The Protection of Internally Displaced Persons in the Sudan: Applying International Law at the Field Level

By Kirsten Zaat

PHOTO: Shikan– This former squatter area for South Sudanese internally displaced persons was demolished by Government of Sudan security forces from 28 December 2004 and an estimated more than 30,000 persons lost there homes. Here a former resident of Shikan trails the area – the size of approximately 16 football fields– for any mud bricks which might be salvageable for the purposes of rebuilding elsewhere. © Kirsten Zaat, January 2005.

PHOTO: El Fateh– This desert area north of Khartoum forms the area in which inhabitants of Shikan and other demolished squatter areas and IDP camps in and around Khartoum where forcibly transferred to by Government of Sudan security forces from 2004 onwards. No life-sustaining services were made available in the area before such transfers. © Kirsten Zaat, January 2005.

While refugee numbers continue to decrease around the world, the number of internally displaced persons (IDPs) continues to steadily rise.[1] The United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) estimates the number of IDPs in the Sudan at around 6 million, the largest IDP population in the world. According to the United Nations, "[i]nternally displaced persons [IDPs] are entitled to enjoy, in full equality, the same rights and freedoms under domestic and international law as do the rest of [a] country's citizens."[2]

In the Sudan however, IDPs are regularly denied their basic human rights and "[a]lthough the displaced are frequently forced to flee their homes for the same reasons as do refugees, the fact that they remain within national territory means that they cannot seek to qualify as bona fide "refugees" entitled to the special protective regime accorded to refugees under international law. Moreover, their presence within national territory means that their own Government bears primary responsibility for meeting their protection and assistance needs."[3]

The international protection of IDPs is an emerging area of international law. Since the mid-1990s the United Nations has embarked upon significant investigation into the matter, having appointed Francis Deng - a former Sudanese minister – as the United Nations Secretary General's Special Representative for Internally Displaced Persons. Since that time, important documentation has been drafted by the Human Rights Committee and the Special Representative's good offices with the assistance of non-government organisations, in an attempt to determine the nature and scope of displacement and potential international protection responses, including the possibility of establishing legally binding regimes.[4]

Yet despite the contemporary plethora of UN and NGO documentation and activities on the international protection of IDPs, comprehensive legal analysis of the matter remains somewhat limited. The work of Catherine Phuong is a notable exception and in late 2004, building upon a disparate compendium of academic articles on internal displacement written by a clique of international lawyers, she published the first inclusive, independent academic study on the international protection of IDPs.

This paper accepts Phuong's generic analysis of the current protection regime of IDPs as elucidated in her important work - *The International Protection of Internally Displaced Persons*, while seeking extend our understanding of the legal protection of IDPs in practice. Here we seek to understand the practical application of law as exemplified by international responses to the specificities of the north-south internal displacement phenomenon in the Sudan following the signing of the 9 January 2005 Comprehensive Peace Agreement. The paper thus explores the application of international legal norms as public policy, in practice, at the field level.

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[1] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge University Press, Cambridge, 2004), p.1.
[2] United Nations Commission on Human Rights; "Compilation and analysis of legal norms", COMMISSION ON HUMAN RIGHTS Fifty-first session, E/CN.4/1996/52/Add.2, 5 December 1995.
[3] Ibid.
[4] UN OCHA has since set up the Inter-Agency Internal Displacement Division (IDD), a unit tasked with focusing on the policy dimensions associated with establishing a mechanism for IDP protection in accordance with UN OCHA's mandate to coordinate complex emergencies. The United Nations High Commission for Refugees (UNHCR) has for many years been involved in the debate around IDP protection, and has most notably since the 1991 establishment of the autonomous area in Kurdish Iraq embarked upon protection and assistance activities for IDPs, which has lead to criticisms that such assistance threatens the refugee right of asylum. Despite UNHCR's capacity to do so, for these and other reasons, UNHCR's propensity for becoming lead agency for IDPs, including in the Sudan, has been fraught with insecurity. Several non-government organizations, most notably the Norwegian Refugee Council's Global IDP Project, also began the process of documenting the needs of internally displaced persons (IDPs) in the mid-1990s in an effort to work towards their better protection. It is indeed the case, in the Sudan - as elsewhere - that it is NGOs providing the overwhelming majority of protection and assistance activities to IDPs.

The problem of internal displacement is thereby analysed within a politico-legal framework. The experiences of Sudanese IDPs are critiqued using current human rights discourses and an argument is put forward that upholds the importance of complementarity with refugee law, in scenarios of internal displacement while attending to the conceptual similarities and differences between refugees and IDPs by analogy. The lack of legal protection afforded Sudanese IDPs focuses here on those living in IDP camps and squatter areas in and around Khartoum.

Importantly, in an act of academic advocacy, the paper focuses on the abuse of the social, cultural, economic, political and civil rights of Sudanese IDPs in an attempt to raise the audience's awareness of the matter. It is hoped that by doing so the legal protection of IDPs will be furthered. This article draws intimately upon the author's experiences working Advocacy Officer for the [IDP] Sustainable Returns Team for UN OCHA in the Sudan in 2005.

BACKGROUND: 'PEACE' IN THE SUDAN[5]

On 9 January 2005, the Government of Sudan (GOS) and the Sudan People's Liberation Movement/Army (SPLM/A) signed the Comprehensive Peace Agreement (CPA), bringing to an end 21 years of internal armed conflict in the Sudan. The level of devastation caused by the war means that peace dividends will not be forthcoming in the immediate future without the ongoing commitment of both parties to the agreement. This must be coupled with sustained international cooperation. Immediate life-sustaining assistance (relief) will be required by all affected populations, including IDPs, for many years to come.

Ongoing fighting in the Sudan inevitably threatens an embryonic peace with conflict in the Darfurs continuing and human rights violations against civilians, including IDPs and humanitarian personnel occurring daily. Despite the somewhat disproportionate media coverage of the Darfurs, the situation in the rest of the Sudan is actually little if at all better. Darfur is largely prioritized because the fighting is 'new' and therefore momentarily holds the limited attention span of the international community. Indeed, the humanitarians are there. For how long depends largely on donor government commitments.

Ethnic cleansing – and some would legitimately say genocide - is also an extremely serious consideration in the Darfurs, which further commands considerable international attention. However, ethnic cleansing is nothing new in the Sudan and the international community has turned a blind eye to many such a Sudanese atrocity for at least the past 150 years.[6]

Despite the 'peace', ongoing localized conflict in areas such as east Sudan, the Upper Nile and south Sudan continue to exacerbate humanitarian need. Severe poverty, social exclusion and food insecurity due to chronic drought and persistent floods make further outbreaks of conflict increasingly likely. Southern and other militia groups - excluded from the peace process - are still active, leading to the ongoing forcible movement of large numbers of IDPs.

Sudan as a whole continues to suffer widespread poverty and unjust development. The human development indicators in south Sudan are some of the worst in the world, making south Sudan in all

[5] Sudan is the largest country on the African continent with a population of 38 million, of which 44% of the population is under 15 years of age. Sudanese are ethnically Arabs (predominantly in the north) and Africans (mainly in the south), however, there are over 300 tribal groups and over 100 different languages and dialects spoken in the Sudan.

[6] See Zaat, Kirsten; 'Legalising a Contemporary 'War of Peace': A Case for Humanitarian Intervention in the Sudan', *Journal of Humanitarian Assistance*, (November 2004), www.jha.ac. See also Scroggins, Deborah; *Emma's War: Love, Betrayal and Death in the Sudan*, (London: Harper Collins, 2004).

probability the poorest place on the planet.[7] Prolonged displacement and poor rainfall leading to crop failure have further compromised the food security situation. A lack of peace dividends in the form of immediate development gains in south Sudan coupled with any large influx of IDP returnees, a natural disaster or a famine will lead to a humanitarian crisis in the south, quickly ending the already tenuous peace in the Sudan.

The Current Situation of Internal Displacement

Even before the crisis in Darfur came to a head in 2003, Sudan had the largest population of IDPs in the world, numbering over 4 million persons. A further 2 million IDPs have been created by ongoing crises there. The resultant social, cultural, economic, political and civil rights violations and abuses facing IDPs remain extreme, despite the signing of the Comprehensive Peace Agreement.

A third of Sudan's IDPs live in settlements in and around Khartoum[8] and while a recent survey suggested that the human rights abuses suffered by this group of IDPs are acute, the situation facing other IDPs is anything but acceptable. In some locales - inaccessible to the international community as a result of GOS restrictions – it may actually be worse.

While the plight of IDPs in the Darfurs in well known, the difficulties facing those in Khartoum and the rest of the north and south have been comparatively neglected by both GOS and the international community alike. Indeed, up to early 2005, IDPs in Khartoum had once again become the forgotten people and as such the daily atrocities perpetrated against them remained hidden from world-view.[9] Considerable efforts by UN OCHA, the United Nations Secretary-General for the Sudan, Jan Pronk and others have put the IDPs of Khartoum back on the map. Sustaining advocacy gains remains a daily battle and unless GOS is called to account by the international community, the chances of IDPs becoming a 'disappeared peoples' once again, is not unlikely.

With humanitarian agencies focused on the Darfurs, the deteriorating humanitarian conditions and veritable dearth of legal protection in Khartoum camps and squatter areas simply went ignored. The physical presence of the international community – including UN agencies, NGOs and donor governments – in Khartoum seemed not to include a capacity for internationals to 'look into their own backyards' and recognize the atrocities taking place on their own doorsteps.

Yet there remains a large body of legal and policy documentation pertaining to the protection of IDPs in the Sudan including as a basic start the *Aide Memoire (2004)*, Security Council Resolution 1590 (2005), the *Guiding Principles on Internal Displacement*[10], the *Joint HAC and SRRC Policy Framework for the Return of Displaced Persons in a Post-Conflict Sudan (2004)*, and the *IASC Core Principles Relating to*

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[7] UNICEF; *Towards a Baseline: Best Estimates of Social Indicators for Southern Sudan*, (NAIROBI: UNICEF, 2004); See also *United Nations Human Development Report*, (Geneva: UNDP, 2005); and Seager, Joni; *The State of Women in the World Atlas: Women's Status Around the Globe: Work, Health, Education and Personal Freedom*, (London: Penguin, 1997).

[8] The migration of IDPs to Khartoum began in the mid-eighties due to drought and famine in Kordofan State and gathered pace in the late-eighties as people fled fighting in south Sudan. Several INGOs commenced activities to support IDPs around Khartoum in the early-nineties, including MSF-France, MSF-Holland, Goal, Adventist Development Relief Agency, Fellowship for African Relief and the International Rescue Committee. As conditions in the camps stabilised after 2000, international NGOs began transferring responsibilities for managing health clinics and other activities to local NGOs which with the exception of *Al Manar* and a few others, are in actuality state-affiliated charitable welfare institutions, and thus anything but non-governmental in nature. The number of IDPs in Khartoum is in constant flux as a result of ongoing demolitions, forced return and spontaneous return.

[9] World attention is considerably compromised by the fact that only two international media outlets employ foreign correspondents permanently based in the Sudan. These correspondents are Jonah Fisher who is a stringer for the BBC and Ophera MacDoom, a Reuters correspondent. They are required to cover the enter country.

