

**APPENDIX**  
**UNDP'S RESPONSE TO HUMAN RIGHTS WATCH/AFRICA**

The Administrator

United Nations Development Programme



Dear Mr. Takirambudde,

We have now reviewed those sections that you have sent us of the draft report prepared by Human Rights Watch entitled: "Failing the Internally Displaced: the UNDP Displaced Persons Programme In Kenya". I would very much welcome an opportunity to meet with you personally to discuss the report as I believe that both UNDP and Human Rights Watch have much to gain from a balanced assessment of the Kenya IDP programme. My office will contact you to arrange a mutually convenient time for us to meet.

In the meantime, in order to meet your deadline for comments on the report, I am sending you under cover of this letter a note which summarizes UNDP's response to a number of the erroneous assertions and claims made in the draft report. I very much hope that these comments will be fully taken into account in the final published document as we consider that the report, as it is now drafted, contains serious flaws. Let me add that there are a number of individuals knowledgeable about the Kenya programme who appear not to have been consulted by HRW in the preparation of the Report; we would be pleased to give you the names of several people whom HRW might wish to contact in order to round out your assessment.

UNDP does not claim that the Kenya IDP programme was without any shortcomings. We recognise that certain aspects of the programme could have been handled better. We will learn from that experience for the benefit of any future IDP programmes that we may be called upon to assist.

However, in making its judgments about the Kenya IDP programme and UNDP's role in funding and coordinating it, we ask HRW to keep in mind that the programme did help many thousands of Kenyans to return to their land and homes. They could not have done so without the support of this programme and the initiative of the UN Resident Coordinator, David Whaley.

Our attached comments attempt to set the record straight on the most serious, if not all, of the assertions which we believe to be wrong. But more importantly, we request

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- 2 -

HRW to take account of the complex political and social environment in which the Kenya IDP programme was developed and implemented as well as the results that it obtained:

- the UN was faced with a huge humanitarian problem in the Rift Valley which was causing widespread suffering and misery;
- UNDP, acting through the local UN inter-agency disaster management team, took the lead in trying to do something about this situation. Had UNDP not done so, many, probably most, would still be living in makeshift camps. As is, many thousands of the IDP's have been able to return home;
- programmes to return the IDP's could not have been launched or conducted effectively without the active involvement and cooperation of the Kenyan government;
- the atmosphere in Kenya at the time was highly charged, exacerbating ethnic tensions; the country was caught up in a complex problem with complex causes (including land-hunger, over-population and disputes over land use);
- UNDP, other agencies and NGOs were therefore working in a politically difficult and emotionally-charged environment. All did their best to navigate through the many obstacles in order to return the IDP's to their land and homes. Unfortunately, threading one's way between obstacles rarely means taking a straight line;

As I said above, I very much want UNDP to learn from this experience. For that reason, I propose that we organise a UNDP/HRW workshop to examine the lessons that have been distilled from the Kenya programme. In my view this would be a more constructive approach than a prolonged and acrimonious exchange of correspondence on the specific contents of the report.

I look forward to meeting with you to continue our dialogue.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Jim Speth', written in a cursive, flowing style.

James Gustave Speth

# **UNDP RESPONSE**

**TO**

## **HUMAN RIGHTS WATCH REPORT**

**FAILING THE INTERNALLY DISPLACED:  
THE UNDP PROGRAMME  
IN KENYA**

**UNITED NATIONS DEVELOPMENT PROGRAMME**

**April 1997**

The comments that follow on the draft HRW report do not attempt to refute or rebut all the statements made in the report with which UNDP disagrees. Rather it focuses on several key points where UNDP believes serious errors of fact or interpretation have been made by the authors of the report.

#### 1. Origins of the GOK-UN Program:

In March-April of 1993, the United Nations Disaster Management Team [UNDMT] in Kenya received reports of continued suffering among populations displaced through ethnic clashes in the Rift Valley despite the denial by the Government of any significant problem. The UN team decided to consider whether the experience previously acquired through the drought alleviation programme could be applied to the search for solutions to the ethnic violence in the Rift Valley. The UNDMT hoped to build on the good-will, methodology, and team work with local administrations, NGO's, community groups and donors developed in the drought programme.

The UN team announced to the Government that they would undertake a joint visit to the areas affected by the clashes. This was accepted by the Government which placed no obstacles whatsoever in the way of the team visiting and discussing with a wide range of partners - affected communities, the churches and NGO's working with them, the local administration.

The team was able in May 1993 to visit extensively and to record the situation referred to on page 30 of the HRW report<sup>1</sup>. The report concluded that conditions were far worse and the numbers of persons displaced far greater than the Government realised and recommended urgent action to address their needs.

