

**THE PROTECTION OF THE RIGHTS OF WOMEN
REFUGEES IN KAMPALA, UGANDA**

A thesis
Presented to the
School of Postgraduate Studies and Research
Kampala International University
Kampala, Uganda

In Partial Fulfillment of the Requirements for the
Degree Master of Laws

By

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LLM/0810/102/DU

October 2011

DECLARATION A

"This thesis is my original work and has not been presented for a degree or any other academic award in any university or institution of learning".



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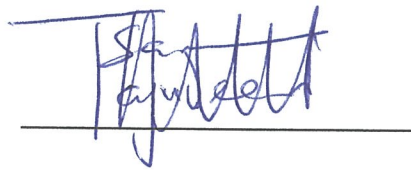
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DECLARATION B

"I confirm that the Work reported in this dissertation was carried out by the candidate under my supervision."

A handwritten signature in blue ink, appearing to read 'Tajudeen Sanni', is written over a horizontal line.

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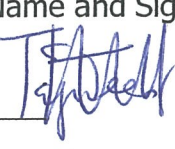
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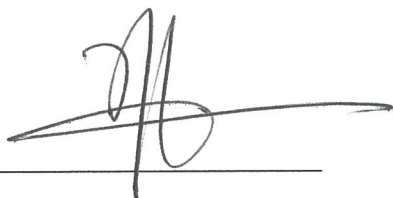
APPROVAL SHEET

This thesis entitled **"THE PROTECTION OF THE RIGHTS OF WOMEN REFUGEES IN KAMPALA, UGANDA"** Presented and submitted by **BARIKE ALI MAZRUI** in partial fulfillment of the requirements for the award of degree of Masters in Laws has been examined and approved by the panel on oral examination with a grade of


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DEDICATON.

This work is dedicated to my beloved parents Mr. and Mrs. **ALI MAZRUI** for their love and support. May the Almighty Allah bless them.

ACKNOWLEDGEMENT

I thank the Almighty Allah for His love, mercy and blessings over my life and having enabled me conduct this research.

I am grateful to all people who, in one way or another, have assisted me in executing this research.

Special thanks go to my supervisor MR.TAJUDEEN SANNNI who has not only helped me make sense of the topic but also painstakingly examined my work and gave advice.

Many thanks go to my family for all the encouragement and support both material and psychological.

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List of Acronyms.

AU	African Union.
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women.
CSO	Civil Society Organization.
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms.
EU	European Union
FAPA	Facilitation for Peace and Development
FGM	Female Genital Mutilation.
ICRC	International Committee of Red Cross.
ICCPR	International Convention on Civil and Political Rights.
ICESCR	International Convention on the Economic, Social and Cultural Rights.
IDP	Internally Displaced Person.
IHL	International Humanitarian Law.
MDG	Millennium Development Goals.
MGLSD	Ministry of Gender, Labour and Social Development.
REC	Refugee Eligibility Committee.
RWC	Refugee Welfare Committee

UDHR	Universal Declaration of Human Rights.
UK	United Kingdom.
UN	United Nations.
UNHCR	United Nations High Commissioner for Refugees.
URCS	Uganda Red Cross Society.
VWP	Vulnerable Women's Project.

List of Statutes

THE UN 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES.

THE UN 1969 PROTOCOL RELATING TO THE STATUS OF REFUGEES.

THE OAU (1969) CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA, UNHCR.

UNHCR (1990) POLICY FOR REFUGEE WOMEN.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979.

THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995

THE REFUGEES ACT, 2006

List of cases.

Ahmed vs Australia ECHR, Judgment No. 17 December, 1996

Immigration and Naturalization Service vs Cardoza Fonseca, 480 U.S supreme Court, U.S.L.W 4313 9th March 1987.

Law and Advocacy for women in Uganda vs AG, constitutional petition no.8 of 2007, judgment of 28 July 2010.

Northern Ireland vs UK 1976 European Convention on Human Rights, 512, 748 of 1978.

The prosecutor vs Akayesu, ICTR – 4 - 1996

ABSTRACT.

This study explores the social construction of women refugees from the perspective of their human rights. To this end, this study examines the development of women refugees' rights as a category within the human rights discourse.

The main assumption of the study is that promoting and improving refugee women's sexual, reproductive health and other rights in Uganda will contribute to their livelihood security in camps. Refugee women's special needs are particularly related to the background of forced migration and their situation in the host country.

In this context, the study looks at the vulnerability of women refugees and identifies barriers that prevent them from getting access to affordable and acceptable sexual or reproductive health and other services. Refugee health is not only a public health and human rights issue, but is also recognized as an important factor for integration.

The study also looks at the legal framework for the protection of refugee women's rights and makes findings as to whether the implementation policy has been beneficial to them. Important to note, is the rights based approach that should be observed in Uganda's legal system, policies and guidelines.

CHAPTER ONE

THE PROBLEM AND ITS SCOPE

1.0 General Introduction.

This research is as a result of gender based analysis of assistance offered to refugee women in refugee settlements in Uganda. Specifically, the study examines how gender relations affect the livelihood security and reproductive health of refugee women in central Uganda camps. This study is pertinent because conditions related to or resulting from reproductive health problems such as unwanted pregnancies as a result of rape, children born as a result of forced engagements, problems of abortion.

The study also stems from past gender observations that the reproductive health process, apart from being a function of psychology, is a social process that hinges on several other factors. They raise particular interest because of the gender- specific problems they face and the mechanisms they devise for survival amidst the challenges of refugee situations and their own position in society.

Generally, refugees do not have an automatic claim to basic needs and income generation. Women refugees, who also care for other vulnerable household members, are in this respect, exposed to many difficulties. In the face of these challenges of refugee life, the choices women make concerning their health can high light how they rank their own livelihood and health concerns and exercise their options.

Studies have indicated that problems facing women refugees are at the global level with many different countries addressing the problem. The prevalent factors have been the effect of wars in different parts of the world. With regard to international instruments

addressing such issues, this research will examine how countries like Uganda are trying to solve the problem, with the application of national legislation.

The primary focus of the study is therefore to establish and analyze factors attributed to gender relations, which affect the livelihood security of refugees and how refugees respond to these factors. There is need to investigate how gender inequalities have perpetuated at the interface with humanitarian aid programs.

Some academicians have noted with great concerns that once women have fled their homes, they are further exposed to the risk of sexual violence and exploitation. The most vulnerable are girls, older women, disabled women and those living in the urban areas and those who have left their county (internally displaced people). Many refugee women have been separated from the father or partner who would normally protect them, while the change in the gender roles brought about by the displacement situation can lead to high levels of domestic violence.

A lack of gender sensitivity in the asylum procedure and in evidence assessment of asylum claims has further restricted women's access to protection in many countries all over the world. Despite a number of guidelines introduced by the UNHCR to safeguard the interests of refugee women, a lot of enforcement is desired to enforce such rights.

1.2 Statement of the problem.

This research will embark on findings based on gender relations, livelihood security and reproductive health in refugee situations. The specific aspect of women rights becomes pertinent because of the gender-biased approaches towards livelihood security and the poor access to health care services. Studies have indicated that refugees are recipients of short term health programs.

I will explore some of the issues that arise when the phenomenon of refugee flows is viewed through a gendered lens, concentrating on the experience of refugee women.

Issues:

Whether women refugees are receiving the desired support /aid towards their livelihood security.

If there has been any special treatment accorded to women refugees due to their reproductive health concerns.

If there has been any mechanism for the proper enforcement of women's rights.

Whether the media and other agencies have been active in exposing the concerns of women refugees to the general public.

1.3 Purpose of the study

In this research problem, the independent variable is the rights of women refugees the dependent variable is their quality of life. It is my contention that there is a direct casual relationship between these variables, if women's rights are in a refugee camp that will guarantee their quality of life which will be of a better standard.

This research proposal will consider the social, economic, bio-physical, religious cultural attributes towards the development of refugee women's rights. It will then outline a hypothetical process of testing the relationship between refugee women issues and other refugees generally.

Finally, it will consider the theoretical and policy implication of that relationship in order to suggest a more equitable protection of women refugees in refugee situations.

1.6 Scope.

The study shall cover the protection of women refugee rights in central Uganda (Kampala and the surrounding areas) Kampala is the capital city of Uganda with a variety of activities including that of refugees. I shall seek to discover the various refugee settlements in the area so as to make the research useful.

Over the years, women refugees have sought for specific rights which ought to be addressed. The variables to be considered are the independent and the dependent variable.

The independent variable is the rights of women refugees; the dependent variable is their quality of life.

The time scope for this research problem (data collection) will be from the 1st August to 30th October 2011.

1.7 Significance of the study.

The beneficiaries of the study are women refugees, administrators in refugee camps, government, agencies, researchers, students and the general public. Each shall benefit as follows;

Women refugees will understand the need for protection of their rights and their specific rights, as women for example reproductive health concerns, provision of sanitary towels in refugee settlements. This research will be educative to them for they will be able to learn more about their rights.

Administrators in refugee camps will benefit in this research as they will be able to change any attitudes that were gender biased for the benefit of all the members in the

refugee settlement. They will also get to learn about the specific legal rights that refugee women must enjoy.

Researchers will base on the study of carry out further studies in the future. Students will widen the scope of knowledge acquiring on the area of study.

The general public will also benefit from the study as it will create awareness about the peaceful co-existence amongst people with refugees amidst their area. The male refugees will also be helpful in ensuring that the rights of human refugees are observed.

LITERATURE REVIEW.

1.8 Introduction:

A number of writers have noted that the refugee experience of men and women can be very different. Women refugees have special needs. Women and girls generally face a variety of challenges during their refugee experience that are specific to their gender. These problems often begin even before the women cross an international boundary and become officially refugees under experienced by internally displaced persons as well.

According to the refugee council¹ refugee women are more affected by violence against women than any other women's population in the world. Many suffer, sexual violence, which has been described by a senior UN official as 'one of the most global protection challenges due to its scale, prevalence and profound impact'.

Both international refugee law and the international refugee assistance programmes have traditionally been gender blind, with introduction of gender as analytical or practical category only in the past years². It is possible not only to illustrate the differential experience of refugee women but also to understand fully the dynamics of refugees in conflict situations.

