

THE EFFECTIVENESS OF THE LAW ON REFUGEES IN UGANDA:

A CASE STUDY OF CONGOLESE REFUGEES

BY

KAHUBIRE SHARON

STUDENT NO: LLB/16860/71/DU



A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL

FULFILLEMENT OF THE REQUIREMENTS FOR THE AWARD

THE BACHELORS DEGREE OF LEGAL LAWS (LLB) OF

KAMPALA INTERNATIONAL UNIVERSITY.

JULY, 2011

DECLARATION

I, **KAHUBIRE SHARON**, do hereby declare, certify and affirm that this research is my original work and that to the best of my knowledge, has not been submitted or is currently being considered either in whole or in part, in fulfillment of the requirements of the bachelor's degree of legal laws at any institution of learning. Where someone else's work has been acknowledged, references have been duly made. I assume personal responsibility to the correctness of facts contained herein.

Signed this 12 day of July, 2011

.....

KAHUBIRE SHARON

Email: shabireh@yahoo.ca

sharonaravena@gmail.com

APPROVAL

I, **MR KIKOMEKO MUHAMMED**, being the supervisor, have read this research paper and approved it for the partial fulfillment of the requirements of the bachelor's degree of laws of Kampala International University (KIU).

Signed this 12th day of July 2011.


.....

MR KIKOMEKO MUHAMMED

(SUPERVISOR)

Contact: 0703634908

DEDICATION

To my lovely parents, Mr. Kunihiro Zadoc and Mrs. Kunihiro Rebecca with all my love for the great support and love you showed me throughout my life.

ACKNOWLEDGEMENT

With pleasure I would like to pass my vote of thanks to the Lord God for having provided for me in all ways throughout my research and especially for having blest me with the gift of my parents who contributed a lot of their time to making sure that I was successful.

I also want to thank my supervisor, Mrs. Kikomeko Mohammed for his valuable comments and commitment in the process of preparing this paper.

I further make special recognition of my daddy Mr. Kahubire Israel, Mrs. Kabakumba Labwoni Matsiko, Mrs. Kinobe Grace, Kaka and their families for the great support they have extended to me both financially and morally. I could not have gone very far without what you granted me at the time when I needed it most. .

My heartily appreciation to all my siblings Hadad, Uneke, Louis Talemwa, My best friends Ruth Akol, Noel Anena, Mugenyi Bernard and many others for all the support and prayers. Your contribution is equally immeasurable. Most importantly for the encouraging words you gave me when the road seemed impassable.

Lots of gratitude goes to my friends of *Sui Generis* and the entire LLB4/2 (2010-11) class for the love, and togetherness we shared. I pray that we take on that spirit even outside the walls of KIU.

Table of Contents

Declarations.....	i
Approval.....	ii
Dedications.....	iii
Acknowledgement.....	iv
Table of Contents.....	v
List of Abbreviations.....	viii
Abstract.....	ix

CHAPTER ONE : The plight of the law on Congolese refugees in Uganda

1.0. Introduction.....	1
1.1 The response of the law on the Congolese refugees in Uganda.....	3
1.2 Background of the study.....	4
1.3 Problem statement.....	7
1.4 Research questions.....	15
1.5 Objectives of the study.....	15
1.6 Specific objectives.....	15
1.7 The significance of the study.....	16
1.8 Definition of the key terms.....	17
1.9 Scope of the study.....	17

CHAPTER TWO: METHODOLOGY

2.1 Introduction.....	19
2.2 Area of study.....	21
2.3 Study design.....	22
2.4 Sampling population.....	22

2.5 Sampling frame.....	22
2.6 Data collection methods and instruments.....	23
2.7 Methods of data collection.....	23
2.8 Limitations of the study.....	24

CHAPTER THREE: LITERATURE REVIEW

3.1 Introduction.....	25
3.2 Review of related literature.....	25

CHAPTER FOUR: STRENGTHS OF UGANDA’S REFUGEE LAWS, WEAKENESSES/GAPS IN UGANDA’S REFUGEE LAWS, RECOMMENDATIONS AND CONCLUSION.

4.1 Introduction.....	30
4.2 Strengths of the laws as regards Congolese refugees living in Uganda.....	30
4.2 Gaps in the implementation of the refugee laws in Uganda.....	33
4.4 Recommendation.....	37
4.5 Conclusion.....	46
4.6 Bibliography.....	48

ABSTRACT

We have seen for a very long time how Uganda as a country has been flooded by refugees from all over the world however the greatest inflow of refugees was from the Congolese people after the first and second Congo war which caused a whole lot of them to migrate from their country seeking for shelter and safety in the neighboring countries, Uganda however welcomed many of those and along the years they became permanent residents waiting for the Congo war to subsidize and eventually return to their country.

However it should be noted that much as they are refugees in a foreign country they are entitled to particular rights according to international instruments and domestic laws governing that particular country. This research paper looks at how the law both domestic and international has been effective enough to these Congolese refugees living in Uganda. The paper centers on the problems that have been faced by the refugees and how the law has come in to ensure that the refugees get adequate and maximum security while living in a foreign country, it also looks at the loopholes that are in the law itself in administering justice to these refugees.

The paper further looks at the some recommendations that these international and domestic instruments or, the countries implementing such laws in their governance ought to look at in order to see to the effectiveness of the law on refugees living in Uganda, and probably those undergoing a similar scenario in other countries.

Furthermore the research is centered on how the refugees are handling the pressure of leaving in a foreign country, more so how life is like living in the camps, and how the government of Uganda has come out to ensure that the conditions under which they are living are good.

INTRODUCTION

Refugee flow is the symbol of the crisis which affects many societies in Africa in this case Uganda in particular most of the refugee flows is a result of armed conflicts and civil strife. Ethnic intolerance; the abuse of human rights on a massive scale; the monopolization of political and economic power; refusal to respect democracy or the results of free and fair elections; resistance to popular participation in governance; and poor management of public affairs all play a part in forcing people to flee their normal places of residence. Fighting in eastern Congo has displaced over 250000 people as a result of the conflict arising from the assassination of President Kabila Laurent, many of whom have entered southwest Uganda in search of safety. The refugees in Uganda are of diverse cultures and in order to blend in with the country people and for these people to accept their way of living there should be a mechanism which should help them (refugees).

Uganda acceded to the 1951 Convention relating to the Status of refugees and its 1967 Protocol (henceforth jointly referred to as the 1951 Convention) on 27 September 1976. The country also ratified the broader, regional 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa in 1987. In February 2010, Uganda ratified the African Union Convention for the Protection and Assistance of the Internally Displaced Persons (also known as the “Kampala Convention”) that was adopted by the Special AU Summit convened on 23 October 2009 in Kampala Uganda . Uganda also acceded to the 1954 Convention relating to the Status of Stateless Persons. On 15 April 1965 with no reservations, but is not a State party to the 1961 Convention on the Reduction of Statelessness. As of February 2011, Uganda was to host 146,108 refugees and asylum-seekers. The Refugee population in Uganda has resulted from civil strife in neighboring countries Such as Burundi, Rwanda, the Democratic Republic of Congo, Ethiopia,

Eritrea, Kenya, Somalia and Southern Sudan. Currently, the most common country of origin of refugees in Uganda is the Democratic Republic of Congo.

The bulk of the refugee population resides in 9 refugee settlements in the North Western and South Western parts of the country. Of this population, 26% are hosted in urban centres the majority, around 38,800, is in Kampala. The municipal asylum policy and practice of Uganda are governed by the refugees Act 2006. The administrative framework for Uganda's asylum policy and practice falls under the mandate of the Office of the Prime Minister (OPM), which relies on UNHCR for administrative and operational costs of the refugee programme. Overall, Uganda is welcoming of refugees. The admission rate is one of the highest in the world, and Uganda is unique in the region in not following a policy of encampment. Refugees are accorded absolute freedom of movement and are allowed to stay where they choose. In the settlements refugees are provided land, which they can till for a living. Government policy dictates that refugees who elect to reside in urban areas should be self-sufficient; if they are unable to provide for themselves, then they must reside in a Settlement.

