

Recruiting Internally Displaced Persons into Civil Militias: The Case of Northern Uganda

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This article explores the state-sanctioned recruitment of internally displaced persons (IDPs) into civil militias in northern Uganda between 1996 and 2006. Drawing upon international and Ugandan domestic law, as well as empirical research in Uganda, it provides an illustrative case study of the circumstances in which IDPs were mobilised into an array of civil militias. By applying a framework elaborated by the UN Commission on Human Rights, it discusses, and subsequently determines, the lawfulness of this mobilisation. When doing so, the article highlights how, in Uganda, civil militias were dealt with completely outside of domestic law, despite repeated calls from Ugandan MPs to establish their lawfulness. It finds that government authorities long denied any liability for the conduct of the militias, and argues that the uncertain position of the civil militias created plenty of room for unmonitored conduct and substantial human rights abuse.

Keywords: Military recruitment; forced recruitment; civil militia; civil defence forces; auxiliary forces; internally displaced persons; Uganda

1. Introduction

Military recruitment in the context of displacement has taken place on almost every continent and constitutes one of the most problematic security issues within refugee and internally displaced persons (IDP) camps.¹ Refugees and IDPs have long been recruited by both state and non-state actors, forced or otherwise. At the same time, from the perspective of international law, one form of recruitment – recruitment into civil militias – is particularly understudied. In 2010, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions called for further research into the conditions under which civil militias come into existence, factors that contribute to illegal conduct, and in what circumstances and how governments could or should legally support or encourage the development of such forces.² Responding to this call, this

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¹V Achvarina and S Reich, “No Place to Hide: Refugees, Displaced Persons, and the Recruitment of Child Soldiers” (2006) 31 *International Security* 127–164; L Alfredson, “Child Soldiers, Displacement and Human Security” (2002) 3 *Disarmament Forum* 17–27. See also UNSC “Report of the Secretary-General on Children and Armed Conflict” (21 December 2007) UN Doc S/2007/757.

²UNHRC “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston” (20 May 2010) UN Doc A/HRC/14/24, para 74.

article explores the significant recruitment of IDPs into state-sanctioned civil militias³ which took place in the context of IDP camps in northern Uganda between 1996 and 2006. It focuses exclusively on the recruitment and maintenance of civil militias in Acholiland, where the government of Uganda has long fought the rebel Lord's Resistance Army (LRA). While the LRA's forced recruitment of Ugandan adults and children is well-documented in the literature, little attention has been given to the military recruitment of IDPs by the Ugandan government.⁴ This is the precise focus of this article, which aims to provide an illustrative case study of the circumstances in which internally displaced persons were mobilised into an array of civil militias. Drawing upon international and Ugandan domestic law, this article aims at discussing, and subsequently determining, the lawfulness of this civil militia recruitment.

Operating in virtually every IDP camp in northern Uganda, the most well-known forces include the Local Defence Units (LDUs) or Local Defence Forces (LDFs) and the Homeguards, while forces such as the Joint Command Combatants, Frontier Guards and the Elephant Brigade are less known. In the neighbouring Lango and Teso regions, so-called Amuka and Arrow militias were similarly mobilised.⁵ While the very essence of such militias lies in the fact that they do not belong to any regular law-enforcement agency,⁶ Rukooko has specifically defined a civil militia in the Ugandan context as:

... a group of citizens organised to provide military service. It is usually a supplementary or reserve army, composed of non-professional soldiers and not necessarily supported or sanctioned by the government, thereby making it distinct from the regular army of a nation. It can serve to supplement the regular military as an irregular reserve, or it can oppose it ... Consequently, militias are often of a less professional character and intended to carry out emergency tasks of a military nature.⁷

This article begins with a brief overview of the methodology of the study, as well as an introduction to the conflict and encampment practices of northern Uganda. Secondly, it concentrates on the international law framework pertaining to military recruitment by the state in general, followed by an elaboration of the legal framework applicable to the recruitment of IDPs and the use of civil militias more specifically. Here, special attention is given to a framework developed by the UN Commission on Human Rights precisely to determine the lawfulness of a civil militia force. Thirdly, this article applies the UN Commission's framework to the case of northern Uganda, and explores the deployment of civil militias under Ugandan domestic law as well. It specifically outlines the political debates concerning the legalisation of these forces. This is followed by a discussion of the purpose of recruitment, voluntariness of participation, and supervision and management of the Ugandan civil militias. Finally, before concluding, this article discusses Ugandan civil militias and

³Also referred to as "civil defence forces" by UN human rights bodies or "auxiliary forces" by the Ugandan government.

⁴See, for example, S Finnström, *Living in Bad Surroundings* (Duke UP, 2008); HRW, "Stolen Children: Abduction and Recruitment in Northern Uganda" (March 2003).

⁵See further KJ Castelijn, *Counter-Insurgency in the Greater North of Uganda: Understanding the Auxiliary Forces* (unpublished MA thesis, Utrecht U, 2008).

⁶UNHRC "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston" (20 May 2010) UN Doc A/HRC/14/24, para 70.

⁷B Rukooko, "Protracted Civil War, Civil Militias and Political Transition in Uganda since 1986", in DJ Francis (ed), *Civil Militia: Africa's Intractable Security Menace?* (Ashgate Publishing Ltd., 2005) 213–230.

accountability, and questions whether or not the Ugandan People's Defence Forces (UPDF) Act, introduced in 2005, is a welcome development from a human rights perspective.

II. Methodology

This article is primarily based on a legal analysis of international and domestic (Ugandan) legislation concerning the issue of civil militia recruitment. As empirical material may also shed important light on legal analysis, it specifically builds upon empirical material collected between September 2009 and January 2010, when the author was a guest researcher at Makerere University in Kampala, Uganda. This research stay included comprehensive research in the parliamentary records of the Ugandan Parliament, for which documentation analysis was employed. These records provide an important contextualization of how human rights norms are viewed in political decision making. The field research also included semi-structured interviews with former civil militia members in the northern district of Gulu. Based on the snowball-method, where interviewees were asked to nominate other individuals who could be asked to give information or opinions on this topic, 20 interviews were conducted with former civil militia members, each lasting approximately 90 minutes. The results of these interviews provide anecdotal rather than statistical evidence of the character of civil militia recruitment, and aim to complement the findings from other sources.

III. Camps and Conflict in Northern Uganda

Civil war ravaged northern Uganda for more than two decades, and rebel groups, some with considerable popular support, have operated there ever since President Yoweri Museveni seized power from a largely Acholi government in 1986.⁸ The Lord's Resistance Army (LRA) emerged in the early 1990s and rebelled against the Ugandan government until 2006, when it withdrew to neighboring countries. While previous rebel groups had enjoyed significant popular support, the LRA interpreted a diminished popular support as indicating that the Acholi had come to support the Ugandan government, and directed their violence against suspected government supporters. At the same time, the Ugandan government directed a considerable part of its counterinsurgency strategies against Acholi civilians, many of whom they suspected of supporting the rebels. In the efforts to deny the LRA food and other resources, in 1996 the government began to forcibly relocate large portions of the civilian population into camps.⁹ As the Presidential Advisor on Political Affairs allegedly asserted at the time, "[t]he depopulation of the villages removes the soft targets and logistics for the survival of the rebels. They will lack food, information, and youth to abduct and people to kill. Desperation will drive them to attack the army and the camps. That will be their end".¹⁰ The IDP population soon found themselves living in a chronic state of emergency where even the basic necessities of life remained unmet, leading to a massive humanitarian crisis

⁸For background on the war in northern Uganda, see S Finnström, *Living in Bad Surroundings* (Duke UP, 2008); T Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (Zed Press 2006); A Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford University Press, 2011).

⁹See S Finnström, *Living in Bad Surroundings* (Duke UP, 2008) 144; C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 55, 76.

¹⁰"Accounting for Post-War Crimes in Northern Uganda" *Daily Monitor* (Kampala, 30 November 2009).

with excess mortality levels of approximately 1,000 per week.¹¹ This situation was exasperated by the fact that the camps were heavily congested and freedom of movement was rigorously limited.¹² In 2002, the crisis became particularly acute when the official number of IDPs grew from 500,000 to 1.5 million, representing more than 90 percent of the population in Acholiland.¹³ In 2006, with the withdrawal of the LRA to neighbouring countries, Acholi civilians began to return to their homes and, by 2012, only 30,000 IDPs still lived in four remaining camps.

