

Training report: Displacement, Forced Migration, and International Law

*Kampala, Uganda
17-21 September 2018*



Introduction

In 2018, PHAP launched a new training course series on Displacement, Forced Migration, and International Law with three editions organized in different locations over the year. The number of displaced persons worldwide has reached record high numbers and more and more practitioners working in situations of humanitarian crisis are confronted with increasingly complex challenges related to displacement. This new track of the PHAP Professional Development Program aims at addressing a growing need expressed by humanitarian and policy professionals to better understand relevant legal frameworks and their application in practice in order to strengthen their capacity to respond to legal and policy issues and better protect the rights of those displaced.

The upcoming ten-year anniversary of the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa adopted in Kampala in 2009 (the Kampala Convention) and the presence of over 1.3 million refugees in Uganda, mainly from South Sudan, made the Ugandan capital a natural choice to organise the first edition of this new course on 17-21 September.



» Participants and speakers at the Kampala Core Training on Refugees, IDPs, and Forced Migrants

Course series overview

The Advanced Professional Training on Displacement, Forced Migration and International Law consists of two components:

1. The Core Professional Training on Refugees, IDPs, and Forced Migrants: Protection in Law and Practice
2. The Issue Roundtables on Displacement, Forced Migration, and International Law

The **Core Training on Refugees, IDPs, and Forced Migrants: Protection in Law and Practice** is structured in two complementary phases. The first three days are designed as an in-depth analysis of the relevant concepts and categories pertaining to displacement and migration, as well as of the applicable international legal and policy frameworks that protect refugees, internally displaced persons (IDPs), and forced migrants. This intensive learning phase introduces participants to the logic and scope of application of international refugee law (IRL), international humanitarian law (IHL) and international human rights law (IHRL), as well as regional treaties and soft-law instruments, in particular in relation to IDPs and how such norms and standards interact with one another in practice.

Issue Roundtables in Kampala:

1. **The Inclusion of Refugees: The Ugandan Experience**
2. **The Kampala Convention**
3. **The Role of UN Peacekeeping Forces in Protecting Displaced Persons**

The second part of the Core Training consists of a half-day simulation and role play, where participants are expected to apply the knowledge they acquired during the first phase in the context of a negotiation requiring the use of legal, policy and practical arguments.

Directly following the Core Training, PHAP is offering **Issue Roundtables on Displacement, Forced Migration, and International Law**, over one and a half days, looking in greater detail at specific topics that have been identified by the applicants for the Core Training, with guest experts. The Issue Roundtables in Kampala covered three topics: The inclusion of refugees through a critical analysis of the Ugandan experience, the

contribution of the Kampala Convention to the protection of IDPs and related legal and practical challenges for its implementation, and the role of UN Peacekeeping Operations in protecting displaced persons.

Features of the Core Training

1. First it provides **a comprehensive analysis of the law and practice of protection of displaced persons**, beyond the traditional more restrictive approaches to consider displacement and migration along the lines of specific categories, such as refugees or IDPs. This allows for an in-depth assessment of how existing legal and policy frameworks relate in order to achieve better protection strategies. For example, the training not only introduces participants to the particular sets of norms and standards, but it also discusses how public international law notions and institutions are used in practice. Furthermore, through a review of the content of relevant frameworks, participants can become familiar with additional legal tools to address protection issues, such as using a broader interpretation of IHRL and related mechanisms.
2. Second, through a participatory approach, the course ensures that participants can share their experiences and address the **ongoing challenges around the lack of clarity and blurring of lines between regimes and categories of persons** in the field of migration and displacement. Mindful of the fact that participants have different understandings of the key relevant notions and concepts, such as forced displacement, migrants, and even protection, facilitators ensure that the sessions include practical exercises to make participants apply the legal frameworks and identify gaps and confusions when confronted with actual scenarios and cases.
3. Finally, the Core Training applies these approaches through **three sets of sessions**: it starts by clarifying the key concepts and notions related to migration and displacement as a basis to discuss the relevant international legal frameworks revolving around categories of persons (for example IRL, IHL, and other broader sets of norms, such as IHRL and public international law). It then moves to define the norm on the prohibition of forced displacement to clarify its scope under international law as opposed to looser understandings used in humanitarian and policy settings. It then provides a detailed analysis of those frameworks and how they apply in practice, looking at the stages of the displacement, from the issue of access to territory and the principle of non-refoulement to solutions to displacement; the content of the protection of certain specific categories of persons (refugees and IDPs) and particular situations raising protection concerns such as smuggling and trafficking, migrant children and migration at sea.

