

Internal displacement and the Kampala Convention: an opportunity for development actors

Analytical Paper on the Relevance of Human Rights Approaches for Development Activities Targeting Conflict- and Disaster-Induced Displacement in Africa



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Cover photo: Madwani is one of the two transit sites in Aweil town, South Sudan. Although it is supposed to shelter people for only a few days before they are moved to their permanent homes, some of the returnees stay in Madwani for months because of slow plot allocation and because they want to stay in the proximity of town, where some services are available. (Photo: IDMC, April 2011)

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List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights (1981)
AU	African Union
Guiding Principles	United Nations Guiding Principles on Internal Displacement (1998)
HLP rights	housing, land and property rights
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights (1966)
IDP	internally displaced person
IDP Protocol	International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, Protocol on the Protection and Assistance to Internally Displaced Persons (2006)
IRR Model	Impoverishment Risks and Reconstruction Model
Kampala Convention	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009)
OCHA	Office for the Coordination of Humanitarian Affairs
OP	Operational Policy
Property Protocol	International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, Protocol on the Property Rights of Returning Persons (2006)
UDHR	Universal Declaration of Human Rights (1948)
UN	United Nations
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNDP	United Nations Development Programme
USAID	U.S. Agency for International Development



Executive Summary

With almost 10 million people internally displaced by armed conflict and other forms of violence in 22 of its countries and an unknown number of those displaced by disasters, Africa is the continent with the largest number of internally displaced persons (IDPs). At the same time, Africa is the continent that has done most to develop a sound normative framework to protect the rights of IDPs by adopting, in 2006, the *Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and Protocol the Property Rights of Returning Persons* as part of the Pact on Security, Stability and Development in the Great Lakes Region, and, in 2009, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the first full-fledged legally binding convention addressing internal displacement in a comprehensive and detailed manner. In addition, several African countries have developed domestic laws, policies and strategies that address internal displacement.

This analytical paper examines how displacement-relevant international and national human rights instruments and frameworks, including the recent Kampala Convention, can influence and strengthen the design and implementation of development interventions targeting IDPs in Africa.

Such interventions are relevant because internal displacement, when it occurs on a large scale, has a negative impact on a country's development, particularly on attainment of the Millennium Development Goals (MDGs), but also because displacement situations may provide development opportunities (e.g. to 'rebuild better'). In particular, internal displacement usually triggers the impoverishment of individuals, families and communities, a process that may be reversed through development interventions addressing, inter alia, the loss of land, livelihoods, shelter, food security, health care, education and social inclusion.

Human rights conventions, the UN Guiding Principles on Internal Displacement and African regional conventions (the Kampala Convention and the Great Lakes IDP and Property Protocols) are relevant for addressing many of the poverty-related needs of IDPs, who are protected by norms enshrined in general human rights conventions. Their needs may also be addressed by domestic laws and policies that incorporate these standards into the legal order of countries with IDPs. International development actors should consider that their national counterparts

are bound by at least some of these norms.

Only a relatively small number of African states have thus far adopted specific national laws or policies or are in the process of doing so. Without such domestic instruments, their ratification of the Kampala Convention and/or the Great Lakes IDP Protocol remains largely symbolic. Furthermore, there is a major discrepancy in most countries between having a national instrument and implementing it in a displacement situation. These problems are sometimes created by a lack of will, and are sometimes the consequence of a lack of resources as well as an inadequate understanding and knowledge of how to develop and later use such instruments in a practical way. They are also sometimes due to a combination of these elements.

The political economy of treaty compliance suggests that international development actors can enhance the likelihood that international, regional and domestic human rights provisions protecting the rights of IDPs will be implemented by promoting peer learning, supporting judicial and legislative reforms and building the necessary government and civil society capacity to publicize, monitor and organize around relevant treaty and constitutional provisions.

Using a human-rights-based approach in this context creates added value in five ways. It helps: (i) to determine the responsibilities of state organs by identifying the rights holders and duty bearers for each human rights guarantee; (ii) to facilitate an inclusive and participatory process of planning and implementing development interventions; (iii) to shape programs and projects in ways that are consistent with relevant human rights guarantees; (iv) to avoid doing harm; and (v) to strengthen accountability for state behavior that is incompatible with human rights.

The Kampala Convention and the Great Lakes IDP and Property Protocols set out state obligations and provide guidance in the areas of, inter alia, service delivery; livelihoods; housing, land and property; and governance. Experience with displacement-specific programs and projects shows the potential for, and high relevance of, development interventions in these fields and suggests that using a human-rights-based approach can improve their quality, impact and sustainability.



Introduction

1. Internal displacement in Africa

According to the African Union (AU), Africa is “a continent disproportionately affected by internal displacement”.¹ The African region, with almost 10 million people internally displaced in 22 countries by armed conflict and other forms of violence, hosts more than one third of the 26.4 million internally displaced persons (IDPs) worldwide at the end of 2011.² Sudan, the Democratic Republic of the Congo and Somalia rank globally among the states with the five biggest displacement situations.³ Even in African countries with smaller figures, very large percentages of people may be in displacement in regions primarily affected by violence.⁴ Such violence has multiple causes, including the long-lasting consequences of colonial heritage, outside intervention, crises of identity in multi-ethnic countries⁵ and conflicts over resources. Today, political exclusion and inequality between ethnic, regional or religious groups are particularly important drivers of violence.⁶

Additional millions are displaced every year by natural disasters.⁷ Africa is less affected by sudden-onset natural disasters than other parts of the world, but an estimated 1.1 million people were displaced by flooding and storms in 2009 and 1.7 million in 2010.⁸ The main drivers of disaster-induced displacement are slow-onset disasters, in particular drought. Overall figures are not available and estimates vary widely, but 1.5 million people are thought to have been displaced by drought and famine in Somalia alone in 2011.⁹

People are also displaced by development projects that are undertaken without proper relocation of affected populations in line with international standards. This type of displacement, while particularly important in the African context, is a particularly under-researched area and does not fall within the scope of this study.

Africa has done more than any other region to develop a sound normative framework to protect the rights of IDPs.¹² In 2006 the International Conference on the Great Lakes Region adopted the *Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons* (hereinafter Great Lakes IDP Protocol) as part of the Pact on Security, Stability and Development in the Great Lakes Region.¹³ In 2009 the AU promulgated the *Convention for the Protection and Assistance of Internally Displaced Persons in Africa*¹⁴ (hereinafter Kampala Convention), the first full-fledged legally binding convention

Key notions:

Internally displaced persons (IDPs) “are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.¹⁰

Displacement-affected communities are “[c]ommunities that bear the negative consequences of displacement, either because they have to flee or leave their homes and places of habitual residence themselves, or because they have had to host internally displaced persons, or because they have to receive and integrate formerly displaced persons who return to their homes and places of habitual residence or settle permanently elsewhere in the country”.¹¹

addressing internal displacement in a comprehensive and detailed manner, covering not only conflict-induced displacement but also the forced movement of people due to natural disasters and development projects. The African Charter on Human and Peoples’ Rights¹⁵ has also become a relevant instrument for the protection of IDPs. Moreover, several African countries have IDP-specific national laws or policies and strategies, or are in the process of developing them.¹⁶

2. Scope of the study

This study examines how international, regional and domestic human rights instruments and frameworks, in particular the guarantees enshrined in the Kampala Convention and the Great Lakes IDP Protocol, can be used to enhance the design and implementation of development interventions targeting internally displaced people and other communities affected by displacement.

It argues that the binding regional treaties provide a unique chance for international development actors (such as the World Bank, regional development banks, the UN Development Programme [UNDP] and other UN agencies, bilateral development cooperation agencies

and international development NGOs) as well as their domestic counterparts (such as relevant ministries, local authorities and national NGOs) to strengthen the quality and impact of their interventions inasmuch as these instruments clarify the scope of the responsibilities of the state and its authorities vis-à-vis the displaced; help to shape the process of implementation as well as the content of specific programs and projects; assist in preventing the infliction of harm through ill-conceived (e.g. discriminatory) interventions; help to strengthen accountability at different levels; and contribute to the empowerment of displaced people and communities.

In doing so, the study limits itself to *internal* displacement, meaning that it does not address the impact of refugees who flee across internationally recognized borders, and only covers displacement caused by armed conflict, other situations of violence and natural disasters. It does not delve into development-induced displacement because its dynamics are very different from those of conflict- and disaster-induced displacement and it has its own applicable normative frameworks.¹⁷

The study argues in *Part I* that development actors should undertake and support activities addressing internal displacement because of the developmental impacts of such situations, and notes that the Kampala Convention provides a unique opportunity for development actors to engage in such work. In *Part II* it introduces the normative framework addressing internal displacement that is relevant for development actors and explains how the Kampala Convention and other regional instruments address internal displacement in Africa. This part also looks at domestic laws, strategies and policies in some African countries. *Part III* examines the political economy of treaty ratification and implementation in the area of human rights in general and the Kampala Convention in particular, and considers what development actors can do to create conditions conducive to improved implementation of treaties that protect the rights of IDPs. Questions as to why development actors should use a human-rights-based approach in their programs and projects are addressed in *Part IV*, which identifies the value added by such an approach as well as its relevant components. *Part V* is devoted to a detailed discussion of the relevance of human rights such as those underlying the Kampala Convention and other relevant instruments to four thematic areas of particular relevance to development actors addressing internal displacement - service delivery; restoration of livelihoods; housing, land and property issues; and accountable and responsive governance, in particular at the local level.

While the paper focuses on Africa, it uses non-African examples where such case studies are particularly illustrative or otherwise relevant to the African context.



Internal Displacement: A Development Challenge

1. The inadequate presence of development actors in displacement situations

Traditionally, internal displacement is perceived primarily as a humanitarian and human rights issue and sometimes as a security challenge. This perception still underpins many existing arrangements for the involvement of the international community in displacement situations: At the international level, humanitarian organizations are regarded as key actors, and development actors such as UNDP and the World Bank are often only brought in, if at all, at a later stage when return becomes possible and durable solutions to end displacement may be envisaged. Development actors are all too often absent from activities addressing internal displacement, a state of affairs that has negative consequences.

National development plans and initiatives usually fail to address internal displacement and its specific challenges or to target IDPs as a distinct group with specific needs. Hence, they are often insensitive to the particularities of internal displacement¹⁸ and its impact on the human rights of the displaced. Even if IDPs are included in more general categories of vulnerable people (children, rural poor, etc), they are often unable to benefit from such programs, for instance because these are only accessible to permanent residents of a targeted area. In other cases, IDPs may not possess the necessary personal documents to be eligible for specific activities, or they may be excluded from certain projects because investment in IDPs is perceived as unsustainable in view of their subsequent return to their areas of origin or the risks of secondary displacement. Conversely, area-based development projects may be planned before IDPs return, thus excluding them from participatory planning processes that may discriminate against them as a result.

Where operational activities specifically address IDPs, problems stem from the fact that assistance and protection on the one hand, and recovery and development on the other, are treated as separate agendas, resulting in what is often referred to as the “early recovery gap”.¹⁹ IDPs are often worse off many years after the emergency phase because of inadequate recovery and development efforts following the departure of humanitarian actors. This gap has often led to long-term dependency on humanitarian aid and is a key cause of the protracted nature of many displacement situations. As UN Secretary-General Ban Ki-moon has highlighted, funding for recovery and peacebuilding in post-conflict situations “is

usually drawn from development budgets, which typically have long lead times from inception to disbursement at the country level. The result is a funding gap between the time humanitarian funding starts to diminish and development funding starts to flow”,²⁰ leading to situations in which returnees are unable to rebuild their previous lives or end up in worse misery than during the emergency phase of an armed conflict or natural disaster when humanitarian assistance was available to them.²¹ All too often, the same is true of recovery efforts in the aftermath of natural disasters.

2. The displacement-development nexus

The inadequate presence of development actors is particularly problematic because the existence of a strong nexus between development and displacement²² creates a major challenge for them. Three dimensions deserve to be highlighted here:

*In pre-displacement situations, the lack of development or its failure may significantly contribute to instability that triggers displacement.*²³ For instance, economic marginalization may contribute to grievances that those starting a rebellion can exploit by claiming that government neglect justifies their actions.²⁴ There seems to be some relationship between poverty levels in a country and the degree of displacement,²⁵ but the dynamics triggering or preventing displacement in areas with poor levels of development are very complex and little understood, as large numbers of IDPs can also be found in regions that are not the poorest parts of a country²⁶ or in countries with a high human development index.²⁷

When displacement occurs, it not only increases the vulnerability of individuals, families and communities but also undermines the overall development of affected areas or countries. Obviously armed conflict usually has negative developmental consequences for a country,²⁸ as have natural disasters. The loss from one day to the next of one’s livelihood, access to basic education or health services and to the house, land and other property one has to leave behind has “significant developmental impacts affecting human and social capital, economic growth, poverty reduction efforts, and environmental sustainability”²⁹ and jeopardizes efforts to attain the Millennium Development Goals (MDGs).³⁰ As the US Agency for International Development (USAID) has pointed out, prolonged or protracted displacement “typically disrupts or reverses

progress made in schooling, healthcare, food production, sanitation systems, infrastructure improvements, local governance, and other sectors fundamental to economic and social development".³¹ Negative developmental impacts of the presence of large numbers of IDPs on host communities due to the pressure on local services and infrastructure, the labor market or natural resources such as water, land and forests will increase.³² At the individual, family and community level, displacement triggers a multi-dimensional process of impoverishment described in section IV.1 of this study. The marginalization of IDPs and prolonged dependency on humanitarian hand-outs enhances their vulnerability and reduces their ability to become productive and self-sufficient again. "Failure to address the long-term development needs of previously uprooted populations risks new cycles of national instability and population displacement".³³ These negative effects are particularly relevant in Africa, where internal displacement mainly occurs in countries that already belong to the least developed category.³⁴ In such states, the presence of IDPs imposes a further serious strain on already very weak national and local institutions, services and economies and thus may further increase their fragility.

At the same time, situations of internal displacement may offer development opportunities. The influx of better qualified or more entrepreneurial people into an area with low skills and capacities may benefit the local economy. Allowing IDPs to access education and to become productive may boost development in the areas to which they have been displaced and thus "may contribute to economic growth benefitting both the displaced and the host region".³⁵ The arrival of humanitarian and development actors to assist IDPs offers an opportunity for interventions such as the upgrading of health services and education, which remain when IDPs return and thus have a sustainable impact. Displaced people may also possess "skills and knowledge that can be utilized for the benefit of local people".³⁶

In the post-displacement phase, development may be negatively affected if people return to areas devastated by armed conflict or natural disaster unless investments in basic infrastructure and services, livelihoods and local governance structures are made early on in the process. At the same time, infrastructure projects and other measures in areas of return may offer an opportunity to "rebuild better" and thus contribute to development in affected areas beyond the period of crisis. Helping IDPs to develop their skills and to support themselves may, as has been recognized by USAID, "bring valuable human and economic capital to the recovery process".³⁷

3. Entry points for development actors

Development actors usually become active when a conflict or natural disaster is over and recovery and reconstruction activities have begun. While it is true that they have a particularly important role to play in the context of finding durable solutions for IDPs, there are also important areas before and during displacement in which development interventions may be highly meaningful or even necessary.

a) In pre-displacement situations

With regard to prevention of displacement, development actors can help to strengthen the *resilience of communities* by enhancing their food security and livelihood opportunities, promoting the availability of drinking water and basic health services, or strengthening local governance structures so that people can better cope with pressures to leave, not only during armed conflict but also in the context of environmental changes. The Representative of the UN Secretary-General on the human rights of internally displaced persons has recommended that in war-torn and drought-affected Somalia the international community implement "programmes and projects, particularly in the areas of livelihoods and basic services, aimed at empowering people and strengthening their resilience and coping mechanisms as a means of preventing displacement, including in regions affected by drought".³⁸ The fact that development interventions can contribute to building resilience, thereby helping to prevent displacement, is recognized by several countries. For example, Nepal's IDP policy mentions prevention of displacement as one of the government's key tasks and provides, inter alia, for "programmes on displacement prevention by providing development, security and social service to all Nepali people".³⁹ One of the objectives of Uganda's IDP policy is to "ensure that persons are not uprooted from their habitual places of residence", a goal to be achieved by developing "mechanisms to guard against factors that led to internal displacement" and integrating deterrents to such factors "into the planning functions of all relevant institutions".⁴⁰ In Colombia, addressing "unmet needs of people or communities that may possibly accelerate a forced displacement process" and giving advice to "the municipal and departmental authorities responsible for the development plans so that they include prevention and assistance programs" are among the preventive measures provided for by law.⁴¹ All these laws and policies highlight the development aspects of preventing displacement.

Development actors can also significantly contribute to the *reduction of risks associated with natural disasters*. Here, their role is fully recognized. Disaster risk reduction measures, as suggested by the 2005 Hyogo Framework for Action: Building the Resilience of Nations and Communities to Disasters, include development interventions

such as the flood- and hurricane-proofing of houses and roads and other infrastructure; upgrading of drainage systems; riparian forest buffers, dams and drainage to prevent floods; sea walls, dykes, mangrove planting, beach stabilization and saltwater intrusion barriers; construction of buildings on slightly elevated areas and other land-use planning measures; soil conservation measures such as terrace farming, digging trenches to divert runoff, tree planting and grass cover; and enhanced livestock management.⁴²

b) During displacement

During displacement, development actors can help to *strengthen the coping mechanisms and absorption capacities of communities hosting IDPs*. The large majority of IDPs in Africa are not housed in camps or collective shelters but stay with host families or live on their own within host communities. Such IDPs living outside camps are often not very visible and humanitarian organizations usually have difficulty in identifying and accessing them.⁴³ Furthermore, as Oxfam has found in eastern Democratic Republic of Congo (DRC), providing assistance “mainly through camps undermines traditional coping mechanisms that can provide safer and more effective aid, and effectively limits the choices available to displaced people. The basic principle is that people should be able to go where they feel safest and assistance should be provided in ways that support livelihoods and help to keep families together”.⁴⁴ Such support should, as the Representative of the Secretary-General stressed, “go beyond delivering humanitarian aid and include development interventions to strengthen basic infrastructure such as water and sanitation and basic services such as health and education, and increase food security and the availability of shelter”; it should also, in line with the concept of “displacement-affected communities”, be area-based, addressing hosts and displaced communities at the same time.⁴⁵ It may well be that in the long run this kind of intervention will not only prove less costly than humanitarian assistance but also contribute to the development of host communities.⁴⁶

Development actors play a particularly important role in *addressing protracted displacement*. More than two-thirds of IDPs worldwide have been in displacement for more than five years.⁴⁷ All too often this means not only a life of misery but also the emergence of dependency syndromes among those supported by humanitarian assistance in camps or settlements. Restoring or strengthening livelihood opportunities and, depending on the context, addressing the lack of adequate housing, water and sanitation, and of health or educational services in areas where IDPs live, are development challenges. If properly addressed, they can go a long way towards making IDPs self-sufficient again and, at the same time, increase the general level of development and reduce poverty in targeted areas.

c) After displacement

Development actors also have a particularly important role to play in the post-displacement phase, since the three types of durable solution, i.e. sustainable return, local integration into the area of displacement or integration into another part of the country, can only be implemented if specific conditions are met that require development interventions. The Inter-Agency Standing Committee (IASC) Framework on Durable Solutions stresses that the following, inter alia, are necessary elements: an adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education; access to employment and livelihoods; and access to effective mechanisms that restore their housing, land and property or provide them with compensation.⁴⁸ The 2009 Report of the United Nations Secretary-General on Peace-Building in the Aftermath of Conflict highlighted the need for interventions in key areas including public administration, early employment, other aspects of economic revitalization, rehabilitation of basic infrastructure and reintegration of returnees in the immediate post-conflict period.⁴⁹

4. The Kampala Convention and the Great Lakes IDP Protocol: A unique opportunity for development actors

An important, albeit not exclusive, reason why the situation of many IDPs is characterized by marginalization and vulnerability lies in the fact that they are all too often neglected by authorities in their country who are unwilling to address their specific needs as displaced people. For a long time, and based on a traditional understanding of the principle of state sovereignty, internal displacement was primarily regarded as an internal affair of states with little or no role for the international community. The decision whether or not to protect and assist IDPs and to engage in finding durable solutions to end displacement was largely left to the discretion of national authorities which, more often than not, failed to live up to their responsibilities and could not be held accountable for such neglect.

Today, the 1998 UN Guiding Principles on Internal Displacement⁵⁰ (hereinafter Guiding Principles) stress that national authorities “have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”. This statement is consistent with recent trends in contemporary international law which view “sovereignty as responsibility”.⁵¹ In many countries, however, responsibilities vis-à-vis IDPs are still not recognized, or the legal and institutional frameworks required to address the specific needs of IDPs remain absent or unimplemented, and necessary resources, if available, are not allocated.⁵² All too often the international response also proves inadequate

for a multitude of reasons, including lack of humanitarian access, lack of funding, competing priorities, conflicting mandates and insufficient management.⁵³

Human rights norms and regional instruments such as the Kampala Convention (and to a lesser extent the Great Lakes IDP Protocol) address these weaknesses by:

- *Entitling IDPs as rights holders* to demand specified protection, assistance and rehabilitation measures from the authorities of their country (and, in some cases, from other actors, including regional and international organizations or non-state armed groups);
- *Obliging state authorities* (and, in some cases, other actors) *as duty bearers* to respect, protect and fulfill the rights of IDPs and to take specific measures in this regard, thus *allocating clear responsibilities* in human rights-relevant operational areas;
- *Providing guidance* with regard to the *substance* of human rights-relevant activities, including development interventions and the *procedural aspects* of such interventions, i.e. the way in which they are planned and implemented;
- *Creating a framework of accountability* for cases in which state authorities (and, in some cases, other actors) neglect their responsibilities and violate their obligations.

All of this contributes in important ways to the empowerment of IDPs and their communities, enabling them to actively address their predicament.

These added value dimensions offered by the Kampala Convention and other human rights instruments are highly relevant not only for the displaced but also for international and non-governmental development actors, as they not only set out what IDPs as rights holders can expect and demand from duty bearers, but also provide a normative framework that allows IDPs and international development actors to engage with relevant authorities at the national and sub-national levels, with a view to having them fulfill their human rights obligations and holding them accountable if they fail to do so.

The Kampala Convention and other relevant instruments on internal displacement change the dynamics for everyone wishing to address the development challenges involved and shift the discourse from state sovereignty and government discretion to obligations, responsibilities and accountability in this area.

Before exploring what this means in practical terms (Part IV), it is necessary to provide a short overview of existing instruments relevant to internal displacement in Africa.



Relevant Legal Instruments: From the Guiding Principles to the Kampala Convention and Beyond

1. The Guiding Principles

In Africa, as elsewhere in the world, legal instruments addressing the needs of IDPs are largely inspired by the 1998 Guiding Principles,⁵⁴ which “identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration”,⁵⁵ that is, during all three phases of internal displacement. They contain 30 articles (see Annex I.) that “reflect and are consistent with international human rights law and international humanitarian law”.⁵⁶ The Guiding Principles not only restate the applicable human right or the international humanitarian law guarantee in general terms, but also establish their relevance to IDPs by setting out in specific terms and in greater detail what these guarantees mean in the context of displacement. These specifications are what make the Guiding Principles particularly relevant for stakeholders, including development actors.

The Guiding Principles do not constitute a legally binding instrument but they are recognized by all states as “an important international framework for the protection of internally displaced persons”.⁵⁷ They have become binding in the African context insofar as the Great Lakes IDP Protocol (sub-section 3 below) explicitly requires states to incorporate them as such into their domestic law, and in that they are also reflected in the Kampala Convention.

2. The Kampala Convention

The Kampala Convention was adopted by a special AU summit held in Kampala in October 2009,⁵⁸ and entered into force in early December 2012.⁵⁹

It provides a comprehensive legal framework,⁶⁰ addressing internal displacement due to armed conflict, generalized violence, violations of human rights, natural and human-made disasters, including climate change-related disasters, and displacement due to development projects carried out by public or private actors.⁶¹ State parties are obliged to protect the rights of all IDPs, irrespective of the cause of their displacement.⁶² The provisions of the convention address prevention of internal displacement,⁶³ protection from arbitrary displacement,⁶⁴ assistance and protection during displacement⁶⁵ and the creation of durable solutions for IDPs.⁶⁶ As such, it aims to protect the rights of IDPs throughout the displacement process. Given

Examples:

Guiding Principles, Principle 23

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

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

the burden and strain that displacement may impose on host communities, it takes their needs into account too.⁶⁷

The primary responsibility to assist and protect IDPs in a specific country lies with the state party concerned. In this regard, the convention lays down a range of obligations to be met by governments in order to prevent displacement, to mitigate its consequences, to protect people from arbitrary displacement, to provide assistance and protection to people in displacement and to create durable solutions.⁶⁸ Specific provisions address compensation and effective remedies for people affected by internal displacement, registration of IDPs, provision of personal documentation and monitoring of compliance with the convention.⁶⁹

The Kampala Convention is unique insofar as it also spells out obligations to be met by international organizations and agencies, civil society organizations and AU,⁷⁰ and highlights the principle of coordination among these actors.⁷¹ The organizations concerned are not and cannot become state parties and so are not, technically speaking, bound by its provisions. As guardian of the convention, however, AU has an interest in supporting the efforts of states parties to assist and protect IDPs by cooperating with such organizations. The obligations of international organizations and humanitarian agencies include respect for international law and the national law of the country they operate in, respect for the rights of the displaced and compliance with humanitarian principles, relevant international standards and codes of conduct. This is often reflected in the mandates of such organizations and in their respective codes of conduct.

Non-state armed groups are also addressed by a provision which stresses that they are accountable for their actions.⁷² This principle reflects prescriptions of international humanitarian and criminal law, which in no way afford any legal status or legitimacy to such groups and in no way affect the sovereignty of the state.

As soon as the Kampala Convention enters into force for a state party, it is obliged to give effect to its provisions at the domestic level.

Obligations of states to implement the Kampala Convention⁷³

- States are bound to incorporate the obligations spelled out in the convention *into domestic law through appropriate legislation*;
- States should adopt other measures that are necessary for, or designed to facilitate the implementation of the convention, such as *national policies or strategies* on internal displacement;
- States with IDPs have to *designate a national institutional focal point* on internal displacement with the task of coordinating activities at the domestic level and cooperating with relevant international organizations;
- States have to *provide and allocate* “to the extent possible” the necessary resources for protection and assistance activities – an obligation that is without prejudice to international donor support.

