Protection Challenges Facing UNHCR in Addressing the Question of IDPs in the Absence of Explicit International Legal Framework: The Case Study of Pader District, Uganda

By

Kimenyi Buzoya

Research report submitted to the Faculty of Humanities, of the University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the Degree of Masters of Arts in Forced Migration.

Graduate School for Humanities and Social Sciences

The University of the Witwatersrand

Johannesburg

South Africa

DEDICATION

I dedicate this work to my daughters

Catherine Umutoni Shénai

and

Sonia Tuyishime Rebecca

ACKNOWLEDGEMENT

DECLARATION

I declare that this thesis is my own unaided work. It is submitted for the degree of Masters of Arts in Forced Migration Studies, in the Graduate School for the Humanities and Social Sciences, University of the Witwatersrand, Johannesburg. It has not been submitted for any other degree or examination in any other university.

_____   March 2009

ABSTRACT

For more than two decades now, the civil conflict that has pitted the Ugandan government against the rebel Lord's Resistance Army (LRA) has caused significant internal displacement of people in the north of the country. Because political solutions have been slow to come to Africa's 'forgotten war', humanitarian organizations have increasingly played a role in attempting to abate the effects of the war on Internally Displaced Persons (IDPs). One such organization is the United Nations High Commissioner for Refugees (UNHCR). Following a report by the then United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland in 2005 and invitation by the Government of Uganda, UNHCR officially started its work to assist IDPs in northern Uganda, including Pader district, in 2006.

This study considers the protection challenges that UNHCR is faced with in trying to address the question of IDPs in the absence of explicit international legal framework. Specifically, the study attempts to understand how UNHCR is responding and assisting the government of Uganda to provide assistance and international protection to the IDPs in the context of the principle of sovereignty, which may be a source of tension between governments and transnational organizations, and a hindrance to effective implementation of UNHCR programmes. The study engages with the paradox of UN humanitarian intervention with IDPs and the challenges it faces as a result of its intervention.

This research report relies on the data that was collected among UNHCR staff in Uganda in December 2008. Information was solicited from respondents through the open-ended in-depth interview technique, while additional data was gathered through the consultation of articles, reports and other written materials from UNHCR.

The findings of the study suggest that UNHCR is faced with challenges to protection that are three-fold in nature; legal problems arising from gaps in the international legal framework for IDP protection and a lack of explicit international protection mandate, ineffective intervention challenges related to local dynamics that result in barriers to effective international protection of IDPs in Pader, as well as security dilemmas associated with the seemingly dire prospects for peace in northern Uganda in general, but particularly IDPs' return to their previous villages that have spawned this situation. These problems hinder the effective implementation of UNHCR programmes at the local level.

The report further suggest that the challenges of protection are less about the absence of a legal protection framework for internally displaced persons and more about contestation, conflict and competition between the state and transnational humanitarian organizations to earn the right to legitimacy in intervening on behalf of the internally displaced in the part of Uganda that is engulfed in war. In an environment where neither the state can claim autonomy nor transnational organisation can stick to political neutrality in delivering interventions, humanitarianism brings rewards for both a) government officials who may expect incentives from UNHCR to carry out work on behalf of the state, as well as b) UNHCR itself that wishes to appear to be the most effective in delivering intervention in the face of donor organizations and countries as well as the local population. In such conditions, both the ideals of sovereignty of the state and the political neutrality of the transnational organizations appear to fall away in either an overlap between the practices of sovereignty and humanitarianism, or the ineffective intervention that result in failure to balance the two in coordinating intervention efforts at the local level.

TABLE OF CONTENTS

LIST OF ACRONYMS/ABBREVIATIONS

AGDM	Age, Gender, Diversity & Mainstreaming
CCCM	Cluster and Camp Coordination Management
CfW	Cash for Work
CPA	Comprehensive Peace Agreement
DDMC	District Disaster Management Committee
DHRPP	District Human Rights, Protection and Promotion sub-committee
FfW	Food for Work
FoM	Freedom of Movement
GBV	Gender Based Violence
GoU	Government of Uganda
IASC	Inter - Agency Standing Committee
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IDP Camps	Internally Displaced Persons Camps
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IOC	Integrated Operation Center
IOM	International Organization of Migration
LC1	Local Council 1
LRA	Lord's Resistance Army
MRE	Mine Risk Education
NGOs	Non Government Organizations

OCHA	Office of the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
OPM	Office of the Prime Minister
PF 3	Police Form number 3
PRDP	Peace, Recovery and Development Plan for Northern Uganda
RLP	Refugee Law Project
UDHR	Universal Declarations of the Human Rights of 1948
UHRC	Uganda Human Rights Commission
UN	United Nations
UNAMIR	United Nations Assistance Mission to Rwanda
UNFPA	United Nations Population Fund
UNGAR	United Nations General Assembly Resolutions
UNREO	UN Rwandan Emergency Office
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children Fund
UPDF	Uganda Peoples' Defence Forces
UXOs	Unexploded Ordinances
VHTs	Village Health Teams
WFP	World Food Programme
WHO	World Health Organization

CHAPTER ONE: INTRODUCTION

1.1. Background of the Study

The ongoing civil conflict in northern Uganda, which has pitted the government against the rebel movement of the Lord's Resistance Army (LRA) for more than two decades, has caused untold suffering to the citizens in northern Uganda. More than a million Ugandans have been displaced within the country. While LRA is blamed for committing war crimes and widespread violations of human rights and for the huge population displacement, the Uganda People's Defence Force (UPDF), which is the country's national defence force, has also reportedly committed human rights violations against civilians and Internally Displaced Persons (IDPs) in that part of the country.

Efforts to end the conflict have largely proven fruitless. Part of the problem has to do with the lack of a clear political agenda on the part of the rebels themselves. The government of Uganda has tried (so far in vain) to reach out to the leadership of the LRA, led by spiritualist Joseph Kony, for a settlement, successively and sometimes simultaneously pursuing military action, peace negotiations and amnesty for the rebels. In 2003, the president of Uganda, Yoweri Museveni, growing impatient of Kony's hide and seek approach to political engagement, referred the northern Uganda situation to the International Criminal Court (ICC), with the result that in late 2005, warrants of arrest were issued against Kony and several of his commanders. This action by the government is seen as having hardened Kony resolve, and in the process has jeopardised chances for any further negotiation.

Several studies have documented the numerous effects of the conflict on the populations (Accorsia et al, 2005; Vinck et al, 2007). These have generally ranged in focus from the relationship between social and environmental factors, disease burden, and the provision of healthcare to peace building. While the basic service and political challenges posed by the conflict are relatively well understood, humanitarian problems have been slow to come to the agenda of scholarly work. Part of the reason may have to do with the idea that as the conflict has continued, humanitarian intervention on behalf of those that have been displaced internally by the conflict, unlike political settlement, has been an area of significant progress, thus giving the notion that there is a relative success in the work to ameliorate humanitarian challenges. This research focused on the protection challenges of IDPs by international humanitarian organizations such as the United Nations. It locates itself in the Pader district.

According to the United Nations (UN), the protection related problems in the camps in Pader district have been caused by the government encampment policy and strategies to forcibly displace the rural population into the so called "protected villages" or internal displacement camps in order to protect civilians while fighting and preventing LRA rebels from having support of the civilians. As a result, LRA has allegedly been attacking civilians in villages, camps, and on roadways, killing, raping and abducting children, thus creating secondary displacement of people who move from one IDP camp to other relatively safe areas to avoid being kidnapped during the night (RLP, 2006).

The concerns of IDPs such as those of the Pader district have recently become a key concern of agencies such as UNHCR. "Too often in the past, IDPs' needs have gone unaddressed," UN High Commissioner for Refugees António Guterres was quoted as saying in reference to the new role that UNHCR has assumed for the protection of the Internally Displaced Persons in December 2005 (UNHCR, 2006). This statement signified the departure of the organization from its traditional role of dealing with refugees and its willingness to engage more with IDPs, an issue which had not seriously featured in its agenda in the past.

UNHCR was created in 1950 by the international community as an exclusive organization vested with the mandate to respond to the challenges of protecting displaced people. More than half a century after UNHCR was first established, the mandate and responsibilities of UNHCR have increased exponentially. At the time it was created, it had less than half a million refugees under its mandate. As of December 2007, UNHCR was caring for more than 25 million refugees and people of concern including IDPs (UNHCR report - The State of the World's Refugees, 2007).

Perhaps what is more interesting is the fact that UNHCR has now turned its mission to help those who are internally displaced following requests from Governments and United Nations Security Council. In other words, people who have been persecuted, like refugees, but have not crossed their national frontiers are now in the UNHCR domain unlike before. This is being done without an explicit amendment of the 1951 Convention which created the organization and its mandate or adoption of the new convention expressly signalling the unanimity of the international community on how to address the issue of IDPs (UNHCR report - The State of the World's Refugees, 2006). At worst this violates a principle of sovereignty of states and at best it creates a series of challenges for provision of protection to IDPs.

UNHCR became involved with IDPs as early as 1970. In the beginning, IDPs were included in programmes for returning refugees in a few countries in Africa and Asia where IDPs were originally from the same areas as the returning refugee populations. UNHCR was motivated to assist IDPs because it was neither reasonable nor feasible to treat the two categories differently as the reasons for their flight and their humanitarian needs were almost identical (UNHCR – EPAU, 2005).

Currently, the global number of IDPs has gone up to 26 million from between 20 - 25 million in 2004 (IDMC, 2008; The State of the World's Refugees, 2007). Due to the consistent increased IDP problem, the UN adopted the UN Guiding Principles on Internal Displacement in 1992. The Guiding Principles call governments to commit resources to better protect their citizens against arbitrary displacement, guarantee their rights during displacement and promote durable solutions by facilitating voluntary return, resettlement, integration and re-integration (UN Guiding Principles on Internal Displacement, 1998).

One of the major challenges facing UNHCR is how to continue addressing the challenge of providing international protection to the IDPs in the absence of an explicit international binding mandate without compromising its own founding mission of helping those who have crossed their national frontiers, on well-founded fear of persecution and more importantly, maintaining the delicate balance between its long and cherished trade mark of neutrality by working directly in the countries of origin, which is likely to bring the organization at odds with some governments.

As of 2006, UNHCR started extending its humanitarian support to IDPs through the so called Inter – Agency arrangement, popularly known as "Cluster Leadership Approach". As part of a wider United Nations reform process aimed at improving the effectiveness of humanitarian response, UNHCR has been chosen, through the new "Inter-agency Collaborative Approach", to lead and coordinate humanitarian efforts in responding to "conflict-related emergencies including IDPs" as a mechanism to address identified protection gaps in response. Under this arrangement, UNHCR has been assigned as a lead agency to coordinate, monitor and lead other selected agencies to perform tasks related to protection, emergency shelter, and camp coordination and management (IASC, 2007). Given the broad responsibilities that UNHCR has been assigned under this new arrangement, this research project only concentrates on the first role of protection with a special focus on Pader district in northern Uganda.

1.2. Statement of the Problem:

Protection problems are endemic to the plight of internally displaced persons. They arise, not only as a cause of flight, but also during displacement and in the search for durable solutions. Furthermore IDPs have found themselves in a dilemma. On the one hand, they cannot avail themselves to the protection of their countries because factors such as civil strife in some parts of the country or natural calamities completely cut them off from receiving assistance and protection from their government or at times, the government itself is the violator of their rights. On the other hand, they are unable to attract assistance from the international community because of either non-consent of their government, for instance, victims of hurricane Nagis in Burma in 2008, or lack of clear international legal framework that could allow the international community to intervene.

The problem has been growing disproportionately in Northern Uganda, which was cited in 2005 by Jan Egeland, the then United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, as the world's worst neglected humanitarian crisis (OCHA, 2006). More important, however, the IDP issue is politically complex due to its encroachment on "sovereignty" of countries because the presumptive beneficiaries are still within their countries. Though countries would like to have assistance to help these people, they are very wary of direct intervention of the international community (Korn, 1999).

In an evaluation report commissioned by UNHCR in 2005, the organization was described as uncertain, inconsistent and unpredictable in its policy towards IDPs. The evaluation further observed that, many a times, UNHCR policy caused tensions between organizations, confusion with governments and false expectations amongst IDPs. UNHCR has also admitted to having had difficulty in justifying its abrupt reversals of position on IDPs involvement (Mattar *et al,* 2005 in Jeff *et al.,* 2007).

1.3. Objectives and Significance of the Study

The primary goal of this research is to understand the paradox of UN intervention with IDPs given the lack of mandate and the principles of sovereignty and the challenges it faces as a result of its intervention. It will look into three main challenges that UNHCR is facing in the delivery of protection to the IDPS in Pader; legal challenges, structural problems and problems related to the issue of peace and insecurity in northern Uganda.

The Statute of the Office of the United Nations High Commissioner for Refugees, as approved by the UN General Assembly resolution 428 (V) of 14 December 1950 Article 9, states that "The High Commissioner shall engage in such additional activities as the General Assembly may determine within the limits of the resources placed at his disposal". The study looks into IDPs challenges in Pader district in relation to the protection work of UNHCR and critically examines the efforts being undertaken by it.

The study attempts to understand how UNHCR is managing the challenges of coordinating, monitoring and leading the efforts of other UN agencies of 'equal status' and international NGOs in delivering assistance and protection to the IDPs in a sovereign state that has failed to contain internal displacement in its territory (RLP, 2007). As part of the broad protection concept the study attempts to understand the way UNHCR officials negotiate the issue of sovereignty when dealing with IDPS in Uganda and the challenges this poses to their work. In general this study is aimed at drawing the attention of the international community, in addressing the plight of IDPs in Uganda, particularly in Pader district

1.4. Rationale of the Study:

The exponential rise in IDPs and UNHCR decisions to respond to the situation of IDPs has created pressure on the work of the UNHCR that derive, not just from the moral imperative to 'do something', but also from a human rights approach which, recognizing the absence of an international framework and mechanisms specifically designed to protect IDPs, seeks to identify legal remedies and fill this protection gap (Chimni, 2000).

Just like in refugee situations, UNHCR faces enormous challenges in its work of providing protection to the IDPs through the newly established Cluster Approach system because of the unpredictability of the situation that produces IDPs and the inadequate cooperation by other entities involved in the provision of protection services. This is partly because of the absence of internationally binding legal framework for IDPs that lend legitimacy to the work of the humanitarian organizations helping IDPs and partly because of states` inadequate resources and professional competences to deal with problems occasioned by internal displacement.

This research proceeds on the hypothesis that the government was very wary in allowing and offering full cooperation to external actors like UNHCR willing to extend assistance and protection of IDPs, a matter it solely considered to be in its domain. The assumption was that the government considered the problem of IDPs as an internal affair which did not need external intervention.

The relevance of this study lies in its attempt to analyze the changing nature of the UNHCR mandate with regards to the protection of internally displaced persons (IDPs) where no specific framework guides such work. The study critically examines international efforts currently being undertaken to tackle this ever growing challenge and what is comprehensively being done to complement these efforts. In light of the idea of sovereignty which is positioned against the delivery of unsanctioned international protection and assistance to IDPs, this research considers how the work of transnational organizations such as the UNHCR appears to validate the same principle of sovereignty, while, by sometimes assuming more political roles in IDP protection, simultaneously move to challenge such a principle in different ways. I argue in this research report therefore that the principle of neutrality in humanitarian work, which is significantly curtailed by the challenges that the UNHCR faces in Pader, positions the UNHCR and other international humanitarian organizations to take on the responsibilities of the government, thus presenting a principle of sovereignty that appears fragmented and that is sometimes ceded for localized practical, and immediate, gains.

1.5. Research Question(s)

The main question that is to be addressed in this research is "What is the nature of the response to IDPs in Northern Uganda and to what extent is UNHCR facing challenges in its protection role?"

In trying to answer this question, the study also looked into the following sub-questions

1. Why does UNHCR extend support to the IDPs in Uganda?

2. How does UNHCR justify its intervention in Uganda?

3. What are the barriers to effective work with IDPs in Uganda?

4. Does the issue of sovereignty pose a problem to UNHCR's provision to IDPs? What is the nature of this problem?

5. On what legal basis is UNHCR addressing the problem of IDPs and how is it responding and managing challenges of the IDPs protection in Uganda in the absence of explicit international legal framework?

1.6. Structure of the Report

This report is divided into five chapters. This introductory chapter outlines the context of the study, problem statement, the objective, the rationale, research question and the hypothesis, as well as the chapter outline.

In order to put the study in broader context, Chapter Two discusses relevant literature on the study including international humanitarian action, state sovereignty in IDP situations, international legal framework for IDPs and the responsibility for the IDPs protection.

Chapter Three discusses the methodology, which highlights key tasks, research design, focus of the study, sampling; research instruments, data collection and analysis; ethical considerations; as well as challenges and the limitations of the study. Chapter Four comprises the presentation of data and the analysis of the protection problems facing UNHCR and other stakeholders in addressing internal displacement in Uganda. The Chapter examines the legal and structure challenges facing different actors involved in the assistance of IDPs in Pader especially UNHCR. Chapter Five provides a discussion of the findings. While discussing further the implications of these challenges to the peace and security upon which successful efforts of protection are premised, the chapter also links the findings to broader debate on the implications of transnational humanitarianism on territorial sovereignty.

CHAPTER TWO: LITERATURE REVIEW

2.1. Introduction

This chapter gives a detailed literature review of some of the theoretical concepts on statehood and the principles of transnational humanitarianism in addressing the issue of IDPs in northern Uganda. This review is centred on the following main thematic issues; The problem of State Sovereignty in IDP situations which analyzes competing priorities of states between seeking international assistance for protecting its own citizens and sovereignty to conduct its domestic affairs without external interference; UNHCR and the Problems of International Humanitarian Action which examines the role of UNHCR in extending assistance in areas outside its original mandate as stipulated in its founding statute of 1951; International Legal Framework for IDPs which examines the impact resulting from lack of internationally legally binding instrument for the protection of IDPs; Responsibility for IDPs Protection as to who is responsible or ought to be responsible as well as a discussion on the Uganda IDPs Policy on how it has succeeded or failed to achieve its main goal of protecting IDPs. By engaging with research findings on how UNHCR responds and operates on behalf of IDPs, the literature review also highlights major theoretical concepts like the concept of Responsibility to Protect (R2P) as related to the subject under study.

IDPs are a particularly vulnerable group of victims of conflict because, despite being displaced as a result of the same reasons that cause refugees' flight to other countries, IDPs are trapped within the borders of their own countries. As a result they largely continue to suffer without international protection as they remain under the jurisdiction of their countries. Some scholars contend that they constitute the single largest at-risk population in the world (Korn, 1999). In this respect the global situation of IDPs has generated significant literature (see Lewis 1992; Deng 1995; Petrasek 1995; Lee 1996; Barutciski 1998; Korn 1999; Phuong, 2004).

2.2. On Sovereignty

Samuel Barkin and Bruce Cronin (1994) have written that the defining feature of the modern international system is the division of the world into sovereign states. Using John Ruggie's 1986 definition of sovereignty as "the institutionalization of public authority within mutually exclusive jurisdictional domains", they posit an international consensus of behaviour and practices that constitute "a vocabulary for international communication" (Barkin and Cronin, 1994: 107). This definition sets a commonality of practice that takes as given the idea of autonomy and independence of individual, politically recognised territorial states. These and

various scholars are, however, also in agreement that sovereignty is rarely a static concept (see Barkin and Cronin 1994; Krasner 2001). Sovereignty is challenged by legitimacy from within, as well as externally through such transnational organizations and processes such as monetary unions, the internet, CNN, and non-governmental organizations (Krasner, 2001). This research utilises both internal and external challenges to the principle of sovereignty in an attempt to clarify the position of, and challenges to, an organization such as UNHCR in realizing local objectives in so-called autonomous states.

