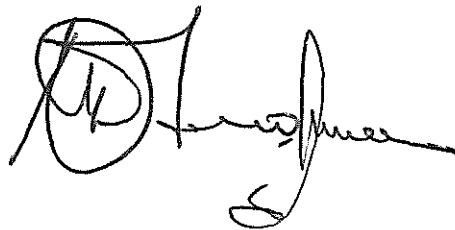


**THE RWANDAN-CONGLESE HUTU REFUGEES AND THE APPLICATION OF  
EXCLUSION CLAUSES. A CASE STUDY OF THE ASYLUM STATUS  
DETERMINATION PROCESS IN UGANDA**

**BY**

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**LLB/20049/82/DU**

A handwritten signature in black ink, appearing to read 'N. Kabungwa', with a large circular flourish on the left side.

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE  
DEGREE OF BACHELOR OF LAWS OF KAMPALA  
INTERNATIONAL UNIVERSITY**

**MAY, 2013**

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## APPROVAL

This dissertation has been submitted for examination to the school of law with my approval as the student supervisor.

Supervisor: **Mundane Robert. M.**

Signature:.....



Date:.....

31/May/2013

## DEDICATION

To all refugees of the world for whom there seem to be no tomorrow, speak out when you cannot bear the sorrow.

Know your right that you can defend them.

Remember, "Every man has a right to decide his own destiny in his own judgment there is no partially. Fight for your rights, your sole rights".

Take heart, do not weep for a new dawn brings better things.

"Aluta continua" – the struggle continues.

## **LIST OF DECLARATIONS AND CONVENTIONS**

AFRICAN CHARTER OF HUMAN AND PEOPLES RIGHTS (1981)

CHARTER OF THE UNITED NATIONS (1945)

THE 1951 UN CONVENTION RELATING TO THE STATUS OF REFUGEES  
AND ITS RELATED PROTOCOL, 1967

THE 1969 OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF  
REFUGEE PROBLEMS IN AFRICA

THE 1984 TORTURE CONVENTION

THE 1977 PROTOCOLS TO THE 1949 GENEVA (RED CROSS)  
CONVENTION

THE 1975 DECLARATION ON PROTECTION FROM TORTURE

THE 1977 DECLARATION ON TERRITORIAL ASYLUM

THE 1966 PRINCIPLES CONCERNING TREATMENT OF REFUGEES

THE 1948 CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME  
OF GENOCIDE

THE INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND  
CULTURAL RIGHTS (1966)

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS  
(1966)

UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

GENEVA CONVENTION ON THE LAW OF TREATIES (1969)

## LIST OF ABBREVIATIONS

AFDL	ALLIANCE DEMOCRATIC FORCES FOR THE LIBERATION OF CONGO-ZAIRE
AI	AMNESTY INTERNATIONAL
Art.	ARTICLE
CTD	CONVENTION TRAVEL DOCUMENT
DRC	DEMOCRATIC REPUBLIC OF CONGO
ESO	EXTERNAL COMMITTEE OF THE UNITED NATIONS GENERAL ASSEMBLY
EXCOM	EXECUTIVE COMMITTEE OF THE UNITED NATIONS GENERAL ASSEMBLY
HURIPEC	HUMAN RIGHTS AND PEACE CENTRE INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES
IARLJ	INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
IMM/MN	MIGRATION
MISR	MAKERERE INSTITUTE OF SOCIAL RESEARCH
NGO's	NON-GOVERNMENTAL ORGANISATIONS
OAU	ORGANISATION OF AFRICAN UNITY

REC	REFUGEE ELIGIBILITY COMMITTEE
RPF	RWANDESE PATRIOTIC FRONT
UN	UNITED NATIONS
UNHCR	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

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CHAHAL V UK (1996) REFUOLLS: HUMAN RIGHTS HAVE NO BORDERS

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UGANDA V TAMENEZ BEZABEH. Crim Case file No. IMM.MN 3 5/97

UGANDA V RABOK CHAPLAIN Crim Case file No. U.2093/97

ATTORNEY GENERAL OF CANADA V WARD (1993) 2 SCR 689

ATTORNEY GENERAL V WARD (1990) 2FG 667

WARD V CANADA (ATTORNEY-GENERAL) (1991) 2 SCR 779

MINSTER OF EMPLOYMENT AND IMMIGRATION V SATIACUM (1989)

99 NR171(FCA)

INSVELIAS— ZACARIAS(1992)112S.Ct812

APPLICANT A & Anor V MINISTER FOR IMMIGRATION AND ETHNIC

AFFAIRS & Anor, (1997) HIGH COURT OF AUSTRALIA



## **DOMESTIC LEGISLATION**

THE CONSTITUTION OF UGANDA, 1995

THE IMMIGRATION ACT, No. 19 OF 1969

THE IMMIGRATION (AMENDMENT) ACT, No. OF 1984.

THE ALENS RIGSTRATION AND CONTROL,) ACT No. 2 of 1984

THE IMMIGRATION (AMENDMENT) REGULATIONS SI No.29 OF 1984.

THE IMMIGRATION REGULATIONS SI No. 165 OF 1969

THE UGANDA CITIZENSHIP AND IMMIGRATION CONTROL BILL, 1998

THE EXTRADITION ACT cap 114

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I am grateful to the staff of Old Kampala Police Station, Inter Aid, UNHCR Library. Kololo. HURIPEC library and Law Development Centre library for useful resource material provided.

*To all of you I owe much.*

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## **CHAPTER ONE**

### **1.0 INTRODUCTION**

#### **1.1 BACKGROUND TO THE PROBLEM**

A refugee is a person who has fled his or her country because of a well founded fear of persecution for reason of his or her race, religion, nationality, political opinion, or membership in a particular social group, and who cannot or does not want to return<sup>1</sup>.

Article 1A (2) of the **Convention Relating to the Status of Refugees**<sup>2</sup> defines a refugee as any person who:

“As a result of events occurring before 1 January 1951 and 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 of the 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.”

B (1) For the purpose of the convention, the words, “events occurring before 1 January 1951,” in Article I Section A, shall be understood to mean either;

(a) “events occurring in Europe before 1 January 1951”

or (b) “events occurring in Europe or elsewhere before 1 January 1951”.

According to the Article I of the 1969 OAU Convention<sup>3</sup> paragraphs 1 and 2 defines a refugee as; “one who has been forced to flee from his or her country, the because of a well founded fear of persecution or because of external aggression, occupation, foreign domination or events that seriously disturb public order”.

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<sup>1</sup> Helping Refugees (1998) Pg. 7 published by UNHCR public information section

<sup>2</sup> 1951 Convention relating to the status of refugees UN Doc No....

<sup>3</sup> Organization of African Unity Convention of 1969 on the status of refugees

Although these definitions refer to all refugees in their respective geographical locations. they are not absolute to some of them.

The 1969 AU Convention recognizes the special need in Africa for refugee protection within the legal framework. While the 1969 AU Convention has provided a legal framework for better protection of the refugee, its benefits have been eroded away by the conflicts that still devastate several areas in Africa. Although the African Convention advanced the progressive development of international law by codifying major principles of refugee law, international cooperation remains the main principle of the convention and has been the keystone in the protection of refugees on the African continent.

#### **1.1.1 HISTORICAL FACTORS THE ORIGIN OF THE GREAT LAKES CRISIS.**

Pursuant to the Berlin Conference of 1884, Rwanda became a German Colony, but after World War 1 it was handed over to Belgium as a mandate territory.

In 1959, there was a dissension between the Hutu majority and the Tutsi minority, which led to a rebellion, resulting in the overthrow of the Tutsi monarchy. During the revolt, an estimated 160,000 Tutsi fled to neighbouring countries and approximately 20,000 were killed. It was generally believed that the seeds of discord were sown during colonial rule when the Belgians gave preferential treatment to the Tutsi, making it possible for them to become better educated and more enlightened in the western tradition than Hutus. They virtually relegated the Hutu majority to the background. The Belgians therefore created the hatred among a population that had lived together in peace for many generations.

From 1962-1973, the Parmehutu (Party for the Emancipation of Hutu) ruled Rwanda following the 1959 revolution. The Parmehutu was also regrettably ethnically based and therefore unrepresentative of the cross section of Rwandese society. That government was widely recognised as inefficient and corrupt. As a result, the public became dissatisfied with the party. Major General Juvenal Habyarimana, who was the Minister of Defence and Head of the National Guard, led a bloodless coup in July 1973 proclaimed a second republic and established a military administration. He became the President of the Republic until his tragic death on 6/04/94.

While the crisis in the Great Lakes Region has a long and complex history, International attention began to focus on Rwanda in the second quarter of 1994 when at least close to 1,000,000 people, usually described as Tutsis and moderate Hutus, were killed in a space of six weeks. The country, Africa and world in general hopelessly witnessed the worst genocide in modern history.

The genocide stopped only when the government was ousted by the Rwandese Patriotic Front (R.PF) a rebel movement composed primarily of exiled Tutsis. whose repatriation from Uganda had for many years been blocked by the regime in Kigali As the RPF drove south, the organizers of the genocide recognised the imminent defeat and organized a mass evacuation of the Hutu population.

Around 1.75 million Hutus moved to neighbouring countries of Zaire (DRC), Tanzania and Uganda where they were accommodated in camps and provided with international assistance.

Former Rwandese government, army and military forces tightened their grip on the refugee population, bringing the repatriation to a halt. Hutu refugees who wished to return to Rwanda were intimidated or eliminated by armed elements in the camps.

North Kivu became the scene of a three-way war between Hutu, Tutsi and local peoples such as Hunde, entailing the killing and mass expulsion of many Tutsi. In south Kivu, people of Rwandese origin, primarily Tutsi known as Banyamulenge also started to be harassed and displaced by local Zaire (Congolese) supported from Kinshasa.

Having witnessed with great concern the fate of the Tutsis in the North Kivu, the Banyamulenge, some of whom had assisted the RPF victory in July 1994 began to resist. Well armed and highly motivated, they became a central component of the Alliance of Democratic Forces for the liberation of Congo — Zaire (AFDL) led by Laurent Kabila a life long opponent of President Mobutu, the AFDL was supported in various ways by other states in the region who wished to see a change of government in Kinshasa — Angola, Eritrea, Rwanda and Uganda.

