

**AN EXAMINATION ON PROTECTION OF RIGHTS OF REFUGEE  
CHILDREN IN NAKIVALE CAMP**

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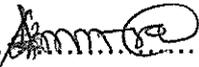
**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN  
PARTIAL FULFILMENT OF THE REQUIREMENT FOR  
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## DECLARATION

I Akampurira Jude declare that the information given in this report is a product of my experience, it has not been presented for any degree or any other academic award in any University or Institution of learning.

Akampurira Jude

Signature.....

Date...07-06-2018.....

## APPROVAL

This is to certify that this research report has been submitted to the University Board of examiners with my approval as the candidate's University Supervisor.

Signature:.......... Date..........

**Ms. NYAPIDI BRENDA**

## **DEDICATION**

I dedicate this dissertation to my lovely family and friends for their great support during my study at Kampala International University. Especially those who were very instrumental in financing my studies in all ways, my lovely family inspired me and supported me morally and spiritually.

## **ACKNOWLEDGEMENT**

First I would like to thank the Almighty God for the gift of life, blessings and wisdom given to me which has enabled me accomplish my education to this level.

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May God bless you all.

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## CHAPTER ONE

### 1.0 INTRODUCTION

More than half of the world's refugees are children. In some refugee situations, children constitute as much as 65% of the displaced population.<sup>1</sup> Each day another 5000 children become Refugees; one in every 230 person in the world is a child who has been forced to flee his or her own home.<sup>2</sup> Children under 18 years of age constitute 56% of all refugees in Africa.<sup>3</sup>

The preamble of the Convention on the Right of the Child (CRC) recognizes that all minors are entitled to special care and protection and assistance. Article 3 of CRC provides that in all actions concerning children the best interest of the child shall be a primary consideration. Therefore refugee children are entitled to be treated as individuals with peculiar needs such as food and nutrition and not as part of a large group of refugees.

Refugee children face far greater dangers to their health, safety and wellbeing than the average children under normal circumstances. The sudden and violent onset of emergencies, the disruption of families and community structures as well as acute shortage of resources with which refugees confronted, deeply affects the physical and psychological wellbeing of refugee children.<sup>4</sup> It is a dehumanizing situation for infants and young children who are often victims of

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<sup>1</sup> UNHCR, realizing the rights of the young refugees. The state of the world's refugee in search of a solution. 1995.

<sup>2</sup> UNHCR. Global Appeal Report. Refugee Children and Adolescent funding and donor relation 1999.P.1

<sup>3</sup> UNHCR Refugee Children in Africa, Trend and pattern in the population in Africa below the age of 18 years.2000

<sup>4</sup> UNHCR, The Refugee Children guidelines to protection and care, Geneva, 1994, P.7

violence, starvation and malnutrition, which accompany population displacement and refugee out flow.

The aftermath of emergencies demand solutions. The separation of families and familiar structure continue to affect adversary refugee children of all ages. There is need for the government and non-governmental organizations to include children refugee rights such as a right to food in their welfare programmes.

### **1.1 Back ground of the study.**

Refugee protection regime is only a recent development in the world refugees have existed throughout history<sup>5</sup> and probably from the time human kind merged into organized communities.<sup>6</sup> an example of these were the Israelite refugees in Egypt and the exodus narrative where they are finally retracted but God and trekked back and forth until when they settled in the promised land of Canaan as is the story in exodus chapter 1 of the bible.

The idea for providing refugees protection by both states and private charitable originations came the time of League of Nations 1921. This took place after the world war when the Russian revolution and the collapse of the Ottoman Empire produced mass movement of people including children in Europe and Asia.<sup>7</sup>

The League of Nations defined refugee in terms of specific group of people who were judged to be in danger if they returned to their home county. The league's first action on behalf of the refugees took place in 1921, when it created the

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<sup>5</sup> Hingorani R.C Humanitarian Law, Mohan Prilani New Delhi, 1991.

<sup>6</sup> Ginyera Pinycwa, Uganda and the problem of references, Makerere university press.1996

<sup>7</sup> Denis Richard, An illustrated History of Modern Europe 7<sup>th</sup> edn, 1789-1794, p300

position of the high commissioner for Russian refugees and elected Fr. Fridtjoy Nansen to fill it.<sup>8</sup>

The challenge further emerged after World War II when the free world, found itself encumbered with an estimated refugee population of 9 million people who were mostly of European origin.<sup>9</sup> Measures to protect refugees became more comprehensive as time went on uncovering wide range of issues such as health, regularization of refugee status, access to employment and protection against expulsion.

When the united nations replaced the league of nations in 1945, it established a new body "the international refugee organization (IRO)" the IRO's mandate was to protect existing refugee groups scattered though out Europe in the after math of world war II and its main objective was repatriation but the political build up to the cold war tilted the balance instead towards resettlement by providing shelter, food, medicine and clothes for those who had valid objection to return home. Such valid objection included persecutions because of race, religion or political opinion.<sup>10</sup> Within the frame work of United Nations, the allies agreed to create subliminally organization for dealing with relief and Rehabilitation of war torn Europe. By 1947 millions of lives were saved from famine, diseases, destruction and economic breakdown through resetting them.

The United Nations High Commission for Refugees (UNHCR) began work on 1<sup>st</sup> Jan 1951 for a three year period, originally to settle the 1.2 million European

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<sup>8</sup> Ibid p 294

<sup>9</sup> Harell Bond B.E, Imposing Aid emergency assistance to refugees oxford university press, 1986.

<sup>10</sup> Ibid

Refugees left homeless because of world war 11.<sup>11</sup> UNHCR was mandated to seek permanent solution for one problem of Refugees.<sup>12</sup>

In response to growing problem of refugees, this mandate was extended and UNHCR is now the lead agency in coordinating International action to protect refugees in all aspects such as health and is currently assisting approximately 22.3 million people worldwide including children<sup>13</sup>.

Since then, UNHCR has been addressing the specific needs of refugee children. In 1993 UNHCR adopted a policy on refugee children. The primary consideration in this is the health.

Rachel Harvey, children and armed conflict, a guide to international Humanitarian and human rights law situation of refugee children, which since then has become the guiding principle. In the following year, UNHCR published guidelines on the protection and care of children, which recognized that children need special care and assistance which upholds the rights of children stipulated in the 1989 convention on the rights of the child. This provides for the health and nutrition of children. The guidelines seek to combine the protection of children's rights such as health with addressing the needs of refugee children. Article 2.UNHCR statute adopted by Geneva Assembly 422(4) of Dec-1950.

According to Oxford advanced learners dictionary, **a refugee** is a person who has been forced to leave his or her country or even home for political or religious reasons or because there is war, shortage of food and others.

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<sup>11</sup> Rachael Harvey, Children and armed conflict, A guide International Humanitarian and Human Rights Law.

<sup>12</sup> Art. 2 UNHCR Statute Adopted by General Assembly 422(4) Dec 1950

<sup>13</sup> UNHCR website. The world of children at [glance.www.unhcr.ch/children](http://glance.www.unhcr.ch/children).

According to the 1951 convention, the term "**refugee** shall apply to any person, as a result of events before 1<sup>st</sup> January 1951 and owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..."

Article 1 (C), of the O.A.U convention of refugees has the same definition as the 1951 convention save for,

"As a result of events occurring before 1<sup>st</sup> Jan. 1951" it is further argued that every person who owing to external aggression, occupation, foreign domination, or extensive

Seriously disturbing public order in either part or the whole of his country or origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country or origin or nationality is also a refugee."

According to the hand work of UNHRC Geneva 1992 on procedures and criteria for determining refugee status, if the head of the family meets the criteria of definition, his dependants are normally granted refugee status according to the principle of family unit. Refugee children therefore include; those that came with their parents or other relatives, those that are unaccompanied from their country of origin as well as those that are born by parents during their status as refugees or have been resettled in refugee camps in their countries of origin.

Since according to UDHR every one has a right to nationality, refugees are partakers of this right too as well as any other rights that accrue thereto, as they are just as human as any other human being.