¹The Vulnerable Women's Project Refugee and Asylum seeking women affected by rape: Women as refugees" 2006 pg 23

² Devoe P.A, "*the silent majority women as refugees*"(1993)pg 23

Despite evidence of violence against and persecution of women for breaking social mores regarding their gender roles in a number of countries³ the legal definition of a refugee in the UN convention relating to the status of refugees does not include persons who have faced persecutions for breaking these social roles. Young⁴ argues that most fundamentally, among the forms of persecution faced by women that are not generally recognized as determination, transgression of societal gender norms, among others, relate to the aspects of gender.

One of the most formidable challenges that women face is the threat to their personal security, particularly, in the form of sexual violence, and as noted above, rape and sexual violence are used to persecute women for their political activity, rape and sexual violence are also increasingly recognized as weapons of war that lead to women's flights from their homes. However, sexual violence does not necessarily end when a woman leaves her home in many cases, women face increased chances of sexual violence once they are in flight.

Women are particularly vulnerable to discrimination and human rights violations both before flight and as refugees. Despite this, they can find it particularly difficult to claim refugee status successfully. For example, experience shows that women suffer severe discrimination on grounds of gender have difficulty proving that the discrimination amounts to persecution. The UN Refugee Convention does not include gender as one of the specific grounds of persecution on which to base a claim for refugee status. In addition, asylum decision makers often fail to understand the particular difficulties and fears faced by women refugees.

³ Forbes Martin, "*refugee women*", (1992) pg 23.

⁴ Young K and C Moser, "*Women and the informal sector*", (1981) pg 93.

The vast majority flee their country for the same reasons as men, to escape persecution because of their national, ethnic or social identity or their religious beliefs or political opinions. Some forms of persecution, however, largely and exclusively affect women. These should be accepted as valid grounds for granting protection under the UN Refugee Convention. Among the issues that should be considered when assessing asylum claims, women are the following.

- a. Women may fear gender related harm and may require gender sensitive procedures during assessment of their claims
- b. Women may be persecuted for reasons of kinship, for example because of the activities of a male relative.
- c. Women may be victims of severe discrimination on the basis of their gender, which may amount to persecution, often the state is unable or unwilling to protect them.
- d. Women may be victims of acts of violence perpetrated by public authorities or private citizens, such as rape and domestic violence, which amount to persecution, again, often the state is unable or unwilling to protect them.
- e. Women may be victims of human rights violations for transgressing or refusing to comply with their society's religious or customary laws and practices.

At present, official positions on which types of gender related harm constitute persecution under the UN Refugee Convention vary between countries and are suffered primarily or solely by women. The UN Declaration on the Elimination of all forms of Violence against Women requires all states to work towards the eradication of violence against women. This means that women fleeing domestic violence committed in states which sanction or tolerate such abuses should be able to rely on the principles of the

declaration in demonstrating ways in which their state has failed to provide the protection to which they are entitled under international human rights standards.

Discrimination against women is prohibited in international human rights law. When discrimination amounts to persecution such as when women are severely punished for breaking their society's customs, victims may qualify for protection under the UN Refugee Convention. The most important international treaty dealing with this issue is the Convention on the Elimination of all forms of Discrimination against Women. This treaty obliges state parties to condemn discrimination against women, to adopt appropriate legislative and other measures, and to establish legal protection for the rights of women.

Women refugee's physical security and safety in refugee camps is further threatened by lack of adequate health care. Women are exposed to more

Health risks than the men in refugee camps⁵. Pregnancy poses particular problems to the refugee women, once the original emergency phase of flight is over and hence the leading cause of death among women of child bearing age is complications from pregnancies.

A body of literature exists regarding the role of women's organizations in developing countries including Uganda. The literature which is based on peaceful societies, suggests that women's organizations contribute to the development process in a variety of ways. Nevertheless, this type of assistance is not usually centered on women refugees, which calls for tremendous changes in order to care for the women refugees.

⁵ Devoe (n.2).

Women have some concerns about bringing up children in a different culture, because of the risk of weakening cultural values. Similarly, they may be unwilling to use child care, even when it is available because they are reluctant to leave their children with strangers and because of their concern about the different values their children may be taught. Women without partners tend to be a particularly vulnerable group.

In addition to rape, sexual assault and sexual exploitation, refugee women may be vulnerable to other forms of gender based violence, such as forced marriage, honour crimes and female genital mutilation. Female genital mutilation has been considered unconstitutional by the constitutional court of Uganda in the case of *Law and Advocacy for women in Uganda vs AG*.⁶ In which the issue before court was whether the custom and practice of female genital mutilation is unconstitutional and should be declared null and void. The practice contravenes Articles 2, 21, 24, 27, 33 of the Constitution.

Court stated that the practice of FGM was condemned by both the Constitution of Uganda and international law, in the treaties, Covenants, Conventions and protocols to which Uganda is a party. The practice of FGM is a custom which is wholly inconsistent with the above mentioned provisions and it is now the duty of the court to declare the custom void.

Increased insecurity and fear of attack often causes women and children to flee, so they form majority of the world's refugees and internally displaced persons. Women are heads of households and bread winners, taking over the responsibility for earning, livelihood, caring for farms and animals, trading and being active outside the home, activities often traditionally carried out by men. This necessitates the development of

⁶ Constitutional petition no.8 of 2007 UGCC 4 /28, July,2010. Justice Twinomujuni J.A.

new coping skills and confidence requiring courage and resilience to help sustain and rebuild families and communities form a part of war⁷.

Children may also experience displacement differently. For example it has been alleged that the age distribution in refugee and IDP camps, reflects that children between 3 and 6 years tend to get lost or left behind during the flight and hence exposed to more danger. This makes the girl child particularly more vulnerable to sexual abuse and other forms of child abuse as well as.

International as well as the national laws provide for the specific needs of refugees and the legal process of implementing the same. However, suffice to note that implementation of such policies is still wanting as women refugees continue to suffer. It is such a dilemma that women and the girl child have special needs which are still hard to achieve. The refugee situations in many parts of the world, presents almost the same problems prevalent in refugee camps.

⁷ Charlotte Lindsey, *"Women facing war"*, ICRC (2001) pg30.

METHODOLOGY

1.9 Research Design

The study shall require, first gathering sufficient background information to form a baseline in the development of indicators. The study shall therefore employ a “modified survey design” with mixed approach for data collection, incorporating both quantitative and qualitative methods.

Alongside the field study, refugee law project offices, public library shall be of great importance. The researcher shall further consult the UNCHR office in Kampala and the UHRC (Uganda Human Rights Commission) for data collection.

The internet shall also be useful in the study.

1.10 Research population

The study shall base on 100 respondents selected from 2 camps and other refugee settlements in central Uganda.

1.11 Sample size

Each refugee camp shall be represented by 50 members selected by the administrators, selected in the different camps. The target population shall therefore be 100 in totality.

1.12 Sample procedure

The selection shall be undertaken with consultation between the researcher and the camp administrators. The quantitative selection shall concentrate on the opinion of the administrators, while the qualitative procedures shall focus on the women refugees.

1.13 Study instruments

The qualitative study will employ structured questionnaire seeking information on;

The extent to which women refugees rights are being observed.

Whether there has been any improvement on the health conditions of women refugees with regard to reproductive health.

What should be done to enable victims cope with the prevalent conditions and suggest possible solutions.

The qualitative study shall be used as an interactive tool and technique to:

Encourage wider participation of the respondents.

Be completely transparent and open about the information to be recorded from the respondents.

The tools shall include an in depth interview and observations.

1.14 Data gathering procedures

Prior to commencement of data collection, the researcher shall arrange for a visit to refugee camp to meet the administrators and discuss on respondent selection, contacts and schedule the study program. This shall be the right time of introducing ourselves to one another and seek the cooperation of the district leader.

1.15 Data analysis;

Simple descriptive statistics shall be used to analyze the data.

1.16 Limitations of the study;

Some of the limitations speculated, include the language barrier and the conservative character among some people who would not wish to share or give out information, while others might not want to be reminded of the past traumatizing experience.

CHAPTER TWO

THE PROTECTION OF THE RIGHTS OF WOMEN REFUGEES IN KAMPALA

2.0 General overview of Human Rights

The contemporary notion of human rights is a specific form of rights that were codified after the Second World War. International law imposes an obligation on states to observe fundamental human rights. Similarly the constitution of the republic of Uganda⁸, provides for the protection of fundamental human rights which are inherent and not granted by the state.

The duty to implement the observance of human rights lies first and foremost with states. States have a duty to take a number of legal and practical measures aimed at ensuring full compliance with the law. This duty stems from the Universal Declaration of Human Rights⁹, in which member states pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms¹⁰.

Legal literature aptly points out that human rights protection shares a common philosophy with international humanitarian law¹¹, and so it comes as no surprise that both the International Committee of the Red Cross (ICRC) and academicians have on

⁸ Article 20(I) of the Constitution of the Republic of Uganda, 1995.

⁹ Preamble to the declaration of 1948 of the Universal Declaration of Human Right .See also the preamble to the ICCPR and ICESCR which provide that rights derive from the inherent dignity of the human person

¹⁰ This assertion is also provided for in the UN Charter, under Article 2.

¹¹ Judith gardan, "The contribution of the international court of Justice to IHL," ICRC pg 352.

numerous occasions attempted to use the implementation mechanisms of the UN human rights treaties to ensure compliance and to make them appealing to states¹².

The Uganda constitution of 1995¹³, provides that the state shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development, and in particular ensure that;

- a) All developmental efforts are directed at ensuring the maximum social and cultural well being of the people
- b) All Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

The preamble¹⁴ further provides that the state shall guarantee and respect institutions which are charged by the state with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively.

Suffice to note, the researcher contends that the observance and protection of all fundamental rights and freedoms is still lacking due to a number of factors that will be discussed later in the study. The office of the High Commissioner for Human Rights is mandated with the primary responsibility of the overall protection and promotion of human rights. The office aims at enhancing the effectiveness of the UN human rights machinery to increase UN system, wide implementation and coordination of human

¹² Ibid pg 355

¹³ Part xiv to the preamble.

¹⁴ Part v.

rights to build national, regional and international capacity to promote and protect human rights and to disseminate human rights information.

As a further step towards the protection of women refugees, the UNHCR has initiated policy guidelines to ensure equality of women refugees, integration and mainstreaming of gender issues into main refugee policies, some of these policies include:

- policy on refugee women
- guidelines on the protection of refugees women
- Sexual violence against women guidelines on prevention and response.