It is well known that the protection mechanisms of the UNHCR are insufficient, especially for urban refugees. Both specialized Ugandan organizations like the Refugee Law Project, and several among the international HR organizations, among them Frontline, have pointed this out. To testify to this, HRH has learnt of several cases of Congolese refugees, especially in Kampala, suffering intimidation and harassments, threats and violent attacks, both by the Ugandan army and police, and by others, most likely past and present members of various Congolese rebel movements, coming over from the DRC to track down their ?enemies? And bring them to silence. According to a one Wetemwami more cases, all adding further evidence to the clear

tendency that can be detected here; that Congolese refugees are far from safe in Uganda, and that Ugandan police, army and other government bodies do little or nothing to protect them. -Many of them have lost hope in the UNHCR, some after being subjected to treatment that is at best ignorant, at worst blatantly inhuman,. As witnesses to some of the worst human rights atrocities in recent times, many of them may well qualify for witness protection through for instance the ICC, but for as long as such mechanisms have yet to be set up, they remain very, very vulnerable, especially now that the whole of Kampala, to some extent the whole of Uganda, is so tense, with political unrest everywhere.

1.1 THE RESPONSE OF THE LAW ON THE CONGELESE REFUGEES IN UGANDA.

In 2006, Uganda adopted refugee legislation that was regarded as a model for Africa, recognizing the right of the country's more than 140,000 refugees to work, move around the country and live in the community, rather than in special camps.

But before it could be enforced, the government and parliamentarians needed to pass a range of bylaws. This happened in May and the Refugee Act 2006 was formally launched by Prime Minister Apollo Nsibambi at a ceremony to mark World Refugee Day.

"Asylum seekers have been accorded a very good law, which embodies some of the best regional tenets on refugee law," said Stefano Severe, UNHCR's representative in Uganda.

The legislation clearly enumerates the rights of refugees, as well as their obligations in Uganda. It defines who is a refugee and it is gender sensitive. The law outlines the process to be used in determining refugee status. It also sets forth how a refugee situation can cease, once durable solutions have been found.

The freedoms enshrined in the law include the right to work, freedom of movement and the right to live in settlements rather than in refugee camps. Prime Minister Nsibambi noted that *"refugees are given opportunity to fend for themselves by growing crops, attain food security and avail themselves of other human basic needs."*

The Ugandan leader stressed that the Refugee Act 2006 "epitomizes Uganda's unwavering liberal policy towards refugees who seek protection here until they feel it is safe for them to return to their countries of origin." According to the UN refugee agency, over 7,000 Congolese refugees have crossed into Uganda since the beginning of 2009.

UNHCR commends the Government and the people of the Republic of Uganda for their open and generous attitude towards refugees on their territory. The Government is also commended for allocating arable land to refugees and for the renowned policy of freedom of movement. UNHCR also wishes to acknowledge that Uganda's municipal law is in conformity with International refugee instruments. The Government is particularly commended for recognizing gender related persecution (e.g. strict and forced adherence to dress code, obligatory pre-arranged marriages, physically harmful facial practices or genital mutilation, rape and domestic violence) as a distinct ground for asylum. UNHCR has maintained demarches with the authorities to ensure the asylum regime is in accordance with the provisions of this legislation.

1.2 BACKGROUND OF THE STUDY

The **First Congo War** (November 1996 to May 1997) was a revolution in Zaire that replaced President Mobutu Sésé Seko, a decades-long dictator, with rebel leader-cum-President Laurent-Désiré Kabila. Destabilization in eastern Zaire that resulted from the Rwandan genocide was the

final factor that caused numerous internal and external actors to align against the corrupt and inept government in Kinshasa. The new government renamed the country the Democratic Republic of the Congo, though it brought little true change. Kabila alienated his allies and failed to address the issues that had led to the war, ultimately allowing the Second Congo War to begin in 1998, mere months after coming to power. In fact, some experts prefer to view the two conflicts as one war¹.

The new Congolese state under Kabila's rule proved to be disappointingly similar to Zaire under Mobutu. The economy remained in a state of severe disrepair and had even deteriorated further under Kabila's corrupt rule. Furthermore, he failed to improve the government, which continued to be weak and corrupt. Instead, Kabila began a vigorous centralization campaign, bringing renewed conflict with minority groups in the east who demanded autonomy.

Kabila also came to be seen as an instrument of the foreign regimes that put him in power. In order to counter this image and increase domestic support, he began to turn against his allies abroad. This culminated in the expulsion of all foreign forces from the DRC on July 26, 2008. The states with armed forces still in the DRC begrudgingly complied although some of them saw this as undermining their interests, particularly Rwanda, which had hoped to install a proxy-regime in Kinshasa.

Several factors that led to the First Congo War remained in place after Kabila's accession to power. Prominent among these were ethnic tensions in eastern DRC, where the government still had little control. There the historical animosities remained and the opinion that Banyamulenge, as well as all Tutsi, were foreigners were reinforced by the foreign occupation in their defense

¹ The great African war: Congo and regional geopolis 1996-2006 Cambridge up 2009 p- 194

Furthermore, Rwanda had not been able to satisfactorily address its security concerns. By forcibly repatriating refugees, Rwanda had imported the conflict. This manifested itself in the form of a predominantly Hutu insurgency in Rwanda's western provinces that was supported by extremist elements in eastern DRC. Without troops in the DRC, Rwanda was unable to successfully combat the insurgents.

In the first days of August 1998, two brigades of the new Congolese army rebelled against the government and formed rebel groups that worked closely with Kigali and Kampala. This marked the beginning of the Second Congo War.

In eastern Congo, the prevalence and intensity of rape and other sexual violence is described as the worst in the world. In October 2004 the human rights group Amnesty International reported that 40,000 cases of rape had been reported over the previous six years, the majority occurring in South Kivu. This is an incomplete count as the humanitarian and international organizations compiling the figures do not have access to much of the conflict area and only women who have reported for treatment are included. The actual number of women raped is thus assumed to be much higher. All armed forces in the conflict are guilty of rape, though the militia and various insurgent groups have been most culpable of particular medical concern is the abnormally high proportion of women suffering vaginal fistulae, usually as a result of being gang raped. The nature of rape in the conflict has, beyond the physical and psychological trauma to the individual women, contributed to the spread of sexually transmitted diseases, including HIV, in the region and migration from their countries to safer neighboring countries like Uganda.

Effects within the DRC include the displacement of some 3.4 million people, as well as the impoverishment of hundreds of thousands. The majority of the displaced are from the eastern

section of the country. Nearly 2 million others have been displaced in the neighboring countries of Burundi, Rwanda, (Tanzania) and Uganda.

Human Rights Watch defines sexual violence as “an act of a sexual nature by force, or by threat of force or coercion,” and rape as “a form of sexual violence during which the body of a person is invaded, resulting in penetration, however slight, of any part of the body of the victim, with a sexual organ, or of the anal or genital opening of the victim with any object or other part of the body.” In the eastern Democratic Republic of the Congo, the prevalence and intensity of rape and other forms of sexual violence has been described as the worst in the world.² With this kind of inhuman act most Congolese women were left with no option but to flee their country into neighboring countries of which Uganda was one of them as a source of refugee.

1.2 PROBLEM OF THE STATEMENT

There are numerous problems with the socio-political and humanitarian conditions under which refugees are currently living within Uganda. The country's most dispossessed and vulnerable are in the most unstable regions of the country and live in a state of constant fear due to the inadequacy of protection within the settlement at the same time; suffer from long-term implications of living short-term solutions. There is therefore a backlog issue which needs being addressed by the law and the international instruments concerned with such a kind of a problem.

The office of the United Nations High Commissioner for Refugees (UNHCR) is mandated to provide protection to the world's refugees. Amongst its activities, it decides who is entitled to protection and runs refugee camps. These take place on a massive scale and affect the lives of millions: UNHCR single-handedly conducts refugee status determination in 80 countries

² Prevalence of rape in E. Congo described as the worst in the world

worldwide and during 2004 it had at least 75,000 asylum applications to deal with, making it the largest single status determination body in the world. In 2002 the total number of people in camps administered by UNHCR was well over four million, with UNHCR exercising or superintending many administrative, judicial, or quasi-judicial powers in these camps. Its work has helped millions. But during refugee status determination, appeal rights and other elements of due process are often limited, and in UNHCR camps, numerous violations of the human rights of refugees have occurred, including sexual abuses, collective punishments, inhuman or degrading treatment, and coercive limits on freedom of expression.