From the very beginning, the camps were sites of severe insecurity and grave human rights violations. The LRA was notorious for attacks against the camps and the ensuing massacres, maimings, and forced recruitment of thousands of civilians, many of them children.¹⁴ The Ugandan People's Defence Forces (UPDF), on the other hand, was tasked with protecting the camps but in effect often responded inadequately to the LRA's attacks.¹⁵ What was worse, many of these soldiers also committed human rights violations of their own against the camp populations, including arbitrary killings, torture and ill-treatment. It was, thus, in this complex and volatile environment that the Ugandan government, often acting directly through the UPDF, mobilised IDPs into a variety of civil militias. Exactly how this occurred, and what the consequences were, is discussed in Section V.

IV. Military Recruitment in International Law

IV.1 Generally on military recruitment by state authorities

All states have an intrinsic right to call upon their citizens to undertake military service. In fact, under international human rights law, conscription is not covered by the prohibition of forced labor. The International Covenant on Civil and Political Rights (ICCPR), for example, provides in article 8(3)(a) that “[n]o one shall be required to perform forced or compulsory labour; ... (c) [f]or the purposes of this paragraph the term ‘forced or compulsory labour’ shall not include: ... (ii) [a]ny service of a military character ...”¹⁶ That said, international law provides important exceptions to this general rule, of which the

¹¹See, for example, UNSC, “Report of the Representative of the Secretary-General on Internally Displaced Persons: Mission to Uganda” (3 March 2004) UN Doc E/CN.4/2004/77/Add.1, 12; “1,000 Displaced Die every Week in War-Torn North”, *IRIN News* (29 August 2005); “When the Sun Sets, We Start to Worry ...” An Account of Life in Northern Uganda”, *IRIN News* (5 January 2004).

¹²C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 112.

¹³Civil Society Organizations for Peace in Northern Uganda, “Nowhere to Hide: Humanitarian Protection Threats in Northern Uganda” (Kampala, 2004) 63.

¹⁴See, for example, HRW, “Stolen Children: Abduction and Recruitment in Northern Uganda” (March 2003); S Finnström, *Living in Bad Surroundings* (Duke UP, 2008) 136; UNOCHA, “Assessment on LRA Attack in Pagak Camp” (Gulu, 19 May 2004).

¹⁵UNSC “Report of the Secretary-General on Children and Armed Conflict” (21 December 2007) UN Doc S/2007/757, 12.

¹⁶International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR). See also the American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (article 6); European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222 (article 4); African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 (article 6).

prohibition against the recruitment and use of child soldiers is the most well known. Indeed, the Statute of the International Criminal Court has even defined the recruitment of children under 15 years old as a war crime.¹⁷ International humanitarian law also prohibits the compulsory recruitment of protected persons by an occupying power.¹⁸ As we will see in Section IV.2, refugees are also intrinsically protected from military recruitment of all kinds.

For a conscription practice to be lawful, it must furthermore fulfil certain fundamental criteria, including that it is prescribed by law, executed in a lawful manner, and implemented in a non-arbitrary and non-discriminatory manner.¹⁹ Indeed, all major human rights treaties prohibit discrimination and expect states to be fair in their conscription practices.²⁰ Infringement of an individual's human rights regarding equal treatment and non-discrimination may arise in circumstances where, for example, only those from a certain ethnic background or only internally displaced persons are conscripted. By the same token, under international human rights and humanitarian law, recruitment practices amounting to cruel, inhuman or degrading treatment would be prohibited.²¹ The Inter-American Commission on Human Rights has specifically found that forced recruitment is also a violation of the rights to personal liberty, human dignity and freedom of movement under the American Convention on Human Rights.²²

IV.2 Specifically on recruitment in the context of displacement

While refugees have, since the very inception of the international refugee law regime, been clearly protected against military recruitment of any kind, the same is not entirely true for

¹⁷See article 8(2)(b)(xxvi) and (c)(vii) of the Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90. See also Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609; J-M Henckaerts, L Doswald-Beck, C Alvermann (eds), *Customary International Humanitarian Law* (vol. I: Rules, Cambridge University Press, 2005) 482.

¹⁸Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (article 51). To do so is a "grave breach" under article 147 and also a war crime under the Rome Statute of the International Criminal Court (article 8(2)(a)(v)). For prisoners of war, see also Geneva Convention relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

¹⁹Inter-American Commission on Human Rights, "Fourth Report on the Situation of Human Rights in Guatemala" (1 June 1993) OEA/Ser.L/V/II.83, Doc. 16 rev., ch 5.

²⁰The principles of equality and non-discrimination in part form the backbone of international law. See notably ICCPR (article 26); ACHR (article 24); AfCHPR (article 3); Four Geneva Conventions (article 3).

²¹See, for example, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85; Four Geneva Conventions (article 3); Additional Protocol to the Geneva Conventions (article 4(2)). See also UNCHR, "Compilation and Analysis of Legal Norms" (5 December 1995) UN Doc E/CN.4/1996/52/Add.2, para 166.

²²*Piché Cuca v Guatemala* [1993] Report No 36/93, case 10.975, decision on merits.

internally displaced persons.²³ These persons are, after all, citizens of the country in which they are displaced, and are as such subject to the general rule concerning military service. As noted by a wide range of international and regional human rights bodies, however, this is not unproblematic from a human rights point of view. In 1995, the UN Commission on Human Rights expressed concern about the fact that “[a]mong the many dangers facing internally displaced persons, both adults and children, is forcible and involuntary recruitment into the country’s armed forces or into those of dissident groups”.²⁴ Importantly, and as we will see in the case of Uganda, “such recruitment may also manifest itself in government coercion to form civil defence patrols”. Recognising that internally displaced adults are especially vulnerable to discriminatory proscription practices, the Commission particularly recommended the drafting of a future instrument to address the special needs of IDPs.²⁵

Such an instrument materialised three years later, when the UN adopted the Guiding Principles on Internal Displacement.²⁶ Principle 13(1) prohibits displaced children from being recruited, required or permitted to take part in hostilities, while Principle 13(2) specifically provides that “[i]nternally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement,” and further that recruitment practices amounting to cruel, inhuman or degrading treatment shall “in all circumstances” be prohibited. While it is positive that the Guiding Principles restate and compile the human rights and humanitarian law relevant to the military recruitment of IDPs, it is arguable that they in themselves do not offer any extended protection to IDPs in this regard. Indeed, these specific provisions are in line with the previously mentioned treaties which prohibit discrimination, cruel, inhuman or degrading treatment, and the use of child soldiers.

The years succeeding the introduction of the Guiding Principles, however, have seen a wide range of improvements in the general protection of internally displaced persons. Many have emphasised the merits of a closer integration of IDP and refugee protection, and several intrinsic refugee protection norms have consequently been applied analogously also to situations of internal displacement.²⁷ One such norm is the important principle of the civilian and humanitarian character of refugee camps.²⁸ It proscribes the presence of armed elements in refugee camps, intimidation, recruitment (forced or otherwise) and training by government armed forces or organised armed groups, the use of refugee camps for the internment of

²³M Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility* (Martinus Nijhoff Publishers, 2014) 136.

²⁴UNCHR, “Compilation and Analysis of Legal Norms” (5 December 1995) UN Doc E/CN.4/1996/52/Add.2, para 165.

²⁵UNCHR, “Compilation and Analysis of Legal Norms” (5 December 1995) UN Doc E/CN.4/1996/52/Add.2, para 171.

²⁶Even though this instrument is legally non-binding in its character, its importance shall not be underestimated. See, for example, M Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility* (Martinus Nijhoff Publishers, 2014) 54; P Orchard, “Protection of Internally Displaced Persons, Soft Law as a Norm-Generating Mechanism” (2010) 36 *Review of Int Studies* 281–303.

²⁷See R Murray, “Refugees and Internally Displaced Persons and Human Rights: The African System” (2005) 24 *Refugee Survey Quarterly* 56–66; T Clark and F Crépeau, “Mainstreaming Refugee Rights: The 1951 Refugee Convention and Human Rights Law” (1999) 17 *Netherlands Quarterly of Human Rights* 389–410; J Crisp, “Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions” (2010) 29 *Refugee Survey Quarterly* 1–27.

