

## **The LSE IHL Project Lecture Series**

### **Giving Peace a Chance: Displacement and Rule of Law during Peacebuilding**

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Distinguished Chair and guests,

The Rule of Law is a coat of many colours. It is a central constitutional principle at the heart of many national debates in the United Kingdom and elsewhere around current issues such as the response to terrorism, the protection of human rights and constitutional reform. The concept is key when it comes to defining the respective roles of parliament, judges and the executive. This is probably the rule of law most of you know best. UNHCR, however, knows another rule of law. For us, it is a much more basic concept. We work increasingly in societies where conflict, or human rights violations of massive proportions, have very much relativised the notion of rule of law - situations in which the basic components of the machinery of protection and justice simply do not exist, or where they do exist, have lost their legitimacy – so that, in terms of practical outcomes for their persecuted, attacked or terrorised populations, it has lost much of its meaning. Its relevance has to be painfully reconstructed, institution by institution, law by law, capacity by capacity. We contribute to this effort, because it can make the difference between solutions or protracted exile for refugees, and if refugee issues go unresolved, the prospects for real and lasting peace are much diminished. I want now to explore the links between peace, rule of law, and managing displacement in a responsible manner. The What, the Why and the How I will comment upon, but first let me set the scene with some basics about the activities of the United Nations more generally in this area.

#### *The UN, peace building and the Rule of Law*

Peace-building is a very topical pre-occupation within the international community at the moment. Peace efforts have come a long way from the 1990's, with the focus on elections as “the high water mark of a successful transition from conflict to peace”, as one commentator put it. That same commentator goes on to talk of the “juggernaut of wholesale state-building” which followed, with its “bewildering array of priorities and challenges”, which peace-makers are now, over the last few years starting to get into more respectable order, by locating the reconstruction of justice systems and re-establishing the rule of law as the centrepiece of their efforts.

The UN reform process, in particular with its emphasis on integrated UN missions, has been the impetus for the UN itself to keep pace here. The Peacebuilding Commission to emerge out of it met for the first time officially on 23 June 2006, with Burundi and Sierra Leone on its early agenda. Its mandate as an inter-governmental advisory body is to coordinate and reinforce the UN peacebuilding architecture. It has a Secretariat to support it, in the form of the Peacebuilding Support Office, and it can

draw on a now fully operational Peacebuilding Fund, to which, by 3 October this year, \$230 million dollars, from 38 donors, had already been pledged. The reform process has also opened up greater synergies between justice and human rights activities and the mandates of peace missions. There is now, for example, a peacekeeping best practices manual which includes a primer for the so-called “Justice Components in Multi-dimensional Peace Operations”.

The UN system can be quite bewildering at first glance, particularly when it comes to rule of law activities and how they come to bear on peacebuilding. Within the system there are many different agencies with programmes supporting the rule of law. To name just a few: the UN Development Programme has particular responsibility for institutional capacity-building in the justice sector; UN Habitat works on land tenure and their legal frameworks; UNICEF works on issues such as child protection and juvenile justice; the Office of the High Commissioner for Human Rights deals with human rights and transitional justice; UNHCR has the mandate for asylum and statelessness frameworks and access to justice for refugees and other displaced people; and the UN Office on Drugs and Crime works on issues such as trafficking, trans-national organised crime, money laundering and terrorism. Earlier this year, a dedicated Rule of Law Coordination and Resource Group, convened by the Deputy Secretary-General, was established, in order to try to bring together the efforts of these various programmes and agencies within a more coordinated framework. As she said in her address to the Sixth Committee of the UN in New York last week: “This is a crowded field where a lack of strategic planning and coordination can produce duplication and wasted effort and money. Sadly this has too often been the reality to date.”