As the AFDL advanced Rwandese refugees were scattered in all directions from the camps in Eastern Zaire. Half a million Rwandese refugees regrouped at Mugunga, near Goma and were finally encircled by AFDL soldiers, who obliged them to repatriate, most of these refugees



crossed the border into Rwanda between 15 and 19 November, 1996, with tens of thousands of stragglers returning in the following days. Even so, the months that followed the mass repatriation of refugees from Tanzania and Zaire witnessed a sharp increase in the level of violence within Rwanda, especially in the North-west of the country. That followed by arbitrary arrests and detentions, and the shooting by government soldiers at suspected militia which led to a stampede at Kibeho camp that left 600 refugees dead. Tension mounted into camps prompting refugees to find their own destinies.

There is little doubt that much of this violence was committed by Hutu militia who had been obliged to repatriate with the refugees. By prompting the authorities in Kigali to use force supporters of the former and genocidal regime achieved their primary objective to perpetuate the instability of Rwanda and of the Great Lakes region as a whole.

## 1.2 STATEMENT OF THE PROBLEM:

Changing Fundamentals of the UNHCR Mandate<sup>4</sup>. The essential character of the regime associated with the 1951 Convention, as revised in its 1967 Protocol, is to offer 'for the purposes of the convention' a curiously restrictive view of 'who is a refugee. It's 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 ... (1967 Protocol Art 1(2)).*

The range of rights of refugees recognised in the 1951 Convention<sup>5</sup> included, crucially. Art 33 on the prohibition of expulsion or return (refoulement), the first paragraph of which states

*"No contracting state shall expel/return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".*

This crucial principle was reinforced by state practice over more than four decades which contributed to further progressive development of the law (Goodwin Gill 1996: 123). However

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<sup>4</sup> Journal of Refugees Studies Vol. II No.4 Dec(1998: 380)

<sup>5</sup> Ibid

some repatriations in the 1990's raise the questions as to whether this fundamental provision of the refugee regime continues to exercise its old normative force; and whether UNHCR is acting as the guarantor of the regime or alternatively as its (albeit unwilling) grave digger.

UDHR Article 14<sup>6</sup> clearly states that "Everyone has the right to seek and to enjoy in other countries asylum from presentation.

### **1.3 HYPOTHESES**

Although Uganda takes a humanitarian approach in the protection and treatment of refugees through state policies and national objectives enshrined in the constitution and thereby implements Human Rights in Chapter Four of the 1995 Constitution of the Republic of Uganda the Rights enjoyed by refugees are limited in practice.

### **1.4 SIGNIFICANCE OF STUDY**

It's worthy noting that little has been written on this topic in Uganda yet it is a very import and vital element, applied to Rwandan — Congolese asylum seekers, in asylum status determination proceedings. The parties should be certain of rights and obligations imposed on them and furnish the process. So I believe that the knowledge and experience that will be obtained from this study will form part of the material for future reference and research, and will enable my successors to learn from both my achievements and mistakes.

### **1.5 OBJECTIVES**

1.5.1 To explore obligations of Asylum States as imposed by the Conventions with regards to refugees.

1.5.2 To examine the application of exclusion clauses to Rwandan- Congolese Hutu asylum seekers in line with the genocide in Rwanda.

1.5.3 To identify the roles played by Uganda government and UNHCR in Asylum status determination.

1.5.4 To examine the fairness and effectiveness of the Asylum status determination process.

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<sup>6</sup> 1948 Universal Declaration of Human rights

1.5.5 To identify the role played by the Judiciary in Asylum status determination process.

1.5.6 To make recommendations in respect of Asylum Status determination process in Uganda.

## **1.6 SCOPE OF THE STUDY**

The study was restricted to Kampala.

The - study revolves around a number of Conventions and Declarations such as the Convention relating to the status of Refugees, 1951, and its Protocol, 1967, Universal Declaration of Human Rights, 1948, applicable to Uganda under The Ratification of Treaties act No. 5 of 1998. Pertinent local statutes shall also be applied.

Since the study looks at asylum status determination and application of exclusion clauses, It therefore follows that decided cases expounding the process and of vital importance.

## **1.7 RESEARCH METHODOLOGY**

This paper is a result of a research carried out both in the libraries and in the field. The library research provided material for the theoretical foundations on which the work is based. It mainly involved going through Refugee Law textbooks, statutes, cases and other publications relevant to the topic. The field research conducted was purposely for substantiating and testing the theoretical material as well as making further practical discoveries. This involved conducting interviews with various authorities engaged in Refugee law and Human rights especially UNHCR, MRS, HURIPED, Inter Aid and Commissioner for refugees PM's office and refugees.

## **1.8 LIMITATIONS OF THE STUDY**

It is important to note that I encountered quite a number of problems while conducting this research. First and foremost time was my major constraint.

A number of UNHCR officials visited were not willing to disclose pertinent information such as files of refugees especially Congolese of Hutu origin who were being kept in military installations and being denied access to information regarding asylum status determination procedures. The method of informal interviews I adopted prove quite successful in enabling me to elicit useful information. For discussions were fairly and some officials interviewed were fairly open minded. However, some officials seemed not to be knowledgeable and well conversant with the refugee laws.

## 1.9 LITERATURE REVIEW

According to my study of the literature available, I discovered that there are good and relevant materials to the problem. Most of the literature discusses the theoretical operation and application of the Rights of asylum seekers, and the laws governing them.

Article II paragraph (2) of the OAU Convention <sup>7</sup>, 1969 states;

*“The grant of asylum is a peaceful and humanitarian act by any member state”.  
Although Refugee generating countries feel that “whoever gives asylum to an  
enemy is an enemy”*

Article 14 (1) UDHR<sup>8</sup>

“Everyone has the right to seek and enjoy in other countries asylum from persecution”

But Amnesty Internationals: Refugee Human Rights have no Borders<sup>9</sup> discussed how refugees are usually detained in order to deter them from seeking asylum or k them to abandon their asylum application.

UNCFIR's: REFUGEES/SPRING 1998 states that “Most people in developed world rarely think of their human rights. Many people in the developing world are probably not even aware that they have any”.

RICHARD REOCH in THE NEW CONSENSUS<sup>10</sup> states that

*“Gross violations of Human rights, including armed conflicts, are among the factors responsible for creating vast populations of displaced persons and refugees. All who are forced to flee persecution must have protection for their right to seek and receive asylum in other countries”.*

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<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> @ Copyright Amnesty International Publications 1997

<sup>10</sup> Human Rights (Regency Press (Humanity) Ltd. (1994:15)

The state of THE WORLDS Refugees 1995 Pg 16, contends that

*"States are increasingly taking steps to obstruct the arrival of asylum seekers, to contain displaced people within their homeland, and to return refugees to their country of origin".*

The state of the Worlds Refugees 1995 pg. 22 further contents that

On Pg. 58 it is contended that

*"The international community's emerging approach to the solution of refugee problems could save millions of people from the trauma of exile".*

The UNHCR commissioner Sadako Ogata contends that refugees are increasingly confronted with rejection and exclusion. She further contends that too often there is pressure to contain displaced populations within the borders of their own state or to send them back home, irrespective of the dangers confronting them there.

Ray Wilkinson<sup>11</sup> (1998:9) observed that in the wake of the Great Lakes Crisis in Africa in which tens of thousands of persons were reputedly killed and millions forced to flee, government's first consideration today is often state security -not human rights.

He further contends that;

"These rights and the issue of refugee asylum have become two of the most contentious items on the international calendar. The term fortress Europe has already entered the vocabulary as a handy sound-bite to signify a general tightening of asylum laws. Governments everywhere are fine-tuning the rules and regulations and barring would be asylum seekers, increasing penalties against airlines or shipping companies carrying suspect passengers or approving innocuous sounding arrangements such as the 'safe third country' rule which allows officials to eject people in flight who have already transited another state. And if those rules don't work, some states simply expel even bonafide refugees".

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<sup>11</sup> Refugees/ Spring 1998

## CHAPTER TWO

### HISTORICAL PERSPECTIVE OF REFUGEE CONVENTIONS

#### 2.0 INTRODUCTION

This chapter looks into the historical background of refugee convention that is how they originated and developed and their applicability by the contracting states.

In Africa<sup>12</sup>, people have sought sanctuary long before the formal legal instruments on refugees were adopted by both the UN and the AU, Ethnic wars, famine, the search for better grazing land, slaver aids and colonial occupation caused the flight of thousands of people across national frontiers in search of security or justice, food or shelter.

In traditional societies, where regional or national frontiers were changeable, some asylum seekers who crossed into neighbouring regions or countries were welcomed by kin assistance given to them was informal and unpublicised. Available resources were shared equitably between asylum seekers and host communities and few distinctions were made between them. Early statistics on asylum seekers were neither institutionalized nor a subject of international concern. Most fundamentally, there was no refugee camps as seen today.

Asylum seekers are viewed differently,

- (i) People fleeing from wars of national liberation, internal strife or interstate conflicts that are often provoked from outside the continent but aggravated by strained relations between states regional tensions arising from changes of governments or ideologies, exigencies of drought and famine, as well as territorial claims;
- (ii) Strains in political relations between refugee generating and receiving countries;
- (iii) Security guarantees for those in flight and the host communities vis-avis pursuing security forces of the countries from which the asylum seekers have fled;
- (iv) Competition between asylum seekers and the local population over limited available resources;

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<sup>12</sup> Chris J. Bakwesigha (1994) forced migration in Africa and the OAU Convention

- (v)- Confinement of refugees to designated zones and setting up of authoritarian administrative systems to deal with them;
- (vi) Suppression of refugees' political sentiments, even in host communities/countries, and protection of rights and interests of concerned states;
- (vii) International concern. emined through resource, mobilization and international organizations to care for refugees;
- (viii) Controversies over enumeration and statistics relating to those in flight.

Africa's refugee problem gained momentum towards the end of the 1950's when Africans started fleeing from the Algerian war of independence and from the South African regime and the Portuguese colonial administration. The problem however became of an international concern in the early 1960's when masses of refugees also began to flee from other countries that were in the process of attaining independence.

Therefore the intent and purpose of this chapter is to show how the generosity and brotherhood paved way for the refugee conventions to flourish. Mention will be made of the rights and obligations of the refugee conventions in line with contracting states and asylum seekers.

