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THE PROTECTION OF SOCIO-ECONOMIC RIGHTS OF
UNACCOMPANIED REFUGEE CHILDREN UNDER HUMAN RIGHTS
LAW: A CASE STUDY OF UGANDA

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
OF THE AWARD OF DIPLOMA IN LAW

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Declaration

1, Agonodong Mangar, declare that the work presented in this research paper original. It has not been presented to any other university or institution where the work of other people has been, references have been provided. It is in this regard that I declare this work as original mine, and it is hereby presented in partial fulfillment of the requirement for the award of diploma in law

Signature: Agonodong Mangar

Date: 24/08/2009

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Date: 24/08/09

Dedication

I would like to dedicate this work to the true God, Lord of heaven and earth, king of kings and saviour of my soul. Everything I do, I do in his strength and to his glory. Also to the children who don't know the law, but need the protection of the law so desperately.

Acknowledgements

I would firstly like to acknowledge my family: Uncle Abel Magok; Dad, Mangar, Mom, Rial; you are the best family and best support a boy could ask for. I love you all so much. Thank you for everything, and thank you mom for your editing assistance. I would also like to thank Majok for being the best uncle I could ask for thank you for keeping me sane this year.

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LIST OF ABBREVIATIONS

ACWRC	African Charter on the Rights and Welfare of the Child
AMR	Accompanied Minor Refugee
CBW	Children Better Way
CRC	Convention on the Rights of the Child
IOM	International Office for Migration
MSF	Medicines Sans Frontiers
NCS	National Catholic Secretariat
NGO	Non-Governmental Organization
UMR	Unaccompanied Minor Refugee(s)
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
WFP	World Food Programme

CHAPTER ONE

INTRODUCTION

1.1 Background To Study

According to the office of the UNHCR the world's refugees¹ problem is one of the most complicated issues before the world community today². In Africa, both internal and external conflicts, as well as factors such as poverty and environmental disasters, have led to a widespread phenomenon of refugees in numerous countries on the continent. According to several estimates, there are millions of refugees in Africa who are vulnerable to abuse and who therefore need to be protected in order to ensure that their human rights are not violated. Certain groups of refugees, most particularly children, require special protection as a consequence of their exceptional vulnerability³. More than half the world's refugees are children and some of these child refugees are unaccompanied minors⁴. Unaccompanied minor refugees (UMR) require special protection because of their personal situation and their immediate need for nurturing and care. They lack the basic protection provided by parents and families. Children depend upon adults to assume that role, a third party must step in to address the child's developmental needs, or the child's special vulnerability may be exploited. According to Ressler et al, "unless special assistance is provided, unaccompanied children are dependent on the chance charity of others, which can fall short of even minimal care and protection"⁵.

Refugees are entitled to all the rights and freedoms contained in international human rights instruments, as well as to protections provided for in guidelines, convention and policies which specifically address the problem of child refugees⁶. There is however concern that child refugees, particularly UMR, are abused and exploited as result of insufficient protections, and that existing protection are not properly implemented and enforced. In South Africa there have recently been allegations in the news of abuse of child refugees in refugee reception offices as well as at Lindela, a detention centre for illegal immigrants in Gauteng. Such allegations prompted an interest in this particular topic.

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¹ For the purposes of this study the term "refugees" also refers to asylum seekers and, to the extent applicable, illegal immigrants.

² <http://www.unhcr.ch/html/menu6/2fs20.htm> (accessed 02 August 2009).

³ C Nicholson 'A first call on available resources for child refugees in South Africa' (2005) 38 *1 De Jure* 71

⁴ Nicholson (n 3 above) 72

⁵ EM Ressler et al *Unaccompanied children: care and protection in wars, natural disasters, and refugee movements* (1988)4

⁶ Article 3(1), 20 and 22 CRC and Article 4 and 23 ACRWC. 2

Unaccompanied children as well', It is clear that is a concern which is relevant now, and it will continue to be relevant. Ressler et al state that

no attempt has been made to document the number of unaccompanied children in present-day emergencies, but on the basis of scattered information available, it is safe to say the total is very likely in the range of hundreds of thousands of children.

The case of Uganda is used as it offers a good refugee situation, with recent influx of refugees from the neighboring countries such as south Sudan, Rwanda, Democratic republic of Congo and Somalia with different economics and capacities.

1.4 Research Question

This study will pose the following questions

- a. What type of protection does international, regional and domestic law offer to UMR?
- b. Are these gaps in the international legal system which need to be filled in order to provide UMR with greater protection and support?
- c. Are there these protections implemented in the field?
- d. What are the obstacles to implement (legal and otherwise)
- e. How can these obstacles possibly be remedied?