[10] See also *Handbook on Applying the Guiding Principles* and the *Manual on Field Practice in Internal Displacement* at www.reliefweb.int/idp

UN Activities in Countries in Crisis (1998).[11] The wealth of knowledge and practical advice contained in such material can no longer be ignored or disregarded by the international community in the field. It is time to professionalise in the interests of providing greater protection to all civilians in need, including IDPs. Structures and systems can no longer be dismissed as 'out of touch with reality.' Ad hoc, reactionary approaches based on long-winded discussions on how to 'reinvent the wheel' must end.

Professional humanitarian standards such as the *Red Cross/NGO Code of Conduct*, *SPHERE'S Humanitarian Charter*, and aid agency mission statements and mandates increasingly require humanitarian personnel to justify and contextualise their activities within a rights-based framework that draws heavily upon human rights law. The *Red Cross/NGO Code of Conduct*, for example, states that "*the right to receive humanitarian assistance*, and to offer it, is a fundamental humanitarian principle which *should be enjoyed by all citizens of all countries*… Hence the need for unimpeded access to affected populations, which is of fundamental importance in exercising that responsibility." (emphasis added).

The comparative neglect of non-Darfuri Sudanese IDPs has been largely attributed to the fact that humanitarian access remains difficult throughout the Sudan and that by insisting on working in the capital (Khartoum) UN and other humanitarian agencies might somehow threaten shaky access elsewhere.[12] This is despite Sudan having signed the Rome Security Protocol (1998) and the Agreement on the Implementation of Principles Governing the Protection and Provision of Humanitarian Assistance to War Affected Civilian Populations (1999) which both guarantee the UN and NGOs safe and unimpeded humanitarian access to the people of Sudan.[13] Perhaps it is not just an access issue per se but also a reflection of the humanitarian community's general ignorance of the existence of legal and policy frameworks which if learnt can be readily utilized for effective advocacy purposes.

By November 2004, frustrated by the lack of movement by the monolithic humanitarian community in the Sudan, a small cliche of committed NGOs, IOM and UN OCHA humanitarian personnel independently determined that it was time to really apply legal regimes and policy in practice in Khartoum itself. No longer willing to participate in the generalised approach of the humanitarian community which we perceived had allowed itself to be inadvertently co-opted to collaborate in GOS' denial of IDP protection in and around Khartoum,[14] a small coalition of like-minded, seasoned humanitarian personnel joined together to working in partnership for protection and assistance purposes.

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[11] See IASC Secretariat "Protecting Principles Under Stress: Guidance for the Development of Common UN Ground Rules Based on Agreed Principles", (Geneva, 1998).

[12] In the camps around Khartoum internationals are required to apply for travel permits in order to access communities to deliver assistance. Internationals are not permitted access to these camps after 3:00pm daily. Harassment of humanitarian workers, especially NGOs is common place and includes death threats made by Sudanese government security and intelligence officials to Sudanese national staff. The author witnessed an increasing number of such threats made to humanitarian personnel, although given that these NGOs are still active in the Sudan for security purposes the precise incidents are intentionally not detailed here.

[13] According to the Norwegian Refugee Council, "control of territory has been a main reason for the fighting [in the Sudan] but the acquisition of resources and assets from civilians, or the denial of resources to the opposing side have been the dominant aspects of the war." Humanitarian assistance is considered a significant resource and asset in the Sudanese conflict and despite a plethora of negotiated agreements between the UN, GOS and insurgents, its use for political gain is well established in the Sudan. So too it seems is the willingness of a number of United Nations and other humanitarian agencies to appease GOS by refraining from insisting on the protection of IDPs in and around Khartoum for the sake of gaining limited humanitarian access to other parts of the country where donor funding is forthcoming and programmatic interventions are already well established. See UN OCHA; *Humanitarian Situation in the Sudan*, (28 September 1999), www.releifweb.int.

[14] This denial had long been supported by a number of United Nations agencies, most notably UNICEF which has consistently undertaken a policy of appeasement with GOS, for reasons which may or may not be attributed to a number of different factors including: the general perceived unwillingness of senior UNICEF staff to confront government officials on human rights abuses and the inordinate length of time spent by the same senior staff in the Sudan alluding to a 'going native' affect. Similarly, it was the author's experience that senior UNICEF staff working in south Sudan were also consistently collaborating with the SPLM/A at the expense of Sudanese civilians in need. Including by fervently expressing anti-Sudanese government rhetoric while being largely unwilling to objectively criticize the SPLM/A.

Our first achievement – as we saw it - was the production of a rapid assessment of conditions in four of the official IDP camps, culminating in *The Khartoum State Rapid Assessment Report*[15] published locally in January 2005[16]. Although the survey only provides a snap-shot of protection and assistance needs in Khartoum and is therefore in no way a comprehensive survey of the phenomenon of displacement there, the group felt the findings warranted the serious attention of the international community and thus the advocacy began.[17]

Predictably, the report was received poorly by GOS and sadly with great skepticism by some UN specialized agencies and international NGOs. UNICEF and the International NGO Consortium in Khartoum sought to ignore and/or undermine the findings contained in the report including by questioning the reports intent. Such detractors where - at least up to May 2005 - staffed by a large number of humanitarian personnel either unaware of or unsupportive of their responsibility to engage in protection activities as part of their humanitarian responsibilities in accordance with international law.

Reasons for reluctance to protect and assist IDPs in Khartoum ranged from fears surrounding humanitarian access, to ignorance of fact and law, to a lack of donor funding, to a desire to not muddy "independent, neutral, and impartial" assistance by engaging in protection activities. Sheer conspicuous and debilitating laziness was also evident. The main sticking point, however, appeared to be not the credibility of the report findings themselves but the implication that even if agencies agreed to apply 'band-aid' assistance this would be unsustainable in the absence of implementing mobilization, persuasion and denunciation protection activities.

Anecdotally, private interlocutors from UN specialized agencies noted that their superiors were particularly unwilling to engage in the denunciation of GOS. When asked why, sources repeatedly shared that agencies felt they were already on shaky ground with international staff being made *persona non-grata* and most national staff either having worked for GOS in the past, presently working for government (despite this being against UN Staff Rules), or hoping to work for the Government in the future actively advised otherwise. The level of government intimidation which persists in the Sudan is a highly effective advocacy tactic which serves to silence too many.

Nonetheless, the report's instigators, including UN OCHA, Fellowship for African Relief, IOM, War Child, International Rescue Committee, Norwegian Refugee Council, World Vision and the European Commission for Humanitarian Aid (ECHO) - known as the Khartoum Inter-Agency Forum – persisted in using the survey to lobby GOS and the international community alike (see Part IV).

As Phuong notes, "one must first identify the needs of the internally displaced in order to determine how the law responds to these needs"[18] as such, an extract of the data underlying this report is offered here in

[15] Fellowship for African Relief et al; Khartoum State Rapid Assessment Report – Report of the Results of an Interagency Assessment undertaken Nov-Dec 2004 (Published by UN OCHA, Fellowship for African Relief, International Organisation of Migration, War Child, International Rescue Committee, Norwegian Refugee Council, World Vision and the European Commission for Humanitarian Office, on January 2005).
[16] The document is now available under the Sudan country page of the IDP Global Project's website at www.globalidp.org. This website was created by the Norwegian Refugee Council.
[17] The findings of this report where subsequently criticized by GOS and UN agencies alike for a variety of reasons including statistical analysis ('the numbers game'), methodology, scope, and editorial quality. However, not incidently the report did prompt further investigations into the humanitarian needs of IDPs in and around Khartoum and has since led to greater GOS and UN agency intervention including through the incorporation of IDP camps and squatter areas into the revision of the Work Plan Sudan (2005).
[18] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.40.

an attempt to provide an overview of the abuses IDPs suffer on a daily basis in Khartoum and elsewhere in the Sudan.[19]

According to the Khartoum State Rapid Assessment Report:

- 61% of Khartoum IDP households have no source of income;
- Over 50% of households report an income of less than 500 Sudanese Dinar (US$1) per day;
- 65% of Khartoum IDPs state that food is one of their greatest needs;
- Less than 10% of Khartoum IDP school age children reported eating 3 meals per day;
- 57% of Khartoum IDPs have had their previous home demolished by the GOS and only 30% are confident that their present home will not suffer the same fate. Many are unwilling to invest limited resources to construct anything other than a temporary shelter. 91% of Khartoum IDPs reported that their shelters flooded during the rainy season;
- The crude mortality rate (CMR) in the Mayo Farms and Soba Aradi official IDP camps is close to the emergency threshold of 1 per 10,000 per day;
- Diarrhoea is responsible for 37% of deaths of Khartoum IDPs;
- 53% of surveyed IDPs reported having someone sick in the two weeks prior to being surveyed. There has been an increase in diseases amongst IDPs (malaria, diarrhoea, pneumonia, skin rash, eye pain, cold, influenza and measles) since home demolitions undertaken by the GOS began;
- Water is cited by 39% of IDPs as one of the things that they most need. 83% of IDPs pay to receive their water supply from donkey carts. IDPs pay between 100 and 120 Sudanese Dinar per barrel of water. Costs have increased by up to 50% since demolitions began as a number of water yards are not functioning. 258,800 IDPs are supplied with water from only 10 water yards; and
- 30% of IDPs report that they have no access to latrines (pit toilets).[20]

These findings of this report are not an anomaly. Despite the signing of the CPA and a swathe of international protection mechanisms developed in accordance with international law, little real protection has been afforded to Sudanese IDPs in general, let alone in Khartoum.

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[19] In March 2005, UN OCHA undertook a comparison of the situation of IDPs in Khartoum and those in Darfur. Although the statistical comparison was in fact compromised by the methodology used to gather each data set, the analysis overall suggested that IDPs in and around Khartoum where much worse off in all sectors, including food security, shelter, non-food items, health, and water and sanitation, with the exception of education and mine action, than IDPs in the Darfurs. UN OCHA assumed this to be the result of more than a year of successful humanitarian assistance in the Darfurs coupled with the acute neglect of IDPs in and around Khartoum by the GOS and the international community alike. During a visit to the Sudan on 7 March 2005, the head of UN OCHA - the United Nations Emergency Relief Coordinator, Jan Egeland, who has been at the forefront of UN advocacy on assistance to Darfur (see UN OCHA; Media Advisory: Jan Egeland, UN Emergency Relief Coordinator to visit Sudan, Press Briefing Monday, 7 March, 17h30), advised the media that "the situation in the camps in Darfur are better than in Khartoum camps and in the south." This statement was rightly and often repeated by Jan Pronk, the United Nations Secretary-General's Special Representative for Sudan upon the advice of UN OCHA, however, such statements were viewed unfavourably by GOS and UN agencies alike, including most notably UNICEF and WFP, whose representatives privately felt that such comparisons might lead the international community to curtail funding to Darfur, and could lead to overall donor fatigue. There was also a highly valid concern that some might receive such advise in a way that encouraged competition and pitted one group of IDPs against another. See UN OCHA's Humanitarian Profile (January 2005) and the 'Khartoum State Rapid Assessment Report' (January 2005) at www.releifweb.int for comparative statistics. A comparative study of the needs of IDPs in the Darfurs and elsewhere in the Sudan, including in and around Khartoum is needed.

[20] Fellowship for African Relief et al; Khartoum State Rapid Assessment Report – Report of the Results of an Interagency Assessment undertaken Nov-Dec 2004 (Published by Fellowship for African Relief, International Organisation of Migration, War Child, International Rescue Committee, Norwegian Refugee Council, World Vision and the European Commission for Humanitarian Office, on January 2005).