The human rights and legal functions of the refugee conventions merit special consideration as they constitute the gist of this research. However there are exceptional situations to the convention i.e. when an asylum seeker is guilty of committing crimes Contrary to the UN purposes and principles.

The facilitate the above illustration, the pertinent legislation and case law shall he propounded to give and bring out the essence and applicability of the conventions.

## **2. 2 1 GENESIS OF REFUGEE AND HUMAN RIGHTS CONVENTIONS**

### **2.1.1 CHRONOLOGY**

August 20, 1921: The League of Nations, forerunner of the United Nations, appoints

Norwegian scientist and explorer Dr. Fridtjof Nansen as the first High Commissioner for Refugees. marking the start of modern international system for protecting refugees. Nansen

receives the 1922 Nobel Peace Prize for his work on behalf of refugees and other displaced peoples.

1922: The High Commissioner introduces internationally recognized travel documents for refugees which facilitates their repatriation or settlement in another country.

December 10, 1948: The UN General Assembly proclaims the Universal Declaration of Human Rights and urges member states to “cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories’.

January 1, 1951: The General Assembly establishes the United Nations High Commissioner for Refugees after approving its working statute the previous month. The new organization would be humanitarian and non political. The office’s first task is to help more than one million people who are still displaced in the wake of World War two mainly in Europe, and its first mandate is limited to three years.

July 28, 1951: The Convention relating to the status of Refugees is adopted, consolidating earlier international instruments and providing the most comprehensive codification of refugee rights in history. The convention will be applied without discrimination to race, religion or country of origin. Significantly, the convention is limited to persons who became refugees before January 1, 1951

January 31, 1967 Human rights abuses spread across the globe and huge new refugee populations are created in Hungary, Algeria and other parts of Africa. A protocol to the refugee convention is adopted, crucially extending protection to all refugees whatever the date they were forced to leave their homes.

September 10, 1969: Africa has become the global epicenter for refugees with 700,000 displaced peoples, and at a summit of the Organization of African Unit (OAU), nations adopt a Convention urging even greater generosity and assistance for refugees. The OAU Convention includes the people forced to flee because of aggression, foreign occupation domination or events disturbing public order.



December 10, 1984: Ten Latin American government adopt the Cartagena Declaration, part of an enlightened trend towards expanding international protection and humanitarian assistance to victims of armed conflict and human rights arouses. It is tailored to meet the specific needs of people in central America.

1999: UNHCR is assisting more than 22 million people worldwide whose human rights have been abused and the total number of uprooted people worldwide whose human rights have been abused and the total number of uprooted people around the world approaches 50 million. UNHCR now operates in 120 countries with a staff of more than 5,600 people.

As observed from the above Chronology, originally refugees did not have an international system for protecting them. This went on until 1921 when the League of Nations appointed Dr. Fridtj of Nansen as the first <sup>13</sup>High Commissioner for Refugees. The 1951 Convention and its 1196/7 Protocol extended international protection to all refugees worldwide through the UNHCR.

As an exception to the practice, countries refused to grant asylum due to the restrictive and limited 1951 convention.

But as human rights abuses spread across the globe massive new populations were created especially in Eastern Europe and Africa generally. In 1967 a Protocol to the Refugee Convention was adopted which crucially extended protection to all refugees whatever the date they were forced to leave the homes

From the foregoing discussion therefore, the following can be noted. That the invention of Asylum was due to the desirability of protecting refugees from persecution and other human rights abuses. According to the UDHR the cardinal principle of the right to asylum is persecution. But Kirby. J. states that<sup>14</sup>,

*"Because the convention is universal, it does not speak only for the grounds of persecution that have been most familiar to Western countries... In other societies, and in*

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<sup>13</sup> The 1951 Convention of the Refugees and its additional protocol of 1967

<sup>14</sup> Applicant A & Aror. High Court Australia Feb. 23. 1997.

*modern times, different cultural norms and social imperatives may give rise to different sources of persecution.... The concept is not a static one. Nor is it fixed by historical appreciation”.*

The concept of refugee protection is itself inseparable from the notion of human rights. The right to seek and enjoy asylum is enshrined in the UDHR<sup>15</sup>, while the 1951 UN Refugee convention incorporates the fundamental protection principle that states must refrain from returning refugees to countries where they would be at risk of persecution. According to that Convention, the ultimate objective of international protection is to provide refugees with the ‘fundamental rights and freedoms which a state normally secures for its citizens.

Sadly, the human rights principle of admission to safety, without which there can be no effective protection for refugees, is now under increasing threat. Many countries of asylum, particularly those in the industrialized world, appear to have tired of the refugee problem and have erected a formidable variety of physical, legal and administrative barriers to obstruct or deter the arrival of people who wish to seek refuge on their territory. Increasingly, at both the rhetorical and practical levels, refugees and displaced people are coming under pressure to stay within or return to their countries of origin even if conditions there are insecure.

A new system of checks and balances is needed to help a growing number of uprooted peoples.

Fifty years after the adoption of the UDHR, the very foundation of refugee protection is under increasing threat. The world is faced with unprecedented number of victims of forced displacement. At the same time, many states are denying protection to refugees and asylum seekers and have ignored the very principles of protection they themselves agreed on.

It's clear that massive human rights abuses trigger mass movements to refugee & yet increasingly the international community is failing to prevent those abuses and is standing by as the number fleeing violations multiply. Then, faced with the flight of millions states have responded by

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<sup>15</sup> 1948 Universal Declaration of Human Rights

closing their bodies shifting responsibility to the countries and regions which refugees have fled from

Many people are simply denied access to the asylum process, are incorrectly found to not meet the refugee definition, are detained, or are sent back to countries in which they will not be safe. Hundreds of thousands of refugees seeking shelter in refugee camps have been forcibly returned to countries which are not safe and many remain unaccounted for.

In 1997, the Human Rights Committee<sup>16</sup> recommended that the definition of 'persecution' be broadened to include people fleeing not only from state harassment but also from persecution by non-state actors, and said a country ignored its obligations by detaining a refugee without allowing for a regular review of the detention. Another group, the committee against Torture<sup>17</sup>, reviewed the situation of mainly asylum seekers concluded that several states had threatened to return these people to their home country in violation of the government's international obligations.

Worryingly, there is no such monitoring procedure in the Refugee Convention<sup>18</sup>. While UNHCR functions as a supervisory body and states are obliged to cooperate with UNHCR<sup>19</sup> and report on implementation of the Convention, information which is provided is not comprehensively publicly available. UNHCR's ability to publicly report on state's performance is severely constrained because it can only operate effectively in countries where government grant access and it needs the cooperation of major funding states. In some situations UNHCR has been effectively silenced, caught between uncooperative host states and countries of origin and with no international support.

At a time of growing mass movements of people, the lack of effective checks on how governments treat refugees and asylum seekers makes the refugee protection system extremely vulnerable. Governments which want to turn their backs on refugees are not formally challenged or reprimanded. For this reason, Amnesty International believes that an effective way to monitor

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<sup>16</sup> Human Rights Committee of United Nations General Assembly

<sup>17</sup> United Nations Committee against torture 1951

<sup>18</sup> Ibid

<sup>19</sup> The Committee against Torture of the UN General Assembly

how or whether governments live up to their obligations is crucial. Otherwise the erosion of refugee protection will continue and the men, women and children who need protection will be betrayed.

## **2.1.2.1 THE NATURE OF POSSIBLE APPROACHES TO A FAIR EFFECTIVE AND EFFICIENT INDIVIDUAL REFUGEE STATUS DETERMINATION**

### **2.1.2.1.1 CORE ELEMENTS OF REFUGEE DETERMINATION**

#### **Information gathering**

At initial level: This refers to the information given by the asylum seekers at the onset i.e. on arrival. The asylum seeker has to give reasons as to why he/she is leaving his country of origin or why he/she feels that his/her country of origin can no longer protect him/her. On review: Here if the asylum seeker is able to get more information from his/her life country of origin that there is a dramatic change of events and that following those events his/her life can be in danger. Then the refugees status determination committee has to reconsider its negative decision and grant asylum.

On appeals: The asylum seeker has a remedy in the courts of law if he/she feels that his/her asylum status determination process was not handled fairly and contrary to the Refugee Convention. The court has to look into the facts, if the Refugee status determination committee was out of the law then the asylum seeker is granted refugee status on court order.

Applying the Convention:

Under the Vienna Convention on The Law of Treaties 1968 and 1969, the Doctrine of *Pacta Stint Servanda* embedded in Article 26 states

*“Every treaty in force is binding upon the parties to it and must be performed by them in good faith” obliges a receiving and contracting state for that matter to follow the refugee convention<sup>20</sup>*

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<sup>20</sup> 1951 Convention Relating To The Status of the Refugees

The convention is non-discriminative, Article 3, gives the right of association: Article 15, access to courts Article 16, Freedom and movement Article 26 being entitled to identity papers Article 27 travel documents, article 28, etc.

#### **2.1.2.1 .2 INFORMATION ASSESSMENT.**

Weighing the country background information:

The asylum seeker's country of origin has to be monitored to assess the state of human rights. The events in the asylum seeker's country of origin give a better picture of the information given by the asylum seekers

Assessing credibility: The Refugee Eligibility Committee should assess and find out how credible an asylum seeker is. It is from his/her credibility that a fair and efficient decision can be made.

There should be a shared burden of proof and an asylum seeker should be given the benefit of doubt.

#### **2.1.2.1.3 POLITICAL AND MEDIA IMPACTS, PRESSURES AND**

##### **CONSIDERATIONS:**

The political sentiments and media pressures should not hamper the process because the entire provisions of the convention lose meaning and the purpose is lost too. Media tends to publish information which they have perceived through hearsay although in some instance they could be true.

Other pressures and considerations such as to whether the asylum seeker has a family and other dependants should be considered or whether the asylum seeker is disabled or he/she is undergoing gender based forms of persecution.

#### **2.1.2.1.4 THE REQUIREMENTS AND METHODOLOGY AN IDEAL REFUGEE**

##### **STATUS DETERMINATION:**

The Refugee Eligibility Committee should have trained and resourced decision-makers. They should be well conversant in international law specifically refugee and asylum law. They should

be in position to help traumatized persons and give them the necessary Psychological treatment. The decision making body should be independent.