1.5 Research Methodology

The research conducted for this study is socio-legal in nature, as the study examines the relevant law but also the impact and implementation of that law in society. The study requires desk research for researching the international law standard on UMR, and what human rights protections it offers for these children. In addition, research is done through 'email interview' with NGO's operating in the area of UMR in Uganda. This study requires non-participative observance of the treatment of UMR at refugee camps in Northern, Eastern and western Uganda, and interview subjects remain anonymous, and are referenced according to the name of their organization and date of the interview.

⁰Ressler et al (n 5 above) 12.

³Made the investigations carried out and recorded in chapter three a main source of information. It is also important to note here that this paper does not address the plight of urban UMR: it focuses on UMR in camps (in Uganda) and in ad-hoc sites and rural areas.

1.8 definitions

unaccompanied minors are children (as defined in article 1 of the CRC)¹⁴ who have been separated from both parents, as well as from other adults who have a legal or customary duty to care for the child¹⁵. This definition includes minors who are with minor siblings but who, as a group, are unsupported by any adults responsible for them, as well as minors who are with informal foster families¹⁶. The term UMR must be distinguished from the term 'separated children', which refers to children who have been separated from both parents but may be accompanied by other relatives.¹⁷

1.9 overview of chapters

The first chapter sets out the context of the research question, and briefly reviews the methodology used in investigating the research question. It also covers an overview of the existing relevant literature, and sets out the limitation of the study. In addition, Chapter one includes the necessary definitions. Chapter two is a study of the relevant international law, including 'hard' law and 'soft' law. This chapter establishes the standards for the treatment of UMR. The third chapter sets out the results of a practical investigation into the treatment and protection of UMR in Uganda. It is based on information received from interviews, questionnaires, desk research and non-participative observance of UMR. This chapter establishes how UMR are treated in reality, in relation to their socio-economic rights. Chapter four addresses the obstacle which prevent the full implementation of the standards set out in chapter two this chapter highlights specific obstacles which need to be addressed in order to sufficiently realize the socio-economic rights of UMR. Finally, Chapter Five summarizes the findings of the study, provides concluding remarks and sets out the recommendation to overcome the obstacles to implement.⁴

¹¹ see for example GS Goodwin-Gill (n 8 above). 4

¹² R Fernhout 'Asylum-seeking children: how to implement their right to family life' in Dock, J, van Loon, H and Vlaardingerbrock, P (eds) (1996) Children on the move: how to implement their right to family life 113.

¹³ Nicholson (n 3 above) 70.5

¹⁴ for the purpose of the present Convention, a child means every human being the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'

¹⁵ General Comment No.6 (2005) committee on the rights of the child 'Treatment of unaccompanied and separated children outside their country of origin (Para 7); <http://www.ccrweb.ca/uam.htm>(assessed 28 July 2009)

¹⁶ <http://www.unhcr.org/excom/EXCOM/43bce482.pdf> (accessed 12 July 2009)

¹⁷ <http://www.icrc.org/Web/Eng?siteeng0.nsf/html/64DJ58> (accessed 02 August 2009)

Refugee children, or to refugee generally, in comparison. Africa has a regional instrument focusing on the rights of refugees, which will be discussed below.

2.2.1 Convention on the rights of the Child (CRC).

The CRC is an international human rights instrument which entered into force in September 1989, and which sets the most international standards concerning children. Uganda has ratified this instrument. Although it is not specifically a refugee treaty, its provisions directly affect and apply to refugee children, as the provisions of the CRC are granted to all persons under the age of 18 (article 1).²² Article 2 protects children against all forms of discrimination, and this includes an obligation on governments to provide the same standards of care to all children within their jurisdiction.²³ Any child within a State's jurisdiction thus holds all CRC rights without regards to citizenship, immigration status or any other status. Refugee children are entitled to all the rights provided for in the CRC.²⁴ In fact, according to Steinbeck, its terms now constitute frame of reference for actions concerning refugee children'.²⁵

The standards set by the CRC are comprehensive as they cover most aspects of a child's life. Although the realization of some social welfare rights, such as health, education and an adequate standard of living. Is subject to a State's financial capability, the no-discrimination clause in the CRC ensure that whatever benefits are given to children who are citizens of a State must also be given to children who are refugees in the territory of the State.²⁶ the 'near – universal ratification'²⁷ of the CRC has ensured that CRC standards have been agreed to and accepted by most countries of the world. The universality of the instrument is demonstrated by the fact that the UNHCR applies the standards of the CRC as Guiding Principles.²⁸ It is important to note that 'by ratifying the CRC, governments undertake to put in place systems to protect children... (who) are separated from parents or caregivers'.²⁹

The socio – economic rights of refugee children are protected under various articles of the CRC. Article 6 grants every child the inherent right to live, and obliges states to ensure the survival and development of the inherent right to live, and obliges states to ensure the survival and development of the child to the maximum extent possible Article 24 recognizes the right to the

²²<http://216.239.59.104/search?q=cache:SzafmDv6AJ:www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.d%3Ffb1%3D+PROTECTION%26id%3D3b84c6c67+Refugee-Children:+Guidelines+on+Protection+and+Care&hl=en&clnk&cd=1&gl=gh>(accessed 02 August 2009).