## **1.2 Statement of the problem**

The problem of this study is to examine why the law relating to the protection of refugee children's right to food as is envisaged in international instruments such as CRC and national instruments is not practically enforced in camps

## **1.3 Significance of the study**

Following the continuous influx of refugees in Nakivaale camp and their practicable impact on the children's rights which is likely to pose a big threat to the ecology, the researcher finds it significant to carry out a study on the violation of children's right to food in refugee camps. It is hoped that the study will expose the problems of refugees to the local authorities, policy makers, aid workers, and the government as a whole.

## **1.4 General objective**

The general objective of the study is to find out whether the existing legislation has out lived its usefulness in terms of guaranteeing maximum protection of the fundamental human rights especially children's right to food in refugee camps.

## **1.5 Specific objectives**

- i. To identify the causes of refugee inflow and discuss the right to food of children refugees.
- ii. To establish the problems surrounding the right to food in camps with a view to suggesting alternatives at policy.
- iii. To determine the causes and consequences due to the neglect of food rights especially in refugee camps.
- iv. To discover the attitude of people living in camps towards food and nutrition of their children.

- v. To identify and suggest better methods that can be adopted to enhance the law and improve its implementation in camps

### **1.6 Hypothesis**

- i. What could be the causes of violation of children right to food in refugee camps?
- ii. What is the historical factor that promoted the development of the right to food in Uganda?
- iii. Is the right to food absolute in Uganda? If yes, how and to what extent?
- iv. What is the comment on the standard of food facilities in refugee camps?

### **1.7 Scope of the study**

The subject scope of the study is on the rights of children to food in refugee camps.

The geographical scope of this study is Nakivaale refugee camp in Mbarara District, western Uganda which has a variety of nationalities such as Rwandese, Somalis, Ethiopians, Sudanese and the Nyamulenge. The researcher's main concern is on refugee children of ages between one to eighteen years old (1-18yrs).

The study will cover the period from 1989 to date. This period is so significant because it saw the clear realization of efforts of activists and organizations in the protection of refugee children's right to food.

## CHAPTER TWO

### 2.0 Literature Review

Protection of refugee children's right to food is fundamental in the world today for people in crisis and living in camps or settlements. The researcher reviewed as many sources as possible concerning refugees. The available material shows a deficiency on the writings on refugee children's right to food. Some of the literature to consider includes the following.

**Dr. Barbara Harrell Bond,**<sup>14</sup> the author of the article entitled "protection of children rights", discusses how refugees are one of the most serious problems to the world and how it is difficult to lessen the problem in the near future.

Further, she takes the issue of humanitarian aid to refugees and she basically talks about policy of refugees in camps or settlements and assisting them from there. This book assisted the researcher's understanding of camp life in Nakivaale Refugee camp. However the book would have been more important if the author had discussed the rights of the refugee children's right to food since she had carried out of the research in Uganda and witnessed the problems of refugee children.

**Guy Good Will Gill,**<sup>15</sup> writes about refugees in municipal law. He actually deals with refugee children in this book and he identifies them as a special category of persons that require attention from the International and national community. He concluded that, refugee law remains an incomplete legal regime of protection; imperfectly covering what ought to be a situation of expectation. He tackles refugees in municipal law practices, but on a general point of view. His book

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<sup>14</sup> Imposing and emergency assistance to refugees, Oxford University press, 1996

<sup>15</sup> The refugee in International law, 2<sup>ND</sup> Edition, Clarendo.Press, 1996.

gave the researchers an easy comprehension of refugee law and protection of refugee children's right to food in Nakivaale.

**Baingana Doreen**<sup>16</sup> broadly discusses the status of refugees but nowhere at all makes mention of children refugees leave alone their rights.

The paragraph 213 of the hand book on procedures and criteria of UNHCR General 1992 on producers and criteria for determining refugee status states that;

There is no special provision in the 1951 convention on refugees, on status of persons under age. The same definition of refugees applies to all individuals regardless of their age. This is the actual problem, the children in their own right need attention as they are entitled to the same rights as any other free child such as the right to belong to the family, food, shelter, citizenship and more others. Yet the situation in the camps on rights of refugees does not reflect the importance of observation of these rights. It is therefore vital that the children refugees in camps should be given the necessary attention.

**A.G.G Gingerer Pinycwa**,<sup>17</sup> discusses exhaustively the refugee problem including women refugees, but doesn't mention refugee children whose right to food is not adequately protected and who are more vulnerable. A gap therefore needs to be filled on the actual rights of the children refugees in the camps

**A Guideline on protection and care**,<sup>18</sup> talks about protection and care for refugee children and incorporates all rights of children set by the Convention on the Right of the Child. It gives guideline on the protection and care of refugee

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<sup>16</sup> The status of refugees under International law ,a dissertation of refugees

<sup>17</sup> Uganda and the problem of refugees Makerere University press 1996.

<sup>18</sup> UNHCR, the refugee children guidelines to protection and care, Geneva, 1994, P.7

children and in particular talks about the right food of refugee children. This book helped the researcher to understand the problems, which hinder refugee children to attain their right to food and ways to improve it by various stakeholders.

**A community based rehabilitation project for refugees**<sup>19</sup> takes note of the fact that unaccompanied children are vulnerable members of the refugee community and need support from the community. Unaccompanied children are defined as children under 18 years of age or the legal age of maturity who are separated from both parents and are not being cared for by a guardian or another adult who by law or custom would have that responsibility. The book points at the problems faced by those children such as the fact that they are not taken care of by their foster families. It also gives guidelines on solutions to the problems faced by unaccompanied children such as tracing their relatives through issuing questionnaires to interview these children. This book helped the researcher to focus her attention to unaccompanied children who are more vulnerable group of children than refugee children who flee their home countries with their parents. It further helped the researcher to appreciate the helpless situation the unaccompanied children go through in camps and to consider their food right as a priority.

**Geraldine Van Bweren**,<sup>20</sup> in his book deals with special features of assistance and protection of children as victims of armed conflict as one of his major topics. The book concentrates more on child combatants and does not cover refugee

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<sup>19</sup> Equal opportunities by programmer and Technical support section UNHCR and rehabilitation unit, WHO

<sup>20</sup> Refugee Network, News Letter (UNHCR) Vol 3 No 1 January 1997

children in or outside refugee camps whose rights such as a right to food needs to be protected.

## **2.1 Methodology**

This describes the research procedure and the techniques used in the study. It focuses on the research design, population, sample size, sampling procedures, and a basis for planning, selecting and developing research instruments. It further describes the Procedure of the applications of the instruments and the data analysis techniques used

## **2.2 Research design**

The study used qualitative method which helped the researcher to come up with data that is subjective, rich and with in-depth information. The study derived the data from unstructured interviews although other sources were also included such as observations, journals, discussions, life histories and documents of all kinds including Newspapers. It also included explanations and explorations of opinions, and attitudes of refugees and their leaders.

## **2.3 Study population**

The target population was defined in two categories:

- (1) Child refugees and a few parents of the children who could understand the questions and give relevant answers.
- (2) Leaders of the refugee groups in the camp.

## **2.4 Sample size and selection**

The sample size was also made of 20% of the number of refugees in the Nakivaale camp. Note that group leaders were also included.

The researcher intended to use purposive sampling to select only those respondents that were considered to have the information that is relevant thus avoiding wastage of time and other resources.

A simple random sampling technique by way of lottery was used to choose the number of respondents. This ensured that each unit in an accessible population had an equal and independent chance of being included in the sample thus helped the researcher to obtain an unbiased sample.

## **2.5 Data collection methods and instruments**

The researcher used interviews, secondary sources, and focused group discussions as the main tools for collecting data. The selection of these tools was guided by the nature of data to be collected, the available time and objectives of the study. The overall purpose of the study being to establish whether child refugees right to food is protected.

## **2.6 Interview**

The method of data collection by which the researcher sought information from the respondents was through in depth interviews and it was by sample selection. The researcher used an interview guide from which she directed questions to the selected persons asking one by one, on a face to face basis and the interviewer recorded the responses down.

This method was advantageous since it was a face to face interview, people were free to give personal information in absence of others and the method was applicable to all classes that is; both the literate and illiterate.