UNHCR has long been an actor in this field. The office was created over 50 years ago to deliver international protection to refugees forcibly displaced outside their own countries and thereby deprived of their right to be protected through the machinery of their own states. Increasingly, as well, our beneficiaries include conflict-displaced persons still inside their countries. Protection means, in simple terms, the restoration of basic human rights lost through flight and displacement, together with the realisation of refugee-specific rights provided for under international and national laws. Our protection activities are also directed at creating an enabling environment in which all these rights have a reasonable chance of being accessed. Our mandate extends, as well, to refugees returning to their countries of origin, where we contribute to efforts which promote the re-creation of national protection structures. It is in this context, not least, that UNHCR can make a substantial contribution to the broader efforts of the UN system to consolidate peace through re-establishing the rule of law in societies emerging from conflict.

“Rule of law” has a particular meaning for the UN. It has been defined in a 2004 report of the then Secretary General in the following terms: “A principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers...and legal certainty”. The normative underpinnings for all UN rule of law

activities are found in the UN Charter and three important bodies of international law, i.e. humanitarian law, human rights and refugee law. These set the boundaries for UN efforts, meaning for example that UN tribunals can never allow for capital punishment, or that UN endorsed peace agreements can never promise amnesties for genocide, war crimes or crimes against humanity.

*Now to the What - what sort of challenges confront the rule of law in societies on the road to peace?*

The context for re-building the rule of law can be hugely challenging. In post conflict societies, as the Secretary-General's report makes clear, it is more often than not marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population. Among the myriad deficits are a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in government, a lack of official respect for human rights and, a lack of peace and security

Peace does not come overnight, with the signing of a peace agreement, or even with elections and the drafting of a Constitution. Building it requires huge legislative and institutional change, in the security sector, the prison system, or the judiciary, so that citizens can genuinely rely on protection through national structures. It means, not least, rebuilding the basic machinery of justice – both the 'hardware' – the rehabilitation and construction of police stations, courts and prisons – and the 'software' – training judges, police officers and lawyers. Beyond this comes constitutional and legislative reform, and the establishment of institutions such as ombudsmen and human rights commissions. Other activities include developing transparent police, judicial and civil service recruitment systems, strengthening court administration, improving penal facilities, and managing more specialised areas such as border controls, juvenile justice, military courts, and violence against women and children.

Examples speak for themselves here. In the Democratic Republic of the Congo, where peace is being haltingly pursued, the humanitarian situation has improved somewhat (even if the situation in parts of the East is still very precarious). Political reconstruction is under way, with elections held in 2006 and more than two million displaced people have returned home in the last three years. Nevertheless, in the area of rule of law, the problems are still considerable, and the main handicap to normalisation and development. In his most recent report to the Security Council, the Secretary General described the state of the justice system in the DRC as follows: "The justice sector severely lacks operational capacity. It has historically lacked independence and an ability to prosecute crimes and enforce judgments. Low salaries have compounded corruption, and few citizens have access to legal representation. Fewer than 60 of the required 180 first-instance courts exist, laws are obsolete and judicial facilities and prisons are extremely dilapidated. Despite a few recent convictions by military courts relating to violations of human rights, the Democratic Republic of the Congo faces a pervasive climate of impunity. The United Nations has contributed to capacity-building through technical advice and training, transport of judges and the MONUC prison support programme. Significant support from

international partners is urgently needed for building the capacity of the justice system”.

In neighbouring Uganda, a report released earlier this year by the Refugee Law Project, an NGO based in Kampala, revealed how the majority of citizens in West Nile in Northern Uganda, are living in what is described as a ‘justice vacuum.’ Administrative and judicial structures are chronically under-funded, and hence heavily susceptible to corruption. Police have no stationery to record complaints (in Moyo, the only criminal records book had been provided by UNHCR). The formal justice system is viewed as irrelevant and inaccessible by ordinary people, owing in part to the distances they have to travel to access it, and because justice is seen as only for those who can pay for it, which most cannot. Or should not! Women who have been raped have even had to pay the fees for forensic medical examinations.