The above guidelines suggest a range of preventive and remedial measures that can and should be taken to combat sexual violence.

It is suggested that special attention be paid to international human rights law as today human rights are an integral part of international law for the common welfare of humanity and represent common values that no state may revoke, even in times of war. The European convention for the protection of human rights and fundamental freedoms (ECHR) is not only instrument referring to the applicability of human rights in war time. The universal human rights treaties also refer to non-derogable rights. For example, the ICCPR¹⁵, includes an emergency clause similar to that formulated in regional instruments.

¹⁵ Article 4, which is to the effect that in case of emergency which threatens the life of the Nation and the existence of which is officially proclaimed, the state parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.

All these human rights instruments show that human rights are an intrinsic part of the legal rules governing wars and other emergency situations. Taking into account the obligation of states to respect no derogable rights in all circumstances, according to human rights instruments and the final document of the first world conference on human rights in Tehran in 1968, Cerna¹⁶ concluded in 1989 that international public law had already been 'transformed into a broad human rights in armed conflicts'.

The issue of non derogable rights to be observed in all circumstances has got exceptions, for example under the ECHR¹⁷, derogations from duties under the convention are permitted only if concurrent with other international legal duties. The obligations spelled out in the general conventions of 1949 are therefore to be observed. In the case of *Northern Ireland vs UK*¹⁸, the European Court of Human Rights investigated whether the derogations adopted by the United Kingdom were in conformity with it's obligations under public international law. In particular, the Court examined whether the British legislation in Northern Ireland was in accordance with the Geneva Conventions. As the Irish side failed to provide further factual details, the investigation was limited to a statement that the Geneva Conventions were also applicable. This example clearly illustrates that referral to international humanitarian law is generally possible under the European Convention on Human Rights.

The notion of human rights law is to be interpreted in relation to refugees rights. It is asserted that refugee situations arise as a result of violation of human rights, which if observed to the letter, reduces cases of forced migration and displacement of persons. Refugees are entitled to fundamental rights and freedoms specified in both the national

¹⁶ Christina M. Cerna, "*Human rights in armed conflict: Implementation Of International Humanitarian law norms by regional intergovernmental human rights bodies*" 1989 pg.39

¹⁷ Article 15 which provides that derogations from duties under the Convention are permitted only if concurrent with other international legal duties.

¹⁸ European Court on Human Rights, 512, 748 of 1978, para 101 and 135.

and international legal instruments to be enjoyed, just like the other citizens of a given country.

2.1 Historical Evolution of Gender Rights

To conceptualize human rights law, and therefore human rights violations is to interpret rights in a very specific manner. The international covenant on civil and political rights (ICCPR)¹⁹ of 1966 contains a general prohibition on gender discrimination in civil and political rights. Article 3 provides.

"the state parties to the present covenant under take to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present covenant".

The United Nations Charter was the first international legal instrument to explicitly affirm the equal rights of men and women and to include gender as one of the prohibited grounds for discrimination (along with race, language and religion) These guarantees were repeated in the Universal Declaration of Human Rights adopted by the General Assembly in 1948. Since that time, equal rights for women have been refined and extended in large number of international human rights treaties, most notably the ICCPR and the ICESCR.

Under the ICCPR, the responsibility to protect refugees is in the hands of host governments, who according to a Human Rights watch report²⁰, often show little concern and commit no resources for protecting refugee women. The international

¹⁹ Article 3 of the ICCPR.

²⁰ Human Rights Watch; Global Report on Women's Human Rights, 1995 pg 103.

convention on economic social and cultural rights (ICESCR)²¹ recognizes the equal rights of man and women to enjoy economic, social and cultural rights.

The UN human rights commission was later established to monitor compliance with the covenants. The Geneva conventions of 1949 which apply in situations of armed conflict, to which perpetrators of persecution based on gender and sexual violence can also be held accountable as a war crime, as a crime against humanity or an act of genocide.

In general term, "gender" refers to the female and male within a given culture, the roles and expected behaviors of men and women are based on cultural practices formed over time²².

It is contended that the most comprehensive international legal document relating to gender based discrimination is the convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which was adopted by the UN General Assembly in 1979 and which had been ratified by the Uganda government. CEDAW has been described as an International Bill of Rights for women and an agenda for action by countries that ratify it.

The Convention defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as '*...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of*

²¹ Article 3 which is to the same effect as the wording in the ICCPR.

²² Benjamin J, Fancy K, "*the gender dimensions of internal displacement*" 1998 pg 10.

equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

This view was reinstated in the case of *immigration and Naturalization service vs Cardoza fonseca*.²³ where court stated that persecution on account of membership in a particular social group refers to persecution that is directed towards an individual who is a member of a group of persons, all of who share a common, immutable characteristics, for example a characteristic that is either beyond the power of the individual members of the group to change or is so fundamental to their identities or conscience that it ought not to be required to be changed.

By accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms including;

- a. To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.
- b. To establish tribunals and other public institutions to ensure the effective protection of women against discrimination.
- c. To ensure elimination of all acts of discrimination against women by persons, organisations or enterprises.

²³ U.S.L.W.4313,9th March 1987 (US Supreme Court)

The Convention is the only Human Rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality. State parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provision in practice. They are also committed to submit national reports on measures taken to comply with treaty obligations. This applies to Uganda for it domesticated the Convention and therefore, has got to implement policies therein.

It is also important to note that the notion of gender often still forms the basis of women's problems throughout the continent. Women and girls generally face a variety of challenges during their refugee experience that are specific to their gender. Devoe²⁴ asserts that, both the international refugee law, and the international refugees assistance programmes have traditionally been gender blind with introduction of gender as an analytical or practical category only in the past years.

The social construction of an individual's gender identity is a central concern within the feminist discourse. Although institutions such as the clan and family and places of working, individual are socialized into values, norms, beliefs, attitudes and practices that are appropriate for men and women²⁵. This approach eventually determines the way people are expected to behave and how others perceive them as much as they perceive themselves.

²⁴ Devoe P.A (n.2), pg 23

²⁵ Benjamin J, Fancy K, [n.22] pg 15.

Gender relatives are therefore shaped by ascribed relations and are based on the ascribed position of an individual according to sex, age and other attributes like level of education²⁶.

The fact that women and men undertake different tasks and activities is not in contention. What is doubtful however, is the perceptions and attitudes of the policy makers, the humanitarian aid regime and the implementers concerning the role of men and women and the likely effects upon the beneficiaries of such programmes. This is due to the fact that gender based activities greatly affects women.

The experience of the effects of displacement and exile by refugee women differ from one individual to the other, while some may adopt the new changes easily, others get difficulties and therefore, need arises of special attention to be accorded to such cases. Hence the need for effective measures that calls for strategic manipulation of specific items such as food and clothing, order to cope with the hard refugee situation.

In 1990, the Human Rights Watch²⁷ established it's own women's rights project to monitor violence against women and gender discrimination throughout the world. This paved the way for the women's right project to later address issues of women refugees specifically. The women's human rights movement has also prompted investigation of violence against women by private actors that is tolerated or ignored by the state. Another important finding of human rights groups investigations is that women's; lack

²⁶ ibid

²⁷ Human Rights Watch (n. 20) pg 105

of social and economic security has compounded their vulnerability to violence and sex discrimination.

In 1993, the UN Commission on Human Rights recognized the legitimacy of women's human rights for the first time by adopting a resolution calling for the integration of the rights of women into the human rights machinery of the United Nations. In the same year, the world conference on human rights in Vienna, the Programme of Action recognize the rights of women and girls as an inalienable, integral, and indivisible part of universal human rights.

Charlotte²⁸ asserts that, it is important to identify the applicable law governing situations of armed conflict and in addition to identify the rules protecting women to assess whether these rules adequately protect and meet the needs of women. While the principal focus of the international committee of the Red Cross (ICRC), is international humanitarian law, the legal regime specifically developed to regulate armed conflicts. There are also reference to other relevant bodies of international law, human rights law and refugee law.

The provisions of international humanitarian law which offer specific additional protection to women are either generic²⁹, such as the requirement in Article 14 of the third Geneva Convention that, "women... be treated with all the regard due to their sex or more specific, such as the provisions in the third convention which spell out how this general obligation should be implemented in practice, for example by the provision of separate detention quarters and sanitary facilities for female prisoners of war".

²⁸ Charlotte Lindsey, (n.7) pg 17.

²⁹ Ibid pg 21.

The development of gender rights into women refugee rights is rather a developing concept as seen in international documents, and particularly with the documents, and particularly with the office of the United Nations High Commissioner for Refugees (UNHCR), pertinent executive committee conclusions³⁰, on refugee women and international protection among the concerns of the committee were;

- a) Noted that refugee women and girls constitute the majority of the world refugee population and that many of them are exposed to special problems in the international protection field.
- b) Recognized that these problems result from their vulnerable situation which frequently exposes them to physical violence, sexual abuse and discrimination.
- c) Stressed the need for such problems to receive the urgent attention of governments and of UNHCR and for all appropriate measures to be taken and girls are protected from violence or threats to their physical safety or exposure to sexual abuse or harassment.
- d) Noted with satisfaction the measures already undertaken by UNHCR to address the protection problems of refugee women and to ensure that they are adequately protected.
- e) Called upon states to continue to support UNHCR programmes established with a view to securing protection for refugee women, especially those aimed at helping refugee women become self-sufficient through educational and income generating projects.

³⁰ No 39 (xxxvi) 1985.

f) Stressed the importance of a more detailed knowledge and understanding of the special needs and problems of refugee women in the international protection field and of gathering statistical, sociological and other data concerning refugee women and girls in order to identify and implement appropriate mechanisms to ensure their effective protection.

g) Requested the high commissioners to report regularly to members of the executive committee on the existing and proposed programmes for their benefit.

h) recognized that states, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or human treatment due to having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1A(2) of the 1951 United Nations Refugee Convention.

With consideration of the above concerns there are specific provisions of the law that provide additional protection for women with regard to their particular medical and physiological needs which are often, but not always related to their child bearing role and for considerations of privacy. For example, the Fourth Geneva Convention³¹ provides that expectant mothers are to be the object of particular protection and respect. In situations of occupation, it requires expectant and nursing mothers to be given additional food in proportion to their physiological needs and expressly includes expectant mothers among the persons for, whose benefit belligerents may establish hospital and safety zones.

³¹ See also Article 27 of the Fourth Geneva Convention which provides that women shall be protected against rape and any form of indecent assault.