 An understanding of the internal challenge to sovereignty qualifies an institutional approach to sovereignty (Barkin and Cronin 1994). Here, the "political legitimation" of nation-states may change over time depending on "the rules of sovereignty"[1]. Thus, in the case of Uganda, for example, Museveni's coming to power was recognised by other states when they felt that his political ideologies approximated a better national authority than that of his predecessor, Dr Milton Obote. The same states have not extended similar courtesy to Joseph Kony. As a result, Kony's challenge for power, even in the northern sections of Uganda, may in this sense be regarded as lacking legitimacy. However, because he successfully controls these parts of the country, Museveni and the national government may also be regarded as not able to extend their national sovereignty to these parts of the country, so that both protagonists have no real claim to the actual government of northern Uganda.

The independence and "autonomy" of states is also thought to be challenged by external influences of transnational organizations and other processes of globalization. However, as Steven Krasner (2001: 20) has pointed out, "the nation-state has a keen instinct for survival and has so far adapted to new challenges". Even for weak states, external influences often work to reawaken a strong notion of independence and autonomy. Thus, sometimes when even big organizations like UNHCR wish to implement programmes in, say Uganda, they invariably are confronted with a dictum of sovereignty and autonomy.

Furthermore there has been a shift in the notion of sovereignty to encompass what has been termed 'popular sovereignty' (Barnett 2001) – a notion that sovereignty should lay with the people to complete the ideal of liberal democracies and to honour individual rights. The continuous tension, contestation, and interplay between and around incomplete autonomy of (especially weak) states on the one hand, and the notion of popular sovereignty on the other, as especially brought to light by the work of transnational organizations such as UNHCR in

---

[1] Defined by Barkin and Cronin (1994: 108) as "a set of principles by which the international community recognises the legitimacy of authoritative control over a specific population and territory"

individual states is the theoretical premise of this research paper. Particularly where such autonomy appears simultaneously absent and salient as and when situations permit, the presence of international humanitarian organizations in sovereign, albeit weak, warrants scholarly attention.

2.3. UNHCR, Humanitarianism, and IDPs

Alain Aeschlimann (2005:27) has written that "IDPs are of primary concern to the International Committee of the Red Cross (ICRC)". This statement, while not precluding other organizations from assuming a similar mandate, does however give an idea that other organizations other than UNHCR have been taking the protection of IDPs as a primary responsibility. UNHCR was chosen for this study because of its long history of humanitarianism.

UNHCR's humanitarian role initially lay primarily with refugees[2], but it has also been helping IDPs in different countries upon request by the United Nations and consent of the governments producing IDPs on an ad hoc basis. Ethnically defined modern liberal democracies have in great part been responsible for the production of stateless minorities who have however been formally restricted in terms of where they can go largely because of stringent immigration laws. Michael Barnett (2001: 251) writes that "only a world of sovereign states that had categories of people called "citizens and were intent on regulating population flows could produce a legal category of "refugees". Periods of political upheaval, such as the First World War, are particularly responsible for the production of huge numbers of such people, who are eventually kept, as a norm, in temporary areas. As a standard practice, these are usually refugee camps. It was as a direct result of this that in 1921, the High Commissioner for Refugees (HCR) was established by states.

The Second World War provided the setting for the formal setting up of the refugee convention and UNHCR, although member states "made sure that they did not let themselves get carried away by their noble thoughts" (Barnett 2001: 252). They mainly could not, as a survival instinct, surrender too much of their sense of sovereignty. The humanitarian work of UNHCR has thus always situated itself within this normative terrain and practical constraint. Barnett (2001) writes that UNHCR, as a result of these concerns by states, was expected to not venture into the politics that were responsible for the refugee problems, since such a mandate would potentially violate the principle of sovereignty. It is mainly for this reason that protection

---

[2] Defined in line with the 1959 Convention relating to the status of refugees as referring to those people who, owing to a well founded fear of persecution due to religious, ethnic or political persuasion, are unable or unwilling to avail him/herself to the protection of his/her country.

became legal protection, which essentially meant that UNHCR had to "identify, issue travel documents, assist in obtaining recognition of various legal statuses and advocate ever more precise guidelines for handling recognised refugees" (Kennedy 1986; Coles 1989; Stuck 1989; Holborn 1975, all in Barnett 2001: 253). Since then, the face of UNHCR has mainly been of an 'apolitical', 'humanitarian' organization whose concern was of 'legal protection' which it mainly attempts to achieve under the cap of international protection. Nevertheless, the fact that states have always been so involved in keeping UNHCR out of politics means that they have been implicated and have shaped its refugee policies. In other words, the fact that its formation has been so closely tied up to that of states means that it could not be kept out of politics entirely. On the other hand, UNHCR itself has benefited (sometimes consciously) from close association to politics, since this means that at opportune moments, it could expand its work into this realm. One example has been the invention of the mechanism of "good office" (Khan 1976, in Barnett 2001: 253), which allows UNHCR to assume such responsibilities that might be politicized as part of their humanitarian and apolitical work.

The concept of "good office" is best exemplified by UNHCR's involvement with IDPs. UNHCR has a long history with IDPs, having been involved since its engagement in Sudan in 1972 (Feller 2006). Since then the work of UNHCR has not only grown in scope, but in the commitment that the organization has shown through statutes and law. Thus, apart from the large pool of human and material resources that UNHCR commands, its [UNHCR's] involvement in situations of internal displacement has been actively encouraged (Feller, 20060). As a result, UNHCR has increasingly played a vital role in various IDP situations, especially in protracted war situations, such as the one in northern Uganda.

In spite of the burgeoning literature on the global situation of IDPs, focus on the protection challenges facing UNHCR, especially in Pader district, has been reduced. This research takes its cue from this gap by examining how humanitarian work impacts on the often assumed steadfastness of the rationale of autonomy at the local level. This research therefore is motivated by the fact that the situation of internal displacement in Uganda has produced challenges to both the government and international organizations like UNHCR. Pader district is chosen because it offers such an example of a locality from which broader epistemic debates can be made.

2.4. UNHCR and the Problems of International Humanitarian Action

UNHCR plays a broad role in addressing the problems of displacement; it offers protection, assistance and initial support for integration (Statute of the Office of the United Nations High

Commissioner for Refugees, UN 1950). As UNHCR's mission statement puts it, "UNHCR is mandated by the United Nations to lead and co-ordinate international action for the worldwide protection of refugees and the resolution of refugee problem as well as IDPs when requested by the UN General assembly" (www.unhcr.org).

UNHCR has increasingly undertaken activities on behalf of internally displaced persons as part of a comprehensive approach to address coerced population movements. While UNHCR's Statute makes no specific reference to internally displaced persons, it recognizes in *Article 9*, that the High Commissioner may, in addition to the work with refugees, *"engage in such activities…as the General Assembly may determine, within the limits of the resources placed at (her) disposal"*.

This article is the basis on which the General Assembly has authorized the Secretary-General to call upon UNHCR to undertake humanitarian assistance and protection activities on behalf of the internally displaced, provided certain specific conditions are met. In 1993, the General Assembly recognized that UNHCR's activities could be extended to IDPs when both refugees and IDPs are so intertwined that it would be practically impossible or inappropriate to assist one group and not the other. Although refugees are legally those displacees that have fled their countries of nationality whilst the internally displaced persons remain uprooted within their national borders, the two groups share many common characteristics. Like refugees, many IDPs have been forced to leave their homes because of fear of persecution, war and violence, and are in need of humanitarian assistance and protection (Phuong, 2004).

UNHCR has interpreted the General Assembly resolutions, and in particular, resolution 48/116, 55 as providing the organization with a mandate to address the challenges of internal displacement in a flexible manner. Based on these resolutions, and on its operations experience, UNHCR developed internal policy directives in 1993 and 1997, defining the criteria for involvement in specific operations as, among others, a) specific request or endorsement from the Secretary-General or the competent principal organs of the United Nations, b) consent of the concerned state or other relevant entity, c) relevance of UNHCR`s expertise and experience in protection, assistance and solution-oriented activities and, d) availability of adequate resources. Also, access to the affected population, the ability of UNHCR to maintain its institutional independence as a non-political and humanitarian organization and to intervene directly with the governments and parties concerned through its field presence are critical to the success of the organization's engagement (Phuong, 2004).

The criteria and considerations outlined above do not automatically prompt UNHCR's involvement in IDP situation, but reflect factors that need to be taken into account in deciding whether or not a situation is appropriate for UNHCR to become involved.

In the absence of a single agency in the UN system with a comprehensive mandate for the protection and assistance of IDPs, a consensus emerged in the 1990s within the context of the Inter-Agency Standing Committee (IASC) that a collaborative approach[3] to internal displacement situations was the most appropriate response mechanism. This approach called for all available agencies to contribute, within their means and according to their mandates and expertise, to the resolution of internal displacement situations under the coordination of the Emergency Relief Coordinator at the headquarters level, and at the field level by the Humanitarian Coordinator.

In late 2004, a broad humanitarian response review process commissioned by the Emergency Relief Coordinator resulted in a set of humanitarian reform initiatives. These initiatives aimed at ensuring a more predictable, effective and accountable inter-agency humanitarian action by improving the response, funding and leadership mechanisms. As a result, in December 2005 the IASC agreed to establish the "cluster leadership approach", or "cluster approach", which organized nine critical areas of the humanitarian response (Logistics; Emergency telecommunications; Camp coordination and management; Emergency shelter; Health and Nutrition; Water, Sanitation, and Hgiene; Early recovery and Protection.) into "clusters" comprised of a broad range of actors (including NGOs and non-UN intergovernmental organizations) and led by a designated "cluster lead" for each cluster. Within this system, UNHCR accepted a leadership role for the Protection, Emergency Shelter, and Camp Coordination and Camp Management Clusters in situations of conflict-induced internal displacement. UNHCR shares a protection leadership role with United Nations Children Fund (UNICEF) and Office of the High Commissioner for Human Rights (OHCHR) for internal displacement due to natural disasters (UNHCR *RefWorld*, 2007).

The IASC agreed to initially launch the cluster approach in the Democratic Republic of the Congo (DRC), Liberia, Uganda and Somalia. Nearly four million IDPs, out of an estimated global total of 24 million, are in these four countries. The "cluster approach" has also been applied to countries like Lebanon, Côte d'Ivoire and Colombia, where UNHCR leads the

---

[3] Cluster Approach is a new system formed as part of a wider United Nations reform process aimed at improving the effectiveness of humanitarian response in IDP situations whereby UNHCR has been chosen to lead and coordinate other agencies in responding to conflict- related emergencies including IDPs as a mechanism to address identified protection gaps. See IASC report 2007 for more information.

Protection Cluster, to bridge gaps in the humanitarian response. While the "cluster approach" has not been formally adopted in all situations of internal displacement, a number of countries are organizing themselves in a cluster-like manner nonetheless; this is the case in Chad and Central African Republic (UNHCR, 2008).

By virtue of its mandate and its global operations on behalf of refugees, UNHCR continues to acquire protection and solution-oriented skills and an operational capacity that can be put to effective use in certain situations of internal displacement.

Francis Deng and Roberta Cohen (1998) have continuously argued the case for better protection of IDPs the world over, and have described the humanitarian crisis of internal displacement as "monumental". They have decried the absence of a specific legal regime for the protection of the rights of IDPs, and a body to monitor compliance with such mechanisms. Inviting states to incorporate provisions of the Guiding Principles into their legislative frameworks, they believe that, while governments have the primary responsibility to care for their displaced populations, they must request and accept outside help when they are unable to do so. They propose that if they refuse or deliberately obstruct access to the displaced, the international community has the right, even a responsibility, to become involved in diplomatic dialogue, negotiation of access for relief assistance, political pressure and military action in exceptional cases.

Given this state of international affairs, some states like China, India, Egypt and Sudan, while not explicitly challenging Deng and Cohen's (1998) concept, have expressed fears that international humanitarian action could be a pretext for interference by powerful states in the affairs of weaker states, which brings the whole phenomenon to the issue of sovereignty and consent of states (UNHCR Report - The State of the World's Refugees, 2006) into contention.

When Harrell- Bond (1986) invites organizations to allow critical self-examination of the way they conduct the business of humanitarian assistance to the displaced people, her solution is not to depart from reality but accept and improve the situation. She argues that "honest examination of reality, however difficult, is a painful means to that end" (Harrell-Bond, 1986:65). Her message to the humanitarian actors is, therefore, not to do less, but to do better to the people they are trying to extend the humanitarian assistance. Addressing the contradictions in UN intervention with IDPs reflects an attempt to take up this challenge. The contradiction is rooted in the imperative of working within the normative framework of

sovereignty while assuming more and more political role the implementation of its programmes at the local level.

On another hand, Loescher (2001) also criticises UNHCR's culture by claiming that it does not lend itself to the kind of self-examination that is necessary for future change in the agency. According to him, the office is defensive and does not easily accept outside criticism, thereby impeding its ability to admit to, and learn from past mistakes and discouragement of open discussion about its failures or the negative consequences of some of the office's actions or inactions and policies affecting its work of protecting refugees and IDPs. The organization, as Barnett (2001) has noted, within the discourse of neutrality in humanitarian work, is involved in advancing its own objectives, thus it may be using the same ambiguities around sovereignty to further its own goals.

There has however been concern that international organizations may be using their resources to encroach onto the internal affairs of especially weak states. Indeed, some authors have strongly argued that sovereignty is the final defence for the poor countries against the rules of the unjust world (Bouteflika in Weiss, 1999). Be this as it may, sovereignty can not be an excuse for non-performance of binding international obligations and neither can countries hide behind this internationally recognized norm to avoid their obligations. Rather, it also carries responsibility for states to perform their obligations. Further more, under the principles and purposes stated under Art. 1(2) of the UN Charter it obliges member states to achieve international cooperation in solving economic, social and cultural or humanitarian problems and in promoting and encouraging respect for human rights and fundamental freedoms. Thus, the Charter elevates economic, social and cultural and humanitarian problems as well as human rights to the international sphere. By ratifying the Charter, a member state in question can not front legitimate claim that such matters are an exclusive preserve of its internal sovereignty when it can no longer discharge its obligations as stated in the Charter.

Most host countries are confronted with unparalled economic crises on the domestic front and find it difficult to host refugees from other countries. Host countries complain that although Africa hosts half of the world's displaced people, the allocation of UNHCR's budget has never reflected the reality on the ground (Rwelamira, 1983 in Harrell - Bond, 1986). As such, logistical, financial and coordination constraints compounded with the issue of sovereignty of states have also hindered UNHCR's ability in effectively protecting IDPs.

As observed by Karadawi (1982) in Harrell-Bond (1986:68), the relationship between the aid-giving community and aid receiving government is "'like an alliance between two parties who agree on goals but eye each other with suspicion". This situation leads UNHCR in some situations, to fail to perform efficiently or in accordance to its mandate because of the mistrust by the states they operate in and vice versa. An example of this is the expulsion of refugees and some UNHCR officers in northwestern Tanzania by the Tanzania government in different times, after accusing UNHCR of engaging in activities that were allegedly sabotaging the government's handling of refugees. The former have been refouled to Rwanda and Burundi on different occasions by Tanzania government on either assumption that they were not bona fide refugees or on claim that the situation in their countries of origin had improved thus their needed return (Rutinwa, 1999; Waters, 2000; Whitaker, 2002). Both sovereignty and humanitarian intervention are shown to sometimes exist in a tension, although they both assume to have the interest of the people they serve at heart.

However, the work of Gingyera-Pinycwa (1998) equally condemns the international community for having a discriminatory approach in delivering humanitarian assistance. But like Gingyera-Pinchwa's (1998) claim, African states also employ discriminatory approaches to their displaced citizens thus creating room for humanitarian assistance from organizations which they, in turn want to control. Because IDPS and refugees have been perceived as threats to both population and states, African governments have been trying to solve the 'displacement problem' by separating the displaced people in sites away from the national population in order to control them. Since refugees are thought and treated as "leftovers" or a global anomaly, they are often secluded by states because they threaten "the national order of things" by being "matter out of place" because they "belong neither here nor there" (Turner 2004: 228-230). This can best be seen by efforts of many governments to keep such populations in camps, although sometimes refugees may prefer to not live in camps[4]. On the other hand, at times, UNHCR has also been advocating for the separation of the displaced to safer spaces in an effort to provide effective physical protection while trying to find durable solution for their plight.

Through governmental practices, refugees are housed in exceptional and organized space, such as camps, where they are sometimes exposed to the media and subjected to the relief and development practices developed at the headquarters of international organizations. Although

---

[4] Some governments of course have actively discouraged the encampment policy, like in South Africa, although this does not directly translate to a better welfare of refugees. In other cases, refugees may constantly leave camps to go and seek better livelihoods in the city, such as the case of Dadaab camp in Kenya.

displaced persons are generally considered helpless, they are increasingly also considered a threat to other displaced persons and host populations. When one adopts this logic, what appears to be an attempt to control displaced persons also becomes a struggle for the state to legitimize its power over territory, where other international interests may have more say on what goes on in the camps than host governments themselves. For example, in the case of Uganda, the state has developed what is called protected camps to house IDPs. The IDPs are placed together with very minimal basic facilities and in most cases; the treatment of IDPs is not in conformity with the internationally accepted standards espoused by the UN guiding principles.

Nonetheless, like the resolutions of the General Assembly, the Guiding Principles on IDPs are of moral imperative only. As such, countries like Uganda can and tend to deviate from these developed principles (Deng, 1998). As in the case of refugees, the longer the IDPs stay in camps, which generally provide substandard or inadequate accommodation (Turner, 2002) the more likely they are thought by states to become a threat to peace. This does not necessarily mean that UNHCR acts without regard to issues of sovereignty. As UNHCR is part of the UN system, it has to adhere to the state system based on the supremacy of the state in international relations. However, because of the enormity of the displacement challenge, it tends to give priority to averting humanitarian crises, and might face stumbling blocks imposed by the red tape and active resistance from states that permeates state bureaucracies.

Different scholars have extensively analyzed the role of state interests in relation to their international obligations. For example Bariagaber (1999), contends that governments take time to evaluate the national security implications of their actions in relation to displacement in order to weigh whether they will benefit politically and materially, whenever possible. This government strategy is thought to seek to minimize losses, even if this means abandoning the option of maximizing from receiving international assistance from humanitarian agencies. International organizations like UNHCR, on the other hand, tend to respond relatively quickly to minimize humanitarian crises and interpret events in terms of the negative consequences of their delay or their inaction. As a result, their differences in priorities, leads to the ineffective humanitarian intervention and protection to the displaced people because the state which is responsible for the protection or even may be the cause of the displacement, has different priorities from humanitarian organizations. A good example is the IDP situation in Sudan which has been unfolding for close to ten years now. Despite the gravity of the problem, still the government has been indifferent to the plight of IDPs to the extent of expelling international non-governmental organizations providing relief assistance to the IDPs. Given

this problem of international humanitarian action, UNHCR is constrained by the interests of the states it is trying to help for the benefit of the IDPs. Such constraints constitute the driving force behind the strategic decision-making approach that UNHCR employs when dealing with the issue of IDPs (Bariagaber, 1999).

2.5. The problem of State Sovereignty in IDPs Situations and its Implications

According to critics like Goodwin-Gill (1999), the transformation of UNHCR into a more general humanitarian emergency organization has put the agency at the mercy of a much broader set of political and strategic calculations. Because UNHCR needs to obtain access to increasingly volatile internal situations and promote compromise solutions, the agency is not well placed to stand up for protection principles regarding its people of concern. For Goodwin-Gill, to fully extend or promote protection in sovereign states like Uganda would mean threatening its accessibility to conflict zones where IDPs reside and its ability to be operational for the benefit of the IDPs it is trying to assist. In this respect, it becomes almost impossible for UNHCR to have political neutrality in such a working environment which does not give the agency the total freedom it needs to operate efficiently.