To take one further example, Liberia, with the inauguration of the new government in January 2006, and Africa’s first female President, as well as the demobilization of over 100,000 combatants, stability and development was given a real chance. More than half a million displaced people and refugees have returned to their homes in the last three years. However, the country remains, in many ways, in a very critical state. A team who visited Liberia earlier this year, to conduct an evaluation of UNHCR’s work there, sounded alarm bells. What they found was an almost complete absence of police, courts, or detention facilities. They expressed strong concern about the lack of any meaningful access to any functioning justice system, reporting that, in the rural areas to which the majority of refugees and other displaced people had returned, physical insecurity is high and impunity for crimes is rife. Gender violence is particularly widespread, and despite the adoption of legislation tightening the penalties for rape in early 2006, only two suspected perpetrators had been brought to trial under its provisions.

Although some 3,500 police officers have now been trained by the UN international policing experts, by August this year fewer than 700 of these had been deployed outside Monrovia. Those who have been deployed are seriously handicapped by a lack of basic communications equipment and transport possibilities. In one county, a team of 42 officers have access to just one vehicle and one motorcycle.

*Turning now to the why – why is it so important to prioritise rule of law in efforts to build peace and why particularly from the displacement perspective?*

There is increasing consensus that security, peace and justice are fundamentally intertwined. The Sierra Leone Truth and Reconciliation Commission began its work by asking the question: “How did a peace-loving nation become engulfed, seemingly overnight, in horror?” Its 2007 report concluded that the war was largely the result of failures in governance, institutional processes and “the continual assault on the rule of law” as “the judiciary was subordinated to the executive, parliament did little more than rubber-stamp, the civil service became a redundant state machine, and the army and police force became vectors of violence against the very people they were established to protect”. The Commission concluded that the country is still awaiting the necessary “overhaul in the culture of governance”.

There is no lack of literature on these sorts of connections. Justice and the rule of law have been described, in a very interesting report by the Centre for Humanitarian Dialogue in Geneva, as “the glue for the complex business of rebuilding shattered nations”. It is not, it is argued, that war torn countries always lack systems here. The alternative to none, in our experience, is a proliferation and fragmentation of such systems, with justice localised within communities, clans or groups. A common thread running through the experiences of societies emerging from armed conflict is the sense of disconnection between the state and its citizens, arising from a legacy of failure by the state to deliver protection to its people.

Let me provide you with a particularly telling example of the risks of paying insufficient attention to such issues in the aftermath of conflict. In March 2002 East Timor was looking hopefully towards a bright new future as a soon-to-be independent new state. The return of some 194,000 persons from West Timor and beyond had proceeded peacefully. The receiving communities had demonstrated extraordinary receptiveness to the process of their reconciliation and reintegration, to the point where the then SRSG Sergio Vieira de Mello noted to me: “security broadly is not an issue, stability is not a problem and there is an absence of hatred”.

My visit at that time showed me abundant evidence for a return to normalcy – bustling streets and markets, even in the worst hit areas like Suai, houses repaired or reconstructed, and nation-building well underway, with a Constitution being drafted and the Commission on Truth and Reconciliation ready to take up its responsibilities. However, the President-to-be Gusmao acknowledged it was still a “fragile” period. The development of a fully functioning judiciary was still some way off, with the administration of justice and lack of clarity over property rights and land issues being two areas with the potential to spark renewed conflict. There were also citizenship issues to resolve, for example as regards the return of long term habitual residents having Indonesian nationality. In addition, there was no satisfactory resolution of legal questions of some complexity, such as tax on goods coming back with returnees, or pension entitlements of the displaced. Finally, policing skills were in short supply. As one CIVPOL officer explained to me, the challenge was an enormous one of “conveying 25 years of policing skills to very young, not well educated and totally inexperienced people”.

A report commissioned by the World Bank at the time concluded: ‘gaps in core legislation, and roadblocks in the justice sector are causing constraints in every other area of development...these weaknesses limit long-term recovery and diminish faith in the institutions of the post-conflict state, which in turn risks the re-emergence of social unrest or destabilizing political forces.’