²³[http://64.233.183.104/search?q=cache:MdSYBD9a1q1:www.savethechildren.net/arc/files/c_sepchil.pdf+Action+for+the+Rights+of+Children+\(ARC\)+Separates+Children+%E2%80%93+December+2004+Foundations.&hl=en&ct=clnk&cd=2&gl=gh](http://64.233.183.104/search?q=cache:MdSYBD9a1q1:www.savethechildren.net/arc/files/c_sepchil.pdf+Action+for+the+Rights+of+Children+(ARC)+Separates+Children+%E2%80%93+December+2004+Foundations.&hl=en&ct=clnk&cd=2&gl=gh)(accessed 14 July 2009).

²⁴ (n 22 above).

²⁵ DJ Steinbeck 'Unaccompanied Refugee Children in Host country foster families' (1996) 81 /2 International Journal of Refugee Law 6.

²⁶ (n 22 above).

²⁷ (n 22 above).

²⁸ 'In all actions taken concerning refugee children, the child, in particular his or her best interests, are to be given primary consideration' para 26 (a).

²⁹ www.savethechildren.net/arc/files/c_sepchil.pdf(accessed 2 July 2009).

Education.³⁴ which obliges states to provide free primary education, and in article 14 it provides for the best attainable state of health and for health services. Article 23, which applies directly to refugee children, requires that states co-operate with existing international organizations in their efforts to protect and assist the child. Article 25 applies to children who have been separated from their parents, and it states that such children are to be provided with special care and assistance.

2.2 International And Regional Refugee Law.

2.3.1 1951 UN Refugee Convention & 1967 Protocol

Uganda acceded to the Convention at independence and to the Protocol thereafter. In these two documents no distinction is made between adults and children with regard to socio – economic rights. Article 22 of the Convention does however set standards which are of special importance to children. It states that refugees must receive the ‘same treatment’ as nationals in primary education, and treatment at least as favourable as that given to non-refugee aliens in secondary education.

³⁴ Article 11.10

Chapter 5 of the Guidelines deals with health and nutrition. It sets out the standards for the quantity of water and quality of shelter and sanitation which should be provided per person. It also requires that refugee children receive appropriate food to ensure nutritional adequacy, acceptability and palatability. The Guidelines state that children must have access to the essential service of a health system including, where necessary, supplementary health mechanisms to the host country's national health services, established specifically for refugee populations.

2.4.2 UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum.

According to section 5(19) of these Guidelines, which were created in 1997, accurate statistics on unaccompanied children should be kept and updated periodically for dissemination amongst relevant agencies and authorities. Section 7(1) of the Guidelines states that all children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection. Such care includes accommodation in foster homes or special reception centers, where the children are under regular supervision and their well-being is assessed,⁴⁰ Such care also includes access to healthcare. Section 7(11) of the Guidelines reiterates the duty that is on states to provide rehabilitative services to children where necessary, to facilitate recovery and reintegration, and to provide culturally – appropriate mental healthcare and counseling. In addition, the Guidelines state that every child should have access to education in their asylum country.⁴¹

2.5 Inter-agency Guiding Principles on Unaccompanied and Separated children

The head of the Central Tracing Agency and protection Unit of the ICRC has stated that the 'range and complexity of situations in which children become ...unaccompanied, and the diverse needs of the children themselves, means that no single organization can hope to solve the problem alone'.⁴² For this reason, the Inter-agency working Group on Unaccompanied and Separated Children was initiated in 1995, bringing together the ICRC, UNHCR, UNICEF, the International Rescue Committee, Save the Children / UK and World Vision International. The Inter-agency Guiding Principles on Unaccompanied and Separated Children were a product of this working group and they are intended to guide future action for national, international and non – governmental organizations, as well as for

⁹ (n 22 above).

⁰s7(5).

¹s7(12).

²(n 17 above).

governments in their efforts to meet their obligations, and for donors in making decisions on "funding"⁴³

The Principles seek to ensure that all actions and decisions taken in respect of separated and

to nutrition, clothing and housing'. In addition, the Comment again makes reference to UN agencies and other organizations requiring states to accept and facilitate their assistance. Finally, the General Comment in paragraph 46 refers to the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health, which reflects articles 23, 24 and 39 of the CRC. It provides that states are obligated to ensure that unaccompanied and separated children have the same access to healthcare as national children.