One of the reasons that work with IDPs is so controversial for UNHCR is the issue of sovereignty. Since IDPs are, by definition, within their country of origin, the international community is bound by the principle of sovereignty to respect the borders of states and to operate carefully when delivering humanitarian assistance, although the balance between sovereignty and humanitarian action appears to be shifting, at least somewhat, toward the latter precisely because of the growing recognition by the international community that, when states can not meaningfully protect their own citizens, their sovereignty can be a subject of legitimate international concern that may or can come in (Dowry and Loescher, 1999). Indeed it is against this background that the doctrine of Responsibility to Protect (R2P) was adopted (Thakur et al, 2007).

State sovereignty denotes the competence, independence, and legal equality of states. The concept is normally used to encompass all matters in which each state is permitted by international law to decide and act without intrusions from other sovereign states. These matters include the choice of political, economic, social, and cultural systems and the formulation of foreign policy (Huber, 1928 in Etima, 2003).

National sovereignty, thus, now requires a system of governance that is based on democratic popular citizen participation, constructive management of social diversities, respect for

fundamental human rights, and equitable distribution of national wealth and opportunities for development. For a state to claim sovereignty, it must establish legitimacy by meeting minimum standards of good governance or responsibility for the security and general welfare of its citizens, and indeed, all those under its jurisdiction (Thakur et al, 2007).

The limits on sovereignty are widely accepted. The Charter of the United Nations of 1945 highlights the tension between the sovereignty, independence, and equality of individual states, on the one hand, and collective international obligations for the maintenance of international peace and security, on the other. State sovereignty may be limited by customary and treaty obligations in international relations and law. Equally, states are legally responsible for the performance of their international obligations and state sovereignty, therefore, cannot be an excuse for their non-performance. Understandings of sovereignty have also been shaped by the humanitarian tragedies created by internal conflict such as in Uganda. This has encouraged a new understanding of the role of governance in managing conflict especially in Africa. Indeed, the most important and devastating challenges in Africa relate to violent conflict within states (Deng and Lyons, 1998). In many cases, internal conflicts have caused a vacuum of responsibility for ensuring the protection, assistance and comprehensive security of the domestic population.

This vacuum calls for international involvement to provide remedial protection and humanitarian assistance. Such involvement is constrained in part by conventional definitions of sovereignty, which place the burden of responsibility for a population on the state itself. For the claim of sovereignty to be legitimate, however, the state under scrutiny must demonstrate in the eyes of the international community its willingness and ability to offer unconditional support and protect its own people. Theoretically and according to international law, when governments fail to discharge this responsibility and sections of their citizens become threatened with severe suffering and death, the international community is compelled to step in to provide the needed protection and assistance, even if the government of a state is reluctant to accept such assistance. Sovereignty, therefore, has both an internal dimension that requires responsibility by the sovereign authority for the citizens within its jurisdiction and an external dimension that obligates the international community to protect and assist those citizens when the national leaders refuse or fail to act responsibly (Deng and Lyons, 1998).

Loescher (2001) examines the issue of state interests and UNHCR institutional autonomy by showing how it is constrained by states in its protection mandate. He claims that UNHCR is dependent on donor states for funding operation and on host governments for permission to

initiate operations on their soil. Thus, according to Loescher's view, UNHCR is faced with the challenge of effecting its mandate while adhering to the objectives and policies of its funders and those of host governments. The situation poses another challenge to its work, especially in places like Uganda, which is experiencing huge internal displacement. In keeping with this argument, when asked why the United Nations had not been able to do more for the internally displaced persons, the former High Commissioner for Refugees Sadako Ogata replied: "The problem is sovereignty" (Ogata as quoted in Korn, 1999:49). She asserted that, because IDPs reside within their borders of their own countries and in most cases under their own governments, primary responsibility for them rests with their national authorities. Sometimes, governments categorize IDPs as "migrants" or "terrorists" to avoid responsibility for their welfare or after failing to develop policies and laws to help the displaced, particularly in civil wars where governments fear that aid to the displaced could strengthen insurgent groups thus legitimizing the rebels. Sovereignty has thus been depicted as objective fact when in fact it constitutes a normative field where contestation about prerogatives in international affairs takes place.

Petrasek (1995) and Chimni (2000) discuss UNHCR's increasing involvement with IDPs and question whether its increasing role detracts from the possibility of those displaced to seek and obtain asylum. Furthermore, they question the UNHCR's transformation from a refugee to a humanitarian organization as being dictated by the aim of the powerful donor states to keep potential refugees at home in order to prevent them from entering other states or associated spill over effects generated in the country of origin as a result of internal conflicts to another. Lastly, they ask if UNHCR's support standards focus on IDPs without attempting to fill at first the gaps which exist in refugee protection. Hathaway (1991) reviews some of the reasons for insisting on a lineage as a criterion for defining refugees, but according to Chimni (2000), Hathaway does not sufficiently appreciate that the principal reasons for the absence of a special regime for IDPs is the very understanding that states are responsible for nationals inside their own territories and not UNHCR.

Within this debate, however, is a steady advancement, which can be seen through the provisions of the Guiding Principles on Internal Displacement towards the provision of a framework for identifying the protection needs of IDPs and thus affording guidance to governments, international organizations and other actors engaged with displaced populations (Kalin 2005 in Cohen 2007). In fact, Roberta Cohen writes that the Guiding Principles have done more than restate existing law as well as provide specific guidelines, something that

Chimni (2000) appears to doubt. "They tailor", she points out, "its provisions to the specific needs of IDPs, and they also fill grey areas and gaps in the law" (Cohen 2007: 372).

It is in recognition of the importance of the Guiding Principles on Internal Displacement that a growing number of governments—including those of Angola, Burundi, Colombia, Georgia, Liberia, Peru, the Philippines, Sri Lanka, Turkey and Uganda—have been incorporating the Principles into their domestic laws and policies because they see IDPs as a category that needs to be addressed in their countries (Wyndham 2006 in Cohen 2007)

In light of the above, it is not surprising that some governments, including Uganda, allow "some form of access" to their displaced populations following a request from the UN for access, while at the same time reaffirming its respect of sovereignty (OCHA, 2006). The specifications of the Guiding Principles would appear to give more clout to intervention efforts of transnational organization, but also to challenge more squarely the principle of non-interference and national sovereignty. Thus, while countries have moral and legal obligation to protect their citizens from suffering, including where necessary accepting international assistance to address the situation (Deng, 1998), the literature shows how IDPs are at once a threat to and responsibility of both states and the UNHCR, something that makes intervention particularly complex.

This moral and legal obligation emanates from the UN Charter itself, the Universal Declarations of the Human Rights (UDHR) of 1948, amongst other international treaties. But the rules under which states operate are quite different from the rules of humanitarian assistance. The case of Sudan would be a good example to illustrate the preceding. Despite the grave humanitarian situation in Darfur, the state not only has it been ambivalent in allowing international humanitarian assistance but it is known to have even expelled organizations which were there to provide critical humanitarian assistance in Darfur. The recent reaction by the government of Sudan to expel ten humanitarian aid agencies with large scale humanitarian operations in Darfur following the International Criminal Tribunal's (ICC) warrant to arrest and indict President Omar al - Bashir for war crimes and crimes against humanity further illustrate the strength of sovereignty of states. As a sovereign state the Sudanese government claimed it expelled humanitarian agencies for their alleged involvement in "activities that act in contradiction to all regulation and laws" (Guardian, 5 March 2009).

The above illustrates how the issue of sovereignty could have posed a hindrance to the direct involvement of international community in assisting IDPs in northern Uganda should it have

decided to use sovereignty to refuse international humanitarian intervention from 2005 just like it had done from 1986 when internal displacement situation started until when it was exposed by the UN Emergency Relief Coordinator, Jan Egeland. The same thing can be said of Sudan, despite international condemnation for expulsion of humanitarian organizations but still the government has maintained its stand not to allow them back.

2.6. International Legal Framework for IDPs

In northern Uganda, the government has not responded adequately when it comes to IDP protection. As a consequence, it has been compelled to partially cede its claim to autonomy and sovereignty to international humanitarian agencies like UNHCR and other NGOs. This is shown in the way it consistently fails to provide adequate resources to successfully counter the ongoing insurgency and protect IDPs in the protected camps it created.

From the perspective of international law, primary responsibility for the protection of and assistance to the IDPs rests with the territorial states. In this respect; UNHCR can work on behalf of the IDPs only, once consented by the concerned country (Goodwin-Gill, 1998).

Despite the growing magnitude of the IDPs today, there is no special legal regime for IDPs. It appears very easy to distinguish IDPs from refugees yet, they may have left their areas of origin for the same reasons. As such, critics contend that there is no justifiable reason for denying assistance and protection to a person simply because he or she may not have succeeded in crossing an international border (Chimni, 2000). According to Chimni, scholarly opinion is divided on the need for evolving a specific legal framework to meet the assistance and protection needs of IDPs. While some scholars contend that the existing regime of international humanitarian and human rights law offers a firm basis to enforce the accountability of states, others believe there is a need for a definitive legal statement for the IDPs. Whereas Chimni argues that any attempt to produce a separate legal regime for IDPs could undercut the extensive legal framework which already exists, Deng and Cohen (1998) argue that a specific legal framework would be more helpful. While appreciating the guiding principles on internal displacement on one hand, Lomo (2006) argues that the IDP challenges in Uganda are essentially due to the lack of strong national protection systems which means that specific legislation pertaining to IDPs may not improve their situation.

Any definition of IDPs would need to avoid the twin pitfalls of being overly broad or too narrow. If the former is adopted, practically any person would qualify as an IDP as the definition would include others who have been internally displaced by other reasons other than

human rights violations and if the latter were adopted, too many IDPs would be left out of the protection net (Chimni, 2000).

Among other branches of International Law, International Human Rights Law (IHRL) and International Humanitarian Law (IHL) are more useful for the protection of IDPs. For instance, in terms of IHRL, Article 55(c) of the UN Charter provides that *'the United Nations shall promote…universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'*

According to Goldman (1998), the main principles of international human rights law and international humanitarian law are valid in situations of non-international armed conflict. However, those principles are not respected in most cases and as a consequence; there are internal and external displacements of populations. Although state sovereignty dictates that governments are the ones with the duty and responsibility of protecting and assisting IDPs, it is often the case, among other reasons, that they are unwilling or unable to assist them either because of lack of expertise or lack of resources (Mooney, 2004). Thus, the international community has a role to play in providing technical and financial support to these governments.

According to Rodley (1998), the ICRC and some UN agencies should provide technical cooperation to assist governments in complying with international human rights and international humanitarian law

Due to the great interest of the international community and particularly some UN agencies and NGOs on the situation of IDPs, and the lack of an agency with a specific mandate on them, it has been argued that currently, the better solution is inter-agency cooperation to avoid gaps and overlaps in protecting and assisting IDPs (Phuong, 2002).

In March 1991, the United Nations Commission on Human Rights called upon the Secretary-General to prepare a report on internal displacement which then triggered more active involvement by the UN on the issue (Analytical Report of the Secretary-General on IDPs, 1992). It led, for example, to the appointment of a Special Representative on Internally Displaced Persons, who was given the mandate to analyze the normative framework of protection applicable to the situation of internal displacement and also to suggest appropriate action. After the publication of the report that led to the creation of the Guiding Principles on Internal Displacement, Lavoyer (1998) observed that non-binding documents could result in

non-application by the states since there is no supervision from international organizations. Thus, although humanitarianism may encroach into the territory of sovereignty, the chance for the two to function together is counteracted that they exist in a tension with each other.

The complex issues of UN mandate and institutional responsibility for internal displacement continue to constrain the international response. The lack of a binding legal framework explicitly addressing the issue of IDP protection, similar to the 1951 Refugee Convention, has in the past often been cited as a reason for the inadequate response. While speaking to a UN Security Council debate on displacements in Africa in 2000, US Ambassador to the UN Richard Holbrooke said that the people who have been driven from their homes but not from their countries by conflict are not different from those who crossed international border. He said, "There is no difference in being a victim, but they are treated differently." His remarks allude to the argument that though IDPs may flee because of persecution like refugees they are still under the protection of their own governments.

The key element in the definition of an internally displaced person is the fact that he/she has not crossed an international border, as opposed to refugees who, by definition have left their country. Therefore, refugee law is not directly applicable to IDPs. However, given the similarities of some of the causes of flight, the living conditions in reception areas and the challenges faced during return, refugee law provides important guidance in dealing with IDP issues. The most important source is the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The application of refugee law by analogy has clearly enriched the content of the Guiding Principles. One important concept borrowed from the refugee regime is the protection against forcible return of IDPs or *refoulement*. In addition to international refugee law, complementarity between international humanitarian law and international human rights law provides enhanced protection of displaced persons and is discussed in the following section (Etima, 2003; Kiessling, 2006; Munoz, 2006).

Such a limited or even contested development of international law on IDPs reflects on the challenges facing international humanitarianism. A lack of clear-cut legal frameworks or guiding principles of intervention on behalf of internal displaced persons points to an international legal system that bifurcates refugee protection according to its two categories, thus relegates IDP protection into a legal quandary. This results in an appearance of resilience and sometimes steadfastness of the condition of sovereignty in affected countries.

2.6.1. International Humanitarian Law and International Human Rights Law

International Humanitarian law regulates the conduct of hostilities and seeks to protect the victims of armed conflict by striving to ensure protection of non-combatants from the effects of war and to limit the use of certain methods of warfare. The main instruments of IHL comprise of the four Geneva Conventions of 12 August 1949 and their two additional protocols. The fourth Geneva Convention is explicitly dedicated to the protection of civilians and, therefore, contains important protection provisions applicable to internally displaced persons. The fourth Convention, *Article 3*43 dealing with internal conflicts and the treatment of persons taking no active part in the hostilities, is relevant to IDPs. The content of *Article 3* is developed in more detail in the *Additional Protocol II on Protection of Victims of Non-International Armed Conflicts*. In the *Additional Protocol II*, particular attention is to be paid to *Article 17*, which explicitly prohibits the displacement of the civilian population "unless the security of the civilians involved or imperative military reasons so demand". Also, from the *IV Geneva Convention,* it is clear that persons evacuated for their own protection have the right to be returned as soon as possible. This is because internal displacement frequently occurs in situations of internal armed conflict (Kiessling, 2006; Munoz, 2006).

Many IDPs live in situations which, by their very nature, violate certain human rights (Phuong, 2004). Human rights law developed after the end of the Second World War, following the conviction by the international community that by spelling out human rights and fundamental freedom, would contribute to preventing atrocities like the ones associated with the world war (Brownlie, 2003). As a result, today, a wide range of conventional and customary norms are in place to provide protection to all individuals (Munoz, 2006).

2.6.2. UN Guiding Principles on Internal Displacement, 1998

The most widely used definition for internally displaced persons is contained in the 1998 Guiding Principles on Internal Displacement, though not fully binding it is considered as a standard definition until when a legally binding instrument for IDPs will be adopted. The guiding principles define them as;

> Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human- made disasters, and

who have not crossed an internationally recognized state border" (Page 1 of the
Guiding Principle on Internal Displacement of 1998).

Unlike the formal definitions of refugees, definitions of IDPs have been informal or descriptive according to the *Analytical Report of the Secretary General on Internally Displaced Persons* which uses the term to mean:

> Persons who have been forced to flee their homes suddenly or unexpectedly in larger numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.

However, this definition has been criticized for numerous reasons. On the one hand, it was perceived as too narrow mainly because of its temporal ("suddenly and unexpectedly") and numerical ("in large numbers") criteria (Mooney, 2005). Restricting the definition to those who fled their homes 'suddenly or unexpectedly' ignored displacement which was not spontaneous but rather, the result of an organized state policy implemented over years or possibly even decades (Mooney, 2005). Similarly, insisting on large numbers limits protection to many within the citizenry that are considered too vulnerable. Thus, on the other hand, the definition has also been critiqued for being too broad. The main criticism toward this end was aimed at the inclusion of natural or man-made disaster as a separate cause of displacement. It was contended that such cases of displacement hardly result in a state depriving its citizens of assistance and protection (Lewis, 1992). Rather, states usually make their own resources available and routinely call for support from the international community if they cannot cope with the disaster alone (Koskinen, 2005).

In addition to the criticism voiced with regard to certain elements of the definition, Luke Lee – Special Advisor to the US Department of State- put forward the proposal to abandon it altogether. Instead of two separate definitions, one for the internally and one for the externally displaced, he advocated to include all the displaced in one definition, regardless of whether they happened to be within or outside their country (Lee,1996).

The reason for eliminating the border-crossing element was his conviction that it created an unwarranted distinction in the standard of human rights protection between refugees and IDPs. However, crossing a border means that the person is subject to a different sovereign entity, whose obligations to an "outsider" are founded on a different legal basis from the one which a

state owes its own citizens. As Phuong (2000) observed correctly, the protection given to refugees is a *surrogate* protection for persons who lost the protection from their own country while the protection of IDPs is of *complementary* nature and only needed when the national protection is insufficient or unavailable.

The above authors generally provide insight on the legal problems that affect UNHCR in its protection work for IDPs, due to the inexplicitness of the international legal framework for IDPs but do not centre in depth on the protection challenges that UNHCR is facing in Pader district. Therefore, apart from making use of the reviewed literature, this research also makes reference extensively to, among others, UNHCR field reports and writings of the scholars and practitioners, both in and outside the country on IDP protection challenges in Uganda. In general this report will contribute to debates about the lack of legal framework by assessing how this plays itself in the Pader district.

Ostensibly, the "legal protection" dictum that was meant to guide humanitarian work has drawn largely from a legal premise with regards to the protection of (especially) refugees. This has been as a result of the efforts of states, which, from their political standpoint, have had misgivings about a humanitarian regime that simultaneously possessed political clout. As the mandate of especially the UNHCR broadened to encompass the internally displaced, the premise for such a legal mandate have begun to clash with the principle of sovereignty in a much more overt manner. Eventually, although the UNHCR has kept the legal banner as a premise under which it can intervene in the internal affairs of sovereign states, contestations around political autonomy on the part of the state, and the right to act unilaterally on the part of the UNHCR, have curtailed the organizations ability to be much more effective in its interventions.

2.7. Responsibility for the IDPs' Protection

Assisting the internally displaced as part of reintegration operation for returnees is the most frequent way in which UNHCR becomes involved with internal displacement. The fact that UNHCR's activities on behalf of the internally displaced in the context of a repatriation operation are usually indivisible from its mandated protection and assistance activities for returning refugees, specific authorization would not normally be a precondition for the organization's involvement.

In contrast, where the link between an envisaged operation and refugee related activities is weak, prior request or authorization from the UN organs or the concerned state is a prerequisite

for UNHCR's involvement with internally displaced persons. While recognizing the difficulties of protecting the internally displaced persons in their own country, UNHCR nevertheless believes that activities, with respect to internally displaced persons, should not be limited to the delivery of relief assistance, but should include a protection component (Cohen,1998)

The government of Uganda is responsible for the protection and assistance of IDPs and is, therefore, also responsible for planning for and leading the return of the IDPs if they voluntarily opt to return to their homes or other places of convenience. The government of Uganda has, therefore, the responsibility to assist the IDPs to make an informed decision to move out of the IDP camps by providing them with accurate, consistent and objective information about the security situation and the respective areas where they would like to return. The government also has to ensure the meaningful participation of the IDPs in all stages of the process of return, which should include planning, decision-making and implementation of programs and services (Uganda National IDP Policy, August 2004). It should also ensure that the places the IDPs are moving to have geographical security, which should include adequate presence of the law enforcement officers such as military personnel and police. Furthermore, freedom of movement and regular dialogue should be facilitated between the returning IDPs and various governmental institutions.