This was 2002. By April 2006, there were IDP camps again in the country, more international troops and police, a major UN assistance effort, and a host of protection problems. Today, almost 18 months after violence erupted, some 100,000 persons are still living in displacement situations. The assessment is now widely shared that the fledgling state of East Timor was not given sufficient time to stabilize before it was left to its own devices. Reconciliation was an incomplete process, long term institutional development had not matured, basic services were inadequate, and below the leadership level, the country lacked enough trained and experienced people to fill

essential jobs. The slow pace of reform in the judicial sector was particularly problematic, as it had undermined public confidence in other rule of law institutions.

In his most recent report to the Security Council, UN Secretary General Ban Ki-moon indicated that the situation remains fragile, and highlighted the crucial role that justice and rule of law reform continue to play in the reconstruction of the country: 'There can be no enduring reconciliation without justice, and it is critical that a culture of impunity not be allowed to establish itself in Timor-Leste'. He outlined plans for a reconstitution of the national police force in order to ensure its long-term integrity as a neutral institution seeking to promote the welfare of all Timorese, within a broader programme of security sector reform.

#### *UNHCR's direct interests – displacement, return and peace*

Forced displacement across borders is perhaps the most visible manifestation of the breakdown in national protection and the rule of law. Those who bear the brunt of war and repression, and constitute the majority of the displaced, are most usually the marginalised or those excluded from social, economic and political power structures – religious and ethnic minorities, the rural poor, indigenous groups, women and children. Peace rests fundamentally on undoing the effects of these human rights violations and other causes of conflict and displacement. How this is done will determine the pace and the sustainability of return, which in turn will impact the durability of peace efforts. There are a number of reasons for this very symbiotic relationship, in our experience.

Transition from war to peace is often characterized by lingering tensions, sporadic violence and the ever present threat of a return to war. In this scenario, the voluntary return of displaced persons can have an important impact on public confidence in the peace process, and can also play a part in validating the post-conflict political order. This is particularly the case where forced displacement has been, as it often is, a central feature of a conflict, and where refugee flight is intertwined with issues of ethnic, national and political identity. Return and reintegration of the displaced can be a key factor in re-establishing not only national, but also regional, stability. For those who remain in exile, the more vulnerable they become to manipulation. As time runs, camps and settlements become breeding grounds for despair, and their inhabitants' prime targets for human smugglers, traffickers, and combatants who wish to exploit unresolved issues to re-ignite the conflict, for their own objectives. Take the new peace talks for Darfur, in Sirte, Libya, which had been optimistically viewed as a chance for bringing this horrible situation to some sort of calm. They have been taking place against the backdrop not only of factionalisation among rebel interlocutors, but also a high level of frustration in the IDP camps, where the younger people are increasingly radicalised after some four years now of displacement, where the level of violence is growing and where arms are flowing in. Rather than the safe haven they should be, they are a source of continuing instability and threat in themselves.

Peace building will not be effective if it ignores the fact that refugees and displaced people often find themselves returning home alongside ex-combatants, demobilised child soldiers, women associated with fighters and others who have become disaffected from their communities. Their return may result in shifts in the ethnic

balance or in the distribution of power within the community. It may reopen old disputes over access to land or other resources, and may stimulate resentment from those community members who never left and who believe they have experienced the worst ravages of war. Rebuilding the bonds, or at least the possibilities for co-existence, through the terms of peace agreements, is fundamental. This means, among other things, striking the proper balance in assistance programmes, and dealing overtly with impunity. The UNHCR evaluation team which visited Liberia met a number of displaced people who reported, for example, that the focus on individual assistance to ex-combatants had led to a situation where the fighters were seen as getting preferential treatment, which amounted to a reward for past conduct, without any acknowledgement of responsibility. This did not facilitate the harmonious reintegration process, either of the ex-combatants or those returning with them.