PROBLEMS FACED BY CONGOLESE REFUGEES LIVING IN UGANDA

The refugees have blamed the UNHCR for abandoning them. A Congolese refugee in one of the interviews conducted by a UN official criticized the agency for abdicating its duty, leaving to interlaid. Another refugee said that it was hard for them to get antiretroviral drugs and medical care. *"We are HIV positive, but it is difficult for us to get drugs when we get them we do not have food"* said the HIV positive refugee from Congo.

When the refugees go to UNHCR for help, they are sent to the office of the prime minister which sends them back to UNHCR. At the end of the day the body claims that it is not a key player in the settlement of refugees saying that the responsibility lies on the government. Such cases have made Uganda fairly poorly in the world ratings on refugee treatment.

Continued large influxes of refugees due to on going conflict mean infrastructure and programs for refugees are constantly inadequate, further changing numbers mean changing relations between refugees and host communities especially as the demand on local resources such as schools and clinics increases. Secondly refugees from Congo find themselves in a protracted

situation; they have lived in exile for more than five years have no immediate prospect of findings a durable long term. (*Crisp 2003*).

Human Rights Watch and other organizations have documented the problems of political repression, armed conflict and other human rights abuses in Burundi, the DRC, Ethiopia, Rwanda, Somalia and Sudan, which often give rise to refugee flight. But no sooner had they arrived in Uganda than their problems doubled. The report notes that as soon as they arrive, asylum seekers and refugees have few places to turn to meet their basic needs. In most cases, UNHCR does not provide the necessary assistance.

InterAid, a Ugandan organization that serves as UNHCR's main implementing partner, provides counseling, some medical care, and income-generating initiatives for a small number of refugees. A few NGOs and faith-based organizations provide assistance only when asylum seekers are waiting for their status to be assessed. Once recognized as refugees, they must sign an agreement verifying that they will be "self-sufficient" in Kampala. Keeping this promise is very difficult for refugees, given that they are living in a city where Ugandan citizens themselves are suffering from unemployment and poverty.

Upon arrival, then refugees are first confronted with the problem of accommodation. In Kampala, newly arrived asylum seekers sleep and spend their days near the Old Kampala Police Station. This is the police station where their first interviews occur, and it is located just around the corner from InterAid. Then follows the food problem, the refugees are only allowed to share the once-a-day food rations of the prisoners held at the police station. Each adult refugee gets one portion of the total amount intended for the prisoners, which is donated by charitable agencies in Kampala. Mothers must share their portion with their children.

Sleeping at night is a major problem. Some are lucky and find shelter with friends or family, or with one of the two church leaders who give refugees shelter on church property. Others decide that since they need to be in Old Kampala to seek asylum or obtain services, they will sleep outside near the Old Kampala police station and InterAid. Several refugees explained that *“prior to the time of Human Rights Watch's visit they had been allowed to sleep inside a broken-down school bus that had been parked near police station”* Several spoke longingly about the shelter and warmth the bus had provided. However, the bus had been allegedly towed away after journalists planned to write a story about it

Finding money to pay rent is a daily struggle for refugees in Kampala. Monthly rent for a room is between U.S.\$5 - \$17. In Kampala, most refugees live in crowded rectangular rooms made out of cement blocks. One neighborhood a Human Rights Watch researcher visited was the Kisenyi-Mengo, where many Somali refugees live.

In one room that measured approximately thirty-by-thirty feet, there were ten foam mattresses on the floor. Each mattress belonged to one family. One man with ten children explained that they had to take turns sleeping on their one mattress, says the report³.

Some refugees, usually women and girls, obtain shelter by working as domestics. Usually they work only for room and board, without a salary. They are vulnerable to sexual and other exploitation. Zola R., a twenty-year-old Congolese refugee woman explained: “ I found a job working as a domestic for an Algerian woman. She had four children and no husband. She gave me food and a place to sleep. I worked from five in the morning until midnight every day. I didn't receive any pay, but food and a sleeping place”.

³ The report entitled: hidden in plain view: the problem of refugees living in Kampala

The report entitled: "Hidden in plain view: the problem of refugees living in Kampala", notes that UNHCR is reluctant to continue assisting even the small number of refugees it helps in Kampala. Human Rights Watch attended a press conference in Kampala where UNHCR made its policy preferences quite clear. A UNHCR Representative in Kampala told the press, "It is easier for UNHCR to deal with refugees in the camp setting. At some point we have to stop paying the rent of refugees. We recommend to refugees that they should go to the settlements".

Asylum seekers in Kampala are not eligible for medical assistance from NGOs. They normally must go to Mulago Hospital, one of Kampala's public hospitals, to try and get treatment. Some asylum seekers go to independent clinics, where treatment is more immediately available and where medicines can be purchased. However, most forgo treatment because they simply cannot afford it.

But the saddest case is that of torture victims, who do not receive adequate care in Kampala. The report⁴ notes that this is in contradiction to UNHCR's own guidelines and the agency's recognition that "the personal, social, and economic costs of failing to identify and intervene with [victims of extreme violence] are devastating. When Human Rights Watch enquired about counseling for sexual violence or torture victims, UNHCR explained that they do have a system of referrals for refugees (not for asylum seekers) to an NGO called the Transcultural Psychosocial Organization (TPO). However, the Director of TPO explained that TPO does not provide any psychotherapeutic counseling for torture victims in Kampala, only in Uganda's refugee camps.

⁴ The report entitled : hidden in plain view: the problem of refugees living in Kampala

Refugees living in Kampala are partly suffering from the poverty and violence that is afflicting many Ugandan nationals. While the Ugandan government does allow some refugees to work and provides them with access to its public hospital, the government could do more. For example, the government's opposition to the presence of Sudanese refugees in the capital has meant that their access to assistance has been even more restricted than other refugees.

For its part, UNHCR has not challenged the government's strict policy requiring that refugees be "self-sufficient" if they live in the city. NGO and UNHCR assistance for recognized refugees is extremely limited, says the report. The report also chronicles cases of harassment of refugees by security agents. Given Uganda's role in the region, Ugandan authorities occasionally work in tandem with security agents to harass refugees. In other cases, refugees are accused of being responsible (by virtue of being Congolese) for the deaths of Ugandan soldiers in the DRC. According to the report, the involvement of the Ugandan military in the war in the DRC has meant that once they are back in Uganda, soldiers have attempted to intimidate individual Congolese they assumed to be in opposition to their military presence (up to late September 2002) in the DRC. As a result, the Ugandan military has been implicated in several security incidents with Congolese refugees.

The Ugandan police have also been accused of committing violence against refugees. At times refugees are not specifically targeted, and violence suffered in custody is no different to that experienced by Ugandan nationals. However, sometimes the police violence appears to be linked to government suspicions about certain nationalities of refugees. Asylum seekers and refugees may wind up in custody after being individually arrested, but most often they are detained after being caught up in one of Uganda's immigration "*swoops*" (a word commonly used in Uganda).

The abuses continue unabated despite the fact that asylum seekers, refugees recognized under the Refugee Convention, and prima facie refugees must be guaranteed certain basic human rights. The rights most relevant to the protection problems documented by Human Rights Watch in Uganda include: the right to freedom of speech, the right not to be tortured, the right to liberty and not to be arbitrarily detained, the right to security of person, and the right to freedom of movement.

Article 19(3)⁵ of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda is a party, provides aliens with the right to freely express opinions; and *Article 21* provides for the right of peaceful assembly. The Human Rights Committee, which is charged with the responsibility to interpret and monitor the ICCPR, has explicitly stated that "[aliens] have the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association." The report also notes that the refugees live under constant security threats. Except for high-profile refugees, who are usually referred to UNHCR for resettlement, the Ugandan government is reluctant to accept full responsibility for providing protection to refugees at risk in Kampala. Instead it chooses to blame UNHCR for not doing enough to protect high-risk security cases.