The Kampala Convention is a legally binding instrument. It reflects the Guiding Principles to a large extent and even goes beyond them in certain respects.⁷⁴ Other provisions are directly drawn from international humanitarian law and African human rights instruments, including the African Charter on Human and Peoples' Rights. It

also reflects and is consistent with the UN human rights conventions, in particular the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. Unlike typical human rights conventions, however, the Kampala Convention does not lay emphasis on the rights of IDPs but on the corresponding obligations of governments and other actors. This clear designation of duty bearers helps to ensure that rights do not remain in a kind of legal vacuum where authorities do not really feel responsible for implementing them.

3. The Great Lakes Protocols

In light of endemic conflicts, insecurity and under-development in the Great Lakes Region, regional heads of state, meeting in 2004 in Dar-es-Salaam, expressed their collective determination to transform it into an area of sustainable peace and security, political and social stability, and shared growth and development, and to this end committed themselves to building cooperation in relevant priority areas, including development, humanitarian and social issues.⁷⁵ In particular, they undertook to respect and use the Guiding Principles and to harmonize their legislation with them in order to address important challenges created by conflicts in the region.⁷⁶

The outcome of the Dar-es-Salaam process was the 2006 Pact on Security, Stability and Development in the Great Lakes Region⁷⁷ and a series of protocols that form an integral part of the pact. Among the latter, the Great Lakes IDP Protocol,⁷⁸ the Protocol on the Property Rights of Returning Persons⁷⁹ (hereinafter Great Lakes Property Protocol) and the Fourth Regional Programme of Action on Humanitarian and Social Issues⁸⁰ are particularly relevant to the protection of IDPs (for details see Annex I.2).

The key obligation under the legally binding *Great Lakes IDP Protocol* is to incorporate the Guiding Principles into domestic law by enacting legislation to give them the force of law at the internal level. Unlike the Kampala Convention, it does not spell out in detail the obligations of states parties and the corresponding rights of the displaced but refers instead to the detailed provisions of the Guiding Principles and makes them binding by obliging states to incorporate them into domestic law.

The *Great Lakes Property Protocol* is also a legally binding instrument and requires state parties to establish, adapt or amend national laws, procedures, mechanisms and schemes to better protect the right to property of IDPs during displacement and especially in the context of durable solutions. It complements the IDP Protocol, in particular with respect to the creation of conditions for durable solutions. The restoration of property and land rights is one of the key conditions for achieving a solu-

tion to internal displacement that is durable and sustainable. The special protection afforded to communities that are particularly attached to their lands, e.g. pastoralists, through the strong emphasis placed on the principle of permitting their return to their former lands, makes it clear that for such communities return is the preferred type of durable solution, as it helps to safeguard their traditional lifestyle and livelihoods.

4. The African Human Rights Charter and the right to development

The African Charter on Human and Peoples' Rights⁸¹ is a comprehensive human rights convention containing civil, political, economic, social and cultural rights for individuals and also collective rights, including the right of peoples to development (Art. 22). The charter is monitored by the African Commission on Human and Peoples' Rights, which can investigate individual cases of violations. In addition, cases can be brought under certain circumstances before the African Court on Human and Peoples' Rights.⁸²

While all rights enshrined in the charter may be invoked by IDPs, the collective right of "peoples [...] to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" (Art. 22)⁸³ has acquired special relevance for internally displaced communities if they constitute a "people" distinct from other communities on the basis of a common history, culture and religion. In the *Endorois Case*, the commission recognized the Endorois community as such a people⁸⁴ and concluded that their eviction from their ancestral lands, without provision for a durable solution in the form of proper relocation, violated, inter alia, the right to development (for details see Annex I.3).

While the case concerns development-induced displacement, it is also, to some extent at least, relevant to the categories of displacement discussed in this paper, for instance cases of forced evictions and relocations in the context of natural disasters. It remains to be seen to what extent the commission or domestic courts will use the potential of the charter to improve the protection of people displaced by conflict or disasters.

5. Domestic and country-specific instruments

Worldwide, more and more states are developing national laws, policies and strategies on internal displacement. In Africa, the development of such instruments has become an obligation for member states of the Great Lakes IDP

Protocol and for the state parties to the Kampala Convention after its entry into force. We can therefore expect many new national laws, policies and strategies on internal displacement in Africa in the near future.

Today, three different approaches may be observed (for details see Annex I.4):

- Some countries, in particular Uganda⁸⁵ and Kenya,⁸⁶ have adopted *comprehensive instruments covering all phases of displacement*, while others, such as the Central African Republic, are in the process of preparing such laws.
- Other countries *focus on a specific phase of displacement* such as, in the case of Angola,⁸⁷ the return and recovery phase.
- Addressing internal displacement can also form part of *peacebuilding strategies*, for instance in the Central African Republic⁸⁸ and Burundi.⁸⁹

6. Conclusion

Unless countries that have a significant degree of conflict-induced internal displacement accept at least some of the regional instruments and/or enact their own laws, legal protection of IDPs in Africa will remain largely elusive. African states with IDPs displaced by violence and armed conflict have, to a considerable extent, accepted or are in the process of accepting regional instruments specific to IDPs, which means that such regional or domestic instruments are in fact playing an important role (see overview in Annex I.V).⁹⁰ In addition, all African states are potential victims of natural disasters. In this context, ratification of the Kampala Convention by countries without armed conflict such as Lesotho, Togo or Zambia is particularly significant.

At the same time, two problems remain. Only a few states have thus far adopted specific national laws or policies or are in the process of doing so, despite the fact that without such instruments ratification of the Kampala Convention and/or the Great Lakes IDP Protocol is largely symbolic. Furthermore, in most countries there is a major discrepancy between having a national instrument and implementing it in a displacement situation.⁹¹ These problems are sometimes created by a lack of will and are sometimes the consequence of a lack of resources and an inadequate understanding and knowledge of how to develop and later use such instruments in a practical way. They are also sometimes due to a combination of these two elements. This raises the general question of why and under which circumstances states will adopt and implement instruments for the protection of the human rights of IDPs.



The Political Economy of Ratifying and Implementing Human Rights Treaties⁹²

1. Treaties without reciprocal benefits

The level of juridification and regulation of internal displacement through international and national law has reached a significant level in Africa. This raises the question as to which factors motivate states (i) to ratify international instruments such as the Kampala Convention or the Great Lakes IDP Protocol and adopt domestic laws and policies in order to assist IDPs, protect their rights and find durable solutions for them, and (ii) to honor their obligations under these legal instruments by actually implementing them.

There is no research available to date to answer these questions, but abundant literature addresses two more general questions. Why do states undertake to implement international human rights treaties in the first place? And what kind of impact, if any, does ratification have on the human rights record of the states concerned?

It is important to note, with regard to human rights conventions in general, that ratification does not provide states with any obvious reciprocal benefits. Firstly, it is quite unlikely that one state mistreats its own population because another state has done so. Similarly, states have no strong intrinsic incentives to accuse other states of failing to fulfill treaty obligations unless such charges serve wider political interests to exert pressure on a specific country.⁹³ Secondly, international enforcement mechanisms for human rights treaties are relatively weak. Governments are left in charge of domestic implementation and the enforcement system is based primarily on self-reporting⁹⁴ as effective regional human rights courts still remain the exception. Thirdly, unlike most other international agreements, the issues at stake in the human rights area are of a non-material nature, such as human dignity, so that they do not provide any specific material incentives for states. Finally, engines of compliance that operate in other areas of international law, such as market forces in trade relations, are absent in the area of human rights.

The following discussion focusses on the reasons why African governments ratify treaties such as the Kampala Convention or enact domestic legislation and actually comply with the obligations they assume with regard to IDPs. Due to the lack of specific literature on this issue, the discussion is based for the most part on the authors' personal observations⁹⁵ and on a recent study by the Brookings-LSE Project on Internal Displacement

(hereinafter Brookings study) that covers African and other countries.⁹⁶

2. Ratification

Reputational concerns, the existence of formalized negotiations and similar processes dealing with a wide array of topics that include internal displacement as just one issue among others, and facilitation of access to funding and other international support through ratification are important factors impelling states to become parties to human rights conventions.

Reputational concerns strongly influence state behavior in general and also have an important bearing on decisions to ratify international instruments on the rights of IDPs. Weak states can enhance their reputation through ratification because such steps are seen as a symbolic gesture or tactical concession aimed at convincing the international community that the government is committed to decent human rights practices.⁹⁷ This means that accession to human rights instruments does not necessarily improve the situation on the ground.⁹⁸ Some empirical research even suggests that treaty ratification may be used in some contexts to divert attention away from violations.⁹⁹

General reputational concerns may have motivated countries such as Niger and Chad to be among the first to ratify the Kampala Convention despite their obvious lack of capacity to implement their newly assumed obligations. Governments may also use ratification to highlight internal displacement and the suffering of IDPs in cases where they were displaced during armed conflict not by the government concerned but by domestic insurgents or armed forces of other states. In such situations, IDPs risk becoming political pawns and being deliberately held in bad conditions over long periods in order to legitimize a massive security presence even when the danger stemming from rebels is subsiding (as was arguably the case in northern Uganda before returns were finally allowed) or (as was the case until recently in Georgia, Azerbaijan and Serbia) because successful local integration would undermine governments' political claims to territories no longer under their control.¹⁰⁰ On the other hand, reputational concerns may be an argument against ratification where the government or groups affiliated with it are mainly responsible for displacing people. The Brookings study found that countries such as Sudan¹⁰¹ shy away

from ratification because their governments have tried “to deny their own role in causing or at least condoning the conditions that created the displacement”.¹⁰²

Formalized negotiations and similar processes dealing with a wide array of topics that include internal displacement as just one issue among others may also provide an opportunity to make progress on IDP issues if leaving displacement situations unresolved would affect or undermine the overall goal. More generally, a state may accept international human rights norms: (i) when there is strong regional pressure to increase its human rights commitment (for instance as a condition for membership of a regional organization¹⁰³); and (ii) when a state seeks foreign assistance from a country that imposes human rights conditionality on the receipt of aid.¹⁰⁴ Peace negotiations may be another relevant context. In fact, such negotiations often address internal displacement¹⁰⁵ because situations in which marginalized IDPs are left in protracted displacement can be exploited by spoilers and become a cause of relapse into conflict. States thus have an incentive to agree to measures that they would not adopt in a context focusing exclusively on IDPs. The Great Lakes IDP Protocol and the Central African Republic Peacebuilding Strategy¹⁰⁶ are good examples. In Sudan, the 2005 Comprehensive Peace Agreement, which ended the armed conflict in Southern Sudan, comprehensively addressed internal displacement, and the issue is also a central element in past and ongoing efforts to conclude peace agreements on Darfur. The situation in Darfur, however, also demonstrates that lack of progress in relevant negotiations may contribute to the protractedness of displacement.

Access to funding and other international support may also be an incentive for ratification¹⁰⁷ of international legal instruments in favor of IDPs. The funding aspect is also highly relevant in the context of peace agreements and peacebuilding. For example, clear commitments in the Dayton Peace Accords resulted in very substantial resources being made available to Bosnia and Herzegovina to rebuild destroyed houses as a prerequisite for return.

3. Implementation

The degree to which states protect and assist their IDPs depends, as experience has shown, on at least three key elements: political will, which depends on a multitude of factors; an appropriate legal and institutional framework; and the necessary capacity for implementation in terms of knowledge and human and financial resources.

a) Political will

Political will is a prime prerequisite for implementation. As states are not homogenous¹⁰⁸ and domestic politics

matter,¹⁰⁹ dynamics and processes within a country play an important role in determining whether governments are willing to enhance the protection of IDPs. According to Simmons, treaties change domestic political dynamics as they “heighten reputational costs because the international community and domestic audiences understand them as serious obligations that signal a commitment to behave according to a specified set of rules”; at the same time, they “legitimate certain claims and delegitimize others”.¹¹⁰

The question as to whether governments are willing to (better) protect and assist IDPs and to engage in finding durable solutions for them is influenced, in particular, by five factors: reputational concerns; the diffusion of concepts regarding protection of IDPs; the way in which a government perceives IDPs in terms of their political role; opportunity structures created by international and domestic instruments protecting the rights of IDPs; and the existence or absence of national and international accountability mechanisms.

aa) Reputational concerns

Reputational concerns may not only motivate governments to ratify international instruments or to enact domestic laws, but also to implement obligations vis-à-vis IDPs and to better assist and protect them, as evidenced, for example, by Colombia and Georgia, which wished to shed their negative image as states unwilling to address their very large displacement situations.¹¹¹ This is particularly likely to occur in situations where the country concerned hopes to achieve specific benefits such as better political support by friendly nations for its agenda or a stronger stance in international fora. Uganda’s very positive role in promoting the Kampala Convention and Sudan’s decision in 2009 to adopt and apply an IDP policy that was broadly in line with international standards after many years of shying away from such a step may have been partially rooted in such considerations. Access to international funding as a consequence of better implementation may also be an important motivating factor.

bb) Diffusion

A wide body of empirical research¹¹² identifies the diffusion of ideas, concepts and values related to political and economic liberalization across national and regional borders as an important feature of the past 50 years.¹¹³ There are four schools of thought as to why this has happened:

“Constructivists trace policy norms to expert epistemic communities and international organizations, who define economic progress and human rights. Coercion theorists point to powerful nation-states, and international financial institutions, that threaten sanctions or promise aid in return for fiscal conserva-

tism, free trade, etc. Competition theorists argue that countries compete to attract investment and to sell exports by lowering the cost of doing business, reducing constraints on investment, or reducing tariff barriers in the hope of reciprocity. Learning theorists suggest that countries learn from their own experiences and, as well, from the policy experiments of their peers.¹¹⁴

What they all have in common is the view that the policy choices of a particular country not only depend on domestic factors but are also largely influenced by what others do.¹¹⁵ In the context of internal displacement, coercion arguably does not play an important role because threats such as withholding humanitarian aid in the event of non-compliance with international norms are rare in view of the risk of inflicting further harm on already victimized IDPs.¹¹⁶ Competition may be an element in decisions to ratify a convention in order to avoid being seen as a country that refuses to join the mainstream. Given the absence of any reciprocal elements, however, it cannot explain why a country implements its obligations under international or domestic law.

Constructivists have found that diffusion occurs in three ways. Countries may be interested in copying other countries that they respect as peers or role models; they may have experts participating in networks that discuss the rationale supporting the adoption by policy makers of a particular course of action; or they may be convinced by arguments of international experts regarding the appropriateness of a specific policy under certain circumstances.¹¹⁷ Learning theorists highlight that policy information “may be channeled by the salience of its apparent success” and is easily transferred where close contacts exist among officials from different countries.¹¹⁸

While such dynamics have not been researched in the area of internal displacement, an argument can be made that constructivist and learning theories explain the relative success of the Guiding Principles, which have evolved within seven years from an expert draft viewed by many governments with suspicion into a document unanimously recognized by the UN General Assembly and the UN Human Rights Council¹¹⁹ as an important international framework for the protection of IDPs. This would not have been possible without a series of workshops with regional organizations,¹²⁰ regular training activities for government officials and NGOs from different countries and the translation of the document into over 50 languages, including local languages spoken by IDPs and local authorities.¹²¹

cc) Perception of IDPs

A particularly important factor in this regard is how the displaced are perceived by their governments in political terms. Political will to protect and assist them is likely to

be particularly strong when they are seen as belonging to “us” because they are on the government's side in an armed conflict or belong to the same ethnic, religious or social group as the members of the government or the administration. In contrast, political will may be expected to be weak where IDPs belong to communities from which an insurgency or rebellion has emanated and are therefore perceived as enemies of the state. Such factors may explain some of the difficulties faced by IDPs and international humanitarian actors in Darfur. Even if IDPs are on the government's side in an armed conflict, responses may be weak because they belong to ethnic and religious minorities, indigenous peoples or other marginalized and particularly vulnerable groups that are traditionally neglected by the state. This is also true for those who are internally displaced by natural disasters.¹²² After the 2004 Indian Ocean tsunami, for example, Dalits in India were denied access to assistance or received less than those belonging to other communities due to their caste status.¹²³

dd) Opportunity structures

Even in such situations, however, domestic dynamics may lead governments that have ratified international instruments to actually enhance implementation of their obligations. According to Simmons, “the ratification of international human rights treaties changes the political opportunity structures in ways that increase the likelihood that governments will edge toward compliance with their obligations” as (i) “they change national agendas, that is, they put new issues on the legislative table”; (ii) “they can be used in litigation directly [...] or can give rise to domestic implementing legislation which itself becomes a source for local court cases”; and (iii) they “can encourage local groups to mobilize to demand attention to rights compliance.” In this regard, the following elements can be highlighted:

The need for *domestic legitimacy* may push governments to adopt positive measures at the domestic level.¹²⁴ It is hardly an accident that the Central African Republic Peacebuilding Strategy lists the commitment of the government to implement the Great Lakes IDP Protocol and to prepare a comprehensive law and strategy on internal displacement with the goal of restoring and enhancing “trust between the people and Government institutions”.¹²⁵ In Kenya the government's decision to elaborate a policy and parliament's vote to adopt a bill on IDPs were strongly influenced by the need to regain credibility among IDPs as well as other population groups that accused politicians and authorities of having failed to prevent and properly respond to the post-election violence and displacement crisis of 2008.

Legitimacy issues become particularly relevant where a *multitude of domestic actors* are able to advocate for

measures to improve the situation of IDPs. With regard to human rights in general, empirical research has shown “that compliance is greatest in countries that have very active domestic groups in the area covered by the treaty”.¹²⁶ This has been evidenced, for instance, in Uganda, where NGOs successfully advocated for better protection of IDPs. Kenya too has a very strong civil society and a very active National Human Rights Commission, and displaced communities are also very well organized. If such communities manage to establish themselves as their own advocates and pool their voices, as in Kenya pressure on the government to act will mount. At the same time, IDPs can only act as their own advocates if they are aware of their rights and capable of using them to address their situation. This is hardly possible where national civil society is weak and the international community does not see the need for empowerment of IDPs in this respect.

b) Accountability mechanisms

The fact that international treaties and domestic laws can be used in litigation and other mechanisms that afford remedies for violations is another element that changes internal dynamics because it enables duty bearers to be called to account.

Such accountability mechanisms exist at different levels. Many African states have *independent national human rights institutions* with monitoring powers, and some of them have been particularly active in addressing the human rights of IDPs. The Ugandan Human Rights Commission played a key role in developing and monitoring the Ugandan policy on IDPs during the displacement crisis in the north of the country.¹²⁷ The Kenyan National Human Rights Commission investigated the arbitrary displacement that took place in the context of the post-election violence in 2007 and 2008.¹²⁸ In addition to invoking domestic laws and policies, both commissions used the Guiding Principles and international and regional human rights conventions as benchmarks for assessing these situations.

The *judiciary* may play a particularly important role at the domestic level by legitimizing certain claims and putting pressure on the government. A remarkable example is Colombia, where it was found that it is “legal pressure resulting from close monitoring of and reporting on the government’s response by the country’s Constitutional Court as well as by the Ombudsman that has proven critical to efforts to ensure that government measures for IDPs are actually implemented. The country’s strong legal tradition has facilitated such efforts”.¹²⁹ On the other hand, where such a legal tradition is absent or where courts and existing ombudsman offices or independent national human rights institutions are not used by IDPs and their advocates, for instance because of a perceived

lack of independence, government inactivity or violations may be reinforced by the lack of judicial control.

In some settings, traditional dispute settlement mechanisms may be as important as mechanisms set up by the state. While traditional mechanisms usually address conflicts between private parties, they may also play some role in addressing the accountable authorities appointed at the local level by the state.

At the regional and international level, so-called *treaty bodies*, i.e. expert organs set up by the respective conventions, are competent to deal with allegations of violations of the human rights of IDPs. The aforementioned *Endorois Case* decided by the African Commission on Human and Peoples’ Rights¹³⁰ is an important example. One member of the commission acts as Rapporteur for Refugees, Returnees, Internally Displaced Persons and Asylum Seekers and reports in this capacity regularly about the situation of IDPs in African countries. At the UN level, the treaty bodies set up by the core UN human rights conventions regularly address internal displacement and make recommendations when examining the country reports submitted by African countries under the respective conventions.¹³¹

Examples: Concluding Observations of the Committee on Economic, Social and Cultural Rights

Chad: “The Committee is seriously concerned about the extent of sexual violence, including rape, against women and girls, particularly in and around sites for internally displaced persons and refugee camps. It is particularly concerned about reports that women and girls in communities of refugees and internally displaced persons are not afforded appropriate protection from, or remedies in respect of, violence in all its forms. It is also concerned about the use of traditional conflict-resolution methods that perpetuate impunity and open the way for violence.

The Committee [...] urges the State party to take steps to investigate and punish all perpetrators of violence against refugees and internally displaced women and children. The Committee urges the State party to assign more staff to, and include more women in, the police forces responsible for security at camps for refugees and internally displaced persons.”¹³²

Kenya: “While noting that many of the hundreds of thousands of persons who were internally displaced by the post-election violence in early 2008 have been

resettled or returned to their homes, the Committee is concerned that the financial assistance provided to internally displaced persons under the National Resettlement Fund is inadequate. (art. 11)

The Committee recommends that the State party provide adequate financial assistance for the resettlement of internally displaced persons and for their reintegration into society, and ensure that those IDPs who have not been resettled or returned to their homes following the post-election violence in 2008 have adequate access to housing and employment."¹³³

The UN Human Rights Council has created the mandate of the *Special Rapporteur* [previously the Representative of the Secretary-General] *on the human rights of internally displaced persons*, who carries out country visits, reports on their findings and makes recommendations that are presented and discussed at a public session of the Council. The Human Rights Council's Universal Periodic Review, a peer review system, is another mechanism whereby violations of IDP rights can be addressed and recommendations made. During the first review cycle, 13 African countries received recommendations from other UN member states and accepted most of them.¹³⁴

While the findings of these bodies are not legally binding, they add an important element to accountability inasmuch as they emanate from regional and international organs entrusted with the task of monitoring the implementation of human rights and compel the country concerned to justify its (in)actions vis-à-vis the international community.

c) Appropriate normative and institutional frameworks

As international law is not directly applicable in many countries, the domestic application of international and regional human rights guarantees hinges on their incorporation in national laws and policies. The absence of normative and institutional frameworks to deal with displacement issues is a key weakness in many African states, including DRC¹³⁵ and Chad¹³⁶, resulting in the non-implementation of international obligations vis-à-vis IDPs. The existence of an appropriate normative and institutional framework addressing internal displacement is thus an essential prerequisite for the practical implementation of such obligations.

Sectoral laws, strategies and policies are usually not drafted with situations of internal displacement in mind and hence all too often do not respond to the specific needs of IDPs. For example, the former Representative of the UN Secretary-General found that in Côte d'Ivoire

and Nepal displaced children were required by law to present documentation for admission to a new school, but were unable to do so because they had lost or left behind such documents in the course of being displaced.¹³⁷ Similarly, IDPs are often unable to recover property left behind because title deeds usually required as evidence of ownership have been lost or destroyed during an armed conflict or natural disasters. Thus, existing laws "may unintentionally discriminate against IDPs" because they "pose unintended obstacles to the ability of IDPs to realize their rights or [...] do not, on their own, provide a sufficient basis for addressing the needs of IDPs", making it necessary to enact specific legislation.¹³⁸

Appropriate institutional arrangements are just as important as normative frameworks. The absence of a government focal point for displacement issues and overlapping and competing powers of several ministries and administrative units result in a lack of coordination or a situation in which nobody feels responsible.¹³⁹ Focal points exist today in several African countries but they do not usually possess the necessary authority to coordinate relevant line ministries unless they are situated at a sufficiently high level in the president's or prime minister's office.¹⁴⁰ Even where institutional responsibilities are clear, implementation may fail because of the lack of a sufficiently strong presence of governmental agencies at the provincial, regional or district levels in affected areas.¹⁴¹

d) Capacity

State capacity to implement complex and demanding regulations such as those arising from the Kampala Convention or the Great Lakes IDP Protocol is a particularly important factor in determining the success or failure of such instruments.

Lack of capacity exists at different levels. In many countries, there is a lack of proper understanding of key concepts such as the notion of what constitutes an IDP, their specific protection needs or the processes and elements that are necessary to achieve durable solutions for them. There is also a lack of capacity to collect and analyze the kind of information about the displacement situation that is necessary for any adequate response. Lastly, human and financial resources are often too limited to have a real impact, even where the other challenges mentioned here do not exist or could be overcome. Building capacity with respect to all these aspects is a factor of crucial importance for the implementation of treaty obligations in practice.