The researcher faced number of difficulties such as communication especially in languages that were not familiar as there were over 11 nationalities such as, Kenyans, Burundians, Sudanese, Somalis, Ethiopians, Rwandese, Congolese and others. The roads were poor and means of transport were limited in the study

area. Thus the researcher spent more money on interpreters and on using the special hire from Isingiro and Mbarara town to Nakivaale camp.

The researcher also faced the problem of uncooperative respondents because they were suspicious that the researcher was a spy and that they have over talked about their problems and that nothing had been done. However, after explaining to them the importance of the research and assuring them of confidentiality of the information given, they were able to reveal the actual experience concerning the inadequate and insufficient food given to them and in particular to the children.

## **2.7 Secondary sources**

In order to gain more insight on the study questions, the researcher visited law libraries such as; Kampala International library, Uganda Christian University Law library, Makerere law library and Uganda Human Right Commission library. Enough literature was got from these libraries through reading text books, statutes, international instruments, dissertations and reports of other researchers. Information was also got from the internet, newspapers, Organizations involved in the refugee field such as UNHCR, Uganda Red Cross and Uganda Human Rights Commission. This helped in getting the format and the key principles essential in writing a dissertation.

## **2.8 Data analysis**

Food rationing based on purpose sampling technique was used to show the particular frequency of respondents saying that child refugees` right to food is protected or not and different reactions about the same right were shown.

Data was analyzed using thematic analysis. In the study, qualitative data was categorized according to the tentative themes and sub themes of the study, legal framework for enhancement of refugee children's right to food.

Content analysis was also used. Content analysis was used to present data in a more verbatim form. The research used direct quotation of respondent's views on particular aspects to give more clarification.

## CHAPTER THREE

### FINDINGS

#### 3.1 Causes of Refugee Phenomenon

The causes of refugee inflow are multiple, complex and varied.<sup>21</sup> They range from acts of God, man originated causes such as persecution on account of race, religion, political opinion and other human rights violations to gross economic and social inequality and sometimes from nature-originated environmental disasters such as drought, famine, earthquakes, floods, and desertification among others.<sup>22</sup>

Most cultures have traditionally offered hospitality to the stranger in need. Before the existence of nation-states, religious faith or a sense of common experience gave birth to concepts such as Christian refugee, Islamic sanctuary and African brotherhood. Temples, pagodas, churches, sometimes entire free cities represented potential havens. With the establishment of the modern state system, national governments increasingly assumed the asylum responsibility. Asylum contributed one of the early doctrines of international law and passed increasingly into practice to protect out-casts from forced repatriation.<sup>23</sup> The second part of the 20<sup>th</sup> century has witnessed an unprecedented explosion in the number and impact of refugees. The number since 1945 is estimated to be as high as 60 million refugees more twice the number of the preceding 50 years and far beyond any historical experience. This challenge first emerged in Europe after the world war 11 when the 'free World" found itself encumbered with a

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<sup>21</sup> Nkabahona Alex causes of Refugee inflows paper delivered to participants at the East African school on Refugees and Humanitarian affairs (EASRHA), Ridar Hotel Mukono, 30<sup>th</sup> August to 12<sup>th</sup> September 2003

<sup>22</sup> ibid

<sup>23</sup> W.R.SMYSER; Refugees: A Never-ending story p 114

refugee population of an estimated 9 million people and this was accrued to the tyranny of the East.<sup>24</sup>

The refugee phenomenon is of course new in Africa. Some studies have shown that refugee movements and population displacements in Africa have a long history than is usually imagined to be the case.<sup>25</sup>

By the end of 1980's the refugee problem had become a permanent element in international relations all over the world. In many states, refugee arrivals have shifted population patterns, altered domestic politics and shaped or even determined foreign policy.

Today, refugees constitute an unmistakable part of international politics, and include not only exiled political figures, dissatisfied intellectuals, professionals and students, but millions of peasants, nomad, labourers and their families fleeing from their convictions and often for their lives. A majority of these refugees are women and children who end up in refugee camps.

When Eleanor Roosevelt received the 1947 Nansen Award for her work with refugees in post war Europe, she said she was depressed to know that 70,000 refugees still remained in camps.<sup>26</sup> She and other humanitarians of her time saw refugees as a transitory phenomenon caused by the great world wars, a problem that could and should be solved promptly with good will and appropriate resources. Yet today four decades later there are more refugees than ever, adults and children and this problem has become a permanent factor of international affairs.<sup>27</sup>

By the late 1980's the largest single refugee population was 4 million Afghan with almost 3 million in Pakistan and over 1 million in Iran.

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<sup>24</sup> Supra Harrell Bond, pg.11

<sup>25</sup> G. Kibreab; Africa Refugees 1985, pg 20

<sup>26</sup> Pierre Claude R. & Weston H.B (eds); Refugees a never-ending story.

<sup>27</sup> Supra, W.R.SMYSER, pg 115

In the horn of Africa, 1.25 million refugees in the Sudan and over 1.5 million in Somalia and smaller but significant numbers in Ethiopia and Djibouti.

More than a million refugees were scattered over 15 countries in East and Central Africa from Cameroon to Kenya, central Africa Republic to Lesotho. The largest groups were in Angola, Tanzania, Zambia, and Zaire. In South East Asia the refugee population had reduced to 150,000 after resettlement in new states. Others who continued to arrive still constituted a major problem for Thailand. Countries in Latin America had over 300,000 refugees, the largest group having fled from several Central American states into Mexico, Honduras and Costa Rica. Over 1 million Indochina refugees live in U.S.A and another 300,000 in Canada. Another 1 million were in Australia, Britain, China, France, West Germany and the Scandinavian countries. There were thousands of refugees in Northwest Africa, Asia and Middle East. There were over 2 million Palestinian scattered all over<sup>28</sup> and the story continues.

These figures have been recorded in the past because since the late 1980's millions of refugees have been added to the already existing number and numbers are ever growing to this date. Adults and children are all emptying into world's refugee camps. It only serves to show that the refugee problem is now fully world concern as there is no area, religion or place in the world that has not been affected by this crisis but what are the causes of these refugees? Refugees are a reflection of our upheavals, war, revolution, communal strife and the past colonial struggle. Modern techniques of conflict and population control have driven more people than ever into exile because more feel or fear the effects of combat or repression. The common drive that compels refugees to leave their homes is fear for their lives, and families' future.

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<sup>28</sup> Claude P.R & Weston H.B (eds); Human Rights in the World Community, 1992, pg 115

At least half of all refugees are children. At crucial vulnerable time in their lives, these children have been brutally uprooted and exposed to danger and insecurity. In the course of displacement millions of them have been separated from their families, physically abused, exploited or abducted into military groups or have perished from hunger and diseases.

A number of factors have contributed to the causes of the refugee problem that faces the world today. However the ethnic compositions, geographical distribution of the population, socio-economic characteristics and other relevant factors too numerous to mention, warrant separate in depth studies of each country, nation or state a situation not possible here. Therefore a general outlook will give us an idea with a few specific examples as will be possible.

### **3.2 Effects of colonialism:**

The history of conflict and repression giving rise to displacements in Africa is traceable to continents' colonial past.

Typically a dominant minority regime representing interest takes control of national resources to the exclusion of the territory majority. The colonial regime is prepared to utilize repression for the total control and subjection of the economically and politically powerless majority. The latter in turn resort to violence in demanding for change from the conflict and repression, the end of colonialism and the ushering in of independence did little to change the power relations and the arbitrary use of force to suppress dissent and opposition.

A manifestation of past- colonial state policies resulting in forced displacements as mentioned have their origins in colonialism. The tendency of former colonial powers to meddle in the internal affairs of their former colonies is another source of conflict, which leads to population displacements. The very countries, which

now express their anxieties about admitting real refugees from persecution and introducing new rules to reduce numbers to admit are the countries which did not lift a little finger to inhibit the dictators and in some cases aided and abetted them.