At the same time, UNHCR asserts that the Ugandan government is not doing enough to protect refugees. In an interview with a Human Rights Watch researcher, UNHCR in Uganda noted that, *"The security of refugees is the responsibility of governments, and the government of Uganda is equipped to deal with the security of refugees."* While the government does need to do more to guarantee the protection of refugees whose lives are in danger in Uganda, Human Rights Watch also found that UNHCR is failing in some of its protection functions. UNHCR is not actively

⁵ ICCPR :INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

tracking or responding to the individual incidents of insecurity experienced by refugees on a daily basis and documented in this report.

Refugees are unable to access the office to report on beatings or other harassment. Even local human rights groups experience problems accessing UNHCR or convincing UNHCR to intervene with the Ugandan government on behalf of refugees. The agency lacks sufficient staff to be able to visit refugees in custody or intervene with authorities in cases that are not high profile.

The report recommends that to address the lack of a domestic legal framework for refugees, the Ugandan Government should adopt its 2001 Refugee Bill in accordance with the Refugee Convention and the OAU Refugee Convention.

To address the problems with camp confinement, refugees should be permitted freedom of movement consistent with *Article 26 of the Refugee Convention and Article 12 of the ICCPR*. Until those standards are met, the Ugandan Government should at a minimum provide, by statute or administrative regulation, permission for certain categories of refugees to leave refugee camps on a voluntary basis. Such categories should include individuals with serious security problems in the camps, those in need of medical care only available in urban centers, those who agree to be self-sufficient and individuals who have been living in a refugee camp for an excessive length of time, such as three years or more, and for whom alternative permanent solutions in the foreseeable future appear unlikely.

To provide adequate reporting mechanisms for security problems, the Ugandan Police should facilitate the filing of official police reports by asylum seekers and refugees regarding security

threats. Copies of these reports should be sent to UNHCR as a matter of standard operating procedure.

1.3 RESEARCH QUESTIONS

What are the strengths of Uganda's refugee laws?

What are the weaknesses'/ gaps in Uganda refugee laws?

How are these gaps going to be addressed?

1.4 OBJECTIVES OF THE STUDY

The broad objective of this study is to find out how the different laws both on the international and national arena, have effectively looked into the problem of Congolese refugees in Uganda, the problems they are facing, what they have done to ensure that these refugees feel secure in a place that is not home above all measures that have been taken by these laws to see that the refugees are well catered for and that the law has them at heart.

1.5 SPECIFIC OBJECTIVES

- To analyze the development of the law as regards to the Congolese refugees living in Uganda
- To provide a basis for future research in the area of refugees protection and settlement in Uganda.
- To investigate how effective the law has been regarding the Congolese refugees living in Uganda.
- To find out the problems the Congolese refugees face while living in Uganda.

1.6 THE SIGNIFICANCE OF THE STUDY

On both the international and national level, refugees are considered to be a very sensitive topic, therefore the need for their protection does require over emphasis. It is envisaged that the findings from this study will specifically help law makers, policy makers in addressing the problems faced by the Congolese refugees in Uganda.

This will help the people who implement the laws to design measures that will be directed to help these Congolese refugees living in Uganda. The successful results from this study that will be implemented could also be applied to other refugees in other parts of the world especially those African countries that shelter refugees.

The researcher hopes that the study will act as a cornerstone for further research in the related field of study of refugees and it will also empower the people termed as refugees with relevant information which help them to wake up and fight for their rights, and also the research will be able to yield first hand information and opinions regarding the problems of the effectiveness of the law to the Congolese refugees living in Uganda so that at the end there are solutions.

It is also hoped that the results of the study will contribute to the publication/compilation of a handbook for educationalists, politicians, administrators and civil society and opinion leaders on how to solve problems faced by refugees and to promote education, health and employment of these Congolese refugees living in Uganda.

the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention), a **refugee** is defined as a person who

"Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution..."

CHAPTER TWO: METHODOLOGY



2.1 INTRODUCTION:

This chapter specifically focuses on the methods employed in data collection. It gives the description of area, methods used in selecting the sample and in collection of the data. Also highlighted are some of the problems and limitations encountered in data collection as well as the description of how data was processed and analyzed.

This study is based on 160 interviews with refugees, asylum seekers, city officials, UNHCR and OPM representatives, and NGOs that work with refugees. The study was conducted from mid-April-may 2011.

Qualitative interviews and participant observation were the main methods used in conducting this study. Due to time and capacity constraints, the study provides a limited understanding of the entire refugee population but raises several issues which affect most Congolese refugees and thus warrants response from stakeholders.

Throughout this study, efforts were made to take into account the views and concerns of interviewees. For instance, after speaking informally with Congolese refugees at the Jesuit refugees services, these refugees made known that due to security concerns, they felt extremely uncomfortable with the prospect of researchers visiting their homes and conducting interviews in their neighborhoods. In response, interviews with Congolese refugees were conducted in a setting where they felt comfortable and safe. The study also relied upon participant observation. For example, at the start of the study the researcher introduced herself to "Jesuit refugee services

and attended a number of their meetings in an observational capacity. Members of these groups also provided helpful information as to where in Kampala other refugees could be located.

Research was carried out in most locations in Kampala where refugees reside. A number of respondents were accessed with the help of organizations working with refugees, which provided information about areas of residence and additional contacts. Upon arrival of the researcher in each area, introductions were made to local councilors and refugee leaders, who initially watched closely who was interviewed and where interviews were conducted. However, our prolonged presence in each area eventually allowed a greater degree of flexibility, and thus it is hoped that a broad spectrum of responses was gathered. The language skills of the researcher, including English, were also an asset in gaining a variety of opinions. On a few occasions, interpreters were used in the course of research. Interpreters were either staff members of other organizations who work with refugees and volunteered their time, or individuals recommended to the Jesuit refugee services by related organizations that were given a small stipend.

One shortcoming of this study is that although local leaders and elected officials were interviewed in areas where refugees reside, no interviews were conducted with Ugandan community members due to time and capacity constraints. The experiences and perspectives of host communities would have helped to provide an understanding of their socio-economic situation in relation to refugees. This, in turn, would provide a basis for formulating a holistic policy aimed at improving the situation of refugees and the Ugandan urban poor alike.

Two other empirical issues need highlighting. First, the original intention was to find out on how effective the law has been in enabling that Congolese refugees are well taken care of and their

welfare in Uganda is appealing. This strategy proved impossible as it was difficult to determine with any degree of certainty how positive the law had worked along with the different organizations in ensuring that the refugees are safe and sound.. It may be that refugees are hesitant to reveal that they are not receiving enough attention from the law and the government of Uganda at large, because they fear possible repercussions if they acknowledge support from multiple sources. Second, although it was clarified at the outset of every interview that the researcher was not involved in provision of assistance and protection, many refugees insisted on showing me their documents, assuming that an interview would improve their chances of resettlement. Often researchers found themselves explaining how the refugee registration process functioned. These experiences directly relate to our research findings: many refugees stated that they lacked direct access to government and UNHCR officials, and many were also confused about the registration process.

2.2 AREA OF STUDY:

The study was conducted in the different refugee camps and urban centers in Uganda the camps included Nakivale refugee camp and Kyaka2 in south western Uganda. The area was chosen due to the high prevalence of Congolese refugees coupled with a relatively long history of hindrances encountered by these refugees and how the law has effectively defended them.

2.3 STUDY DESIGN:

This study adopted both quantitative methods of data collection. It was intended to explore and describe the underlined effects of the ineffectiveness of the law on Congolese refugees living in Uganda and upon which findings, interpretations, summaries and recommendations were made in subsequent chapters.

2.4 SAMPLE POPULATION:

The population selected for the study was composed of both males and females of young age and adult age who were able to express their feeling rightly when approached. These varied from students, staff of different organizations, married and single, working (employed) youth and the unemployed. These were taken from the different camps in Uganda.

2.5 SAMPLING FRAME:

The study was carried out in different camps in different parts of Uganda. Due to the limited resources, the truth of the matter is that the researcher was not in position to extensively cover all the camps; so sample random sampling method was adopted since the population was big and within technique large number could be reduced significantly, while every number had an equal chance of being selected. The study composed of about fifty respondents of which were inclusive the key informants. This implies that about five people were randomly selected from each camp.