In this context, the significant number of what are called fragile or "failed" African states¹⁴² with IDPs is particularly worrisome. According to the Failed State Index 2011, seven of the 21 countries with IDPs on the continent are among the 10 most vulnerable and dysfunctional states

worldwide, with Somalia, Chad, Sudan and DRC ranked first to fourth.^{143 144} Ratification of international instruments by such states is motivated by reputational concerns rather than an actual commitment to implement them. This problem is particularly serious if the state presence is very weak or virtually absent in parts of the country where IDPs have found refuge or to which they are expected to return.¹⁴⁵ In such situations and in the absence of sufficiently strong de facto authorities, international actors must often substitute for governments, provided that humanitarian access and sufficient financial resources are available.

e) Access to international support

Donor funding and other international support are particularly relevant elements for the strengthening of domestic capacity, and access to such support may offer an incentive not only for ratification of international legal instruments protecting IDPs but also for their implementation. While the primary responsibility under existing international law for assisting and protecting IDPs as part of the permanent population of a country lies with national governments, the authorities concerned all too often lack the capacity to assume responsibility without proper funding. Yet the requisite funds are often difficult to raise unless a government shows willingness to improve its own performance. When, for instance, humanitarian funding almost collapsed in 2010, the government of Yemen finally displayed a willingness to develop a strategy on IDPs and strengthen its activities on behalf of the displaced in order to signal to donors that it took the issue seriously and was ready to abandon its previously haphazard approach. That step was honored by donors.¹⁴⁶ In the Central African Republic, agreement on the peacebuilding strategy¹⁴⁷ and the ensuing international support had a positive impact on government activities. It began to assume responsibility for IDPs by sending officials tasked with providing them with protection to displacement-affected areas.¹⁴⁸

- the *diffusion* of concepts related to relevant human rights of IDPs and corresponding state responsibilities and obligations at the central but also the local level of states affected by internal displacement;
- Taking measures, in close cooperation with humanitarian actors such as the UN Refugee Agency (UNHCR), to:
 - a) establish *normative and institutional frameworks* at the domestic level that cover not only humanitarian but also developmental action;
 - b) *build capacity* in terms of knowledge, human resources, and necessary infrastructure and tools;
- Supporting IDP communities and national or local NGOs lobbying for ratification and proper implementation;
- Supporting steps to *establish and strengthen accountability mechanisms* including through projects aimed at:
 - a) enhancing the capacity of IDPs, their communities and civil society to advocate for the human rights of the displaced and to hold authorities accountable for neglecting or violating such rights (e.g. training, support to organizations, legal aid projects);
 - b) introducing or reinforcing administrative accountability mechanisms at the appropriate level for local authorities, line ministries, the security sector and other state institutions (such as disaster management agencies);
 - c) building the capacity to focus on such rights of organs and bodies that monitor the implementation of human rights of IDPs, such as independent national human rights institutions (national human rights commissions; ombudsman's offices, etc), parliamentary oversight committees and courts;
- Implementing *projects that directly address the human rights of IDPs* in development-related areas such as enhancement of the availability and accessibility, without discrimination, of basic services in areas such as health, education, water supply and sanitation; restoration of livelihoods; provision of housing and protection of land and property rights.

4. What development actors can do

International development actors are unlikely to be in a position to convince governments to ratify conventions protecting IDPs. They may, however, support activities in their areas of expertise that are necessary for, or conducive to the creation of the requisite conditions for the ratification and implementation of international and regional instruments, in particular by:

- Offering donor support as an *incentive* to states to improve their action on behalf of IDPs and engaging in a dialogue with them on how to improve implementation of their obligations under international instruments;
- Facilitating - through training activities, publications, South-South exchanges and other learning activities

IV

Why Should Development Actors Use a Rights-Based Approach when Addressing Internal Displacement?

1. The complementarity of human rights and development approaches in the area of internal displacement

a) Identifying impoverishment risks: an entry-point for development actors

While some development actors are familiar with rights-based approaches to development, others are more hesitant to explicitly refer to human rights. For them, the notions of poverty and impoverishment may provide a more familiar entry-point for addressing internal displacement.

There can be no doubt that violence in general is a driver of impoverishment.¹⁴⁹ Empirical data show that IDPs are disproportionately affected by impoverishment because they have to leave their livelihoods and property behind and usually find it difficult to access new livelihood opportunities during displacement.¹⁵⁰ From this perspective, displacement can be appropriately described as a *process of impoverishment* of individuals, families and communities as it usually means that IDPs lose their livelihoods as well as any previous access to health services and education.¹⁵¹ Host communities may have to exhaust their resources to cope with the arrival of IDPs. The negative developmental impact on hosts is particularly relevant in Africa, where the great majority of IDPs do not stay in camps run or supported by humanitarian actors but live with host families or among host communities with little outside support.

Against this backdrop, the *Impoverishment Risk and Reconstruction Model* (hereinafter IRR model) developed by Michael Cernea in the 1990s¹⁵² is helpful in understanding and properly addressing such processes. The IRR model was developed to deal with involuntary resettlement in the context of development projects but can easily be adapted to other categories of forced displacement.

The IRR model “highlights the intrinsic risks or sub-processes that cause impoverishment through forced relocation, as well as the ways to counteract – eliminate or mitigate – such risks”.¹⁵³ Impoverishment is understood as loss of “(i) natural capital, (ii) man/woman-made physical capital, (iii) human capital, and (iv) social capital”.¹⁵⁴ The model identifies eight risks or processes that cause impoverishment of people affected by involuntary resettlement. They are landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property and services, and social disarticulation.¹⁵⁵ By addressing these risks it is possible to reconstruct the livelihoods of involuntarily

resettled people in ways that Cernea describes as processes that lead “a) from landlessness to land-based resettlement; b) from joblessness to reemployment; c) from homelessness to house reconstruction; d) from marginalization to social inclusion; e) from food insecurity to adequate nutrition; f) from increased morbidity to improved health care; g) from loss of common property to restoration of community assets and services; h) from social disarticulation to rebuilding of networks and community”.¹⁵⁶

The model is also useful for cases in which people are not resettled in another location in the same country, but are able to find a durable solution by integrating into the location to which they were displaced or by returning to their former homes and places of habitual residence.¹⁵⁷ The list of risks or processes leading to impoverishment can be helpful as a means of understanding the developmental impacts of other types of displacement, in particular those caused by conflict, violence and natural disasters, and the ways in which they can be addressed by development actors.¹⁵⁸ In order to cover all these situations, however, it is suggested that the list of processes addressing relevant risks be reformulated as follows:

- a) From landlessness to access to/restitution of land after displacement and, if possible, temporary use of land during displacement;
- b) From joblessness to reemployment after displacement and, if possible, temporary employment during displacement;
- c) From homelessness to temporary shelter during displacement and permanent housing after displacement;
- d) From marginalization to social inclusion both during and after displacement;
- e) From food insecurity to adequate food and nutrition during and after displacement;
- f) From increased morbidity to improved health care during and after displacement;
- g) From loss of common property to restoration of community assets and services;
- h) From social disarticulation to rebuilding of networks and community during and after displacement, including through reconciliation;
- i) From loss of educational opportunities to restoration of access to education.

These goals are not identical to but are compatible with the criteria identified by international humanitarian agencies and organizations as necessary elements for achieving a durable solution for IDPs. These elements include

long-term safety; security and freedom of movement; an adequate standard of living, including access to adequate food, housing and basic services; access to employment and livelihoods; and access to effective mechanisms to have housing, land and property restored or compensation paid where restitution is not possible.¹⁵⁹ While safety, security and freedom of movement are elements outside the mandates and scope of activities of development actors, the other three criteria overlap with the elements of the IRR model.

b) The compatibility of the IRR model with human rights

Human rights help to normatively ground the IRR model. All IRR processes indicated above have their equivalent

in human rights guarantees as enshrined in the 1948 Universal Declaration of Human Rights; the UN human rights conventions, in particular the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights ratified by virtually all African countries; the African Charter on Human and Peoples' Rights; and, more specifically, the Guiding Principles and the Kampala Convention. Thus, for instance, the processes leading from food insecurity to adequate food and nutrition and from increased morbidity to improved health care are directly linked to the human rights to adequate food and the highest attainable standard of health.

The following chart provides an overview of the relationship between development-relevant risks/processes

Impoverishment risks	Reconstruction processes	Human rights guarantees
Landlessness	From landlessness to access to/restitution of land after displacement and, if possible, temporary use of land during displacement	GPs Nos. 21 & 29(2); Art. 4(5) and 11(5) KC Art. 14 ACHPR
Joblessness	From joblessness to reemployment after displacement and, if possible, temporary employment during displacement	GPs No. 22; Art. 3(1)(k) KC, Work-related rights: Arts. 23 UDHR, 6 – 8 CDESCR, 15 ACHPR
Homelessness	From homelessness to temporary shelter during displacement and permanent housing after displacement	GPs No. 18(2)(b); Art. 9(2)(b) KC Right to adequate housing: Art. 25 UDHR, 11 CDESCR
Marginalization	From marginalization to social inclusion both during and after displacement	GPs Nos. 1 & 22; Art. 3(1)(b) KC Prohibition of discrimination: Arts. 2 and 7 UDHR, 2(2) and 3 CDESCR, 2, 3 and 26 ICCPR, 2 and 3 ACHPR Right to development: Art. 22 ACHPR
Food Insecurity	From food insecurity to adequate food and nutrition during and after displacement	GPs No. 18(2)(a) Right to be free from hunger: Arts. 25 UDHR, 11(2) CDESCR
Increased morbidity and mortality	From increased morbidity to improved health care during and after displacement	GPs Nos. 18(2)(d) and 19; Art. 9(2)(b) – (d) KC Right to the highest attainable standard of health: Arts. 25 UDHR, 12 CDESCR, 16 ACHPR
Loss of access to common property and services	From loss of common property to restoration of community assets and services	GPs Nos. 21 & 29(2); Art. 11(5) KC Right of access to public property and services: Art 13 ACHPR Housing, land and property rights: Arts. 17 and 25 UDHR, 11 CDESCR, 14 ACHPR
Social disarticulation	From social disarticulation to rebuilding of networks and community during and after displacement	GPs Nos. 22 & 29(1) Freedom of expression, association, political rights: Arts. 20 UDHR, 19, 21, 25 ICCPR, 10 ACHPR
Loss of educational opportunities	From loss of educational opportunities to restoration of access to education	GPs No. 23; Art. 9(2)(b) KC Right to education: Arts. 26 UDHR, 13 CDESCR, 17 ACHPR.

and the Guiding Principles (GPs), the Kampala Convention (KC), the Great Lakes IDP and Property Protocols (IDP-Prot; Property-Prot) and relevant human rights guarantees as enshrined in the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter of Human and Peoples' Rights (ACHPR).

Domestic laws and policies on internal displacement adopted by some African states may contain provisions that reaffirm, spell out or further develop these general guarantees.

2. The rights-based approach to development and the value added for addressing internal displacement

a) The rights-based approach to development

aa) The UN Common Understanding

At a general level, human rights provide key principles and a basis for value shaping, complementing and supporting development goals such as the MDGs or good governance. In the absence of the acknowledgement that everyone has the right to health and education, and the fulfillment of corollary obligations by state authorities, relevant MDGs are difficult to reach, and it is hard to see how good governance is possible when people are not able to express their opinion on matters affecting their lives or where corrupt authorities are not held accountable. Human rights principles and standards are thus increasingly recognized by development actors as a factor to be taken into account. Some have adopted explicit human rights-based approaches while others implicitly integrate them into their activities.

At the core of any rights-based approach to development lies the aforementioned acknowledgment that people as "rights holders" have specific rights legally enshrined in human rights instruments which they can invoke vis-à-vis authorities who, in turn, have obligations as "duty bearers" and can be held accountable for any breach of such obligations. Based on this concept, the approach has been described by the UN agencies as a method for planning and implementing development activities that (i) aims to further the realization of human rights through all programs of development cooperation, policies and technical assistance; (ii) uses human rights standards such as equality, non-discrimination, inclusion, participation and accountability as guidance for programming in both substantive and procedural terms; and (iii) seeks to develop the capacities of "duty bearers" to meet their obligations and/or of "rights holders" to claim their rights.¹⁶⁰

As human rights and their realization are a basic tenet of the United Nations Charter and thus binding on all UN agencies,¹⁶¹ this common understanding of UN development actors is not concerned with the "whether" but rather with the "how" of a rights-based approach. The same is not true for other development actors, including the World Bank, whose mandate does not cover human rights, and the question arises as to why a rights-based approach should be relevant for them. Apart from the fact that such actors should also refrain from doing harm and that human rights help to develop appropriate safeguards, such rights are relevant because they become part of the normative environment of development action that is binding and that guides national and sub-national authorities. Human rights, thus, are increasingly becoming a factor that international development actors, regardless of their mandates, may be confronted with when supporting their governmental counterparts. In addition, a human rights approach may enhance the quality and effectiveness of development interventions, as will be shown below (section V).

To make the human rights-based approach to development more operational and simple, several organizations have developed models, among them the PANEL principles (which stands for participation, accountability, non-discrimination, empowerment, and linkage to human rights).¹⁶² This approach is, for instance, used by the Office of the High Commissioner for Human Rights in northern Uganda in areas of return of IDPs.¹⁶³

bb) Human rights as part of the legal environment of development action

Some development actors are not mandated to deal with human rights issues. The World Bank's core mandate, for instance, is economic growth and poverty reduction and it has to work "with due attention to considerations of economy and efficiency and without regard to political or non-economic influences or considerations".¹⁶⁴ This does not mean, however, that human rights are irrelevant for international development actors with mandate restrictions.

Development actors that are not mandated to deal with human rights issues do not operate in a legal vacuum. Their government partners have legal obligations towards their people and they are bound by their constitutions and other domestic law, and by international and regional treaties, including conventions protecting human rights that they have ratified. This is also applicable in the case of governments of African countries hosting IDPs. Their authorities are not only bound by general human rights instruments, including the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, but also by the Kampala Convention and other relevant regional instruments that specifically address displacement issues. Supporting government

compliance with these obligations is a legitimate task for international development actors, regardless of their mandates.

At the same time, there is a wide substantive overlap between development and human rights principles, such as participation, empowerment and accountability, which also guide and inspire good development practices. Through their support for, inter alia, primary education, health care and nutrition, sanitation, housing and the environment, development banks and other international development actors contribute to the realization of the economic, social and cultural rights of vast numbers of people in developing countries. There is also a link between civil rights and the performance of development interventions, as success in socio-economic development is dependent to a large extent on an environment in which rule of law, control of corruption, transparency and possibilities for political participation exist. Without explicitly referring to human rights principles, the World Bank, for instance, acknowledges this dimension in its Operational Policies OP 4.10 (Indigenous Peoples)¹⁶⁵ and OP 4.12 (Involuntary Resettlement).¹⁶⁶

b) Value added of a rights-based approach to development

Beyond the fact that human rights are part of the legal environment in which development actors operate, they have specific added value as they help to strengthen the quality and impact of interventions. In this regard, an in-depth study of child rights projects in conflict-affected areas in the Middle East came to the conclusion “that child rights-based programming seems to add special qualities to the planning, implementation and evaluation of development projects that move beyond the intended delivery of services and that these features may be beneficial for the development and maintenance of human security”.¹⁶⁷

A human rights-based approach to development may be beneficial in at least five respects:

- 1) *Human rights clarify the scope of authorities' responsibilities vis-à-vis the displaced.* As human rights designate state authorities as *duty bearers* who must respond to claims by rights holders, the “human rights-based approach to development is above all a responsibility-based approach. It asks ‘who is, and who should be, responsible for what with respect to whom?’”.¹⁶⁸ In other words, human rights define what people can claim and who is obliged to respond to these claims.

Example:

In order to fulfill the right to protection of the family, the Kampala Convention establishes the responsibility of the state to ensure that there are mechanisms “to trace and reunify families separated during displacement”.¹⁶⁹ Regarding the “who”, the provision makes it clear that, while such tracing mechanisms are often run by the International Committee of the Red Cross (ICRC), it is the state and not the ICRC that is responsible for ensuring that separated families can access a tracing mechanism. As regards the “what”, the guarantee clarifies that the state is not responsible for ensuring that in all cases separated family members can be identified and reunited with the rest of the family but only that mechanisms to look for them exist and are accessible for the displaced.

- 2) *Human rights contribute to shaping the process of planning and implementing specific programs and projects.* A human rights-based approach regards beneficiaries of development interventions not as objects but as responsible subjects who may have legitimate claims vis-à-vis states and their authorities, and it accepts that people not only possess the right to freely express their opinion, as guaranteed by many human rights conventions, but also the right to participate in public affairs affecting them, as enshrined in Article 25 of the International Covenant on Civil and Political Rights. In practical terms, this means that the *inclusion, consultation and participation* of relevant stakeholders in the design and implementation of programs and projects is not an option but a must. The duty of states to consult with IDPs and allow for their participation in decisions relating to their protection and assistance and in the context of durable solutions is explicitly enshrined in the Kampala Convention¹⁷⁰ and highlighted with regard to women in the Great Lakes IDP Protocol.¹⁷¹ This ensures that programs and projects are better adapted to specific contexts and enhance ownership – two factors that are often critical for the sustainability of development interventions. Participatory planning, implementation and evaluation may also help to reduce tensions within and between communities and contribute to the sustainability of projects.¹⁷²

Examples:¹⁷³

In Turkey's Van province returnees were directly involved in the design and the actual rebuilding of houses in areas of return. Although the government was not ready to rebuild the widely scattered original homes but decided to cluster them in new villages some distance away from the fields to facilitate service delivery, the project was successful. People felt that many of their wishes were taken into account and that, due to their own work contributions and planning inputs, these were not "government houses" but their own.

By contrast, the provision of housing to IDPs in Georgia met with resistance in some instances from beneficiaries because they had not been consulted about their wishes and needs, and those who moved there did not feel that they had to take care of their new living spaces and to maintain them properly.

- 3) *A human rights analysis helps to ensure that development programs and projects are consistent with relevant human rights guarantees in terms of their substance and content.* Human rights provide substantive criteria for the planning and implementation of programs and projects. Many human rights guarantees and the jurisprudence of treaty bodies, in particular the General Comments¹⁷⁴ adopted by UN treaty bodies, explain in detail the exact entitlements of rights holders within the framework of a specific guarantee and what the respective obligations of duty bearers are. A careful analysis of the exact content of relevant rights is essential for ensuring that development interventions are framed in ways that are consistent with human rights.

Example:

As will be explained in greater detail below (section V.i), the right to education, for instance, demands that schools for IDP children are not only available in terms of buildings and teaching staff, but also accessible in terms of geographical proximity, affordability and the absence of bureaucratic obstacles such as the need for personal documentation which most IDPs do not possess, and acceptable in cultural terms, meaning that educational programs for displaced children must be respectful of their cultural traditions.¹⁷⁵

The relevance of human rights consistency is not the same for all development interventions. It is very high where a human rights guarantee constitutes the focus of a program or project (e.g. a land titling project, an intervention to end harmful child labor or a legal aid program for women experiencing discrimination). Such "human rights projects" must be fully consistent with relevant guarantees. Consistency is also important for development activities such as school-building, which cannot be labeled as human rights activities but contribute to the realization of such rights ("human rights-relevant" development interventions). Finally, there are projects without a direct link to human rights. For instance, as no right to a road exists, road projects cannot be positively framed in human rights terms. Nevertheless, such projects must avoid negative human rights consequences (e.g. forced evictions).

- 4) *Human rights help to define program and project safeguards.* From a human rights perspective, development interventions must avoid causing harm that amounts to discrimination and other effects that are incompatible with human rights guarantees. Without a proper human rights analysis there is a danger that well-intentioned programs and projects actually harm people in ways incompatible with human rights guarantees. Development interventions supported by international development actors should be carried out in ways that are consistent with human rights principles, in particular the principle of non-discrimination, and specific guarantees for particular categories of people such as women, children and members of ethnic or religious minorities or indigenous peoples, because partner countries are bound by these principles as a matter of international law. In practical terms, this means that human rights safeguards are used to prevent the unintended replication of traditional social structures and attitudes that exclude or marginalize certain categories of people, and the sidelining of those most in need, and to ensure that basic human rights principles such as the best interests of the child (Art. 3, Convention on the Rights of the Child) are respected in projects addressing the needs of children.

Example:¹⁷⁶

In a post-disaster situation in an African country, an international agency distributed seeds and tools and introduced new techniques to rebuild agriculture. The project included only men because traditionally women in that region were not involved in farming. This meant that women who actually had access to land because their husbands had perished during the disaster or had abandoned the family were not included and were thus unable to provide for themselves or their children suffering from malnutrition. This negative consequence could have been avoided had the project designers been aware of the non-discrimination principle and identified the beneficiaries on the basis of a careful analysis of pre-existing patterns of discrimination.

5) *The concept of rights holders and duty bearers inherent in human rights entails the notion of accountability of the latter towards the former and thus helps to strengthen the idea of accountable governance.* A basic tenet of international human rights law is the right to an effective remedy and redress for violations. States must therefore ensure that anyone claiming that a human right has been violated has their claim determined by a competent judicial, administrative or legislative authority and that any remedy granted is enforced.¹⁷⁷ More specifically, the Kampala Convention obliges states to “provide persons affected by displacement with effective remedies” and with “just and fair compensation and other forms of reparations, where appropriate” (Art. 12). Thus, human rights provide for legal as opposed to social or political accountability. As highlighted above,¹⁷⁸ judicial, quasi-judicial or administrative mechanisms for providing remedies may exist at the domestic as well as the international level. At the domestic level, they may be part of the formal legal order or be provided by traditional mechanisms of dispute settlement that are recognized by the state.

These principles are grounded in contemporary understandings of human rights obligations. According to the current practice of human rights courts and monitoring bodies, human rights obligations are not limited to state authorities' duty to *respect* human rights; i.e. to refrain from actively violating them. They also have the *duty to protect* people against infringements of their rights by private actors to the extent that they have knowledge of such threats and possess the means to counter them, as well as the duty – within available resources in the case of economic, social and cultural rights – to *fulfill* them,

i.e. to create the legal and institutional framework and to provide the goods and services necessary for the enjoyment of rights by their holders.¹⁷⁹

c) Relevant questions

While the issue of human rights-based programming of development activities¹⁸⁰ is not a topic addressed in this study, the elements of responsibilities, procedural and substantive human rights consistency, safeguards and accountability are helpful in ensuring that development interventions targeting IDPs, host communities and others affected by displacement are in line with their human rights. Relevant questions to be asked include the following:¹⁸¹

Responsibilities: Rights holders and duty bearers

- Who are the rights holders and what are their rights in a specific situation?
 - Do IDPs and members of other affected communities have specific rights that they can claim in the situation?
 - Do displaced women, children, people with disabilities, or members of minorities have specific rights that they can claim in the situation?
 - Do IDP communities have rights as a collective under the African Charter of Human and Peoples' Rights? Which collective rights?
 - Do members of host communities and other affected people have specific rights that they can claim in the situation?
- Who are the duty bearers and what are their responsibilities in a given situation?
 - Who is responsible for addressing specific rights claims of IDPs at the local level?
 - Who is responsible for addressing specific rights claims of IDPs at the central level?
 - Is it clear who is responsible for what or are there gaps in the allocation of responsibilities?

Process: Access to information, consultation, and participation

- Has effective provision been made for the information, consultation and participation of IDPs and others affected by a specific program or project?
 - Do IDPs and other affected people de facto and de jure have the possibility to exercise their right to information and to freedom of expression and association, and the right to participate in public affairs affecting them?
 - Are measures in place to ensure that IDPs and other affected people are not just heard but effectively and meaningfully involved in planning and implementing programs and projects that affect them?
 - Is the effective and meaningful involvement of women, youth and marginalized groups ensured?

- Do certain IDPs lack the possibility/capacity to express themselves freely and meaningfully, and how are problems of social or cultural barriers or power dynamics addressed?

Substance and Content: Human rights consistency, in particular non-discrimination

- Are specific programs and projects framed in ways that are consistent with relevant rights of IDPs and others affected by displacement?
 - Are programs and projects addressing social and cultural rights such as the right to food, housing, health and education, and ensuring that relevant goods and services are available in sufficient quantity and accessible without discrimination in geographical, administrative and financial terms?
 - Do programs and projects addressing other human rights take into account the specific entitlements enshrined in them?

Safeguards: Do no harm

- Have steps been taken to ensure that specific programs and projects do not violate the rights of those affected by them?
 - Are programs and projects framed in such a way as to avoid discrimination on grounds such as race, gender, language, religion, political or other opinion, ethnic, national or social origin, property, birth or other status?
 - Are programs and projects framed in such a way as to avoid other negative and harmful impacts on people affected by them?
 - Are monitoring measures in place to detect and address unintended discriminatory or otherwise harmful effects, particularly on vulnerable and marginalized groups?

Accountability: Effective remedies

- Is accountability at all relevant levels ensured?
 - Are relevant judicial, quasi-judicial or administrative complaint and redress mechanisms in place at all stages? Are traditional or other alternative dispute settlement mechanisms available?
 - Do IDPs and other affected people possess sufficient knowledge about such mechanisms and the capacity to use them?
 - Is access to such mechanisms guaranteed or are there obstacles such as high costs, administrative hurdles, language requirements or discrimination and corruption?
 - Are available complaint/redress mechanisms efficient and effective?



Human Rights and Development Interventions: Relevant Areas and Topics

The IRR model was identified above¹⁸² as a useful tool which, in a slightly modified form, can be used in support of development activities addressing conflict- and disaster-induced displacement. Understanding displacement as a situation with increased risks of impoverishment which calls for processes to reverse such risks helps to identify entry points for development actors in terms of areas of activity. At the same time, these processes are relevant from a human rights perspective insofar as they are also addressed by the Kampala Convention and other relevant human rights instruments which have the effect of turning the reconstruction processes suggested by the IRR model from adequate and desirable policy responses into, at least in part, obligations of states owed to IDPs.

It would go beyond the scope of this study to discuss all nine categories of impoverishment risk – landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property and services, social disarticulation and loss of educational opportunities – and the processes to reverse them. Instead, most of these elements will be analyzed under the three more general headings of (i) basic services, (ii) housing, land and property, and (iii) livelihoods. In addition, the issue of responsive and accountable governance will be taken up inasmuch as such governance is essential for the success of many of the identified processes.

1. Delivery of basic services, in particular health and education

a) Typical problems faced by IDPs

Displacement usually means that people lose their access to basic services such as water and sanitation, health care and education unless humanitarian actors provide such services in camps, collective shelters or settlements. Certain services may be made available for IDPs for the first time in their lives, particularly if they come from remote rural areas.

Problems for IDPs occur in three typical settings:

- 1) Services provided by humanitarian agencies and different types of non-governmental actors¹⁸³ in camps, collective shelters and IDP settlements may disappear quickly when humanitarian actors leave after the emergency phase, or they may deteriorate when displacement becomes protracted and humanitarian funding decreases.

- 2) IDPs staying with host families or scattered among host communities may not have access to basic services because of administrative hurdles or for discriminatory reasons; because such services are totally overwhelmed by the arrival of IDPs; or because they are non-existent in areas where the displaced find refuge.

Examples:

In some locations in Côte d'Ivoire, IDP children were denied access to local schools unless they could produce a birth certificate, a document that many of them did not possess because it was never issued or was taken from them at roadblocks when they were fleeing.¹⁸⁴

In Nepal, the right to education of displaced children was affected because they were unable to produce so called "transfer papers" issued by the headmaster of their former school which were required by law for admission to their new school. Many of these children fled when their village was attacked and headmasters were displaced too.¹⁸⁵

In Iraq, certain IDPs squatting on public land where denied access to local health facilities, schools and other services in violation of the law, but no effective remedies were accessible for the displaced under the specific circumstances of the situation.¹⁸⁶

- 3) IDPs may return (or opt not to return) to areas where basic services collapsed or were destroyed during a conflict or disaster, or where services exist but returnees are denied access for discriminatory reasons.