Course locations 2018:

Kampala, Uganda

17-21 September 2018

Geneva, Switzerland

15-19 October 2018

Amman/Dead Sea, Jordan

11-15 November 2018

Core Training speakers



Jean-François Durieux



Théo Boutruche
Humanitarian Law and Policy
Course Director, PHAP



John Cerone

Paul Martin Senior Professor in International Affairs & Law, University of Windsor, and Visiting Professor of International Law, Fletcher School of Law & Diplomacy (Tufts University)



Sophie Crozet

Independent consultant specialized in forced displacement

Kampala: Participants at a glance

The course in Kampala gathered 18 practitioners with experience of response operations in more than 50 countries, and currently working for ten different organizations in across Africa, as well as the United States, United Kingdom, and Thailand allowing for a lively exchange of experience and views.

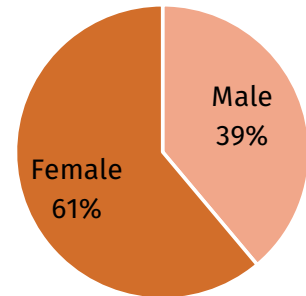
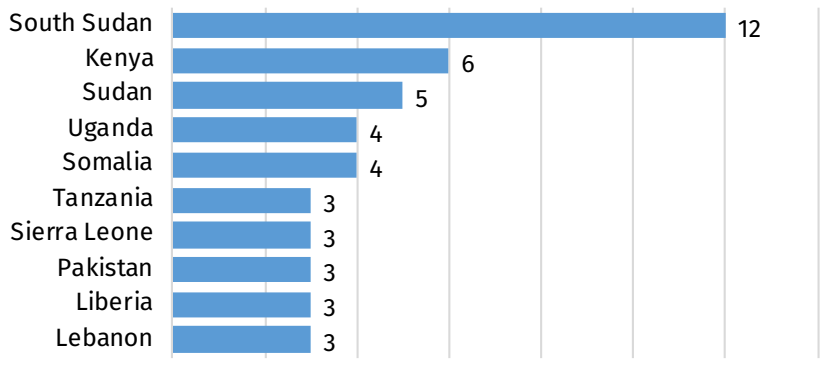
Participants were currently working in the following countries:

- Ethiopia
- Kenya
- Sierra Leone
- Somalia
- South Sudan
- Sudan
- Tanzania
- Thailand
- Uganda
- United Kingdom
- United States

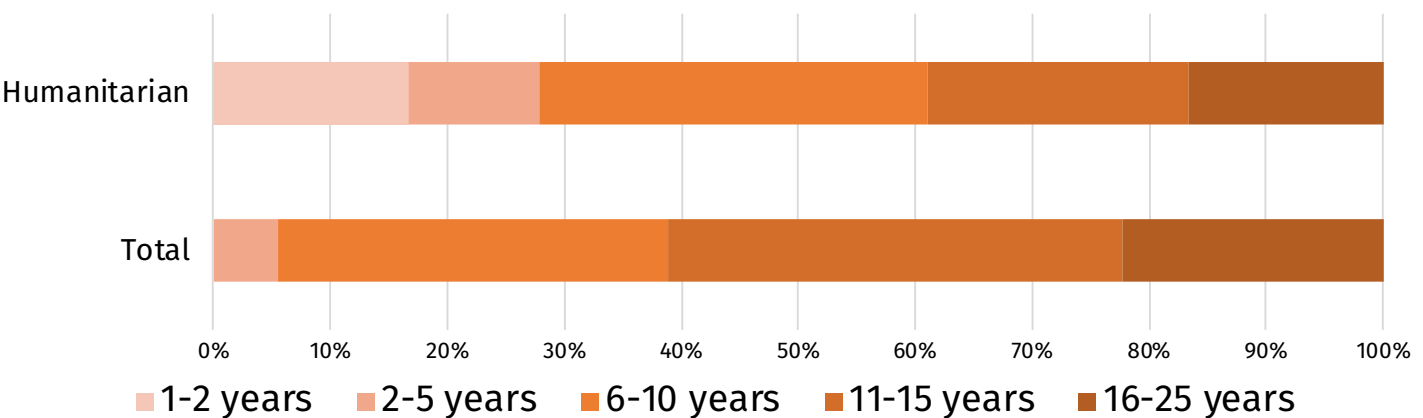
Participants were currently working for the following organizations:

- Danish Refugee Council
- ECHO
- International Federation of Red Cross and Red Crescent Societies (IFRC)
- Iowa State University
- Norwegian Refugee Council (NRC)
- U.S. Department of State
- UN High Commissioner for Refugees (UNHCR)
- UN Mission in South Sudan (UNMISS)
- UN World Food Programme (WFP)
- UNICEF

Countries of professional experience (top ten)



Professional experience of participants



Kampala: Core Training

Questions raised during the sessions

- Participants raised a range of questions during the course, which were discussed in Kampala, and will also feed into the design of future editions of the course. These included:
- What are the conditions of application of IHL and how does IHL define forced displacement as a prohibited conduct as opposed to the prohibition under IHRL?
- What is the difference between forced displacement as a violation of IHL and as a war crime?
- How does IHRL apply during an armed conflict when it comes to various patterns of displacements
- Can refugees be victims of forced displacement in the context of an armed conflict?
- In which circumstances fleeing an armed conflict can amount to a well-founded fear of persecution under IRL?
- What are the norms under IHRL and under general public international law, including with regard to State responsibility, that protect internally displaced persons beyond the Kampala Convention?
- When does the principle of non-refoulement protect asylum seekers under IRL and how does its scope vary compared to the understanding of this norm under IHRL?
- What are the conditions for a State to be held responsible for a violation under international law?
- How do soft law instruments contribute to international norms in the protection of displaced persons?
- What are the judicial and non-judicial mechanisms available to remedy violations of norms protecting displaced persons under international law, in particular through IHRL mechanisms?
- How do you distinguish between forced displacement as a violation of international law by a State agent and as a war crime triggering the individual criminal responsibility of the perpetrator?

Sessions in the Core Training:

1. **Basic Notions, Concepts, and Categories**
2. **Applicable Legal Frameworks and Other Instruments**
3. **The Prohibition of Forced Displacement under International Law**
4. **The Protection of Internally Displaced Persons**
5. **Cross-Border Displacement**
6. **Qualification and Eligibility of Refugees**
7. **International Protection for Refugees**
8. **Solutions to Displacement**
9. **Special Protection Concerns within Mixed Migration Flows:**
 - Smuggling and Trafficking
 - Child Migrants and Refugees
 - Migration at Sea
10. **Simulation exercise**

Explanation through examples really helps for better understanding the subject matter, this is very much appreciated.

Participant, Kampala

Contexts discussed

- During the course participants also raised questions regarding particular countries and contexts, including
- Forced evictions in Kenya;
- Lack of security for returnees in Somalia
- The UNHCR protection mandate in countries not parties to the 1951 Convention;

- Which patterns or forms of displacement in Syria amount to IHL violations;
- The relationship between refugees and host communities; and
- Issues related to camp settings.

Applying the law in practice

A prominent element within the discussions was about the law oriented approach of the training. The course is indeed designed for experienced professionals who have been exposed to the challenges of protection issues in humanitarian crisis situations – whether from a practical or policy perspective. It is therefore crafted to accommodate mixed groups of participants working under different types of mandates with a wide range of profiles such as staff of NGOs, components of the Red Cross/ Red Crescent Movement, the UN and other international organizations, donor agencies, and other governmental entities. While some participants have a legal background, the majority of them do not. As a result the primary challenge for the Course in Kampala was to focus on how practitioners can use legal frameworks and terms strategically within their respective professional responsibilities without requiring them to become lawyers, the same way very few participants would conduct Refugee Status Determinations as part of their daily job. Most of the questions from the audience revolved around a better understanding how to apply international norms to better ensure protection of displaced persons in practice, which will be a greater focus in upcoming editions of the course.

This training has given me a better understanding of underlying legal frameworks and options (or lack of) enforcement mechanisms.

Participant, Kampala

Additional feedback

- Participants expressed a desire to include even more practical examples to illustrate how practitioners can use the various norms when faced with displacement and migration issues.
- Several participants expressed a need to go more in-depth in the analysis of the various legal frameworks, in particular IHL, and ensure that each session combines references to the relevant norms with examples/ practical cases to show how they are being applied in practice.

Kampala: Issue Roundtables

Roundtable 1:

The Inclusion of Refugees: The Ugandan Experience

The first issue roundtable on “The Inclusion of refugees through the Ugandan experience” provided the participants with a concrete example of the many issues arising as a result of a mass influx of refugees in a country and how to address those.