PART II: THE LEGAL PROTECTION OF INTERNALLY DISPLACED PERSONS

International Legal Framework(s)

The International Labour Organisation (ILO) Convention No 169 (1989) is the only international legal instrument, which explicitly prohibits arbitrary displacement as it pertains to indigenous persons (see Article 16 (1)).[21] Indeed, the precise concept of what it actually means to legally protect IDPs, beyond the scope of protection against displacement and protection for those already displaced,[22] remained anything but transparent until the mid-1990s when the international community began to discuss the potential need for developing an international legal regime which might better ensure the protection of an ever increasing number of IDPs.[23]

Nonetheless, the awareness of the international community to the plight of Sudanese IDPs has a long and checkered history. It was the advent of mass exodus from fighting in south Sudan in 1972 that first prompted the United Nations General Assembly to request UNHCR to expand its mandate and consider providing protection to internally displaced persons (Sudanese IDPs) for the first time in the agency's history. This suggests that despite the lack of a comprehensive approach to the legal protection of IDPs, there has been an ongoing awareness – prompted by the Sudanese experience - for at least 33 years that a large proportion of forced migrants are subsisting in complex emergency scenarios in the absence of adequate legal protection.

On 11 March 1993, the Commission on Human Rights passed a resolution requesting the United Nations Secretary General's Special Representative on Internally Displaced Persons, Francis Deng, to embark upon a study into the needs of IDPs with a view to undertaking further work into their potential legal protection. On 5 December 1995, Deng published the resultant *Internally Displaced Persons: Compilation and Analysis of Legal Norms.*[24] The document symbolises a belated yet stark awakening by the international community to the international protection needs of IDPs.

The Compilation sets out nine areas of specific need including equality and non-discrimination, life and personal security, personal liberty, subsistence needs, movement-related needs, the need for personal identification, documentation and registration, property-related needs, the need to maintain family and community values and the need to build self-reliance. The areas of IDP need identified in the Compilation are almost exactly the generic needs of refugees. An observation that serves to highlight the arbitrary nature of the protection regimes afforded to those who forcibly migrate – regimes that since the inception of the United Nations system till current times have largely privileged state sovereignty over human rights.

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[21] The Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO Convention 169 (1989) at www.ilo.org.

[22] *Analytical Report of the Secretary-General on Internally Displaced Persons*, E/CN.4/1992/23, 14 February 1992, pp.74 – 105.

[23] See Deng, F.M; *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institute, 1998); See also Cohen, R; 'The Development of International Standards to Protect Internally Displaced Persons', in Bayefsky and Fitzpatrick, J (eds), *Human Rights and Forced Displacement*, (The Hague: Kluwer Law International, 2000). See also Refugee Policy Group; Human Rights Protection for Internally Displaced Persons: An International Conference, June 24 – 25, 1991 (Washington DC: Refugee Policy Group, 1991). The growing interest in and resultant exponential growth in United Nations legal discourses surrounding the protection of IDPs might be attributed to the growing number of IDPs resulting from an increasing number of complex emergencies around the globe, at the same time as the number of persons attaining refugee status continues to shrink. Rather than being based on genuine concern for the rights of the individuals affected, it could be argued that such interest was also propelled by potential countries of third asylum seeking to stem refugee numbers.

[24] *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, E/CN.4/1996/52/Add.2, 5 December 2005 (UNOCHR, New York and Geneva, 1998). As also transferred into an infield handbook by UNHCR entitled *International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR Staff* (Geneva: UNHCR, 1996).

Some persons forced to migrate for reasons of natural or human-made disaster – refugees - are fortunate enough to cross imaginary lines on maps that where in all probability drawn by distant colonial powers of the past. Thus, their protection is facilitated. Others – IDPs – move only, accidentally or otherwise, within the realm of the state of their citizenship and are therefore not afforded requisite international legal response. This in total disregard for the lived experiences associated with the comparative rights and fundamental freedoms of either or both parties.

In this way, the Compilation serves to highlight the inadequacies of an international legal regime which privileges a shrinking minority – refugees – over an ever expanding group of persons for whom their state simply fails to protect. Importantly, the Compilation arrived at a time in which the international community is increasingly favoring respect for human rights over state sovereignty (see Part III) and can no longer afford to ignore the rights and livelihoods of around 25 million internally displaced persons around the globe.

The Compilation also, for the first time, succinctly elucidates the fledgling international legal regime as it pertains to IDPs, a summary of which placed within the context of the Sudan, follows.

Human Rights Law
The legal protection of IDPs in the Sudan and elsewhere derives - as it does for all human beings from the Universal Declaration of Human Rights (1949), the International Covenant on Civil and Political Rights (ICCPR) (1967), the International Covenant on Social and Economic Rights (ICSER) (1967); for women, the Convention on the Elimination of Discrimination Against Women (CEDAW) (1973); and for children, the Convention on the Rights of the Child (CRC) (1989).

The rights of IDPs are also found in several regional treaties, including the American Convention on Human Rights (1969), the European Convention on Human Rights, and importantly for Sudanese IDPs, the African Charter on Human and Peoples' Rights (1981). As Phuong notes, "human rights law applies to internally displaced persons since it applies to all individuals without distinction ..."[25] Similarly, other conventions including the Genocide Convention and the Convention Against Torture apply equally to IDPs as they do to all other human beings.

International human rights law is comprehensive in the protection it provides Sudanese IDPs as GOS has ratified the two main human rights covenants (ICCPR and ICSECR). Although human rights treaties are binding on states only and as such only states can be held accountable for any such violations, "with the development of positive obligations, states have to ensure that individuals do not violate other individuals' human rights and this ensures that individuals are indirectly bound by human rights obligations."[26]

As such, GOS is ultimately accountable for abuses carried out against Sudanese IDP populations whether perpetrated by the SPLM/A, militia groups, regional authorities or others. In accordance with the Rome Statute (2000), the Government also has a responsibility to engage in activities that make parties answerable for such acts; where appropriate, recompense victims accordingly; and most importantly, do everything in the state's power to mitigate the perpetration of such acts in advance of their occurrence.

It should be noted that the Compilation identifies 'consensus gaps' within international human rights law as it applies to IDPs because although many rights are expressly delineated within international law, specificities as they pertain to the IDP experience are not explicitly addressed.[27] In this way, "a general

[25] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.42.
[26] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.50.
[27] Deng, F.M; *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institute, 1998), p.123.

norm may exist but no corollary and more specific right is formulated. It is thus sometimes unclear how the general norm can apply in the specific situation of internally displaced persons …".[28] These areas are referred to in the Compilation as 'grey areas' that need to be clarified and include the protection of life; gender-specific violence; freedom of movement; and humanitarian access.[29]

The Compilation makes it clear that although the right not to be arbitrarily displaced is not made explicit beyond the scope of the ILO Convention, such associated rights can be inferred from human rights treaty provisions as they relate to freedom of movement and the right to choose one's residence (see Article 13 of the Universal Declaration and Article 12 (1) of the ICCPR). This finding was confirmed by the Human Rights Committee, which has stated that the right to chose ones residence "includes protection against all forms of forced internal displacement."[30]

Importantly, the Compilation also attends to certain normative gaps in international human rights law "where no identifiable norms exist to address identifiable needs of the displaced." These include in the case of disappearances; the missing and the dead; the use of landmines; detention; the need for personal identification; documentation and registration; property-related needs; humanitarian personnel and aid agencies.[31]

As such, the Compilation sets out the existing law and identifies those grey areas where it might be argued by some that gaps in protection exist. The Compilation then makes important suggestions on how human rights law might be interpreted to bridge such gaps and also offers the suggestion of developing future soft law options, such as IDP guidelines, so that what is legally implicit can be made practically explicit for the purposes of both policy and action.

Refugee Law
Although refugee law does not apply to IDPs, Sudanese or otherwise, this body of law remains relevant by analogy, especially given that the lived experiences facing both groups are very similar and often exactly the same. In this way, "refugee law can serve as a point of comparison and might also inspire standard-setting for internally displaced persons"[32].

For example, the principle of *non-refoulement* at Article 33 of the Refugee Convention, might serve as a reference point for IDPs given that their return can also lead to a threat to their persons. This is also the case for the important concepts of "safe and voluntary return" which prescribes circumstantial protection measures commensurate with IDP scenarios.

Various UNHCR guidelines, including those applicable to women and children[33] and the *Handbook for Repatriation and Reintegration Activities*[34] also provide important complementary advice for meeting the needs and upholding the rights and livelihoods of IDPs based on the similarity of refugee experiences.

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[28] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.50.
[29] *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, E/CN.4/1996/52/Add.2, 5 December 2005 (UNOCHR, New York and Geneva, 1998) para 414.
[30] Human Rights Committee; *Freedom of Movement* (Article 12) CCPR/C/21/Rev.1/Add.9, CCPR, General Comment 27, 2 November 1999. It should be noted that this right can be derogated from in certain circumstances, nonetheless derogation is not applicable in the context under discussion here. As detailed in Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.42.
[30] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.51.
[31] *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, E/CN.4/1996/52/Add.2, 5 December 2005 (UNOCHR, New York and Geneva, 1998) paras 411 – 416.
[32] See *Internally Displaced Persons: Compilation and Analysis of Legal Norms*, E/CN.4/1996/52/Add.2, 5 December 2005 (UNOCHR, New York and Geneva, 1998), para 25.
[33] Fitzpatrick, J; 'Human Rights and Forced Displacement: Converging Standards', in Bayefsky and Fitzpatrick, J (eds) *Human Rights and Forced Displacement* (The Hague: Kluwer Law International, 2000), p.12.

As suggested earlier, refugees have similar needs to IDPs and the Refugee Convention (1951) covers most of these needs. Indeed in theory there is a "continuum of norms protecting the rights of the human person in all situations",[35] including in situations of forced migration. Yet while protection frameworks have been developed to address the specific needs of certain persons on the move due to forced migration, there is much contention around the development of such frameworks for IDPs, who constitute a more sizable population of forced migrants nonetheless. As Phuong reminds us, "as internally displaced persons are on the move, the protection of their human rights is reduced but on the other hand, they cannot benefit from the special regime of protection created for refugees"[36] given that they have not crossed an international border.

There appears to be a fear amongst some legal analysts that extending protection to IDPs might result in the denial of asylum to those persons able to flee international borders. This dread is based on the notion that claiming the existence of a set of rights for IDPs may actually encourage some states to return refugees to their country of origin. Such concerns are relevant, especially in an era when nation states outwardly privilege human rights over state sovereignty yet continually seek to deny the right of refuge by utilizing such arguments as the 'internal flight mechanism'.[37] As Fitzpatrick notes, "refugee law may appear to condone the return of persons who will join the ranks of the internally displaced."[38]

Yet attempts to document the needs and rights of IDPs may better be interpreted as a process of bringing prevalent perceptions of IDPs back into the human fold by reminding offending states and those accountable to them that IDPs are human beings like any others and as such there is an obligation upon state apparatus to ensure the human rights of IDPs are regularly attended to. In practice, the privileging of IDP rights over those of other civilians in situations of complex emergency is little more than an attempt to raise their status to that of the average citizen. It is not, as is often mistakenly thought, an attempt to privilege the rights of IDPs over those of other citizens. Bestowing human rights upon IDPs in an attempt to better ensure their legal protection, does not therefore, provide a way for third countries to deny the right of asylum. For as long as the potential for persecution of a person seeking refuge remains, his/her claim will remain valid in law.