The mission also enabled the UN team members to assess the needs of the population. Those needs were found to be not so much for short-term humanitarian relief<sup>2</sup>, but rather those aspects of the situation which NGO's and churches felt they could not handle alone. The main problems revolved around - security, registration, land-tenure problems, and long-term development goals.

The UN team agreed that these problems could not be solved by the population alone, supported by NGO's and church communities but required the participation of the local and national administration. Without a commitment by the Government to ensure safety, to clearly condemn ethnic violence, to tackle

<sup>1</sup> The footnote gives an inaccurate description of this composition - Ferguson and Palmer were both UNVs assigned to the Emergency Relief Unit, funded through DHA and operating under the responsibility of the UNDMT - they were not part of the UNDP team but reported to all the agencies who participated in the mission as well as those who were unable to do so but who reviewed and endorsed the conclusion of the mission

<sup>2</sup> This was already being provided under EU sponsored NGO and church feeding programmes and through local acts of solidarity

the underlying causes of the conflict and to foster long-term development there could be no prospect of return for the majority of the displaced persons nor lasting solution to the crises that had occurred in 1992. These conclusions were shared by the persons consulted on the ground including the Roman Catholic Bishop of Nakuru and Eldoret, who urged the UN team to involve the Government in the search for solutions, stressing that the UN was better placed to raise this issue than others.

John Rogge, a UNDP Consultant at the time, visited the clash areas and produced a report in September 1993. On the basis of this report a GOK-UN programme was developed and approved by Government towards the end of the year.

The UN programme was based on the principle of the community finding its own way back to harmony and coexistence and the value of locally initiated rehabilitation and development activities. It fully recognised the important role of churches and NGO's in the provision of relief, based on their acceptance by the communities and their critical input to the process of reconciliation.

On the other hand, the UN programme also recognised the need for the Government to address issues of security, access, registration and longer term problems - particularly of land-tenure. It recognised as well the need for sustained - though preferably discreet - donor support and informal monitoring through the United Nations.

## 2. The Rogge Reports :

The HRW report makes numerous factual errors and distortions with regards to the two reports by John Rogge:

HRW page 33: It is incorrect that that Rogge returned for two weeks. He had a five (5) week contract and spent well over three weeks revisiting all the clash affected areas; also on page 33, it is true, as suggested, that the 'report was upbeat' since violence had been reduced greatly over what existed a year earlier and many people were in varying stages of return, i.e., there was a cause to be optimistic.

It also states correctly that Rogge indicated several areas where conditions were still very tenuous [p. 34]. The UN programme's response was based upon these prevailing conditions; the fact that violence surged in a few areas because of a small group of powerful, manipulative politicians cannot be put at the doorstep of UNDP or the UN system. It is ingenuous to suggest that the UN programme's optimistic attitude in early 1994 was inappropriate because the government reverted to its former policy which contributed to an escalation of violence in late 1995;

HRW page 36: It is incorrect to refer to Rogge's assessment as 'rosy'. The report indicates clearly that there were certain high level government officials who were supportive of UNDP's initiative while others were undermining it. Rather the Rogge assessment merely reflected the fact that in two of the three most affected Provinces (Nyanza and Western) there was a gradual return to normalcy.

HRW page 43: refers to the UNDP Programme not 'detering messages of ethnic hatred', however odious, from being disseminated. How could it? The Rogge report in 1994 clearly indicates that there were numerous politicians who were still actively inciting political violence. What the HRW seems to be unaware of is that the UN Resident Co-ordinator, David Whaley, was consistently bringing these incidents to the attention of Government.

HRW page 51: what the report leaves out is that the UN programme initiated regular local and regional community meetings where many of these issues were raised. The Rogge report makes reference to the conciliatory role these meetings played and where Government officials, politicians, NGO's and local community representatives regularly interacted. No mention is made in the HRW report of the contribution made by the UN programme in introducing these mediation fora.

HRW page 61: the report suggests that what was required was a UNDP programme which 'blended immediate assistance with longer term rehabilitation and development strategies'. This is a misrepresentation of the purpose of the UN programme. It was a rehabilitation programme.

Indeed the Rogge report devotes a whole chapter on the rehabilitation aspect of the programme. Moreover, Rogge reported that during his field visits, he disagreed with some of the church groups and NGOs who insisted on continuing with relief programmes, while the UN programme was trying to promote rehabilitation and recovery.

HRW page 62: The point made about the second Rogge report 'whitewashing' the problems with the UN programme is untrue. The central thesis in the second report was that the church and church-based NGOs believed that it was too early to do anything other than relief. There was evidence to suggest that certain church groups were discouraging people from returning and /or wanted to introduce more camps rather than help disband them. Furthermore, the suggestion that the second report was 'rushed' is also unfounded.