Under the fourth Geneva Convention³² which requires that pregnant women and mothers of children under seven years who are aliens in the territory of a party to a conflict must benefit from "preferential treatment" to the same extent as nationals of the state concerned.

The development of these laws, suggests that the rights of women in respect to gender biased programmes has been dealt with depending on given circumstances. Women are able to attain specific rights that are related in their gender and hence greater protection accorded to them.

In Uganda, with particular reference to the constitution³³, provides for the rights of women to include affirmative action, the state to provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential. Laws, cultures, customs or traditions which are against the unity, welfare or interest of women or which undermine their status are prohibited by this constitution.

2.2 The Development of Humanitarian Law in Respect to Refugee law.

International humanitarian law (IHL) is a branch of public international law that deals with situations of armed conflicts. IHL generally operates so as to prevent displacement of civilians and to ensure their protection during displacement should they nevertheless have moved.

³² Article 38

³³ Article 33 of the Constitution of the Republic of Uganda, 1995.

Parties to a conflict are expressly prohibited from displacing civilians. This is a manifestation of the principle that the civilian population must be spared as much as possible from the effects of hostilities. Apart from shielding civilians from the effects of hostilities, IHL, also plays an important role in the prevention of displacement as it is often violations of these rules which are at the root of displacements in situations of armed conflicts.

- (a) The prohibition to attack civilians and civilian property and of indiscriminate attack.
- (b) The duty to take precautions in attack to spare the civilian population.
- (c) The prohibition of starvation of the civilian population as a method of warfare and of the destruction of objects indispensable to its survival.
- (d) The prohibition on reprisals against the civilian population and its property.
- (e) The prohibition on collective punishment ie, destruction of homes leading to displacement.
- (f) The rules requiring parties to a conflict, as well as all other states, to allow the unhindered passage of relief supplies and assistance necessary for the survival of the civilian population.

These basic rules protecting the civilian population apply in both international and non international armed conflicts.

Unlike refugees, Internally Displaced Persons (IDPS) are not the subject of a specific international convention, they are nevertheless protected by various bodies of law,

including, most notably, national law and human rights law and if they are in state affected by armed conflict, IHL.

In addition to this general protection, IHL affords refugees further specific protection, in international armed conflict, refugees are covered by the rules applicable to aliens in the territory of a party to a conflict generally as well as by the safe guards relating specifically to refugees.

Refugees benefit from the protections afforded by the fourth Geneva conventions to aliens in the territory of a party to a conflict, including:

- (a) The entitlement to leave the territory in which they find themselves unless their departure would be contrary to the national interest of the state of asylum.
- (b) The continued entitlement to basic protection and rights to which aliens had been entitled to before the outbreak of hostilities.
- (c) Guarantees with regards to means of existence, if the measures of control applied to the aliens by the party to the conflict means that they are unable to support themselves.

The fourth Geneva convention also lays down limitations on the power of a belligerent to transfer aliens, of particular relevance is the rule providing that a protected person may in no circumstances be transferred to a country where he or she may have reason

to fear persecution for his or her political opinions or religious beliefs, a very early expression of the principle of *non-refoulement*³⁴.

IHL offers refugees who find themselves in a state experiencing armed conflict protection, but the question of who a refugee is for purposes of IHL is not clearly defined. Although the fourth Geneva Convention expressly refers to refugees, it does not define this term; instead, it focuses on their de facto lack of protection from any government

State responsibility for the feared persecution is an inherent part of the definition contained in Article 1 of the Geneva Convention which was drafted to protect those who had for one reason or the other lost the protection of their own state. Under the Geneva Convention, it is generally considered that a refugee must fear persecution resulting from a failure of state protection. This view was reinstated in the case of *Ahmed vs Australia*³⁵ where the applicant was threatened with return to Somalia, a country in the grip of various warlords and with no government as such, by that time, and consequently no state to exercise responsibility. The Convention considered that the absence of state authority was immaterial to the risks to which the applicant would be exposed.

The 1951 UN Convention Relating to the status of Refugees³⁶ defines a refugee as some one who:

³⁴ This principle is to the effect that a person should not be compelled to return to a country where he or she may be subjected to persecution.

³⁵ The European Court of Human Rights, judgement of 17 December, 1996.

³⁶ Article 1 (1) of the 1951 UN Convention Relating to the status of Refugees.

"As a result of events occurring before 1 January 1951 and owing to a well founded fear of being persecuted for reasons of race, 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 nationality and being outside of his former habitual residence.... is unwilling to return to it".

Realizing that the 1951 UN Convention had geographical limitations, the UN amended it to cover refugees elsewhere other than Europe and to do away with the geographical limitations. The 1960's and early 1970's witnessed many liberation wars for independence from colonialists. Similarly, conflicts in East Africa had started displacing thousands of refugees. It was imperative that the organization of African unity (now called African union) formalized in 1969, the Convention on refugee problems in Africa. The OAU added the following definition³⁷.

"the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to seek refuge in another place outside his country of origin or nationality is compelled to seek refuge in another place outside his country of origin or nationality".

It is contended that the language used in the above instruments is not gender sensitive.

Against such a background, it is important to identify the applicable law governing situations of armed conflict and the rules protecting women, to assess whether these rules adequately protect women. The Geneva Conventions of 1949 and the additional

³⁷Article 1 (2) of the OAU Convention.

protocols there to, provide for the protection of women. Women and children shall be protected against any form of indecent assault³⁸.

It is argued that women and girls are more exposed to sexual violence, regardless of the perpetrators' motive, although men are also victims of such violence especially during situations of armed conflict. So the ICRC³⁹, considers that the vulnerability refers to the precarious living conditions of individuals house holds or communities in the face of a threat, in the form of an abrupt change in the environment, for the ICRC, such a change is typically the result of an armed conflict or internal disturbance.

It is an established fact that 80% of the current refugee population consist of women and children. Not only are these groups vulnerable, in many countries the human rights of women and children are ill protected in the first place. Both groups are extremely prone to abuse, neglect and sexual or other forms of exploitation. They therefore require special protection of their fundamental rights protection of their fundamental rights and freedoms⁴⁰, (ie the right to life, liberty and security of person), if they are to be at all able to claim the other rights to which they are entitled under the international human rights instruments.

There are no laws prohibiting women from taking active part in the conduct of hostilities in situation of armed conflict. Common Article 3 of the Geneva conventions applicable in situations of non-international armed conflict, the term "combatant" is not used. However, persons taking part in hostilities are not protected. This reflects that women who are taking part in conflicts are not protected.

³⁸ Article 24, Fourth Geneva Convention.

³⁹ Charlotte Lindsey (n.7) pg 30.

⁴⁰ C de Rover, *"To Serve and to Protect; Human Rights and' Humanitarian Law for Police and Security Forces,"* 1998 pg 350.

Women who do not take part in hostilities can be termed as non-combatants and these are protected persons, including refugees. Sexual and other forms of assault directed specifically against women civilians is forbidden by IHL, set forth in the fourth Geneva Convention in Article 27. This principle was applied in Rwanda which demonstrated that rape as a method of warfare is still prevalent, in the *prosecutor Vs Akayesu*⁴¹, where the rape of women and girl children were carried out in an organized and systematic way a clear indication that sexual abuse was part of a wider pattern of warfare used to deprive opponents of their human dignity to undermine and punish enemies. Akayesu was found guilty and convicted.

Uganda has hosted refugees since the 1940's when Polish refugees arrived as a result of World War II. Refugees in Uganda are comprised of Sudanese Congolese, Rwandese, Ethiopians, Somalis, Sierra Leoneans, etc, the refugee populations vary from settlement to settlement⁴².

Uganda's national legislation and more particularly the constitution is a fundamental instrument in as far as regional and international relations is concerned. State policy is provided for under the constitution (the preamble to the constitution) that provides for respect of national sovereignty of other states in order to maintain peace.

Uganda being a member state to the UN is mandated to promote international peace and security⁴³, which imposes an obligation on the member states. International peace

⁴¹ ICTR – 4- 1996

⁴² Uganda Human rights Commission, 6th Annual Report, pg 65.

⁴³ Under Article 2(6) UN Charter.

is also one of the objectives of international humanitarian law which seeks to protect persons that are not taking part in hostilities.

In a bid to maintain and implement humanitarian policies, Uganda ratified the Geneva conventions of 1949 and the additional protocols. These laws are prominent in the implementation of international humanitarian law.

2.3 Uganda and Refugee Issues

Over the period in history, migration of people from one African country to another occurred mostly for economic reasons and colonial service. During this colonial rule, in Uganda and particularly after the partition of African, immigrants into Uganda included Asians brought by the British Government to construct the East African railway line, Kenyans and Sudanese who worked in the sugar and rubber plantations.

Migration, forced displacement and flight have been part of the human experience from the earliest times. From a human rights perspective, migrants, people displaced within their own country (internally displaced persons) and refugees are groups that require special protection because they have been deprived of their security normally enjoyed by people who can remain in their homes⁴⁴.

Uganda has hosted refugees since the 1940s, when polish refugees arrived as a result of World War II⁴⁵. At the same time, events such as Idi Amin's seizure of power in Uganda in 1971 prompted thousands of Ugandans to flee to neighboring countries as a

⁴⁴ Walter kalin and Jorg Kunzli, "*the Law of International Human Rights Protection*," 2009. Pg 487.

⁴⁵ Human Rights Commission (n.42).

result of conflict or oppression, while others still remain in a given country but become internally displaced.

Uganda has had cases of refugees as well as those that become internally displaced as a result of war or natural disaster. Government enacted the Refugees Act of 2006 to cater for refugee issues in line with the 1951 convention relating to the status of refugees and other international obligations of Uganda relating to the status of refugees.

The government of Uganda has the sovereign right to grant or deny asylum or refugee status to any person⁴⁶. So, the qualification of refugee status under the Act is as a result of a well founded fear of being persecuted for reasons of race, sex, religion, nationality, membership of a particular social group or political opinion, that person is outside the country of his or her nationality and is unable, or owing to that fear, is unwilling to return to or avail himself or herself of the protection of that country⁴⁷.

Refugees are victims of violence and war and are compelled to leave their country of asylum in fear of persecution, they are thus marginalized and a vulnerable group of people. Therefore, their fear and uncertainty of physical safety or freedom should be fully taken into account when conducting any operations that affect them⁴⁸.

