

A research paper submitted in partial fulfillment of the requirements
of the degree Masters of Laws (LLM) at the Faculty of Law,
University of the Western Cape

**THE PLIGHT OF INTERNALLY DISPLACED PERSONS
(IDPs) DURING ARMED CONFLICT: THE CASE OF
SUDAN AND SOMALIA**



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At the Faculty of Law, University of the Western Cape

2007

ABBREVIATIONS

ACoHPR - African Commission on Human and Peoples' Rights

ACHPR - African Charter on Human and Peoples' Right

AHRLR - African Human Right Law Reports

ARPCT - Alliance for the Restoration of Peace and Counter Terrorism

CPA - Comprehensive Peace Agreement

GC - Geneva Convention

GNU - Government of National Unity

GOSS - Government of Southern Sudan

ICRC - International Committee of the Red Cross

ICC - International Criminal Court

ICU - Islamic Court Union

IDPs- Internally Displaced Persons

IGAD - Inter-Governmental Authority for Development

IHL - International Humanitarian Law

JEM - Justice Equality Movement

NDA - National Democratic Alliance

NGOs - Non-Governmental Organizations

NIF - National Islamic Front

OLS - Operation Lifeline Sudan

Protocol I and II - Additional protocol I and II of June 1977

RCMs - Red Cross Messages

SAF - Sudanese Armed Forces



SPLA - Sudanese People Liberation Army

TD - Turku Declaration

TFG - Transitional Federal Government

UN - United Nation

UN-OCHA - United Nation Office for Coordination of Humanitarian Affairs

UNCHR - United Nation High Commission for Refugees

UNCU - United Nation Coordination Unit

USCR - United States Committee for Refugee

WFP - World Food Program

WHO - World Health Organization



KEYWORDS

1. Armed conflict
2. Internally displaced persons
3. Plight
4. Women and children
5. Africa
6. Sudan
7. Somalia
8. Causes and consequences
9. Protection mechanisms
10. Challenges

DECLARATION

I declare that “*The plight of internally displaced persons (IDPs) during armed conflict: The case of Sudan and Somalia*” is my original work, that it has never been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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Date: May 14, 2007

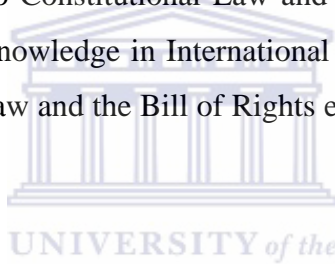
Signed _____



ACKNOWLEDGMENTS

I am greatly indebted to a number of people who have played an important role, both directly and indirectly, in the realization of this research paper. First and foremost, I wish to express my sincere gratitude to my supervisor, Prof. Letecia van der Poll, for her motherly and tireless supervision and guidance that was indeed valuable. Without her encouragement and recommendations, this research paper would not have been completed.

I am equally thankful to my entire lecturers at the Faculty of Law, University of Western Cape for offering me the opportunity to gain further knowledge into South African Law and International Law. Special thanks in this regard goes to; Prof. Nico Steyler, who gave me an inspirational insight into Constitutional Law and the Bill of Rights, Mr. Edward John Hunt, who broaden my knowledge in International Trade and Investment Law and to all my lecturers of Private Law and the Bill of Rights especially the course coordinator Prof. Julia Sloth-Nielsen.



The staff at the Community Law Center has also been supportive in providing me with information, and materials I needed for this research paper, and for this I am grateful. In particular, I am thankful to Jill Claasen for providing me with books and articles that were relevant to my research topic and to Trudi Fortuin for her continues friendly smiles each time I come to the Community Law Center.

Finally, I would like to thank my parents, Mr. Pascal Keyanti and Mrs. Helen Sanda for giving me this unique opportunity to study in such a prestigious institution, and to Mr. E. Chambi and his wife C. Chambi, to my family, V. Chambi, K. Chambi, W. Kari, Bomboy, J. Yelang, A. Sanda, J. Sanda, and not forgetting special friends, Fumane, M. Atabong, E. Peweh, Innocent, E. Nyensa, Chuchill, Adul, Tony, M. Paul, Vuyolwethu and Rosewita. Thank you all for your support and God bless you.

DEDICATION

To my parents for your love and support towards me and the family

To Mr. and Mrs. Keeble for their moral and financial support

To my younger ones back home

Especially Bindo Daisy Keyanti, Franca Keyanti and Joyce Sanda

To all Refugees and Internally Displaced Persons allover the world

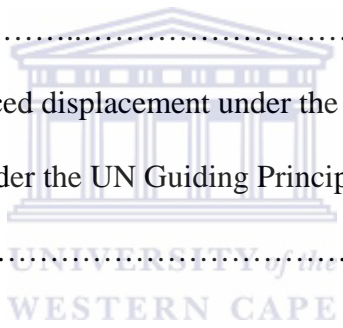


TABLE OF CONTENTS

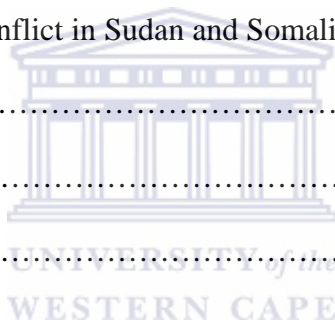
ABBREVIATIONS.....	i
KEYWORDS.....	ii
DECLARATION.....	iii
ACKNOWLEDGEMENTS.....	iv
DEDICATION.....	v
TABLE OF CONTENTS.....	vi
ABSTRACT.....	xi
CHAPTER ONE.....	1
1. Breakdown of Chapters.....	1
2. Brief Background to Study.....	1
3. Research Question.....	3
4. Research Methodology.....	3
CHAPTER TWO.....	4
Factors leading to increased numbers of IDPs in Sudan and Somalia.....	4
0.1. Introduction.....	4
1. Internal factors leading to increased numbers of IDPs in Sudan and Somalia.....	5
1.1. Political, economic and socio-cultural factors.....	5
1.2. Breakdown of administrative and judicial institutions.....	10
1.3. Religious, regional, ethnic and clanism.....	11
1.4. The war on terror.....	12

2. External factors leading to increased numbers of IDPs in Sudan and Somalia.....	13
2.1. Foreign support to militias.....	13
2.2. Inadequacy of international response.....	14
CHAPTER THREE.....	16
Institutional and legal frameworks for the Protection of IDPs in Sudan and.....	16
Somalia.....	16
0.1. Introduction.....	16
1. Institutional frameworks.....	16
1.1.The ICRC and IDPs.....	16
1.2. The UNCHR and IDPs.....	18
2. Legal frameworks.....	19
2.1. Rules Protecting IDPs under IHL.....	19
2.1.1. Protection of IDPs against forced displacement.....	19
2.1.2. Protection of civilians (IDPs) under IHL once displacement has occurred.....	19
2.2. Protection of IDPs under International Human Right Law.....	20
2.2.1. Protection of IDPs under the Turku Declaration of December 2, 1990.....	20
I- Protection against forced displacement of civilians.....	20
II- Protection of IDPs under the Turku Declaration once displacement has occurred (TD).....	21
2.2.2. Protection of IDPs under the Protocol to the African Charter on Human and Peoples' Right on the Right of Women in Africa (African Women's Protocol) of 2003/2005.....	22

I- Protection of IDPs against forced displacement under the African Women’s Protocol.....	22
II- Protection under the African Women’s Protocol once displacement has occurred.....	22
2.2.3. Protection of IDPs under the African Charter on Human and Peoples’ Right (African Charter) of 1981/1986.....	23
I- Protection against forced displacement under the African Charter.....	23
II- Protection under the African Charter once displacement has occurred.....	23
2.2.4. Protection of IDP under the UN Guiding Principles on Internal Displacement (Guiding Principles).....	24
I- Protection against forced displacement under the UN Guiding Principle.....	24
II- Protection of IDPs under the UN Guiding Principles once displacement has occurred.....	24
CHAPTER FOUR.....	26
Consequences and challenges of armed conflict in Sudan and Somalia.....	26
0.1. Introduction.....	26
1. Consequences of armed conflict in Sudan and Somalia.....	26
1.1. Violation of IHL and International Human Right Law by parties to the conflicts....	26
1.1.1. Forcible transfer of civilian population in violation of Article 17 AP II, Article 11 and 12 of the African Women’s Protocol, Article 12 of African Charter, Article 7 of Turku Declaration, and Principle 6 of the Guiding Principles.....	26



1.1.2. Violation of the right to freedom of religion.....	28
1.1.3. Violation of the provision against starvation of the civilian population under Articles 14 of AP II, Article 3(2)(f) of Turku Declaration, Article 15 of African Charter, and Principle 10(2)(b) of Guiding Principles.....	28
1.1.4. Violation of the provisions against the spread of terror and against the systematic attack of the civilian population under Articles 13 of AP II, Article 6 Turku Declaration, Article 11 of African Women’s Protocol and Principle 10 of the Guiding Principles.....	29
1.1.5. Violation of human rights under International Human Right Law and IHL.....	29
1.2. Consequences of armed conflict in Sudan and Somalia on IDPs.....	31
1.2.1. Sexual violence.....	31
1.2.2. Food and nutrition.....	32
1.2.3. Health and hygiene.....	33
1.2.4. Other consequences.....	34
2. Challenges facing the humanitarian community in Sudan and Somalia.....	35
2.1. Access and security of humanitarian staffs.....	35
2.2. Lack of sufficient protection mechanisms for IDPs.....	36
2.3. No agency with clear mandate on IDPs.....	37
2.4. Insufficiency of resources.....	37
2.5. Lack of effective leadership and coordination.....	38
2.6. Lack of reliable information.....	38



CHAPTER FIVE.....	39
Recommendations and conclusion.....	40
0.1.Introduction.....	40
1. Recommendations.....	40
2. Conclusion.....	42
Bibliography.....	44



ABSTRACT

The plight of internally displaced persons (IDPs) during armed conflict: The case of Sudan and Somalia

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The plight of IDPs in Sudan and Somalia constitutes one of the greatest human tragedy of our time since the end of the Cold War. The concept of IDPs is immense and growing. In this research paper I address the plight of IDPs during armed conflict in Sudan and Somalia. In doing so, I explore into the root causes of the armed conflict in both countries. In addition, I investigate into the existing institutional and legal frameworks for the protection of IDPs during armed conflict and critically highlight some of the weaknesses of these institutions and legal instruments that protect IDPs during armed conflict. I argue that as a consequence of armed conflict in Sudan and Somalia, there has been gross violation of IHL and International Human Right Law by parties to the conflict. Furthermore, I identify some of the challenges that the armed conflicts in Sudan and Somalia has opened up for the humanitarian community. Finally, I examine the impact of armed conflict on IDPs in Sudan and Somalia. By way of conclusion, I propose recommendations and point out some key areas where research is urgently needed to effectively assist and protect IDPs from the effects of hostilities.