²⁸M Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility* (Martinus Nijhoff Publishers, 2014) 136.

prisoners of war, and exploitation of refugee situations for the purpose of promoting military objectives. In other words, the recruitment of refugees for military purposes – whether into regular or irregular forces – is clearly prohibited at all times. What is interesting for our issue at hand is that the UN Security Council has on a number of instances deliberately applied this principle to situations of IDP camps.²⁹ In the case of Chad and the Central African Republic, for example, the Council has emphasised the need to “preserve the civilian and humanitarian nature of the refugee camps and internally displaced persons sites and prevent *any* recruitment of individuals, including children, which might be carried out in or around the camps by armed groups”.³⁰ The principle of the civilian and humanitarian character of IDP camps is also encompassed in two recent and important regional treaties – the Great Lakes Pact on Security, Stability and Development in the Great Lakes Region, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).³¹ Under the Kampala Convention, for example, states parties agree to “respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons”.³² While it may be arguable that a state’s obligation to “respect” and “maintain” the civilian and humanitarian character of IDP camps and other places clearly entails a prohibition against both state and non-state military recruitment, forced or otherwise, it is interesting to note that, in article 7, the Kampala Convention only sets out an explicit prohibition on armed groups (but not states) recruiting IDPs. Thus, even though it is enticing to contend that the development instigated by the UN Security Council might signal an important shift in international legal thinking concerning military recruitment of IDPs, more research on this recent development is certainly called for. Because the Kampala Convention only entered into force as recently as in 2012, its tangible effects furthermore remain to be seen.

IV.3 Specifically on recruitment into civil militias

A question also arises as to whether or not international law distinguishes between a state’s recruitment of its citizens into regular forces and recruitment into irregular forces or civil militias. Under what circumstances may the state lawfully mobilise its citizens into civil militias? While no specific international law treaty explicitly deals with the recruitment of individuals into civil militias, this topic has on a few occasions been the focus of international and regional human rights monitoring bodies. These bodies have often expressed concern about the human

²⁹UNSC Res 1265 (17 September 1999) UN Doc S/RES/1265; UNSC Res 1296 (19 April 2000) UN Doc S/RES/1296; UNSC Res 1834 (24 September 2008) UN Doc S/RES/1834; UNSC Res 1861 (14 January 2009) UN Doc S/RES/1861; UNSC Res 1922 (12 May 2010) UN Doc S/RES/1922; UNSC Res 1923 (25 May 2010) UN Doc S/RES/1923.

³⁰Emphasis added. UNSC Res 1834 (24 September 2008) UN Doc S/RES/1834, preamble. See also UNSC Res 1861 (14 January 2009) UN Doc S/RES/1861, preamble.

³¹Great Lakes Pact on Security, Stability and Development in the Great Lakes Region (adopted 15 December 2006) <[http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/60ECE277A8EDA2DDC12572FB002BBDA7/\\$file/Great%20Lakes%20pact_en.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/60ECE277A8EDA2DDC12572FB002BBDA7/$file/Great%20Lakes%20pact_en.pdf)> accessed 4 December 2013; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) available at <http://www.refworld.org/docid/4ae572d82.html> accessed 4 December 2013.

³²Article 9(2)(g). See also articles 7(5)(i); 3(1)(f).

rights implications of the use of civil militias; the Inter-American Commission on Human Rights, for example, has recognised that “the creation of unregimented and undisciplined security forces, without the kind of structure, training and internal and external supervision that all forces of law and order must have, engenders conflict and human rights violations”.³³ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has equally recognised that there is a “significant risk that such groups will commit serious human rights abuses with impunity, or evolve into unaccountable militias or bandit forces”.³⁴ It is arguable that this is precisely what unfolded in northern Uganda (see Section V.5).

The legality of recruitment into civil militias, or the lawfulness of the forces as such, has only rarely been addressed by international human rights monitoring bodies. In 1994, the UN Commission on Human Rights, recognised that “under exceptional circumstances, when public military and police forces are unable to act, there may be a need to establish civil defence forces to protect the civilian population”.³⁵ In these exceptional circumstances, it recommended, states should establish, “where appropriate”, minimum legal requirements for them within domestic law.³⁶ Perhaps the most important of these minimum requirements is that recruitment into the forces should be voluntary and no individual shall therefore be forced to participate in such groups. This voluntariness of joining civil defence forces has notably been emphasised by a number of international bodies, and suggests that, while states may have a right to call upon citizens to join regular security forces, such a right may not inherently exist when it comes to recruitment into *irregular forces*.³⁷

Other important minimum requirements proposed by the UN Commission included that civil defence forces shall only be deployed for the purpose of self-defence; they shall be effectively controlled by public authorities; public authorities shall supervise their training, arming, discipline and operations; commanders shall have clear responsibility for their activities; civil defence forces and their commanders shall be clearly accountable for their activities; and that offences involving human rights violations by such forces shall be subject

³³Inter-American Commission on Human Rights, “Fourth Report on the Situation of Human Rights in Guatemala” (1 June 1993) OEA/Ser.L/V/II.83, Doc. 16 rev., 60.

³⁴UNHRC “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston” (20 May 2010) UN Doc A/HRC/14/24, paras 72–3. See also UNHRC, Res 1993/54 (9 March 1993) UN Doc E/CN.4/RES/1993/54; UN ECOSOC, “Report of the Secretary-General on civil defence forces submitted pursuant to Commission on Human Rights Resolution 1992/57” (3 March 1992) UN Doc E/CN.4/1993/34; UN ECOSOC, “Report of the Secretary-General Submitted Pursuant to Commission on Human Rights Resolution 1993/54” (2 February 1994) UN Doc E/CN.4/1994/38; UN ECOSOC, “Report of the Secretary-General on Civil Defence Forces Submitted Pursuant to Commission on Human Rights Resolution 1992/57” (28 January 1993) UN Doc E/CN.4/1993/34.

³⁵UNHRC, Res 1994/67 (9 March 1994) UN Doc E/CN.4/1994/132, ch 11. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has equally recognized that “in some circumstances – for instance, out of strict necessity and in defence against imminent threats to life – the formation of such groups may be appropriate, and their use of force may be lawful”. See UNHRC “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston” (20 May 2010) UN Doc A/HRC/14/24, paras 72–3.

³⁶UNHRC, Res 1994/67 (9 March 1994) UN Doc E/CN.4/1994/132, ch 11 para 2.

³⁷UN ECOSOC, “Report by the Special Rapporteur, Mr. Baere Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1993/71” (7 December 1993) UN Doc E/CN.4/1994/7 paras 19–20; UN ECOSOC, “Report on the Visit to Sri Lanka by Three Members of the Working Group on Enforced or Involuntary Disappearances” (8 January 1992) UN Doc E/CN.4/1992/18/Add.1, para 204 (m).

to the jurisdiction of the civilian courts.³⁸ Similar recommendations have also been suggested by the UN Working Group on Enforced or Involuntary Disappearances.³⁹

While the frameworks presented in Sections IV.1 and IV.2 significantly inform the law on the recruitment of internally displaced persons into civil militias, and all share the ambition of providing the individual with the widest possible human rights protection, the framework elaborated by the UN Commission on Human Rights provides the only detailed test developed exclusively to apply to a situation in which states employ civil militias. In contrast to, for example, the civilian and humanitarian character of refugee and IDP camps framework, which implies a very clear prohibition against *all* military recruitment and therefore fails to encourage any deeper contextual discussion, as is clear in the above, the UN Commission's framework includes an aspect of *how* and *why* the recruitment is pursued. It furthermore emphasises the *institutional* component of the militias. These features suggest that the UN Commission's framework is the most analytically useful in understanding the particularities of the Ugandan case study. As we will see in Section V, the minimum requirements proposed by the UN Commission were largely disregarded in the Ugandan context, and through an application of the Commission's framework we may get closer to an understanding of how and why this was the case. That said, it is regrettable that, in the UN Commission's focus on the possibility of holding militia members accountable for human rights violations against the civilian population, the Commission largely disregards the conditions of service, which, as we have seen in Section IV.1, may amount to human rights violations in themselves. In Section V, however, it will become fairly clear that the conditions of service were of such severity that they most certainly violated core human rights norms.

