Parties shall take all measures necessary to minimize and mitigate the adverse effects of displacement where no alternatives exist.

4. States Parties shall carry out, or cause to be carried out, a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

[Article 10]

Displacement Induced by Lack of Development

1. States Parties shall prevent and mitigate conditions which induce internal displacement owing to lack of development through the adoption and implementation of inclusive social and economic development policies and programmes.

2. States Parties shall ensure that public and private actors shall fulfill the economic, social and cultural rights of persons likely to be displaced by lack of development.
3. States Parties shall redress the inequality of well being of persons displaced by lack of development by ensuring that they have equitable access to, and benefit from fair distribution of, economic resources, social services and amenities.
4. States Parties shall ensure the protection of persons displaced by the lack of development from deprivation, hunger, starvation and extreme poverty.
5. States Parties shall safeguard persons displaced by the lack of development against forced removal, eviction or expulsion from areas in which they settled spontaneously.
6. States Parties shall undertake the social and economic rehabilitation of the victims of displacement induced by lack of development, and they shall find suitable alternative sites for their habitation.
7. States Parties shall ensure peaceful and orderly relocation to such sites in satisfactory conditions of safety, nutrition, health, hygiene, and suitable or appropriate accommodation.]

[Article 10 is bracketed for reasons explained in the report]

Article 11

Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation

1. States Parties shall **seek lasting solutions to the problem** of displacement by promoting and creating **satisfactory conditions** for voluntary return, local integration or relocation **on a sustainable basis** and in circumstances of safety and dignity.
2. States Parties shall **enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate** by consulting them on these and other options and ensuring their participation in finding sustainable solutions.
3. States Parties shall cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and non-governmental organizations [civil society], in providing protection and assistance in the course of finding and implementing solutions for

sustainable return, local integration or relocation and long term reconstruction.

4. States Parties shall establish **appropriate mechanisms providing for simplified procedures where necessary** for resolving disputes relating to the property of internally displaced persons.

5. States Parties shall take all appropriate measures, **whenever possible**, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12 Compensation

1. States Parties shall establish an **effective** legal framework to provide **just and fair compensation and provide other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.**

2. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13 Registration and Personal Documentation

1. States Parties, in collaboration international organization or humanitarian agencies, and non-governmental organizations [civil society] **shall create and maintain** an up-dated register of all internally displaced persons within their jurisdiction or effective control.

2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents **necessary for the enjoyment and exercise of their rights**, such as passports, personal identification documents, birth certificates and marriage certificates.

3. **States Parties** shall facilitate the issuance of new documents or the replacement of documents lost **or destroyed** in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. **The**

failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.

4. Women and men as well as separated and unaccompanied minors shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14 Monitoring Compliance

1. States Parties agree to establish a Conference of States Parties to monitor and review the implementation of the objectives of this Convention.

2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference.

3. States Parties agree that the Conference shall be convened periodically and facilitated by the African Union.

4. States Parties shall, when presenting their report under Article 62 of the African Charter on Human and Peoples' Rights, indicate the legislative and other measures that shall have taken to give effect to this Convention.

Article 15 Final Provisions

1. The present Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and People's Rights or other applicable instruments of international human rights law or international humanitarian law and shall not in any way be understood, construed or interpreted to restrict, modify or impair existing protection under any of these instruments.

2. The right of internally displaced persons to lodge complaints before the African Commission on Human and People's Rights or the African Court on Human and People's Rights or any other international complaints mechanism shall not in any way be affected by this Convention.

3. Nothing in this Convention shall be construed to affect or undermine the right of internally displaced persons to seek and enjoy asylum as provided for under the African Charter on Human and Peoples' Rights, and to seek

protection as a refugee under the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol.

- 4. *The provisions of this Convention are without prejudice to individual criminal responsibility of internally displaced persons under domestic or international criminal law and their duties under the African Charter on Human and Peoples' Rights.***
5. This Convention shall enter into force upon the deposit with the Chairperson of the Commission of the African Union of instruments of ratification by 15 Member States of the African Union.
6. States Parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

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