May 14, 2007

CHAPTER ONE

1. Breakdown of Chapters

Chapter one of this research paper illustrates briefly the historical evolution of the conflict in Sudan and Somalia. It further discusses the research question, which has encouraged me to undertake this study, and finally it examines the method I will use in the research process. Chapter two explores into the internal and external causes of armed conflict in Sudan and Somalia that has led to huge numbers of internally displaced persons (IDPs). Chapter three explores into the existing institutions that deal with IDPs and the existing legal frameworks that protect IDPs in situations of armed conflict. Chapter four investigates into the consequences of armed conflict and the challenges that the humanitarian communities are facing during the protection of IDPs in Sudan and Somalia. Finally, chapter five concludes and proposes recommendations to guide the humanitarian communities in their efforts to protect and assist with the plight of IDPs in Sudan and Somalia.

2. Brief Background to Study

The notion of IDPs during an armed conflict is relatively of recent origin. In the late 1800s, there was less recognition of IDPs. Issues of internal displacement were considered as matters of sovereignty.¹ The scale of the problem is immense and growing. Most research in this field suggests that the plight of IDPs emerged after the end of the Cold War, which led to the proliferation of internal conflicts.² In the 1970's, there were approximately 5 million IDPs.

¹Cohen and Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, 1998.

²Helle, International review of the Red Cross No. P 695-700, September 1999.

“Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not cross an internationally recognized border.”³

The worst situations of internal displacement in the world are the cases of Sudan and Somalia.⁴ Sudan hosts about 4 million IDPs, being the highest in the world.⁵ Somalia is host to about 3 million IDPs. The root causes of internal displacement in Sudan and Somalia can be traced from history. Since the 1980s, internal turmoil and rivalry amongst clans have left thousands of people homeless. Sudan had two periods of armed conflict from 1955 - 1972 and from 1983 to date. Rebels, militias and government troops alike have caused the displacement in Sudan and Somalia. The war, which originally aimed at overthrowing the former dictators Mohamed said Barre of Somalia and General Numeiry of Sudan, finally turned to a clan-based, religious, ethnic and regional conflict. These periods of armed conflict were characterized by lawlessness leading to gross violation of IHL and human rights.⁶ The recent conflicts in Sudan and Somalia have rendered millions of IDPs homeless, in addition to the recent American air strikes in the name of fighting terrorism. Owing to this background, the people of Sudan and Somalia can be said to be “running away from cold land only to find themselves in frost land.”⁷ As I write both conflicts are ongoing.

³UN Guiding Principles on Internal Displacement, 1998.

⁴Global IDPs Project, February 2004.

⁵USCR, 1999, at 90, and Global IDPs Project, February 2004.

⁶Honne M. V., “Political identities in northern Somalia,” 2006, at 397-398.

⁷Phrase is borrowed from the famous writers- Ngugi and Ngugi, in “I will marry when I want,” explaining how Africans ran from cold land (colonialism) to find themselves in frost land (neo-colonialism).

3. Research Question

This research paper attempts to answer four essential questions, what the causes and consequences of armed conflict are in Sudan and Somalia leading to an increase in the number of IDPs. If these causes and consequences are traced, one will need to consider the available institutional and legal frameworks to safeguard the protection of IDPs during armed conflict. In addition, this research paper will examine the challenges facing the humanitarian communities to respond effectively to the plights of IDPs in Sudan and Somalia and finally, this research paper will conclude and propose recommendations on the methods that can be used to remedy effectively the plights of IDPs in Sudan and Somalia.



4. Research Methodology

In carrying out this research, literature will be obtained from textbooks, journal articles, reports, newspapers, television networks as well as the Internet.

CHAPTER TWO

Factors leading to increased numbers of IDPs in Sudan and Somalia

0.1. Introduction

Sudan and Somalia have been ravaged by long-term internal turmoil and internal armed conflict.⁸ Different reasons account for the constant and persistent armed conflict in Sudan and Somalia, which has led to increased numbers of IDPs. Internal displacement in the Sudan and Somalia is not only caused by armed conflict. Other factors such as natural disasters, nomadic movement in search of grazing land, heavy rain, and rural urban migration in search of jobs has also resulted to internal displacements. This chapter will focus on the causes of armed conflict leading to thousands of IDPs in the Sudan and Somalia. The researcher acknowledges the fact that the factors listed above can cause internal displacement. In the present instance, attention shall strictly be placed on internal displacements caused by armed conflict leading to the huge numbers of IDPs. Armed conflict in Sudan and Somalia is caused either by internal factors,⁹ or by external factors.¹⁰ These factors account for the disregard of International Law and IHL by the warring parties in Sudan and Somalia. To address effectively the needs of IDPs in these two countries, the root causes of the displacement must be traced.¹¹

⁸Conflict not of an international character or otherwise conflict amongst the different fractions or insurgent groups within a state. The conflict may either result from political, ethnic, religious and or economic and socio-cultural grounds. See Sassoli and Bouvier, *How Does Law Protect in War*, at 1814 (*Tadic's* Judgement).

⁹Political, economic, ethnic, religious, clan conflict, socio-cultural factors etc.

¹⁰Foreign support to militias, poor international responds to conflict situation for example the case of the genocide in Rwanda, the international community failed to respond adequately.

¹¹Johnson, *The root causes of Sudan's Civil Wars*, 2003, at 234-238.

1. Internal factors leading to increased numbers of IDPs in Sudan and Somalia

1.1. Political, economic and socio-cultural factors

Politically, Sudan and Somalia has been in a power struggle since independence. Sudan has witnessed two periods of civil war leading to internal displacement.¹² When General Numeiry took over power in 1969,¹³ he introduced the laws of Sharia.¹⁴ He also setup an oil refinery in the north.¹⁵ These factors increased tension in 1983, leading to the second period of internal armed conflict.¹⁶ In 1989, the military staged another *coup* under the leadership of Omar Hassan al-Bashir.¹⁷ His regime faced opposition from the north by NIF¹⁸ and from the south by the SPLA.¹⁹ These divisions in the country intensified internal fighting and displacing several people in Sudan.²⁰ SLA and the Justice and Equality Movement (JEM), in 2003, started attacking government forces and installations in the western region of Sudan. The militants accused the government of President Omar Hassan El-Bashir of neglecting the region and oppressing black Africans in favour of Arabs in the state of Darfur. The government, caught by surprise by the militants' attacks, had very few troops in the region. In response, it mounted a campaign of aerial bombardment in

¹²1955 -1972 and 1983 to date.

¹³He came to power through a staged *coup d'etat* and in 1972, signed the Addis Ababa agreement, which temporarily ended the long period of internal armed conflict.

¹⁴Unjust islamic laws.

¹⁵Suliman M., "Civil War in Sudan: The Impact of Ecological Degradation", Dec. 18, 1994.

¹⁶Ruiz, Hiram A., "The Sudan Cradle of Displacement", in Cohen and Deng eds, *The Forsaken People: Case Studies of Internally Displaced*, 1998, at 140.

¹⁷He is still in command. His coming to power led to the imprisonment and exile of many Sudanese. See also Du Plessis and Gevers, "In to the deep end - The International Criminal Tribunal and Sudan," 2006, *AYIHL*, at 93.

¹⁸ National Islamic Front led by Hassan al Turabi.

¹⁹ Sudanese People Liberation Army led by John Garang.

²⁰Ruiz, *op cit*, note 16, at 140.

support of ground attacks by an Arab militia (the *Janjaweed*)²¹, which it had recruited, from local tribes and the suspected *Al Qaeda*.²² This political struggle inside Sudan left thousands of people homeless and displaced within Sudan.

Somalia on the other hand, entered into the political race in an effort, which started in 1991, to topple the dictatorial regime of Siad Barre.²³ These later turned into political violence, banditry, and lawlessness.²⁴ The political conflict in Somalia can be seen as secessionist among various regions and clans. The period from 1998 – 2006, saw the declaration of a number of autonomous states within Somalia. Only Somaliland sought independence amongst these states.²⁵ Several attempts at reconciliation were made and the TFG was formed in 2004. However, warlords and clan-based violence continued over this period. During the early part of 2006, the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT) was formed by secular Mogadishu-based warlords and opposed the rise of Sharia Law oriented by the Islamic Court Union (ICU), which has been rapidly consolidating power. The US CIA funded the ARPCT, increasing tension in the capital Mogadishu.