V. Military Recruitment of IDPs in Northern Uganda

V.1 *Calls for militia-specific legislation*

As the previous section highlighted, to ensure the lawfulness of the use of civil militias, the UN Commission on Human Rights has recommended that states establish minimum legal requirements pertaining to such militias within domestic law. While Uganda is party to all major international humanitarian, refugee, and human rights treaties,⁴⁰ its deployment of civil militias has generally been supported by very vague domestic legislature. Since 1999, if not earlier, members of the Ugandan parliament have called for a specific law dealing with Uganda's use of civil militias.⁴¹ Government representatives, on the other hand, have often

³⁸UNHRC, Res 1994/67 (9 March 1994) UN Doc E/CN.4/1994/132, ch 11 para 2.

³⁹See, for example, UN ECOSOC, "Report on the Visit to Sri Lanka by Three Members of the Working Group on Enforced or Involuntary Disappearances" (8 January 1992) UN Doc E/CN.4/1992/18/Add.1, para 204(m).

⁴⁰These include the ICCPR, the Convention against Torture, Convention on the Rights of the Child, as well as all of the four Geneva Conventions and Additional Protocols. For an overview, see University of Minnesota Human Rights Library, "Ratification of International Human Rights Treaties – Uganda" <<http://www1.umn.edu/humanrts/research/ratification-uganda.html>> accessed 3 December 2013.

⁴¹Hansard (Ug) 10 February 1999 (Betty Amongi Ongom). See also 18 September 2000 (Bidandu Ssali); 8 November 2000 (John Eresu); 16 August 2001 (Kalule Ssengo); 24 October 2001 (Mathias Kasamba); 24 October 2001 (Alice Alaso); 12 March 2002 (Dora Byamukama); 4 July 2002 (Tariff Sebagala); 26 June 2003 (Mathias Kasamba); 23 September 2003 (Committee on Defence and Internal Affairs); 10 February 2004 (Okulu Epak); 21 November 2005 (John Kigyagi); 17 May 2007 (Alice Alaso).

argued that there was really no need to “come out with a totally new piece of legislation to attend the problem”.⁴²

Both the 1995 Ugandan Constitution and the 1992 National Resistance Army Statute (NRA Statute), pertaining to the Ugandan army, have occasionally been cited to ground the lawfulness of these forces.⁴³ Article 17 of the Constitution, for example, requires every citizen “to defend Uganda and to render national service when necessary”, and every able-bodied citizen “to undergo military training for the defence of this Constitution and the protection of the territorial integrity of Uganda whenever called upon to do so”.⁴⁴ Nonetheless, the Constitution makes no explicit provision for the use of civil militias – to the contrary, article 208, which concerns the UPDF, states in paragraph 4 that “no person shall raise an armed force except in accordance with this Constitution”.⁴⁵ Additionally, article 222 provides that the Ugandan Parliament shall make laws to regulate the possession and use of firearms and ammunition. It would as such appear as if, for a militia group to be constitutional, its existence must be enacted by a law passed in Parliament.

The Minister of Defence has also argued that the NRA Statute covers “persons who have been asked to come and work alongside the UPDF”.⁴⁵ While the Statute indeed provides for the use of “such other officers and militants attached to the regular Force under arrangements made by government”, it does not offer any clarification regarding the nature of these.⁴⁶ As we will see in the following sections, issues such as the purpose of these forces, the voluntariness of joining them, and management and accountability have in practice long been inadequately dealt with. In addition, as the Minister of Defence later admitted, “not all the Local Defence Forces, by whatever names they are called, fall into those [the NRA Statute] categories” (and therefore, he rather reluctantly agreed, there was a need to enact a law that comprehensively addresses the issue of auxiliary forces).⁴⁷ Similarly, prominent members of the UPDF have acknowledged that while NRA Statute does not “substantively provide for the creation and employment of LDUs and Home guards”, “as the situation went on deteriorating”, such forces were nonetheless created outside of the law.⁴⁸

Despite of the governmental recognition that the Ugandan civil militias were created and managed outside of domestic law – and regardless of the fact that government representatives had agreed to set in motion the drafting of a new law,⁴⁹ in 2003, a draft law had still not been proposed to the Ugandan Cabinet. These circumstances triggered a clear reaction by the Parliamentary Committee on Defence and Internal Affairs: “[t]here is urgent need for legislation regarding auxiliary forces. This will help in legalising their existence and provide

⁴²Hansard (Ug) 10 February 1999 (Minister of State for Defence Steven Kavuma).

⁴³Note that the Ugandan Police Act of 1994 also allows for the establishment of auxiliary forces. These forces are nevertheless not encompassed in Rukooko’s civil militia definition as provided in the introduction to this article. See further Part VIII and section 65(1) of the Police Act of 1994.

⁴⁴1995 Constitution of Uganda (article 17(1)(e)).

⁴⁵Hansard (Ug) 7 September 2000 (Minister of State for Defence Steven Kavuma). See also 8 November 2000 (Minister of State for Defence Steven Kavuma); “Museveni Says LDU is UPDF Reserve” *Daily Monitor* (Kampala, 18 April 2000); “Museveni Directs UPDF to Control Karamoja Vigilantes” *IRIN News* (Kampala, 24 September 2001).

⁴⁶1992 National Resistance Army Statute (articles 3(c) and 17(2)).

⁴⁷Hansard (Ug) 7 September 2000 (Minister of State for Defence Steven Kavuma). See also 8 November 2000 (Minister of State for Defence Steven Kavuma).

⁴⁸Hansard (Ug) 16 August 2001 (Major General Tinnyefuza).

⁴⁹Hansard (Ug) 10 February 1999 (Minister of State for Defence Steven Kavuma).

mechanisms of how they are recruited, trained, deployed and funded”.⁵⁰ This call was also echoed in the Committee on Defence and Internal Affairs, which argued that “[w]here LDUs have to be deployed, Government is urged to ensure that they are adequate in number, well-trained, motivated, properly armed, well remunerated and *legalised*”.⁵¹ As of today, no specific legal framework deals explicitly and exclusively with the activities of Uganda’s civil militias. In 2005, however, a new piece of legislation concerning the Ugandan army was enacted. Whether or not this legislation provides an improvement in the management of Uganda’s civil militias will be addressed in Section VI. Before that, however, the following sections will illustrate how, in the absence of a legal framework, the recruitment and management of civil militias in northern Uganda was played out in practice.

V.2 Purposes of recruitment

The UN Commission has, as we saw in Section IV.3, recommended that civil defence forces shall be deployed only for the purpose of self-defence. Self-defence was ostensibly the main reason for the deployment of civil militias in northern Uganda, and the government has frequently maintained that it mobilised civilians to “share the burden of protecting the civilian population” and to “protect the internally displaced persons”.⁵² However, it is arguable that had not considerable portions of the UPDF been withdrawn from northern Uganda once the camps were formed and civil militias deployed, the 40,000 or so soldiers constituting the UPDF would have been enough to both protect the camps from LRA attacks, and to pursue military operations against the rebels. In other words, there was not an obvious need to create such militias in the first place, and some have even argued that the militias were created among the ethnic Acholi population first and foremost as an excuse *not* to provide regular military protection to this very population.⁵³ Indeed, the government’s counterinsurgency strategies have been particularly brutal against the Acholi, as the Ugandan army has focused their use of force on destroying suspected rebel support among civilians.⁵⁴ Thus, self-defence emerges as not the only, or perhaps not even the main, reason for the creation of the (principally Acholi) militias.

It is clear that the government mobilised these forces also as a military strategy against the LRA. The LRA was, after all, in the mind of the government, first and foremost an *Acholi* rebel group, even though it did not represent the interests of most Acholi in Uganda.⁵⁵ Referring to the recruitment of Acholi civilians in the northern military operation, one MP even asserted that “[t]he best way to fight guerrillas in particular areas is to use the local people to do so”.⁵⁶ Consequently, a considerable portion of these forces – against the wishes

⁵⁰Hansard (Ug) 23 September 2003 (Committee on Defence and Internal Affairs). See also 12 March 2002 (Minister of Defence Amama Mbabazi).

⁵¹Emphasis added. See Hansard (Ug) 23 September 2003 (Committee on Defence and Internal Affairs). See also 23 September 2003 (Minister of Defence Amama Mbabazi).