Furthermore it is still the role of the government of Uganda to ensure that social services are provided to the IDPs as per government guidelines and international standards through advocacy and by working with the district departments and humanitarian agencies responsible for the protection and assistance of IDPs (UN Guiding Principle on Internal Displacement, 1998).

2.7.1. Uganda IDPs Policy vis-à-vis IDPs Protection

The 2004 Ugandan Policy on Internal Displacement attempts to adopt the rights of IDPs as contained in the Guiding Principles developed by the United Nations. It creates Protection Committees and Disaster Management Committees and procedures for hearing complaints of violations of the rights of IDPs. According to this policy, the government of Uganda commits itself to ensuring that the movements of the IDPs out of the camps are voluntary, takes place in safety and dignity and that the IDPs participate in decision-making regarding their protection and assistance (National IDP Policy; 2.4, 2.4.1.v, and 3.4).

The protection and movements of the IDPs are largely determined by the IDPs as to where and when they want to move. However, due to the spontaneous nature of their movements, the planning for the needs of the returning IDPs, in accordance with the nature of IDP movements out of the main IDP camps, has to be done after they have moved. This therefore requires that the needs and challenges of the IDPs that are moving out of the IDP camps to be identified in order for interventions to be made, long after IDPs have left the camps. This also means that the IDPs cannot participate in making the decisions about their protection since they just moved. This kind of movements can expose the IDPs to several challenges and protection threats that have to be identified and addressed in order for IDP return process to be in safety and with dignity as stated in the National IDP policy.

The government has consistently encouraged IDPs to move away from the main IDP camps without a comprehensive peace agreement between the government and the rebel groups whose activities has been the main cause of displacement. This means that the root cause of their displacement has not yet been addressed. In accordance with the OCHA guiding principles on IDPs, their return should take place when the root cause of their displacement has been addressed such that the resettlement process does not expose them to harm resulting from the cause of their displacement. This raises a protection issue for the returning IDPs.

This kind of policy stance on the part of the Ugandan government appears to appeal to the ideal of popular sovereignty. The notion that government decisions have to adhere to and honour the rights of its civilians is however confronted by the practicability of such a decision. As this case demonstrates, where it does not command both political autonomy of the area (such as northern Uganda) as well as the resources to bring its policies to fruition, the principle of sovereignty comes under severe test. When the vulnerability of internal displacees cannot be ameliorated by the best efforts of the government alone, the intervention of humanitarian organizations such as the UNHCR may become crucial. However, without a clear legal framework for their protection by the international organizations, such interventions keep clashing with this principle of sovereignty, however weak or challenged it may appear. This presents a case of international intervention that is tested by the double challenge of a principle of sovereignty that does not carry through with its promise of looking after its own citizens adequately, and a humanitarianism that is curtailed by its lack of guiding principles and frameworks as spelt out in international law.

2.7.2. The Constitution of Uganda

The Ugandan Constitution is the supreme law of the land and all other laws are subordinate to it. Any law inconsistent with the Constitution is deemed invalid to the extent of the inconsistency. The Constitution outlines the rights and obligations of both citizens and the state and elaborates a number of mechanisms by which the state can honour its obligations as sanctioned by the law. The Constitution of Uganda draws the line of the states` explicit duty to protect its citizens from abuses of their rights and reaffirms that the state has a primary legal obligation to act as the custodian of the rights of all Ugandans, with the attendant obligation to protect those rights.

In the context of the protection of the IDPs during the return and resettlement process, the Ugandan government has the obligation to provide a secure and stable environment for those already resettled to access their constitutional rights. The Constitution mandates the government to fulfil the fundamental obligations to its citizens, including IDPs by provision of social justice and economic development and ensure that all the people enjoy rights and opportunities to education, health services, safe water, work, decent shelter, adequate clothing, food security, pension and retirement benefits. (Preamble III (v) and XIV of Uganda Constitution)

The Ugandan government, therefore, has the obligation, as provided for in the Constitution and outlined above, to protect and provide basic social services to its people including the IDP population. As the IDPs resettle from the IDP camps to the return sites and villages, the Ugandan government has to play its role and provide the necessary legal protection guaranteed under the constitution for both returning IDPs and other citizens.

CHAPTER THREE: METHODOLOGY

3.1. Introduction

The researcher largely used academic materials from the libraries of the University of the Witwatersrand, existing literatures as listed on references and used the following primary research methods; informant interviews, semi-structured open-ended questionnaires, in-depth interviews with UNHCR senior officers and field-based staff, personal observations and administration of questionnaires for UNHCR staff in Kampala and Pader.

3.2. Research Design

Humanitarian intervention in sovereign states falls within the terrain of contested relations between international and domestic actors. Such contestations are implicated in the guiding language of, on the one hand, international protection of IDPs on the part of humanitarian organizations, and autonomy and territorial sovereignty on the part of the individual states. They however manifest unevenly through implementation of intervention strategies at the local level. Such unevenness speaks to disparity between ideal positions and practice for both protagonists, where either overlaps and/or deficiencies in responsibilities impact on the eventual intervention on the ground. The work of UNHCR district provides a good site from which to study such contestation. It is with this in mind that a case study research technique has been selected.

The case study is a research strategy which focuses on understanding the dynamics present within single settings (Eisenhardt, 1989). A case study involves the detailed examination of a relatively few persons or items (Casley and Cury, 1981). The case study approach was chosen because it deals with a case as a whole in its entirety and is sensitive to the details of this particular study. According to Descombe (2003), the case that forms the investigation is normally something that already exists. Therefore, this study used UNHCR organization in Uganda as its focus of study. The researcher used an emergent research design in order to begin with an initial focus of enquiry while at the same time, refining it as he engaged in an ongoing process of data collection and analysis (Lincoln and Guba, 1985 in Maykut. P *et al,* 2001).

3.3. Research Instruments

Semi-structured, face-to-face, in-depth interviews lasting between one to two hours were employed to obtain data from UNHCR staff regarding the protection challenges the organization faces in Uganda. By using the 'open-ended response questions, the researcher was permitted to understand the world as seen by the respondents, without predetermining their point of view through prior selection of questionnaire categories' (Strauss *et al.,* 1990); (see questionnaire guide as appendix 1).

3.4. Focus of the Study

The study took UNHCR Pader Office in Uganda as its prime focus of study. Since the researcher used a qualitative case study approach, purposive sampling and snowballing were used because of the qualitative research design chosen and the time the researcher had to conduct the field research. I identified the key respondents through the assistance of the IDP coordinator based in Kampala who also helped in contacting and arranging my meeting with the staff who were dealing directly with the IDP protection in the field.

The sample included senior policy officers based in Kampala and in the field and junior staff based in the field as respondents. This is because, chosen respondents were likely to give valuable information for they are the ones in a position to influence the strategic direction and nature of the possible intervention on the protection challenges facing the organization in Uganda, in particular Pader district, within the time limit of the scheduled programme. In relation to this, the study analytically interpreted the findings using some of the theories in the forced migration literature as well as examining legal regimes such as the domestic laws in Uganda and international legal instruments like the UN guiding principles in the wider protection of IDPS.

It is worth noting that although Gulu was not the focus of this study, the interviewer conducted interviews in this place because some of the field staff were based and overseeing Pader from Gulu office.

The chronology of this study consisted of an initial analysis of the already existing bibliography and documentation on IDPs available at the internet resources of Global IDP Project (www.idpproject.org), Brookings-CUNY Project on Internal Displacement (www.brook.edu) United Nations office for the Co-ordination of Humanitarian Assistance (OCHA) - Internal Displacement Unit, Reliefweb (www.reliefweb.int), United Nations High

Commissioner for Refugees (UNHCR) (www.unhcr.org) among others. The use of existing documents and web resources were chosen for they were able to give high quality data and a wide range of ideas and they are relatively cheap financially when employed, and they familiarized me with the key debates and dilemmas facing the implementers in the field. These documents helped to hone the focus of the field questions, and their material helped develop some of the questions that were then used during the interviews conducted in the field.

Given the complex nature of the Northern Uganda conflict and the unique IDP situation in Pader district, the researcher interviewed UNHCR key protection staff both in Kampala and in the field to get more facts on the IDP protection challenges facing the organization. The researcher made extensive consultations and interview sessions, both with senior and junior UNHCR staff in the field and in Kampala. The researcher interviewed;

1. The IDPs Coordinator based in Kampala

2. The Head of Sub-Office for Gulu

3. Three Protection Officers based in the field

4. The Head of Field Office for Pader

5. The Field Safety Adviser based in the field

6. Three Protection Assistants; one based in Kampala and two others based in the field.

In total ten interviews were conducted. The views of UNHCR staff were important because they are the primary people on the ground that face the challenges and deal with the issues affecting IDPs and the organization in Uganda on a day to day basis. The researcher used a digital recorder for some interviews and transcribed them thereafter for easy extraction of the required information. The research was carried out in December 2008. In addition to consulting literatures, the researcher also made use of some policy documents on IDPs in order to get more information on the topic for this report. Some of the documents consulted were; Statement of the UN Secretary General on the justification of "Two Concepts of Sovereignty" of 1999; Speech of the US Envoy to the UN, Richard Holbrooke given at Yeshiva University in New York in 2000, independent evaluation reports like; Real–time (2005) Consistent and

Predictable Responses to IDPs-A Review of UNHCR's Decision-Making Processes and Real–time (2007) Evaluation of UNHCR's IDP operation in Uganda.

3.5. Data Collection and Analysis

Interim analysis was made throughout the data collection process to keep track of changes in data collection strategies and evolving ideas. Data was organized coded and categorized using thematic content analysis (Strauss and Corbin, 1990) and thereafter edited. Qualitative data analysis for this study involved the systematic process of coding, categorizing and interpreting data to provide explanations of a single phenomenon (Macmillan et al., 2006).

The main ideas in the data were clearly recorded. Data from questions and interviews was processed into manageable proportions to easily interpret the information. This was attained through the use of editing, coding and tabulation methods. Qualitative data was analyzed by extracting key merging themes based on the objectives of the study. The report was then written based on the objectives and emerging themes from the data that were collected.

The researcher did analysis of the findings obtained from the primary data collected through the interviews and information from other related documents described above. This was ongoing within the emergent approach design that was employed in the research process. In connection to this, each topic was given a label and a definition. To this end, thematic content analysis was preferred as it gives a deeper understanding of data. For example, some of the topics that were used to analyze data are; UNHCR's response to the IDPs challenges; the nature of the protection challenges; gaps as a result of these challenges and the impact of the absence of explicit international legal framework on the IDPs protection in Pader, among other things. The literatures reviewed were compared with the information gathered from various interviews conducted in the process and critical analysis was made.

3.6. Ethical Considerations

The researcher followed a code of ethics that included information on anonymity, confidentiality, interviewee right to comment, final report and data protection before the interview (Dawson, 2007).

In order to ensure that respondents understood the purpose of the research and that participation was voluntary, the researcher informed the participants of the nature of questions that were to be asked and the purpose of the interview. The respondents had a choice to go on

with the interview or not to answer any question they were uncomfortable with (Ellsberg *et al,* 2005)

Prior to the commencement of the field work, the researcher had requested and arranged for permission from both UNHCR and government authorities to go to the field to interview key respondents. The researcher ensured he minimized possible risks to his person by ensuring that he followed all security procedures applied in the field as a measure to avoid any dangers that could have been posed by insecurity.

In order to avoid bias and respect for the issue of confidentiality, the researcher endeavoured to explain to the interviewees clearly before interview sessions his positioning within the organization, the impact of humanitarian intervention in the area and the fact that although he was an employee of UNHCR in Tanzania he was currently doing an academic work for purely academic purposes. Thus, the staff had choices of information to make available to the researcher.

3.7. Scope and Limitation of the Study Challenges

The study mainly focused on protection challenges experienced in Pader district since the commencement of UNHCR involvement with IDPs in 2001. The field work was carried out in December 2008 in Kampala and Pader District.

The primary challenge for this study was to get access to the right officials at the right time in UNHCR offices in Uganda as most of them were busy in the field. However, given the fact that the researcher works for UNHCR office in Tanzania, access to the information required for the research was not an insurmountable problem.

Another challenge was to travel to the field to conduct interviews with the right staff in the office. Before I proceeded to Uganda to make extensive consultations and interview sessions with UNHCR staff, both in Kampala and in the field, I sought and arranged for travel permit to the field from UNHCR office in Kampala ahead of time to avoid last minute disappointments. Although I had secured a permit and allowed to conduct the field work in Kampala and Pader, I was delayed to start the work due to the UNHCR operational priorities that demanded the presence of the key respondents in other operations within Uganda

CHAPTER FOUR: PRESENTATION OF FINDINGS

4.1. Introduction

This chapter presents the findings of the report on the problems that UNHCR is facing in Pader district under three main themes, namely; legal challenges, structural problems and security challenges. These protection problems being faced by UNHCR are in a sense related to the issues of durable solutions that UNHCR Uganda office is currently working on. Among the challenges that UNHCR is facing in its efforts to extend international protection are issues regarding delivery of assistance and protection to the IDPs in conjunction with its implementing and operational partners in Pader district. All this occurs in the context of the absence of a clear international legal framework on IDPs. Before going in detail into these issues, it is important to briefly explain the state of affairs in Pader district in relation to the displacement of the population which has been occurring for almost three decades.

4.2. Displacement Situation of IDPs in Pader District

Since 1986, Pader district, which is part of the Acholi land, has been experiencing armed rebellion by the LRA against the government of Yoweri Kaguta Museveni[5]. Arguably, the group that has been most affected by the conflict has been the civilian population which has been terrorized and attacked. In 1996, government forces embarked on a strategy to relocate the local population into 'protected villages' in an effort to prevent the rebels from harming them. Since then the IDPs have been living in these camps while being assisted by humanitarian agencies (OCHA, 2008). The IDPs situation in the camps became so bad that international humanitarian organizations were invited by the government of Uganda to go and intervene following the visit of Under Secretary General for Humanitarian Affairs, Jan Egeland in 2003. While being interviewed by the BBC's Focus on Africa Programme, he was quoted as saying "It is a moral outrage, that the world is doing so little for the victims of the war" in Uganda. He further said "I cannot find any other part of the world that is having an emergency on the scale of Uganda that is getting such little international attention". Following his remarks, many humanitarian agencies started to come in and assist IDPs under the Cluster approach

From the interviews carried out with key informants in Pader the research established that amongst other problems, the UNHCR was facing were legal constraints. These are discussed below.

---

[5] Yoweri Kaguta Museveni became President of Uganda in January 1986, after leading a successful five-year guerrilla struggle against the regimes of Milton Obote and Tito Okello

4.3. Legal Challenges

4.3.1. Gaps in the International Legal Framework for IDPs Protection in Pader.

Despite the large numbers of humanitarian, human rights, and development organizations that are now involved with the internally displaced persons, I argue that they are not extensive enough to address the problem effectively. Some organizations, like local NGOs operating in Pader, require increased capacity to deal with emergencies given their financial disadvantage when compared to international NGOs. Others still need more training and experience in working with displaced populations. Furthermore, the organisations also require expertise in protection work. Nonetheless, international organizations have shown to be remarkably flexible in responding to situations of internal displacement. For example, UNHCR has used its office to undertake activities on behalf of the internally displaced at the request of the UN Secretary-General or General Assembly. Others, like the International Committee of the Red Cross (ICRC) and United Nations Children's Fund (UNICEF), have extended coverage to internally displaced persons when they fall within a broader category of concern, such as the victims of armed conflict, or women and children in need. Still, others, for instance the World Health Organization (WHO) and the International Organization for Migration (IOM), have broadly interpreted their own constitutions to encompass internally displaced persons. They have also developed expertise and innovative skills to reach and deal with persons displaced within the borders of their own countries (Etima, 2003).

It is, however, the argument of this research report that the international response system is far from adequate. According to UNHCR, as recently as 2004, there has not been a specific UN agency that could be relied upon to respond to internal displacement in a predictable manner. Nor was there any international accountability when an agency denied coverage to internally displaced populations. Different agencies pick and choose the situations in which they want to become involved, depending on their mandates, resources and interests. As a result, coverage has often been limited and inconsistent. Often, some agencies have been found to be reluctant to become involved when they have suddenly found themselves in direct conflict with governments they want to cooperate with (Phuong, 2004).

The absence of reliable international funding for the internally displaced persons has also encouraged international organizations to take a selective, case-by-case approach to this group. Unlike the funding for refugees, no overall funding exists for situations of internal displacement. Moreover, it is a general perception and views of some of the respondents in this work that funding for humanitarian emergencies, of which the internally displaced are a part, is

apparently declining. Meanwhile, there is no effective central point that exists within the international system that routinely assigns responsibility in situations of internal displacement. Agencies have tended to go their own way and are not likely to become aware of the gaps that need to be addressed. However, agencies are not always inclined to subordinate their priorities to an overall plan.

An equally important reason is that international legal bodies are not yet fully operational and there is little consensus among UN agencies as to what they should do about identifying, monitoring, and addressing the protection problems of internally displaced persons. If UN humanitarian agencies are too weak to participate effectively, many humanitarian and development agencies do not consider defending physical safety and fundamental human rights their central concern or function.

Within all these challenges, other problems have arisen that have further impacted negatively on the Pader situation. In November 2006, the Ugandan Minister for Relief and Disaster Preparedness, Prof. Tarsis Kabwegyere asked IDPs in Pader district to vacate the camps by late 2006 in an attempt to close down the camp (OCHA, 2006). So IDPs may return, or be forcibly returned, to areas without due attention to their safety or ability to reintegrate and the reintegration process in a country. As a result, humanitarian relief agencies have increasingly become involved in monitoring returns and providing reintegration assistance. Respondent 4 summed up as follows;

> Given the fact that many IDPs have started returning to their areas of origin
> even without government assistance, every agency has now started focusing
> on the return areas because that is where, I think, assistance and protection is
> needed more.

In emergency situations, humanitarian activities focus primarily on meeting short-term needs. Education, training, and income-generating activities are rarely available for IDPs. Development agencies however, seldom have adequate funds for the rehabilitation and development of such areas. For the most part, their resources are expected to be allocated in cooperation with governments and used for regular development purposes. In many cases, governments prefer to use the limited development funds available to them for the benefit of nationals who are not displaced, rather than for the reintegration of uprooted populations. When rehabilitation and development projects are designed and funded to benefit both the local population and uprooted persons, however, governments are often more responsive.

38

Nonetheless, donors tend to treat relief and development as separate exercises and to catalogue funds for each. This has made it difficult to find funding for rehabilitation purposes, which often fall between the two.

Unlike UNHCR, many development agencies are hampered by the lack of rapid and flexible procedures for disbursing rehabilitation funds. Instead, they use many of the same procedures for emergencies as they do for regular development projects, something that invariably slows down the pace of response. In general, donors are more willing to allocate resources to emergency and disaster relief than to support the reconstruction and development of areas where IDPs, refugees and returnees should be integrated. Yet, the return or resettlement of such populations and their reintegration is critical to reconstruction and to the process of reconciliation in war-torn societies. Moreover, if the process takes into account the inequities and schisms that led to breakdown in the first place, it can help prevent renewed conflict and displacement. In sum, the gap in protection as a result of the absence on an international legal framework is just one of the problems. Another problem relates to the absence of any other organisation or UNHCR itself as an endorsed organisation with an explicit protection mandate. This will be discussed below.