27. General Assembly Resolution 51 / 77

In this resolution on the rights of the child passed in 1996, the General Assembly made specific reference to the plight of UMR and urged that coordinated efforts be made by all agencies to address their specific need as 'the (CRC) itself calls for co-operation in protection, care and tracing of unaccompanied minors, and the Committee on the Rights of the Child attaches great importance to (their) situation'. The resolution also calls on states and United Nations bodies, as well as other organizations, to ensure the continual monitoring of the care arrangements of UMR.⁴⁶

2.8 Conclusion

From the foregoing discussion, it may be concluded that both international and regional African law require the provision of special protection and care of UMR. The UNHCR Guidelines reflect these legal standards, as they required treatment of UMR in line with the standards set in the international instruments. UMR must have access to education, particularly primary education, as well as healthcare, shelter, water and food. They must receive special attention, and their best interests must at all times be the primary consideration in any decision affecting their well-being. What is unclear, however, is whether these legal standards are being met and whether UMR are, in fact, receiving the special care and protection which the law demands.

¹⁶ (n 16 above). 15

education, healthcare, food and water and sanitation and shelter in order to address the realization of the socio – economic rights of UMR.

3.2 The Uganda scenario

3.2.1 Introduction

Since Uganda was recently liberated by the NRA/M in 1986 it has become the destination for tens of thousands of migrants and refugees from across the African continent'.⁴⁹ Uganda hold hope for many African refugees – hope of political and economic stability, and the opportunity of an improved standard of living. In fact, according to the IOM there are more than 125,000 registered refugees in Uganda.⁵⁰ Yet many refugees are faced with maltreatment at the hands of the police and South African citizens. Many refugees advocates 'frequently criticize the police and the Ministry of Internal Affairs for their treatment of refugees... the data indicate that such complaints are justified'.

3.2.2 Education

In the words of a teenage refugee child from Rwanda living in Uganda, 'we find it very hard to experience and enjoy our childhood ...we don't access easily to public education facilities...this in most cases leads to illiteracy amongst refugee children'.⁵¹ Legally, child refugees living in Uganda are entitled to an education, however many do not gain access to state schools. 35% of children who enter Uganda as refugees do not attend school, due to the problem of school fees, schools being under resourced, and the language in which the school operates.⁵² At refugee sites established in Western Uganda, children have had no access to education. In Kampala district, there are 110 children who have been denied access to state schools. They are currently enrolled at as school which runs in the afternoons for refugee children who otherwise would have no education at all. The school is run by a group of civil society organizations.

In the Child Protection Rapid Assessment for UMR conducted in 2008, it was established that lack of access to education was a recurrent issue. Apparently refugee children were asked to provide documents, such as birth certificates, as a pre-condition to their enrolment, documents which UMR almost never had. Even when UMR do enroll, school drop-out rates high, partly because of language barriers but mainly because, in the absence of adequate care structures, unaccompanied.

⁴⁹ 19 Forced Migration Review (2004) 44.

⁵⁰ http://www.polity.org.za/article.php?a_id=134092 (accessed 14 July 2009).

⁵⁴ K Kadende 'The Plight of the Refugee Child' (2007) World Refugee Day Speech.

⁵² [education/school_offers_hope_to_child_refugees.html](http://www.education/school_offers_hope_to_child_refugees.html)(accessed 15 September 2008).

through its feeding scheme that covers 6 Drop –in Centres and 3 feeding points. Although there are certainly projects in place to feed UMR, it must be noted that they are all run all civil society and faith based organizations and not by the Ugandan government per the UNHCR and that they are not sufficient to address the nutrition needs of all the UMR living the camps.

3.25 Sanitation and shelter: There is a chronic shelter shortage for refugees in Uganda, both for UMR entering the country and UMR displaced due to the conflict in Eastern DRC. Regarding children entering the country, the 2008 Child Protection Rapid Assessment noted that lack of safe and shelter available for unaccompanied children.