⁵²C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 55; “Kony Orders Juniors to Massacre Acholi”, *The New Vision* (3 June 2004).

⁵³Hansard (Ug) 7 July 2004 (Aggrey Awori).

⁵⁴A Branch, “Humanitarianism, Violence and the Camp in Northern Uganda” (2009) 11 *Civil Wars* 477–501, 480.

⁵⁵A Branch, “Humanitarianism, Violence and the Camp in Northern Uganda” (2009) 11 *Civil Wars* 477–501.

⁵⁶Hansard (Ug) 7 July 2004 (Captain Babu).

of the civilian population and the militia members themselves – was prevented from protecting the camps and rather taken out on army operations, often to other regions.⁵⁷ As one MP complained to the Ugandan Parliament in 2003:

The recently recruited home guards are being deployed to do an army job, leaving the camps open. This has happened in Palabek and Padibe. The home guards who were protecting these camps were moved to the area of Atappi to waylay the LRA on their routes and carry out the operations of the Army.⁵⁸

On a number of instances, the units were redeployed as far away as the Democratic Republic of the Congo.⁵⁹

Another, more general, reason for the government's creation of civil militias was that this deployment provided an opportunity of de facto augmenting the Ugandan army while at the same time decreasing official army expenditures. Uganda has long relied greatly on international financial support – at one point even an estimated approximately 50 percent of the national budget – and donors have regularly requested that the government drastically decrease its military expenditure. The downsizing of the army, then, appears to have coincided with an increase in the deployment of irregular security forces.⁶⁰ Such forces were virtually invisible in the official military budget – although they were (more or less) under the operational command of the UPDF, they were, quite confusingly, managed and (under-)funded by the Ministry of Interior. This invisibility of the civil militias in any official sphere was also attractive to the Ugandan government from an accountability perspective – as long as the militias remained undetectable, it was difficult to hold the government responsible for their conduct. This issue is dealt with in more detail in Section V.5

V.3 *Voluntariness of participation*

As the UN Commission on Human Rights recommended in 1994, recruitment into civil militias should be voluntary and no individual shall be forced to participate in such groups.

⁵⁷Confidential interview (Kampala, 2 November 2009).

⁵⁸Hansard (Ug) 29 July 2003 (Hilary Onek).

⁵⁹Hansard (Ug) 28 August 2002 (Odonga Otto); 17 July 2002 (Ogenga Latigo); 26 June 2003 (Norbert Mao); 10 February 1999 (Betty Amongi Ongom); 14 June 2000 (Livingstone Okello-Okello); 6 September 2000 (Okumu Reagan); 24 October 2001 (Louis Opange); 1 April 2003 (Johnson Malinga); 13 July 2004 (Tom Anang-Oduu); 29 June 2005 (Micah Lalem); 29 June 2005 (Isaiah Imumet); 28 June 2006 (Simon Ross Euku). See also R Muggah, "Protection Failures: Outward and Inward Militarization of Refugee Settlements and IDP Camps in Uganda", in R Muggah (ed), *No Refuge: The Crisis of Refugee Militarization in Africa* (Zed Books, 2006) 89–134; Human Rights Focus, *Between Two Fires, The Plight of IDPs in Northern Uganda* (Gulu, 2002) 27–30.

⁶⁰See D Bevan, "The Budget and Medium-Term Expenditure Framework in Uganda" (2001) The World Bank: Africa Region Working Paper Series No 24, 12; W Reno, "Uganda's Politics of War and Debt Relief" (2002) 9 *Review of Int Political Economy* 415–435, 426; D Hendrickson, "The Uganda Defence Review, Learning from Experience" (2007) King's College London/Makerere University Report 24; R Muggah, "Protection Failures: Outward and Inward Militarization of Refugee Settlements and IDP Camps in Uganda", in R Muggah (ed), *No Refuge: The Crisis of Refugee Militarization in Africa* (Zed Books, 2006) 89–134, 100–1.

However, it is not always easy to distinguish between voluntary and forced recruitment. While many IDPs appeared unwilling to join the militia forces due to a fear of being mistreated or transferred against their will, both adults and children were subjected to various political and economic pressures that provided them with little alternative than to join the civil militia “voluntarily”.⁶¹ Indeed, local youth, in particular those with poor family relations and facing economic challenges, constituted the majority of the Local Defence Units.⁶² Many were “strongly encouraged” to join a militia, for example upon requesting increased UPDF protection.⁶³ Upon realising that the UPDF frequently failed to protect the camps, others saw no other option than to participate in organising their own protection.⁶⁴

Although forced recruitment was repeatedly denied by the Ugandan authorities, when announcements to voluntarily recruit new members did not result in a satisfying number of new recruits, authorities were known to employ forcible recruitment methods.⁶⁵ Dolan describes how in Awer camp in 1998, people were first requested to join the Homeguard, but “[l]ater on, the message was left with the I.Cs [Local Councils] to recruit people forcefully into Homeguards so that they could be trained to become soldiers ... Some boys on seeing that they were being pressurized, decided to join the Homeguards voluntarily ...”⁶⁶ Many former rebels, including children who escaped or were captured or released from the LRA, were also mobilised into the militias. Individuals who were unwilling to join risked being considered LRA collaborators, as recounted by one informant:

⁶¹Coalition to Stop the Use of Child Soldiers, “Child Soldiers Global Report 2008 – Uganda” (20 May 2008) <<http://www.unhcr.org/refworld/docid/486cb13ac.html>> accessed 1 July 2010. See also UNSC “Report of the Secretary-General on Children and Armed Conflict” (21 December 2007) UN Doc S/2007/757, 25; B Rukooko, “Protracted Civil War, Civil Militias and Political Transition in Uganda since 1986”, in DJ Francis (ed), *Civil Militia: Africa’s Intractable Security Menace?* (Ashgate Publishing Ltd., 2005) 213–230; HRW, “Submission to the Committee on the Rights of the Child (CRC)” (May 2005); C Dolan, “Views on the Northern Uganda Conflict from Inside the War Zone: Report on COPE Fieldwork Findings” (April 2000) COPE Working Paper No 35, 5–6; IOM, “Uganda: Internally Displaced Persons in the 2006 National Elections” (May 2005) Action Plan: IOM Project on Political Rights and Enfranchisement System Strengthening, 29; Human Rights Focus, *Between Two Fires, The Plight of IDPs in Northern Uganda* (Gulu, 2002) 50–51; HRW, “Stolen Children: Abduction and Recruitment in Northern Uganda” (March 2003).

⁶²See C Blattman and J Annan, “The State of Youth and Youth Protection in Northern Uganda” (2006, UNICEF) 41. See also C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 144; C Blattman, “From Violence to Voting: War and Political Participation in Uganda” (2009) 103 *American Pol Sci Rev* 231–247.

⁶³E Stites, D Mazurana and K Carlson, “Movement on the Margins: Livelihoods and Security in Kitgum District, Northern Uganda” (November 2006) Feinstein International Center, 55.

⁶⁴Hansard (Ug) 13 November 2003 (Odonga Otto); 19 March 2003 (Okupa Elijah); 19 March 2003 (Omara Atubo).

⁶⁵See for example, C Blattman and others, “The State of Youth and Youth Protection in Northern Uganda” (2006, UNICEF) 58–9; also R Muggah, “Protection Failures: Outward and Inward Militarization of Refugee Settlements and IDP Camps in Uganda”, in R Muggah (ed), *No Refuge: The Crisis of Refugee Militarization in Africa* (Zed Books, 2006) 89–134; UNOCHA, “Humanitarian Update Uganda” (31 May 2004); Hansard (Ug) 10 February 1999 (Minister of State for Defence Steven Kavuma); 13 July 2000 (Minister of State for Defence Steven Kavuma).

⁶⁶C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 144.

