

**The London School of Economics & Political Science**

# **Rethinking Internal Displacement**

*Geo-Political Games, Fragile States, & the Relief Industry*

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## Abstract

The aim of my thesis is to excavate and interrogate the history, structure, and impact of the new Global Internal Displacement Regime that seeks to apply international law and humanitarian relief mechanisms for the protection of vulnerable populations within their sovereign borders, from the effects of civil conflict and social breakdown. It will demonstrate that at each level of inquiry the IDP Regime has been a vehicle to secure the interests of the powerful.

The Origins of the IDP Regime are a product of a geo-political game that has been played between UNHCR, Western states, and Third World states since the 1940s. Similarly the Evolution of IDP norms were designed to eclipse and replace the 1951 Convention in order to contain refugee flows from the Global South to the North. This history ran parallel to the wider history of internal displacement as a function of population control practiced by states in both war and peace, with humanitarian mechanisms now justifying and employing similar structures and rhetoric.

The Structure of the IDP Regime reveals a series of discursive reproductions of power by the manner in which vulnerability, paternalism, and control are constructed and intertwined with IDPs presented as passive, voiceless, victims; NGOs as altruistic saviours; displacement as an endemic condition of crisis prone Third World states; and IDP protection mechanism promoted as solutions for balancing the rights and privileges of humanitarians with the predatory and coercive goals of fragile states.

Finally the Impact of the IDP Regime was evident in the civil war in northern Uganda where the application of humanitarian protection mechanisms became incorporated into the political economy of violence with aid agencies legitimating the government's precarious counter-insurgency campaign. By trapping displaced masses into IDP camps, a lucrative humanitarian economy emerged that turned northern Uganda into a permanent zone of crisis and relief under the Cluster Approach system, which had initially boasted greater aid agency co-ordination and efficiency. The consequence of which was that 1.8 million citizens who were existing under an alternate bureaucratic category, in an alternate territorial space, and governed by an alternate external entity, suffered and perished from starvation, disease, exposure, and unchecked rebel attack.

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## I. INTRODUCTION

An interesting analogy for comprehending the Global Internal Displacement Regime comes from Ian Hacking in his study of the reality of transient mental illnesses, where he questioned their validity through their haphazard conceptualisation, and highlighted the social repercussions of their diagnosis. In relation to the children's condition known as Attention Deficit Hyperactivity Disorder (ADHD) 'discovered' in the early twentieth century, he asked the penetrating questions:

Fidgety children have been with us forever; then came hyperactivity; next came, attention deficit; at present attention deficit hyperactivity disorder, for which the steroid Ritalin is prescribed. Is that a real mental disorder? Or is it an artefact of psychiatry demanded by a culture that wants to medicalise every annoyance that troubles parents, teachers, bus drivers, and all the other powers that be?<sup>1</sup>

Even more critical were the consequences of its first diagnosis, which began a process of 'scientific' knowledge production which snowballed and gave birth to a plethora of specialists and bureaucracies, education policies, school treatment programs, pharmaceutical products, and voluminous academic studies, all containing their own discourses that reinforced each other to make ADHD an established and respected object of paediatric healthcare.

However along the way this became open to manipulation and exploitation. Hyperactivity had defined disorder until the 1980s when the US psychiatry's Diagnostic and Statistical Manual of Mental Disorder (DSM) coined the term 'attention deficit disorder', which effectively shifted diagnostic emphasis from hyperactivity to attention as the core problem of disorder. The implication of this was that now children with or without hyperactivity could be diagnosed with ADD.<sup>2</sup> Thus education authorities created categories of children who became stigmatised and subjected to rigorous treatment programs. School teachers were awarded

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<sup>1</sup> Hacking (1998), p. 8.

<sup>2</sup> Singh (2002), p. 361.

powers beyond their professional remit to identify and even diagnose ADHD, with many having vested interests in either detecting and managing disruptive children or dissuading parents of the need for treatment due to their personal beliefs about learning disorders. Authorities required schools to screen children for ADHD with special education budgets skyrocketing. This demand created a medicine boom in the pharmaceutical industry with many companies engaging in drug promotion that masqueraded as professional education by sponsoring publications, websites and advocacy groups that offered ‘guidelines’ to teachers, school nurses and parents. Such a move reinforced the place of the pharmaceutical industry as a ‘benevolent’ and ‘authoritative’ presence within the school. The most serious impact was on families, with schools reporting parents who refused treatment to child protection authorities for neglect.

Hacking’s critical analysis of the discovery, evolution, and trajectory of mental illness sets the tone for the way we should think about the Global Internal Displacement Regime. This thesis thus asks the question: *What is the History, Structure, and Impact of the IDP Regime?* In doing so I will endeavour to illuminate how such a regime led to the creation of complex systems of objectification, categorisation, manipulation and exploitation by a raft of actors. My underlying motivation for conducting such a study into the wider history of norms, policies, institutions and agents shaping the process and outcome of internal displacement is to reveal a diverse web of interactions within international politics, between institutions, the relief industry, and fragile states. Through an exposition of the histories, a deconstruction of the conceptual and normative make-up, and the case study of the impact in Uganda, this thesis will provide a counter narrative that unlocks and questions the inherent contradictions, assumptions, ambiguities, and dangers of the global IDP Regime.

### **The Internal Displacement Regime**

The formation of the global IDP Regime is widely understood to be a reaction to the perceived upshot of instability and violence in the Post-Cold War era which saw state

collapse, civil war, popular revolt, secession, ethnic cleansing, famine and genocide, force millions of people from their homes to seek refuge either across or within their national borders. The modern regime stems from the proposed reform of the United Nations issued by Kofi Annan in 1997, that sought to adequately address the needs of IDPs through the Emergency Relief Co-ordinator of UN OCHA who was tasked with developing policy and operational mechanisms so that 'all humanitarian issues, including those which fall in gaps of existing mandates of agencies such as protection and assistance for internally displaced persons, are addressed'.<sup>3</sup> There are five elements to the Global Internal Displacement Regime. First the legal and advocacy dimension is comprised of the United Nations Special Representative to the Secretary General on the Human Rights of Internally Displaced Persons. This post was established at the request of the Commission on Human Rights in 1992 in order to examine the human rights issues related to internally displaced persons and to prepare a relevant comprehensive study by General Assembly Resolution.

Linked to this is the new African Union IDP Convention which is a legally binding treaty signed by its member states in Kampala in 2009 and ratified in 2012.<sup>4</sup> This was an outcome of the initial soft law arrangement of the Guiding Principles on Internal Displacement which were a set of 25 non-binding standards for governments and international organisations in the protection of IDPs. Established in 1998 they detailed the rights and guarantees relevant to the protection of IDPs in three phases, 'from arbitrary displacement', 'during displacement', and the 'safe return, resettlement and reintegration'.<sup>5</sup> Third are the Norwegian Refugee Council and the Internal Displacement Monitoring Centre (IDMC) which works to formulate all relevant data on global IDPs which is used to advocate for the rights of the IDPs by carry out training programmes for Country Teams.<sup>6</sup>

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<sup>3</sup> Extract from Secretary General's report to General Assembly: A/51/950 (July 1997), Renewing the United Nations: A Programme for Reform.

<sup>4</sup> The Kampala Convention: Making it real: A short guide to the AU Convention for the Protection and Assistance of IDPs in Africa, IDMC, (2010).

<sup>5</sup> Guiding Principles on Internal Displacement (1998).

<sup>6</sup> McNamara (2005), p. 17.

Fourth is the humanitarian dimension of the global IDP Regime through the creation of the Cluster Approach in 2005. There are three global clusters led by UNHCR. The Protection Cluster Working Group (PCWG) comprises over 30 implementing partners from the humanitarian, human rights and development community who tackle the challenges arising from the physical security of IDPs, property issues, gender-based violence, lack of basic services and the loss of personal documentation. The Camp Coordination and Camp Management Cluster (CCCM) is jointly led by UNHCR which focuses on conflict based displacement and the International Organisation for Migration (IOM) which focuses on natural disaster based displacement. The Emergency Shelter Cluster is co-lead by UNHCR and IFRC and seeks to increase the effectiveness and predictability of service provision by i) expanding the number of qualified professionals available for rapid deployment; ii) developing an emergency shelter strategy and guidelines and tools for assessments, intervention and monitoring alongside training; and (iii) strengthening stockpiles of shelter and related non-food items (NFIs).<sup>7</sup>

Finally the academic and intellectual discourse attached to the IDP Regime is spearheaded by the Brookings-Bern Project, which is a collaboration between the Brookings Institute and the University of Bern School of Law established to monitor global displacement, promote the dissemination and application of the Guiding Principles, lobby governments, regional bodies, international organisations and civil society to create policies and. The Project publishes studies, articles and reports and convenes international seminars. Supplementing this has been the Institute for the Study of Migration at Georgetown University which has been engaged in a project since 2007 to determine ‘when internal displacement ends?’

Today the Global IDP phenomenon is an acclaimed international regime endorsed by governments, international organisations, civil society groups, and humanitarian actors. The General Assembly has since passed multiple resolutions dedicated to IDPs. In his report *In*

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<sup>7</sup> EXCOM Report EC/57/SC/CRP.18, 8 June (2006): UNHCR’s expanded role in support of the inter-agency response to internal displacement situations, SUMMARY, p. 114.

*Larger Freedom*, the UN Secretary-General, in March 2005 urged Member States to accept the Guiding Principles on Internal Displacement as “the basic international norm for protection” of internally displaced persons. In July 2005, the Chairman of the UN General Assembly in a report reaffirming the UN Millennium Declaration, under the heading *Internally Displaced Persons*, recognised the Guiding Principles as “the minimum international standard for the protection of internally displaced persons” . In addition the Organisation for Security and Cooperation in Europe (OSCE), African Union (AU), The Economic Community of West African States (ECOWAS), and the International Authority on Development (IGAD) have all formally acknowledged the principles.<sup>8</sup>

## II. RESEARCH PROBLEM

This thesis first attempts to reconcile a divide by bringing several disciplines and discourses to the same table. This has arisen because internal displacement is not a unified concept and simply attempting to define precisely what the IDP Regime consists of has become a herculean task. Internal displacement is rather a chameleon and a major constraint to analysing it stems from its multiple guises depending on the given environment which cut across disciplines, sub-fields and ultimately imprints itself on all the various constellations of human life. This emphasises how the dimensions of culture, society, the economy, and the political all coexist on an immanent field of interaction. This is significant because how the IDP is interpreted is not exclusive to any one realm and may give rise to tugs of war over the implementation of a given program(s) by a given actor(s). The legal discourse primarily regards the protection of IDPs under the black letter of national and international law.<sup>9</sup> However this may lead to purely symbolic protection with lawyers having no conception of political dynamics within fragile states. The intellectual and academic discourse seeks to research and produce knowledge able to better assist and direct policy towards the

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<sup>8</sup> Kalin (2005), p. 27.

<sup>9</sup> Phoung (2005), Bagshaw (2005).

identification and protection of IDPs.<sup>10</sup> However this can lead to an objectification of the IDP as a passive, voiceless and invisible victim, encompassing a special category devoid of citizenship. The humanitarian discourse concerns the physical protection of vulnerable people arising from conflict induced displacement, either through a rights based or a needs based approach.<sup>11</sup> However this may clash or become complicit with the military discourse of internal displacement which concerns the control of the civil populace through forced evacuations and concentration camps, in an attempt to deny rebel groups a resource base in counter insurgency warfare.<sup>12</sup> Finally the development discourse is concerned with the imperative to create open and equitable societies that reduce the propensity for displacement through poverty and war by the employment of 'good governance' mechanisms which can facilitate infrastructural development and economic development. However this can itself cause development induced displacement through the construction of communications, transportation and energy infrastructure, which can leave hundreds of thousands stranded and destitute.<sup>13</sup> Overall there is little or no interaction between fields and no introspection by each discourse of the changing relationships to one another. Given this state of affairs this thesis thus develops a broad ecumenical framework for thinking about the dynamics of IDP Regime which draws upon various theoretical schools including: the constructivist scholarship on norms, discourse theory, and political geography, all of which contribute something important to our understanding of the IDP Regime.

Secondly the inability for inter disciplinary dialogue predominantly stems from the failure to properly historicise the IDP Regime. The few writings on internal displacement focus on the events after 1990, however to comprehend the regime requires us to revisit the contestations and debates both within the League of Nations in 1930s and within the United Nations from the 1940s to the present. In addition the scholarly work on internal displacement is predominantly divided along the lines of ethnographic studies on the lived experiences of

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<sup>10</sup> Deng (1993), Korn (1999), Cohen and Deng (1998).

<sup>11</sup> Mooney (2001).

<sup>12</sup> South (2007).

<sup>13</sup> Turton in Robinson ed. (2002), p. 27.

displaced people<sup>14</sup>; the political and socio economic complexities of displacement and its categorisation<sup>15</sup>; and the attempts to afford IDPs legal and humanitarian protection through durable solutions<sup>16</sup>. There is however little discussion or analysis of how, when, and why internal displacement has become a shibboleth of our time, nor of the consequences of this conceptualisation. The origins and evolution are rarely connected to further innovations, developments, and trends with the past and present unconnected. Instead, it is treated as an unprecedented phenomenon which simply fell out of the sky to the alarm of the international community in the Post-Cold War era. This thesis hopes to provide the first account of the modern IDP Regime that further links forced migration to International Relations. While the discipline has expanded its empirical focus beyond the hard security issues of war and peace to encompass a range of themes including the global economy, environment, human rights, and international trade, relatively little attention has been directed towards the international politics of forced migration, with only isolated pockets employing forced migration as an appendage and symptom for more traditional military threats of ethnic cleansing, genocide, peacekeeping, and regional stability, etc. According to Betts, forced migration ‘touches upon issues relating to international cooperation, globalisation, global public goods, ethnicity, nationalism, sovereignty, international organisations, regime complexity, security, the role of non-state actors, interdependence, regionalism, and North-South relations’.<sup>17</sup>

Finally this thesis is a response to the work of Thomas Weiss & David Korn, *Internal Displacement: Conceptualisation and its Consequences* which hailed the formulation of the IDP concept as a positive international achievement, in line with the arguments and slogans that profess that *People Matter and Ideas Matter*. For Weiss & Korn the plight of voiceless

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<sup>14</sup> Brun (2003), Brun and Lund (2005), Lund (2003), Shanmugaratnam et al. (2003), Skonhoft (1998), Vincent and Sorensen (2001), Schrijvers (1999), Banerjee et al (2005), Mertus (2003), Van Hear (2002) and Birkeland (2003).

<sup>15</sup> Deng and Cohen (1998), Zetter (1985 & 1991), Raper (2003), UNOCHA (2003), Cernea & McDowell (2000), & Rajaram (2002), Barutunski (1996, 1998, 1999), and Bennett (1999), and Qadem (2005)

<sup>16</sup> Deng (2000), Cohen (1998, 2003), Frelick (1999), Jacobsen (2001), Borton et al. (2005), Slim and Eguren (2004), Mooney (2003), Contat Hickel (2001), Krill (2001), Kalin (2000), Davies (1998) and Dubernet (2001).

<sup>17</sup> Betts (2009), p. 2.

victims was brought to the attention of the international community. They trace the origins, actors, politics & problems which shaped the modern IDP discourse arguing that:

The phenomenon of internal displacement and the conceptualisation of sovereignty as responsibility- including the various dimensions of international protection-have had substantial normative, legal, and operational consequences during what, by historical standards, represents a remarkable brief period of time (1992-2005). They are: the recognition of the category itself; the acceptance of the Guiding Principles on Internal Displacement; the promotion of national and international protection for IDPs; and the integration of internal displacement into the machinery of donors, IGOs, regional organisations, and NGOs. The mandate of the representative provided the platform, and the PID provided the intellectual firepower and institutional base.<sup>18</sup>

Weiss and Korn begin their analysis with the historical background to the IDP problem from 1992-1993. They then give an account of factors which led to the UN publication of the two books *Protecting the Dispossessed & Masses in Flight* and the formulation of the Guiding Principles on Internally Displaced People from 1993-1998. They document how Francis Deng who was the UN Special Representative to the Secretary-General on Internal Displacement from 1992 to 2004 attempted to address the institutional shortcomings within the UN with regard to IDPs and conclude with his legacy. While they state very clearly that their intentions are not to provide an appraisal of the effects of the IDP discourse for protection and assistance operations on the ground<sup>19</sup>, this thesis will document how the actual consequences and experience of this conceptualisation for states, aid agencies, and displaced populations in complex emergencies, challenge the perceived achievements.

They only observed the IDPs suffering without recognising these unintended consequences. There is a whole dimension of internal displacement not analysed and airbrushed out of their analysis. For the authors the 'conceptualisation' and birth of internal displacement stemmed

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<sup>18</sup> Weiss and Kohn (2006), p. 7.

<sup>19</sup> Ibid, p. 3.

from the valiant efforts of Francis Deng, as the heroic figure who worked tirelessly trying to reconcile the suffering on the ground with bureaucratic politics in New York and Geneva.

The title of their book represents something of a misnomer because in reality there has been no conceptualisation of internal displacement on its own merit. Instead what has been conducted by lawyers, academics and humanitarians alike, has been a simple emotional analogy of destitute vulnerable citizens with destitute and vulnerable refugees which reduces internal displacement to established international mechanisms of refugee protection. However to properly conceptualise and develop the core elements of this phenomenon would require identifying the external and internal political dynamics of state-societal relations which would invariably point to the vested and entrenched interests of the powerful, which dwarfs any attempt by academics, lawyers and humanitarians to control, manage, or change. By using the case study of northern Uganda I will show how the IDP Regime has impacted on fragile state-society relations in order to 'reconceptualise' the initial failed 'conceptualisation' of internal displacement, which will provide a more accurate understanding of the phenomenon. The work of Weiss and Korn represent only a galaxy in a universe of competing agendas, geo-political games, international humanitarian organisations and fragile states.

### **The History of the IDP Regime**

Tracking the origins and evolution of the regime will give a very different perspective on its present outlook. To understand where the IDP Regime originated from, it is necessary to grapple with the causes, interests, and interactions between powerful states and international institutions in relation to the international politics of refugees. The forced migration literature that covers the history, politics, actors, and responses pertaining to refugees and the UNHCR contains only a modicum of historical coverage of IDPs.<sup>20</sup> The prevailing scholarship on internal displacement is of the conviction that the regime began in the late 80s with

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<sup>20</sup> Loescher (1989, 1993, 2001, 2010), Betts (2010), Holborn (1956), Goodwin-Gill (1996), Harrell-Bond (1986), Hathaway (2005), and Chimni (2000), Nicholson and Twomey (1999), Soguk (1999), and Gibney (2004).

proponents of the IDP Regime describing a new and unprecedented phenomenon. The origins of the Internal Displacement Regime are widely believed to have stemmed from the tireless and selfless efforts of a coalition of Non-Governmental Organisations (NGOs) and individuals who lobbied, reported and pressured powerful governments and institutions to consider internal displacement not solely a humanitarian but a human rights issue, that required new norms, structures and institutions. The World Council of Churches, the Quakers, the Refugee Policy Group, International Council of Voluntary Agencies (ICVA), Caritas International, the Jacob Blaustein Institute for the Advancement of Human Rights and the European Foundation for Human Rights, and the Brookings Institute, were all instrumental in pushing for resolutions that recognised internally displaced persons. In 2000 Francis Deng received the Rome Prize for Peace and Humanitarian Action. In 2005 he and his colleague Roberta Cohen jointly received the Grawemeyer Award for Ideas Improving World Order. Finally in 2007 Deng received the Merage Foundation American Dream Leadership Award. In a 2006 edition of *Forced Migration Review* titled *Putting IDPs on the map: Achievements and Challenges*, Roberta Cohen is credited as the person who placed internal displacement on the agenda of human rights institutions by ‘applying the principles through fundraising for their translation and dissemination, organising and speaking at countless seminars and conferences and lobbying within the UN system...credited with defining a field of academic and intellectual study...establishing the case for IDPs as a category of concern’.<sup>21</sup>

However to truly understand why a handful of individuals and institutions came to be regarded as the founders of the IDP Regime, we have to recognise the belief systems that explained the emergence of IDP issues, which describe it as a direct product of precedence set by a collection of wider social forces of the globalised media coupled with the rise of human rights discourse, and interventionism, penetrated and demolished the defensive wall of sovereignty, to expose, indict, and embarrass repressive governments, and elevate suffering masses to a level of acceptable dignity, which was enshrined in adherence to the higher values

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<sup>21</sup> FMR, December (2006), p. 3.

of global civil society. However here lies the difficulty, because it is precisely the obsession with this social order by humanitarians, human rights activists, lawyers, and civil society organisations today, which represents the subterfuge that has eclipsed the real and imminent interactions of geo-politics with powerful Western states seeking to curb the flow of refugees arriving from the global south through a new regime that nullifies the UN 1951 Refugee Convention through in-country protection that abrogates the need for flight.

In addition to this UN Humanitarian Organisations have now employed IDP Camps as viable relief mechanisms. This practice adds another layer of complexity to the formation of the IDP Regime because of the parallel history of internment (villagisation, extermination, counter insurgency, and internal security) which has been practiced by states for over two hundred years for the retention of power and governance. This is perplexing because the IDP camp which was first a tool for population control has now been inverted to become a new and effective remedy to the suffering of displacement.

### **The Structure of the IDP Regime**

Uncovering the history undoubtedly leads to questions of its nature and logic. Internal displacement has become so deeply entrenched, that it seems almost impossible to question due to the hegemonic status of human rights discourse at its centre, which requires an analysis of its discursive formations. By deconstructing aid agency literature, agency speeches, IDP images, academic scholarship, and field operations, we will observe how the various discourses of internal displacement between lawyers, academics, international organisations, humanitarian practitioners, military forces have affected the articulation and construction of the global IDP Regime, so as to comprehend the following:

- What are the terms in which the IDP phenomenon have been framed?
- Why are IDPs invariably framed as a 'problem' in need of a solution?
- What identities are constructed by the prevailing classification system of IDPs?
- What privileged positions are created through IDP protection structures?

Empirically the global IDP Regime does not generally bring about any significant reduction in displacement, nor the protection of internally displaced populations, for reasons that I will expand in the following section, precisely because it is set up in such a way that it never could, with institutions that are organised to primarily perpetuate themselves, and with the assistance to suffering people simply conducted as an appendage to this quintessential endeavour. Furthermore the obvious fact that the forces driving displacement (socio-economic inequality, state fragility, colonial and Cold War legacies, the peripheral position of the Global South in the world economy) exist beyond the capacity and scope of any one actor to tackle through humanitarian solutions that only address symptoms of crises. Given such a reality, it therefore becomes fundamental to understand the effects the IDP Regime produces. Through its deconstruction, I intend to unveil how institutions addressing the global internal displacement generate their own forms of discourse, which simultaneously construct internal displacement as a particular kind of object of knowledge, which then creates a structure of knowledge around that object for particular interventions and outcomes by particular actors. By employing a critical discourse analysis as a vivisection of this conceptual apparatus: an investigation of how specific ideas about ‘internal displacement’ are generated in practice, and how they are put to use; and a demonstration what effects they end up producing, I hope to provide an overarching picture of the embedded knowledge-power complex of the IDP Regime.

### **The Impact of the IDP Regime**

In order to create a resilient argument against such an entrenched and mainstream international regime, a firm empirical base is required to determine the way it works in practice and the effects it generates, so as to ascertain what happens differently due to the regime that would not or could not happen without it?

The IDP Regime has awarded citizens of a state the rights and privileges of refugees, which is a legal status under international law given to people who cross a sovereign boundary and

are therefore in need of rights outside their country of origin. The fact that aid agencies and donors are now officially responsible for citizens within their own borders has begun to distort state societal relations and become open to exploitation and manipulation. As will become evident in the humanitarian operations in Uganda (1996-2010), 'projects can end up performing extremely sensitive political operations involving the entrenchment and expansion of institutional state power almost invisibly, under cover of a neutral, technical mission to which no one can object'.<sup>22</sup>

By deconstructing and assessing the impact of the global IDP regime in northern Uganda, we will observe how it has formally institutionalised humanitarian politics, to the point where rather than respond to, exacerbate, or prolong complex emergencies, humanitarian aid operations become the complex emergency in of themselves. The Cluster Approach ironically employs the practice of internal displacement as a remedy to the suffering of internal displacement. The employment of concentration camps through the Cluster Approach framework as an effective mechanism for the delivery of aid, imprisons its recipients in a permanent state of relief where they are subjected to all the above pathologies and politics of aid agencies, with no voice, capacity or resources to escape what is presented and sustained as a magnanimous and noble act of human security. The dual use of the concentration camp by military forces and humanitarian actors for clearly diametrically opposed objectives has blurred the continuum between protection and control to the detriment of those displaced in camps. In addition most of the authors neglect to mention any of the macro level political or economic forces that contribute to humanitarian catastrophes or shape its responses. Humanitarian aid is presented as a mechanical organisation-driven process devoid of human agency or process. Therefore by linking the humanitarian dimension of the global IDP Regime to the complexities of international politics and the crises of governance, we will begin to establish a more comprehensive and contextualised picture that makes humanitarian politics and violence logical and even expected manifestations of these interactions.

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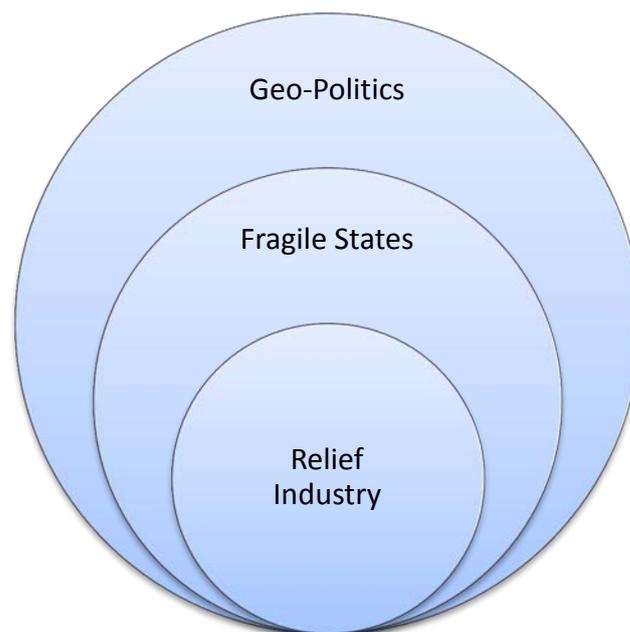
<sup>22</sup> Ferguson (1990), p. 256.

To accomplish this, a relatively neglected Foucauldian framework- that of heterotopology (the analytics, in other words of 'heterotopia') is employed. Foucault's notion of heterotopia provides an avenue of conceptualising 'differential', or 'other' social spaces. These are zones of social activity with prescribed functions and identities which are able to operate as spaces of alternate social ordering; heterotopia in other words, are able to show up, critically reflect and subvert a society's commonplace norms and discursive values. Heterotopia are connected to a series of criteria- ritualised systems of opening and closing, a codified sense of social functionality, a distinctive ordering of time and the spatial realisation of utopian aspirations- that Foucault applies as a set of steps for the analysis of spatio-discursive relations of power. The applied focus on the IDP camp and the Cluster Approach, will be the site in which a particular formation of 'protection' will be thrown into sharp perspective. The subsequent analysis identifies how a particular discourse of 'protection' that aid agencies and Uganda government mobilise as a means of justifying a series of coercive, brutal and exploitative measures. The spatial ordering of camps through the creation of a 'different' category of citizens, with 'different' rights, organised in a 'different' location, and governed by a 'different' external entity, justify structures of power, privilege and paternalism and function as the ultimate and true impact of the IDP Regime.

### **III. ARGUMENT**

It is my contention that by analysing the history, structure and impact we will rethink the IDP Regime to be purely a mechanism for accommodating a series of interests at three levels (see figure 1 below). The history of the IDP Regime was not simply about the discovery of destitute masses who shared the same characteristics as refugees and had no protection under international law, but a geo-political game in which the old frameworks of the 1951 Convention had limited the interests of the powerful, with new ones thus required to replace it to manage and contain refugee flows, calm domestic pressures and conceal xenophobia while upholding international human rights obligations through the right to remain, which authorised interventions into the domestic affairs of weak states. The structure of the IDP

Regime rested upon reproducing existing power structures of Western paternalism, humanitarian privileges, and the control of destitute masses through the refugee protection system. Such structures worked to create an alternate category of people, residing in an alternate territorial space, protected by an alternate external actor, which employed an alternate set of laws and guidelines. The impact of the IDP Regime was witnessed in Uganda where it bolstered a fragile state in its retention of power, by becoming fully incorporated into the political economy of violence, by camouflaging counter-insurgency practices, maintaining a shining international image, and lubricating and stabilising a highly precarious patronage system. In addition to this it secured the privileges & status of the relief industry operating within complex emergencies through a camp based system that created a series of overlapping vicious cycles.



**Figure 1**  
**IDP Regime Complex**

**Research Caveats**

My overall aim in this thesis was to ignite a discussion that grounded the IDP Regime within its 'proper' context of geopolitics and governance. As a result a number of important limitations need to be considered regarding the present study. Firstly due to the scant data on the history, structure and impact of the IDP Regime, there is no clear benchmark, which meant that much of the work had to be assembled and assessed through events, speeches, official reports, operations, field observations, images and informal discussions in order to triangulate and read between the lines of a great deal of ambiguity and contradiction. As a consequence many of the findings are open to alternate explanations that either build upon or challenge the current study. Secondly in light of this and due to the limitation of time, I do not attempt to provide an absolute all-encompassing narrative but acknowledge that more concrete data into the institutional make-up of organisations and the intricate decision making processes of states may illuminate or fine tune any unexplained or incomplete areas more rigorously, which may be the basis for further research.

## **IV. METHODOLOGY**

### **Archival Research**

To properly historicise the IDP Regime so as to understand why the displacement of populations has existed throughout the history of warfare, suddenly became a prominent challenge for the international community in the Post-Cold War era, I had to engage the archival material held at the Refugee Studies Centre at Oxford University which included reports, conferences and workshops on internal displacement. Secondly the Official Records of the League of Nations from 1920-1936 and the Official Records of the United Nations General Assembly 3<sup>rd</sup> Committee from 1947-1994. Both sources were based at the Commonwealth Reading Rooms at Cambridge University and revealed the long history of the geopolitical contestations surrounding the protection of people within their borders by the Great powers since the early twentieth century, which were absent from the prevailing literature.

### Critical Discourse Analysis

To detail the structure of the IDP Regime, I had to employ a discourse analysis of a diverse collection of artefacts, documents and images that eventually reveal a series of logics of control. This involved applying three methodological instruments to uncover the embedded structures of power. First was the central notion of activity, as Foucault warned us not to be overly concerned with such caricatures of power as simply repressive force that prohibits and constrains behaviour, but instead to be receptive to its modes of innovation, invention, and adaptability. Second because discourse operates to formulate given understandings it is important not just to consider the plenitude of meaning but the restrictive and constraining functions which account for the scarcity of meaning with what *cannot* be said, or what is deemed unreasonable or impossible within certain discursive domains, which in themselves reveal. Thirdly is resistance which arises from the dynamism of responses and exchanges which for Foucault is a necessary precondition for the operations of relations of power as without contestation there would be complete domination, subservience and obedience.

### Northern Uganda

In order to uncover the material impact and unintended consequences of the IDP Regime on a fragile state, Uganda became the site of ethnographic fieldwork. The research was based over a nine month period in which I enlisted the help of a small team of five research assistants to interview, observe and translate 100 life histories from a cross section of people who lived and operated in the camps from 1996 to 2010. I selected a total of 12 IDP camps which varied in size from the three districts of Gulu, Kitgum and Pader. The people selected include families, youths, elderly, traditional leaders, religious denominations, security personnel, journalists, aid workers, camp commandants, lawyers, civil servants, and local politicians. In addition I conducted document collection first from the Parliamentary Library of all official Hansards of government debates and committee meetings on the war and displacement in northern Uganda from 1990 to 2011. Secondly from the Gulu District Authority archives I

collated all correspondence and meetings between local government, NGOs, and IDPs from 1998 to 2009. Thirdly I collected articles from the major Uganda newspaper (New Vision, Daily Monitor, and Observer) of public debates on northern Uganda.

## V. OUTLINE

The thesis will be divided into three parts. The first will provide the *history* of the IDP Regime. Chapter one will document the origins of the IDP Regime as an outcome of the geopolitics of refugees. Chapter two will then focus on the evolution of the IDP Regime through an analysis of how refugee norms were carefully redesigned to emerge as IDP norms that could eclipse the 1951 Convention and contain refugees. The second part will observe the *structure* of the IDP Regime through a critical discourse analysis. Chapter three will delineate the nature, logic and effects by outlining the discursive reproductions of power, privilege and paternalism at its heart. The third part will then apply such findings to understand the *impact* of the IDP Regime in Uganda. Chapter four will set the stage through an appreciation of this fragile state and how it used the IDP Regime to manage its retention of power within the context of a counter-insurgency campaign conducted within a lucrative civil war. Chapter five will apply the Foucauldian concept of heterotopia to understand how the IDP camps became spaces of discourse where relief and state actors could manage and secure their interests which culminated in the suffering of over 2 million people for over ten years.

## VI. WIDER IMPLICATIONS

The practical and theoretical concerns raised in this thesis go well beyond the domains of refugees, Uganda and the relief industry that touch upon the significant contemporary debates in international politics. Firstly regarding the nature of Third World sovereignty by the way in which sovereign territory and citizens are formally handed over to the international community for indefinite periods which echoes the politics of International Administration of War Torn states. Secondly for the emerging crises of citizenship in many developing nations

by the way the IDP Regime has reconfigured state-societal relations through masking and legitimising state predation and creation of sub-categories of citizens in already divided states. Finally for the accountability of international organisations who through the IDP Regime have now come to imprint their own agendas, interests and pathologies upon citizens within their borders.

# **Part One**

## **The History of the Internal Displacement Regime**

## Chapter One

### The Origins of the Internal Displacement Regime

#### *The International Politics of Refugees*

#### Introduction

In 1998, the former United Nations Secretary-General, Kofi Annan, stated that “Internal displacement has emerged as one of the great human tragedies of our time. It has also created an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis...protection should be central to the international response and [with] assistance should be provided in a comprehensive way that brings together the humanitarian, human rights, and development components of the United Nations”.<sup>23</sup> It has further been reported by the Internal Displacement Monitoring Centre (IDMC) that in the world today there exist over 25 million people internally displaced as a result of violent conflict and human rights violations, with notable cases of Iraq, Sudan, DRC, Somalia and Colombia containing over 1 million IDPs each. Such staggering figures have given impetus to governments, international organisations and NGOs to formulate and apply a series of global protection initiatives and national policies.<sup>24</sup> However, why and how we reached such a new global consensus will be the subject of this chapter, to *ab initio*, draw out the historical roadmaps, actors, and political processes at the root of this supposedly new international endeavour at in-country protection. What we will come to understand is that internal displacement is a child of the Refugee Regime. The goal of this chapter is thus to tell a story of the alternate history of the IDP Regime which was an outcome of the international politics of refugees over a sixty year period (see table 1 overleaf). The global initiative to protect and assist people trapped within their own borders has not been a new and unprecedented

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<sup>23</sup> Preface to Deng (1998).

<sup>24</sup> Internal Displacement Monitoring Centre (2011).

challenge, but instead a geo-political game in which UNHCR became embroiled, and had to make a series of adaptations in order to survive.

**Table 1. History of Refugee Politics**

<b>Historical Period</b>	<b>Politics of Refugees</b>
<b>1920-1940 Post War Refugees</b>	Start of protection international debates with contestations over internal or external assistance.
<b>1950-1980 Cold War Years</b>	UNHCRs creation and adaptation through the emergence of IDP issues.
<b>1990-2000 Barriers to Asylum</b>	UNHCR transition to IDP Protection and the formalisation of IDP policy.
<b>21<sup>st</sup> Century &amp; Beyond</b>	UNHCRs global humanitarian dominance through a new IDP Regime.

This alternate history reveals how the imminent need for comprehensive in-country protection became an attractive option to prevent hundreds of thousands of people fleeing across borders from the Global South into Europe and North America, which silenced any international public accusations of racism or xenophobia and authorised the external intervention into the domestic affairs of states on humanitarian grounds.

This chapter is divided into six parts. The first part will document the early years of the creation of the International Refugee Convention, in which the protection of the internally displaced was at the centre of heated debates and contestations between both the member states of the League of Nations in the 1930s, and the newly formed United Nations in 1949. The second part will discuss the Cold War years of the 50s, 60s, and 70s, in which the UNHCR struggled to become relevant to the Great Powers amid American attempts to undermine and marginalise the infant organisations that they could not control. This period sees UNHCR adapt and market itself to the interests of the powerful states of the Free World, through a number of critical interventions in East Germany, Hungary and Algeria, and the construction of the refugee as an object of Cold War propaganda and, ultimately through the

unilateral initiative of the High Commissioner, to expand beyond Europe and engage in reconstruction activities. These decades witnessed enormous internal displacement through the superpower proxy wars and indigenous national liberation struggles in the Third world.

The third part covers the decades of the 80s and 90s which marked a watershed for UNHCR. The image of the refugee was once again recast with the end of the Cold War bi-polar stand-off, to one of destitute, unskilled, non-white people from the Global South, who now arrived in great numbers at the doorsteps of the Global North. Funding crises, massive refugee repatriation operations, un-mandated interventions in Somalia, northern Iraq and Kosovo, and internal rifts transformed the organisation and unofficially inaugurated internal displacement as a crisis through a careful repackaging and re-labelling of the refugee crisis as in-country protection, rather than the containment of refugee flows. The fourth section documents the wider structural changes in the international system that allowed the IDP Regime to take root through the reconceptualization of sovereignty; the birth of human security; and the rise of Neoliberalism and non-governmental organisations which all created the necessary space for UNHCR to identify and engage in internal displacement.

The fifth part witnesses the culmination of this 60 year struggle with UNHCR coming full circle through the expanded mandate to engage in in-country protection which forms the IDP Regime and cements its existence as a permanent UN organisation. This period is marked by the organisation again re-inventing itself to counter potential rivals and clever lobbying and positioning that danced to the tune of powerful member states to once again solicit their support and funds. This allowed UNHCR to shape the outcomes of UN resolutions which paid dividends in December 2003. The final part charts the present trajectory of UNHCR in which dominance has now become its principle goal, through the protection of all categories of displaced persons. This will be evident in the political manoeuvring that has transformed UNHCR into the world's largest humanitarian organisation.

## **1. The Early Years 30s & 40s: The Creation of a Refugee Regime**

The critical concern of this first historical inquiry is not only to explore how the phenomenon of internal displacement predates the Post-Cold War era, but how the current issues and debates surrounding the international Responsibility (R2P) to Protect IDPs are not new and were heavily deliberated in the early and mid-twentieth century respectively.

### ***1.2 Total War & the Birth of the Modern Refugee***

The League of Nations in the aftermath of the First World War from 1926-1933, began a process of creating and codifying the international protection rights afforded to refugees. This was as a result of two major developments. The first was the advent of total war and the economic, social and technological transformation it brought, through the identification of enemy civilians as legitimate military targets, which resulted in vast numbers of people escaping indiscriminate violence. Second was the dissolution of the Habsburg, Romanov, Ottoman and Hohenzollern empires and the expansion of nation-states which accelerated the drive to create ethnically, religiously and culturally homogenous societies, which removed and excluded hundreds of thousands from citizenship, and in many cases became scapegoats for failed post war recovery amid the deteriorating conditions in the global economy.<sup>25</sup> Hungary received hundreds of thousands of Magyar refugees from the successor states of Romania, Czechoslovakia, and Yugoslavia. Following the Armenian genocide which killed between 500,000 to 1 million, Armenian survivors fled to Soviet Armenia, Syria and Europe. The Greco-Turkish war of 1922 created over 1 million Anatolian Greek and Armenian refugees. The Russian exodus was the biggest of all, with between 1 and 2 million people fleeing into Germany and France in the aftermath of the collapse of tsarist Russia, the Russian civil war, the Russo-Polish war and the Soviet famine of 1921. In the wake of such chaos, the League of Nations received calls from the International Committee of the Red Cross (ICRC) to find solutions to the masses in flight.

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<sup>25</sup> Loescher (2001), p. 22-23.

The contemporary debates surrounding the formal protection of people displaced within their borders by the international community are believed to have begun at the International Conference on the Plight of Refugees, Returnees & Displaced Persons in Southern Africa (SARRED) held in Oslo in August 1988. However, they were first ignited by the High Commissioner for Refugees to the League of Nations Lord James McDonald, who in December 1935 resigned from the League of Nations in protest against the refusal of member states to deal with the root causes of refugee flows from Nazi Germany. For McDonald, this required a radical approach that overstepped his limited mandate with intervention to change the domestic structure of a predatory state<sup>26</sup>. In his letter of resignation he spelt out the problem clearly:

The task of saving those victims calls for renewed efforts of the philanthropic bodies. The private organisations, Jewish and Christian, may be expected to do their part of the Governments, acting through the League, make possible a solution. But in the new circumstances, it will not be enough to continue the activities on behalf of those who flee from the Reich. Efforts must be made to remove or mitigate the causes which create German refugees. The efforts of the private organisations and of any League organisation for refugees can only mitigate a problem of growing gravity and complexity. In the present economic conditions of the world, the European States, and even those overseas, have only a limited power of absorption of refugees. The problem must be tackled at its source if disaster is to be avoided.<sup>27</sup>

Such protest eighty years ago became the bedrock of current measures to address the plight of IDPs through root causes and preventative protection in the 1990s. The former High Commissioner Ogata explained in the same way as McDonald in the wake of UNHCR's involvement in the 1992 Balkan wars that:

UNHCR traditionally understood protection to mean first of all the right to seek asylum and the rights to return for all who desired it. We realised that in the current Balkan context, protection should be [re] defined above all as 'the right to be allowed to stay in one's home in safety and dignity, regardless of one's ethnic national or religious origin.

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<sup>26</sup> Skran (1995), pp. 230-240.

<sup>27</sup> James G. McDonald, League of Nations, Resignation Letter (1935), Official Journal of the League of Nations (1936).

It is clear that protection must include the notion of prevention, but the latter can only be effective if backed by political action for a peaceful settlement.<sup>28</sup>

McDonald concluded his letter with a plea that humanitarianism needed to trump state sovereignty. This was prophetic because it became the maxim for all IDP protection discourse fifty years later through Francis Deng's conceptualisation of *Sovereignty as Responsibility*, Kofi Annan's notion of *Two Sovereignties* and a variety of NGOs and academic institutions:

When domestic policies threaten the demoralisation and exile of hundreds of thousands of human beings, consideration of diplomatic correctness must yield to those of common humanity. I should be recreant if I did not call attention to the actual situation, plead that world opinion, acting through the League and its Member-States and other countries move to avert the existing and impending tragedies.<sup>29</sup>

### **1.2 International Protection for Whom: IDPs or Refugees?**

The rancour over the protection of displaced masses continued into the 1940s due to the return and resettlement of hundreds of thousands of refugees and those displaced in camps in Post-War Europe. This dominated the agenda of the 3<sup>rd</sup> Committee on Economic & Social Affairs of the newly formed United Nations, which necessitated the creation of a new refugee convention and agency. The late 1940s saw growing numbers of internally displaced people in post war environments in India, Pakistan, Germany, and Turkey who became the concern for the international community in the heated debates that attempted to further define who and what constituted a 'refugee' in order to define the protection operations and parameters of the new UNHCR. Sweden, The Netherlands, Greece, Canada, UK, Belgium and Turkey were of the opinion that the High Commissioner's powers should not be confined to legal protection, but should be sufficient to meet all requirements, including those of a material and social

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<sup>28</sup> Statement of the United Nations High Commissioner for Refugees to the International Meeting on Humanitarian Aid for Victims of the Conflict in the former Yugoslavia, Geneva, 29, July.(1992), p. 2.

<sup>29</sup> James G. McDonald, League of Nations, Resignation Letter (1935), Official Journal of the League of Nations (1936). Pg. x, point 17.

nature<sup>30</sup>. The Indian delegate, Mrs Menon, abstained from participating in these debates firstly because the problem of European refugees was limited in geographic scope and number. This required a small agency with limited resources, which would be rapidly depleted if a refugee definition were expanded to all displaced people. Secondly was the fact that resettlement was relatively easy for Europeans living in Europe who could be absorbed into neighbouring countries. For Mrs Menon, however, the real issue was the fact that,

The United Nations should try to help not only special sections of the world's population, but all afflicted people everywhere. *Suffering knew no racial or political boundaries; it was the same for all.* As international tension increased, vast masses of humanity might be uprooted and displaced. For the United Nations to attempt a partial remedy involving discrimination, whether accidental or deliberate, would be contrary to the principles of the Charter[emphasis added].<sup>31</sup>

There resides here a striking parallel with the same arguments employed almost fifty years later by Francis Deng who protested against the international community for failing to assist IDPs in the 1990s, which became the mantra for all subsequent justifications by donors, humanitarians and, lawyers arguing that suffering and death do not recognise borders. In 1989, Roberta Cohen, in a report *Refugees and Human Rights: A Research and Policy Agenda*, argued that the focus of refugee scholars on people crossing borders, and the focus of human rights organisations on those trapped within oppressive states, was detrimental to people forced to flee regardless of whether they fled within or across states<sup>32</sup>. In addition, The Special Advisor, Population, Refugees and Migration, to the State Department Luke Lee, argued in 1996 for a legal synthesis between refugees and IDPs, on the basis that

equal rights for all individuals is implied in all universal and regional human rights instruments through the use of such expressions as 'all human being', 'everyone', 'no one', or 'all'. Hence, not a single 'right' in the Universal Declaration of Human Rights,

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<sup>30</sup> Year Book of the United Nations (1948-49), p. 593.

<sup>31</sup> Official Records of the United Nations General Assembly, Fifth Session, Third Committee, p. 377.

<sup>32</sup> Cohen and Morsch, Refugee Policy Group, (1989).

for example, is specified or implied as belonging only to refugees, and not internally displaced persons.<sup>33</sup>

More recently in 2000, US Ambassador to the UN, Richard Holbrooke, asserted that ‘there is no difference between being a refugee or an IDP. In terms of what happened to them, they are equally victims, but they are treated differently’.<sup>34</sup>

The universal fervour embedded in such sentiments was, however, not shared by all delegates within the 3<sup>rd</sup> Committee. Eleanor Roosevelt at the time representing the United States, was the main protagonist against the conflation of issues through the inclusion of IDPs in the development of a new refugee convention and critically argued that:

The transfers of population in Germany, India, Pakistan and Turkey, for example unquestionably raised serious problems for the countries involved, for those populations had to be integrated into the social economic and political life of the receiving countries. Yet they [IDPs] enjoyed all the rights and privileges of the nationals of those countries, and did not require international protection such as was envisaged in the proposals before the Committee. The problem of relief arising out of such movements was an entirely different matter, and specific proposals should be made to that effect.<sup>35</sup>

She was joined by the French delegate, Mr Rochefort, who, in December 1950, very clearly identified and reaffirmed the problem of extending international protection to those displaced within their own borders:

They [IDPs] were under a government’s protection and enjoyed the same rights as other nationals; they constituted what might be called *internal refugees*...Extension of the High Commissioner’s competence to that category of refugees would have more serious consequences. In the first place, it would give the High Commissioner the right to investigate a country’s internal affairs. Secondly, it would compel the High Commissioner to assume responsibility for from eight to ten million persons whose legal status had been determined by an international decision of far-reaching

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<sup>33</sup> Lee (1996), p. 36-37.

<sup>34</sup> Holbrooke quoted in Goodwin-Gill (2000), p. 26.

<sup>35</sup> Official Records of the United Nations General Assembly, Fifth Session, Third Committee, 329<sup>th</sup> Meeting, 29 November (1950), p. 363.

importance set down in the constitutional article. Lastly, the implicit inclusion of those refugees in the High Commissioner's competence might bring his mandate into conflict with international decisions and with governments and expose him to claims on the part of refugees and philanthropic governments. The problem of those refugees [IDPs] was grave, but it was not a problem of legal assistance. It was a problem of material assistance.<sup>36</sup> [emphasis added]

The UNHCR was thus established by General Assembly Resolution 319/4 IV/ of 1949, which stated very clearly in Article 1 (D) that 'This Convention shall not apply to a person who is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country'<sup>37</sup>. The responsibility to protect was thus to be granted to those who:

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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>38</sup>

The early years were particularly turbulent due to shortages in funding, which was only temporarily overcome through a generous donation of \$2.9 million from the Ford Foundation which became its life blood. Also it had a 3 year mandate later extended for renewal every 5 years, and it was never intended to be an operational agency that only existed to provide technical and legal assistance.

## **2. The Cold War Years 50s, 60s & 70s: The Refugee as Propaganda Tool**

The early Cold War decades saw the UNHCR adapt to the geo-political environment. In the 1950s, the Cold War superpowers were extremely opposed to UNHCR, with the US creating its own agencies outside the UN system; most notably the Intergovernmental Committee for

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<sup>36</sup> Official Records of the United Nations General Assembly, Fifth Session, Third Committee, December (1950).

<sup>37</sup> Year Book of the United Nations (1951), p. 520.

<sup>38</sup> Ibid, p. 521.

European Migration (ICEM) in 1951 and the United States Escapee Program (USEP) in 1952. The USSR and its Eastern European allies also perceived the agency to be a pawn of Western propaganda and subversion. Along with the United Nations Relief & Work Agency for Palestinian refugees (UNWRA) created in 1948, and the United Nations Korean Reconstruction Agency (UNKRA), the infant UNHCR was forced to compete with these parallel organisations for funds and political support.<sup>39</sup> However, a number of global crises emerged in the 50s for UNHCR to present its relevance to the foreign policies of both blocs. While UNHCR had already allocated \$400,000 of the \$2,900,000 received from the Ford Foundation for practical assistance to Berlin refugees, whose arrival in large numbers was affecting the position of the foreign refugees already residing in Germany, the High Commissioner appealed to governments for greater support in September 1953. Such a rallying cry bore instant fruit with goods to the value of \$2,323,843 received, and the United States donating a staggering \$15,000,000 for housing settlements for East German refugees.<sup>40</sup>

The Hungarian Revolution of 1956 saw the General Assembly call upon UNHCR to support the 200,000 Hungarians who had fled into Austria and Yugoslavia following the Soviet Union invasion. UNHCR used this opportunity to play to the interests of both East and West. The organisation had

convincingly showed off itself to be the only international institution capable of dealing effectively with a political crisis and a refugee problem of major proportions. It had worked quickly to defuse the refugee crisis, and it had even earned the respect of some socialist governments. The office had clearly come of age and had won international acceptance and recognition.<sup>41</sup>

The UNHCR's next successful venture arose during the Algerian war of decolonisation and the subsequent repatriation efforts from 1951-1963, which were of serious concern precisely because of the potential political fall-out arising from the status of those fleeing. To label those Algerians fleeing into Tunisia as refugees with a well-founded fear of persecution

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<sup>39</sup> Loescher (2001), pp. 56-65.

<sup>40</sup> Year Book of the United Nations (1953), p. 439.

<sup>41</sup> Loescher (2001), p. 70.

would have exposed the French atrocities and embarrassed a great power that sat on the Executive Committee (ExCom) for which UNHCR was accountable to. Thus the General Assembly immediately granted UNHCR a mandate to allow the High Commissioner to 'continue his action on behalf of Algerian refugees in Tunisia on a substantial scale and ...undertake similar action in Morocco', this was done to create the perception of flight from a general and ultimately 'blameless' state of instability. In the end, the UNHCR's involvement in Algeria was a face saving exercise for a number of states, as 'what was important were the political implications, rather than humanitarian or legal concerns- the UK's relationship with France, the US desire to resist the Communist influence in North Africa, and the Tunisian perception of the strategic advantages inherent within the UN rather than bilateral aid'.<sup>42</sup> Such a precedent became a strategic tool in the organisation's management of refugee crises which was encapsulated in the creation of the pragmatic notion of the 'Good Offices'. This 'enabled the UNHCR to avoid the undesirable political consequences of making refugee determinations in the Third World that might damage relations with some of the principle Western supporters of the international refugee regime'<sup>43</sup> and extend limited relief to people who were not statutory refugees, which included those displaced within their borders. This was witnessed in Cyprus in 1972 following the coup d'état and Turkish invasion which left tens of thousands displaced, and twice in 1957 and 1962 to assist Chinese refugees in Hong Kong by encouraging contributions for assistance.

The fourth incident was the Soviet Re-defection Campaign which sought to reclaim the thousands that had defected to the West through a policy of general amnesties, rehabilitation, and reform of the police and judiciary and police in Eastern Europe. Such a scheme was viewed with suspicion by the United States and its allies, who co-sponsored a resolution in 1954 that created the United Nations Relief Fund, which was a four year plan for permanent solutions. UNHCR thus became aware of the available opportunity as the US recognised that it had to be more generous, not only to those who had fled to the West, but also to the masses

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<sup>42</sup> Goodwin-Gill (1999), p. 20.

<sup>43</sup> Loescher (1993), p. 73.

who were residing in camps, and being constantly subjected to Communist propaganda to return home. UNHCR was able to tap into this new budget, receiving \$500,000 by playing to these fears of camp indoctrination.<sup>44</sup>

### ***2.1 The Refugee as a Tool of Propaganda***

The construction of the refugee as an object of Cold War propaganda was further cemented in the 1960s when the UNHCR invited artists Ronald Searle and Kaye Webb to visit refugee camps in Austria, Italy and Greece in order to document and illustrate the plight of the remaining 110,000 refugees and raise £4 million for World Refugee Year. Their findings were presented in a book entitled *Refugees 1960* (see figure 2 below). The publication presented sketched images and testimonies of refugees which upheld the liberal values of the Free World with the Escapee Program of the United States constantly referred to and praised as the preferred destination of many trapped refugees. The refugees were not objects of charity, per se, with many being skilled professionals who had been forced to abandon their jobs and careers amid advancing Russian aggression. Furthermore, refugees were extolled for preserving a strong Christian identity (see figure 3), with admiration for those who ‘voted with their feet, because they ran, walked, or even crawled painfully and perilously away from their countries of their birth to find sanctuary in a Free World’.<sup>45</sup>

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<sup>44</sup> Ibid, p. 67.

<sup>45</sup> Searle and Webb (1960), p. 34.

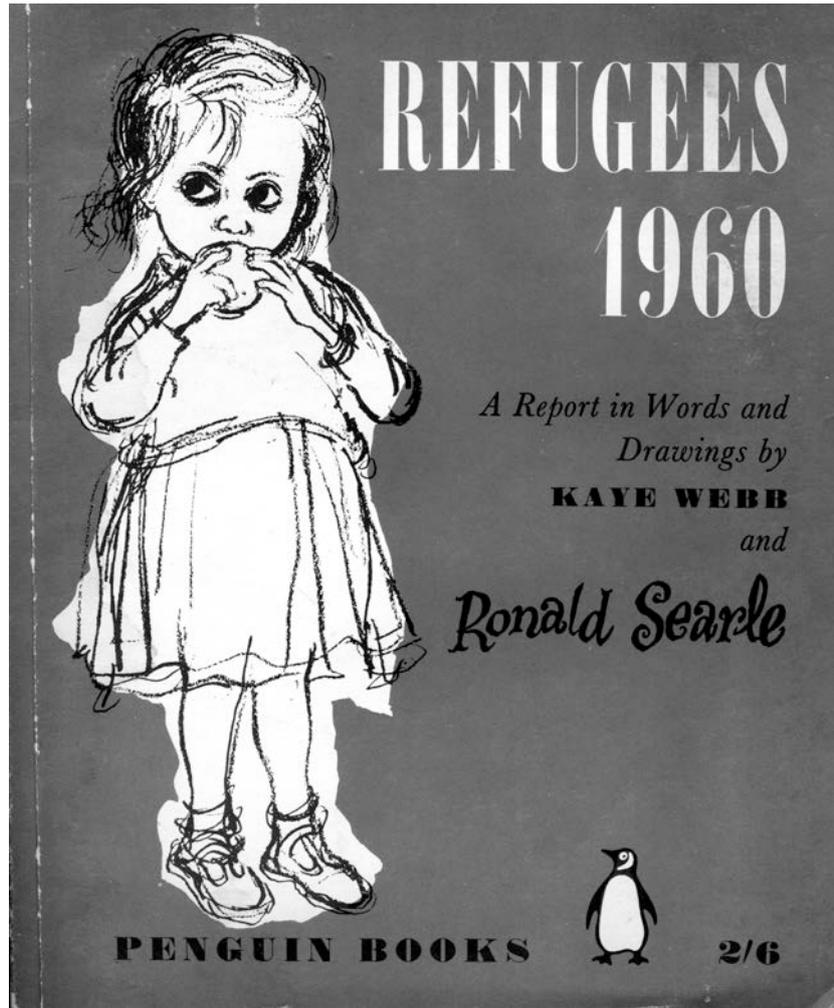


Figure 2. Refugees 1960 book cover



For many refugees freedom to follow their religion is both the reason and the compensation for their present condition. Many of the Austrian camps shelter members of the Russian Orthodox Church for whom there was no place of worship until, inspired by Archbishop Stefan, an 88-year-old Russian refugee, the United States Escapee Programme provided the funds to buy an old house on the outskirts of Salzburg. Here, on the first floor, Archbishop Stefan has created a tiny but brilliant Orthodox Church. The ikons are painted by refugees, the footstools and ikon frames carpentered by the Archbishop himself. As well as for regular services, the Church is used for weddings, christenings, and burials, all of them occurring during the course of prolonged stay in the camps.

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**Figure 3. Image & Caption of Archbishop Stefan**

## ***2.2 Expansion Beyond Europe***

In the 1970s, the High Commissioner Aga Khan Sedruddin carried out a number of unilateral actions that boosted the agency's global profile with the expansion beyond Europe into Africa. What was striking about the Sedruddin tenure was the de-securitisation of forced migration, which contrasts with the politics of subsequent High Commissioners. For Sedruddin UNHCR 'must attempt to reduce complex political questions in the minds of nations into simple moral and humanitarian components for the heart to answer'.<sup>46</sup> Finally the

<sup>46</sup> Sadruddin Aga Khan, UNHCR, Nov (1974), quoted in Hammerstad, in Loescher and Milner ed. (2010), p. 237.

superpower struggle for the Third World and the attempts by both blocs to assist the refugee crisis that had arisen from the wars of decolonisation and national liberation struggles in the wake of independence made UNHCR the focal point once again. Huge numbers of IDPs existed throughout the decades of the 60s, and 70s in the wars of decolonisation and national liberation struggles in Africa, Asia, Middle East and Latin America, but many were irrelevant and subsumed into the Cold War struggle and treated as an internal issue of state sovereignty with no need for a dedicated international regime. UNHCR chose not to get involved on the basis that ‘these situations were not a matter within the competence of the High Commissioner and were not a matter of direct concern to the UNHCR for ‘constitutional’ and legal considerations’.<sup>47</sup> This further exposed how UNHCR was now attempting to champion the rights of those it had once chosen to avoid involvement with due to its changing priorities:

The Office felt that the African’s effort to set up their own refugee organisation would duplicate and compete with their own agency and programmes...Moreover, the UNHCR feared that the establishment of a separate OAU refugee office would unduly politicise the African refugee problem.<sup>48</sup>

This period marked the beginnings of the expansion of the agency, which within a six year period had transformed itself from a non-operational agency, with no authority to lobby for funds to carry out limited programs, into an international institution providing humanitarian assistance. It had finally won the support of the major powers who realised the agency’s strategic value.<sup>49</sup>

### **3. The Volatile 80s & 90s: Third World Refugees, Xenophobia, & Containment**

The impetus for the protection of people displaced within their borders begins in earnest with the large influx of refugees into the Global North in the 1980s and 1990s, which sent many Western governments into a state of panic. This period, according to Smyser, writing in 1985, was marked

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<sup>47</sup> Views of former UNHCR senior staff quoted in Loescher (2000), p. 145.

<sup>48</sup> Loescher (2001), p. 125.