Refugee protection should not be privileged over the protection of a considerably larger population of persons affected by war, natural disaster and other such calamities who, for many reasons, do not have the luxury of crossing international borders. It is for the international community to seek the dual protection of refugees and IDPs, in accordance with refugee and other international law in ways which do not diminish the protection of either group. The following section explores this suggestion.

'Soft Law': The Guiding Principles on Internal Displacement

Phuong identifies three current trends in protecting IDPs within international legal frameworks: (1) utilising current protection mechanisms which it is deemed are sufficient; (2) developing 'soft law' with the eventual introduction of new human rights standards; and (3) devising and adopting a comprehensive approach to forced migrants (which includes IDPs and refugees).[39] The preferred option of the United

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[34] *Handbook for Repatriation and Reintegration Activities*, (Geneva: UNHCR, May 2004).
[35] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.44.
[36] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.44.
[37] See Hathaway, J.C, and Foster, M; 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination', in Feller, E, Turk, V and Nicholson, F (eds); *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge UP, 2003), pp.357 – 417.
[38] Fitzpatrick, J; 'Human Rights and Forced Displacement: Converging Standards', in Bayefsky and Fitzpatrick, J (eds) *Human Rights and Forced Displacement* (The Hague: Kluwer Law International, 2000), p.12.
[39] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), pp.52-54.

Nations at this time appears to be the second, that is, developing 'soft law' with the eventual introduction of new human rights standards.

Indeed, the Guiding Principles on Internal Displacement (1998)[40] which have grown from the Compilation at the behest of the Office of the United Nations Special Representative on Internal Displacement aim to protect IDPs within the framework of existing human rights law, international humanitarian law (IHL)[41] and in compliment with refugee law.[42] The Guiding Principles serve to demonstrate the "considerable complimentarity"[43] between these various bodies of law at a point where they appear to converge.[44]

Nonetheless, it is the case, as Phuong points out, that certain provisions in the Principles such as the prohibition to return internally displaced persons to dangerous areas, and the provision on humanitarian assistance could be characterized as going beyond existing international law, most notably the Refugee Convention's precepts regarding *non-refoulement* which pertains only to those crossing international borders, and the Geneva Conventions which limit aid to humanitarian access only.[45]

This might be explain by the fact that the Principles take a very different approach to, for example, refugee law. Whereas the 1951 Convention is aimed at detailing the rights refugees acquire through status, the Principles do not create any such legal status for IDPs. Rather, the Principles are more focused on humanitarian remedies and utilise legalistic principles only as far as human rights law can be applied. Similarly, one the Convention is legally binding, while the Principles are not.

In March 1998, 30 Guiding Principles on Internal Displacement were presented to the Human Rights Committee. As Phuong notes, "the purpose of this document is not to create a new legal category to which rights and obligations would be attached but to improve the legal protection for the internally displaced, protection which already exists in international law.[46] The Principles thus discover existing law in a way that poses no threat to refugee protection.

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[40] *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 11 February 1998. See also the Handbook for Applying the Guiding Principles and the Manual on Field Practice on Internal Displacment as published by UN OCHA at www.releifweb.int/idp.

[41] The application of international humanitarian law to the post-peace Sudanese context has not been developed in this paper, although such law is still applicable within certain areas of the country, notably the Darfurs. The current application of international humanitarian law in the Sudan includes the Geneva Conventions (1949) Common Article 3. In addition, Additional Protocol II (1967) is also applicable, especially Article 17 which prohibits the transfer of populations. Although Sudan has not ratified Additional Protocol II, the transfer of populations in international customary law constitutes a crime against humanity, and is therefore *jus cogens*. Further, the Statute of the International Criminal Court (2000) formulates the crime of population transfer as a crime against humanity punishable by international trial. It should also be noted that in the Sudan, there are many ongoing incidents and situations involving IDPs that constitute considerable internal strife. Situations which do not reach the intensity of internal armed conflict but can be characterized as internal strife can be mediated (although not legally addressed) through the Turko/Abo Declaration on Minimum Humanitarian Standards, Article 7 of which specifically prohibits the transfer of populations. See Eide, A, Rosas, A and Meron, T; 'Combating Lawlessness in Grey Zone Conflicts through Minimum Humanitarian Standards', *American Journal of International Law*, (1995), 89, p.215 and Petrasek, D.; 'Moving Forward on the Development of Minimum Humanitarian Standards', *American Journal of International Law* (1998), 92, p.557. As shall be discussed further (Part IV), there are a number of ongoing circumstances of internal strife occurring in the Sudan in the post-peace context to which such a Declaration is applicable, if not legally binding.

[42] Brett, R and Lester, E; 'Refugee Law and International Humanitarian Law: Parallels, Lessons and Looking Ahead', *International Review of the Red Cross 2001*, 843, p. 714.

[43] Lavoyer, J.P; 'Protection under International Humanitarian Law', in ICRC; *Internally Displaced Persons, Symposium, Geneva, 23-25 October 1995* (Geneva: ICRC, 1996), p.26.

[44] Fitzpatrick, J; 'Human Rights and Forced Displacement: Converging Standards', in Bayefsky and Fitzpatrick, J (eds) *Human Rights and Forced Displacement* (The Hague: Kluwer Law International, 2000), p.3.

[45] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.61.

[46] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.57.

As Kalin notes, at Paragraph 2 the Principles provide a "descriptive identification" as opposed to a legal definition of internally displaced persons[47] as follows:

> … persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an international recognised State border.[48]

The Principles detail all situations of internal displacement – that is before, during and after displacement, which as Phuong notes, is relatively broad in comparison with the protection provided to refugees. Importantly, for the first time, (at Principle 6) in a UN document the right not to be arbitrarily displaced is made explicit.[49]

The Principles cover existing protection gaps within international human rights law by detailing general legal rules – which are reiterated as they are worded in existing treaty law[50] - and then extrapolating upon them within an internally displaced context. The Principles also attend to the substantive gaps in human rights law (identified above) as they pertain to gender-specific violence, forcible recruitment of children, women's participation in the distribution of supplies, special health and education needs of women and equal access to documentation.

Importantly, the Principles also provide guidance not only to states but also at Principle 2 (1) to "authorities, groups and persons". The Principles make it clear to all parties that internally displaced persons are to enjoy the same rights as every other human being and in this way despite the contextualisation of these rights, the Principles, intentionally according to their drafters[51], do not go beyond existing international law. This is important in terms of the acceptance of the Principles by all parties, which would be more difficult to garner if the Principles were seen to be establishing new law.

Phoung suggests that the lack of prioritization of minority rights within the Principles (they are mentioned only once at Principle 6 (2) (a)) and the absence of guidance on the use of safe areas for protecting internally displaced persons weakens the Principles. However, it might be asserted that the document throughout attends to minority rights at some length by insisting on the need to prioritise the protection of "special groups" which by extension includes minority groups in its definition.

The absence of a direct reference to safe areas is also a minor or even preferred exclusion given that the use of such areas for protection purposes, including the delivery of humanitarian assistance, is contentious. It might be argued that to make reference to 'safe areas' in such a document could inadvertently privilege the use of such methods to the detriment of real and potential IDP and other civilian beneficiary communities. Where parties fail to respect 'safe areas' large numbers of IDPs once grouped together might actually be at greater risk. Also, the protection of IDPs and other civilians in 'non-safe areas' may have their protection inadvertently compromised. That is, IDPs not afforded the brokered protection of 'safe areas' may in actuality become greater, softer targets.

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[47] Kalin, W; 'The Guiding Principles on Internal Displacement – Introduction', *International Journal of Refugee Law* (1998), 557, p.560.
[48] Guidelines on Internal Displacement (1998).
[49] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.57.
[50] Goldman, R.K; 'Codification of International Rules on Internally Displaced Persons', International Review of the Red Cross (1998), 324, p.463.
[51] Kalin, W; 'Guiding Principles on Internal Displacement' paper presented to the Overseas Development Institute, (London:, 20 July 1998), p.7 as detailed in Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.60.

It is more so the case that the overall weakness of the Principles lies in their non-binding nature which enables states to opt out of their application where it is felt such standards are too high to apply to a given scenario, be it a natural disaster or a complex emergency with armed conflict at its root cause. Indeed, in their application in the Sudan, this is without question the weakest aspect of the Principles both due to practical (limited logistics, communication and educational levels associated with a lack of development in south Sudan but also in north Sudan) and political constraints whereby both GOS and SPLM/A typically pick and chose to apply the Principles with the consistency only of their own political, strategic and tactical motives.

Some legal theorists have thereby asked whether approaching the protection of IDPs through law – be it 'soft' or 'hard' - is a useful approach at all. In the author's experience, despite the political machinations that often hamper the application of the Principles, they are nonetheless extremely useful. Indeed even international 'soft' law matters as it offers a platform for developing the tools and tactics by which humanitarian personnel and other stakeholders may advocate to state parties and those accountable to them on their responsibilities to protect IDPs.

This is particularly important given that it is immeasurably more difficult to find common ground on moral and/or strategic (political) matters in complex emergencies where parties hold such considerations to be disparate and often in competition. When raising awareness, mediating, negotiating or lobbying for the protection of IDPs, international legal instruments, including those ratified by the parties involved and those agreed to in principle can provide the catalytic normative structure and/or shared values from which dialogue and policy change can be sparked and sometimes even nurtured.[52]

For this reason, the Principles provide a tremendously important tool with which all parties can approach the protection of IDPs because they create a reference point against which substantive needs and effective protection might be measured. Indeed, importantly, "the Principles can be used as benchmarks to evaluate the situation of the internally displaced in a specific case"[53] and can serve to raise the awareness of all concerned on the needs and rights of IDPs.

The following portion of this paper shall now turn to the practical application by various parties of the Principles as a source of international 'soft' law which can both serve to facilitate IDP protection, and therefore better ensure the arrival of peace dividends to a significant proportion of the population in a post-peace Sudan.

PART III: SUDAN'S PRIMARY RESPONSIBILITY TO PROTECT

Protecting Sudanese IDPs is the ultimate responsibility of GOS, that is, the state in which they enjoy citizenship. This responsibility includes negative obligations such as the requirement not to displace IDPs and not to inflict inhumane treatment upon them, as well as positive obligations such as the duty to provide IDPs with sufficient water, food, education and health services. It also includes ensuring that others do not displace them.

"Reaffirming human rights protection for internally displaced persons thus amounts to reminding the state of the fact that internally displaced persons should still benefit from the same protection as anyone else in the country. Not only should the state treat the internally displaced like the rest of the civilian population but it should also provide extra protection for these vulnerable populations."[54] The human rights

[52] See Helle, D.; 'Enhancing the Protection of Internally Displaced Persons', in Norwegian Refugee Council, *Rights Have No Borders: Worldwide Internal Displacement* (Oxford: NRC Global IDP Survey, 1998), p.40.
[53] Ibid p.61
[54] Phuong, Catherine; *The International Protection of Internally Displaced Persons*, (Cambridge: Cambridge UP, 2004), p.44.

obligations of Sudan can not be derogated from in the post-peace context, and indeed these rights are reaffirmed in the agreement which brought about and moderates peace in the Sudan – the Comprehensive Peace Agreement (CPA).

***The Comprehensive Peace Agreement*[55]**

The CPA signed on 9 January 2005 is a collection of agreements and protocols that have been negotiated between GOS and the SPLM/A over past years. The total package outlines a framework for long-term peace in the country. The CPA also upholds the duty of GOS to attend to the protection of IDPs.