3.3 Conclusion

‘This section concludes with brief observations. Firstly, in Uganda, UMR fleeing the instability in DRC, as well as refugees who have recently become displaced within the country, do not receive adequate attention. Their access to education is severely hampered, and many of them battle to access food or appropriate shelter. Their socio-economic rights are certainly not being fully realized: an official from a NGO operating in the camp stated that the problem of access for UMR to their socio- economic rights is a large problem and the realization of their rights ‘all depends on the resources’. It is clear that there are individuals, organizations and government officials who are attempting to address the situation of UMR but, despite these efforts, access to food, water, education, healthcare and adequate sanitation is still a large problem for these children. It is therefore necessary to identify the obstacles which inhibit the full protection of the socio-economic rights of UMR, and to address the reasons for the gaps in their protection.

and payment of school fees, registration fees and uniforms are not conditions for registration to public schools rights of children, and provides that 'every child has the right to basic nutrition, shelter, basic healthcare service and social serves'. Uganda government is under a constitutional duty to respect, promote, protect and fulfil the rights contained in this Bill of Rights.⁵⁹ there is also specific legislation in Uganda which regulates the treatment of refugees. The refugees Act, (2000), outline the rights and obligations of refugees and asylum seekers, and include special provisions for unaccompanied children. Both the Constitution and the Refugees Act guarantee and recognize the right of 'everyone' to access healthcare; refugees, asylum seekers and undocumented persons are therefore equally protected. The Children's Act, of 2000, is a far-reaching and progressive piece of legislation which requires that children regarded as in need of protection and care (which incorporates UMR through the provision 'any child who has been abandoned or orphaned and is without visible means of support'). Finally, there is currently a structure being formed under the new Children's Act which will serve as a monitoring body for service delivery to children in Uganda.

it is also important when considering domestic law to have regard to pertinent case law. In the case of *Center for child law v Minister of Home Affairs*,⁶⁰ the Court declared that all unaccompanied foreign children found in need of care should be dealt with in accordance with the provisions of the child Care Act (which has been replace by the Children's Act) , and the South African government is directly responsible for the socio-economic and education needs of unaccompanied foreign children in South Africa, including the needs of refugee children. In the case of *Bishogo v The Minister of Social Development*,⁶¹ it was held that there should not be a bar on refugees accessing social services, whether the bar is direct or indirect. From the foregoing, it is evident that the legal framework in Uganda adequately addresses the plight of UMR. Yet the law is not always adequately implemented. In a 2000 report commissioned by the UNHCR on the development of health and welfare policies for refugees in Uganda, there was concern that there is a lack of uniformity amongst government departments in dealing with UMR.

The legal framework in Uganda for addressing UMR is extensive; yet the poor implementation of these laws is an obstacle to the realization of the rights of UMR. It must be noted that there are policies in Uganda which govern the relationship between the UNHCR and the Ugandan government.

⁵⁹ Chapter Four of the Constitution of the Republic of Uganda 1995

⁶⁰ 20056 SA 50 (T). 32

⁶¹ Unreported Transvaal provincial Division case number 9841 / 2005.

UNHCR...is supposed to ensure the provision of water sanitation, and healthcare electricity and security, sports and entertainment, and all amenities that would enable refugees to live with dignity and safety in the country of asylum...unfortunately, the adequate funding and resources make the current situation of programs of assistance to the refugee population challenging'.⁶⁶ it is interesting to note that in discussions with various stakeholders, many concluded that the UNHCR is not spending enough of their money: that they have the necessary funds but do not spend them wisely.

4.4 Capacity parties involved

4.4.1 Government

Sovereign states have primary jurisdiction over UMR in their territory. Governments in host countries are therefore under a duty to ensure that UMR in their jurisdiction are protected and treated according to international standards. In many countries, host governments fulfil this obligation by mandating the Department of Social Welfare (or equivalent) to care for UMR. For example, in Uganda there is a Ministry of Disaster Preparedness catering for the needs of UMR.⁶⁷ This branch has assisted UMR by formalizing informal fostering arrangements which existed prior to social Welfare's involvement, and they have, in conjunction with the UNHCR, set up a Fostering Committee to arrange formal fostering for the remaining UMR.⁶⁸ Yet the work of the Ministry of Disaster Preparedness alone is not sufficient. Prompt responses to refugee situations from governments are vital yet, in Uganda due to lack of resources departments are usually established many years after the camp itself was established.

A host government cannot adequately address the needs of UMR alone. According to Ressler et al, 'national authorities may fulfil their duty by inviting an international or voluntary organization to assume full or partial responsibility for the care, protection and placement of the children. He also states that.

There may be so many other demands on national resources and so few resources to meet those demands that authorities find it impossible to identify and care for children left unaccompanied by the emergency .. International or voluntary organizations can help meet all of these needs and many states have used such outside assistance in the years since World War I⁶⁹.

⁶⁶ Ressler et al (n 5 above)

⁶⁷ See Minister ecweru's statement in New Vision Newspaper on Refugee Day celebrations at Kampala Sheraton Hotel

⁶⁸ (n 66 above)

⁶⁹ Ressler et al (n 5 above)

Determination Committee which was revised in 2007. it deals with issues concerning children , and involves interviewing UMR and making recommendations. It is possible, however, for this Committee to lose sight of UMR when they are placed in fostering families. In addition, there are no child Protection Offices who work from the Kampala branch of UNHCR. The UNHCR has not established an orphanage on the camp, and has no direct project with unaccompanied children. A social welfare officer working in the camp has recommended that the UNHCR should be more streamlined with the government of Uganda, as together they could better support UMR and their foster families.