4.3.2. Lack of Clear Protection Mandate

As pointed out earlier, IDPs do not benefit from a specific regime of legal protection. However, this does not mean that international law provides them with no protection. Most cases of internal displacement coincide with situations of armed conflict, which prompt the applicability of international humanitarian law (Phuong, 2006). Furthermore, IDPs are entitled to the protection of the expansive body of international human rights law, since human rights, are the birthrights of all human beings which apply to everyone without distinction (Phuong, 2006).

The 1998 *Guiding Principles on Internal Displacement* set out the rights of internally displaced persons and the obligations of governments and armed opposition groups in all phases of displacement. Although the *Guiding Principles* are not a legally binding instrument, they bring together the essential principles of international humanitarian law, international human rights law and international refugee law in one document with the intention of reinforcing and strengthening existing legal provisions. In other words, they provide a practical guide to the rights of internally displaced people tailored specifically to their needs.

Generally, legal frameworks calling for the protection of IDPs by countries exist but these general legal frameworks are not binding to these countries. Like the resolutions of the General Assembly, the Guiding Principles on IDPs are of moral imperative only, and as such countries can deviate from these developed principles as they deem so. For example, in the case of northern Uganda, the state has developed the so-called 'protected camps' where IDPs are camped together with very minimal basic facilities. In most cases, the treatment of IDPs is not in conformity with internationally accepted standards espoused by the UN guiding principles and because these guiding principles are not legally binding, government has the last say, resultantly, it is easier for the government to formulate its own "best" solutions without international agencies like UNHCR interfering.   Respondent 5 explained this;

> Our main problem is, we don't have a clear mandate here. We have to work with the Office of the Prime Minister (OPM) and the district authorities. We can not intervene just like the way we normally do in the refugee programme, here we have to work through the Ugandan system where some district authorities are indifferent to the plight of IDPs, and it's hard.

In explaining the problems that UNHCR is facing in its work for IDPs Respondent 9 further explained;

> UNHCR work aims at assisting the government to protect its citizens, but the organization does not have a supervisory role, making it dependent on the intentions and wishes of the host government, who, in an essence is the cause of the displacement from the beginning.

It is apparent from the above quote that burden sharing also assumes a political posture, since UNHCR seeks to have a share of the political prerogative of providing protection that in first and foremost is the responsibility of the concerned government, in this case, of Uganda. As a result of the understandable misgivings of the government with regards to ceding a part of its sovereign right to protect the citizens, this situation leads to the absence of a legitimate platform to seek international donor support by the organization. This also betrays an organization that seeks to use its position to leverage itself within the business of humanitarianism.

As already observed of the principle of sovereignty, other countries tend to shy away when they feel that a country's IDP problem is an internal affair. Unlike refugees whose protection

calls for burden sharing and solidarity among countries, the protection of IDPs solely depends on the willingness of countries to provide material assistance, which is difficult to mobilize by an organization that is at the same time raising resources for the refugees. Further, the fact that the organization relies on the *ad hoc* arrangement of the General Assembly to pass resolution conferring powers to the organization makes UNHCR an equal partner with other organizations in assisting IDPs denying it the protection leverage it enjoys when assisting refugees. The reluctance of other countries props up the survival instinct inherent in states, as brought under strain by the problems of internal displacees, while the lack of a legal guiding instrument by the UN body complicates humanitarian work, such that one can never say with confidence that it is a regime devoid of, apart from the collusion of uncooperative states, self-incapacitating internal problems

Some multinational bodies have shown an interest in setting out a platform for coordinated responses. For instance, as a result of innovation on the part of the African Union member states are planning to adopt a new law on IDPs. The African Union is slated to adopt an African Union Instrument for the protection of IDPs on the continent, in the latter part of 2009. This instrument, which is likely to be one of its kind, is meant to provide legal framework for the protection of IDPs in Africa. The instrument, which will also be a guiding convention for all matters related to the protection of IDPs, compels member states to honour their obligation to protect IDPs, who are their own citizens, and in case of failure to honour this obligation, the document calls on countries to work in solidarity to address the problem. It is an innovative document which also imposes punitive sanctions to those who cause massive displacement. Once adopted, it is hoped that this document will help address the plight of IDPs in Africa where the number of IDPs has grown faster than any other continent. Where the problem of IDPs has been considered huge and possible threatening to the sovereignty of states, such states have shown, at least in principle, a willingness to move collectively to address the problem. Whether this can translate in reality remains to be seen. The discussion below explains some of the structural problems that limit the capacity and functions of UNHCR in Pader.

4.4. Ineffective Coordination and the Effect of Local Dynamics

UNHCR intervention can only be effective if it is supported by other local players, including but not limited to the local government agencies. A lack of sync between humanitarian organizations and government departments may result from local problems such as lack of motivation, resources and skills on the part of implementing partners, especially government

departments. When this inter-agency coordination is ineffective interventions at the local level tend to fail.

4.4.1. Barriers to Effective International Protection of IDPs in Pader District

Obstacles to effective international protection of IDPs in Pader range from problems emanating from the newly established cluster system to coordination with government authorities and implementing and operational partners in Pader. While explaining on the over gaps and barriers to effective protection for IDPs Respondent 9 elaborated;

> The lack of commitment by the authorities, manifested through general unwillingness to take action, is the most apparent problem. Resources have and are made available to assist IDPs to ensure their adequate protection, but an insufficient use of them by the local authorities has resulted in low impact and eventual withdrawal of assistance from the central government and the international community.

According to UNHCR, at times there have been situations where district leadership which is supposed to be at the forefront of the intervention in certain areas, like organizing community outreach programs, are asking for support of facilitation in exchange for money. This is happening regardless of the fact that, as government officials, they are already on civil service salaries for performance regarding the IDPs situation. Respondent 3 explains;

> Despite the fact that UNHCR is only in Uganda to complement what the government is supposed to do, the very officials of the government are asking UNHCR to pay them to spearhead interventions for IDPs.

Another example given by UNHCR was the low response of the authorities to sensitize the community about certain specific protection issues over radio. Respondent 3 further explains;

> Most of the time the government official does not move away from the office, as a result UNHCR is compelled to go to the government official with a recorder to take his voice so that his message for the IDPs can be recorded and played on an FM station.

Government officials are supposed to be at the forefront in passing all crucial information that may have been discussed and agreed upon by the cluster groups to the IDPs. However, they are

not doing effectively what they ought to do on behalf of the IDPs in Pader, a situation which has put the UNHCR in an awkward position when it comes to extending its assistance in coordination with the government authorities.

In an effort to support and make the concerned government to officials work, UNHCR has been giving some allowances with some specifications and clear guidelines to the officials. For instance, if an official is working in his area of operation, he is not given any allowances. If, however, the UNHCR is asking the official to go and work in another district, he would be given compensation by UNHCR.

UNHCR representatives interviewed described being in constant dialogue with district officials to try and encourage them to perform according to the agreements with humanitarian community. Furthermore they explained the need for looking at different ways of strengthening the local council structures where the actual work concerning IDPs is done. This is a departure from the scenario at the district levels, where district authorities are more involved in policy implementation. In this way, respondents described how UNHCR is trying to strengthen the local council at the grass root level so that they become more responsible and involved at the sub country level where IDPs are.

Such an atmosphere within government implicates UNHCR in government building, thus drawing it into the political realm. This shows the difficulty of being politically neutral on the part of UNHCR and consequently, if by default, sees UNHCR encroaching onto the sovereign. Sovereignty is thus shown to not always be concretely invoked and defended by the state of Uganda, but sometimes traded for individual financial gains for the government officials. This however has another effect on the eventual implementation of programmes by the UNHCR. As Respondent 9 says;

> Due to low commitment by the authorities to respond to the displacement
> situation, the overall work of assisting IDPs has become very cumbersome
> and ineffective.

On the other hand, however, it has equally proved difficult for UNHCR to coordinate other protection agencies of equal status like UNICEF and NGOs alike, some of which have been operating longer in Pader than UNHCR. Respondent 3 explains this challenge;

I would say from 2006 when we started operation here, UNHCR protection role was seen enviously by other organizations that have been here before. Some agencies were reluctant to work with UNHCR and would question how does a new organization come and take up this role while we have been doing this protection before for ages? How can somebody just come up and say we are the lead protection cluster organization. This has not been well perceived by other protection actors at the beginning but now the situation seems to be improving.

Even on the part of UNHCR, it became a challenge to start getting used to working with other agencies as operational partners instead of implementing partners. The UNHCR-Real time evaluation report (2007:2) on IDP operation and Cluster Approach echoes and sums up this phenomenon; "UNHCR field staff are adapting to their new relationship with cluster members as operational partners, alongside the Office's traditional relationship with 'implementing partners' when UNHCR assumes the role of operational agency". From the findings, it was clear that there was difficulty on the part of UNHCR office to increasingly work with operational partners in IDP situation, agencies that would normally have been implementing partners if it was in the refugee situation. The above quote also indicates that there are very real investment and rewards (often financial) for NGOs and other agencies to be seen as key to solving a conflict situation like the one in Pader. Humanitarian work has its own ulterior objectives under the veil of 'the best interest of the affected populations'. Inter-agency conflicts and competition for space and authority underscore these self interests, but also reflects on the wish for organizations to gain political influence, even if within and among other organizations, such that eventually being seen as commanding humanitarian clout may lead to some political gains.

The findings also reveal that there has been a gap on coordination between the country office and the personnel in the field. While in other programmes UNHCR worldwide operates within a bottom up approach, in the case of Uganda, UNHCR Kampala country office would implement programmes using a top down approach. Under this arrangement, many decisions on projects for IDP protection are being proposed and decided at country level for the office in the field, for example in Pader, to implement. This was seen as a challenge because the needs for IDP protection could, in the field officers' opinion, best be determined by the field office that deals with IDPs on a day to day basis. Apart from these issues, UNHCR fieldworkers interviewed in the study also indicated that the cluster system proved to suffer from coordination and   management challenges, as discussed below.

4.4.2. Protection Cluster and Camp Coordination/Management Challenges (CCCM)

In Pader district, many of the key protection actors (for example NGO partners of the UNHCR) are not physically located in the District, making coordination and effective response difficult for UNHCR. For example, it was found that UNICEF now coordinates its activities in Pader from its offices in neighbouring Kitgum District and has maintained the same level of presence and coordination in the District since the commencement of Cluster system in Pader district in September 2006. The situation in Pader as elsewhere in northern Uganda could be likened to what Charmy (2005) said of coordination problems in IDPs situations;

> The more recently – established inter-agency Collaborative Response - under the aegis of the Interagency Steering committee (IASC) – is also a heavily bureaucratic mechanism which has proved largely ineffectual on the ground.

CCCM cluster was only launched in July 2007, thus limiting the cluster's overall impact for the year. Due to limited number of capacity of camp management actors and other service providers, only ten camps were selected for the initial roll-out of CCCM. 21 other camps in Pader had been left out due to operational difficulties. The main challenge to the successful implementation of the CCCM cluster and its support of the return process has been the uncertain security situation, lack of services and fear of insecurity in return areas. This has meant that many people remained in camps even though they are now free to return.

Uganda Human Rights Commission (UHRC) is the co-chair of the District Human Rights, Protection and Promotion subcommittee (DHRPP) meeting with the Office of the High Commissioner for Human Rights (OHCHR), but their current staffing capacity and resources are very limited. United Nations Population Fund (UNFPA) has only one staff member with limited resources despite its leadership of the Gender Based Violence (GBV) sub cluster and the critical importance of GBV prevention and response in Pader district. The local government also does not have a sufficient number of protection staff with adequate resources to address the protection needs in the district. There is only one Probation Welfare Officer who is tasked with safeguarding the well-being of children and performing tracing, family reunification and child protection monitoring functions.

As a result of this uncertainty and the complex movement of people between camps and return sites, including people displaced from Pader into neighbouring districts, population tracking and planning of services has been difficult in Pader district. Therefore humanitarian work may

also be constrained by the non-availability for resources on the part of the intervening organizations themselves. From this angle, a gap resulting from the lack of resources from both government and humanitarian organizations speaks of the ineffectiveness of intervention. Despite their best interests, sometimes humanitarian organizations are shown to be not immune to challenges associated with lack of resources and ineffective planning.

In addition, there have been limited referral pathways to address protection issues identified through camp management partners in the camps, and the absence of the early recovery cluster in Pader means that there are few development actors to support the transition of former camps into viable communities. Another structural problem in the provision of protection has to do with the limitations in movement and the freedom to make choices among the IDPs whom UNHCR protects in the camps.

4.4.3. Freedom of Movement and Freedom of Choice of IDPs

United Nations member states and UNHCR regard voluntary return as the preferred solution to refugees and to the IDPs' plight (Statute of the Office of UNHCR, 1950). In many cases, refugees and IDPs themselves also favour repatriation as the solution to their displacement. Faced with the prospect of keeping millions of refugees and IDPs in often impoverished and isolated camps indefinitely, international and local efforts have shifted to promoting the return of refugees and IDPs. While many scholars, practitioners and policymakers argue that return is a fundamental right of forced migrants, others see the new focus on return as an erosion of refugee and IDP rights and question the voluntariness of many repatriation movements, and the assistance that are provided to address the concerns and needs of the returning IDPs.

Tied to the debate on return is a misunderstanding amongst district officials regarding the existence of the *three* IDP durable solutions; return, resettlement and reintegration. With the launching of the camp phase out process in Pader district, some officials are reported to have been telling IDPs to return to their villages while disregarding the other two durable solutions. This poses several problems. Most of the return sites and villages in Pader do not have access to safe drinking water, functional schools, health facilities, etc; the situations which affect people's decision to move away from the camps.

According to UNHCR, so far more than 50% of the IDPs have gone back to their villages of origin. Due to uncertain security situation and lack of services in return areas, it is likely that many IDPs could not make informed decisions to remain in camps, although they were free to return. With the restructuring of UNHCR's IDP operation and subsequent pull out of UNHCR

presence in Pader in December 2008 and relocation of its staff to Gulu district, the protection presence and coordination for the assistance to the returning or resettled returnees in Pader district will likely be challenged.

A lack of understanding of the IDPs' needs and differences in priorities between the government officials and UNHCR on the issue of freedom of movements of IDPs was found to be resulting from the lack of the needed coordination. While UNHCR is advocating for the IDPs to be able to choose freely where to go without any coercion, government was spearheading for the return of IDPs as it claimed there was no need for their continued stay in the camp. Although many IDPs, according to UNHCR office, have returned home voluntarily, in some situations some IDPs have returned because they have been asked to leave despite having reservations due to various reasons related to their security and livelihood upon return. The use of coercion to make IDPs return is the erosion of their rights which would have amounted to refoulement if it was in the refugee situation. Apart from being deprived of their freedom to move and to make choices, the IDPs', particularly women's issues pose challenges for the officers related to GBV and health in general.

4.4.4. Gender Based Violence (GBV) and Health Challenges

The issue of Gender Based Violence falls under the protection of UNHCR which, among others, is supposed to monitor and lead efforts of other agencies and government authorities to intervene on behalf of the victims of GBV. According to UNHCR office, GBV incidents were still common in Pader, especially in the camps. This is closely linked with the high incidence of domestic violence at the household level and alcoholism. The GBV incidences have resulted from the insufficient and inadequate protection service providers to carry out effective GBV prevention and response activities within the district.

GBV survivors were reportedly unable to physically access or unable to afford the necessary health care. In addition, the signing of the Police Form 3 (PF3), a special form to be certified and obtained by the GBV victim from the Police post before she sees the doctor, was found to be a problem due to alleged corruption by some police officers. This was despite efforts to make the PF3 forms readily available and the tough disciplinary action taken against corrupt officers by the District Police Commander. Sometimes, confidentiality in handling such cases was said to be not observed, and the combined impact was the low reporting of GBV cases leading to low response. This was compounded by the fact that defilement and rape are still socially tolerated in some areas and dealt with between the perpetrator and the family of the survivor, rather than being referred to the police.

47

The reporting and referral mechanisms in place for GBV cases at sub-county level were still not fully functional in most parts of Pader. Furthermore, Pader's District Community Development department has a very limited budget for community development activities, even though their active engagement is critical to ensure that protection incidents were addressed. Many transit sites where IDPS are returning to lack functional latrines and as a result, people relieve themselves in the bushes surrounding the sites leading to contamination of the water sources. Health provision is still low in Pader district according to the national standards of service provision at the parish level due to. All the health centers in the district lack adequate numbers of medical personnel, and most centers still do not have drugs. In addition, the Village Health Teams (VHTs) do not have sufficient medical supplies and are not present in some return sites and villages.

The low response to GBV and health problems by the agencies, including UNHCR and the government inability leads to ineffective protection of the IDPs. Sometimes, as the case above illustrates, both government and international agencies fail to alleviate the vulnerability of the civilian populations, casting doubt on the assumed importance of both sovereignty and humanitarianism as important for intervention in IDP situations.

4.4.5. Population Data Collection Challenges

Demographic data regarding IDPs is scarcely and poorly collected. Some local authorities see population data collection as the work of an NGO or UN project thus expects incentives to carry out such work. Resultantly, they lack adequate motivation to participate in this work for the district. The Local Council 1 (LC1) is now used to the payment of incentives by some operational partners even for sitting in meetings. Respondent 7 explains;

> This makes it difficult for UNHCR to move to a sustainable and government-owned method of implementing the programme though as a policy, the Government is not supportive to payment of incentives. Some LCls are reluctant to collect data and report to the Parish Chief. The reason is that they believe that population data collection is the work of the Parish Chief who is a paid civil servant. Other LC1s have tended to inflate the population figures in their respective villages assuming that the data being collected is tied to assistance.

The key issue therefore becomes that what would be a 'project' for a refugee becomes something that really belongs in policy when the person is within their country. This means very actively stepping into the realm of government service provision which implies that the

48

sovereignty incumbent in the state is challenged and reconstituted, often successfully through this incentivising of government employees.

In general, there is still limited commitment and ownership of the programme by some district officials due to the limited capacity of the government to carry out such exercises effectively. The District Planning Unit has very limited capacity in terms of staff, logistics and technology to collect and manage population data effectively.

Lack of capacity and commitment to implementing some important tasks related to the IDPs protection and assistance by some authorities result into ineffective coordination with humanitarian agencies like UNHCR that could intervene to fill in the gap. The lack of capacity and commitment has negative implications on the implementation of the programmes for IDPs as they lead to dependency syndrome by the state authorities on humanitarian agencies. The absence of co-ordination and commitment regarding collection of statistical data poses a challenge to effective planning of programmes of intervention into the problems of IDPs. Another challenge is to do with challenges of inadequate social and humanitarian services as illustrated below.

4.4.6. Inadequate Social and Humanitarian Services

The Age, Gender, & Diversity Mainstreaming (AGDM) scheme was launched by UNHCR and was being implemented by different agencies using the AGDM approach in various aspects of their programmes. However, as UNHCR gathers data on a daily basis, it was challenging to respond to all priority needs/gaps and to give adequate feedback to beneficiaries. One major problem, as Palmary (2008: 126) has observed, has been that "…because discourses of culture … are conflated with race and nation, [they] depend on a cultural essentialism that… is a part of why the discourse on culture in UNHCR policy cannot adequately engage with gender politics". Issues of gender are conflated with those of culture, and therefore having been universalized as such, are left unquestioned (Palmary 2008).

Furthermore, cluster members often always have a set agenda, and may not feel accountable to respond to needs which were being raised. Assessments have often been seen to create great expectations from the IDP population and local authorities and the response has, therefore, been limited due to shortage of staff.