HRW pages 71 and 72: On the question of the numbers of IDPs returning / reintegrating, the one third figure used in the Rogge report was an estimate based on what the NGOs on the ground reported, including the Peace and Justice Commission in Nakuru. The proposal in the Rogge report clearly stated

that perhaps as much as a third were back living on their land and about half of the total were cultivating their land but not necessarily living on it, i.e. the other half were displaced.

John Rogge presented these 'numbers' to an NGO seminar on the displaced shortly before his departure and the NGOs present did not disagree with the validity of these assertions. Hence, the UN team used these numbers as working estimates for the programme. It continued to target areas of return or partial return with rehabilitation and recovery projects and areas of displacement with relief and reconciliation activities.

HRW page 77: The statement attributed to the UNDP Administrator, Mr. Speth, in which it suggested that he failed to 'even hint' that there were still problems to be addressed is wrong. In his statement, he clearly made the point that while as many as one-third of the displaced persons had been resettled, there remained many who remained displaced. On page 71, the HRW's own citation of Mr. Speth's speech quotes him as saying that 'there were still intricate land disputes involving the rest' i.e. the 50 percent who remain displaced.

HRW page 84: This is with reference to the temporary housing structures in Kapsokwony referred to in the citation of Tecla Wanjala. This information is incorrect. The temporary housing structures in Kapsokwony were erected by a church-based NGO which did not participate in the UN programme, the agency in question was trying to regroup displaced persons at this site into a relief camp taking them away from a nearby town where they were temporarily settled and at least marginally self-reliant. That NGO rejected the attempt to discourage this project because it felt that the displaced persons needed relief instead of rehabilitation.

### **3. Harassment of the Displaced, Relief Workers and Journalists:**

UNDP constantly raised these concerns with senior Government officials - both publicly and privately. It also ensured that the issues of concern to the displaced were raised both with the donor representatives in Nairobi and with senior visitors (including ministers) from donor capitals. The UNDP was roundly attacked in public for doing so - by the President himself. The UNDP stood its ground and this was eventually the element that brought the joint program to a halt. Others who protested were similarly treated<sup>3</sup>.

The access envisaged under the GOK-UN programme did not include journalists or other observers not engaged in the rehabilitation activities. However, the visit of the Administrator of the UNDP was used to urge the government to open up

<sup>3</sup> Baroness Chalker, Minister for Overseas Development of the UK whose criticism was dismissed on account of gender was a case in point.

the areas to these groups. This concern was conveyed to the Government in a letter from the Administrator to the President in October 1994.

#### **4. Fraudulent Land Transfer, Illegal Occupation, Pressured Land Sales and Exchanges:**

It is true that the justice and land issue was not resolved. The failure to do so, however, was the responsibility of the Government. Both UNDP and other donors (e.g. Germany) offered repeatedly to provide technical assistance for land registration and the reform process. These offers were not accepted. No donor can impose technical assistance when it is not wanted.

#### **5. Providing a National Forum for all Actors:**

This section starts in a relatively positive manner. It noted the open and comprehensive participation in the management of the programme which allowed for the first ever meeting of all concerned partners. In fact it was the key instrument through which UNDP addressed the specific challenge of bringing the Government into dialogue with other partners.

It is interesting to note that this achievement is roundly criticised by the same report on the preceding page<sup>4</sup>. UNDP had been solicited by the communities and by the churches and NGOs working with them to bring the Government into the process. All parties considered this to be appropriate at the time.

The establishment of the NCDP resulted from an initiative of UNDP. The committee could not have existed, however, without the agreement of the Government of Kenya to participate and to assume its responsibilities. Again all involved considered the full participation of the Government as the key to the success of the operation, and that Government chairmanship was an appropriate means of obtaining its public commitment to all the goals of the programme.

#### **6. No Comprehensive Data Collection:**

On page 68 and elsewhere references are made to the inadequacy of data collection. IDP data are notoriously difficult to pin down. Undertaking a detailed enumeration can actually place people at risk. Many of the IDPs did not want to be on 'lists'. Many were dispersed among relatives or even out of the region and hence could never be sampled even if the UNDMT had tried.

The estimates throughout were just that - estimates. This was made abundantly clear in both Rogge reports and UNDP had always indicated that the 250,000 figure that was being used was little more than a crude estimate. The number

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<sup>4</sup> The assertion that the UN has assisted a programme that was blatantly manipulated by the Government to further its own ends is a very one-sided interpretation of a complex situation.



was, however, based exclusively on data provided to Rogge by the NGOs and Churches; at no time were any Government estimates used.