4.4.3 NGO's

Co-operation between parties in the response to refugee crises is crucial, and found that NGO's play a large and important role in such responses. Indeed, 'protection concerns reveal a commonality of interest; effective protection demands a purposeful degree of co-operation, by no means limited to states'. Although there is little regulation or oversight of their participation in these responses, the research for this study revealed that NGO's provide UMR with tangible assistance and support. Such assistance includes feeding programmes, scholarships to attend schools and temporary places of shelter. In fact, the UNHCR recognizes the importance of an NGO presence in refugee crises, and recognizes the need for it to solicit support from these originations. In Uganda, NGO's that wish to work in refugee camps inform the UNHCR of their goal, and they are sometimes informally monitored by the UNHCR. The nature of NGO's which work with UMR range from faith-based organization run by refugees themselves which focus specifically on UMR, such as CBW; as well as organizations run by international philanthropists, such as Point Hope. An NGO presence is not only vital in emergency refuges situations, but also in long term protection of and assistance to refugee settlements, and a limited NGO presence reduced the assistance and protection offered to UMR.

In addition, NGO's operate with little external oversight or regulation. Apart from informal monitoring from the UNHCR, the work of NGO's seems to be largely independent, particularly in Uganda where personal observation demonstrated that NGO's operate with little oversight. This can create problems where the operations of such organizations are not in the best interests of the UMR. A potential obstacle thus highlighted during this study is the lack of oversight of programmes of NGO's which work with UMR, and the negative affects this can have on UMR hen the programmes are disadvantageous to the children.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Summary of findings

This study set out to investigate the treatment of UMR in Uganda by examining their access to social-economic rights such as education, shelter, food and water and healthcare. The results of this investigation show that UMR are among the most vulnerable in any refugee situation, and that their socio-economic rights are not being fully realized in either country, for various reasons. This study also analyzed the obstacles to the full implementation of the rights of UMR. Firstly, it was found that existing international conventions do not adequately address the plight of UMR and there is, therefore, a critical need to fill this gap in the protection of the socio-economic rights of UMR. This can be achieved by creating an international convention which focuses on the situation of child refugees, including UMR and to which state parties must comply in their treatment of UMR within their territories. It was also found that domestic law and policies in Uganda do not sufficiently provide for national mechanisms for the regulation of the treatment of UMR. This is due to poor implementation of the existing laws and a lack of policies on the matter and a lack of legislation or policy framework regarding child refugees in general, and UMR in particular. This can be remedied by the adoption of policies, and amendment of legislation, to allow for proper protection of the rights of UMR. In addition, the study found that the interested parties operating in refugee situations (the UNHCR, governments and NGO's) cannot achieve full protection of UMR when acting alone, as individually they lack the capacity or resources to do so. This can be remedied by co-operation between states and between the interested parties, as co-operation is vital for full and far-reaching protection of UMR. It can also be achieved by initiating changes within the UNHCR in order to resolve the capacity-related inadequacies of the organization.

5.2 Conclusion

This study focused on the practical treatment which UMR receive in Uganda and whether this treatment is in accordance with international and regional legal standards set out in human rights instruments, refugee instruments and UNHCR Guidelines and Principles. As a study of the relevant international and domestic law revealed, there is certainly a gap between the rights provided for UMR in Uganda, and the realization of these socio-economic rights guaranteed in the law. This study has proposed reasons for the lack of implementation of the rights, including financial reasons, and inadequacies in both the law and the implementation of the law. The study also proposes in what follows recommendations on how these obstacles to implementation can be remedied, including a new international instrument and the possibility of a sub-body within the UNHCR which focuses on the plight of refugee children, including UMR. Whether or not these particular recommendations are implemented, it is clear that some action must be taken in order to protect the rights

children in the provision of suitable care'. This study endorses this position, and recommends that state domesticate international standards of protection either contained in a new international instrument or in the UNHCR Guidelines and Inter-Agency Guiding Principles, through domestic legislation or policy. In addition, it is recommended that priority be given in budget allocation to the realization of the socio-economic rights of refugee children, particularly UMR.