Unlike in other UNHCR offices, UNHCR Community Services Officer who was covering Pader district was physically based and stationed in Kitgum district, a situation which left

UNHCR Pader office with inadequate ability to extending community services to the IDPs in the camps, thus pose as a protection challenge. Findings showed that social problems like prostitution, illiteracy, especially of the girl child, moral degradation, destitution and idleness, poor sanitation, inadequate access to clean water, inadequate health facilities, and increase in prevalent HIV/AIDS rates continue to affect the IDPs in Pader district. This has been linked to the absence of community services personnel who are meant to liaise and coordinate with the population on behalf of UNHCR office. In this way, the noble objectives of humanitarian assistance are challenged and humanitarianism itself shown to sometimes be not reaching its intended targets.

The study found that due to this long war and conflict in northern Uganda, the people in Pader lacked freedom of expression and association, mainly because the people in the war torn area of northern Uganda have lost confidence in the government that for the 20 years of displacement has been unable to devise positive measure to end the civil war. There is also abject poverty because people cannot access their cultivation fields due to the insecurity. Most of them are still dependent on food rations from humanitarian agencies, something that has often led to a dependency syndrome. There is also land exhaustion because of over-cultivation on the few pieces of land that are accessible.

According to the government of Uganda (Discussion Paper # 7, 2003) a large mass of land is under-utilized. Geographically, northern Uganda is the largest region, covering 35 percent of the total land surface in Uganda. It is followed by Central region (25 percent), western (23 percent) and lastly eastern with 16 percent of the land area. However, northern Uganda is the least populated region with an estimated population of 5.4 million, lower than the other regions (National Census, 2002) This, among many other factors has led to large tracts of land remaining unused or under-utilized, compared to other parts of the country where land pressure is escalating resulting into land fragmentation and land conflicts. This land offers enormous potential for economic development but poverty remains significantly high in northern Uganda, especially in Pader, despite numerous targeted interventions.

While insecurity may be the most important factor explaining this phenomenon, it is plausible that there are other broader social, political and economic inequalities that may account for the observed regional inequalities. But the time is also right for moving focus beyond the ravages of the war, and to start thinking about reconstruction and rehabilitation. Currently, it has been established as a fact that war in the Pader is the most important factor explaining the low development.

Evidence also seems to indicate that, apart from Pader, the war is a significant factor reducing the pace of development of Uganda as a whole. The conflict in the North is continuing to cost the economy in a number of ways. These include, among others, direct military expenditure, loss of lives, physical assets, food, internal displacement and loss of will to produce, disruption of social service delivery, poor maintenance of economic infrastructure, higher costs of transport resulting in exaggerated prices of basic needs and rising HIV/AIDS figures.

The discussion above shows how a lack of the ability to command autonomy in northern Uganda leaves the people in the area beyond the reach of the protection of the state. The fact that they eventually have to depend on donor aid for survival brings into view the role that humanitarian organizations are playing to sustain lives of the citizens. Where looking after the welfare of the people should be a responsibility that comes with autonomy and territorial sovereignty, such sovereignty is shown as being ceded to international actors, such as UNHCR. In this way, such organizations, although playing a humanitarian role are assuming quasi-political responsibilities, and in this way bolstering their own standings among other organizations and also in the eyes of the international community, thus pushing the political inclinations of transnational organizations into the gaze of international system of states.

4.4.7. Challenges to Community Based Projects

Although local communities always identify a need for these kinds of project, their participation and contribution during the implementation of such projects is in most cases curtailed. The community still believes that UNHCR should provide the complete package of interventions without any community contribution. Their dependency continues to undermine traditional community coping mechanisms. The following example of community road access rehabilitation project will help to shed some light on the challenge that UNHCR is facing when working with its counterparts on behalf of the IDPs in Pader.

> As IDPs started returning to their parishes and villages of origin, one of the immediate priority needs for IDPs was to access their villages of origin. Due to the war in northern Uganda that has led to the widespread displacement of communities into camps, overgrown grass has covered most of the community access roads to such an extent that they were too bushy to be used by returning IDPs.

UNHCR Pader started opening up community access roads in 2006 in Puranga Sub County to facilitate return and access to basic services. This was also to increase access by humanitarian

agencies to return areas, support the return and early recovery process, facilitate access of IDPs to their original land/homes, increase access to community infrastructure such as schools, health units, markets and other basic services; and promote freedom of movement.

According to UNHCR office in 2007, IDPs in collaboration with WFP and the Local Government rehabilitated eleven community access roads, totalling 60.1 km out of the 90 km that had been planned for that year. In 2006 and 2007, UNHCR opened 8 km and 52.1 km of community access roads in Puranga Sub County. About 1000 direct beneficiaries benefited from the project through Food for Work (FfW) and tools provided by WFP and UNHCR. In 2006/07, an FFW approach was used to rehabilitate community access road. In 2008, the approach changed to Cash for Work (CfW) because the food was no longer an attractive incentive for IDPs working on the road due to the improved level of food security. In 2008, 12.5 km of community access roads were identified for rehabilitation and work was in progress as of end 2008. A total of 72.6 km of community access roads was supposed to have been rehabilitated with UNHCR support by end of 2008 (UNHCR report, December 2008).

Rehabilitation of community access roads has facilitated the return process by increasing community access to return sites and services. It also reduced protection risks related to land mines, banditry and gender-based violence. However, the work is constrained by, *inter alia*, the reluctance of community members to participate in communal activities voluntarily. Secondly, there is lack of motivation by some key government officials due to the reduced interest in the Food for Work (FfW) scheme in favour of Cash for Work (CfW). In reality, CfW is more expensive with less impact than FfW scheme. On the other hand, the community and local government structures have not demonstrated serious commitment to maintain the roads after the handover. Limited supervision of road works by the district engineering department has meant low production of good quality access roads in the district for IDPs return.

That communities believe that UNHCR should always take the lead says something about the constraining nature of the concept of popular sovereignty. Whereas the government would have wished to have better say on the mature of the work of UNHCR, when local people are at the forefront of advocating more involvement of the transnational organization, popular sovereignty is shown as self-defeating. Of course the alternative view is that UNHCR gains more ground towards mobilizing community support, thus taking on a more political role. Between sovereignty and humanitarianism, the later assume more prominence and agency in shaping the local people's lives, but also the politics at a local level.

4.5. Lack of Peace and Other Security Challenges

4.5.1. Security and Prospects for Peace in Uganda

When asked to assess how the issue of insecurity has affected UNHCR work in northern Uganda, Respondent 3 answered;

> It appears that the government is regretting why it took the matter of LRA rebel leader Joseph Kony to the International Criminal Court (ICC). In the beginning, it had good intentions of ensuring punitive measures towards human rights violations and atrocities by the LRA. But at the same time, the government was, it seems, in a dilemma of completely controlling the operations of the LRA because its operations are said to have bases inside Uganda, Congo and Southern Sudan.

Since the start of the insurgency in northern Uganda, the government has never wanted to acknowledge the strength of the LRA, thus kept in denial by claiming that the rebels were just bandits and thugs who 'would be defeated soon'. This is despite the overwhelming evidence that LRA had been committing serious crimes and other atrocities and in the process compelling IDPs to reside into camps. The visit of Jan Egeland in 2005, coupled with the Uganda referral of the situation to the ICC, helped publicize the conflict and brought it to the attention of the international community. These events necessitated the government of Uganda to seek humanitarian assistance from outside in an effort to portray and protect its image as the responsible government that can call for help from the international community when need arises. Respondent 3 continued to explain that 'the government was saying Kony was a small thug but now, they are calling the same person a big criminal'.

Rebel leader Kony and his LRA group have been referred to and blacklisted by the U.S government and European countries as terrorists. Given the complexity of the situation in this conflict, the government has since tried to withdraw the ICC indictment of Joseph Kony, hoping that such an attempt will attract Kony and his group to sign a peace deal that would effectively end the conflict. These attempts of the government, however, have yielded little success so far. Given the fact that the LRA rebels are well aware what has happened to other African war lords like Charles Taylor, who is facing trail in The Hague, they have become reluctant to sign the final peace agreement, a situation which has effectively thrown peace prospects into disarray.

While some people seem to favour the continued prosecution and eventual surrender of Kony and his group to the ICC, other Ugandans seem to favour the withdrawal of the indictment against him in the interest of peace, the recovery and the development of the area so that Joseph Kony can sign the peace agreements with the government and return home. Many a time, the rebels have not been attacking military targets but rather, they have attacked IDP camps, vehicles on the roads and other installations necessary for provision of social services to the people who have concretized the plight of IDPs (Lomo, 2008).

In an effort to end, once and for all, the conflict which had started in 1986 in northern Uganda, the Government of Uganda, in March 2002 launched the so called 'Operation Iron Fist', a determined military campaign to root out Joseph Kony's LRA by taking the war into Southern Sudan, the LRA's military and logistical base (Afako, 2002). 'Operation Iron Fist' has however not yielded significant results so far and in fact, the operation may have further compromised the security of civilians in both Southern Sudan and Northern Uganda. This is because the civilian population has been left without adequate protection while the Ugandan army has focused its efforts in the pursuit of the LRA in Sudan.

While the researcher was in the field on 17th December 2008, the Ugandan government forces were reported (*New Vision*, 18th December 2008) to have jointly, with Congolese and South Sudan armies, carried out a military offensive code-named 'Operation Lightning Thunder' on LRA in Garamba forest following a refusal by Joseph Kony to sign the peace agreement that had already been reached in Juba in April 2008.

The offensive was aimed at breaking the will of Kony in his continued fight against the government. Although some Acholi condemned the attack, alleging the fear of continued displacement of Ugandan citizens in the north because the military option has thus far failed to deliver peace. Some other quarters, including the UN envoy to Northern Uganda and former Mozambican President Joachim Chissano, symphasized with the government. The Envoy was quoted as saying that military action was necessary since Kony had refused to cooperate in the peace process. He, however, urged both parties to continue with the peace talks to end the war that has led to internal displacements in many parts of northern Uganda.

The current crisis in northern Uganda shows the high cost of the collective failure to protect the civilian population, including IDPs, which calls for urgency of increased and continued international action on behalf of the IDPs.

Another security challenge is the issue of unexploded ordinances (UXOs), or military explosives. According to UNHCR Field Safety Adviser (FSA), there have been lots of UXOs which have been discovered and reported by the community but there has not been enough response. The presence of de-miners in Pader is thin as they are based in Gulu district from where they work in Pader on an *ad hoc* basis.

By seeking international humanitarian intervention, the government of Uganda a) conceded its inability, and inadvertently ceded some of its sovereign responsibility, to protect its own citizens, b) betrayed the inadequacies of sovereignty as a prerogative for autonomous rule and c) proved how, through Kony's efforts in the north of the country, sovereignty could be effectively challenged from within.

In areas where UPDF and the LRA forces had clashed, there have been reports of the remains of unexploded bombs and other dangerous ordinances. This situation has made the IDPs to fear the ongoing Mines Risk Education (MRE) that is carried out by some NGOs. The MRE has created genuine fear that they could be harmed by those UXOs, thus hampering return in some areas. However, it appears the response has been positive in western and southern parts of Pader where the IDPs have returned near their areas of origin.

In an effort to fill the vacuum of the police in the north, the government had initially deployed the soldiers from different army barracks for policing work because of the scarcity of police officers in Pader. However, since their arrival and their involvement with the policing of civilians, they had not been seen to be performing in a professional manner, precisely because they were not trained to do policing work with the community. As a result, following different allegations and blames on the army for mishandling civil cases, the government decided to roll out the army from the IDPs back to the barracks. While this process is ongoing, the government decided to deploy what is known as the Special Police Constables, to back up professional policemen.

Scarcity of police forces on the ground was found to be a major challenge for the physical protection of the IDPs, a situation which led the government to come up with the idea of the "Special Police Constables" to fill in the vacuum. Due to the fact that these police have limited training, which is supposed to be at least nine months, it becomes another challenge for them. This is in addition to their small numbers and geographical areas they are supposed to cover.

Contestations for and around sovereignty through war leave more people at risk, sometimes impoverishing them, and impeding their return. Furthermore, through a poorly trained police force, mechanisms of propping up sovereignty are curtailed, something that speaks to the impossibility of the concept of sovereignty in practice.

Evidence from the work of the newly deployed special constables paints a gloomy picture. According the (FSA), presently, the IDPs are complaining because the newly deployed police are not well-trained. For example, if an IDP is raped and the police need to intervene, it takes a long time for the police to respond mainly due to inadequate manpower and operational tools.

While the deployment of the new police was inspired by the need to ensure law and order in the community and in areas of return where the IDPs are going now, their presence is not felt. They are reportedly immobile. In spite of the fact that UNHCR provided them with bicycles, in order to reach remote areas and that UNHCR has opened up road access roads in most of these return areas, they continue to remain only in the sub-county offices and not in the villages where IDPs are.

Although these police officers have been equipped with communication equipments like handsets and radio communications and provided with motorcycles by UNHCR, their deployment level in the villages and areas of return is low. Even if they are ready and willing to move to the villages where they can ensure effective physical protection of the IDPs, they would most of the time, complain of the lack of fuel for their vehicles. So, in general, the physical protection of the IDPs by the police in Pader is ineffective due to the above mentioned reasons.

4.5.2. IDPs Return and Camp Closure

On a first tour that aimed at sensitizing the IDPs return and closure of the camps in Northern Uganda, the Minister for Relief and Disaster Preparedness, Prof. Tarsis Kabwegyere, visited Pader in November 2006 and informed the members of the humanitarian community of the government's intention to close all camps by the end of December 2006. The announcement drew a lot of criticism from local leaders in the region on grounds that people should be given adequate resettlement package and their security guaranteed before they could be made to move. The declaration, however, marked the beginning of the increased returns of IDPs from the mother camps to different destinations within the district (OCHA, 2007). Following the declaration of possible camp closure, it became a defining moment for IDPs as returnees had

little choice but to start moving within ill-defined zones of conflicts that are not geographically restricted (RLP, 2002).

While continuing with the ongoing peace process, the government has continuously been asking IDPs to vacate the camps into which they were previously forced and proceed to their original homes. Despite the willingness to go home if the situation was to become conducive, IDPs have shown different views regarding the whole issue of return. They have also been hesitant, without the availability of basic services like clean water, education and health facilities, access roads, food security in the areas of destination. More importantly, the security guarantee which has been threatened, by among other reasons, *Karamajong* warriors/criminal elements and the presence of mines have all made the return of IDPs difficult (OCHA, 2008). Respondent 3 further clarifies;

> The enforcement of the voluntary return has been one of the major successes. People have been given information they needed to make choices, an informed choice to return to wherever they are. There is a lot of pressure from government to force people out of the camps for political reasons but UNHCR has stood its ground to make this a gradual process where IDPs make informed decision based on the right information given through partners and district officials and the District Disaster Management Committee, which has been quite helpful in this process.

Since the commencement of their involvement in the monitoring of return movements, UNHCR's Pader office has been trying to promote and advocate for freedom of movement in different fora. UNHCR has been negotiating and discussing with the local authorities about allowing freedom of movement in all sub counties. As the peace accord has not been finalized, its position has so far been, to support the voluntary return of IDPs to wherever they wish to return. This is because, according to UNHCR position, the freedom of movement is essentially the fundamental basic human right that IDPs should also enjoy as the *bonafide* citizens of Uganda. In the beginning of the monitoring of return movements in Pader district in November 2006, UNHCR defined the meaning of the freedom of movements to its partners as;

> Freedom of Movement (FoM) does not necessarily imply return at this stage, unless IDPs choose to return. It does imply allowing IDPs greater freedom to make their own choices and to become more self sufficient at their own pace, if and when they believe the security situation allows. More importantly, it

implies that we work with the UPDF in new ways to encourage them to provide security to areas, rather than only to camps. The promotion of FoM to places of origin and to areas IDPs determines appropriate and provision of assistance in camps are not mutually exclusive activities. Continued and improved assistance in camps where no movement is taking place will be necessary because the majority of people will remain in camps.

According to UNHCR office in Pader, more than 50% of the IDPs who were residing in Pader camps have already returned to or near to their areas of origin. Although some IDPs have been returning following sensitization, the government has, on different occasions, been urging and counselling IDPs to return. So far, no IDP camp has ever been declared officially closed by the government, despite the general government declaration that by March 2009, there should be no more camps in northern Uganda.

While the government of Uganda has been urging IDPs to vacate the camps and return to the villages which are protected by UPDF, UNHCR on its part has continuously been advocating for the freedom of choice of the IDPs to return to any area which they felt safer. So, inspite of the absence of Comprehensive Peace Agreement (CPA) between the government and the LRA rebels, many IDPs are now looking at the opportunities that exist in their return areas. IDPs are moving on their own to their areas of origin following encouragement from their government, which has always showed willingness to maintain peace even in the absence of the CPA.

This conflict over UNHCR and government priorities regarding return speaks to the contested nature of sovereignty. It gives leeway for international humanitarian actors to encroach onto the territory of states, which is itself aided by the ability of such organizations to realize change on the ground more than the government has often been able to. This way such organizations resonate with the aspirations of the people, thus setting the scene for a clash of interest where, for instance, by advocating freedom of movement in contradistinction to the government's stance of forced return, UNHCR is in a way pronouncing popular sovereignty on behalf of government.

4.6. Some Achievements in the IDPs Protection

In conclusion, the study found that although UNHCR has faced a lot of challenges in its protection work in Pader district, it has tried to fulfil many of the roles and responsibilities of coordinating, assessing, sharing information, advocacy and capacity building for the betterment of the IDPs in northern Uganda particularly Pader. However there have been

constraints which have been essentially occasioned by contestations around the meaning and practice of both sovereignty and humanitarianism. At a practical level, the study has shown that despite many challenges that UNHCR has been facing in Pader district, there are some achievements that it has made while extending international protection to the IDPs in Pader district. The achievements are discussed here further. Respondent 4 explains how UNHCR has realized progress in the promotion of freedom of movement in Pader;

> All these years that the IDPs have left their homes of origin, access roads have been a very big issue. And many times it has been very difficult for the IDPs themselves to try and get back to their homes, villages to actually access their land. So UNHCR and its partners have actually tried very much to open up access roads to help, which to me I see that it has been a big achievement as well. Because as the roads are opened, you see that there is a lot more movement in the return areas.

According to Dolan and Hovil (2006) who examined the Uganda's IDP situation for more than a decade, the promotion of the right to freedom of movement by UNHCR has been perhaps the single most important protection intervention by a humanitarian actor in the field to date. Promotion of freedom of movement in Pader district has been recorded as one of the biggest achievements of UNHCR in dealing with IDPs (UNHCR Pader Report, Dec 2008). By June 2007, the district authorities had declared freedom of movement in the whole of Pader district and the local authorities removed all restrictions on movement outside of camps, the situation which has resulted into the return of more than 50% of IDPs to near their villages of origin.

Secondly UNHCR has been able to establish its presence and lead and support joint assessments on various issues such as durable solutions, GBV, security situation to identify protection risks and design multi-sectoral prevention and response initiatives in the field. UNHCR office has also been able to extend some support to different government departments which deal with IDPs in an effort to strengthen protection in the district.

In general, in the case of Uganda, the state has shown fundamental weakness when it comes to issue of IDPs thus posing no resistance to the humanitarian intervention. Having abdicated its core responsibilities of protecting the population affected by the insurgency in the north, the government has essentially ceded sovereignty to international humanitarian agencies and NGOs. Equally significant, it has neither the capacity nor resources to prevent international actors from playing a significant role in meeting the needs of IDPs, including UNHCR. The

main problem posed by the Ugandan government in the way of UNHCR in Pader so far was found to be the state's inefficacy and incompetence to deal with the problems that are essentially occasioned by internal displacement.