It is argued that the growing number of refugees in Uganda has made it difficult for refugees to adequately receive humanitarian assistance. The IDPs are located in areas

⁴⁶ Section 3(2) Refugees Act of 2006.

⁴⁷ Ibid section 4(a).

⁴⁸ Uganda Human Rights Commission (n.42) pg 72.

that provide limited access to social services and which in turn has heightened insecurity and the devastation of socio-economic infrastructure.

The Uganda Red Cross society (URCS) signed a Tripartite Agreement with the government of Uganda and the United Nations High commission for Refugees (UNHCR)⁴⁹ to be the acting partner, responsible for implementing a multi-sector programme in Nakivale and Kyaka II camps. The activities under the programme was to be implemented under the following areas;

- community services
- Education
- Health water and sanitation
- Distribution of food and non-food items.

The government of Uganda and Rwanda together with the UNHCR, signed a Tripartite agreement in July 2003⁵⁰, under this agreement, all refugees from Rwanda are free to choose whether to be repatriated to Rwanda or to remain in Uganda. In the Agreement, repatriation must be exclusively voluntary. Article 2 of the Agreement states.

'the contracting parties fully recognize the essentially voluntary character... of repatriation....'

International or host government assistance to refugees can cause tensions and conflict between refugees and local citizens, particularly when the local population, perceives that the refugees are provided with better living standards (medical care, education,

⁴⁹ Ibid pg 66

⁵⁰ Ibid pg 67

nutrition, etc) than themselves⁵¹. This prompted providers of refugee aid, aware of the possibility of creating tension, have for decades attempted to follow the formula of local priority or providing refugees with a level of aid which does not exceed the local populations living standards⁵².

2.4 Rights of women refugees

The Refugees Council's Vulnerable Women's Project (VWP) was set up at the end of 2006 with the support of Comic Relief to address the needs of refugee and asylum seeking women who had been subjected to sexual violence including rape⁵³. The project also aimed at raising awareness amongst the UK and EU decision makers of the needs and rights of refugee women who have survived rape and sexual exploitation⁵⁴.

The Refugees Act of 2006⁵⁵, provides for the rights and obligations of refugees', to which every refugee is entitled to the rights and shall be subject to obligations provided for or specified in;

- a) , the Geneva Convention
- b) The OAU Convention and;
- c) Any other convention or instrument relating to the rights and obligations of refugees to which Uganda is a party.

⁵¹ United Nations High Commission for Refugees Report, state of the world's refugees, 1997, pg 73.

⁵² Ibid.

⁵³ Refugee Council Report, 2009 pg 8.

⁵⁴ ibid

⁵⁵ Part v of the Act.

Refugees in Uganda generally have rights and freedoms that should be observed. A recognized refugee shall⁵⁶;

- a) Be issued with an identity card in a prescribed form stating the refugee status of the holder for purposes of identification and protection.
- b) Be permitted to remain in Uganda.
- c) Be entitled to fair and just treatment without, discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.
- d) Receive at least the same treatment as is generally accorded to aliens under the constitution and any other law in force in Uganda.
- e) Receive at least the same treatment accorded to aliens generally in similar circumstances relating to;
 - i. Movable and immovable property and other rights pertaining to property and to leases and other contracts relating to movable and immovable property;
 - ii. The right to transfer assets held and declared by a refugee at the time of entry into Uganda, including those, lawfully acquired in Uganda.
 - iii. Education, other than elementary for which refugees must receive the same treatment as nationals and in particular, regarding access to particular studies, the recognition of foreign

⁵⁶ Article 29 (i) Refugees Act.

certificates, diplomas and degrees and the remission of fees and charges.

- iv. The right to engage in agriculture, industry, handicrafts and commerce and establish commercial and industrial companies in accordance with the applicable laws and regulations in force in Uganda.
- v. The right to practice the profession of the refugee who holds qualifications recognized by the competent authorities in Uganda and who wishes to practice that profession.
- vi. The right to have access to employment opportunities and engage in gainful employment
- vii. Any other right that may legally be accorded to a refugee.

- f) Have the same rights as the nationals of Uganda with respect to practising their religion and the religious education of their children.
- g) Have a right of association as regards non political and non profit making association and trade union.
- h) Have free access to courts of law, including legal assistance under applicable laws of Uganda.

These are general rights that every recognized refugee should enjoy regardless of their gender.

Refugee women have specific rights specified in the refugees Act⁵⁷, to the effect that a refugee woman shall have equal opportunities and access to procedures relating to refugee status, and affirmative action shall be taken to protect women refugees from gender discriminating practices.

A woman refugee is also entitled to equal enjoyment and protection of all human rights and fundamental freedoms in economic, social, cultural, civil or any other fields as provided for in the constitution and other relevant laws in force in Uganda and international and regional instruments to which Uganda is a party, and in particular the following.

- a) The Convention on the Elimination of all Forms of Discrimination Against Women, 1979.
- b) The African Charter on Human and People's Rights, 1981⁵⁸

Most of the rights crucial to refugee protection are also the fundamental rights stated in the 1948 Universal Declaration of Human Rights. These rights, it is argued is more of gender related as compared to the general rights of refugees. The specific rights of women refugee are to include the following.

- (a) Right to seek and enjoy asylum.
- (b) Right to life, liberty and security of the person.
- (c) Freedom from torture, or cruel, inhuman or degrading treatment or punishment.
- (d) Freedom, from slavery or servitude.
- (e) Recognition as a person before the law.
- (f) Freedom of thought, conscience and religion.

⁵⁷ Article 33 of the Refugees Act of 2006.

⁵⁸ *ibid*

- (g) Freedom from arbitrary arrest and detention.
- (h) Freedom from arbitrary interference in privacy, home and family.
- (i) Freedom of opinion and expression.
- (j) Right to be educated.
- (k) Right to participate in the cultural life of a community.
- (l) Right to reproductive health.

Further protection for Women's rights it is found in, the Convention on the political rights of women, a Convention on the nationality of married women, the Convention on consent to marriage, minimum age for marriage and registration of marriages, and the UN Declaration on the protection of women and children in emergency and armed conflicts. In addition, the work of the special rapporteur on violence against women, appointed by the UN commission on human rights in 1994 is instructive.

The Beijing Declaration and platform for action, adopted by 1995 UN world conference on women, also contains important commitments by the governments to improve the protection and promotion of women's human rights. For example, governments agreed to review national legislation, policy and practices in light of CEDAW. Most importantly for refugee protection, Governments recognized that sexual violence and other gender related persecution constitutes persecution within the meaning of the UN Refugee Convention. They also acknowledge that in some countries of asylum women have difficulties in being recognized as refugees when their claim based on such persecution.

The Executive Committee encourages states and UNHCR to continue to promote, where relevant, regional initiatives for refugee protection and durable solutions, and to ensure that regional standards which are developed conform fully with universally recognized protection standards and respond to particular regional circumstances and protection needs.

This therefore imposes a duty on member states to the international convention concerning refugees, such as Uganda to implement policies and ensure refugee protection meets the standards of an international level. Suffice to note that each country faces the situation of refugees differently.

A refugee's right to be protected against forcible return or "*refoulement*" is set out in the 1951 convention relating to the status of 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."

Refoulement is also prohibited explicitly or through interpretation by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,⁵⁹ the Fourth Geneva Convention of 1949,⁶⁰ the International Covenant on Civil and Political Rights⁶¹ the Declaration on the Protection of All Persons from Enforced Disappearance,⁶² and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.⁶³

In addition, *refoulement* is prohibited explicitly or through interpretation in a number of regional human rights instruments, including the European Convention for the

⁵⁹ Article 3 of the convention

⁶⁰ Article 45 paragraph 4

⁶¹ Article 7 of the fourth Geneva Convention of 1949

⁶² Article 8

⁶³ Principle 5

Protection of Human Rights and Fundamental Freedoms,⁶⁴ the American Convention on Human Rights,⁶⁵ the OAU Refugee Convention,⁶⁶ and the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World⁶⁷

The principle of *non refoulement* as it appears in Article 33 of the 1951 Convention, applies clearly and categorically to refugees within the meaning of Article 1 of the same Convention.

The Refugee Convention definition is not an absolute guarantee of protection and *non refoulement* is not an absolute principle. 'National security' and 'public order', for example have been recognized as potential justifications for derogation⁶⁸. Article 33[2]⁶⁹ expressly provides that the benefit of *non refoulement* may not be claimed by a refugee, whom there are reasonable grounds for regarding as a danger to the security of the country... or who, having been convicted by a final judgement of a particular serious crime, constitutes a danger to the community of that country.

In contrast to the 1951 Convention, the 1969 OAU Convention declares the principle of *non refoulement* without exceptions. No formal concession is made to over riding considerations of national security, although in cases of difficulty in continuing to grant asylum, appeal may be made directly to other member states and through the OAU. Provision is then made for temporary residence pending settlement although it's grant is not mandatory⁷⁰.

⁶⁴ Article 3

⁶⁵ Article 22

⁶⁶ Article 2

⁶⁷ Article 2

⁶⁸ Guy S. Goodwin Gill, 'The Refugee in international Law,' 1998 pg 139.

⁶⁹ Refugee Convention of 1951.

⁷⁰ Guy S. Goodwin [n. 68] pg 140. See also Article 11 of the 1951 Refugee Convention.

States therefore have an obligation under the refugee Convention and under customary international law to respect the above principle. When this principle is violated or threatens to be, UNHCR responds by intervening with relevant authorities.

It can therefore be asserted that the principle of non *refoulement* is the 'backbone' of refugee law and even if it does not establish a right to asylum, it lays the basis for an internationally guaranteed right of refugees to remain beyond the reach of the persecuting state as long as their fear of persecution remains well founded

The Convention on the Rights of the Child of 1989, to which nearly every state in the world is a party, applies to all children without discrimination, including child refugees and asylum seekers. The convention specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in that convention and others to which the state is a party.

Children are clearly a vulnerable group in need of special protection. The Convention on the Rights of the child applies to all people under 18 years of age. It covers nearly every aspect of a child's life, from civil and political rights to health and education. There are specific provisions on juvenile justice, including deprivation of liberty, and on family rights. The Convention prohibits discrimination, which means that whatever benefits a state gives to children who are citizens, it must also give to all children, including those who are refugees on its territory⁷¹.

⁷¹ See also Article 22 regarding measures a state shall take for children seeking refugee status and family reunification.