Throughout the CPA, many references are made to *all* Sudanese having basic civil, political, social, cultural and economic rights as outlined in the ICCPR and the ICSECR, both having been ratified by GOS. The CPA reaffirms Sudanese national law that all men and women, including IDPs, have equal economic, social, cultural, civil and political rights. Article 6.3 of the CPA states that "… the enjoyment of all rights and duties shall be based upon citizenship and not religion, beliefs and customs."

Specific rights and fundamental freedoms, particularly relevant to the protection of Sudanese IDPs are also included in the CPA such as the right to life (Article 1.6.2.1); the prohibition of all forms of slavery including during movement (Article 1.6.2.3); the prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 1.6.2.4); the right to personal liberty and security of person (Article 1.6.2.6); the right to freedom of thought, conscience and religion (Article 1.6.2.7); the right to freedom of expression (Article 1.6.2.8); the right to freedom of association (Article 1.6.2.9); equality before the law (Article 1.6.2.12); the prohibition of discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 1.6.2.13); and the right to liberty of movement and freedom to choose ones own residence (Article 1.6.2.14).

The CPA states that GOS and the SPLM agree that the *Shari'a* shall be applied in northern Sudan. Non-muslims will not endure *Shari'a* penalties such as amputations and floggings, but shall receive alternative penalties. The judicial discretion of courts to impose penalties on non-Muslims shall observe the long-established *Shari'a* principle that non-Muslims are not subject to *Shari'a* penalties and therefore other penalties shall apply. In addition, the CPA states that a commission shall be set up by the Sudanese president to ensure that the rights of all non-Muslims are protected and not adversely affected by the application of the *Shari'a*.

Further, Article 1.6.2.10 determines that "all personal and family matters including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws of those concerned." Behaviour based on cultural practices and traditions which do not disturb public order, are not disdainful of other traditions, and are not in flagrant disregard of the law, shall be deemed in the eyes of the law as an exercise of fundamental freedoms and therefore legal.

***A Note on Shar'ia Law*[56]**

The CPA upholds existing Sudanese national law and the requirement to protect Sudanese IDPs is firmly entrenched as such. As the Sudan is an Islamic State, all such laws precipitate directly from the *Shari'a*[57] - that is the *Quran* and the *Sunna* or teachings (words and deeds) of the Prophet Mohammed.

[55] At the time of writing the GOS and the SPLM where negotiating a draft Constitution which it is understood will uphold these rights and fundamental freedoms.
[56] The *Shari'a* is applicable only in northern Sudan, the Comprehensive Peace Agreement establishes that customary law is to be applied in south Sudan and that this shall remain the case until 2011, when the southern Sudanese shall vote to determine whether they wish to remain part of the Sudan or become an autonomous entity.
[57] The Malaki school of Islamic jurisprudence is applicable in the Sudan.

The *Quran* makes special mention of the *muhajirin* (emigrants), that is the Meccan Muslims, including the Prophet himself, who forcibly migrated to Medina to seek refuge from persecution in AD622 in the face of internal strife (see *Sura* (chapter 59) *Al-Hijra*). At 59:7 - 9 the *Quran* states that "A share of the spoils shall also fall to the poor among the *muhajirin* who have been driven from their homes and their possessions … the men who stayed in their own city and embraced the Faith before them love those who have sought refuge with them; they do not covet what they are given, but rather prize them above themselves, though they are in want."

This chapter of the *Quran* clearly demonstrates that the *Shari'a* recognises the rights of those in situations of forcible migration (both refugees and IDPs, given that 'state borders' where non-existent at the time). The extent to which this chapter privileges the rights of Muslim forced migrants over those of *dhimmi* ("people of the book", that is Christian and Jewish) and *jahil* (non-believing migrants) is a matter of Islamic jurisprudence which remains undeveloped at this time and deserves considerable further investigation beyond the scope of this paper.

The Joint Sudanese IDP Policy Framework

In practice, the legal protections afforded to IDPs through international human rights law and Sudanese national law are rarely applied despite ongoing written and tacit GOS commitments. The most noteworthy of these commitments, the *Joint Humanitarian Assistance Commission and Sudanese Relief and Reconstruction Committee Policy Framework for the Return of Displaced Persons in a Post-Conflict Sudan (2004)* (hereafter the Joint Policy Framework) explicitly reaffirms the Guiding Principles on Internal Displacement (1998) within the Sudanese context.

The Joint Policy Framework was negotiated between GOS and the SPLM/A by the United Nations and was signed by both parties on 13 July 2004. The language of the agreement is extracted almost verbatim from the Guidelines[58] and has been translated into Arabic and widely disseminated by UN OCHA and other agencies to all relevant Sudanese authorities. In addition, a series of training workshops on the Joint Policy Framework have been conducted by UN OCHA and the Norwegian Refugee Council from February 2005. These training sessions were aimed at government and SPLM officials responsible for humanitarian and security affairs and covered topics such as 'What is Protection?'; the Guiding Principles on Internal Displacement; the Joint Policy Framework; humanitarian access; and humanitarian space (civil-military distinction).

In Practice: Forcible Transfer

Since 1997, GOS has refused to recognize the legal status of IDPs in and around Khartoum, instead charactering them as part of Khartoum's urban poor. According to GOS, these IDPs are therefore not in need of additional protection and assistance. However, it should be recognized that the protection of IDPs by both GOS and the SPLM/A has been less than satisfactory with both parties continuing to utilize IDP communities for political purposes, including by transferring populations in the interests of consolidating territorial gains.

The re-planning process of IDP camps and squatter areas in Khartoum may be used here as a case study which typifies GOS' approach. Around 325,000 IDPs reside in the 4 official IDP camps of Omdurman es Salaam, Wadi el Bashir, Mayo Farms and Jebel Aulia in Khartoum. The remaining 1.7 million reside in approximately 30 different squatter areas.[59] The impact of ongoing demolitions, relocations and a lack of transparent allocation of land (plots) has had a profound impact on the lives of these IDPs.

[58] The Joint Policy Framework is therefore not detailed here.

[59] The number of IDPs who have integrated into urban areas is unknown at this time and given that a comprehensive survey of their situation has never taken place it is difficult to precisely determine their legal status. There is much debate surrounding the notion of when an IDP ceases to be an IDP for legal protection purposes. According to UNHCR "protection and assistance to the

Demolitions, relocations and plot allocation are of grave concern to those UN and NGO humanitarian personnel with a keen knowledge of rights-based approaches to humanitarian assistance which center on protection (see Part IV). Put bluntly, GOS' activities suggest an active pursuit of discriminatory polic ies undertaken on the basis of ethnicity and religion, despite official, persistent protestations to the contrary. IDP populations are often forcibly relocated to desert areas where access to water, food, shelter and health services are unattainable. Such relocations inevitably result in forced return.[60]

At least 665,000 IDPs have lost their homes due to demolitions over the last 16 years in Khartoum. Demolitions ceased in the early 1990s due to significant international pressure and the UN and NGOs began providing assistance to IDPs in camps and squatter areas in and around Khartoum in the absence of GOS protection. From 1998 onwards however, UN and NGOs began to leave the camps, most withdrawing from 2003 onwards. The openly stated reasons vary from not wanting to build international dependence, to not wanting to provide protection (in fact the obligation of GOS), to a lack of donor funding. Whatever the reasons, the withdrawal was not coupled with adequate advocacy and the Sudanese IDPs of Khartoum where quickly forgotten by an already over-whelmed international community. GOS initiated human rights abuses closely followed. The correlation between an absence of international presence and increased violations and abuses does not appear to be coincidental.

From 2004, demolitions and relocations have been on the increase. More than 300,000 IDPs have lost their homes since then. GOS asserts that demolition of IDP property and relocation of IDPs is part of a rezoning process, which includes the allocation of land to IDPs. However, 77% of relocated IDPs have never received plots and vulnerable groups including female-headed households; IDPs without IDs; and IDPs recently arrived in Khartoum have been excluded. The Khartoum Rapid Needs Assessment (January 2005) suggests that the situation of IDPs living in the 4 camps and 30 squatter areas in and around Khartoum may actually be worse than IDPs living in camps in Darfur.

The current approach to demolition, relocation and plot allocation by GOS and their corollary violations of the rights and fundamental freedoms of IDPs (including their right to housing, family, health and education) constitute a total disregard for international law as embodied in the Guidelines and the Joint Policy Framework, despite commitments by GOS to both. As we have seen, human rights law implies that no person may be arbitrarily displaced from his or her home, and that the Principles and Joint Policy

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internally displaced should cease when their needs are fulfilled. This can only be determined on an *ad hoc* basis after a general assessment of the political and socio-economic situation, as well as a specific assessment of the situation of a particular IDP group." See Bettochi, G and Freitas, R; 'A UNHCR Perspective', *Forced Migration Review*, vol.17, May 2003, p.13. In May 2005, at the request of UN OCHA, UNHABITAT agreed to investigate the situation of these IDPs and attempt to assist GOS is undertaking re-planning activities in Khartoum in a way that at tends to the protection needs of all Khartoum residents, including IDPs in accordance with their human rights, including citizenship rights.

[60] At least 500,000 returnees were expected to travel to south Sudan in 2005. Human rights abuses along return routes are ongoing. In order to facilitate safe and dignified return, protection mechanisms must be established along return routes before IDPs begin safe and voluntary returns. Care must also be taken not to create a pull factor through the provision of assistance, which could expose returnees to insecurity along the route. Unplanned returns resulting from relocation place significant pressure on receiving communities, which lack the requisite infrastructure and services to sustain surges in IDP numbers at this time. It should be noted that although human rights abuses resulting from demolitions, relocations and forced return are the focus of this paper, other abuses such as the denial of the legal status of IDPs with birth, marriage and death certificates, and personal ID being rarely provided; and sexual and gender based violence (SGBV) sometimes committed by government security forces, is prolific in the Sudan and the targeting of women and their children for imprisonment remains of high concern in Khartoum in particular. According to Sudanese sources, in 2004 and 2005 more than 6,000 women were imprisoned for brewing alcohol illegally. In field interviews with Sudanese NGO, *Al Muwatinat*, February – May 2005. In 2005, at least 23 persons died from drinking illegal alcohol, the main source of income and recreation in IDP camps and squatter areas in and around Khartoum. See BBC website report February 23, 2005 at www.bbc.co.uk/africa.) All such human rights abuses warrant equal humanitarian protection and academic attention elsewhere.

Framework prevents such acts, yet in practice, GOS continues to dispossess Sudanese IDPs with impunity, regularly.

Other than the express commitments made in the Joint Policy Framework and therefore the Principles, GOS rarely puts IDP policy to paper - despite repeated UN and NGO requests for documentation on the legal status of such communities. Delaying tactics are usual, just as denials of ongoing human rights abuses are frequent. However, GOS' position was reluctantly set out in a letter to the humanitarian community issued by the Khartoum State Ministry of Planning and Public Utilities on 23 December 2003, in an attempt to justify ongoing demolitions and relocations affecting the IDP population in Khartoum.

The letter determines that "[t]he terminology of "displaced persons" is no longer appropriate to identify those people who are presently living in the camps."[61] The letter goes on to make it clear that no legal protections, including the provision of shelter and basic services will be afforded to such persons by the state. Although the letter was written before the Joint Policy Framework was signed, in practice the position stated by GOS remains active.