2.6 DATA COLLECTION METHODS AND INSTRUMENTS:

The researcher got a letter from the department of the faculty of law of Kampala international university which was presented to the representatives of Jesuit refugees' services and associated organizations. These people helped the researcher with the people of whom he was to interview. These comprised of all sorts whereas questionnaire was distributed to the staff only. The data used for the analysis has been collected primarily from the refugees met in Kampala, Uganda and this article relies heavily on case material. In addition some information was collected from the urban office and headquarters of Jesuit refugee services, from the offices of refugees law project and from official and unofficial refugee born organizations all based in Kampala

2.7 METHODS OF DATA COLLECTION

The researcher mainly used three instruments of data collection. These included interviews, observation and questionnaires. The questionnaire was presented to the supervisor for renewal and comments on its suitability. The researcher gave respondents time as they were busy and could later collect them at an agreed upon time.

The interview schedule was used on the people who have worked with the refugees, those people who have worked to see to the wellbeing of these refugees while in Uganda and those who were so busy that filling questionnaire was rather time consuming and hard for them.

The researcher further used the observation method, the researcher used his eyes to see and supplement some of the issues which were raised by the respondents and also to explore more on those which seem to be existing but were not revealed by the respondents.

2.8 LIMITATIONS OF THE STUDY

The biggest problem was with having to move in search of information given the fact that the places where to get it were far and even then, the progress of the study seemed futile since most Congolese refugees did not know English and hiring a translator was expensive.

Another problem was with the key informants who used the questionnaire method. There was a tendency to retain them only remember to fill them in when the researcher had gone to collect them this hindered the progress of the study.

The researcher faced the problem of language barrier when it came to interviewing the Congolese refugees, the researcher could not manage to understand what they had to say to him/her.

The researcher also faced the problem of inadequate resources. It was indeed very costly since some respondents wanted “sitting allowances” before responding. Another of the problems faced was lack of co-operation from some respondents especially the “big fish” or the people who were in charge of the welfare of refugees.

CHAPTER THREE: LITERATURE REVIEW

2.1 INTRODUCTION

It is in principle that some knowledge, which is already known about the problem, should be put across so as to give knowledge to the researcher. Therefore this chapter presents the review of the theory related to the study by different scholars and legal materials.

2.2 REVIEW OF RELATED LITERATURE

The word refugee is often used to refer to anyone who has been forced to leave areas that are struck by natural disasters and the people of northern Uganda who fled rebel activity are often referred to as refugees in the media and in everyday conversation. In strict legal terms however refugee has a specific and quite limited definition.

THE U.N AND O.A.U REFUGEE CONVENTIONS

The 1951 UN convention relating to the status of refugees was created at a time when power brokering nations were concerned about the protection of the large number of people fleeing communist regimes in Eastern Europe. The convention and its 1967 protocol defined a refugee as a person who is outside his or her home country and needs international protection because of a well founded fear of being persecuted for reasons of race, religion, and nationality membership of a particular social group or political opinion⁶.

In 1969 member nations of the organization for African unity (OAU) concerned with the effects of the liberation movements sweeping across the continent created the OAU convention governing the aspects of refugee problems in Africa and broadened the definition to include

⁶ 1951 convention relating to the status of refugees ch.1 Art.(2)

people who had been forced to flee their home nation because of “external aggression” occupation foreign domination of events seriously disturbing public order.⁷

The OAU convention also specifies that states may declare an entire region to be conflict areas and those who flee it to be refugees barring evidence to the contrary. These two conventions form the basis for refugee protection in Uganda. The vast majority of the 170,000 plus refugees in the country are recognized under the OAU convention with a minority recognized under the UN convention status refugees Uganda being signatory to both convention status to refugees⁸.

Not only the 1969 OAU Convention, but also other regional human rights instruments, such as the African Charter on Human and Peoples Rights, and international conventions provide a full spectrum of refugee protection rights and obligations. However, there have been and continue to be failures of protection of these rights, even though several countries have over the decades demonstrated a solid record of protecting, assisting and finding solutions for hundreds of thousands of refugees.

The failures cannot, in my view, be put at the door of the 1969 Convention itself. Derelict state behavior is usually the problem, even if there are also cases in which the inability or failure of refugees to access their full legal rights is due to objective, material, social, economic or political factors. National security interests have always been the source of countervailing pressures, and in some instances have grown even worse. However, there is really no evidence to support the contention that refugees are an inherent source of risk to the security of a host state or population. On the contrary, strict adherence to the essential refugee law principles, such as those

⁷ 1969 convention on the specific aspects of the refugee problems in africa Art.1 para.1

⁸ The granting of refugee status is recognition of a pre-existing condition. Neither nations nor UNHCR have power to classify someone as a refugee, but only to officially recognize that an individual falls under the international criteria for a refugee.

contained in the OAU Convention, is often an important step in deterring any abuse or misuse of refugee status and the asylum system.

THE STATUTE OF UNHCR

The UNHCR is also authorized by its 1950 statute to give refugees status to persons that fall under its mandate to protect refugees⁹.these individuals are referred to as mandate status refugees

While there are no legal guidelines on whether convention status or mandate should precedence. Lomo argues that mandate status should be granted only in two circumstances¹⁰. First, if a state that is receiving refugees is not a signatory to one of the refugee conventions, UNHCR must intervene to offer protection. Second in the event that s state has signed a relevant convention but has no procedure to determine eligibility for refugee status, UNHCR is mandated to offer assistance. If a country that is a party to the conventions has a procedure in place as in the case of Uganda.UNHCR should not be actively determining status during the initial hearing. The UNHCR's role as an advocate on behalf of refugees is best served by considering cases for mandate status only if they have been rejected by Government of Uganda.

The Refugees Act 2006 took effect in May 2007, although the Government has not implemented its status determination procedure. The Act provides for refugee protection defined by the 1951 Convention relating to the Status of Refugees (*1951 Convention*), its *1967 Protocol*, and the *1969 Convention governing Specific Aspects of the Refugee Problem in Africa* (African Refugee Convention), all of which Uganda is party to. Uganda maintains reservations to the 1951 Convention's rights to exemption from reciprocity requirements and exceptional measures,

⁹ 1950 statute of the office of UNHCR annex Chap 1 Para 8(d)

¹⁰ Lomo 2000

property, association, access to courts, work, and administrative assistance; its allowance of provisional measures; and its restrictions on expulsion.

The Act's refugee definition includes persons fleeing from persecution for not conforming to "gender discriminating practices." In situations of mass influx, the minister in charge of refugees can also allow groups of asylum seekers to remain in the country up to two years with the same rights the Act gives refugees.

International legal protection of refugees centers on a person meeting the criteria for refugee status as laid down in the 1951 refugee convention. Under Article 1(A) 2 the term "refugee" shall apply to any person who:

"..... owing to well-founded fear of being persecuted for reasons of race, religion nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it"

Thus according to this provision refugees are defined by three basic characteristics.

- They are outside their country of origin or outside the country of their former habitual residence
- They are unable or unwilling to avail themselves of the protection of that country owing to a well founded fear of being persecuted and:
- The persecution feared is based on at least one of five grounds race, religion, and nationality, membership of a particular social group or political opinion.

As the problem of displacement has grown in recent years, the increasing number of refugees and displaced persons has necessitated a broader approach and a search for a comprehensive response.

The High Commissioner has launched a threefold strategy of prevention, preparedness and solutions. This strategy calls for, among other things, coordinated efforts in countries of origin to address the conditions that cause displacement; an improved response to protection and assistance when displacements occur; and a greater involvement by UNHCR and governmental, intergovernmental and non-governmental agencies in countries of asylum and of origin to seek the successful integration of refugees, returnees and displaced persons.

CHAPTER FOUR

STRENGTHS OF UGANDA'S REFUGEE LAWS, WEAKNESSES/GAPS IN UGANDA'S REFUGEE LAWS, RECOMMENDATIONS AND CONCLUSION.

4.1 INTRODUCTION

This chapter presents the strengths of the law in ensuring that the Congolese refugees living in Uganda are in a suitable condition and it also goes ahead to highlight the loopholes that are in the domestic and international laws as regards the welfare of refugees since it is a fundamental aspect that should be addressed in different states Uganda inclusive. It further presents the recommendations that were the researcher thought would help in implementation of the laws for in the future. It finally presents the conclusions that were drawn by the researcher from the findings of the study.

4.1.1 STRENGTHS OF UGANDA'S REFUGEE LAWS

Article 1 of the Convention defines a refugee as "A person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution."