In the case of South Africa, it is recommended that the country should formulate clear and detailed policy guidelines, the implementation of which could be monitored by the national Human Rights Commission. A human advocate in South Africa has recommended that the country develop a comprehensive policy framework to protect and assist UMR. This recommendation was made in response to the recent case of the Donkakim family, in which the court found that 'the procedures to determine the asylum applications of unaccompanied children in South Africa were inadequate and fell short of international guidelines'. This study endorses this recommendation. Policies which are implemented should recommend an interdepartmental policy initiative which deals specifically with the access of child refugees to health and welfare service. It is imperative that such policies require the dissemination of the legal status of UMR in a country, for example to the police services, medical officers, and educators in the country. In addition, it is recommended that such policies address the activities of NGO's and regulate their assistance of UMR. In the workshop summary of a recent strategy workshop on vulnerable children in South Africa, it was recommended that the role of NGO's working with vulnerable children be acknowledged, and this study proposes that the role of NGO's should not only be acknowledged, but also addressed, in any policy framework.

3.3 Changes in UNHCR

The UNHCR is responsible for UMR, as such responsibility falls directly under its protective mandate. A possible solution to the inadequacies of the UNHCR in addressing the plight of child refugees is the creation of a sub-committee or body within the UNHCR which focuses solely on the plight of refugee children, including UMR. It is acknowledged that creating such a body may be discriminatory in that such bodies do not exist for other vulnerable groups of refugees, such as women or the disabled. It is, however, recommended that the plight of children has for too long gone unnoticed and unattended, and drastic action is required. There may be need in the future to create sub-bodies which focus on other vulnerable groups, but the plight of UMR, and other refugee children, requires immediate and far-reaching action.

BIBLIOGRAPHY

Books

- Chimni, BS (Ed) (2000) *International Refugee Law: a reader* New Delhi: Sage publications Ltd.
- Goodwin-Gill, GS (1996) *The refugee in international law* 2nd ed Oxford: Clarendon Paperbacks
- Heys, C & Killander M (Eds) (2007) *Compendium of key human rights documents of the African Union* 3rd ed Pretoria: Pretoria University Law Press.
- Miserez, D (Ed) 1988 *Refugees – the trauma of exile* Dordrecht: Martinus Nijhoff Publishers
- Ressler, EM Boothby N & Steinbock, Dj (1998) *Unaccompanied children: care and protection in wars natural disasters, and refugee movements* Oxford: Oxford University Press.

Chapters in books

- Fernhour, R 'Asylum-seeking children: how to implement their right to family life' in Doek, J; van Loon, H & Vlaardingerbroek, P (Ed) 1996 *Children on the move : how to implemt their right to family life*. The Hague: Martinus Nijhoff Publishers.
- Goodwin-Gill,GS Protecting the human rights of refugee children: some legal and institutional possibilities in Doek, J: van Loon, H & Vlaardingerbroek, P (Eds) (1996) *Children on the move how to implement their right to family life* The Hague: Martinus Nijhoff Publishers.

Journal articles

- Cohen, CP The rights of the child: implications for change in the care protection of refugee children' (1991) 3 4 *International Journal of Refugee Law* 677.
- Dulleh, A 'Child right abuses at Buduburam' (2004) 1 4 *ExileNews* 7
- Dulleh, A '4000 children out of school at Buduburam' (2004) 1 6 *ExileNews* 1 .
- European Council on Refugees and Exiles 'Position on refugee children' (1997) 9 1 *international Journal of Refugees Law* 74.
- Landau, L & Jacobsen, K 'Refugees in the new Johannesburg' (2004) 19 *Forced Migration Review* 44
- Nicholson, C'A first call on available resources for child refugees in South Africa' (2005) 38 I *De Jure* 70
- Nyan, LS Teacher volunteers for Buduburam' (2004) 1 4 *ExileNews* 1 .
- Steinbock, DJ Unaccompanied refugee children in host country foster families' (1996) 8 ½ *International Journal of Refugee Law* 6.

Newspaper Articles

- How Liberians Live on the Camp at Buduburam in Ghana' *The Perspective* 14 June 2004
- 'South Africa legal system fails refugee children' *Sunday Independent* 26 June 2005.
- 'Children push wheelbarrows to survive in Buduburam' *The Vision* 21 May 2007
- 'Survival of the Fittest: Pushing Wheelbarrows to live in Buduburam' *The Vision* 4 August 2007.

International and regional instruments

- Africa Charter on the Rights and Welfare of the Child 1990
- American Convention on Human Rights 1978
- Constitutive Act of the African Union 2000
- Convention on the Rights of the Child 1989

ANNEXURE 1: INTERVIEW CONSENT FORM

*This form was given to each interviewee before the interview was conducted. As the interviewees remain anonymous, it is not possible to attach the consent forms of the interviewees to his study. However, these forms have been filled out by each interviewee, and they remain with the researcher, in accordance with the rules of Kampala International University, Uganda. The results of these interviews have been embodied in this study.