The asylum seeker should be given effective access to his claims i.e. he/she should be informed of his/her rights. In case of a rejection he should be availed with legal assistance. Should be given ample time to prepare and seek other advice. The reasons for rejection should be explained and in writing and all legal facts should be spelled out. He/she should be informed of his/her right to appeal.

There should be an independent body for appeal to ensure justice. He/her right of stay during the appeal procedure should be upheld.

## **PROCEDURAL ASPECT REGARDING ASYLUM STATUS AND**

### **APPLICATION OF EXCLUSION CLAUSES WITH EMPHASIS ON TORTURE:**

Refugee status depends to a great extent on both objective and subjective elements. By deleting subjectivity, the essentials of the concept of 'fear' (viz well-founded fear of being persecuted) is incorrectly being denied. -

The proportionality theory, should be applied rather than the objectivity motivation, should be applied. The proportionality theory states that various aspects have to be taken into account. The subjective feelings of fear, the objective probability of being submitted to torture upon return, the reason for prosecution, the underlying reason (s) for torture, the political concepts at stake and the overall factual situation.

Torture amounts to persecution if the well founded fear of the asylum seeker concerned is linked to the criteria mentioned in Article I.A.2 of the Refugee Convention<sup>21</sup> (political opinion, nationality, race, religion membership of a particular social group). Precise balancing of all the relevant elements should result in:

- a) Asylum with refugee status. here the fear of persecution is not only based on the criteria in Article IA of the Refugee Convention<sup>22</sup> but there is a realistic fear of torture: or

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<sup>21</sup> Ibid

<sup>22</sup> Ibid

- b) non-expulsion (*de facto* asylum without refugee status) where, for example an asylum-seeker fear persecution for a crime which is not clearly political, but has been or is likely to be tortured by the authorities in his country; or
- c) The possibility of being expelled/returned to his country of origin if the individual has committed a serious, non-political crime and there is confirmation that there is not the slightest chance of being tortured.

In other words; where torture per se amounts to persecution, granting of asylum with refugee status is a logical consequence. Only in a very limited number of cases, the victim of torture cannot be considered a refugee and in those cases Article 3 (1) of the Torture Convention<sup>23</sup> (non-expulsion) should be upheld, irrespective of whether or not the person is a refugee).

#### **2.2.1 THE TORTURER AND REFUGEE STATUS:**

The question as to whether former members of secret services or intelligence agencies can be recognized as genuine refugees is not new. Of particular relevance is whether these asylum seekers have been involved in acts which may be considered criminal. It's for example no surprise that after the Shah had been toppled, many SAVAK members ran into serious trouble in Iran. They had after all, been staunch supporters of the old regime. Consequently, many Savak members fled abroad and applied for asylum. In the Federal Republic of German (FRG) (as it then was) their applications seldom met with success. The wording of the negative decisions, particularly the following paragraph in which reference is made to torture practices, leave room for criticism.

“The applicant has more or less agreed with torture through his work for Savak, which is to be considered a crime against humanity, even if the applicant did not directly participate in torture practices. Recognition as a refugee is, therefore, in view of article I.F of the 1951 Genevan Convention, excluded.”

The UNHCR Hand book<sup>24</sup> on the Determination of Refugee status deals extensively with article I.F and due attention is paid to crimes against humanity, crimes against peace, and war crimes.

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<sup>23</sup> 1984 Torture Convention

<sup>24</sup> UNHCR Handbook on procedures and criteria for determining refugee status. Geneva.

Crimes against humanity should be seen in light of World War II and the proceedings and dicta of the military tribunals of Nuremberg and Tokyo. These crimes have inter alia been defined as.

*"Murder, extermination, enslavement, deportation and other inhuman acts committed on political, racial or religious grounds in execution of or in connection with (crimes against peace or war crimes)".....*

It should, moreover, be stressed that only top level officials have been condemned for the above crimes. There should be no doubt that people who were only indirectly involved in torture are not guilty of a crime against humanity, according to the existing and recognised interpretation of the above instruments (cf The 1977 Protocols to the 1949 Geneva (Red Cross Conventions).

How serious a crime should torture be considered? According to Article 2 of the 1975 Declaration, torture has been condemned as a denial of the purposes of the UN Charter and as a violation of 1948 UDHR. This falls short of article 1.f(c) which speaks of acts contrary to the purposes and principles of the United Nations. The UNHCR Handbook clearly states that article 1 F(c) only concerns the exclusion from Refugee Status of individuals who have been in a position of power and who have been instrumental to their states' infringing the fundamental principles set out in the preamble and articles 1 and 2 of the UN Charter<sup>25</sup>. This would only apply to very few cases. and as torture has not been defined as an act contrary to the UN purposes, but on the contrary as a denial of these purposes, one can conclude that article 1 .f(c) is not applicable.

In this context it is submitted that there is no need to examine whether the act of torture is non-political or political. It suffices to cite article 5 of the 1975 Declaration.

"No state may permit to tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment".

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<sup>25</sup> United Nations Charter. San Francisco. 1945



Moreover, article 4 of the 1984 Convention reads: Each state shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture

In view of these texts, of the *hostis human generis* concept, and of the prohibition in any derogation, it can be concluded that for the purposes of article 1.f(b) torture should indeed be considered a serious non-political crime. The offender, the torturer, is therefore excluded from refugee status.

### **2.2.2 THOSE WHO FAIL TO PREVENT TORTURE:**

This having been said, it remains to be seen to what extent someone should prevent the crime from taking place and in particular whether someone who has been unable and/or unwilling to prevent others from committing this 'serious non-political crime' is also guilty of a 'serious non-political crime'.

As stated in Nuremberg, 'the very essence of the (London) Charter is that individuals have international duties which transcend the national obligations of obedience imposed by an individual's state'.

The responsibility, in so far as negligence to prevent is concerned, has been clearly worded by Judge Roling in his dissenting opinion in the Tamashita case (Tokyo Military Tribunal) and his words as reflected in the 1997 Protocol 1 are quoted here: (The conditions for responsibility (and ) that he had the duty to prevent these acts. There three elements (knowledge, power. duty) stated above, the crime of torture cannot be classified under these headings, the negligence to prevent the crime of torture from taking place may well lead in particular cases to criminal responsibility. While it would prima facie seem that non-prevention per se does not amount to participation, complicity incitement or attempt which are covered by Article 4 of the torture Convention 'knowledge' and 'power' may, however, amount to 'complicity'. This would mean that article 11(b) may be invoked not just because of the non-prevention element, but particularly in view of the complicity aspect.

### **2.2.3 THOSE WHO REFUSE TO PRACTICE TORTURE:**

Another group which we must consider are Government officials, and/or military personnel who are confronted with a system in which torture i.e. either a common phenomenon or a frequently

occurring event. The persons concerned may refuse to participate in torture practices and/or its preparation etc. They may flee to seek protection and asylum elsewhere. We are therefore dealing with a group of evaders, deserters in away, men and women of principle unable to fight the system directly, but able to turn their backs on injustice, and thereby, voting with their feet. A positive decision on refugee status ought to be taken in cases in which the asylum seeker left his country because he would or could have been forced to participate directly or indirectly in torture or other inhuman treatment of others. Particularly now that universal jurisdiction has been agreed upon (inclusive of *(inclusive of aut punier aut deldere)*), the 'refuser' should be honoured. These who are unwilling to become hostes humani generis have the right to enjoy international protection.

Over and above these elements due attention should also be paid to the principles of forgivable errors *iuris* and error *situations*.

Article 2(3) of the Torture Convention reads; An order from a superior officer or a public authority may not be invoked as a justification of torture in practice it is ever difficult to uphold a correct, impeccable approach to such orders. It is true that both Nuremberg and Tokyo tribunals have duly dealt with the *Befell-ist-Befell* syndrome. This however, does not mean that it is easy to refuse such an order. Power systems are more complex than we sometimes think. Apart from the duty to refuse illegal orders, we have to recognize the right to refuse illegal orders, even the right to refuse orders which might after all appear to be legal. Asylum applications should be analyzed in light of the above, particularly with respect to obligations deriving from article 2(3) cited above.

Moreover, states of refuge may have certain responsibilities with regard to illegal situations elsewhere I don't necessarily support a duty to intervene, but to refuse asylum to someone who may thereby be forced to commit an international crime can be regarded as an act which leads to violation of international obligations (be they written, unwritten, or merely moral ones) such asylum applications should be considered in accordance with the auto-interpretation of international law by an individual which is pre-supposed in the Nuremberg judgments, factual information, the opinions of outstanding outsiders, like experts in international law, Amnesty international, the proceedings of the Human Rights committee, etc.

Torture has been strictly forbidden each state official whether in the army intelligence. security or other areas, who may in one way or another be forced to participate in an attempt to commit torture, in the act of torture itself or in an act which constitutes complicity or participation in torture (c.f article 4. (1) of the Torture Convention, cited above), and who consequently flees his country, should not be denied the status of refugee under international law particularly if it is evident that he would run into serious trouble upon return to his country of origin. This appears to be logical consequence of the Torture convention combined with the Refugee Convention and other relevant instruments of International Law.

## **CHAPTER THREE**

### **THE ASYLUM STATUS DETERMINATION PROCESS IN UGANDA.**

#### **3.0 INTRODUCTION.**

In this chapter I discussed the procedure followed during the asylum status determination process in Uganda. Asylum is a legal right or an equitable right which should be given to an individual whose basic human rights are in danger. Its a legal right to seek asylum i.e. a person without asylum status, an alien, has no right to acquire protection from the refugee convention. It is in this light that the performance and applicability of this principle should be assessed in refugee issues in Uganda.

This was about to be witnessed in the following discussion where the roles of the Ugandan Government, UNHCR and judiciary play in asylum status determination of importance to illustrate are the obligations imposed on the question who should be granted asylum in line with the developments in Rwanda and Zaire ( now D.R. Congo)<sup>26</sup>, and then show how the obligations and duties arise and shift between the parties. Local and International conventions and protocols will be applied, and the pertinent case law used fore late the question at hand with the propounded principles. However other refugee principles shall be used in substantiating the applicability of the doctrine since it can't work in isolation.