At the battle of Mogadishu in June 2006, the ARPCT was defeated and the ICU launched attacks against the TFG, Putland, and Galmudug. This led to Ethiopia's

²¹Du Plessis and Givers describe the *Janjaweed* as “A local Arab colloquialism which, loosely translated means “Devils” on horse back and has been used by locals to describe Arab militiamen. Phrase also used by Security Council in Resolution 1564.

²²CBC, In Depth Sudan, Crisis Zone: Darfur, Dec. 4, 2006.

²³Honne (2006), *op cit*, note 6, at 397-398.

²⁴OCHA, “Internally Displaced Persons: *Combined Report on Somalia*,” August 1, 2002, available at <<http://ochaonline2.un.org>> [Accessed: January 18, 2007].

²⁵Putland 1998, Juba land 1998, Southwest Somalia 1999, and Galmudug 2006.

intervention in support of ARPCT and Eritrea in support of the ICU.²⁶ The ICU was, however, defeated in all major battles and its leaders forced to resign.²⁷ The US intervention in 2007 worsened the situation as many more civilians were killed and some more displaced. This was in an effort to air strike the terrorists within the ICU. This political background paved the way for total insecurity amongst the civilian population, causing them to flee to war free zones within Somalia and some of them frustrated around the Kenyan border, as a result of the Kenyan government refusal to accept refugees.

Economically, the conflict that has displaced millions of Sudanese can be seen as a conflict of who gains control of the natural resources of the south.²⁸ In the 1990s, competition over the natural resources, particularly the Nile waters and the oil region in the south, left untold number of people displaced. Johnson writes that the government of Sudan relies on these natural resources (oil in the south) for development of the country, although it south only benefits the north. High oil revenues caused the government to double the salary of the military and buy weapons that are more sophisticated.²⁹ This resulted to the exploitation, marginalisation and depopulation of the oil rich south.³⁰ Inequality in the distribution of available resources and national projects, and the lack of cooperation has

²⁶Wanjohi Kabukuru, "Oil, not terrorist the reason for US intervention in Somalia," Jan.27, 2007, available at <<http://www.globalpolicy.org/empire/intervention/2007/0122somaliioil>> Also Ignacio Romenet (2007), <<http://www.globalpolicy.org/empire/intervention/2007/0207somalia>> [Accessed: April 2, 2007].

²⁷Wanjohi Kabukuru (2007) *Ibid*, note 26.

²⁸Deegan, "Conflict in Sudan: the Peace Agreement of April 1997", 1997, at 164.

²⁹James P., "To stop Sudan's Brutal Jihad, Support Sudan's Opposition," June 13, 2001.

³⁰Johnson (2003), *op cit*, note 11, at 234-238.

contributed significantly to the present conflict in Darfur.³¹

Somalia has been characterized as one of the poorest nations in the world.³² As a result, people turn to join insurgent groups to protest and fight against injustice. Rebels are regarded as public-spirited heroes fighting against injustice. Their grievances represent the grievances of the suffering masses.³³ Stronger clans in Somalia seized and occupied valuable estates by force.³⁴ The pattern of clan settlements in the cities in Somalia,³⁵ have changed due to heavy infusion of non-resident clans supported by their militias.³⁶ South central Somalia has always been a point of target for the armed rebels. This is because of economic gains they derived from its fertile soil for agriculture, urban real estate and its seaport. Illiterate gunmen saw war, plunder, and extortion as their only livelihood. The collapse of the state and the civil war has led to the destruction of the formal command economy. Subsequently, public regulatory mechanisms and banking facilities are weak or absent. There is little formal access to international markets in Somalia.³⁷ Livestock ban in Somalia has led thousand of nomads to move around hunting jobs and economic opportunities elsewhere. These economic disparities resulted to armed conflict displacing weaker groups, vulnerable groups as well as weaker clans.

³¹University for Peace, "Environmental degradation as a cause of conflict in Darfur, Conference proceedings," Dec. 2004.

³²Somalis live on less than one US dollar a day, per person.

³³Chester A, Crocker, Hampson, and Pamela A., eds, *The Turbulent Peace: The Challenges of Managing International Armed Conflict*, June 13, 2000, at 1-3.

³⁴Estates in Somalia are seen as lucrative source of income hence major clans turn to fight the weak displacing them to uncultivated and invaluable farming areas.

³⁵ Cities such as Mogadishu, Juba valley, Lower Shabelle.

³⁶ ICG African Report No. 59: "Negotiating a Blue print for Peace in Somalia," March 6, 2003.

³⁷Bayne S., "The European Union's political and development response to Somalia." (*ECDPM Discussion Paper 25*). 2001.

The socio-cultural background of Sudan and Somalia can also be said to have played a significant role in the armed conflict and internal displacement in both countries. Sudan is a country with different cultural heritages and social life styles. The north Sudan sees the south as pagans and primitive, and “eligible for salvation through Islam.”³⁸ The domination of the south by the north is a cultural heritage from the British who practice marginalisation of the Dinka who occupied the south.³⁹ The northerners hold the opinion that they were destined to make policy that affects the whole country. Deng submits that, by regarding the south as godless and primitive, was a very ignorant view of the northerners, because they totally misunderstood the cultures of the southerners. The spread of Islam was forced and where there was resistance, the gun was used.⁴⁰ Because of islamisation of the south, southerners who reject north superiority tendencies reacts by way of armed conflict.

In Somalia, the leadership skillfully manipulated and politicized clan identity over two decades of divide-and-rule politics. This left a legacy of deep clan divisions and grievances. Most Somalis are farmers and nomads and have a divided culture based on clans. Somalia, like the Sudan, also practices the Sharia Laws, by which disobedience and resistance is met with punishment through conflict or *jihad*.⁴¹ The weaker clans who refuse to abide by those laws are forced to migrate.⁴² The decline in the levels of education has resulted in the phenomenon of a “lost generation” and

³⁸Deng, *War of Vision: Conflict of Identities in Sudan*, 1995.

³⁹Deng (1995), *Ibid*, note 38, at 136.

⁴⁰Deng, (1995), *Ibid*, note 38 at 136.

⁴¹Jihad is a holy war often launched by Arabs to Islamize a society.

⁴²World Bank, “Conflict in Somalia: Drivers and Dynamics,” January 2005, available at <www.worldbank.org> [Accessed Jan. 28, 2007].

has exacerbated the tendency for young men to join ‘militias’ in order to gain respect and livelihoods in areas where conflicts are most likely to flare up.⁴³

1.2. Breakdown of administrative and judicial institutions

The ouster of the Barre regime in Somalia was followed not by a replaced government but by a prolonged period of violent anarchy and warfare. Somalia descended into clan-based conflict in 1991 and has been without an internationally recognised government and central state authority for 10 years.⁴⁴ Armed conflict raged across southern Somalia through 1991 - 1992, pitting clan-based militias against one another. The wars that began as struggle for control of the government quickly degenerated into predatory looting, banditry, and occupation of valuable real estate by conquering clan militias. Young gunmen fought principally to secure war booty, and were under only the loosest control of militia commanders. Armed clashes in Somalia now are increasingly difficult to distinguish from armed criminality. Many of the worst clashes in recent years began as acts of robbery or murder that produced a counterattack, leading to a cycle of violence between two clans.⁴⁵ Because of this breakdown and lack of central governments, warlords ran many clans, and the period from 1998 - 2006 saw the declaration of autonomous states within Somalia leading to tension and armed conflict. Lawlessness is a characteristic of the Somalis community. Gross violations of national law and international law are the order of the day. Crimes like sexual assault, rape, abuse of children, and banditry are unstoppable.

⁴³Bayne, S. (2001), *op cit*, note 37.

⁴⁴Bayne, S. (2001), *op cit*, note 37.

⁴⁵World Bank (2005), *op cit*, note 42.

Although there exist a central government based in Khartoum, Sudan, the government structures are contributive to the continuous outbreak of hostilities. The fact that, the Khartoum government uses militias, who are either untrained or ill skilled in law, is inefficiency. The conflict in Darfur is a sign of collapse in legal and administrative frameworks. Government and its backed militias and insurgents have caused the plight of IDPs in Sudan.⁴⁶ It will not be a miscalculation to say that the Sudanese government and its *janjaweed* militias encourage ethnic cleansing.⁴⁷ These internal weaknesses caused Sudan to have the highest number of IDPs in the world.⁴⁸

1.3. Religious, regional, ethnic and clanism

Somalia is divided into six major clans,⁴⁹ and other minority groups.⁵⁰ Clanism exists amongst all sectors in Somalia, even amongst the minority and the majority groups. Within the IDPs, one can still find that they practice class stratification, based on sex, race, gender, clan and ability.⁵¹ An example of clan-based conflict in 2004 was between the Marehan and Dir clans in the central Somalian region of Galgudud. In February 2004, clashes broke out at a water point between the small villages of Godshilan and Aboorey. In the ensuing month, the conflict escalated as the two clans mobilized increased military resources against each other. Some sources claimed that relationship between the two clans had begun deteriorating in April 2003, when a Dir

⁴⁶In Darfur, three displacements in 2003, was caused by government troops and government backed militias. See Global IDPs project, Internal Displacement, The Global Trends and Development in 2003, Geneva, Feb. 2004.

⁴⁷Refusal to let in humanitarian relief team, Fuel, depopulation of the south is contrary to the Genocide Convention and hence, can be classified as genocide.

⁴⁸The total number of IDPs in Sudan is up to about 4 million. Global IDPs project Supra.

⁴⁹Dir, Isaq, Darod, Hawige, Digil, and Rahanwein.