They [the UPDF] threatened that if we did not join, then they would kill everybody in [redacted], for they would all be considered to be rebels. So we decided to make the sacrifice, we did not do it voluntarily, but out of fear. Therefore we went and helped [the UPDF] to do their work.⁶⁷

Somewhat paradoxically, acting or potential militia members were at the same time particular targets of the LRA, who often directly attempted to dissuade or intimidate Acholi civilians from joining or remaining in these forces.⁶⁸ Finally, the UPDF would also often track down and re-recruit militia deserters.⁶⁹ As one informant explains:

I was captured many times. I used to escape from time to time. But I only decided later to accept the authority of those above me and stay. "Ah, you are just wasting your time. Some people have already captured you. Let me just accept it because it is not worth it bothering myself. I accept it." Then I remained.⁷⁰

V.4 Supervision and management

Not only should militia participation be voluntary and the purpose of deployment self-defence, as explained in IV.3, the militias should also be effectively controlled, armed, and trained by public authorities. In Uganda, the government created a seemingly deliberate confusion when it came to the supervision and management of its civil militias. As indicated earlier, this confusion served two purposes – on the one hand, it obstructed many attempts to hold the state to account for the actions of these forces, and, on the other, it prevented donors and others from gaining an overview of Uganda's total military expenditure. Disturbingly, for many years, the exact, or even approximate, number of these forces remained publicly unknown. One reason for this may lie in the mode of recruitment and management, described by the Minister of Defence in 2008 as "not so organized or easy". In the early days, records were rarely kept, and, due to the suddenness of the emergency, the government "just called up people to fight" and could thus "not be so neat in writing up the

⁶⁷Name of village withheld for confidentiality reasons. Confidential interview (Gulu district, 9 December 2009). See also Refugees International, "Inadequate Response to Protection Crisis in Northern Uganda" (December 2004) RI Bulletin; Coalition to Stop the Use of Child Soldiers, "Child Soldiers Global Report 2008 – Uganda" (20 May 2008) <<http://www.unhcr.org/refworld/docid/486cb13ac.html>> accessed 1 July 2010; "Uganda: Army Explains Recruitment of Former Rebel Child Fighters" *IRIN News* (Kampala, 17 February 2005)

⁶⁸A Vinci, "The Strategic Use of Fear by the Lord's Resistance Army" (2005) 16 *Small Wars and Insurgencies* 360–381, 370. See also Hansard (Ug) 23 September 2003 (Committee on Defence and Internal Affairs); S Lautze, "Livelihood Systems of Enlisted Ugandan Army Soldiers: Honour and Reform of the UPDF" (2008) 19 *Small Wars and Insurgencies* 635–653.

⁶⁹See, for example, Hansard (Ug) 1 December 2004 (Patrick Amuriat); 13 November 2003 (Odonga Otto); 3 August 2005 (Omara Atubo). See also B Rukooko, "Protracted Civil War, Civil Militias and Political Transition in Uganda since 1986", in DJ Francis (ed), *Civil Militia: Africa's Intractable Security Menace?* (Ashgate Publishing Ltd., 2005) 213–230; C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 144–7; R Muggah, "Protection Failures: Outward and Inward Militarization of Refugee Settlements and IDP Camps in Uganda", in R Muggah (ed), *No Refuge: The Crisis of Refugee Militarization in Africa* (Zed Books, 2006) 89–134.

⁷⁰Confidential interview (Gulu district, 9 December 2009).

people”.⁷¹ Equally alarming, the government lacked an official registry of the civil militia weapons.⁷² It was only in 2007, after the conflict in northern Uganda had drawn to a close, and subsequently to the set-up of a Cabinet Sub-Committee on auxiliary forces in May 2005,⁷³ that the government revealed that the number of civil militias in the whole of Uganda had at its highest during the conflict been 38,135.⁷⁴ Considering these figures, claims such as those made by Rukooko that Uganda has had the highest known number of government supported militias in the world, appear more convincing.⁷⁵ In 2007, the Ministry of Defence also proposed retiring 10,000 militia members and demobilising a further 8,000 members, leaving the number of civil militia members in Acholiland to about 10,000.⁷⁶ These figures point to that the number of militia members in northern Uganda might have been as high as 30,000 during the conflict years.

One major source of discussion amongst Ugandan parliamentarians concerned the government institution to which such forces belonged, or should belong. Such debates continued for years despite several committees being initiated with the view to streamline the position of the militias.⁷⁷ At one point, the Minister of State for Defence even asserted that the “Ministry of Defence *in conjunction with* the Ministry of Internal Affairs and Uganda Police manage the auxiliary forces”.⁷⁸ Indeed, it appears as if the responsibility for managing and providing salaries to the civil militias oscillated between the Ministry of Internal Affairs and the Ministry of Defence.⁷⁹ Most of the time, money for these forces came from the budget of the Ministry of Internal Affairs, but was channeled through the Ministry of Defence. At the same time, militia members were armed and, to various degrees, trained and controlled by the UPDF.⁸⁰ In this way, the militias were de facto under the Ministry of

⁷¹Hansard (Ug) 20 August 2008 (Minister of Defence Kiyonga).

⁷²Hansard (Ug) 6 July 2004 (Minister of State For Defence Ruth Nankabirwa).

⁷³Hansard (Ug) 9 August 2005 (Minister of Finance, Planning and Economic Development Ezra Suruma).

⁷⁴Hansard (Ug) 22 May 2007 (Minister of Defence Crispus Kiyonga) But see 9 August 2005 (Minister of State for Defence Ruth Nankabirwa).

⁷⁵B Rukooko, “Protracted Civil War, Civil Militias and Political Transition in Uganda since 1986”, in DJ Francis (ed), *Civil Militia: Africa’s Intractable Security Menace?* (Ashgate Publishing Ltd., 2005) 213–230.

⁷⁶The Acholi sub-region was to maintain this number of forces “until there are alternative means to keep security in that area”. See Hansard (Ug) 22 May 2007 (Minister of Defence Crispus Kiyonga); 1 August 2007 (Minister of Defence Crispus Kiyonga).

⁷⁷Hansard (Ug) 7 September 2000 (Kibaale Wambi); 7 September 2000 (Minister of State for Defence Steven Kavuma); 17 July 2002 (Lartif Ssebagala); 18 September 2000 (Bidandu Ssali); 8 November 2000 (John Eresu); 16 August 2001 (Kalule Ssengo); 24 October 2001 (Mathias Kasamba); 24 October 2001 (Alice Alaso); 12 March 2002 (Dora Byamukama); 4 July 2002 (Lartif Ssebagala); 23 September 2003 (Committee on Defence and Internal Affairs); 21 November 2005 (John Kigyagi); 17 May 2007 (Alice Alaso); 26 June 2003 (Mathias Kasamba); 10 February 2004 (Okulu Epak); 16 August 2001 (Minister of State for Security Mukasa Muruli).

⁷⁸Emphasis added. Hansard (Ug) 9 August 2005 (Minister of State for Defence Ruth Nankabirwa).

⁷⁹Hansard (Ug) 24 October 2001 (First Deputy Prime Minister and Minister of Internal Affairs Eriya Kategaya); 29 June 2005 (Minister of State for Defence Ruth Nankabirwa; Micah Lolem and Francis Epctait).

⁸⁰While some militias received training over two or three months, militias such as the Homeguards were generally only trained for three weeks. See Committee on Defence and Internal Affairs, Hansard, Ugandan Parliamentary Records, 23 September 2003. See also Human Rights Focus, *Between Two Fires, The Plight of IDPs in Northern Uganda* (Gulu, 2002) 27–30.

Defence, but the their management was not budgeted for in the military expenditures. It was thus not fully evident to the donor community just how large the military budget actually was.⁸¹ This – seemingly deliberate – confusion had severe consequences for the management of the militias; issues of salaries and management were inadequately dealt with, and payments often did not reach the militias on the ground.⁸² As I will show in Section V.5, the conditions of service – the lack of wages, health facilities and adequate food provision – directly impacted the performance of the militias. Indeed, protecting the IDP camps was a heavy task which they commonly were neither adequately equipped nor trained for.⁸³ As one informant admitted, “[t]he duties used to overwhelm us and we found ourselves hiding from work, so that you [we] could get a little rest”.⁸⁴ Importantly, these factors may also be indicative of conditions of service amounting to torture, inhuman or degrading treatment, clearly prohibited under general human rights law (see Section IV.1).