#### **3.1 THE UGANDAN PROCEDURE FOR PROCESSING ASYLUM CLAIMS:**

When an asylum seeker enters Uganda he/she has to report to any frontier guard nearest i.e. port authorities, police stations, mayor's offices or any other designated officials. The officer takes details i.e. the asylum seeker fills the asylum seekers personality report giving his/her particulars including the passport number of he/she has one. In Uganda Refugee Camps and settlements are based on refugee s political beliefs i.e. refugees from rival political groups are not put in the same camps or if they are from Countries which are hostile to each other. The asylum seekers personality report is under the appendix.

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<sup>26</sup> Democratic Republic of Congo

The officer then explains the procedures followed then informs UNHCR. Meanwhile the applicant goes to an agreed address, home of a friend or relative if any or reception centre for example interaid an Non - Government Organization helping refugees with assistance from UNHCR.

The applicant is sent asylum application form from UNHCR<sup>27</sup>. The applicant is asked to give reasons why he or she left her/his country of origin. In the instant case of the Rwandan - Congolese Hutu claim the Tutsi led Government in Rwanda and Tutsi led Banyamulenge Rebels in Eastern Congo respectively are persecuting them since they are blamed for the genocide in Rwanda and destabilising Eastern Congo. Many interviewed sight the current war in Eastern Congo where they had sought refugee as the major cause of their flight. As reported the state run newspaper The New Vision September 24, 1998 Vol. 13 No. 228. *KABILA ALLIES ATTACK GOMA*".

The Banyamulenge Rebels claimed that 56 persons were killed during the second assault. The New Vision of November 26, 1998 Vol. 113 No. 283 reported under its headline "*KABILA BOMBS REBELS IN EAST*".

With the aforesaid antecedents the asylum seekers are considered. But the Rwandan - Congolese Hutu asylum seekers are branded genocidines and their applications seldom meet with any success. Yet as I observed refugees from Congo of other tribes automatically get asylum. A Senior UNHCR official said that this is a new phenomena that came up after the 1994 killings in Eastern Congo. So they have to take precaution lest they give criminals asylum status. The officer said that they cross check with the names which are in Geneva and other names published in other media. If the applicants name appears on the said lists his application is out rightly rejected. For instance if one looked at a publication like "RWANDA: DEATH.

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<sup>27</sup> Questionnaire for the determination of Refugee Status (Appendix)

DESPAIR AND DEFIANCE, African rights Revised Edition Chapter 3 THE KILLERS AND THEIR ACCOMPLICES page 100-176 where killers and accomplices are indentified if one addressed himself to page 126 and I quote: "The following have been implicated in the massacres at the Commune of Kazenze in Greater Kigali.

- Ngombwa;
- Sengoga;
- Harerimana;
- Habiyambere;
- Ferdinand, a trader in Nyamata Centre.

Looking at these aforesaid names alone lives a lot to be desired. In Africa as we all know surnames are shared throughout the Negroid race. So if one looked at the names above and simply denied another asylum, one loses faith in the refugee rights hence human rights. moreover this is done by the UNHCR officials who are supposed to protect refugees and asylum seekers. The reasons of denying Hutu refugees asylum should be spelt out and even concrete evidence should be adduced against them not a matter of hearsay.

The truth of the matter is that those who committed those offences have to be punished but the procedure used is very questionable. Because here we are looking at one's basic human rights including his/her life being in danger. There can be as many as 1,000 Ngombwas or Harerimanas but if one just looks at one and concludes that he is a genocidist then it's utterly wrong and it needs thorough review.

On the other hand the UNHCR should not determine asylum status as is the case in Uganda. Legally, as a local saying has it "no monkey can decide matters related to the forest". So in the matter of Prof Banjo for example here the aforesaid gentleman, a Nigerian sought asylum from Uganda Government. The Government contacted UNHCR<sup>28</sup> who later claimed that after investigations and assessment that Banjo could not benefit from refugee conventions. This is clearly not UNHCR's duty to determine asylum status of an individual. UNHCR is supposed to monitor the refugee eligibility committee to find out whether it's fair and effective.

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<sup>28</sup> Re: The Daily Monitor Friday April 09, 1999

Prof Banjo now is a refugee in 'Orbit' Stuck at Entebbe airport. UNHCR should protect not oppress..

The applicant is put in touch without advisor, after consultation his form is filled in UNCHR is sent to the Commissioner Refugees under the Prime Minister's Office. Under tilts is Refugee Eligibility Committee (REC) which is constituted by the permanent Secretary Prime Minister's office. Permanent Sectaries of Ministries of Foreign Affairs, Justice and Internal Affairs respectively, Director general of Special Branch (police), Internal Security Organization (ISO) External Security Organization (ESO) and Immigration.

Tue REC through Ministry of Foreign Affairs collaborates information given by the applicant with that of his country, the ESO find out and collaborate the antecedents of the applicants from his country. ISO collaborate information given by applicant since his arrival, Special Branch collaborate information that the applicant filled in the asylum seekers personality report and that filled in the UNHCR questionnaire, the Ministry of Justice Officer advises on the law applicable and the official from Internal Affairs updates the REC on the situation in the camps and settlements. The Permanent Secretary of the Prime Minister chairs the REC. UNHCR provides Interpreters for those asylum seekers who do not have although they have the priviledge to provide their own. I was not permitted to attend the live process for security reasons.

The applicant is notified of the decision by the REC if positive the applicant is given identity papers, is appraised of rights and obligations, is informed of language and other services and is give it permission to work.

There are 2 kinds of refugees's

(i) Conventional Refugees, these enjoy state resources.

(ii) Mandate Refugees, these are taken care of by UNCHR refugees under this do not enjoy state resources.

If the applicant receives a negative decision response he/she is given reasons for refusal. The right to appeal is explained and UNHCR is informed. The Advisor appeal on behalf of the applicant. Appeals lie to an independent board. The appellant is notified of the hearing date and

UNHCR is also informed. The appellant board comprises of the applicant with his/her advisor, witnesses, UNCHR and representative of Immigration service.

If its a positive decision the asylum seeker become a bonafide refugee. If its a negative decision - the asylum seeker faces removal / deportation which can be immediate or delayed to find another third country

If the rejected asylum seeker has more information i.e. if there is a dramatic change n conditions in the country of origin or if the legal advisor can prove claim was unfairly handled, then final appeal lies to the courts. During this period the asylum seeker is given temporary protection, the right to work, identity papers etc.

With a positive decision the asylum seeker becomes a bonafide refugee. If its negative, deportation orders are issued either immediately or delayed to find a third country during which period an asylum seeker is given temporally protection, right to work, identify papers etc.

### **3.2 LEGAL PROBLEMS ASYLUM SEEKERS AND REFUGEES ARE LIKELY TO ENCOUNTER IN UGANDA.**

Under the Immigration Act<sup>29</sup>, every person entering Uganda must have prior permission to do so from Immigration officials. Entry without permission amount to a crime. Under section 9 (1) of the Immigration Act, 'no person shall enter or remain in Uganda unless he is possession of a valid entry permit, certificate of residence or pass issued him under the Act'. This is a problem for asylum seekers. in practice, asylum seekers, most of whom may be wanted for politically motivated crimes cannot travel under the normal travel procedures. The possibility of asylum seekers being charged will illegal entry is therefore real as illustrated by the case of *Uganda V Muhamed Abdu*<sup>30</sup>, 16 year old Congolese was charged with unlawful presence in the county C/s 17 (1) of the Immigration Act<sup>31</sup>.

Illegal entry also means not being in possession of any proper identity papers e.g entry into Uganda without a passport. Case in point *Uganda V Katanga and Anor: Crime case No. M/MN2/97*.

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<sup>29</sup> Immigration Act 19/1969

<sup>30</sup> Not reported

<sup>31</sup> Ibid



Consequences of illegal entry-lead to arrest.. detention pending deportation or prosecution, conviction, imprisonment and deportation: illegal entry also results from failure by aliens to register with (lie Immigration officials within the described period by the aliens (Registration and Control) Act No. 2 of 1984. Section 3 (1) of this Act exempts refugees from this requirements. The Uganda citizenship and Immigration Control Bill of 1998, exempts refugees recognised by the Government of Uganda and the UNHCR. What about asylum seekers who have just arrived in the country and are still finding where to report themselves and make an application for asylum?

Conclusion: Asylum seekers are exposed to real danger if the Immigration officials have no knowledge of refugee law in particular the 1951 UN Refugee Convention. Note: This important note that asylum seekers often avoid Government authorities for fear of being sent back to the countries of origin. They may thus not report their presence to the authorities as soon as they enter a country.

### **3.2.2 USE OF FORGED TRAVEL DOCUMENTS, PSEUDONYMS AND LACK OF IDENTITY PAPERS.**

The use of forged passports, alias and lack of any identity papers is a crime under our Immigration law. Section 8 of the 1969 Immigration Act describes certain aliens as 'prohibited alien'. Under this section, a person found in Uganda with no valid passport or document of identity issued by an authority recognised by Government is a prohibited Immigrant. The document must have all particulars, endorsements and visas as required from time to time.

Conclusion: Use of forged travel documents by asylum seekers can land them in trouble with the Immigration laws of Uganda. But the 1951 UN Convention relating to the status of Refugees allows refugees to use means of escape which would amount to "illegal means" under the laws of contracting states (Article 31). Is this binding on the Government of Uganda? The language of the article will determine its legal effect. If this is a recommendation, then we know that its not binding. Is it persuasive to the courts? Has Uganda made any reservations of Article 31? No (UNHCR& REFWORLD-Legal Information) It is important to note that in practice, asylum seekers are sometimes compelled to use forged document and pseudonyms as means to safety.

The practice in Uganda seems to be that such asylum seekers may be denied asylum or refugee status if they use forged documents and pseudonyms. In fact, asylum seekers who use forged travel documents rarely get the opportunity to lay their claim to the Directorate of Refugees. For example, the case of the four Iraqis and a child deported by Immigration officials because they used forged passports to escape from Iraq. They were not given the opportunity to present their case to the relevant Government departments. Another case (OPIVIR/4/1/1) is of that an Ethiopian who travelled under an alias. His application was rejected. Apparently no reasons were given for the rejection but one can only speculate. Consequences of not having the right travel documents lead to arrest and deportation or arrest prosecution and deportation.

### 3.2.3 WORK PERMITS:

Under the Immigration Act aliens<sup>32</sup> must first secure work permits before they can get employed in Uganda (section 12A).