⁵⁰The Bantus and Benadines.

⁵¹Abby and Dheeman, "In displaced minorities in Somalia and Somaliland," Oct 2005.

clansman allegedly killed a Marehan clan elder.⁵²

In Sudan, regionalism and religion coupled with ethnicity play a vital role in provoking armed conflict. There exists a separation between Muslim and Christians on the one hand, south, and north on the other hand. The north is always struggling to gain control over the oil rich south. Also, the constant struggle to islamise the south has always met with resistance from the Christian south.⁵³ The conflict in Sudan displaced thousands of Africans. Even within the Arabs, those who refused to abide to Islam were either regarded as “apostates” and ready to be hang or killed.⁵⁴ Class stratification plays a vital role in the history of armed conflict in Sudan and Somalia.



1.4. The war on terror

Since the bombing of Pentagon and the World Trade Center in 2001,⁵⁵ and subsequently US embassies abroad, the US have embarked upon “Operation fighting *Al Qaeda*” around the world. It started in Afghanistan and Iraq then to Africa. Most insurgents or political leaders have used the concept of terrorism to spread terror amongst their population. This has become a lucrative way of extracting money from US CIA to cop terrorism. In Somalia for instance, the ARCPT, which has as one of its objective to fight terrorism, receive funding from the US CIA. This has contributed to the source of power to prolong the conflict, thereby also prolonging

⁵²Joakim Kreutz, “Collective Violence in 2004: Focus on Human Insecurity on the Horn of Africa” 2004.

⁵³Ruiz (1998), *op cit*, note 16.

⁵⁴James P. “To stop Sudan’s brutal Jihad, support Sudan’s opposition.” June 13, 2001.

⁵⁵By the suspected Al Qaeda, led by Osman Bin laden.

the plight of the IDPs. In January 2007, the US officially entered the conflict in Somalia. This was part of an effort to “catch or kill” *Al Qaeda* operatives embedded within the ICU forces in Somalia.⁵⁶ This move caused lives amongst civilians, rendered some more people homeless, and displaced within Somalia.⁵⁷ In Sudan, the government is rather harboring terrorist than fighting them. The US is still planning a strategy for the terrorist in Sudan, and the Sudan government itself as a terrorist.

2. External factors leading to increased numbers of IDPs in Sudan and Somalia

2.1. Foreign support to militias

Foreign support to militias and other insurgent groups in Somalia help to strengthen their resistance.⁵⁸ The interim coalition government, received pledges of support from Ethiopia and there are independent reports of Ethiopian troops in Somalia.⁵⁹ The Union of Islamic Court (UIC) meanwhile urges a “holy war” against Ethiopia, and may be receiving weapons from that country’s longtime rival, Eritrea.⁶⁰ The US by also funding the ARCPT to fight the the terrorist within the ICU, is only helping to prolong fighting which at the end increases the plight of IDPs. Constructive support from regional neighbours could end conflict in Somalia, while interference for selfish purposes will only lead to more violence and instability in the region.⁶¹

⁵⁶The US succeeded in air striking the ICU jet killing some of the suspected *Al Qaeda*.

⁵⁷UN-OCHA, “US Intervention: Battle of Ras Kamboni,” Jan. 2007.

⁵⁸Steve, “Rapid recon: Somalia’s ICU: The new Taliban,” 2007, Threat Watch Org, Available at <<http://threatswatch.org/cms/refer.cgi/2404/>> [Accessed: April 23, 2007].

⁵⁹Independent reports from the BBC that Ethiopian troops and Somali Government troops advance into the Capital Mogadishu to fight ICU, available at <<http://news.bbc.co.uk/2/hi/africa/6211573.stm>> [Accessed: March 27, 2007].

⁶⁰ Steve (2007), *op cit*, note 58.

⁶¹Hassan H., Somalia for the Somalis: “An idea in peril: The intervention of Ethiopia and Eritrea marks a perilous new phase in Somalia’s civil war,” 2006, at 1-2.

Johnson⁶² argues that the involvement of the oil companies and international relief agencies showed that Sudan's conflict has been international as well. The Sudanese government was supported by the United States as a Cold War ally against Mengistu's Ethiopia⁶³ in the 1970s. With Chevron entering Sudan for oil in the 1980s, and the IMF imposing a structural adjustment, the US became even more interested. The government used the funds and military supply against the SPLA. With the end of the Cold War and the fall of the Mengistu regime in Ethiopia, the US lost interest in Sudan as an ally. Museveni's Uganda gave SPLA some assistance. The US 'intervened' in Sudan in August 1998, launching cruise missiles and destroying the al-Shifa pharmaceutical plant, the country's only plant for veterinary medicines.⁶⁴ The Sudanese government is aided by Osman bin Laden *Al Qaeda* embedded within the *janjaweed*. Iran is one of the sources of power to the Sudanese government. Osman bin Laden had lived in Sudan from 1991 - 1996. His networks inside Sudan were exempted from paying taxes and immune from prosecution.⁶⁵ Support from these networks is a source of power to the Khartoum government. Consequently, civilians are forcefully displaced and killed.

2.2. Inadequacy of the international response

The international community has been reluctant to fund the governments of Sudan and Somalia to protect and assist civilians because it is calculated that one of the reasons for the persistence of armed conflicts was the dictatorial and aggressive

⁶²Johnson (2003), *op cit*, note 11, at 234-238.

⁶³Ethiopia was a friend to the USSR at that time.

⁶⁴Justin P., "The Forgotten Conflict in Sudan," March 14, 2004, a Review of Douglas H Johnson's book, at 1-3.

⁶⁵James P. (2001), *op cit* note 54.

regime in both countries. Security of staff from various respond teams has always been an issue. In 1995 the UN withdrew from Somalia because of the death toll of UN peacekeepers. This led to humiliation and ineffectiveness of UN troops.⁶⁶ In addition, the issue of sovereignty is a draw back to effective response. For these reasons coupled with many others, the conflict had to be left in the hands of the government to manage leading to more serious violations of human rights and IHL.



⁶⁶ Goulding, "The United Nation and conflict in Africa since the Cold War," April 1999, at 163.

CHAPTER THREE

Institutional and legal frameworks for the protection of IDPs in Sudan and Somalia

0.1.Introduction

This chapter explores into the various institutions and rules that are available to protect and assist IDPs. Emphasis in this chapter shall be placed on the mandate of the ICRC on IDPs and its role in the crisis in Sudan and Somalia, as well as on the mandate of the UNCHR and its role on the current crisis in Sudan and Somalia. Other agencies and variety of NGOs have also played a role on IDPs but emphasis will be laid on the ICRC and UNCHR. The legal frameworks are the binding laws and “Soft Laws”⁶⁷ that protect IDPs under IHL and International Human Rights Law.

1. Institutional frameworks

1.1. The ICRC and IDPs

Generally, the ICRC protects and assists IDPs as civilians. It is the policy of the ICRC not to categorise the civilian population with the view to giving preferential treatment. However, special protection is accorded to vulnerable groups.⁶⁸ During an out break of armed conflict, the ICRC is the first humanitarian organization to gain access to the field and rebel held areas, because of its principle of confidentiality, neutrality and impartiality. Its role during armed conflict includes; promotion and respect of IHL, evacuation of civilians, provision of relief, protection of cultural property, restoration of family links etc. The ICRC cannot publicly

⁶⁷Soft law refers to unbinding laws or non-treaty law.

⁶⁸Women and children.

denounce human right violations because it will go against its principles. The ICRC works on IDPs is based on binding treaties on like other agencies that rely on the UN Guiding Principles on Internal Displacement.

As regards to the role-played in Sudan and Somalia, in Sudan, two high-ranking officers of the Sudanese Defence Forces attended a conference on the implementation of IHL for heads of military training at the ICRC headquarters in Geneva. The ICRC organized a seminar on IHL for 28 officers of the Sudanese Defence Force in Khartoum. ICRC was granted access to all detainees held by the SPLA in Yirol. Detainees have received food and non-food assistance and have all been given the opportunity to write Red Cross messages (RCMs) to their families. Medical evacuations to the ICRC's 560-bed Lopiding surgical hospital in Lokichokio continue.⁶⁹ In addition, 120,000 IDPs receive food, water and health care. The ICRC plans to seek an additional \$30million from donors after taking over a camp of 120,000 displaced people near Gereida. This followed the evacuation of other agencies last December after an attack on a house used by ICRC station.⁷⁰

In Somalia, ICRC supported Somalia north and south since the out break of hostilities, with 23 running clinics, and 3 hospitals in Mogadishu in addition to 16.5 tones of surgical supplies, first aid kits and medicines. About 850 civilians have been treated in these facilities.⁷¹ The ICRC had called on parties including the US to

⁶⁹University of Pennsylvania – African Study Center, Sudan: Update No.98/05 on ICRC activities in Sudan 1998. <<http://www.africa.upenn.edu/AS.html>> [Accessed on February 20, 2007].

⁷⁰Gulf Time, “ICRC sees gross violations in Darfur,” 2007.

⁷¹ ICRC, “Somalia: ICRC Call for respect of IHL,” 1999-2007.

respect IHL and protect civilians in Somalia.⁷²

1.2 The UNCHR and IDPs

Generally, the office of the UNHCR does not have competence on issues of IDPs. If it has to act on their behalf, it must consult with the UN Secretary General.⁷³ One of the reasons is that IDPs have no link with its mandate.⁷⁴ Although it does not have such mandate, to reduce the amount of refugees it must first address the IDPs.