Speakers/panelists:

- Dr. Kalyango R Sebba (chair), Researcher at Makerere University
- Margaret Atieno, Assistant Representative (Protection), UNHCR
- Leslie Velez, CRRF Advisor, UNHCR (seconded to the OPM)

- Soledad Herrero, UNICEF

Roundtable scope of discussion:

- The question of documentation and access to services
- The relationship with host communities
- The “model” developed by Uganda to respond to the presence of over 1.3 million refugees on its territory.
- The role of the UNHCR and other agencies as well as the specific mechanisms in place, including when it comes to budgeting and the responsibility of local governmental actors.
- Practical approaches to ensuring peaceful relationships with host communities and programming in favor of refugees can also benefit host communities.

Issues, questions, and challenges raised in roundtable

- The extent to which the Ugandan “model” of inclusion is effective at the local level and it can be replicated elsewhere
- The challenges raised by the UN working so closely with the authorities
- How to ensure social cohesion between refugees and host communities

Roundtable 2: The Kampala Convention

The second issue roundtable on the Kampala Convention focused on its contribution as a regional treaty to the protection of IDPs and how it relates to other frameworks. The central point of the discussion revolved around the legal aspects of the Convention, from its implementation to how it reinforces or challenges other norms contained for example in IHRL or in Public International Law.

Speakers/panelists:

- Allehone Abebe, Senior Legal Officer, UNHCR (seconded to the African Union)
- John Cerone, The Fletcher School of Law and Diplomacy and Boston University School of Law

Overall, excellent – a lot of topics covered, great facilitation, good energy, amazing expertise, inspirational and exciting.

Participant, Kampala

Roundtable scope of discussion:

- The history and rationale for the adoption of the Kampala Convention
- Key substantive provisions
- The status and obligations of armed groups under the Convention
- National draft laws domesticating the Convention
- Challenges related to its implementation

Issues, questions, and challenges raised in roundtable

- The nature of State obligations under the Convention compared to IHRL and public international law obligations
- How to ensure compliance by non-state armed groups?
- The implications of the “obligations relating to IOs and Humanitarian Agencies” under the Convention

Roundtable 3: The Role of UN Peacekeeping Forces in Protecting Displaced Persons

The last issue roundtable on the role of UN Peacekeeping operations in protecting displaced persons.

Speakers/panelists:

- Maria Lopez Echevarria (chair), Recovery, Return and Reintegration Officer, Relief, Reintegration and Protection Section, United Nations Mission in South Sudan (UNMISS)
- Thijs Van Laer, Programme Director, International Refugee Rights Initiative (IRRI)
- Theo Boutruche, PHAP Course Director

Roundtable scope of discussion:

- Analysis of the UNMISS mandate and challenges in ensuring protection in PoC sites
- Comparison between the case of the UN Mission in South Sudan with other practices such as in the DR Congo
- The gap between what is expected of the UN to protect displaced persons in such volatile security environments and what they can actually do, due in part to limited resources and conflicting instructions received from the contributing States and the UN.
- To what extent international law applies to UN Peacekeeping Forces and who is responsible in case of violations of international law/how can one hold the UN accountable?

Issues, questions, and challenges raised in roundtable

- How can UN Peacekeeping forces maintain their impartiality character during active armed conflict?
- How can the UN address the conflicting instructions received by battalions from their State authorities?
- Can the UN forces use force when civilians’ physical integrity is not under imminent threat?

Upcoming editions

Geneva, 15-19 October 2018

15-18 October

Core Training on Refugees, IDPs, and Forced Migrants: Protection in Law and Practice

18-19 October

Issue Roundtables on Displacement, Forced Migration, and International Law

Issue roundtable topics:

- The “EU-Turkey Statement of 18 March 2016” and its implications
- Displacement and Housing, Land, and property Issues
- Criminalization of Migration and Detention of Migrants

Read more and apply at phap.org/DML-GVA2018CT

Amman/Dead Sea, 11-15 November 2018

11-14 November

Core Training on Refugees, IDPs, and Forced Migrants: Protection in Law and Practice

14-15 November

Issue Roundtables on Displacement, Forced Migration, and International Law

Issue roundtables:

- Displacement and Housing, Land, and Property Issues
- Humanitarian Evacuations in Times of Armed Conflict
- Protracted Displacement: The Case of Palestinian Refugees

Read more and apply at phap.org/DML-AMM2018CT

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