<sup>49</sup> Loescher (1993), p. 74.

by the unprecedented explosion in the number and impact of refugees. The numbers since 1945 are estimated to be as high as 60 million, more than twice the number of preceding 50 years and far beyond any historical experience. In many states refugees arrivals have shifted population patterns, altered domestic politics and shaped or even determined foreign policy.<sup>50</sup>

However, a closer inspection revealed that the end of the Cold War had simply removed the ideological and geopolitical value of the refugee to advanced Western states. During the Post Second World War era and throughout the Cold War, the image of refugee had consisted of a white, skilled, person from the Global North escaping Communist aggression. As a result, resettlement had always been the preferred option from 1945-1985. This was indeed functional for states experiencing unprecedented economic expansion in the context of depleted populations. The Hungarian refugee crisis provided the US with young, skilled, and educated people. The US Secretary of Labour, James Mitchel, noted how 'America's instinctive reply to the call for help has enriched her economy in many ways....It is now clear that America has received a valuable economic bonus'.<sup>51</sup> Thus the 80s and 90s witnesses a dramatic transformation in the image of the refugee, who becomes an object of suffering and vulnerability, with mass media projections of illiterate, weak, and starving masses fleeing chronic violence and instability with the little they could carry. This was confirmed by Cels when he commented how,

In recent years, however, the majority of asylum-seekers have arrived haphazardly, fleeing civil war, the consequences of natural disasters, economic decline, and external aggression. The nature of their arrival, by air and either without travel documents or with false ones, has complicated the application of the Convention and has resulted in irregular movements and in refugees being 'in orbit'.<sup>52</sup>

In the 'new' period it was believed that these 'other' immigrants would not be able to adjust or be accepted in Europe, and should therefore be 'assisted' within their home territories.

According to Frelick,

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<sup>50</sup> Smyser (1985), p. 155.

<sup>51</sup> Loescher (1993), p. 87.

<sup>52</sup> Cels in Loescher and Monahan ed. (1989), p. 191.

The post-Cold War has become intensely solution-orientated when confronted with impending refugee crises, so much so that a new paradigm is emerging by which refugee flows are prevented before asylum seekers cross an international border, the definitional trip-wire that heretofore has marked the threshold step in the world's response to refugees.<sup>53</sup>

The impetus for the securitisation and the later upsurge in xenophobic sentiments towards refugees and asylum seekers began with the United Nations General Assembly Resolution 36/148 in December 1981, which called for *International Co-operation to Avert New Flows of Refugees*, which were reported to be approximately 10 million, and which affected every continent (in reality Europe and North America). While the UN claimed that massive refugee flows were not new, it stated that the scale and impact of that of the 80s was significant because:

In addition to creating individual human misery, massive flows of refugees could impose great political, economic and social burdens upon the international community as a whole, with dire effects on developing countries, particularly those with limited resources of their own. Massive flows might not only affect the domestic order and stability of receiving states but also jeopardise the political and social stability and the economic development of entire regions and thus endanger international peace and security.<sup>54</sup>

The rhetoric of preventative protection, and the need to address root causes of refugee flows became the main thrust of recommendations by the UN government experts and took centre stage and cascaded within the global arena. However, there were immediate inconsistencies because while the resolution called for co-operation, as laid down in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states, it later states the 'importance of having due regard for the principle of non-intervention on the internal affairs of sovereign states, and also of the principle that nothing in the Charter shall authorise the United Nations to intervene in matters that are essentially within the domestic

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<sup>53</sup> Frelick (1992), p. 442.

<sup>54</sup> United Nations General Assembly Resolution A/RES/36/148, 16<sup>th</sup> December (1981).

jurisdiction of any state'.<sup>55</sup> This was significant because addressing root causes of refugee flows within states would require some form of external intervention, especially when the state in question was unable or unwilling to quell the problem by its own means.

### **3.1 *The Rise of Barrier Restrictions to Asylum Seekers***

The 1980s and 1990s witnesses a plethora of barrier restrictions to refugee flows by states in the Global North which were contradictory, inconsistent, and further compounded problems. Richmond, in a publication titled *Global Apartheid: Refugees, Racism, and the New World Order*, summed up the prevailing attitudes of the First World by likening the justification of their restrictive policies to those created in the South African in the 1950s, which called for a defence of cultural and social institutions; state security; maintenance of law and order; the need to preserve ethnic identity; preservation of economic privilege; and the need to regulate and manage population movements.<sup>56</sup> Such paranoia was bred and projected throughout media sources. The Economist article of February 1992 titled *Europe's Immigrants: Strangers Inside the Gates* claimed that 'the healthy feeling that binds together the societies of Europe's nation states now seems to be breeding something far from healthy, a mindless intolerance of outsiders'.<sup>57</sup> The Financial Times article titled *Behind Closed Doors*, in October 1992, stated that 'European electorates expect their governments to maintain a tough immigration policy, and that is very difficult to combine with a generous asylum policy'.<sup>58</sup> The most blatant expression of racism came from French Premier Jacques Chirac's claim that the 'noise and smell' of Arab and black immigrants were driving French workers crazy.<sup>59</sup>

The first barrier restriction was the Internal Flight/Relocation/Protection Alternative (IFA/IRA/IPA) which came into existence at the beginning of the 1980s as an ad hoc creation of a mixture of international and national jurisprudence, academic analysis and governmental and intergovernmental policy statements. The 1951 Refugee Convention made no mention of

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<sup>55</sup> Ibid.

<sup>56</sup> Richmond (1994).

<sup>57</sup> 'Europe's Immigrants: Strangers Inside the Gates', *The Economist*, 15<sup>th</sup> February (1992), p. 21.

<sup>58</sup> , Financial Times, 'Behind Closed Doors', 28<sup>th</sup> October, (1992).

<sup>59</sup> The Guardian, 28<sup>th</sup> June (1991).

an Internal Flight Alternative which stipulates that a person fleeing an imminent risk of being persecuted, at the time of leaving his country of origin may be denied refugee status if, at that time, there existed an alternative to flight within the country of origin. The resort to national protection was thus perceived as an alternative to flight, and international protection outside a country of origin. While such a notion became very popular in Europe and North America, it had inherent dangers which, in reality, facilitated internal displacement, and lacked a universal and principled application, with many refugees denied access on the basis that they could not produce enough evidence to disprove the availability of an Internal Flight Alternative.<sup>60</sup>

The ill-researched criteria for Internal Flight only exposed the xenophobic sentiments of states, as while there was a broad agreement on where the claimant had protection, there was no consensus on what the notion of protection actually implied. If the persecutor was a state agent, then a clear problem arose with Internal Flight Alternative, because, for example, once a ‘well-founded fear’ of persecution by a national army in one part of the country was established, it became comical to then expect a person to seek refuge in another part of the country that was controlled by that same army. Why should a person who had fled a repressive government in one part of the country suddenly feel safer in another part? The proposal of such a policy towards refugees fleeing Communism, to have sought refuge in another region of the Soviet Union, would have been unthinkable and ludicrous during the Cold War. This created another layer of complexity which itself nullified the whole IFA concept, because if the agent of persecution was the state, and an IFA was ‘objectively’ identified, then the logical conclusion was that the state was not in control of their own territory, and therefore any displaced person was not enjoying the protection afforded by the state in that given IFA. This is because a state could not simultaneously persecute and protect its citizens, which, *ipso facto*, created the conditions of internal displacement.<sup>61</sup>

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<sup>60</sup> Marx (2002), p. 180.

<sup>61</sup> Ibid, pp. 16-17.

The experiences of Canadian case law highlighted the gross platitudes of IFAs with the Convention Refugee Determination Division (CRDD) of the Immigration & Refugee Board, determining that if refugees could avail themselves of protection from non-state actors in areas of a state that were under the control of a refugee's ethnic kin, then an IFA existed. In the early 1990s, Iraqi Kurdish claimants were denied access on the basis that an IFA existed in parts of northern Iraq which was under local Kurdish control and protected by a joint military US, UK, French, and Turkish no fly zone.<sup>62</sup> However, what was completely overlooked was that there was no functioning government, with internal armed conflict erupting in 1994 between the Kurdish Democratic Party (KDP) and the Patriotic Union of Kurdistan which killed thousands until 1998. Furthermore, the IFA was subject to continuous incursions by Turkish forces to rout harbouring PKK fighters. Similarly, the Board rejected a number of cases of ethnic Tajiks fleeing Kabul in 1996 who were believed to have had an IFA in northern Afghanistan under the control and protection of General Dostrum, who at the time was besieged by the Taliban. However, within a year the Taliban had taken control of the north, killing thousands of civilians.<sup>63</sup>

The next barrier restriction was the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities which was signed in Dublin in June 1990. The objectives of the Dublin Convention were to ensure freedom of movement for persons on the territory of the Member states through abolition of checks at internal borders. The Convention prevented the lodging of simultaneous or consecutive asylum applications in the Member states by setting out criteria to determine the responsible state. The Schengen Convention signed in June 1990 at Schengen in Luxemburg between the five neighbouring states of Belgium, Holland, Luxemburg, France and Germany was an attempt to abolish border controls along the frontiers of these states, and to increase vigilance to their external frontiers through the co-ordination of migration and law enforcement policies. According to Waever, the real issue

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<sup>62</sup>Kelley (2002), p. 45.

<sup>63</sup>Ibid, p. 19.

behind such policies lay in the fear of a return to a past Europe in which the balance of power system fragmented and culminated in national slaughter during the World Wars. The European security identity and debates about multiculturalism were nested in the potential politicisation of migration, leading to a revival of extreme nationalist and racist ideology which snowballed and destabilised Europe in the early twentieth century.<sup>64</sup>

There was indeed an inherent schizophrenia with the restrictive migration policies developed by the EU, because, on the one hand, they sustained the image and perception of the migrant as a burdensome and threatening other, who challenged the internal stability of states, and needed to be kept at a distance. On the other hand, the EU itself is a multicultural project of a social, economic and political cohabitation of different nationalities.<sup>65</sup> Fortress Europe begins with the removal of internal borders through the Single European Act and EC policies strengthened external borders to control and regulate the entrance of legitimate human traffic within the space of free movement. However, it was contestable whether illegal immigrants were smuggled into a country, as remaining in a country after a visa has expired was the most common form of becoming an illegal immigrant. According to Bigo, 'The issue was no longer, on the one hand, terrorism, drugs, crime, and on the other, rights of asylum and clandestine immigration, but they came to be treated together in the attempt to gain an overall view of the interrelation between these problems and the free movement of persons within Europe'.<sup>66</sup>

The most high profile barrier restriction to refugees was the United States government program of intercepting and forcibly returning Haitian boatpeople to Haiti, which first began with President Ronald Reagan, who made illegal immigration a national security issue under Executive Order 12,324 on September 29<sup>th</sup> 1981. This policy was continued by President George Bush, who, in May 1992, issued Executive Order 12,807 so called 'Kennebunkport Order', that allowed the Coast Guard to forcibly repatriate Haitians interdicted at sea, without

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<sup>64</sup> Waever (1996), pp. 103-32.

<sup>65</sup> Huysmans (2000), p. 766.

<sup>66</sup> Bigo (1994), p. 164.

any prior inquiry to ascertain whether they had valid asylum claims, on the basis that the refugee treaty obligations did not extend to people outside the territory of the United States.<sup>67</sup> Then came the Clinton administration, which, while purporting to care and assist Haitian refugees and reverse the previous coercive policies, guilefully maintained them. The ideological and economic justifications behind such restrictive programs was that Haitians were economic and not political, refugees. This was based on assessing the country's chronic poverty, with 85% of lives below the poverty line, and a life expectancy of 55 years; adult literacy at 47%; the virtual collapse of infrastructure and agriculture in 1990, and the fact that Haiti was a stable non-Communist regime with Haitian returnees not subject to any retaliatory violence for attempting flight to the US.<sup>68</sup> The US thus defined refugees as:

[A]ny person who is outside any country of such person's nationality...and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>69</sup>

In light of the 1991, coup which deposed President Jean Bertrand Aristide, and the ensuing widespread violence, such a definition of refugee would have been expedient to the 38,000 Haitians who risked shark-infested waters to seek sanctuary in the US. Ultimately, while such policies and arguments only exposed racist and xenophobic attitudes, and conveniently ignored the long history of unchecked American military intervention in Haiti and Central America under the Munroe Doctrine, they invariably created the conditions of internal displacement with many forced to return to a state of instability and violence.<sup>70</sup>

### ***3.2 The Barrage of Assaults on the 1951 Convention***

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<sup>67</sup> Helton (1992), p. 331.

<sup>68</sup> Former INS General Counsel Maurice Inman summarised government attitudes when he exclaimed that 'one hundred per cent [of Haitians refugees] came for economic reasons: 'They want material wealth, whatever that may be to them-a house, a car, a pig'.

<sup>69</sup> INS definition.

<sup>70</sup> Lennox (1993), p. 32.

These drastic mechanisms signalled the beginning of a tempest that would almost consume and destroy UNHCR. What was more alarming for the organisation was that this period was marked by a slew of former senior UNHCR officials, eminent legal scholars, diplomats, and immigration policymakers who began attacking the Refugee Regime from which the UNHCR received its *raison d'être*. Their criticisms were particularly potent because they were breaking down the very system of which many had defended for so long, whilst serving in their own country's diplomatic corps and working to uphold their respective national interests which included curbing asylum. On the surface they presented very credible, concise, and apolitical arguments that played down the hidden xenophobic intentions of their respective governments by creating the perception of a 'new', and 'changing' global environment that required 'new' improved coping structures. The first notable direct assault on UNHCR was by Roy McDowall, a former British immigration policymaker who dismissed the organisation's imposition upon states:

Over the past few years, UNHCR has increasingly invoked the formula that particular individuals or groups, whom they accept do not qualify for recognition, are of concern to their office. This practice is perceived by some states as the assumption by an international agency of the sovereign state's function of deciding whether or not asylum outside the Convention should be granted. States argue that such action by UNHCR inhibits the normal (a proper) functions of immigration control and de facto enlarges the effective limitation of the refugee definition in the 1951 Convention...states believe that, where asylum is not justified, they themselves should decide how those 'selected out' should be treated.<sup>71</sup>

Furthermore, for McDowall, the 'solution' to the refugee problem was for UNHCR to curb their flow through the pursuit of in-country protection, which advanced states supported through the

linking of development aid with regional resettlement. It is to the long-term advantage of major donor states-which are the prime receivers of today's irregular movements-to share UNHCR's view since funds which are now used to support extra-regional arrivals

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<sup>71</sup> McDowall in Loescher and Monahan (1989), p. 186.

in a developed states can be put to far wider use within a developing or Third World region.<sup>72</sup>

Next came David Martin, who from 1978-1980 served in the Bureau of Human Rights and Humanitarian Affairs at the US State Department. Martin, together with a number of contributors, argued in the book *The New Asylum Seekers: Refugee Law in the 1980s*, that the international protection regime was slowly becoming anachronistic due to the emergence of 'New Asylum Seekers' who had changed the face of asylum. He wrote that:

...there are genuine elements of novelty in the new phenomenon that are crucial to our understanding. And they are differences which in the end may force us- the West and the world community as a whole- to rethink the exact meaning of, and appropriate level of ambition for, refugee law in the final decades of a crowded and violent century<sup>73</sup>

He claimed that establishing a refugee's credentials so as to distinguish economic migrants from genuine cases of those fleeing persecution was precarious. He went on to attack the agencies and actors (UNHCR in particular) responsible for protecting refugees on the basis that:

Refugee advocates are sometimes too ready to dismiss the new suspicions as the outgrowth of xenophobia and racism in the West, and to act as though it could all be remedied if only government officials had the courage to confront such manifestations. To be sure, xenophobes and racists have exploited the phenomenon for their own efforts at political gain. But it is not enough, in the current, simply to denounce such movements and argue for expansive new notions of who is entitled to refugee status.<sup>74</sup>

Martin even went as far to claim that the refugee was in fact a unique and privileged state, which had arisen over decades of turmoil to afford desperate people in need protection. However, the arrival of the 'new asylum' seekers diluted and tarnished this special status. Martin argued that the true motives were to protect the Refugee Convention from dubious claims of economic migrants and therefore defended the restrictive practices of Western governments. Following this was Gervais Coles, a former Australian diplomat, and a former

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<sup>72</sup> Ibid, p. 185.

<sup>73</sup> Martin (1988), p. 8.

<sup>74</sup> Ibid, p. 11.

senior legal advisor to UNHCR. In a chapter titled *Approaching the Refugee Problem Today* he made similar claims, first justifying the need for a new approach, which was evident in the fact that past unprecedented refugee crises heralded new pragmatic responses. The case in point was the exodus of Chinese refugees from Communist China to Hong Kong in 1954. Second, Coles attacked the Refugee Convention as an anachronistic concept and made a striking recommendation to UNHCR, which became its mantra in the 1990s and a foretaste of the expansion and dominance it underwent from the 2000s onwards:

Today the High Commissioner is responsible for an organisation which must be much more than an operational body charged with care, and maintenance and external settlement: he must concern himself also with cause and prevention as well as with reconciliation and restoration. To advise and assist him in his key responsibility for seeking solutions, he needs a pool of staff with political experience, diplomatic background, regional expertise, and a wide range of international experience. Although his Office continues to need lawyers, assistance experts, and persons experienced in immigration work and social service, such persons cannot normally be entrusted with the specialised task of seeking solutions, which requires broad international political knowledge and diplomatic experience. Given its traditional role of providing mainly legal, assistance, and migration services, it would not be surprising if UNHCR had serious problems in adapting itself to the expanded role which is now required of it.<sup>75</sup>

Finally, Coles produced a selective reading of Lord McDonald's resignation in 1935, in which he twisted the meaning of the affair to suit his argument of the need to address root causes in this new 'changing' era. Coles argued that McDonald's resignation was primarily due to the root causes of refugee flows within states as a justification for the collapse of the Refugee Regime and a need for a new shift. However, he did not consider the whole meaning and purpose of Lord McDonald's resignation, which was an attempt to prompt states to intervene in Germany to deal with those very root causes.

In addition to this was Jack Garvey, a professor of law who questioned the validity of UNHCR's mandate by commenting on the irrelevance of international refugee law, which

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<sup>75</sup> Coles in Loescher and Monahan (1989), p. 400.

rested on a humanitarian premise of human rights, from which the UNHCR derived its *modus vivendi*. For him, the refugee crisis of the 80s went beyond the humanitarian dimension because, firstly, the instigators of refugee movement were not ‘defeated or defunct regimes but existing governments, able to insist on the prerogative of sovereignty while creating or helping to generate refugee crises’.<sup>76</sup> As a consequence of the criticism levelled against them, many would simply assert their sovereignty and explain such attacks against them as politically motivated. In the end, castigating governments would only exacerbate the refugee crisis by reducing avenues to gaining their co-operation.<sup>77</sup> Finally James Hathaway, a professor of law, in his edited book *Reconceiving International Refugee Law*, maintained that the Refugee Regime had failed on the basis that it did not regard the impact it had on receiving states who were simply transformed into immigration societies and therefore explained their lack of interest in granting asylum. In another paper, Hathaway traced the evolution of refugee status in international law over three distinct periods 1920-1935, 1935-1939, and 1938-1950. His agenda was to challenge the perceived rigidity of the Refugee Regime by exposing how it was a fluctuating concept that could adapt and morph to suit a given global environment:

Refugee status then is an extremely malleable legal concept which can take on different meanings as required by the nature and scope of the dilemma prompting involuntary migration. If properly defined, refugeehood enables the maintenance of a delicate balance between domestic policies of controlled immigration and the moral obligation of the international community to respond to the plight of those forced to flee their countries. In order that refugee status may continue to play this role, the definitional framework must, as during the period analysed here, evolve in response to changing social and political conditions.<sup>78</sup>

However, unlike his contemporaries, he changed the tempo of the debate by presenting a way forward, arguing that it could be redeemed only if,

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<sup>76</sup> Garvey (1985), p. 484.

<sup>77</sup> Ibid.

<sup>78</sup> Hathaway (1984), p. 380.

Refugee law serves fewer and fewer people, less and less well, as time goes on. Refugee law as traditionally conceived is being subverted by a combination of non-entrée tactics and disingenuous insistence of the ‘right to remain’. We should seize the moment actively to promote a new paradigm of refugee protection that is both human rights-based and pragmatic. Refugee law should be redesigned to take account of the legitimate state preoccupations that have undermined the value of law in governing refugee protection, but without compromising the essential commitment to protection.<sup>79</sup>

For Hathaway proposed ‘temporary protection’. However, this begged the question of how temporary was temporary? The Saharawi refugees from Morocco have been in exile for over thirty years in neighbouring Algeria; the base from which they are currently building their future state. The Tutsi of Rwanda have spent over thirty years in exile in neighbouring Uganda since 1959 with their attempts to ‘return home’ sparking sporadic violence which culminated in the 1994 genocide. Similarly, it was not until 1991 that the Eritrean population in Ethiopia were finally able to ‘leave’, following the creation of a new state.

### ***3.3 Understanding the Sub-Texts of In-Country Protection***

While the arguments against the Refugee Regime seemed convincing, and were very much welcomed by paranoid Western states at the time, they were constructed with a lack of memory, and were not grounded in any operational research. They simply amounted to a logical subterfuge designed to hide and rationalise xenophobic sentiments, as Chimni exclaimed:

A central feature of the Post-Cold War era is that refugees are no longer welcome in the North, and UNHCR is being forced to come to terms with this. To face this development the organisation has had to either advance or go along with ideas and policy options which suit the powerful Northern states. Having done so it is compelled to justify these ideas and policies to the rest of the international community (Southern States, NGOs, academics, activists) through attempting to reconcile them with its mandate and the core principles and norms of international refugee law. It is this need to justify its current policies and practices which explains the new focus on research

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<sup>79</sup> Hathaway (1997), ed, p. xxv.

and analysis. It also explains why UNHCR is an uncritical consumer of concepts and theories which support a particular (Northern) vision of the global refugee order.<sup>80</sup>

Chimni noted how such fears resulted in states beginning a process of knowledge production that sought to justify the containment of the influx through non-entrée regimes. This involved the creation of a myth of difference between Refugees from the Cold War era in Europe and the 'new' Third World Refugees. Such sentiments would then justify the rejection of the exile bias and the need to address root causes of refugee flows. In addition, voluntary repatriation and protection of internally displaced people would in the end become the 'new' way forward. A survey of the literature reveals the following: Firstly it was reported that the Post-1960s crises were of an unprecedented nature. Secondly, it was that the European refugee adhered to the individualist criteria of political persecution compared to the mass exodus of Third World refugees. Thirdly, it was voiced that advances in transport and communications eliminated 'natural barriers to movement', and therefore kept numbers low and manageable for the West. Fourthly, the refugee claims by non-Western asylum seekers of oppression were bogus, with many being economic migrants in disguise. Fifthly, the root causes of the exodus of Third World Refugees were as a result of internal and not international conflicts, for which Western states had no responsibility. Finally, the attempt to revert to the 1969 OAU Convention departure from the 1951 Convention was again to posit a glaring sign of 'difference' between the African refugee experience and those of the European continent.

However, a closer investigation revealed glaring inconsistencies and double standards. The myth of difference grounded in the root causes essentialised internalist explanations over external ones, which were one-sided and ignored the complexities and vast superstructure of actors, policies, and interests of Western states in creating and sustaining policies and practices that contributed to instability, inequality, violence and conflict. The devastating legacies of the colonial encounter and the proxy wars of the Cold War had been completely airbrushed. For Kibreab, this *lapsus memoriae* as to the nature and causes of African refugee

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<sup>80</sup> Chimni (1998), p. 368.

and population movements, was an attempt to confine and constrict, within a refugee stereotype, six hundred years of mass displacement resulting from slavery, colonial pacification, and forced labour (see Table 2 below).<sup>81</sup>

**Table 2. History of African Refugee Experience**

<b>HISTORICAL PERIOD</b>	<b>CAUSES OF FLIGHT</b>
<b>African Pre-Contact Period</b>	<i>Inter-Tribal Raids, War, &amp; Agriculture</i> Weaker tribes would seek protection from stronger tribes. Shifting cultivation and grazing areas for cattle and water sources.
<b>15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> Century</b>	<i>Atlantic Slave Trade</i> Mass displacement from people fleeing home villages, escaping raids & kidnappings by slave traders uprooting millions for transportation & sale.
<b>19<sup>th</sup> Century</b>	<i>Colonial Period</i> Fleeing enslaving laws of compulsory recruitment to work in settler agriculture or forced to grow commercial crops that they were obliged to sell to companies that enjoyed a monopoly right over the purchase of all agricultural produce.
<b>Early 20<sup>th</sup> Century</b>	<i>Forced Labour</i> Fleeing expropriation of land through poll and hut taxes and forbidding the growth of cash crops in order to ensure supply of cheap labour for settlers. Fleeing over-congestion and corporal punishment for resisting forced labour.

This was in addition to the peripheral position of many developing nations within the global economic system, which left commodity dependent nations vulnerable to market shocks, amid the grossly detrimental impact of the Washington Consensus in the 80s and 90s by the way macro-economic reforms imposed by international creditors fostering the collapse of state institutions that created situations of social and political divisiveness<sup>82</sup>. This was functional

<sup>81</sup> Kibreab (1985), pp. 11-18.

<sup>82</sup> Chossudovsky (1997).

because ‘internalist’ explanations apportioned blame on the states from which refugees were fleeing from as being responsible for authoring policies or undertaking actions leading to the outflow of refugees. Conversely, ‘externalist’ explanations would hold major powers responsible and generate pressure on them to assume responsibilities for the protection of refugees. Nevertheless, given the deluge of criticism and the welcome it received among the powerful states in the Global North, UNHCR was well aware of the mortal danger levelled against it, which began to materialise with budget cuts and an ensuing funding crisis that High Commissioner Hocke reacted to in 1986 when he stated that:

I am particularly concerned about the growing negative public opinion in the West vis-à-vis refugees and asylum seekers from the Third World. Many governments in the West have used this development to adopt restrictive practices which have a tendency to spread like a contagion...The first requirement, in my view, is to recognise that the circumstances of most of today’s refugee problems require a fresh look...States must also realise that there is no way they can legitimise their way out of the present predicament. You cannot prevent people who have compelling reasons for leaving their country from fleeing to another country for refuge. You must address the reasons which prompted their flight’<sup>83</sup>

However, such a protest was a weak show of strength to an organisation which was heavily dependent on constant hand-outs from those powerful states<sup>84</sup>. In the late 70s and early 80s the High Commissioner refused to publically criticise the Mexican government for their forced relocation of Guatemalan and Salvadoran refugees and the refusal to involve UNHCR or the press and human rights organisations. The UNHCR country representative who became critical was quickly recalled and replaced in 1984 following protest by the government<sup>85</sup>. Similarly, Canada which had sat on the Executive Committee since 1959, had been a prolific abuser of the Refugee Regime. In April 1985 anxious to weather the European immigration

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<sup>83</sup> Hocke, Beyond Humanitarianism: the need for political will to resolve today’s refugee problem’ Joyce Pearce Memorial Lecture, Oxford University, 29th October (1986), pp. 3-7.

<sup>84</sup> In early 1988 Hocke ordered 130,000 copies of the UNHCR monthly magazine *Refugees* to be burned because the magazine contained a fourteen page article critical of West Germany for its declining commitment to refugee asylum. This was to appease a major donor that contributed 10% of funds.

<sup>85</sup> Matas and Simon (1989), pp. 260-261.

storm, High Commissioner Paul Hartling met governments and established a forum known as the European Consultations, which served as a means of dialogue between UNHCR and European states. In 1989, UNCHR was hit by a funding crisis caused by a deficit that arose firstly from the increase in refugees from Somalia, Mozambique and Sudan and continued overflows from Afghanistan, Iran, and Vietnam, and secondly from the large expensive repatriation and development operations in Namibia, Sri Lanka and Nicaragua. This provided ammunition for dissatisfied Western states wishing to undermine the agency by first refusing to cover the shortfall which had reached \$100 million, and secondly by creating a working group that scrutinised all administration, programmes, and management of funds.<sup>86</sup> Hocke was later forced to resign following corruption charges regarding his abuse of expenses in which he and his wife had been travelling on Concorde for business trips using agency funds.

### ***3.5 Creating IDPs through Voluntary Repatriation & Cross Border Operations***

The UNHCR from the mid-80s had to make a series of rapid adaptations, which invariably created IDPs and brought them to centre stage. The first major operational attempt carried out with great alacrity was Voluntary Repatriation, which was a way of reducing the number of refugees in its care, and the huge costs of protection. This period was indeed labelled the 'Decade of Repatriation' and High Commissioner Ogata, in a speech in 1992 titled *Refugees: A Comprehensive European Strategy* used her office to push for voluntary repatriation and preventative protection in order to allay European paranoia.<sup>87</sup> Such a policy arose from the July 1985 San Remo Round Table on Voluntary Repatriation. While on the surface it was presented as an unofficial and non-attributable discussion forum for government ministers, jurists and governmental and non-governmental refugee experts, in reality the conclusions and observations were to be reported to the Executive Committee of UNHCR, which determined all UNHCR policy.<sup>88</sup> While San Remo emphasised that voluntary repatriation

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<sup>86</sup> Loescher (2001), p. 179.

<sup>87</sup> High Commissioner Sadaka Ogata speech, 'Refugees: A Comprehensive European Strategy', Peace Palace, The Hague, 24<sup>th</sup> November (1992).

<sup>88</sup> Harrell-Bond (1989), p. 46.

should not disrupt asylum by forcing refugees to return against their will, the round table ultimately agreed that ‘international co-operation and solidarity should be directed, first and foremost, in favour of the solution of return’<sup>89</sup>. Voluntary repatriation was presented as a humane solution, even in circumstances where it could lead to greater suffering. UNHCR’s 1992 Note on International Protection made gross claims which contradicted its primary role of protecting refugees:

Criteria for promotion and organisation of large scale repatriation must balance the protection needs of refugees against the political imperative towards resolving refugee problems...the realisation of a solution in a growing number of refugee situations today is most likely where the solution is made an integral part of a ‘package’ *which strikes a humane balance between the interests of affected States and the legal rights, as well as humanitarian needs, of the individuals concerned.*<sup>90</sup> [emphasis added]

This was unprecedented because it was not in UNHCR’s mandate to strike any sort of balance that compromised refugee protection, which confirmed that repatriation was an outcome of a marriage between convenient theory, untested assumptions and the interests of states.<sup>91</sup> In addition, there had been little financial assistance from the developed countries which was interesting because ‘after decades of pursuing their geopolitical interests at a cost of billions of dollars, millions of lives, and massive human displacement, the Cold War’s major Western protagonists... are now loathe to invest even a fraction of the funds they spent fuelling Cold War conflicts on helping those conflict victims rebuild their lives’.<sup>92</sup> Many scholars at the onset protested at the fact that there was no published research data which could be used to test the assumptions which governed current policies. Allen & Turton explained that the conceptualisation of forced migration in politico-legal terms, particularly the beliefs that the ending of instability lay simply in the reconstitution of the nation state as the quintessential social unit, formed the backbone to many UN resolutions on voluntary repatriation. However,

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<sup>89</sup> Coles (1985) ‘Voluntary Repatriation: A Background Study’, quoted in Harrell Bond (1989), p. 46.

<sup>90</sup> UNHCR, Note on International Protection, [UN doc. A/AC.96/799 \(1992\)](#), paras. 38, 39, emphasis added.

<sup>91</sup> Ruiz (1993), pp. 20-29.

<sup>92</sup> Ibid.

such platitudes blinded policymakers and lawyers to the reality of mass repatriation becoming a humanitarian catastrophe in itself, with many refugees re-entering war zones and becoming internally displaced.<sup>93</sup> There were three major problems associated with repatriation. First were the social problems generated through acculturation to host communities, with the emergence of second and even third generations who became completely integrated. In such conditions repatriation may not have necessarily meant 'going home', and resulted in cultural and linguistic alienation from the communities in the former states. Second were the economic problems, with sustained livelihoods generated while in exile lost upon return. Third was the problem arising from the potential threats of fifth columns as 'a country which has produced refugees, whose government is under attack by armed opposition movements, has more reason to fear that the repatriation of its people constitute a security threat'.<sup>94</sup>

The second aspect of UNHCR adaptation was the Quick Impact Projects (QIPs) in the form of Cross Border Operations (CBOs), conducted in Somalia in the early 90s following the civil war, collapse of the central authority and the famine which left 300,000 dead and 427,000 refugees in neighbouring Kenya. The CBO was designed to supplement its existing refugee camps and border sites, by establishing field offices inside a country to rebuild physical and social infrastructure in order to support displaced people so as to reduce the numbers of refugees crossing the border and encourage voluntary repatriation of Somali refugees in Kenya (see figure 4 below).<sup>95</sup>

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<sup>93</sup> Allen and Turton (1996), p. 1.

<sup>94</sup> Harrell-Bond (1989), p. 45.

<sup>95</sup> Kirby, Kliet, Frerks, Flikkema and O'Keefe (1997), p. 182.

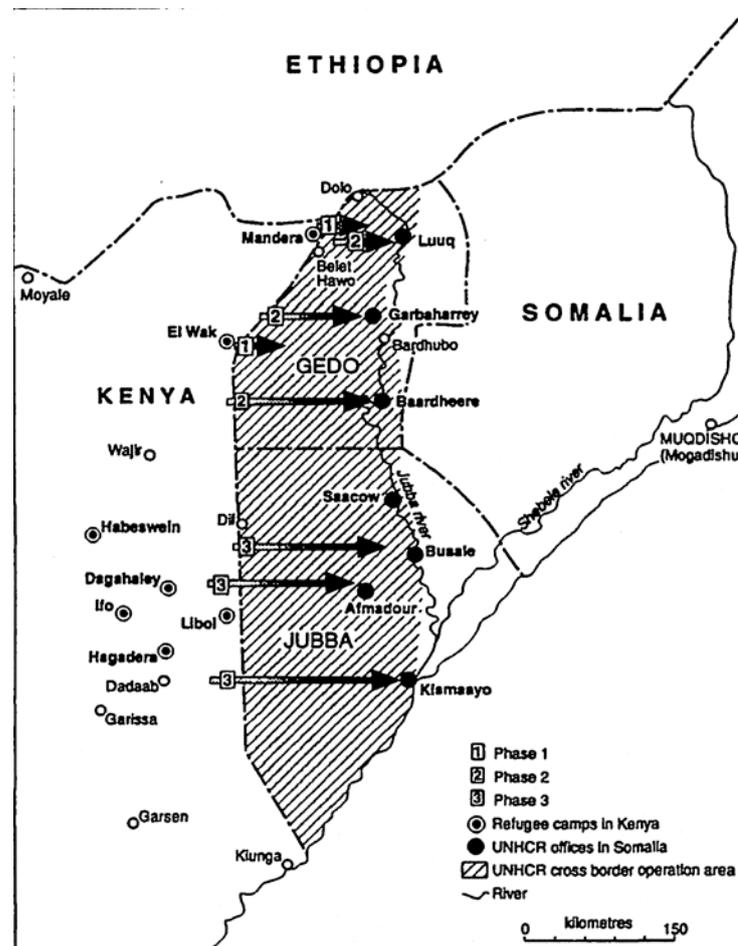


Figure 4. UNHCR SOMALIA CBO

The QIPs were relatively cheap to administer, with a maximum threshold of US\$ 50,000. The simple execution of QIPs at least reinforced the state of normality which, in turn, would induce repatriation to the zone. Apart from that, they provided amenities like drinking water supplies, (without which there would probably have been no resettlement). The CBO program was perplexing because it was not within UNHCR's mandate to enter states and address root

causes or engage in any form of reconstruction or development, which went beyond the capacity of the agency. Instead UNHCR's primary duty was to encourage admission of displaced people into states for refuge. The structure and operations of the CBOs were over-ambitious because they completely anaesthetised the complex emergency in Somalia by prematurely leap frogging from a state of relief to development within the vacuum of a functioning state. There were 12 categories of QIPs (Agriculture, Water, Health, Community Services, Education, Income Generation, Livestock, Sanitation, Infrastructure, Transport, and Forestry) which signalled that assistance was turning away from relief to development as:

The injection of cash starved economy would support the broader development of economic activity. Entrepreneurs would be able to reinvest. Beneficiaries would be able to increase their rate of local purchases. There would be a little leakage from the local economy. Thus, economic beneficiaries from the QIP to supply seed to destitute dry land farmers were to be: the **local merchants**, the farmers themselves, those whose subsistence they provided, and sellers of the surplus. Ideally, they should be able to rebuild seed stocks from production and thus the involvement would be economically sustainable<sup>96</sup>

The CBOs reduced Somalia's deep rooted political pathologies of lawlessness and insecurity into simple technical assistance programs which created a false perception of hope and stability among Somali refugees that purely served the interests of UNHCR in its attempts to reduce the number of refugees in its care. For example, one QIP in Baardheere involved women making mats for roofing for houses destroyed by war, which was itself linked to what was proclaimed as a successfully run local credit union established by USAID.<sup>97</sup> Thus both Voluntary Repatriation and the QIPs were a direct result of the institutional insecurity felt by UNHCR, which had to renew its mandate every five years and whose budget was approved annually, but not assured. The initiatives established by the working group had inflicted immense damage with reductions in camp assistance and food delivery which threatened the nutrition of some 200,000 refugee children. Protection seminars were cancelled; eighteen

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<sup>96</sup> Ibid, p. 185.

<sup>97</sup> Ibid, p. 194.

branches were closed with no chance to establish a presence in Eastern Europe; camps for the detained Vietnamese in Hong Kong remained underfunded; but the most catastrophic aspect was the loss of 15% of staff. The belief among Western governments was that a smaller UN budget automatically equated greater efficiency.<sup>98</sup> Kent writing in the late 80s, neatly encapsulated UNHCR's perennial predicament with how:

The greater the institutional insecurity, the less control it may have over its own agenda and resource base, the greater will be the propensity to define organisational objectives in terms of the organisational survival. Organisational survival in such cases is reflected in what one observer describes as 'prudence'...There is a tendency to restrict activities to pre-established standard operating procedures, programmes and repertoires...means, not ends provide the focal point for resolving problems...For UNHCR 'prudence' pervades the whole of the organisation's structure.<sup>99</sup>

This is further reiterated by Wigley, writing in 2005, who observed the organisational culture of UNHCR and concluded that the primary task of the organisation has been self-perpetuation through donor accountability requirements, and relationships with host governments. Such pressures transformed UNHCR into a donor reporting organisation with endless administrative and bureaucratic tasks which has reduced field staff and resources.<sup>100</sup>

#### **4. Post-Cold War Era: The Emergence of Internal Displacement Issues**

The end of the Cold War, through the changing nature of conflict, has always been the popular explanation for the sudden rise of internal displacement. The United States Committee for Refugees claimed that IDPs had risen from 1.2 million in 1989 to over 20 million by 1997.<sup>101</sup> According to Weiner, the savagery of internal conflicts fought between ethnic groups within the same territory, with the increase in the availability of arms, and regional spill-overs, all produced enormous numbers of IDPs.<sup>102</sup> UNHCR, up to this point, had a great degree of ambivalence towards IDPs, throughout the early 70s and 80s it had been

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<sup>98</sup> Guest (1991), p. 594.

<sup>99</sup> Kent (1987), p. 92.

<sup>100</sup> Wigley (2005), pp. 18-19.

<sup>101</sup> Cohen and Deng (1998), p. 15.

<sup>102</sup> Weiner (1996).

engaged with internally displaced communities unofficially in a number of high profile states, despite continuous claims in the 90s from the High Commissioner Sadaka Ogata that the organisation would not formally assist IDPs in the 1990s. According to Deng and Cohen the explanation for UNHCR's inactivity rested upon the notion that it was apparently 'developing its expertise in individual cases of internally displacement, and all the while delaying the larger decision of whether it should assume responsibility for all or most situation of internal displacement'.<sup>103</sup> However, there is little comprehension of both the informal plans it executed to sustain its existence without overtly pushing for expansion. In order to explain why internal displacement, which was centuries old as a natural occurrence in all civil conflicts, suddenly became an international regime in the late 20<sup>th</sup> century and not a phenomenon of concern in any other given time or place, we have to acknowledge what Hacking identifies, in his studies of transient mental diseases, as the *Ecological Niche*. These are a 'concatenation of an extraordinary large number of diverse types of elements which for a moment provide a stable home for certain types of manifestation'.<sup>104</sup> In this context we have to appreciate three structural developments in the international system during the 1990s which made internal displacement visible and provided UNHCR with an opportunity to rebuild and restructure itself as a leader in humanitarian assistance.

#### **4.1 The New World Order**

The first was American President George Bush's call for a New World Order in 1990, where he signalled an end to tyranny and oppression in the course of the US led coalition to repel the aggressor, Saddam Hussein, against Kuwait, which virtually set the stage for UNHCR to begin officially transforming its mandate:

Out of these troubled times, our fifth objective- a new world order- can emerge; a new era-freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace, an era in which the nations of the world, East and West, North, and South, can prosper and live in harmony...Today that new world is struggling to be

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<sup>103</sup> Deng and Cohen (1998), p. 171.

<sup>104</sup> Hacking (2002), p. 13.

born, a world quite different from the one we have known, a world where the rule of law supplants the rule of the jungle, a world in which nations recognise the shared responsibility for freedom and justice, a world where the strong respect the rights of the weak.<sup>105</sup>

The Kurdish protection in northern Iraq in 1991 was one of the great turning points for UNHCR because of the wider geopolitical implications for NATO. Operation Provide Comfort was orchestrated after the passing of UN Resolution 688 to authorise coalition forces in Iraq to set up camps and prevent the Kurdish population from being uprooted and entering Turkey as refugees, following their persecution at the hands of the Saddam regime, which had already pushed 2 million Kurds into Iran in March 1991.<sup>106</sup> This was unprecedented because, not only did UNHCR become politicised by NATO, who would not put pressure on Turkey to allow the admittance of Kurdish refugees, but it marked the end of the exile bias of refugee protection and the global recognition of internal displacement. Ogata was well aware of the conundrum the UNHCR faced to the protection mandate: 'Should we follow the legal dictate of not exercising our mandate inside the border and thereby refrain from helping those prevented from crossing, or should we stand on more realistic humanitarian grounds and extend whatever support we could?'<sup>107</sup> Furthermore, the actual relief and protection was carried out by the Allied military forces who possessed the necessary manpower, logistics and resources for such an operation, with UNHCR simply becoming the face of the relief effort, which, while bolstering UNHCR's status, created a tension which had to be quickly ameliorated by Boutros Boutros Ghali.<sup>108</sup> This involved building camps to protect Iraqi Kurds and preventing them from entering Turkey as refugees, which would fuel greater instability with a key NATO ally. In light of Operation Provide Comfort, the August 1991 Report of the Working Group on Solutions and Protection to ExCom, UNHCR tactically concluded that the

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<sup>105</sup> President Bush, *Toward a New World Order*, Address before a joint session of Congress, Washington, DC, 11<sup>th</sup> September (1990).

<sup>106</sup> Loescher, (2001) p. 288.

<sup>107</sup> Ogata (2005), pp. 28, 34, 37-8.

<sup>108</sup> *Ibid*, p. 289.

contemporary environment for refugee protection had changed and that there was a need to seek alternative solutions for internally displaced persons.

International law afforded internally displaced persons was inadequate for a number of reasons. In the case of non-international armed conflicts, article 3 of the four Geneva Conventions of 1949 and Protocol II of 1977 do afford fairly extensive protection to civilian and military victims, including the displaced persons. It is in situations of internal disturbances and tensions that international humanitarian law offers scant protection; international humanitarian law is not applicable and many human rights can be suspended, leaving only non-derogable human rights in effect.<sup>109</sup>

The second international incident was the dissolution of Yugoslavia which saw conflict and violence erupt in the 1990s that was characterised by ethnic cleansing, rape, siege and bombardment, refugee flows, and foreign military intervention. The then UN Secretary, General Javier Perez de Cuellar invited UNHCR ‘to assist in bringing relief to needy internally displaced persons affected by the conflict...[which]...may also have a welcome preventative impact in helping to avoid the further displacement of populations’.<sup>110</sup> In reality, UNHCR became politicised and ended up contributing to ethnic cleansing in July in the town of Bosanski Novi where the mayor organised transportation for the expulsion of the Muslim residents. Many were even given documents stating that they had given away their homes as ‘gifts’, and that they were leaving ‘voluntarily’. In the end in order to prevent their extermination, UNHCR was blackmailed into evacuating 7,000 inhabitants out of Bosanski Novi into Croatia.<sup>111</sup> Despite this Ogata maintained that

...in a war zone operations, a humanitarian presence was the most important protection tool for all victims- refugees, internally displaced, and affected civilians...we saved innumerable lives and mitigated human suffering. We strove and came up with new approaches and new hypotheses to address constantly evolving situations.<sup>112</sup>

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<sup>109</sup> UNHCR, Report of the Working Group on Solutions and Protection to the Forty-second Session of the Executive Committee of the High Commissioner's Programme, 12th August (1991), EC/SCP/64.

<sup>110</sup> Perez de Cuellar quoted in Goodwin-Gill (1999), p. 226.

<sup>111</sup> Frelick (1992), p. 447.

<sup>112</sup> Ogata (2005), pp. 170-171.

The events in the Balkans, whilst widely regarded as a failure, elevated the international profile of UNHCR. It received a new building and its expenditure rose from US\$544 million in 1990 to US\$1,307 million in 1993.<sup>113</sup> UNHCR quickly became aware of the potential for media co-operation in securing its status and existence:

By demonstrating its expertise in launching such a large-scale relief programme, the organisation has gained a greatly enhanced public reputation and boosted its credibility with donors States...For UNHCR, the operation has had particular important implications for the future. The organisation has clearly moved into new areas, somewhat away from its more traditional role as a refugee protection agency... UNHCR's experience in former Yugoslavia has demonstrated the benefits that can be gained when media relations are treated as an important and integral part of the organisation's operational activities. With the expertise and reputation UNHCR has acquired, the organisation is now well placed to make better use of the international media.<sup>114</sup>

#### **4.2 Changing Nature of Sovereignty**

This first global transformation dovetailed into the second component, which was the new conceptions of sovereignty which broke down the barriers previously chanted as justifications for non-intervention in the first half century of the Refugee Regime. This was a product of the wider Washington consensus, the main thrust of which sought the retreat of the state, and the expansion of the market in its place. The rolling back of the state equalled deregulation, welfare reform, lower taxes, and the removal of politics from the business cycle. The Post-Cold War era witnessed an erosion and re-conceptualisation of the concept of sovereignty in order to facilitate humanitarian intervention amid the perceived global chaos. The UN Secretary General Boutros Boutros Ghali, in his *Agenda for Peace*, recognised emphasised preventative diplomacy, arguing that:

the time of absolute and exclusive sovereignty [...] has passed...a major intellectual requirement of our time is to rethink the question of sovereignty- not to weaken its

<sup>113</sup> UNHCR, Table 15, (1995) p. 255.

<sup>114</sup> UNHCR, Working in a War Zone: A review of UNHCR's Operations in former Yugoslavia, UN Doc. EVAL/YUG/14, April (1994), paras. 32, 52, 99.

essence, which is crucial to international security and cooperation, but to recognise that it may take more than one form and perform more than one function. This perception could help solve problems both within and among states. And underlying the rights of the individual and the rights of peoples is a dimension of universal sovereignty that resides in all humanity and provides all peoples with legitimate involvement in issues affecting the world as a whole.<sup>115</sup>

This erosion of the Westphalian state system created the necessary space for humanitarianism which had since been a voluntary and underfunded area. The growth of humanitarian agencies operating in hot-spots throughout the world thus magnified the plight of IDPs. The rise of humanitarianism through the non-governmental organisation (NGO) 'giving rise to the belief that opposition mobilised outside the state apparatus and within some separate entity called 'civil society' is the powerhouse of oppositional politics and social transformation'.<sup>116</sup> The flows of emergency relief funds increased from \$766 million in 1989 to \$4.365 billion in 1999 respectively, many of which went to in-country protection operations.<sup>117</sup>

### **4.3 The Advent of Human Security**

The third component was in 1994 when the United Nations *Human Development Report* formulated the concept of 'Human Security' which redefined the concept of 'security' away from traditional notions of realpolitik involving conventional military threats.<sup>118</sup> It had two main aspects: 'First, safety from chronic threats as hunger, disease and repression and Second, protection from sudden and hurtful disruptions in the patterns of daily life'.<sup>119</sup> This was in addition to the World Bank document, *World Development Report 2000: attacking poverty*, that observed poverty as 'the result of economic, political and social processes that interact with each other and frequently reinforce each other in ways that exacerbate the deprivation in which poor people live'.<sup>120</sup> These multidimensional approaches went beyond

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<sup>115</sup> Boutros-Ghali, (1992/1993) pp.91-101.

<sup>116</sup> Harvey (2005), p. 78.

<sup>117</sup> Quoted in Minear (2002), p. 3.

<sup>119</sup> [http://hdr.undp.org/reports/global/1994/en/pdf/hdr\\_1994\\_ch2.pdf](http://hdr.undp.org/reports/global/1994/en/pdf/hdr_1994_ch2.pdf).

<sup>120</sup> World Bank 'World Development Report 2000: Attacking poverty: Opportunity, Empowerment and Security'. <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/overview.pdf>.

the definition of poverty based on per capita income, to include deprivation across the spectrum of human existence. It understands that poor people, 'lack adequate food shelter, education and health, deprivations that keep them from leading the kind of life that everyone values. They also face extreme vulnerability to ill health, economic dislocation and natural disasters. And they are often exposed to ill treatment by institutions of the state and society and are powerless to influence any decisions affecting their lives'.<sup>121</sup>

Such a definition of security received considerable criticism, as according to Floyd, 'The broad vision of human security is ultimately nothing more than a shopping list; it involves slapping the label human security on a wide range of issues that have no necessary link. At a certain point, human security becomes a loose synonym for 'bad things that can happen', and it then loses all unity to policymakers'.<sup>122</sup> For UNHCR, however, it was a blessing with Ogata proclaiming in 1994 that 'Population displacement, whether internal or international has gone beyond the humanitarian domain to become a major political and socio-economic issue, affecting regional and global stability, as the crises in former Yugoslavia, Somalia, and Rwanda have clearly shown'.<sup>123</sup> This presented a momentous opportunity for UNHCR as 'she could harness the power of security to increase refugee protection and to use the urgency of security language to garner a level of resources and attention to address the refugee problem that had never before been seen'.<sup>124</sup> Such an intellectual shift in the concept of security opened up an endless gamut of possible activities UNHCR could conduct, which logically went beyond refugee protection to include operations and programs that required virtual state building which were beyond the scope of any UN agency.

## **5. UNHCR's Formal Transition to IDP Protection**

These structural developments allowed UNHCR to once again adapt by positioning itself to take the reigns on IDP protection in the 21<sup>st</sup> century. In the report of the Working Group on

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<sup>121</sup> Ibid.

<sup>122</sup> Floyd (2007), p. 43.

<sup>123</sup> Ogata, October (1994), quoted in Hammerstad in Loescher ed. (2011), p. 238.

<sup>124</sup> Ibid, p. 248.

Solutions and Protection in August 1991, internal displacement was purported to have arisen out of the ‘major changes in the character and composition of asylum-seekers...and have brought into question traditional thinking about solutions and have necessitated new approaches’.<sup>125</sup> Ogata in the 1992 International Protection Report Ogata ruled out any protection of IDPs unless seeking to establish durable solutions stating that:

The legal bases for UNHCR programmes on behalf of people within their own country are qualitatively different from those governing work on behalf of refugees in countries of asylum. It is nevertheless understood that UNHCR’s mandate and expertise lies in the areas of protection and solutions. Wherever UNHCR is called upon to assist non-refugees...its activities must be consistent with this mandate.<sup>126</sup>

However, the attempt at IDP protection contradicted the Note on International Protection for 1992 which contained a reversal on the previous policy and included one of the first definitions of Preventative Protection that set the stage for a formal transition:

The Working Group considered prevention to be an umbrella term covering activities both to attenuate causes of departure and to reduce or contain cross-border movements or internal displacements. Prevention is not, however, a substitute for asylum; the right to seek and enjoy asylum therefore, must continue to be upheld.<sup>127</sup>

### **5.1 *Rifts over IDP Protection***

Preventative Protection and the reorientation of the organisation were not without their critics, for Article 8D of the Statute promoted admission which made in-country protection a breach of the obligation for which UNHCR was created. The most vocal opponent was Frelick who had observed the events in the former Yugoslavia, and the way the term was misinterpreted and manipulated by both Bosnia and Croatia. He also questioned the impact it would have on UNHCR’s original mandate, citing the northern Iraq crisis in which ‘establishing a safe zone

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<sup>125</sup> Report of the Working Group on Solutions and Protection, 42 session of Executive Committee of the High Commissioners Programme, 12 August (1991).

<sup>126</sup> Ogata, UNHCR, Note on International Protection (submitted by the High Commissioner) , 25th July (1992), A/AC.96/799.

<sup>127</sup> Executive Committee of the High Commissioner’s Programme, Note on International Protection, 25th August (1992), A/AC.96/799, para 26.

inside Iraq became yet another way for States to create a substitute for asylum; the very practice the Note on Protection seeks to avoid. The safe haven zone in northern Iraq had the effect not only of protecting Turkey from encroachments, but also of denying Saddam Hussein control, over a portion of his territory'.<sup>128</sup> Further rifts emerged over the inclusion of IDPs within UNHCR's mandate between the legal and protection division, with the latter arguing for an expansion. UNHCR's Director of the Division of Communication and Information, John Horekens, was one of the proponents who maintained that:

The expansion of UNHCR's role to cover categories of people other than refugees is consistent with the Statute of the organisation. Article 1 directs UNHCR to seek "permanent solutions to the problem of refugees", while Article 9 provides that the organisation "shall engage in such additional activities...as the General Assembly may determine". A series of General Assembly resolutions thereby provides the legal basis for many of the UNHCR protection activities which take place in countries of origin rather than countries of asylum. For example, UN General Assembly Resolution 48/116 of 1993 encouraged UNHCR to become involved with the internally displaced at the request of the UN Secretary General, particularly where the refugee problem and internal displacement are linked, as in the cases of the former Yugoslavia, Sri Lanka, the Caucasus and Tajikistan.<sup>129</sup>

However, his argument was premised on a very selective reading of the Statute; the subject of which had been bitterly contested in its formation during the 3<sup>rd</sup> Committee of the General Assembly in 1950. The 'additional activities' cited were not a justification for in-country protection, but instead measures designed to assist the primary objective of refugee protection. This was specifically mentioned by the Israeli delegate Mr Robinson who stated that 'what was implied in paragraph 9 was not therefore an extension of functions *rationae personae*, but simply the exercise of additional functions made necessary by *repatriation or resettlement*'.<sup>130</sup> For Goodwin-Gill a serious weakening of the agency's protection and legal authority would develop if it formerly undertook in-country protection activities, as it could

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<sup>128</sup> Frelick (1992), p. 449.

<sup>129</sup> Horekens (1999), p. 17.

<sup>130</sup> Mr Robinson, Israeli delegate to 3<sup>rd</sup> Committee of General Assembly, Fifth Session, 344<sup>th</sup> meeting, Monday 11<sup>th</sup> December (1950), UN General Assembly Official Records, p. 452.

not simultaneously request the extension of asylum from a neighbouring state which was a legal right for the refugee to flee oppression, while criticising a state's domestic practices with the argument that people had the right to remain, and not be displaced as refugees.<sup>131</sup> This very problem arose in the Note on International Protection in 1993 which contained a complete reversal of the previous 1992 Note on International Protection:

The objective of prevention is not to obstruct escape from danger or from an intolerable situation, *but to make flight unnecessary by removing or alleviating the conditions that force people to flee. Defending the right to remain does not in any way negate the right to seek and to enjoy asylum.* UNHCR has always insisted that its activities in countries of origin are not incompatible with and must not in any way undermine the institution of asylum or the individual's access to safety.<sup>132</sup> [emphasis added]

In an unpublished internal paper, Loescher, working as a consultant to UNHCR, raised a number of serious practical implications of protecting IDPs which went beyond the scope of the agency and simply amounted to delusions of grandeur that were not grounded in any operational research.<sup>133</sup> Erin Mooney, a consultant and a major proponent of IDP protection, dismissed the main arguments levelled against in-country protection as invalid. For her, the argument that such a move went beyond the agency's refugee centred mandate was ahistorical as several past General Assembly resolutions had extended its competence beyond refugees and asylum seekers to include stateless persons; repatriated refugees, internally displaced people and war affected populations.<sup>134</sup> However, Mooney had failed to understand that General Assembly resolutions were simply an extension of power politics as most of the resolutions she cited (Algerian repatriation from Morocco and the 1953 refugee exodus from East to West Germany) that had endorsed or extended the authority of the High Commissioner were always declared *ex post facto* with UNHCR initially acting unilaterally to desperately legitimate itself among powerful states. Overall, while proponents and opponents

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<sup>131</sup> Goodwin-Gill in Nicholson and Twomley ed. (1999), p. 220.

<sup>132</sup> Executive Committee of the High Commissioner's Programme, Note on International Protection, 31st August (1993), A/AC.96/815, para 37.

<sup>133</sup> Loescher unpublished paper on UNHCR and IDP protection.

<sup>134</sup> Mooney in Nicholson and Twomley ed. (1999), p. 205.

battled over the legality and logic of IDP protection, the central issue of UNHCR's desperate attempt to survive extinction was overshadowed and forgotten.

## 5.2 UNHCR's IDP Credentials

The transition to IDP protection required operational qualifications for which UNHCR had to present in order to be legible for the role. In 1992, the UN General Assembly passed Resolution 48/116 which 'supports the strengthened efforts by the High Commissioner to explore protection and assistance strategies that aim at preventing conditions that give rise to refugees outflows and at addressing their root causes, and urges her to pursue such efforts...to undertake activities in favour of internally displaced persons'.<sup>135</sup> In September 1994, UNHCR's Division of International Protection published a report titled *UNHCR's Operational Experience with Internally Displaced Persons*. The report was, in essence, a long resume with the organisation presenting its skills, credentials, and resources, mentioning its operations in twenty countries bedevilled by civil war. It also made a series of *mea culpas* for not assisting IDPs in the past and made up for the fact that while it did not have a legal mandate to protect IDPs it drew together a number of past General Assembly Resolutions which conferred upon the agency a selective and limited mandate to assist IDPs.<sup>136</sup> The report included an analytical study of 15 situations of internal displacement between 1971 and 1991 detailing the assistance and protection delivered.<sup>137</sup> It concluded by insisting that:

Like refugees, the internally displaced need protection, assistance, and a solution to their plight. It is appropriate for UNHCR, with the consent of the parties concerned, and provided adequate resources are available, to take part in the efforts of the international community on behalf of the displaced, in order both to meet their

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<sup>135</sup> United Nations General Assembly Resolution, A/RES/48/116, 85th plenary session, 20th December (1993).

<sup>136</sup> 1972 UN General Assembly Resolution. 2958 (XXVII) and 1972 UN General Assembly Resolution . 2956 (XXVII).

<sup>137</sup> Bangladesh, Southern Sudan, Former Portuguese colonies, Indochina, Ethiopia, Uganda, Zimbabwe, Chad, Nicaragua, Sri Lanka, Cyprus, Lebanon, and Iraq.

compelling humanitarian needs and to contribute to the prevention and solution of refugee problems.<sup>138</sup>

However, the report had a wider strategic objective because it was a defensive initiative against the perceived encroachments made by the Governing Council of United Nations Development Programme (UNDP) three years earlier in 1991. This was after General Assembly resolution 89/65 in June 1989 published two reports that discussed UNDPs involvement with internally displaced populations. The first report from May 1990 titled *Refugees and displaced persons-present and future role of the United Nations Development Programme in the field of refugee aid and development* was particularly alarming for UNHCR because UNDP's involvement harmonised containment policies through its promotion of refugee return and in-country protection that addressed the root causes of flight:

A search for durable solutions for refugees, the reintegration of returnees of the resettlement of internally displaced persons, all constitute a developmental challenge to Governments. Although different approaches are pursued, determined by the requirements and circumstances of each situation, it is clear that all categories of displacement, regardless of cause, need to be integrated in the socio-economic environment through carefully designed plans and programmes.<sup>139</sup>

UNDP had a natural disposition to assist IDPs through its involvement within states that could trump any claim by UNHCR which had no expertise or mandate to intervene and conduct extensive development work that would have undoubtedly addressed root causes. This was expressed in the second report of May 1991 titled *Refugees, Displaced Persons and Returnees* which argued that:

Against this background, a consensus has been developing that emergency operations which are not firmly anchored in the development process are unlikely to produce durable solutions, and indeed, may actively harm the development process. The former dichotomy of approach- whereby emergencies were managed totally separately from

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<sup>138</sup> UNHCR, 'UNHCR's Operational Experience with Internally Displaced Persons', Division of International Protection, September (1994).