V.5 Civil militias and accountability

Perhaps the most important issue relating to the creation of civil militias concerns that of accountability. The UN Commission on Human Rights has clearly recognised the need for accountability frameworks to hold such forces and their commanders accountable for any wrongdoings (see Section IV.3). The NRA Statute (article 13) provides for a code of conduct as well as a framework for holding civil militia members accountable for any wrongdoings. However, in contrast to the Commission’s recommendation that offences involving human rights violations by civil militias shall be subject to the jurisdiction of the civilian courts, under article 14 of the NRA Statute, militia members are subject to military law. A Unit Disciplinary Committee may try and determine cases related inter alia to murder, robbery, rape and terrorism, but this Committee may also refer any case to the Division Court Martial (article 76), which has “unlimited jurisdiction” to try any offence under the NRA Statute (article 79). The NRA Statute also provides for the use of a Field Court Martial (article 77) in cases where it is “impracticable” for the offender to be tried by a Unit Disciplinary Committee or Division Court Martial, as well as for a General Court Martial (article 80). While the NRA Statute does open for the use of “any civil court to try a person for an offence triable by that court” (article 90), in practice, local civilian officials and the civilian criminal justice system had neither the effective authority nor the capacity to hold the military or civil militia members accountable for any human rights abuse. This is very unsettling considering the fact that no effective accountability structure whatsoever existed in the camps, and that reports of UPLDF and civil militia abuse rarely resulted in any

⁸¹Hansard (Ug) 23 September (Okumu Reagan).

⁸²See, for example, Hansard (Ug) 18 December 2007 (Government Chief Whip Kabakumba Masiko); 17 May 2007 (Leader of the Opposition Ogenga Latigo); 22 May 2007 (Minister of Defence Crispus Kiyonga); 6 July 2004 (Francis Epetai).

⁸³R Muggah, “Protection Failures: Outward and Inward Militarization of Refugee Settlements and IDP Camps in Uganda”, in R Muggah (ed), *No Refuge: The Crisis of Refugee Militarization in Africa* (Zed Books, 2006) 89–134, 116; C Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 144–7. See also Human Rights Focus, *Between Two Fires, The Plight of IDPs in Northern Uganda* (Gulu, 2002) 27–30; E Stites, D Mazurana and K Carlson, “Movement on the Margins: Livelihoods and Security in Kitgum District, Northern Uganda” (November 2006) Feinstein International Center, 55.

⁸⁴Confidential interview (Gulu district, 8 December 2009).

investigations or the prosecution of UPDF personnel even through the military system.⁸⁵ Thus, militia members were rarely brought to justice and an atmosphere of impunity generally prevailed.

Because the civil militias often exacerbated the very problems they were created to help, this reality is particularly disturbing.⁸⁶ As we see in the comments made by one concerned MP, the question of accountability is very much related to the discussion of under which government ministry the forces were to belong:

On the one hand we are told that LDUs are under the Ministry of Internal Affairs, on the other, they are under the Ministry of Local Government and in some instances they are under Defence. My worry is that if some of them commit crime, how are they going to be tried? Are they going to be tried under the UPDF Code of Conduct, under the Police or as civilians? I am very worried about the legal framework of some security agencies that Government has established ...⁸⁷

Not only were the forces sometimes manipulated for political purposes – in one camp in 2002, for example, militia members were used to beat up political opponents – the irregular wages, and the inadequate health facilities and food provision, directly impacted their performance.⁸⁸ To ensure their own survival, some militia members ended up committing crimes against IDPs; as one informant explains: “[s]ometimes due to starvation overcoming their senses, they [militia members] would be driven to do bad things. They would go and grab things from civilians or try to force them to give them things”.⁸⁹ Indeed, the human rights problems associated with the militia forces were so widespread that the Africa Centre for the Treatment and Rehabilitation of Torture Victims pointed to Local Defence Units as

⁸⁵See, for example, Amnesty International, “Uganda: Breaking the Circle: Protecting Human Rights in the Northern War Zone” (1999) AFR 59/01/99, 61–2; HRW, “Submission to the Committee on the Rights of the Child (CRC)” (May 2005) 24; IDMC/RIIP, “‘Only Peace Can Restore the Confidence of the Displaced’ – Update on the Implementation of the Recommendations made by the UN Secretary-General’s Representative on Internally Displaced Persons following his visit to Uganda” (October 2006) 23; Oxfam, “The Building Blocks of Sustainable Peace” (September 2007) 10. For an exception, see “LDU Officer Who Killed Six to Hang” *New Vision* (Kampala, 3 February 2009).

⁸⁶E. Stites, D. Mazurana and K. Carlson, “Movement on the Margins: Livelihoods and Security in Kitgum District, Northern Uganda” (November 2006) Feinstein International Center, 55.

⁸⁷Hansard (Ug) 30 September 1999 (Chebet Maikut).

⁸⁸As combatants they were furthermore excluded from the services provided to the IDP population by UN organizations. See C. Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Berghahn Books 2009) 145; C. Blattman and J. Annan, “The State of Youth and Youth Protection in Northern Uganda” (2006, UNICEF) 41; HRW, “State of Pain: Torture in Uganda” (March 2004) 26–7. See also Hansard (Ug) 3 September 2002 (Alintuma Nsambu); 27 February 2003 (Okot Santa); 13 November 2003 (Odonga Otto); 15 June 2004 (Alex Okot); 1 July 2005 (Johnson Malinga); 3 August 2005 (Omodi Okot); 3 August 2005 (Omara Atubo); 9 August 2005 (Minister of State For Defence Ruth Nankabirwa); 7 September 2005 (Juliet Rainer); 10 October 2005 (Alice Alaso); 14 June 2006 (Jessica Alupo); 17 May 2007 (Emilly Otekat); 17 May 2007 (Leader of the Opposition Ogenga Latigo); 17 May 2007 (Okot Ogong).

⁸⁹Confidential interview (Gulu district, 8 December 2009). See also Hansard (Ug) 3 September 2002 (Alintuma Nsambu); 1 July 2005 (Johnson Malinga); 13 November 2003 (Odonga Otto); E. Stites and others, “Movement on the Margins: Livelihoods and Security in Kitgum District, Northern Uganda” (November 2006) Feinstein International Center, 55.

the worst abusers of human rights in its reports of 2000 and 2002, ahead of the UPDF, the Ugandan Police Force and the Prisons Services.⁹⁰ Killings, rape and arbitrary arrests by militia members were all too common occurrences.⁹¹ As another informant exemplifies: “[i]f they [the civilians] said something that was offensive and could not be accepted, then you would arrest them and throw them in. You would take them to the leader and explain all those things that he had said to you. He would be given punishment and cautioned against repeating those words”.⁹²

The Ugandan government had arguably created its militias in such a manner that it was relatively easy for the government to disown them when “their operations attract public disapproval or when no government department wants to pick up the bill for their maintenance”.⁹³ The lack of will on the part of the government to recognise its own liability when it came to wrongdoings by these forces created an obvious dilemma when it came to seeking legal redress. That said, these legal conundrums had in part – but only in part – already found solution in the 1995 High Court case of *David Kironde v Mukono District Administration & Attorney General*.⁹⁴ The High Court examined the question of whether the Attorney General is liable for the tortious acts of the Local Defence Units and whether these are servants of the Attorney General. Examining whether an LDU had acted in the “course of duty or was on own frolic” when he had shot the plaintiff, the court eventually established government responsibility for the acts of LDU. It importantly held that:

1. It is a notorious fact that LDUs are trained and armed by the government. LDUs are an integral part of government machinery for the maintenance of law and order in the country. Therefore even if there is no statute defining the status of LDUs, they are servants of government.
2. An LDU's duty is to maintain law and order and his duty involves stopping and interrogating people. That is why the LDU is armed. Therefore even if the act of hitting the plaintiff was wanton and unjustified, it was nevertheless the wrongful way of doing the authorised act. Therefore the Attorney General was liable for the tortious act of the LDU since the LDU was acting in the course of his employment...

While it is subsequently clear that the LDUs are an integral part of government machinery, it is unclear exactly what this judgment entails for other, even less regulated, groups in northern Uganda. While some have suggested that there is a difference between, for example, an LDU and a Homeguard (“the Home Guards started on a voluntary basis. They are not officially recruited under UPDF, while the LDUs are officially recruited”),⁹⁵ others have questioned this distinction, arguing that Homeguards in Gulu district were in fact recruited and commanded by the UPDF.⁹⁶ In any manner, the High Court's recognition that the LDUs

⁹⁰“LDUs Named Worst Rights Abusers” *New Vision* (Kampala, 27 June 2002); “Security Organs Accused of Torture” *New Vision* (Kampala, 27 June 2002).