Rogge spent over three days in the field with the very person who is cited as having made this allegation. The figures on IDPs in the Nakuru area which were used in his report were derived from the Nakuru based Justice and Peace Foundation. The suggestion therefore, that Rogge 'threw out figures' is misleading. All the data on IDP numbers cited in the report, which formed the basis for the UN programme, were obtained from local churches and NGOs.

HRW page 70: The specific reference to the Rogge report underestimating numbers by 30,000 was explained at a meeting with the HRW in New York in February. This explanation has not been taken into consideration in the current report. The issue concerned data for Mt. Elgon region where the NCKK had greatly inflated numbers. Rogge opted on the side of caution to adjust these numbers to what he saw on the ground. He was subsequently proved right in doing this since two months after the survey the NCKK Relief Co-ordinator for the Mt. Elgon area was removed for misappropriating relief funds and was accused of greatly inflating the number of beneficiaries in his area.

The missing 30,000 to which the HRW refers in report are the 30,000 which the NCKK Co-ordinator was accused of inflating. A more basic issue is that given the uncertainties of the data, to dwell extensively on whether the numbers were 250,000 or 280,000 is somewhat irrelevant.

#### **7. No Terms of Agreement with Government / Government Undermining of the UNDP Program:**

The proposals of the NCDP for a continued and expanded programme were duly transmitted to the Government in writing as the basis for formulation of a new phase of activities. At the same time they were incorporated into the basic agreement between the Government and UNDP.

The UN team on the ground, including the UNDP Resident Representative would agree that the lack of a formal agreement between UNDP and the Government has been criticised as one of the factors contributing to the confusion. This confusion arose, in part, from the difficulty in reaching agreement with the Government, but also the uncertainty over funding that made it impossible for UNDP to enter into specific commitments that would have allowed it to call for reciprocal formal commitments from the Government.

A formal financing agreement would have obliged the donors to prioritise the interest of the victims of ethnic violence above their overall aid policy in Kenya similar to the humanitarian relief for drought victims in 1992-93.

#### **6. Reluctance to Criticise Government Human Rights Abuses:**

The issue of IDPs in the Rift Valley and Western Kenya was important for donors from 1993 to 1995, but it was not the determining factor in decisions on aid and investment. Structural Adjustment was the priority.

This was the critical aspect of the Kenyan situation discussed at the Consultative Group meeting of 15 December 1994. The statement of Chair of that meeting, involving the generally accepted view that there had been improvements in the human rights area as well as a lessening of ethnic tension, contributed to the decision to release external funding but it did not determine it. The sudden reversal of budgetary policy that occurred in the week following the CG meeting was a more serious development for most donors than the tragedy at Maela. It was certainly the key factor that led to a change of heart on the part of the World Bank and the IMF.

#### **9. No Protection Component / Inadequate Security or Protection:**

The UN programme for IDPs, co-ordinated by the Resident Co-ordinator and UNDMT, and implemented through a UNDP project, had two primary objectives, namely:

(a) work towards attenuating the escalating political violence through the physical presence in affected regions of UN field personnel and through behind-the-scenes negotiations by the UN Resident Co-ordinator with senior Government officials;

(b) start laying the foundations for the eventual resolution of the conflict by facilitating the gradual return of most IDPs.

At no time did the UNDMT, the RC, or UNDP imply that it had the capacity or mandate to become the primary advocate against human rights violations in Kenya.

Much of the criticism of UNDP contained in the HRW report is basically a misinformed commentary on UNDP's 'failure' to be the international human rights monitor, arbitrator and advocate in Kenya during the crisis. This indicates HRW's misunderstanding of UNDP's role and its limitations to engaging in 'sovereign' issues for which it has no mandate. Instead of blaming UNDP for not solving the human rights problems in Kenya, the report should identify the link between human rights violations and the policy of the Government at that time.

#### **10. Strained Relationship with Donors:**

UNDP used the NCDP and other mechanisms to keep donors fully informed. During the preparatory phase, Resident Representatives had regularly briefed

the aid representatives of the development of the proposed programme, based on the Rogge report which was made available to all.

In addition, contrary to the assertions of the HRW report, the UN team worked closely with representatives of NCDP and other interested members of the diplomatic community who offered to take responsibility for the more sensitive interventions. Several leading diplomats posted in Kenya advised the Resident Co-ordinator to continue the quiet diplomacy, leaving direct interventions and public criticism of the Government to them.

#### **11. Abandoning the Displaced:**

The UN programme was not suspended as the draft report indicates. It ended in November, with a Government agreement in principle to incorporate activities in favour of displaced persons in its social dimensions of development programme.

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