The 1951 UN Refugee Convention provides that a 'contracting state shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances the right to engage in wage-earning' (Article 17) Clause 3 of this article stipulates that the contracting state shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals..... 'Clause 2 states that restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from at the date of entry into force' of the convention<sup>33</sup>. A refugee who has (a) completed three years of residence in the country of asylum; (b) a spouse or is processing the nationality of the country of residence; and (c) one or more children possessing the nationality of the country of residence. [Article 17 (a - c) ] should also be exempted from these restrictions. The control of alien refugees Act 01 of 1991 provides that refugees should be allowed to work but does not say whether they should acquire work permits.

The daunting task here is to determine whether these exemptions are binding on the Government of Uganda. And in the absence of any domestic legislation which positively incorporates these provisions, the challenge is even greater. Again, the language of the provisions of each article

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<sup>32</sup> Ibid

<sup>33</sup> 1951 Convention Relating to Status of refugees

may determined its legal effect. What would be one's course of action in cases where some rights in the convention have not been positively stated? Shall the provisions of the constitution of Uganda be applicable? Of what significance are international human rights instruments that Uganda has ratified?

It is important to keep in mind the conditions of asylum seekers and refugees visa - vis the requirement of work permits and the spirit of the 1951 refugee convention. Asylum seekers do not always have the means to pay for a work permit let alone accommodation and other basic necessities of life. They will always find employment without work permits because they are willing to work for payments far below the wage rates.

Consequences of being caught by the authorities by Immigration officials and deportation Cases in point: *Uganda V Teshome Nood*, Crim case No IMM/MN/33/97; and *Uganda V Tamenez Bezabeh*, Crim case No. IMM/MN/35/95.

Both were charged with engaging in gainful employment without entry permit. They appeared in the Chiefs Magistrates Court of Mengo at Nakawa; Prosecution was alike to the fact that both were asylum seekers and were granted refugee status on 22/11/96; Prosecution case against the accused was that both got employment without work permits as required by law They contravened the law and should be convicted; Both were represented by Counsel K/bunko Musoke of Slionubi, Kibuuka Musoke & Co. Advocates. Because both pleaded guilty straight away court was lenient with them and imposed a less severe sentence a fine of U.Shs. 80,000/= or imprisonment for 4 months in default of payment of fine. However court record show that they were finally pardoned. Court says being a refugee each was 'cautioned and set at large'. Court records show that there was no attempt to lay before court the law on refugees and Uganda's obligations assumed by ratifying the 1951 UN refugee Convention. It would be interesting to see in whose favour court would reconcile the conflict between section 13A and Article 17 of the 1951 UN refugee Convention. The question will always be whether this article is binding on Uganda. Also keep in mind the reservations Uganda has made to the convention. Uganda has made reservation to Article 18<sup>34</sup>. It is silent on clauses 2 and 3 of Article 17.

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<sup>34</sup> Article 17 of 1951 Refugee Convention

### 3.2.4 EXTRADITION

The Extradition Act allows the extradition of persons it describes as criminal fugitives.

Extradition is only for non-political offences (section 22).

Extradition must take into consideration the principle of non-refoulement (Article 33 of UN Convention on Refugees).

*"No contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".*

In United Kingdom (UK), the European Court of Human rights (ECHR) referred to Article 3 in Chahal V UK<sup>35</sup> judgment of 15 November 1996 ECHR when hearing the case of Karamjit Singh Chahal, a Sikh asylum seeker in the UK. He had been at risk of torture and other serious human rights violations. In November 1996 the European Court ruled that the protection offered by Article 3<sup>36</sup> is absolute and doesn't allow for any derogation. The court instructed that Karamjit S.Chahal should not be deported and that his detention should be subject to judicial scrutiny. He was immediately released.

The principle of non – refoulement, as in the UN Convention is not absolute Article 33<sup>37</sup> states that it may be suspended if there are reasonable grounds for regarding the asylum seeker as a danger to the security of the host country, or if the asylum seeker has been convicted of "a particularly serious crime" and constitutes a danger to the host community/country, circumstance in which they are to be suspended ( non - refoulement laws ) are restricted, it should take into account the proportionality of the sentence faced relative to the crime; the circumstances of the crime and other factors e.g if a refugee who has been sentenced to one year's imprisonment for a public order offence is likely to face further 30 year sentence is returned to his/her country of origin then his/she should not be returned.

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<sup>35</sup> Article 3 Ibid

<sup>36</sup> Refugees Human Rights have no borders pg 33 1997

<sup>37</sup> Article 33 Ibid

On the contrary to *Chahal's case*, *Bouasria Ben Othman*<sup>38</sup>, an Algerian asylum seeker paid an ultimate price when the principle of non-refoulement was violated. On 15/07/1996 the Belgian authorities returned him to Algeria after refusing his asylum application, despite the clear risks he would face in his country. He immediately "disappeared". Four months later the Belgian authorities told Amnesty International (AI) that he had indeed been arrested on arrival in Algeria then released, then rearrested in mid - November when trying to cross the border into Libya. On 26th November Bouasria appeared on Algerian Tv saying he was well and that people should stop asking about him. A week later Algeria Police told his family that he had thrown himself out of a window while in detention and that he had died. He was only 31 year old.

Non - political offences listed in the exclusion clauses in the 1951 UN and 1969 OAU Refugee Convention such as genocide call for extradition. Under the convention on the prevention and punishment of the crime of genocide<sup>39</sup> Article 11. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such; -

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group
- (c) Inflicting conditions of life calculated to bring about physical destruction of the group
- (d) Imposing measures intended to prevent births within the group.
- (e) Forcibly transferring civilians of the group to another group.

If an asylum seeker is clearly accused of genocide the he/she should be extradited to Arusha<sup>40</sup> for trial.

Executive Committee<sup>41</sup> (EXCOM) No. 17 (xxxii) - 1980 on problem of extradition affecting refugees reiterates that the principle of non - refoulement must be borne in mind. Although the conclusions of EXCOM are not legally binding on states in the same sense as treaties, they represent the views of the international community and carry persuasive authority.

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<sup>38</sup> Ibid

<sup>39</sup> Convention on the Prevention and punishment of the Crime of genocide

<sup>40</sup> UN War- Crimes Tribunal Arusha

<sup>41</sup> Executive Committee of the UN General Assembly

Article 3 of the Convention against torture<sup>42</sup> states that, the host country should be able to prosecute the criminals even war criminals if they are at risk of facing torture and death in their countries of origin.

In Uganda, so far we have had only one case where a Kenyan asylum seeker was reportedly extradited on trumped up charges. Also consider cases of asylum seekers, especially of Hutu asylum seekers who have mysteriously disappeared after being followed by security operatives.

### **3.2.5 DEPORTATION:**

Section 14 of Immigration Act<sup>43</sup> deals with deportation issues. Aliens who contravene the provisions of the Immigration Act must be deported to their countries of origin or to countries of habitual residence. Article 32 of the 1951 UN Refugee Convention allows expulsion of a refugee unlawfully in a country. Article 33 forbids the return of a refugee to territories where her or his life may be in danger. Article 28 of the 1995 constitution of Republic of Uganda stipulates that every person be given opportunity to be heard in an impartial tribunal.

Note: Uganda has made reservations to Article 32 of the 1951 UN Refugee Convention the constitution of Uganda has enshrined the Bill of Rights thereby effectively incorporating international human rights standards; the principle of non — refoulement must be taken into consideration in every case.

The practice in Uganda is that the prosecution will always request aliens convicted in our courts of law to be deported once they have served their sentences without regard to the status of the accused as is illustrated by the case of *Uganda V Rabok Chaplain Crim* case file NoU. 2093/97. This refugee was charged with giving false information to a police officer; he was convicted and sentenced to 12 months imprisonment and should be deported to his country of origin Sudan. This is not clearly in line with Article 32 of the 1951 UN Refugee Convention of which Uganda is a contracting state and has ratified it.

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<sup>42</sup> Convention against Torture and other cruel Inhuman or Degrading Treatment or Punishment. 1984.

<sup>43</sup> No 19 of 1969

### **3.2.6 DETENTION:**

In 1995, 23 Congolese were held up in Makindye Military Barraks. They were released only on the intervention of UNHCR. Most refugees of especially of Rwandan - Congolese Hutu origin have complained of harassment and intimidation by what they believe to be security operatives. Some workers in NGOs assisting refugees confirmed that the security operatives track down the refugees and refugees end up "disappearing".

### **3.2.7 RESERVATION MADE TO CONVENTIONS:**

The Uganda Government has reservations made to the conventions such as; Article 5 of the International Convention on Civil and Political Rights (ICCPR 66) which states:-

*"The Republic of Uganda does not accept the competence of the Human Rights Committee to consider a communication under the provisions of article 5 paragraph 2 from any individual if the matter in question has already been considered under another procedure on International Investigation of Settlement".*

On Article 18 it states 'The Republic of Uganda cannot guarantee at all times to provide the legal assistance in accordance with the provisions on article 18 paragraph 3 (d)'. With the aforementioned reservations the legal remedies of an asylum seeker are greatly narrowed and hampered.

### **3.3 THE ROLE OF THE JUDICIARY:**

In Uganda refugee issues had not been addressed in the judiciary until recently. The Chief Justice W. W. S. Wako Wambuzi observed that refugee issues had not been raised in Uganda before. The Chief justice went on to note that the aliens (Registration and Control) Act<sup>44</sup> the Minister has absolute powers to grant asylum.

Justice A. Oder said that international documents are embedded/incorporated in the national constitution and a commission of inquiry into Human Rights was set up to investigate. However, he was optimistic that if state institutions and other organs do not guarantee the human rights then it would be useless to have them. He added that ignorance of human rights by state organs and institutions or individuals leads to abuse of individuals rights. He observed that political sentiments have not permitted establishment of tribunals in line with refugees and have fuelled

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<sup>44</sup>Article 2 Aliens Legislation and control Act 1984

wrangles between ingenious persons and refugees. The honourable judge further observed that a clear provision in the constitution<sup>45</sup> can oust the jurisdiction of the High Court i.e Article 50(1) and (3).

Justice G. W. Kanyeihamba observed that political priorities take precedent to other issues such as human rights, he later contended that the Alien Control Act 19/60 and cap 64 came in to being because of the Rwandese and Sudanese conflicts thereby not applicable to aliens from other nations.