In Somalia, UNHCR has joined forces with UN-Habitat, UNICEF and the Danish Refugee Council to move 120 families to one of the sites, helping to decongest the settlements of IDPs in Basaso Somalia.⁷⁵ The UN refugee agency in January 2007 began airlifting supplies for IDPs to Somalia. Emergency teams were dispatched to verify reports of new displacement in northeast Somalia.⁷⁶

The UNCHR wants to raise US\$56.1 million for its operations to help tens of thousands of southern Sudanese refugees and IDPs to return home and reintegrate in their communities, and to provide 25,000 IDPs and refugees returnees with reintegration packages. Finally, to create health clinics, schools, improve shelter and sanitation.⁷⁷

⁷²Reuters, ICRC urges all sides in Somalia to Spare Civilians. Jan 11, 2007.

⁷³UNCHR, IDPs: The Rules of the UNCHR, EC/50/SC/INF.2. July 20, 2000, at 1.

⁷⁴Phoung (2004), *The International Protection of Internally Displaced Persons*, p.84.

⁷⁵Greyson, M., "UNCHR seeks to ease harsh conditions of IDPs in Somalia Puntland," March 9, 2007, at 1.

⁷⁶Reuters, "UNHCR sends supplies, emergency teams to Somalia and Ethiopia". January 12, 2007.

⁷⁷Reuters, "UNHCR, seeks US\$56.1 million for repatriation of southern Sudanese," March 6, 2007.

Several other roles have been played by different agencies on behalf of IDPs in Sudan and Somalia. This ranges from assistance (WFP), emergency relief (UNICEF, WHO, IOM, UNDP, IASC, OCHA, etc.), to Protection (AU Peacekeeping, UN peace Keeping etc.), I will however, limit this study to the role played by the ICRC and the UNHCR.

2. Legal frameworks

2.1. Rules protecting IDPs under IHL

2.1.1. Protection of IDPs against forced displacement

Common Article 3 of the Geneva Conventions (GCs) does not make provision for the protection of civilians⁷⁸ against displacement in non-international armed conflict. However, one can draw by analogy that article 49 of GC IV applies. The loophole in Article 3 was filled by AP II to the GCs. Article 17 of AP II protect civilians against forced displacement. The only acceptable instance where displacement is allowed by this Protocol⁷⁹ is when the security of civilians is at stake. Displacement must be carried out under good conditions of hygiene, shelter, health and nutrition. Thus, IHL generally protect civilians against forced displacement.

2.1.2. Protection of civilians (IDPs) under IHL once displacement has occurred

Once displacement has occurred, IDPs as civilians enjoy protection under common Article 3(1) of the GCs, and under Articles 4, 5, 7, 8, 13, 14, and 16 of AP II. Article

⁷⁸Civilians in IHL include the IDPs, wounded sick and shipwreck, those who have laid down their arms, disabled and the elderly etc. IHL provide protection to the entire category listed above with no adverse distinction. Also included in these categories are those interned by rebels or parties to the conflict.

⁷⁹AP II, article 17 of June 8, 1977.

3 protects IDPs as civilians against murder, mutilation, cruel treatment and torture; taking of hostages etc.⁸⁰ Article 4 of AP II provides similar protection with some additional sphere. It further protects civilians (IDPs inclusive) against violence to health, physical integrity, corporal punishment, acts of terrorism, rape, enforced prostitution, any form of indecent assault, slavery and slave trade, pillage and threat to commit any of the forgoing acts. Article 4(3)(c) specially protects against the recruitment of children below the age of 15 to take part in hostilities. Article 5(d) of AP II allows for freedom of religion. Article 13(1) protects civilians against the effects of hostilities while Article 13(2) prohibits parties to a conflict to spread terror amongst the civilian population. Article 14 AP II prohibits the use of starvation as a means and method of warfare. Article 16 AP II protects cultural objects of civilians and their places of worship. Once displacement has occurred, Article 18 of AP II provides that “relief societies within the territory may provide their services to civilians. Those civilians suffering undue hardship owing to lack of supplies...may receive relief action from humanitarian organizations of impartial nature, subject to consent of the high contracting party.” This means that the rights of IDPs as part of the civilian population are protected under the Articles cited above.

2.2. Protection of IDPs under International Human Rights Law

2.2.1. Protection of IDPs under the Turku Declaration of December 2, 1990

I- Protection against forced displacement of civilians

The Turku Declaration (an unbinding instrument) on minimum humanitarian

⁸⁰Common Article 3 of the GCs of August 12, 1949.

standards to be observed in armed conflict was adopted in Turku, Finland.⁸¹ Article 7 of the Turku Declaration addresses the displacement of persons during armed conflict. It prohibits forced displacement of civilians who do not or are no longer taking part in hostilities.⁸²

II- Protection of IDPs under the Turku Declaration once displacement has occurred

Once displacement has occurred, all human rights that civilians enjoy are assumed by IDPs. Article 3 of the Turku Declaration (TD) lists acts prohibited during armed conflict. These acts listed in Article 3(a)-(g), are similar to those listed in Common Article 3(1) of the GCs and Article 4 of AP II to the GCs. Articles 5 and 6 of the TD protect IDPs against attacks or use of force and against the spread of terror amongst people not taking part in hostilities. Article 8 of TD recognises the right to life, prohibits genocide, and the death penalty especially on women with children under the age of 18. Article 9 lists various judicial guarantees for civilian's accused of crimes during armed conflict. Article 10 provides protection to minor children in situation of armed conflict. Article 12 and 13 of TD protect the wounded and sick against effects of hostilities. Article 15 provides that states must grant access to humanitarian organisation to carry out their humanitarian activities.⁸³ This instrument if observed will go along way to enhance and protect the right and plight of IDPs.

⁸¹UN Doc E/CN.4/Sub.2, 1991/55 (December 2, 1990).

⁸²Including the wounded sick and shipwrecked.

⁸³Provided they fulfill the requirements of confidentiality, neutrality and impartiality.

2.2.2. Protection of IDPs under the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa (African Women's Protocol) of 2003/2005

I- Protection of IDPs against forced displacement under the African Women's Protocol

The African Women's Protocol,⁸⁴ (a binding instrument) does not contain provisions protecting women as civilian against displacement during armed conflict. However, Article 11 of the African Women's Protocol obliges states parties to respect rules of IHL applicable in armed conflict, which affect the population particularly women.⁸⁵ Article 11 further obliges state parties to respect their obligation under IHL and protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.⁸⁶ Although the African Women's Protocol does not expressly provide for provisions prohibiting forced displacement, it analogically refers states to their obligations under IHL.

II- Protection under the African Women's Protocol once Displacement has occurred

Once displaced, Article 11(3) compel states parties to protect amongst others, IDPs against all forms of violence, rape, and other forms of exploitation, and to ensure that such acts if committed, are considered war crimes, genocide and/or crimes against humanity and their perpetrators be brought to justice before a competent criminal tribunal. Women as part of the civilian population, once displaced assumes the rights

⁸⁴ Adopted by the 2nd ordinary session of the Assembly of the union, Maputo July 2003.

⁸⁵ Article 11(1) of the African Women's Protocol of 2003/2005.

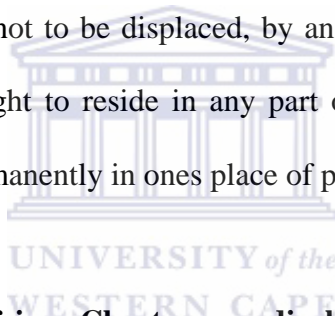
⁸⁶ Article 11(2) of the African Women's Protocol of 2003/2005.

contained in Article 2 - 4, and Article 12 - 23 of the African Women's Protocol.

2.2.3. Protection of IDPs under the African Charter on Human and Peoples' Rights (African Charter) of 1981/1986

I- Protection against forced displacement under the African Charter

The African Charter⁸⁷ being a binding and regional instrument does not expressly mention situations of internal displacements. However, Article 12 is to the effect that, every individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law.⁸⁸ Although there is no mention of right of people not to be displaced, by analogy, we assumed that these rights should apply. The right to reside in any part of a country by analogy also imply the right to dwell permanently in ones place of permanent residence.



II- Protection under the African Charter once displacement has occurred

Once displaced, all the right under Part I, Chapter I of the African Charter become applicable. Part I entitled rights and duties lists the rights protected under the Charter and the duties states and individuals owe their communities and families. IDPs as part of the civilian population are entitled to these rights and duties under Part I of the Charter.⁸⁹

⁸⁷ Also sometimes called the "Banjul Charter", the African Charter was adopted in Nairobi, Kenya on 27 June 1981 and entered into force on 21 October 1986. CAB/LEG/67/3/Rev 5.

⁸⁸ Article 12(1) of the African Charter on Human and Peoples' Rights of 1981/1986.

⁸⁹ The African Charter on Human and Peoples' Rights of 1981/1986.

2.2.4. Protection of IDP under the UN Guiding Principles on Internal Displacement (the Guiding Principles)

I- Protection against forced displacement under the UN Guiding Principle

The Guiding Principle⁹⁰ although not a binding instrument, contains principles that guide states and international actors. These principles are a combination of IHL, Human Rights Law and Refugee law. Most of the principles are drawn by analogy to apply to non-international armed conflict.⁹¹ Principle 5 to 9 relates to prohibition and prevention of internal displacement. These principles elaborate the grounds by which displacement may be allowed and where displacement is prohibited. Principle 6 prohibits displacement of any kind during armed conflict or natural disaster. Displacement can be ordered under Principle 6 only when the security, health, and safety of the civilian population are at stake. Principle 7 and 8 outline conditions of displacement. These Principles are to the effect that displacement must not violate the right to life, security, and liberty of IDPs.⁹² Displacement must be carried out in a way that takes into account the health, hygiene, nutrition and family ties of the civilians population.⁹³

II- Protection of IDPs under the UN Guiding Principles once displacement has occurred

Once displacement has occurred, IDPs are protected as civilians, and they enjoy all rights of civilians. Principle 10 is to the effect that, every displaced person shall have

⁹⁰ UN DOC.E/CN.4/1998/53/Add.2 Annex, 11 Feb. 1998.