The other side of this discussion, too often overlooked, is that refugees can actually be agents of peace themselves. Most refugees return to rural, poor areas where government structures are lacking. In exile they acquire skills and training which, together with their resourcefulness and capacity to survive, fit them well to contribute to the rebuilding their own communities. Vocational training, peace education and reconciliation projects are now quite routinely built into UNHCR's work with the displaced prior to repatriation. We also try and ensure that the agreements on the basis of which return takes place make proper provision for political and social reintegration of returnees at the earliest possible phase. As one example, with elections approaching in Angola, it has been now agreed that the UNHCR Refugee Card will be recognised as a document enabling persons to register to vote. Many of our programmes, here and elsewhere, focus on ensuring refugee women can participate in elections on equal terms with men.

This still, though, requires a bit of a culture change, as traditional gender roles, disrupted during displacement, tend to reinstate themselves on return. This is in spite of Security Council Resolution 1325 on Women, Peace and Security, which was intended to promote women's meaningful participation in peace processes, as catalysts and change agents. A woman leader from Sri Lanka made the following very apt observation in this regard on the Sri Lanka peace process during a 2005 celebration of resolution 1325 "Only the parties responsible for war and its accompanying atrocities are negotiating the terms of peace, while those who have been lobbying for peace and campaigning against human rights violations over the past two decades find themselves marginalized in the peace process". UNHCR makes the resolution the basis of women's leadership training activities in camps and advocacy activities after return to enable repatriating women to defend their rights and take their place at the negotiating table.

More generally as Resolution 1325 recognises, peace arrangements have to take more specific account of the particularities of women returnees. One is the prevalence of violence against women, which is a lamentable feature of many return situations. The Security Council has actually just concluded a debate on Resolution 1325. During it there were strong calls to the Council to take more seriously the issue of sexual and gender based violence against women and girls. UNHCR sponsors many programmes designed to make the machinery of law responsive to the problem, with activities as varied as rehabilitation of police barracks and prisons for women and child friendly

spaces, to secondment of staff to relevant ministries, such as the Ministry of Gender Development in Monrovia.

*This brings me to the How - Some Lessons Learned for UNHCR.*

Former Secretary General, Kofi Annan, observed: “Too many countries lapse back into violence when efforts to consolidate peace or create stability are weak or not sustained. The return of refugees and internally displaced persons is a major part of any post-conflict scenario. Indeed, it is often a critical factor in sustaining a peace process”. We work in countries of return to ensure this link is made. Our activities normally focus on mechanisms to secure land and property rights, access to national documentation, non-discriminatory access to services, respect for minority rights, prevention and response to sexual and gender violence and legal assistance. We do a great deal of training as well, for example of military, police and human rights entities.

UNHCR strongly advocates that the peace agreements themselves, and then the process they set in train, lay the basis for addressing impunity issues, property questions, citizenship matters, voting rights, pensions and disputes resolution, among others. Certain agreements, such as Annex 7 of the Dayton Accords which ended the conflict in Bosnia-Herzegovina, have recognized this. A major reason for the failure of the Darfur Peace Agreement to gain the support of the displaced, and that of the two major rebel factions that had declined to sign it at the last moment, was the inadequacy of its provisions for compensation to victims of atrocities for their losses.

To recognise the importance of such issues for sustainable peace is but the beginning of a long process of implementation, beset by all sorts of difficult, if interesting, challenges. Let me mention several of particular relevance to UNHCR’s work.