On the international scene, the Africa Commission of Human Rights was established in 1981 under the Banjul (African) Charter of the OAU Convention. It is to inquire into alleged abuse of human rights by member/contracting states. Although AU is in place it has limited machinery and underdeveloped. The commission is not enforceable. The African Charter is at the discretion of the host country. The commission has limited jurisdiction or the states prevail over it.

Judges have powers under Article 60- 61, Banjul (African) Charter<sup>46</sup> and the OAU<sup>47</sup> convention. The Human Right Commission monitors the states respect/compliance with international law. The African Courts of Human Rights protocol has been passed. But as observed by Justice A. Oder who is a member of the court, the court is very timid and weak, It is under funded and footless.

In 1997, the International Association of Refugee Law Judges (IARLJ) was founded in Warsaw. Poland. It is sponsored by the Dutch Government. Justice Prof G. W. Kanyeihamba is the African Co-ordinator of IARLJ.

The preamble of IARLJ constitution states that Judges and Quasi Judicial Officers have a role to play in helping asylum seekers. I noted that our courts are not given a say in matters regarding aliens.

In United States, C. J. Marschal insisted that the supreme court has powers over Congress in legal matter Hence the supreme court can revoke a provision of an Act of Congress.

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<sup>45</sup> The 1995 Constitution of Republic of Uganda

<sup>46</sup> AU

<sup>47</sup> OAU Convention, 1969



In Europe, the Europeans Court of Justice says that community law prevails over national law and legislation constitutional law.

### 3.3.1 ELEMENS IN THE JUDICIAL REASONING IN LINE WITH CANADA (Attorney General) V WARDs<sup>48</sup> CASE

#### 3.3.1.1 PERSECUTION

The judgment cites with approval definition of persecution that encompasses 'sustained or systematic violation of basic human rights. Perhaps because torture and killing are paradigmatic examples of persecution, the judgment does not enter into extensive analysis of what constitute 'basic human rights' or what counts as 'systematic ..... denial of those rights.

#### 3.3.1.2 STATE COMPLICITY

Ward did not apprehend persecution at the hands of the Irish Government. Rather, he feared torture and possible death by the Irish National Liberation Army (INLA) from which the Irish Government could not protect him.

Writing for the court, Mr. Justice La Forest declares that state complicity in persecution is not a pre-requisite to a refugee claim' Put another way, serious violations of human rights by non-state actors can ground a finding of persecution under the refugee definition if the state cannot or will not protect nationals from such mistreatment. In coming to its conclusion, the court examined the drafting history of the *Convention, Determining Refugee Status*<sup>49</sup>, Canadian and United States refugee cases, and scholarly commentary & With the exception of the *travaux préparatoires*<sup>50</sup>, which La Forest, J. found inconclusive, the remainder of the sources supported the proposition that state inability to protect can trigger a finding of persecution. As La Forest J. remarks elsewhere, 'security of national is, after all, the essence of sovereignty.' The logical implication is that if a state falters in either regard, it has failed to fulfill its most basic obligations towards its nationals, who are hence entitled to seek refuge elsewhere.

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<sup>48</sup> (1990) 2 FC 667

<sup>49</sup> UNHCR Handbook, Geneva 1979.

<sup>50</sup> Alex Takkenberg and Christopher Tahbaz, The collected Travaux Préparatoires of the 1951 Geneva Convention Amsterdam: Dutch Refugee Council 1990

### 3.3.1.3 TEST FOR DETERMINING FEAR OF PERSECUTION.

Mr. Justice La Forest notes that paragraph 65 of the UNHCR handbook injects state failure to protect into the definition of persecution such that act of by state citizens, when combined with state inability to protect, constitute 'persecution'. The role played by the state as perpetrator, accomplice or impotent bystander would not, however, be germane to the issue of whether the conduct feared constitutes persecution in the first place. Thus, when speaking of the requirement that a fear of persecution be well-founded, La Forest J. comments that (i) is at this stage that the states's inability to protect should be considered ..... if a state is able to protect the claimant, then his or her fear is not, objectively speaking, well-founded.'

La Forest, J. rejects the notion that a claimant must prove that he/she unsuccessfully sought state protection in the past in order to justify 'an unwillingness to avail himself/herself of state protection for purposes of establishing a refugee claim: 'it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness.'

In an era where the gates of many nations are closing (if not slamming shut) to refugee claimants, the *World* decision is laudably progressive in many respects. It recognises that the obligations owed by state to its nationals in exchange for obedience encompass not only a duty to respect their human rights, but also a responsibility to protect them from having those violated by others. In so ruling, Ward implicitly rejects the liberal/libertarian conception of the state that sees the exercise of state power exclusively in terms of what the state does directly and remains blind to the ways in which the state, through its inaction, facilitates the systematic abuses of some individuals by others.

The *Ward* decision also refuses to 'read down' the refugee definition to deny certain individuals access to refugee protection ex ante by designating them as criminals or terrorists. It adopts an expansive interpretation of political opinion' that implicitly acknowledges the multiple way in which political opinion as a statement about power can manifest or be attributed.

## **CHAPTER FOUR**

### **4.1 SUMMARY OF FINDINGS**

4.1.1. Criminalization of refugees creates a negative attitude towards them. This is a common occurrence to Hutu asylum seekers who are branded Genocidires and blamed for distablising the Great lakes Region.

4.1.2. Political sentiments had not permitted Somali asylum seekers the right to seek asylum. It called for the presidents' intervention to be granted asylum.. Such political occurrences have not permitted the establishment of independent refugee tribunals and have fuelled wrangles between indigenous people and refugees.

4.1.3. Refugee issues have not been raised in Uganda before. The Judges and Magistrates are not well conversant with international refugee law hence they have not been able to assist asylum seekers. Aliens are not granted refugee status and they are not given a hearing. Courts too are not given a say in matters pertaining aliens.

4. 1.4. The chief refugee protector ie UNI-ICR is actually the "Jury, Judge and Executioner" in refugee status determination which actually portrays a bad picture of the UN's principles and practices.

4. 1.5. The law in relation to refugees and asylum seekers though existent does not offer adequate protection to them. This is due to various legal, political, social and economic short comings which in turn serve to hinder the applicability and adequacy of refugee protection laws.

4.1.6. There is need for more research on the position of asylum seekers in the Ugandan society

### **4.2.1 APPROACHES TO LAW REFORM:**

- (i) There is need for tile UN to make a legislative definition of a refugee which has no time limit and geographical barrier Because countries take advantage of the current restrictive definition in the refugee convention<sup>51</sup>n leaving the matter to a Minister's discretion leads to confusion, C. J. Wako Wamnbizi is of tile same opinion.

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<sup>51</sup> 1951 Convention Relating to Status of Refugees

A uniform definition of a "refugee" should be provided so that confusion as to what this term refers is avoided. This may not be the best alternative but at least the existing confusion will be lessened

- (ii) International treaties should be ratified and implemented. The treaties that are not clearly applicable should be amended to suit out legal system International documents should be incorporated in the constitution Just like the Bill of Rights<sup>52</sup> in chapter 4 of the constitution This makes it possible to enforce and respect the convention.
- (iii) International and community law should prevail over national and constitutional legislation laws Tins precedent was set by the European Court of Justice ( Human Rights ) m the case of Chahal V UK<sup>53</sup> Domestic law should be overlooked when dealing with refugee experiences and policy.
- (iv) The role of law should predominate. There should be equality before the law. A man should not be a judge in his own case, which is a rule against bias and sometimes expressed in Latin as *memo judex in causo sua* and literally put in a Luganda proverb - the monkey does not decide an affair of the forest. This was witnessed when UNHCR which is supposed to protect asylum seekers and refugees denied Prof. D. Banjo refugee asylum status. UNHCR should observe the asylum status determination process but it should not actually decide who are refugees or a gratifying refugee is. An opinion should be Z. Lomo legal researcher MISR<sup>54</sup>.
- (v) The old law should be repealed Le Aliens Control Act 19/1969 and Cap 64. Act 19/69 was put in place to control refugees out of the Commonwealth countries. Whereas cap 64 was put in place due to the conflicts in Rwanda and Sudan and it was to cater for Tutsi and Sudanese refugees.

A non discriminative law should be put in place to accommodate asylum seekers of other nationalities. Justice G. W. Kanyehamba commenting on the Aliens Control Act and 64 in an interview carried out during this research calls for rescindment of the aforementioned laws because they are not realistic enough to be applied to refugees of other nationalities. According to him the law does not suit refugees of other nationalities and it has out lived as usefulness and

<sup>52</sup> Bill of Right of Universal Declaration of Human Rights, 1948

<sup>53</sup> Refugee: Human Rights have no Borders pg. 33, 1997

<sup>54</sup> Makerere Institute of Social Research

is inapplicable. He suggested that the Uganda citizenship and Immigration Control Bill, 1998 should not have any racial barriers. The new law will enable easier implementation of refugee protection law.

- (vi) The Refugee Eligibility Committee (REC) should be part of the Act This helps in identifying the legal obligations bestowed upon the REC Because in some incidents decisions on asylum cases are effectively made by a lone immigration official, acting without any human rights of legal advice
- (vii) NGOs, Lawyers and Civil workers should move the bench and help set precedents with the Judges. For instance Supreme Court of Canada set a precedent for the definition of persecution, in the matter of Canada (Attorney General) V Ward<sup>55</sup>, thereafter in Ward<sup>56</sup> case defection from his militant group Irish National Liberation Army (INLA): had put his life in danger.
- (viii) Quick adoption and implementation of newly enacted laws to facilitate the community's greater involvement in refugee protection should be done. This will create awareness which will go a long way in curbing the abuse of asylum seekers rights.
- (ix) There should be rule of law. The full range of human rights must be respected as the equal and inalienable birth right of all people. All people, regardless of their characteristics or social situation, must be understood to have the same fundamental rights. No one is to fill, at any one time or for any reason, outside the circle of those whose rights are to be universally protected.
- (x) Gross violations of human rights, including armed conflicts, are among factors responsible for creating vast populations of displaced persons and refugees. All who are forced to flee persecution must have protection for their right to seek and receive asylum in other countries. At the same time, the root causes that create refugee movements must be addressed for example there should be arms/weapons embargo imposed on Governments that commit gross violations of human rights.

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<sup>55</sup> The Control of Alien Refugee Act Cap 64 of 1964

<sup>56</sup> (1993)2 SCR 689 .