The position expressed in the letter directly contravenes GOS' legal obligations towards IDPs as it denies their existence. This is particularly puzzling given that at the international and regional level GOS regularly accepts the existence of IDPs in and around Khartoum through its willingness to sign onto a variety of legal and policy documents for donor funding and other purposes. Similarly, GOS continues to publicly call upon donor governments for IDP assistance, if only in the form of monies to be directed exclusively through the state.

So how does the international community response to the flagrant human rights abuses of Sudanese IDPs in practice? The following section of this paper discusses the theory and policy of international protection strategies and reveals how such strategies are played out in field.

PART IV: INTERNATIONAL PROTECTION STRATEGIES

The International Community's Response

The Inter-Agency Standing Committee (IASC) - the peak humanitarian forum constituting all heads of UN agencies, the International Committee of the Red Cross (ICRC), the International Federation of the Red Cross and Red Crescent Societies (IFRC) and the four peak NGO platforms – the International Council of Voluntary Associations (ICVA), the Steering Committee for Humanitarian Response (SCHR) and InterAction - has admitted that "in the past, the international response to internal displacement crises has tended to focus on providing assistance, with less attention given to protection concerns. In recent years, however, there has been a growing awareness within the international community of the connections between protection and assistance. … [T]he protection of IDPs must be of concern to all humanitarian and development agencies. That is to say that all agencies have a responsibility: to address more proactively the needs of IDPs; to assess and analyse those needs; and to act when the rights of IDPs are being violated."[62]

In September 2004, the IASC issued guidelines for institutional arrangements aimed at facilitating the international protection of IDPs. The document *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams* states that "responsibility for assisting and protecting internally displaced persons lies first and

[61] Unpublished letter from Executive Director, Ministry of Social and Cultural Affairs, Khartoum, "Subject: Re-Planning of IDP Camps" issued on behalf of Khartoum State, at p.1.
[62] Inter-Agency Standing Committee; *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams,* (Geneva: UN OCHA, September 2004), p.11.

foremost with the national authorities. … In situations where the authorities are either unable or unwilling to meet their responsibility, international humanitarian and development organizations have the right to offer their services to alleviate suffering and support national efforts … These responsibilities are reaffirmed in the Guiding Principles on Internal Displacement, which both the Inter-Agency Standing Committee (IASC) ands the Inter-Agency Internal Displacement Division (IDD) have identified as fundamental to a comprehensive response in all phases of displacement and as the overall framework for their response."[63]

The Guidance goes on to note that "at the operational level, unlike refugees, there is no single organization within the UN responsible for IDPs … in responding to internal displacement crises, rather than a single agency approach, the UN has opted for a collaborative response. That is to say a response in which a broad range of UN and non-UN, governmental and non-governmental actors (including humanitarian, human rights and development actors) work together in a transparent and cooperative manner to respond to the needs of IDPs on the basis of their individual mandates and expertise."[64] This approach was first set out by the IASC in its Policy on the Protection of Internally Displaced Persons issued in December 1999 and has been reaffirmed by the IASC over time in its *Supplementary Guidance to Humanitarian Coordinators and/or their Responsibilities in Relation to Internally Displaced Persons (April 2000)* and the *Guidance Note on the Collaborative Approach (March 2003)*[65].

The "collaborative approach" places a UN Humanitarian Coordinator (HC) supported by UN OCHA humanitarian personnel at the helm of IDP protection in any given complex emergency, including in the Sudan. It is the HC's responsibility to consult with national authorities and donors, facilitate the appointment of national focal points, coordinate the response and put the collaborative approach into practice in accordance with a procedural roadmap. This involves establishing a system (Country Team), undertaking IDP analysis, devising a strategic plan, creating a division of labour based on expertise, experience and agency mandates, and regularly reviewing progress on the international protection of IDPs.

The HC is supported by UN OCHA humanitarian personnel whose functions include "providing support for humanitarian diplomacy or other negotiations, such as on gaining access to IDPs and other vulnerable groups; the collection, analysis and dissemination of IDP-relevant information; supporting the development of the Common Humanitarian Action Plan (CHAP), and Consolidated Appeal and ensuring the inclusion of IDP concerns therein; organising and participating in inter-agency needs assessment; and convening coordination forums."[66]

The ICRC "has a specific mandate to provide protection and assistance to persons affected by armed conflicts, internal disturbances and tensions, including IDPs."[67] Other agencies with specific "protection mandates"[68] for specific groups of persons include UNHCR, UNICEF and UN OHCHR – which also has specific responsibilities towards IDPs - while other humanitarian agencies such as IOM, WFP and the NGO community are required to respond in accordance with their assistance and other such mandates.

The collaborative approach is prefaced on the capacity of the key humanitarian stakeholders to work collectively, "as a team". In practice this is extremely difficult and is coloured by the competitive nature

[63] Ibid, p.4.
[64] Ibid.
[65] Both documents are available at www.humanitarianinfo.org/iasc/publications.asp .
[66] Inter-Agency Standing Committee; *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams,* (Geneva: UN OCHA, September 2004), p.9.
[67] Ibid.
[68] Some agencies, such as ICRC and UNHCR, are also legally responsible for supervising the implementation of specific international treaties.

of dollar-driven aid; the individual personalities of UN, NGO and donor personnel who are not infrequently ambitious unilateralists rather than committed multilateralists; the generalized inadequacy of humanitarian personnel experience and expertise; and the cynicism and/or chronic fatigue that often plagues humanitarian communities that have seen one too many atrocities.

In addition, agencies invariably put their own mandates first. In addition, certain agencies such as ICRC, Medicines san Frontiere (MSF), UNICEF and UNHCR act independently for a variety of reasons including: a firm belief in the humanitarian standards of neutrality; independence and impartiality; and/or a security of funding which does not require any level of competition with other agencies and therefore paradoxically precludes collaboration. Some agencies, such as many NGOs and OHCHR are significantly under-resourced and typically late to arrive in country and as such have difficulties taking up their mantle. Such challenges characterise many complex emergencies, including in the Sudan.

The approach also requires "leadership" and "transparent decision making" however, the HC's capacity to lead is seriously compromised by the fact that his/her position in the UN hierarchy is typically at the same level as many of the heads of agencies appointed to the given scenario and so there is no reporting line to the HC, only to headquarters in Geneva or New York, or indirectly to the Special Representative for the Secretary General where one exists in country.[69]

Indeed, decision making is often undertaken in New York corridors of power amongst the highest levels of the UN with HCs being informed of agency decisions on IDP protection responsibilities once deals have been done without in-field consultation. While much in-field senior management consultation does take place, the author's experiences with the UN in Occupied Palestinian Territory, Cyprus, Jordan, Iraq, Kuwait and the Sudan suggest that few decisions are actually arrived at on controversial issues such as protection. This seriously compromises the capacity of humanitarian personnel to facilitate the protection of IDPs in practice.

The approach also requires "the presence on the ground of actors with the requisite expertise, capacity and resources". Yet agencies are dependent on donor funding which is frequently pledged yet not provided. The Work Plan for Sudan 2005 was only 5 per cent funded by mid-2005 making the recruitment of requisite IDP protection personnel impossible. Where monies are tangibly forthcoming, the bureaucratic nature of UN and other administrations; intentional and other delays in host country access approvals; and other such obstacles further impede deployment. The nepotistic, 'boys club'[70] nature of UN and other agencies also does much to ensure the right protection personnel are not forthcoming. In addition, most UN and NGO personnel this author has worked with do not have even the most basic understanding of what protection actually is, let alone an understanding of the international legal instruments from which protection concerns and activities are derived. As such, IDP protection in the Sudan and elsewhere is severely compromised in practice.

The collaborative approach requires "structures are put in place that ensure effective communication …" yet the very nature of complex emergencies which occur in or lead to an absence of basic services means that communication is extremely difficult and often, as in the case of Sudan - a country the size of western Europe with the lowest technological development of any country - logistically impossible. Lastly, the collaborative approach requires actors to attend to the "relief and development continuum" and "other vulnerable individuals, groups and communities." These are philosophical requirements of extreme

[69] In the case of the Sudan the SRSG is Jan Pronk, a former Dutch minister of government who was active with IGADD throughout the 1990s and was one of the first internationals to publicly advocate for an end to demolitions, relocations and forced return in the Sudan in the early 1990s.
[70] Less than 30 per cent of UN OCHA workers in field are female.

importance that are often relegated to a position of final consideration and rarely given the requisite time for reflection, especially in emergency circumstances involving the life and death of IDPs.

The collaborative approach provides for recourse to UN headquarters, the UN Security Council, the Special Representative of the Secretary General for Internally Displaced Persons, the Special Representative of the Secretary General on the Human Rights of IDPs, the UN Emergency Response Coordinator, and the IASC. However, in practice such recourse is only undertaken where an SRSG or HC exists in field who has a keen understanding of the institutional arrangements of the UN system; the technical expertise to read the situation; and the professional confidence to consult. Such leaders in the UN system are rare and as such the international protection of IDPs is greatly dependent upon the competence of a given HC and/or SRSG in field.

These problems are not Sudan specific. Similar challenges and difficulties have been identified in other IDP scenarios, as detailed by IDD in their 2003 *Protection Survey* and *Response Matrix*.[71] According to IDD there is an identified need "for increased accountability among Humanitarian and Resident Coordinators (HCs and/or RCs) and operational agencies. Assessment and strategy-making required vast improvement; and the decision-making process leading to a division of labour required greater predictability."[72]

Yet subsequently, all agencies reiterated their commitment to the collaborative approach. Given agency turf battles in practice it might be asserted that this commitment is disingenuous and suggestive of a willingness to compete at the field level for IDP funding based on perceived expertise. Based on practical experience, it can not be read as instructive of a commitment to collectivism. What the agencies are really saying is "we will agree to work together at the team management level, and the rough and tumble can be sorted out in the field." Unfortunately this "collaborative approach" is anything but in practice and the international protection of IDPs suffers immensely as a result.

There are exceptions to the rule however, which typically arise where a group of dedicated, like-minded humanitarian personnel with relevant expertise rally around a specific protection "cause". From January – May 2005 the main international protection approach utilized by the humanitarian community in Khartoum to respond to GOS' demolitions, relocations and forced return was advocating for the application of international law in accordance with the Principles. This method of protection, detailed in the following section, provides a good example of where the collaborative approach can work towards the greater protection of IDPs in accordance with international law.

Advocating Protection in Practice

Although "active and assertive advocacy is an essential component of any IDP strategy"[73], in the Sudan only one agency, UN OCHA recognised this fact in a practical sense and put aside the resources required

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[71] The Protection Survey was published in collaboration with the Brookings Institute and along with the Response Matrix can be accessed at www.releifweb.int/idp.

[72] Inter-Agency Standing Committee; *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams*, (Geneva: UN OCHA, September 2004), p.5.

[73] Inter-Agency Standing Committee; *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams*, (Geneva: UN OCHA, September 2004), p.21. "Advocacy is an umbrella term which refers to an act or process of activism as it relates to a particular issue, concern, proposal or cause. It typically involves persuasive communication (speaking out, pleading and arguing) and targeted actions that seek to influence or change policies, positions, programs, laws, norms, mores, attitudes, behaviors or beliefs. Advocacy is a fundamental and valued function of good governance and is an instrumental component of the democratic process. Advocacy is not limited to but can involve intervening, acting or speaking out on behalf of others." See Zaat, Kirsten; *UN OCHA Sustainable Returns Advocacy and Communication Strategy 2005*, (24 May 2005), (unpublished). Advocacy in the context of the protection of IDPs relies heavily upon sources of international law including international conventions, international customary law, general principles of law, judicial decisions and teachings, (See Charter of the United Nations and the Statute of the International Court

to advocate (campaign and lobby) on IDP protection. Nonetheless an active group of NGOs in Khartoum, resource strapped but highly committed worked closely with UN OCHA to keep the agency's advocacy informed and on track.