*Competing justice systems*

Where to locate traditional justice mechanisms can be a particularly thorny issue. Our experience is that they have a huge potential to resolve disputes within and between communities, even while national structures are being built or re-established. For many people, these provide the most effective way of obtaining redress for harm suffered and resolution of disputes. They frequently have an important role to play on land issues, where traditional elders act as the repository of communal memory. Our legal assistance teams in Afghanistan found that traditional mechanisms were generally faster than the courts, virtually cost-free, less susceptible to bribery and more accessible to those who are illiterate. As decisions are generally reached through mediation and consensus, and the social stigma attached to non-compliance is considerable, they often enjoy greater enforceability. A recent study carried out for the Norwegian government in the north-western province of Faryab concluded that traditional structures still enjoyed much greater legitimacy amongst the population than formal justice mechanisms. Nonetheless, in working with traditional systems, we need to maintain a clear-eyed awareness of their weaknesses as well as their advantages. Traditional mechanisms typically focus on minimizing conflict through a system of collective responsibility for wrongs committed, rather than protection of individual rights. As such, they are generally weak on issues of criminal accountability, and on protection of the rights of women and children. Minorities may

not have full access (until recently, customary law in Burundi was not applicable to the Twa) and they are generally not equipped to deal with disputes in urban areas. They are also not immune to corruption or subversion by powerful interests.

Our experience suggests that traditional mechanisms should not be viewed as competing with the formal justice system, but rather as a complementary process. We advocate that Rule of Law initiatives should incorporate a solid analysis of the relationship between the two systems, capitalizing on the strengths of informal mechanisms, whilst asserting the role of the formal justice institutions in areas such as criminal responsibility and individual rights, where informal systems are weak. Sierra Leone is an interesting case study, it being a country in which some 80% of the population relies on the customary law system. Legal disputes of daily significance, such as land ownership and tenure, inheritance, marriage, divorce, and other family law issues are addressed in local and chiefs' courts. These fall under the Ministry of Interior and generally lack legally qualified staff. Access to them of women and girls is particularly problematic, varying from chieftdom to chieftdom. The lack of codified law generates tensions, in particular between paramount chiefs and local councillors. The system operates in tandem with the magistrate courts, which suffers from their own problems, not least lack of infrastructure, equipment and capacities. The UN Peacebuilding Commission has been reviewing the co-existence of the two systems, together with legal authorities in the country. The current consensus seems to be that the establishment of a network of modern courts, based on codified law and administered by trained jurists, is simply unrealistic for the moment. Instead of eliminating the dependence on customary law, therefore, the focus has to be on its reform through building the capacity of local judges, standardizing the customary laws and eliminating the discriminatory practices against women and children. In addition this needs to be accompanied by public campaigns designed to increase legal literacy and build momentum for legal and cultural change.

#### *The top down versus bottom up approach*

A linked issue is that rule of law cannot be imposed by a 'top-down' approach. UNHCR's experience is that issues of immediate concern to ordinary people and their local communities have to be prioritized, based on a process of broad consultation and community participation. The aim is to close the psychological and physical gap wrought by conflict between individuals and national justice mechanisms. In the words of one interviewee quoted in the Refugee Law Project report on Uganda mentioned earlier, 'The judicial system should move to the grassroots, then we would be able to see justice'.

There are again interesting lessons to draw out of UNHCR's programme in Afghanistan. The country has received back millions of refugees from Pakistan, Iran and beyond, many of whom were in exile for twenty years or more. Their decision to return in such large numbers was an important mark of confidence in the new government, but their reintegration was – and continues to be - a huge challenge. Many have returned to areas where the influence and reach of the new national authorities is still limited, and in a country where 75% of the population lives in the rural areas, the formal legal system is generally viewed as inaccessible and lacking in authority. A review of the rule of law programme carried out in 2004 concluded that it

lacked a coherent community level strategy and that there had been too much focus on Kabul, at the expense of the regions.