<sup>139</sup> UNDP Governing Council, 'Refugees and displaced persons-present and future role of the United Nations Development Programme in the field of refugee aid and development', DP/1990/66, p. 5.

longer-term development efforts- has been reflected in the past in both recipient and donor institutional arrangements as well as in conceptual approaches.<sup>140</sup>

Much like the UNHCR report, it listed a variety of countries and situations of displacement where UNDP had been carrying out early warning systems, relief and emergency aid, recovery, rehabilitation and development operations (Iraq, Angola, Somalia, Sudan, Vietnam, and Central America) which again paraded its technical superiority and leadership:

The centrepiece of the plan (Special Plan of Economic Cooperation for Central America) is the Regional Development for Displaced Persons (PRODERE) covering the six affected countries. PRODERE is managed by UNDP and is financed by a contribution of \$115 million from the Government of Italy over a four-year period. PRODERE benefits 147,000 people directly and a further 305,000 indirectly. A June 1990 CIREFCA meeting, organised by UNDP, led to pledges of a further \$160 million, covering 33 other projects funded by the international community.<sup>141</sup>

The report was audacious because while UNDP claimed to be seeking greater collaboration with other UN organisations, it made proposals that would have allowed it to fulfil both development and emergency duties as it claimed: ‘to enable UNDP to respond effectively to this challenge, it is recommended that a new humanitarian programmes support unit be established to assist with the mainstreaming of all emergency-related activities into UNDP regular operations, both in the field and headquarters’.<sup>142</sup>

Given such a threat, the formal shift to protecting IDPs began in 1995 when Ogata explained to EXCOM that ‘We have shifted from a bias towards exile to a focus on the country of origin’ claiming that of the 27.4 million persons of concern to UNHCR, ‘almost half’ were residing in their own territories’.<sup>143</sup> Such a move was fully embraced by states in the Global North. Following on from this, the most overt sign of UNHCR’s ambitions came during the UN reforms in May 1997, when Maurice Strong recommended the UNHCR to be the future

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<sup>140</sup> UNDP Governing Council ( DP/1991/20), p. 3.

<sup>141</sup> Ibid, p. 8.

<sup>142</sup> Ibid, p. 10.

<sup>143</sup> Opening statement of the High Commissioner for Refugees, at the 46<sup>th</sup> Session of the Executive Committee of the High Commissioners Program, UNHCR, Geneva, October 16<sup>th</sup> (1995).

focal point for all humanitarian operations amid the demise of the Department for Humanitarian Affairs (DHA), and assume the role of Emergency Relief Co-ordinator (ERC), which became Ogata's crowning moment after the political mileage UNHCR had been receiving throughout the 90s. The leakage of an internal report titled *Humanitarian Co-ordination: Some Preliminary Reflections* sent shock waves across the UN humanitarian community with no consultation with agencies, who became emboldened by the outrageous claims it made; one being that: 'UNHCR...is the only agency whose responsibility is to meet all humanitarian needs of those of its concern, as opposed to responsibilities defined by nature of need, age or gender'.<sup>144</sup>

### ***5.3 Accommodating the Interests of the Powerful***

In order to be victorious in the ferocious UN turf wars, the organisation needed powerful allies. In March 2000, UNHCR issued a position paper clarifying its relationship with IDPs, which maintained that its interest arose purely from its humanitarian mandate on behalf of persons displaced by persecution, situations of general violence, conflict or massive violations of human rights. This mandate placed upon UNHCR 'a responsibility to advocate on behalf of internally displaced; mobilise support for them; strengthen its capacity to respond to their problems; and take the lead to protect and assist them in certain situations'.<sup>145</sup> UNHCR asserted that it was ready to take the lead where its protection and solutions expertise was particularly relevant, or where involvement with IDPs was closely linked to the voluntary repatriation and reintegration of refugees. Most important was the recognition of the 'complementarity' between refugees and IDPs:

Countries of asylum may be more inclined to maintain their asylum policies if something is done to alleviate the suffering of the internally displaced, reduce their compulsion to seek asylum and create conditions conducive to return. On the other

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<sup>144</sup> UNHCR 'Humanitarian Co-ordination: Some Preliminary reflections', 20<sup>th</sup> May (1997), quoted in Goodwin-Gill, in Nicholson and Twomley ed. (1999), pp. 232-233.

<sup>145</sup> UNHCR (2000), p. 1.

hand, UNHCR's activities for the internally displaced may be (mis)interpreted as obviating the need for international protection and asylum.<sup>146</sup>

This had all been a strategic manoeuvre, as earlier in the same year the US Ambassador to the UN and Security Council President, Richard Holbrooke, in a statement to the Security Council on *Promoting Peace & Security*, argued that:

I want to focus on the fact that two thirds of the refugees in the world do not fall under the official purview of the UNHCR. We call them IDPs...these are persons who have been driven from his or her home by conflict, there is no difference between being a refugee or an IDP. In terms of what has happened to them, they are equally victims but they are treated differently. The reason we all turn to the UNHCR...is precisely because they are our last, best hope for dealing with these problems...I hope that all of us would recognise that what we must do is expand the definition of what is a refugee and person who is internally displaced...fix the responsibility more clearly in a single agency.<sup>147</sup>

Following the 'unanticipated' commencement of this debate in the Security Council, the High Commissioner regurgitated the same message in her briefing during the same Security Council meeting, calling for an 'end to the distinction between the two groups' and comprehensive mechanisms to protect people fleeing their homes... and comprehensive, regionally based solutions to their predicament'.<sup>148</sup> In addition, Ogata blamed UNHCR's past limited role on the lack of security and funds, which Holbrooke responded to by calling upon all states to provide more support.<sup>149</sup>

#### **5.4 *Becoming a Permanent UN Organisation***

These tactical successes among Western states paved the way for its strategic ambition, which came in 2003 when the High Commission published a report titled *Strengthening the Capacity of the UNHCR to carry out its mandate*. This marked the culmination of a 60 year struggle for existence, in which it argued for a removal of the time limitation established by

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<sup>146</sup> Ibid, p. 8.

<sup>147</sup> Note for the High Commissioner: UNHCR'S involvement with IDPs, IDP Task Force meeting conclusions.

<sup>148</sup> Ibid.

<sup>149</sup> Presidential Statement on Refugees and Internally Displaced Persons in Africa, 13th January (2000).

Chapter 1: Article 5 of the Statute of the Office of the High Commissioner which stated that ‘The General Assembly shall review, no later than at its eighth regular session, the arrangements for the Office of the High Commissioner with a view to determining whether the Office should be continued beyond 31 December 1953’.<sup>150</sup> UNHCR justified such a proposal on the basis that:

The Office’s primary role has not changed, but *new categories of persons of concern have been added to the responsibilities of the Office*. What is needed now is to ensure that UNHCR is sufficiently equipped to carry out this mandate and to respond to the challenges of modernity.<sup>151</sup> [emphasis added]

The organisation claimed that such a removal would recognise that the refugee problem had no immediate end in sight and would allow strategic planning ‘improving multi-year programming, to address these situations more comprehensively’, which was tantamount to addressing the root causes which states in the Global North favoured. This careful move resulted in the UNHCR in December 2003 when it finally becomes a permanent UN organisation following General Assembly Resolution 58/153 on the basis of the above recommendation from UNHCR, which ‘Decides to remove the temporal limitation on the continuation of the Office of the High Commissioner contained in its resolution 57/186 and to continue the Office until the refugee problem is solved’.<sup>152</sup>

## **6. The 21<sup>st</sup> Century & Beyond: Emergence of the IDP Regime**

With its existence now secure as a result of a series of strategic manoeuvres to re-invent itself to protect internally displaced persons, UNHCR now embarked on exploiting in-country protection to galvanise its new global position. This period witnesses a more autonomous organisation exercise greater power to dominate all UN humanitarian discourse.

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<sup>150</sup> Statute of the Office of the High Commissioner, Chapter 1: General Provisions, Article 5.

<sup>151</sup> Executive Committee of the High Commissioner’s Programme, ‘Strengthening the Capacity of the UNHCR to carry out its mandate’, December (2003).

<sup>152</sup> United Nations General Assembly Resolution, ‘Implementing Actions Proposed by the United Nations High Commissioner to Strengthen the Capacity of his Office to Carry out its Mandate, A/RES/58/153, 22<sup>ND</sup> December (2003).

### **6.1 The Lubbers Era: Building the IDP Structures**

This period is marked by Convention Plus, which began in 2003 as part of the Global Consultations on International Protection, which brought together Northern & Southern states. It was a strategic response by High Commissioner Ruud Lubbers which opened the way for a much broader function for UNHCR because it arrived at a time when the protection of IDPs was on centre stage, and when the organisation was being reminded and criticised for neglecting its primary refugee mandate. Thus Convention Plus was Lubber's attempt to re-engage European donor states by developing a new inter-state agreement that would 'supplement' the 1951 Convention for which many states had become averse. This was to be achieved by solutions in the regions of origins which was ultimately a neat reaffirmation of the crisis of internal displacement.<sup>153</sup> However, it represented a serious irony whereby UNHCR tried to employ the migration and asylum control mechanisms and policies of the Global North as an 'effective' means of inducing those very states to commit to supporting and funding refugee protection within the countries of origin, which was, in reality, facilitating internal displacement and undermining the 1951 Convention. UNHCR was in effect using refugee containment to contain refugees in the hope that this would 'assist' refugees and 'uphold' its mandate.

This period is further marked by massive numbers of IDPs generated through the enormous natural disasters during the Indian Ocean Tsunami of December 2004 and the Pakistan earthquake of October 2005. The media attention and large scale relief operations represented another area of UNHCR expansion.<sup>154</sup> In December 2005, the Inter-Agency Standing Committee (IASC) agreed to establish the Cluster Approach system with UNHCR agreeing to become the cluster lead for IDPs during conflict generated emergencies in the three areas: *Protection, Emergency Shelter and Camp Coordination/Management*. Such an approach was

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<sup>153</sup> Betts in Loescher, Betts and Milner (2008), p. 63.

<sup>154</sup> Ibid, p. 67.

aimed at ‘improving the predictability, timelines, and effectiveness of humanitarian response, providing operational leadership and a heightened sense of accountability’.<sup>155</sup>

The Cluster Approach, which will be discussed in greater depth in chapter 2, was not without its critics. The head of the IASC, the ERC ‘has no authority to order compliance’, nor does he ‘have funding to offer to make the decision to respond more appealing’.<sup>156</sup> For proponents of IDP protection, most notably Susan Martin, the failure of clear leadership, authority, and funding of the current collaborative system, abrogated attempts to protect IDPs as ‘when everyone is responsible...no one can be held accountable for failures’.<sup>157</sup> For them there was a desperate need to consolidate assistance and protection into a new UN High Commissioner for Forced Migrants which ‘superseding UNHCR, its mandate would include refugees covered under the 1951 UN Convention relating to the Status of Refugees as well as individuals internally and externally displaced because of repression, conflict, natural disasters, environmental degradation and development-induced displacement’.<sup>158</sup> For Martin, the creation of a United Nations High Commission for Forced Migrants was a better option to replace UNHCR as it would guarantee that all displaced persons received the same treatment, with the office mandated ‘to negotiate access and protection of forced migrant with governments and insurgent groups in both home and host countries...It would be responsible for developing a consolidated appeal for funding that would show donors the full range of financial needs in all countries’.<sup>159</sup> Such a proposal was however unthinkable and presented a clear and present danger to UNHCR’s survival and dominance. In its 2006 *The State of the World Refugee Report*, in a section titled *Should UNHCR become a ‘displacement agency?’*, it used the authoritative recommendations first by the former UK Secretary of State for International Development Hilary Benn, who asserted in relation to Darfur that ‘Is it really sensible that we have different systems for dealing with people fleeing their homes dependent

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<sup>155</sup> UNHCR’s Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations, 8th June (2006).

<sup>156</sup> Martin (2005), p. 120.

<sup>157</sup> Martin et al, (2005), p. 120.

<sup>158</sup> Ibid, p. 132.

<sup>159</sup> Martin (2004), p. 314.

on whether they happen to have crossed an international border?'.<sup>160</sup> Second, by a US Congressionally-mandated bipartisan task force on the UN, which recommended 'redefining' the mandate of UNHCR to ensure the delivery of aid to refugees, internally displaced persons and those affected by natural disasters.<sup>161</sup> All these statements justified UNHCR taking a lead role, as it would allow states to maintain their asylum policies by reducing the need to seek asylum, and would create conditions conducive to return and resettlement of refugees. There was, however, a hidden pattern to this game, whereby the organisation would, on the surface, claim not to seek expansion, while subtly producing 'knowledge' about displacement and imminent and catastrophic global challenges that undoubtedly 'fell' within its remit, from which it 'may' have had to 'respond if required'. The Assistant High Commissioner for Protection, Erika Feller, summarised this 'quandary' before the Executive Committee in June 2008:

New terminology is entering the displacement lexicon with some speed. The talk is now of 'ecological refugees'. 'climate change refugees', the natural disaster displaced'. This is all a serious context for UNHCR's efforts to fulfil its mandate for its core beneficiaries...The mix of global challenges is explosive, and one with which we and our partners, government and non-government, must together strike the right balance.<sup>162</sup>

Shortly after in October 2008, in a document titled: *Climate Change, Natural Disasters, and Human Displacement: A UNHCR Perspective*, it expounded that 'it is legitimate to ask whether new legal protection instruments might be needed for cross-border movements that are induced by climate-related reasons. *UNHCR is not seeking an extension of its mandate, but it is our duty to alert the international community to the protection gaps that are emerging*' [emphasis added].<sup>163</sup> Similarly, the current High Commissioner Antonio Guterres in a speech titled *People on the Move: The Challenges of Displacement in the 21<sup>st</sup> Century* in 2008 stated that: 'We at UNHCR are not trying to enlarge our mandate or increase our

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<sup>160</sup> UNHCR (2006), p. 166.

<sup>161</sup> Ibid.

<sup>162</sup> Feller quoted in Martin (2010), pg. 54.

<sup>163</sup> 'Climate Change, Natural Disasters and Human Displacement', October (2008).

functions. This is not the case. But we believe that the international community should focus on these issues and find answers to the problems of forced displacement'.<sup>164</sup> In the same speech he even recognised that 'the interpretation of who needs protection and what persecution means is being extended to cover non-state agents of persecution and to many areas linked to religion, culture, and other aspects of human life'<sup>165</sup>, all of which would no doubt catapult the agency into new galaxies of relief assistance.

In that same critical year it published a policy paper describing the nexus between climate change and displacement, which was an attempt to control, as it maintained that 'some movements prompted by climate change could indeed fall within the traditional refugee law framework bringing them within the ambit of international or regional instruments...as well as within UNHCR's framework'.<sup>166</sup> The paper was again a tactical manoeuvre because it first argued that the agency was opposed to the term 'environmental or climate change refugee' since the label refugee should only be applied to those people covered under the 1951 Convention. However, it then recognised that there was a 'specific' link between climate change, and internal displacement. In the lead up to the Copenhagen negotiations in 2009, it then published an updated policy paper which was an attempt to cannibalise the humanitarian discourse on climate change, claiming that, 'All UNHCR staff involved at the country level with refugee and IDP settlements, both rural and urban, will need to be equipped with strategies to combat and cope with the effects of climate change, impacting not just on persons of concern to UNHCR but also broader host communities'.<sup>167</sup> These bold statements were purely political posturing, according to Hall, who saw no substantial developments or changes within UNHCR in this period, with the agency generating reservations and weariness from member states regarding its enlargement to cover climate change induced

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<sup>164</sup> Guterres, A, 'People on the Move: The Challenges of Displacement in the 21<sup>st</sup> Century', Annual Lecture, Royal Geographical Society, London, 16th June, (2008).

<sup>165</sup> Ibid.

<sup>166</sup> UNHCR (2008a), 'Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective', p. 6.

<sup>167</sup> UNHCR( 2009a), 'Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective', p. 11.

displacement<sup>168</sup>. Finally a 2010 speech by Guterres titled: *Forced Displacement: Responding to the Challenge of the Next Decade* marked a complete reversal on his previous claim against the agency's enlargement in which he now unveiled UNHCR's true expansionist mission to become the largest global welfare organisation:

UNHCR sees itself as an organisation with the experience, expertise and delivery capacity to be a central instrument of the international community in supporting states to protect, assist and resolve the plight of people who have been forced to flee from their homes and who find themselves in vulnerable circumstances. In this context, UNHCR has assumed responsibility even when persons have not crossed international border. UNHCR is now leading the response to conflict-induced internal displacement in areas of protection, shelter and camp management. If asked to do so, we stand ready also to assume leadership at field level of the protection response in cases of natural disasters.<sup>169</sup>

The irony inherent here was that the December 2003 General Assembly resolution that lifted the term limits and the Cluster Approach framework, allowed UNHCR to fulfil this broad operational role by giving it a mandate to enter states and employ the same administrative structures and responsibilities of a 'potential' High Commission for Forced Migrants, while cleverly preserving its brand name. UNHCR had simply accomplished everything that Martin had been proposing in all but name. In addition Martin ignored the fact that the crisis of internal displacement was itself a key issue in heated debates within the UN General Assembly 3rd Committee in the late 1940s, which culminated in a compromise over the protection of those displaced within their own borders as citizens, and those who fled their territory into other sovereign states, from which UNHCR was created. To now present a fresh case for the creation of an organisation that protected all categories of displaced people was to once again reignite fiery deliberations between powerful member states.

## ***6.2 Balancing Internal & External Protection***

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<sup>168</sup> Hall, 'Climate Change and Organisational Change in UNHCR', conference paper for UNU-EHS Summer Academy on protecting Environmental Migration: Creating New Policy and Institutional Frameworks, 25-31th July (2010), p. 108.

<sup>169</sup> Guterres, A, 'Forced Displacement: Responding to the Challenge of the Next Decade', UNHCR, Berlin Symposium for Refugee Protection, 15<sup>th</sup> June (2010).

Given such a momentous undertaking by one single UN agency, it became necessary to recount UNHCR's past record in IDP protection, which were white-washed in its previous grand proposals. In a 2005 UNHCR report titled *Consistent & Predictable Responses to IDPs*, Mattar & White uncovered the inherent pathologies, ambiguities and anomalies within the organisation's decision making processes in eight fragile states with large IDP populations, which casted a shadow of doubt on its ability to effectively protect IDPs. They showed first how there was no consistency in UNHCR's timing to become engaged with IDPs. Secondly, there were strained relations between UNHCR and other agencies and NGOs due to its unpredictability and perceived dominance. Thirdly was the impact on the collaborative approach and the inter-agency operations and discussions, with UNHCR's ambivalence and lack of defined parameters in an operational framework. Fourthly, serious rifts arose as a result of the conflict of mandates between refugees and IDPs. Operational problems developed with the agency overstretched to the point where 'the protection needs of the targeted IDPs were vast, and were not essentially different from those faced by the Angolan population at large'.<sup>170</sup> Similarly, Barutciski documented the unreliability and opportunism within UNHCR's involvement with IDPs which brought a complete halt to humanitarian principles of neutrality, impartiality and humanity that was evident in Kosovo, where UNHCR exaggerated the number of IDPs and casualty figures. At the onset of a NATO air campaign in 1999 UNHCR claimed that the displaced masses had been uprooted by Serbian forces; a declaration that could not be corroborated, but was nonetheless welcomed by NATO in the propaganda war. The agency then claimed that 250,000 died in the conflict of Bosnia-Herzegovina when conservative estimates from recognised institutions (SIPRI) placed casualty numbers between 25,000 and 55,000.<sup>171</sup> More importantly, the crisis in the former Yugoslavia highlighted the overall problem of becoming a lead agency for protected displaced masses. Such a status 'represents a 'default' position to fill a co-ordination

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<sup>170</sup> UNHCR, UNHCR's programme for internally displaced people in Angola: a joint Danida/UNHCR review, EPAU/2001/04, May (2001), para.75.

<sup>171</sup> Barutciski (1996).

vacuum'<sup>172</sup> which detracts from its primary role of assisting refugees, thus balancing impartiality within a precarious environment of civil-military relationships, with its statutory responsibilities, and its lead agency function became overwhelming and dangerous, factors which we will revisit in chapter 5.<sup>173</sup>

### ***6.3 History Repeating Itself***

These recent developments had all been discussed and foreseen by Mrs Roosevelt 60 years earlier, whose clairvoyance in the 3<sup>rd</sup> Committee had warned against the UNHCR taking on an expanding mandate to protect citizens within their borders:

The problems inherent in those movements of millions of people [IDPs] could only be treated effectively within the framework of consideration of the total economies of the countries concerned, a task far beyond the competency of the High Commissioner's Office for Refugees...It would commit the United Nations to undertakings which it was not prepared to assume and which were beyond available resources to fulfil.<sup>174</sup>

Thus the contemporary IDP Regime had simply brought UNHCR full circle as the entire history of its turbulent existence was foreshadowed by the Indian delegate, Mrs Menon, who, when discussing proposals for the refugee definition, succinctly added that:

The immigration policy of many countries was based on racial prejudice...The whole problem of refugees could never be solved, however, until it became evident that the humanitarian sentiments expressed by representatives were an accurate reflection of their governments' intentions and that the United Nations had the same concern for all peoples, regardless of race.<sup>175</sup>

Her echoing message had indeed been the essence of the international politics of refugees from which UNHCR had to manage and adapt to, and from which we come to understand the origins of the IDP Regime.

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<sup>172</sup> Pugh and Cunliffe (1997), pp. 20-25.

<sup>173</sup> Ibid, pp. 21-22.

<sup>174</sup> Official Records of the United Nations General Assembly, Fifth Session, Third Committee, 329<sup>th</sup> Meeting, 29 November (1950), p. 363.

<sup>175</sup> Official Records of the UN General Assembly, Third Committee, 332<sup>nd</sup> Meeting, 1<sup>st</sup> December (1950)

## Conclusion

We have observed how the IDP Regime was an outcome of the international politics of refugees through the formal and informal connections between actors, institutions, and the fluctuating global environments over a sixty year period. This chapter has chronicled how a small, weak and unstable organisation that was created to protect refugees, evolved to become a large, powerful, and dominant UN player for the protection of all people displaced within their sovereign borders. The IDP Regime was, in reality, an initiative for calming the fears and harmonising the interests of powerful Western states and international organisations. The next chapter will historicise the evolution of the IDP Regime through a deeper exploration into the international politics of refugees, that charts the development of norms, laws, policies, frameworks, and discourses that facilitated and cemented refugee containment.

## Chapter Two

### The Evolution of the Internal Displacement Regime

#### *Refugee Containment through Norm Creation*

#### Introduction

Norms are said to play a vital role in the maintenance of international peace and security, for they are not only created by states and institutions in order to govern and condition state and institutional behaviour, but they have themselves been employed to create states, organisations, and academic discourse<sup>176</sup>. However, it is important to always keep in mind that global norms are not constant, which ultimately reflects the prevailing power politics of a given age. This was the case with the evolution of IDP norms, which were widely attributed as a charitable act of humanity as stated by the former UN Secretary General Kofi Annan in September 2005:

For over a decade, the humanitarian crises posed by the scope of internal displacement have engaged the attention of the international community. The appointment in 1992 of a Representative of the Secretary-General on internally displaced persons, Francis Deng, marked the commencement of a decade of sustained attention to developing solutions to the challenge of internal displacement. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) emerged as a basic normative framework, applying the provisions of international human rights and humanitarian law, as well as refugee law by analogy, to victims of internal displacement. At the same time, the Representative was pivotal in advocating for the rights of internally displaced persons (IDPs), particularly through country missions and other visits, and in advancing the institutional ‘collaborative response’ of the United Nations and its specialised agencies as the only possible answer to the broad spectrum of IDPs’ needs.<sup>177</sup>

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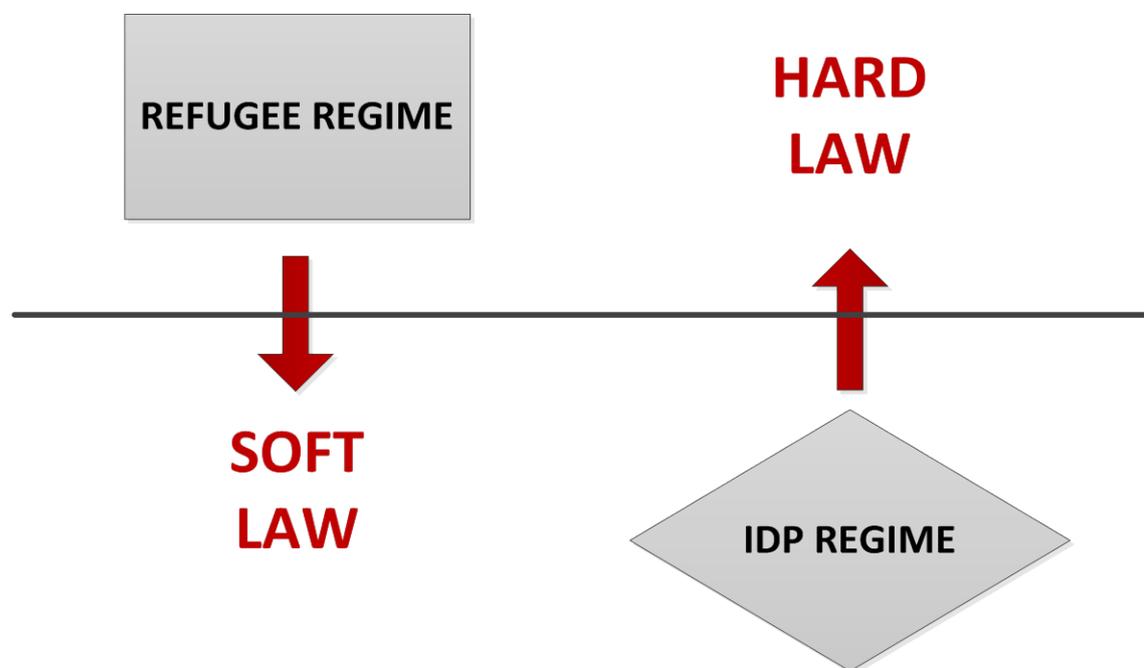
<sup>176</sup> Checkel (1998), Johnston (2007), Legro (1997), Klotz (1995).

<sup>177</sup> UN Secretary General Protection of and assistance to internally displaced persons, Note by the Secretary-General, 7<sup>th</sup> September (2005).

However the purpose of this chapter is to pick up the story of chapter one; to further illuminate how such norms were designed to house and harmonise the interests of the powerful. It will trace the *contestation*, *emergence*, and *stabilisation* of norms pertaining to the IDP Regime to expose how its ascendancy has been a complete recycling and restructuring of the previously ‘unwanted’ and ‘anachronistic’ 1951 Refugee Convention, which now engenders ‘new’ and ‘acceptable’ labels and values from states, international institutions, and NGOs. Through a careful unpacking of the legal and institutional norms for IDP protection and reflection upon their inherent contradictions, ambiguities and tensions, we will begin to appreciate how, rather than being an expression of international concern for suffering masses, it was purely a subterfuge for the containment of refugee flows by calming the xenophobic storms raging beneath containment policies.

The chapter will be divided into three sections. The first will document norm contestation through an investigation of the manner in which a normative lacuna was manufactured to challenge the 1951 Convention on the basis that IDPs were a new category of people requiring protection through the creation of new legal and institutional frameworks. The second will observe norm emergence through the strategic roots of the IDP Regime by the way actors emulated the evolution of the Refugee Regime. The third will detail norm stabilisation through the development of an academic discourse and the final creation of the new African Union IDP Convention. The chapter will commence with a clarifying light on the many characteristics of refugee containment. Throughout this chapter, like the former, we will observe how every stage of this norm cycle to supposedly ‘assist’ people trapped within their own borders and uphold the ‘right to remain’, conveniently paralleled and absorbed the intentions and motives of broader policy frameworks and strategies aimed at containing refugee flows by the Global North. Indeed, the overall strategy of norm creation lay in the evolution of the IDP Regime from a soft to hard law instrument by capturing all the norms of the Refugee Regime. This is to award it greater global relevance and adherence, while simultaneously attempting to dilute and circumvent the significance of the 1951 Refugee

Convention by its re-interpretation as a political concept that could be interpreted on an ad hoc basis to suit the interests of states, even though it was still legally binding and functioning with states obligated to ameliorate the plight of refugees (see Figure 5 below).



**Figure 5. Evolutionary Framework of the IDP Regime**

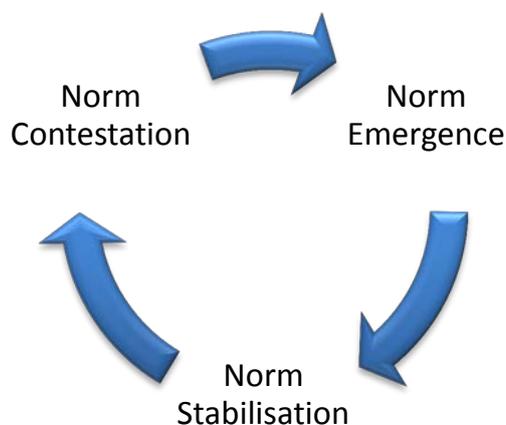
### Defining IDP Norms

IDP norms can be divided into three broad categories: legal protection, physical protection, and academic discourses (see Table 3 below), with each containing institutions and conceptual frameworks that have been the product of heated debates, UN General Assembly Resolutions, conferences, workshops, and humanitarian interventions.

**Table 3. IDP Norms**

<b>Legal Protection</b>	<b>Physical Protection</b>	<b>Academic</b>
The IDP Category	The UN Special Representative to the Secretary General on the Human Rights of IDPs	Forced Migration Discourse
Sovereignty as Responsibility		Brookings/Bern Project
		Georgetown/ Bern Project
The Guiding Principles	The Cluster Approach	

To understand the evolution of these norms I will employ the framework devised by Park & Vetterlein (see Figure 6 below) which argues that ‘a historical/temporal element such [as] a norm is not just ‘born’ and at some point ‘dies’. Rather, a norm emerges at a specific point in time and is based on its own historical antecedents. That the process is circular also frees us from merely examining a norm in the emergence to stabilisation phase: norms can be examined at every stage of the norm circle (from emerging to stabilising to declining, declining to r-emerging). There is no beginning and end as such; norm change is on-going’.<sup>178</sup> Given this norm cycle, we will come to appreciate in the following sections that the IDP norms are simply a recycling of refugee norms.



**Figure 6. Stages of the Norm Cycle**

### **Assumptions and Clarifications of Refugee Containment**

Before plunging into a detailed analysis of how the evolution of IDP norms facilitated refugee containment, we have to understand that attempting to comprehensively define refugee

<sup>178</sup> Park and Vetterlein (ed) 2010, p. 20.

containment is akin to describing the aroma of coffee, as while people may know ‘exactly’ what it is, it is virtually impossible to articulate in its entirety. This is because refugee containment is not an officially articulated or candid policy, but instead a nebulous series of both actions and inactions by governments and international institutions with several paradoxes and grey areas, which can only be deciphered by reading between the lines of state interests and behaviour towards refugee across time and space. Indeed, for the sake of political correctness and legitimacy in an era of globalisation that purports to uphold universal values of humanity and equality, states are continuously forced to mask and distort their true intentions while maintaining a façade of unfailing adherence to human rights principles and membership of the club of global civil society, amid the watchful eye of unfettered IOs, NGOs, and global media, and who can expose and embarrass racist and xenophobic governments.<sup>179</sup> Such subtleties will be fully explored through the IDP Regime as the new instrument for upholding this international public relations game.

### *Challenges in Identifying and Analysing Containment*

The first challenge is the tendency to conflate the practice of refugee containment with that of refugee deterrence. The purpose of containment is to prevent people from arriving at Western borders by physically preventing them from leaving their countries of origin through the application of visa restrictions, carrier sanctions, safe third country, and safe country of origin legislation.<sup>180</sup> This is different from deterrence, which is practiced within countries of asylum through a mixture of restrictive and punitive measures, which include detention, denial of state benefits, reduced access to appeal procedures, and negative propaganda and rhetoric.<sup>181</sup>

As we saw in the previous chapter, in the last 30 years there has been a rise in the

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<sup>179</sup> Amnesty International in February 2004 published: *Get It Right: How Home Office Decision Making Fails Refugees* and June 2005 it launched another campaign titled: *Seeking Asylum Is Not A Crime: Detention of People who Have Sought Asylum*.

*Still Human Still Here* is a coalition of over 50 organisations that are campaigning to end the destitution of thousands of refused asylum seekers in the UK. The coalition believes that the current policy is inhumane and ineffective.

<sup>180</sup> Hassan (2000), p. 185.

<sup>181</sup> *Ibid*, p. 186.

containment of refugees arriving from the Global South ‘who had less in common culturally with Europeans than previous asylum movements; and they arrived, often illegally, through the use of smugglers and/ or false documentation’.<sup>182</sup> Western European nations thus employed a range of policies and practices including ‘safe’ third countries and ‘safe’ origin countries to which refugees could be sent back to, visa restrictions, and airline sanctions, all with the overarching argument, according to the European Council, that ‘a rising number of applicants for asylum (...) are not in genuine need of protection’.<sup>183</sup> Such developments received considerable scholarly attention in attempting to identify the underlying factors which have ranged from the shifting geo-political relations at the end of the Cold War<sup>184</sup>, to intra-state socio-economic issues of identity and the fear of the ‘other’<sup>185</sup>, to critical debates about international migration.<sup>186</sup>

There are two examples that shed light on this first issue. The first is the paradox of US refugee policy which is both designed to contain and maintain the flow of refugees. While the US has overtly and forcefully curbed the flow of boat people from Haiti in the early 90s with the Four D Policy (Detect, Deport, Detain & Deter), from 1959 to 1995, it simultaneously maintained an open door policy to Cuban refugees under the 1962 Migration and Refugee Assistance Act, who were instrumental in the American strategy of destabilising the Cuban economy by draining all human and economic capital, and winning the wider propaganda war against Communism.<sup>187</sup> The media was thus very supportive of refugee arrivals, with *Fortune* claiming that “Those Amazing Cuban Emigres...A lot of talented refugees from Castro’s Cuba are rapidly becoming an important American asset”.<sup>188</sup> *Business Week* proclaimed how

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<sup>182</sup> Hansen and King (2000), p. 400.

<sup>183</sup> European Council, (1992), p. 1.

<sup>184</sup> Chimni (1998).

<sup>185</sup> Givens, Freeman and Leal Ed. (2009), Geddes (2000), Luedtke (2009), Guiraudon (2000), Huysmans (2000), Lavenex (2001).

<sup>186</sup> Messina and Lahav ed. (2006).

<sup>187</sup> Arboleya (1996).

<sup>188</sup> Reimers (1994), p. 166.

“The Cubans who fled Castro have become the city’s affluent new middle class”.<sup>189</sup> Thus for Washington the removal of the 1951 Convention in favour of the IDP Regime would have been beneficial for Haiti, while upholding the 1951 Convention and downplaying the IDP Regime would have suited Cuba. This open door policy of extended asylum to all refugees fleeing governments that the US directly opposed was encapsulated in President Truman’s 1953 Commission titled *Whom Shall We Welcome* which advocated ‘that effective measures should be taken and adequately appropriations be made to provide reasonable reception, care and migration opportunities for escapees from Communism’.<sup>190</sup> This was visible in a number of cases, notably that of Vietnamese and Indochinese refugees after 1975 with the US departure and fall of Saigon. In the late 1970s the Justice Department’s creation of ‘extended voluntary was departure’ granted to nationals from Iran, Nicaragua, Ethiopia, and Uganda. It was later extended to thousands of Poles in 1981 after martial law was declared. The justification for such a status lay in the claim that non-immigrants visiting the US would be persecuted if they returned home.<sup>191</sup> All these cases would challenge the absolutist claim that the US sought to contain all refugees.

The second case is the well documented Australian opposition towards refugees, dating back to the turn of the century with the Immigration Restriction Act of 1901. This began the White Australia Policy that fuelled insecurity and an invasion complex which set the tone for future debates and policy making.<sup>192</sup> The most high profile was the August 2001 incident, when the Howard government denied entry into Christmas Island to the Norwegian freighter MV Tampa, which was carrying 438 Afghan refugees rescued from a distressed fishing boat.<sup>193</sup> More recently was in July 2011 when the Gillard government announced the ‘Malaysian Solution’ which involved a bipartisan agreement between Australia, Malaysia and UNHCR to

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<sup>189</sup> Ibid, p. 167.

<sup>190</sup> Ibid, p. 159.

<sup>191</sup> Ibid, pp. 197-198.

<sup>192</sup> McMaster (2002), p. 279.

<sup>193</sup> Peter Shadbolt, ‘Australians Bar Ship laded with Afghan Refugees’, The Telegraph, 28<sup>th</sup> August (2001).

'legitimately' contain refugees by transferring up to 800 offshore asylum seekers for processing in Malaysia which was not a signatory to the 1951 Convention, in return for accepting up to 1000 'legitimate' refugees per year for a period of four consecutive years.<sup>194</sup> This new measure would have involved UNHCR 'processing' en-route claimants in Malaysia before they could be resettled in Australia after meeting certain 'criteria'. Such a practice presented an interesting dynamic because Australia was sub-contracting its international obligations under the 1951 Convention to a subsidiary of the UN whose primary function was to provide international protection to refugees, by, among other things, promoting their admission into the territory of states, and not engaging in offshore processing of refugees for state parties. By cleverly employing UNHCR Australia did not appear to be containing refugees because on the surface the organisation was 'performing' its mandate of providing international protection. As Pickering and Lambert note:

No other country maintains this zero sum game between offshore and onshore applicants. As a consequence of this approach the rhetoric of queue jumping is easily invoked against those coming as part of the offshore system; and it obscures the reasons as to why many make the hazardous journey. Onshore asylum seekers are considered less deserving because they have usually paid people smugglers to reach Australia. Genuine refugees are considered those that wait within camps in places like Pakistan and Thailand to be processed by UNHCR. Deterrence, as it has been positioned within refugee policy, is aimed at onshore asylum seekers. It is aimed at preventing them from embarking on the journey to Australia.<sup>195</sup>

However, following a landmark trial in the Australian High Court in August 2011 involving 42 asylum claimants, six of whom were unaccompanied minors<sup>196</sup>, the Malaysian Solution was ruled unlawful on the basis that Australia could not legally send asylum seekers for 'protection' and 'processing' to a country that was not legally bound by the Refugee

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<sup>194</sup> Minister for Immigration and Citizenship (Australia). 'Agreement between the Government of Australia and the Government of Malaysia on transfer and resettlement', 25<sup>th</sup> July (2011).

<sup>195</sup> Pickering and Lambert (2002), p. 66.

<sup>196</sup> Plaintiff M70/2011 v. Minister for Immigration and Citizenship; and Plaintiff 106 of 2011 v. Minister for Immigration and Citizenship. (Australian High Court, 31 August 2011) HCA 32.

Convention, nor recognised refugees in its domestic law, all of which had been conveniently whitewashed by UNHCR rhetoric which oddly maintained that:

...the Arrangements and its implementing guidelines contain important *protection safeguards including the respect for the principle of non-refoulement, the rights to asylum, the principle of the family unit, and best interests of the child; humane reception conditions including protection against arbitrary detention, lawful status to remain in Malaysia until a durable solution is found*, and the ability to receive education, access to healthcare, and a right to employment.<sup>197</sup> [emphasis added]

### ***Refugee Containment within the Global South***

A second assumption seldom addressed is the belief that refugee containment is an exclusive practice of advanced Western states against masses arriving from Third World countries. However, as Keely, writing in the early 80s noted, over 95% of the world's 13 to 16 million refugees resided in the Third world alone.<sup>198</sup> Similarly, their presence often threatened interests and populations of host states, and resulted in South-South containment with less economically developed states seeking to curb refugee flows from other less economically developed states. Indeed, a prime case arose from the low intensity conflicts in Central America between the military and Marxist insurgents in the 1980s which led to the unprecedented exodus of peasants into Mexico. For Mexico, the arrival tens of thousands of Guatemalans created concerns, as many arrived through Chiapas which escalated fears that the presence of already landless Guatemalans would reignite the existing unrest. Secondly, they compounded problems, as Mexico was seeking to establish good relations with the Guatemalan state, which would have been damaged if Mexico had recognised and protected refugees fleeing the oppressive state in Guatemala, that had not only labelled those refugees as 'guerrillas', but had even demanded their return, and even launched incursions into Mexico

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<sup>197</sup> UNHCR Statement on the Australia-Malaysia Arrangement, 25<sup>th</sup> July (2011), [unhcr.org.au](http://unhcr.org.au).

<sup>198</sup> Keely (1981), p. 36.

against refugee settlements.<sup>199</sup> Thirdly, the Mexican state was going through economic turmoil due to falling oil prices and the increasing debt burden which meant that it could not meet the basic needs of its own citizens let alone fleeing foreigners. The Mexican solution began with large scale deportations from Chiapas on the official claim that many had failed to request asylum and not met refugee criteria. However, this changed in the late 80s when Mexico, through UNHCR, began protecting and settling 5,000 Guatemalans which contained and depoliticised refugees in camps that allowed the state to save face and maintain its relations with Guatemala while also receiving much needed funds from UNHCR.

### *The Migration-Asylum Nexus*

A third clarification is that while a number of scholars have identified the internal fears and anxieties of the 'other' as the quintessential theme in determining the emerging discourses, mechanisms and policies of refugee containment, as Norman Myers commented regarding the flow of environmental refugees from Africa to Europe: '[this] will surely come to be regarded as a trickle when compared with the floods that will ensue in decades ahead'.<sup>200</sup> Such analyses have to be approached with a high degree of caution because they are premised on the rhetoric that there once existed a perfect state that held a right balance between citizens and immigrants, which suddenly became threatened by the large influx of foreign hoards. However, this is not the full picture because asylum represents only one galaxy within the wider universe of migration, which cannot be neatly disentangled, as state immigration policies can fluctuate from being open and inclusive in some decades, to being closed and discriminatory in others, depending entirely on the socio-economic realities it confronts.

Indeed, Castles and Miller show us that in order to understand refugee flows, we must appreciate that the contemporary era is defined by the globalisation of migration (both forced and voluntary), interacting with transnational social transformations. They show us that

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<sup>199</sup> Hartigan (1992), p. 713.

<sup>200</sup> Myers (1997), pp. 167-182.

‘migration is a process which affects every dimension of social existence, and which develops its own complex dynamics. The great majority of people in the world (97% in 2000) (UNDESA, 2005) are not international migrants, yet their communities and way of life are changed by migration’.<sup>201</sup> These governments attempting to contain refugees at times ‘tacitly use asylum and undocumented migration as a way of meeting labour needs without publicly admitting the need for unskilled migration’.<sup>202</sup> Even the Australian government after the Second World War, despite its anti-asylum rhetoric, engaged in a large scale immigration program to strengthen national security and economic development through an increased population after the post war labour shortages under the slogan ‘populate or perish’ under Minister Arthur Calwell.<sup>203</sup>

## **1. Norm Contestation: Manufacturing a Normative Lacuna**

Having established the various mediums of refugee containment and the challenges in articulating them, I will now add to the existing repertoire of containment practices. According to Park and Vetterlein,

...orms are not independent of actors and their interests. On the contrary, if relevant actors are not convinced that a norm is (still) appropriate, it will change. To explain, norms change if relevant actors give new meaning to the situation in which the norm usually applies. As a result something quite powerful must happen for a norm to change since according to our definition norms are not external to actors but are constitutive of actors’ identity, which determines their dispositions.<sup>204</sup>

It should be noted that, for Park and Vetterlein, contestation implies contending understandings of what norms mean, with clashes from several actors that results in one emerging victorious. However, in the context of the IDP Regime, what happens is slightly different in that there was no battleground per se of competing norms, but instead a direct

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<sup>201</sup> Castles and Miller (2009), p. 21.

<sup>202</sup> Castles (2003), p. 16.

<sup>203</sup> McMaster (2002), p. 282.

<sup>204</sup> Park and Vetterlein (2010), p. 22.

attack on refugee norms by several actors. This is significant for comprehending the present study as already observed in chapter one. The dependence of the founders and proponents of the IDP Regime on powerful states for funds and influence meant many had to dance to the piper's tune, thus the evolution of norms had to be envisaged as an organic process deriving from the unfailing conscience of a dedicated international community, rather than as a manufactured strategy of paranoid and xenophobic states, seeking to counter the threat posed by asylum seekers to their supposedly homogenous national identities and depleting treasures. To achieve such a feat the existing norms of the 1951 Convention had to be subtly and smoothly contested by NGOs, IOs, academic institutions, and legal scholars in a 'legitimate' and transitory manner through the fair use of numbers, labels, and the redefining of sovereignty. These were all necessary in creating a normative lacuna that could motivate actors to seek 'new' alternatives, that created the perception of an adaptive transformation of the 1951 Convention and not of its complete extinction. As we saw in the previous chapter, refugee norms were being contested by UNHCR itself through Preventative Protection, which while on the surface appeared unusual coming from the very institution that protected refugees, was absolutely necessary to guaranteeing its survival. Indeed, High Commissioner Ogata summed up the true nature of this norm contestation when she endorsed the right to remain employing rights language, but which ultimately neutralised the 1951 Convention:

Today displacement is as much a problem within borders as across them...the political and strategic value of granting asylum diminishes....The cost of processing asylum applications has skyrocketed, while public acceptance of refugees has plummeted....At the heart of....a preventative and solution-oriented strategy must be the clear recognition of the right to remain...the basic right of the individual not to be forced into exile....I am convinced that preventative activities can help to contain the dimensions of human catastrophe by creating time and space for the political process.<sup>205</sup>

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<sup>205</sup> Ogata statement at UNHCR Roundtable: Refugees: A Challenge to Solidarity, New York, 9<sup>th</sup> March (1993).

While we saw the overarching politics behind the contestation of the 1951 Refugee Convention in the late 1980s, there existed other more overt and seemingly ‘normal’ mechanisms set in place to gradually bring IDPs to the centre stage in order to overshadow and render irrelevant the 1951 Convention. Best makes us aware that,

...some of the most useful statistics track changes over time....When people use this sort of data to depict a trend, they must choose a time frame: which years’ data will they report? *When advocates are trying to make a particular point, the time frame can be part of the packaging. It may be possible, by judiciously choosing their time frame, to make the data seem to support their claims more strongly* [emphasis added].<sup>206</sup>

As already noted, the ‘discovery’ of the IDP ‘problem’ coincided with the large scale flow of refugees to the global north and the creation of multiple barrier restrictions to asylum from the late 1980s onwards, which becomes the key time frame for all advocates in devising new norms. This led the General Assembly in 1989 to request ‘the Secretary-General to initiate a United Nations system-wide review to assess the experience and capacity of various organisations in the co-ordination of assistance to all refugees, displaced persons and returnees, and the full spectrum of their needs, in supporting the efforts of the affected countries’.<sup>207</sup> This reticence of Western states towards refugees and the huge clamp downs on asylum flows was further evident in this period, as in May 1987 when the British government chartered the MV Earl William from the Sealink Company to moor at Harwich and become a makeshift detention centre for 100 asylum seekers. The government had been criticised for tasking private security company Securicor to handle all on-board operations, which was further troubling when the ship in the aftermath of a storm broke from its mooring and ran aground.<sup>208</sup> Similarly, across the Atlantic in 1988, the US government, in an attempt to comprehensively avert refugees from Central America, unveiled the ‘Enhancement Plan for the Southern Border’ which included increased border controls, rapid processing of claims,

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<sup>206</sup> Best (2008), p. 69.

<sup>207</sup> UN General Assembly Resolution 1990/78, 37<sup>th</sup> Plenary meeting, 27<sup>th</sup> July (1990).

<sup>208</sup> Cohen and Joly ed. (1989), p. 153.

detention, and deportation. The Southern Border Plan was justified by the INS on the basis that:

We intend to send a strong signal to those people who have the mistaken idea that by merely filing a frivolous asylum claim, they may stay in the United States. This wilful manipulation of America's generosity must stop.<sup>209</sup>

In Canada following the incident in July 1987 when 174 Sikhs arrived in Nova Scotia by boat after having been refused asylum in Europe, the government enacted Bill C-84, The Refugee Deterrents & Detention Act which awarded greater powers to detain and turn back undocumented refugees and clamp down on anybody within Canada attempting to assist the entrance of refugees.<sup>210</sup> It was from this point onwards that like in most European nations xenophobic sentiments determine containment policies within Canadian asylum discourse. To understand the norm contestation further we have to observe what Finnemore and Sikkink recognise in that 'networks of norm entrepreneurs and international organisations also act as agents of socialisation by pressing targeted actors to adopt new policies and laws and to ratify treaties and by monitoring compliance with international standards'.<sup>211</sup> Francis Deng and Roberta Cohen became the intellectual flag bearers of the Internal Displacement Regime, who pulled the legitimacy of international law pertaining to refugees to make the international community feel guilty for its inaction which catapulted IDPs into the spot light with claims such as,

...identifying these needs are not intended to confer on IDPs a privileged status but to ensure that in a given situation their unique concerns are addressed along with those of others. Moreover, identifying the internally displaced as a specific group is a good advocacy tool and one that can motivate the donor community and international organisations to integrate the issue into their programs.<sup>212</sup>

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<sup>209</sup> INS Commissioner Nelson cited in Frelick, (1989), p. 5.

<sup>210</sup> Griego in Cornelius, Martin and Hollifield (1994 ed.), pp. 120-126.

<sup>211</sup> Finnemore and Sikkink (1998), p. 902.

<sup>212</sup> Cohen (1992), p. 89.

Indeed what Cohen and Deng had done was reminiscent of Barbara Harrell-Bond who in the 1980s challenged the relief policies and operations of the Refugee Convention by exposing the manner in which funds were eaten up at bureaucratic level, how refugees in camp based settings were subject to horrific conditions and treatment, and more importantly how crucial intellectual contribution could rupture the moral complacency of the international community.<sup>213</sup>

Weiss and Korn's claim that 'the momentum began in the early 1990s with Francis Deng's 'sovereignty as responsibility', formulated to help internally displaced persons by finessing sovereignty and then expanded to reflect the clear need for international protection'<sup>214</sup>, which was in no way a nuanced approach. Indeed, Deng had simply seized upon the changing times and jumped on the popular bandwagon of the New World Order, neo-liberalism, humanitarianism and human security approach discussed in chapter 1. The moral authority Deng and Cohen brought eased tensions and created a conducive environment for UNHCR to assume responsibility for IDPs by revealing all their inherent similarities with refugees which was akin to killing two birds with one stone, or, as they argued, that to 'resolve the problems of inequity that often arise between the level of attention given to refugees and to internally displaced persons in the same country. It would further encourage service providers to treat refugees and internally displaced persons 'as two sides of one problem in regional situations'.<sup>215</sup>

### ***1.1 The Politics of Numbers***

Understanding the politics of numbers provides a significant backdrop for this first section as 'measures imply a need for action, because we do not measure things except when we want to

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<sup>213</sup> Harrell-Bond, (1989).

<sup>214</sup> Weiss and Korn (2005), p. 137.

<sup>215</sup> Deng and Cohen (1998), p. 170.

change them'.<sup>216</sup> The starting point for the evolution of the IDP Regime was the apparent existence of large numbers of displaced men, women and children, which was attributed to civil conflicts, with many actors claiming that statistics about civilians in war had rapidly increased. The June 1991 Cuenod Report on *Refugees, Displaced Persons & Returnees* was a product of the UN General Assembly Economic & Social Council Resolution 1990/78 which claimed that 'the time where the potential and actual number of persons leaving their habitual place of residence with the hope to settle somewhere else, whether temporary or for good, has reached unprecedented proportions'.<sup>217</sup> Refugee containment loomed large over the analysis with the claim that 'internal disturbances and gross violations of human rights can as well be the cause of forced and often large displacement of persons who may be classified either as refugees when they cross a national border or internally displaced persons when they remain within the boundaries of their country'.<sup>218</sup> First was by the shock of numbers, with the claim that there were now 24 million IDPs to 17 million refugees. Secondly there was a dilution of the refugee definition. Thirdly there was the continual reference to UNHCR which hinted at the proposed role it could play in protecting IDPs who were claimed to be 'identical' to refugees.

Within the United Nations system there is no entity entrusted with the responsibility of ensuring that aid is provided to needy internally displaced persons. Material assistance to this group has been provided on an ad hoc basis. Various arrangements have been taken by the General Assembly or the Secretary General. *For instance, UNHCR is responsible for assisting internally displaced persons within Cyprus. In several situations, the High Commissioner's Office assists former refugees returning to their village of origin and UNHCR includes in its programmes internally displaced persons going back to the same places.*<sup>219</sup> [emphasis added]

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<sup>216</sup> Stone (1997), pp. 167-168.

<sup>217</sup> Jacques Cuenod, E/1991/109/Add.1, 27<sup>TH</sup> June (1991).

<sup>218</sup> *Ibid.*, p. 30.

<sup>219</sup> *Ibid.*, p. 32.

This report was swiftly followed by the February 1992 *Analytical Report of the Secretary-General on Internally Displaced Persons* which set the tone for the creation of IDP norms and institutional structures on the basis that:

...the situation in which they [IDPs] themselves differs significantly from that of the general population. Internally displaced persons typically have suffered from a series of human rights violation which add up to a characteristic and distinctive syndrome. The cumulative effect of these violations, together with the fact of having been forced to flee their home and the difficulties, risks and deprivations invariably associated with their new situation, make their needs qualitatively different from those of other persons.<sup>220</sup>

According to UNHCR, 'The high ratio of civilian to military casualties [is] more than 9:1 in some cases...In the Post-Cold War period, civil wars and communal conflicts have involved wide-scale, deliberate targeting of civilian populations. The violence of these wars is often viciously gender-specific. Women are systematically raped and young men are the targets of mass murder or forcible conscription'.<sup>221</sup> These reports created interesting ambiguities and tensions because the central theme in all deliberations surrounding IDPs were always attributed to the changing pattern of warfare in the Post-Cold War era. While this claim will be investigated at great length in the next chapter, it is worth just outlining its structure because it became instrumental in the claims that there existed large numbers of desperate IDPs who outnumbered refugees. This then solidified the arguments that refugee numbers were on the decline, therefore making the 1951 Convention obsolete and in need of a new more congruent and robust legal mechanism. The base of their inquiry relied simply on the discovery of existence of high figures, as the guiding argument for the creation of a new IDP Regime. However, such an act of 'discovery' remained suspect, because the same arguments could be derived from any social context, for example by counting the total number of all people affected by diabetes in any given country (which would certainly produce staggering

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<sup>220</sup> E/CN.4/1992/23, 14<sup>th</sup> February (1992), p. 23.

<sup>221</sup> UNHCR (2006), p. 277.

figures) the results could very easily become the justifications for the creation of an international legal and humanitarian regime to intervene and alleviate the pain and suffering of diabetes.<sup>222</sup>

There was further ambiguity in the rhetoric of the rise of IDPs now outnumbering that of refugees as <sup>223</sup> according to the Internal Displacement Monitoring Centre (IDMC) there are over 26 million IDPs displaced by war in some fifty countries (13 million in Africa, 3 million in Asia, 2.5 million in Europe, 3.5 million in the Middle East, and 4 million in the Americas). Similarly a greater number have been displaced by natural disasters and development projects.<sup>224</sup> Weiss maintained that when IDP data was first gathered in 1982, there was one IDP for every 10 refugees; at present the ratio is approximately 2.5:1.<sup>225</sup> However, such claims demanded a closer investigation because it was essentially discussing the same people but under two different bureaucratic labels. Let me qualify. If citizens of a state failed to cross an internationally recognised border they would not qualify for the status of refugees, and so would remain within their borders and therefore be counted under the new label of IDP. Therefore, the rejection of admittance into states of refuge, and the physical and economic inability of many to depart from a warring state, was the reality behind this so called 'rise' of internal displacement and the decline of refugee numbers, which became the backbone of all justifications for the creation of an IDP Regime. In reality the IDP was always present, However, the creation of a bureaucratic category applied to citizens suddenly made them a visible international 'concern'. Following on from this was the obvious intention of refugee containment inherent in claims of the rise of IDP numbers. For the claim that refugee numbers had declined and IDP numbers had suddenly risen, could not be sustained by the glaring fact that many Western states from the 1990s onwards were intensely constructing barrier restrictions to asylum on the proclaimed basis that large numbers of refugees were

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<sup>222</sup> Chimni (2009), p. 18.

<sup>223</sup> Lewis (1992), p. 695.

<sup>224</sup> Norwegian Refugee Council, Internal Displacement Monitoring Centre, Internal Displacement: Global Overview of Trends and Developments (2010).

<sup>225</sup> Weiss in Hollenbach, ed. (2010), p. 208.

now breaching their borders, as we witnessed in the previous chapter and which UNHCR confirmed (see Table 4 below).<sup>226</sup>

**Table 4. Number of Asylum Applicants in Developed Countries (in 1000s)**

	1975-1979	1980-1984	1985-1989	1990-1994	1995-1999	1980-1999
Total	233.6	793.8	1,495.6	3,373.3	2,751.7	8,414.55
Western						
Europe	215.2	570.6	1,105.7	2,586.0	1,783.9	6,301.59
France	40.4	106.3	178.6	184.5	112.2	581.86
Germany	121.7	249.6	455.2	1,337.1	542.4	2,584.51
UK	3.3	17.4	28.5	150.8	223.2	420.13
N. America	18.1	201.1	368.9	637.6	773.2	2,017.08

Finally, the overall claim that IDPs were a new phenomenon was based on widely disseminated statistics that they were a direct product of the rise of civilian casualties in civil wars. However, as Andreas and Greenhill uncovered in their investigation of the origins of these momentous numbers that as a direct result of armed conflict in the last decade 2 million children have been killed, 4-5 million disabled, 12 million left homeless, and over 1 million orphaned victims featured in a myriad of NGO, IO, and IGO reports, speeches, and press releases as well as a multitude of books and journals<sup>227</sup>, were indeed fabricated. While Graca Machel in her work *The Machel Review 1996-2000: A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-Affected Children*, and Olara Otunnu the former UN Under-Secretary General and Special Representative for War-Affected Children & Armed Conflict, have been widely credited as the original sources of such statistics, both had referred to the UNICEF report titled the *State of the World's Children 1996: Children in War* as the true origin. However, UNICEF itself rested this claim on the declaration that it had compiled those statistics from a variety of sources, with no mention of who they were or the method it had used to identify and obtain such information. In addition to this, the report dated from 1996 and so the statistics it mentioned were from 1986-1996 and

<sup>226</sup> UNHCR Global Report (2001).

<sup>227</sup> Andreas and Greenhill (2010), p. 129.

not 1990 to 2000 which was the period cited by many as the ‘last decade’. Even more startling was that UNICEF finally declared that:

...the increasing number of child victims is primarily explained by the higher proportion of civilian deaths in recent conflicts...In the later decades of this century the proportion of civilian victims has been rising steadily: in World War II it was two thirds, and by the end of the 1980s it was almost 90%.<sup>228</sup>

However, this unfounded but seemingly gospel claim originated first from a 1991 report by Christa Ahlstrom & Kjell-Ake Nordquist, titled *Casualties of Conflict*, which claimed that 9 out of 10 victims (dead and uprooted) were civilians. However, the ‘uprooted’ included displaced and refugees who were *living*. This was in addition to the fact that the words “dead and uprooted” were not included in the cover title, which just left the statement “*nine out of ten victims of war and armed conflict today are civilians*” which ultimately gave birth to the new social truth, with victim automatically equates fatality.<sup>229</sup> Similarly, Ruth Sivard’s *World Military & Social Expenditures* was the other UNICEF source which maintained that ‘in 1990 [the proportion of civilian to combat deaths] appears to have been close to 90%’.<sup>230</sup> However, Sivard had included war related famine deaths which had been dismissed as a myth in the 2005 Human Security Report, which argued that no global data existed to ascertain such a gigantic figure.<sup>231</sup> This whole statistical circus was even more worrying as a number of actors embroidered or added greater specificity to these already shocking figures. In some cases, the “estimate” became the low-end assessment with claims that “in the last decade”, “at least” or “more than” two million were killed, five million disabled, and so on.<sup>232</sup>

## ***1.2 The Politics of Labels.***

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<sup>228</sup> UNICEF (1996).

<sup>229</sup> Ahlstrom and Nordquist (1991).

<sup>230</sup> Sivard (1991).