The convention was the first truly international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of basic human rights which should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises

and the necessity of international cooperation, including burden-sharing among states, in tackling the problem.

Host governments are primarily responsible for protecting refugees and the 143 parties to the Convention and/or the Protocol are obliged to carry out its provisions. UNHCR maintains a 'watching brief', intervening if necessary to ensure *bona fide* refugees are granted asylum and are not forcibly returned to countries where their lives may be in danger. The agency seeks ways to help refugees restart their lives, either through local integration, voluntary return to their homeland or, if that is not possible, through resettlement in 'third' countries.

The Refugees Act provides that recognized refugees "shall ... be issued with an identity card in a prescribed form stating the refugee status of the holder for purposes of identification." Asylum seekers receive renewable identification cards good for three months while the REC reviews their cases. If the REC grants them refugee status, they receive an official refugee identity card. All refugees living in urban areas receive this form of identification, but refugees who live in settlements have to request cards from administrators, and students, businessmen, and those seeking medical treatment have priority. Uganda issues only ration cards to refugees authorities recognized *prima facie*, which camp authorities recognize as identification. Outside camps, police and authorities generally recognize refugee identification cards and asylum seeker documents but not the ration cards.

The Refugees Act 2006 guarantees the right of refugees to international travel documents, which are usually valid for 90 days from the date of issuance and renewable every two months. To obtain them, refugees have to apply through OPM and provide proof of their reasons for travel, length of stay abroad, and other travel details. Students require letters of admission; medical

patients have to provide evaluations from Ugandan medical institutions explaining why no one could treat them in Uganda, those traveling to see family have to provide a letter of invitation from the family member, and business travelers have to provide proof of a legitimate business. Uganda does not provide international travel documents for asylum seekers.

UNHCR commends the Government and the people of the Republic of Uganda for their Open and generous attitude towards Refugees on their territory. The Government is also commended for allocating arable land to refugees and for the renowned policy of Freedom of movement. UNHCR also wishes to acknowledge that Uganda's municipal law is in conformity with international refugee instruments. The Government is particularly commended for recognizing gender related persecution (e.g. strict and forced adherence to dress code, obligatory pre arranged marriages, physically harmful facial practices or genital mutilation, rape and domestic violence) as a distinct ground for asylum. UNHCR has maintained demarches with the authorities to ensure the asylum regime is in accordance with the provisions of this legislation.

Under the *Refugees Act 2006*, recognized refugees enjoy the same right to work as nationals. Refugees do not require work permits in Uganda. OPM issues refugees' letters explaining their status and rights, including the right to work. Refugees are free to establish businesses and do not require permits. They enjoy the right to own property, both movable and immovable, and acquire assets. They are free to lease land, but refugees have to obtain permission from the Minister of Land and Environment in order to own it. Refugees in settlements where land is especially fertile farmed successfully but movement restrictions prevented them from selling their produce in urban markets and required them to rely on Ugandan intermediaries. *The 2005 Poverty Eradication Action Plan (2004/5-2007/8)* the Ministry of Finance, Planning and Economic Development

prepared for international donors deals with refugees as a disaster to manage, but highlights self-reliance and allows that refugees can "become an asset." The Plan notes, however, "Being an emergency issue, expenditure on refugees is not treated as part of the [Medium Term Expenditure Framework]." The latter includes the goal of increasing growth to seven percent by removing bureaucratic barriers to investment; improving transportation infrastructure and utilities; modernization and commercialization of agriculture; improving rural access to finance and strengthening small and medium-sized businesses; and enhanced environmental sustainability.

CEDAW takes an even broader view of state parties' obligations to ensure compliance with the rights provisions in various aspects of public and private life. Under *Article 2 (e)* states are obliged to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise." In the following subsection (f), the Convention prescribes that state parties must "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." *CEDAW* thus extends the elimination and prohibition of discrimination against women to all aspects of public and private life which may, in turn, give rise to other conflicting human rights obligations in respect of freedom of association, equality rights, and personal and family life.

4.1.2 GAPS IN UGANDA'S REFUGEE LAWS

The Act contains a broad definition of members of a family that takes into consideration the realities of African family units. It includes a spouse or spouses who is dependant on the refugee.

The provision for any person dependant on the refugee is potentially very wide indeed, although a person dependant /a dependant is not defined in the Act, reference to succession law where the term is defined suggests that dependant in this context could mean any person who is substantially dependant on the refugee for provision of ordinary necessities of life suitable for that person's situation¹¹. By referring to any person, the Act potentially provides a wider definition of a dependant than that provided for in the succession Act. The succession Act restricts the term to relatives including spouses, children under 18, parents, brothers, and sisters¹².

While the suggestion of the broad definition dependant is welcome we note that the lack of definition in the Act may cause some practical difficulties in the asylum determination process. We recommend that the Act clearly states the meaning of a dependant taking in account the realities of African family units. Much of the Act is accommodative of dependants; the practical definition relating to this inevitably presents itself in the operationalization of a resettlement to a third country as a protection tool and or as a durable solution. The definition of family by the traditional resettlement countries revolves around the core/nuclear family. Dependency is rarely considered in cases of extreme vulnerabilities where the dependant is not a member of the nuclear family¹³. The absence of a clear definition or the generality of the term in the Act presents practical problems in resettlements process thus hampering burden sharing further

¹¹ See section 2(b) of the succession Act

¹² Under section 2 of the succession Act a dependant relative includes a spouse, children below 18 years or above 18 who are wholly dependant on the deceased and a parent brother or sister who are substantially dependant on the deceased for the provision of the ordinary necessities of life

¹³ The refugee law project has practical examples of families denied resettlement particularly by Australia on grounds of family composition where the dependants of the principal applicant is extended to distant relatives whereas this was not stated in the rejection letters it was not informally confirmed from immigration officers who conducted interviews.

protection by resettlement and the possibility of alternative durable solution by way of resettlement.

Recommendation the Act should limit the definition of a member of a family to include the nuclear family spouse or spouses, children and dependants within the meaning of a dependant adopted in the succession Act.

An asylum seeker is defined as a person who has made an application for the application for the grant of refugee status under section 19 of this Act. Section 19 (1) further expands to state that *“any person who enters Uganda and wishes to remain in Uganda as a refugee shall make a written application to the Refugee Eligibility Committee for the grant of refugee status within 30 days after the date of his or her entry into Uganda”*.

The definition is too narrow because it excludes entering persons who despite entering Uganda with the intention of applying for asylum are prevented from doing so by circumstances beyond their control, such as detention illness or even unawareness regarding the process of acquiring refugee status.

Recommendation: I recommend that this section be rephrased to include a person who demonstrates an intention or who intends to apply for refugee status at the earliest possible opportunity.

Thus an asylum seeker is a person who has applied for refugee status under *section 19* of this Act or who demonstrates an intention to apply for the grant of refugee status at the earliest possible opportunity. Much as section 38 forbids persecution of an alien in Uganda who intends to make an application to be recognized as a refugee under the Act meaning that an asylum seeker

includes a person intending to apply for refugee status in Uganda. The definition of an asylum seeker should come clear with the express definition of that implication in *section 38*.

Persecution is defined as including *“any threat to the life or freedom or serious violation of the human rights of a person on account of that person’s race, religion, nationality, sex, political, opinion or membership of a particular social group and as long as a person is threatened with any harm which can reasonably be seen as part of a course of systematic conduct directed against that persons, on account of race, religion, nationality, sex, political opinion or membership of a particular social group that person is being persecuted for the purposes of this Act”*.

The definition of persecution is ambiguous. The first part of the definition reflects the widely recognized position that persecution includes any threat to life or freedom or serious violation of human rights. The definition then goes further to provide and as long as a person was threatened with any harm..... it is not entirely clear whether the latter clause is intended to qualify or add to the first part of the definition. In either case we can find no basis both in international refugee law and our national laws for the inclusion of such a provision. Persecution as defined by the 1951 convention does not necessarily require a systematic series of threats. As pointed out in the *UNHCR handbook at paragraph 51* from Article 33 of the 1951 convention *it may not be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution*.