Refugee children have special protection needs, especially those who are alone or unaccompanied minors. UNHCR has published guidelines on appropriate procedures which cover the special concerns of refugee children. Some states, notably Canada, have followed suit with similar guidelines.

CHAPTER THREE

3.0 THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR REFUGEE PROTECTION IN UGANDA.

Uganda has been, and continues to be, an epicentre for refugees, standing at the geographical centre of a region characterized by instability and conflict. As early as the Second World War, events in Uganda have been inextricably linked to the numerous issues surrounding the presence and creation of varying numbers of refugees. Uganda has presented several different images to the outside world during the course of its recent history, yet one that has received little recognition in the international arena is that of Uganda as one of the first countries to host refugees.

The country has constantly had to balance the implications of its location within the Great Lakes Region with the need to promote stability inside its own borders. At the same time, Uganda has itself generated, and continues to generate, considerable numbers of refugees, most notably through the notorious years of social and political strife under Idi Amin (1971-79) and of civil war during the second Milton Obote government (1980-85).

The legal framework that supports refugee protection in Uganda is the Constitution of 1995 and the Refugees Act of 2006. Uganda affirmed its commitment to protecting refugees by acceding to the 1951 convention relating to the status of Refugees, the cornerstone document of refugee protection.

The National Objectives and Directive Principles of state policy embodied in the constitution provide guide lines to agencies of the state and other bodies in applying

and interpreting the constitution. Part v (i) of the national objectives is to the effect that the state shall guarantee and respect institutions which are charged by the state with the responsibility for promoting and protecting human rights by providing them with adequate resources to function effectively.

In the context of refugees, the state is mandated to guarantee and respect the independence of non- governmental organizations which protect and promote human rights⁷². Therefore, the UNHCR as a humanitarian and non- political organization is mandated by the UN to protect refugees and help them find solutions to their plight.

The state shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that⁷³;

- a. All developmental efforts that are directed at ensuring the maximum social and cultural well being of the people.
- b. All Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

The specific rights of women provided for in the constitution⁷⁴, include affirmative action, the state to provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential. Laws, cultures, customs or traditions which are against the unity, welfare or interest of women or which undermine their status are prohibited by this constitution.

⁷² Part v (ii) of National objectives

⁷³ Part (xiv) of National objectives

⁷⁴ Article 33 of the Constitution of Uganda.

Similarly the Refugees Act of 2006⁷⁵ specifically provides for the general rights of women refugees, who shall have equal opportunities and access to procedures relating to refugee status; and affirmative action shall be taken to protect women refugees from gender discriminating practices.

The section further provides that a woman refugee is entitled to equal enjoyment and protection of all human rights and fundamental freedoms in economic, social, cultural, civil or any other fields as provided for in the constitution and other relevant laws in force in Uganda and international and regional instruments to which Uganda is a party, and in particular the following:

- a. The convention on the Elimination of all forms of Discrimination Against Women 1979,
- b. The Africans chapter on human and people's rights, 1981.

The UNHCR is also authorized by its 1950 statute to give refugee status to persons that fall under its mandate to protect refugees⁷⁶. UNHCR must intervene to offer protection, if a state that is receiving refugees is not a signatory to one of the refugee conventions and also, in the event that a state has signed a relevant convention, but has no procedure to determine eligibility for refugee status.

Cooperation with UNHCR - Article 35 of the Refugee Convention and Article II of the 1967 Protocol contain an agreement for States Parties to cooperate with UNHCR in the exercise of its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties.

⁷⁵ Section 33 of the Refugees Act of 2006.

⁷⁶ Statute of the office of the United Nations High Commissioner for Refugees, 1950

Information on National Legislation - The States Parties to the Refugee Convention agree to inform the UN Secretary-General about the laws and regulations they may adopt to ensure the application of the Convention.

Exemption from Reciprocity - Where, according to a country's law, the granting of a right to an alien is subject to the granting of similar treatment by the alien's country of nationality (reciprocity), this will not apply to refugees. The notion of reciprocity does not apply to refugees since they do not enjoy the protection of their home country
Regional laws and standards

Official refugees in Kampala consist of three general groups, asylum seekers who are trying to gain official refugee status, self-settled refugees who have already registered and who, for a variety of reasons ranging from economic hardships to security concerns, have decided to opt out of the formal assistance structures, and refugees who, albeit based in settlements up country, seek assistance, such as medical treatment or resettlement, at the offices of UNHCR.

Few organizations in Kampala give assistance to urban refugees and such assistance is usually very limited, if uncoordinated. The conventional approach to assisting refugees in developing nations has been to place them in rural settlements where they subsist on food rations given by the international community through the World Food Program.

As a result, refugees who are living in Kampala have special humanitarian needs resulting from their legal status and the fact that most of them have been impoverished by the circumstances that forced them to flee their homes and leave their material wealth behind. Such difficulties have been detrimental to refugee women who have to suffer in order to maintain their survival.

These real difficulties may be compounded by inappropriate timing of the implementation. Therefore many refugees continue to live in harsh conditions, with inadequate facilities for schooling, health, and other basic humanitarian needs.

In addition to facing humanitarian problems, refugees often live in areas that are dangerous and vulnerable to attack. The extent of the problem is reflected in the fact that the number of people who die in Uganda's crisis areas from attacks by rebels, terrorists or cattle rustlers is significantly high to merit concern.

3.1 The Role of UNHCR.

UNHCR as a humanitarian and non political organization is mandated by the United Nations to protect refugees and help them find solutions to their plight. UNHCR therefore, provides material relief in major emergencies, either directly or through partner agencies.

UNHCR also promotes international refugee agreements and monitors government compliance with international refugee law. UNHCR staff promotes refugee law among people who are involved in refugee protection, like responding to emergencies, relocating refugee camps away from boarder access to improve safety. Etc.

UNHCR seeks long term solutions to the plight of refugees by helping refugees repatriate to their home country, if conditions are conducive to return, integrate into their countries of asylum, or resettle in second countries of asylum.

The UNHCR statute sets forth the High Commissioner's functions, including his/her authority to protect refugees as defined in terms similar, although not identical to the

Refugee convention. Over the years, the General Assembly has expanded UNHCR responsibility to include protecting of various groups of people not covered by the refugee convention and protocol, such as state less persons, returnees; etc.

The right of refugees to return to their home country, or otherwise known as voluntary repatriation, has institutional and human rights dimensions. Both the facilitation and the promotion of voluntary repatriation fall within the province of UNHCR, while the right to return the one's own country locates such efforts squarely in a human rights context. For example in the Universal Declaration of Human Rights⁷⁷, provides that everyone has the right to leave any country, including his own, and to return to his country.

A particular legal context for protection in repatriation is offered by Article V of the 1969 OAU convention, which stresses its essentially voluntary character, the importance of country of origin and country of refugee collaboration, of amnesties and non-penalization as well as assistance to those returning.

It has been asserted that refugees, unlike other human beings, do not want to return to their country of origin, even if conditions that led them to flee had changed. This could be true of only a relatively small number of refugees who have never had any real sense of belonging to their country of origin.

⁷⁷ Article 13 (2) of UDHR.

In view of the efforts at the international level, there are attempts at the national level, regional level put in place for refugee protection. One example is European Union, and African union. One such example is the Refugee council's vulnerable Women's project.

The project was set up at the end of 2006 to address the needs of refugee and asylum seeking women who had been subjected to sexual violence including rape⁷⁸. The vulnerable Women's project aims to raise awareness amongst UK and EU decision makers of the needs and rights of refugee women who have suffered rape and sexual exploitation⁷⁹.

The project gained popularity in Europe, for it rendered good practice in the care of refugees that included the following.

- (a) Taking refugees seriously as competent interpreters of their own lives.
- (b) A holistic approach which offers integrated programmes of social, emotional and psychological help.
- (c) A receptivity towards culture
- (d) A recognition of the impact of ongoing events on refugee's lives.
- (e) An orientation toward empowerment through ownership and participation.
- (f) An emphasis on enhancing refugee's own capabilities.

It is contended that the above projects is mostly beneficial to refugees in Europe and thus, refugees elsewhere still hope for similar treatment. The vulnerable Women's

⁷⁸ Refugee Council Report (n.53)

⁷⁹ Ibid

project is thus a good move towards the development of refugee women's right in Europe and not the rest of the world.

The Organization of African Unity [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional treaty adopted in 1969, added to the definition found in the 1951 Convention to include a more objectively based consideration, namely. Any person compelled to leave his/her country *owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.*

In 1984, a colloquium of Latin American government representatives and distinguished jurists adopted the Cartagena Declaration. Like the OAU Convention, the Declaration adds a more objectively based consideration to the 1951 Convention refugee definition to include:

•Persons who flee their countries "*because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order*".

UN Special Procedures on Human Rights available to or in favour of refugees

The United Nations Commission on Human Rights, a body comprised of 53 member States, has established various mechanisms to investigate human rights thematic issues and country situations. One of the features of these special procedures is that they allow action regardless of whether a State is party to the international human rights treaties or not.

Under all special procedures, a study of the corresponding human rights situation is presented to the Commission at its annual session in Geneva. Under several of them,

urgent appeals can be made on a strict humanitarian basis. As far as refugees are concerned, the following may be taken into consideration:

The Special Rapporteurs or special bodies of the UN Commission can intervene with the Government concerned to prevent refugees, asylum seekers or internally displaced persons from being subjected to imminent human rights abuses or in response to allegations of the existence of such abuses.

When it concerns an imminent violation of the principle of *non refoulement*, resorting to the following thematic mandates may, in certain instances, be particularly relevant:

UN Special Rapporteur on Torture

UN Special Rapporteur on Summary Executions

UN Working Group on Enforced Disappearances

Parliamentarians may make use of and contribute to the above special procedures by:

- a Providing information under the relevant procedures on the situation of refugees, internally displaced persons and asylum-seekers
- b •Requesting the relevant thematic procedure(s) to intervene when an individual or group is about to be sent back to a country in violation of the principle of non-refoulement or is arbitrarily detained. It should be borne in mind that such a situation can only be addressed by a country or thematic mechanism whose mandate covers the imminent abuse •Urging their own governments to follow-up on requests for information or urgent appeals issued under the special procedures.