<sup>231</sup> Human Security Report: War and Peace in the 21<sup>st</sup> Century, (2005) 75 (inset).

<sup>232</sup> Andreas and Greenhill (2010), p. 132.

With numbers came the imposition of labels, as the Guiding Principles defined the internally displaced as:

...persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalised violence, violation of human rights, or natural or human-made disasters, and who have not crossed an internationally recognised state border.<sup>233</sup>

According to Wood, 'labelling is a way of referring to the process by which policy agendas are established and more particularly the way in which people, conceived as objects of policy are defined in convenient images'.<sup>234</sup> This was critical because carefully chosen labels can have strong emotional reactions that make statistics seem particularly worrying.<sup>235</sup> Thus the normative lacuna was carefully founded on the strength of a bureaucratic label which had the power to demand the creation of new protection structures by utilising norms involving bodily integration. Indeed the inviolability of the body for vulnerable groups such as women and children which carried a transnational and cross-cultural potency because they adhered to basic ideas of human dignity.<sup>236</sup> This was fully evident in the *Compilation and Analysis of Legal Norms* submitted by the Special Representative in 1995. The report examined the existing international legal standards of the UN which were applicable to the needs of IDPs and whether or not they afforded protection. Human Rights, Humanitarian, and Refugee Laws were all examined to this end. The Representative concluded that in all three cases

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<sup>233</sup> Deng, Francis E/CN.4/1998/53/Add.1.

<sup>234</sup> Wood (1985), p. 1.

One of the most high profile examples of the expedient application of labels to contain and manage an imminent threat has been the US capture and imprisonment of Al-Qeada and Taliban fighters in Guantanamo Bay under the label of 'unlawful combatants' rather than Prisoners of War, which has been politically expedient in order to circumvent the Geneva Conventions. By not granting prisoner of war status the interrogation of fighters for information that could abate future terrorist attacks or neutralise terrorist cells can be acquired. Secondly, the US is not compelled to repatriate fighters back to Afghanistan from where they could regroup and re-launch assaults against the west. Thirdly the label allows them to be confined in uncomfortable settings due to the high risk they pose compared to POW who would have to be housed in comfortable environments (Mofidi and Eckert (2003), pp. 89-90).

<sup>235</sup> Best (2008), p. 39.

<sup>236</sup> Keck and Sikkink (1998).

international legal standards *did* exist for the protection of IDPs, however they did not specifically mention internally displaced persons:

It can be concluded that, in situations of tensions and disturbances, or disasters, internally displaced persons are fully protected by prohibitions of discrimination and guarantees of equal protection. *However, an international instrument should explicitly state that the term 'other status' in non-discrimination clauses includes the status of internally displaced persons.* In addition, fundamental provisions of humanitarian law apply to all civilians and, therefore, afford full protection for internally displaced persons against discrimination. *However, it could be useful to state this principle explicitly in a future international instrument relating to the legal status of internally displaced persons.*<sup>237</sup> [emphasis added]

Although it can be concluded that present international law, in principle, affords adequate protection from gender-specific violence against internally displaced persons, *many of these guarantees, especially their bearing on internally displaced person, need to be highlighted and further detailed in a future international instrument.*<sup>238</sup> [emphasis added]

What was even more interesting was that the analysis of legal norms in 1995 was a carbon copy of a previous attempt in 1949 by the Economic & Social Council to the Secretary-General for a *Study on Statelessness*, through UN Resolution 116 D (VI) on 2<sup>nd</sup> March 1948. For the UN, stateless persons fell under two categories, as 'persons who are not nationals of any State, either because of birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one'.<sup>239</sup> The Secretary General at the time employed the same approach of reviewing policy and existing legal frameworks which drew the same conclusions that revolved around the existence of high numbers and a UN system, which only 'partially' recognised stateless people, with many falling through the cracks of existing legal mechanisms:

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<sup>237</sup> E/CN.4/1996/52/Add.2, 5<sup>th</sup> December (1995), p. 28.

<sup>238</sup> Ibid, p. 41.

<sup>239</sup> A Study of Statelessness, United Nations Department of Social Affairs, August (1949), p. 15.

The number of stateless persons is at present very large, and to improve their status is an urgent necessity. It is true that the international conventions exist which have determined the states of certain categories of stateless persons in a fairly satisfactory manner. *But there are many stateless persons who do not benefit from these conventions which apply only to certain categories and to which only a small number of States are parties.*<sup>240</sup> [emphasis added]

This was paradoxical because of the contemporary manner in which refugees had been employed to understand IDPs, was reminiscent of the analogous use of refugees forty years earlier to understand and cement the study of statelessness as:

In fact, a considerable majority of stateless persons are at present refugees. These refugees are de jure stateless persons if they have been deprived of their nationality by their country of origin. They are de facto stateless persons if without having been deprived of their nationality they no longer enjoy the protection and assistance of their national authorities. The measures taken since the end of the first and world war in order to improve the legal status of refugees and to ensure them international legal protection will therefore have an important place in the present study.<sup>241</sup>

Deng's overall findings while greeted with jubilation however begged the question as to why IDPs were to be considered as a specific legal category in need of new international protection instruments? Indeed, how were the experiences of displacement unique to other forms of suffering during civil war and conditions of social breakdown? For as Best warns:

...advocates prefer to define social problems as broadly as possible. There are at least two reasons for this. First advocates often claim that they are drawing attention to neglected problems, to subjects that have been ignored instead of being given the close attention they deserve...a second advantage of broad definitions is that they allow advocates to count more cases. That is, broad definitions justify larger statistical estimates. Bigger numbers make it clear that these are big problems.<sup>242</sup>

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<sup>240</sup> Ibid, p. 8.

<sup>241</sup> Ibid, p. 9.

<sup>242</sup> Best (2008), p. 42.

The IDP definition was descriptive and not legal, further adding to the magnitude of the crisis by now encompassing everyone and anyone displaced by conflict, natural disaster and development projects. Cohen attempted to allay these concerns when she oddly claimed that ‘identifying these needs is not intended to confer on IDPs a privileged status but to ensure that in a given situation their unique concerns are addressed along with those of others’.<sup>243</sup> This was contradictory because if IDPs did not require a ‘privileged’ status, why were their circumstances deemed by so many to be ‘unique’. Similarly, Mooney in reaction to these objections for the need for a separate categorisation, simply relayed the statement of the Secretary General that

What distinguishes the internally displaced are the unique needs and heightened vulnerabilities that arise as a result of forced displacement, including their need for a durable solution. To be sure, IDPs often are a part of a much larger group of persons in need, whether it be civilians caught up in armed conflict or populations affected by a natural disaster. Nevertheless, the objective fact of being displaced implies particular needs and exposes those affected to additional risks.<sup>244</sup>

Thus for all the proponents ‘movement’ became the quintessential feature of internal displacement, which further complicated matters. Firstly, because movement was not unique or unprecedented but a natural consequence of panicked communities in all situations of instability. Secondly, what would then be the metric for displacement? How far and for how long would a person(s) have to move from their home to be considered displaced? Thirdly, there existed extra-territorial forms of displacement, as in the case of Mayan Indians on Guatemala whose culture and community structures were deliberately targeted in the low intensity war. For many, the real displacement was not physical but spiritual due to the inability to worship deities associated with a specific geographical feature (lakes, streams, hills), or from the arson of maize and food stuffs deemed sacred<sup>245</sup>. These criticisms, while

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<sup>243</sup> Cohen (2006), p. 89.

<sup>244</sup> Mooney (2005), p. 18.

<sup>245</sup> Muggah (2008).

important in exposing the overall inconsistencies and consequences such categorisations created, however failed to recognise the real strategy at play, for as Zetter explained:

The discourse on the refugee label transcends the world of institutional practices and statutory processes. It relays anxieties about the fear of the 'other' and social relations between newcomers and settled communities. It reflects a growing preoccupation with culturalism, as apparently secure national 'identities' of the past are perceived to diminish in a global era. Migrants are a potent representation of these concerns, whilst the specific label 'refugee', conveying undesirable images of destitution and an unwelcome burden, is a powerful synonym for these apprehensions. The concept of labelling shows how political agendas about identity become incorporated in ostensibly neutral bureaucratic categories, such as 'refugee'.<sup>246</sup>

The refugee label had simply become too sensitive and thus required a replacement that could instantly calm and assuage the fears and anxieties it projected. Indeed, social problems cannot be properly articulated unless they are given a name that can convey a particular impression of the problem.<sup>247</sup> For to re-label internally displaced persons as 'citizens residing within their borders' or as 'non-combatant persons' (which is what they essentially are) requiring the creation of new UN protection mechanism, would automatically raise questions and protests due to the existence of long established UN human rights treaties and humanitarian organisations to that end. More fundamentally, the defining feature of 'movement' to form an analogous connection to refugees would instantly vanish with a clear distinction remaining between people living in a foreign land and citizens residing within their states. This would have allowed the 1951 Convention to remain intact and binding to the bane of powerful and xenophobic states seeking its demise. The IDP label was thus welcomed and successful because it extinguished the subliminal fears of the 'other' and the imminent threat of multitudes arriving at Western borders. The label itself aptly 'contained' the problem by evoking the picture of people trapped in far distant lands who had no recourse to escape or

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<sup>246</sup> Zetter (2007), p. 185.

<sup>247</sup> Best (2008), p. 38.

travel overseas, and therefore posed no danger to the perceived cultural homogeneity of the West or as a burden to already overstretched treasuries. In sum, the real irony of this exercise was that before a myth of difference was created to serve barrier restrictions and contain refugees from the Global South journeying to the Global North, a new myth of similarity was now constructed between IDPs and refugees to create a normative framework for protecting people within their borders that could finally nullify the Refugee Regime:

Despite the fact that internally displaced persons remain in their own countries, they like refugees, have been forced to leave their homes and find themselves in refugee-like situations. Consequently, refugee law, by analogy, can be useful in proposing rules and establishing guidelines to protect the needs of the internally displaced.<sup>248</sup>

### *1.3 The Politics of Sovereignty*

Numbers and labels were alone insufficient to herald systemic change as the evolution of the IDP Regime faced the formidable barrier of sovereignty for which the proponents carefully re-conceptualised and mobilised to fill the normative lacuna and therefore gain access to citizens ‘trapped’ within their borders. This was critical to neutralising the 1951 Convention by removing its essence, which was the crossing of an international border and the protection subsequently required to overcome the legal limbo of people living in a foreign land. This was the only way to silence the critics of the IDP Regime, most notably Barutciski who hit hard at the logic of suddenly giving citizens within their own borders the rights of refugees:

Thus, the idea of expanding the refugee definition to include IDPs simply does not make sense because the term ‘refugee’ addresses a particular situation that is characterised by being a foreigner in a host country. There is not one specific right found in the 1951 Geneva Convention relating to the Status of Refugees that could logically be applied to displaced persons who have escaped their own country. The whole Convention is based on the notion of having fled one’s country. That is the condition or situation that is being addressed: not displacement or human rights

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<sup>248</sup> United Nations, E/CN.4/1996/52/Add.2, 5<sup>th</sup> December (1995), p. 11.

violations per se, but rather the fact of being stranded outside one's country without the formal protection that comes from being the national of a particular state.<sup>249</sup>

For as High Commissioner Ogata declared in 1997 as to why the UN had not been able to assist IDPs, 'the problem is sovereignty', of which the legal basis stems from the Westphalia understanding where states are equal, independent and sovereign, as enshrined in Article 2 (1) of the UN Charter. This was further safeguarded by the principle of non-intervention in the domestic affairs of states. Therefore, to establish an international treaty codifying the rights of citizens displaced within their own territories would be a direct violation of its sovereignty, territorial integrity and political independence. Such a herculean task required the assistance and power of human rights norms to deflect criticism with the famous mantra 'rights have no borders'. Such a grand strategy was embedded in benevolent propositions such as that of Hathaway, who, commenting on the Draft Declaration of Principles of International Law on Internally Displaced Persons in 1996, argued that:

If we are serious that we are now in a position to enter behind the wall of sovereignty, we ought not privilege those who are displaced, effectively doing a disservice to those who are trapped in their own homes, and we ought simply to get about the business of enforcing international human rights law internally if we honestly believe that is a possibility.<sup>250</sup>

To understand how this barrier was finally overcome, it is important to historicise the concept of the Responsibility to Protect (R2P) in order to understand how its content and scope was not new or revolutionary but instead an old concept plucked from UN archives and extrapolated for addressing new interests and concerns. R2P can be traced back to the emergence of the Refugee Regime which flowed from UN Resolution 319/A (IV) of 1949, with the General Assembly mentioning two fundamental principles:

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<sup>249</sup> Barutciski, FMR, December (1998), p. 12.

<sup>250</sup> Proceedings of the American Society of Public International Law, (1996), p. 562.

*Considering* that the problem of refugees is international in scope and nature and that its final solution can only be provided by the voluntary repatriation of the refugees or their assimilation within new national communities.

*Recognising* the responsibility of the United Nations for the international protection of refugees.<sup>251</sup>

Thus R2P was already promulgated as the basis for all UN action at the end of the Second World War for the protection of refugees. It was necessarily upheld in an ‘external’ dimension to protect citizens of states that had fled because of ideological differences. People who fled from Communist systems were regarded as allies because they did not enjoy the rights of ‘free’ citizens within the Soviet Union, and therefore became an effective way to embarrass and discredit adversary nations while simultaneously portraying the superiority of Western liberal ideals.<sup>252</sup> R2P lacked an internalist orientation for the protection of millions of displaced persons within their territories, as the strategic calculations of the nuclear stand-off dwarfed any benefits or attempts at humanitarian intervention by the UN into the USSR. Indeed, the only possible internalist attempts of R2P were the unilateral measures by states at regime change to install governments that shared their ideological cleavages through proxy engagements in Central & South America, Africa, and South East Asia, which all utilised the language and rhetoric of R2P. However, once the global threat of Communism evaporated in 1990, and there witnessed a resurgence of the threat of people fleeing civil war, genocide and state collapse from the developing world, a new grammar of R2P emerged which engendered an internalist orientation that gave license for powerful actors threatened by the alleged waves of people fleeing to halt them within their borders. Indeed, as the Executive Director of UNICEF commented in 1993, ‘the world has established a minimum safety net for refugees, but this is not yet the case with respect to internally displaced populations’.<sup>253</sup> The 1990s witnessed a number of high profile debates and ‘re-formulations’ of sovereignty to fit the

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<sup>251</sup> United Nations General Assembly Resolution 319/A (IV), 3rd December(1949), UN Doc A/RES/319.

<sup>252</sup> Teitelbaum (1984), p. 430.

<sup>253</sup> James P. Grant, ‘Refugees, Internally Displaced and the Poor: An Evolving Ethos of Responsibility’, address at the Round Table on the Papal Document, UNICEF, 9<sup>th</sup> March (1993).

‘changing’ and ‘unprecedented’ circumstances, many of which utilised the guilt of the international community for ignoring and failing to repel the gross human rights violations witnessed in places like Cambodia, Rwanda and Srebrenica. Beginning in 1992 was Boutros Boutros-Ghali’s report *Agenda for Peace*, already mentioned in the previous chapter, where he affirmed that:

We have entered a time of global transition marked by uniquely contradictory trends. Regional and continental associations of States are evolving ways to deepen cooperation and ease some of the contentions characteristics of sovereign and nationalistic rivalries. National boundaries are blurred by advanced communication and global commerce, and by the decision of States to yield some sovereign prerogatives to larger, common political associations.<sup>254</sup>

Next came Francis Deng’s formulation of *Sovereignty as Responsibility* which according to him stemmed from the fact that IDPs fell ‘into a vacuum of the responsibility normally associated with sovereignty. Given the extent of the human suffering involved, the international community is often called upon to step in and meet the humanitarian challenges posed by the absence of national responsibility’.<sup>255</sup> For Deng, accountability, protection, and the provision of basic needs to domestic constituencies ensured state legitimacy, which if broken or were incapacitated to discharge would ‘force’ the international community to act.<sup>256</sup> Building on this was Kofi Annan’s *Two Concepts of Sovereignty* which in 1999 illuminated that:

State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty –by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequently international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we

<sup>254</sup> Boutros Boutros-Ghali, UN Doc A/47/277- S/24111, 17h June (1992).

<sup>255</sup> Deng (1995), p. 251.

<sup>256</sup> Ibid, p. 278.

read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.<sup>257</sup>

Following on from this, Annan, again in 2003 in an address to the General Assembly, stated that the international community had reached a 'fork in the road' necessitating difficult questions 'about the adequacy, and effectiveness, of the rules and instruments at our disposal'.<sup>258</sup> He then established The High Level Panel in September 2003 to examine the challenges to peace and security, which then produced a report in December 2004 entitled *A More Secure World* that identified six clusters of threats, among them 'internal conflict, including civil war, genocide and other large scale atrocities'.<sup>259</sup> Finally, there was the International Commission on Intervention & State Sovereignty (ICISS) in December 2001 led by former Australian Foreign Affairs Minister Gareth Evans who shifted the terms of the debate first by arguing that sovereignty did still matter as an effective tool in internationalising trade, investment, technology and communication. However, when it came to the debates concerning the right to intervene it was unhelpful in three ways because

...it focuses attention on the claims, rights and prerogatives of the potential intervening states much more so than on the urgent needs of the potential beneficiaries of the action...does not adequately take into account the need for either prior preventative effort or subsequent follow-up assistance...the familiar language does effectively operate to trump sovereignty with intervention at the outset of the debate: it loads the dice in favour of intervention before the argument has even begun.<sup>260</sup>

The change in terminology to the Responsibility to Protect would first encompass a bottom-up approach that evaluated the issues 'from the point of view of those seeking or needing support, rather than those who may be considering intervention',<sup>261</sup> which protect communities from systematic violations of human rights. Secondly, it would be a 'linking

<sup>257</sup> Kofi Annan, 'Two Concepts of Sovereignty', *The Economist*, 18<sup>th</sup> Sept (1999).

<sup>258</sup> The Secretary-General's Address to the General Assembly, New York, September 23<sup>rd</sup>, (2003).

<sup>259</sup> United Nations High Level Panel Report on Threats, Challenges and Change, December 2004, Paragraph:84-88.

<sup>260</sup> *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty*, December (2001), p. 16.

<sup>261</sup> *Ibid* p. 17.

concept that bridges the divide between intervention and sovereignty'<sup>262</sup> with the international community stepping in to fulfil the responsibilities of unable and unwilling states. Finally, there is the responsibility to rebuild with 'conceptual, normative and operational linkages between assistance, intervention and reconstruction'.<sup>263</sup>

While R2P propagated positive and seemingly revolutionary ideas for achieving global order, it nevertheless came under increasing attack with accusations that it merely amounted to the responsibility of rich Western powers to interfere in the affairs of poor countries<sup>264</sup>, and was nothing more than an exercise of 'disciplining mice while freeing lions' by its double standards which authorised aggression, witnessed with Israel's heavy handed assaults on Gaza 2006, US invasion of Iraq 2003, and the US & Canadian deposition of Haitian President Jean-Bertrand Aristide in 2006.<sup>265</sup> Nevertheless, R2P had a far greater purpose which involved redesigning the global arena by transforming sovereignty from a hard legal concept into a soft political one, which could fulfil whatever fluid interpretation, criteria or agenda one suited. This made it feasible for actors to now engage IDPs on the international stage through a 'new' normative framework which allowed the integration of all the disparate previous attempts at IDP protection (Preventative Protection, Cross Border Operations, Quick Impact Projects, Internal Flight Alternatives) into one umbrella concept that boasted a seemingly legitimate and dedicated response to the needs of vulnerable citizens.

## **2. Norm Emergence: The Strategic Roots of IDP Norms**

After a period of norm contestation comes norm emergence, which, according to Park and Vetterlein, occurs when 'actors (re) construct the world by projecting their understanding of reality through their actions, or in other words by externalising their interests through

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<sup>262</sup> Ibid, p. 17.

<sup>263</sup> Ibid, p. 17.

<sup>264</sup> Responsibility to Protect: An idea whose time has come-and gone? *The Economist*, July 23<sup>rd</sup> (2009).

<sup>265</sup> Fake and Funk (2009), Hehir (2012), Thakur (2010).

action’.<sup>266</sup> This was achieved by emulating the key steps in the evolution of the 1951 Refugee Convention, so as to capture the legitimacy and sympathetic grip it once held, by making internally displaced persons analogous to refugees in order to gradually eclipse them, but now in a ‘new’ and changing global environment, precisely because ‘legitimation produces new meaning that serve to integrate already existing meanings and practices and justifies them through cognitive and normative elements’.<sup>267</sup>

### ***2.1 The Evolution of the Legal Mechanisms***

The Guiding Principles on Internal Displacement (see Table 5 below) were created in 1998 as an outgrowth of the *Compilation and Analysis of Legal Norms* through a need to codify international rules as a set of soft law arrangements based on the concept of ‘Sovereignty as Responsibility’ to guide states in bringing ‘their policies and legislation into line with them’.<sup>268</sup> They were not designed as a draft declaration or as a binding instrument but were simply consistent with international human rights and humanitarian law.<sup>269</sup> Principle 3:25 affirmed that primary responsibility for IDPs rested with their governments. However, if governments were unable to protect their populace they would be expected to request assistance from the international community. The Principles further emphasised that in providing assistance, international humanitarian organisations should pay attention to the ‘protection needs and human rights’ of IDPs and take ‘measures’ in this regard (Principle 27).

The legal protection discourse from the outset was premised on the argument that the distinction between refugees and IDPs based on sovereignty through the crossing of an international border was both arbitrary and unjustifiable because the realities and conditions of forced migration were the same for both groups.<sup>270</sup> The legal dimension thus attempted to

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<sup>266</sup> Park and Vetterlein ed. (2010), p. 21.

<sup>267</sup> Ibid, p. 23.

<sup>268</sup> UN Commission on Human Rights, The Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 11th February (1998)

<sup>269</sup> Kalin (2000), p. 3.

<sup>270</sup> Shacknove (1985), pp. 274-84.

sensitise and reconcile both international law and domestic law to the plight of the IDP by overcoming the limitations of protection which could arise from governments limiting protection to only the victims of insurgents or aid agencies only working to save lives in emergency situations. Roberta Cohen thus extolled the Guiding Principles on the basis that they:

...consolidate into one document all the international norms relevant to IDPs, otherwise dispersed in many different instruments. Although not a legally binding document, the principles reflect and are consistent with existing international human rights and humanitarian law. In re-stating existing norms, they also seek to address grey areas and gaps.<sup>271</sup>

**Table 5. The Guiding Principles on Internal Displacement**

<b>The Guiding Principles are not binding but are based on, and consistent with, existing international legal instruments. The 30 principles are divided into 5 sections:</b>	
<b>Section I</b>	General Principles: Assert that national governments and other authorities must ensure that displaced persons enjoy the same rights as other citizens of the same country.
<b>Section II</b>	Principles Relating to Protection from Displacement: Particularly urge protection from arbitrary displacement and from violent treatment.
<b>Section III</b>	Principles Relating to Protection During Displacement: Emphasise that universal rights (e.g., to family life, livelihood and free association) apply equally to the displaced.
<b>Section IV</b>	Principles Relating to Humanitarian Assistance: Provides an overview of the responsibilities of national governments working in collaboration with humanitarian agencies and statutory protection bodies.
<b>Section V</b>	Principles Relating to Return, Resettlement and Reintegration: Provides an overview of the rights of IDPs to return voluntarily and in safety, not be discriminated against and be helped to recover or be compensated for property left behind.

<sup>271</sup> Cohen (1998), pp. 31-33.

For IDP proponents they were the *magnum opus* of IDP protection which was further endorsed at the UN General Assembly in the 2005 World Summit Outcome Document as an ‘important international framework for the protection of internally displaced persons’.<sup>272</sup> However, on closer inspection their evolution and structure raised questions and doubts because the creation of the Guiding Principles directly mimicked the strategy taken by Nansen & the League of Nations to address the problem of the anomalous status of refugees arising from both the 1917 Russian Revolution and the collapse of the Ottoman Empire, through the exact measure of designing ‘soft law’ Arrangements which were simply recommendations with no binding force of law. Five Arrangements were framed between 1922 and 1936, which laid down the initial groundwork for the creation of a legally binding Convention, by establishing definitions, circumstances, statuses, and rights of refugees. I will briefly outline them.

#### *The 1922 Arrangement: Russian Refugees*

The lack of identity and travel documents for Russian refugees was a huge challenge which was presented by Nansen to the Council and the League of Nation members. At the intergovernmental conference, Geneva, July 1922, participants ‘unanimously agreed upon...certified of identity, and recommend its adoption and the adoption of the present arrangement of the States represented at the Conference, to the Members of the League of Nations and to States which are not Members of the League’.<sup>273</sup>

#### *The 1924 Arrangement: Armenian Refugees*

Similarly to the previous 1922 Arrangement, Nansen invited Governments to consider the introduction of identity certificates for Armenian refugees with the right to return. Nansen justified introducing a right of return on the grounds that ‘experience gained in connection with the Russian refugee problem has convinced me of the great importance of facilitating as

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<sup>272</sup> UN General Assembly Resolution 60/1, paragraph 132, UN Doc. No. A/RES/60/1, 24<sup>th</sup> October , (2005).

<sup>273</sup> Official Journal of the League of Nations, August (1922), pp. 923-926.

far as possible, free movement by refugees'.<sup>274</sup> It recommended that governments should 'grant such authorisation in all cases where there are no special reasons to the contrary, in order to facilitate much as possible free movement on the part of the refugees and to enable them to improve their economic situation'.<sup>275</sup>

*The 1926 Arrangement: Russian & Armenian Refugees*

The lack of a formal definition in the previous two Arrangements of who was a refugee or the right of return and freedom of movement for refugees once they had travelled abroad was addressed. But on 12 May 1926, the 'Arrangement Relating to the Issue of Identity Certificates to Russian & Armenian Refugees, Supplementing and Amending the Previous Arrangement dated July 5<sup>th</sup>, 1922 and May 31<sup>st</sup>, 1924 was adopted. For the first time, it defined persons eligible to the protection services of the League.'<sup>276</sup>

*The 1928 Arrangement: Legal Status of Russian & Armenian Refugees*

While the Arrangements of 1922, 1924, and 1926 eased some of the legal challenges faced by refugees, they were far from fully stabilising their legal and personal status as regards employment and movement within host States or abroad. As a result, Nansen and the inter-governmental Advisory Commission for Refugees (IACR) appealed to the Assembly for measures to be taken to 'provide refugees with a clearly defined legal and personal status'. The 1928 'Arrangement Concerning the Legal Status of Russian and Armenian Refugees' adopted on 30 June 1928 attempted to address these. The Arrangements also allowed these refugees to enjoy certain rights, benefits, and privileges previously reserved for foreigners on condition of reciprocity. The Arrangement further defined the competence of the HCR and authorised him to appoint representatives 'in the greatest possible number of countries', in order to provide refugees services entrusted to him by the League.<sup>277</sup>

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<sup>274</sup> Official Journal of the League of Nations, July (1924), p. 967.

<sup>275</sup> Ibid, p. 969.

<sup>276</sup> Official Journal of the League of Nations, July (1926), p. 983-985.

<sup>277</sup> Official Journal of the League of Nations, March (1929), p. 483.

*The 1928 Arrangement: Assyrian, Assyro-Chaldean & Assimilated Refugees*

The conference of 28<sup>th</sup> June 1928 in addition to adopting an Arrangement of the legal status of Russian and Armenian refugees, also framed an Arrangement that extended earlier measures taken on behalf of the Russian and Armenian refugees by the Arrangements of 5<sup>th</sup> July 1922, 31<sup>st</sup> May 1924, and 12 May 1926 to Turkish Assyrian Assyro-Chaldean and assimilated refugees.<sup>278</sup> While Arrangements may be considered as ‘mere recommendations’ because they do not create binding obligations, the 1926 Arrangement was the first non-binding agreement by States on refugees that defined who was entitled to international protection. It formulated eligibility criteria for international protection: first, loss of the protection of the government of one’s country and, second, not acquiring the nationality of another country- two elements that remain central to the conceptualisation of refugee status today. A third element, not explicitly articulated in the definition but significant, is that the person is outside his or her country of origin. Albeit not in absolute terms, the 1926 Arrangement also provided for the rights of return.<sup>279</sup>

These five soft law Arrangements were appropriate for the international environment of the 1920s, because they were primarily designed to afford refugees protection in the legal lacuna that existed at the time due to the absence of any customary or treaty law, for the Universal Declaration of Human Rights were not in existence until 1948; the Convention on the Prevention and Punishment of the Crime of Genocide came into force in 1948; the Four Geneva Conventions entered in 1949 and the Additional Protocols to the Geneva Conventions in 1977; the UN Convention relating to the Status of Refugees was signed in 1951; and finally the Convention on the Elimination of All Forms of Discrimination Against Women was ratified in 1979. Therefore, the anomalous refugees from Russia, Armenia, and Assyria had no international protection and therefore truly existed in a state of legal limbo. This was alarming because the Guiding Principles were created as a soft law instrument in a global

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<sup>278</sup> Ibid, p. 488.

<sup>279</sup> Ibid.

environment where customary and treaty law were already long in existence and fully functioning. Furthermore, the Guiding Principles became in essence a cut and paste exercise of those existing treaties, as they ‘do not really fill any legal gap; they simply state and interpret existing norms’.<sup>280</sup> This created a serious conundrum because many of the proponents had argued that the existing UN system was insufficient to afford IDPs protection. However, the proponents then took those very ‘insufficient’ structures of hard law and converted them into soft law for the protection of a specific category of people, who were already covered under that hard law in all but name. In sum, binding treaties were now co-existing alongside non-binding versions of themselves in the form of the Guiding Principles.

Furthermore, there was a critical design error in that it was advocating the notion that *the key to protecting IDPs was not to have IDPs*, as the application of all the 30 principles promoted protection through the virtual re-establishment of the social contract that would have transformed displaced masses into citizens once more. The Principles were mistakenly understood to be the pre-requisites to protection, when in actuality they were the outcomes of protection by a centralised authority. These inconsistencies highlighted a key tactic in the containment of refugees by first seeking to ground and legitimise IDPs through a similar path of applying soft law that slowly accustomed the international community to accepting the need to protect a ‘new’ category of people, who were completely identical to the anomalous status once held by refugees in the 1920s and 30s. As Barutciski foresaw in 1998:

The implicit and dangerous logic is that if a new category called ‘IDPs’ is granted supposedly new protection under international law, then there is no reason to allow those displaced to become cross-border refugees. Even if the protection does not contain anything substantively new, its formal expression can reduce commitments regarding the availability of temporary refuge across borders. Put bluntly: if the development of IDP norms does not substantively advance the international community’s attempts to deal with humanitarian crises and intervene in troubled countries, then the current debate and re-focus on internal displacement would

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<sup>280</sup> Barutciski (1998), p. 13.

represent little more than capitulation to non-entrée and containment strategies to the extent that it de-emphasises the external asylum option.<sup>281</sup>

This was indeed fully evident as the introduction of the Guiding Principles in 1998 paralleled attempts by the EU to introduce new, sustained, and more coordinated policies of containment, which shifted away from the legal and normative notions to more politicised conceptions of asylum that awarded states greater autonomy. According to Zetter, this was a reflection of the invasion complex and subsequent discourse of Fortress Europe, in which the belief in an existential threat posed by both migration and asylum to the sovereignty and nation states was the reality behind the push for a ‘common’ immigration and asylum policy framework that could ‘harmonise’ and keep Europe ‘integral’.<sup>282</sup> Thus the Treaties of Maastricht (1993) Amsterdam (1997) all shared this undercurrent. Similarly, in 1998, the strategy paper by the Austrian government which at the time held the EU presidency commented that migration pressures could be reduced by ‘coordinated policy which extends far beyond the narrow field of policy on aliens, asylum, immigration and border controls and also covers international relations and development aid’.<sup>283</sup> It went on to state that the Refugee Convention had become ‘less applicable to the problem situations actually existing’<sup>284</sup> and that the solutions required not only asylum law but cooperative transnational and cooperative approaches. The new protection for refugees involved ‘reform of the asylum application procedure and transition from protection concepts based only on the rule of law to include politically orientated concepts’.<sup>285</sup> In 1999 EU member states began the drive for a Common European Asylum System (CEAS) through an Area of Freedom, Security and Justice (AFSJ) which was the ideation basis of European governance, for integrating ‘shared factual knowledge on the causes and consequences of the underlying social problems and

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<sup>281</sup> Ibid, p. 14.

<sup>282</sup> Zetter (2007), p. 186.

<sup>283</sup> Council of the European Union, ‘Note from Presidency to K4 Committee: Strategic Paper on Immigration and Asylum Policy’, CK4 27, ASIM 170, 9809/98 (OR.d) Brussels, 1<sup>st</sup> July (1998), paragraph 41.

<sup>284</sup> Ibid, paragraphs 27 and 37.

<sup>285</sup> Ibid, paragraph 41.

normative-orientations with which to evaluate the desirability of political action'.<sup>286</sup> However, while there was an underlying strategy of refugee containment it was quickly and carefully glossed over a year later in the 1999 Tampere Conclusions which re-established an atmosphere of solidarity and humanity by outlining the European Union's full commitment to the obligations of the 1951 Convention and were able to respond to the needs of those suffering.<sup>287</sup>

### ***2.3 The Evolution of Protection Mechanisms***

The legal mechanisms were redundant without the creation of a physical in-country protection structure that could tangibly house and justify them, by warding off any criticism of being a purely symbolic gesture without any practical application to the daily lives of IDPs. The solution was a collaborative mechanism entitled the Cluster Approach (see Table 6 below) which originated from the UN reform programme proposed by the Secretary General in 1997; where greater collaboration was needed to overcome unsatisfactory institutional arrangements; with specific reference made to address the needs of internally displaced persons so that 'all humanitarian issues, including those which fall in gaps of existing mandates of agencies such as protection and assistance for internally displaced persons, are addressed'.<sup>288</sup> The endorsement by the General Assembly in the same year set the stage for the evolution of new bureaucracies and institutional structures, first in January 2000 with the establishment of the Senior Inter-Agency Network on Internal Displacement designed to assess the operational responses of the UN in situations of displacement. Following this was the Internal Displacement Unit in January 2002 which was a small non-operational unit within the Office for the Coordination of Humanitarian Affairs (OCHA). After a further restructuring in July 2004 it was renamed the Inter-Agency Internal Displacement Division

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<sup>286</sup> Lavenex (2001), p. 855.

<sup>287</sup> Tampere European Council, Presidency Conclusion, 15<sup>th</sup> and 16<sup>th</sup> October (1999).

<sup>288</sup> Secretary General's report to General Assembly: Renewing the United Nations: a Programme for Reform, A/51/950, July (1997).

after a 2003 review with a new focus on identifying and addressing gaps in eight specific countries.<sup>289</sup>

This final phase came in December 2005 when the Inter-Agency Standing Committee endorsed the creation of the IDP camp into a flagship humanitarian model for all UN relief agencies that came into force on 1st January 2006 with pilot cases in Uganda, Liberia and the Democratic Republic of Congo (DRC). According to the Under Secretary, General John Holmes, it centred around ‘raising standards and ensuring greater predictability, accountability and partnership in all sectors...more structured approach should enable international actors to be a better partner for governments, who have primary responsibility for leading humanitarian responses in their countries’.<sup>290</sup>

**Table 6. Cluster Approach Framework**

<b>CLUSTER</b>	<b>CLUSTER LEAD</b>
Logistics	World Food Program
Emergency Telecommunications	OCHA, UNICEF, WFP
Camp Coordination & Management	UNHCR for conflict induced IDPs IOM for natural disaster induced IDPs
Emergency Shelter	International Federation of Red Cross (IFRC)
Health	World Health Organisation
Nutrition	UNICEF
Water, Sanitation & Hygiene (WASH)	UNICEF
Early Recovery	UNICEF
Protection	UNDP UNHCR for conflict induced IDPs UNHCR, UNICEF & OHCHR for natural disaster induced IDPs

#### 1) Protection Cluster

More should be done to assist Governments to strengthen their own protection and response capacities. Field partnerships must also be strengthened, and NGOs in particular need to be fully involved for the cluster’s response to be effective.<sup>291</sup>

#### 2) Camp Co-ordination and Camp Management Cluster (CCCM)

<sup>289</sup> McNamara (2005), pp. 63-66.

<sup>290</sup> Holmes (2007), p. 4.

<sup>291</sup> UNHCR 8<sup>TH</sup> June (2006).

There was no existing network of experts. The overriding objective of the cluster, as agreed by its members, is to provide better protection and assistance to camp-based populations...The CCCM Cluster worked to ensure that IDP operations had adequate capacity and tools, standards and technical guidance through training, the deployment of experts to country teams and the provision of technical advice to field operations.<sup>292</sup>

### 3) Emergency Shelter Cluster

The agreed aim is to increase the effectiveness and predictability of service provision by (i) expanding the number of qualified professionals available for rapid deployment. (ii) Developing an emergency shelter strategy and guidelines and tools for assessments, intervention and monitoring alongside training; and (iii) strengthening stockpiles of shelter and related non-food items (NFIs).<sup>293</sup>

To thus argue that the Cluster Approach was designed to enable refugee containment may have seemed completely unfounded on the surface, as actors constantly argued that the creation of new and effective co-ordination and accountability structures was paramount with the argument that ‘the humanitarian system must work to fill protection gaps...’<sup>294</sup> Roberta Cohen praised the Cluster Approach stating that it ‘has the potential to bring predictability and clarity to an area regularly described as the biggest gap in the international response to IDPs’.<sup>295</sup> This was also confirmed by Assistant High Commissioner Erika Feller who affirmed ‘a clear commitment to be a more predictable partner among humanitarian actors in its response to the protection, assistance and solutions needs of the IDPs’.<sup>296</sup> However, for Goodwin-Gill, in a 2006 workshop on the theme *Refugee Protection in International Law: Contemporary Challenges*, alluded to this when he questioned the UN Reform and the Cluster Approach for being very selective in detecting and attempting to remedy gaps. The IASC decided it was not necessary to apply the cluster approach to the four sectors of food (WFP), education (UNICEF), agriculture (FAO) and more importantly refugees (UNHCR). Indeed

...he primary intention was in fact to preserve established mandates and turf, irrespective of system efficiency. *For it is not difficult to envisage a situation of, say external displacement, in which the essential needs of the refugees could be met most*

<sup>292</sup> UNHCR Global Report (2008), p. 51.

<sup>293</sup> UNHCR 8<sup>th</sup> June (2006).

<sup>294</sup> ‘Strengthening of the Coordination of emergency humanitarian assistance of the United Nations’, A/RES/46/182, 78<sup>th</sup> Plenary Meeting, 19<sup>th</sup> December(1991).

<sup>295</sup> Ibid.

<sup>296</sup> Quoted in Lanz (2008), p. 200.

*effectively by agencies other than UNHCR.* To what extent, then is an operational UNHCR required for the purposes of 1) ensuring protection and/or 2) ensuring efficient and effective assistance delivery, in the context of a system-wide coordinated response?<sup>297</sup> [emphasis added]

By not providing a rigorous attempt to better reform refugee protection and instead push for UN agencies who all at the time had no legal authority to ‘protect’ persons within their own country, raised alarm bells, as it first conformed to the internalist bias outlined in chapter one by a number of eminent legal scholars who proclaimed a new era of refugee protection. As Goodwin-Gill commented:

*Assuming that the protection of refugees will continue to be valued by the international community, and assuming further that the UN’s emergency response system will continue to improve (food, shelter and service delivery, communications, health care etc.), then it may be reasonable to ask whether and to what extent the provision of assistance to refugees should or needs to continue to be a particular operational responsibility for UNHCR.*<sup>298</sup> [emphasis added]

Secondly, the Cluster Approach following pilot cases in Somalia, Chad, DRC, Uganda, and Liberia in 2006 was claimed to have ‘brought tangible dividends in forging a common vision amongst humanitarian actors and in targeting resources more effectively on the basis of jointly identified needs’.<sup>299</sup> However, it was important to distinguish between appearance and essence because what was in principle happening was the reorganisation and repackaging of refugee protection mechanisms. Indeed, UNHCR’s refugee camp operations were always built upon allocated and shared responsibility among implementing partners.<sup>300</sup> The Cluster Approach thus employed the same agencies, conducting the same tasks, in the same settings, with the same mandates under a seeming new framework but now within the borders of states. Indeed a cursory comparison shows how the refugee dynamic was employed to steer

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<sup>297</sup> Goodwin-Gill, ‘International Protection and Assistance for Refugees and the Displaced: Institutional Challenges and United Nations Reform’, Paper presented to the RSC Workshop: Refugee Protection in International Law: Contemporary Challenges, 24<sup>th</sup> April (2006), p. 15.

<sup>298</sup> Ibid, p. 16.

<sup>299</sup> Crisp, Kiragu, and Tennant (2007), p. 13.

<sup>300</sup> Harrell-Bond (1989).

the development of IDP protection with identical terminology (Durable Solutions, Return, Reintegration, Resettlement, Camp Management) and use of structures which became a simple reincarnation of the refugee camp mechanism which re-designed and re-applied the earlier UNHCR concepts of the Quick Impact Projects (QIPs) and the Cross Border Operations (CBOs). An undiscussed danger of the Cluster Approach which will be unpacked at length in chapter 5, was that the inherent problems commonly associated with the refugee camp structures (militarisation, NGO exploitation, refugee manipulation, erroneous counting, breakdown of social structures, and gender inequalities) that were witnessed in Goma, Kenya, Palestine, Burma, and Nepal to name a few, were now being directly transplanted into IDP camps for the 'effective' management of citizens within their own territories.

Overall refugee mechanisms thus became efficient for gaining access and control of citizens under a new legal category, otherwise under the 1949 Geneva Convention of the Laws of War, they would possibly have been under the oversight of the International Committee of the Red Cross (ICRC) which is mandated and has a long history of handling the needs of citizens displaced by war and fighting.<sup>301</sup> This move would, however, have allowed the 1951 Convention to remain intact with flight continuing to be a valid option as the ICRC's role was not to contain but to protect civilians, treat the wounded, and ensure belligerents adhere to the laws of war. This would not have suited the containment strategies of the Global North as IDP protection reduced the need for flight and justified barrier restrictions on the assumption that the mere presence of these humanitarian actors in the Cluster Approach sufficiently constituted 'protection'. More importantly, what was occurring was a 'complete blurring of legal categories, principles, and institutional roles. These practices are threatening legitimate

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<sup>301</sup> During international conflicts the ICRC bases its work on the Four Geneva Conventions 1949 and Additional Protocol I of 1977. During non-international armed conflicts, the ICRC bases its work on Article 3 common to the Four Geneva Conventions and Additional Protocol II. In violent situations not amounting to an armed conflict the ICRC bases its work on Article 5 of the Movement Statutes.

boundaries between international refugee law, human rights law and humanitarian law. [With] their distinctive and separate spaces increasingly being transgressed'.<sup>302</sup>

The evolution of IDP protection norms paralleled and complemented three seemingly 'legitimate' containment policy solutions devised by the Global North to externalise their asylum problems from 1999 to 2006, which were summed up in this statement by the Tampere European Council in October 1999:

The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflict and consolidating democratic states and ensuring respect for human rights....To that end, the Union as well as Member States are invited to contribute....to a greater coherence of internal and external policies of the Union.<sup>303</sup>

The first was offshore extraterritorial processing designed to 'de-territorialise the provision of protection to refugees in such a way that temporary protection and the processing of asylum claims take place outside of the given nation-state'.<sup>304</sup> The British government in June 2003 at the EU Thessaloniki Summit attempted to emulate Australia by proposing the creation of a transit processing centre in Croatia but was deemed non-viable by EU members and humanitarian agencies.<sup>305</sup> In June 2004 the rescue of 37 people in the Mediterranean by the German ship *Cap Anamur* resulted in a standoff between Italy, Germany and Malta over claims that the duty to process rested with Malta, which was the country of first arrival. As UNHCR impotently noted in 2006, 'interception measures that effectively deny refugees access to international protection, or which result in them being returned to the countries

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<sup>302</sup> Chimni (2000), p. 244.

<sup>303</sup> Presidency Conclusion, European Council, Tampere, 15-16<sup>th</sup> October (1999), paragraph 11.

<sup>304</sup> Betts (2004), p. 59.

<sup>305</sup> *Ibid.*

where their security is at risk, do not conform to prevailing international guidelines and many even amount to violation of the 1951 UN Refugee Convention'.<sup>306</sup>

The second wider policy solution was the Regional Protection Programmes of 2005 which were designed to ensure durable solutions and capacity building. It marked the development of what Samers identified as 'the gradual implementation of a system of migration management aligned with development assistance in third countries'.<sup>307</sup> This mirrored the Cluster Approach in order to promote socio-economic development that removed the need to migrate. The European Mediterranean Association Agreements (EMAA) was signed between 1998 and 2005 between the EU and all North African states except Libya for the establishment of a free trade area and a conducive environment for social, cultural co-ordination with the EU.<sup>308</sup> This would deprive human smugglers of 'customers' that would then reduce pressure on asylum systems in western nations, which would further ease the political tensions surrounding asylum debates. The reductions in the costs of asylum, repatriation, and reintegration would then be channelled to development programmes in countries of refugee origin.<sup>309</sup> The third strategy was the 2004 creation of European Agency for the Management of Operational Cooperation at the External Borders of Member States of the EU also known under the acronym FRONTEX. This was a Warsaw based intelligence driven EU agency that aimed to improve information coordination and dissemination efforts for border security. Comprising of several centres<sup>310</sup>, this agency represented the concluding measure in the securitisation of migration as the Hague Programme adopted in 2004 declared that:

The management of migration flows (...) should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and

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<sup>306</sup> UNHCR (2006), p. 40.

<sup>307</sup> Samers (2004), p. 43.

<sup>308</sup> Haas (2008), p. 1309.

<sup>309</sup> Crisp, 'Refugee Protection in Regions of Origin: Potential and Challenges', December (2003).

<sup>310</sup> Air Borders Centre in Rome, the Centre for Land Borders in Berlin, Maritime Borders Centres on Madrid and Piraeus, COLPOFOR and Risk Analysis Centre in Helsinki.  
[www.frontex.europa.eu/about/mission-and-tasks](http://www.frontex.europa.eu/about/mission-and-tasks)

entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism.<sup>311</sup>

In spite of this challenge UNHCR in June 2008 signed an agreement with FRONTEX to have ‘regular consultations, exchanges in information, expertise and experience, and inputs into training, with the aim of ensuring that border management is fully compliant with Member States’ international obligations’<sup>312</sup>, which had been written into Article 13 of the FRONTEX Regulation providing that FRONTEX “may cooperate with (...) the international organisations competent in matters covered by this Regulation in the framework of working arrangements (...)”.<sup>313</sup> However, this partnership was short lived with rifts emerging in 2010 when UNHCR urged EU member states to ensure that the tighter policing of external borders did not threaten asylum. They noted that the ‘stemming of sea arrivals is not solving the problem but shifting it elsewhere. This can be seen in the corresponding sharp rise there has been in overland arrivals in the Evros region of Greece. Evros recorded 38,992 arrivals in the first 10 months of this year compared to 7,574 in the same period in 2009- a 415% increase’.<sup>314</sup> UNHCR noted that the concept of ‘risk analysis’ which was the core task of FRONTEX was unhelpful because ‘people seeking protection do not necessarily represent a ‘risk’ or threat to the European Union. Rather, they are seeking protection from threats including persecution or serious harm’.<sup>315</sup> However, the organisation from the onset was fighting a losing battle because it was trying to partner with an EU initiative to respect the fundamental human rights of asylum seekers, when that very initiative was designed to specifically restrict and curb the flow of asylum.

### **3. Norm Stabilisation: Creating an IDP Convention**

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<sup>311</sup> The Hague Programme, Strengthening Freedom, Security, and Justice in the European Union, Official Journal of the EU, 3/3/2005, 1.7.2.

<sup>312</sup> UNHCR Agreement with FRONTEX, briefing notes, 17<sup>th</sup> June (2008).

<sup>313</sup> FRONTEX Regulation, Op.Cit.

<sup>314</sup> UNHCR urges EU and FRONTEX to ensure access to asylum procedures, amid sharp drop in arrivals via the Mediterranean, UNHCR Briefing notes, 10<sup>th</sup> December (2010).

<sup>315</sup> UNHCR’s observation on the European Commission’s proposals for a Regulation of the European Parliament and the Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), COM (2010) 61.

The final stage in the norm cycle according to Park & Vetterlein is norm stabilisation, characterised by the legitimacy of the emergent norm whereby ‘through repeated habitualised action certain behaviour turns into patterns that can be reproduced. If these patterns are reciprocally reproduced through interaction they become institutionalised whereby policies are acted upon. Once policy norms have been institutionalised they guide and constrain action. Norms are re-projected into actors’ consciousness during this process, leading to socialisation and internalisation’.<sup>316</sup> This section will document the strategy that was employed by actors to institutionalise the norms so as to stabilise and legitimise the IDP Regime, in order for it to be taken for granted as the dominant standard of appropriateness. This was observed in the final and most important phase in the evolution of the IDP Regime, which was the move to binding law in the creation of an IDP Convention.

### ***3.1 The Evolution of an Academic Discourse***

Part of norm stabilisation is the intellectualisation of basic known ideas and their elevation to new thresholds so as to give meaning to policy. This was critical in the evolution of the IDP regime which first began with the creation of the intellectual discourse of Refugee Studies as a field of academic inquiry in the early 80s through the establishment of the Refugee Studies Centre at Oxford University in 1982, the publication of the Journal of Refugee Studies in 1988, the Centre for Refugee Studies at York University in 1982, and the International Research and Advisory Panel (IRAP) to facilitate information exchange on refugee policy and practice in 1989. The alignment of refugee studies with governmental policymaking developed a knowledge-power relationship, which legitimised the asylum barriers and non-entrée regime in the Global North through a distinction of ‘past’ and ‘present’ refugees, arising from the ‘new’ political circumstances in the Global South. From the mid- 90s onwards there was, however, a further academic transformation with Refugee Studies morphing into Forced Migration Studies, with the creation of the International Association for

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<sup>316</sup> Ibid p. 22.

the Study of Forced Migration (IASFM), a plethora of university degrees in Forced Migration Studies from various educational institutions, and the creation of the Forced Migration Review publication. As Chimni observed,

The themes addressed by Forced Migration Studies include the world of IDPs, the smuggling and trafficking of persons, armed humanitarian intervention, and the construction of a post conflict state, revealing that the concept of forced migration has been reconfigured to primarily reflect the geopolitical and strategic concerns of western states.<sup>317</sup>

This was echoed by Fearon & Laitin who recognised the development of a ‘neo-trusteeship’ or ‘post-modern imperialism’ in the 1990s, with huge relief aid annually directed predominantly towards a small number of high profile cases: Iraq, Sudan, Former Yugoslavia, and Afghanistan<sup>318</sup>, which reflected the shifts in major power foreign policies with ‘internationally mandated interventions in conflict ridden states by consortia...motivated fears of refugees flows, regional wars, terrorism, or other ‘spill-over’ effects’.<sup>319</sup> Such scholarly structures and developments paved the way for the IDP Regime as the Brookings and Bern partnership established in 1993 made Francis Deng, Roberta Cohen, David Korn, and Walter Kalin the leading intellectual authorities on IDP issues, which allowed them to sit at high tables and make prescriptions directly to the UN and governments. They would frequently reinforce UNHCR’s involvement with IDPs commented in their assessment of the UN machinery how:

Of all the UN agencies, UNHCR plays the broadest role in addressing the problem of the internally displaced: it offers protection, assistance and initial support for reintegration. Although UNHCR’s statute does not include internally displaced persons, the organisation has increasingly become involved in the situation they face at the request of the secretary or the General Assembly.<sup>320</sup>

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<sup>317</sup> Chimni (2009), p. 15.

<sup>318</sup> Fearon in Weiss and Barnett ed. (2008), p. 50.

<sup>319</sup> Ibid, p. 50.

<sup>320</sup> Ibid, p. 128.

In November 2008 they produced a handbook titled *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers* that provided ‘guidance to national authorities seeking to prepare and enact domestic legislation and policies’.<sup>321</sup> The Forced Migration discourse thus made internal displacement the new global fashion as Zetter confirmed that ‘the existence and plight of internal displaced persons (IDPs) was hardly recognised in 1988, still less the impact of development-induced displacement (DID).’<sup>322</sup> This led to the creation of other academic arrangements which further assembled evidence to secure the legitimacy of proposed norms through the construction of debates and narratives that validated IDPs. Most notably was the Norwegian Refugee Council’s Internal Displacement Monitoring Centre (IDMC) established in 1998 and tasked with counting and updating global displacement figures and patterns. Since 1998 it produced the Global IDP Database with the hope that:

The need to let the fate of internally displaced populations be known is both a major practical and methodological challenge that must be given higher priority by humanitarian actors. It is the hope of the Global IDP Project that its information services may trigger new thinking about how best to approach the protection and assistance of the growing number of people around the world who find themselves internally displaced.<sup>323</sup>

However, this programme became an extension of the politics of numbers and labels discussed earlier, in which the simple tabulation of IDPs around the world distinguished them as a specific category and cradled the humanitarian arguments. Secondly, the partnership between the Brookings Institute and Institute for the Study of International Migration at University of Georgetown, which has since spearheaded research and consultations between governments, civil society, and UN organisations into identifying *When Does Displacement*

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<sup>321</sup> Kalin, et al, *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*, Studies in transitional Legal Policy, Brookings-Bern Project on Internal Displacement, No.41.

<sup>322</sup> Zetter (2000), p. 352.

<sup>323</sup> Norwegian Refugee Council, *Internal Displaced People: A Global Survey*, Global IDP Project (2002), 2<sup>nd</sup> Edition, p. 16.

*End?* This initiative was not revolutionary but unsurprisingly founded on the same academic debates and themes concerning refugee return and resettlement<sup>324</sup>. It concluded with the development of a Framework for Durable Solutions presented to the IASC Working Group in March 2010.<sup>325</sup> All of this effectively cut the cloth for UNHCR to transition into a ‘new’ area of responsibility, which provided breathing space to relax and not be seen to be perpetuating itself, but instead respond to a ‘pressing need’ that was objectively identified by scholars of impeccable intellectual standing.

All of this comes at a critical historic juncture for UNHCR, as Deng & Cohen presented the organisation to be the reluctant hero ‘whose greater involvement remained a viable option’ but which had turned down several UN calls to assume responsibility for IDPs throughout the 90s on the basis that the resources required far exceeded those it possessed; the need for a collaborative venture; and ultimately the glaring concern that it would divert its attention away from its primary duties to refugees.<sup>326</sup> As already noted, such claims were a mere sideshow to an organisation already harbouring greater aspirations to ensure its’ survival. This was also linked to the changing notions of sovereignty, as the focus on all types of displaced encouraged new systems of governance and control which created legitimised Western intrusion into the non-Western world. Indeed, as Nadig stated, ‘truth can help produce knowledge, experts, and a discipline, to legitimise hegemonic practices. The role of IDP numbers is crucial to the transition to a new regime in which the category ‘refugee’ continues to exist but shares space with the category IDP’.<sup>327</sup>

### ***3.2 Forging the Kampala Convention***

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<sup>324</sup> Allen and Morsink ed, ‘When Refugees Go Home’ (1994); Allen ed. ‘In Search of Cool Ground’ (1996); Black and Koser ed. *The End of the Refugee Cycle*, (1999); Hammond, ‘This place will become home: Refugee Repatriation in Ethiopia’, (2004); Long and Oxfeld ed. ‘Coming Home Refugee, Migrants and Those who Stayed Behind’, (2004).

<sup>325</sup> IASC Framework on Durable Solutions for Internally Displaced Persons, Brookings-Bern Project on IDPs, April (2010).

<sup>326</sup> Deng and Cohen, (1998) p. 130.

<sup>327</sup> Chimni (2009).

With an established academic discourse now in place to legitimise the IDP Regime, the move to translate the Guiding Principles into binding law through a new Convention was paved through four consecutive international conferences. This was again similar to the root taken by the League of Nations seventy years earlier, which convened an inter-governmental conference to frame a new Convention relating to the International Status of Refugees in October 1933.<sup>328</sup> The signed Protocol of November 2006 culminated in the Pact on Security, Stabilisation, & Development in Great Lakes Region in 2008 which committed its 11 member states to incorporate the Guiding Principles into their domestic laws. This paved the way for the creation of The Convention for the Protection and Assistance of Internally Displaced Persons in Africa known commonly as the Kampala Convention in 2009.

For many proponents, the AU Convention broadened the scope as an ‘important achievement for the AU’<sup>329</sup>, which ‘represents the will and determination of African States & People to address and resolve the problem of internal displacement in Africa’.<sup>330</sup> However, similar to the evolution of all the other IDP norms, the new Convention raised more concerns than solutions, because the initial binding international treaties that fashioned the non-binding Guiding Principles in 1998, were now converted back into binding treaties within the guise of a ‘new’ IDP Convention (see Table 7 below). Now a further legal transformation took place with binding customary and treaty law co-existing alongside binding copies of themselves. So, for example, while IHL already prohibits forced and arbitrary displacement<sup>331</sup>, it was now suddenly aped by ‘new’ Convention which provides that state parties “shall declare as offences punishable by laws acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity”.<sup>332</sup>

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<sup>328</sup> Official Journal of the League of Nations, February (1934), p. 109.

<sup>329</sup> Abebe (2010), p. 56.

<sup>330</sup> Beyani quoted in ‘The Kampala Convention: Making it real: A short guide to the AU Convention for the Protection and Assistance of IDPs in Africa, IDMC, NRC, (2010).

<sup>331</sup> GC IV, Article. 147; AP 1, Article .85.

<sup>332</sup> Kampala Convention, Art. 4(6).

**Table 7. Transition of Binding International Treaties**

BINDING	NON-BINDING (1998)	BINDING (2009)
1948 Universal Declaration of Human Rights		
1948 Convention on the Prevention and Punishment of the Crime of Genocide	30 GUIDING PRINCIPLES Interpret existing international treaties for IDP protection.	AU IDP CONVENTION The codification of the Convention was based on the Guiding Principles.
1949 Four Geneva Conventions 1977 Additional Protocols to the Geneva Conventions		The Convention now endorses all the international instruments within the Preamble.
1951 UN Convention relating to the Status of Refugees		
1979 Convention on the Elimination of All Forms of Discrimination Against Women		

Secondly, while the Convention was finally ratified by the required 15 African member states on December 6<sup>th</sup> 2012<sup>333</sup>, and was hailed by many as a historic development<sup>334</sup>, it created a further ambiguous parallel legal structure within those very states. For while Ojeda acknowledged that the Kampala Convention reflected existing IHL rules, he argued that it went beyond them in the aspects of IDP return, repatriation, and documentation which were not specifically mentioned.<sup>335</sup> In addition to this was a rallying cry by IDP proponents for the incorporation of the Convention into national laws.<sup>336</sup> However, in the case of Uganda, which staged and championed the whole IDP Convention, the rights and protection of all citizens displaced or non-displaced was already fully enshrined in its Constitution in Articles 20, 21,

<sup>333</sup> Swaziland, Burkina Faso, Central African Republic, Benin, Chad, Gabon, The Gambia, Guinea Bissau, Lesotho, Niger, Nigeria, Sierra Leone, Togo, Uganda, and Zambia.

<sup>334</sup> 'African Convention on Internally Displaced Persons comes into force', The Guardian, Friday 7<sup>th</sup> December (2012).

<sup>335</sup> Ojeda (2010), p. 63.

<sup>336</sup> Schrepfer (2012), Neussl (2012), p.42, 'Making the Kampala Convention Work for IDPs: A Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of IDPs in Africa', AU, IDMC, NRC, July (2010).

44, & 45 within Chapter Four: *Protection and Protection of Fundamental and Other Human Rights and Freedoms*<sup>337</sup>:

**20. Fundamental and other human rights and freedoms.**

(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

**21. Equality and Freedom from discrimination.**

(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to cause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, creed, or religion, social or economic standing, political opinion or disability.

**44. Prohibition of derogation from particular human rights and freedoms.**

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to fair hearing;
- (d) the right to an order of habeas corpus.