Further still, colonialism in Africa was further characterized by lack of respect for human and people's rights, arbitrariness of discretionary power and the absence of the rule of law and economic exploitation of human and natural resources. These were the kinds of conditions which induced conflict, spearheaded by nationalistic forces anxious to remove the shackles of foreign domination.

Further, repression was typical response followed by a cycle of violence and conflicts. The authoritarian and exploitative nature of colonial regimes was secured by the implementation of certain policies some of which have been described as divide and rule tactics. The multi-ethnic diversity of the populations of African territories was exploited to serve narrow political interests. Colonial policies tended to operate in favor of selected ethnic groups at the expense of others.

The tendency of political leaders to consolidate their power and to stay on for as long as possible, sometimes as life presidents such as Idi Amin of Uganda between 1971-1979 and Mobutu Sese Seko of former Zaire since independence in the 1960's until 1997, has led to resentment, instability, military interventions (ostensibly in the name of democracy, liberation or salvation), conflicts, violence massacres and repression. Specific repression measures have included arbitrary arrests, detention, torture and assassinations of political opponents. There are also reported cases of government sponsored ethnic clashes and violence, ethnic cleansing such as in Rwanda in 1994 and in Bosnia in former Soviet Union. These

have led to unnumbered influxes of refugees who inevitably end up in refugee camps, sometimes in the worst of conditions.

### **3.2.1 Armed conflict**

Armed conflicts in many parts of the world including African countries such as Liberia among others have been responsible for forced displacements resulting in mass exoduses of refugees all over the world.

By 1994, the estimated number was 23 million refugees and asylum seekers in the world of whom 7.5 were to be found on the Africa continent.<sup>29</sup> The phenomenon increase in the number of African refugees over the last 36 years bears testimony to the magnitude of the problem of armed conflict compared to 1964 when the number of refugees was up to 400,000 people.

Easy availability of arms behind every situation in Africa and elsewhere in the world has led to gross destruction of human lives. Manufactures of arms and ammunition delight each day in whichever conflict breaks out and are not hesitant in application for supplies to further these conflicts. The countries fighting to tighten up their migration procedures to keep refugees out rather than let them in are those which take pride in the benefits to their economies for their success in selling arms, that is, USA, Britain, France, and others competing to catch up in their arms sales achievements. This is real hypocrisy!<sup>30</sup>

In Rwanda a western diplomat was quoted:

*"The country is flooded with weapons. Two beers will get you a grenade!"*<sup>31</sup>

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<sup>29</sup> UNHRC, Public Information, Geneva 30<sup>th</sup> Sept 1994

<sup>30</sup> Baroness Judith Hart FN 31

<sup>31</sup> HR Watch Arms Project, Arming Rwanda. 1994, pg 12

There is no doubt that conflicts will continue under such circumstances and as a consequence more and more refugees will be displaced, and more and more adults and children will end up in refugee camps. While in Africa –American institute meeting in Accra in 1994 the UNDP administration called for a ban on arms sales in Africa. It was noted that military expenditure by African governments in 1992 came to eight billion US dollars, eleven billion on debt servicing; much of which includes importation of arms. A military budget of one African country was five times that of health and education combined and in another country, money was allocated to 80 tanks that were needed to immunize 2 million children and provide family planning for nearly 17 million people.<sup>32</sup> The civil war in Liberia in Western Africa for example fought by half a dozen different armed groups up rooted more than 50% of the country's 2.3 million people; the clan based in Somalia has created over 500,000 refugees and untold numbers of internally displaced people.<sup>33</sup> The majority of Somali refugees arrived in Kenya in September 1989, mostly Ogaden civilians from the Doble area, which had been a strong hold of the rebel Somali Patriotic Movement (SPM). The SPM were defeated in a large and brutal government offensive; and about 5000 refugees crossed into Kenya. In 1992 Gen.Aideed of Somali National Party (SNP) launched a devastating military offensive in which tens of thousands of refugees fled the country.<sup>34</sup>

In Rwanda, 1.5 million people died in the 1<sup>st</sup> half of 1994 followed by an exodus of about 2 million refugees to Zaire, Tanzania, and Uganda most of whom fled from their homeland within a single week.<sup>35</sup> In Sudan fighting continues between

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<sup>32</sup> ibid

<sup>33</sup> Refugee Journal, FN. 32

<sup>34</sup> The Night Mere Continues Sept, 1993: Rukiah Omar & Alex De WAAL a Magazine

<sup>35</sup> ibid

government and rebel forces, a conflict which has led to the displacement of large portions of the population of whom more than 200,000 people have found refuge abroad.<sup>36</sup> For as long as human race has not learnt to settle conflicts diplomatically but always taking arms, the refugee problem is here to stay and the refugee children in particular will continue to experience the worst conditions in countries of refuge that cannot themselves take care of their own nationals.

### 3.2.2 The Cold war effects

Loescher<sup>37</sup> in his book aptly observes that the enormous changes and instability generated by the end of the cold war have triggered off new mass movements of people across the globe. Subsequent developments in Europe, especially in parts of the former Yugoslavia and the former Soviet Union have not only led to increased threats to the integrity and peaceful co-existence of long settled communities but also into massive dislocation of such communities and the creation of more and more refugees. For example the disintegration, civil war and re-drawing of boundaries in the former Yugoslavia and the accompanying explosion of long repressed ethnic tensions in the region in fact continue to generate refugee and population movements and to populate refugee camps with both adults and children.

Similarly, in the Russian federation, the military operation in Chechnya had uprooted more than 200,000 people by mid-1995, *"a number of the conflicts in the last two decades which have had the most serious refugee consequences have involved the super powers to such an extent that they have almost been surrogate wars in the cold war struggle for spheres of influence."*<sup>38</sup>

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<sup>36</sup> ibid

<sup>37</sup> Nanda P. Ved Refugee Movements and International Security 1989, pg 203

<sup>38</sup> ibid

Africa is not any better in this cold war era. Civil war, genocide and mass displacement of people in parts of the continent such as the Horn of Africa, East Africa, West Africa and Southern Africa (Angola) continue to undermine the peace and security of all states concerned. The conclusion of the liberation struggle which saw South Africa into democracy on the 10<sup>th</sup> May 1994 has not brought to an end the refugee exodus that the region has been experiencing for the better part of the last four decades. On the contrary, mass movement of people from within and outside the region has continued.

### **3.2.3 Lack of respect for Human Rights and Humanitarian Law**

In many parts of the world today, refugee flows have been provoked not by the breakup of countries but by efforts to impose authority of the state on minority groups, opposition movements and secessionist forces. In Asia for instance, this process has been witnessed by Myanmar where human rights abuses allegedly committed by the armed forces led to an exodus of over 270,000 Muslims in 1991 and 1992 and in the Bhutan the intimidation of the ethnic Nepalese population has led to the departure of up to 100,000 people since 1991. Radical economic and social changes have in many cases added to an already volatile mix, providing a fertile breeding ground for the violence and human rights abuses which provoke large scale population displacements.

According to P. Nyinguro,<sup>39</sup> *"Suppression of human rights in developing countries especially in Africa has more often than not led to civil strife. For instance, the refugee problem, which is today a critical security issue in Africa, is in part the result of the non-observance of human rights equality, freedom and justice by most governments."*

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<sup>39</sup> Peace and Security in Post- Cold War Africa; Safeguarding the Future, pg 90

I do agree with him, as the issue of human rights observance in Africa is quite alien with such examples as Uganda especially during the 1970's and 1980's, Liberia for the last 15 years, and Algeria.

Furthermore, the denial of civil and political rights provided for the International Covenant on Civil and Political Rights (ICCPR) including the right to participate in government lies at the root of most political conflicts and violence. These rights have been clearly provided in various international instruments such as the additional protocol 11 Art 17 (1) (2)<sup>40</sup> and Art 12 (5) and Art 28<sup>41</sup> which all indicate the need for proper human treatment, but all these are always generally ignored or disregarded by government forces and insurgents that have ratified them, to the detriment of the human race.