The following section of this paper, publicly reveals for the first time the approach utilized by UN OCHA, IOM and NGOs from January – May 2005 in an attempt to demonstrate how the Guiding Principles on Internal Displacement (1998) may be exploited in practice to increase the likelihood of domestic and international protection of IDPs.

When GOS re-instituted its policy of demolitions and relocations whilst the international community's attention was focused firmly on Darfur, few international aid workers seemed to notice, and even fewer seemed to be concerned. A notable exception was the humanitarian personnel at Enfant du Monde (EMDH) who along with their Sudanese partner agency *Al Amal*[74] had the unfortunate experience of witnessing one such demolition that took place in Shikan squatter area, north of Omdurman (a suburb of Greater Khartoum) from 28 December 2004 (see below). EMDH's informed advocacy in response to this demolition would prove a turning point in the international community's response to such human rights abuses, which continue to this day to be perpetrated by GOS and its agents.

As a result, UN OCHA was able to devise an advocacy strategy aimed at "actively and assertively"[75]:

- Speaking out on behalf of Sudanese IDPs affected by North-South conflict and peace and reconciliation processes, ensuring the voices and views of vulnerable Sudanese IDP populations are heard and considered by policy and decision-makers at the local, national, regional and global level.
- Advocating with stakeholders privately and publicly for better preparedness and coordinated, effective and adequately resourced humanitarian response to assist Sudanese IDPs.
- Using information strategically to influence the policies and practices of all stakeholders with the aim of assisting and protecting those in need.
- Building the capacity of the UN, donors and NGOs to advocate on humanitarian protection concerns and coordinate joint UN, donor and NGO advocacy in the interests of promoting sustainable returns, as appropriate.[76]
- Actively promoting adherence to international human rights and humanitarian law and the humanitarian principles of impartial, neutral and independent humanitarian action, including by advocating for unimpeded access to affected populations and protecting humanitarian space and human dignity.
- Complementing current and future responsive, remedial and environment building protection activities undertaken in the interest of upholding the human rights of IDPs in the Sudan.[77]

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of Justice (1945) at Article 38.) and UN resolutions, and 'soft law' such as guiding principles and humanitarian standards. The aim of such advocacy is to facilitate a positive change in the lives of IDPs and improve awareness of the rights of IDPs in the interests of increased domestic and where required, international protection.

[74] Agency name changed for protection purposes.

[75] See Inter-Agency Standing Committee; *Implementing the Collaborative Response to Situations of Internal Displacement*, (September, 2004), at page 21.

[76] "Severe breaches of international human rights law should lead to a collective UN response. … In situations where severe breaches of international humanitarian law (Defined by the Statutes of the International Criminal Court as encompassing the crime of genocide, crimes against humanity, war crimes, and the crime of aggression) are occurring, human rights activities should be the UN's priority, even at the risk of interrupting humanitarian access." See IASC Secretariat "Protecting Principles Under Stress: Guidance for the Development of Common UN Ground Rules Based on Agreed Principles", (Geneva, 1998)

[77] ICRC; *Strengthening Protection in War: A Search for Professional Standards*, (Geneva: ICRC, 2001).

- Addressing the root causes of humanitarian need and protection concerns as they relate to IDPs in north and south Sudan which remain political.[78]
- Raising the profile of the UN OCHA Sustainable Returns Team in the Sudan.[79]

The Shikan Incident and Beyond

On 28 December 2004, GOS began demolishing Shikan, an IDP squatter area established in the 1980s 23km north of Omdurman, a suburb of Greater Khartoum. At least 30,000 IDPs including persons from the Nuba, Majanin, Arab, Shiluk, Dinka, Masalit, Felata and Khofra ethnicities lost their homes with an area the size of around 16 football fields being levelled to the ground by government bulldozers supervised by security and intelligence forces.

Around 15 per cent of the resident IDP population of Shikan were permitted to stay next to the site (new Shikan) of the former squatter area and were pledged plots of land by the government. The remaining 85 per cent were loaded onto trucks and removed to El Fateh[1] - a desert area 38km north of Omdurman. The levelling of Shikan resulted in the destruction of all IDP property and infrastructure, and included the demolition of an EMDH community centre - the only source of primary health care in the area.

370 IDP families were initially permitted to stay in new Shikan after the demolition occurred. Most of those families allowed to stay where affiliated with Shikan's community leaders who where being paid salaries and other stipends by GOS. Over subsequent months many of the IDPs relocated to El Fateh made their way back to new Shikan and built *rakubas* (twig huts) there as the site is closer to urban areas and therefore better facilitates access to casual labour. The families who were permitted to stay in new Shikan were pledged plots by GOS.[80] However, no such plots have been allocated to date.

By 25 January 2005, the author had been appointed Advocacy Officer for the [IDP] Sustainable Returns Team for UN OCHA in the Sudan and quickly determined that ongoing meetings with the relevant Sudanese authorities at the Committee for Voluntary and Humanitarian Works (CVHW) and the Humanitarian Assistance Commission (HAC) on protection and assistance issues of concern to IDPs in Khartoum where proving ineffectual.

At the same time the author had been advised in a Khartoum Inter-Agency Forum Meeting on 30 January 2005 by EMDH that the aid agency had been making ongoing requests for assistance from the international community in response to the demolition process, with particular reference to Shikan. Other than UNICEF providing 1,000 jerry cans and soap to affected families, little else had been forthcoming.

UN OCHA thus offered to advocate on the issue of demolitions, relocation and plot allocation firstly to the United Nations Secretary General's Special Representative for the Sudan (SRSG), Jan Pronk, the United Nations Emergency Coordinator, Jan Egeland and then to all relevant UN agencies.

Simultaneously, UN OCHA began a process of raising the awareness of the entire NGO community on EMDH's concerns and on 9 February 2005 and 6 March 2005 UN OCHA held the first of two workshops on the international protection of IDPs to build NGO capacity to advocate and to identify NGO focal points on key issues of concern.

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[78] For a detailed account of the politic nature of relief in the Sudan, including UN and NGO collaboration with GOS and SPLM/A which it is argued has served to prolong the denial of civilian protection see Johnson, Douglas H.; 'The War Economy and the Politics of Relief' in *The Root Causes of Sudan's Civil Wars*, (Oxford: The International African Institute, 2004), pp.143-166.

[79] See Zaat, Kirsten; *UN OCHA Sustainable Returns Advocacy and Communication Strategy for the Sudan 2005*, (24 May 2005), (unpublished).

[80] The cost of plots is expected to be 100,000 Sudanese Dinars.

Donor governments were also approached and the European Commission's Humanitarian Office (ECHO) and the UK Government's Department of Foreign and International Development (DFID) responded favorably with ECHO advising that funding for protection measures may be forthcoming and could be funneled through NGOs. Similarly, DFID funding was pledged immediately and allocated through UN agencies.

On 3 March 2005, UN OCHA and EMDH organised a field visit to squatter areas for SRSG Jan Pronk who determined that demolitions and forced relocations constitute human rights abuses and issued a statement through the UN headquarters in New York committing the UN to assist IDPs in and around Khartoum in a policy of return and resettlement in response to the signing of the CPA.

From this time forward, SRSG Pronk consistently called upon GOS to meet their primary legal responsibility to protect and assist IDPs in all current locations of displacement. He also continually called for action from UN agencies, donors, and NGOs in accordance with their legal obligation to gap-fill GOS' protection responsibilities in accordance with state sovereignty.

On 6 March 2005, SRSG Pronk met with the Sudanese Minister of Foreign Affairs expressing his deep shock at the situation of IDPs in and around Khartoum calling for an immediate end to the demolitions. On 7 March 2005 Under-Secretary General for Humanitarian Affairs Jan Egeland held a press conference in Khartoum deploring the situation of IDPs in current locations of displacement after being briefed by SRSG Pronk and UN OCHA.

On 10 March 2005 SRSG Pronk visited Omdurman es Salaam and Wadi el Bashir official IDP camps with MEDAIR and War Child. The visit was plagued by GOS access problems and the delegation was followed throughout the visit by both security and intelligence forces. NGO personnel visited by the SRSG received subsequent death threats for having shared information with the UN.

On 12 March 2005 the Khartoum Inter-Agency Forum (NGOs, donors and UN OCHA) attended a meeting with the Minister of Planning for Khartoum State organized by CVHW. NGOs called for greater justice in the relocation and plot allocation process, while UN OCHA advised that the demolitions and relocations constitute human rights abuses and called for their immediate end until such time as places of relocation where furnished with life supporting services. The French Embassy reiterated that the demolitions of homes and public infrastructure must end, noting the demolition of a primary health clinic built with French funding. The meeting was well prepared for and the UN, NGO and donor entreaties where in complete compliment. The meeting was a spectacular act of assertive and effective lobbying and served to consolidate the sense of purpose and the objectives aspirations of the Khartoum Inter-Agency Forum.

The Minister requested that concerns be detailed in writing. On 15 March 2005, the NGOs sent a joint letter of concern; the EC sent a support letter; and UN OCHA prepared a support letter for SRSG Pronk's signature. These letters where never responded to as of 25 May 2005 and remained on the agenda.

At the request of UNDP, UN OCHA organised a field visit for 15 Nordic journalists to IDP camps and squatter areas in Khartoum on 13 March 2005. That evening, NGOs were informally advised that a GOS Cabinet meeting had been held and the Minister for Foreign Affairs had advised the Cabinet that all demolitions must cease immediately if the government was to avoid being shamed in the eyes of the international community. It appeared that private lobbying efforts by SRSG Pronk coupled with the threat of international media coverage was proving a successful strategy.

In order to keep the pressure on GOS, on 17 March 2005 SRSG Pronk held a press conference and amongst other concerns, detailed his shock at the condition of IDPs in all current locations of displacement, calling for an immediate end to the demolitions and more humanity in the relocation and plot allocation process. He also stated that such treatment often leads to forced return. On 20 March 2005, UN OCHA then organized a field visit to IDP camps and squatter areas for BBC, Reuters, AFP, AP and the Khartoum Monitor, and on 23 March 2005, UN OCHA was interview by IRIN. BBC radio pieces on the World Service, Arabic Service and Africa service in addition to Reuters, AFP and IRIN wire articles subsequently appeared. All articles where widely picked up by print and radio news services both inside and outside Sudan.

Despite being met with significant reluctance, from 25 January 2005 onwards UN OCHA had petitioned UN agencies to facilitate protection and provide assistance to IDPs in all current locations of displacement. On 18 March 2005 the Returns Taskforce Khartoum and Rumbek was created and UN OCHA used this forum to lobby relevant UN agencies. UNICEF and WHO reluctantly agreed and visited Shikan and El Fateh on 23 March 2003.

On the morning of the visit, SRSG Pronk met with NGO advocacy focal points (EMDH, FAR, War Child and NRC) and UN agencies to convince UN technical staff of their obligation to provide gap-filling protection and assistance. The field visit that followed resulted in UNICEF and WHO admitting that assistance needed to be provided in the health, water and sanitation and education sectors. Despite all of the UN personnel representing these agencies having had significant experience in the Sudan, and being based in Khartoum, only one staff member had previously visited IDP camps and squatter areas in the Khartoum area.