**45. Human rights and freedoms additional to other rights.**

The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter *shall not be regarded as excluding others not specifically mentioned.* [emphasis added]

This begged the questions as to why a state now needed to create and ratify a new set of external laws for a specific category of citizen who were already in theory under its

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<sup>337</sup> The Constitution of the Republic of Uganda, Chapter Four: Protection and Protection of Fundamental and Other Human Rights and Freedoms, Article 20, 21, 44, and 45, pp. 39-52.

protection. Secondly, what was a new Convention going to achieve that national laws had ignored or had completely floundered in doing? Indeed, it was comical to expect a fragile state to suddenly adhere to a new set of legal principles when the state in question had already reneged or was unable to fulfil its primary duty to protect its populace (which in many cases had been the original cause of the conflict). This enigma was identified by Lomo during the ICGLR when he commented how the real problem facing IDPs was not the absence of laws but rather “the absence of strong national systems and local and international commitment to enforce existing international standards”.<sup>338</sup> The good intentions of the international community were hampered by political imperatives and the complexities of state societal relations within those fragile states. Indeed, what was the benefit of identifying legal solutions when the very issue was a clash of social values underlying the fundamental questions, namely how we should live together? No matter how efficient a Convention might have claimed to be, if it failed to confront the basic values that framed our understandings of the problem it was bound to become nothing more than a symbolic gesture. Thus the Convention simply danced around the real issue pertaining to internal displacement by failing to grasp the core issue, which was the contested nature of the social contract between the state and its people in neo-patrimonial environments of scarcity.

More importantly, any robust analysis of these inconsistencies and ambiguities however detracted from the real goal of the IDP Convention which was the mutation of the 1951 Convention and the official demise of sovereignty for fragile states, with the international community now authorised to intervene to assist displaced sections of a populace through a new binding treaty that shifted all concerns and responsibility for displaced people within the borders of states as an ‘international’ matter. The evolution of both the ‘new’ Convention that made IDPs a hard legal concept and ‘new’ academic discourse that had collapsed a whole range of issues of development, human trafficking, humanitarian intervention into ‘Forced Migration Studies’, paralleled wider policies by Western states to silence, dilute, and virtually

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<sup>338</sup> Lomo quoted in Kamungi (2010), p. 54.

expunge the significance and presence of the refugee from the mid-2000s onwards. The most significant was the European Union Qualification Directive of April 2004 which was the first supranational instrument designed to unify the concept of subsidiary protection, which seeks to address the legal status of persons who require protection, but do not fit within the legal definition of refugee (B status, de facto refugees, war refugees and humanitarian asylum).<sup>339</sup> This initiative which began as early as 1997 was viewed by some as circumspect because it was basically designed to assist EU member states in their attempts to redefine refugee status as they saw fit, to neutralise the Refugee Regime as McAdam illuminated:

While it establishes a harmonised legal basis for complementary protection in the EU, it does so in a political environment that is suspicious of asylum-seekers, that seeks restrictive entrance policies and that is wary of large numbers of refugees. Accordingly, these factors have heavily influenced the scope of the Directive- who is eligible for protection- and the rights to which they are entitled- what that protection actually is. If ‘complementary protection’ describes the role of human rights law in broadening the categories of persons to whom international protection is owed beyond article 1A(2) of the Refugee Convention, then ‘subsidiary protection’ *is a regionally-specific political manifestation of the broader legal concept*.<sup>340</sup> [emphasis added]

The Refugee Regime thus now became a soft legal concept through the Directive’s new definition of a ‘person eligible for subsidiary protection’ which stated that:

A third country national or a stateless person who does not qualify as refugee but in respect of whom *substantial grounds have been shown for believing that the person concerned*, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.<sup>341</sup> [emphasis added]

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<sup>339</sup> Council Directive 2004/83/EC of 29 April.(2004) on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted [2004] OJ L304/12.

<sup>340</sup> McAdam (2005), p. 465

<sup>341</sup> 7944/04 ASILE 21,31<sup>st</sup> March (2004), article 2(e).

The standard of proof for subsidiary protection was ‘substantial grounds... for believing’. This completely reversed the Refugee Convention definition of the applicants’ ‘well-founded fear’ as now the ‘belief’ related not to the applicants belief, but to the judgement of the decision maker that substantial grounds existed for believing that the applicant would face harm. This gave Western states full control and autonomy to determine asylum cases without the yoke of the 1951 Convention. The hidden feature of this new ‘refugee definition’ was identified by UNHCR and Amnesty International who protested against the restrictive definition which contravened Article 42 of the Refugee Convention that prohibits states from limiting the personal scope of Article 1 or making reservations to Article 3.<sup>342</sup> Furthermore, as the UK House of Lords Select Committee on the EU alerted ‘for a major regional grouping of countries such as the Union to adopt a regime apparently limiting the scope of the Geneva Convention among themselves would set a most undesirable precedent in the wider internal/global context’.<sup>343</sup> However, despite these reservations it was greeted with jubilation by pro-migration activists and NGOs who praised the Directive for broadening the scope of protection by first considering non-state actors to now be considered as actors of persecution, rather than purely state actors, and secondly the shift from an accountability approach that focussed on state persecution to a ‘protection approach’ that focused more on the lack of protection.<sup>344</sup>

## Conclusion

In sum, the evolution of the IDP Regime was, in practice, a duplication of the Refugee Regime, with each component copied into a new version of itself through the careful recreation of norms, values, numbers, and language (see Table 8 below).

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<sup>342</sup> UNCHR’s Observations (n26) [11], Amnesty International’s Comments on the Commission’s Proposal for a Council Directive on Minimum Standards for the Qualification and Status of Third Country National.

<sup>343</sup> House of Lords Select Committee on the EU, ‘Defining Refugee Status and Those in Need of International Protection’, The Stationary Office London (2002).

<sup>344</sup> Kaunert and Leonard (2012), p. 12.

**Table 8. Refugee/IDP Duplication**

<b>Refugee Regime</b>	<b>Duplication</b>	<b>IDP Regime</b>
1951 Refugee Convention	Duplicated as	2009 IDP Convention
UNHCR Protection	Duplicated as	Cluster Approach
Refugee Category	Duplicated as	IDP Category
Refugee Camp	Duplicated as	IDP Camp

While the previous chapter detailed the actors and political climates that gave impetus to the creation of an IDP Regime, this chapter has uncovered how those imperatives worked to forge new laws, policies and a convention that were presented as a revolutionary development in human rights, but ultimately fulfilled the prerogatives of the powerful. We have begun to notice that the true function served by the creation of IDP norms had been to extinguish refugees from the pages of history by eclipsing the 1951 Convention, with a ‘new’ and ‘acceptable’ IDP Convention built on the former that boasts greater strength in upholding human rights principles, and which managed refugee containment through the construction of ‘new’ legal labels, protection mechanisms, and institutional arrangements. Ultimately this whole game was only possible through what Finnemore and Sikkink illuminate and caution in their study of international norms, which is that:

...instrumental rationality and strategic interaction play a significant role in highly politicised social construction of norms, preferences, identities, and common knowledge by norm entrepreneurs in world politics...In many of the most politicised salient strategic interactions, it is precisely the changing contours of common knowledge that are the object of the game. Common knowledge about who is a political participant (suffrage), what the rules of war are, and even who is a person (slavery) has been created by strategic actors in highly contested processes that are central to our understanding of politics.<sup>345</sup>

<sup>345</sup> Finnemore and Sikkink (1998), p. 911.

This was critical in the creation of IDP norms in order to contain refugees, with states, lawyers, academics, NGOs, and international organisations restructuring the common knowledge regarding (1) the conduct and casualties of contemporary conflict; (2) the nature of sovereignty; (3) the function of international human rights law and humanitarian intervention; and (4) the legitimacy of both asylum seekers and the institution of asylum, in order to pave the way for a new regime that accommodated new interests. The following section will conduct a critical discourse analysis of the IDP Regime to reveal the knowledge-power complex at its centre.

## **Part Two**

# **The Structure of the Internal Displacement Regime**

## Chapter Three

### The Nature, Logic, & Effects of the IDP Regime

#### *Discursive Reproductions of Power, Privilege, & Paternalism*

[T]here is no power that is extended without a series of aims and objectives...the rationality of power is characterised by tactics that are often quite explicitly at the restricted level where they are inscribed...tactics which, becoming connected to one another, attracting and propagating one another....end by forming comprehensive systems.

Foucault 1980a, p.95

## Introduction

In order to fully comprehend the structure of the IDP Regime we have to keep in mind that there is always a logic to the practices of power with a strategic objective which does not require us to 'isolate a definitive agent or cause: it is rather to understand the workability of this particular instance of power, to grasp its lines of efficacy, to fathom something of the contingencies and conjunctions that have made it possible'.<sup>346</sup> While the previous section provided us with the historical and socio-political contextualisations which are indispensable for comprehending discourse, precisely because the prevailing agendas will always reside within a 'history of systems of thought'<sup>347</sup>, this chapter will now proceed by addressing the pressing questions: *What is the IDP Regime? How does it operate? and What effects does it have?* By employing a critical discourse analysis of how the various institutional actors and geopolitical objectives have come to structure systems that purport to protect thousands of people within their own borders, we will grapple with the primary representations of the field by a critique of the norms, conventions, images and practices of the IDP Regime, to unpack how rationalisations and humanisms promote particular types of interventions by particular

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<sup>346</sup> Hook (2007), p. 84.

<sup>347</sup> Foucault (1977).

actors that effectively blend operations of power, privilege, and paternalism with various languages of truth, knowledge and human rights, with little or no objection (see Table 9 below).

The chapter will be divided into three sections that reveal the comprehensive linkage between power, paternalism and privilege. The first will set the stage by excavating to unearth the embedded belief systems and social constructions that form the nature of the IDP Regime and rationalise its power structures. This will then relay into the second section which will detail the logic and form such power structures create and through which they operate. This will finally relay into the third section that will observe the effects such power structures produce. This chapter seeks to journey away from a simple analysis of what the IDP Regime claims to perform, to a more ambitious undertaking of what the IDP Regime actually performs. Indeed, as Giddens shows, ‘new knowledge...does not simply render the social world more transparent, but alters its nature, spinning it off in novel directions’.<sup>348</sup> In other words scientific interpretations configure the way people see the world, and thus actually change it. We will observe how the constructions of the IDP knowledge have thus heralded significant changes for fragile states, the relief industry and complex emergencies.

**Table 9. Structure of the IDP Regime**

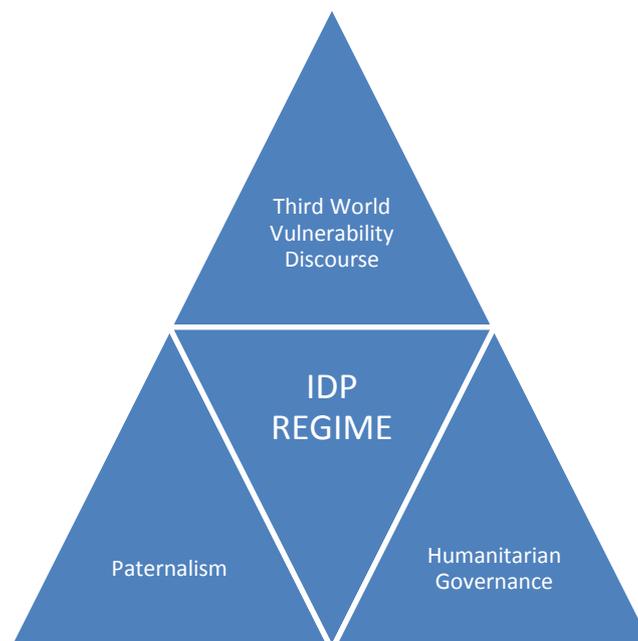
Nature	Logic	Effects
Third World Vulnerability Discourse	Pacify & Infantilise Citizens	Creating a Zone of Alternate Social Order
Paternalism	Camp Based Relief & Bureaucratic Category	Establishing a Humanitarian Economy
Humanitarian Governance	Depoliticises Displacement Technicises State Predation	Altering the Dynamics of Conflict

## 1. The Nature of the IDP Regime

<sup>348</sup> Giddens (1990), p. 153.

It is necessary to first delineate the three central elements in the genetic make-up of the IDP Regime in order to comprehend its operations, precisely because discourse is a vital component in the successful functioning of any power structure, as the exercise of power forms knowledge of which its application inevitably produces the effects of power. The nature of the IDP Regime is comprised of third world vulnerability discourse, humanitarian governance and paternalism (see Figure 7 below). These elements are the central components that provide it with the essential truth from which further structures come to be founded. This is to reiterate what Said aptly characterised in his understanding of discourse as:

The will to exercise...control in society and history has also discovered a way to clothe, disguise, rarefy and wrap itself systematically in the language of truth, discipline, rationality, utilitarian value, and knowledge. And this language in its naturalness, authority, professionalism, assertiveness and anti-theoretical direction is...discourse.<sup>349</sup>



**Figure 7. Nature of the IDP Regime**

### ***1.1 Third World Vulnerability Discourse***

Discourses are always multiple in combination with no single dominant discourse, but instead an ‘uneven terrain, a topography that is infinitely complex in its details, that resists division

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<sup>349</sup> Said (1983), p. 216.

into simple basic mutually exclusive categories'.<sup>350</sup> Some discourses are seen to be 'true' by their reliance upon other discourses that make them more potent. Moreover, such potency of a given discourse derives from the particular narrative being propagated. Let me qualify this claim. For discourse to be effective it has to be regarded as knowledge; as a sustained reference to social, historical and political conditions that render statements as true or false.<sup>351</sup> Closely linked to this is narrative theory, which holds that people employ narratives to connect together fragmented observations so as to construct meaning and reality. For Leach & Mearns narratives inherit pervasive and persistent methods and ideas which form their bedrock to become the very 'received wisdom' embedded within institutional structures.<sup>352</sup> Thus Western constructions of knowledge 'form part of one and the same essentialising and generalising cultural discourse: one that denigrates large regions of the world as dangerous – disease-ridden, poverty-stricken and disaster-prone; one that depicts the inhabitants of these regions as inferior-untutored, incapable, victims; and that it reposes in Western medicine, investment and preventative systems the expertise required to remedy these ills'.<sup>353</sup> This division of the world into the rich West of Europe and North America and the poor equatorial South ultimately translated into the demarcation of *us* and *them*.

The constructed weakness of third world/developing/poor countries first began between the seventeenth and early twentieth century with the conceptualisation of 'tropicality', that equated warm climates with disease, and facilitated intervention in the form of colonialism with education and medicine to overcome their primitivism. Post-1945, the discourse shifted to 'development' with intervention manifested as aid. Finally, in the 1990s, the discourse became 'vulnerability', and Western intervention known as relief. All of these helped maintain the influence and power that Western nations held over other societies and resources. The narratives of the IDP Regime now came to share this pedigree of discursive frameworks, whereby hazard fashions the way certain global regions are imagined, which

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<sup>350</sup> Hook (2007), p. 217.

<sup>351</sup> McHoul and Grace (1997).

<sup>352</sup> Leach and Mearns (1996).

<sup>353</sup> Bankoff, (2001), p. 29.

further provides a staple for interventions. The IDP Regime is justified and formed upon this vulnerability discourse that becomes the structural knowledge which makes all the facets of displacement and protection as expected; common sense truths that would render any denial or scrutiny as politically incorrect and even inhumane.

The story-tellers are invariably NGOs. International organisations, lawyers and academics would thus use these social, historical and political belief systems to attribute the causes and experience of internal displacement to the ‘nature’ of fragile and failed states, ‘riddled’ with ethnic cleavages, and which disregard the rights and liberty of their suffering populace. Such narratives were always linked to the formation of values and value systems which reflect beliefs, attitudes and behaviours of Western states. In the same way that tropicality, development and vulnerability discourses helped to cushion imperialism, contain Communism, and reduce the dangers emanating from the Third world, the IDP Regime was ultimately a response by the paranoid and xenophobic West for the containment of refugees from the Global South, who were ‘different’ from the once preferred and homogenous Cold War refugees, precisely because they brought these constructed vulnerabilities to Western borders. This underlying ‘truth’ was first displayed in the mainstream history of internal displacement by proponents of the regime who assumed a very lineal cause and effect pattern as Korn promulgated in the late 90s:

The reader might well ask why Africa should have become afflicted by so many civil wars driving such large numbers of people from their homes. One cause has been examined already: crises of national identity, often manipulated by governments and by opposition groups. The European great powers that divided Africa among themselves in the nineteenth century drew borders for their own convenience. These rarely if ever took cognizance of African ethnic, linguistic, or tribal realities. The leaders of newly independent African states of the second half of the twentieth century were left with the herculean task of infusing a sense of national unity into a hodgepodge of diverse, competing, and sometimes warring linguistic, tribal, and clan groups. Many did not even try; those few who did have yet to succeed in any substantial measure.<sup>354</sup>

Such a history is reliant upon Nietzsche’s notion of ‘effective history’. This is functional for two reasons. Firstly it confines displacement to the past making it a natural, unintended,

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<sup>354</sup> Korn (1999), p. 21.

knock- on effect of history, which is out of the range and control of contemporary states, institutions and actors. However, this raises alarm bells, as historical analyses emphasising continuity run the risk of projecting backwards from the present the factors that their studies will ultimately ‘reveal’.<sup>355</sup> Secondly, it worked to completely bypass the geo-politics of refugees and mechanisms of population control exposed in chapters 1 and 2, that brought it into existence. Such histories, peppered with xenophobia, racism, informal wrangles and hidden agendas, would instantly ‘disturb what was previously considered immobile...fragments what was thought unified...[and] shows the heterogeneity of what had been considered consistent’<sup>356</sup> and so have to be rapidly calmed with a generally ‘accepted’ and ‘simple’ apolitical explanation.

### ***1.2 Paternalism***

The vulnerability discourse heralds the arrival of a paternalism discourse which is an admixture of care and control famously defined by Dworkin as ‘the interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced’.<sup>357</sup> Such vulnerabilities gave the IDP story meaning with the ‘cure’ for such menacing conditions once again resting upon the transfer and application of unquestioned Western expertise. Paternalism underpins all rhetoric, labels, tools and legitimacy of emergency relief because it ‘presumes that an individual is incompetent or inferior. Worryingly, the powerful often believe that they know what is best for everyone. We should be worried whenever actors become convinced of their generosity’.<sup>358</sup> Such was the essence of the previously discussed Refugee Regime which now came to imprint itself upon the new IDP Regime.

The paternalism of the IDP Regime is of a strong nature which has three distinctive characteristics inherited from the Refugee Regime. The first is the willingness to exert force

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<sup>355</sup> Butchart (1998).

<sup>356</sup> Foucault (1977b), p. 147.

<sup>357</sup> Dworkin quoted in Barnett (2012), p. 492.

<sup>358</sup> Ibid, p. 491.

which is observed through the movement of displaced people into regimented camp structures supervised by a host of relief specialists, with areas of control that extend over a broad spectrum of life (shelter, food, hygiene, water, health, livelihoods, and security). The second is the unshakable conviction in the knowledge and abilities of NGOs who rationalise their activities upon universal and eternal ideals, as well as experience based on unimpeachable technical operations, scientific data, and academic studies. Many easily dismiss criticism or the failures of such practices as attempts to subvert moral ideals or belittle the transcendental commitment that in the face of war, rape, hunger, epidemics, destitution, and displacement ‘something must be done’. The third is the reduction in accountability mechanisms for local actors to check and balance the actions of their paternalisers. This is the case with legitimate protest, criticism, non-compliance, and resistance by displaced masses automatically branded as deviant behaviour and dismissed, leaving many voiceless and incapable of freeing themselves from structural violence which will become evident in chapter 5.

### ***1.3 Humanitarian Governance***

Paternalism naturally gives birth to humanitarian governance, which is defined as ‘the administration of human collectivities in the name of a higher moral principle that sees the preservation of life and the alleviation of suffering as the highest value of action’.<sup>359</sup> Such governance has meant a transformation in the 1990s, with humanitarians now becoming political actors through their engagement in a plethora of operations (see Table 10 below)<sup>360</sup>.

**Table 10. Humanitarian Governance**

<b>Operations of Humanitarian Governance</b>
<b>Disarming Warring Factions</b>
<b>Separating Armed Groups</b>
<b>Decommissioning Weapons</b>
<b>Reintegrating Soldiers into civilian life</b>
<b>Professionalising Militaries, Civilian Police &amp; Entire public security apparatus</b>
<b>Assembling the foundations for economic development</b>

<sup>359</sup> Fassin in Feher (ed), (2007), p. 151.

<sup>360</sup> Barnett (2011), p. 196.

**Promoting democracy through election monitoring and building institutions**  
**Advancing Human Rights and Rule of Law by developing independent media**

Thus under the IDP Regime, the humanitarian community is now tasked to intervene and remedy suffering through the establishment of large-scale protection structures for indefinite periods. However, for many, the ideology of humanitarianism has to be approached with extreme caution because it sustains global relations of dominance by mobilising meaning and practices that manipulate human rights language to justify the use of force in order to alleviate the local consequences of globalisation that culminate in rationalising the neo-liberal political agenda, which further reinforces the grip of transnational capital.<sup>361</sup>

This forces us to consider the deeper realities of such organisations which are neatly concealed behind the universal truths of charity and compassion that can neutralise any attempt to scrutinise or challenge such enterprises. Such strategies were well known to Foucault who, in his work ‘What is an author?’, asserted that the author-function was not simply a creative or originating, but rather a complex discursive function which unearthed certain groups of discourse associated with the author. By asking ‘What matter who’s speaking?’ the causal assumption that authors generate discourse is turned on its head to show that discourse can give rise to subjects (like authors) with privileged positions. For Foucault instead of questioning what authors reveal in their texts, he suggests we ask what subject-positions are made possible within such texts. Such a point is critical for understanding the R2P discourse, which, when invoked, acts as a discursive warrant immediately creating authors that sit in positions of power by the sole fact that protection can ‘only’ be guaranteed by external specialists and not fragile or failed states. The blueprints for IDP protection echoes a fairy tale story whereby crisis summons forth a hero that has to battle to then emerge triumphantly with everybody living happily ever after. We thus have to engage the core practices and informal arrangements that govern all humanitarian work but which are absent

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<sup>361</sup> Chimni (2000), p. 244.

from egalitarian visions and beliefs encompassed in ambitious mission statements as seen here:

We seek a world of hope, tolerance and social justice, where poverty has been overcome and people live in dignity and security. CARE International will be a global force and partner of choice within a worldwide movement dedicated to ending poverty. We will be known everywhere for our unshakable commitment to the dignity of people.<sup>362</sup>

Oxfam's vision is a just world without poverty. We envision a world in which people can influence decisions which affect their lives, enjoy their rights, and assume their responsibilities as full citizens of a world in which all human beings are valued and treated equally.<sup>363</sup>

To grasp this, we must consider what Foucault termed *Societies of Discourse*, which 'function to preserve or produce discourse, in order to make them circulate in a closed space, distributing them only according to certain rules'.<sup>364</sup> Such a facet revolves around institutionally bound networks that operate their own mechanism of exclusion and discretion through the application of technical or scientific jargon, which can guarantee a series of entitlements and prerogatives. We have noticed that the humanitarian community has come to constitute the first and last line of defence for IDPs through the Cluster Approach system which, *de jure*, made them the given authority on the ground. As we saw in Chapter 2, this was an outcome of humanitarian contributions to conferences, consultations, and publications on all IDP protection related matters which positioned them as the bastions of knowledge and further allowed them to make 'prescriptions' that invariably bolstered their own interests. In addition to this was the reformulation of refugee camp protection, which utilised the same agencies and practices. However, it is first necessary to place the 'humanitarian governors' into their proper context. Now, while the blanket labelling of humanitarianism as an industry

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<sup>362</sup> CARE International Mission Statement, <http://www.careinternational.org.uk/who-we-are/vision-and-mission>.

<sup>363</sup> OXFAM Mission Statement, <http://www.oxfam.org/en/about/what/purpose-and-beliefs>.

<sup>364</sup> Foucault (1981a), pp. 62-63.

may be viewed by many as a facetious judgement that denies and disparages the charitable motives and gains of agencies working in extreme circumstances, it should be considered more as a natural corollary of the New Policy Agenda of the 1990s. This reflected the market-centred approach to social organisation and economic development, which was vindicated by the collapse of Communism. The reductions in state capacity and public services ran alongside the increasing volume of donor support channelled through NGOs in the form of contracts. This had astronomical implications for NGOs, as Commins affirmed,

One challenge for NGOs is to determine whether their receipt and utilisation of public funds will enable them to have greater impact in their operational work and to better influence donor policies, or whether they will become domesticated by their dependence on public sector monies. In many cases, NGOs are in effect being asked to substitute for work that has been carried out by state agencies and to act more as public service contractors rather than independent agencies.<sup>365</sup>

As a result, the global proliferation of NGOs to this end made development aid, and disaster relief a boom industry, with voluntary organisations morphing from shared value driven entities that catalysed development initiatives and provided support services, into Public Service Contractors (PSCs) who sold their services to donors and government agencies to implement projects and programmes.<sup>366</sup> This brought into question the prevailing presentations of relief actors as simply selfless charitable organisations, by the fact that competition eroded collective action and the conditionalities of sub-contracting created conflict of interests with agencies unable to maintain independent profiles or be critical witnesses.<sup>367</sup> Even though many PSCs claim to have shared humanitarian aspirations, ‘the market driven PSC starts with an assessment of prospective funding sources and defines its program on that basis’.<sup>368</sup> This shift completely transformed humanitarian actors in several

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<sup>365</sup> Commins in Hulme and Edwards ed. (1997), p. 141.

A recent and turbulent case in point was in the aftermath of the September 11<sup>th</sup> attacks and the US led coalition assault on the Taliban and Al Qaeda in 2001, in which humanitarian relief became intertwined with the military and political goals of the US with NGOs regarded as force multipliers for hearts and minds operations designed to legitimate the military presence and strengthen the stabilisation process.

<sup>366</sup> Robinson in Hulme and Edwards ed. (1997), p. 59.

<sup>367</sup> Bradbury (1995), p. 19.

<sup>368</sup> Ibid.

ways (1) the skills and qualifications required from employees with a strong emphasis on business administration; (2) the rapid rotation of employees moving from agency to agency with varied and interchangeable skillsets; and (3) the commoditisation and agency branding of relief aid, which is more akin to a large scale logistical operation directly replicable in virtually any humanitarian situation around the world.<sup>369</sup> Therefore, while the underlying rhetoric and practice of humanitarian governance for vulnerable people displaced within their borders through the Cluster Approach is justified under R2P, and widely acclaimed, in reality it becomes more akin to a business venture by organisations attempting to win clients and maximise profits. We will observe the impact of this in Uganda in chapter 5.

## **2. The Logic of the IDP Regime**

Having established the DNA of the IDP Regime, it is now prudent to observe how such embedded formations of knowledge and truth operate to create objects, narratives, and systems that can sustain particular structures of power behind seemingly benevolent and logical facades. Indeed, knowledge to power works to establish highly specialised institutional mechanisms and procedures which are the target of analysis. As Said emphasises, the importance of re-relating discourse to a wider network of power relations by stripping it of its 'esoteric or hermetic elements and to do this by making [it] assume its affiliations with institutions, agencies, classes, academies, corporations, groups, ideologically defined parties and professions...[These critical engagements]...forcibly redefine and re-identify the particular interests that all [discourses] serve'.<sup>370</sup> By re-emphasising this re-affiliation he notes that '[e]ach discourse is to some degree a jargon...a language of control and a set of institutions within the culture over what it constitutes as its special domain'.<sup>371</sup>

### **2.2 *Creating Passive, Voiceless, Victims***

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<sup>369</sup> Hopgood in Weiss and Barnett ed. (1999), pp. 105-107.

<sup>370</sup> Said (1983), p. 212.

<sup>371</sup> Ibid, p. 219.

The Third World Vulnerability discourse directly shapes the identity of IDPs through the visual humanitarian representations (see Figures 8-25 below). All images convey IDPs as passive, voiceless, victims desperately in need of aid. The use of women, children, camps, and displacement thus symbolically transform the IDP from a human being into a commodity for donor consumption. This is because the inexpressibility of pain and suffering requires visual portrayals which lead to a politics of representation with iconic and universal symbols as a substitute for pain. Thus images of children with distended stomachs automatically speak the language of famine and starvation which drown out any uniqueness to the person's experience of suffering.<sup>372</sup> Their most economically marketable characteristics, which will generate sympathy and funds, are marketed and emphasised in order to create system of 'automation', whereby characters can think, speak, and behave as you would expect them to.<sup>373</sup> For such a strategy to work it requires effective visual aids that embody in Western imagination 'a special kind of powerlessness; perhaps that they do not tend to look as if they could be 'dangerous aliens'.<sup>374</sup> This powerlessness opens up avenues to easy access and control by aid agencies and directly replicates the refugee image as noted by Rajaram:

Refugees are confined to their body. That is, they are rendered speechless and without agency, a physical entity, or rather a physical mass within which the individuality is subsumed. Corporeal, refugees are speechless and consigned to visuality: to the pictorial representation of suffering and need. One of the central effects of this consignment is commodification of refugee experience.<sup>375</sup>

Children are portrayed as being idle or engaged in heavy manual work, again in contrast to Western children studying in school, and emphasising the illegality of child labour. The images of displaced children play on Western constructions of childhood, as people in the process of 'becoming', who are entirely dependent on adults. However, while the misconception of these portrayals rests in their lack of appreciation of the meaning of 'childhood' in developing countries-with children acquiring multiple responsibilities in the

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<sup>372</sup> Scarry (1985), pp. 4-13.

<sup>373</sup> Chow (1992), p. 105.

<sup>374</sup> Malkki (1995), p. 11.

<sup>375</sup> Rajaram (2002), p. 251.

home at an early age, which in the West would be unthinkable and only undertaken by adults—they have particular value as, according to Holland, ‘paradoxically, while we are moved by the image of a sorrowful child, we also welcome it, for it can arouse pleasurable emotions of tenderness, which in themselves confirm adult power’.<sup>376</sup>

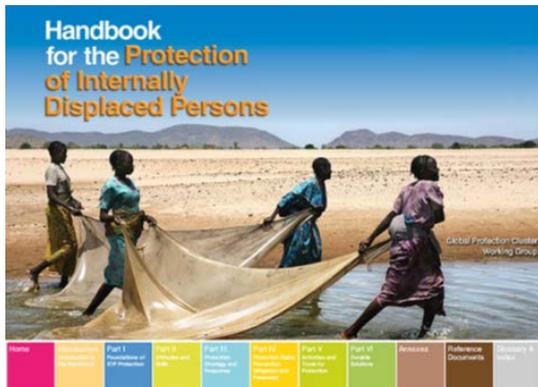
All aid agency images (see Figures 9-20) of women and children purposefully omit the causes of displacement; with war, violence, and destruction not shown, but instead implied by the large congregation of people lumped in one space and the sombre facial expressions that create an atmosphere of emergency. This is powerful because it is taken as a given, which eliminates all political explanations by collapsing their unique complexities into that of general crisis, which forms the initial point of departure for humanitarian assistance.<sup>377</sup> Images of camps show no presence of military personnel or state officials carrying out counter-insurgency screening or engaging in torture and rape. There are no pictures of ethnic violence and rebel recruitment in camps or of disease, death, malnutrition, or morbidity caused by the dense concentration of people. This works to purposefully exclude all themes and subjects, which can lead viewers to thinking and discussing the ‘political’, as images of soldiers and rebels, would directly lead the audience to question why belligerents are not being held to account. This could open up debates and arguments about the futility and dangers of relief aid, by not only failing to address structural causes, but also by fuelling the violence.

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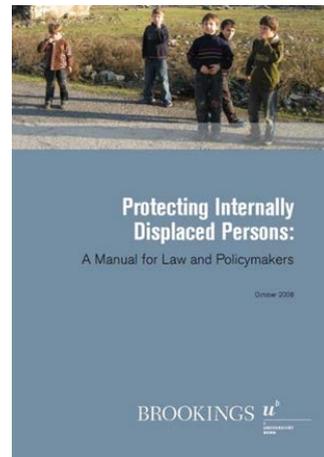
<sup>376</sup> Holland (1992), p. 148.

<sup>377</sup> Malkii (1996), p. 386.

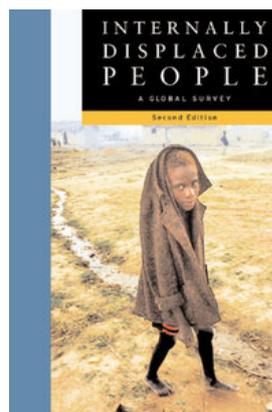
## IDP Related Publications



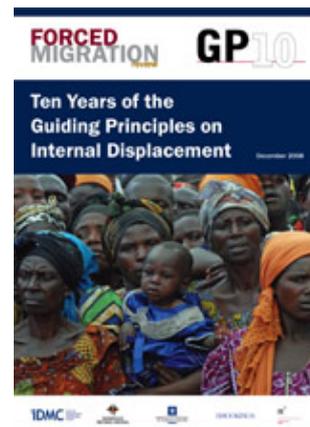
**Figure 8**  
**UNHCR Handbook for the Protection of IDPs**  
**Global Protection Cluster Working Group**  
**(2008)**



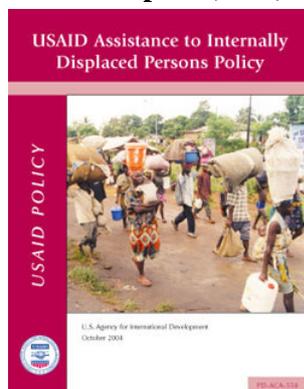
**Figure 9**  
**Protecting Internally Displaced Persons**  
**A Manual for Law & Policymakers**  
**Brookings Institute (October 2008)**



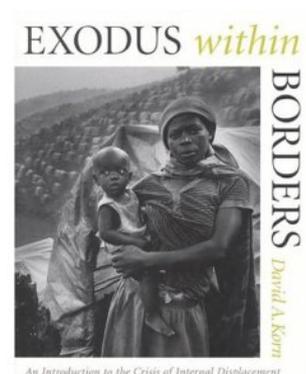
**Figure 10**  
**Internally Displaced Persons**  
**A Global Survey**  
**Jamie Hampton (2002)**



**Figure 11**  
**Forced Migration Review**  
**(January 2009)**



**Figure 12**  
**USAID IDP Policy (October 2004)**



**Figure 13**  
**Exodus Within Borders**  
**David Korn (1999)**

## NGO Images of IDPs



**Figure 14**  
**ICRC**  
[icrc.org](http://icrc.org)



**Figure 15**  
**UNOCHA**  
[unocha.org](http://unocha.org)



**Figure 16**  
**World Vision**  
[worldvision.com.au](http://worldvision.com.au)



**Figure 17**  
**OXFAM**  
[oxfam.org.uk](http://oxfam.org.uk)



**Figure 18**  
**Brookings Institute**  
[brookings.edu](http://brookings.edu)



**Figure 19**  
**IOM**  
[www.iom.int](http://www.iom.int)



**Figure 20**  
**Human Rights Watch**  
[hrw.org](http://hrw.org)



**Figure 21**  
**UNHCR**  
[www.unhcr.org](http://www.unhcr.org)



**Figure 22**  
**CARE International**  
[care-caucasus.org](http://care-caucasus.org)



**Figure 23**  
**Caritas**  
[caritas.org](http://caritas.org)



**Figure 24**  
**WAR CHILD**  
[warchild.org.uk](http://warchild.org.uk)



**Figure 25**  
**MSF**  
[doctorswithoutborders.org](http://doctorswithoutborders.org)

Vulnerability is the key message in all images, with the pictures showing infant children either on the move or carrying heavy loads. Images display a lack of action, with people simply waiting eagerly for an unknown and unseen response. Time appears to have ceased, with people in a state of limbo, with physical and facial expressions that denote anxiety through long, endless and blank stares. There is a recurring feeling of abandonment and estrangement continually arising with the IDP locations, which appear to be in remote, distant rural localities surrounded by endless land, desert, or forest, and far away from any large populated urban settlements. Such a theme strengthens the argument of vulnerability, and the great need for essential provisions of water, healthcare, sanitation, food and shelter. In sum, they reinforce the 'humanitarian narrative' consisting of three components: first, with the destitute victim in distress, second, the non-Western regime that represents the villain who causes destruction; and finally, the aid agencies who are the saviours fighting for the survival of victims.<sup>378</sup>

### ***2.5 Camp Based Relief***

The infantilisation of IDPs is closely linked to the practice of camp based relief as 'interpretations of compassion seem to define those in need as helpless, and then work in ways which makes sure that they are useless'.<sup>379</sup> This uselessness rationalises humanitarian regulation which forms the underlying logic of most if not every relief operation involving camp structures. Firstly, through a language of emergency that promotes a technical approach to translate disaster, violence, and displacement into statistical terms (number of displaced, size of camps, and nutrition and health status) that agencies can then act upon to improve. This has the effect of first legitimating humanitarians as the only experts possessing the sound knowledge required to rectify such deficiencies and therefore maximise survival of vulnerable masses. Secondly, it requires the creation of an expansive surveillance system needed to identify the first instances of a crisis and track the movement of populations so as to determine the scope of international action, the required funding, and the requisite logistical

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<sup>378</sup> Chandler (2002), pp. 36-37.

<sup>379</sup> Harrell-Bond (1986), p. 82.

infrastructure.<sup>380</sup> Both practices, however, are riddled with power, because the insertion of relief agencies into disaster zones automatically attracts displaced people which re-territorialises them into zones as ‘target groups’ for ‘needs assessment’ exercises; secondly, the need to quantify requires a passive, voiceless, and regimented population divested of all and any political agency, in what Malkki, through her study of refugee camps in Tanzania, termed as a ‘technology of power’, in which people are reconstituted and regularised as objects of knowledge and control. Thus in practice women and children become the principle targets of humanitarian assistance with multiple programs and workshops designed around their perceived needs. Such interventions are then hailed as success stories to donors and Western audiences.

The IDP Camp, however, goes even further than the known delivery of aid. Indeed, critical discourse analysis forces us to consider how ‘the things being said’ work as solutions to a problem. How is speaking a kind of intervention? By comparing the crisis of internal displacement to the refugee crisis, the solution becomes ever more apparent and self-explanatory. As we saw in earlier chapters, the refugees are recognised under international law, with UNHCR mandated to protect them. By juxtaposing and likening the plight of IDPs with that of the refugee, and identifying the shortfalls in protection, the ‘solution’ thus becomes the creation of similar bureaucracies, agencies, and mandates to assist IDPs. The essence of the IDP camp resides in the fact that the privileged notions discussed come to be utilised as rationales for particular implementations of force, which purport to be honest and unique under the Cluster Approach. These imperatives work to extend relations of authority and control in three ways. First, the Camp Management Toolkit presents the IDP camp as a neutral, benevolent, safe haven for all suffering people to inhabit, with the emphasis on creating an organised, planned space to ensure effective relief operations. However, on closer inspection, the features of the toolkit become the model for the development of an ‘ideal’ state, with the benefits and services offered replicating state institutions and practices (see

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<sup>380</sup> Davies and Gurr (1998), Calhoun (2004), Duffield (2007), Steele and Amoureux (2005).

Table 11 below) which can logically transform, modernise, and urbanise ‘traditional’ societies.

**Table 11. Camp Management Operations**

<b>IDP Camp Management Operations</b>
<b>Education</b>
<b>Health Care &amp; Health Education</b>
<b>Shelter</b>
<b>Livelihoods</b>
<b>Environment</b>
<b>Food Distribution</b>
<b>Registration &amp; Profiling</b>
<b>Water Sanitation &amp; Hygiene</b>
<b>Protection in Camp</b>
<b>Camp Security</b>

Secondly, linked to this is the idea that camp based relief practices can perform highly political operations. The humanitarian principles of neutrality, impartiality, and humanity which are widely trumpeted by agencies as the bedrock of their protection activities, alter the dynamics of fragile state politics. Indeed by elevating people to a higher set of global values that supersede the realm of sovereignty by ascribing the universal rights of freedom and the inviolability of the human person. These can, however, clash with the very systems of oppression, marginalisation, and control which may have caused, and even sustained, violence in a given state<sup>381</sup>. Thirdly, the paternal attitude manifested in the prevailing representations of displaced people and the camp services they receive, culminate in entrapping people in conditions of aid dependency that can create a permanent state of relief, as Edelman proclaims:

When ‘help’ is given to the poor or the unconventional, a wholly different set of role relationships and benefits appears. Now it is the beneficiaries who are sharply

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<sup>381</sup> Nyers (2006), p. 37.

personified and brought into focus...What they personify is poverty, delinquency, dependency, or other forms of deviance. That they are in need of help, but help in money, in status and in autonomy must be sharply limited so as to avoid malingering. One of the consistent characteristics of the 'helping' institutions is their care to limit forms of help that would make clients autonomous...The limit is enforced in practice while denied in rhetoric.<sup>382</sup>

### **2.1 Bureaucratic Category**

A regimented system of camp based relief structures thus requires an official bureaucratic category to legitimise its custodial operations. Such a category is a 'spatial, temporal, or spatio-temporal segmentation of the world...A 'classification system' is a set of boxes into which things can be put to then do some kind of work- bureaucratic or knowledge production'.<sup>383</sup> While we saw how the creation of the IDP label was instrumental in diminishing the subliminal fears of refugee flows, it was performed in a subtle way by the creation of an alternate bureaucratic category that attached the same rights of refugees in order to replace the refugee category while retaining all its key features. This parallel cognitive convention was essential to the survival of the IDP Regime as,

Before it can perform its entropy-reducing work, *the incipient institution needs some stabilising principle to stop its premature demise. That stabilising principle is the naturalisation of social classifications. There needs to be an analogy by which the formal structure of a crucial set of social relations is found in the physical world, or in the supernatural world, or in eternity, anywhere, so long as it is not seen as a socially contrived arrangement.* [emphasis added] When the analogy is applied back and forth from one set of social relations to another, and from these back to nature, its recurring formal structure become easily recognisable and endowed with self-validating truth.<sup>384</sup>

The stabilising principle, as already noted, was the 1951 Convention and the strong analogies it produced, which justified the shift to in-country protection. The first was that IDPs now came to assume a legal category entitling them to rights and privileges of refugees, which made them visible and worked to make a strategic distinction between refugees and citizens,

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<sup>382</sup> Edelman in Shapiro ed. (1984), p. 59.

<sup>383</sup> Bowker and Star (2002), p. 10.

<sup>384</sup> Douglas (1986), p. 48.

so as to then create the necessary justifications for policies and operations that contained refugees. Indeed, many legal scholars would often ask broad questions that automatically railroaded responses into to the creation of similar refugee protection structures (see Table 12 below). For example, Korn in his work, *Exodus Within Borders*, confirmed such a strategy when he attempted to classify and conceptualise the IDP problem:

**Table 12. IDP Conceptual Framework**

<b>Question?</b>	<b>Answer</b>	<b>Response</b>
<b>Who are the internally displaced?</b>	People who are similar to refugees but who have not crossed an internationally recognised border	Few would disagree that persons forced from their homes by armed conflict, internal strife, and systematic abuses of human rights and freedoms warrant the sympathetic attention of the international community. <i>After all, that and more is given to those who escape the borders of their country-refugees. Why should it be denied to those caught within the borders of their country?</i> <sup>385</sup> [emphasis added]
<b>Who helps the IDPs?</b>	Most internally displaced find themselves without adequate shelter, food, medical care, and sanitation and with little or no protection from abuse by government or insurgent groups.	Today most UN and other major international humanitarian organisations take some part in assisting and protecting the internally displaced even though none has a specific, legally recognised mandate to do so. <sup>386</sup>
<b>Can the UN do a better job?</b>	Yes	Creation of newer and more effective structures <sup>387</sup>

<sup>385</sup> Korn (1999), p. 11.

<sup>386</sup> Ibid, p. 34.

<sup>387</sup> Ibid, p. 49.

Such a move shifted all the international legal and humanitarian rights of the refugee to people residing within their own states, which created a state of both physical and legal limbo with IDP's existing somewhere along the continuum between citizen and refugee. While this may have seemed completely irrational, as we saw, it silently suppressed the 1951 Convention by attempting to nullify the 'refugee' as an international object of concern with its reconceptualization as an internal 'root cause' issue of fragile soil. The alternate category of citizens meant that rather than assume the label of refugee on foreign soil and the political problems it entailed, citizens could simply be contained in a state of limbo on 'home' soil as 'displaced people' but with the rights of refugees.

This shift had three consequences; firstly with IDPs now coming under the same structures of objectification associated with the refugee label, as refugees are constructed essentially as people to be acted upon rather than as actors themselves. Indeed, refugees are objectified as populations whose function is to be counted, registered, studied, surveyed and one day returned to become 'normal' people.<sup>388</sup> Secondly, through the control it awarded relief actors, it subjected IDPs to the same imbalances that emerged between refugees and UNHCR which will be detailed in the IDP camps in Uganda in chapter 5. These included petty abuses, systematic humiliations, and punishments inflicted at the behest of the organisation in order to reinforce the message of control.<sup>389</sup> Thirdly, such an ambiguous category opened the flood gates to multiple impositions of value, as what we thus incurred was a bureaucratic label that could absorb different meanings to identical circumstances and behaviours. For the humanitarian community, the suffering IDPs that require protection may be to the army of a fragile state the subversive population interned in camps for aiding and abetting insurgent groups. For UNHCR the 'potential' refugees unable to flee persecution and civil war may be considered by Western states to be IDPs who must be assisted so as to prevent them from becoming refugees.

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<sup>388</sup> Allen and Turton (1996), p. 9.

<sup>389</sup> Verdirame and Harrell-Bond (2005), p. 294.

#### ***2.4 Depoliticised & Technicised Protection***

The combination of a bureaucratic category within camp based relief operation thus has the logic of depoliticising and technicising protection.<sup>390</sup> While protection is today a ubiquitously revealed truth within development and humanitarian discourse, it became an essential ingredient within the IDP Regime first with the construction of displacement as an apolitical crisis coupled with the creation of an IDP category that pacified people, and secondly in justifying mechanisms of power that cemented the supremacy and privileges of institutions and foreign intervention under R2P.

The explanation for such a manoeuvre resided in the fact that power politics is perceived to be an almost evil and corruptible element, incompatible with development and humanitarian values, precisely because it does not respect human rights and opens up contestations that result in winners and losers and festering iniquities and systems of oppression. As a consequence, its presence, which cannot be eradicated, is instead continuously hidden, denied, downplayed and ignored by practitioners, academics, and policy makers, to simply allow it to flourish unchecked below radar. The recourse to power politics only unearths past wrongs, which now shape the present, and ultimately reveals the world's true colours, as a zero sum contest filled with a few powerful and entrenched winners, and many weak and discontented losers. This is fully displayed in the *UNHCR Handbook for the Protection of Internally Displaced Persons* which lists a number of distinct protection risks that remove and bypass any traces of the 'political':

IDPs have been *compelled* to leave their homes and often cannot return because *they face risks* at their places of origin from which *State authorities are unable or unwilling to protect them*, because they might have been *specifically prohibited to return*, or because their *homes have been destroyed* or are *being occupied by someone else*. They also may face the risk of *forced return* to an area that is unsafe.<sup>391</sup> [emphasis added]

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<sup>390</sup> Dreyfus and Rabinow (1982), p. 196.

<sup>391</sup> UNHCR (2007), Chapter 1, p. 7.

The language of displacement appears to be vague, ambiguous and virtually blameless, omitting any trace of the identity or motivations of perpetrators. The highlighted areas are simply euphemisms that beg the imminent questions *by whom and why?* In the following section titled *the particular factors of internal displacement that tend to heighten protection risks*, the handbook creates a surreal and innocuous atmosphere of quick and easy solutions to simple technical problems (see Table 13 below).<sup>392</sup>

**Table 13. IDP Protection**

<b>Problem</b>	<b>Solution</b>
IDPs have lost their homes and, as a result, may be in need of shelter.	Shelter
They have lost access to their land and other property and are cut off from their normal livelihoods and sources of income.	Livelihoods
Access to adequate food, safe, water and public services, such as education and health care becomes difficult.	Relief Delivery
Identity documents often are lost, destroyed or confiscated in the course of displacement. As a result, IDPs often face difficulties in accessing public services, such as education, and health care, limits on freedom of movement and heightened risk of harassment, exploitation or arbitrary arrest and detention.	Registration & Monitoring
In many cases, IDPs are displaced into areas where they face marginalisation, discrimination and hostility, are exposed to landmines or explosive remnants of war, or are targeted for abuse and attack	Camp Based Relief

There is no mention of how the camp is supposed to protect inhabitants from the real imminent threats of direct armed conflict in the form of kidnappings, rape, raiding of relief stocks, rebel recruitment, all of which require a significant military presence in camps, which

<sup>392</sup> Ibid, p. 7.

may unsettle aid agencies and donors not wishing to remove or conflate the civil-military divide and which has made many NGOs the targets to factions of a conflict. The power politics existing at the IDP, State, and NGO/Donor level is virtually absent from the displacement discourse, which is purely an international response to suffering people. The language of humanitarianism ultimately delinks citizens from their state. By labelling them as internally displaced, that morphs them into sanitised, static and technical objects of charity. This is in contrast to the label of 'citizen', which is an active word that forces people to hold governments to account for not providing services and rights. Such discussions would automatically plunge us into a murky, complex, and unnavigable political ocean, well beyond the scope of any humanitarian actor to resolve.

This indeed has been a major critique of humanitarian protection by organisations in the growing literature which has become somewhat of a cottage industry in itself.<sup>393</sup> Nearly all recognise the gulf between rhetoric and reality of assistance with the struggle to prevent what all acknowledge as the 'well fed dead' or the 'well fed harassed, intimidated, and raped'. As a counter weight to these criticisms and arguments levelled against humanitarian intervention Hugo Slim has sought to defend relief aid on the basis that:

It should never be forgotten that relief agencies are always responding to the violence of others. The difficult moral choices faced by relief agencies usually come about as a result of the immoral choices already made by political leaders and other individuals and groups. In most situations, relief agencies inherit an already uneven moral playing field.<sup>394</sup>

However, to mount a critique or defence of humanitarian protection may be to completely miss the point, because, in earnest, protection is a consensual ideal, which while impossible to entirely define, measure, and operationalize, reveals a number of unspoken practices that cement a series of power structures, which may be the real object of the game. Firstly on the ground, protection simply equates to the presence of large numbers of Westerners, which is

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<sup>393</sup> De Waal (1997), Anderson (2001), Vaux (2001), Terry (1999), Marriage (2006), Rieff (2003)

<sup>394</sup> Slim (1997), p. 247.

predicated on the experience and perception that suffering civilians are less likely to be killed or harassed in the presence of civilised and advanced ‘white people’, who can expose, embarrass, and have greater leverage over backward and corrupt Third World states.<sup>395</sup>

Secondly, the perceived fruitless and perilous endeavours of protection may in actuality adhere to the ‘normal’ working practices of the UN system, as Hancock recounts:

An important part of this in the United Nations is that the accepted indicators of a job well done have ceased to be, for example, material benefits delivered to the poor; rather, ‘success’ is defined by bureaucratic or ceremonial factors like the number of conferences, studies and meetings that take place to discuss the subject of global poverty, the number of Days, Weeks, Years or Decades of ‘solidarity’ with the disadvantaged that are celebrated, the number of ‘keynote’ publications prepared, the sophistication of the language in which ‘back-to-office reports’ are couched-and so on. In such a fashion, as Maurice Bertrand puts it: *The way in which the mill operates becomes more important than the quality of the flour it produces.*<sup>396</sup> [emphasis added]

This is fully evident with the IDP Regime today, which has prompted the hyper growth of ‘new’ protection initiatives (offices, working groups, partnerships, training, and monitoring structures) for ‘unprecedented’, ‘specific’, and ‘unaddressed’ protection concerns, that once again maintains the flow of salaries, livelihoods, benefits and the all important aura of liberal internationalism.<sup>397</sup> Since 1999, the Inter Agency Standing Committee (IASC) has developed several policies and tools relevant to IDP protection.<sup>398</sup> However, none can effectively end displacement or confront or hold a predatory state or belligerent actor to account. Instead,

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<sup>395</sup> Human Rights Watch, ‘Because they have the guns...I’m left with nothing. The Price of indifference in Cote d’Ivoire’, May (2006), Volume 18, No.4 (A). UN Watch, Urgent NGO Appeal to World Leaders to Stop Atrocities in Libya, 20<sup>th</sup> February (2011).

‘NGOs Plot Wave of Criminal Referrals to Legitimise International Criminal Court’, The Daily Bell, 28<sup>th</sup> December, (2012).

‘Uganda threatens to expel Oxfam and NGOs over land-grabbing claims’, The Guardian, Thursday 10<sup>th</sup> May (2012).

‘EU assembly seeks criminal trial for Burmese Junta’, EU Observer, 23<sup>rd</sup> May, 2008.

<sup>396</sup> Hancock (1993), p. 101.

<sup>397</sup> Protection of Internally Displaced Persons, Policy Paper (1999).

Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for United Nations Humanitarian and/or Resident Coordinators and Country Teams (2004).

Growing the Sheltering Tree: Protection Rights Through Humanitarian Action (2002).

Gender Handbook for Humanitarian Action (2007).

Operational Guidance on Human Rights and Natural Disasters (2006) and Manual (2007).

Guidelines on Mental Health and Psycho-social Support in Emergency Settings (2007).

<sup>398</sup> [www.humanitarianinfo.org/iasc/content/default.asp](http://www.humanitarianinfo.org/iasc/content/default.asp)

they all become polite and commendable attempts at problem solving but which justify inaction.<sup>399</sup> Indeed, as will be exposed in chapter 5, humanitarian protection is, in essence, a game that is played with actors constantly attempting to reduce the cognitive dissonance arising from their failed neutrality, professionalism, and ethics, as Marriage notes,

Assistance is delivered alongside rules based on human rights and humanitarian principles. These rules are not constantly adhered to by any party, but are inconsistently referred to, and rarely fulfilled or enforced. When the rules are invoked, their function is to claim legitimacy for interventions, and to discredit people who obstruct them. On other occasions, violations are overlooked, and when assistance is inadequate, its discourse ignores, excuses or disguises weaknesses in implementation. This has two consequences: no change for people suffering from destitution caused by violence and no impact on the description of suffering or the formulation of assistance.<sup>400</sup>

### **3. The Effects of the IDP Regime**

Having established the nature and logic of the IDP Regime, it is now important to observe what it does in practice. This requires us to jettison purely textual analyses which define discourse as ‘a system of statements that construct...an object’<sup>401</sup> or as ‘forms of spoken interaction’<sup>402</sup>, or ‘sets of meanings representations, images stories and statements’<sup>403</sup>. Indeed, Foucault’s primary concern was that discourses were, in essence, forms of practice in, what he termed, matrices of transformation that qualify and condition such processes. Indeed, speaking and the use of words is in itself a force that brings about effects.<sup>404</sup>

#### ***3.1 Creating a Space of Alternate Social Ordering***

The first major effect is the creation of an alternate bureaucratic category of citizens, residing in an alternate territorial space, governed by an alternate set of actors who intervene to imbue those in their care with the de facto ‘rights of refugees’. This has the principle effect of

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<sup>399</sup> Du Bois (2010).

<sup>400</sup> Marriage (2006), p. 12.

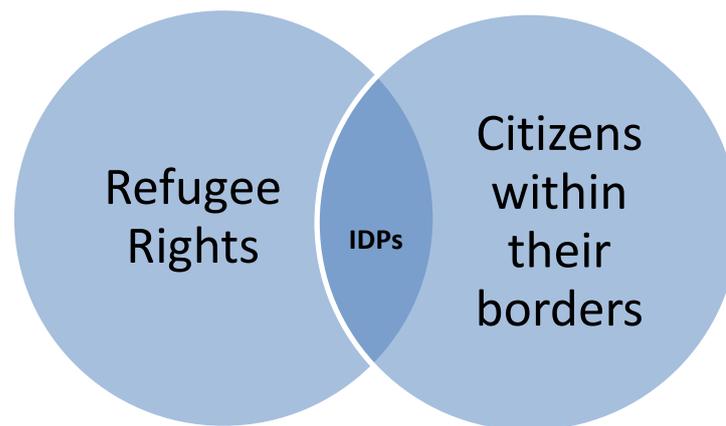
<sup>401</sup> Parker (1992), p. 5.

<sup>402</sup> Potter and Wetherell (1987).

<sup>403</sup> Burr (1995).

<sup>404</sup> Foucault (1977).

creating a space of alternate social ordering within the borders of a fragile state. Such an exercise can open, justify, and sustain a series of controls and privileges due to the fact that it is a zone of limbo with inhabitants residing within an ambiguous status of existing within their state territory through a legal category that can become anything and everything to its custodians (see Figure 26 below).



**Figure 26. Space of Alternate Social Order**

As refugee camps are all too familiar with the complexities of exploitation, militarisation, and morbidity, and the fact that IDP Regime mirrors such practices, we notice that embedded and enacted within the discrete spatiality of IDP camps will be several of the same characteristics. In Somalian refugee camps in Kenya, there was a tension with the need to marry the cultural needs of the inhabitants with the universality of UN protocols in that ‘the spaces of refugee camps are in policy and practice structured accordingly to supra-local understandings of local needs. That is to say, the UNHCR organised camps, ostensibly with the shelter, provision, and protection needs of refugees in mind. But on the ground their organisation looks quite different. Once inside the camps, it appears that they meet the security and logistical needs of the humanitarian organisations’.<sup>405</sup> In many camps, inhumane treatment by relief agencies is often justified as ‘needs assessments’,

<sup>405</sup> Hyndman (2000), p. 88.

Because numbers are essential for appeals for international funding extraordinary efforts are taken by UNHCR and NGO partners to conduct ‘accurate’ censuses. Methods involve herding refugees into enclosures and night swoops on camps. As one manual on registration advises: Spot checks involve an actual head count and are best carried out at unsocial hours like midnight or dawn when the majority of people will be in their houses. You will need a large number of staff to go round counting every person.<sup>406</sup>

Camps have been the site of continued unrest, as in the Somali refugees in camps in Kenya at Kakuma and Dadaab, where multiple occurrences of violence at the intra and inter group levels persisted, with armed robbery, domestic and community violence, and sexual abuse becoming a norm for which UNHCR had to navigate.<sup>407</sup> The militarisation of camps was documented in Nepal among the Bhutanese Lhotshampas refugees who were subject to propaganda and recruitment activities of Maoist insurgents to the alarm of the government in Kathmandu. Similarly in Tanzania, Burundian refugee camps have been the sites of the proliferation of arms which caused the Burundian military in January 2002 to commence bombing Tanzanian villages close to the border. This crisis led to the employment of 300 Tanzanian police officers to ensure law and order.<sup>408</sup> Refugee camps in Liberia witnessed the accumulation of ration cards and the duplication of names as a survival strategy. In the Laine camp the UNHCR would count 28,000 inhabitants in 2003, while the MSF count produced 21,000.<sup>409</sup> In sum, the reformulation of the refugee camp now within state borders as IDP camps, re-establishes all these power structures, but under a new internationally acclaimed regime. All of these known features and pathologies are now transported and fixed into the new structures of IDP camps with the same effects. The impact of this will be explored in greater depth in chapter 5.

### ***3.2 Altering the Dynamics of Conflict***

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<sup>406</sup> Harrell-Bond (1986), p. 90.

<sup>407</sup> Crisp (2000), p. 99.

<sup>408</sup> Loescher and Milner (2005).

<sup>409</sup> Agier (2011), p. 109.

The second effect of this emanates from the depoliticisation, in that the multiple political agendas which forged the new regime continue to silently linger with displacement now becoming a hybrid that amalgamates three opposed agendas (population control, refugee containment, and humanitarian protection) which results in a comfortable co-existence of interests for a given number of actors over a given period. So, for example, a state engaging in a counter-insurgency operation that has displaced sections of its populace into concentration camps can, in effect, claim that it is suffering a crisis of internal displacement and call for humanitarian assistance to ‘protect’ its destitute citizens. Secondly, Western states wanting to curb the flow of asylum seekers can thus now intervene in fragile states for indefinite periods by claiming to address the root causes of flight through reconstruction and development. These are both matched by the protection mechanisms of humanitarian actors who have transformed the concentration camp from a once temporary, artificial, and visceral structure, into a permanent and ‘benevolent’ one. Through the United Nations Cluster Approach and the Norwegian Refugee Council (NRC) Camp Management Tool Kit, sovereign territory can be sectioned and citizens quarantined on the basis that they are working for their welfare. Ultimately, it becomes difficult to ascertain just where along this spectrum of the IDP Regime each of these agendas reside, as they share similar characteristics to each other (see Table 14 below).