Similarly, the adoption of economic development policies with scanty regard to human rights and environmental protection has also produced mass exoduses. In some cases, forcible removals and resettlement 'to make room for development projects' have been undertaken as deliberate government policy. Forced evictions clearly intensify inequality and social conflict,<sup>42</sup> which in turn will lead to population displacements. There is no doubt that unless human rights and humanitarian legal principles are respected, the atmosphere of insecurity and life threatening situations generated by wars, civil strife and conflict will compel mass exodus of civilian populations into refugee camps since many at a time, it is necessary to confine them in the interest of the host state.

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<sup>40</sup> The Geneva of 12<sup>th</sup> Aug 1949, Relating to the protection of Victims of Non International Armed Conflict(1977)

<sup>41</sup> African Charter on Human and Peoples' Rights

<sup>42</sup> Adam Dieng; Root Causes of Population Displacements in Africa IJRL. Pg 126

### **3.2.4 Economic social welfare and rapid population increase.**

Competition for scarce employment opportunities as well as basic necessities such as food housing, health, and educational facilities tend to intensify latent ethnic hostilities and feed secession tendencies, political extremism and conflicts. Those in power view such actions as challenges to their authority by the 'opposition' and over react by adopting repression measures to deal with the situation. A cycle of intensified conflict and repression which ensures tension resulting in forced displacement of populations.<sup>43</sup>

The displacement of large numbers of people calls for massive resources creates immense problems of management and integration into lost communities. Thus rejection and conflicts are the inevitable consequences of a large population influx.

### **3.3 Other factors:**

Other factors of refugee causes include: environmental factors especially drought, economic deprivation and outright oppression and exploitation: the various localized and ethnic religious and other non-ideological conflicts which following the arrival of the so -called new world, have replaced the regional conflicts previously fueled by cold war rivalries.<sup>44</sup>

Furthermore, refugee problems that are left unresolved can also become a cause of further instability, violence and population displacement. For example, the violence which accompanied the progressive seizure of power by the majority Hutu community about 30 years ago is one of the causes of Rwanda refugee

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<sup>43</sup> Supra kibreab

<sup>44</sup> Supra the state of the World's Refugees pg 669

problem today.<sup>45</sup> Therefore serious consideration must be taken today for a refugee free world in future or else the problem will continue growing and the children who make a majority in many cases will continue to experience trauma even after leaving the scene of conflict.

It must be noted that, in this paper the center of focus is children refugees, yet so far not much has been discussed about these children in this chapter. This is to indicate that whatever the cause of refugee influxes, man, woman, father, mother, grandmother, child, infant or teenager are affected indiscriminately, whole families are uprooted only to find themselves in strange lands. It is therefore not possible in this chapter to discuss children in isolation. This further emphasizes the plight of refugees if the old and young should be affected the same way and be subjected to the same conditions by the ruthless heart of man that is always seeking to destroy even the child.

In conclusion therefore the potential cause of conflicts is man and refugees are the product of failure to resolve these conflicts and their underlying causes, such as intolerance, antagonism, poverty and many others.

Whatever the causes, stricter boarder delimitation and policing have meant that refugees now attract more attention and need more formal recognition than in the past. They seem to have become an inevitable and often highly invisible by product of almost every conflict and every crisis.

### **3.3.1 Factors That Contribute to Shortage of Food in Nakivaale Camp**

The discussion below is based on a field research carried out between March a and April 2013 at Nakivaale refugee camp, 63km from Mbarara town in a new break away district called Isingiro in western Uganda.

The parent refugees were grateful especially to UNHCR in conjunction with the Uganda Red Cross and the Government of Uganda for the basic necessities that

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<sup>45</sup> Supra Adam Dieng pg 128

are provided to them such as clothing (once in a while), food, education, medical care and the like.

The refugees were grateful to the Government of Uganda for the land on which they are temporarily settled. However there were a number of problems identified in the camp, in relation to food that in fact over shadow all that the parent and the child refugees are grateful for.

Food is a big problem; all the 10 pregnant mothers the researcher reached complained of general body weakness, frequent fainting and state of dizziness all the time. This was attributed to insufficient and inadequate feeding. The food is too little and nutrition inappropriate for the expectant mothers. The camp soils are rocky and therefore not good for farming. This means that the diet as a result of food supplied by the UNHCR cannot be supplemented in any way. The relief agencies take care of only the basic need of feeding in order to survive but not exactly the appropriate diet. This then provides so little for the expectant mother's body and the unborn child contrary to paragraph 2 of Article 25 of the UDHR. One mother told the story of her 2 months old baby who had to be forced out of the womb after having stayed for 11 months and 13 days, the major problem having been malnutrition of the fetus causing slow growth. There was a general complaint of lack of milk for the babies as it can only be acquired through buying from the locals, yet money seems a dream to the refugee parents. Lactating mothers further complained of the difficulty in feeding their children with such bad and minimal feeding, the breast milk is sometimes too little to suffice. There were several babies of toddlers' stage that had not attempted to sit, due to malnutrition. This problem was mostly seen in the Somalia village where the researcher witnessed so many cases of this nature. A little child, 1 year and 8 months was obviously stunted in growth due to malnutrition as he could only lie with no movement at all. He had no special diet,

the mother tries barter trade but this is not always possible as there is not enough to spare from the rations received at the base (exchange of maize and beans for milk).

An 11year old Somali boy wished they could have some fresh food such as vegetables and fruits on top of maize seeds and beans supplied from the camp base.

The refugees further complained of the administrators at the base altering the instructions of UNHCR head office on how much to be rationed per head. A father of 3 had this to say,

*"if they want to give us, they had better but they should not test us!"*

This was a comment on how little the food given per head is. Supplies/rations usually per months by UNHCR/Red cross are indicated in the table below.

**Table 1 FOOD RATIONS**

ITEMS (MONTLY)	PER PERSON
Maize seeds	12kg
Beans	4 nice cups
Sugar	½ a nice cup (once in a while)
Cooking oil	½ a nice cup (once a while)
Salt	2 jerrycan covers(tops)
Soap	1 piece/bar depending on supplies

This is visibly very little for proper survival for human being and there is not much in terms of a balance diet.

There is further a complicated problem of insufficiency of the basic necessities of life such as salt, lighting, soap and milk for the young ones where possible.

Surprising to note however, is the fact that some refugee parents especially the fathers sell off some of the food stuffs in order to buy beer to feast, at the expense of their children who become weaker and weaker due to inadequate nutrition. This denies the children of enjoyment of their right to food and proper nutrition.

The Red Cross and the World Food Programme (WFP) are the most providers of food for the camp. The very malnourished children are given a specially prepared dish from the feeding center, a cup a day. However from observation by the researcher, well fed children in the camp were rare and this was confirmed by information from the health care center. This means that almost all the children under 5years need special diet but it is too little for all around the camp. The special supplement included, milk, cooking oil, porridge, and Soya. However if there is no firewood to prepare this meal, the children will have to miss it for the day. Further, when the doctor recommends milk for a given infant that is the only time he/she can receive some milk but none beyond a very ill child.

The fact that the situation is aggravated by chronic ill health resulting from inadequacy and insufficiency of food, food production in the camp is reduced, even when they have food, they experience a problem of collecting water and fire wood as the resources are far from the camps

Further there is also a general fear that the refugees would be repatriated to the home countries any time and therefore they do not want to grow crops of which they are not sure of harvesting.

### **3.3.2 The role of stake holders in protecting child refugee right to food and nutrition.**

The non-governmental organizations and government in an attempt to solve the above problems have provided these vulnerable groups with food and other necessities of life. For example World Health Organization in partnership with Red Cross provides food in form of beans, cooking oil, maize seeds and other necessities.

UNHCR is not sitting down as it has partners with different non- governmental organization who supplement the service offered to children refugees in order to ensure that their rights are protected, though what is provided is inadequate and insufficient.

### **3.3.4 The Legal Framework Governing Refugee Children on the right of health care**

It is very clear that a strong body on the protection of refugees has developed over time and more so with the ratification of international treaties and the setting up of human rights institutions, most states are in a position to protect those rights including the child refugee right to food. Refugee law thus lies at the conference which marks on the one hand, concern for the individual and his most fundamental rights and on the other concern for international peace and harmonious relations between states.<sup>46</sup>

Therefore the researcher examined the legal and institutional framework for ensuring the right to food of child refugees in refugee camps in Uganda. Also the researcher looked at the adequacy and efficacy of the laws and given institutions in ensuring the right to food in Uganda. The researcher further considered other scholarly materials on the right to food of refugee children.