At the national level, Ministries such as the Ministry of Relief and Disaster Preparedness, seeks to provide Relief to it's nationals in times of Disaster and this includes refugees. The National policy for Disaster preparedness and management, therefore seeks to⁸⁰,

- (i) Set the overall policy goal and objectives for disaster risk management
- (ii) Provide a broad policy framework for the harmonization of sectoral and cross sectoral policy objectives, principles and strategies
- (iii) Establish an integrated and multi sectoral approach to disaster management.
- (iv) Promote positive behavioral and attitudinal change towards disaster management.
- (v) Provide a basis for the formulation of a comprehensive disaster management legal framework
- (VI) Establish an institutional framework for disaster preparedness and management.
- (vii) Establish an effective monitoring and evaluation system
- (viii) Provide for an effective information management system to facilitate collection, storage, analysis and dissemination of disaster management information.

This Ministry as an institutional framework in providing protection to refugees, is thus helpful to them for it provides leadership and coordination for the resettlement, rehabilitation and provisions of psychological services to those internally displaced by disaster.

⁸⁰ The New Visio, Friday February 11, 2011

The Uganda Human Rights Commission (UHRC) serves to monitor and advance human rights in Uganda. The UHRC is a body established under the 1995 constitution of Uganda. Its functions are derived from Article 51 consisting of the Bill of Rights found in chapter four of the constitution. Some organizations form to address social issues such as health, education, nutrition, and Women's recovery from violence. A large number of the documented Women's organization that form after the transition to peace provide basic services such as health, food, education and shelter. International Non governmental organizations (NGOs) and donor agencies often focus specifically on war affected women when delivery emergency relief services.

The Ministry of Gender, Labour and Social Development (NGLSD), is the lead agency of the Social Development Sector (SDS), with the mandate to empower communities to harness their potential through cultural growth, skills development and labour productive for sustainable and Gender responsive development. Collaborative partners and stake holders include government agencies, other sectors, local government and Civil Society organizations (CSO)⁸¹. The Ministry's strategic objectives are⁸²:

- (i) To empower communities to appreciate, access, participate in, manage and demand accountability in public and community based initiatives.
- (ii) To protect vulnerable persons from deprivation and livelihood risks
- (iii) To create an enabling environment for increasing employment opportunities and productivity for improved livelihoods and social security for all, especially the poor and vulnerable.

⁸¹ Social Development Sector Strategic Plan for Statistics, 2010 - 11

⁸² Ibid

- (iv) To ensure that issues of inequality and exclusion in access to services across all sectors and at all levels are addressed.
- (v) To improve performance of institutions to coordinate and implement at various levels.

The Ministry's functions revolve around promotion, protection and fulfillment of the rights of various social groups (Women, Youth and children)

This Ministry has been influential in as far as gender related aspects are concerned. In the context of refugees however, the Ministry does not accommodate the needs of women refugees effectively. This is true because Women refugees continue to be vulnerable in refugee situations / camps, a problem greatly attributed to their gender.

Refugee Law Project Working Paper

A Refugee Eligibility Committee (REC), an administrative body made up of officials from nine government ministries and the Senior Protection Officer of UNHCR (in an advisory capacity), has been set up to determine individual claims for refugee status. The UNHCR assists government in the determination of status of *prima facie* refugees from Sudan and Congo. In theory, the UNHCR is only supposed to recommend to the Directorate of Refugees that a refugee be given *prima facie* status. However, in practice this recommendation is as good as a final decision⁸³.

⁸³ Refugee Law Project working paper No. 9 2010

The Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa

Women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;

United Nations Security Council's Resolution 1325 (2000) on the role of Women in promoting peace and security, provides that States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

- a) Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application.
- b) Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;

3.2 Specific Challenges to Refugee Protection in Uganda.

Despite the ever increasing number of refugees, Uganda is commended for its open door policy towards refugees; however, it is struggling with the ever increasing refugee population.

The foundation of the Ugandan refugee policy, is the local integration policy, whereby refugees are allocated land to produce food and be self sufficient. Therefore, the

capacity of Uganda to effectively host and protect refugees is determined by the quality and quantity of available land. This would certainly affect the quality of asylum and protection afforded to refugees by the Uganda government.

Like settlement, the solution of local integration is not viewed as a viable solution today, for as Loescher⁸⁴ explains.

"Most first asylum countries are very poor and un-stable. A Sudden influx of refugees can disrupt a fragile economy, exacerbate unemployment and heighten ethnic tensions. Many countries of asylum are unwilling to settle refugees close to boarder areas. If their presence is likely to raise diplomatic or security problems, or provoke popular resentment and domestic conflict..."

The above argument presented by Loescher greatly applies to the refugee situations in Uganda. It is to be noted that some refugees self – settled themselves along borders, for example, some Kenyan refugees that settled along Busia boarder greatly affected the residents and heightened ethnic tensions. The integration of refugees has therefore become a big issue, for most of the self-settled refugees are not registered as refugees.

While the condition of fundamental change of circumstances in the country of origin will usually not be met in such situations, UNHCR, may consider facilitating return in order to have a positive impact on the safety of refugees or returnees as well as to render assistance which the refugees may require in order to return. Such assistance may have to be given in the absence of formal guarantees or assurances by the country of

⁸⁴ B.S. Chimni, "International Refugee law" (2000) pg 332

origin for the safety of repatriating refugees , and without any agreement or understanding having been concluded, and to the basic terms and conditions of return.

Inspite of the challenges facing refugee governance in Uganda, the Country does not generally derelict in it's duty of protecting refugees. This is made possible by the legal framework and relevant institutions.

First, the Constitution of Uganda makes a general provision for Uganda's constructive engagements in external affairs in refugee matters. Unlike the fundamental human rights provisions of the constitution, Uganda is a signatory to International legal instruments such as the United Nations Convention Relating to the Status of Refugees of 1951, which provides for the rights of refugees including women's rights.

The constitution particularly provides that government and it's agent are obliged to promote the fundamental human rights and freedoms enshrined in the constitution. All fundamental human rights are inherent and not granted by the state.⁸⁵ Thus, even if this provision does not extend to non Ugandans, the spirit it generates should provide an atmosphere of respect for human rights as enshrined in the Universal Declaration of Human Rights.⁸⁶

⁸⁵ Article 20 (1) of the Constitution of Uganda, 1995

⁸⁶ Universal Declaration of Human Rights of 1948.

The children of refugee parents in Uganda should also face no discrimination in the exercise of their freedoms.⁸⁷ Similarly, the children's Act⁸⁸ of Uganda, makes provision for the rights of children to be respected, and this includes refugee children

⁸⁷ The State of Human Rights in Uganda, Awareness and Promotion Forum Uganda (HRAPF) (2011) pg 19

⁸⁸ Cap 59 Laws of Uganda

CHAPTER FOUR

4.0 WOMEN REFUGEES IN KAMPALA; EXAMINING COMPLIANCE WITH THE LAW.

The study noted that, currently the distribution of food and non food relief had reduced, except for refugees in settlements. Refugees living in Refugee settlements are expected to produce their own subsistence food supplies, in addition to supply for sale.

Funding from UNHCR has been drastically reduced to just enough cater for the salaries of health, personnel, and supplementary medicines that may be lacking from that supplied by the district health authority. The Deputy Director of UNHCR'S Division of international protection pointed out that, while the policy of mainstreaming remains, it has proved insufficient.

Domestic violence was construed for decades as a private matter, just any other misunderstanding in a family. In terms of refugees, this kind of attitude can be seen in aid workers in the field who choose not to deal with matters of sexual violence, because they see it as a "private issue." The prevalence of sexual violence in armed conflict has long been under estimated. Only recently, has it been recognized as a widespread phenomenon and as an appalling method of warfare, due mainly to increased media coverage.

According to an interview conducted by ICRC, officials the Republic of Congo in 2009, Mawazo, a 24 year old girl from the village of Shabunda in the Democratic Republic of Congo, is one of the countless victims of sexual violence. Mawazo narrated,

"I was working in the fields when seven things attacked me. They had knives and guns. I was raped by all seven of them. I was torn and cut and there was a lot of blood"

Ten years later, mawazo was abducted by the same armed group and raped again. Mawazo's story is not unusual. Wherever there is conflict, stories like hers can be found.

The observation of the non- Governmental Organization, facilitation for peace and Development (FAPA) on this kind of violation in Uganda generally is also relevant for refugees in particular FAPAD , strategic plan 2009-2013 notes.

The twin lessons learnt of lack of a long term commitment by partners in following up advocacy and violation issues and inconsistencies between the current laws and the cultural ones make of a slow process to change the face of child protection with respect to sexual abuse and exploitation.

The disconnection between laws and practice, is observed by this researcher in issues relating to the rights of women refugees.

The ability of women refuges to integrate depends on the local environment for making ends meet. While this researcher found that Kampala is not quite gravely unconducive for business much need is be done, not only for the Women refugees but for women generally.

A questionnaire administered by National Association of Women Organization in Uganda (NAWOU). To this effect, the questionnaire was administered to 60 Women in and

around Kampala to find out what they do and the challenges they face⁸⁹. The occupations of these women who were aged between 23 and 60 were selling detergents, shoes, clothes, charcoal, Matooke and others. Many of these women complained of the attitude of Kampala City Council harassing them over taxes, not considering whether they have made profit to be able to pay.⁹⁰

The problems they face tend to discourage many of them from continuing with their small business. This researcher found that it is far easier men to make profit than the women in business, hence, raising crucial issue of gender inequality in making ends meet. One finds that refugee men for example of Somali origin, find it easier to survive by sustaining a business than their female counter parts. This issue is essential particularly for integrating refugees.

Caroline Moser argues that social policy should identify programs for example business as a precondition for empowerment, particularly economic empowerment of the vulnerable group.⁹¹ Such vulnerable group includes refugee women. For this reason, refugees would need adequate social protection that would give expression to the letter of the law and successful implementation of social protection that makes it easy for refugees to empower themselves, will go a long way in helping the refugees and even contribute to the national economy.

In KAMPALA, Uganda, June 22 (UNHCR) – In 2006, Uganda adopted refugee legislation that was regarded as a model for Africa, recognizing the right of the country's more

⁸⁹ NAWOU News Issue No.11, December 2010. pg 6

⁹⁰ Ibid

⁹¹ See the position of Global social policy vol 10,n0 2,August ,(sage publications) 2000,pg 168

than 140,000 refugees to work, move around the country and live in the community, rather than in special camps.