There has been a too top-heavy focus on institution-building and not enough effort to make the machinery of justice accessible to the average Afghan. Where governance and security structures are left unattended in provinces and districts, particularly in such countries where there are limited communications channels with the central authorities, security and law and order remain dangerously incomplete. The Afghan Government and the international community are now working to try to address some of the lessons learned from those early initiatives. There have been renewed efforts to develop a more comprehensive and coordinated approach, and at a ministerial conference held in Rome in July this year donors pledged more than 360 million dollars in support of a new Justice Sector Strategy (due to be finalized by October 2007), oriented towards strong outreach to regions and local communities

#### *A specific challenge – land rights*

In all displacement situations, loss of home and land is a common denominator and their re-acquisition, or compensation for loss, can remain one of the most enduring and divisive issues for sustainable return, and peaceful reintegration. Land issues, such as unauthorised possession or secondary occupation of abandoned property, consistently emerge as the largest single source of conflict, particularly where displaced people are returning home to communities where land tenure has never been formalized through registration, or where these systems have collapsed. For example, in Burundi, more than 70% of the claims submitted to courts concern land. Working within the framework of the Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles, which were adopted by the Sub Commission on Promotion and Protection of Human Rights in August, 2005, after seven years of consideration), UNHCR, together with its partners, is actively engaged in work on land and property issues in many countries.

When refugees began to return to their homes in Afghanistan in large numbers in early 2002, a host of land-related problems quickly became apparent, ranging from illegal occupation by local commanders, disputes arising from loss and destruction of ownership documents, fraudulent transactions, land distribution by successive governments to their political supporters, and disputes over grazing and water rights. The Afghan government acted quickly to ban any further land distribution, and established a Special Land Court to adjudicate land-related problems experienced by returning refugees. Despite these early promising signs, there has still been no systematic progress on land reform and, according to the Afghan Independent Human Rights Commission, disputes over land and property ownership still form more than half the cases referred to informal and formal justice mechanisms. The Land Court and other specialist tribunals have been criticized as ineffective, and perceptions of corruption in the formal justice system continue to deter parties from registering disputes with the courts.

Turning to another example, the Democratic Republic of the Congo, monitoring activities revealed that land disputes were on the rise, in parallel with the gathering pace of disarmament and demobilisation. When we tried to distribute seeds and agricultural equipment in returnee communities, this actually helped to exacerbate the

conflicts over land tenure, resulting in violent disputes, but without disputes resolution systems. Working with an NGO partner with expertise on land issues, UNHCR is now conducting legal awareness campaigns on land law for local communities, training judges, local authorities and traditional leaders in land law issues, providing legal advice and support to individuals asserting land claims, and offering training on mediation skills. We found that by increasing awareness of the DRC law, which is very specific as to which documents are required for proof of title, this enabled those who owned land to take the necessary steps to ensure that their title was legally registered and their rights protected. The result was less resort to violence and a brake on corruption by the authorities. Displaced people interviewed by an evaluation team in July this year actually cited this project as being amongst the most practical and valuable of all those offered by the international community.

*Another challenge – the fight against impunity*

Whilst such initiatives may help many individuals, and may even play a role in reducing intra-communal conflict, their overall impact is limited unless complemented by efforts to take account of past violations. This is an area which still tends to be quite controversial, not least because of accompanying dilemmas, such as whether peace and stability, or justice for crimes, should take precedence.

The setting up of the international criminal tribunals for Yugoslavia and for Rwanda has significantly advanced the development of international criminal justice mechanisms and procedures. Given that UNHCR is a field organisation operating in many situations of interest to such tribunals, and because we work with the witnesses to the violations they may be investigating, we are seen to have unique knowledge and capacities which can forward the fight against impunity by such bodies. We do engage quite closely with them, albeit that our cooperation has always to be tempered by concerns for the safety of refugees, the viability of our operations on the ground and the security of our own staff. The tribunals have presented us with some interesting dilemmas of our own, such as to what extent UNHCR can assist with witness protection through our resettlement programmes, or how we relate to indicted individuals whom the tribunals might acquit but who cannot return to their home country.

Against the background of lessons learned from our cooperation with these tribunals, UNHCR is currently working out the parameters of its association with the International Criminal Court. High-profile cases we are following with interest include the forthcoming trial of Charles Taylor before the Special Court for Sierra Leone, the arrest warrants issued by the International Criminal Court in respect of events in Darfur and in Northern Uganda, and the anticipated trial of Thomas Lubanga before the ICC on charges related to recruitment of child soldiers in the Eastern DRC.