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<sup>46</sup> Ogato sadako, The Problem of Refugees, p xix

### **3.3.5 International, national and other instruments related to the right to food**

Uganda is a signatory to the Universal Declaration of Human Rights (UDHR) (1948),<sup>47</sup> the International Covenant on Civil and Political Rights (ICCPR) (1966), Uganda has further ratified the African Charter on Human and People's Rights (1981), and the Convention on Rights of Children that relate to the right to food. All the above international treaties with the exception of the Convention on Rights of Children have been incorporated in the national laws and as such may be binding on municipal courts of law.<sup>48</sup> The welfare principle was incorporated in the Children Act Cap 59 Laws of Uganda.<sup>49</sup>

Therefore the right to food is either stated or implied in the following instruments that Uganda has ratified under international law.

## **3.4 International Instruments**

### **3.4.1 The 1951 Convention**

Early in the 20<sup>th</sup> century, the refugee problem became the concern for the international community, for which humanitarian bodies began to assume responsibility for protecting and assisting refugees (1921-1946) .The pattern of international action on behalf of the refugees was established by the League of Nations and led to adoption of a number of international agreements for their benefit .Soon after the 2<sup>nd</sup> world war, as the refugee problem had been solved, the need was felt for a new international law to define the legal status of refugees . The convention relating to the status of refugees was adopted by a

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<sup>47</sup> The UDHR will only bind Uganda through customary international law, because it has gained force of law through state parties recognition by way of common practice, however Uganda cannot ratify it because it is not a treaty.

<sup>48</sup> Uganda ratified the UN Convention on the right of the child in 1991.

<sup>49</sup> James katarikawe, East African Journal of peace and Human Rights Vol 7 no 1 of 2001

conference of plenipotentiaries of the **UN** on 28<sup>th</sup> July 1951 and entered into force on 21<sup>st</sup> April 1954.

The 1951 convention relating to the status of refugees is a legally binding treaty and a milestone in international refugee law. Some of the provisions of the convention and the 1967 protocol are inadequate to deal with certain aspects of today's refugees problems. It should not be forgotten that the convention has its origin in the cold war climate of the late 1940s and the early 1950's when concern was centered on refugees in Europe.

The provisions of the convention have a European "flavour" as it is manifested by the fact that of the 26 states which participated in the drafting and adopting the convention were from Europe and four more were of a western European or North American disposition. The scope of the earlier definition of refugee has been outlived and the refugees' problem now demands an outlook that embraces refugees' crisis from all over the globe.

Certain articles in the convention have their integrity protected such as article 1 which defines refugees; article 3 is on non-discrimination, article 4 religion, article 16 on access to court and article 33 on non refoulement. However the convention and the protocol do not deal with the content of solutions for particular categories such as refugee children and their right to food and nutrition.

The 1951 convention does not provide an entirely satisfactory legal basis in so far as it addresses the situation of refugee children. The convention does little more than recommend measures to ensure family unity and it further provides in Article 22 that contracting states should accord refugees the same treatment as is accorded to nationals with respect to education.

**Article 33** prohibits the expulsion or forceful return of refugees to their countries of origin. This article has been violated frequently, where they have been turned away at the borders of the countries from which they seek asylum or they are subjected to forced repatriation. The response of host government towards refugees is always influenced by political concerns.

Host governments fear that the tension of accommodating the increasing number of refugees which overstrains the capacities of host nations that makes them unable to provide adequate protection to refugee children rights such as the right to food.

Chapter 4 of the convention in a bid to protect the social welfare of refugee enshrines rights to settlement, the right to public education under Article 22, article 23 on the right to public assistance and article 24 on the right to social security. All these are intended to ensure that refugees as much as possible enjoy those fundamental rights and freedom which they would otherwise forfeit in a foreign territory.

### **3.4.2 The UN Charter and the UDHR**

It is clearly laid out in the U.N charter that the purpose of the charter among others is to promote and encourage respect for human rights without discrimination.

Further, article 25 of the UDHR provides for a right to standard of living adequate for the health and wellbeing of every one including food, clothing, Housing, medical care..., mother hood childhood are entitled to special care and assistance.

This article also recognizes the child refugees and their right to food and nutrition as being an inherent right and is intertwined with the right to life. The

right to life must not be seen as a mere existence or drudgery as was held in the case of **Ramakrishnan and Others v. State of Kerala**,<sup>50</sup> in effect; the right must call for improvement of quality of life.

The UDHR sets the general standard of human rights in the world which has been ratified by Uganda and most of its provisions are incorporated in Chapter IV of the 1995 Constitution of the Republic of Uganda and various treaties which have been ratified by Uganda.

Whereas the UDHR expands the protection of children rights, its enforcement is limited.

The declaration is not itself a constitutional document or legally binding treaty instrument that automatically lays down rights, it represents rather a statement of principles towards which the international community ought to strive.

Today UDHR constitutes part of customary international law as a source of international law. It can be argued that the rights guaranteed under UDHR are enforceable as an international obligation of states. However a more accessible avenue of enforcing protection of refugee children's rights today is by making reference to the specific conventions and treaties relating to refugee protection especially children's food and nutrition rights in order to enforce the principles laid down. Therefore one has to ascertain whether the provisions of the law are respected or are put in practice or enforced.

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<sup>50</sup> O.P no 24160 of 1998-A, Judgment of 12<sup>th</sup> Feb 1999, India (S.C)

### **3.4.3 The UNHCR Statute**

The **UNHCR** was established almost over 50 years ago by the general assembly, under Article 22, it has a special role of providing international protection to refugees under the auspices of the **UN** and together with governments to seek permanent solutions to their problems. The definition of a refugee under the UNHCR statute is of universal application and it does not have geographical limitation. However, there is a significant restriction on the scope of refugees who must establish a well-founded fear of persecution before they are admitted as a refugee in a country. In a comprehensive conclusion adopted the same year, the executive committee condemned the violence often facing children reiterated the "widely- recognized principle that children must be among the first to receive protection and assistance."

### **3.4.4 An unaccompanied Children**

The **UNHCR** guidelines on an unaccompanied children recognizes that they are present in every refugees situation, that in the crisis, an appropriate agency with child welfare experience should be assigned responsibility for immediate and long – term care, that they must be searched for, and a registry maintained together with full documentation in the due course.<sup>51</sup> Their legal responsibility rests with the government of the country of the asylum, they should have a legal guardian with respect to involve in any legal proceedings and to advocate for the child's interests.

In theory it all sounds good, in practice however the situation is far less satisfactory. One wonders whether countries of asylum know about their responsibility as mentioned above or they just find themselves in a pool of refugee problems such that they are forced to take them on without any binding

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<sup>51</sup> Public lecture, Refugee commissioner Ogata 1988 .

responsibility. In theory it all sounds good, in practice however the situation is far less satisfactory.

Experience shows that, for various reasons a country of refugee may be less than willing formally to undertake legal responsibility for decisions affecting refugee children within its territory. It may consider that such children are present only temporarily and do not meet either the legal requirement or factual test of habitual residence, or the link with the home country is likely to be re-established soon or that the home country is more appropriately responsible for decisions affecting the children's future given consideration of language and culture. This is precisely the area in which international agreements and practices so far has failed to fill the gap. States do not always accept that refugee children on their territories are habitually residents with the meaning of the Hague conference even if that is regarded as "a question of fact"<sup>52</sup>

There is another crisis as to who should be expected to actually have the responsibility of the child, as earlier noted. The state of origin with its turmoil and cause of the flight, where communications may have been interrupted, civil government may be non-functional or the politics of non-co-operation may rule. Too often in such a situation the children's rights are in suspense, in the legal limb that often characterizes refugee camps and settlements or the general case that accompanies any population.<sup>53</sup> The presumption therefore of an orderly situation implicit in the Hague convention that, "*the convention shall apply where a child habitually resident in a contracting state ('the state of origin') has been, is being or is to be removed to another contracting state ('the receiving state')*".<sup>54</sup>

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<sup>52</sup> Convention on the Civil Aspects of International Child Abduction.