**Table 14. IDP Spectrum**

CONTROL	CONTAINMENT	PROTECTION
<b>Counter-Insurgency</b>	<b>UNHCR</b>	<b>R2P</b>
<b>Villagisation</b>	<b>CBOs/QIPs</b>	<b>Humanitarianism</b>
<b>Extermination</b>	<b>Internal Flight Alternative</b>	<b>Development</b>
<b>Internal Security</b>	<b>Xenophobia &amp; Racism</b>	<b>IDP Convention</b>

## **IDP REGIME**

A prime example of this effect was in the wake of the military defeat of the Tamil Tigers in Sri Lanka in May 2009, in which the Sri Lankan military became the lead authority on post-conflict reconstruction, with claims from senior military officials that ‘security forces in North will be engaged in a new role of developing the region’.<sup>410</sup> Under *the Project for Confidence Building and Stabilisation Measures for IDPs*’ over 100,000 Tamil IDPs were interned into militarised concentration camps officially defined as ‘High Security Zones’ for security vetting. The government introduced strict controls on information with no media or humanitarian presence allowed in camps. Intelligence personnel were also embedded in camps among IDPs, monitoring and reporting, all with the purpose of preventing the Tamil Tigers from regrouping and resuming hostilities. The Defence Secretary commented how, ‘Once this terrorism problem which lasted for 30 years is completed, we have to enter the next episode of it. The war is like a cancer. Even after curing cancer, there is a period of radiation treatment. It is the same with the war on terrorism’.<sup>411</sup> The aid community while criticising the Sri-Lankan Government for the violent way it concluded the conflict, became complicit through their construction of the concentration camps, which was reflected in the casual and technical approach documented in this United Nations briefing report to the Secretary General Ban Ki-Moon in 2009 that whitewashed state predation.

In the camp Manik Farm Zone 2, government authorities have agreed to prioritise basic drainage so that agencies can start implementing shelter construction. Shelter agencies will provide tents to accommodate the latest influx of IDPs in Manik Farm 2 and 5 additional sites identified by the authorities. As of yesterday, almost 6000 emergency shelters were completed at the Zone 3 transit site of Manik Farm...In Jaffna, a new site has been identified by authorities for temporary shelters. Shelter agencies are in the process of assessing the site...The UN Population (UNFPA) is collaborating with district health authorities to provide hygiene packs to IDPs in Vavuniya. A total of

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<sup>410</sup> Satkunanathan (2010), p. 34.

<sup>411</sup> Ibid, p. 26.

25,000 packs will be distributed, of which 13,000 have already been handed over to the Regional Director of Health Services in Vavuniya.<sup>412</sup>

By July 2009, Manik Farm in Vavuniya was housing 210,000 ethnic Tamils, complete with banks, post-offices, schools and supermarkets. This camp was built by the international aid community who put up 43,000 shelters and tents, 8,761 latrines, 339 places to wash, 12 nutrition centres and 132 temporary learning spaces for students<sup>413</sup>. The government claimed that IDPs would be returned to their homes by the end of the year in 2009. In July 2010, after receiving Indian assistance for the reconstruction of the KKS Harbour, cement factory and Palaali airstrip, the Media Minister Keheliya Rambukwella rejected proposals to close the High Security Zones commenting that the military would be tightening its grip along the north east coast with the construction of new military bases for the Sinhalicisation of strategic Tamil areas.<sup>414</sup>

### *3.3 Establishing a Lucrative Humanitarian Economy*

Finally, the presence of the relief industry coupled with the technicisation of camp based relief structures, has the effect of sustaining the privileges of NGOs through the humanitarian funding appeal processes that can instrumentalise visual portrayal of chronic human suffering to generate a sizable flow of funds with relatively little oversight for actors wishing to operate within complex emergencies. Indeed, through the marketability of disaster appeals this has led many inexperienced and unqualified organisations to advertise and tender for relief work. In July 1994, following the Rwandan genocide, and the mass exodus to Zaire, Match International, a small Canadian women's development organisation assumed humanitarian credentials and competed against Canadian branches of the Red Cross, CARE, Oxfam and World Vision to 'supply kerosene stoves to stop the destruction of forests by refugees seeking

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<sup>412</sup> Okabe, Sri Lanka: Security Council to be briefed this afternoon, Highlights of the Noon Briefing, Wed, United Nations Office of the Spokesperson of the Secretary General, 22<sup>nd</sup> April (2009).

<sup>413</sup> 'Sri Lanka keeps refugees in camp that aid built', MSNBC, 18<sup>th</sup> July (2009).

<sup>414</sup> 'SL Government intends to keep Jaffna in SLA grip', TamilNet, 15<sup>th</sup> July (2010).

fuel'.<sup>415</sup> Secondly, it raised the concern about the transparency of funding, which is virtually impossible to identify, trace, and monitor. This is due to multiple identifiable and unidentifiable sources (donors, governments, and private contributions), the continuous stages of sub-contracting of relief projects, and the bribery of unwilling governments and belligerent factions to guarantee relief presence and delivery. Funds are easily subject to mismanagement due to the absence of rigorous mechanisms of accountability and the independence of NGOs. Thirdly, as Dawes explains, in analysing humanitarian work, 'it is sometimes difficult to distinguish the desire to help others from the desire to amplify the self, to distinguish altruism from narcissism'.<sup>416</sup> In many emergencies, the primary objective of disaster relief, as a number of practitioners have candidly admitted, is the creation of a lucrative humanitarian economy through the implementation of a vast myriad of independent projects that absorb immense resources and manpower expenses, and which are all sustained by the continuous flow of donor funds:

My job is to assure AICF's survival. If we are out of Sudan [and other agencies replace us], then the hard truth is we are less likely to get funding...That's the reality. An NGO simply must be in certain areas that the donors are paying attention to.<sup>417</sup>

The main reason that people accept a job in a place like this is so they can stash away money- and I'm stashing away a small fortune. Because it's classified as a hardship post, I'm automatically on 25% above the basic salary for my grade. In addition it's a Muslim country, which means we work on Sundays- and that gets me another 25%. My housing's paid, food is cheap and there's really nothing much else to spend money on, so I'm building up a nest-egg.<sup>418</sup>

Ultimately, it is imperative to recalibrate the lenses we use to observe and understand relief actors by remaining conscious of the power dynamics many bring to bear upon complex emergencies through the 'NGO Scramble' that can easily side-line ethics, project efficiency, and accountability<sup>419</sup>. The security and wellbeing of displaced masses which are initially

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<sup>415</sup> Smillie (1995), p. 117.

<sup>416</sup> Dawes (2007), p. 122.

<sup>417</sup> Regional Director of Agence Internationale Contre le Faim (AICF) quoted in Reiff (2003), pp. 4-5.

<sup>418</sup> Development worker quoted in Hancock (1993), p. 80.

<sup>419</sup> Cooley and Ron (2002), p. 16.

trumpeted as primary goals, can thus, in practice, become tertiary objectives when aid agency survival is paramount. This has usually meant agencies taking on greater risks, which culminate in the incorporation of relief aid into the political economy of war and disaster. For example, the civil war in Nigeria in 1968 saw the Nigerian military besiege the separatist state of Biafra. However, continuous delivery of aid by air from Oxfam, Catholic agencies and the ICRC who defied the siege with 7800 relief flights which was praised as a heroic achievement, was widely believed to have prolonged the crisis for 18 months and contributed to over 180,000 deaths.<sup>420</sup> Similarly, in Somalia in 1992, the ICRC through UNISOM 1, Operation Restore Hope intensified both the famine and civil war through its delivery of food aid. The location of distribution sites in rebel territory pushed many people away from their farms and cultivation into the direct influence and recruitment of warlords. The need to recruit and secure aid convoys with armed guards created a premium for weapons as a prerequisite for employment for many unemployed young men. Ultimately, the injection of food aid into a highly charged environment of lawlessness and scarcity resulted in it becoming a spoil of war with mass looting of warehouses, redirection of relief by rebel factions and the kidnapping and ransoming of aid workers.<sup>421</sup> Finally, in Goma in 1994, the humanitarian relief industry was held responsible for the cholera epidemic which killed over 50,000 Rwandan refugees through their dense concentration in squalid camps. This became a media spectacle for many agencies seeking to maintain a relief presence and generate emergency funds. This was in addition to directly aiding the Interehamwe militia who were escaping the RPF invasion and had been regrouping and rebuilding their forces within the camps for future incursions.<sup>422</sup>

## **Conclusion**

This chapter has interrogated the conventionalised thought introduced by the IDP Regime, to show how such formalisations not only carry a series of reductions but, more importantly, a set of characteristic pre-occupations which detract attention from the continuous minutiae of

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<sup>420</sup> Yanacopulos and Hanlon (2006), p. 38.

<sup>421</sup> Natsios in Clarke and Herbst ed. (1997), p. 83.

<sup>422</sup> Prunier (2008), pp. 24-28.

power's everyday operations. More importantly, as Shapiro cautions, when textualising global politics:

It is the dominant, surviving textual practices that give rise to the systems of meaning and value from which actions and policies are directed and legitimated. A critical political perspective is, accordingly, one that questions the privileged forms of representation whose dominance has led to the unproblematic acceptance of subjects, objects, acts, and themes through which the political world is constructed.<sup>423</sup>

Put clearly, the IDP Regime is a social construction that allows powerful northern states to sanction the relief industry to intervene in fragile and warring states, in order to transform citizens into a bureaucratic category of passive, voiceless, victims through the application of the custodial institution of concentration camps as a space of alternate social ordering for effectively reforming the domestic social and political environment. This is all designed to address and manage the root causes of refugee flows to the Global North. The forthcoming section will discuss the impact of the IDP Regime by observing how all these discursive reproductions of power, privilege, and paternalism operated within the fragile state of Uganda.

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<sup>423</sup> Shapiro in Wetherell, Taylor and Yates ed. (2001), p. 320.

## **Part Three**

# **The Impact of the Internal Displacement Regime**

## **Chapter Four**

### **Uganda & the IDP Regime**

#### *The Political Economy of War & Displacement*

#### **Introduction**

For the IDP Regime, all attempts to mitigate and reverse the physical suffering of IDPs are located within the boundaries of fragile states. Thus policies revolve around either humanitarian relief interventions or campaigns to build and incorporate the IDP Convention into domestic legal systems for such states to respond rapidly and efficiently. This was in addition to the work of the Special Representative who since 1992 was tasked with making country visits to assess situations of displacement and offer advice to officials on disaster mitigation. The Republic of Uganda provides a perfect setting for an empirical evaluation of the impact of the IDP Regime, for it was one of its poster children, being one of the first to develop a national policy for internally displaced persons in 2004; one of the first to implement the UNHCR Cluster Approach mechanism in 2005; and the country which launched the IDP Kampala Convention in 2009. It is therefore important to document the underlying conditions within this fragile state, in order to understand the history, actors and politics of conflict resolution for which the IDP Regime came to be immersed in.

The chapter is divided into four sections. The first provides a historic overview of the violence in northern Uganda. The second outlines the five phases of displacement as a result of the social breakdown and international attention. The third documents the political economy of war to expose the functions that the violence served. The final section details the ways in which Uganda was able to retain power by manipulating the IDP Regime to maintain a lucrative war while guaranteeing international public acclaim.

#### **1. Brief History of Violence 1980-1996**

Since independence in 1966, the Republic of Uganda has endured a turbulent existence characterised by political unrest, economic collapse, coup d'états, and violence.<sup>424</sup> Colonial masters deliberately selected soldiers from indigenous minority ethnic groups, or from areas that co-operated and accepted colonialism. Howe argues that 'ethnic selection works against a common identity by placing and supporting an exclusive sub-nationalism above an inclusive nationalism. It also lowers political acceptance of the state by groups excluded from the military, and raises their fears of state-sponsored repression'.<sup>425</sup> In Uganda, the British Protectorate recruited exclusively from the Acholi in the Northern regions. This policy arose from three considerations. First, when deploying colonial troops, soldiers should not be of the same race, religion, or ethnicity as the local population in the areas planned for deployment, 'since the army was engaged primarily in southern Uganda and not in the north, Acholi recruits would be stationed among alien tribes in accordance with colonial principles'.<sup>426</sup> Second, the Baganda having been exposed to British rule were more familiar and assertive in their interaction with them and it was hoped that the Acholi would be more amenable to the authority of the British, unlike the Baganda who were perceived by military officers to be arrogant and insubordinate.<sup>427</sup> Third, the Acholi were loosely organised which made large-scale military mobilisation very difficult under a single political leadership to confront the British administration, if conflict were to arise between the two.<sup>428</sup>

This militarization of society through ethnic recruitment had detrimental effects on civil-military relations in Uganda throughout the 1960s post-independence era in two ways. Military intervention and conflict thus became the only effective means to changing the political destiny of the state. Acker notes how, 'security forces acquired lives and identities of their own, with civilian control non-existent, while competition concerning which ethnic

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<sup>424</sup> Thompson (1999), Mutibwa (1992), Kyemba (1977), Twaddle and Hansen (1988).

<sup>425</sup> Howe (2001), p. 30.

<sup>426</sup> Otunnu (1989), p. 32.

<sup>427</sup> Ibid.

<sup>428</sup> Ibid.

groups would form the constituent core of the security forces drove a history of violent political change'.<sup>429</sup>

This began following Idi Amin's seizure of power in 1971, in which he consolidated his base in the army by employing his own ethnic group from West Nile and exterminated many Acholi and Langi soldiers.<sup>430</sup> Second with the military being the main source of employment in Northern Uganda, the later overthrow of Acholi by the National Resistance Army (NRA) in 1986, meant many Acholis lost employment and subsequent livelihoods which compelled them to rebel. After the National Resistance Movement defeated the Uganda National Liberation Army (UNLA) and entered government, a series of reprisals against the Acholi including massive retrenchment of Acholi from the military and government departments ensued. Acholi civilians were evicted from government-allocated houses; Acholi businessmen were harassed by security services with their wealth confiscated as a form of revenge. Negative propaganda was issued against the Acholi blaming them for the Luwero atrocities calling them 'Anyanyas', (a derogative phrase coined during Amin's era as an insult to the Sudanese from whom the Acholi are perceived to have originated).<sup>431</sup> The worst occurred when the NRA pursued defeated Acholi-UNLA remnants deep into the villages of Gulu and Kitgum, with unarmed civilians tortured, raped and killed with unlawful arrests, looting of properties and the burning of houses and granaries. Nyeko & Lucima note how 'the government ordered all former soldiers to turn themselves in with their weapons. Ex-soldiers who responded to the order were severely mistreated, many detained and some killed'<sup>432</sup>. These conditions of fear or reprisals led to the emergence of more than one insurgent group

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<sup>429</sup> Acker (2004), p. 338.

<sup>430</sup> In March 1971 more than thirty Acholi/Langi soldiers were dynamited at Makindye barracks. On 22 July 1971 between 150-500 Acholis from Simba Battalion, Mbarara were herded into trucks, taken to isolated ranches and gunned down. On 9 July 1971 twenty new Acholi recruits were killed. On the 5 February 1972, about 117 soldiers of the Obote regime were gunned down<sup>430</sup>. The extermination of the Acholi did not stop within the military but extended to prominent Acholis in commerce, parliament, media, academia, medicine, civil service and clergy, who were tortured, dismembered, imprisoned, humiliated, and massacred from 1970-1979, Kasozi (1994), p. 111.

<sup>431</sup> Understanding the LRA, KM paper July (1999), p. 30.

<sup>432</sup> Nyeko and Lucima in Accord 11 (2002), p. 21.

attempting to resist government.<sup>433</sup> The most prominent was the Lord's Resistance Army led by the spiritual leader Alice Lakwena and then subsequently by her cousin Joseph Kony who since 1986 attempted to transform Uganda into a theocracy governed by the biblical 10 Commandments.

## **2 .The Phases of Internal Displacement 1994-2008**

While the violence brought mass social breakdown, fear and cultural dislocation which displaced over 2 million people, the internal displacement in northern Uganda was not a single event but rather a gradual five level process that progressed and mutated according to the escalating violence, disorder, government priorities and international attention. The *first phase* was the psychological displacement from security and livelihoods experienced by many during the early years of the insurgency and counter-insurgency from 1986. This phase was characterised by fear, uncertainty and desperation, which necessitated the initial need for flight. The government in 1991 conducted an aggressive counter-insurgency operation codenamed Operation North, which saw large number of the Acholi population summarily imprisoned, screened, and interrogated by the army as part of a drive to uncover remnants of the UNLA hiding amid the population and supporting the LRA.

The *second phase* was the sporadic voluntary movement of large numbers of panic-stricken communities away from villages and homesteads into towns and larger trading centres closer to government forces and perceived security. There was also a backward movement to homesteads for cultivation amid the fluctuating security conditions. The *third phase* was the coercive displacement by the military as a solution to guerrilla warfare, which arose from the direct rebel targeting of the civilian population. The Acholi populations were displaced into established camps termed 'protected villages' or into trading centres under army control with a 48 hour notice period. This was carried out through UPDF formal radio announcements.

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<sup>433</sup> Nantulya, 'Exclusion, Identity and Armed Conflict: A Historical Survey of the Politics of Confrontation in Uganda with Specific Reference to the Independence Era', paper presented at conference: Politics of Identity and Exclusion in Africa: From Violent Confrontation to Peaceful Cooperation, University of Pretoria, 25-26th July, (2001),p. 89.

The *fourth phase* arose from the heightened suffering within the protected villages due to malnutrition, disease and congestion, which forced the government to invite a humanitarian relief intervention in 1998 in order to save face both globally and domestically. This move changed the face of the war and displacement as the conflict which was politically and economically functional could endure with camps now becoming semi-permanent structures through the co-opting of the relief industry to reduce any collateral damage. The *fifth phase* of displacement was the introduction of the IDP Regime with Uganda becoming one of the first test cases alongside Liberia and Congo for the Cluster Approach framework. The statement in 2003 by Jan Egeland, the United Nations Under-Secretary for Humanitarian Affairs, which described Uganda as ‘the most forgotten humanitarian catastrophes’, transformed the region into a complex emergency with the consolidation appeal by over 100 relief agencies amounting to US\$148.1 million, which also brought unprecedented global media attention.<sup>434</sup> The government intensified the forced displacement across the whole of northern Uganda and the creation of the IDP policy in 2004 resulted in IDPs becoming a formal state bureaucratic category, with enshrined rights and services. The IDP camps thus mutated from a counter-insurgency practice to a recognised humanitarian structure with NGOs forming a basic civil administrative structure through a camp management strategy. This demarcated and divided the three Acholi sub-counties (Gulu, Kitgum & Pader) between themselves, in order to render camps more ‘sustainable’, but which made the total of 99 camps more permanent (see Figures 27-29 below).

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<sup>434</sup> Jan Egeland, Nairobi news conference statement, 11th November (2003).



This last phase internationalised the violence and created an interesting dynamic which was similarly observed in the case of Sierra Leone with the Revolutionary United Front (RUF), who only caught the international spotlight when they captured hostages, began dismembering people, and using child soldiers. This was primarily because,

...the normative approach of assistance operates within the political environment. It supports victims of the 'other'-the opposite and barbaric, particularly by appealing to abused rights and the principle of impartiality....The political morality formalises condemnation...certain forms of violence are abhorred, and assistance is bestowed symbolically on its victims. Other forms of violence are ignored, depending on how the morality activity reflects on the aid provider.<sup>435</sup>

Throughout the early 1990s the LRA were virtually unheard of, attracting scant global attention, nor neither presenting territorial claims, or even a coherent political agenda. However in the early 2000s, the moral titillation produced by the media spectacle of violent abuse, rape, abduction, child soldiers, mutilation, and the great numbers languishing in camps, combined with the enigmatic cult figure of Joseph Kony gave the IDP Regime and the humanitarian industry all the energy they required for maximum impact, as will be revealed in the next chapter.

### **3. The Political Economy of War**

The violence in northern Uganda raised many questions, ambiguities, and doubts for political leaders, war victims, scholars, journalists, and the wider international community.<sup>436</sup> The puzzle of seemingly endless war was openly discussed because it featured in the annual Presidential State of the Nation Address. Indeed, for over a decade President Museveni had told Ugandans that the war in northern Uganda was in its concluding phases with the LRA weak and on the brink of absolute military defeat. However such statements became a continuous and predictable comical gesture because they were always instantly disproved through intense LRA incursions against civilians, appeals by government for rebels to accept

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<sup>435</sup> Marriage (2006), p. 183.

<sup>436</sup> Branch (2011), Dolan (2011), Finnstrom (2008), Eichstaedt (2009), Green (2009), Allen and Vlassenroot (2010), McDonnell (2007).

amnesty, and protests from civil society at the army's abuses and inability to protect civilians. Nevertheless, Museveni would continuously reassure his citizens that the Uganda People's Defence Force (UPDF) was capable of engaging in decisive operations that would soon bring lasting peace (see Table 15 below).

**Table 15**  
**President Yoweri Museveni State of the Nation Address (1995-2010)**

Date	Statement	Solution to Violence
1995	'In the North, Government efforts in eliminating armed thuggery are taking a bit longer because of the external factor but I wish to assure this August House that the security of the North is on top of our agenda and we shall soon bring peace to these areas infected by thuggery' <sup>437</sup>	
1997	<p>The remnants of Kony's group have now broken into small groups that are being picked one by one, or they are surrendering in droves.</p> <p>Kony is not fighting for political ends, but for a style of living that he cannot afford through legal toil. Kony is not fighting for politics, he wants to have free chicken, if I may summarise it like that. He wants to remain in the Sudan or in the mountains if we do not chase him, taking chicken from the villagers. Because sitting down to work until you get chicken for yourself is laborious, it takes time, it takes discipline. Now, there are people who do not want to work but they want to take from others, and if they happen to have the gun, until you control them, they will use that method.</p>	<p>Is it wise to allow such bad example to go unpunished? What if it encourages others to similarly loot as a form of fund-raising or capital accumulation? When will our society ever settle down to develop? In any case, these criminals have not only looted, but have also murdered thousands of people. Remember the massacres of Atiak, Palabek, Chet kan and others. Do you think that such criminals can settle down in villages without reprisals from the relatives of the victims?</p> <p>There is no short cut. We must build a strong Army, a strong Police Force, a strong Intelligence service to defeat illegal elements, whether they are backed by foreigners or not'<sup>438</sup>.</p>
	The bandits of Kony have wreaked havoc on the population: cutting off their ears, their noses, killing people, raping, abducting. They	In the last two years however, the UPDF has inflicted very severe losses of these bandits. Even some of the hard core bandits who have

<sup>437</sup> State of the Nation Address (1995).

<sup>438</sup> State of the Nation Address (1997).

<p style="text-align: center;"><b>1999</b></p>	<p>have done all this in the company of the Sudanese Government.</p>	<p>been organising this have been killed. That is why you hear that there is some peace in the North, because the bandits are quite weakened. We are also improving infrastructure in that area by reopening the roads and building new ones so that the area is accessible<sup>439</sup></p>
<p style="text-align: center;"><b>2000</b></p>	<p>In December, 1999 Uganda and Sudan concluded the Nairobi Peace Agreement. Since then, we have released Sudanese prisoner of war by unfortunately, Sudan has not shown much commitment to that agreement. No sooner had the ink dried on the agreement papers than 200 bandits of Kony crossed into Uganda from Sudan. This particular group are still dispersed in Kitgum and Gulu areas in small groups.</p>	<p>As I said recently, we shall not fold our arms while this group of Kony is still disturbing us from near Juba. We are working with different people including President Gadaffi to ensure that this Kony leaves Juba and he is taken somewhere else by Bashir and I am sure, we shall succeed one way or the other<sup>440</sup></p>
<p style="text-align: center;"><b>2001</b></p>	<p>Kony has also been weakened. Recently, he tried to re-enter Uganda; we intercepted him inside Sudan and gave him a thorough beating. He fled back towards Jaberain where he stays with the Sudanese. Jaberain is deep inside Sudan near Juba. We are waiting for Sudan to re-locate Kony bandits to Khartoum as we agreed in Nairobi.</p>	<p>I appeal to the rebels to take advantage of the amnesty and come back to the fold<sup>441</sup>.</p>
<p style="text-align: center;"><b>2003</b></p>	<p>One factor that has damaged one aspect of our economy, i.e. tourism, has been the terrorism of Kony in Northern Uganda. Starting exactly a year ago, the UPDF launched 'Operation Iron Fist' to uproot Kony from Southern Sudan and wipe out that criminal terrorism. In the one year of continuous operations, the UPDF has killed 3,496 bandits, liberated about 6,800 children from Kony's captivity, and released several thousands of other abductees who are not children. The bandits efforts to infiltrate into Lango, Karamoja, and Adjumani have been defeated. I have been concentrating on the North because the people of the North have suffered too much; the people of Acholi in particular</p>	<p>The government gave some additional resources to the army. Those resources have enabled the Army to acquire new equipment. Only a small portion of the equipment has arrived. We do not yet have enough of the Mi-17s to supplement the Mi-24s in launching combined operations, although they are coming. In most of the engagements, the UPDF commanders have been doing a good job...The CO of the 11<sup>th</sup> Battalion along the Karuma road has been given the task of wiping out the group that killed the 14 people in a bus on the 28<sup>th</sup> May 2003...We have also deployed the 75<sup>th</sup> Battalion to support the 11<sup>th</sup> Battalion in guarding Karuma road.</p>

<sup>439</sup> State of the Nation Address (1999).

<sup>440</sup> State of the Nation Address (2000).

<sup>441</sup> State of the Nation Address (2001).

	<p>and the people of Karamoja...It has taken time, and the anti-Kony war has taken a zigzag course, but Kony will be defeated and wiped out.</p>	<p>So, there are now two full battalions on that road to guard it in enough density, to ensure that no other nasty incidents, like the one that happened recently, happens again<sup>442</sup>.</p>
2004	<p>Since January 2004 up to the 1 May 2004, the following achievements have been registered: 781 terrorist killed, 372 surrenders, 179 prisoners, 1,565 abductees liberated, 531 SMG rifles captured, 33 anti-tank mines, &amp; 19 anti-personnel mines.</p> <p>The remnants of the Kony terrorists are now fugitives trying to hide. In fact, many of the operations which are still going on in the North are no longer really serious fighting as such, it is now more like hunting people who are hiding; and the whole of Teso is peaceful; the whole of Lango is peaceful.</p>	<p>People were saying, 'why has this problem lasted so long?' it is because the Army was under equipped. That is all; there is no other reason. But now with better equipment, we can reach any point in that area, including Southern Sudan where the government of Sudan has agreed with us that we can operate up to 4 degrees north of the equator. Our core assets are improving even more. It would be almost impossible for anybody to hide from the security forces for any length of time by day or by night<sup>443</sup>.</p>
2005	<p>This problem of Kony is really being resolved. We have captured so many of these terrorists, killed many of them, many have come out, and Kony is remaining with small groups of people. Two days ago, we killed seven of the terrorists who killed people in Koch-Goma; there was a massacre some few weeks ago where ten people were killed. Yesterday but one, we killed seven of those who were on the spot and three were captured, so that problem is being resolved.</p> <p>We still maintain a two-track policy; Betty Bigombe continues trying to talk to the remnants of Kony, but for us we are hunting them and we shall finish this problem. There is a lot of pressure; I do not know why some people do not want Kony to be defeated! There must be reasons why some people do not want Kony to be defeated. They really come and confuse outsiders, then they talk about the humanitarian problem. The humanitarian problem is there but it will not be resolved by begging Kony, defeating or forcing him to come out if he wants to save himself will resolve it.</p> <p>All parts of the North are now</p>	<p>Our view is that the amnesty is still available, if he wants to come out, he can come out, and others can come out too. Banya was captured; Sam Kolo came out himself and others. Kony can come but if he doesn't come we shall get him- (<i>Interjection</i>)- Never mind, I will give him to you. Our work has been to degrade his capacity by capturing people around him and killing those who come in our line of fire. In the end we shall get him.</p> <p>The International Criminal Court is a good ally because it makes Kony untouchable as long as it has got indictment; anybody who touches him will have problems with the International Criminal Court, therefore, that is the advantage. Now, some people who went to confuse the International Criminal Court wanted to relieve Kony from that pressure. Like for instance, if Kony goes in the part of Sudan which is far away from where we operate and there is an indictment, they will be under pressure to follow him, but if there is no pressure, then he will be free. They wouldn't be as pressurised as when there is an ICC indictment.</p>

<sup>442</sup> State of the Nation Address (2003).

<sup>443</sup> State of the Nation Address (2004).

	<p>totally accessible; you can take relief wherever you want. We have degraded Kony so much that he has no capacity to ambush roads, vehicles and kidnap any more.</p>	<p>As part of Uganda's participation in post conflict Sudan, the Uganda People's Defence Forces are preparing a battalion to join other forces under the auspices of the African Union to implement the United Nations Security Resolution 1590 to deploy a 10,000 United Nations strong force to assist in the implementation of the peace accord ending the war in Southern Sudan<sup>444</sup>.</p>
2006	<p>The UPDF has defeated Kony in both Northern Uganda &amp; Southern Sudan. Kony did not go to Garamba for tourism. We defeated Kony. Kony is now part of Congo that has no borders with Uganda. We are making contingent plans to react vigorously in case Kony comes to the part of Congo that has got a order with Uganda. Our forces are in Southern Sudan just to help our brothers the SPLA but Kony as of now is not our problem. The remnants who are there, even yesterday we killed seven in Latanya hills. We are finishing those and other are coming out.</p>	<p>The NRM will continue to welcome those who are willing to take advantage of the Amnesty Act and give up rebellion and join other Ugandans in rebuilding of that part of our country. So those who are not willing to come out peacefully, my message is that the government will continue to pursue them using all the means at its disposal, if they dare to re-enter Uganda again. I can however, reassure Ugandans that the UPDF possess now the capacity to promptly destroy any terrorist group that dares to enter Ugandan territory. If we had this capacity in 2002 when the Kony's re-entered Uganda following Operation Iron Fist we could have destroyed them promptly and our people would not have suffered. The UPDF will have an all weather capacity to guard our sovereignty and peace, and do so quickly. Therefore, those days of turning Uganda into a field of adventurers and lawless elements are finished<sup>445</sup></p>
2007	<p>The effective operations by the UPDF led to Kony and Otti fleeing to Congo in 2005. They could no longer stay in northern Uganda or in Southern Sudan where we were allowed to operate.</p>	<p>Since the Congo government did not allow us to operate against Kony in Congo, I accepted Gen. Salva Kiir's proposal to initiate peace talks in Juba. This would be a soft landing for the Konys, and we would also save the efforts we have been expending on defeating the terrorists, for more constructive purposes like building schools, health units, roads etc. Unfortunately, the Konys have not</p>

<sup>444</sup> State of the Nation Address (2005).

<sup>445</sup> State of the Nation Address (2006).

		been making good use of these talks; that is their choice <sup>446</sup> .
<b>2008</b>	Since the Congo Government had not allowed us to pursue Kony into Congo, and the UN was doing nothing about it, I decided to accept His Excellency, Salva Kiir's idea just in case it worked. Although I thought that it would not work, nor was it really necessary or correct to allow impunity to continue. It has not worked, just as I suspected. Kony was fooling those who were trooping to Garamba to beg a criminal to accept forgiveness of the victims while it should be the other way round.	Kony's behaviour is his own business. Since Kony is in Congo, it is the responsibility of President Kabila and the UN to deal with him. However all our capacity is ready and available in case Congo asks for our assistance to go and deal with Kony there. We are ready, able and prepared to go. If Kony tries to come to Uganda, we shall destroy him more thoroughly and quickly than we did in Teso in 2003 <sup>447</sup> .
<b>2009</b>	With respect to ending years of strife brought on by Kony, a joint force from the Democratic Republic of Congo, Southern Sudan and Uganda launched an attack on Kony in Garamba mainly because of the brutality he was meting out on the people in some areas of the DRC and Southern Sudan. Although Kony was not captured or killed, his infrastructure was destroyed. A number of his commanders were decimated while others surrendered and many abductees were freed.	Kony will never attack Uganda again if he values his own security. The few attacks that Kony is trying out in the DRC will be dealt with by the Congolese Army assisted by MONUC and the UPDF intelligence squads that are there continuing with their work under the leadership of the Congolese army. <sup>448</sup>
<b>2010</b>	It is now clear that Kony's group has now been destroyed and no longer poses any threat to the Ugandan people with the on-going mop-up operations that the Ugandan Peoples Defence Force is undertaking together with neighbouring countries. This marks the culmination of the National Resistance Movement and UPDF's successful war against tumultuous years of grief and wanton mismanagement.	The havoc which Kony occasionally wreaks in Congo or Central African Republic will be stopped. The world should not just sit back and watch. If some of these countries want to help, they should work with us and we shall finish the remnants of Kony. The step the USA Government has taken recently by Mr Obama signing a law authorising the American Government to help in the fight against Kony is a welcome development <sup>449</sup> .

Charles King stated that one of the major problems in resolving civil wars was that, 'war creates special interests...at the extreme parties to the conflict may actually have an interest in

<sup>446</sup> State of the Nation Address (2007).

<sup>447</sup> State of the Nation Address (2008).

<sup>448</sup> State of the Nation Address (2009).

<sup>449</sup> State of the Nation Address (2010).

continuing the conflict'.<sup>450</sup> Although there was no war economy per se in the Central North based on natural resources as was the case in Sierra Leone, Angola, Liberia, Colombia, Cambodia and DRC, all the actors had found avenues to benefit from the continued hostilities. The LRA benefited significantly from the instability which provided them with a livelihood, through the theft of food, money, clothes, females, and livestock. Violence had become a modus vivendi for the hard core elements that saw no advantage of life in civil society. In the bush they could roam freely across borders unrestricted by any government legislation or regulations.<sup>451</sup>

For Museveni's political party the National Resistance Movement (NRM), the violence in Northern Uganda had become politically functional on three levels. Firstly Museveni had been able to consolidate popular support across Southern Uganda, particularly among the Baganda, the most populous and prosperous ethnic group. The Museveni government was the first government since independence that has enjoyed significant support from the Baganda. This is partly due to Museveni's reestablishment of Baganda traditional institutions, especially the Kabaka (king) and partly on the President's skill at playing on Baganda fears that the war in the North spreading southward if not contained.<sup>452</sup> The UNLA defeat by the NRA in 1986 marked a sudden and dramatic change in Uganda's political landscape, with political and military power that had been concentrated among the Acholi, Langi and West Nile of Northern Uganda from 1962 to 1986, shifting to the Bantu South, which has enjoyed all state power up to this day. The fear in the South that an LRA victory would mean a loss of power and return to the old system, was visually depicted in the 1996 NRM presidential electoral campaign poster (see Figure 28 below), which portrayed the skulls collected in the

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<sup>450</sup> King (1997), p. 37.

<sup>451</sup> Interview with Lt.Col Achoka, UPDF Civil Military Relations Officer, Gulu District (1990-present).

<sup>452</sup> Challenges and Change in Uganda, Woodrow Wilson International Centre for Scholars, Africa Program, presentation made 2<sup>nd</sup> June (2005), p. 18.

wake of the Luwero Triangle battles as an iconic image of the 'well known' UNLA brutality against civilians.<sup>453</sup>

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<sup>453</sup> Mwenda and Tangri (2003), p. 542.

32 The New Vision, Friday, May 3, 1996

# THINK



**DON'T FORGET THE PAST:** Over one million Ugandans, our brothers, sisters, family and friends lost their lives.

**YOUR VOTE COULD BRING IT BACK:** In 10 years under Museveni, peace and development has come to our country. Let's keep it.

**VOTE MUSEVENI**  
 • PEACE • UNITY • DEMOCRACY • MODERNISATION

*This advert was sponsored by the Museveni Campaign*

Figure 30

Museveni Presidential Campaign Poster, New Vision, Friday, May 3<sup>rd</sup> 1996

Secondly, the instability was a means to discredit and prosecute opposition party members in order to strengthen the NRM grip on power. Dr Kizza Besigye leader of Uganda's Forum for Democratic Change (FDC) party was arrested in November 2005 and put on trial for treason, concealment of treason, and his 'links' to the LRA and People's Liberation Army (PLA). The government brought former LRA fighters and abductees who had been bribed and coached to testify of their knowledge and dealings with Besigye in the LRA. The charges were designed to stop Besigye and the FDC party from challenging Museveni in the 2006 elections. Thirdly the violence had become an integral part of patron-client relations as budgetary reforms gave donors closer scrutiny of Uganda's expenditure and thereby limited the opportunities for using the formal budget process to finance political patronage, meaning Museveni was increasingly forced to rely on defence and security budgets because of their very large 'classified funds' for political finance. Procurement of heavy and therefore expensive military equipment created the best opportunity to cream off large funds through inflated costs.<sup>454</sup> The defence budget in Uganda thus grew from US\$88m in 1996 to US\$110m in 2001. This explained why in 1990 Museveni supported the Tutsi invasion of Rwanda, the 1998 Uganda invasion of Congo, and why Operation Iron Fist was launched against the LRA in Southern Sudan in 2002 after former British International Development Secretary Clare Short denied President Museveni's request to increase defence spending from US\$110m per annum to US\$157m on the premise that Rwanda planned to invade Uganda.<sup>455</sup>

In addition to the domestic political scene, the civil war played a significant role in the global political arena. Between 1996 and after the September 11<sup>th</sup> attacks in the United States and the declaration of the global War on Terror, Uganda, Ethiopia and Eritrea became frontline states in fighting the Islamic regime in Sudan which had once been a haven for Osama Bin Laden and supported the Al-Qaeda terrorist network. These states thus began receiving \$20 million dollars a year in military aid from the United States which aimed to contain the spread of Islamic extremism in the Horn of Africa. Such diplomatic manoeuvring gave the

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<sup>454</sup> Mwenda in Allen and Vlassenroot ed. (2010), pp. 51-54.

<sup>455</sup> Clare Short's reply to Museveni on 11<sup>th</sup> September (2001), Sunday Monitor, 18th October, (2001).

Government of Uganda carte blanche to pursue military operations against the LRA under the banner of the ‘War on Terror’. The brutality unleashed by the LRA benefited the government, as with this ‘victim’ image came international sympathy whose net effect had two elements: first with increased foreign aid support especially given the government’s economic, institutional and political record in the south and secondly by whitewashing government’s own human rights abuses.<sup>456</sup>

#### **4. Uganda & the IDP Regime**

The Government of Uganda was well aware of the opportunities that the IDP Regime presented for its retention of power. This was first witnessed through the formulation of the national policy for internally displaced persons in August 2004. This was controversial from the outset, because it became a tool for manipulating ethnic politics. It was justified on the basis of a history of violence-induced displacement, which it framed as a historical problem exclusive to the people of northern Uganda beginning with Idi Amin’s dictatorship in 1979, the war in Luwero Triangle between 1981 to 1985, the Allied Democratic Forces insurgency (1994-2001), the present LRA violence, and the perennial problem from Karamoja cattle raiders.<sup>457</sup> The policy written by Lt. General (Rtd) Moses Ali while benevolent in its policy objectives, completely glossed over and fostered a degree of institutional amnesia of the history of government practise of displacement and counter insurgency policies from 1996 onwards in northern Uganda.

Despite this, Uganda received praise from the Representative to the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, in July 2006:

I welcome the adoption of a substantive policy on internal displacement and the first steps taken toward its implementation. As I mentioned during our conversation, in my

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<sup>456</sup> Mwenda and Tangri (2005), pp. 464-466.

<sup>457</sup> National Policy for Internally Displaced Persons, Office of the Prime Minister, August (2004), p. vii.

consultation with government worldwide, I often reference Uganda's National Policy as an example for those seeking to develop their own laws and policies.<sup>458</sup>

The second manipulation of the IDP Regime was in relation to the catastrophic state of affairs in northern Uganda with regard to the failed camp based relief and the unchecked LRA massacres which were met with constant calls and protests by politicians and civil society leaders for the declaration of a disaster zone under a formal state of emergency. In Parliament heated debates emerged most notably from Norbert Mao, an MP from northern Uganda.<sup>459</sup>

**MR NOBERT MAO:** Mr Speaker, in the spirit of your communication from the Chair, which covered a number of issues, I want to let members know that we who represent areas in conflict are very grateful for the work Members of Parliament did towards the end of the last Meeting. Members then unanimously adopted a motion in support of peaceful means of resolving the conflict. They also contributed financially, from their own pockets, towards the humanitarian relief of those who are displaced and who are suffering.

I stand to appreciate that, and to report that the situation has gotten worse. The number of displaced people has now increased to 800,000 and we have more problems in the camps. For instance, last week there were incidents of houses burning. As I speak now, over 1,000 families have no shelter in Pabo camp. Many of the roads, like the road between Lira and Kitgum and that between Gulu and Kitgum, are still unsafe. Despite the need for commerce, fuel in Kitgum is Shs 5,000 per litre, and sugar is Shs 3,000 per kilogram. This, I believe, is the impact that insecurity has brought. While people there were already poor, the situation has gotten worse, and they are being hit harder.

I pray therefore that the Members of Parliament will continue to stand together with Ugandans who are suffering and not politicise humanitarian issues. I am very proud of the spirit in which we parted after the last Meeting. I pray that the spirit prevails, because we intend to bring a motion to declare that area a disaster area, in order to ensure that there is a focus of humanitarian assistance there. We also do hope that the Members of Parliament will continue to support efforts to resolve the conflict by means other than the military. I thank you, Mr Speaker.

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<sup>458</sup> Letter to President Museveni from Representative to the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, 28<sup>th</sup> July (2006).

<sup>459</sup> Official Uganda Parliamentary Hansard, Wednesday 12<sup>th</sup> February (2003).

This was further compounded by the fact that government later declared a state of emergency on two occasions arising from natural disasters with floods in Soroti in 2007 which devastated crops and displaced thousands<sup>460</sup>. Such a move was authorised by the Ugandan Constitution under Article 110 of Chapter 5: Representation of the People<sup>461</sup>, which stated that:

- (1) The President may, in consultation with the Cabinet, by proclamation, declare that a state of emergency exists in Uganda or any part of Uganda if the President is satisfied that circumstances exist in Uganda or in that part of Uganda-
  - (a) In which Uganda or that part of it is threatened by war or external aggression;
  - (b) In which the security or the economic life of the country or that part is threatened by internal insurgency or natural disaster; or
  - (c) Which render necessary the taking of measures which are required for securing the public safety, the defence of Uganda and the maintenance of public order and supplies and services essential to the life of the community.
- (2) Subject to the provision of this article, a state of emergency declared under clause (1) of this article shall remain in existence for not more than ninety days and shall then expire.

However its enactment carried immense political consequences for the President and the international image of Uganda. First, it was tantamount to declaring a complete loss of control which was unthinkable for a fragile state already battling to retain power and guarantee the support of the donors. Second, it would afford Ugandans living in camps in northern Uganda the right to flee across borders to become refugees which was already problematic due to the existence of chronic instability in the states bordering northern Uganda. Third, it placed huge pressure on the state to urgently resolve a conflict that was producing huge political and economic dividends. Thus in order to avoid such a costly endeavour the IDP Regime became the perfect buffer because through the large humanitarian presence government could argue that the situation was under control as NGOs assumed control in the maintenance of concentration camps. Government could thus assuage international criticism by employing

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<sup>460</sup> Museveni Declares State of Emergency, *New Vision*, 19<sup>th</sup> Sept<sup>h</sup> (2007).

<sup>461</sup> Constitution of the Republic of Uganda, Chapter 5: Representation of the People, Article 110: State of Emergency.

the relief industry that would not challenge or expose army atrocities in return for access to a complex emergency that secured donor funds and international status.

## **Conclusion**

This chapter has delivered a brief overview of the conflict and violence in Uganda in order to appreciate the macro-level dynamics of internal displacement within a fragile state which was able to manipulate the IDP Regime to secure its interests. We saw how internal displacement was not simply an outcome of violence and disorder but a government--orchestrated mechanism of population control, which fused with the IDP Regime to create an ambiguous and precarious environment of protection and control. The following chapter will now investigate the micro-level power dynamics of this fusion within the IDP Camps in northern Uganda, to expose how it facilitated conditions of violence, starvation, disease, exposure, and morbidity.

## Chapter Five

### The IDP Regime as Heterotopia

#### *Harmonising Ugandan & Relief Industry Politics*

‘Space is Fundamental in Any Exercise of Power’

Michel Foucault<sup>462</sup>

### Introduction

Humanitarian Space is considered to be a dynamic concept that is not simply a fixed and unchanging spatiality but more akin to an accordion that ‘may shrink or expand in accordance with the policies or actions of local political and military authorities. Rather than simply filling existing space, outside humanitarian institutions it may expand this space through their presence and the international attention they attract’.<sup>463</sup> The Global IDP Regime has today launched the concept and practice of humanitarian space into a new galaxy, with the IDP camp representing the formal handover of citizens and territory of fragile states to the international community for indefinite administration and relief. Up until now in this thesis we have become aware of the history and structure of the IDP Regime. We have also been introduced to the political economy of displacement within Uganda. This final chapter now seeks to carry on the baton by injecting the findings of chapters four and five into the case study of Uganda to subsequently answer the pressing question: What happens when you create an *alternate* bureaucratic category of people, who exist in an *alternate* territorial space within a sovereign state, who are governed by an *alternate* external set of agencies, and who thus employ an *alternate* set of laws and policies? The answer to this is **Heterotopia**, which is a zone of *alternate social ordering* where specific power relations are established and orchestrated with considerable effects.

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<sup>462</sup> Foucault (1993), p. 168.

<sup>463</sup> Minear and Weiss (1995), p. 38.

My overarching contention is to show how the IDP Regime through the Cluster Approach intervention, in essence creates an alternate and permanent space of political and physical limbo that unleashes a gamut of exploitative measures and pathologies, which are themselves implemented and justified as the very ‘solutions’ to the problems of displacement, which therefore suppress any suspicion, protest or call for termination. The chapter will uncover how an indefinite humanitarian economy was created which buttressed and harmonised various interests, with the IDP Camps in northern Uganda becoming free human laboratories for all intervening actors to test their pseudo-experiments and operations, and for the NRM Government to consolidate political power, with all having little or no concern for the catastrophic side effects brought to bear on the 1.8 million displaced people.

### **The Prevailing Narrative**

This chapter seeks to respond and contribute to two sets of literatures. The first set is the empirical literature on the violence and displacement in northern Uganda which while insightful in depicting the multiple actors and political layers, require contextualisation within a broader analytical lens. The first is Dolan’s model of ‘Social Torture’, in which he propagated the accusation of the harmony of interest that developed between the humanitarian community and the government of Uganda which kept 1.8 million people in a permanent state of relief for over 13 years. Dolan’s conceptual framework seeks to establish Social Torture as a continuation of warfare in which IDPs were kept in a justified state of limbo from which they could not work, cultivate, socialise, and live the lives they desired. Instead the conditions of camps facilitated structural violence in which people were debilitated, humiliated, and violated by constant rebel attack, disease, crime, malnutrition, exposure, congestion and continuous fear, all of which are central functions in the practice of torture as defined in international conventions but with notable differences:

Social Torture, by contrast, rather than taking place in very restricted locations in short bursts, is both geographically extensive and time indifferent. The whole environment, in this case both ‘protected villages’ and the war zone as a whole, are the site of torture-all the time. For most people, who have no resources with which to remove themselves

from the war zone, there is no 'outside'. You are not whisked away from your daily life to be tortured; daily life is your torture.<sup>464</sup>

However, while Dolan presented a credible counter narrative which penetrated through the veneer of human rights discourse, his analysis was floating with the events understood as unprecedented and outrageous. It was not grounded as the rational outcome of wider structural forces, which this chapter seeks to illuminate through the lens of the IDP Regime. Similarly Branch's work on northern Uganda recognised the violence to be logical, with the IDP Regime as a contributing factor, however he only attributed significance to the IDP category mentioning it in passing as a neutral, non-political designation that occluded the reason for displacement, leaving it unquestioned, and turns displacement into something that is to be resolved not through a return home but through technical humanitarian intervention to ameliorate IDP suffering.<sup>465</sup>

Finally is Finnstrom's anthropological work to understanding how the Acholi people living in a war torn area were able to construct meaning into their daily lives amid on-going rebel and government attacks. He probed and contextualised wartime rumours as a 'way of coping with the unknown and the threatening, they help people cope with lived uncertainty and stress'.<sup>466</sup> His purpose was to ultimately dispel the prevailing created perceptions of people as perpetual objects of charity, by detailing how people living in war zones are active agents in deriving meaning. Finnstrom discussed the forced displacement and understood it from the testimony and perspective of those living in camps. Like Dolan he recognised that the camps were structures of domination that disrupted everyday life that became intertwined with the government's counter-insurgency strategy.<sup>467</sup> He criticised the humanitarian system which only treated symptoms rather than understanding political crises and grievances. However there was no appreciation of the perceptions and processes of the history and functions of the

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<sup>464</sup> Dolan (2009), p. 14.

<sup>465</sup> Branch (2009), p. 487.

<sup>466</sup> Finnstrom (2008), p. 190.

<sup>467</sup> *Ibid*, p. 164.

Global IDP Regime and how the creation of a bureaucratic category had astronomical consequences.

The second audience I hope to address is the humanitarian community through a re-evaluation of the Cluster Approach, which is assessed primarily as a neutral, technical, and apolitical tool that originally sought to identify and fill gaps in programme areas and coverage; strengthen overall capacity to respond and cutting response time; improve partnerships for humanitarian action, including with the host state; improve standards; integrate cost cutting issues; improve needs assessment, prioritising and strategic planning; and above all, foster predictable and accountable leadership in the field. The final evaluation report by the Humanitarian Policy Group in 2007 vaguely concluded that:

The subsequent summary of findings produced mixed results because while they claim that there despite the initial confusion there has been systemic improvement with clusters 'better able to gather the necessary information on response capacities and gaps...helped foster stronger and more predictable leadership over sectors...'<sup>468</sup>

However, such findings have to be treated with caution because they detract from evaluating and understanding the real and important consequences of this new mechanism. The difficulty arising is that the report employed a one dimensional approach which assumed that everything apart from the process and structure of the humanitarian intervention (which was the target of the Cluster Approach) simply remained constant both during and after implementation. It completely ignores the way in which the Cluster Approach permanently altered the dynamics and landscape of a fragile state embroiled in a civil war. It was treated as a static concept that was designed to originally fulfil the challenges identified by the UN humanitarian reforms of the late 90s, and was simply measured against such a benchmark. Such a condition is akin to doctors assessing the effects of new drugs on patients by only focussing on whether or not they cured or alleviated the pain of given illnesses, but completely disregarding how such drugs altered the patients' physical and mental state and of

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<sup>468</sup> Cluster Approach Evaluation Final Report, Humanitarian Policy Group, ODI, November (2007), p. 1.

the harmful side effects they caused thereafter. So while Cluster Evaluation reports may conclude, for instance, that the ‘engagement of host states has been mixed, and overall has suffered from insufficient emphasis and strategic focus’<sup>469</sup>, they neglect to mention how this particular short-coming impacted on the wider complex emergency. Instead, all that is mentioned is that ‘in complex emergencies, particularly those falling under the ‘forgotten emergencies’ label, the UN is sometimes the only player, with a longer lead time to introduce the Cluster Approach, the UN can play a very close and supportive role with regard to the government at the national, regional and local levels’.<sup>470</sup> The following sections will attempt to provide deeper insights into this shortcoming.

### **Chapter Structure**

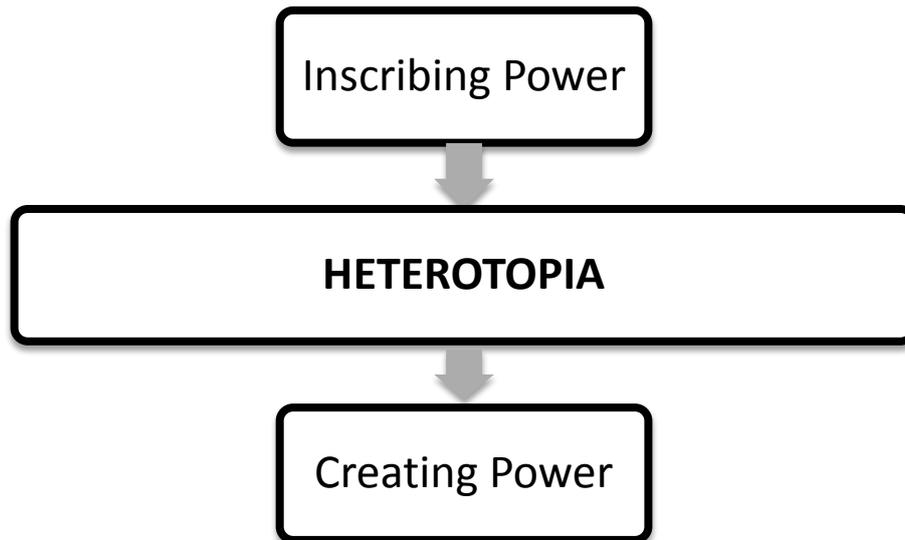
This chapter will be divided into five sections in order to build a detailed conceptual and empirical framework. The first section will introduce readers to the prevailing theories surrounding the sociology of space and its significance in illuminating the diverse activities of discourse and power. It will define a particular conceptualisation of space; that of Heterotopia, with a review of its core identifying features and theoretical debates concerning its relevance. The second section will be a Heterotopology of the IDP camps in northern Uganda, in which each identifying feature will be applied to uncover the tacit operations of power at play. The third section will provide a critical investigation into the overt and covert manifestations and operations of micro politics instilled into the camp space by both the humanitarian industry and the Government of Uganda, which existed under the pragmatic and benevolent auspices of ‘protection’. The fourth section will observe the consequences of such power dynamics which created several vicious cycles that violated, debilitated, humiliated 1.8 million IDPs. The camp dynamics were thus an outcome of NGOs intervening in ways that facilitated themselves, the Government’s retention of power, IDPs coping and adapting to the reality of camp existence, and rebels seizing upon the many opportunities the camp presented in the wake of the abdication of the state security forces. The final section will explore how

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<sup>469</sup> Ibid, p. 2.

<sup>470</sup> Ibid, p. 22.

heterotopias not only involve the spatialisation of discourse, but also the creation of new meaning and power (see Figure 31 below), through the establishment of new barrier restrictions to refugee flows and the construction of the LRA as a violator of human rights. The chapter will conclude with a discussion that seeks to contribute to the grand strategy of rethinking the IDP Regime.



**Figure 31. Function of Heterotopia**

While it may seem elementary and more important to argue that the IDP Regime simply recreates the refugee camp experience within states and therefore disregard the application of Heterotopology as an analytical lens, such an endeavour may prove ineffective in grasping the intricate operations of power at play. Indeed, the overall significance of employing this unfinished and relatively unheard of Foucauldian paradigm for comprehending the true impact of the IDP Regime, resides in the logic that by studying the discourses and emblematic practices which constitute the place of heterotopia and cement its social identity at the micro level within camps, we should thus be transported back to the overarching macro schema of political practices and discourses of fragile states, the humanitarian industry, and international organisations, who all seek to transpose their own rationalities of power into material practice.

## **1. Space, Discourse & Power**

Before plunging into an all-out dissection of the IDP camp, it is important to cradle the analysis within the wider theoretical discussions surrounding social space. In the last forty years social theory has stretched its tentacles into the realm of social space with the sociology of space becoming a fulcrum for understanding the prevailing issues of social change, modernism and post modernism, consumption, power, inequality and political and cultural resistance, to name but a few.<sup>471</sup>

It thus follows on, that we must now consider the central role played by space in directing practices of subjectivity and power, because as Hook illuminates, 'To demarcate a place is also to demarcate an appropriate regime of behaviour and practice, a particular order of materiality. The identity and functionality of a place is hence importantly tied to forms of social practice, to the types of knowledge it engenders, that 'reside' within it, and which its space puts into play'.<sup>472</sup> In keeping with this a slew of human geographers have sought to theoretically relocate and re-substantiate the importance of space away from the hegemony of 'physicalist' understandings. For Henri Lefebvre space was political and ideological as in the case of the state:

Space is never produced in the sense that a kilogram of sugar or a yard of cloth is produced. Nor is it an aggregate of the places or locations of such products as sugar, wheat or cloth. Does it then come into being after the fashion of a superstructure? Again no! It would be more accurate to say that it is at once a precondition and a result of social structures. The state and each of its constituent institutions call for spaces- but spaces which they can then organise according to their specific requirements; so there is no sense in which space can be treated solely as an a priori condition of these institutions and the state which presides over them.<sup>473</sup>

Following on from this is the need to disentangle notions of place from that of territory as what gives a place its characteristics are the many social relations, processes, experiences and understandings constructed and articulated within that particular locus.<sup>474</sup> This echoes Soja's

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<sup>471</sup> Hirst, (2005), p. 170, Tuan (1977), p. 113.

<sup>472</sup> Hook (2007), p. 179.

<sup>473</sup> Lefebvre (1991), p. 85.

<sup>474</sup> Massey (1994).

notion of 'Spatiality' which is particularly useful for this discussion as he directs us to consider a separation between space per se, space as a contextual given, and socially-based spatiality, which is socially organised and produced. This social creation of space requires us to jettison ideas of space being a simple white canvas on which actions of groups and institutions are inscribed, to consider 'socially produced space as a created structure comparable to other social constructions'.<sup>475</sup> Spatiality thus becomes *discursive* because in being a social construction, it is permeated by socio-political and historical relations of power. An interesting example of this is the common sense notion of 'the field' central to the work of donors, aid agencies, researchers and journalists. The 'field' which is an artificial construction of a physical space marked off for a period of time by ethnographers and the like, can include as well as exclude, the subject of which is seldom addressed.<sup>476</sup>

### ***2.1 Unpacking Heterotopology***

In March 1967, Michel Foucault, in a public lecture to architecture students, introduced what he termed as 'Des Espace Autres' / The Other Spaces or Heterotopia. Originating from the study of anatomy and used to refer to parts of the body that were either out of place, missing, extra or alien (tumours), Heterotopia are understood as 'other' spaces, that is 'spaces of alternate social ordering' which pose particular organised identities and functions within society (prisons, cemeteries, schools, mental asylums, museums, hospitals, libraries, monasteries and airports may all qualify as heterotopia). According to Foucault, the role of Heterotopia is either to create 'a space of illusion exposing real spaces still more illusionary, or to create another space as perfect, as meticulous, as well arranged, as ours is messy, ill constructed, and jumbled'.<sup>477</sup> Foucault established a set of characterising features for describing heterotopia which act as both a criteria for identification, so as to differentiate what might qualify a heterotopia from what does not, and second as a means of igniting analytical observations regarding the micro politics of unique spatialities. It is important to first review

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<sup>475</sup> Soja (1980), pp. 79-80.

<sup>476</sup> Katz (1994), p. 67.

<sup>477</sup> Hook (2007), p. 183.

these charactering features before grafting them to a striking example of a space of alternate social ordering, in this case the IDP Camp.

Heterotopia exist in two forms: one of crises which are privileged or forbidden places reserved for individuals or populations in a state of turmoil, fragility or collapse (refugee camps, concentration camps, leper colonies). The other is one of deviance where individuals who manifest behaviours that deviate from acceptable standards of a society reside (rest homes, reformatories, psychiatric clinics, prisons). These two facets further reflect their differential quality and *otherness*, which enriches the critical perspectives they offer.

The special nature of time distinguishes and accentuates heterotopia because they do not conform to 'traditional' or 'normal' practices of time. For example, one only has to observe the nature of time in an airport where the constant knowledge and visual presence of time regulates all activities (check in, arrivals, departures, transit, security control, boarding, and air traffic control) which is at the heart of the continuous movement involved in travel. This is in sharp contrast to the nature of time in a cemetery where it has virtually stopped and is even non-existent due to the stillness and inactivity of its residents and visitors. This is further in sharp contrast to the nature of time in a museum, in which several time periods exist at once due to the principle function of a museum which is to capture in one single space multiple exhibits from different historical periods.

Heterotopia contain systems of opening and closing, which both isolate them and makes them penetrable. They do this through the maintenance of barriers, boundaries, and gateways that prohibit anonymous entrance. For Foucault this is the most palpable manifestation of power, as access is not by will alone but includes forms of submission or numerous rites of exchange. For example, entry to a prison requires visitors to report to a central location where they are issued identification cards and are searched for contraband. Entrance to libraries, cinemas, and museums requires the immediate submission to specific rules and regulations, which

include adhering to silence and the prohibition on food consumption and use of photography among other things.