⁹¹ Charllo, *Women Facing War*, International Committee of the Red Cross (ICRC), at 69.

⁹² Principle 8, of the UN Guiding Principle on Internal Displacement.

⁹³ Principle 7, of the UN Guiding principle on Internal Displacement.

the right to life, which include the right against genocide, the right not to be murdered or arbitrary executed and the right against enforced disappearances. Principle 10(2) prohibits starvation as a method of combat, direct or indiscriminate attack on civilians, attacks of camps and the use of anti-personnel landmines. Principle 11 prohibits rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault, Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children and acts of violence intended to spread terror among IDPs. Threats and incitement to commit any of the foregoing acts shall be prohibited. Principle 12 - 23 contains other human rights provisions to be observed during armed conflict. I shall not go into enumerating all of them. The Guiding Principles although not a binding instrument, if observed by parties to a conflict, will minimise the risk and plight of internal displacement and protect and assist IDPs once displacement has occurred.

CHAPTER FOUR

Consequences and challenges of armed conflict in Sudan and Somalia

0.1. Introduction

Armed conflict in Sudan and Somalia has caused severe consequences and challenges. Thousands of people have lost their lives. The majority of people who suffer from the effect of hostilities are women and children. The conflicts have led to gross violation of IHL and Human Right Law. The humanitarian communities have faced several challenges in an effort to minimize effectively the effects of hostilities. This chapter outlines some of the consequences and challenges of armed conflict in Sudan and Somalia.

1. Consequences of armed conflict in Sudan and Somalia

1.1. Violation of IHL and Human Right Law by parties to the conflicts

Armed conflicts in Sudan and Somalia have led to the disregard of International Human Right Law and IHL. Parties to the conflicts have used means and method of warfare that are prohibited or restricted under International Human Right Law and IHL. Below are some of the foreseeable violations committed in Sudan and Somalia.

1.1.1. Forcible transfer of civilian population in violation of Articles 17 AP II, Article 11 and 12 of the African Women’s Protocol, Article 12 of African Charter, Article 7 of Turku Declaration, and Principle 6 of the Guiding Principles

In Sudan, the government and the *janjaweed* militias removed potential support base

of the rebels. The displaced population belongs mostly to the Masalit, Zaghawa and the Fur tribes.⁹⁴ Sudanese government depopulated oil rich regions in the south and exploited the oil in the region. The displaced population were forced to move into camps called “peace camps.”⁹⁵ Women were forcefully taken as slaves and transported to the north.⁹⁶

In Somalia, the ICU imposed Sharia Law and banishing warlords and their supporters.⁹⁷ Seaports were depopulated alongside fertile farmlands for economic reasons.⁹⁸ Weaker clans are forcibly displaced causing them to abandon their former life style to adapt to new life style. The Genocide Convention⁹⁹ in Article II(b) expressly prohibits actions intended by governments or other groups in a state to deliberately inflict conditions calculated to bring about total destruction in part or whole. The Somali and Sudanese government and militias by forcibly removing people from their farms and homes inflicted conditions of life intended to bring about their destruction in part and in whole. This is in violation of the Genocide Convention.¹⁰⁰

⁹⁴Sassoli and Bouvier (2006), “*How Does Law Protect in War*,” Case No. 138, report of a commission of inquiry in Darfur, Jan. 25, 2005, at 1481.

⁹⁵A camp where food is distributed on condition of continues submission to government authority and Islam.

⁹⁶James P., *op cit*, note 54, at 3.

⁹⁷Power and Interest News Report, “Intelligence brief: ICU expels Warlords from Mogadishu” June 2006, available at <http://www.pinr.com/report.php?ac=view_printable&report_id=505&language_id=1>[Accessed: march 27, 2007].

⁹⁸Bradbury M. Menkhaus K, and Marchal R, “Somalia Human Development Report,” 2001.

⁹⁹Article II(c) “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”

¹⁰⁰Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948. Entry into force: 12 January 1951.

1.1.2. Violation of the right to freedom of religion

The imposition of Sharia Law in Sudan and Somalia is a violation of the right to freedom of religion and worship. In the case of *Amnesty International v Sudan*,¹⁰¹ the court held that imposition of Sharia Law was a violation of freedom of religion under Article 8 of the African Charter. The launching of *jihad*¹⁰² in both countries is a violation of International Law. In Sudan, some Christians are forced to attend Muslims schools where the Quran is taught. Christians are crucified for their faith.¹⁰³ Christians are forced to change their names.¹⁰⁴ In Somalia, the ICU believes that political Islam is the only way forward. They believe in an Islamic Constitution, which is a violation of freedom of religion and worship.¹⁰⁵

1.1.3. Violation of the provision against starvation of the civilian population under Article 14 of AP II, Article 3(2)(f) of the Turku Declaration, Article 15 of African Charter, and Principle 10(2)(b) of Guiding principles.

In Sudan, the government used starvation as a means and method of warfare. Farms, humanitarian relief projects, markets and livestock's were seized, destroyed or bombed by Sudanese authorities.¹⁰⁶ About 250,000 people died because of starvation.¹⁰⁷ UN "Operation Lifeline Sudan" was refused access to rebel held areas in southern Sudan and the Nuba Mountain in central Sudan.¹⁰⁸ Aircraft transporting

¹⁰¹African Commission on Human and Peoples' Right (ACoHPR), 1999, at 237.

¹⁰²Another name of a jihad is a "holy war."

¹⁰³Justin P., "The forgotten conflicts in Sudan," March 14, 2004. A review of Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars*. Oxford, James Curry, 2003. 234 pages, at 4.

¹⁰⁴Dagne T., "Sudan: Humanitarian crisis, peace talks, terrorism and US policy," April 2007, at 12.

¹⁰⁵Hassan H. *op cit*, note 61, at 4.

¹⁰⁶James P. (2001), *op cit*, note 54, at 3.

¹⁰⁷James P. (2001), *op cit*, note 54, at 3.

¹⁰⁸James P. (2001), *op cit*, note 54, at 3.

food to remote areas were bombed.¹⁰⁹ In Somalia, the insurgents deliberately impeded delivery of food and medical supplies and livestock ban essential for survival of the civilian population.¹¹⁰

1.1.4. Violation of the provisions against the spread of terror and against the systematic attack of the civilian population under Article 13 of AP II, Article 6 of the Turku Declaration, Article 11 of African Women’s Protocol, and Principle 10 of the Guiding principles

The Sudanese government resorted to systematic attacks aimed at the civilian population. They carried out the bombing of the civilian population, villages, installations, hospitals and schools. The *janjaweed* abducted women and enforced their disappearance. The regime of Al Bashir bombed civilian target at least 167 times.¹¹¹ In Somalia, there was a series of burning of houses, hospitals, and schools.

1.1.5. Violation of human rights under International Human Right Law and IHL

Common Article 3 of the GCs, Article 4(2)(3) of AP II, the Guiding Principles, the International Convention on Civil and Political Rights, African Charter, and the African Women’s Protocol contain provisions of human rights that must be respected in times of armed conflict as well as in times of peace. These instruments contain for instance the right to life. In Sudan, the right to life was violated.¹¹² Both the

¹⁰⁹James P. (2001), *op cit*, note 54 at 3.

¹¹⁰Sassoli and Bouvier (2006), *op cit*, note 94, at 1692 Para. 5.

¹¹¹Dagne T. (2007), *op cit*, note 104, at 12.

¹¹²The Sudanese government, resorted to genocidal proportions, Southern villages were bombed

government and the *janjaweed* killed indiscriminately men of military ages. Some of the killings were committed right inside camps of IDPs.¹¹³ Most of those killed were from the Fur, Masaalit, and Zaghawa. Jebel and Aranga clans of west Darfur were targeted far less frequently. In January 2004, about 250 people were killed in Surra including women and children. Men were killed and those who disguise and hide amongst women when discovered were also killed in the Mosque. Surrendered soldiers and captured soldiers were burn to death.¹¹⁴ In Somalia thousands of civilians were killed and the security remains unpredictable. In January 27, 2007 for instance two police stations were attacked and at least two civilians died. In February 2007 several children were killed in Mogadishu. All these killings constitute a violation of the provisions mentioned above and hence, constitute war crimes, crimes against humanity and genocide. This is because the killings were targeted at a particular clan or religion and the death toll was amongst protected persons under International Law. Both the government and militias in Sudan and Somalia failed to target military objective as required by IHL, rather particular groups of civilians were targeted.

Every human being has the right to fair trial. In the case of *Amnesty International v Sudan*,¹¹⁵ the dismissal of 100 judges by the Sudanese government is a deprivation of the right to fair trial under Article 7(1)(d) and Article 26 of the African Charter.

indiscriminately, civilian objects were targeted at least 167 times. The killing targets only a particular group of individuals known as the Dinka's.

¹¹³Sassoli and Bouvier (2006), *op cit*, note 94, at 1485, Para 263.

¹¹⁴Sassoli and Bouvier (2006), *op cit*, note 94 at 1485 Para 271.

¹¹⁵ACoHPR (1997), at 297.

Every person has the right not to be tortured. In Sudan and Somalia, several forms of torture were meted on the civilian population. Rape as torture is prohibited under IHL and International Human Right Law. Several men inflicted rape as war crime and crime against humanity on a woman. Several sources report that rape was carried out in public. Some victims got pregnant in the process.