Recommendation: The language of this section should amended to exclude the additional qualification an systematic conduct and instead should mirror the language from Article 33 of the

1951 convention otherwise the second part of the definition undermines the proper scope and content of the term. The unnecessary appendage in the definition be deleted.

The definition of country of nationality: country of nationality means each of the countries of which that person is national.

The definition of a country is in line with international consensus however the term is used in synonymously with “country of origin” in other parts of the Act which is quite misleading in refugee status determination country of nationality means country of citizenship. In case of statelessness, the term country of habitual residence is used. The drafters of the 1951 convention defined country of habitual residence to mean the country in which the refugee resided and where he had suffered or fear he would suffer persecution if he returned.

Recommendation: The term country of origin is preferable because it is a wider term connoting both the country of nationality and habitual residence.

Section 3(6) states that the government of Uganda has sovereign right to grant asylum or refugee status to any person. Although the state has the sovereign right to grant asylum the granting of refugee status is bound by the provisions laid out in the 1951 and OAU conventions particularly the principle of non refoulment¹⁴. To state that the government of Uganda has the sovereign right to grant refugee status derogates from international conventions that the Act purports to uphold and weakens the provisions in the Act that lay out the principles for granting refugee status. The provision reserves the state of right to make arbitrary decisions of denial of refugee status with a legal backing.

¹⁴ The principle of non refoulment is the cornerstone of international refugee law. It provides that no refugee should be retained to any country where he or she is likely to face persecution or torture. This principle is expressed inter alia in Article 33 of the 1951 convention relating to status of refugees

Recommendation: I recommend that the sovereign right to grant refugee status be deleted from this section.

4.1.2 RECOMMENDATIONS

To the Government of Uganda

To address the problems with camp confinement

- Refugees should be permitted freedom of movement consistent with *Article 26¹⁵* of the Refugee Convention and *Article 12* of the ICCPR. Until those standards are met, the **Ugandan Government** should at a minimum provide, by statute or administrative regulation, permission for the following categories of refugees to leave refugee camps on a voluntary basis (as it already does on an informal basis for all categories except iv, below):

i) Individuals with serious security problems in the camps;

ii) Individuals in need of medical care only available in urban centers;

iii) Individuals who agree to be self-sufficient;

iv) Individuals who have been living in a refugee camp for an excessive length of time, such as three years or more, and for whom alternative permanent solutions in the foreseeable future appear unlikely;

¹⁵ Convention relating to status of refugees "Each contracting state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances".

v) Individuals who are in need of educational opportunities not available in the camps; and

vi) Individuals with family members who are residing legally outside of the camp.

- Standard procedures should be put in place for applications under these six exceptions to be brought before an impartial decision-maker. All recognized refugees, whether *prima facie* or individually recognized, should be allowed to apply for permission to leave the camp.

To address problems in the refugee status determination system

- The **Ugandan Government** should allow independent legal representatives or UNHCR protection staff to represent asylum seekers (and not merely observe the proceedings) before the Special Branch, the Refugee Eligibility Committee, and during appeals.
- Relations between the country of origin and Uganda should not influence the standards applied or procedures followed in a particular asylum seekers' case. Instead, the **Ugandan Government** should ensure that its criteria for transfer to the Special Branch and Refugee Eligibility Committee are transparent, and its staff decides cases based on the facts presented and in accordance with the 1951 Refugee Convention and the OAU Refugee Convention.
- The **Office of the Prime Minister** and the **Special Branch** should immediately cease using randomly chosen interpreters from among the refugee community at all stages of the determination process. Professional interpreters should be hired for each of the commonly spoken languages during determinations. If funds for interpreters are not

available, then they should be sought from donor governments (see also the recommendations to donor governments, below).

To address protection problems when asylum seekers and refugees first arrive in Kampala and its environs

- The **Office of the Prime Minister** should set up temporary reception sites for asylum seekers and refugees, providing them with safe shelter for at least the first two weeks that they are in Kampala. These temporary sites could be appropriate places for UNHCR to identify at-risk individuals.

To address the problem of secondary movement policies

- The **Ugandan Government** should not apply secondary movement policies to a refugee in Uganda who was compelled to move because of specific protection or security problems in his or her previous country.

To provide adequate reporting mechanisms for security problems

- The **Ugandan Police** should facilitate the filing of official police reports by asylum seekers and refugees regarding security threats. Copies of these reports should be sent to UNHCR as a matter of standard operating procedure.
- An **independent and impartial Ombudsman** should investigate security incidents in which the Ugandan camp commandants, police, or military are implicated. Copies of all incident reports should be sent to UNHCR. Disciplinary action or prosecution must be

taken against officers found responsible for such behavior. A guarantee for the security of the complainant against any potential reprisals must be made and adhered to.

To address the problem of real or perceived bias by the government of Uganda

- The **Office of the Prime Minister** should build confidence among asylum seekers in the confidentiality of the status determination process through public announcements on radio and visits to refugee communities, informing asylum seekers about the process. As a subset of these efforts, Uganda should build public awareness in the Congolese community of the importance of registering with the police in Old Kampala, and of obtaining refugee status.
- The **Ugandan Government** should ensure that the Joint Verification Commission does not impede the rights of asylum seekers to fair and confidential assessment of their asylum claims

To address the problem of refoulement

- The **Ugandan Judiciary** should institute training for magistrates on international refugee law, particularly non-refoulement, and develop a standard inquiry during deportation proceedings for determining fear of persecution upon return.
- The **Ugandan Police** should be trained to inquire into the *prima facie* or individualized refugee status of those in custody, and to contact UNHCR where appropriate.

To United Nations High Commissioner for Refugees (UNHCR)

To address gaps in UNHCR's urban refugee policies

- UNHCR should adopt the Evaluation and Policy Analysis Unit's clear recommendation to re-write and re-issue its 1997 *Policy on Refugee in Urban Areas*, focusing in more detail on methods for providing adequate protection and assistance to refugees living in urban areas. The revised policy should avoid generalizations, derogatory depictions, or incorrect assumptions about urban refugees (such as that they are "irregular movers") that undermine efforts to address their protection concerns.
- UNHCR should revise its other policies and guidelines (e.g. during the planned revision of its *Guidelines on Refugee Children* in 2004) to address the specific protection and assistance problems facing asylum seekers and refugees in urban areas.
- UNHCR should systematically gather statistics about the numbers of refugees living in Uganda.

To address the lack of a domestic legal framework for refugees

- UNHCR should continue to encourage the government of Uganda to adopt domestic refugee legislation. It should also assist in the drafting process to ensure that the laws fully implement all governmental obligations towards asylum seekers and refugees under refugee and other forms of human rights law.

To address problems in the UNHCR-run refugee status determination system in Uganda

- UNHCR should provide all asylum seekers with written information in their own language on: i) the legal standards to be applied; ii) a realistic indicative timetable for each stage of the determination process; and iii) when applicable, detailed reasons for rejection. For purposes of accountability, both the asylum seeker and the officer

conducting the interview should sign this written information indicating that it was transmitted and received.

- UNHCR should post a notice board indicating by case number as made known to each asylum seeker (individual identities should not be disclosed) the progress of processing for each asylum seeker's file. If confidentiality concerns still prevent being able to post individualized tracking systems aligned with each asylum seekers' case number, then at least a generalized tracking system should be posted, indicating the progress of all files submitted on a given day.
- UNHCR offices should have adequate personnel and resources so that status determinations are fair and efficient, keeping in mind the particular difficulties and needs of applicants.

To address the problem of secondary movement policies

- UNHCR should not apply secondary movement policies to a refugee who was compelled to move because of specific protection or security problems in his or her previous country.

To address problems in the refugee status determination system in Kampala

- UNHCR in Kampala should immediately cease using randomly chosen interpreters from among the refugee community during its interviews. Professional interpreters should be hired for each of the commonly spoken languages during determinations.

To address the problem of refoulement

- One officer at UNHCR in Kampala should be identified to receive notices on asylum seekers or refugees who have been taken into the custody of the military or police and may face refoulement, and should respond to these referrals expeditiously.

To address the problems with camp confinement

- UNHCR should urge the two governments to provide for exceptions to the camp confinement policies in domestic law or regulation, and should revise its own policy on urban refugees.