Heterotopias manifest utopian qualities which essentialise their 'alternate ordering'. Whereas utopias are ideal and fantastical sites that have no real tangible presence (Heaven, Garden of Eden), heterotopias are 'real sites' of 'effectively enacted utopias', they are 'the potentially transformative spaces of society from which meaningful forms of resistance can be mounted. These are the places capable of a certain kind of social commentary, those sites where social commentary may, in a sense, be written into arrangements and relations of space'.<sup>478</sup> Heterotopias relate to other surrounding spaces to create contrasts and differences which work to construct social and cultural meanings. Such a practice is termed juxtaposed incompatibilities. Heterotopias never exist in and of themselves and will always have this external function which is not necessarily overt but which is critical to highlighting their 'otherness'. As Hetherington makes clear 'It is the heterogeneous combination of the materiality, social practices and events that were located at this site and what they come to represent in contrast with other sites, that allow us to call it heterotopia'.<sup>479</sup> Such juxtaposed incompatibilities also work internally within the heterotopia in their day to day functioning, which creates a further avenue for critical reflection.

The last identifying component for which its analytic usefulness lies is similitude, which works to mirror specific aspects of society with the hope of offering alternate methods of ordering them that either builds, destroys or regresses back to previous norms and values. According to Foucault, 'The real effective spaces which are outlined in the very institution of society...which constitute a sort of counter-arrangement, [an] effectively realised utopia, in which all the real arrangements that can be found within society, are at one and the same time represented, challenged and overturned'.<sup>480</sup> This is evident in places of religious worship (churches, mosques, synagogues, temples and shrines) where everyday life is mirrored

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<sup>478</sup> Ibid, p. 185.

<sup>479</sup> Hetherington (1997), p. 8.

<sup>480</sup> Foucault (1997), p. 352.

through the religious values which attempt to elevate it to higher levels of meaning and existence. So the alternate ordering is observed in representing, challenging and overturning society's notions of love, forgiveness, work, friendship, sex, family etc. which feel different because they now have to be measured and practised in accordance to the supernatural status they are awarded. This is significant because it raises questions that reveal embedded power dynamics. Why should there be an alternate ordering in a particular way and not another? What are the real agendas behind such an alternate ordering? Who is the actor attempting to re-order society?

### ***1.2 Points of Clarification***

There are three clarifications which should be made regarding the application of Heterotopology. The first is that while heterotopia may appear to share many of the traits of what Agamben classified as the 'State of Exception'<sup>481</sup>, it has a number of differences which set it apart. The state of exception is a condition enacted by a sovereign state to counter a clear and present danger for which the law may have to be broken in order to be protected, as according to Walzer's notion of the Supreme Emergency, when 'the danger must be of an unusual and horrifying kind'.<sup>482</sup> When manifested in the form of concentration camps, extra-judicial detention centres, and airport hotels where would be migrants reside while awaiting deportation, Agamben argues that they are not an extension of the law, but a space that is extra-territorial to the law- a space where the law is suspended.<sup>483</sup> Now while this condition clearly reinforces and creates discourses of power between state and society which can be manifested into space as in creation of concentration camps, it differs from heterotopia in that it is an extraordinary and temporal measure designed to abate a threat in order to return society back to 'normality' or the pre-threat status quo. Heterotopias however, seek to transform and overturn the normal operations of the existing status quo, and can be normalised over time into the idiosyncracies of society. For example, a reformatory or prison

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<sup>481</sup> Agamben (2005), p. 2.

<sup>482</sup> Walzer (1992), p. 253.

<sup>483</sup> Agamben (1998).

is a response to a crisis of crime and disorder that purports to transform and rehabilitate offenders. The second clarification is a response to a number of criticisms levelled against the usefulness of heterotopology. Genocchi raises a fundamental issue relating to an inherent contradiction of the concept:

How is it that we can locate, distinguish and differentiate the essence of this difference, this ‘strangeness’ which is not simply outlined against the visible...how is it that heterotopia are ‘outside’ of or are fundamentally different to all other spaces, but also relate to and exist ‘within’ the general social space/order that distinguishes their meaning as difference?<sup>484</sup>

In response, the most important application of heterotopia rests in analysing how space is a form of discourse and therefore the concept has to be treated as a methodology, rather than simply the identification of an absolute concrete spatiality. Hook applied the notion to South Africa’s growing gated communities, where fear of crime became a powerful justification for the removal of the white middle class from the new (black controlled) South Africa, into protected settlements that boasted a secure, luxurious, utopian setting, juxtaposed against the damaged, poor, and hazardous surroundings townships, which ultimately revived and perpetuated the many privileges they enjoyed during the Apartheid era.<sup>485</sup> Thirdly heterotopia has no absolute universal model, because bound spatialities change over time in form, function and meaning according to a particular ‘synchrony of culture’ and moment in history when they are formed, which makes them indexes of historical change more generally.<sup>486</sup>

## **2. A Heterotopology of the IDP Camp**

Having introduced the notion of heterotopia, it is necessary to now apply it to a particular confluence of space and power, namely the IDP camps in northern Uganda.

### ***2.1 Displacement Crisis***

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<sup>484</sup> Genocchio in Gibson and Watson ed. (1995), p. 38.

<sup>485</sup> Hook (2007).

<sup>486</sup> Soja (1995), p. 15.

Given that internal displacement has become the ‘new’ crisis of the 21<sup>st</sup> century as shown in chapters one and two, there is little doubt that the IDP camp qualifies as a heterotopia. This is exemplified in the Camp Management Toolkit:

Camps exist to ensure that the basic human right to life with dignity is upheld for displaced communities. Camp management best practice is based on an understanding that all activities in an camp should be undertaken with the core aims of ensuring the protection of the camp population from abusive or degrading treatment and upholding their rights, including to food, shelter, health care and family unity.<sup>487</sup>

This characteristic of the heterotopia, that it is a spatial answer to a social and political problem, seems to be exactly what provides the IDP camp with the pragmatic rationale for their elaborate control of space. This quality of offering a spatial solution also provides the IDP camp with a precise and well-defined function within society, a function that, in Foucault’s terms, should prove emblematic of presiding structures of power. Indeed one of the strengths of Foucault’s analytics of heterotopia is the way it forces one to overturn routine explanations of pragmatic function in order to facilitate critical reasons fixed to broader socio-political agendas. This leads us to query how the rationale for ‘temporary’ camp based emergency relief delivery becomes a powerful warrant to commence development projects that seek to restructure peasant society, with humanitarian agencies engaging in state building projects which dwarf their mandates and budgets. Or secondly, how the state which claims to lack the capacity and responsibility to protect its own citizens, (which is the rationale for the IDP Regime) can displace them into camps where the security organs are fully present (see Figure 48 at end).

The IDP camp presents us with a paradox because while displacement is a state of crisis, it has now become its own solution. The IDP camp which has been shown to be an effective tool of population control by state security forces, has now become an effective tool in ending the suffering of displacement by further displacing people into camps. Here it is critical to reiterate that the IDP camp serves a series of functions providing not only the immediate

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<sup>487</sup> Camp Management Toolkit, Chapter 1, p. 24.

relief from the effects of war, but the complete livelihood provisions entitled to citizens in conditions of peace, all of which are controlled and guaranteed by an exclusive club of international agencies. Such organisations are presented to have nothing but the complete ‘care’ and ‘welfare’ of IDPs at heart:

For a Camp Management Agency every intervention in the daily life of a camp, or camp-like setting-whether, for example, repair of shelter roofs, setting up of a pre-school or distribution of commodities- must be done in such a way that camp residents’ vulnerability to violation, deprivation and dependency is reduced and opportunities to enjoy their rights and participate meaningfully and equitably are maximised. Likewise, it is the duty of the Camp Management Agency to ensure that while displaced persons are staying in a camp they receive legal recognition and protection, through registration, issuance of birth and death certificates and assurance they will not be forced to return home against their wishes before it is safe to do so.<sup>488</sup>

There exists here a tactic of conflation in which humanitarian intervention, development, counter-insurgency, relief supremacy, vulnerability, and human security, are all carefully collapsed into the universal and unquestionable discourse of ‘protection’. This works to the benefit of a number of actors as will be discussed in later sections.

## ***2.2 Separate Humanitarian Space***

The IDP camp represents a separate locality of protection where citizens first relinquish their status to take on the new bureaucratic category of IDP. This is in line with what Malkki observed in refugee camps where they were ‘produced as a collective object’ through all the techniques of control which include control and monitoring of mobility, tours by government officials, reports and project evaluations, media coverage, and visits from donors<sup>489</sup>. In IDP camps NGOs now take on the functions of the state in the processing and handling of citizens under their supervision:

In most planned camp situations, a camp’s population will be established through an organised registration and referral system in cooperation with the national and local

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<sup>488</sup> Camp Management Toolkit, Chp 1, p. 24.

<sup>489</sup> Malkki (1995).

authorities and the Camp Coordination or Sector Lead Agency...This information forms the basic demographic database for overall camp population figures throughout the life of the camp and should be updated regularly to reflect births, deaths, arrivals, departures and other fluctuations in the population.<sup>490</sup>

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NAME		SEX		AGE		VILLAGE OF ORIGIN						17
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<sup>490</sup> Camp Management Toolkit, Chp 2, p. 58.

### Figure 32. WFP IDP Household Card

IDPs were issued with household cards by the World Food Program, which stated their district, village of origin, camp of residence, household size, and the food entitlement holder (see Figure 32 above). While such procedures may seem essential to the smooth running of relief delivery, it ultimately cemented IDPs as a different category of people who were now entitled to a raft of services and benefits within a different territorial space, which they would not otherwise have received outside the camp as citizens. This is further compounded by the IDP policy created by the government in 2004 which distinguished IDPs from the rest of the ‘non-displaced’ population stating that:

Local Government shall issue to IDPs all necessary documents to enable them to realise full enjoyment and exercise of their rights. In particular, the authorities shall facilitate issuance of new documents or replacement of documents lost in the course of displacement.<sup>491</sup>

A Camp Management Agency can help to improve the population’s overall standard of living and support positive livelihoods strategies by identifying and coordinating with relevant agencies to provide skills training, agricultural support, where appropriate, and income generating projects. These should be based on a participatory analysis of the social, economic and environmental context of the camp population and the local community.<sup>492</sup>

For IDPs living in northern Uganda such organisation of humanitarian space had both a positive and negative impact, as not only were they completely isolated and virtually hidden from public gaze, their humanitarian carers became their only lifeline within their own state borders, as one camp commander informed me that:

They [aid agencies] brought a sense of hope and care, with a degree of security through providing for our basic needs and monthly interactions to become the mouthpiece for

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<sup>491</sup> The Republic of Uganda, The National Policy for Internally Displaced Persons, OPM, August (2004), p. 24.

<sup>492</sup> Camp Management Toolkit, Chp. 18, p. 561.

the people in parliament. Aid agencies were getting facts and communicating to the outside world. However there was very little they could do the problem was too big. They came in to build classrooms and health centres and execute what government could not do. We were relying on them more than government.<sup>493</sup>

### *4.3 Contradictions of Time & Space*

When asked, IDPs would often comment how time functioned differently in camps with the average day as follows:

5.30am-9.00am: Wake up and move around the camp gathering information on security and general issues which needed to be handled.

9.00am-3pm: People would be permitted to leave the camp for cultivation in small gardens, nearby; small business within camps would open selling various everyday items. Many IDPs would begin drinking, socialising, and preparing food.

5.00pm onwards: All IDPs were to be indoors, with no movement around or within the camp. All socialising was forbidden, with enforced silence and darkness within huts throughout the whole night.<sup>494</sup>

Time functioned in two distinct ways within the camp which both revealed and accentuated the power dynamic imposed within the space. First it was heavily controlled and regimented by the military. The Project Officer for Caritas at the time revealed how, ‘bells were placed in camps to mobilise people for particular times including security, food distribution, or addressing a particular issue. Large rims were used and when they rang especially during food distribution people ran in desperation dropping whatever they were doing to rush for relief’.<sup>495</sup> People woke up, worked, ate, socialised, and slept at designated times decided by the military, and during rebel attack people would stop all movement and lie down.<sup>496</sup> In contrast, time had virtually become non-existent, which was a result of the infinite space created by the camp based relief and the anxiety and fear caused by the threat of imminent rebel attack felt by all. It felt different during day and the night as one camp commander

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<sup>493</sup> Interview with Mr Christopher Okot, Camp Commander for Alero and Langol (2002-2007).

<sup>494</sup> Interview with IDP Camp Dweller Sandra Acham, Pader, (2006-2010).

<sup>495</sup> Interview with Paul Rubakene, Project Officer Caritas Gulu branch (2000-2004).

<sup>496</sup> Interview with Lemoi Dennis, Camp Commander of Pajak IDP camp (1996 to 2007).

commented, ‘you wanted it to remain daytime because you could see activity, but the day would move fast. Night was a problem because of the recurrence of fear’.<sup>497</sup> This feeling of time was as a reflection of the complete absence of the everyday lives people had lived in homesteads where they had been in control. Time felt static because people were not cultivating, schooling, or engaging in Acholi culture. All had been replaced by the humanitarian community who were now providing all livelihoods and by the collapse of virtually all cultural structures and norms due to the instability and with no definitive date as to when displacement would end from the government.<sup>498</sup> The Acholi people were in a state of limbo, ‘with no sequential flow of living, with people just kept in a corral with no freedom of movement, there was no progress as you could not go home and cultivate and raise children’.<sup>499</sup>

#### ***2.4 Juxtaposed Incompatibilities***

Heterotopias yield a variety of contradictions and paradoxes which make them important focal points of critical analysis. Such juxtapositions work both internally (within its own contrary representations and conditions of space and time) and externally (with reference to its surrounding spaces). Firstly the IDP camps were presented as havens of perpetual protection. The utopian rhetoric of heterotopia is evident in the description of one aid agency manual and report, in which the camp and all its operations create the presence of the perfect archetype of a functioning state with all its attendant goods and services provided to its citizens. According to UNHCR,

Well managed camps and camp-like settings can strengthen physical, legal and material protection, and security. They also facilitate access to humanitarian assistance, including food, clean water, life-sustaining commodities, medical services and education.<sup>500</sup>

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<sup>497</sup> Interview with Camp dweller Paul Oduny, Pabbo IDP Camp (2001-2008).

<sup>498</sup> Interview with Camp dweller Olanya Morris, Paicho camp (1996-2010).

<sup>499</sup> Interview with Camp dweller Cecelia Onen, Lalogi camp (1997-2009).

<sup>500</sup> UNCHR, Handbook for the Protection of Internally Displaced Persons, Guidance Note 12, p. 154.

The camp supersedes anything IDPs could have had during ‘peacetime’, by elevating them to a state of development beyond their current peasant/feudal existence to the realms, norms and practices of the information age. The utopian rhetoric is even more present, perhaps unsurprisingly, in the Camp Management Toolkit:

Displaced people, who have suffered direct losses of their productive, economic, financial, and social assets, through natural disaster or conflict, have the right to protect, recover, improve and develop their livelihoods. In a camp setting where communities are largely dependent on the assistance and services of others to fulfil their basic needs and rights, this is particularly important. Livelihoods contribute to food security, prevent dependency, reduce vulnerability, enhance self-reliance and can develop or build a set of specific skills during displacement which may have a positive impact on their well-being and future opportunities.<sup>501</sup>

Bearing in mind that the heterotopia are sites of ‘alternate social ordering’, what is the broader pattern of socio-political rationality that might be read out of the spatiality of the IDP camp? This creation of a separate world, a new social, moral, and political enclosure that departs from the existing broken, are attempts by the international community at ‘reforming’ through the hand-over of citizens to relief industry which has a colonising activity of civilising and elevating pre-industrial peasant societies into the modern age. This begs two fundamental questions, firstly given that the colonial experience embedded systems of exploitation and manipulation under benevolent and utopian rhetoric, how are donors and NGOs benefiting from the camps and this expensive ‘reordering’ of fragile societies? Secondly, given the uniqueness and complexities of civil wars and the hopes by NGOs to standardise intervention mechanisms, what do international donors and NGOs know about the everyday lives and needs of IDPs, which the displaced people do not know themselves, and therefore require highly paid ‘experts’ to come and teach them, in order for them to live better lives?

## ***2.6 Disqualifying the Exterior***

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<sup>501</sup> Camp Management Toolkit, Chp.18, p. 561.

As in the case of heterotopias, IDP camps promote themselves as the closest possible realisation of certain social, political and moral ideals. This is not only the case in terms of how they promise the full gamut of protection mechanisms within the inner space, but also in terms of how outside space comes to be constructed. Outside the camp was cast as a dangerous and lawless environment because of the war, sporadic LRA movement, and marauding criminal bands all of which was irrefutable, due to the countless aid agencies present, the continuous global news reportage of the war, heart rending stories from rebel victims, and a heavily militarised region, some of which was captured in the testimonies and drawings of former child soldiers and abducted children (see Figures 33 below)<sup>502</sup>:

In our village, we realised the rebels were coming, and my whole family hid in the bush at night. At dawn, we thought they were gone, and I went back to the compound to fetch food. But they were still there, and they took me. It was very fast. The rest of my family was still in hiding. The rebels had already abducted about a hundred children, and they had looted a lot of foodstuff. But they would just give you only very little food to keep you going. I saw quite a number of children killed. Most of them were killed with clubs. They would take five or six of the newly abducted children and make them kill those who had fallen or tried to escape. It was so painful to watch. Twice I had to help. And to do it, it was so bad, it was very bad to have to do.<sup>503</sup>

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<sup>502</sup> Broken Childhood, Children Abducted by the Lord's Resistance Army, Concerned Parents Association.

<sup>503</sup> The Scars of Death, Children Abducted by the Lord's Resistance Army in Uganda, Human Rights Watch/Africa, September (1997).

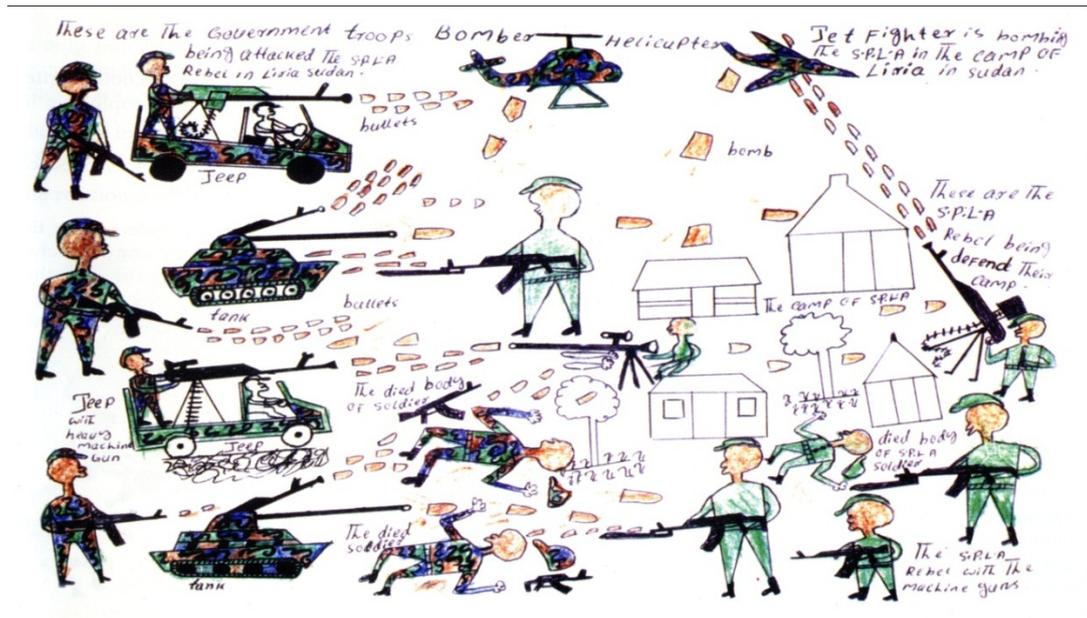


Figure 33. Drawings by abducted children of northern Uganda

## Kony



The external environment was so horrific that it justified the employment of the camp and could easily deflect and neutralise the deluge of criticisms of malpractice by NGOs and government, with the famous phrase that ‘something must be done’, which rested upon the notion that even a modicum of relief could have a positive impact regardless of whether it caused twice the suffering in return, as will be shown in later sections. The external further placed the camp as the only moral response for an international community reluctant to walk

away and ignore chronic human suffering. Inaction was simply not an option and was a factor which received the proportions of heavenly truth since the failures in Rwanda and Bosnia, and in the case of Uganda was cemented by Egeland's rallying cry to the UN Security Council in 2006.

Camps were thus presented as organised spaces of peace and refuge that contained administrative structures of zones with leaders that could maintain order, regulate the masses in times of relief delivery, and facilitate information dissemination. All of which created the picture of an island of peace and hope surrounded by an ocean of chaos. This was further evident in the labelling of camps as 'Protected Villages' by the government which rendered the external areas as 'unprotected' and instilled the feeling of a continuation of 'village' life amid the insecurity from which many people had lost entire livelihoods.

### **3. Inscribing Power into the Camp Space**

It is now important to understand what the application of the analytics of heterotopia helped to show about the IDP camp as we have here behind the façade of pragmatic necessity, a set of co-ordinated operations of power, as the surreal promise of infinite protection seem just too good to be true, with a series of social contradictions. From the initial discussion, one begins to feel that the driving force behind the establishment and running of IDP camps may be less about providing protection to destitute vulnerable people and more about inscribing and sustaining the interests, privileges and prerogatives of the humanitarian industry and fragile states, into physical space to the point where responsibility to *protect* becomes opportunity to *control*. This is the case considering the camp space was an ambiguous structure in that it was housing citizens who held an alternate legal status within the borders of the state.

The IDP camp must also be considered to be an arena which had the capacity to become *anything* and *everything* to any intervening actor wishing to control, exploit, defraud, challenge, and overturn the status quo, and who simply needed to first declare their intention of IDP protection to thus enter. This resulted in the camp possessing multiple layers of

contradictory and competing structures which brought their own pathologies to the collective arena. The camp space was able to house and sustain a coexistence of humanitarian relief operations, development projects, counter-insurgency operations, a zone of social breakdown and deviance, a political party forum, a prison system, a battleground for rebel punishment, recruitment and supply, and a media spectacle. All of which resulted in 1.8 million IDPs experiencing the consequences of each concurrently.

The Cluster Approach which was predicated on the notion that humanitarian agencies could be streamlined to become more predictable, organised, co-ordinated, accountable and efficient instead simply made it more efficient for NGOs to co-ordinate and manage exploitation, corruption, and mismanagement<sup>504</sup> as the following section will argue by implementing Prendergast's conceptualisation of the *Seven Deadly Sins of Aid in Complex Emergencies*.

### ***5.1 Institutionalising Relief Politics***

As we saw in chapter four the creation of a lucrative humanitarian economy is the primary unspoken objective of many aid agencies which is glossed over by charitable statements evident here in the ICRC's Logistics Field Manual:

The primary aim of relief operations in conflict situations is to protect the lives of the victims their moral and physical integrity, and to ensure that displacement and internment and the consequences of disease, injury or hunger do not jeopardize their future. When we plan humanitarian aid it is not a partisan or political act and our action should not be viewed as such.<sup>505</sup>

As a number of scholars have recognised, the reason why assistance programmes in war zones often 'fail' to improve the lives of those affected resides in the fact that NGOs have greater interests in sustaining their livelihoods with high salaries in secure well-resourced compounds.<sup>506</sup> This was evident in the utopian rhetoric of the camps which buttressed the tactic of conflation, in which large aid worker salaries, ad hoc interventions, subjugated

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<sup>504</sup> Norbert Mao, NGOs have to change the way they operate, Letter from Gulu, Commentary, *The New Vision*, September (2006).

<sup>505</sup> ICRC Logistics Field Manual, 2004, Section 1.2 WFP Agreement (1996).

<sup>506</sup> De Waal (1997), p. 148-150.

masses, and a protracted and profitable war could all be couched in appeals to humanity, rights, protection, and livelihoods of IDPs. Norbert Mao the former District Chairman for Gulu summed up northern Uganda as follows:

There was a humanitarian bubble with millions spent and *everybody* becoming a beneficiary and cashing in. The army whose job it was to provide security was sub-contracted to provide security to NGO convoys. Government and civil society officials were being ‘facilitated’ with all expense paid overseas visits to proclaim and lobby the suffering of the Acholi to foreign parliaments, universities, and donor conferences. Senior military officials were renting out property and land to NGOs. The media was receiving huge amounts of money for countless advertisements and radio broadcasts on the war and relief situation. Local suppliers of all products (corn, transportation, hospitality) would inflate prices above market rate. Planes would be chartered from Kampala for politicians to come and engage in disaster tourism. There was a tacit understanding by all actors that you simply played along with the charade.<sup>507</sup>

An interview with a former senior Save The Children worker revealed how donors would send money together with their own staff to manage that money through the creation of director positions that paid \$8,000 per month and \$1000 on rent. There were some fifty 4x4 vehicles for projects across northern Uganda and in cases of poor road network, staff would travel by chartered planes. The project costs for the month of November 2006 was 381 million Uganda Shillings, but the administration costs for that month was 302 million Uganda Shillings. Local staff became emboldened as they were undertaking all the donkey work compared to their international counterparts from Denmark, Norway and the UK. Anonymous letters of dissent began appearing after staff numbers were cut back due to the overhead costs which had become larger than the project between 2008 and 2009.<sup>508</sup> Such stories were very common as a breakdown of some NGO budgets from the 2006 Consolidation Appeal Process (CAP) compared the total budget to the administration costs revealed (see Table 16 below).

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<sup>507</sup> Interview with Norbert Mao, Former District Chairman of Gulu, 6<sup>th</sup> October (2011).

<sup>508</sup> Interview with Florence Ochola, Save The Children (1999-2010).

**Table 16**  
**UN CAP 2006**

<b>NGO</b>	<b>TOTAL BUDGET US\$</b>	<b>ADMINISTRATION COSTS US\$</b>	<b>% OF TOTAL BUDGET</b>
<b>Cooperazione Italiana Nord Sud (CINS)</b>	410,883	183,883	44
<b>German Agro Action (GAA)</b>	200,000	70,000	35
<b>UN FAO</b>	497,000	257,000	51
<b>UN OCHA</b>	3,874,903	2,573,768	66
<b>UN HABITAT</b>	450,000	200,000	44
<b>UNAIDS</b>	288,000	90,000	31
<b>Christian Children's Fund Inc</b>	642,371	198,000	30
<b>Mercy Corps</b>	411,000	178,180	43
<b>Cooperazione Internazionale (COOPI)</b>	2,000,000	500,000	25
<b>UN OHCHR</b>	1,628,000	981,600	60
<b>Norwegian Refugee Council (NRC)</b>	770,000	400,000	51
<b>Population Services International</b>	1,443,235	390,000	27

The danger of such a situation was that it created the necessary conditions to assuage and mitigate cognitive dissonance arising within the relief industry. Marriage, in her study of relief assistance in Sierra Leone, Congo & Rwanda observed how NGOs employed several tactics to cushion the negative effects of their interventions. She showed how:

Assistance is a game in that it attaches disproportionate and symbolic significance to some events and people, and uses these to distract attention from others. It is recreational as it does not realistically address suffering, and in that this is known by

the people who control it'<sup>509</sup>. One of the tactics used in this game was fantasy which 'involves denying reality...the discourse of assistance does not simply overlook uncomfortable aspects and rebuff charges but also generates 'place' proactively to protect itself, whatever the reality.'<sup>510</sup>

Protection in northern Uganda became an elastic concept with no real indication as to how it would reduce civilian exposure to the risk of rebel attack or the camp conditions. For example NGOs would report how their child protection activities included 'peace building training for teachers' and 'training for young mothers in bricklaying' and in many cases it simply meant being nice to children rather than delivering any hard services.<sup>511</sup>

In 2007 the Spain division of Medecins Sans Frontieres (MSF) became embroiled in a scandal with the local government of Gulu district, who had forced them to terminate all operations and leave the region. The quarrel revolved around the malpractice of MSF Spain within the IDP camps, where it was learnt that they had been administering paediatric drugs for tuberculosis to adult patients by simply doubling the dosage, which contravened Uganda Health Authority regulations. They had also refused directives by the District Chairman Norbert Mao to cease building latrines within camps and instead commence their construction in village areas of IDP return. In their defence MSF complained directly to central government and invoked humanitarian values to de-campaign Mao, by claiming that he was hindering protection and their 'life saving' operations.

A similar tension occurred with American Refugee Committee (ARC) who was also dismissed from Gulu by Mao due to their reckless conduct. ARC had been engaging in a controversial project to combat domestic violence in camps which involved the creation of a hotline for battered women to call and then be transported with their children away from their violent partners to lodges in town, where they would remain for two weeks receiving counselling and assistance. However, upon return many would find themselves rejected from their homes by their partners who had found new wives, and had told them 'to return to their

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<sup>509</sup> Marriage (2006), p. 176.

<sup>510</sup> Ibid, p. 189-190.

<sup>511</sup> Dolan and Hovil (2006), p. 10.

humanitarian carers'.<sup>512</sup> Such an incendiary intervention was not sensitive to the dynamics within Acholi culture, and was simply an intrusion of Western rights and norms into peasant society. Similarly many interventions had outcomes with relief and development projects that exclusively targeted women and resulted in high levels of domestic violence, arising from emasculated males who saw their wives and partners usurp and undermine their unquestionable control of the household. In addition ARC were charged with violating employment codes of conduct with the mistreatment of local staff who were lower than their international colleagues regarding salaries and conditions of work.<sup>513</sup>

Besides these, one of the most horrific but seemingly benevolent interventions conducted by humanitarian agencies to 'improve' livelihoods, was the World Vision/ USAID Food Security Project, which involved the creation of demonstration sites around camps to 'educate' and assist IDPs in the 'correct' agricultural techniques for the seeds and tools they were being allocated. However, this project became incorporated into the relief economy, with World Vision selling the mega tons of beans and maize produce to the World Food Program for distribution to Sudanese refugees. They stated very enthusiastically that:

WFP and World Vision would like to...encourage the people of Gulu and Kitgum to follow this example that will lead to self-sustainability. WFP and World Vision will continue supporting efforts of the Acholi people to develop Gulu and Kitgum districts. Development that will help build peace and understanding in the north and in Uganda.<sup>514</sup>

The implicit message was clear; IDP's deprivation was their own fault, and if only they acquired modern farming skills they would be 'self-reliant' and 'prospering'. Such a programme had a complete disregard for human rights, as IDPs who were imprisoned in concentration camps, and were themselves recipients of food aid, and whose problem was not the lack of cultivation skills but access to land, were being made to grow crops for refugees in

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<sup>512</sup> Interview with former District Chairman of Gulu, Norbert Mao, 6<sup>th</sup> October (2011).

<sup>513</sup> Gulu District Authority Letter of dismissal to American Refugee Committee, December (2009)

<sup>514</sup> Dolan (2009), p. 128.

camps elsewhere.<sup>515</sup> Government in addition glossed over such violations by presenting them as the actual ‘benefit’ and ‘cure’ to displacement:

Government in partnership with WFP provides 90% of the food needs of the IDPs (Government 15%, WFP 75%). Government in addition, supports food production around the IDP camps by deployment of UPDF and Auxiliary Forces to a radius of 3 km around each camp and two km along the roads thus making IDPs capable of accessing production land to meet up to 26% of their food needs. This is the reason why some IDP camp populations have some food for sale at markets. In the past 18 months Government and WFP provided IDPs with 143,210 metric tons of relief food.<sup>516</sup>

The above two cases illustrate *Sin 7: lack of accountability & professionalism* which the camps fostered as ‘the proliferation of agencies creates huge discrepancies in the agencies’ adherence to basic humanitarian principles...the less of a stake communal structures have in a given response, the less accountable that response will be’.<sup>517</sup> A larger schema of pathologies were ordained in camps which became a hub for ghost NGOs, ghost beneficiaries, ghost project proposals, and ghost projects. It was standard practice for public officials to receive ‘gifts’ from NGOs wishing to obtain permission to operate freely across northern Uganda. It was also common for those same officials to redirect scholarships and aid packages away from IDPs in camps to their unaffected relatives. One local journalist revealed how funding proposals, images of camps and life stories of IDPs all became interchangeable and recyclable among NGOs wishing to simply acquire funds from donors.<sup>518</sup> The Assistant Chief Administrative Officer for Gulu informed me of how many NGOs had resources but chose to make small insignificant interventions while withholding large funds. One NGO began an agricultural programme to teach IDPs how to grow boo (a green leaf vegetable), which for the

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<sup>515</sup> Ibid, p.129.

<sup>516</sup> Uganda Government Interventions on the Humanitarian Situation in Northern Uganda, Office of the Prime Minister, p. 6.

<sup>517</sup> Prendergast (1996), p. 13.

<sup>518</sup> Interview with Alex Odongo, Daily Monitor Journalist (2000-2010).

Acholi community ‘was like teaching Chinese people how to grow rice’.<sup>519</sup> According to Marriage:

Assistance discourse champions the moral over the ‘political’ or ‘criminal’-. If the moral and the transparent are manipulative and deceitful, this undermines the integrity that apparently validated their legitimacy. The mechanisms by which the game is sustained are the inverse of the guidance and strategy apparently offered by the rules- the game is sustained because it pursues an alternate strategy, and because it manages to obscure it.<sup>520</sup>

As the former director of the Refugee Law Project aptly told me, northern Uganda became a carcass for which all actors could happily feast upon. All that was needed to guarantee a large share of the ‘meat’ was the ‘size’ and ‘sharpness’ of the ‘knife’ one used. A detailed funding proposal that ticked all the right boxes in seeking to spectacularly end suffering and contained the right buzz words of ‘camp based relief’, ‘women’, and ‘children’ could automatically release donor money, with little oversight as to the application and efficiency of such a program.<sup>521</sup>

### ***3.2 Institutionalising State Politics***

In addition to the pathologies of the relief industry, the camps provided fertile ground for the cultivation of government interests, discussed in the previous chapter which explained their longevity. In 2006 the government launched the *Emergency Plan for Humanitarian Interventions for the North* under the Office of the Prime Minister, in liaison with the Ministry for Foreign Affairs. The expected outcomes were ‘to improve the humanitarian situation in IDP camps, especially security, enhance protection of the civilian population, humanitarian assistance to IDPs, peace-building and reconciliation, and support return and reintegration where possible’.<sup>522</sup> However, such an initiative was a façade to assuage the true intentions of government, which was to keep people imprisoned in camps. The camps served

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<sup>519</sup> Interview with David Oponya, ACAO Gulu District, (2011).

<sup>520</sup> Marriage (2006), p. 198.

<sup>521</sup> Interview with Zachary Lomo, Former Director of the Refugee Law Project, Makerere University, 5<sup>th</sup> January (2010).

<sup>522</sup> Joint Monitoring Committee, Emergency Plan for Humanitarian Interventions for the North, OPM and Ministry of Foreign Affairs, May (2006).

the NRM and President Yoweri Museveni's imperative to break the will of the wider Acholi population to resist the NRM government which they had been in opposition to since the early 1980s. In a presidential address of the 8<sup>th</sup> Parliament in November 2002, regarding the on-going hostilities, Museveni alluded to this when he commented that 'there was a tribal chauvinism, which had been inculcated among our Acholi people by the colonialists among others. They would go to the Acholi and say, 'you Acholi you are very brave, you are like lions'...So this was part of the problem [of the protracted conflict] without anybody to destroy that chauvinism'.<sup>523</sup> Now while such a statement may have had multiple meanings and needed to be read with caution, it was fully compatible with the realities on the ground as one government worker informed me. The violence and encampment led to the complete collapse of the northern socio-economic infrastructure. Government and rebels looted a great deal of livestock, homesteads were destroyed with houses burnt and granaries emptied. The north was on its back, not producing, yet it had been the bread basket of the country. The co-operative societies (Acholi Co-Operative Union, Lint Marketing Board, Produce Marketing Board, and Middle North Co-Operative Union) were disbanded leaving no production and marketing structures.<sup>524</sup> This was in addition to the prison-like nature of camps as one senior Caritas aid worker revealed:

I have never been to prison, but I have met prisoners. At night there was no talking and no light. Those caught talking at night were taken and beaten in front of their families. Those caught walking in camps were either shot dead or taken to the barracks for questioning. IDPs would come from Awac camp to Gulu town to buy food. They were escorted once a week by the UPDF on the roads. Once in town they agreed a time to regroup and return to the camp. If an IDP was missing or late questions began and punishment with suspicion of rebel collaboration. This was the treatment you gave to prisoners. People who wanted to spend time had to disclose all the affairs they sought to conduct in town.<sup>525</sup>

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<sup>523</sup> President Yoweri Museveni, Official Parliamentary Hansard, Thursday 21<sup>st</sup> November (2002).

<sup>524</sup> Interview with Martin Otim, NUSAF 2 Advisor, 8<sup>th</sup> June (2010).

<sup>525</sup> Interview with Paul Rubakene, 4<sup>th</sup> December (2011).

In relation to this was the suppression of all political opposition which became easy without freedom of movement across the central north, which disrupted mobilisation and campaigning. During the 2001 election, Okot Christopher, a camp leader who stood for the Local Councillor 5 office, informed me how the army would harass those who spoke out against the camp conditions, government rhetoric, or attempted to represent the IDPs in camps. People who campaigned were immediately black-listed as enemies of the state and rebel collaborators. A number of political leaders were arrested in 2001 after being voted into office, and later thrown into Luzira prison without charge or trial. This included David Ocheng Pengto the councillor for Lamogi; Alex Otim the councillor for Paicho, Stephen Olanya the LC1 for Green Valley; and Lukwiya Pido a community mobiliser and activist. While in prison they were coerced to cross over to the government side in exchange for amnesty.<sup>526</sup> Government in return used the camps for NRM political mobilisation, with candidates and officials given free access to campaign among IDPs (see Figure 43 & 47 at the end).

Certain commanders, units and individual soldiers of the UPDF were responsible for a number of crimes in camps against the IDPs they were entrusted to protect (see Figure 49 at end). Violence against IDPs became rife as there were no police units in camps. All civil matters were referred directly to the military. Sexual assault against women and girls was very common. Illegal land use was widely documented, as one IDP protested: 'The army in the camp, the relationship is not good with the civilians because they are taking food from the gardens which belongs to the IDPs. The army cuts down pieces of wood which the IDPs use for thatching their huts and use it for their own buildings and lighting fire'.<sup>527</sup> The most outrageous act of exploitation with impunity by the army was perpetrated by Lt. Col Kayesigye who transported between 150-300 heads of cattle to graze on the land in Awach sub-county in 2006. He even partitioned a section of the local stream to create a small dam to water his cows, which were feeding on the crops of IDPs trapped in camps. The local

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<sup>526</sup> Interview with Okot Christopher, 9<sup>th</sup> December (2011).

<sup>527</sup> UNOHCHR, Coe Pee Camp visit report, 6<sup>th</sup> July (2006).

community would not protest such an abuse and kept silent out of fear of his herdsmen who were all armed soldiers.<sup>528</sup> All situations of abuse, neglect and violations were documented by a raft of human rights organisations but very little was done to address them for reasons which will become clear later.

The most indicative display of the power imposed into the camp space came from the President's brother UPDF General Salim Saleh who in May 2003 proposed a camp gazetting programme which involved developing the rural landscape of northern Uganda into large farming zones that eliminated all scattered settlements, with camps becoming permanent 'model' homesteads for the Acholi population. According to the *Security & Production Programme (SPP)* which was modelled on the Israeli Kibbutzim system of combining defence and agricultural production, farms called Security Production Units (SPU) would be created whereby IDPs would acquire the means of production through the division of land into equal sized plots allocated to each household (see Figure 34 below). This would galvanise security as defending and controlling organised settlements would be easy with 'violence robbery, defilement, vandalism in homes and neighbourhoods being easily detected with instilling discipline among the civic defence personnel and creating an environment for accountability to the population achieved'.<sup>529</sup>

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<sup>528</sup> Interview with Norbert Mao, 6<sup>th</sup> October (2011).

<sup>529</sup> Security and Production Programme (SPP), May (2003).

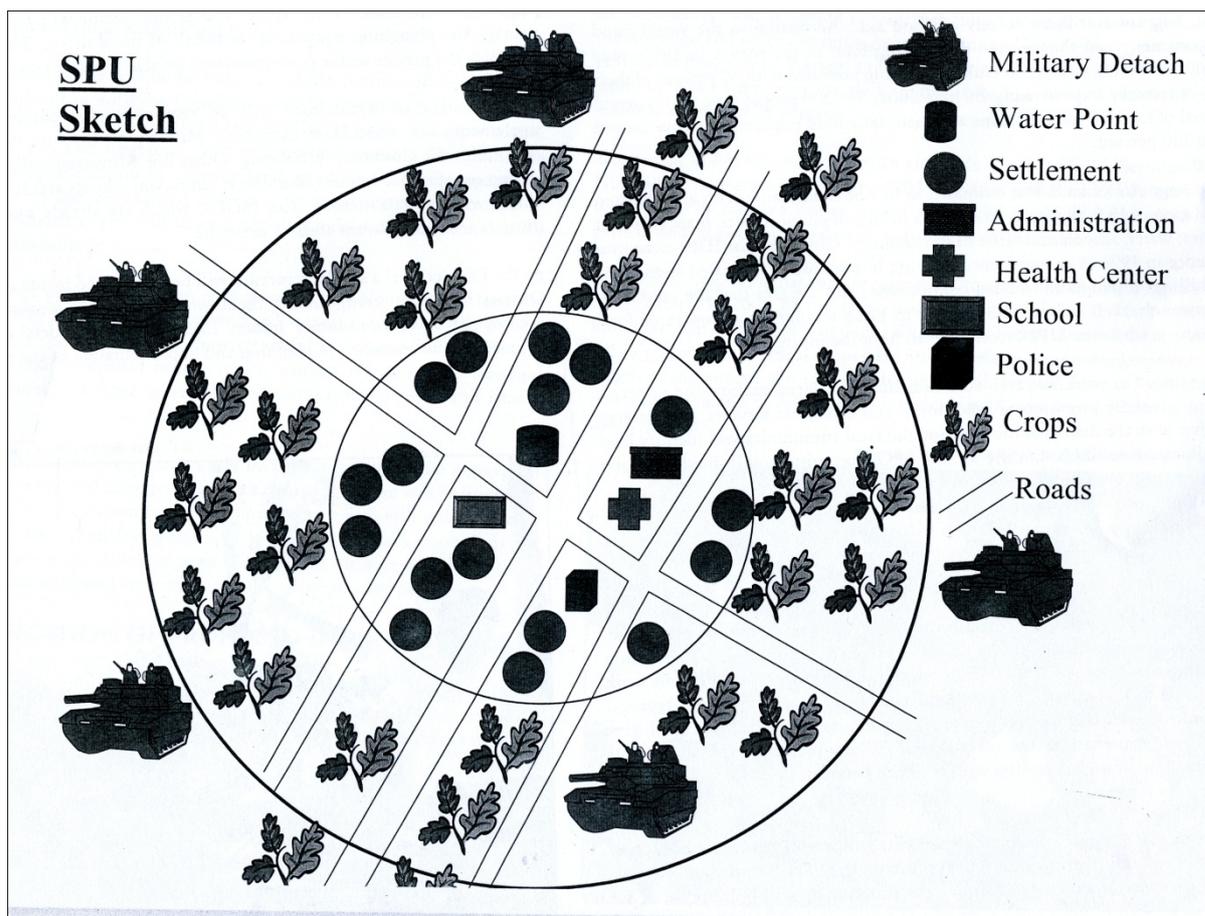


Figure 34

## Diagram of Security Production Units

Such a programme was similar to the Swynerton Plan of the British during the Mau Mau rebellion in Kenya<sup>530</sup>, as IDPs who were imprisoned in conditions of starvation, disease and social breakdown would thus remain in camps to become ‘farm labourers’ upon the argument that:

Through provision of information about availability of produce in Acholi region, the programme should be able to attract agro-processors into the area. There will be value addition to the produce, which will increase market value and product shelf life. It will lead to small scale industrialisation which will create jobs in the region. It will be easy to plan other social services like education, water, health services, road network, law and order.<sup>531</sup>

<sup>530</sup> Elkins (2005), pp. 128-130.

<sup>531</sup> Ibid.

The SPP was imposed in addition to more overt plans by government to ‘utilise’ the land of IDPs languishing in camps.<sup>532</sup> From 2006 government began planning the development of a US\$80 million sugar works plant on 40,000 hectares of land in Amuru district. This was a joint venture between government and the Madhvani Group, which created a frightening contradiction, as the north, which had been presented as a war zone and humanitarian disaster with over 300 NGOs present, suddenly became a viable and potentially prosperous region for future investment.<sup>533</sup> President Museveni himself even accompanied representatives of the group on a guided visit of the war affected region at the end of 2007, in order to gain support. Such plans created political storms by the Acholi Parliamentary Group (APG) under the leadership of MP Livingstone Okello-Okello, who were incensed by the prospect of one investor being awarded large tracts of land while people had not returned from camps amid an uncertain security environment.<sup>534</sup> Overall, both ‘agricultural’ schemes lent credence to the accusations that government was simply using the IDP camps as a diversionary tactic to illegally appropriate land.<sup>535</sup>

#### **4. Consequences of Inscribed Power: A Circus of Vicious Cycles**

The Protected Villages in northern Uganda thus became ends in and of themselves, in order to harmonise the combined interests of the relief industry and Government of Uganda. This however unleashed a series of consequences with the imperative of all actors to adapt, cope, or preserve the status quo which thus reconfigured the trajectory and dynamics of the civil war. To understand why so many people suffered and died as a result of the horrific camp conditions which were designed and hailed to ‘protect’ them, we have to consider five concurrent and overlapping vicious cycles (see Table 17 below) that arose from this harmony of interests, which were a product of the opportunistic state of limbo that IDPs were thrust into, that ultimately imprisoned them in an indefinite complex emergency.

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<sup>532</sup> ‘Give investors land, Otafiire tells Acholi’, Daily Monitor, 14<sup>th</sup> October, (2008).

<sup>533</sup> ‘Uganda: Madhvani Group Scores on Northern Uganda ‘Deal’, Daily Monitor, 19<sup>th</sup> July, (2007).

<sup>534</sup> ‘Acholi MPs sue Madhvani and Kingdom over land giveaway’, Daily Monitor, 9<sup>th</sup> September (2010).

<sup>535</sup> ‘Amuru land should not go to Madhvani says Bishop Odama’, Daily Monitor, 7<sup>th</sup> April (2009).

**Table 17**  
**IDP Camp Vicious Cycles**

<b>Vicious Cycle One</b>	<b>Food Distribution</b>
<b>Vicious Cycle Two</b>	<b>Relief Responses</b>
<b>Vicious Cycle Three</b>	<b>IDP Adaptation</b>
<b>Vicious Cycle Four</b>	<b>Army Protection</b>
<b>Vicious Cycle Five</b>	<b>Calculated Silence &amp; Denial</b>

There was indeed an artificiality to northern Uganda from 1996-2010 in which there existed the atmosphere of a complex emergency but with several enigmas. Firstly the camp became a spectacle for humanitarian disaster tourism by state officials, politicians, donors, and celebrities who all arrived in obsequious fashion to extend their solidarity and charity to the displaced masses, but with no improvement thereafter (see Figures 40, 41 & 42 at end). So much money was being pledged and pumped into northern Uganda, but it became difficult to trace where the money had reached, with many agencies spending huge sums on interventions which had seemingly no relevance to the immediate needs of IDPs.<sup>536</sup> By compartmentalising each of the camp dynamics in order to see them more clearly, we will make great strides in explaining how they were the direct manifestations of a combined process of relief delivery; IDP adaption; failed protection; and calculated silence and denial which were born out of the zone of alternate social ordering.

#### ***4.1 Vicious Cycle One: Food Distribution***

The first vicious cycle was that of food distribution and accessibility in camps (see Figure 35 below). The problem of starvation and malnutrition related death and morbidity in camps was rife, and always the number one complaint by camp commanders in letters to government and NGO officials:

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<sup>536</sup> Northern Uganda: Increased Focus, Little Change, The Uganda National NGO Forum, Policy Brief, January (2007), p. 7-10.

I am humbly informing you that the beneficiaries of this IDP camp have reached a desperate situation as a result of food shortage. The last food distribution was carried out on the 1<sup>st</sup> May 2004. As per now the food is over and people have started moving out of the camp in search of wild food.<sup>537</sup>

I wish to submit to your Office with great regret complaints from the IDPs of Acet camp pertaining to the General Food Distribution by the World Food Programme yesterday 19<sup>th</sup> April 2004. Madam as a result of concurrent relief distribution by UNICEF and WFP and heavy down pour, more than 2500 households did not receive food assistance from the WFP. I am writing to you to assist in enabling the starving 18,000 people to receive their ration.<sup>538</sup>

This situation was perplexing given that WFP had always requested over \$100 million a year through the Consolidation Appeal Processes (see Table 18 below) in order ‘to meet the minimum nutrition and dietary standards of IDPs, refugees and Drought Affected Persons, with special attention to women, school going children, malnourished children, HIV/AIDS affected families and extremely vulnerable individuals’.<sup>539</sup> Such a breakdown was as follows<sup>540</sup>:

**Table 18**  
**WFP CAP 2006**

Beneficiaries	Numbers	Tonnage of Food Distribution
IDPs	1,444,000	165,180
Refugees	190,420	
Therapeutic Feeding	2,080	495
Food-For-Education	500,000	27,075
Maternal Child Health & Nutrition	123,920	9490

<sup>537</sup> Letter to Chairman of Disaster Management Committee by Mr Opwonya Martine, Camp Leader of Parabongo IDP Camp, 13<sup>th</sup> July (2004).

<sup>538</sup> Letter to LC5 Councillor of Odek/Lalogi by Mr Ojok Opolot, Camp leader of Acet IDP Camp, 20<sup>th</sup> April, (2004).

<sup>539</sup> WFP Food Aid, UNOCHA, Uganda Consolidation Appeals Process (CAP) for 2006, 30<sup>th</sup> November (2005), p. 32.

Food For Assets	168,400	10,710
HIV/AIDS	107,000	14,830
Drought Affected Person	70,000	
<b>TOTAL</b>	<b>2,498,820</b>	<b>227,780</b>

The reason for such a discrepancy was that the humanitarian intervention coupled with the camp dynamics created a lucrative system of collusion between IDPs, aid agency staff, and local business men. From 1996 to 2010 there had been over 100 dismissals of NGO staff caught stealing and selling food aid that should have gone to IDPs. IDPs would commute between camps and receive double rations and sell to business men who, having stores in town, would come to operate close to camps in rural areas.



**Figure 35. Food Distribution Dynamics**

An interview with a Government Food Monitoring official revealed how food would be delivered on a specific day by the WFP and its implementing partners to IDPs. However, theft would occur with either camp commanders inflating the number of households receiving aid

or handing out additional cards. The excess would then be sold through various middle men in towns back to the station produce dealers who were business men that supplied the main WFP warehouses. From there the same food stocks would be loaded in trucks and supplied to camps where the same arrangements would continue.<sup>541</sup> In 2005 Amuru was reported to have had two ghost villages with a total population of 800 people, and in Pabbo camp between 2005-2007 the total 33 villages had all been inflated, so a village with 60 households suddenly increased to 80 on delivery day. It was even common for non-food items (blankets, jerrycans, soap and saucepans) to be offloaded in warehouses and to then have the empty boxes taken to camps and signed for in order to ensure 'accountability'.<sup>542</sup>

This was all in addition to the problem of camp dwellers stealing relief food which became so widespread that the military were called in to oversee deliveries to camps. Raiding food aid arose because NGO service providers based targeting populations on the resources available, and so prioritised and partitioned receiving camp dwellers (widows, orphans, former abducted, HIV+), which created further resentment among the mass of suffering IDPs left without<sup>543</sup>. However this vicious cycle was only the tip of the iceberg because it was the outcome of the wider assumptions by WFP and their implementing partners which form *Sin I: Numbers Game*, whereby 'NGOs are under constant pressure to portray the huge amounts of aid inputs delivered to a targeted population as having a direct impact on saving lives. Consequently, logistical targets become ends in themselves: 1,000 metric tons delivered, 1,000 lives saved, and so on'.<sup>544</sup> This need to portray success in terms of quantitative impact hindered strategic responses to suffering as well as the containment of its negative externalities. The initial need for food relief was carried out by *WFP Emergency Food Security Assessment (EFSA)* which was a tool that assessed the impact of shock on the food security of households and communities, in order to estimate the location, number, coping

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<sup>541</sup> Interview with Oluba Alfred, Head of Food Distribution Monitoring, Gulu district (1996-2007).

<sup>542</sup> Ibid.

<sup>543</sup> Interview with Lemoi Dennis, Camp Commander.

<sup>544</sup> Prendergast (1996), p. 3.

strategies, and severity of affected people.<sup>545</sup> It employed a Food Consumption Score (FCS) as a proxy indicator to represent the ‘dietary, diversity, energy and macro (content) value of the food that people eat’.<sup>546</sup> WFP made an important admission about the usefulness of the FCS stating that, ‘Although it provides essential information on people’s current diet, the FCS is of limited value for in-depth analysis of food consumption patterns for the following reasons<sup>547</sup>:

- It is based on a seven day recall period only. This is insufficient for a full analysis of food consumption for longer periods.
- It provides no indication of the quantity of each foodstuff consumed.
- It does not give information on intra-household food consumption, such as who eats first and last.
- It does not show how food consumption has changed as a result of the crisis

This is significant because these were the very issues that would determine a person’s entitlement to food, and in a nutshell it revealed how WFP was incapable of identifying or measuring the underlying power dynamics of food security, which were the most important variables in the planning for an effective relief response in any complex emergency. The EFSA were conducted at sub-office by programme assistants which calculated that 10kg of maize could last 15 days, but in actuality it was only for 10 days, so for 5 days people would starve. Calculations were based on relief being a supplement to other sources of food, but the reality was that there were no other sources, as people had very little access to their land, as this IDP lamented:

We had problems with those recruited to write household names. But ghost names were common because relief was not enough to sustain them. WFP would deliver 10kg of

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<sup>545</sup> World Food Programme, *Emergency Food Security Assessment Handbook*, Second Edition, January (2009), p. 29.

<sup>546</sup> *Ibid*, p. 62.

<sup>547</sup> *Ibid*, p. 62.

beans to a household of 15 people for a whole month and this was not uniform. Inflation was a survival strategy.<sup>548</sup>

There was a failure to appreciate that the conditions of displacement in camps dwarfed the perceived gains of food delivery. In an interview with the Senior Program Assistant for WFP, in which I asked why food distribution had not been enough, he retorted by claiming that ‘enough was relative and subjective, there had to be contributions from IDPs through the personal cultivation, milling of grain, and helping with distribution’.<sup>549</sup> However, the need to survive meant that many would sell off food and other relief items, which was especially the case with the idle masses who had given up hope and turned to alcoholism and prostitution due to the endless encampment. One IDP from Paicho camp commented furiously to me how:

They have distributed maize, beans, cooking oil but no salt. So I should sell the maize to get salt. I am not a weevil to eat grain throughout my life span I must sell the maize to get wangiri (small fish) to balance my diet. I have children who have to go to school, I must sell the food stuffs to keep them in school...If your relief has conditions which are not favourable to me, take it away so that I can die my own death.<sup>550</sup>

In 2004 WFP sent a patronising letter to Gulu district officials in response to the unceasing appeals from camp leaders of incomplete distribution and the persistent raiding of food by camp dwellers, which laid blame for food scarcity on the IDP’s inability to understand and participate in fast and efficient delivery:

I would like therefore to appeal to all the local leaders to talk to the people, educate them on the importance of their participation in fast unloading of food from the trucks. And also they should be educated on the difference between UN WFP teams and the Uganda Government, because sometimes they might mistake us for the Government, and make wrong accusations. They say we are the ones that brought them into the camp. Such attitudes could also be some of the underlying factors towards reluctance to participate willingly in unloading of food from the trucks.<sup>551</sup>

#### ***4.2 Vicious Cycle Two: Relief Responses***

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<sup>548</sup> Interview with Okot Christopher (2011).

<sup>549</sup> Interview with Moses Oryema, WFP Senior Programme Assistant, (2006-present).

<sup>550</sup> Interview with camp dweller Agness Ajok, Paicho Camp (1998-2008).

<sup>551</sup> WFP letter to Gulu District Local Authority, 26<sup>th</sup> April (2004).

The second vicious cycle was the wider relief responses to suffering (see Figure 36 below). The IDP Regime maintains that the circumstances of displacement, automatically incurs the loss of livelihoods and security which the humanitarian community is obliged to provide. While such a noble aspiration is commendable, it says nothing about conditions where agency responses to displacement further reinforce displacement and elevate IDPs to new levels of chronic suffering. MSF in a 2003 study found that IDPs in northern Uganda suffered mortality rates that were five times higher than expected in Uganda, which they attributed to the violence and measles outbreaks due to the lack of vaccinations.<sup>552</sup> The congestion of thousands of people in cramped, unhygienic, make-shift huts with little protection from the elements or access to clean water and sanitation facilities gave birth to a host of communicable diseases, flooding, and fires which killed and debilitated thousands at a time.

Household sanitation has continued to be a major problem since most camps now lack space where pits for latrines and garbage can be dug. Even for the proposed decongestion centres, we have not got sufficient support, in terms of latrine construction, to take up the new design which is believed to solve sanitation problems.<sup>553</sup>

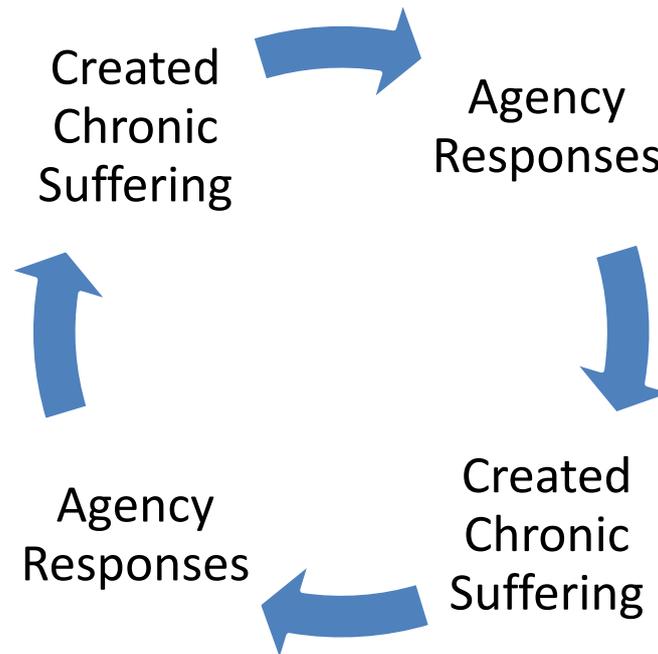
Many aid agencies now found themselves having to react to the after-effects of their protection interventions within the squalid camp conditions, which then created further suffering in a never ending cycle. Projects would thus create new projects with the same mechanisms of assistance employed over again. This accommodated *Sin: 3 The Law of the Tool*, which asserts that ‘the nature of the response is in large part dictated by the tools at hand...no matter what the unique causes of the emergency might be in each situation...which restricts ownership of program activities to external agencies rather than focussing on the need for local communities to rebuild their own society’.<sup>554</sup>

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<sup>552</sup> Nathan et al (2004).

<sup>553</sup> DDMC, Water and Sanitation Sub-Committee Quarterly report, May-July (2004).

<sup>554</sup> Prendergast (1996), p. 8.



**Figure 36. Relief-Suffering Dynamics**

A case in point was the destruction of huts from fires which were common due to the close proximity of structures, the continuous use of open fires by IDPs' cooking, and idle children playing with fire in camps, or arson during rebel attack (see Figures 45 & 46 at the end). Fires would tear through entire camps in minutes with little defence from IDPs. However, in the aftermath of camp fires many NGOs would make proposals and solicit funds from donors for the rebuilding of huts in camps on the basis that IDPs required immediate shelter, with no thought for the glaring fact that such structures and living conditions had initially caused the fires to occur, and in rebuilding them simply re-created the conditions for future catastrophes, which would undoubtedly be responded to in a similar manner.