In light of the research questions of this study, these are some of the examples of how UNHCR has been able to push its priorities in spite of sovereignty. On the one hand, sovereignty is in this case shown to be deficient of universalism. It can be both challenged and circumvented in different ways. On the other this weakness in the concept of sovereignty allows humanitarian organizations to reap financial and other rewards that come with humanitarian work in a resource poor area. More broadly though, the different in priorities and mandates of governments and UNHCR point to the impossibility of both sovereignty and political neutrality.

CHAPTER FIVE: DISCUSSIONS AND CONCLUSIONS

5.1. Introduction

The report has illustrated the various challenges of protection faced by UNHCR in Pader district such as legal challenges, ineffective local level coordination challenges and the lack of security. This chapter will discuss these findings in greater detail. After the discussions on the findings, conclusions in respect to the challenges that UNHCR has been facing will be drawn.

5.1.1. Legal Problems

The primary responsibility to ensure the protection of all nationals including IDPs belongs to the State as a sovereign duty. It is not the international community but national authorities that "have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction" (Principle 3(1) of the 1998 Guiding Principle on Internally Displacement). However, in the case of northern Uganda, Pader in particular, the government seems to have come into competition regarding its protection responsibility with UNHCR and other humanitarian agencies because of its reduced ability to handle the issue of IDPs In other countries like Sudan or Burma, governments have offered resistance by creating obstacles to the work of humanitarian agencies like UNHCR and others. Though UNHCR has still to work in coordination with the government, the government is fundamentally too weak to prevent humanitarian agencies from implementing programmes. This is seen in the example of getting freedom of movement in places against the government's wishes. It shows that UNHCR is arguably taking on some state responsibilities. This works to curtail political sovereignty which it reduces the significance of political neutrality for UNHCR.

In general, the study, taking its cue from other studies found that, despite the presence of a general legal framework on IDPs, it is not binding to the countries that produce IDPs, impacting on the way in completion and contestation around sovereignty and humanitarianism play out in practice. As only a moral imperative, the non-binding framework means that they can deviate from the developed principles. For example, in the case of northern Uganda, the state has created the protected camps which are generally not in conformity with internationally accepted standards espoused by the UN guiding principles. Because these guiding principles are not legally binding, it has been easier for the government to formulate its own "best" solutions without international community interfering. Further, the fact that UNHCR relies on the *ad hoc* arrangement of the General Assembly to pass resolutions

conferring powers to the organization makes UNHCR an equal partner with other organizations in assisting IDPs, denying it the protection leverage it enjoys when assisting refugees.

The findings have also shown that without an explicit legal framework for the IDPs, UNHCR's ability and legitimacy is challenged. This is a departure from the situation in the refugee programme. This finding concurs with what Crisp (Brookings Institution Workshop Report, 2007) says regarding the issue of IDPs;

> For IDPs, the recently adopted cluster approach assigns important leadership and coordination roles to UNHCR in the areas of protection, camp coordination and camp management, and emergency shelter, but in practice, and pursuant to its mandate, UNHCR's legal responsibility for IDPs is less clear.

Another study by Phuong (2006:84) suggest that "it has been repeated on many occasions in UNHCR official documents that the agency 'does not have a general competence for internally displaced persons". While quoting Weiss and Pasic she says "one can not predict the involvement of UNHCR since the criteria for involvement are purposely broad and flexible" (Phuong, 2006:84). One of the reasons for UNHCR to justify its non-involvement in particular situations has been the absence of a link with the mandate. Other factors mentioned are related to the lack of donor interest, operational constraints, presence of other UN agencies and the presence of a threat to the institution of asylum which is the most problematic issue as UNHCR does not wish its field activities to be incompatible with its core mandate. The study has shown how an unclear mandate makes room for worrying tensions between NGOs. The study, for instance, revealed how the mandate is both very extensive (e.g. changing government policy in some examples) and very narrow. As a consequence of this, where the mandate is broad, UNHCR ends up taking political decisions and responsibilities, such as encroaching onto the political and the sovereign prerogative of the state. Where its mandate has been narrow, it has found itself implicated in other means of challenging (often successfully) the political authority of the state through capturing the interests of the government employees mainly through offering them incentives.

5.1.2. Ineffective Coordination at the Local Level

While examining the issue of state interests and UNHCR institution, Loescher (2001) showed that UNHCR is constrained by states in its protection mandate. He claimed that UNHCR is dependent on donor states for funding operation and on host governments for permission to

initiate operations in their countries. Thus, according to his view, UNHCR is in no position to challenge the policies of its funders and host governments and merely acts as an instrument of states. It is a situation like this that poses another challenge to its work, especially in places like Uganda, where despite experiencing huge internal displacement, it cannot take over the operation fully because of lack of explicit mandates and funds which are made available by donor countries. UNHCR has been shown to take the initiative and acting almost unilaterally, set the agenda for its mandate where the state is weak.

In some instances, UNHCR has nevertheless taken care of IDPs, but on a case-by-case basis and depending on a series of factors, including the existence of a formal request from the UN main bodies and the government affected by the humanitarian crisis. However, the organization cannot always offer and guarantee the same protection to the IDPs as if they were under the protection of international refugee law. Some of the problems that need to be prevented or addressed are the creation of gaps, overlaps, duplication of efforts and lack of coordination. These are mainly caused by similar mandates or an extension of the mandates of the organizations responsible for applying the international legal framework. However, it should be mentioned that the involvement of these organizations in areas outside of their traditional roles and mandates occurs in most cases, by special petitions of the United Nations' main bodies, among others, the Secretary General, General Assembly, Security Council and the affected governments.

The study also found that, due to the lack of active and capable protection actors in Pader district on the part the government, it has made it difficult for UNHCR to respond to protection gaps swiftly and on regular basis. In other words, it seems that coordination with the government departments, which are responsible for protection of IDPs, is posing a great challenge to the work of UNHCR because it is working in coordination with the government departments or officials who are either unable or unwilling to run the IDPs programmes.

Another finding shows that UNHCR has been facing the challenge of coordinating other humanitarian agencies within the cluster it leads because such agencies perceive themselves to have capacity to work independently having been longer on the ground than UNHCR itself. Therefore, they feel entitled to operate alone without having to work through UNHCR. A part of the underlying factors is the competition for the same funding sources, hence the need to assert oneself as the most credible agent for effective implementation. This offers a good example of self interest in humanitarian work.

63

The same applies to working with UN sister agencies like UNICEF that have been working more on development programmes than emergency. Coordination to intervene in the GBV programme, for example, in Pader has been found to be a challenge to UNHCR. In a 2007 UNHCR Real- time evaluation report on IDP programme in Uganda, the co-ordination activity, through cluster approach, was reported to be characterized by too many meetings, leading to a lot more work on co-ordination rather than on programmes. In general, the Cluster system was said to be based on 'a number of abstract concepts that have never been properly explained'.

The situation described above can be likened to the example of ineffective inter-agency coordination experienced among the humanitarian agencies in the aftermath of the 1994 Rwandan genocide. In an effort to respond to the problem of internal displacement in Rwanda, UN Rwandan Emergency Office (UNREO) formed an Integrated Operation Center (IOC) to coordinate activities on behalf of the IDPs. While IOC was composed of members of most international agencies, NGOs and ministries of the Rwandan government, most agencies showed little interest in attending the meetings (Kleine-Ahlbrandt, 1996). While UNREO had fulfilled most of its coordinating functions, it encountered substantial problems with regard to the protection of IDPs. With little political influence and expertise, the organization could not put enough pressure on the government whose objective was to close down (by force if necessary) IDP and refugee camps that were situated across the border in the former Zaire. (Minear and Kent, 1998) further observe that at that time there were also coordination problems between the peacekeeping force of United Nations Assistance Mission to Rwanda (UNAMIR) and other humanitarian agencies which had resulted from a lack of clarification over their respective mandates.

In such situations like it was in Rwanda and many others where there are humanitarian crises duplication of work becomes a problem. Moreover, the presence of so many agencies, donor organizations, and NGOs in a situation like Pader often represents a serious drain on the limited resources of post-conflict states. In many situations, security is as important a priority as food, but protection of physical safety often takes second place to the provision of food, medical care, and shelter. Most of the time government inability or resistance is a major factor limiting international involvement with protection (Etima, 2003). Where the inability of government of assert itself more fully, a gap that is left by the absence of government autonomy often creates a space for competing agendas for NGOs, so that a clear case of self interest among NGO can be seen within the contestation of NGOs themselves, but also the lack of effective implementation on the ground that accompanies it.

Given the fact that IDPs are also internal refugees, some scholars have been advocating for UNHCR to take over as an agency for IDPs so as to avoid the pitfalls caused by the problems of coordination. While giving a lecture on refugees and internally displaced persons at Cardozo Law School at Yeshiva University in New York City in 2000, Richard Holbrook, the then President of the UN Security Council, once suggested that "the mandate for internal refugees should be given to a single agency, presumably UNHCR". His proposal was based on the assumption that there was no difference between a refugee and an internally displaced person. For him, coordination between the UN and other humanitarian agencies was inefficient and thus the responsibility for the IDPs should be given to a single agency in order to ensure UN effective response to crises of internal displacement. Faced with criticisms, he later retreated from his early position and ended up supporting the model of lead agency (through cluster approach system) to resolve the institutional gaps. The pressure that Holbrook faced can best be seen in the light of states moving to safeguard their sovereignty that the work of transnational organizations, such as UNHCR, always seeks to override.

However, coordination was found to be not only a challenge between UNHCR and its operation partners, but also between UNHCR country and field offices – that is, within the UNHCR as an organization itself. Respondent 4 characterized this coordination challenge as a top down approach problem where decisions were made in Kampala for the field offices to implement. The main challenge observed was the difference in prioritization of the two offices. While country offices decide to initiate projects in consultation with their government or agency counterparts in Kampala, the field offices were required to implement the projects in the field. Thus even within the organigram of the humanitarian organization itself, lack of proper organization and coordination may impede real change on the ground.

As previous studies have shown, UNHCR coordination with its implementing and operational partners is one of the big challenges facing UNHCR in its work of protecting IDPs especially in Africa. This is reflected in Harrell-Bond (1986) claim as observed in Karadawi (1982) that the relationship between the aid-giving community and aid receiving government "is like an alliance between two parties who agree on goals but eye each other with suspicion". While the UNHCR office is trying to play a supplementary role to strengthen the government ability to handle IDPs, the officials and authorities secretly expect UNHCR to provide everything. On the other hand, UNHCR looks at other authorities with suscipicion for failure to deliver on their responsibilities. As a result, each entity at times tries to influence the other to ensure its agenda is prioritised. On the one hand, UNHCR may seek to push government to provide an enabling environment for it to function within, thus boosting its standing both within the

country and in the face of the donor communities, thus safeguarding its own interests. On the other hand, government officials may seek to utilise the resources of UNHCR, especially in terms of money, just to get their everyday responsibilities done. Where they succeed to do this we see how the two encroach onto each other's 'territory', but by so doing, ensure their respective perpetuity.

Many other problems were found to be facing UNHCR office in its work of providing protection to the IDPs in Pader district. These are related to lack of capacity on the part of the government which is supposed to provide that protection to its own people. Also, at times, incompetence and/or unwillingness on the part of some government quarters which have different priorities from those of UNHCR in handling IDPs hamper progress. It should be noted, however, that despite being chosen to be a Protection cluster leader, UNHCR can not do it alone. Government and other humanitarian agencies must continue to improve their roles in a coordinated manner. In sum, Deng's (1995) report recognizes that no agency can cover the needs of IDPs on its own.

5.1.3. Absence of Peace and Security

The northern districts of Uganda, including Pader, have been severely affected by the twenty year armed conflict between the government of Uganda and the LRA. The conflict has caused massive population displacement, something that as resulted in many people leaving their homes to go and seek protection in the government run camps. Long term displacement and lack of access to sustainable livelihoods have left many people destitute. Given this situation the issue of peace in northern Uganda is crucial for all Ugandans.

Insecurity and lack of peace have brought together all actors to work through Cluster Approach Leadership on behalf of the IDPs in Uganda. Since the primary responsibility for IDPs is within the jurisdiction the Ugandan government, all actors are compelled to work in coordination with the government offices to provide protection to the IDPs. As has been noted, such a situation leads to coordination problems. A failure of efficient coordination among the actors is partly caused by the fact that the recently introduced Cluster Leadership Approach system is still new to all of the actors thus, coupled with the weak government structures, the effective delivery protection and assistance to the IDPs becomes difficult.

While the government of Uganda has tried to involve and bring the rebel leader Joseph Kony to the negotiating table, its efforts have largely been fruitless. His refusal to sign the Comprehensive Peace Agreement means that peace and security for all citizens and the end of

displacement camps in northern Uganda continues to be elusive. His refusal has also meant continuation of displacement camps and conflicts in the north.

Reports in the media, such as in the Ugandan *New Vision* newspaper of 18th December 2008, of sporadic fighting between the Ugandan government and the LRA rebels in Garamba forest do not bode well for peace efforts. The military offensive, which was carried out jointly with Congolese and South Sudanese armies, aimed at destroying the rebels after failing to sign the peace agreement that had already been reached in Juba in April 2008. In light of the unpredictable current security situation in the north, it has become imperative for every humanitarian actor to be cautious in the planning and implementation of their programme for IDPs. In order to cope with any eventuality, agencies have been planning their interventions through best likely scenarios and worst likely scenarios as preparedness in case of change of situation due to insecurity. In general, the effectiveness and future of UNHCR IDP operation will also likely be determined by the presence of peace for both IDPs and humanitarian workers. Where there is a lack of security, there is often a related lack of autonomy, such that both sovereignty and humanitarianism can neither be asserted. Despite the tension, contestation and competition between the two, it is this lack of an enabling environment for the two to flourish that provides a rare glimpse of the symbiosis of the two concepts. After all, humanitarianism came into being as a result of the best wishes of sovereign states.

5.2. Conclusions

This research report set out to examine various protection challenges faced by UNHCR in relation to IDPs in the absence of an explicit international legally binding framework. A closer look at the existing international standards has revealed that IDPs are, in theory, widely protected. However, theory has not reflected in practice in the case of northern Uganda. One of the reasons for this divergence has been the inability or unwillingness of the states that bear the primary responsibility for ensuring these standards to live up to their responsibilities. In most part, they constitute the cause behind the need for protection in the first place. As such, it can be concluded that, as much as IDPs (and indeed refugees) are in need of enhanced protection, it is clear that refugees (or even citizens for that matter) do not get protection. Instead, more immediate concerns seem to influence the objectives of both governments and humanitarian organizations in their respective spheres of work. While this research sought to understand how a lack of a clear legal framework affected the eventual outcomes in intervention, evidence suggests that the problem is more subtle – being more about bureaucracy, competing agendas, weak states that on paper possess authority that they nonetheless are unable to effect in

practice, and strong international organisations that in principle have no legitimacy over sovereign matters but that nonetheless are able to organise their interventions in ways that make them command more political legitimacy within their day-to-day work settings.

A number of limitations arise from this study. A larger sample of respondents could have broadened the scope of the data that has formed part of this report. As such, it may be difficult to generalise the experiences of few staff out of many UNHCR personnel working for IDPs in northern Uganda. The findings of this research report could be contested as a result of some limitations of the techniques used. At the very least, however, the report remains of value in that it opens a door for other stakeholders to debate issues related to humanitarian provision of protection to the IDPs in Africa and Uganda in particular. The case study may not apply in other contexts – but does point to the complexity of the situation and the need to unpack how notions of sovereignty and political neutrality function on the ground.

This research has examined and discussed the main problems that are facing UNHCR in addressing the question of IDPs in the absence of explicit international legal framework. An important finding is that, apart from the absence of a legal framework in which to ensure IDPs' protection, UNHCR faces many structural problems in providing protection which are not related to, but which have resulted from the lack of, an explicit legal protection framework. Most importantly, the principle of sovereignty remains a major obstacle for the protection of IDPs since tackling the issue of internal displacement sometimes involves overriding the territorial sovereignty of the state concerned (Phuong, 2006).

Whereas there are many challenges that UNHCR is experiencing in Pader that are mainly structural in nature, these mainly emanate from the contestation around legitimacy between UNHCR and the state of Uganda. Sovereignty appears to prevent the existence of an explicit legal framework that can allow UNHCR and other humanitarian agencies to work in Uganda independently within clear transnational legal mandates without having to be accountable to the government. Though Uganda is a weak state, its claim to sovereignty has allowed it to at times, override all other humanitarian agencies including UNHCR. Many problems experienced in northern Uganda can be traced from the contestation around the issue of sovereignty. The Ugandan government retains sole accountability to the IDPs who are also citizens. Unlike refugees, IDPS are theoretically supposed to be protected by their state and not foreign entities.

In general, this research found out that although efforts by various governments in Africa push for a binding international legal regime to protect IDPs, there seems to be other more immediate concerns for both governments and international organization that make such a need appear peripheral. The efforts being undertaken by the African Union in this respect appear noble on paper; however the terrain in which such efforts will eventually play out, looks already congested with other struggles of asserting individual priorities for both government as well as humanitarian actors that shore up the immediate interests of these actors, more than the IDPs in whose name they present themselves.

BIBLIOGRAPHY

Secondary Sources

Aeschlimann, A. 2005. 'Protection of IDPs: an ICRC view', *Forced Migration Review IDP Supplement, pp25-27.*

Afako. A. 2002. *Operation Iron Fist: What Price for Peace in Northern Uganda?* African Rights. 121. ACCORD.

Analytical Report of the Secretary-General on IDPs, 1992.

Accorsia, S., Fabiania, M., Nattabib, B., Corradob, B., Irisob, R., Ayellab, E.O., Pidob, B., Onekc, P.A., Ogwangb, M., Declicha, S. 2005. 'The disease profile of poverty: morbidity and mortality in northern Uganda in the context of war, population displacement and HIV/AIDS', *Royal Society of Tropical Medicine and Hygiene, 99, 226—233.*

Bariagaber. A. 1999. *States, International Organizations and the Refugee: Reflections on the Complexity of Managing the Refugee Crisis in the Horn of Africa.* The Journal of Modern African Studies, Vol. 37, No. 4. Pp. 597-619. Cambridge University Press.

Barkin, J. S. and Cronin, B. 1994. 'The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations', *International Organization*, Vol. 48. No. 1, pp. 107-130.

Barnett, M. 2001. 'Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow', *International Migration Review*, Vol. 35, No. 1, pp. 244-277.

Barnett. M. And M. Finnermore. 1999. *The Politics, Power, and Pathologies of International Organizations.* International Organization, Vol. 53, No. 4. Pp. 699-732. The MIT Press.

Barutciski. M. 1998. *Tensions between the refugee concept and the IDP debate.* Forced Migration Review (No.3, December).

Beyani. C. 2006. *Recent developments. The elaboration of a legal framework for the protection of internally displaced persons in Africa. Journal of African law*, 50 (2). pp. 187-197.

Brownlie. I. 2003. *Principles of Public International Law.* Oxford University Press, USA; 6th edition.

Casley. D. J and D. A Curry. 1981 *Data Collection in Developing Countries.* Oxford: Clarendon Press.

Charmy. J. 2005. *New approach needed to internal displacement.* FMR. www.fmreview.org

Chimni. B. S. 2000. *International Refugee Law, A Reader*, Sage Publications, New Delhi.

Cohen. R. 2004. *The Guiding Principles on Internal Displacement: An innovation in International Standard Setting,* Global Governance, vol. 10, no. 4, October-December 2004.0.

Cohen. R. 2006. *Strengthening Protection of IDPs: The UN's Role*, Georgetown Journal of International Affairs.

Cohen. R. 2007. 'Responses to Hathaway', *Journal of Refugee Studies*, Vol. 20, No. 3, pp 370-376

Crisp. J, Kiragu. E, and Tennant. V. 2007. *UNHCR, IDPs and Humanitarian Reforms' Humanitarian Reform: Fulfilling its Promise*? FMR issue 29.