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

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

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

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

The Ugandan leader⁹² stressed that the Refugees Act of 2006 "epitomizes Uganda's unwavering liberal policy towards refugees who seek protection here until they feel it is safe for them to return to their countries of origin."

Most of the more than 140,000 refugees in Uganda come from neighbouring countries, including Burundi, the Democratic Republic of the Congo, Kenya, Rwanda and the Sudan. There are also hundreds of thousands of internally displaced Ugandans in the north of the country⁹³.

Against this background, there is need not only to provide food for refugees, especially women and children, but also to get the former empowered to do some work to earn livelihood on and off camp, and the latter to be given education in camp situations. More needs to be done in this regard, going by the refugee situation in most camps across East Africa.

The health of refugees is another important issue, the poor environmental condition in which refugees are living is recipe for serious health problems. A new report by medicines sans frontiers (MSF) provides an example of the connection between the state of refugee camps and the health of its inhabitants⁹⁴. It gives example of the three refugee camps in Kenya meant for 90000 people, now accommodating 350000

⁹² The President of Uganda, Museveni during Celebrations held by the UNHCR at Entebbe, Uganda, 10th;12th July, 2007

⁹³ Refugee Law Project, working paper no. 17 of 2008.

⁹⁴ Paul Redfesh, Alarm bells as "Biggest refugee camp in the world, still growing" East Africa, issue 20 – 26, 2009 pg.12

people⁹⁵. The result of this is out of diseases. The story was not different for Kampala refugee camp and its remnants.

Closely related to above is the reproductive health of women refugees, Uganda is a signatory to protocol and the Africa charter on human and people's rights and right of women of Africa⁹⁶. The constitution has been accommodating of gender equity as it is in refugee law. These instruments will not be useful if the reproductive rights of women are not respected as Norah Matovu, of the African Women Development and communication networks, notice that all these instruments can only become useful if they are implemented⁹⁷. So the question arises how they have been implemented vis-a-vis women refugees.

The reproductive health rights in Uganda in general and Kampala in particular, is not properly observed and it is generally poor. Recently some Doctors and Nurses were in news for allowing pregnant women in labour to die for her inability to part with bribes⁹⁸. If this can happen to Uganda, how much safety do refugee women have in as far as their reproductive health rights are concerned.

A visit to Kampala refugee camp shows that there are no special facilities for delivery, and in case of complications, patients are referred to government hospital in Town. This researcher got findings to show that most of these government hospitals are in poor

⁹⁵ Ibid

⁹⁶ The African initiative, July – December, 2010, East African sub regional support initiative for the advancement of Women. Pg 6

⁹⁷ Ibid p.9

⁹⁸ New vision, September Monday 5th, 2011 in which a lady in labour, one Nambozo, had 2 die as a result of negligence on the part of medical officers, who apparently didn't offer any help despite her pleas, and complications that arose during labour. This is an indication that refugee women are also at risk of such dilemma.

shape, suffering from absentee medical officers, poor facilities and inadequate supply of drugs.

Underlying these issues is the divide between obligations and practice that currently prevails in Uganda. The Government of Uganda is a signatory to the 1951 Refugee Convention, the 1967 protocol, and the 1969 OAU Convention. However it has been hard for Uganda to reflect this generosity of commitments in practice. For instance, the fact that large influxes of refugees were entering Uganda at a time when it was recovering from prolonged civil war meant that although refugees were accepted, the government's priority was, inevitably, the rehabilitation of the economy and infrastructure.

In addition, the government was aware of the security implications of having large influxes of refugees entering Uganda at a time when its own stability was fragile—refugees can exacerbate tensions as their presence is as much a political issue as a humanitarian one. And with voluntary repatriation considered the ideal, there has been a prevailing attitude that refugees are a temporary phenomenon, leaving the integration and assimilation of refugees largely overlooked.

Thus despite Uganda's goodwill on a rhetorical level, the perception of refugees as an economic burden, a political/security problem, and as a temporary phenomenon has generally led to practices aimed at controlling, segregating, pacifying, depoliticising, and therefore marginalizing the refugees so that they do not become a source of conflict in intra and inter-state politics.

For the vast majority of refugees today, the conditions of exile are far from good, even by standards which normally apply to them at home. In some situations, the conditions

of exile can prove worse than the conditions experienced at home. Many do not get beyond the threshold of their countries of first asylum. They are detained in camps or treated as irregular aliens, forced to live in makeshift accommodation or wherever a roof can be found, under constant fear of expulsion or *refoulement*.

In general note, Musa Ecweru, the Uganda minister of state for relief and disaster preparedness and this includes refugees, pledged that the Uganda government would increase awareness, campaigns (and better conditions) in all sites that host refugees including Kampala, Kyaka II, Oruchinga, Kiryadongo and Nakivale camps which he said should host 16000 refugees to date⁹⁹. The Uganda government also pledged that the cessation clause requiring refugees to be repatriated after cessation of circumstances that forced them out of their countries will be exercised indiscriminately¹⁰⁰.

This is good news for compliance, on a general note. One only hope is the promises made by the government are fulfilled.

⁹⁹ Bonnie M Rwiya Milira, Rwanda Refugees in Uganda, the repatriation deadline extended, the East African, October 10 – 16, 2011 pg 34

¹⁰⁰ Ibid

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS.

Conclusion.

Conflicts in many parts of the world keeps giving impetus to the refugee 'industry'. Women and children, particularly girl children, are known to be the most vulnerable group in any conflict. They suffer during conflict, and as refugees in foreign lands. This necessitates a study on the regime for protection of women refugee rights in kampala. While there are adequate legal and institutional framework for affording protection, the framework needs to be strengthened further particularly at the level of implementation, not only in Kampala, but generally in Uganda.

Many women refugees in Uganda have unmet health and physiological needs. These needs should be anticipated during the integration of refugees by host countries to aid in planning the provision of health resources more efficiently for refugees and displaced people.

Uganda is bordered by five countries, three of which remain involved in armed conflict. This is a precarious position, and the numbers of refugees living within Uganda both exemplify the situation and exacerbate it. Given the circumstances, Uganda has been relatively effective at accommodating refugees. However, there are numerous problems associated with the sociopolitical and humanitarian conditions under which refugees are currently living within Uganda.

The country's most dispossessed and vulnerable are in the most unstable regions of the country and live in a state of constant fear due to the inadequacy of protection within

the settlements. At the same time, they suffer from the long-term implications of living with short-term solutions. There is therefore a backlog of issues which need addressing, most essentially the presentation of the refugee bill to parliament, so that Uganda can begin to live up to its claim to be a friend to refugees.

Although in some respects an improvement over the 'vulnerable groups' paradigm, the phrase 'People with Specific Needs' is a fallacy; all refugees have different experiences and capacities as well as individual needs specific to them¹⁰¹. Before these needs can adequately be met, actors working with refugees, particularly in the community services sector, must understand how individuals' circumstances and capacities impact on their ability to take care of themselves. In this way, "The aim [of community services] should be to help people in the aspect of life in which they are vulnerable and recognize the other aspects of life where they are not vulnerable. To do so, however, UNHCR must move beyond the needs-based approach that characterizes the way in which the agency conducts its work¹⁰²:"

Ironically, given its focus on protection and rights guaranteed to refugees with respect to host states, UNHCR has yet to adopt a clear human-rights framework for its humanitarian aid activities and still operates largely within a needs-based approach to assistance¹⁰³. Within this context, and in an atmosphere of dwindling financial resources in which the provision of assistance must be prioritised, officials are forced to reduce the number of people considered to be in need of external support. This practice is justified on the basis of self-reliance, but as this report has demonstrated, the limited material assistance to refugees does not strengthen the capacity of their communities,

¹⁰¹ Ginyera Pinchwa AGG, *'Refugees and internally Displaced people in Africa on the eve of the 21 century'*, 1998 pg 25.

¹⁰² Ibid pg 32.

¹⁰³ According to the UNHCR Report of March, 2010. Pg 15

and leaves those not considered 'vulnerable' without the necessary means to advance beyond mere survival¹⁰⁴.

Suffice to not that the efforts of international humanitarian organizations do not address the ongoing health needs of refugees after arrival and settlement, and local health providers could benefit from being informed of the women's health issues facing specific groups.

Fulfillment of the right to education, for example, is a key prerequisite for the development of sustainable livelihoods, and therefore crucial for the achievement of true self-reliance. It has however, been noted that although "It is taken for granted in most countries that a society's level of economic growth and prosperity is intimately linked to the quality of education and training that its citizens receive", with respect to *refugee* education on the other hand, "the international community as a whole does not seem to have adopted the same position.

The protection of women refugees' rights in both the international human rights instruments and the Refugees Act of 2006, has developed gradually, though what still remains to be seen is how these instruments help women refugees, especially after settlement in the camps.

¹⁰⁴ Ibid.

5.1 Recommendations.

In view of the fore going findings, this study makes the following recommendations.

- a) In attempts to supplement their livelihood, refugee women have engaged in small income generating activities, such as saloons and hotel business and have faced many hurdles. In essence, there is no enabling environment for refugees to engage in meaningful enterprise. Agencies should therefore make deliberate efforts to employ more women in their services.
- b) Some refugees practice cultural and social norms which are oppressive to women and girls, for example female genital mutilation (FGM). These practices should be discouraged and the refugees informed accordingly. The concerned agencies such as UNHCR should not condone the practice of norms that are harmful to women and children.
- c) The current source of livelihood for refugees that is not sustainable. The donors need to heavily invest in long term and durable solutions to help sustain the lives of refugees generally.
- d) Refugees are compelled to leave their country of asylum in fear of persecution; they are thus marginalized and vulnerable group of people. Therefore, their fear and uncertainty of physical safety or freedom should be duly taken into account when conducting operations that affect them. Refugee protection is a truly humanitarian ideal.
- e) Displacement and encampment undermine the traditional role that families and communities have in helping one another. As UNHCR has warned with respect to refugee children, "A family that is split apart or under serious stress may not fully meet the physical and emotional needs of their children" and therefore such families "may need assistance in using their own coping techniques and rebuilding their support links.

Accordingly, because children's needs are "met most effectively within the context of family and community" UNHCR's Policy on Refugee Children directs staff members to "strengthen the capacities of refugee families to meet their own needs and improve the participation and situation of refugee women, thereby contributing significantly to the welfare of their children. Psychosocial support plays a key role in the process, yet the Refugee Law Project has found this to be seriously lacking in settlements visited.

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