<sup>53</sup> *ibid*

<sup>54</sup> Art. 2

### **3.4.5 The Convention on the Right of the Child (CRC) 1989**

In 1989, the Convention on the Rights of the Child was introduced by the U.N and it was ratified by more than 180 states. State parties to the CRC must respect and ensure the rights in the convention to each child within their jurisdiction without discrimination a reminder that refugee children are first and foremost children, a fact which sometimes risks being ignored in the midst of the chaos and upheaval of mass forced migration.

The preamble of the **CRC** recognizes that a child is a human being in its formative stages .As such; he/she is entitled to special protection in order to enable him to fully develop his/her personality, talents and aptitudes.

Article 39 of CRC provides that, state parties shall promote physical and psychological recovery and social integration of a child victim of armed conflict and that such recovery shall take place in an environment which fosters the health, self-respect and dignity of the child.

Section 2(c) in particular provides for state parties to combat disease and malnutrition including within the framework of primary healthcare the provision of nutritious foods and clean drinking water, taking into account the dangers and risks of environmental pollution.

Article 24 provides that each child has the right to the highest attainable standard of health. States must therefore take action to diminish infant and child mortality, to develop primary health care and to teach child health and nutrition. Article 22 of the CRC stipulates that refugee children should have appropriate protection and humanitarian assistance.

Though **CRC** is one of the most widely ratified international legal instruments, there are allegations that there are child violations and non-protection of refugee children's right such as food and nutrition. Thus there is need to make a study to

prove or disprove the allegations and come up with the possible solutions and recommendations.

#### **3.4.6 The International Covenant on Civil and Political Rights (ICCPR)**

Article 1 of the ICCPR contains the right to self-determination. Food self-reliance is an implied pre-requisite to such a right. In the case of **Tellis & Others Vs Bombay Municipal Council and Others**.<sup>55</sup> Court held that the right to life should be interpreted as widely as possible to include the right to livelihood.

Article 6 of the ICCPR which stipulates that, every human being has an inherent right to life is directly related to the right to food and nutrition with particular reference to the increase in life expectancy through the elimination of malnutrition and related epidemics.

#### **3.4.7 The International Convention on Economic Social and Cultural Rights (ICESCR)**

The ICESCR guarantees all human beings a number of rights guaranteed under UDHR which among others include the right to adequate standards of living. While the ICESCR aims at guaranteeing the refugees protection including refugee children, its implementation and enforcement provisions are not so strong. The state signatories to the ICESCR do not undertake to provide a domestic remedy in relation to refugee children in camps.

Article 2(2) instead provides that, developing countries with due regard to human rights and their national economy should determine to what extent they can guarantee the economic rights recognized in the present convention to non-nationals like refugee children and yet Uganda ratified the conventions. This has

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<sup>55</sup> (1987) LRC (Constitution) 351 ( India S.C )

made refugee children to receive inadequate additional guarantee capable of enforcement from the ICESCR in Uganda especially in Nakivaale refugee camp,

### **3.4.8 The 1969 Organization of African Unity (OAU) Convention governing the specific aspects of refugee problems in Africa**

The Organization of African Unity (OAU) decided as early as 1963 what a regional refugee treaty was needed in order to take into account the special characteristics of the refugee situation in Africa.

Article 11 of the convention is the only provision in refugee law that deals with the settling of refugees in a specific area particularly a reasonable distance from the border for reasons of security. The physical security of refugees in the countries of asylum has been guaranteed by the convention by settling them in the camps. However in practice, refugee camps in most African countries like Tanzania and Uganda are suited at the borders.<sup>56</sup> The proximity between the countries from which the refugees fled has exposed the camps to various dangers. For instance in Uganda the Sudanese armed opposition group (the SPLA) continuously abducted the Sudanese refugees from Adjumani. Internally displaced persons were abducted from Internally Displaced Camps in Northern Uganda by Joseph Kony's Lord Resistance Army and very many were recruited as military combatants which exposed them to more danger to their health.<sup>57</sup>

### **3.4.9 The African Charter on Human and Peoples Rights (ACHPR) 1981**

The ACHPR entails no specific provision on the right to food and nutrition or the right to an adequate standard of living that covers the right to food amongst others. However it contains provisions relevant and applicable to the right to food and nutrition.

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<sup>56</sup> Amnesty International, Open Letter to Governments hosting refugees. Oct 1997

<sup>57</sup> *ibid*

Article 16 of ACHPR states that every individual shall have the right to enjoy the best attainable state of physical and mental health.

#### **3.4.10 National Laws applicable to the rights of children in Uganda**

It should be noted that the Constitution contains neither an express, binding and enforceable provision on the right to food and nutrition. Accordingly within the context of Uganda's Constitution the right to adequate food may only be inferred from the state objectives which are not binding and other Constitutional provisions.

The right to food and nutrition is part of the preamble of the constitution under national objectives and directive principles of state policy number XXII.

Chapter 4 provides for the bill of rights which is mainly an incorporation of rights provided under other international human rights instruments. This is a manifestation of Uganda's adherence to her international obligations towards the protection and preservation of fundamental human rights including protection of the refugee children's right to food and nutrition.

Article 34 (1) provides that subject to laws enacted in their best interest, children shall have the right to be cared for by parents and no child shall be deprived by any person of medical, education or any other social or economic benefit by reason of religious or other beliefs or the law shall accord special solution to vulnerable children. These also include refugee children since under Article 21; all persons are equal before the law in the sphere of political, economic, social and cultural life and shall have equal protection of the law. Hence the protection of food and nutrition right of children refugees in Uganda can be inferred.

### **3.5 Children Act Cap 59**

Under the Act, every parent or guardian to whom custody of a child is vested is obliged to maintain that child and in particular, that duty gives the child the right among others, adequate food.<sup>58</sup> Such a right would be presumed to extend to refugee children though the Act does not expressly provide for them.

### **3.6 The Control of Alien Refugee Act Cap 62.**

The control of Alien refugee Act is specifically concerned with handling issues relating to refugees and is the principle legislation governing refugees in Uganda. The provisions of protection of human rights for refugees such as children right to food are not a priority in the Act. The underlying aim is to control and put restrictions other than protection as reflected by the title of the Act.

Although the refugee camps are often conceived as temporary solutions, they often become semi-permanent if not permanent homes for refugees and yet the conditions in the camp are not conducive to protect the rights of children refugees especially the right to a food.

This law is needed to rectify the shortcomings under the Control of Aliens Refugees Act, Cap 62 as amending it may not be enough

#### **3.6.1 Policy and institutional framework on the right to food in Uganda**

The Ministry of Agriculture Animal Industry and Fisheries is responsible for ensuring the right to food in Uganda. The ministry puts out policies for ensuring this right and other institutions. There are other institutions, which are formulated by government to help the ministry in policy implementation as discussed.

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<sup>58</sup> Sec 5

### **3.6.2 National food and nutrition council.**

The national food and nutrition council is a non-statutory entity which was established by the Ugandan cabinet in 1964. It operates under a multi sectoral arrangement involving several ministries including the ministry of agriculture, the ministry of health and the ministry of education. Its objective is to advise the government on issues of food insecurity in the northern Uganda as well as Kwashiorkor. The council has contributed to policies towards the establishment of a food science and technology department at Makerere University, the establishment of the Uganda National Bureau of Standards among others and it has prepared draft policies on child nutrition, nutrition-guide system, Uganda action plan for nutrition, a participatory approach to district food and nutrition planning and the draft food and nutrition policy.

The draft policy contains proposals for achieving these objectives through among others, efficient management of the food chain, establishing food and nutrition committees at the district and lower levels, mobilizing resources to support food nutrition programs, environment protection and establishing national food reserves.