- (xi) An effective system for investigating and redressing violations of human rights in line with refugees must be set up. Because up to now political sentiments have not permitted the setting up of a commission of inquiry in refugee issues.

A strong and independent administration of justice must be seemed in order to sustain human rights democracy and development Independence of judiciary shall be ensured as observed by Chief Justice of Canada.

- (xii) To enhance enforcement of international law, ratification of treaties should be more vigilantly sought. Better still, more declarations instead of conventions should be adopted. S. Singer (1922: 181) explains that although a convention once ratified is legally binding and therefore theoretically stronger than a declaration, experience has shown that a declaration adopted unanimously has greater moral impact than a convention ratified only by a few countries. E. Luswata (1994 : 4 ) says that inclusion of international law into municipal law ( doctrine of incorporation ) may help greatly but this will only be so if it can be adopted to fit the peculiar circumstances.
- (xiii) The commission on human rights, the international law commission and the sixth committee (legal committee) OF UN General Assembly should expedite studies related to the possibility of establishment of an international human rights courts and an international criminal court.

Although, there is the Arusha War Crime Tribunal trying persons suspected of committing genocide in Rwanda, it is not enough to handle all the cases in line with gross human rights violations.

The existing world court<sup>57</sup> with its 15 Judges drawn from the 4 corners of the world and nominated by the UN security council. Over the years it has done valuable work in adjudicating financial claims, seabed claims/disputes and even the hot political potatoes like who is the rightful ruler of Namibia and does the US have the right to mine the harbour of Nicaragua's main port? But only states can appear before it. Not individuals. Not ethnic groups. If individuals

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<sup>57</sup> International Courts of Justice Established by UN Charter, 1945

could, the world court would be able for example, to try those accused of war crimes and genocides in ex-Yugoslavia, Cambodia, Rwanda and Iraq.

However as already shown, attitudes of nations are difficult to change and as long as geographical and physical barriers exist, a distinction will always be made. Given time, law reform may bring about a change.

#### **4.2.2. OTHER REFORMS:**

- (i) information about the legal personality of refugees should be provided in the media Ray Wilkin son (1998 : 8 ) says that most people in the developed world rarely think of their human rights and that many people in the developing world are probably not even aware that they have any. This if done universally will ensure that refugees and other people will be aware of what rights refugees are entitled to. R. Reoch ( 1994 ) remarks that refugees should know their rights so that they do not suffer in ignorance and silence.

Amnesty International (AI) publications ( 1997 : 1 ) observes that refugees though aware of their right are over whelmed by their duty to obey regulations of asylum countries.

- (ii) Refugees need not be a burden on their local hosts, but can make a positive contribution to the economy in the areas where they settle. That is the lesson to be learnt from Arua in the West Nile Region where more than 20,000 exiled Congolese were settled in the late 190s and early 1990s.

They have boosted the tobacco industry in Arua in particular and Uganda in general by growing vast shambas of tobacco.

- (iii) The refugee issue is a human rights issue states which preach the virtues of human rights abroad and which consider themselves to be custodians of humanitarian principles cannot be surprised if they are asked to respect the same norms at home. Refugees are characterized by then well founded fear of persecution and the failure of then own state to safeguard then human rights The states to which they turn for

asylum have a continuing obligation and one which they have freely taken upon themselves to provide the protection they need.

- (iv) Judicial officers, armed forces and Immigration officers should be enlightened and furnished with international and refugee law. This will go in a long way to curb abuse of refugee's rights because the aforementioned officers are directly involved in refugee issues in one way or another.
- (v) The Federation of Women Lawyers (FIDA) should sensitize in the REC about vulnerable people. This goes to women, and children who need a lot of care and are prone to fall easy victims to human rights violations.
- (vi) Simple legal education and human rights education will go along way in improving the refugees welfare worldwide S. Koenig (1994 : 47') says that in order do this. educators and grassroots activists suggest that pubic education in human rights must demystify the laws that govern daily concerns. E. Luswata (1990 : 100 ) writing on Uganda is of a similar opinion.

P. Nkurunziza (1987: 46) asks what the use of law reform is when people do not know the law. According to him the first thing to do is to awaken the masses on their rights.

The education of the masses on human rights will bring forth learning about justice and fairness and inculcate a human rights culture universally. This will create an international community in which desecration and transcendence of human rights are prevented and human dignity is safe guarded by the power of knowledge.

- (vii) The provision of proper, effective and independent infrastructure for review and appeals will help in preventing and reduction of abuse of refugee rights. The review and appellate infrastructure could be a network of judicial officers, lawyers, counselors, social welfare workers, Immigration officers, local committee members and persons in charge of licensed refugee - caring centres.
- (viii) The alteration of society attitude towards refugees / asylum seekers is necessary. Raymond Hall (1995 : 229 ) outlines that International migration is not an aberration which must be eliminated, but a cultural and inevitable characteristic of human life. People are bound to move when they perceive an advantage in doing so, and when



conditions in their normal place of residence become excessively insecure. A fundamental improvement in the nature-of Ugandan society is required.

#### 4.3 CONCLUSION:

Although this research has not pretended to be exhaustive on the subject discussed, it has attempted to give abroad analysis of the situation of the Rwandan — Congolese asylum seekers. The applicability and adequacy of refugee protection laws in relation to the asylum seekers have received close examination.

Currently Government policy puts into focal position the vulnerable groups of people in society namely children, women, the elderly and disabled. The Constitution among the national social and economic objectives provides that, “The state shall guarantee and respect institution which are chargedly the state with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively<sup>58</sup>.

In addition to this the constitution states that, “the state shall guarantee and respect the independence of non - Governmental Organizations which protect and promote human rights<sup>59</sup>.

This account for the enactment of the Uganda citizenship and Immigration Control Bill, 1998 passed by Parliament but not yet assented by the president which if enforced is expected to curb the problem of abuse of rights of asylum seekers.

However, this study has revealed that law enforcement is being affected by several, legal social, political and economic short comings which if not solved will continue to hinder the applicability and adequacy of refugee protection laws.

It is believed that if the several recommendations that have been raised are put to work better results will be achieved. If the problems that the refugees face are not totally eradicated, at least, their situation will be greatly improved.

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<sup>58</sup> Preamble (vi) of the 1995 Constitution of the republic of Uganda

<sup>59</sup> Ibid Preamble v (ii)

# **APPENDIX** **QUESTIONNAIRE FOR DETERMINATION OF REFUGEE STATUS**

IC'S NAME.....CASE NUMBER.....

Nationality Family Status.....Family Status.....

Ethnic Group Language.....Language.....

What other languages do you speak.....

Date and place birth.....

Religion:..... Occupation.....

Present place of stay in Uganda.....

How long have you been in that place?.....

Education:

(a) Which schools did you attend? (dates/standards reached) ,

.....  
 .....  
 .....

(b) Which University/Higher institutions, etc did you attend? (dates and degrees, diplomas/certificates obtained)

.....  
 .....  
 .....

Who are the immediate family members living with you in Uganda,

Nam	Sex	Relation to you	Date and Place of birth	Place of stay/address

Who are the extend family members/other relatives living with you in Uganda

Nam	Sex	Relation to you	Date and Place of birth	Place of stay/address

Who are the immediate family members outside Uganda

Nam	Sex	Relation to you	Date and Place of birth	Place of stay/address

Who are the extended family members/relatives outside Uganda

Nam	Sex	Relation to you	Date and Place of birth	Place of stay/address

What is you home address/ location in country of origin?

.....

Which was your last place of residence in the country of origin?

.....

When did you leave your home area? (dm/y).....

When did you leave last place of residence in country of country?

.....

Did you have a Visa or Exit permit? Yes/No. if yes, how was it obtained?

.....

What Identity Documents do you possess?

.....

Since there is no document, how else can you prove your identity?

.....

Did you apply for a passport in your country of origin? Yes/No.

Was the passport issued? If yes, give details (date issued/number if lost where, how?

.....

Through which town countries did you travel to reach Ugandan border?

.....

What means of transport did you use?.....

How long did you spend in each place? (days/months/years)

.....

Through which border post did you enter Uganda?.....

What date did you enter into Uganda (d/m/y),.....

Through which towns did you travel in Uganda to reach Kampala?.....

What means of transport did you use?.....

Have you ever registered with another UNHCR Office or any other international agency dealing with refugees? Yes/No.

If yes, give details.....

.....

Why did you leave your home country:.....  
.....  
.....  
.....

Have you ever been converted by a court of Law? Yes/ No  
If yes, give details of changes and sentence:.....  
.....  
.....  
.....

Have you applied for asylum in other country? Yes/No  
If yes, provide details.....  
.....

Are you registered with an embassy, consulate or any other authority of your home  
country? Yes I No.  
If yes, provide details

Have you approached an embassy of another country? Yes / No.  
Is military service compulsory in your country? Yes / No.  
If yes, were you called to serve? Yes / No  
What was your duty station?.....  
Rank and type of unit.....  
If called up but did not serve, give reasons.....  
.....

If deserted, give date and reasons.....  
.....

Did you or any members of your family belong to political, religious, military, ethnic or social organization or grouping in country of origin? Yes I No. If yes, give details (activities, position in group, leaders area of operation, etc.)

.....  
.....

Your activities/responsibilities (details, incidents, where, how arrest, kin, etc)

.....  
.....

Were you arrested or detained? (reasons, details, when, by whom, where, why released, length of time, etc.)

.....  
.....

Where you charged? Yes/No. Do you have any documentary evidence?

Yes / No. Provide details?

.....

What were the conditions of detention?.....

How were you treated by the authority (during detention, etc.)

Were you tried? Yes / No. Place:..... Date .....

Judge .....Prosecutor .....

Acquitted/found guilty: Yes/ No. If yes what was the sentence?.....

Was any close relative arrested/detained? (details).....

.....

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.....

What do you think would happen if you were to return to your country now?

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List of documents received during interview

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Do you have any other details which you think will assist in determining whether you are, entitled to refugee status? Yes / No. If yes, provide details.

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INTERVIEW.....

INTERPRETER.....LANGUAGE.....

STAGES (FIRST), (SECOND) REOPENING)

DATE/TIME OF INTERVIEW:

Asylum Seeker's Signature.....(Thumb Print).....

Date.....

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