On 7 April 2005 the Deputy UN Humanitarian Coordinator undertook a presentation prepared by UN OCHA to the UN Country Team. UN agencies had been consistently reluctant to engage for more than 3 months, but during the UNCT committed to providing assistance activities within the context of the Mid-Term Review of the Work Plan for Sudan 2005.

On 9 April 2005 the prioritization of return and reintegration, including assistance to all current locations of displacement, was raised and agreed to at the Oslo Donor's Conference. Considerable donor pledges were made in this regard.

On 18 April 2005 UN OCHA organized a field visit to squatter areas for the Acting High Commissioner for Refugees, Wendy Chamberlain. Somewhat predictably, given UNHCR's ongoing internal debates about how far to reach into IDP matters, Deputy Commissioner Chamberlain was not persuaded that UNHCR should provide protection or other assistance in and around Khartoum, although in the author's opinion she was deeply concerned by the situation she found there. Indeed, her comment, "I would never allow this to happen on my watch [in a refugee camp]" served to highlight the true misery of the situation facing Sudanese IDPs in and around Khartoum. On 19 April 2005 Ms Chamberlain issued a statement through Geneva calling on GOS to meet its legal responsibilities towards IDPs living in all current locations of displacement.

On 20 April 2005 UN OCHA assisted UNICEF in organizing a visit to El Fateh by the assistant Executive Director of UNICEF, Rima Salah. UNICEF is now drilling bore holes, providing mobile clinics and mobile schools in the area, however, no protection whether in the form of advocacy of tangible activities has been forthcoming to date.

On 26 April 2005, UN OCHA was advised by EMDH that the Governor of Khartoum has made two visits to El Fateh in the following two weeks a primary health care clinic had been built by GOS and two government schools had been pledged. It seemed that the message was getting through to GOS that if they

wanted assistance from the international community they would have to demonstrate goodwill and begin establishing requisite services.

On 9 May 2005, UN OCHA met with USAID securing up to US$1 million in funding for Khartoum camps and squatter areas to be channeled through NGOs with an ongoing presence. This was a significant advocacy victory, as the presence of the US Government in these locations could offer greater protection to IDPs, including by discouraging GOS from demolishing homes and public infrastructure. It will also better enable the US Government to keep a watching brief on GOS activities in the area. Given the recent cooperative agreement between the US and Sudan in the interests of preventing terrorism in Iraq (where a significant Sudanese ex-patriot community lives) and elsewhere the willingness of the US Government to highlight human rights abuses as they unfold in the camps and squatter areas may nonetheless be compromised.

In response to UN OCHA's international law-based advocacy, the United Nations, lead by the outstanding efforts of the UN Secretary-General's Special Representative for the Sudan, Jan Pronk, the international NGO community and all donor governments has since taken the position that although they support GOS' intent to re-plan current locations of displacement in principle, the process by which demolitions, relocations and plot allocations have been undertaken constitute serious human rights violations, including forced return.

Since March 2005, the United Nations has made it explicit through government, NGO, donor, and media channels that demolitions must stop until suitable life-sustaining arrangements - acceptable to affected IDPs - are made. Specifically, the United Nations has called upon GOS to "fulfil its legal responsibility to guarantee the security and safety of IDPs and minimise the adverse effects of displacement", as explicitly stated in the Joint Policy Agreement.

The UN has stated on a variety of occasion that GOS must:

1. Provide basic services to IDPs throughout the re-planning process;
2. Provide advanced warning of planned demolitions and public guarantees of the provision of services in places of relocation;
3. Allocate plots before demolishing houses, schools, clinics, and other facilities and provide advance notification of demolitions;
4. Simplify the process of applying for and acquiring plots by sharing transparent policy guidelines with IDPs and implementing affordable and flexible plot fee payment measures;
5. Allocate plots to all IDPs and ensure the most vulnerable groups, including female headed households and children are prioritized; and
6. Where IDPs are removed for the purposes of rezoning, take all measures to minimise the adverse effects of displacement; ensuring that proper accommodation is provided and safety, nutrition, health, hygiene and non-separation of family obligations are fulfilled.[81]

In addition, after much prodding from SRSG Pronk, the UN Country Team agreed to offer assistance to IDPs living in all current locations of displacement in the Sudan, including in and around Khartoum. By May 2005, it was decided that the HC should lead a process of leading the expansion of protection and assistance activities in this regard with UN agencies engaging in a broader collaborative approach – not unlike that instituted in the form of the Khartoum Inter-Agency Forum - aimed at building trust and cooperation amongst agencies.

[81] See Zaat, Kirsten; *UN OCHA Sustainable Returns Advocacy and Communication Strategy 2005*, (24 May 2005), (unpublished) as reiterated in a number of public UN statements to the media throughout the course of 2005.

As such a UN Task Force was created to thrash out a return and reintegration strategy, which would better facilitate the legal protection of IDPs in Khartoum, along return routes and in south Sudan more broadly.

Much headway was made in implementing international law at the field level in the Sudan throughout the first half of 2005, and GOS did halt demolitions, relocations and forced return while the international community remained on heightened alert thanks to UN OCHA and NGO advocacy. However, despite significant advocacy victories, on 18 May 2005, GOS returned to its re-planning policies and the squatter area of Soba Aradi was targeted for demolition.

The Soba Aradi Incident and Beyond
Soba Aradi is a squatter area located 20km south of Khartoum. The area is populated by an estimated 23,000 IDPs. Demolitions in Soba Aradi squatter area started in September 2004. To date, more than 87,000 IDPs have lost their homes in Soba Aradi as a result. At least 665,000 IDPs have lost their homes due to demolitions in and around Khartoum over the last 16 years. From 2004, demolitions and relocations have been on the increase. More than 300,000 IDPs have lost their homes since then.

On 18 May 2005, GOS security forces surrounded Soba Aradi squatter area in an attempt to prevent IDPs from leaving the area with the intent of relocating them to south of Mayo official IDP camp to Jabal Aulia. The IDPs resisted and gathered at the bus station. Security forces opened fired and the situation escalated considerably with IDPs confiscating weapons from the security forces. At least 4 police officers and 2 IDPs where killed and scores injured. According to eye witnesses, the following day a 1,000 strong police force entered the squatter area in riot gear. Heavy military reinforcements were reported. UN OCHA broke the news of the incident to the international community, contacting Rueters and BBC, the only two international media outlets available in Khartoum on that day.

UN OCHA called directly for the IDP community to remain calm and women and children in particular to remain in doors. IDPs suspected of having informed the UN and others of the incident the previous day were arrested. Women accused of brewing illegal alcohol were also arrested. In addition, A BBC correspondent was arrested and beaten.

In addition, UN OCHA began sending 'Flash Alerts' containing up –to-the-minute reports of the incident every few hours to donor governments, NGOs, UN agencies and other key stakeholders via email throughout the globe. These reports where soon leaked to media outlets and appears in a number of newspapers, including the Khartoum Monitor[82] and the Juba Post. These alerts served to rally the donor community in Khartoum to petition GOS to end their activities, including bringing condemnation from the British Foreign Office and from the US State Department. The international NGO platforms ICVA, SCHR, and InterAction were alerted and the local NGO community was mobilized to offer medical and other assistance. The office of the SRSG (led by the deputy SRSG for political affairs at that time as Jan Pronk was traveling) issued a media release calling for calm. The matter was also taken up by UN headquarters in New York with other external audiences and in the following days directly between Jan Pronk and the highest levels of GOS leadership.

The lesson of the Soba Aradi Incident is that advocacy is a process not a protection outcome in and of itself. In recognition of this and in response to the Soba Aradi Incident, in May 2005, it was determined that the efforts of the Khartoum Inter-Agency Forum should be distilled into a Consultative Committee that would meet regularly with GOS. The Sudanese Government has now agreed to consult with the UN, NGOs and donor governments *before* future re-planning activities are undertaken. Such developments might have a significant impact on improving the domestic and international protection of IDPs in

[82] *The Khartoum Monitor* was subsequently shut down by GOS but has now been reinstated.

Khartoum and the Sudan more widely but only if they are properly resourced and staffed. The baton can not be dropped, and it is for successive representatives of the international community in Khartoum to prioritise the protection of Sudanese IDPs least they once again become the forgotten people.

PART V: CONCLUSION AND RECOMMENDATIONS

This paper has reflected on the extent to which existing norms of international law afford protection to IDPs in the Sudan and the extent to which protection mechanisms are being applied in practice by Sudanese national authorities and the international community alike. We now end with some recommendations on how the rights of Sudanese IDPs might be better protected in accordance with international law.

If the international protection of IDPs in the Sudan and elsewhere is to be forthcoming further actions must be taken by the international community in accordance with its new-found prioritization of human rights over state sovereignty. The United Nations and NGOs now have at least a ten year track record of commitment to providing greater international protection for IDPs culminating in the development and ongoing application of the Guiding Principles on Internal Displacement (1998). As we have proposed here, the Principles are enough to facilitate protection in field, what is now needed is **a firm Member State commitment to the Guiding Principles on Internal Displacement and for this commitment to be enforced**

Such a commitment might be demonstrated by **the issuance of a UN General Assembly resolution which clearly articulates a wide commitment to the Principles**. In addition, **all future UN Security Council Resolutions dealing with situations where IDPs are present should make mention of the obligation of all parties to uphold the Principles** in accordance with international human rights law, where applicable international humanitarian law, and refugee law by analogy.

The Rome Statute (2000) categorizes 'forcible transfer', including deportation, forced relocation and forced return, as crimes against humanity. The international community must now use its territorial, personal, and universal jurisdiction to **ensure all individuals accused of having committed or aided or abetted such crimes stand trial**. Where nation states are unwilling or unable to act in this regard, the International Criminal Court should hear such cases. **No-one should be exempt from being tried for the crime of forcible transfer. Humanitarian personnel who are complicit in such crimes whether through act or omission must also stand trial**.

In this regard, **humanitarian agencies with protection mandates, notably UNHCR and UNOHCHR must engage more consistently on IDP protection** matters at both the headquarters and field level. After 33 years of deliberations **it is time for UNHCR to clearly articulate a consistent position on the role the agency is willing to play in the protection of IDPs** in a way that makes internal guidance externally known to all. UNOHCR has a Special Representative for the Human Rights of the Internally Displaced, yet that office's action in many complex emergencies, including in the Sudan belies this fact. **UNOHCHR must now prioritse the protection of IDPs as part of its core agency responsibilities**.

At the field level, **greater awareness raising in the form of advocacy and training for humanitarian personnel and government officials** (both national and donors) must be provided and this requires a commitment by donor governments, UN and NGO agencies to provide the requisite resources to make such protection activities a reality. Lastly, **humanitarian personnel must be trained in assisting IDPs and other civilians in need within a rights-based approach that upholds international legal protection mechanisms**. It is not enough to pay lip service to IDP protection. The persons tasked with providing that protection must have a significant understanding of and commitment to international law.

Nation states in which complex emergencies occur consistently fail to meet their obligation to protect IDPs, and as we have seen, the Sudan is a particularly heinous example. It is time for the UN, NGOs and donor governments to stop protecting governments which systematically abuse the human rights of their citizens, including IDP populations, and demonstrate their commitment to "… reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] … to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained"[83] for all human beings, including those who forcibly migrate. Internally displaced persons can be no exception to this rule.

[83] Preamble, Charter of the United Nations (1945).

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