### **3.7 Uganda Human Rights Commission (UHRC)**

The UHRC is mandated to promote and protect fundamental human rights in Uganda including the right to adequate food.<sup>59</sup> Its function extends to monitor governments compliance (Uganda human rights commission, annual report, 1999, p-36) with international treaties and conventions on human rights as well as the establishment of a continuing program of research, education and information to enhance the respect of human rights.

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<sup>59</sup> UHRC, Annual Report, 1999, p36

Since 1996, the commission has been involved in various aspects of promotion and protection of human rights. However, it has not made much on the area of economic and social rights in general and food rights in particular.

### **3.7.1 Adequacy and efficiency of the law on food security in Uganda**

The 1995 Constitution of Uganda does not expressly provide for the right to food as it does in other economic and cultural rights such as the right to education,<sup>60</sup> clean and healthy environment,<sup>61</sup> and the right to culture.<sup>62</sup> However, the countries national objectives and principles of the state policy state that;

(i) The state shall endeavor to fulfill fundamental rights of all Ugandans to social justice and economic development and shall in particular ensure that all development efforts are directed at ensuring the maximum social and cultural wellbeing of the people and all Ugandans enjoy rights and opportunities and access to education and health services, clean and safe water, work, descent shelter, adequate clothing, food security and pension and retirement benefits.<sup>63</sup>

(ii) The state shall take appropriate steps to encourage people to grow and store adequate food, establish national food reserves, encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy state.<sup>64</sup>

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<sup>60</sup> Art 30

<sup>61</sup> Art 39

<sup>62</sup> Art 37

<sup>63</sup> Principle iv

<sup>64</sup> Principle xxi

## CHAPTER FOUR

### CONCLUSIONS AND RECOMMENDATIONS

#### 4.1 Introduction

Refugee children suffer a form of double jeopardy, that is, a denial of their human rights which made them refugees in the first place and also are frequently abused, in the process of fleeing persecution or conflicts, they lose whatever social or familiar protection they enjoyed at home.

Tragically, the risk of human rights violation against refugee children does not end at the crossing of international borders, even when they might have run away from the conflicts and wars in their home countries, a series of traumatic experiences and other violations against their lives such as the denial of a right to food follow them where they settle in camps.

Every human being in this world is a potential refugee, it is important to understand that refugee children are people who once enjoyed complete harmony in their lives, they had comforting elements of protection of their everyday routines. Therefore what may start as an ordinary day, could for many people around the globe end in a state of exile.

Chapter one encompasses the background of refugee problem and refugee protection by states through UNHCR, statement of the problem, general objective, specific objectives, research questions, significance of the study, scope of the study, literature review, and methodology.

Chapter two covers the causes of refugee phenomenon and analyzes factors that contribute to shortage of food in Nakivaale Camp.

Chapter three gives a general analysis of legal framework governing access to food by refugees. It analyzes both international and national laws and comes up with the following.

## **4.2 Conclusions**

The existence of UNHCR since 1<sup>st</sup> Jan 1951 has done a great job as far as protection of

Refugees and children in particular is concerned.

UNHCR being a lead agency in coordinating international action to protect refugees in all actions, has addressed specific needs of refugee children and has published guidelines on the protection and care of children which recognize that children need special care and assistance which upholds the rights of children stipulated in the 1980 Convention on the Rights of the Child.

Despite the efforts put by UNHRC, refugees face a lot of challenges as analyzed in chapter two.

The protection of refugee children's rights to food has not been achieved. This has been manifested through the inadequacy and insufficiency of the food given to them and the difficulties they go through in the process of accessing it. As a result, most of the refugee children are malnourished and they have stunted growth, yet children's developmental needs are a fundamental reality which has not been achieved in the camp.

The law generally is old, and does not address the new challenges such as a growing number of refugees and does not specifically cater for marginalized groups.

Both the international community and municipal governments are not interested in guarding against the causes of refugee phenomenon, instead they only intervene after the occurrence of the refugee problem.

There is no specific constant source of funding to cater for refugees in camps. The refugees only depend on donations which are not predictable. As a result, the children right to food in camps has always been violated as food supplies are on and off.

### **4.3 Recommendations**

Basing on the findings, the following recommendations are made in regard to protection of refugee children's right to food.

*There is need for municipal governments and other organizations such as Red Cross, and Save the Children to join hands with the UNHCR, and WFP in providing food for the children refugees in refugee camps especially Nakivaale.*

To maintain a satisfactory nutritional status for refugee children, it is necessary to subsidize the quality and quantities of food provided in the camps and provide other related needs, like water, shelter and health services.

The soils not being fertile and dry, the stakeholders should encourage better farming methods for instance by supplying the refugees with fertilizers and hybrid seeds to enable them produce enough food to supplement what is provided by the World Food Programme.

Nationals (neighbouring communities) should be encouraged to support the refugees especially the children by giving them food and milk and those who violate the refugees' rights should be brought to book and punished.

There should also be strict adherence to the law regarding the protection of children rights in the camps and law enforcement measures should be put such as prosecution of the violators of the same. Amendments of the old law and a whole reconstruction of a new law is also needed.

The researcher also recommends that international community affirms and defends vigorously the right of people to remain peaceful in their homelands than waiting to act when people are forced to leave their homes.

International communities and municipal governments should handle refugee problem basing on human rights perspective.

The other aspect to be improved is the source of funding. There should be a stable fund/bag created to prevent crisis. Probably all countries of the world should be compelled to contribute towards the care and maintenance of the refugees as well as the cost of mitigating the impact of refugees in most countries.

The protection of refugee children should be of the highest priority to the international community and therefore, a prompt national and international response to immediate development and rehabilitation needs an urgent consideration.

Family planning methods should be encouraged so that the number of children produced in families can be controlled and proper care taken of them.

Governments should initiate serious trainings and introduce a study area on refugees' rights in schools' curriculum so that both society and the refugees

themselves should always be able to understand their rights in the event of becoming victims of human rights violations in refugee camps.

Thus there is need for the government, NGO's and other charitable organizations to join with UNHCR as the lead agency to support the children in the camps to enable them achieve their right to food.

## **BIBLIOGRAPHY**

### **Books**

Gingyera Pinycwa, Uganda and the problem of references, Makerere university press.1996

Wim Van Damme, Do refugees belong in camps? Experiences from Goma and Guinea, volume 346, 1995.

Harell Bond B.E, Imposing Aid emergency assistance to refugees oxford university press, 1986.

Guy Goodwin Gill, The refugee in international law, 2<sup>nd</sup> edition, Clarendon press, 1996.

UNHCR, Sexual violence against refugees, guidelines on protection and response, Geneva 1995.

UNHCR, The state of the world refuges the challenge of protection, 1996.

UNHCR, Refugee Children and Adolescents Funding and Donor Relations, 1999

UNHCR, The Refugee Guidelines on Protection and Care Geneva, 1994.

UNHCR, The State of the World Refugees in Search of Solutions, oxford university press, 1995.

B.E Harell Bond (Dr), Hannah K, Garry, Zachary A. Lomo, The Enjoyment of Rights by Refugees in a Social Legal Study.

Amnesty international, open letter to governments hosting refugee, October 1997

### **JOURNALS, REPORTS, ARTICLES AND MAGAZINES.**

Hurifo, The human rights situation in protected camps in Gulu district May 2000.

Uganda Human Rights Commission (UHRC) 7<sup>th</sup> Annual report to parliament 2004.

A Research on Uganda Human Rights Commission (UHRC) Nov. 2003.

The Uganda Refugee Bulletin, vol 1. No.2 October 1999.

International Journal of Refugee Law, special issue, July 1995.

M.C Namara D, Human Rights approach to the protection of refugee children, a paper presented at the Londo School of economics 14<sup>th</sup> November, 1998.

Zachary A Lomo, Human Rights and Refugee, presented to interns HURIPPEC internship programme, equity of law, Makerere University 1998.

### **LIST OF CONVENTIONS**

The U.N charter

Universal Declaration of Human Rights

The 1951 Convention and the 1967 Protocol on Refugee Status.

The United Nation High Commission for Refugee's Statute.

The Convention on the Rights of Children (CRC) 1989

The Origination Africa Union Convention of Refugees.