International criminal justice is a topic unto itself. Time does not allow me to go further into it; suffice to make one additional point here, relevant in the context of the rule of law theme. The ‘internationalisation’ of criminal accountability in the aftermath of conflict is a fundamental tool to address issues of impunity. However, it should not become a substitute for national prosecutions, which are less expensive, provide more immediate access to witnesses and evidence, and can contribute to

strengthening national capacity. While the ICTR is trying high profile persons indicted on crimes of genocide committed in Rwanda and neighbouring states in 1994, this is complemented by a “grass roots” mechanism of so-called Gacaca courts. These process the massive backlog of additional crimes related to the genocide. They are a sort of specialised court system, with features of a penal process, but presided over by Persons of Integrity elected by the community. 2007 has been set as the deadline to process all crimes of genocide falling within the competence of the Gacaca (an estimated 761,000 persons), after which the competence of the Ordinary Courts will re-assert itself. The process is worth a study in itself. It has not been without its controversies – for example in how evidence is collected by local authorities, or because of the bewildering multiplicity of possible sentences and the exemption from the process of Rwandan Patriotic Army offenders. In addition, in recent years dozens of genocide survivors and others involved in the Gacaca process have been killed, to the point where there are real concerns about the security of witnesses and the Government has had to establish an office of witness protection in mid-2006. All this said, though, it is a participatory process which has helped, as its foundation document states, to combat the culture of impunity and unify Rwandans on a basis of justice being seen to be done.

Criminal justice is not the only element of a comprehensive transitional justice process. The significance of investing in independent, national human rights commissions also has to be underlined. We regularly promote the early development of an independent, national capacity to monitor the human rights situation, to make accessible a complaints mechanism and to offer the possibility of effective remedies for individual complaints.

Other important processes include establishing and acknowledging the truth about the past through the work of truth commissions, and by creating memorials and other forms of remembrance. Encouraging returns to Bosnia, Liberia or East Timor came up against deeply felt sentiments on the part of many that they could not return to a situation where the people directly responsible for the deaths of their relatives were living in the same village. Our more successful reintegration operations have been those which prioritised ‘coexistence’ programming.

Finally, reparations policies which acknowledge the responsibility of the state and compensate victims for the loss they have suffered have a significant role to play. The issue of financial compensation was important in the negotiations over the future of Darfur in Abuja last year. Many Darfurians were disappointed by the \$30 million figure included in the final text of the DPA, which the majority of the rebel factions failed to sign. The Sudanese government has now reportedly raised the figure to \$100 million, and this is likely to remain a controversial issue during the new round of peace talks. It is worth noting that the Commission of Inquiry on Darfur, which the UN mandated in 2004 to investigate the violations, recommended that the Security Council establish a Compensation Commission to provide reparation to the victims, even if the perpetrators have not been identified. Reparations may, by the way, also incorporate non-monetary benefits, such as health support, education assistance, or psycho-social rehabilitation. Even more symbolic measures, such as official apologies, have their place.

*Concluding Remarks – Displacement, justice and peace*

To conclude, I have developed the following propositions. Sustainable peace depends heavily on the success of efforts to re-establish the rule of law, access to justice, and reversal of the causes and effects of displacement. Forced displacement is the result of violent conflict and serious violations of human rights. The return of refugees and IDPs to their home communities often serves as a barometer of the success of a peace-settlement and progress in peace-building. Failure to address the causes and consequences of displacement and the needs of the displaced in recovery strategies underestimates the potential of the contribution of refugees and IDPs to peace-building. It also may contribute to renewed violence and undermine peace efforts. As High Commissioner Guterres suggested in his briefing to the Security Council in 2006: “The absence of an effective transition from short to longer-term assistance reduces the life expectancy of solutions. Without adequate resources for development, institution-building and reconciliation, societies can unravel again, dormant conflicts can reignite, and civilians can be forcibly displaced once more.”

Thank you for your attention.