Examples:

A longitudinal study in northern Uganda showed that "the lack of health services and safe water in their home villages" was one of the key reasons why people hesitated to return when this became possible and that access to schools "has been a key factor in households' decisions around when and where to move, to a far greater extent than access to health services. This underlines the value parents place on education, and the need for continuing donor commitment to the sector."¹⁸⁷

In Bosnia and Herzegovina, returnees belonging to minority communities left again when local authorities failed to provide houses rebuilt by the international community with water and electricity.¹⁸⁸

Thus, basic services may not be available, or they may exist in a given location but not be accessible for IDPs. Sometimes, basic services are available and accessible but not acceptable because they violate certain cultural norms or traditions or lack the minimal level of quality that can be reasonably expected in a given situation.

Examples:

In Yemen, community centers served to assist IDPs with counseling and to impart certain skills. Cultural norms prevailing among the displaced resulted in women staying away from the centers because no hours or days were set aside when men were not allowed to go there.¹⁸⁹

In parts of Bosnia and Herzegovina, returnees belonging to minority communities refused to send their children to schools where the curriculum for courses in history, religion, language, music or geography only reflected the cultural traditions of the majority. As a result, minority children could only go to classes after the majority children left - a phenomenon known as "two schools under one roof".¹⁹⁰

b) Human rights aspects of development interventions

Development actors are routinely involved in supporting government activities aimed at providing basic services in areas such as health, water and sanitation and education. In this regard, Article 9(2) of the Kampala Convention requires states to provide IDPs with humanitarian assistance, including health services, sanitation and education and to extend such services, where appropriate, to local and host communities. It also requires states to address reproductive and sexual health needs of displaced women and to provide psychosocial support for victims of sexual and similar abuse. According to Article 11(i) of the Kampala Convention, the restoration of services, including in the areas of health and education, is implicit in the obligation "to create satisfactory conditions" for durable solutions.

The Great Lakes IDP Protocol requires state parties to receive IDPs "in satisfactory conditions of dignity, hygiene, water, food and shelter" and "extend protection and assistance to communities residing in areas hosting

internally displaced persons".¹⁹¹ More generally, the IDP Protocol makes it mandatory to incorporate the Guiding Principles into domestic law and thus to implement, inter alia, all principles addressing service delivery, including in the area of health and education.¹⁹² In this context, Principle 19 on the right to development and Principle 23 on the right to education are based upon and reflect Articles 12 and 13 of the International Covenant on Economic, Social and Cultural Rights.

A human rights-based approach to programs and projects in the area of health and education thus has to take the following elements into account:

1) *Rights holders and duty bearers:* The Kampala Convention and other relevant instruments designate IDPs in general as the main *rights holders*. In addition, they provide special entitlements for women (regarding reproductive health), people with disabilities, children (regarding special protection and assistance), and victims of sexual abuse (regarding psychosocial support).

With regard to *duty bearers*, relevant instruments leave it to states to decide whether competent line ministries or special institutions are responsible for carrying out these tasks. It is clear that, once the emergency phase is over, they cannot be assigned to humanitarian actors alone and require the involvement of development actors.

2) *Information, consultation and participation* of IDPs and, where appropriate, local and host communities regarding the provision of basic services should be undertaken not only when needs are assessed but also in connection with the planning and implementation of projects and, where appropriate, their actual administration. Information, consultation and participation regarding the provision of basic services helps to identify adequate solutions, to empower affected communities and to contribute to the sustainability of interventions by enhancing acceptance and ownership.

3) *Human rights consistency, including non-discrimination:* As general human rights law enshrines, inter alia, the right to the highest attainable standard of health and the right to education,¹⁹³ it can be inferred that related services provided in displacement situations should be *adequate*. According to relevant human rights bodies, these rights require that relevant goods and services are not only *available*, i.e. provided in sufficient quantity and quality, but also accessible, acceptable and adaptable. *Accessibility* requires that relevant goods and services (i) are provided to all according to their needs and without discrimination, i.e. can be used by people

according to their needs and regardless of gender, ethnic origin, political opinion, belief, language, age and other elements covered by the prohibition of discrimination; (ii) are within safe reach and can be physically accessed by everyone, including people with specific needs; and (iii) are affordable, i.e. economically accessible. *Acceptability* refers to the requirement that the goods and services provided are (i) respectful of the culture of individuals, minorities, indigenous peoples and communities, and sensitive to gender and age requirements; and (ii) are not sub-standard but provide the level of quality that can be expected in a given situation. *Adaptability* requires that these goods and services are provided in ways that are flexible enough to adapt to changing needs in the different phases of emergency relief, protracted displacement, recovery, and, in the case of displaced people, return, local integration or settlement elsewhere in the country.

Example:

In order to increase the availability and accessibility of health services in areas of return, Turkey introduced an action plan to address the protracted displacement situation in Van province and to promote durable solutions, which provided for mobile health units that “will be purchased and equipped on a scale appropriate to the population intensity and field of service provision. These mobile health units will periodically visit remote villages that lack ready access to permanent health facilities”.¹⁹⁴ To enhance adaptability, the action plan envisages “[d]ynamic planning and implementation [...] characterized by the ability to reformulate service delivery based on assessments of impact, efficiency, local ownership and relevance. In the case of Van, this means a transition from the collectivized village model [...], where all basic services (housing, education, transportation, etc.) are provided, to a participatory rural resettlement model in which returning citizens are more actively involved in both the planning and service delivery aspects of the resettlement process”.¹⁹⁵

With regard to the requirement of economic accessibility, internally displaced children in some countries do not have to pay any fees at the primary school level. In Azerbaijan, IDPs have free access to higher education, including at the university level.¹⁹⁶

More specifically, relevant norms require, as mentioned above, that the reproductive and sexual health needs of displaced women are addressed, psychosocial support for victims of sexual and other abuse is provided, and contagious and infectious

diseases, including AIDS, are prevented. The right to health as enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights requires states to take the necessary steps to, inter alia, reduce infant mortality and to “assure to all medical service and medical attention in the event of sickness”.

As regards *education*, Guiding Principle 23 requires that displaced children receive free and compulsory education at the primary level that respects, to the extent possible, their cultural identity, language and religion, and that special efforts are made to include girls in education programs. Education and training facilities should also be made available to adolescents and women in particular. These requirements are also implicit in the right to education enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

- 4) *Human rights safeguards*: Development actors often use area-based approaches to create or enhance basic services. This is generally adequate, but it also carries the risk of unintended discriminatory effects as a consequence of the failure to factor into planning the specific needs of the displaced. This may happen because IDPs (i) are not consulted or lack a sufficiently strong voice to be heard at the planning stage; (ii) do not – as a consequence of being displaced – meet the necessary criteria (e.g. permanent residency; possession of a house) to qualify as beneficiaries; or (iii) simply become victims of ethnic, religious, political or other discrimination by local or host communities. With regard to the third of these challenges, UNDP’s finding that in fragile and conflict-affected settings it is important to ensure “that services are delivered in a way that is not captive or partial to specific elite or identity-based interests”¹⁹⁷ has a particular bearing on displacement situations.

Other human-rights-based safeguards include the avoidance of unsafe locations for schools and health facilities. Such action was taken, for instance, in educational projects for internally displaced children in Yemen when students felt unsafe.¹⁹⁸

- 5) *Accountability*: In the area of service delivery, accountability can take several forms. The strongest form is judicial action in cases where rights holders take duty bearers to court in order to force them to make relevant services available or to admit IDPs to available schools or health services where they are denied access. Other accountability mechanisms include administrative monitoring of educational¹⁹⁹ and health services that includes a focus on human

rights-relevant aspects of services delivery (accessibility for all, non-discrimination etc), or the creation of committees of users that monitor schools, health facilities and hospitals.

Example:

In Colombia, the Constitutional Court recognized that “the State is bound, at the minimum, to secure the provision of a school seat for each displaced child within the age of mandatory education, in a public educational institution. That is to say, the State’s minimum duty in regards to the education of displaced children is to secure their access to education, through the provision of the seats that are necessary in public or private entities of the area [...] This preferential treatment for displaced children is justified, not only because education is one of their fundamental rights - as happens with all the other children in the national territory - but because of their especially vulnerable conditions they receive reinforced constitutional protection, which means, in the educational field, that if at least their basic education is not secured, the effects of displacement upon their personal autonomy and the exercise of their rights will be worsened”.²⁰⁰ In a previous case (Decision T-215 of 2002), the court had ordered the competent authority in a specific area “to secure access to the educational system by the plaintiff children, using the available places in the schools of the area”.²⁰¹

With regard to the right to health, the court stated, *inter alia*, that every IDP “has the right to receive a document that proves his/her inscription with a health service provider, so as to secure effective access to healthcare services”.²⁰²

c) Good development practice

In line with the IRR model, development actors can contribute to the two key processes leading (i) from increased morbidity to improved health care, and (ii) from loss of educational opportunities to restoration of access to education during and after displacement by:

- 1) Enhancing availability by ensuring that the capacities of existing health, sanitation and educational services are expanded and upgraded in areas where IDPs are hosted in order to enable such services to cope with the influx. The sustainability of such interventions should be taken into account early on in order to provide host communities with development gains once IDPs leave to return to their areas of origin;
- 2) Ensuring that services built up by humanitarian actors are taken over by line ministries, local authorities or communities when humanitarian actors leave

and that they are expanded, where appropriate, rendered accessible for host communities, and made sustainable; or ensuring that IDPs are mainstreamed into existing regular services and – if necessary – that the capacity of such services is expanded to be able to cater for additional users. This is important as “an over-reliance on non-state service providers may be unsustainable and can rapidly fade once external support comes to an end”;²⁰³

- 3) Ensuring that deteriorated or destroyed health, sanitation and educational services are (re)built in areas of return, expanded if necessary in areas of local integration, or built in areas of relocation or settlement in another part of the country;
- 4) Ensuring that all such services are accessible, without discrimination, to the displaced in spatial and economic terms and that legal or administrative obstacles to access are removed. With regard to such obstacles, a particular problem in many countries is the fact that certain sectoral laws and policies designed for normal circumstances have detrimental effects on IDPs because they fail to take into account their specific problems. Where laws and policies specific to IDPs exist, they sometimes contradict general laws and fail to clarify how such conflicts should be resolved. Here, development actors can help to design clear legal provisions, policies and action plans specific to IDPs that avoid overlap or conflicts with regular laws, policies and programs.

Example:

“In Somaliland, the Ministry of Education, in collaboration with Save the Children UK and Save the Children Denmark, launched an Alternative Approach to Basic Education (AABE) program in IDP and refugee returnee settlements. This is a condensed lower primary education program, whereby the usual four years of primary education can be completed in three years, with the aim that pupils will then be channeled into the formal education system.

Such flexibility in implementing national curricula should be reflected in the national education legislation that will often stipulate the age that children must be in order to undertake a certain level of schooling. Especially in the context of protracted displacement crises, there is a need for adult learning and vocational classes for individuals who did not have the opportunity to attend school as a result of their protracted displacement. In Guatemala, the national education legislation explicitly recognizes that in the case of some adults, accelerated learning courses may be necessary in order to provide them with the opportunity to begin or complete their education from the primary level.”²⁰⁴

In the context of displacement situations, development actors often focus for good reasons on the infrastructure investments necessary for the provision of health services, water and sanitation or education. These, however, are insufficient to ensure the availability of necessary services without sufficient staff and resources to properly run and maintain them.

Example:

In Uganda, the Peace, Recovery and Development Plan (PRDP) for northern Uganda focused on four priority areas, i.e. the construction of roads, schools, health clinics and water points when returns became possible in 2008/09. At that time, however, there were concerns that staffing and equipment of services remained a major challenge because the government faced difficulties in finding staff, in particular for remote areas where absenteeism presents a problem due to lack of staff housing. Lack of equipment at schools and of medical stocks in health posts and clinics were other challenges affecting the functionality of services. Because of these challenges, the UN Peace Building and Recovery Assistance Programme (UNPRAP) aimed to complement PRDP and address the “software” side of service recovery.²⁰⁵

In such situations, development actors need to strengthen their capacity to intervene in a timely and flexible manner. As UNDP has stressed, transitions from fragility to peace “are non-linear and will demand continual learning” and thus “development agencies must be equipped to anticipate and address immediate priorities of fragility, while remaining prepared to ‘shift gear’ at a moment’s notice”.²⁰⁶ This, however, runs counter to traditional approaches of long-term planning and inflexible implementation processes. For example, when mass returns started in northern Uganda, many stakeholders deplored the absence of development actors at a time when humanitarian actors had left, a problem that stemmed not so much from a funding gap as from the fact that the former had not anticipated the changes when planning their activities.

On the other hand, governments and the international community sometimes adopt specific programs to address the plight of the displaced as one-time interventions. To make them effective and sustainable, it is important to ensure that they are linked and coordinated with relevant general development plans. This may necessitate a revision and adaptation of such development plans in light of achievements and remaining challenges once the implementation of displacement-specific interventions has come to an end.

Example:

The United Nations Development Assistance Framework for Iraq 2010 – 2014 (UNDAF) includes as one of five priorities increased access to quality essential services. Under this heading, UNDAF stressed that the UN country team (UNCT) “will focus on supporting policy reform and participatory and accountable implementation mechanisms for improved delivery of quality services. To ensure that services are delivered in an equitable manner, the UNCT will advocate for the formulation of social policies and budgets that are inclusive of all sectors of Iraq’s populace, while being child friendly, gender sensitive, and in line with international standards. Downstream, the UNCT will provide technical support for capacity development of service providers, to enable the delivery of quality essential services, particularly health, education, water and sanitation, housing, agricultural inputs, and food and nutrition security. Special focus will be placed on assisting in the extension/restoration of basic essential services where currently absent, thereby promoting the (re) integration of IDPs and returnees, and providing enhanced basic services for entire populations in areas strained by population movements and instability”.²⁰⁷

2. Livelihoods

a) *Typical problems faced by IDPs*

Self-employed farmers who owned land, shopkeepers and other people with their own businesses or enterprises lose their livelihoods because they have to leave behind the very basis of their economic activities in terms of assets, resources, customers and professional and social networks. Moreover, IDPs previously employed in industry and services or as agricultural laborers automatically become jobless when they are displaced.²⁰⁸

It is obvious that all these people face difficulties in finding new employment and other livelihood sources while in displacement for a multitude of reasons. Internal displacement often takes place in the context of economic downturns caused by armed conflict, political crises or natural disasters and IDPs may be displaced to areas where no work is available. Experience shows that even where economic opportunities exist, IDPs

“often face discriminatory barriers to training, education and employment while displaced, whether based on ethnic prejudice, distance of settlements from job markets or pragmatic grounds such as the protection of jobs in host communities or concerns that allowing IDPs to work will encourage them to permanently resettle [...] Sometimes, governments pursue active

policies aimed at keeping IDPs away from the labor market and other economic activities with a view to maintain their readiness to return to places of origin once this becomes possible.”²⁰⁹

Unavailability of economic opportunities and discrimination in the economic sphere may also persist in the context of durable solutions.

Lack of access to livelihoods not only causes impoverishment but may also trigger particularly serious dependence on humanitarian assistance and, in its absence, exposure to serious economic exploitation, including contemporary forms of slavery, sexual exploitation of women and girls, dangerous or exploitative forms of child labor and underage recruitment as child soldiers.²¹⁰

b) Human rights aspects of development interventions

Livelihood issues are not directly addressed by international human rights instruments, even though guarantees such as the right to work, the right to an adequate standard of living and property rights are closely related to them. The Kampala Convention, in Article 3(i)(k), explicitly stipulates that state parties shall promote “self-reliance and sustainable livelihoods amongst internally displaced persons” without, however, using such promotion as an excuse to withhold necessary assistance. Article 11 requires states to seek durable solutions for IDPs, a goal that cannot be achieved without restoring livelihoods.

The Great Lakes IDP Protocol does not go so far but it refers implicitly, by making the incorporation of the Guiding Principles into domestic law mandatory, to Principle 22 according to which IDPs shall not be discriminated against with regard to their “right to seek freely opportunities for employment and to participate in economic activities”. Thus, unlike the Kampala Convention which requires active measures to promote livelihoods, the Great Lakes IDP Protocol is limited to prohibiting discriminatory restrictions on access to available livelihoods.

In general human rights law, the following rights are particularly relevant for IDPs: the right to work, understood as “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”,²¹¹ thus including both employment-based and self-employed economic activities; the right to food security as an aspect of the right to food;²¹² guarantees protecting against exploitative labor conditions,²¹³ including for children,²¹⁴ and guarantees regarding the elimination of discrimination against women in the field of employment and equal pay for women and men.²¹⁵

A human rights-based approach to programs and projects in the area of livelihoods must take the following elements into account:

- 1) *Rights holders and duty bearers*: In the area of livelihoods, applicable legal norms entitle IDPs to a livelihood, with – in certain respects – additional guarantees for displaced women and children. Local and host communities, unlike in the area of basic services, are not explicitly mentioned as right holders but they are entitled on the basis of general human rights law not to be discriminated against, meaning that they should be included in programs and projects to the extent that they have similar needs to IDPs.

Duty bearers are those state authorities that have been designated by domestic law as being in charge of labor and economic policy. Such authorities, however, may not exist, particularly in failed or failing states, creating particular challenges for IDPs. Private economic actors are particularly important for livelihood projects, but they are not bound by human rights guarantees for IDPs unless domestic law imposes specific obligations on them over and above general labor law and standards.

- 2) *Information, consultation and participation*: Here, the general principles described above apply. Information is particularly important, as without knowledge about available economic opportunities IDPs can hardly regain their livelihoods. Without careful consultation and effective participation of IDPs, many livelihood projects will not respond to the real needs of the displaced.
- 3) *Human rights consistency, including non-discrimination*: The right to work is not the right to be provided with an income-generating activity by the state. Rather, as highlighted by the UN Committee on Economic, Social and Cultural Rights, the following dimensions of the right are in the foreground:

“Availability. States parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment;

Accessibility. The labour market must be open to everyone under the jurisdiction of States parties. Accessibility comprises three dimensions: (i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment [...] According to article 2 of ILO Convention No. 111, States parties should ‘declare and pursue a

national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof [...];

(ii) Physical accessibility is one dimension of accessibility to employment [...];

(iii) Accessibility includes the right to seek, obtain and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national and international levels;

Acceptability and quality. Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.²¹⁶

Thus, authorities must refrain from taking discriminatory and otherwise unlawful measures to prevent IDPs from engaging in economic activities that can secure their livelihoods. At the same time, they must take positive measures to facilitate access to livelihoods. These may include vocational training, particularly for adolescents and women, as provided for by Guiding Principle 23(4), and projects and programs as described below (sub-section c). Positive measures to create food security in rural areas may provide IDPs with livelihood opportunities in the agricultural sector.

- 4) *Human rights safeguards* in the area of livelihoods include measures to ensure that programs and projects are framed in such a way that they are not discriminatory, do not allow for unequal pay for men and women, cannot be used to economically exploit IDPs or to expose them to unsafe working conditions, or to further child labor that is detrimental to the development of children's physical or mental health, and that they are otherwise compatible with minimal labor standards as enshrined in the so-called International Labour Organization (ILO) Core Conventions.²¹⁷
- 5) *Accountability* is particularly relevant in the area of livelihoods, and court proceedings can be a good way to provide remedies against discriminatory obstacles limiting access to the labour market and other livelihood opportunities, unequal pay for men and women, unsafe labor conditions and the exploitation of workers, including children. Judicial remedies may also be a tool to ensure that authorities take required positive action.

Example:

In Colombia, the Constitutional Court considered "that the State's minimum duty is that of identifying, with the full participation of the interested person, the specific circumstances of his/her individual and family situation, immediate place of origin, particular needs, skills and knowledge, and the possible alternatives for dignified and autonomous subsistence to which he/she can have access in the short and mid-term, in order to define his/her concrete possibilities of undertaking a reasonable individual economic stabilization project, of participating in a productive manner in a collective project, or entering the work market, as well as to use the information provided by the displaced population in order to identify income-generation alternatives for displaced persons.

It is important to note that this minimum right of displaced persons does not bind the authorities to provide, in an immediate manner, the material support required to begin the productive projects which are formulated, or to secure access to the work market on the grounds of the individual evaluation at hand; even though such support must necessarily materialize through the programs and projects designed and implemented by the authorities for the purpose, the minimum and immediately enforceable duty imposed by this right upon the State is that of gathering the information which can allow it to provide the necessary attention and consideration to the specific conditions of each displaced person or family, identifying with the highest possible accuracy and diligence their personal capacities, so as to extract from such evaluation solid conclusions that can facilitate the creation of stabilization opportunities that respond to the real conditions of each displaced person, and which can, in turn, be incorporated into the national or territorial development plans."²¹⁸

c) *Good development practice*

aa) *Jobs and livelihoods*

In the area of livelihoods the key process identified above²¹⁹ is from joblessness to reemployment after and if possible already during displacement. While there is no consensus regarding which policies are most efficient in creating jobs and livelihoods, pragmatic approaches that take into account the specific contexts work best.²²⁰ In this sense, development activities may include: ²²¹

- *Provisional work programs* such as organized cash or food for work during or after displacement, including the construction, in IDP camps, settlements or areas of return, of shelters, latrines or schools. If displacement lasts longer or becomes protracted, it may be possible to

set up production and business opportunities employing IDPs that serve both displaced and host communities.

Examples:

In northern Sri Lanka, the World Bank supported the government in (a) helping returnees to resume farming and fishing activities; (b) generating immediate employment for 45,000 IDP households through the creation of targeted village-level cash for work programs; and (c) supporting sustainable livelihoods through rehabilitation of essential infrastructure and facilities.²²²

In Madagascar, a World Bank funded project increased access to short-term employment in targeted communities in order to provide a safety net in food-insecure areas affected by cyclones.²²³ In Yemen, the World Bank used labor-intensive flood protection work to create temporary jobs for disaster-affected communities, supporting households that had lost their sources of income and livelihoods in the disaster.²²⁴

In Galkayo, Somalia, a local NGO set up, with UNHCR support, a bakery and a small factory producing sanitary pads with locally available materials for sale on the local market, where IDP women find not only employment but also protection for themselves and their families because their income enables them to refrain from dangerous and exploitative economic activities outside the IDP settlements.²²⁵

In Afghanistan, the International Organization for Migration (IOM) created opportunities for returnees to produce blankets used in its humanitarian distributions.²²⁶

In Sri Lanka, UNDP supported a program that “provided building materials to displaced persons and paid them to build their own houses. Extending this, a small community finance association was later set up to fund small businesses and recreate livelihoods.”²²⁷

Through the provision of micro-credits or equipment, one can promote, support and facilitate economic activities by IDPs in camps or settlements, such as collection “of firewood, personal grooming services, production of clothing or blankets, repair of clothing, shoes or watches, food preparation, small-scale construction and similar services”²²⁸ as well as the establishment of small shops and markets serving both IDPs and host communities and, depending on the location, passers-by. In the context of return, “cash or food for work programs might focus on the reconstruction of damaged homes and infrastructure, including roads, utilities, public buildings, irrigation systems and wells. Such programs can improve physical assets that, in turn, improve livelihood opportunities after displace-

ment.”²²⁹ Such interventions are usually not sustainable in the long term, but they are an important step towards restoring the self-sufficiency of the displaced.

- *Vocational training programs* can help to improve IDPs' prospects of accessing the labor market while in displacement, particularly if it is protracted and if the displaced cannot – as in the case of flight from rural to urban areas – use their previous skills. Vocational training can also promote livelihood recovery in the context of durable solutions. Such programs are frequently offered in displacement settings, but those initiating them do not always sufficiently take into account the fact that such (re)training “can provide skills but not necessarily jobs”.²³⁰

Examples:

Nepal: In 2009, UN-HABITAT provided 250 internally displaced household representatives with up to 400 hours of technical vocational training and shelter-related skills before they returned to areas in eastern Nepal affected by severe flooding the year before. According to the project description, providing “returning IDPs with a recognised technical vocational training [...] will improve medium - long term employment opportunities, increase their earning capacity to improve levels of household economic growth and food security, including shelter improvements”.²³¹

Sudan: A study on North Darfur identified the following challenges that must be addressed to make projects successful: “Skills training and income generation activities rarely reach the poorest groups, as they cannot afford not to work. It is also difficult for those trained in new skills to generate income, either because they cannot purchase the equipment or materials needed or because there was no demand for their products.”²³²

- *Non-discriminatory access to and provision of economic assets:* In the context of protracted situations, access to economic assets such as land, livestock, tools, other professional equipment and credits is essential for restoring livelihoods in the long term. In rural areas, for instance, the displaced may be able to become largely self-sufficient by renting and leasing agricultural land or sharecropping,²³³ but only if they have the necessary assets. Access to and provision of economic assets is crucial when durable solutions in the form of return, local integration or settlement of IDPs in another part of the country become possible. Lack of such access may be an important contributing factor to the protract- edness of displacement.

Examples:

Somalia: In Somaliland, UNDP and a local NGO improved the livelihoods of very vulnerable single IDP women by providing them with chicks, cages and training, a package worth \$75. One year later, many of these women were able to support their families and even send their children to school with the income they made from selling eggs and chickens.²³⁴ In *Timor-Leste*, the government provided IDPs with lump-sum compensation for destroyed property amounting to the equivalent of a few thousand dollars when return started to become possible in 2008.²³⁵ In many cases, these cash transfers helped beneficiaries to expand their assets in general.²³⁶ The same experience ensued when cash transfers were made to returning IDPs in northern Sri Lanka which were supposed to assist them in rebuilding houses but were often used for livelihood investments.²³⁷

- *Including and mainstreaming IDPs into general poverty alleviation and livelihood programs* may be helpful, too, but only if the specific needs of the displaced are sufficiently taken into account.
- *Creating sustainable livelihood opportunities and self-reliance in the context of durable solutions:* Such interventions have to be area-based and multi-dimensional and must cover IDPs and returnees as well as local communities to have a lasting impact.