⁹¹HRW, “Submission to the Committee on the Rights of the Child (CRC)” (May 2005) 24.

⁹²Confidential interview (Gulu district, 8 December 2009).

⁹³See S Mutengesa and D Hendrickson, “State Responsiveness to Public Security Needs: The Politics of Security Decision-Making, Uganda Country Study” (June 2008) King's College London: CSDG Papers No 16, 56.

⁹⁴(10 August 1995) HCCS 486/93.

⁹⁵Hansard (Ug) 16 August 2001 (Minister of State for Defence Ruth Nankabirwa).

⁹⁶Hansard (Ug) 16 August 2001 (Okumu Reagan).

operate under the government did not notably affect the de facto widespread impunity for human rights abuse that prevailed in northern Uganda.

VI. The 2005 UPDF Act – A Step in Which Direction?

Replacing the NRA Statute, the Ugandan Peoples' Defence Forces Act (UPDF Act) came into force in 2005. While the UPDF Act admittedly addresses the use of civil militias, as we will see, it does so in a very incomprehensive and unsatisfying manner. Article 3 stipulates that the UPDF shall be composed of the land forces, the air forces, and "any other service prescribed by Parliament". These forces are additionally composed by both "Regular" and "Reserve" forces. The latter is interestingly made up of (1) personnel seconded from the regular forces, (2) retired officers and discharged militants, and (3) "auxiliary forces, state security organizations, and such other citizens of Uganda as have undergone military training under article 17(2) of the Constitution".⁹⁷ Without defining them any further, auxiliary forces are simply defined as home guards, LDFs and vigilantes.⁹⁸ However, this appears to suggest that many of the civil militias that were active during the conflict in northern Uganda would today be encompassed by the UPDF Act.

However, several provisions of the Act stirred considerable Parliamentary debate during the drafting process. Article 6, for example, provisions that the High Command (led by the President) and the Defence Forces Council may determine the criteria for membership of the Reserve Forces.⁹⁹ This provision was considered so complex that discussions concerning it were repeatedly postponed. Equally one of the most debated provisions is article 4, which in paragraph 2 provides that "[e]ach regular force, reserve force or any other prescribed force shall ... be under the immediate supervision and control of such officers as may be prescribed by the Defence Forces Council". While the Ministry of Defence argued that it is precisely the Defence Forces Council (rather than the Ugandan Parliament) that is "best suited to make the assessment and provide for a response to the perceived threat", and should therefore "be given the power to do that without having to come back to Parliament", certain MPs warned of the potential unconstitutionality of permitting "soldiers to expand the army at their will".¹⁰⁰ In the words of one MP:

... in the recent past, it has not been uncommon for the government to start establishing other auxiliary forces, for example the Kalangala Action Plan. I think we have reason to believe that this is possible. Anything can happen. Somebody could wake up one day and says he has created a, b, c, d, Arrow boys or anything like that. What is important is that we must be clear on what kind of forces we are creating so that those who want to create Arrow boys and the Kalangala Action Plan will have to be forced to come to Parliament to seek that permission.¹⁰¹

As is evident from the final version of the article, in the end, views such as these were sidestepped.

The prominent position of Uganda's military forces when it comes to the creation of civil militias, as well as the involuntary nature of participation in them, is also mirrored in article

⁹⁷2005 UPDF Act (article 6).

⁹⁸2005 UPDF Act (Part I – Preliminary, Section 2, Interpretation).

⁹⁹2005 UPDF Act (article 6(2)).

¹⁰⁰Hansard (Ug) 6 October 2004 (Omara Atubo; Minister of Defence Amama Mbabazi).

¹⁰¹Hansard (Ug) 6 October 2004 (Steven Chebrot).

31 concerning the mobilisation of Reserve Forces. Article 31(1) stipulates that the Commander-in-Chief (i.e. the President) “may order the whole or any part of any Reserve Force or any prescribed force to be on continuing full time military service for such period as he or she may determine”. This article also sets out the functions of the members of the mobilised Reserve forces, and, when doing so, differentiates between wartime and peacetime. Examples of tasks during wartime include “to operate covertly behind enemy lines”; “to reinforce, when necessary, the Regular Forces in combat” and “to mobilise and sensitise the population in the theatre of operations against the enemy and in support of the war effort”.¹⁰²

Article 32 furthermore differentiates between two modes of Reserve Force mobilisation – the “silent” method, notifying only those who are required, and the “loud” method, through the use of radio and other media “to respond quickly to surprise attack or similar emergency”. The obligatory manner of participation is also suggested in article 33(1), which provides that “[e]very reservist or member of a prescribed force shall be liable to be called out for training at such place and for such periods not exceeding thirty days in any one year as may be specified under this Act”. Under article 34, reservists or members of prescribed forces may notably be punished for non-attendance. Thus, contrary to the recommendations of the UN Commission on Human Rights, participation in Uganda’s civil militias appear to be mandatory when called upon. Also conflicting with the Commission’s view that offences involving human rights violations by such forces shall be subject to the jurisdiction of the civilian courts is the UPDF Act’s provision that civil militia members who commit offences may be tried by military court.¹⁰³

In sum, then, while the UPDF Act may be a considerable improvement with regard to the legalisation of civil militias in Uganda, it remains insufficient on a number of points, not the least from an accountability perspective. Disturbingly, the government did not seize the opportunity presented by the preceding drafting process to incorporate thorough and adequate provisions concerning civil militias into this Act. Indeed, it may be for this reason that MPs have continued to call for the enactment of a specific legislation as a “matter of urgency”.¹⁰⁴ As one MP argued as recently as 2007, these forces remain considerably in “a no-man’s land”.¹⁰⁵

VII. Conclusions

This article has explored the recruitment of internally displaced persons from a human rights perspective, illustrated by the deployment of IDPs into civil militias in northern Uganda between 1996 and 2006. While recognising that, under international law, all states have an intrinsic right to call upon their citizens to undertake military service, the first part of this article argued that important exceptions exist to this general rule. It also outlined the debate within international and regional human rights bodies concerning the use of civil militias, and highlighted the recommendation by the UN Commission on Human Rights that states establish minimum legal requirements for them within domestic law. Such minimum requirements include that recruitment into such forces shall be voluntary; militias shall only

¹⁰²2005 UPDF Act (article 31(3)).

¹⁰³2005 UPDF Act (article 34(2)).

¹⁰⁴Hansard (Ug) 23 August 2005 (Beatrice Kiraso Birungi).

¹⁰⁵Hansard (Ug) 17 May 2007 (Alice Alaso).

be deployed for the purpose of self-defence; effectively controlled; armed and trained by public authorities; accountable for their activities; and that offences involving human rights violations by such forces shall be subject to the jurisdiction of the civilian courts.

The second part of this article focused exclusively on the state-sanctioned deployment of civil militias in the context of the northern Ugandan conflict. It highlighted how until 2005, civil militias were dealt with completely outside of domestic law, despite repeated calls from Ugandan MPs to establish their lawfulness. In this legal vacuum, it argued, government authorities deliberately created a climate of confusion when it came to the management and supervision of these forces. The purpose of the creation of the militias was ostensibly to protect the IDP camps, but, as this article argued, such forces were often specifically deployed as a military strategy against the LRA rebels. Additionally, this mode of deployment remained largely invisible in the official military budget, a factor that was seen as particularly attractive to the Ugandan government considering substantial donor concerns about Uganda's military expenditure.

The uncertain position of the civil militias also created plenty of room for unmonitored conduct and substantial human rights abuse. This article explored how, even though a 1995 High Court case had established that Local Defence Units were an integral part of government machinery, government authorities long denied any liability for the conduct of the militias. Finally, the article explored how civil militias were addressed in the 2005 UPDF Act. It found that, although it is a considerable improvement with regard to the legalisation of the militias, it raises a number of concerns from a human rights perspective. Importantly, it disregards practically all of the UN Commission's recommendations concerning the deployment of civil militias. Amendments to the UPDF Act are therefore necessary in order to secure that Uganda's civil militia legislation is in line with international standards. By the same token, the lessons from Uganda may provide important insights in any future legislative work on civil militias on an international level, and particularly so in the work of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.