Crisp. J. 2001. *Mind the gap! UNHCR, humanitarian assistance and the development process.* Evaluation and Policy Analysis Unit. UNHCR Geneva.

Dawson. C. 2007. *A Practical Guide to Research Methods: a User Friendly Manual for Mastering Research Techniques and Project*, third edition. Spring Hill House.

Deng, F. M. and Lyons. T. Eds: 1998. *African Reckoning: A Quest for Good Governance*, Brookings Institution Press, Washington D.C., pp. 1-3.

Deng. F and Cohen. R. 1998. *The Forbidden People, Case Study of the Internally Displaced,* Brookings Institutions Press.

Deng. F M and Cohen. R. 1998. *Masses in Flight: The Global Crisis in Internal Displacement,* Brookings Institutions Press 1998.

Deng. F. 1995. *Internally Displaced Persons*: Report of the Representative of the Secretary General. E/CN.4/1995/50.

Deng. F. 1995. *The International Protection of the Internally Displaced.* Special Issue *International Journal of Refugee Law* 74, 77.

Deng. F. 1998. *Compilation and Analysis of Legal Norms*, United Nations, New York and Geneva.

Deng. F. M. 1993. *Protecting the Dispossessed* A Challenge for the International Community, Human Rights, Internal Displacement , Brookings Institution Press 1993.

Deng. F. M. 1993. *Protecting the Dispossessed, A Challenge for the International Community*, Brookings Institutions Press.

Deng. F. M. and Cohen. R. ed. 1998. *The Forsaken People: Case Studies of the Internally Displaced,* Brookings Institution Press, 1998.

Deng. F. M. and others: 1996. *Sovereignty as Responsibility: Conflict Management in Africa*, Brookings Institution Press, Washington D.C., pp. 131.

Denscombe. M. 2003. *The Good Research Guide: For Small–Scale Social Research Projects*. Open University Press, Maidenhead. Philadelphia, Second Edition.

Discussion Paper # 7. 2003. *Post Conflict Reconstruction: The Case of Northern Uganda*. Ministry of Finance, Planning and Economic Development. Uganda

Dolan. C and Hovil. L. 2006. *Humanitarian protection in Uganda: a Trojan Horse?'* Humanitarian Policy Group Background Paper, Overseas Development Institute, London.

Dowty. A and Loescher. G. 1999. *Changing Norms in International Responses to Domestic Disorder*. In *Globalization and Global Governance.* Ed.R. Vayrynen. New York: Rowman and Littlefield.Pp. 199 – 222.

Eisenhardt, K. M. 1989. 'Building Theories from Case Study Research', *The Academy of Management Review*, Vol. 14, No. 4, pp. 532-550.

Ellsberg, Mary Carroll, Heise, Lori. 2005. *Researching Violence against Women: Practical Guide for Researchers and Activists*, World Health Organization. Dept. of Gender and Women's Health. World Health Organization. Geneva.

Feller. E. 2006. *UNHCR IDP protection: opportunities and challenges* in FMR Special Issue *Putting IDPs on the Map*, Brookings-Bern Special Issue, FMR.

Gallagher. D. 1989. *The Evolution of the International Refugee System*. International Migration Review, Vol. 23, No. 3, *Special Silver Anniversary Issue: International Migration an Assessment for the 90's*. pp. 579-598. The Center for Migration Studies of New York, Inc.

Gilbert. G. 1998. *Rights, Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order*. International Journal of Refugee Law 349, 356.

Goldman. R. 1998. *Codification of International Rules on Internally Displaced Persons*, 324 IRRC 463, Geneva. p. 464.

Goodwin-Gill, G.S. 2007. *The Refugee in International Law* (Paperback), Oxford University Press, USA; 3rd edition.

Goodwin-Gill. G. S. 1999. "Refugee Identity and Protection's Fading Prospect*." In Refugee Rights and Reality.* Ed. F. Nicholson and P. Twomey. Cambridge University Press, UK, Pp.220-252.

Harrell - Bond, B.E. 1986. *Imposing Aid: Emergency Assistance to Refugees*, Oxford University Press. UK.

Hathaway. J. 1991. *The Law of Refugee Status* Butterworths, Toronto. Canada.

Helton. A. 1998. *Legal Dimensions of Responses to Complex Humanitarian Emergencies, International Journal of Refugee Law,* 533 - 536.

IDMC *Report on Internal Displacement, Global Overview of Trends and Development in 2007*, April 2008. www.internal-displacement.org.

IDMC Update, *Only peace can restore the confidence of the displaced*, IDMC publication, October 2006. www.refugeelawproject.org.

Inter Agency Standing Committee (IASC) report, 2007, www.reliefweb.int.

James. H. Macmillan and Sally Schumacher. 2006. *Research in Education, Evidence Based Inquiry*, sixth edition Pearson Education Inc. USA.

Kalin. W. *Guiding Principles on Internal Displacement: Annotations*, the American Society of International Law and the Brookings Institution Project on Internal Displacement, Washington.

Kleine-Ahlbrandt S.T.E. 1996. *The Protection Gap in the International Protection of Internally Displaced Persons: The Case of Rwanda*. Institut Universitaire des Hautes Etudes Internationales. Geneva.

Korn. D.A. 1999. *Exodus within Borders: An Introduction to the Crisis of Internal Displacement*. Brookings Institution Press, Washington, DC.

Koskinen. P. 2005. *Internally Displaced Persons and the Right to Housing and Property Restitution*. Institute for Human Rights, Abo Akademi, Finland.

Krasner, S. D. 2001. 'Sovereignty', *Foreign Policy*, No. 122, pp. 20—29.

Landau. L. B. 2003. *Beyond the Losers: Transforming Governmental Practice in Refugee-Affected Tanzania,* Journal *of Refugee Studies*. Vol. 16(1): 19-43.

Lavoyer. J. P. 1998. Philippe, *Guiding Principles on Internal Displacement: A few comments on the Contribution of International Humanitarian Law*, 324 IRRC, 467-469, Geneva.

Lee L. 1996. *Internally Displaced Persons and Refugees: Towards a Legal Synthesis.* Journal of Refugee Studies 9:27–42.

Lewis. C E. 1992. *Dealing with the Problem of Internally Displaced Persons*, Georgetown Immigration Law Journal (Vol 6). pp. 84-89,

Loescher. G. 2001. The UNHCR and World Politics: State Interests vs. Institutional autonomy. *International Migration Review.* The Center for Migration Studies of New York, Inc. Vol 35. Issue 1. pp 33 – 56.

Loescher. G, Betts. A and Milner. J. *UNHCR: The Politics and Practice of Refugee Protection into the 21st Century* Global Institutions series, Routledge 2008

Lomo. Z. 2007. *Regional or National Protection for Great Lakes IDPs.* Putting IDPs on the Map, *Forced Migration Review*.

Lomo. Z. Naggaga. A. and Hovil. L. 2001. *The Phenomenon of Forced Migration in Uganda: An Overview of Policy and Practice in an Historical Context*, Refugee Law Project Working Paper 1.

Maykut. P and Morehouse. R. 2001. *Beginning Qualitative Research: A Philosophic and Practical Guide,* Routledge.

Miner L and Kent R.C. (1998). *Rwanda's Internally Displaced People: A Conundrum Within a Conundrum'* in Cohen and Deng (eds.), The Forsaken People Case Studies of the Internally Displaced, pp 57-95.

Mooney, E. 2005. *The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*, Refugee Survey Quarterly, Volume 24, Issue 3.

Mooney. E. 2004. *Towards a protection regime for internally displaced persons*, in Refugees and Forced Displacement: International Security, Human Vulnerability, and the State edited by Edward Newman and Joanne Van Selm, United Nations University Press, Tokyo, p.160.

Natsios. A. S. 1995. *NGOs and the UN System in Complex Humanitarian Emergencies: Conflict or Cooperation?* Third World Quarterly, Vol 16, No 3.

OCHA. 2003. *No Refuge: The Challenge of Internal Displacement*. United Nations Publications.

Ofstad, A. *et al.* 1999. *UN and International Organisations*, Bergen: Chr. Michelsen Institute.

Palmary, I. 2008. 'Gender, race and culture: Unpacking discourses of tradition and culture in UNHCR refugee policy', *Annual Review of Critical Psychology – Vol. 6 (Available on line at www.discourseunit.com/arcp/6.htm).*

Patton. M.Q. 2001.*Qualitative Research & Evaluation Methods*. Sage Publications, Inc; 3rd edition.

Petrasek. D. 1995. *New Standards for the Protection of Internally Displaced Persons: A Proposal for a Comprehensive approach, Refugee Survey Quarterly* (Vol.14, No1 and 2).

Petterson. B. Global IDP Project: *Complementarity between key instruments of international law. International human rights and humanitarian law merged into one operational instrumen*t: the UN Guiding Principles on Internal Displacement.

Phuong. C. 2002. *Improving the United Nations Response to Crisis of Internal Displacement*, IJRL Vol. 13, No. 4, Oxford University Press, Oxford.

Phuong. C. 2006. *The International Protection of Internally Displaced Persons*. Cambridge UK: Cambridge University Press, UK, 2006.

Pierre-Michel Fontaine. 1995. *The United Nations and Future Refugee Challenges. Melbourne University Law Review* 139.

Pincwa. G. 998. *Refugees and Internally Displaced Persons in Africa on the Eve of the 21st Century*. 5 N1; East African Journal of Peace and Human Rights.

Plattner. D. 1992. *The Protection of Displaced Persons in Non-International Armed Conflicts*, International Review of the Red Cross (No.291).

Refugee Law Project. 2002. Working Paper No. 5, *War as Normal: The Impact of Violence on the Lives of Displaced Communities in Pader District*, Northern Uganda.

Refugee Law Project. 2006. *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, RLP, Uganda.

Rodley. N. 1998. *Can Armed Opposition Groups Violate Human Rights?* p. 318.

Ruggie, J. 1986. "Continuity and Transformation in the World Polity: Towards a Neorealist Synthesis", in Robert O. Keohane, ed., *Neorealism and Its Critics*. New York: Columbia University press, pp. 131-57.

Rugumamu. S. M. Discussion Paper: State Sovereignty and Intervention in Africa: Nurturing New Governance Norms. Submitted to the International Commission on Intervention and State Sovereignty (ICISS) Roundtable Maputo, Mozambique, March 10, 2001.

Rutinwa. B. 1999. *The end of asylum? The changing nature of refugee policies in Africa,* UNHCR Working Paper No. 5.

Simon Bagshaw and Diane Paul. 2004. Protect or Neglect? Toward a More Effective UN Approach to the Protection of IDPs, An Evaluation, The Brookings-SAIS Project on Internal Displacement and OCHA.

Straus. A and Corbin. 1999. *Basics of Qualitative Research*. Newbury Park. Sage.

Suhrke. A. 2000. *From One Crisis to Another: Organisational Learning in UNHCR*. Expert Group on Development Issues.

Thakur. R, Jacobsen. T and Sampford. C. (eds). 2007. Re-envisioning Sovereignty: The End of Westephalia? Ashgate Publishers, Brisbane and Tokyo.

The State of the World's Refugees. 2006. *Human Displacement in the New Millennium*, UNHCR. Geneva.

Turner. S. 2004. *Under the Gaze of the 'Big Nations: Refugees, Rumours, and the International Community in Tanzania. African Affairs.* Vol. 103: 227-247.

UNHCR. 1997. The State of the World's Refugees 1997-98 - A Humanitarian Agenda Chapter 3, 1997. UNHCR Geneva.

UNHCR. 2007. *Real –time Evaluation of UNHCR's IDP operation in Uganda*. UNHCR Geneva.

Vanessa Mattar and Paul White. 2005. *Consistent and Predictable Responses to IDPs A Review of UNHCR's Decision-Making Processes*. EPAU/2005/2. UNHCR Geneva.

Ved Nanda. 1996. *Comments On The Legal Basis of International Jurisdiction to Act with Regard to the Internally Displaced* in Vera Gowlland-Debbas (ed), *The Problem of Refugees in the Light of Contemporary International Law Issues.* Pp 142-143.

Vinck, P., Pham, P. N., Stover, E., Weinstein, H. M. 2007. 'Exposure to War Crimes and Implications for Peace Building in Northern Uganda', *Journal of American Medical Association*, Vol. 298 (5), pp 543-554.

Weiss. T. G. 2006. *Internal Displacement: Conceptualization and its Consequences (Global Institutions)***.** Routledge.

UNHCR Pader Field Office report, December 2008.

National and International Legal Instruments

African Union Draft Legal Framework on the Protection and Assistance of Internally Displaced Persons. www.internal-displacement.org.

Constitution of Uganda of 1995. Government Gazette.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August. 1949.

Uganda National Policy for Internally Displaced Persons, 2004. Government Gazette.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted 8 June 1977, entered into force 7 December 1978..

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II), adopted 8 June 1977, entered into force 7 December 1978.

Statute of the Office of the United Nations High Commissioner for Refugees: Approved by the UN General Assembly resolution 428 (V) of 14 December 1950.

Statute of the Office of the United Nations High Commissioner for Refugees: Approved by the UN General Assembly resolution 428 (V) of 14 December 1950.

The Charter of the United Nations signed 26 June 1945, in San Francisco, at the conclusion of the UN Conference on International Organisation, and came into force on 24 October 1945. Articles 1-2 of the Charter.

UN Guiding Principles on Internal Displacement, 1998.

UN High Commissioner for Refugees, *Real-time Evaluations of UNHCR's Involvement in Operations for Internally Displaced Persons and the Cluster Approach: Analysis of Findings,* 29 August 2007. EC/58/SC/CRP.23. Online. UNHCR Refworld, available at: http://www.unhcr.org/refworld/docid/470394f12.html.

UNHCR, Executive Committee, 45th Session, EC/SCP/87, 17 August 1994, Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons.

Unpublished Works

Etima. S. L. 2003. Internally Displaced People: The Political Paradigm and Legal Solutions in the African Context. Master of International Human Rights Law degree, Lund University, Sweden.

Kiessling. A. 2006. Internally displaced in international law – do they require international law? Master of Laws (LL.M) degree. University of Cape Town, South Africa, 2006.

Munoz. S. 2006. The Role of the Colombian Constitutional Court in Protecting Internally Displaced People's Human Rights. LL.M in International Human Rights Law, University of Essex, United Kingdom.

Articles in Newspapers and Statements

Guardian Newspaper, 5 March 2009. *Sudanese president expels aid agencies.* Available online at www.guardian.co.uk.

New Vision. Ugandan Newspaper. Thursday, 18th December, 2008. '*UPDF attacked Kony on parade'*. Available online.

Real – Time Evaluations of UNHCR's Involvement in Operations for Internally displaced Persons and the Cluster Approach: Analysis of Findings. EXCOM Report. EC/58/SC/CRP. 2.3. 29 August 2007.

Statement by Algerian President Abdelaziz Bouteflika's at the UN General Assembly 20 September 1999 in response to the Secretary General report on the justification of "two concepts of sovereignty" as quoted in Weis. T. G. 2006. *R2P After 9/11 and the World Summit*. *Vol. 24, No. 3.* Wisconsin International Law Journal.

BBC News. Uganda conflict 'worse than Iraq'. Monday, 10 November, 2003. http://news.bbc.co.uk.

Electronic Resources

Amnesty International (AI), www.amnesty.org (accessed 20/07/2008).

Brookings - CUNY Project on Internal Displacement www.brook.edu.

Global IDP Project, www.db.idpproject.org (accessed 20/07/2008).

Institute for the Study of International Migration, Georgetown University, www.isim.georgetown.edu (accessed 21/07/2008).

Inter- Agency Internal Displacement Division, OCHA, www.reliefweb.int/idp (accessed 21/07/2008).

Intern- Agency Standing Committee (IASC), www.humanitarianinfo.org/iasc (accessed 21/07/2008).

International Displacement Monitoring Centre (IDMC), www.internal-displacement.org.

Oxfam, www.oxfam.org/en (accessed 24/07/2008).

Refugee Law Project, Makerere University, www.Refugeelawproject..org (accessed 24/07/2008).

Refugee Studies Centre, Oxford University (Working Paper Series), www.rsc.ox.ac.uk (accessed 24/07/2008).

Reliefweb, www.reliefweb.int (accessed 24/07/2008).

Uganda Conflict Action Network, www.ugandacan.org (accessed 24/08/2008).

Uganda Humanitarian Clusters, www.ugandaclusters.ug. (accessed 24/12/2008).

United Nations High Commissioner for Refugees (UNHCR), www.unhcr.ch (accessed 24/07/2008).

Interviews

Interview with Respondent # 1 held on 15 December 2008

Interview with Respondent # 2 held on 15 December 2008

Interview with Respondent # 3 held on 17 December 2008

Interview with Respondent # 4 held on 18 December 2008

Interview with Respondent # 5 held on 20 December 2008

Interview with Respondent # 6 held on 20 December 2008

Interview with Respondent # 7 held on 21 December 2008

Interview with Respondent # 8 held on 21 December 2008

Interview with Respondent # 9 held on 22 December 2008

Interview with Respondent # 10 held on 23 December 2008

Appendix 1: Questions Guide for Qualitative Study

Questionnaire: "Protection Challenges Facing UNHCR in Addressing the Question of IDPs in the Absence of Explicit International Legal Framework: The Case of Pader District, Uganda"

1. How is UNHCR managing the protection of IDPs in Uganda in the absence of an international legal framework?

2. Is it facing challenges in this regard? Explain these

3. What is being done to respond to IDPs in Northern Uganda?

4. Why in the first place, does UNHCR extend support to the IDPs in Uganda

5. On what basis does UNHCR justify its intervention in Uganda?

6. What about the legal basis on which UNHCR is addressing the problem of IDPs? Explain please

7. What do you think are the gaps in the overall protection of IDPs in Pader district?

8. What are the barriers to effective work with IDPs in Uganda?

9. What is the criteria which merits the UNHCR`s intervention in the IDPs situation in Uganda?

10. What are the main challenges facing UNHCR in the overall protection of IDPs in Uganda?

11. How does the issue of peace and insecurity in northern Uganda affect UNHCR work?

12. Of the problems that you have mentioned, which ones are the UNHCR facing in Uganda can be attributed to sovereignty and the Ugandan government's reluctance?

13. Does the issue of sovereignty pose a problem to UNHCR's accessibility to IDPs?

14. What do you think are the impacts of sovereignty concerns to the overall protection of IDPs in Pader?

15. To what extent is UNHCR facing challenges of sovereignty?

16. To what extent does the question of sovereignty or non-interference affect the work of the organization in the overall protection needs of the IDPs?

17. How does UNHCR negotiate the issue of sovereignty in Uganda?

18. What have been UNHCR major successes in the protection of IDPs in Pader district

19. Above all do you think UNHCR is living up to its imposed mandate of protecting IDPs in situation of conflict?

Filename: Buzoya Final Research Report - Updated Version
Directory: C:\Documents and Settings\a0003825\My Documents
Template: C:\Documents and Settings\a0003825\Application
    Data\Microsoft\Templates\Normal.dotm
Title: Healthy Migrants or Health Migrants
Subject:
Author: user
Keywords:
Comments:
Creation Date: 10/19/2009 2:38:00 PM
Change Number: 2
Last Saved On: 10/19/2009 2:38:00 PM
Last Saved By: a0003017
Total Editing Time: 6 Minutes
Last Printed On: 10/29/2009 2:52:00 PM
As of Last Complete Printing
    Number of Pages: 90
    Number of Words: 32,221 (approx.)
    Number of Characters: 183,661 (approx.)