Example:

The World Bank is supporting the Transitional Solutions Initiative, conducted together with UNHCR and UNDP as partners. The aim of this initiative is “to work towards including displacement needs on the developmental agenda for sustainability of interventions for refugees and IDPs and local community members well into recovery and development programming. In essence helping prioritize displacement needs on the development agenda of governments and international development donors and other actors.

As recognized through past experiences, a critical factor in supporting durable solutions is additional dedicated transition and development assistance supporting an integrated approach that targets both displaced, returnees, and local populations.”²³⁸

Interventions under this initiative are always area-based, targeting displaced as well as host communities.²³⁹

One of the first programs under the initiative aims at creating conditions for self-reliance of long-term refugees in eastern Sudan, with interventions that could also be applied in IDP situations where local integration is the preferred solution.

bb) Possible activities for development actors in the area of food security

The process *from food insecurity to adequate food and nutrition during and after displacement* is relevant for livelihoods insofar as food security and livelihoods are intimately related to each other in rural areas where IDPs stay or return to.

Experience shows that forced uprooting “increases the risk that people will fall into temporary or chronic under-nourishment”.²⁴⁰ Restoring food security during and after displacement to make people less dependent on food distribution is thus another essential area in which development actors have an important role to play, especially because early recovery measures taken by humanitarian actors are often insufficient to restore food security.

Example:

Uganda: A longitudinal study in northern Uganda showed how in a return situation the lack of or inadequate development interventions may actually lead to increased food insecurity. The study, which examined the situation of selected families over a period of three years in Pader district, identified the following problems faced by IDPs after returning to their villages. (i) Inputs and labour were lacking despite the availability of land. (ii) Income-generating activities were “mainly limited to low-paying activities, such as agricultural labour, sale of grass and firewood, construction work and brick making”. (iii) Income dropped to very low levels when returnees had to clear their land and construct their houses. (iv) For these reasons, people were unable “to rapidly rebuild their former livelihoods or invest in livestock” and continued to depend on food aid. (v) With the end of food aid, livelihoods risked further deterioration.

The study also stressed that many agricultural rehabilitation projects “focused on quick impact and increasing overall production over a wide area, but this has meant that assistance mainly benefited households that have already been able to clear their land, while those who lack labour were left out. The timeframe for reestablishing agricultural livelihoods is unpredictable and returns on investment rely as much on factors outside donor control (the weather, the price of oil, insecurity) as they do on good project management and design. This indicates the need for substantial investment to recapitalise production over a longer period than the normal 12–18-month emergency funding cycle [...] the premise that ‘self-sufficiency’ can be restored to agricultural communities within an 18-month aid cycle is simply inaccurate. The current situation of widespread food insecurity will create a further deterioration in the livelihoods and wellbeing of returnees”.²⁴¹

Development actors may engage in a whole range of activities aimed at restoring and improving food security. In the context of internal displacement, these may include:

- Providing IDPs, while in displacement, with government-owned or unused land and the tools and seeds necessary to plant and harvest food, and, in urban areas, with training, micro-credits and other measures enabling them to access the local labor market;²⁴²
- In the context of return, providing support for clearing land that was unused when the owners were in displacement and repairing irrigation systems and other infrastructure;
- Introducing more productive methods and crops, agricultural credits and measures to improve access to markets.

Example:

The World Bank's International Development Association (IDA) financed the Second Northeast Irrigated Agriculture Project (renamed The Reawakening Project in 2007) in conflict-affected areas of eastern Sri Lanka in order to help affected communities, many of which had been displaced, to restore their livelihoods, enhance agricultural production and increase incomes. Over 500 villages (1.25 million households) were organized into community-based organizations and benefitted from rehabilitated irrigation and draining schemes, linkage roads and bridges, water wells and marketing centers. The introduction of new sustainable agricultural practices and a system of rice intensification doubled yields. Community agriculture was strengthened through producer organizations that were able to coordinate their efforts to increase bargaining power and marketing activities. The creation of more than 10,000 savings and credit groups helped to start or expand small business activities.

Communities had the responsibility for planning, designing and implementing small projects. This was crucial to rebuild "self-esteem and renewed confidence among victims of conflict and displaced people by giving them voice (though their village institutions) and choice". Women were given a strong voice and measures to target and include the poor and marginalized communities were adopted.²⁴³

3. Housing, land and property

a) *Typical problems faced by IDPs*

There is a growing consensus that housing, land and property issues are, at a macro level, not only a key driver of violent conflict but also, as stressed by UNDP, a major consequence of such conflicts, with "those who have profited from war or emerged as the political victors tak[ing] advantage of their power to grab land".²⁴⁴

In the aftermath of natural disasters, housing, land and property rights often play an important role too, as observed by the Representative of the Secretary-General on the human rights of internally displaced persons:

"The destruction of houses and other private possessions is typical for sudden-onset disasters. Many internally displaced persons met by the Representative [...] had still not been able to restart their lives because of an insufficient legal and budgetary framework to help them either access new property or return to their former properties and rebuild. In all cases little or insufficient attention had been paid to the fact that the most affected were people whose title deeds were destroyed or who had no formal property titles but possessed land and houses on the basis of customary law or uncontested long-term use. Lack of evidence of property or possession may become an obstacle when trying to access compensation or financial support for the reconstruction of houses."²⁴⁵

Furthermore, conflicts over property may erupt over specific plots where the disaster "has wiped out landmarks used for demarcation", and existing laws or traditions often "discriminate against women, who then experience particular difficulty regaining their homes and property, especially when their husbands have been killed".²⁴⁶

At the micro level, i.e. the individual, family and community level, homes and lands left behind by IDPs often constitute their most valuable assets and are essential to their livelihoods and identities.²⁴⁷ Their loss and IDPs' inability to recover them is one of the key impoverishment risks identified by the IRR model.²⁴⁸

In addition, lack of adequate shelter is one of the most important displacement-specific needs that has to be addressed during as well as after displacement. In this context, IDPs in protracted displacement and returnees often face the following problems:

- They live in sub-standard housing in urban areas that are without water and sanitation and other basic infrastructure;
- They lack security of tenure;
- They are unable to pay rent and therefore have to engage in dangerous or exploitative economic activities to make sufficient money²⁴⁹ or else face eviction with no place to go;
- They occupy public and private land or buildings, live in sub-standard shelters without access to clean water and sanitation, and run the risk of being evicted at any time;
- In areas of return, most houses and apartments are damaged or totally destroyed, and resources to restore or rebuild them are not available or largely insufficient.

b) Human rights aspects of development interventions

Housing, land and property rights are among not only the most important but also the most complex human rights issues facing IDPs. It is therefore hardly surprising that African instruments on internal displacement address this challenge in detail. The Kampala Convention mentions housing, land and property-related obligations of states in several provisions touching upon all phases of displacement.

- At the pre-displacement stage, states have to take measures to protect “communities with special attachment to, and dependency on, land due to their particular culture and spiritual values from being displaced from such lands [...]” (Art. 4, Kampala Convention).
- During displacement, state parties have to take necessary measures to protect property left behind by IDPs (Art. 9, Kampala Convention).
- In the context of durable solutions, states have to set up mechanisms, including simplified procedures, for resolving property disputes and take appropriate measures for the restitution of properties of communities with special dependency on and attachment to such lands (Art. 11).

Furthermore, the Kampala Convention requires state parties to “establish an effective legal framework to provide just and fair compensation and other forms of reparations [...] for damage incurred as a result of displacement, in accordance with international standards” (Art. 12), a provision that is also relevant insofar as it covers damage to property.

In the Great Lakes region, the Great Lakes Property Protocol of 30 November 2006 contains basically the same obligations, although it is more detailed than the property-related provisions of the Kampala Convention.²⁵⁰

With regard to housing, in terms of the *provision of shelter* during and after displacement, the Kampala Convention stresses that states shall provide IDPs “to the fullest extent practicable and with the least possible delay, with adequate [...] shelter” during displacement (Art. 9[2][b]). The obligation to seek durable solutions “on a sustainable basis and in circumstances of safety and dignity” (Art. 11[1]) necessarily includes a housing component.

Based on this, a rights-based approach to programs and projects related to housing, land and property rights must take the following into account:

- 1) *Rights holders and duty bearers*: IDPs are the primary rights holders including, in particular, women and children who, according to domestic law or tradition, may not have property rights in a given situation. Communities with collective property,

including communities with a special attachment to land such as indigenous peoples, are protected as collectives. Local communities and their members are not mentioned as rights holders but they also benefit in the area of dispute resolution from guarantees contained in the African instruments. Duty bearers are again states and the administrative and judicial authorities tasked with addressing their obligations under the Kampala Convention, the Great Lakes Property Protocol and other relevant instruments.

- 2) *Information, consultation and participation*: Again, the general principles apply. The degree to which they apply, however, may vary according to the planned activities. For instance, establishing simplified procedures for the resolution of disputes requires little participation if such procedures are run by state courts, while a very high level of involvement of communities and their members is needed where community-based traditional mechanisms are used for this purpose. Similarly, community-based land-titling initiatives require by definition much more participation than the upgrading of an outdated governmental land-cadaster system.

- 3) *Human rights consistency, including non-discrimination*: Development interventions addressing land and property issues must closely comply with the requirements set out in the Kampala Convention and the Great Lakes Property Protocol. Such interventions contribute to the protection of property left behind by IDPs, the establishment and strengthening of effective mechanisms for resolving property disputes, the restitution of property taken over by others, and the provision of just and fair compensation and other forms of reparation for property that cannot be restituted or is lost or destroyed. Examples of such activities are outlined below (sub-section c).

With regard to programs and projects in the area of housing, the right to adequate housing includes the elements of availability, accessibility without discrimination in spatial, legal and economic terms, acceptability in terms of quality and respect for cultural traditions and adaptability over time. Measures to ensure security of tenure and prohibition of forced evictions are particularly important.

- 4) *Human rights safeguards* in the area of land and property rights concern general issues of discrimination. In the case of projects to create or strengthen judicial proceedings to resolve property disputes, to restitute property to its rightful owners or to provide compensation and other forms of reparation, care must be taken to ensure that they

fully respect applicable international standards, including fair trial guarantees. With regard to housing projects, it is important to ensure that no forced evictions of people already living in the area or buildings concerned take place as a consequence of the intervention.

- 5) *Accountability* is particularly important in the context of housing, land and property rights and is directly addressed by projects aimed at creating or strengthening judicial proceedings to resolve property disputes, restitute property or provide compensation. Judicial protection against forced evictions is important in the case of housing projects.

c) Good development practice in the area of land and property rights

From a development perspective, there is a close relationship between access to property and livelihood issues inasmuch as lack of access to (lost or new) property may, in certain circumstances, be a root cause of IDP livelihood problems as well as an obstacle to finding durable solutions.

Example:

According to a World Bank study, in Mindanao, Philippines “displacement is largely a historical outgrowth and most visible sign of the cumulative effect of a long process of discriminatory laws, policies and programs, including development programs. In large part when ‘livelihood opportunities’ emerge as a felt need of the displaced in the many surveys, the underlying issue is that of ‘access to productive assets’, principal among which is clear property rights to land. It is no wonder that many displaced persons with unclear property rights prefer to stay in secure, slum-like peri-urban settlements of cities [...], or even in evacuation centers and relocation sites with minimum access to basic services and tenuous livelihood prospects [...] the predominance of women, children and elderly men in the rural evacuation centers suggests that many of the young displaced males have either migrated to urban centers or joined the insurrection. In this case displacement, especially when poorly governed, is a breeding ground for instability.”²⁵¹

Thus, the process of moving from landlessness to access to/restitution of land after displacement and, if possible, temporary use of land during displacement is crucial. While security, humanitarian, judicial and other actors play specific roles in this context, support for the process by development actors is critical in several regards.

aa) Protection of property left behind

Property left behind by IDPs may be pillaged or destroyed,

illegally occupied by others, or confiscated and appropriated by authorities. The loss may become permanent where legitimate owners do not possess formal title deeds to their land or where the deeds were destroyed or lost.

In such cases, IDPs lose any conceivable opportunity to gain an income from such assets during displacement, e.g. by renting or leasing them out to non-displaced people, swapping them with IDPs from another community that fled to their region of origin,²⁵² or selling them with a view to generating resources to invest in the area of refuge. When durable solutions become possible, the fact that property left behind is destroyed, occupied or confiscated can become a major obstacle to return and sustainable reintegration into areas of origin.

Protection of property left behind by IDPs may necessitate action by multiple actors, including local authorities, security forces, the police and the judiciary. Development actors can play an important role in one specific area: the risk of wanton destruction, occupation or confiscation may increase if perpetrators can count on not being held accountable at a later stage because owners have no title deeds or other instruments proving that a specific piece of land, house, apartment, commercial building or any other asset is their property. Lack of proof is also a major obstacle at a time when property restitution would become possible. Here, the following types of projects may be supported or implemented by development actors:

- *Recording and registration of hitherto unregistered informal or traditional property or ownership* of land and buildings in communities at risk of being displaced or in areas already affected by displacement.

Example:

In Colombia, the World Bank supported the Project on Protection of Land and Patrimony of Internally Displaced Population. During a first project phase (2003 – 2005), two mechanisms were designed, one for IDPs (called the “individual route”) and the other for communities at risk of displacement (called the “collective route”). “Through the first procedure, any displaced person could request the protection of his/her abandoned or disposed property. Through the second procedure, the Municipal Committee for Comprehensive Assistance of IDPs could declare an area as affected by displacement or at risk of displacement, therefore protecting all properties. All the land and properties affected are registered in the Unique Registry of Land and Properties (RUP), and these properties cannot be sold or bought [...] As a result of the first phase, methodologies, procedures, and tools to protect the different types of

Example (continued):

land rights were developed and tested in five violence-affected regions of Colombia. The pilot tests resulted in the protection of 6,629 rights to land, covering 69,887 hectares.²⁵³

During a second phase (2005 – 2008) the project was scaled up to apply “the protective measures across the country and strengthen institutional and community capacities [...] As a result of the implementation of the second phase 2,525,565 hectares were protected, covering 106,398 land rights on 83,450 properties belonging to 76,844 households (66 percent of the persons who requested the protection were men, 33 percent women, and one percent were companies). Eighty-nine percent of the protected properties have less than 50 hectares, which demonstrates that small farmers have been the main targets for armed groups. Others important outputs of the second phase of the Project were: (i) the design of an ‘Ethnic route’ to protect the land rights of indigenous peoples and Afro-Colombians; (ii) the design of an information system for the Unique Registry of Land and Properties (RUP) which later evolved into the Unique Registry of Land, Properties, and Collective Territories (RUPTA) in order to include the registration of land rights for Afro-Colombians and indigenous persons and peoples; (iii) identification of barriers and constraints in protecting women’s land rights and institutional recommendations to overcome these barriers; (iv) information systems to assist some institutions in systematizing data on land registers and other relevant information, (v) implementation of a pilot land-titling program for IDPs who have protected their rights; (vi) exchange of information with the Justice and Peace Unit of the Attorney General’s Office and other institutions about abandoned and disposed land; (vii) suspension of legal proceedings against displaced people and victims of violence because of their inability to pay taxes, loans and/or other financial obligations; (viii) expansion of protective measures for other victims of violence, such as the missing and the kidnapped; (ix) sanctions on civil servants if they do not comply with this legislation.”²⁵⁴

The ongoing third phase of the project aims at restituting property to the displaced. A big step in this regard was made with the adoption of the so called Victims’ Law in 2011 providing for the restitution of property lost by IDPs, but actual implementation is hampered by incidents of violence.

- *Land titling* to provide individuals, families or communities with formally recognized title deeds. Such efforts have to be broad and innovative enough to address the specific rights of women and children or communities with collective forms of property.

Example:

In northern Uganda, disputes are growing as competition for land increases and conflicts triggered by land grabbing or boundary encroachments become rampant. In order to better protect the common lands of rural communities that are necessary for their daily subsistence and long-term survival, the Land and Equity Movement in Uganda (LEMU) and the International Law Development Organization (IDLO) undertook a project called Community Land Protection Initiative in Oyam District in Northern Uganda. The objectives were to “understand how to best and most efficiently support communities to successfully protect their lands through legally established land documentation processes; devise and pilot strategies to guard against intra-community land-related injustice and discrimination; and craft recommendations for the improvement of community titling laws and regulations so as to improve fairness and make titling procedures easier for both communities and land administrators to follow”. The project sought to identify the kind of support that communities needed for community land-titling processes and how in this context the land rights of women and vulnerable groups could be best protected. To achieve these goals, the project “provided different levels of legal support to 18 communities [...] and then tracked their progress through Uganda’s community land documentation processes, as set out in the Land Act 1998”. Results showed “that, if well done, community land documentation may help to: resolve long-standing land conflicts and reduce future land conflict; improve community governance and promote the downward accountability of community leaders; strengthen protections for the land rights of women and other vulnerable groups; enhance natural resource conservation; and promote legal empowerment”.²⁵⁵

- *Securing land cadasters* and other documents of relevance for the establishment of property and ownership rights and the archives where they are kept, or restoring such cadasters and archives if they were damaged or destroyed.

bb) *Facilitating the recovery of lost property*

A particular challenge for IDPs is the recovery of property left behind in the aftermath of a conflict or natural disas-

ter. Such recovery is particularly difficult where title deeds and other evidence of property and ownership rights have been destroyed and land administration systems have collapsed. In this context, development actors may:

- Facilitate efforts to replace lost documentation;
- Support the rebuilding of land cadasters and land administration systems.

Example:

In Aceh, Indonesia the World Bank supported a project aimed at facilitating the recovery and protection of land ownership rights of people displaced by the 2004 tsunami whose evidence of ownership was destroyed and at rebuilding the land administration system.²⁵⁶ In this post-disaster situation, securing land property rights “was critical given the risk of large-scale land grabbing. Likewise, land with clear tenure rights was a key input in all reconstruction efforts”.²⁵⁷ A particularly interesting aspect of the project was its bottom-up approach: the basic mechanism for identifying and adjudicating land rights was community-based, with “each landowner sign[ing] a statement of ownership that was subsequently endorsed by the neighbors and the village chief”, an approach that avoided the usual bureaucratic delays and helped to solve conflicts at the local level in cases of competing claims to the same property.²⁵⁸ A manual, developed together with traditional courts, “gave detailed guidance on how to proceed in inheritance and guardianship cases, introducing safeguards against the risk of dispossession of widows, children and orphans by their guardians”.²⁵⁹

cc) Resolution of property-related conflicts

Property-related conflicts are prevalent in many displacement situations, including some that were triggered by natural disasters. They constitute a typical key obstacle to durable solutions because competing claims to ownership jeopardize restitution. As UNDP found:

“Effective markets require the clear delineation of individual and community property rights. Often in post-conflict settings these rights are lost through appropriation and displacement. It is therefore important to (re)establish strong local institutions to help restore legitimate access. This means early strengthening of the rule of law and access to justice mechanisms even as return and reintegration are taking place. It also entails timely, fair, transparent and equitable resolution of conflicts over land and property rights.”²⁶⁰

In many such instances, regular courts would be overwhelmed with the sheer volume of cases. This is why the Kampala Convention calls for the establishment of

“appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons”.²⁶¹ In this context, development actors may:

- Strengthen the capacity of existing dispute resolution mechanisms such as ordinary courts or land tribunals;
- Help, where appropriate and in close cooperation with relevant ministries (e.g. Ministry of Justice), to develop alternative mechanisms with simplified procedures for solving disputes over property left behind by IDPs;
- Promote alternative methods of dispute settlement, where neither existing nor newly created simplified procedures are available.

Example:

A pilot project launched in 2009 by the Uganda Land Alliance (ULA), an NGO focused on land rights, “aimed at improving access to land justice through the empowerment of traditional authorities and the integration of the customary and formal justice sectors”. The project was based on the assumption “that the legitimacy and authority of traditional leaders comes from two sources — the community and the formal justice sector — and that to be most effective, any effort to empower traditional authorities must address both spheres”. It therefore took steps to strengthen the legitimacy of traditional leaders in both spheres.²⁶² “First, it sought to foster an efficiently functioning land justice delivery system through the integration of the traditional with formal land justice delivery mechanisms. Second, it aimed to empower traditional authorities by building their technical capacity to effectively address land rights violations as a means of restoring and maintaining lasting peace in northern and eastern Uganda.” Project activities included dissemination of information, advocacy and training of traditional leaders, community members and paralegals to work with land rights offices and to mediate land disputes.²⁶³

dd) Compensation for damaged or lost property

Sometimes property has been damaged or destroyed or restitution of property is not possible for a multitude of reasons. In such cases, international instruments including the Kampala Convention require states to set up mechanisms that allow IDPs to obtain compensation from those responsible for the damage to or loss of their property. In this context, development actors can undertake the following activities or support them:

- Set up structures and simplified procedures to obtain compensation for property damages or adjudicate such claims;
- Strengthen the capacity of courts, land tribunals, property or compensation commissions and other bodies that decide claims for compensation for damaged or lost property.

Example:

In Turkey, UNDP “cooperated closely with the Ministry of the Interior and members of the Compensation Commissions, including those appointed by the Bar Associations, to share with them the lessons drawn from international experiences” when it became clear that the Compensation Commissions set up under a 2004 Compensation Law to adjudicate claims concerning property damaged during security operations in Turkey’s eastern provinces struggled to apply the law coherently and in line with international standards.²⁶⁴

d) Good development practice in the area of housing

While providing emergency and transitional shelter is a key task of (usually local) authorities and of national and international humanitarian actors, development actors have a role to play in the context of protracted displacement and durable solutions and thus contribute to the process leading from homelessness to shelter during and after displacement.

In such situations, development interventions should aim at:

- upgrading areas where IDPs live or to which they return in terms of both infrastructure and actual housing as part of town planning or rural development projects;
- providing IDPs and returnees with some form of security of tenure;
- developing housing policies that take into account the specific needs of IDPs in a non-discriminatory manner.

Example:

In Bossaso, a city in Puntland, eastern *Somalia*, an estimated 20% of the population are IDPs. As part of a larger town planning program, “UN-HABITAT, UNHCR, Danish Refugee Council, and UN-OCHA, in collaboration with the Bossaso local authorities, the communities, and local counterparts, joined forces to help resettle displaced and urban poor families in Bossaso East. The intervention gave a new home with security of tenure, access to services, and livelihood opportunities to 112 displaced families from the most disadvantaged IDP settlements and 28 poor families from the local community [...] A similar approach is now being replicated in the city to benefit up to 450 vulnerable families.”²⁶⁵ The project consisted of seven steps: 1. Discussions with local authorities led to the decision not to segregate IDPs by relocating them to locations outside the city but to recognize their rights and allow them to integrate within existing neighborhoods. 2. Business people and clans donated land that was transferred to the municipality. 3. Beneficiaries were selected. 4. The municipal water network and roads were extended to the new settlement.

5. Local companies constructed the core of the house (boundary walls, foundation, latrine, shower box). 6. Beneficiaries moved in and built the first room. 7. Beneficiaries received tenure documents.²⁶⁶

In *Iraq*, adequate shelter “is a priority concern for more than half of IDP families (58%). The majority live in rented accommodation and are burdened with high rent prices. A significant population shelter with host families, or live in tents or makeshift shelters on the host families’ land. In addition, a large percentage of displaced families that cannot afford to rent, live in unplanned settlements, often in structures made from mud, sticks and other salvaged materials, or have occupied public buildings and former military camps. These families are threatened with forceful eviction with no alternative accommodation available.”²⁶⁷

To address these problems, in 2011 UN-HABITAT started a project entitled Initiating Durable Shelter Solutions for IDPS and Returnees in Baghdad, which aims to “foster agreement and build capacities of Iraqi officials, representing Ministries of Displacement, Housing, Municipalities, Finance, Justice, Baghdad Mayorality and Baghdad Provincial Council, as well as civil society and district level stakeholders on how to address the long-term shelter needs of displaced people. The project develops consensus and necessary tools and legislation and in parallel initiates pilot projects in informal settlements populated significantly by people who have been displaced in Baghdad. The process of building consensus on long-term shelter solutions builds on recent efforts to prepare a strategy for longer-term shelter solutions for people affected by displacement, facilitated by UN-HABITAT in partnership with the Ministry of Displacement and Migration, and in collaboration with the above ministries, as well as UN agencies and NGOs.”²⁶⁸

4. Accountable and responsive governance, in particular at the local level

a) Local authorities as duty bearers

Governance projects are less directly linked to human rights than those in the other areas discussed here. Authorities, however, whether at the central or the local level, are duty bearers to the extent that they are responsible under domestic law for responding to human rights claims of IDPs and for implementing responsibilities under the Kampala Convention and other relevant instruments.

Progress in human rights areas related to basic services and livelihoods and in housing, land and property rights is not possible without strong governance by capable, accountable and responsive authorities. This concerns not only central government and its line ministries but also, at

least in countries with a certain degree of decentralization or devolution of powers, local governments who are the first-line responders when IDPs arrive or return.²⁶⁹

Local governments are particularly important actors in post-conflict situations. As highlighted by UNDP:

“Local governments have increasingly been identified as an important institution in post-conflict situations given their potential roles in post conflict reconstruction, the re-establishment of the State in the regions, in the provision of sustainable services and as a natural promoter and facilitator of local economic development. The conflict mitigation potential of local governments is also usually highlighted as important, particularly, because of their greater ability to interact with communities and traditional authorities, compared with national institutions [...]”²⁷⁰

The Kampala Convention and the Great Lakes IDP Protocol, in line with the Guiding Principles, take a traditional approach by highlighting the primary responsibility of national governments to assist and protect IDPs without mentioning sub-national levels of government.²⁷¹ Direct reference to the local level can be found, however, in Article 3(2)(c) of the Kampala Convention, which requires states to adopt “measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities”.²⁷²

At the domestic level, states may, as illustrated in Africa by the Ugandan IDP policy,²⁷³ assign important roles in assisting and protecting IDPs to local governments. Even where this is not the case, local authorities or local representatives of the central government may play an important role in responding to displacement situations.

b) Good development practice

There is little research on internal displacement and the role of *local authorities*, although they play a key role in many countries in responding. Available studies²⁷⁴ and the personal experience of the authors²⁷⁵ point to the existence of four key problems that may weaken and jeopardize activities undertaken by local authorities on behalf of IDPs:

- *Unclear allocation of powers and responsibilities:* Displacement-specific laws, policies and action plans may allocate certain powers and responsibilities regarding assistance to and protection of IDPs to local authorities in unclear ways²⁷⁶ or even create conflicts with ordinary laws on aspects of service delivery and the provision of security at the local level, thus allowing central authorities to intervene in ways that are not conducive to effective assistance and protection at the local level.
- *Ineffective financial decentralization:* A key problem often encountered is the fact that national governments make municipal authorities responsible for certain activities, but

fail to provide the additional resources that would enable them to carry out these responsibilities. This is true not only where financial resources allocated to local governments are in general insufficient, but also where they are calculated in terms of the size of the permanent population and are not adjusted in the event of an influx of IDPs or where they are earmarked and cannot, although available, be used for dealing with the displacement situation.