In the case of *Amnesty International*, the African Commission on Human and Peoples' Right (ACoHPR) found that the government of Sudan jointly and severally committed torture as a result of failure to prosecute perpetrators. Other forms of violations were documented e.g. in *Law Office of Ghazi Suleiman v Sudan*,¹¹⁶ it was held that the government of Sudan violated the right to be presumed innocent until proven guilty by sending people to jail without trial. The ACoHPR also found the Sudanese government in *Law Office for Ghazi Suleiman* guilty for cruel inhuman and degrading punishment of lashes meted on civilians.

1.2. Consequences of armed conflict in Sudan and Somalia on IDPs

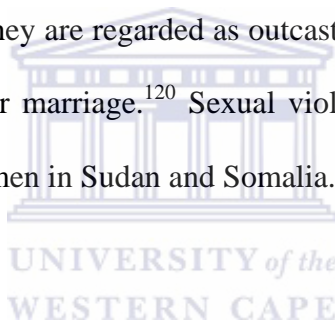
1.2.1. Sexual violence

IDPs are often the subject of attack. The most vulnerable groups that suffer from sexual violence during armed conflict are women and girls. Women and girls are subjected to rape, forced prostitution, sexual slavery, forced maternity, forced termination of pregnancy and impregnation.¹¹⁷ Rape of women is a form of aggression against a nation or community, because women are considered the

¹¹⁶ACoHPR (2003), at 144.

¹¹⁷Charlotte L. (2004), *Women facing war*, "ICRC study on the impact of armed conflict on women," at .51.

bearers of community honour. Sexual violence is used as a form of torture to extract information during armed conflict. In Sudan, sexual violence is used as a means by the government and the *janjaweed* to instil fear amongst the Dinka so as to compel them to leave their area of residence. Rape in Darfur is accompanied by whipping and beating and at times committed in public. In some instances women are berated and called “slaves” or “Tora Bora” some victims were pregnant and gave birth.¹¹⁸ Women going to market, to fetch firewood, or drinking water in streams were held and raped by the *janjaweed*.¹¹⁹ In Somalia, lawlessness led to “sexual warfare.” Warlords either attack women and girls at night or in broad daylight. They abduct girls and if the girls return, they are regarded as outcasts in the Somali society where virginity is a prerequisite for marriage.¹²⁰ Sexual violence has led to physical and Psychological torture on women in Sudan and Somalia.



1.2.2. Food and nutrition

A major consequence of armed conflict on IDPs in Sudan and Somalia has been the decline in food and nutrition. Drought has ravaged these two countries leading to the decrease in the production of cash crops. The farms of IDPs and civilians were either seized or destroyed by parties to the conflict. In Sudan, the government and the *janjaweed*¹²¹ use food as a weapon of war.¹²² About 250, 000 people died from

¹¹⁸This was for instance the case of the *janjaweed* attack on a school in Tawila north of Darfur.

¹¹⁹Sassoli and Bouvier (2006), *op cit*, note 94, at 1487, Para 342.

¹²⁰Craig T., “Gender based-violence galvanized warlords’ foes” June 18, 2006, at A12.

¹²¹This is a local Arabic colloquialism which loosely translated, means “devil” on horse back and has been used by locals to describe Arab militiamen and the Security Council in Resolution 1564.

¹²²Dunfield M. “Famine, conflict and the internationalization of public warfare,” in Martin Doornbos, *et. al., Beyond Conflict in the Horn: The Prospect of Peace, Development in Ethiopia, Somalia, Eritrea and Sudan*, 1992, at 49-62.

starvation South of Sudan.¹²³ Food supply in the camps of IDPs is provided under the condition that IDPs continuously submits to the government and Islam.¹²⁴ The distribution of food does not take into consideration the nutritional value of the food.¹²⁵ Even more, age groups are not taken into consideration. In Somalia, majority of the population including the IDPs live below one US dollar a day. As a result, malnutrition has characterised the camps of IDPs. Many women and children in IDPs camps look like an “improper fraction.” As a consequence, many people have died inside the camps of internally displaced.

1.2.3. Health and hygiene

In Sudan, the recent outbreak of waterborne disease is a plight to the IDPs. The outbreak of hepatitis E in refugee camps in the Greater Darfur Region and the risk of a cholera outbreak following an outbreak in the central and western part of the country highlighted the urgent need to speed up water and sanitation activities in camps. The death toll within IDPs increased as a result of these factors. IDPs suffer from poor supply of water; as a consequence personal hygiene has diminished. Their sources of water for daily use are contaminated. IDPs use open wells as a source of water. This accounts for the high rate of cholera amongst IDPs.¹²⁶ The lack of clean water in Somalia, and the destruction of sanitation systems, results to cholera, measles, malaria as well as nutritional deficiencies amongst IDPs. The outbreak of

¹²³James P.(2001), *op cit*, note 54, at 3.

¹²⁴James P, (2001), *op cit*, note 54 at 3.

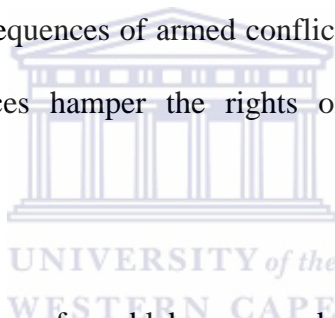
¹²⁵Charlotte L., Florence T.H., Letitia A., *Addressing the Needs of Women Affected by Armed Conflict*, March 2004, at 47.

¹²⁶WHO, “Health risk for the people in the greater Darfur region: the cocktail of environment hazards, Sept 13, 2004, available at <www.who.int/> [Accessed: March 24, 2007].

Rift Valley Fever in neighboring Kenya, coupled with the ongoing conflict in Somalia, further undermined the health situation of IDPs. IDPs lack basic productive health care and the spread of HIV, STDs and AIDs within IDPs is at an increased. Internally displaced women give birth under poor conditions in camps. In Somalia, there is a lack of reproductive health care facilities.¹²⁷ This breakdown in health and hygiene has resulted to severe consequences amongst IDPs in Sudan and Somalia.

1.2.4. Other consequences

There are several other consequences of armed conflict faced by IDPs in Sudan and Somalia. These consequences hamper the rights of IDPs as citizens of their community.



Women and children suffer from forced labour, sexual abuses and forced recruitment into the armed forces.¹²⁸ Women and children can't travel long distance or afford money to escape abroad; as a result they are left behind in the hands of their enemies.¹²⁹ The old and the handicapped are often left behind or over looked by key actors, including governments and the humanitarian community at large.

The use of land mines in Sudan and Somalia hamper flight and return of IDPs. Land mines were planted on agricultural fields in Sudan, which hampered the flight, and

¹²⁷Global IDPs Project "Internal displacement: The global overview of trends and development in 2003," 2004.

¹²⁸Sassoli and Bouvier Case No. 168, *Korad Kalid v. Pracommando Soldier*, at 1096.

¹²⁹Phoung, *op cit*, note 74, at 142.

return IDPs.¹³⁰ The United Nation is carrying out investigation into the use of chemical weapons on civilians in two Southern towns.¹³¹ In Somalia land mines killed livestock of civilians and nomads.¹³²

Armed conflict has led, IDPs to suffer from “dependency syndrome” because of the under utilisation of their human resources.¹³³ “Kibreab¹³⁴ argues that a general agreement exist which states that refugees develop a dependency syndrome if they stay in camps for a long period of time. The refugees are then expected to lack initiative and creativity. They turn to rely on help given to them without trying to be self-reliant. This tendency stems from the fact that refugees and IDPs are often regarded by host communities as problems instead of problem carriers.¹³⁵

All the above-mentioned consequences increased the plight of IDPs in Sudan and Somalia.

2. Challenges facing the humanitarian community in Sudan and Somalia

2.1. Access and security of humanitarian staff

One of the major challenges facing humanitarian organisations to handle the plight of IDPs is access and security of staff. In Darfur, for instance insecurity and attack on aid workers seriously limited access to the two million IDPs. The Sudanese

¹³⁰Global IDPs Projects (2004), *op cit*, note 127.

¹³¹Dagne T. (2007) *op cit*, note 104, at 11.

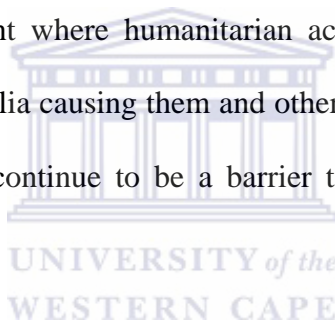
¹³²McGrath R., *Landmines: Legacy of Conflict: A Manual for Development Workers*, p.vii (foreword).

¹³³Kibreab, “The State of the Art Review of Refugee Studies in Africa,” at 36-39.

¹³⁴Kibreab, *Ibin*, note 133, at 36-39.

¹³⁵Nilsson D., “Internally Displaced, Refugees and Returnees from and in Sudan,” *Studies on Emergencies and Disaster Relief* No. 8, at 22.

government and its *janjaweed-backed* militias routinely has denied Operation Lifeline Sudan (OLS) access to rebel-held areas in southern Sudan and the Nuba mountains in central Sudan. Moreover, the Sudanese armed force has bombed food relief distribution centres, as well as aircraft that were transporting food supplies to remote areas.¹³⁶ In Somalia where the transitional government relocated to the country from neighbouring Kenya in June 2005, rampant insecurity in the south and central Somalia continued to restrict humanitarian access to the majority of the countries 370,000 - 400,000 IDPs who are exposed to physical and appalling living conditions.¹³⁷ Many humanitarian staff have been abducted and killed in Sudan and Somalia. Abuses are flagrant where humanitarian access is restricted. UN Peace Keepers were killed in Somalia causing them and other humanitarian organisation to withdraw.¹³⁸ These factors continue to be a barrier to response effectively to the plights of IDPs.