To address protection problems when asylum seekers and refugees first arrive in the capital cities

- UNHCR and the government of Uganda should set up temporary reception sites for asylum seekers and refugees, providing them with safe shelter for at least the first two weeks that they are in Kampala. These temporary sites could be appropriate places for UNHCR to identify at-risk individuals.
- UNHCR should deploy a team of staff members to rotate through the various neighborhoods housing refugees in Kampala in order to identify at risk individuals who may not have reached UNHCR's offices, and in order to intervene in urgent protection problems in the community, including at local police stations.

To address protection and assistance problems faced by asylum seeker and refugee children

- UNHCR should work to ensure access to education for all refugee children, regardless of their location within a host country, and to the greatest extent possible given resource constraints.

- In addition to registering refugee or asylum seeker children during their first contact with the office, UNHCR should ensure that refugee children within its protection areas in camps or housed in secure accommodations in urban areas have access to education.
- Unaccompanied and separated refugee children who cannot be placed in appropriate foster care, but who are living in secure accommodations should have separate appropriate housing facilities or separated parts of housing facilities.

To address concerns about inadequate medical referrals in Kampala

- UNHCR in Kampala should increase the capacity of InterAid to offer quality medical treatment to all asylum seekers and refugees. Referrals to hospitals should be made on the spot; however, if an individual seeks treatment in a hospital for an urgent illness over the weekend or at a time when referrals from InterAid are not available, she should be reimbursed for her duly certified costs even if she did not receive an InterAid referral.
- Referrals to a psychotherapeutic treatment center in Kampala should be made for all victims of torture and sexual violence, and for other refugees who might need or request such treatment, after the initial intake interviews with InterAid.

To address security problems

- UNHCR in Kampala should establish a larger number of secure residences to house asylum seekers and refugees with security problems. Asylum seekers and refugees should be carefully vetted for potential security conflicts before they are housed in the same facility. Separate accommodation, or at least separate buildings and rooms lockable from the inside should be provided for unaccompanied and separated women and children.

- UNHCR should designate an officer to review all complaints (submitted by police, NGO partners, or refugees themselves) of security concerns affecting refugees and to take one or a combination of several immediate protection actions, depending on the nature and severity of the problem: i) give the individual the option to participate in a periodic check-in program at UNHCR's offices, so that if he or she does not appear, action can be taken; ii) assist the individual in filing an official police report; iii) permit the individual to relocate to a refugee camp, settlement, or another town or village where he or she believes his or her security to be at a lesser risk; iv) refer the individual to UNHCR-run safe accommodation; v) refer the individual for resettlement consideration (using expedited procedures when necessary); vi) provide the individual with relocation assistance to another UNHCR office in another country within the region.
- UNHCR in Kampala should pay particular attention to the security problems faced by refugees fleeing from Rwanda and the portions of the DRC that were controlled by Uganda, in the latter case since they may be under the control of the same authorities responsible for their original persecution. UNHCR should consider referring these cases on to another country for status determination and access to resettlement procedures.

To address resettlement delays and inefficiencies

- UNHCR should put in place resettlement referral officers in the Kampala UNHCR offices to prepare files of individuals for resettlement.
- UNHCR should allow NGO personnel to send suggested cases for resettlement to the designated resettlement officers in Kampala, utilizing a standard referral form and applying mutually agreed-upon threshold criteria for referral.

CONCLUSION

The refugee problem is a global phenomenon and it has been a continuous feature in national and international life in the 20th and 21st century. Refugees were one of the first concerns of both the League of Nations and the United Nations, and over the last 60 years, a vast number have found the opportunity of a new life in countries of asylum and resettlement. And yet, there is no end in sight to the potential for future flows. Refugee law and protection of those who flee should therefore be the focus in any international regime professing concern for humanitarian issues.

It is my considered opinion. However that Africa's refugee problem is beyond the amplification of the concepts found in the legal instruments. There is a need for specific legislation to tackle the peculiarities of refugee problems in Africa because refugees displaced persons and returnees are a typical group in need of special protection and attention. They exemplify the dangers which lie in the exclusion of a particular group. Refugees are especially prone to exclusion¹⁶. There is therefore a need for specific legislation safeguarding their rights. The 1969 convention is not such a law. It is a convention in need of complete overhaul and replacement with a more all-encompassing legislation that will consider and tackle the myriad problems highlighted in this research.

¹⁶ Sadako ogat solidarity and nation building: the case of refugees

BIBLIOGRAPHY

BOOKS, ARTICLES AND REPORTS

1. AMNESTY INTERNATIONAL (2005) =*Democratic Republic of Congo: North Kivu: Civilians pay the price for political and military rivalry*‘

2. AMNESTY INTERNATIONAL (1980) =*Human Rights Violations in Zaire: an Amnesty International Report*‘

3. AMNESTY INTERNATIONAL (1997) =*Democratic Republic of Congo: Deadly Alliances in Congolese forests*‘

This report covers human rights abuses committed in the DRC since March 1997. It portrays a sustained pattern of atrocities committed principally against Rwandese, Burundian and Congolese Hutu, but also against Congolese nationals from other ethnic groups.

4. AMNESTY INTERNATIONAL (1997) =*Zaire: Hidden for scrutiny: human rights abuses in eastern Zaire*‘

The report catalogues human rights abuses committed by the ADFL in eastern Zaire. These included extrajudicial killings, deliberate and arbitrary killings by the ADFL, hospital patients and nurses killed, attacks on refugee camps, abuses during fighting in Tanzania and killings at Mboko.

5. AMNESTY INTERNATIONAL (1997) =*Zaire: Rape, killings and other human rights violations by the security forces*‘

This report looks at the numerous human rights abuses by the security forces in Zaire. Residents of towns and villages in many parts of Zaire live in constant fear of human rights violations by

Zairian soldiers. Government troops on their retreat from the Kivu region have pillaged , raped and killed with virtual impunity.

6. CARAYANNIS, T. (2009) *=The challenge of building sustainable peace in the DRC:*

Background paper ' Centre for Humanitarian Dialogue

7. CONE, C. (2007) *=An analysis of the economic dimension of the conflict in the Democratic Republic of Congo with recommendations for one-track diplomacy' [dissertation] University of Pretoria <http://upetd.up.ac.za/thesis/available/etd-04292008-140416/>*

8. CHR. MICHELSEN INSTITUTE (2007) *=A Promising Experience: building peace through community development' CMI brief 6(3) Chr. Michelsen Institute, Norway*

9. DALEY, P. (2006) *=Challenges to peace: conflict resolution in the great lakes region of Africa' Third World Quarterly 27(2): 303 – 319.*

10. INTERNATIONAL CRISIS GROUP (2009) *=Congo: une strategie globale pour desarmer les FDLR: Rapport Afrique N°151 'International Crisis Group.*

11. HUMAN RIGHTS WATCH (2009) *=DR Congo: Massive Increase in Attacks on Civilians Government and UN Peacekeepers Fail to Address Human Rights Catastrophe'*

<http://www.hrw.org/en/news/2009/07/02/dr-congo-massive-increase-attacks-civilians>

United Nations-backed Congolese armed forces conducting intensified military operations in eastern and northern Democratic Republic of Congo have failed to protect civilians from brutal rebel retaliatory attacks and instead are themselves attacking and raping Congolese civilians.

12. HUMAN RIGHTS WATCH (2009) *=Soldiers Who Rape, Commanders Who Condone Sexual Violence and Military Reform in the Democratic Republic of Congo'*

20. THAKUR, M. (2008) *Demilitarising militias in the Kivus (eastern Democratic Republic of Congo)* Institute for Security Studies, South Africa
21. VINCK, P., PHAM, P. and BALDO, S. (2008) *Living with fear: a population-based survey on attitudes about peace, justice, and social reconstruction in eastern Democratic Republic of Congo* The International Center for Transitional Justice,
22. VLASSENROOT, K. and RAEYMAEKERS, T. (2004) *Conflict and social transformation in Eastern DR Congo*. Academia Press.
23. van DAMME, W. (1995) *Do Refugees belong in Camps? Experiences from Goma and Guinea* The Lancet 345: 360-362

LEGISLATION

24. *Convention relating to the Status of Refugees (1951 Convention),*
25. *Refugee Act 2006*
26. *1969 Convention governing Specific Aspects of the Refugee Problem in Africa (African Refugee Convention),*