- *Lack of capacity:* Insufficient human resources in terms of both numbers and knowledge at the local level to deal with the particular challenges of displacement are a common problem in displacement situations.
- *Split loyalties of elected local authorities:* Mayors and other local leaders must, on the one hand, respond to the demands of the central authorities and assist IDPs as provided for by national laws and policies. In the case of IDPs, however, this may cost them votes in the next elections if the local population perceives IDPs as a threat or feels that meager resources available at the local level have to be shared with the newcomers.

Development interventions specifically addressing local governance issues may include:

- Training local authorities and other local stakeholders in key aspects of internal displacement and, in particular, the human rights of IDPs;
- Provision of direct support to local governments for community-based local projects that help to (re)integrate IDPs;

Example:

In Angola, the World Bank provided grants to “*municipios*” to help communities identify and implement an integrated program of small-scale, community-based investments (e.g. roads, water, schools, health posts, rural markets, irrigation works). This will help to reintegrate returning families, IDPs, demobilized soldiers and returning refugees and to restore village-level economic and social activities.²⁷⁷

- Measures to build the capacity of authorities at the local level;

Example:

In Bossaso, Somalia, a city consultation identified “a good city administration and a qualified local council that is responsive to the needs of the citizens” as the most urgent needs. UN-HABITAT’s Bossaso city planning project focused, in addition to providing equipment and training, on two areas: (1) improving the quality of the local authorities by revising “the roles and responsibilities of the mayor, councilors, and municipal staff within Bossaso Municipality”;

developing “eligibility criteria for the local councilors”; establishing “transparent criteria for municipal staff selection (qualifications, experience, etc.)”; setting up “an open and transparent recruitment system (job advertisement, interviews, and candidate selection)”; and improving “the efficiency of employees through incentives, allowances, grants, promotions, and training”; and (2) the establishment of a fair, effective and transparent tax collection system and the introduction of a modern, computerized financial management system.²⁷⁸

- Design of flexible systems for allocation of financial resources to local levels in accordance with assessed needs created by the influx and presence of IDPs and returnees.

VI

Conclusions

Internal displacement, when it occurs on a large scale as in many African countries, is highly relevant for development actors because of its negative impact on a country's development. In pre-displacement situations, the lack of development or its failure may significantly contribute to instability and thereby trigger displacement. When displacement occurs, it enhances the vulnerability of individuals, families and communities and may undermine the overall development of affected areas or countries and jeopardize, in particular, the achievement of the Millennium Development Goals in the country concerned. In the post-displacement phase, development may be negatively affected if people return to areas that have been devastated by armed conflict or natural disaster and if no investments in basic infrastructure and services, livelihoods and local governance structures are made early on in the process. At the same time, displacement situations may create development opportunities. For instance, the arrival of humanitarian and development actors to assist IDPs may trigger the upgrading of health and education facilities that stand to benefit local communities once IDPs return, and post-conflict and post-disaster recovery regularly provides an opportunity for "rebuilding better". In reality, however, there is frequently a gap between the phasing out of humanitarian assistance and the transition to development interventions.

From a development perspective, internal displacement can be understood as a process of impoverishment of individuals, families and communities that may be reversed with development interventions addressing, inter alia, the loss of land, livelihoods, shelter, food security, health care, education and social inclusion. The IRR model developed to better understand and respond to development-induced relocation is also useful, with some minor adaptations, for analyzing and addressing situations of conflict- and disaster-induced displacement. It suggests that development actors should invest in processes leading: (a) from landlessness to access to/restitution of land after displacement and, if possible, temporary use of land during displacement; (b) from joblessness to reemployment after displacement and, if possible, temporary employment during displacement; (c) from homelessness to temporary shelter during displacement and permanent housing after displacement; (d) from marginalization to social inclusion both during and after displacement; (e) from food insecurity to adequate food and nutrition; (f) from increased morbidity to improved health; (g) from loss of common property to restoration of community assets and services; (h) from social disarticulation to

rebuilding of networks and communities during and after displacement, including through reconciliation; and (i) from loss of educational opportunities to restoration of access to education.

These poverty-related needs of IDPs are protected by human rights norms enshrined in general human rights conventions as well as by the Guiding Principles. In Africa, the Kampala Convention and the Great Lakes IDP and Property Protocols are binding regional instruments that address the rights of IDPs by setting out in detail the obligations of states and other relevant actors. In addition, in some African states domestic laws and policies incorporating these standards into the legal order of countries with IDPs and peacebuilding strategies provide the normative and institutional frameworks necessary at the domestic level to adequately respond to displacement situations. While many of these norms touch upon humanitarian issues, many are also directly relevant for development action insofar as they address development-related issues. International development actors, including the World Bank, have to bear in mind that their national counterparts are bound by these international, regional and domestic norms.

A particular problem is the fact that only a relatively small number of African states have thus far adopted specific national laws or policies or are in the process of doing so. Without such domestic instruments, ratification of the Kampala Convention and/or the Great Lakes IDP Protocol is largely symbolic. Furthermore, in most countries there is a marked discrepancy between having a national instrument and implementing it in a displacement situation. These problems are sometimes created by a lack of will and are sometimes the consequence of a lack of resources and an inadequate understanding and knowledge of how to develop and later use such instruments in a practical way. They are also sometimes due to a combination of these two elements.

The political economy of treaty compliance suggests that international development actors can enhance the likelihood of actual implementation of international, regional and domestic provisions addressing the needs of IDPs, particularly by facilitating the diffusion of concepts related to the human rights of IDPs (training, South-South exchanges, etc), supporting efforts to establish normative and institutional frameworks at the domestic level and to build the necessary capacity to implement them, strengthening accountability mechanisms pertaining to

the rights of the displaced and investing in projects that directly address these rights.

Taking human rights into account has an added value for development actors inasmuch as human rights provide normative answers to human beings' fundamental needs by providing entitlements to those with specific vulnerabilities as *rights holders* and designating the state and its authorities as *duty bearers* that have to respond to these needs, thus clarifying who is, and who should be, responsible for what and with respect to whom. A human rights-based approach insists on the inclusion, consultation and participation of beneficiaries in the design and implementation of programs and projects, thus helping to realize interventions that are adapted to specific contexts and enhance ownership – two factors that are often critical for their sustainability. The core human rights principle of non-discrimination ensures that women, children and members of minorities or indigenous communities are not left out and can thus also benefit from and participate in the development of their country. Lastly, some human rights guarantees provide guidance on how best to design projects (e.g. related to housing, land and property issues). Human rights are thus also relevant for development actors such as the World Bank that do not use and promote a human rights-based approach to development.

The human rights provisions of the Kampala Convention and the Great Lakes IDP and Property Protocols set out state obligations and provide guidance that is applicable, inter alia, in the areas of service delivery, livelihoods, housing, land and property and governance. Experience with displacement-specific programs and projects shows the potential for and the high relevance of development interventions in these fields. A multitude of activities are possible and, as many examples from all over the world indicate, have in fact been undertaken by development actors. The systematic use of a human rights-based approach would improve the quality, impact and sustainability of such interventions. In addition, the systematic incorporation of displacement-related needs into national recovery and development assessments and strategies and national development plans would enable states to fulfill their human rights obligations vis-à-vis IDPs.

With regard to substantive areas requiring further research, several questions may be highlighted:

- What kind of impact does the fact that many conflicts triggering internal displacement today are linked to ethnicity and ethnic politics have on the political economy of treaty implementation, particularly as regards non-discriminatory responses to the protection needs of IDPs and the ability of governments to live up to their human rights obligations?
- To what extent are displacement issues mainstreamed into development plans and poverty alleviation pro-

grams, and is this being done in a way that is conducive to respect for the human rights of IDPs?

- To what extent do human rights-based approaches that have actually been integrated into development programs and projects specifically address displacement? What can be learned from cases where this has occurred? And from cases where the human rights dimension has been neglected?
- What, in reality, is the role of local authorities in addressing human rights-relevant aspects of internal displacement? What are the main legal, administrative, financial and capacity constraints that may account for their inadequate capability in most cases to meet their responsibilities under instruments addressing the human rights of IDPs?
- Which accountability mechanisms work best in which situations and what is needed to make them effective?

Annex I: African Legal Framework: Key Content of Relevant Instruments and Documents

1. The UN Guiding Principles on Internal Displacement

The introductory part of the Guiding Principles includes a description, but not a definition, of what constitutes an IDP. It highlights three elements: (1) the coercive or otherwise involuntary character of movement; (2) the fact that such movement takes place within national borders, i.e. that the displaced do not flee to another country; and (3) a non-exhaustive list of situations that may trigger displacement, including armed conflict, situations of generalized violence and human rights violations as well as natural or human-made disasters.

The document stresses that national authorities “have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Principle 3) and addresses the issue of protection from displacement, inter alia, by setting out the prohibition of arbitrary displacement and listing examples of such displacement (Principle 6). The main body of the Guiding Principles (Section III, Principles 10 - 23) relates to protection during displacement. They not only restate the applicable human right or international humanitarian law guarantee in general terms but also specify their relevance for IDPs by setting out in specific terms what the guarantees mean in the context of displacement. These specifications are what make the Guiding Principles particularly relevant for stakeholders, including development actors.

Section IV deals with the issue of humanitarian assistance. Principle 25 stresses that the primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities, thus acknowledging the principle of state sovereignty. While assistance by international actors may be delivered only if the state concerned agrees, such consent must not be denied for arbitrary reasons, i.e. reasons that are not based on objective and serious considerations.

The document concludes in Section V with the post-displacement phase, addressing “return, resettlement and reintegration” (Principles 28 - 30), i.e. the issue of durable solutions ending displacement. Principle 28 is particularly important as it provides the legal framework for finding durable solutions for IDPs. It spells out the primary duty and responsibility of competent authorities to establish the conditions and provide the means which allow IDPs to return voluntarily, in safety and with dignity, to their homes

or places of habitual residence or to resettle voluntarily in another part of the country. Implicit in this principle is the right of IDPs to freely choose between the three possible forms of a durable solution, namely: (1) return and sustainable integration into the area of their former homes; (2) sustainable local integration into the area to which they were displaced; or (3) sustainable integration into another part of the country. Principle 29(2) provides some guidance on the restitution of property or compensation when such restitution is not possible.

2. The Great Lakes Protocols

The IDP Protocol

The main objective of the IDP Protocol²⁷⁹ is the establishment of “a legal framework in the Great Lakes region for ensuring the adoption by Member States of the Guiding Principles on Internal Displacement”, i.e. the integration of the Guiding Principles into national legislation.²⁸⁰ It sets out general obligations of member states, which are the primary bearers of responsibility towards IDPs,²⁸¹ and the scope of protection that is to be granted to them²⁸² and extended to host communities in accordance with their needs.²⁸³ While the IDP Protocol acknowledges the primary responsibility of member states, it also recognizes the role of international agencies and civil society.²⁸⁴ The protocol addresses displacement due to all causes²⁸⁵ and provides for assistance and protection throughout the displacement process. It also sets out the relevant circumstances and conditions under which displacement due to development projects is lawful.²⁸⁶

The Property Protocol

The Property Protocol is closely linked to the IDP Protocol, as it deals with the legal protection of property of IDPs during displacement as well as upon their return or relocation due to development projects.²⁸⁷ Furthermore, it affords special protection for the property of women and children and communities with a special attachment to land.²⁸⁸

The protocol recognizes the right to own property in line with international and regional human rights standards²⁸⁹ and requests member states to protect the property of IDPs against acts prohibited under international humanitarian law²⁹⁰ as well as against arbitrary and illegal appropriation, occupation or use.²⁹¹ In essence, it requires member states to assist IDPs in recovering property left behind or lost during displacement and to provide compensation if property cannot be restituted.²⁹² States must

establish the necessary procedures, mechanisms and schemes to that end.²⁹³ The protocol does not rule out the possibility of member states acquiring or expropriating property abandoned by IDPs. It does, however, specify the grounds and conditions that may justify such action.²⁹⁴ Particular attention is paid to the recovery of the lands of communities with special attachment to their lands and the protocol requires that such communities be reintegrated into areas previously occupied. Where such return and reintegration are not possible, lands of at least equal value must be provided, and where such lands cannot be allocated, affected communities are entitled to receive an appropriate compensation package.²⁹⁵

Fourth Regional Programme of Action on Humanitarian and Social Issues

The Fourth Regional Programme of Action aims to address some of the key humanitarian, social and environmental problems in the Great Lakes region by providing for specific programs and projects. It contains two sub-programs:²⁹⁶ The framework for disaster preparedness, protection and assistance to IDPs and their environment contains projects relating to the issuance of personal documentation; protection, assistance and the search for durable solutions for IDPs and their hosts; the establishment of a legal framework for recovery of land and property by returning IDPs; and restoration of the environment and human settlements. The sub-program on resumption of basic social services, provision of health care and psychosocial support to groups with special needs contains projects relating to the fight against a number of chronic and communicable diseases, the prevention of sexual exploitation and gender-based violence, and the protection of victims. While IDPs are not explicitly targeted by these projects, they may be included among the beneficiaries, depending on the nature and location of the project.

3. The Endorois Case

In the *Endorois Case*,²⁹⁷ the African Commission on Human and Peoples' Rights clarified the content of the right to development contained in Article 22 of the African Charter on Human and Peoples' Rights and its relevance in cases of forcible relocation. The right does not apply to all IDPs and their communities but only to communities that constitute "peoples". The commission accepted in this case that the Endorois, being an indigenous people with special attachment to their lands, meet this requirement.²⁹⁸ The case does not clarify to what extent other communities may be recognized as "peoples" within the meaning of Article 22.

The commission held that this right contains a procedural and a substantive element.²⁹⁹ States must: (i) fully inform

communities of the nature and consequences of the development process;³⁰⁰ (2) adequately and effectively consult with them in a manner appropriate to the circumstances;³⁰¹ and (3) let them meaningfully participate in all parts of the process of relevance to their lives,³⁰² including in its planning. Most notably, the commission draws from the right to development the duty to obtain the free and informed consent of a community, in accordance with its customs and traditions, if it will face a major impact on its territory as a result of a development or investment project.³⁰³

The substantive part of the right to development is two-fold. Development processes should lead to the empowerment of a people and not be detrimental to their choices, opportunities and wellbeing. A state is thus under a positive obligation to improve the choices and capabilities of a community.³⁰⁴ As the right to development will be violated if a development process negatively impacts the wellbeing of a community, a second aspect of this right relates to benefit-sharing.³⁰⁵ Communities that contribute to the development process by giving up their lands not only have a right to just compensation for losses suffered but also a right to receive an equitable share of the benefit of the development process.³⁰⁶

4. Domestic and country-specific instruments

a) Comprehensive IDP laws and strategies

Uganda's National Policy for Internally Displaced Persons of 2004 predates the Great Lakes IDP Protocol and the Kampala Convention. The policy was a response to the lack of a coordinated, planned and cross-sectoral approach to the longstanding displacement situation in the north of the country by the government and the international community.³⁰⁷ The policy determines which institutions are required to manage the displacement situation and specifies the roles and responsibilities of relevant actors.³⁰⁸ The objectives of the policy are very development-relevant. It aims to create an enabling environment for IDPs to uphold their rights, to address the causes and effects of internal displacement through integrated and coordinated response mechanisms, and to support durable solutions for IDPs by guiding development and recovery programs towards the rehabilitation and reconstruction of social and economic infrastructure.³⁰⁹ According to the policy, internal displacement should be addressed by integrating displacement issues into development planning and programming at the national and sub-national level.³¹⁰ In order to achieve this, it sets up a detailed cross-sectoral institutional apparatus at the national and sub-national level.³¹¹ An existing department of the Office of the Prime Minister is tasked with the role of national institutional focal point,³¹² but operational responsibilities are highly

decentralized to the districts³¹³ and sub-counties.³¹⁴ The policy provides for a coordination structure with national and international partners.³¹⁵

With regard to *livelihoods*, the policy stresses that the freedom of movement of IDPs should not be curtailed as it is vital for subsistence activities ensuring their economic and social survival.³¹⁶ The policy also makes it clear that the protection of *property and land rights*, including customary ownership, is mainly the task of local governments. IDPs are to be assisted, especially in the context of durable solutions, in acquiring or recovering their land and, where this is not possible, local governments should endeavor to acquire and allocate alternative land to IDPs.³¹⁷ This has proved to be highly relevant but it was also problematic during the return of the displaced in 2009 and 2010, when landless IDPs or IDPs who were unable to recover their lands due to land-related disputes remained in dismantled camps without any prospect of moving elsewhere, while being, at the same time, at risk of eviction.³¹⁸ With regard to *food security*, the policy requires the government to maintain grain stores for IDPs, especially if they have no access to their land or to markets and other sources in order to establish and maintain a livelihood. The Ministry of Agriculture is expected, together with local governments, to improve methods of food production, conservation and distribution in order to achieve the most efficient and sustainable development and use of natural resources by IDPs during and after displacement as a measure to counter food insecurity.³¹⁹ The policy also provides for the supply of resettlement inputs and of tools and toolkits to support the construction of *housing* and self-employment.³²⁰ Rehabilitation of social and economic infrastructure, including health, education, water and sanitation infrastructure, and the restoration of access to markets, are key tasks of the central as well as local governments.³²¹ The policy provides for the prioritization of return and resettlement areas for the supply of clean and safe water, and calls for capacity building, especially in the health and education sectors, in such locations.³²² IDPs are exempted from payment of tax for as long as they lack sufficient means.³²³

The policy requires proper consultation and participation of IDPs, e.g. as representatives in the District Disaster Management Committee and the Sub-County Disaster Management Committees.³²⁴ With a view to ensuring that displaced women are included in the planning and management of the response, women may participate in the meetings of these committees and a special effort must be made to ensure that women and young people are consulted on matters relating to their welfare.³²⁵ IDPs must further be consulted on the preparation and implementation of plans for safe return and other solutions.³²⁶

While the policy is exemplary in its scope and content, its

effective implementation has been hampered in several regards.³²⁷

When security in northern Uganda was restored and return became possible, a Peace, Recovery and Development Plan 2008-2011 (PRDP) was adopted in order to consolidate state authority, rebuild and empower communities, revitalize the economy, and build peace and reconciliation. The Government of Uganda intended to use this plan to bring northern Uganda up to the national development average.³²⁸ While PRDP was not a document specific to IDPs, it covered all displacement-affected areas (Acholi, Karamoja and West Nile) and was thus intended to stabilize these areas. Some programs explicitly addressed the specific needs of IDPs, such as the IDP Return and Resettlement Programme. Others were generic but sensitive to or advantageous for IDPs. Implementation faced several challenges, including a one-year delay due to lack of funding and an ensuing gap in the transition from humanitarian relief to recovery activities.³²⁹ Progress was made mainly in the rehabilitation of roads, health, education and water facilities. A lack of proper linkages between PRDP and the general national and district development plans caused major problems.³³⁰

Kenya has both a national policy and a bill on IDPs, both of which were adopted in 2012. The bill builds on the policy and specifies government structures at the central level and, where applicable, also at the decentralized level.³³¹ During the 2007/2008 post-election crises, the absence of local government structures at the county level made the response to the displacement situation difficult, as did the absence of a designated and effective national institutional focal point at the central level.

The policy and the bill are fairly comprehensive and relevant for development actors throughout the period of displacement. Their elaboration was guided by the Great Lakes obligations, the Guiding Principles, the Kampala Convention and a set of relevant guidelines and tools such as the Framework on Durable Solutions and the World Bank's Operational Policy 4.12 on Involuntary Resettlement. One of the areas in which Kenyan policy differs from Ugandan policy is that relating to the prevention of internal displacement. Chapter IV of the Kenyan policy³³² highlights the relevance of development interventions and provides for entry points for development actors to prevent displacement. It deals with generic issues such as upholding the rule of law; building capacity to strengthen the resilience of communities; prevention of political, social, cultural and economic exclusion and marginalization; addressing poverty and unemployment in regions at risk of displacement; and strengthening reconciliation. At the same time, it highlights preventive measures that relate specifically to the different causes of displacement. Another key area of the Kenyan policy that deserves atten-

tion from a development perspective is the part dealing with preparedness, which makes it clear that preparing for a humanitarian emergency is not a purely humanitarian but also a development matter, for instance because it requires the establishment of early warning systems or the upgrading of services in areas and communities that are likely to receive an influx of IDPs.

b) Sectoral instruments

In *Angola*, a decree regarding norms applicable to the resettlement of IDPs³³³ addresses only the post-displacement phase, i.e. durable solutions. It acknowledges the Guiding Principles as the “general principles governing the treatment” of IDPs.

Institutionally, the instrument provides for a decentralized approach, assigning overall responsibility for resettlement and return to provincial governments (Arts. 1 and 2). It aims to address the typical challenge presented by the transition from humanitarian assistance to recovery and development, and assigns particular roles to humanitarian and development actors. In terms of substance, Article 3 is critical, as it relates to the identification of land for relocation. The norm provides for the inclusion of IDP communities in this process and thus goes hand in hand with Article 5 (2), which requires the involvement of IDPs in the planning and management of their relocation. When identifying land, the quality and quantity of agricultural land and secure access to the nearest market are two criteria to be borne in mind. Mine clearance and verification (Art. 4) is another relevant requirement for return and resettlement of IDPs, as well as the rehabilitation of infrastructure in these areas (Art. 7). Articles 9 and 11, which deal with “water and sanitation” and “food” respectively, are interesting in that they clearly show the need for fine-tuned collaboration between humanitarian and development actors. They require humanitarian agencies to provide water and food, but at the same time provide for the drilling of water points, the introduction of food for work programs aimed at preparing land and the rehabilitation of social infrastructure. Article 10 is similarly structured. It deals with resettlement kits that require the provision of agricultural seeds and tools and a tool kit to support construction and self-employment – a task that is a shared responsibility between humanitarian and recovery/development actors.

c) Peacebuilding strategies

The Central African Republic and Burundi are two countries supported by the UN Peacebuilding Commission, with peacebuilding strategies providing an integrated approach post-conflict peacebuilding and recovery and an overall framework for the undertakings of the governments concerned and of the international community.

The *Burundi* strategy identifies displacement as one of the problems to be solved. Displacement is not addressed with specific measures, but IDPs and returnees are included in many of the more general measures aimed at building peace, including those addressing impunity, human rights, land issues and socio-economic recovery.³³⁴

By contrast, the strategy for the Central African Republic³³⁵ explicitly recognizes the relevance of addressing the challenges created by internal displacement as an important element of peacebuilding. Thus, it foresees specific measures “for re-establishing confidence between the protagonists in the conflicts and the people, who have been the main victims of various crimes and atrocities and have often been forced into displacement”.³³⁶ These include the commitment by the government to fulfill “its obligations under the Protocol on the Protection and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons, adopted under the Pact on Security, Stability and Development in the Great Lakes Region” and to prepare “a comprehensive legal framework and a strategy for internal displacement, covering all phases of displacement (prevention, protection and assistance during displacement, sustainable solutions)”.³³⁷ At the same time, the strategy envisages the creation, through joint action by the government and the international community, of development poles, i.e. areas of regional growth “aimed at restoring administrative services and at favouring improved availability and access on the part of citizens to basic social services and infrastructure”, in order, inter alia, to “contribute to the return and harmonious reintegration of refugees and displaced persons in their home localities”.³³⁸ In this context, activities will endeavor, inter alia, to: “1. Implement the socio-economic aspects of projects in partnership with the government and the development partners. 2. Pursue integrated local development activities (health, education, agriculture and microfinance). 3. Provide support for affected people” and promote “income generating activities in the form of micro-projects” or enlist families “in small development projects that will improve their incomes and living standards”.³³⁹ Development organizations and agencies, in other words, are included as strategic actors involved in finding durable solutions for IDPs as an essential part of peacebuilding.

d) Overview

The following chart synthesizes information about the degree to which African countries with a substantial number of people who have been internally displaced in the context of armed conflict and violence are bound by relevant regional conventions, have at least indicated their intention to be bound by them³⁴⁰ or have already adopted their own laws, policies and strategies on internal displacement.³⁴¹ All these countries have ratified the two UN International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights.