2.2. Lack of sufficient protection mechanism for IDPs

Some actors and writers believe that the protection mechanisms are insufficient for the protection of IDPs. While others argue that since the UN Guiding Principle on Internal Displacement, is not a binding instrument neglect is visible. Because of the unbinding nature, the UN practice the policy of “pick and choose” to provide relief based on their mandate and support.¹³⁹ IHL protect IDPs as civilians only during

¹³⁶James P. (2001), *op cit*, note 54, No.1449 at 3.

¹³⁷Jens-Hagen E., (ed) “*Internal Displacement: The Global Overview of Trends and Development In 2005*,” March 2006, at 54.

¹³⁸Issaka K. “Revisiting the United Nations Intervention in Somalia: Lessons for future Africa-UN Partnership in Peacekeeping,” March 27, 200, at 1.

¹³⁹Roberta C. “The displaced fall through world’s safety net” *Christian Science Monitor*, Feb. 1999.

armed conflict. Situations of forced displacement during peacetime are not covered under IHL.¹⁴⁰ Therefore, IDPs that are not suffering from displacement as a result of armed conflict are left unprotected under IHL hence, the need for more binding instruments on internal displacement caused by other factors other than armed conflict.¹⁴¹

2.3. No agency with clear mandate on IDPs

Scholars argue rightly that, confusion exist on which agency should have full mandate over the plight of IDPs. In many UN documents, it has been declared that the UNHCR does not have general competence on IDPs.¹⁴² If it has to act on behalf of IDPs, it must first consult with the Secretary General according to Rule 9 of its Statute.¹⁴³ Because of this lack of clear mandate, the issue of IDPs has led to conflict of interest amongst several different actors. This has limited the effectiveness in addressing the needs of IDPs in Sudan, Somalia and elsewhere.

2.4. Insufficiency of resources

Funds or resources available are insufficient; hence, the division between policy formation and implementation hinders follow up. In eastern Sudan, there is an inadequacy in aid and rehabilitation of IDPs.¹⁴⁴ Where resources are available there

¹⁴⁰See the forceful displacement of civilians in Zimbabwe and the notion of developmental induced displacement.

¹⁴¹Internal displacements caused by migration, drought, natural disasters, developmental induced displacement, nomadic movements etc are all forms of displacements not covered under IHL.

¹⁴²Phoung (2004), *op cit*, note 74, at 83.

¹⁴³UNHCR, "Internally displaced persons: The role of the UNHCR," EC/50/SC/INF.2, July 20, 2000, Phoung, at 84.

¹⁴⁴Babikri (1994), "Refugee short comings with special reference to eastern Sudan," at 383-386.

is too much bureaucratic procedure because of the many institutions involved.¹⁴⁵ The governments of Sudan and Somalia lack resources to assist IDPs. Donors have disregarded the conflicts in Sudan and Somalia. In 2003, donors have concentrated their support in Iraq than Africa covering almost all the money needed for IDPs in Iraq. Most countries in Africa with high rates of IDPs such as Sudan and Somalia receive less than 50 percent of funds required in 2005.¹⁴⁶ Insufficiency of resources or fund greatly hampers the effectiveness in response to the needs of IDPs in Sudan and Somalia.

2.5. Lack of effective leadership and coordination

Most of the humanitarian organisation lack effective leaders in the field of IDPs. This is because they either lack the skill or are ill trained on issues of IDPs. An example is the lack of leadership and coordination in the case of OLS. This was because OLS saw it as almost impossible task to coordinate over 40 organisations involved.¹⁴⁷

2.6. Lack of reliable information

Humanitarian institutions lack reliable data regarding the size, needs, age, sex, and health of the affected population. Without such collected data, it is difficult for humanitarian partners to address effectively the needs of the Sudanese and Somalis IDPs. Most often, there is inadequate information and reports patterning to rape and other sexual abuses because of the sensitivity of the issue and the stigma associated

¹⁴⁵Woldedagabriel (1990), "Forgotten in the maze," at 27.

¹⁴⁶Jens-Hagen E., (ed), 2006, *op cit*, note 137, at 55.

¹⁴⁷Murphy and Salma (1999).

with rape thereof. Some authorities fail to give information because its agents committed rape. Rape in Sudan was committed by the *janjaweed* militias hence, the government failed in reporting abuses and abusers.¹⁴⁸

These challenges although not exhaustive, are drawbacks to an effective protection and assistance to the plight of IDPs in Sudan and Somalia.



¹⁴⁸Sassoli and Bouvier (2006), Case No. 138 at 1488, para. 336.

Chapter Five

Recommendations and conclusion

0.1. Introduction

In this chapter, I will propose suitable solutions to assist actors and humanitarian institutions to respond effectively to the plights and needs of IDPs. Then I will conclude and identify key areas where research still needs to be done.

1. Recommendations

- Memoranda of understanding should be reached amongst humanitarian institutions, giving full mandate on IDPs to the ICRC, because of its traditional and effective role in dealing with assistance and protection of civilians, wounded, sick, shipwreck and those who do not longer participate in hostilities (those *hors de combat*). This could go a long way to promote proper coordination in the field.
- Creation of “safety, neutralized, hospital zones and undefended localities” in Sudan and Somalia as demanded by Article 23 of GC I, Article 15 GC IV, and Article 59 of AP I. We can apply these provisions to non-international armed conflict by analogy.
- Aid distribution must take into account seasonal changes e.g. winter or summer, and dry or rainy seasons for distribution of clothes and blankets. In addition, when distributing food aids, the age and nutritional value of the

food must be given priority to reduce the high rates of malnutrition in Sudan and Somalia.

- Sudan, Somalia and the world at large should follow the footsteps of Angola, Burundi, Liberia and Uganda who have adopted IDPs legislation that is in line with the UN Guiding Principle on Internal Displacement.

- IDPs and the civil society should be allowed to participate in programs and projects affecting them. As pointed out by Walker,¹⁴⁹ the most successful programs were those that were implemented through civil society and victims. Educating civil society and IDPs on their rights and giving them leadership in advocating for those rights will reduce the plights of IDPs. These will also enable them to be self-reliant and not dependent on humanitarian aid for livelihood.¹⁵⁰

- Women should be given food for distribution according to their traditional role. Food relief should not be given to government for distribution. This will reduce the powers of government and militias to use food as a weapon of war. Women and children should be accompanied in search of firewood and water to reduce rates of abduction and rape.

¹⁴⁹Walker (1998), "Famine relief amongst pastoralists in eastern Sudan: Report of Oxfam's experience," at 198-202.

¹⁵⁰Nilsson D., "Internally displaced, refugees and returnees from and in Sudan," Study of emergency disasters relief No.8, 2002, at 22.

- The ICC must intervene in the prosecution of abuser for crimes against humanity, war crimes, and genocide. A quick response by the ICC will stop the high rates of violation and reduce the plights of IDPs in Sudan and Somalia, because this would scare other violators and hence do justice.
- Special attention should be paid to old, disabled IDPs, for many programs exclude them, while they are as vulnerable as women and children.

2. Conclusion

The plight of IDPs in Sudan and Somalia constitute one of the greatest human tragedies of our time. The impact of armed conflict on IDPs as civilians is frustrating and rigorous. The plight of IDPs ranges from lack of shelter, food supplies, portable water, cloths, and jobs, to lack basic household equipments. They also suffer personal injuries because of physical torture, slavery, sexual assault, and rape. These personal injuries are inflicted on vulnerable groups.¹⁵¹ This has led to psychological stress resulting to increased rate of mortality, especially amongst women.¹⁵²

From the analysis drawn above on the historical overview of the causes of armed conflict in Sudan and Somalia, and from what other researchers perceive, one can rightly conclude that the conflict in Sudan and Somalia is deeply rooted in their successionist past based on religious, economic, political, socio-cultural and ethnic struggle for power and identity. International involvement only helps in prolonging

¹⁵¹ Often women, young girls and children.

¹⁵² Ferraro K. F. and Nuriddin T., "Psychological stress and mortality: Are women more vulnerable?" (2006), at 227-241.

and inflicting more pain on the IDPs who already suffer long term and severe consequences from the decades of armed conflict. These consequences leave the humanitarian communities with several challenges in an effort to combat the plights of IDPs. The protection mechanisms as it stands needs to be given more weight by giving laws on the protection of IDPs during armed conflict a binding character. More cooperation is also needed at institutional level between the various institutions involved with IDPs for proper coordination in the field.

IDPs in Sudan and Somalia constitute the largest number of displaced groups in the world today. The problem is immense and growing and even though one can recognize a positive trend in the attention the subject is given, more research is urgently needed on those displaced persons at the border of Sudan and Somalia and the old and disabled IDPs who are unable to escape the effects of hostilities.

Cooperation amongst states, rebel groups and humanitarian actors will go a long way to minimize the effects of hostilities on IDPs. States must also provide information about violators so that they are brought to justice immediately, without which hostilities will continuously increase the plight of IDPs.

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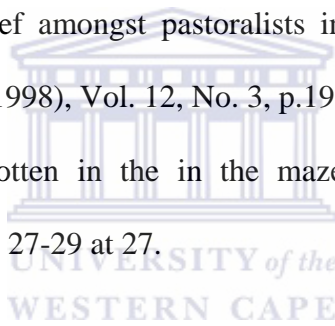
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