A second example was access to water, which was delivered primarily through the sinking of boreholes in camps by the Water Sanitation and Hygiene (WASH) cluster. In one DDMC quarterly report for the Water & Sanitation sub-committee, several 'achievements' were documented by NGOs:

Confirmed commitment from UNICEF to provide all the 6 boreholes required for Jeng-Gari resettlement camp (i.e. 1 for the primary school and 5 for IDPs, CARE has managed to identify and train 22 CBOs on sand and plat production and hygiene education in the camps of Pabbo, Awer, Unyama, Palaro, Paicho, Awere, Lalogi, Opit, Anaka and Agung, The sub-committee has also managed to map the operations of all the agencies/organisations involved in WATER & Sanitation activities in IDP camps. This will ease co-ordination and avoid duplication.<sup>555</sup>

The sinking of boreholes as the only known and available approach to delivering clean water by NGOs resulted in the contamination of water sources in congested camps where latrines and water points were concentrated together (see Figure 44 at the end). This would then cause disease to spread, which would raise the alarm for rapid response interventions by a barrage of health experts, with their own pharmaceuticals and pseudo-experiments. These experts would in the first instance attempt to contain and cure people, but would more problematically provide the statistics and justifications for new NGO projects to construct ‘clean’ water sources in those same camp conditions.<sup>556</sup> This is in keeping with Dolan who saw that:

For social torture succeeds precisely because of its ability to combine and create synergy between unconscious wants and needs and various economic and political interests. While the intentions of individuals and institutions are not eliminated from the picture, they are not the critical issue, indeed they cannot be the critical issue as social torture is at least in part defined by the involvement of bystanders who do not acknowledge their own complicity. Social Torture relies on the fact that people have psychological mechanism, and generated discourses to externalise these, specifically to convince themselves and others that they had no bad intentions.<sup>557</sup>

This was further witnessed in the transformation of camps and IDPs into objects of academic inquiry with studies and experiments that sought to ‘improve’ conditions and livelihoods, but which augmented the knowledge power complex made easy by the availability of a large concentration of idle masses, which had the effect of not only making camps more permanent,

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<sup>555</sup> Ibid.

<sup>556</sup> Interview with Raphael Opira, ICRC Logistics Officer (2011).

<sup>557</sup> Dolan (2009), p. 259.

but completely white-washing and concealing their central structures of exploitation and violence. In 2005 the Journal of Mathematics and Statistics published a study titled *Mathematical Models for the Dynamics of Tuberculosis in Density-dependent Populations: The Case of Internally Displaced Peoples' Camps in Uganda*, which was designed to uncover both the conditions and area of living space per individual required in order to minimise the incidence of tuberculosis. The study concluded that 'there exists a stable disease-free equilibrium point provided that the characteristic area is greater than the product of the probability of survival from the latent stage to the infectious stage...the characteristic area per individual should be at least 0.25 square kilometres'.<sup>558</sup> The study however fell short of reality because while the authors argued that 'there is need to address the issue of limited knowledge on the biology of tuberculosis and host-parasite relationship', (which laid blame on IDPs) they then stipulated that 'overcrowding and unsanitary conditions play a major role in explaining the observed trends in Uganda'<sup>559</sup>, which was contradictory because their study virtually recommended that IDPs could remain in those wretched camp conditions but with each now having a new personal living space of 0.25 square kilometres!

A similar study was published in Journal of Water & Health in 2008 titled: *Impact of Jerry Can Disinfection in a Camp Environment-experiences in an IDP camp in northern Uganda*, by the Centre for Environmental Health Engineering at the University of Surrey. The research was designed to show how 'a regular jerry can cleaning procedure using high strength sodium hypochlorite had been shown to offer an effective method of alleviating contamination in water collection vessels'.<sup>560</sup> Such a study was oblivious to wider dynamics of the conflict, and instead adopted patronising advice that tactfully blamed IDPs for their own inadequate hygiene conditions, with relief actors once again cast as the external saviours:

In the Okidi community it was observed that the water was stored at ground level, often outside the house. This allowed easy access by children and animals, and could have

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<sup>558</sup> Ssematimba, Mugisha and Luboobi (2005), pp. 217-224.

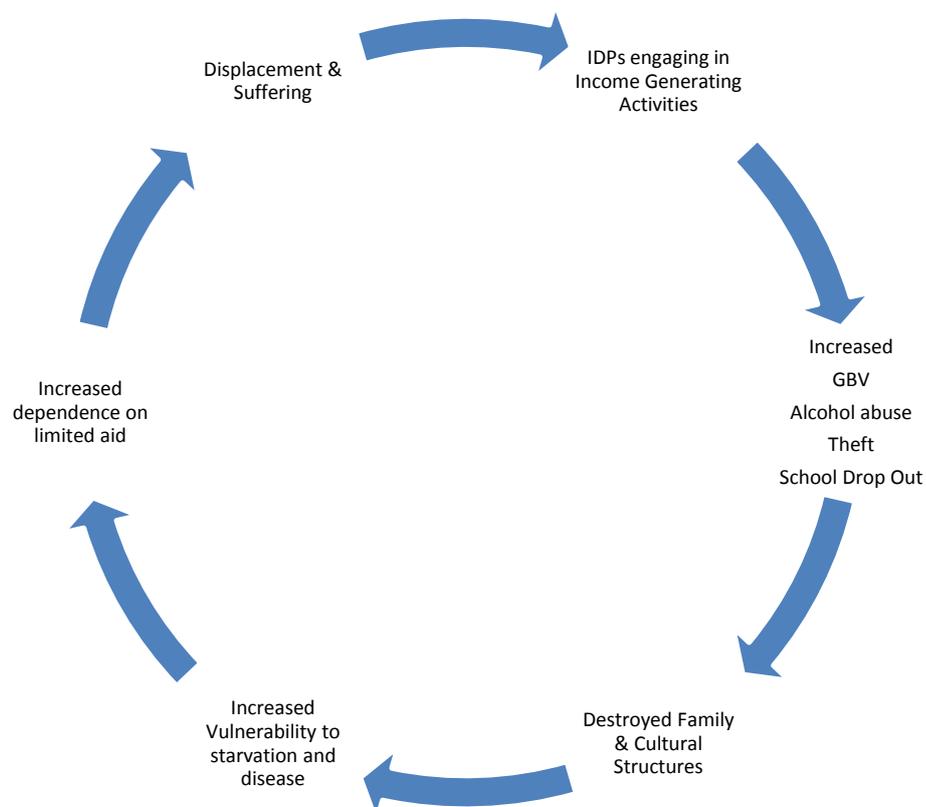
<sup>559</sup> Ibid, p. 223.

<sup>560</sup> Steele, Clarke and Watkins (2008), p. 560.

resulted in contamination. This was accentuated by the fact that not one jerry can had a lid. These observed practices indicate that the effectiveness of hygiene promotion in a complex emergency environment needs to be considered. It is suggested that there may be an inevitable gap between the aims of the hygiene promoters and the hygiene practices adopted by the community.<sup>561</sup>

However, in the end the real issue was that while establishing an effective cleaning programme for jerry cans may have worked to reduce the spread of disease, it did virtually nothing to repel rebel incursions into camps to steal, amongst other things, those very jerry cans. The unquestionable authority and perception of ‘rigorous’ academic inquiries conducted by scholars from prestigious institutions, would not only form the ‘scientific’ basis for NGO projects in camps that kept people imprisoned, but, more importantly, in the end justified the livelihoods and funds of actors involved in the wider humanitarian economy.

#### ***4.3 Vicious Cycle Three: IDP Adaptation***



**Figure 37. IDP Adaptation Dynamics**

<sup>561</sup> Ibid, p. 562.

The third vicious cycle was that of adaptation to camp life by IDPs (see Figure 37 above). The camp conditions heralded the social breakdown of individuals, entire villages and communities, as one IDP lamented: 'People lost hope and did not know what was going to happen the next day. People had to risk coming to town to Lacor to receive healthcare which was not part of the relief. School teachers did not want to live in camps and so stayed in towns and ran classes when they felt like and many children missed school'.<sup>562</sup> Psychological trauma in the form of mental illness and suicides became the order of the day.

The idle and destitute masses were forced to engage in income generating activities amid the shortages of relief and livelihoods, which included, among other things, prostitution, alcohol brewing, cultivating, and shops selling small everyday items (sweets, razor blades, soap, matches). However, this increased gender based violence with women becoming the sole breadwinners in the home due to NGO humanitarian and development projects which specifically targeted them. Alcohol abuse became rampant among the old and young as it was in plentiful supply which increased school drop out rate and theft in order for them to acquire it. These conditions destroyed family and cultural support structures that were essential to survival in such horrendous circumstances, which then increased vulnerability to starvation, disease and violence. This cycle is evident in Dolan's distinction of social torture from the mainstream Convention Against Torture, in that 'the categories of perpetrator, bystander and victim are shown to be fluid, such that, over time, as victims seek to deal with their situation by becoming perpetrators, membership of the perpetrator group is likely to grow'.<sup>563</sup> This culminated in dependency on the limited aid which ultimately imprisoned hundreds of thousands in camps.<sup>564</sup> *Sin 2: High Stakes Funding* mentions that 'camps for displaced people are often favoured over decentralised initiatives because of their high profile, ease of operation and photogenic product'.<sup>565</sup> Bigger camps were used to attract donors because they were more appealing compared to smaller camps which could contain a moderate lifestyle so

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<sup>562</sup> Interview with Okot Christopher, Camp Commander Alero IDP camp (2011).

<sup>563</sup> Dolan (2009) p. 259.

<sup>564</sup> Ibid, p. 260.

<sup>565</sup> Prendergast (1996), p. 5.

were unattractive.<sup>566</sup> This visible suffering then reinforced the need for greater injections of aid into camps to counter and abate that suffering which once again set off the vicious cycle.

#### ***4.4 Vicious Cycle Four: Army Protection***

The fourth vicious cycle was the precarious UPDF counter-insurgency and protection operations in camps (see Figure 38). Camps had been hailed as a protection mechanism. However, it soon became apparent that they instead heightened, and even facilitated, insecurity to the point where they became the primary theatre of war between government and rebels. One in question was the Pajak massacre of 2004, where close to 80 LRA fighters entered the camp in the evening and divided into three groups for a five hour raid that culminated in 21 children abducted and 32 people killed and countless goods looted.<sup>567</sup> It was common for the UPDF to either be absent from duties or, even worse, desert during rebel attack, as was the case in Alero IDP camp in 1997, which resulted in huts being torched, ten people killed, and thirty abducted.<sup>568</sup> It was also common for UPDF soldiers to hand over guns to IDPs in order to defend themselves from rebel attack. Parliamentary debates would often erupt in anger over the Ministry of Defence's attempts to cover up the dereliction of duty by its soldiers<sup>569</sup>:

**Minister of State for Defence: Ms Nankabirwa Sentamu:** What I got from his contribution was that we would have deployed where LRA is. It is impossible! This is not how deployment goes. You have to set positions and then you attack. You cannot find where LRA is and then you bring your troops and dump them there. You cannot!

**Mr Awori:** Some people have been kidnapped. Have we heard anything from the hon. Minister in charge of Defence telling us of measures that have been taken to attend to this problem? Mr Speaker, with your permission, I would like to refute the statement from the hon. Minister of State for Defence.

One, she says you just do not throw soldiers into a situation. I for one know, and I was in this Parliament when we were told, that the US Government has trained UPDF in

<sup>566</sup> Interview with Raphael Opira, ICRC Logistics Officer (2006-2009).

<sup>567</sup> Interview with Lemoi Dennis, Camp Commander of Pajak IDP camp (2004-2006).

<sup>568</sup> Interview with Okot Christopher, Camp Commander of Alero IDP camp (2002-2007).

<sup>569</sup> Official Parliamentary Hansard, Tuesday 17<sup>th</sup> June, (2003).

what we call "rapid response", or getting to a situation area within 24 hours. At one time we even went to Jinja and trained a number of soldiers in rapid response, in order to go to Somalia and other African countries. Why do we train people to respond to external situations but not internal situations?

The camps had been justified and created as 'protected villages' with many forced from their homes. However, the failure to secure IDPs by the army and the multitude of paramilitary forces led to camps becoming 'unprotected villages' with countless LRA incursions:

**Ms Betty Amongi (Women Representative for Apac):** Let me start by giving information. Yesterday ten people were killed and houses were burnt when the LRA attacked Alito sub-county. I am still going to get more information on how many people were abducted.

As I talk now, and I am grateful that the Minister noted in her statement that Alito sub-county had no deployment of UPDF - we disclosed spots the LRA use to enter and escape and we thought those were the strategic spots for deployment of the UPDF. Today, four months after giving those possible points of deployment, there has never been any deployment there.

On Thursday last week I toured the whole of that northern part of my constituency. There are only a few spots where the UPDF is deployed. We must talk on the basis of facts; and the fact is that there are no strategic deployments in all those areas where the LRA abduct and kill the people from.<sup>570</sup>

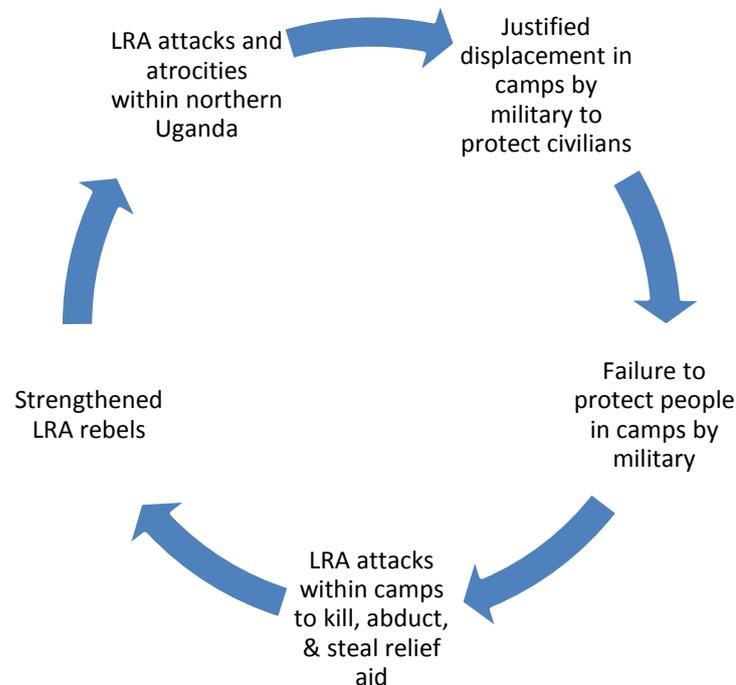
This state of affairs gave birth to *Sin: 6 Exploiting Competition*, in which 'warring factions are often able to easily exploit the competition that logically results from dozens of agencies trying to obtain front-row seats...operating in areas or ways that maximise benefits to warring parties'.<sup>571</sup> This debacle strengthened the rebels with the logistics needed to continue fighting the government, who had already awarded them the initiative with the encampment of 1.8 million people. This left the LRA free to roam and feast upon hundreds of square miles of uninhabited land, which further justified the need for camps. The situation had become so

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<sup>570</sup> Official Parliamentary Hansard, Thursday 19<sup>th</sup> June, (2003).

<sup>571</sup> Prendergast (1996), p. 12.

perilous that some IDP camps began rejecting relief aid on the basis that, once received, rebels would be certain to come and cause havoc to steal it.<sup>572</sup>



**Figure 38. Army Protection Dynamics**

The Barlonyo massacre in Lira district in February 2004, saw an estimated 300 people lose their lives in a co-ordinated rebel assault with no UPDF protection for which the president later apologised in a visit to the area. As one IDP survivor recounts:

I saw rebels approaching the Barlonyo IDP Camp. They surrounded us from all directions. We decided to get into our houses when I heard a bomb explode. I ran outside and collided with people who were also running for safety. I lay flat on the ground trying to take cover. Meanwhile bullets were exploding in the air. I started running, as I was running a bullet hit the person who was running behind me. I was just trying my luck with a baby on my back...I returned the next morning only to find the body of one of my sister's children. She had been axed to death and flies were covering her body. My husband's face had been sliced onto four pieces with a machete.<sup>573</sup>

<sup>572</sup> Interview with Joyce Acan, former UNHCR Senior Protection Officer (2004-2011).

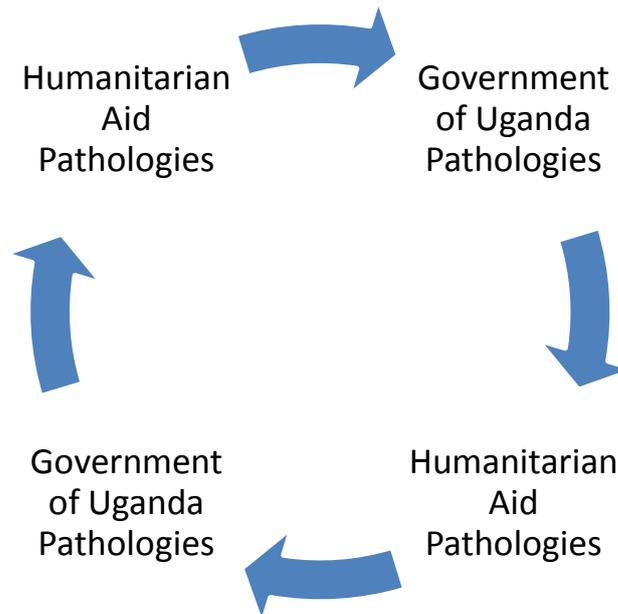
<sup>573</sup> Today You Will Understand, Women of Northern Uganda Speak Out, FEMRITE and IRIN (2008), p. 22.

#### ***4.5 Vicious Cycle Five: Calculated Silence & Denial***

The fifth vicious cycle was the most important because it overshadowed the previous four by initiating and sustaining them. This was the denial, inaction, and calculated silence exhibited by the Government of Uganda, Donors and the Humanitarian community over the events in northern Uganda (see Figure 39 below). This led to *Sin 4: Humanitarian Aid as a Cover*, whereby ‘foreign policy responses to complex emergencies have underplayed the complexity of the forces driving modern conflicts...donors avoid tough political issues and delivering humanitarian aid to massage symptoms and assuage consciences’.<sup>574</sup> In northern Uganda a Faustian bargain was struck with all three locked into a cycle whereby the GoU would turn a blind eye to the mismanagement and malpractices of the relief community precisely because it needed them to sanitise and gloss over the human costs of its counter insurgency operation and general instability, which while disastrous, had become politically functional. On the other hand, the relief community was reluctant to confront the GoU on the glaring UPDF violations because of the need to maintain a prominent field presence and the continuous flow of donor funds, which ultimately guaranteed their privileges and heightened global status. Thus each was prepared to tacitly tolerate the pathologies of the other in order to cover up and expunge their own wrong doing.

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<sup>574</sup> Prendergast (1996), p. 8-9.



**Figure 39. Dynamics of Silence & Denial**

In the BBC Hardtalk of 2007, Allan Little confronted the then Minister for Foreign Affairs Sam Kutesa, over the IDP situation in the north.<sup>575</sup>

**Allan Little:** The entire population of Acholi have been displaced from their homes, taken off their land and moved into camps. Why?

**Minister for Foreign Affairs Sam Kutesa:** These people have not been taken off their land and these are not concentration camps. These are internally displaced persons (IDP) camps. The Government established these camps to protect people who were running away from the attacks of the terrorist organisation called LRA. It is difficult to protect them in their homes. So the Government organises IDP camps to be able to feed them, provide them with water, medicine, education and better protection.

**Allan Little:** The IDP Monitoring Centre in Geneva said it suits the Government to keep people in the north in camps, the northerners have for a long time been seen as a threat to the Government, it is an opposition stronghold and that this neglect can be constructed as an attempt to weaken the north politically

**Minister for Foreign Affairs Sam Kutesa:** That is an unfortunate perception and it is factually incorrect. It is not in the interest of the Government to keep the people in camps or in opposition. In the light of self-interest, if you help people develop you

<sup>575</sup> BBC Hard Talk, 24<sup>th</sup> September (2007).

generate support for yourself and we are not foolish. But we are fighting a terrorist organisation and we are ill-equipped because of some budgetary constraints. When we hose to arm our army, the LRA have fled; they are not in Garamba enjoying a holiday. We have done our best to make the situation in IDP camps better with the help of the international community.

In an interview, the Commissioner for Disaster Preparedness, Martin Owor, was very quick to justify the NGOs and camps.<sup>576</sup>

**Interviewer:** How did Government engage with the large numbers of NGOs?

**Mr Owor:** Keeping people in camps was expensive, Government was running three programs at the same time for the benefit of the people (humanitarian, normal socio-economic development, special programs for the recovery of northern Uganda). NGOs were everywhere and did a good job during the instability, government could not operate at micro level and so NGOs linked the Government to the community by speaking the local language and engaging the people.

**Interviewer:** Did you not feel that NGOs were exploiting the people or that the camp based relief was causing more harm than good?

**Mr Owor:** No! The conflict was based on people running away from Kony to the government for protection and working with government to help them be liberated. NGOs minimised suffering in camps by bringing out the issues in camps for government to then act. The camps had several advantages, first people were trained in modern production methods, secondly the military had two mile radius around all camps so people could farm while being escorted.

However, this was in contrast to the interview conducted with the Assistant Commissioner for Disaster Preparedness Rose, who was very quick to state the various problems encountered with NGOs, but when asked why it was tolerated, immediately asserted that her hands were tied by her superiors.<sup>577</sup>

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<sup>576</sup> Interview with Commissioner for Disaster Management and Preparedness, Martin Owor, 7<sup>th</sup> January (2012).

<sup>577</sup> Interview with Assistant Commissioner for Disaster Management and Preparedness, Rose Nakabugo, 6<sup>th</sup> January (2012).

For relief agencies, any introspection regarding their interventions in northern Uganda brought uncomfortable questions. In a 1999 WFP internal report, the organisation scrutinised the role of the major humanitarian actors. The consultant noted the fact that, ‘tension still remains between the government’s broader political concern to control a population and the potential co-opting of the aid programme to this end’<sup>578</sup>. In relation to WFP’s conduct he came to the conclusion that ‘The programme as a whole was not designed around protection concerns, other than the general assumption that the camps were safer than outlying villages...WFP may have too readily fallen in line with government policy, in effect becoming both provider and legitimiser of a villagization policy’.<sup>579</sup>

Many organisations were well aware of such dangers even before their deployments. UNICEF’s *Emergency Field Handbook* obviated the guidelines for humanitarian-military relations asserting that ‘insofar as military organisations have a role to play in supporting humanitarian work, this role should not, to the extent possible encompass direct assistance. It is important to keep a clear distinction between humanitarian and military roles. Any use of military assets should be, at its onset, clearly limited in time and scale’.<sup>580</sup> Similarly UNOCHA in 2003 published *Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies*, which warned that:

The expedient and inappropriate use of military and civil defence resources can compromise neutrality, impartiality and other humanitarian principles of all humanitarian actors responding to the emergency. The loss of neutrality can result in relief workers becoming direct targets of the belligerents and being denied access to the affected population, not only in the current emergency, but also in future humanitarian crises. In addition, the loss of neutrality can result in the affected population becoming direct targets of the belligerents. Ultimately, decision-makers must weigh the risk to relief workers and their ability to operate effectively at the moment, and in the future,

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<sup>578</sup> WFP Report, Assistance to Internally Displaced Persons Country Case Study on Internal Displacement Final Draft, UGANDA DISPLACEMENT IN THE NORTHERN AND WESTERN DISTRICTS, September (1999).

<sup>579</sup> Ibid.

<sup>580</sup> UNICEF (2006), p. 94.

against the immediacy of the needs of the affected population and the need for the use of military and civil defence assets.<sup>581</sup>

However, many NGOs resorted to denial as an effective remedy to the cognitive dissonance arising from questions of their failed neutrality. As Marriage explains, ‘denial allows unofficial acknowledgement of the political environment to co-exist with the official version of neutrality and effectiveness’.<sup>582</sup> This was managed by encouraging and facilitating the capacity building of the very security forces that carry out crimes against camp dwellers, in the hope that once trained and educated to respect human rights, many would simply acquiesce. The UN Office for High Commissioner for Human Rights (UNOHCHR) documented many UPDF and paramilitary crimes against the civilians in camps through their monthly visits.<sup>583</sup> However, between 2007 and 2009 they took a ‘non-confrontational’ approach towards government, which had the effect of presenting such abuses as simple bad habits that could be easily overcome by creating Civil-Military Co-Operation Centres (CMCCs). The Uganda Human Rights Commission, The UPDF and Uganda Police, were integrated into a programme designed to ‘bridge the information gap between the civilian population and law enforcement and security forces to provide quick and effective mediation in minor human rights violations, to reduce impunity by channelling complaints to relevant justice mechanisms’.<sup>584</sup>

However, one had to question the efficacy of such an initiative which only focussed on two security organs, when there exist over thirty official and unofficial state security outfits that operated both overtly and covertly throughout the country with virtually no Parliamentary oversight. Overall, the initiative quietly dissolved government accountability while simultaneously upholding the illusion of tireless UN advocacy and civilian protection. In a

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<sup>581</sup> UNOCHA, *Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies*, March (2003), p. 10.

<sup>582</sup> Marriage (2007), p. 195.

<sup>583</sup> UNOHCHR, *Jengari IDP Camp Visit (2004), Ogwette IDP Camp Visit (2006), Unyama IDP Camp Visit (2006), Pagak IDP Camp Visit (2006), Pabbo IDP Camp Visit (2006), Koch Goma IDP Camp Visit (2006), Koro Lapainat IDP Camp Visit (2006), Alero IDP Camp Visit (2006), Bobi IDP Camp Visit (2006)*.

<sup>584</sup> *Promotion and Protection of Human Rights in Uganda, UN Office of the High Commissioner for Human Rights, (2007-2009)*, p. 6.

private discussion with a senior OHCHR worker, it was revealed that such an approach was imperative to guarantee the presence of UN OHCHR in Uganda, which would automatically end if the organisation ever exposed or embarrassed the government.<sup>585</sup>

## 5. Creating New Power

Up until now we have witnessed how power was instilled into the camp space and the effects it generated. However, this is only half the story as a final point of illumination is to observe how the camps were themselves instrumental in creating new structures of power. To do so we have to first consider heterotopia as symptomatic, precisely because all the prevailing contradictions highlighted above show us that the particular political rationalities at play within camps, transcends the stated objectives widely trumpeted for their establishment. Let me qualify this claim. If it can be argued that camps do not necessarily deliver on the pragmatic reasons that are provided for in their creation, and in reality do more harm than good? Indeed, as Foucault warned us not to consider the modern prison system as a failure due to its inability to fulfil its stated objective of reducing crime and rehabilitating criminals, but to consider the true purpose it served within society which was to create a medicalised category of social deviants who could be turned upon themselves in a confined space away from civil society; a factor which explained its uninterrupted 200 year existence<sup>586</sup>. To answer this we have to recognise heterotopia to be a two way street, in that they not only house asymmetries of power but are also instrumental in constructing new meaning and power. Indeed Lefebvre asserted that space,

Though a product to be used, to be consumed, it is also a means of production; networks of exchange and flows of raw materials and energy fashion space and are determined by it. Thus this means of production, produced as such, cannot be separated either from the productive forces, including technology and knowledge, or from the

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<sup>585</sup> Interview with Patrick Amihere, UN OHCHR field officer (2004-present).

<sup>586</sup> Foucault (1979), pp. 276-277.

social division of labour which shapes it, or from the state and the superstructures of society.<sup>587</sup>

Furthermore, the practices of power manifested in arrangements of space may themselves function as points of discursive generation which can form the basis for further justifications and expansions of power.<sup>588</sup> The spatiality of the IDP camp, as I have tried to show, is at one end of a loop of power in which humanitarian and counter-insurgency discourses validate a variety of prerogatives and entitlements which has the effect of entrapping people. However, according to Hook ‘if heterotopias do emerge in societies as a kind of ‘compromise structure’ between power and pragmatic necessity, then, as in the case of symptoms, we might expect that they would provide a cryptic indication of the underlying conflict of interests that has both brought them into being and given them their particular form’.<sup>589</sup> Therefore, at the other end of the loop, the IDP camp thus becomes a compromise space that reproduces and sustains two wider diametrically opposed facets of control, which otherwise could not be guaranteed under ‘normal’ circumstances and hence all require an infinite and alternate zone occupied by a population living in a state of suspended political animation.

### ***7.1 Creating the Ultimate Barrier to Refugee Flows***

The first creation is the curbing of refugee flows which was the quintessential strategy in the origins and evolution of the IDP Regime discussed in chapters one and two. The Cluster Approach is today a recognised global instrument practiced in Pakistan, Liberia, and DRC in which, according to Crisp, ‘significant strides have been made in conceptualising some of the key challenges faced by IDPs as human rights issues-which has facilitated the development of protection strategies and effective advocacy campaigns’.<sup>590</sup> Now while its operational performance has raised serious questions, with small NGOs lacking time and personnel to attend all meetings<sup>591</sup>, or Clusters lacking the leadership and logistics<sup>592</sup>, such evaluations

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<sup>587</sup> Lefebvre (1991), p. 85.

<sup>588</sup> Hook (2007), p. 205.

<sup>589</sup> Ibid, p. 204.

<sup>590</sup> Crisp, Kiragu and Tennant (2007), p. 13.

<sup>591</sup> De Mul (2002); Tinnermann (2010); Holmes (2007).

<sup>592</sup> Hicks and Pappas (2006); Lanzer 2007; Messina (2007); Bennett (2003).

completely miss its real and true function. The Cluster Approach emanated from UNHCR's urgent responses to the threat of extinction at the hands of powerful states in the Global North. The IDP camp thus becomes the material extension of this fundamental survival strategy of a once beleaguered international organisation, with the operational dynamics as tertiary considerations. This is in keeping with what Massey cautions us against, in that,

Instead then, of thinking of places as areas with boundaries around, they can be imagined as articulated moments in networks of social relations and understandings. And this in turn allows a sense of place which is extraverted, which includes a consciousness of its links with the wider world, which integrates in a positive way the global and the local.<sup>593</sup>

As already noted, the camp occupies an ambiguous political and legal space, because it is a half-way house between citizens living in a sovereign state and the international legal rights apportioned to refugees living in foreign lands. While this may seem contradictory and completely irrational, it gives UNHCR the capacity to simultaneously solve two diametrically opposed problems, which guarantees its existence. Indeed, as we saw in chapter one, the main criticism arising from UNHCR's involvement with IDPs and in-country protection in the 90s, was that by promoting the rights of citizens to remain within their borders, it eroded its modus operandi of refugee protection, especially in its ability to lobby receiving states to respect and contribute support to the masses fleeing into their territories.

However, the IDP camp and its residents occupy a desensitised state of limbo that does not attract the protest against barrier restrictions compared to refugee flows, or of claims of neo-colonial interventions, precisely because it is a 'placeless place' neither within nor without the state, which ultimately means that international organisations can stage interventions 'without' staging interventions. The camp therefore provides the new political avenue for powerful states to curb refugee flows while simultaneously 'protecting' the vulnerable and assuaging any criticism or guilt. Citizens can remain at 'home', therefore extinguishing the need for flight and its associated political tensions, while the 'root causes' of their plight are

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<sup>593</sup> Massey (2005).

simultaneously ‘addressed’ by ‘altruistic’ NGOs. The IDP Regime becomes the ultimate barrier to refugee flows because it makes refugees extinct from the onset.

This echoes the work of Dubernet who observed how measures enhancing the safety of displaced persons were shallow and were always subordinate to containment aims. Now while she focused on wider humanitarian safe areas, and not on the IDP Regime per se, with its systematic creation of bureaucratic structures, laws and policies in camps, her study has resonance for the IDP experience in camps, as

...the international community’s impact on the size and evolution of humanitarian spaces is greater than accounted for so far. Indeed, in the return, containment and bargaining processes, places such as Kibeho, the front line areas in northern Iraq or Srebrenica *turned into snares for their unfortunate residents. They became traps because they were initially created to discourage flights and thus had no escape routes: they were and remained humanitarian spaces without exit* [emphasis added].<sup>594</sup>

### ***5.3 Constructing the Enemy***

Secondly the camp could be harnessed by the NRM government and international community, to create and sustain the prevailing images and stereotypes of the ‘enemy’ as a violator of human security, which was part of the propaganda machinery used for both international and domestic audiences respectively. As Keen states

...when others want to define you in particular ways, this may be to recruit supporters or perhaps to label you as an ‘other’. This labelling as ‘other’ may be part of a process of defining oneself and one’s own group and of promoting self-esteem. It may also be part of a programme of discrimination, exploitation and/or scapegoating.<sup>595</sup>

The camps thus came to possess a subliminal meaning, because together with the sights of mutilated and dismembered rebel victims, they became the international face of the suffering of northern Uganda. The camps were well suited to this end because unlike the insurgency and LRA, which were virtually hidden between Uganda’s border with Sudan and difficult to comprehend from afar, the camps thus became a tangible reference point to market the trauma

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<sup>594</sup> Dubernet (2001), p. 127.

<sup>595</sup> Keen (2008), p. 72.

and magnitude of suffering. Their attenuated conditions were projected as an outcome of LRA violence and not as a deliberate strategy or mechanism of exploitation and manipulation by government and NGOs, with both actors perceived to be simply acting in a reactionary capacity to the perceived LRA madness. This was first envisaged within Donor and NGO reports that would always commence with a synopsis of the conflict which perpetuated this false and constructed image:

On December 23<sup>rd</sup>, 1999, the Lord's Resistance Army re-entered the Districts of Gulu and Kitgum, ending the relative peace the district had known. *As a result the population returned massively to the IDP camps, leaving a large part of their crops on the fields.* Since then, the LRA successfully managed to restrict access to roads, initially paralysing and later on seriously hindering relief efforts, and choking the economic life of the district [emphasis added].<sup>596</sup>

The 18 year insurgency *caused* by the Lord's Resistance Army (LRA) rebels characterised by massive killings, abduction, ambushes on civilian vehicles and forced recruitment of children, lootings and wanton destruction of property etc. *resulted into the massive displacement of people from their original villages into 33 Government gazetted IDP camps* [emphasis added].<sup>597</sup>

The second came from global media which was thus mobilised to conflate and present such a skewed picture in which 'information emerging at the time of the worst disasters may represent the collision of one set of fictions (for example, deliberate falsehoods and confusions put about by abusive local governments) with another set of distortions propagated by the international media'.<sup>598</sup> Beginning in 1995 with the New York Times, which published an article titled *Rebels Without a Cause Terrorise Uganda's Poor*, the LRA were presented as a senseless group that 'has only about 1,500 followers, but have killed hundreds, abducted thousands of children and terrorize with tactics like cutting off noses and ears, breaking legs with hammers and laying land mines...seeks to overthrow the Government but has no concrete political program but to terrorise a population of subsistence farmers and delay the

<sup>596</sup> Action Against Hunger-USA, 'Water and Nutrition Program in Displaced Camps', Gulu District, January-December (2000).

<sup>597</sup> WFP, Recovery Evaluation Brief, September (2004).

<sup>598</sup> Keen (2008), p. 149.

development of Uganda's poorest region'.<sup>599</sup> Throughout the early 2000s the connection between LRA and the camps became more pronounced with the *New York Times* claiming that 'Over the past few weeks, as many as 30,000 villagers have been huddled together at night for protection on the sprawling grounds of the main hospital here. *They have reason to be scared: the huts of thousands of people in and around Gulu have been destroyed in recent fighting between government soldiers and some of the world's most bizarre rebels—the Lord's Resistance Army*' [emphasis added].<sup>600</sup>

*The Economist* of that year in an article entitled *A Catastrophe Ignored*, stated that 'many flooded back into northern Uganda, murdering and massacring as they went. *The Ugandan government then told the local people to leave their villages and settle in camps, for better protection.* Ever since, desperate for food that is no longer grown in the countryside, the LRA has targeted these camps'.<sup>601</sup> Following the ICC's unsealing of the warrants of arrest for the five LRA commanders in October 2005 and Joseph Kony being placed on the US Treasury Department's Special Designated Global Terrorist' list in August 2008, it became even easier to make such inaccurate connections. *The Washington Post* similarly echoed such a biased message in a 2006 article entitled *To End Uganda's Nightmare*, where camp life became the first point of reference for anyone wanting to denounce the LRA atrocities and lobby the world for relief: 'In Palabek-Kal camp where thousands have been crammed into a makeshift village. Hearing their stories of suffering and survival made two points abundantly clear: They are praying for peace every moment, and they expect the world community to do everything possible to help them achieve it. Their yearning was deeply moving, and their collective intensity and faith to build a better future in the midst of such hardship was powerful'.<sup>602</sup> Similarly, *The Guardian*, in a 2007 article entitled *Teaching Peace in Uganda*, made the leap of arguing that the rebel activity had singlehandedly destroyed farmland and

<sup>599</sup> 'Rebels Without a Cause Terrorise Uganda's Poor', *The New York Times*, 21<sup>st</sup> June 21 (1995).

<sup>600</sup> 'Uganda's Terror Crackdown Multiplies the Suffering', *The New York Times*, 4<sup>th</sup> August (2002).

<sup>601</sup> 'Uganda: A Catastrophe Ignored', *The Economist*, 22<sup>nd</sup> July (2004).

<sup>602</sup> 'To End Uganda's Nightmare', *The Washington Post*, 31<sup>st</sup> October (2006).

livestock and disrupted the education of children forced into camps, as one interview with a school teacher living in a camp claimed:

The reality is that many people have nowhere to go. The camps are home, and everyone in them- from school teachers to the children they teach is living in the same cramped conditions...many children don't have any background knowledge; either their education was disrupted by the fighting around them or they were recruited as child soldiers, drafted with thousands of others by the rebel Lord's Resistance Army. Many children still don't come to school for fear of being abducted by the LRA.<sup>603</sup>

*The Economist* of 2007 argued that, 'The violence is worth emphasising because it explains the almost demonic grip the LRA has over the displaced. A single LRA bullet, says aid workers, would be all it would take to send the resettled back to the camps...The children are barefoot, in tattered rags or naked, their bellies swollen with worms; traditional community life broke down in the centralised camps'.<sup>604</sup> A 2008 *Guardian* article entitled *Civil War Pushes Stress Levels to Record High In Uganda*, proclaimed the same argument, but then went on to make the direct connection between war, camps and the rebels in the following year as the LRA gradually moved across the border to bases in DRC and Central African Republic, with the claim that 'northern Uganda is now experiencing a semblance of peace. But while some people are making their way back to their home towns and villages, up to 80% of the population of Gulu, Amuru, Kitgum and Pader districts are still considered displaced, and an estimated 85% still live in government camps'.<sup>605</sup>

## Conclusion

This chapter has employed the Foucauldian concept of heterotopia as a clarifying light on how the practice of humanitarian space within the displacement camps in northern Uganda spatialised particular regimes of truth. It has exposed how just because arrangements of space exist beneath a legitimate rationale (protection of IDPs) and just because they have an apparent spatial, that is, pragmatic, existence (camp based delivery), does not make them

<sup>603</sup> 'Teaching Peace in Uganda', *The Guardian*, 15<sup>th</sup> November (2007).

<sup>604</sup> 'Uganda: Still Gripped by Fear', *The Economist*, 29<sup>th</sup> November (2007).

<sup>605</sup> 'Civil War Pushes Stress Levels to Record High in Uganda', *The Guardian*, 5<sup>th</sup> June (2008).

innocent in the retention of power or the perpetuation of relief politics. The spatial regulation of the IDP camp was not simply about rescuing displaced masses from untold suffering, but far more fundamentally, about the creation of a separate and permanent world, which could absorb and sustain an indefinite humanitarian economy that guaranteed countless privileges and upheld the unceasing trepidations of a fragile state.

The events were a logical and predictable outcome of the IDP Regime, which revoked citizens of their citizenship and placed them outside the state both politically through the abdication of state responsibility to the international community, and physically through the creation of a separate territorial space within a state and the issue of a new bureaucratic label which 'entitles' them to external services and 'benefits'. However, what was actually experienced was far from benevolent with the IDP camp becoming a mechanism of control with all actors exploiting this 'acceptable' and 'urgent' state of limbo to justify any and every action. The IDP Regime had catapulted humanitarian impunity to astronomical levels because whereas before aid agencies were heavily criticised for their lack of co-ordination, ill suited 'one size fits all' interventions, and their incorporation into war economies, the Cluster Approach mechanism institutionalised humanitarian pathologies to create a seemingly more organised and sanitised intervention, which was in concordance with the imminent needs of the suffering masses.

In reality, the Cluster Approach became a Trojan Horse, acting as a subterfuge for 'business as usual' within the global relief industry. Camp Co-ordination became a euphemism for the consolidation of relief supremacy within complex emergencies. Camp Management became a euphemism for the depoliticisation and technicisation of chronic horizontal inequalities and state predation. Emergency Shelter became a euphemism for the 'Nightingale Effect' with the co-opting of the international community into calming and cooling the collateral damage emanating from a haphazard counter-insurgency campaign. Each component worked to cement structural violence which claimed more lives than the civil conflict, with 1.8 million people imprisoned in a permanent state of relief that involved them living and dying in their

own excrement, succumbing to water borne diseases, starving from lack of access to food, and living in the constant fear of rebel and government violence. In practice the Cluster Approach, which was trumpeted as the new and effective means to end suffering, changed the dynamics by creating a new complex emergency within an existing complex emergency.

## Pictures of IDP Camps in Northern Uganda



Figure 40. US Congress Woman Nita Lowey & Congressman Maurice Hinchey interviewing Raymond Odoki in Unyama IDP Camp (Frederick Laker 19/8/2007)



Figure 41. AMREF Goodwill Ambassador, actress Mena Suvari (Frederick Laker 20/2/2008)



**Figure 42. UN Under-Secretary General for Humanitarian Affairs Jan Egeland in Opit IDP Camp (Frederick Laker 1/1/2005)**



**Figure 43. Kitgum LC5 Chairman Naman Ojwee (left) and NRM Vice Chairman Haji Kigongo (right) posing for a photo in Padibe IDP Camp (Frederick Laker 15/2/2006)**



**Figure 44. IDPs in Pabbo IDP Camp lining up at bore holes (Frederick Laker 29/3/2007)**



**Figure 45. Lacekocot IDP Camp gutted by fire (Frederick Laker 4/4/2007)**



**Figure 46. Pabbo IDP Camp on fire (Frederick Laker 17/12/2005)**



**Figure 47. Presidential Candidate Dr. Abed Bwanika, PDP campaigning in IDP camp (Frederick Laker 9/1/2006)**



**Figure 48. Anaka LC3 Chairperson Denis Okema (right) leading UPDF Chief of Land Forces Lt.General Katumba Wamala (left) in IDP Camp (Frederick Laker 6/2/2007)**



**Figure 49. Police and civilians carrying 65 year old Josephine Arim shot dead by army in IDP Camp (Frederick Laker 25/12/2005)**

## Conclusion

At the beginning of this thesis we observed how the construction of Attention Deficit Hyper Activity Disorder (ADHD) as an unquestionable social fact, despite having no biological basis, facilitated a knowledge/power relationship which created norms, categories, institutions, publications and treatment programmes that served the multiple interests of schools, teachers, medical professionals, the pharmaceutical industry and the media, with considerable consequences for children, parents, and education. Similarly, the construction of the Global Internal Displacement Regime, despite being ambiguous, contradictory and having no conceptual basis, served a plethora of interests at each stage in its origins, evolution, structure and impact. It acted as a compromise initiative between powerful states, international institutions, fragile states, and the relief industry with considerable consequences for conceptions of sovereignty, state-societal relations, and the nature and trajectory of complex humanitarian emergencies.

The origins and evolution of the IDP Regime were not simply about the discovery of destitute masses who shared the same characteristics as refugees and had no protection under international law, but a geo-political game in which the old frameworks of the 1951 Convention had limited the interests of the powerful, with new ones thus required to replace it to manage and contain refugee flows, calm domestic pressures and conceal xenophobia while upholding international human rights obligations through the right to remain, which authorised interventions into the domestic affairs of weak states. The geo-political game saw the UNHCR embroiled in an existential fight to reinvent itself by recycling the Refugee Regime in the 'new' IDP Regime so as to allay Western fears and establish itself as a dominant humanitarian player. These events, however, paralleled the wider history of population control which now came to imprint itself upon new humanitarian norms and structures within complex emergencies, where in many cases counter-insurgency was already being practiced through displacement of populations into concentration camps (Sri Lanka,

Indonesia, Burma, and Uganda). This had a wider effect of blurring and white-washing state predation through systems of relief delivery.

The structure of the IDP Regime rested upon reproducing existing power structures of Western paternalism, humanitarian privileges, and the control of destitute masses through the refugee protection system. Such structures worked to create an alternate category of people, residing in an alternate territorial space, protected by an alternate external actor, which employed an alternate set of laws and guidelines. This had the effect of completely depoliticising and transforming complex emergencies into technical problems that awarded the relief industry complete control over a given populace for indefinite periods of time that could instantly justify and secure the livelihoods, funding, and global status of NGOs.

In addition, the introduction of the Cluster Approach framework created a zone of alternate social ordering which harmonised the interests and power dynamics of both fragile states and the relief industry by simultaneously infusing them into the camp space to the detriment of almost 2 million people, who were imprisoned in a space of permanent limbo, characterised by starvation, overcrowding, disease, social breakdown and continuous rebel attack.

### **Internal Displacement & International Politics**

The IDP Regime, while creating a number of inherent contradictions, ambiguities, and distortions, makes grand prescriptions that ran at the core of international relations. Indeed, the removal of state borders and the entrance of the humanitarian community into fragile states for indefinite periods, to cradle sections of a populace in the absence of a centralised authority amid a complex emergency, casts serious doubt on the funding, preparedness, personnel, and accountability of all ‘dedicated’ relief actors. This strategy has amounted to what Andreopoulos terms as normative overstretch: ‘collective expectations about proper conduct that create impetus for behaviour in issue areas that transcend the settled cartography bounded by institutional mandates’<sup>606</sup>. However, this could be considered to be a minor issue

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<sup>606</sup> Andreopoulos in Cronin and Hurd ed. (2008), p. 105.

compared to the underlying nature of international law, as recognised by Chimni who comments how:

International law has always served the interests of dominant social forces and States in international relations. However, domination, history testifies, can coexist with varying degrees of autonomy for dominating States. The colonial period saw the complete and open negation of the autonomy of the colonised countries. In the era of globalisation, the reality of dominance is best conceptualised as a more stealthy, complex and cumulative process. A growing assemblage of international laws, institutions and practices coalesce to erode the independence of third world countries in favour of transnational capital and powerful States.<sup>607</sup>

For already troubled states in the Global South, the IDP Regime provided the ‘new’ normative framework for the promotion of wider geo-political interests of states in the Global North that went far beyond refugee containment. In the same way, the Refugee Regime was only accepted and upheld insofar as it was useful for the West as a Cold War propaganda tool. The IDP Regime also came to be useful in legitimising and preserving systems of intervention, dependency and control, instrumental for the neo-colonial project. What was striking about the R2P discourse was that the arguments that ‘suffering knew no borders’, which then authorised intervention, were only applicable to fragile states in the Global South. This is arguably the latest reincarnation of the old practice of the International Administration of War Torn States as sections of a populace and territory which are ceded to international organisations with new mandates for indefinite periods of time.<sup>608</sup>

### **Internal Displacement & Crises of Citizenship**

The third implication exists at the level of governance, as while proponents claimed that they were assisting vulnerable masses, their direct application of refugee law automatically lifted the veil to expose their true colours, as in order to successfully contain refugees within their

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<sup>607</sup> Chimni et al (2003), p. 72.

<sup>608</sup> Ratner (2005), p. 695.

own borders, actors needed to create parity between IDPs and refugees. However, this endeavour led to a conflation of the issues of governance and internal politics, with that of the international politics of refugee protection. As a consequence, citizens trapped within their territories now ascended to the realm of international humanitarianism, which reproduced the systems of refugee protection and both side-lined and silenced the structural deficiency of the crises of citizenship that caused displacement in the first place.

The concept of citizenship generally connotes being a member of a political community with prescribed rights and duties. T.H. Marshall, from a sociological perspective, defines it as “the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society”. Citizenship is therefore the trajectory and landscape of relations between the citizen and the political entity.<sup>609</sup> However in many developing states such a concept becomes hollow with contestations over its precise meaning and physical value, which reveals how an ontological displacement first occurs before the physical displacement.<sup>610</sup> Sudan, the country with the record highest number of internally displaced people has been the result of such a crisis of citizenship. Differences in ethnicity and religion have merged with the disparities in socio-economic status between Northern and Southern Sudan.<sup>611</sup> The Dinka of Southern Sudan, who are predominantly Christian, have been marginalised, exploited and almost destroyed by the Arab Muslim government. Prendergast notes how the implementation of Islamic law in 1989 by General Omar al-Bashir, made non-Muslims second class citizens; Col. Nimeri’s attempts to redraw boundaries so as to incorporate the oil deposits in the North in 1983; attempts to reroute more water from the Nile for irrigation in the North, which would affect Southern nomadic pastoralists; and attempts by the North to depopulate the fertile agricultural land in the South through violent

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<sup>609</sup> Marshall (1992).

<sup>610</sup> Manby (2009), Fawole and Ukeje (2005), Kyung-Sup and Turner (2012), Yashar (2005)

<sup>611</sup> Prendergast in Sorenson ed. (1995), p. 116.

means,<sup>612</sup> have all been met with violence from The Sudan People's Liberation Army (SPLA).

A similar case is Colombia, which has been experiencing a protracted guerrilla war, with military forces employing displacement of rural populations as a counter-insurgency tactic within a conflict that also served multiple political and economic interests for a plethora of international and domestic actors. Like Uganda, authorities since 1997 have also developed a national IDP policy which awarded services, goods and rights to over a million IDPs residing in urban centres. Law 387 of 1997 created a national status for IDPs providing humanitarian assistance. Since 1999, at the request of the government, UNHCR has maintained a field presence disseminating IDP legislation, registering IDPs, issuing ID cards, and creating protection networks among civil society groups and local authorities.<sup>613</sup> However, there was an irony to the experience of internal displacement in Colombia, which was widely believed to have been an outcome of the 60 year war, but was, in actuality, the original cause of the violence and instability in the early 20<sup>th</sup> century. The main protagonists, the Revolutionary Armed Forces (FARC), first began as civil defence units who fought to protect peasants from eviction and displacement off their land by rich farmers in 1930s, who then later adopted Marxist ideology in the 1960s and demanded greater access to land and income distribution.<sup>614</sup> The conflict then mutated and hardened over the decades through the US involvement and the lucrative coca industry, with the emergence of a three dimensional war between government forces, paramilitaries and three guerrilla forces, that forced hundreds of thousands into cities for sanctuary.<sup>615</sup>

For such states the IDP Regime simply distorts and inverts crises of governance and citizenship through the creation of a new official bureaucratic label (IDP) incorporated into national policies. This awards certain citizens trapped within their own states with new rights

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<sup>612</sup> Ibid, p. 166.

<sup>613</sup> UNHCR, May (2003).

<sup>614</sup> LeGrand (1986).

<sup>615</sup> Guaquetta in Arson ed. (1999). p. 86.

and services, when the wider violence and disorder has arisen precisely because of the state's inability or unwillingness to deliver on the social contract. The IDP Regime is in sum adding an inefficient parallel structure to existing inefficient state structures, by creating two tiers of citizens who are both seeking, in different ways, to reverse the same socio-economic iniquities.

### **Internal Displacement & Accountability of International Organisations**

Finally the IDP Regime makes a considerable contribution to the emerging debates regarding the accountability of international institutions which are seldom considered, with obligations always falling on state actors, with continuous efforts invested in moralising and socialising the state. The failures and inconsistencies of international organisations fall below the radar without question and can easily be deflected. This is evident in the famous case which ignited this debate in the late 1970s, when former employees of the Organisation of American States (OAS) who were unfairly dismissed, challenged their termination first within the internal system of the OAS, through a tribunal (*Broadbent v. OAS*) which while ruling in their favour, exploited them by agreeing to pay them compensation instead of their full reinstatement. Unsatisfied with this outcome they sued the OAS in US courts. However, this became a futile exercise as their case was thrown out after many appeals on the grounds that the OAS was immune from the jurisdiction of American courts.<sup>616</sup> Immunity has thus always since been the biggest obstacle to the accountability of international organisations.<sup>617</sup> In light of this, a slew of scholars have attempted to navigate this minefield with potential solutions<sup>618</sup>. More recently, Verdirame rested hopes of 'guarding the guardians' on the obligations of international organisations. While most actors trumpet the rights of international organisations, they rarely focus on the obligations which match a particular right. Therefore,

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<sup>616</sup> Lewis (1978-1979), p. 683.

<sup>617</sup> O'Toole (1980), Wallens (2004), Wilde (2006).

<sup>618</sup> Reinisch (2000 and 2010), Wouters and Odermatt (2012), p. 7-14.

if an organisation is going to be on the ground promoting policies and practices that cause harm, then it has violated the UN Charter.<sup>619</sup>

However in light of these debates there was a turn of the tide in June 2011, when the European Court of Human Rights, in the case of Sufi and Elmi versus United Kingdom, made a juridical pronouncement on the conditions of humanitarian relief camps that set a precedence which sent shockwaves for this wider debate. The case involved the deportation of two Somali refugees, Mr Abdisamad Adow Sufi & Mr Abdiaziz Ibrahim Elmi from Britain back to the Afgooye corridor and Dadaab refugee camps in Kenya, with the former not only entering the UK legally and the latter's rejection of asylum, but more seriously for the criminal acts of burglary, fraud, road traffic offenses, drugs and possession of firearms which made them a danger to the public. However, on being referred to the ECHR, and following a long investigation into the security situation in camps and Somalia, through visits and Amnesty International and Human Rights Watch reports, the court ruled that Sufi & Elmi could not be deported on the grounds that the conditions constituted torture:

As sufficiently dire to amount to treatment reaching the thresholds of Article 3 of the Convention. IDPs in the Afgooye Corridor have very limited access to food and water, and shelter appears to be an emerging problem as landlords seek to exploit their predicament for profit. Although humanitarian assistance is available in the Dadaab camps, due to extreme overcrowding access to shelter, water, and sanitation facilities is extremely limited. The inhabitants of both camps are vulnerable to violent crime, exploitation, abuse and forcible recruitment. Moreover, the refugees living in- or, indeed, trying to get to- the Dadaab camps are also at risk of refoulement by the Kenyan authorities. Finally the Court notes that the inhabitants of both camps have very little prospect of their situation improving within a reasonable timeframe. The refugees in the Dadaab camps are not permitted to leave and would therefore appear to be trapped in the camps until the conflict in Somalia comes to an end.<sup>620</sup>

This landmark case ended a long battle between proponents and opponents of camp based humanitarian relief. As while we have always known about camp conditions with fierce

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<sup>619</sup> Verdirame (2011).

<sup>620</sup> Sufi and Elmi v. The United Kingdom, Judgement, European Court of Human Rights, Fourth Section, 28<sup>th</sup> June (2011), p. 69.

arguments from opponents who would reveal horrific conditions and would cite the Torture Convention<sup>621</sup>, they would be quickly countered as the practice of torture would be open to debate and contested by many camp proponents.<sup>622</sup> However, European jurisprudence closed that debate by specifically defining the thresholds that match what the black letter of the law mentions. Encampment now constituted torture and a violation of international law, with a measure of whether a particular international actor has breached this convention. There would be a breach of obligations by an organisation's acts or omissions that created the conditions that subjected human beings to degrading treatment or punishment which would lead to their responsibility being engaged in international law, with considerable consequences of ceasing their conduct and activities or making huge reparations.

As I have shown in this thesis, the creation, maintenance and control of the IDP camps in northern Uganda by the UPDF and UN agencies, together with their implementing partners under the Cluster Approach system, inscribed their own power dynamics into space, which then created a precarious environment that exposed its inhabitants to a whole set of risks covered under Article 3 (rape, murder, starvation, restricted movement, disease, crime and rebel attack) which debilitated and violated 1.8 million people. While they appeared to be unforeseen events in a complex emergency, they were tolerated, disguised, and legitimated under the language of 'protection'. However, they were ultimately the logical outcome of the establishment of a lucrative humanitarian economy, grafted to a counter-insurgency operation, amid a protracted civil conflict, that divided the country to perpetuate a variety of local and global interests. Indeed, the IDP Regime, through the mainstream Cluster Approach system which defined and allocated responsibility but instead facilitated structural violence, can be instrumental in holding aid agencies accountable for the injury they cause, and for their failure to fulfil their stated obligations.

### **Recommendations for further research**

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<sup>621</sup> Kibreab (1989), Voutira and Harrell-Bond (1995), Hyndman (1997), Black (1994)

<sup>622</sup> Crisp and Karen (1998), pp. 27-29.

This research has thrown up many questions in need of further investigation. The first is a deeper assessment of the Cluster Approach framework in comparative cases. A point of caution comes from UN Habitat's 2003 *The Challenge of Slums: Global Report on Human Settlements* which asserted that 'in order to do so [tackle the scourge of slums] governments, international aid agencies, and NGOs involved in facing the slum challenge must first come to grips with what slums really are, why they exist, and in fact, why the number of people living in such places is projected to double by 2030'.<sup>623</sup> UN Habitat thus defined a slum as 'an area that combines to various extents the following characteristics: *Inadequate access to safe water; inadequate access to sanitation and other infrastructure; poor structural quality of housing; overcrowding; and insecure residential status*'[emphasis added].<sup>624</sup> However, given such a definition and attempts by the UN to end slums in accordance to the Millennium Development Goals, it therefore becomes prudent to ask whether the debut performance of the UN Cluster Approach and the Camp Management Toolkit were in practice simply creating slums under the legitimate label of IDP camp.

This was witnessed in the aftermath of the January 2010 earthquake in Haiti, which left an estimated 300,000 dead and countless homeless with 1.5 million people residing in IDP camps in Port au Prince which were supposed to guarantee protection through the application of the Cluster Approach system under the aegis of UN OCHA. However, Schuller, in his visit to 31 camps, documented how the camps had created a disaster within a disaster, through the plummeting conditions of health, education, sanitation, and water. One camp dweller reported how, 'In my camp, there are 12 toilets in the front, 12 toilets in the back for 4,200 people. In the camp, the shower is...Everyone at their tent has a little plastic basin, where they throw water over themselves, or they just shower in public'.<sup>625</sup> In addition there were a series of cholera outbreaks that arose from the lack of clean water and healthcare facilities which in one camp alone killed 1700 people in December 2010.

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<sup>623</sup> UN Habitat (2003).

<sup>624</sup> Ibid.

<sup>625</sup> Schuller (2010).

From afar such catastrophes seemed perplexing given that there were over 400 NGOs active in the health sector alone. However, on closer inspection such conditions of acute unaddressed suffering became very logical. The impact of the Cluster Approach system in Haiti revealed how, like Uganda, there existed a huge gulf between theory and practice, as while OCHA was attempting to co-ordinate planning and implementation of relief activities, many NGOs did not recognise the ‘authority’ of OCHA, considering themselves to be independent barons. For many NGOs ‘when planning has to be put into action, co-ordination efforts with OCHA tend to decrease, while aspects of *visibility, competition and donor accountability play an increasingly important role. This leads to a large number of independent projects.* In this phase some NGOs tend to neglect the feedback to the clusters regarding initiated, completed, or abandoned projects’ [emphasis added].<sup>626</sup> This ‘free for all’ like Uganda therefore created the many gaps in service delivery for which many IDPs were left to their own devices to endure.

Second, if the debate is to move forward, a better understanding of the end of displacement may need to develop. This derives from observing how the commencement, practice and experience of displacement serve a multitude of macro, mezzo, and micro interests which explain its longevity. Therefore, it may be prudent to understand the events, political processes, and interests that determine its conclusion. This is of serious concern in many post-displacement states where new displacements have arisen due to the inability of many to return and resettle in their original ‘homes’ due to situations of disaster, land grabbing, and government consolidation of rebel territory.

The final recommendation for further research would be an analysis of UNHCR to understand how the organisation is balancing its refugee protection obligations with that of IDP protection. This is of concern because of the diametrically opposed priorities and problems that each produces. For now UNHCR is on the one hand promoting the right to seek asylum, while on the other upholding the rights of citizens to remain within their borders under a new

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<sup>626</sup> Stumpehorst, Stumpehost and Razum (2011), p. 591.

bureaucratic structure. Furthermore, there is the giant task that arises when refugees exist in the same states as IDPs. In the case of Uganda which was hosting refugees from Sudan, Rwanda, and the Democratic Republic of Congo in addition to its own 2 million IDPs, UNHCR became increasingly overstretched with tensions emerging from the division of labour, resources and mixed mandates.

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