Country	No. of IDPs ³⁴²	Kampala Convention (signed/ratified)	Great Lakes	African Charter	IDP-specific law/policy/strategy
Angola	Up to 20,000	signed	ratified	ratified	law
Burundi	78,800	signed	ratified	ratified	peacebuilding strategy
Central African Republic	105,00	ratified	ratified	ratified	peacebuilding strategy/law in preparation
Chad	126,000	ratified	n/a	ratified	–
Côte d'Ivoire	247,000	signed	n/a	ratified	–
DRC	1,710,000	signed	ratified	ratified	–
Eritrea	Up to 10,000	signed	n/a	ratified	–
Ethiopia	Undetermined	signed	n/a	ratified	–
Kenya	About 250,000	–	ratified	ratified	IDP bill IDP policy
Liberia	Undetermined	signed	n/a	ratified	declaration / instrument of adoption of the Guiding Principles / strategy
Libya	Undetermined	–	n/a	ratified	–
Niger	Undetermined	ratified	n/a	ratified	–
Nigeria	Undetermined	ratified	n/a	ratified	–
Republic of the Congo	Up to 7,800	signed	ratified	ratified	–
Rwanda	Undetermined	signed	ratified	ratified	–
Senegal	10,000 – 40,000	signed	n/a	ratified	–
Somalia	1,460,000	signed	n/a	ratified	–
South Sudan	Undetermined	–	–	bound by succession?	–
Sudan	At least 2,200,000	–	ratified	ratified	policy
Togo	Undetermined / 10,000	ratified	n/a	ratified	–
Uganda	About 30,000	ratified	ratified	ratified	policy
Zimbabwe	Undetermined	signed	n/a	ratified	–

Annex II: Overview of Relevant Provisions of African Instruments on IDPs

Topic	UN Guiding Principles	Kampala Convention	Great Lakes Protocol
Basic services	Principles 18: Adequate standard of living Principle 19: Health Principle 23: Education Principles 24 – 27: Humanitarian assistance Principle 28: Establishment of conditions necessary for durable solutions	Article 9(2)(b): Adequate humanitarian assistance to IDPs, and where appropriate to host communities, during displacement Article 11(1): Restoration of services implicit in the obligation to create satisfactory conditions for durable solutions Article 11(3): Cooperation with relevant actors in protecting and assisting IDPs in the course of finding and implementing solutions and long-term reconstruction	<i>IDP Protocol</i> Article 4(1) (f): Extending protection and assistance, according to need, to host communities <i>IDP Protocol</i> Article 4(1)(g): Ensuring safety and satisfactory conditions of dignity, hygiene, water, food and shelter for IDPs
Livelihoods	Principle 22(1)(b): Right to seek freely opportunities for employment and to participate in economic activities without discrimination	Article 3(1)(k): Promotion of self-reliance and sustainable livelihoods amongst IDPs and protection against forms of economic exploitation Article 11(1) and (3): Livelihoods as an implicit condition for durable solutions	<i>Property Protocol</i> Article 7: Special protection for returning communities whose mode of livelihood depends on special attachment to their lands
Land and property	Principle 21: Protection of Property Principle 29(2): Restitution of property	Article 4(5): Protecting communities with special attachment to, and dependency on, land from displacement Article 9(2)(b): Provision of adequate shelter during displacement Article 9(2)(i): Protection of property during displacement Article 11(1): Creation of satisfactory conditions for durable solutions (which necessarily includes housing) Article 11(4): Simplified procedures for solving property disputes Article 11(5): Restoration of lands of communities with special dependency on and attachment to lands in the context of durable solutions	<i>IDP Protocol</i> : Article 3(3): Primary responsibility of national authorities to assist and protect IDPs, also in the context of durable solutions, which will necessarily relate to recovery and restitution of land and property. <i>Property Protocol</i> : Article 4(1): Assistance for the recovery of property Article 4(3): Legislative procedures to assist in the recovery of property; simplified formal judicial procedures; alternative and informal community-based mechanisms and processes for resolving property disputes, with simple requirements of proof of ownership; establishment of a property registration scheme Article 5(4): The property registration scheme shall accord women legal capacity to register titles Article 8: Compensation for loss of property
Strengthening of institutions	Principle 3(1): Primary responsibility of national authorities to provide protection and assistance to IDPs	Article 3(2)(b): Designation of an authority or body in charge of coordinating activities to assist and protect IDPs Article 3(2)(c): Measures, including strategies and policies on internal displacement, at the national and local level Article 8(3)(a): African Union required to strengthen its institutional framework and capacity to assist and protect IDPs	<i>IDP Protocol</i> Articles 3(5), and 6(4), (5): Designation of an authority or body in charge of providing assistance and protection, disaster preparedness, implementation of national legislation incorporating IDPs and cooperation with other actors

Notes

- 1 African Union, “Explanatory Note on the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, p. 2.
- 2 IDMC, *Global Overview 2011*, p. 13 estimated the total number of people displaced in Africa due to armed conflict and violence to reach at least 9.7 million. The total number of 26.4 million IDPs worldwide does not include those displaced by natural disasters.
- 3 *Idem*, p. 13.
- 4 At the height of the displacement crisis a very large majority of the population were displaced in the Acholi district of Northern Uganda.
- 5 Deng, *Identity, Diversity, and Constitutionalism in Africa*.
- 6 The World Bank, *World Development Report 2011*, p. 6; Francis Stewart, 2010. “Horizontal Inequalities as a Cause of Conflict: A Review of CRISE Findings”, background paper for the WDR 2011.
- 7 IDMC estimated that 1.1 million persons were displaced by sudden-onset natural disasters in Africa in 2009 and 1.7 million in 2010: IDMC/NRC, *Displacement due to natural hazard-induced disasters*, pp. 8 and 11.
- 8 *Idem*, pp. 8 and 11.
- 9 ACAPS, Geneva, “Secondary Data Review: Horn of Africa”, 26 July 2011, p. 1, available at <http://www.acaps.org/img/documents/secondary-data-review-horn-of-africa-drought-somalia-and-displacement-secondary-data-review---horn-of-africa-somalia-and-displacement.pdf>; accessed on 30 March 2012).
- 10 “UN Guiding Principles on Internal Displacement”, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998. For details see below, Annex I, section I.
- 11 “Operational Guidelines on the Protection of Persons in Situations of Natural Disasters”, UN Doc. A/HRC/16/43/Add.5, 31 January 2011, Appendix I, p. 43.
- 12 On the challenges of IDP protection in Africa see Abebe, *Legal and Institutional Dimensions*, pp. 155-176.
- 13 The Pact and the Protocol are available at http://www.brookings.edu/projects/idp/Laws-and-Policies/regional_policies.aspx (accessed on 8 January 2012).
- 14 African Union, Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention), 23 October 2009, available at http://www.brookings.edu/projects/idp/Laws-and-Policies/regional_policies.aspx (accessed on 8 January 2012).
- 15 African [Banjul] Charter on Human and Peoples' Rights, adopted on 27 June 1981.
- 16 See below, Annex I, section IV.
- 17 E.g. the World Bank's Operational Manual, “Involuntary Resettlement”, OP 4.12, January 2001, as updated in March 2007; African Development Bank, “Involuntary Resettlement Policy”, November 2003; International Finance Corporation, “IFC Performance Standard 5, Land Acquisition and Involuntary Resettlement”, 1 January 2012.
- 18 Christensen/Harild, *Forced Displacement*, p. 17.
- 19 For a recent example see Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Addendum, Mission to Kenya, UN Doc A/HRC/19/54/Add.2, 6 February 2012, paras. 52 – 53.
- 20 “Report of the United Nations Secretary-General on Peace-Building in the Aftermath of Conflict”, UN Doc. A/63/881-S/2009/304, para. 73.
- 21 See the examples provided by the former Representative of the Secretary-General on the human rights of internally displaced persons in his reports on Southern Sudan (Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to the Sudan (3-13 October 2005), UN Doc. E/CN.4/2006/71/Add.6, 13 February 2006, paras. 51 – 53) or Côte d'Ivoire (Conclusions et recommandations principales du Représentant du Secrétaire Général sur les droits de l'homme des personnes déplacées dans leur propre pays suite à sa visite en Cote d'Ivoire (25 – 29 Juin 2007) [on file with the authors], paras. 14 and 17).
- 22 Christensen/Harild, *Forced Displacement*.
- 23 Christensen/Harild, *Forced Displacement*, p. 11, and, more generally, World Bank, *World Development Report 2011*, pp. 78-81.
- 24 See, e.g., Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to the Central African Republic, UN Doc A/HRC/8/6/Add.1, 18 April 2008, para. 83, and UNHCR/DRC, *Profiling of IDPs Affected by the Conflict in Sa'ada*, Yemen, December 2010 [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/DA0F91A57CF6D7BDC125783F00546129/\\$file/PROFILING+FINAL+REPORT+Dec+2010+\(1\).pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/DA0F91A57CF6D7BDC125783F00546129/$file/PROFILING+FINAL+REPORT+Dec+2010+(1).pdf) (accessed on 8 March 2012).
- 25 Ferris, *Natural Disaster- and Conflict-Induced Displacement*, points out that 5 of “the 10 lowest ranking countries on the Human Development Index [...] are currently experiencing displacement because of conflict (Democratic Republic of Congo, Ethiopia, Chad, Central African Republic, and Sierra Leone)”.
26 According to an USAID analysis, Sa'ada, the governorate that took up arms against Yemen's previous government, is not one of the governorates with the highest levels of absolute poverty. See Strategic

- Planning & Analysis Division, E&E Bureau, USAID, Yemen Gap Analysis, April 25, 2011, (http://www.usaid.gov/locations/europe_eurasia/wp/mcp_gap_analyses-yemen_april_2011.pdf (accessed on 2 February 2012), figure 28.
- 27 Azerbaijan (HDI rank: 91), Colombia (HDI rank 87) and Georgia (HDI rank 75), which have a very large number of IDPs, all belong to the category of countries with a high human development index (HDI). See UNDP, *Human Development Report 2011 - Sustainability and Equity: A Better Future for All*, New York 2011, p. 128.
- 28 The World Bank found that “[f]ragile and conflict-affected states and those recovering from conflict and fragility, account for 47 percent of the population considered here, but they account for 70 percent of infant deaths, 65 percent of people without access to safe water, and 77 per cent of children missing from primary school”. See World Bank, *World Development Report 2011*, p. 62.
- 29 Harild/Christensen, *Development Challenge*, p. 4.
- 30 Idem. See also World Bank, *World Development Report 2011*, p. 61.
- 31 U.S. Agency for International Development, *USAID Assistance to Internally Displaced Persons Policy*, p. 3.
- 32 Christensen/Harild, *Forced Displacement*, p. 11
- 33 U.S. Agency for International Development, *USAID Assistance to Internally Displaced Persons Policy*, p. 3.
- 34 Nineteen out of the 21 African countries with significant numbers of conflict-induced displaced persons are rated “low” in UNDP’s Human Development Index.
- 35 Christensen/Harild, *Forced Displacement*, p. 4.
- 36 In Jordan, for instance, “well-educated Iraqi refugees staff hospitals and universities and contribute know-how to local businesses”: Puerto Gomez and Christensen, *The Impact of Refugees on Neighboring Countries*, p. 8, summarizing Jeff Crisp, Jane Janz, Jose Riera and Shahira Samy, *Surviving in the City, a Review of UNHCR’s Operation for Iraqi Refugees in Urban Areas of Jordan, Lebanon and Syria*, UNHCR, Geneva, 2009.
- 37 U.S. Agency for International Development, *USAID Assistance to Internally Displaced Persons Policy*, p. 4.
- 38 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Somalia, UN Doc. A/HRC/13/21/Add.2, 21 January 2010, para. 60(d).
- 39 Nepal, “National Policies on Internally Displaced Persons”, 2063 (2007), section 9.11.
- 40 The Republic of Uganda, “The National Policy for Internally Displaced Persons”, August 2004, Chapter 3.3.
- 41 Colombia, Arts. 8.(3) and 14.(5) of Law 387 of 18 July 1997 (Ley 387 de 1997, (julio 18), Diario Oficial [Official Gazette] No. 43,091 of July 24, 1997). English translation available at http://www.brookings.edu/~/media/Files/Projects/IDP/Laws%20and%20Policies/Colombia/Colombia_Law387_1997_Eng.pdf.
- 42 Climate Vulnerable Forum, *Climate Vulnerability Monitor 2010*, pp. 129-159, highlighting these activities as activities with proven practical benefits.
- 43 Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, UN Doc A/HRC/19/54, 26 December 2011, paras. 20 and 26.
- 44 Haver, *Out of Site*, p. 5.
- 45 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, UN Doc. A/HRC/13/21, 5 January 2010, para. 49.
- 46 Idem.
- 47 Brookings-Bern Project on Internal Displacement, Expert Seminar on Protracted IDP Situations, 21–22 June 2007, Geneva: Summary Report (www.brookings.edu/events/2007/0621_displacement.aspx).
- 48 IASC, *Framework on Durable Solutions for Internally Displaced Persons*, paras. 65 – 83.
- 49 Report of the United Nations Secretary-General on Peace-Building in the Aftermath of Conflict, UN Doc. A/63/881-S/2009/304, para. 58.
- 50 UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.
- 51 Francis M. Deng, *Sovereignty as Responsibility: Conflict Management in Africa*, Brookings Institution, Washington D.C., 1996.
- 52 Many of the reports by the former Representative of the Secretary-General on the human rights of internally displaced persons highlight such gaps and weaknesses in state response. They can be accessed at <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx>. See also the headlines of the Representative’s press releases such as “Internally displaced persons neglected by the government and the international community” (Mission to Côte d’Ivoire 2006).
- 53 On some of these problems see Bagshaw/Paul, *Protect or Neglect? Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons*.
- 54 UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.
- 55 Guiding Principles, Introduction, para. 1.
- 56 Guiding Principles, Introduction, para. 3.
- 57 2005 World Summit Outcome, General Assembly resolution 60/1, para. 132; Human Rights Council resolution 6/32, para. 5; General Assembly resolutions 62/153 (2008), para. 10 and 64/162, para. 11.
- 58 On the background and drafting history see Abebe, *The African Union Convention on Internally Displaced Persons*, p. 28; Beyani, *Recent Developments*, p. 187.
- 59 Pursuant to Art. 17 (i) the Kampala Convention entered into force 30 days after the 15th ratification or accession which was submitted by Swaziland on 5 November 2012. As of 9 November 2012, the convention had been ratified by Benin, Burkina Faso, Central African Republic, Chad, Gambia, Gabon, Guinea-Bissau, Lesotho, Nigeria, Niger, Sierra Leone, Swaziland, Togo, Uganda, and Zambia. A further 21 AU member states had signed the convention, thereby indicating

- that they were ready to consider ratification.
- 60 See Abebe, *The African Union Convention on Internally Displaced Persons*, pp. 45 – 56; Kidane, *Managing Forced Displacement*, pp. 53 – 81. See also IDMC, *Making the Kampala Convention work*.
- 61 See Art. 1 (k) and (l), Art. 5 (4) and Art. 10, Kampala Convention.
- 62 Art. 9 (1), Kampala Convention.
- 63 See Art. 2 (a) and (b), Art. 3 (1) (a) and (1) (b), and Art. 4, Kampala Convention. The convention also requests states to ensure accountability for acts of arbitrary displacement and thus addresses prevention through the establishment of accountability. See specifically Art. 3 (1) (g) and (h), Art. 4 (4) and (6), and Art. 7 (5) (a).
- 64 In particular Art. 3 (1) (g) and (1) (h), Art. 4 (4) and (6), and Art. 7 (5) (a), Kampala Convention.
- 65 In particular Arts. 5 and 9, Kampala Convention.
- 66 In particular Art. 11, Kampala Convention.
- 67 Art. 3 (2) (c), Art. 5 (5) and Art. 9 (2) (b), Kampala Convention.
- 68 Arts. 4, 5, 9, and 11, Kampala Convention.
- 69 Arts. 12 – 14, Kampala Convention.
- 70 See in particular Arts. 2 (e), 6 and 8, Kampala Convention.
- 71 See in particular Art. 4 (3), Art. 5 (3), (5) and (6), Art. 9 (3), and Art. 11 (3), Kampala Convention.
- 72 Art. 7, Kampala Convention.
- 73 These obligations are set out in Art. 3 (2), Kampala Convention.
- 74 E.g. Art. 10: Displacement induced by Projects; Art. 12: Compensation; Art. 13: Registration and Personal Documentation.
- 75 International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, paras. 14 and 16, adopted by the First Summit of Heads of State and Government, 19 and 20 November 2004.
- 76 Dar-es-Salaam Declaration, para. 58.
- 77 Ratified by ten of the eleven Great Lakes States: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda, Zambia.
- 78 Art. 12, Great Lakes Pact.
- 79 Art. 13, Great Lakes Pact.
- 80 Art. 20, Great Lakes Pact. The Programme of Action is not legally binding and its implementation depends on available resources, but states are expected to promote policies based on its content in order to find lasting solutions, particularly to the plight of internally displaced persons. Thus, the Programme of Action provides a framework for implementation of the objectives of the Protocols and the Pact.
- 81 African Charter on Human and Peoples' Rights (Banjul Charter) (ACHPR) of 26 June 1981.
- 82 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998.
- 83 On the difference between individual and collective human rights, see Kälin and Künzli, *Law of International Human Rights Protection*, pp. 123 and 124. The authors also draw attention, however, to the unresolved doctrinal issues relating to the personal scope of such collective rights.
- 84 African Commission on Human and Peoples' Rights, Case 276/2003, 4 February 2010, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (hereinafter *Endorois Case*), p. 40. The Commission had to consider whether the Endorois clan constitute a people entitled to exercise the collective right to development. Examining the criterion of distinctiveness, the Commission concluded that the Endorois are a distinct people, sharing a common history, culture and religion, and thus constitute a people.
- 85 Uganda, National Policy for Internally Displaced Persons, 2004.
- 86 Kenya, *The Internally Displaced Persons Bill*, 2012.
- 87 Angola, Norms on the Resettlement of Internally Displaced Populations, Council of Ministers Decree Number 1/101, 5 January 2001. Decree Number 79/02 of 6 December 2002 approves standard operational procedures for implementation of the norms on resettlement.
- 88 Strategic Framework for Peacebuilding in the Central African Republic 2009-2011, UN Doc. PBC/3/CAF/7, 9 June 2009.
- 89 Strategic Framework for Peacebuilding in Burundi, UN Doc. PBC/1/BDI/4, 30 July 2007, Annex. There is no mention of displacement in the Sierra Leone Peacebuilding Cooperation Framework, 3 December 2007, UN Doc. PBC/2/SLE/1, 3 December 2007, or the Strategic Framework for Peacebuilding in Guinea-Bissau, 31 July 2008, UN Doc. PBC/3/GNB/3, 2 October 2008.
- 90 Only two states (Libya and Niger) with significant numbers of people displaced by violence and armed conflict have neither signed/ratified the Kampala Convention or Great Lakes IDP Protocol nor adopted IDP-specific national instruments.
- 91 See the detailed analysis relating, *inter alia*, to Central African Republic, Democratic Republic of the Congo, Kenya, Uganda and Sudan in: Ferris, Mooney and Stark, *From responsibility to response*.
- 92 We thank Serap Akgül-Demirbas, lic. rel. int., for her assistance in drafting this section.
- 93 State-to-state complaints, though possible under several human rights treaties, are very rarely used, since states' actions against their own population do not directly and immediately harm other states.
- 94 Hill, *Estimating the Effects*, p. 1162, observes with regard to state reporting procedures under UN human rights conventions: "Aside from the obvious lack of incentive to report one's own wrong-doings, even if

- states felt compelled to call attention to their own transgressions, the human rights committees [meaning treaty bodies] that view the reports are powerless to punish recalcitrant states.”
- 95 Walter Kälin was the Representative of the UN Secretary-General on the human rights of internally displaced persons from 2004 to 2010 and in this capacity undertook extensive work in Africa, including in the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Kenya, Uganda, Southern Sudan, and Somalia. Nina Schrepfer led and coordinated the elaboration of the Kenya IDP policy and was also heavily involved in the process leading to the Kenya IDP bill. She also supported the work of the Representative in Uganda and Somalia.
- 96 Ferris/Mooney/Stark, *From Responsibility to Response*, p. 288.
- 97 Simmons, *Treaty Compliance*, p. 288.
- 98 Neumayer, *International Human Rights Agreements*, p. 926.
- 99 Hathaway, *Do Human Rights Treaties Make a Difference?* p. 1940. In one of the first empirical studies on the issue, the author found that ratification of the Convention against Torture was in some cases associated with worse human rights records. These findings were recently confirmed by Hill, *Estimating the Effects of Human Rights Treaties*, p. 1172: “One possible explanation is the ‘decoupling’ effect [...] whereby states ratify human rights treaties as a subterfuge to hide worsening practices.”
- 100 See the reports of the Representative of the Secretary-General on the human rights of internally displaced persons on his missions to Azerbaijan, Georgia, and Serbia, available at <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx>.
- 101 Sudan has neither ratified the Great Lakes Protocols nor the Kampala Convention. In 2009, however, it adopted a National Policy on Internally Displaced Persons.
- 102 Ferris/Mooney/Stark, *From Responsibility to Response*, pp. 301 and 302, mentioning Sudan and Turkey.
- 103 A good example is Turkey, where the development of strategies and action plans was largely triggered by the EU's insistence on including the topic of internal displacement in the negotiations on accession to the European Union.
- 104 Ramos/Zartner Falstrom, *State compliance with human rights norms*, p. 2. The authors explain that the presence of a human rights court within a regional organization has a considerable impact on state compliance (p. 24).
- 105 See Brookings-Bern Project on Internal Displacement, *Integrating Internal Displacement in Peace Processes and Agreements*, Peacemaker's Toolkit, United States Institute of Peace, Washington D.C., 2010.
- 106 *Supra*, sections II.3 and II.5, and *infra*, Annex I, section II and section IV.3.
- 107 Geisinger/Stein, *Rational Choice*, p. 1136.
- 108 Neumayer, *International Human Rights Agreements*, p. 930.
- 109 Goodliffe/Hawkins/Vreeland, *Identity and Norm Diffusion*, p. 28.
- 110 Simmons, *Treaty Compliance*, p. 292.
- 111 Ferris/Mooney/Stark, *From Responsibility to Response*, p. 302.
- 112 See the overview provided by Dobbin, Simmons and Garrett, *The Global Diffusion of Public Policies*.
- 113 *Idem*, p. 450.
- 114 *Idem*, p. 449.
- 115 *Idem*, p. 450.
- 116 Such threats, however, may have been a factor that influenced the decision of the Sri Lankan government in fall 2009 to release IDPs from closed internment camps earlier than planned.
- 117 Dobbin/Simmons/Garrett, *The Global Diffusion of Public Policies*, pp. 452 and 453.
- 118 *Idem*, p. 461.
- 119 See *supra*, note 57.
- 120 The Brookings Project on Internal Displacement e.g. organized 17 seminars and workshops with regional and sub-regional organizations or at country level to familiarize stakeholders with the Guiding Principles. See Weiss & Korn, *Internal Displacement*, 105 – 108.
- 121 Available at <http://www.brookings.edu/about/projects/idp/gp-page> (accessed on 31 October 2012).
- 122 Brookings Institution – University of Bern Project on Internal Displacement, *Protection of Internally Displaced persons in Situations of Natural Disasters*, p. 15.
- 123 See Timothy Gill, *Making things worse - how 'caste blindness' in Indian post-tsunami disaster recovery has exacerbated vulnerability and exclusion*, commissioned by Dalit Network Netherlands, February 2007, available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/tsunami_report.pdf (accessed on 6 April 2012).
- 124 Simmons, *Treaty Compliance*, p. 291.
- 125 Strategic Framework for Peacebuilding in the Central African Republic 2009-2011, UN Doc. PBC/3/CAF/7, 9 June 2009, pp. 15 and 16.
- 126 Simmons, *Treaty Compliance and Violation*, p. 287 referring to Dai X. *International Institutions and National Policies*, Cambridge University Press, Cambridge, UK and New York, 2007.
- 127 Ferris/Mooney/Stark, *From Responsibility to Response*, p. 103.
- 128 *Idem*, p. 105.
- 129 Ferris/Mooney/Stark, *From Responsibility to Response*, p. 302. On the work done by the Constitutional Court of Colombia and its positive impacts, see Rivadeneira, *Judicial Protection of Internally Displaced Persons: The Colombian Experience*.
- 130 For details see below, Annex I, section III.
- 131 These observations and recommendations can be accessed at OHCHR's Universal Human Rights Index

- (<http://uhri.ohchr.org>).
- 132 Consideration of reports submitted by State parties in accordance with articles 16 and 17 of the Covenant; Concluding observations of the Committee on Economic, Social and Cultural Rights; Chad, UN Doc. E/C.12/TCD/CO/3; 16 December 2009, para. 20.
- 133 Consideration of reports submitted by States parties in accordance with articles 16 and 17 of the Covenant; Concluding observations of the Committee on Economic, Social and Cultural Rights; Kenya, UN Doc. E/C.12/KEN/CO/1, 1 December 2008; para. 29.
- 134 They can be accessed at http://www.upr-info.org/database/index.php?&limit=0&f_SUR=&f_SM-R=&order=&orderDir=ASC&orderP=true&f_
- 135 See Report submitted by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to the Democratic Republic of Congo, A/HRC/8/6/Add.3, 16 May 2008, paras. 25 – 27.
- 136 See, e.g., Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to the Republic of Chad, A/HRC/13/21/Add.5, 22 December 2009, paras. 30 - 33.
- 137 Report submitted by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Côte d'Ivoire, UN Doc. A/HRC/4/38/Add.2, 18 October 2006, para. 42. Report submitted by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Nepal, UN Doc. E/CN.4/2006/71/Add.2, 7 January 2006, para. 54.
- 138 Ferris/Mooney/Stark, *From Responsibility to Response*, p. 63.
- 139 Idem, p. 87.
- 140 For more details on the Central African Republic, Democratic Republic of the Congo, Kenya, Uganda and Sudan, see idem, pp. 92-94.
- 141 Idem, p. 95.
- 142 There is no agreed definition of a “failed state”. There is actually no consensus either about the term as such, and alternative notions, such as “failing state”, “fragile state”, “disintegrated state” or “collapsed state” are suggested by different authors. It is helpful to understand the phenomenon not as a situation but as a process of breakdown of effective structures and institutions, and the ensuing breakdown of law and order and hence the loss of the state’s monopoly of power.
- 143 The Fund for Peace, *The Failed States Index 2011*, <http://www.fundforpeace.org/global/?q=fsi-grid2011>. A further five African countries with IDPs are ranked 11 to 20 among the most fragile states.
- 144 At the same time, it is important to stress that the degree of vulnerability and development is not the only reason why states fail to meet their responsibilities regarding IDPs. As a recent study found, in states such as Colombia and Georgia that belong to the countries with a high level of human development, “the dynamics of the conflict rather than the level of development have played the most important role in determining the government’s response”, even though their level of development, including in terms of governance structures, equipped them better to address their internal displacement situations (Ferris/Mooney/Stark, *From Responsibility to Response*, pp. 312 and 313).
- 145 See, e.g., Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to the Republic of Chad, A/HRC/13/21/Add.5, 22 December 2009, paras. 34 and 35.
- 146 Conclusion based on the personal experience of the authors.
- 147 *Supra*, section II.5, and *infra*, Annex I, section IV.3.
- 148 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to the Central African Republic, A/HRC/16/43/Add.4, 18 January 2011, para. 45.
- 149 The World Bank, *World Development Report 2011*, p. 4. Figure F1.3 indicates that for every three years of major violence, poverty reduction lags behind by 2.7%.
- 150 Cernea, *Risks and Reconstruction Model*, p. 1570.
- 151 Christensen/Harild, *Forced Displacement*, p. 11.
- 152 Cernea, *Risks and Reconstruction Model*, pp. 1569 – 1588; idem, *Impoverishment Risks and Reconstruction*, pp. 11 – 55;
- 153 McDowell/Morrell, *Displacement Beyond Conflict*, p.165.
- 154 Cernea, *Risk Analysis*, p. 101.
- 155 Cernea, *Impoverishment Risks and Reconstruction*, pp. 20 and 22 – 30. Social disarticulation is understood as “the tearing apart of social structures, interpersonal ties, and the enveloping social fabric as a result of forced resettlement” (Dowell/Gareth, *Displacement Beyond Conflict*, p. 165).
- 156 Cernea, *Impoverishment Risks and Reconstruction*, p. 20.
- 157 On these three types of durable solution, see IASC, *Framework on Durable Solutions for Internally Displaced Persons*, UN Doc. A/HRC/13/21/Add.4, 29 December 2009.
- 158 Dowell/Gareth, *Displacement Beyond Conflict*, pp. 165 – 167.
- 159 IASC, *Framework on Durable Solutions for Internally Displaced Persons*.
- 160 United Nations, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, 2003. Reproduced in OHCHR, *Frequently Asked Questions on*