Dear Participant

Title of Research Paper **THE PROTECTION OF SOCIO-ECONOMIC RIGHTS OF UNACCOMPANIED REFUGEE CHILDREN UNDER HUMAN RIGHTS LAW: A CASE STUDY OF UGANDA.**

You are invited to volunteer for a research study. This information document will help you decide if you would like to participate, before you agree to take part in this study you should fully understand what is involved. If you have any questions, which are not fully explained in this document, do not hesitate to ask the researcher. You should not agree to take part unless you are completely happy about all the procedures involved. This study is in accordance with the requirements of Diploma in Law of Kampala International University.

Participant's name: _____

Participant's signature: _____

I, _____, herewith confirm that the above participant has been informed fully about the nature and scope of the above study.

Investigator's name: _____

Investigator's signature: _____

Witness's name _____ Witness's signature _____

20. Is food provided culturally and socially acceptable, palatable and digestible? N
21. Are cooking fuel and utensils made available?
22. Have nutrition monitoring and surveillance systems been set up? Y
23. Is there evidence of any deficiency diseases among children, especially girls, or among Pregnant or lactating women? N
24. Is breast-feeding being promoted and the use of bottles discouraged? Y
25. Is the use of milk products being monitored and adhered to according to UNHCR policy? N
26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies?
N
27. Is there a need for training of nutrition staff in carrying out necessary interventions? Y
28. Is an epidemiological health surveillance system in place?
29. Is the appropriate Vitamin A prophylaxis being provided to protect children from Vitamin A deficiency and is a mechanism available for early detection of Vitamin A deficiency?
30. Are the health services meeting the health needs of children and adolescent?
31. Are additional female health professionals/or community health care workers required?
32. Are education and other measures being provided to prevent and control diseases?
33. Are counter-measures in place to address harmful traditional health practices affecting children and adolescents?

YES/NO

17. Does available shelter provide adequate protection for refugee children & their mothers?
N
18. Are the standards of space, privacy and freedom of movement adequate for parents to meet the developmental needs of their children and to raise them with dignity? N
19. Are children receiving adequate quantity and quality of food? N
20. Is food provided culturally and socially acceptable palatable and digestible? Y
21. Are cooking fuel and utensils made available? N
22. have nutrition monitoring and surveillance systems been set up? N
23. Is there evidence of any deficiency disease among children, especially girls, or among pregnant or lactating women ? N
24. Is breast-feeding being promoted and the use of bottles discouraged? Y
25. Is the use of milk products being monitored and adhered to according to UNHCR policy?
N
26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies?
N
27. Is there a need for training of nutrition staff in carrying out necessary interventions? Y
28. Is an epidemiological health surveillance system in place? N
In order children, for those up to 12 years of age)? N
29. Is the appropriate Vitamin A prophylaxis being provided to protect children from Vitamin A deficiency and is a mechanism available for early detection of Vitamin A deficiency? N.
30. Are the health services meeting the health needs of children and adolescents? N
31. Are additional female health professionals / or community health care workers required?
Y
32. Are education and other measures being provided to prevent and control disease? N
33. Are counter-measures in place to address harmful traditional health practices affecting children and adolescents? N

YES/NO

26. Are appropriate measures being taken to prevent and reduce micro-nutrient deficiencies?
27. Is there a need for training of nutrition staff in carrying out necessary interventions?
28. Is an epidemiological health surveillance system in place?
29. Is the appropriate Vitamin A prophylaxis being provided to protect children from vitamin?
A deficiency and is a mechanism available for early detection of Vitamin A deficiency?
30. Are the health services meeting the health needs of children and adolescents?
31. Are additional female health professionals / or community health care workers required?
32. Are education and other measures being provide to prevent and control diseases?
33. Are counter-measures in place to address harmful traditional health practices affecting
children and adolescents?

YES/NO

QUESTIONNAIRES : Volunteer at NGO

1. Do children play a role in collecting water ? Y
2. Is water collected from a protected source? N
3. Is adequate water available for bathing and washing? N
4. Do children play a role in collecting water? Y
5. Are additional measures required to improve availability of potable water particularly for
young children? Y
6. Is the sanitation programe accompanied by a health education programme? N
7. Is the site safe from flooding? N
8. Have clinics and school been provided with sanitary facilities? N
9. Is the general cleanliness of the camp satisfactory? N
10. Is there adequate drainage around water points (particularly around tapstands and / or
washbasins)? N
11. Is soap distribution organized on a regular basis? N
12. Have appropriate measures for solid waste collection and disposal been established? N
13. Have women been consulted and their cultural practices respected in the design and
Location of latrines?
14. Have latrine been constructed. Located and lighted to ensure their safety and usability by
Children and their mothers? N