- a Human Rights-Based Approach to Development Cooperation, New York/Geneva 2006, pp. 35 – 37.
- 161 The Common Understanding is very explicit in this regard, highlighting that the UN “is founded on the principles of peace, justice, freedom and human rights” and that human rights are therefore to be mainstreamed by the UN agencies into all their activities and programmes within the framework of their respective mandates.
- 162 See, e.g., The Human Rights based approach and the United Nations system, p. 54.
- 163 Information provided by OHCHR Uganda, on file with the authors.
- 164 International Bank for Reconstruction and Development, IBRD Articles of Agreement, Article III, Section 5(b).
- 165 OP 4.10 - Indigenous Peoples, July 2005, available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> (accessed on 25 February 2012).
- 166 OP 4.12 - Involuntary Resettlement, December 2001, revised February 2011, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> (accessed on 25 February 2012).
- 167 Save the Children Sweden, *Rights-based Programming for Children in Conflict-Affected Areas*, p. 10.
- 168 Paul Lundberg, Decentralized Governance and a Human Rights-based Approach to Development, (without date and location, p. 5, <http://www.un.org/kg/en/publications/document-database/article/Document%20Database/UN%20System%20in%20Kyrgyzstan/Human%20Rights%20and%20Human%20Rights%20Based%20Approach/115-Governance/2126-decentralized-governance-and-a-human-rights-based-approach-to-development-eng> (accessed on 5 April 2012).
- 169 Art. 9 (2)(h), Kampala Convention.
- 170 Arts. 9 (2) (k) and 11 (2), Kampala Convention.
- 171 Art. 4 (i) (b), Great Lakes IDP Protocol.
- 172 Save the Children Sweden, *Rights-Based Programming for Children in Conflict-Affected Areas*, p. 47.
- 173 This and the following examples are based on personal observations by the author.
- 174 General Comments are non-binding, albeit authoritative, documents adopted by UN treaty bodies to provide guidance on the content and scope of states parties’ human rights obligations in respect of a particular right.
- 175 Besides availability, accessibility is a key requirement that must be fulfilled in the implementation of the right to education. See Committee on Economic, Social and Cultural Rights, General Comment No. 13: The right to education (art. 13) (1999), para. 6, available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (accessed on 11 February 2012).
- 176 Personal observation of the author.
- 177 See, e.g., Art. 2 (3) ICCPR expressing a general principle.
- 178 Supra, section III.2.b.
- 179 For more details see Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection*, Oxford University Press, Oxford 2009, pp. 98 – 120.
- 180 On human-rights-based programming see the tools contained in UNDP, *Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences*.
- 181 This is inspired by idem, section entitled “Tool: Mainstreaming Human Rights in Development Policies and Programmes – An Initial Checklist”.
- 182 See, above, section IV.1.
- 183 As UNDP, *Governance for Peace*, p. 51, has recently highlighted, “[i]n most fragile and conflict-affected contexts, the de facto delivery of essential services [...] is undertaken not by the state, but by non-state actors. Private enterprises and non-governmental agencies, faith-based associations, tribal-, kin-, clan-based networks and self-help-associations are often at the forefront.”
- 184 Report by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Côte d’Ivoire, UN Doc. A/HRC/4/38/Add.2, 18 October 2006, para. 42.
- 185 Report by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Nepal, UN Doc. E/CN.4/2006/71/Add.2, 7 January 2006, para. 54.
- 186 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Visit to Iraq, A/HRC/16/43/Add.1, 16 February 2011, para. 42.
- 187 Martin/Petty/Acidri, *Livelihoods in crisis*, p. 27.
- 188 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Bosnia and Herzegovina, E/CN.4/2006/71/Add.4, 29 December 2005, para. 40.
- 189 Personal observation by the authors.
- 190 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Bosnia and Herzegovina, E/CN.4/2006/71/Add.4, 29 December 2005, para. 42.
- 191 Great Lakes IDP Protocol, Art. 4 (i) (g) and (f), respectively.
- 192 Principles 18, 19 and 22.
- 193 See the general comments by the Committee on Economic, Social and Cultural Rights, including General

- Comments No 12(1999) on the right to food, para. 8; No 13 (1999) on the right to education, para. 6; No 14 (2000) on the right to the highest attainable standard of health, para. 12; and No 15 (2002), on the right to water, para. 12; all available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (accessed on 11 February 2012).
- 194 Turkey: Van Provincial Action Plan for Responding to IDP Needs, 2006, available at <http://www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx> (accessed on 12 February 2012), p. 7.
- 195 *Idem*, p. 4.
- 196 Report by the Representative of the Secretary-General on the human rights of internally displaced persons, Addendum, Mission to Azerbaijan, UN Doc. A/HRC/8/6/Add. 2, 15 April 2008, para. 40.
- 197 *Idem*, p. 38.
- 198 Save the Children, 'Rights-Based Programming for Children in Conflict Affected Areas', p. 29.
- 199 *Idem*, pp. 50 – 52.
- 200 Constitutional Court of Colombia, Decision T-025 of 2004, English translation in: Rivadeneira, *Judicial Protection of Internally Displaced Persons*, p. 264. See also p.271, which reaffirms that every IDP child under the age of 15 has the right "to have access to a seat in an educational institution".
- 201 *Idem*, p. 264.
- 202 *Idem*, p. 271.
- 203 UNDP, *Governance for Peace*, p. 51.
- 204 Brookings Institution – University of Bern Project on Internal Displacement, *Manual for Law and Policy Makers*, p. 236 (footnotes omitted)
- 205 Follow-up Working Visit of the Representative of the UN Secretary-General on the human rights of internally displaced persons to Uganda, 13 – 17 July 2009, Memorandum on Key Findings and Recommendations, para 43 (on file with the authors).
- 206 UNDP, *Governance for Peace*, p. 29.
- 207 United Nations Development Assistance Framework for Iraq 2010 – 2014 p. 30 (emphasis added).
- 208 Cernea, *Impoverishment Risks and Reconstruction*, p. 24.
- 209 Brookings Institution – University of Bern Project on Internal Displacement, *Manual for Law and Policy Makers*, p. 192.
- 210 *Idem*, p. 192.
- 211 Art. 6 CESCR. The right to work is also enshrined in Art. 15 ACHPR.
- 212 Art. 11(2) CESCR.
- 213 Art. 7 CESCR on just and favorable conditions of work, Art. 8 ICCPR on the prohibition of slavery, servitude and forced labour.
- 214 Art. 32 CRC; ILO Convention 182 on the Worst Forms of Child Labour; Art. 15 African Charter on the Rights and Welfare of the Child.
- 215 Art. 11 CEDAW.
- 216 Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work (art. 6), para. 12.
- 217 The eight ILO Core Conventions are: Convention No. 29 on Forced Labour (1930); No. 87 on Freedom of Association and Protection of the Right to Organize (1948); No. 98 on the Right to Organize and Collective Bargaining (1949); No. 100 on Equal Remuneration (1951); No. 105 on the Abolition of Forced Labour (1957); No. 111 on Discrimination (Employment and Occupation) (1958); No. 138, the Minimum Age Convention (1973); and No. 182 on the Elimination of the Worst Forms of Child Labour (1999).
- 218 Constitutional Court of Colombia, Decision T-025 of 2004, English translation in: Rivadeneira, *Judicial Protection of Internally Displaced Persons*, pp. 264 and 265.
- 219 See section IV.1.
- 220 World Bank, *World Development Report 2011*, p. 256.
- 221 The following categorization is adapted from *idem*, pp. 196 - 202.
- 222 World Bank, Sri Lanka: Emergency Northern Recovery Project (P118870), <http://web.worldbank.org/external/projects/main?projid=P118870&theSitePK=40941&piPK=51351143&pagePK=51351001&menuPK=51351213&Type=Overview> (accessed on 6 April 2012).
- 223 World Bank, Madagascar – Emergency Food and Reconstruction Project (O113134), <http://web.worldbank.org/external/projects/main?Projectid=P113134&theSitePK=40941&piPK=73230&pagePK=64283627&menuPK=228424> (accessed on 6 April 2012).
- 224 World Bank, Yemen - Flood Protection and Emergency Reconstruction Project: additional financing (P115178), <http://documents.worldbank.org/curated/en/2009/03/10345651/yemen-flood-protection-emergency-reconstruction-project-additional-financing> (accessed on 6 April 2012).
- 225 Visit by the authors in October 2009. See also IRIN, Somalia: Fartun Abdi Hashi, "I really would like to make a difference in someone's life", 2 November 2011, <http://www.irinnews.org/report.aspx?ReportId=94119> (accessed on 12 February 2012).
- 226 Information provided by IOM representatives in August 2007 in Kabul. See also <http://60years.iom.int/posters/development.html?ml=1> (accessed on 12 February 2012).
- 227 UNDP, *Crisis Prevention and Recovery Report 2008*, p. 75.
- 228 Brookings Institution – University of Bern Project on Internal Displacement, *Manual for Law and Policy Makers*, p. 197.
- 229 *Idem*, p. 197.
- 230 Cernea, *Impoverishment Risks and Reconstruction*, p. 24. In Eastern Sudan, UNHCR found that "[a]ccording to some interviewees, the sluggish nature of eastern Sudan's economy, the high levels of underemployment found in the population at large, as well as the disadvantages experienced by people of Eritrean origin, will prevent a good proportion of the refugees from ex-

- ercising the skills that they have learned" (Ambroso/Crisp/Nivene, *No turning back*, para. 118), confirming Cernea's finding in a protracted refugee situation.
- 231 UN Habitat, *The Provision of Vocational Training for Returning IDPs Affected by Koshi Floods*, http://www.fukuoka.unhabitat.org/projects/nepal/detailo4_en.html (accessed on 12 February 2012).
- 232 Jaspars, *Coping and change in protracted conflict*, p. 2.
- 233 Ambroso/Crisp/Nivene, *No turning back*, para. 113.
- 234 Displaced women in Somaliland put their life back on track with 75US\$, 15 June 2010 <http://www.beta.undp.org/content/undp/en/home/presscenter/Articles/2010/06/15/displaced-women-in-somaliland-put-their-life-back-on-track-with-75us.html> (accessed on 24 February 2012).
- 235 Lopes, Ibere. 2009. "Land and Displacement in Timor-Leste", *Humanitarian Exchange Magazine* 43: pp. 12–14.
- 236 Idem, p. 14; World Bank, *World Development Report 2011*, p. 162.
- 237 Jeff Crisp/Andreas Graf/Vicky Tennant, "Banking on solutions, A real-time evaluation of UNHCR's shelter grant programme for returning displaced people in northern Sri Lanka", UNHCR, March 2010, p. 27.
- 238 Concept Note, Transitional Solutions Initiative, UNDP and UNHCR in collaboration with the World Bank, October 2010, p. 1, available at <http://www.unhcr.org/4e27e2fo6.html> (accessed on 8 February 2012).
- 239 Idem, p. 6, para. 21.
- 240 Cernea, *Impoverishment Risks and Reconstruction*, p. 27. See also Green, *Food Security in Refuge and Return*, pp. 253 – 290.
- 241 Information provided by IOM representatives in August 2007 in Kabul. See also <http://60years.iom.int/posters/development.html?ml=1> (accessed on 12 February 2012).
- 242 Brookings Institution – University of Bern Project on Internal Displacement, *Manual for Law and Policy Makers*, p. 115. See also Gobena, *The Rights to Food and Water*, pp. 140 – 156.
- 243 IDA at Work: Sri Lanka – Restoring Livelihoods in Conflict Zones, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:21345456~menuPK:4754051~pagePK:51236175~piPK:437394~theSitePK:73154,00.html> (accessed on 8 March 2012).
- 244 UNDP, *Crisis Prevention and Recovery Report 2008*, p. 79 (footnotes omitted).
- 245 Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Protection of Internally Displaced Persons in Situations of Natural Disasters, UN Doc. A/HRC/10/13/Add.1, 5 March 2009, para. 52.
- 246 Brookings Institution – University of Bern Project on Internal Displacement, *Protection of Internally Displaced Persons in Situations of Natural Disasters*, p. 24.
- 247 Brookings Institution – University of Bern Project on Internal Displacement, *Manual for Law and Policy Makers*, p. 71. See also Williams, *Property*, pp. 363 – 432.
- 248 Supra, section IV.1.
- 249 E.g., prostitution or child labor. See, e.g., Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Visit to Iraq, UN Doc. A/HRC/16/43/Add.1, 16 February 2011, para. 50.
- 250 The Great Lakes Protocol on the Property Rights of Returning Persons of 30 November 2006 aims, according to its Article 2, at establishing legal principles pertaining to: (i) the recovery of property left behind by refugees and IDPs in areas of return "with the assistance of the local traditional and administrative authorities"; (ii) the resolution of "disputes arising from the recovery of property previously occupied or owned by internally displaced persons and refugees in the Great Lakes Region"; (iii) "special protection for the property of returning women, children, and communities with special attachment to land"; and (iv) "legal remedies for the loss or destruction of the property of internally displaced persons and refugees, and persons resettled or relocated elsewhere due to the construction of large scale development projects". For this purpose, the protocol sets out a series of general principles, including on the protection of property of IDPs (Art. 3), addresses the recovery and restoration of property left behind by IDPs (Art. 4), highlights the protection of property of returning spouses, children and orphans, and returning communities (Arts. 5, 6 and 7), and obliges states to compensate "the loss of the property of internally displaced persons and refugees in situations where they are directly responsible for such loss" as well as "to establish a framework for enabling the compensation" in situations where they "bear no direct responsibility for such loss" (Art. 8).
- 251 Coletta, *The Search for Durable Solutions*, para. 26.
- 252 During the wars in the Balkans in the 1990s, IDPs and refugees of Serb and Croatian origin fleeing areas where they were a minority to areas controlled by their own community often swapped houses and apartments temporarily or permanently.
- 253 Background Document for the Workshop on the Protection of Land Rights and Patrimony of Internally Displaced Persons – Building on the Colombian Experience, Project on Protection of Land and Patrimony of Internally Displaced Persons, Bogota, July 2010, pp. 14 and 15 (http://www.accionsocial.gov.co/documentos/Tierras_Doc/Workshop%20On%20The%20Protection%20Of%20Land%20Rights%20And%20Patrimony.pdf, accessed on 24 February 2012).
- 254 Idem, p. 23.
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- 257 World Bank, Social Environment and Rural Development Unit, Sustainable Development Department, East Asia and Pacific Region, Implementation Completion and Results Report, Reconstruction of Aceh Land Administration System (TF-055353), 24 May 2010, p. 5, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/24/000356161_20100824005719/Rendered/PDF/ICR13060P095881Officialouseonly191.pdf (accessed on 6 April 2012).
- 258 Idem, pp. 5 and 6.
- 259 Idem, p. 6.
- 260 Idem, p. 80.
- 261 Art. 11(4), Kampala Convention.
- 262 Carfield, *Land Justice in Uganda*, p. 128.
- 263 Idem, p. 133.
- 264 New Horizons, UNDP Turkey Monthly Newsletter, Issue 10, October 2006, New Hope for Internally Displaced, October 2006, <http://www.undp.org.tr/GoZlem2.aspx?WebSayfaNo=647> (accessed on 24 February 2012).
- 265 UN-HABITAT, *Bossaso – First Steps Towards Strategic Urban Planning*, Nairobi, 2009, p. 40.
- 266 Idem, p. 40.
- 267 UN-HABITAT, Baghdad Settlement Initiative, <http://e-roster.unhabitat.org/vacancy.aspx?id=254> (accessed on 25 February 2012).
- 268 Idem.
- 269 On the role of local authorities to assist IDPs outside camps see Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, UN Doc A/HRC/19/54, 26 December 2011, paras. 45 – 48.
- 270 UNDP, *Local Government in Post-Conflict Situations*, p. 14.
- 271 See Art. 3 (2) (b) Kampala Convention and Art. 3 (5) and 6 (4) (c) Great Lakes IDP Protocol, calling for the designation of a central authority or body in charge of coordinating activities addressing internal displacement.
- 272 Emphasis added.
- 273 Uganda, The National Policy for Internally Displaced Persons, August 2004, Section 2.4 “Administration at District Level”.
- 274 The Brookings Institution – University of Bern Project on Internal Displacement, *Protecting the Displaced in Colombia; Ibáñez and Velásquez, Public Policies to Assist Internally Displaced Persons*; IDMC, *Only Peace Can Restore the Confidence*, pp. 17 – 20.
- 275 Based on discussions with local authorities in Bosnia and Herzegovina, Colombia, Serbia, Somalia and Uganda in the course of visits and missions as Representative of the Secretary-General on the human rights of internally displaced persons.
- 276 In Uganda, local authorities complained at a workshop that, at the district level, authorities had no operational budgets to deal with displacement issues. Furthermore, “there had been little guidance, which left district officials uncertain as to how to create or manage” the money that was made available such as a fund. “Participants therefore recommended that a method of funding the [district authorities] be devised that was flexible and would allow for the timely release of conditional grants.” (The Brookings Institution-University of Bern Project on Internal Displacement, *Workshop on the Implementation of Uganda’s National Policy*, p. 14).
- 277 World Bank, Angola - Post Conflict Social Reconstruction Project (P045644), <http://web.worldbank.org/external/projects/main?Projectid=P045644&theSitePK=40941&piPK=64302789&pagePK=64330676&menuPK=64282137&Type=Implementation> (accessed on 6 April 2012).
- 278 UN-HABITAT, pp. 14 and 15.
- 279 On the Protocol see IDMC, *The Great Lakes Pact and the Rights of Displaced People*.
- 280 Arts. 2 (1) and (3) and 6 (3) and (4), IDP Protocol.
- 281 Art. 3, IDP Protocol.
- 282 Art. 4, IDP Protocol.
- 283 Art. 4 (1) (e), IDP Protocol.
- 284 This is reflected in Arts. 3 (5) - (8) and (10) of the IDP Protocol.
- 285 The Great Lakes Protocol contains the same IDP notion as the Guiding Principles in Art. 1 (4). Art. 1 (5) explicitly mentions that development projects are also a cause of displacement, something that is only implicit in the Guiding Principles. An explicit reference to natural disasters as a cause of displacement is made in Art. 3 (2) of the IDP Protocol. Art. 6 (4) (a) requires states to define IDPs in accordance with the Guiding Principles.
- 286 Art. 5, IDP Protocol.
- 287 The Property Protocol contains in Art. 1 (3) and (4) the same IDP definitions as are prescribed in the IDP Protocol and the Guiding Principles. It also defines the term “returnees” in Art. 1 (8) as IDPs who return to their original place of residence. Arts 2 (5) and 3 (1) of the Property Protocol indicate that persons displaced by development projects are included in its protection ambit.
- 288 The definition of such communities is contained in Art. 1 (2) of the Property Protocol. The objectives set out in Art. 2 (4) include the provision of special protection for the property of such communities as well as of women and children. Art. 5 relating to spouses, Art. 6 relating to children and Art. 7 relating to communities spell out in greater detail what such protection entails.
- 289 Art. 3 (1) (a), Property Protocol. Art. 5 (3) enshrines women’s right to own property. Women’s legal capacity to own land and property in their own right without discrimination must be given legal effect. The protocol upholds children’s right to inherit property in Art. 6, which requires that legal arrangements be

- made for the holding of such property in trust until children attain legal capacity and that children should be guaranteed access to and use of their property.
- 290 Art. 3 (2,) Property Protocol.
- 291 Art. 3 (3) of the Property Protocol with an explicit reference to the UN Principles on Housing and Property Restitution.
- 292 Art. 4 (1) and (2) in conjunction with Art. 8 of the Property Protocol.
- 293 Art. 4 (3), Property Protocol.
- 294 Arts. 4 (5) and (6), Property Protocol.
- 295 Arts. 7 and 8 (3), Property Protocol.
- 296 As provided for by Art. 20 of the Great Lakes Pact.
- 297 African Commission on Human and Peoples' Rights, Case 276/2003, 4 February 2010, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*.
- 298 *Idem*, paras. 155 – 162.
- 299 *Idem*, para. 277.
- 300 *Idem*, paras. 282 and 292.
- 301 *Idem*, paras. 281 and 282.
- 302 *Idem*, paras. 282 and 289.
- 303 *Idem*, paras. 290-293.
- 304 *Idem*, para. 283.
- 305 *Idem*, para. 294.
- 306 *Idem*, paras. 295-297.
- 307 Uganda, National Policy for Internally Displaced Persons 2004, p. v.
- 308 *Idem*, Policy Goal, p.1.
- 309 *Idem*, Policy Objectives, p. 1.
- 310 *Idem*, Guiding Principles, p. 2.
- 311 *Idem*, Chapter Two, pp. 3-18.
- 312 The Department of Disaster Preparedness and Refugees, *idem*, pp.3-5.
- 313 The District Disaster Management Committee, *idem*, pp. 11-16.
- 314 The Sub-County Disaster Management Committee, *idem*, pp. 16-18.
- 315 *Idem*, Chapter Four, pp. 33-37.
- 316 *Idem*, p. 21, sub-section 2.1.
- 317 *Idem*, pp. 24 and 25.
- 318 Memorandum by the Representative of the UN Secretary-General on the human rights of internally displaced persons on Uganda, 2009, p. 5, paras. 22-24 (on file with the authors).
- 319 Uganda, National Policy for Internally Displaced Persons, 2004, pp. 26 and 27.
- 320 *Idem*, p. 31.
- 321 *Idem*, pp. 31 and 32.
- 322 *Idem*, pp. 28-31.
- 323 *Idem*, p. 32.
- 324 *Idem*, pp. 11 and 16.
- 325 *Idem*, pp. 13 and 18.
- 326 *Idem*, pp.14 and 32.
- 327 See Brookings-Bern Project on Internal Displacement. Workshop on the Implementation of Uganda's National Policy for Internally Displaced Persons, 3-4 July 2008, available at http://www.brookings.edu/events/2006/0704_uganda.aspx (accessed on 8 March 2012).
- 328 Memorandum by the Representative of the UN Secretary-General on the human rights of internally displaced persons on Uganda, 2009, p. 2, para. 8 (on file with the authors).
- 329 Memorandum by the Representative of the UN Secretary-General on the human rights of internally displaced persons on Uganda, 2009, p. 8, paras. 39 and 40 (on file with the authors).
- 330 Memorandum by the Representative of the UN Secretary-General on the human rights of internally displaced persons on Uganda, 2009, p. 10, para. 44 (on file with the authors).
- 331 Unlike in Uganda, decentralization of institutions and devolution of powers and funds has yet to be completed in Kenya. The new Constitution adopted in a popular referendum in 2010 introduced such a decentralized system and its effective implementation and functioning is still at an early stage.
- 332 National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, 2012.
- 333 Angola, Norms on the Resettlement of Internally Displaced Populations, Council of Ministers Decree Number 1/101, 5 January 2001. Decree Number 79/02 of 6 December 2002 approves standard operational procedures to implement the norms on resettlement.
- 334 Strategic Framework for Peacebuilding in Burundi, UN Doc. PBC/1/BDI/4, 30 July 2007, Annex. No mention is made of displacement in the Sierra Leone Peacebuilding Cooperation Framework, 3 December 2007, UN Doc. PBC/2/SLE/1, 3 December 2007, or the Strategic Framework for Peacebuilding in Guinea-Bissau, 31 July 2008, UN Doc. PBC/3/GNB/3, 2 October 2008.
- 335 Strategic Framework for Peacebuilding in the Central African Republic 2009-2011, UN Doc. PBC/3/CAF/7, 9 June 2009.
- 336 *Idem*, para. 30.
- 337 *Idem*, p. 15, points 4 ad 5.
- 338 *Idem*, para. 35 plus specific measures listed on pp. 20 – 30.
- 339 *Idem* pp. 28 and 29.
- 340 In international law, the signing of a convention reflects an intention to ratify it at a later stage and thus to accept its legally binding force.
- 341 Besides the countries on this list, Gabon, Gambia, Guinea-Bissau, Sierra Leone, Togo and Zambia have also ratified the Kampala Convention, although they appear to no longer have any or to have only relatively few IDPs displaced by violence.
- 342 Figures drawn from IDMC, *Global Overview of Trends and Developments in 2011*.

The Internal Displacement Monitoring Centre

The Internal Displacement Monitoring Centre (IDMC) was established by the Norwegian Refugee Council in 1998, on the request of the Inter-Agency Standing Committee to set up a global database on internal displacement. IDMC remains the leading source of information and analysis on internal displacement caused by armed conflict, generalised violence and violations of human rights worldwide. Since 2009, IDMC has also monitored displacement due to disasters associated with natural hazards.

IDMC aims to support better international and national responses to situations of internal displacement and respect for the rights of internally displaced people (IDPs), many of whom are among the world's most vulnerable people. It also aims to promote durable solutions for IDPs, through return, local integration or settlement elsewhere in the country.

IDMC's main activities include:

- Monitoring and reporting on internal displacement;
- Researching, analysing and advocating for the rights of IDPs;
- Providing training on the protection of IDPs;
- Contributing to the development of guides and standards on protecting and assisting IDPs.

For more information, visit the Internal Displacement Monitoring Centre website at:

www.internal-displacement.org

www.internal-displacement.org/kampala-convention

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