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# **The 2006 Refugees Act in Uganda: Between Law and Practice**

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## **Abstract**

Uganda hosts refugees and asylum seekers from neighboring countries and the region. By April 2020, Uganda was one of the top refugee hosting countries in the world and the largest in Africa with over 1.4 million refugees. Uganda passed the Refugees Act in 2006 to regulate refugees. The Act has been praised world wide as being a progressive law that meets international protection standards. The country has been generally described as being friendly to refugees. However, there is a discrepancy between the provisions of the Act and the country's practice. This article analyzes this discrepancy by focusing on specific provisions of the Act.

**Key words: forced migration, refugee protection, refugees act, refugee law, Uganda**

## **1. Introduction**

The UNHCR's annual global trends report notes that by the end of 2018, Uganda was hosting 1.2 million refugees and it was the 3<sup>rd</sup> largest refugee hosting country in the world (after Turkey and Pakistan) and the largest in Africa<sup>1</sup>. As of 30<sup>th</sup> April 2020, the number stood at 1,423,740 refugees.<sup>2</sup> The majority of these refugees come from neighboring countries and the wider region, South Sudan, Democratic Republic of Congo, Burundi, Somalia, Rwanda, Kenya, Ethiopia and Eritrea among others.

Although Uganda has been praised as a generous and friendly country to refugees with a progressive Act that meets international protection standards, this paper argues that this has not been the case with the way the Act has been implemented and adhered to in practice. This paper based on text interpretation of theoretical texts and research findings, found that there is a gap between the provisions in the Act and what is actually done in practice. This paper analyzes this gap and focuses on specific provisions like right to asylum, freedom from persecution, cessation of refugee status, application and grant of refugee status, appeals by aggrieved parties,

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<sup>1</sup> UNHCR (2019), *Global trends: Forced displacement in 2018*, Geneva, UNHCR: 3, available at <https://www.unhcr.org/globaltrends2018/> (accessed on 20 January 2020).

<sup>2</sup> See Office of the Prime Minister & UNHCR (2020), *Uganda comprehensive refugee response portal*, available at <https://ugandarefugees.org/en/country/uga> (accessed on 30 April 2020).

naturalization, voluntary repatriation, offices of refugees and the commissioner and finally concludes with policy and methodological considerations.

Although there has been sufficient scholarly attention to the 2006 Refugees Act<sup>3</sup>, there is little scholarly writing on the practice and implementation of the Act. This paper analyses the Act from the point of view of Uganda's practice.

This paper is a result of a study based on four research visits carried out at different intervals. This study started as my PhD and later follow up visits. The first three visits were carried out in Nakivale and Oruchinga settlements in south western Uganda and focused on Rwandan new caseload refugees<sup>4</sup>. The fourth visit partly covered Nakivale, Oruchinga and Kampala. It looked at Rwandans, Burundians, Eritreans, Ethiopians and Congolese. The first visit was undertaken from June 2010 to December 2011. A second visit took place between June and August 2016. The third visit was carried out from 26th to 31st January 2018. The fourth visit took place between September to December 2019 and included other refugee nationalities: Burundians, Eritreans, Ethiopians and Congolese. In all the study visits, qualitative research methodology was used. Semi-structured and key informant interviews, Focus Group Discussions (FGDs), observation and documentary evidence were the main research techniques. Data collection and sample size were guided by the saturation point where no new insights were emerging. Purposive criterion sampling was used to select the study respondents, namely the refugees and asylum seekers, Ugandan government officials, UNHCR and NGOs officials, as well as local hosts around Nakivale and Oruchinga settlements, Isingiro District<sup>5</sup> and Kampala. In addition,

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<sup>3</sup> See Addaney, M. (2017), "A step forward in the protection of urban refugees: The legal protection of the rights of urban refugees in Uganda", *African Human Rights Law Journal*, 17, 219-244; Mujuzi, J.D. (2008), "From archaic to modern law: Uganda's Refugees Act 2006 and her international treaty obligations", *East African Journal of Peace and Human Rights*, 14(2), December, 399-422; Sharpe, M. & Namusobya, S. (2012), "Refugee status determination and the rights of recognized refugees under Uganda's Refugees Act 2006", *International Journal of Refugee Law*, 24(3), 561-578; Refugee Law Project, (undated), *Critique of the Refugees Act 2006*, Kampala.

<sup>4</sup> Rwandan new caseload refugees refer to Hutu that came during and after the 1994 genocide. Before them, Uganda hosted old case load Rwandan Tutsi refugees who arrived in 1959 and the early 1960s. The majority returned to Rwanda after the genocide while a significant number stayed in Uganda.

<sup>5</sup>The first visit involved 162 respondents. 1 FGD, each with 12 Rwandans was organized in each of the 3 zones in Nakivale; Base Camp, Juru and Rubondo. In each of the zones, I interviewed 10 refugee leaders. I also interviewed 10 recyclers, 10 Isingiro district officials, 11 Officials from Office of the Prime Minister (OPM), 16 NGOs staff, 10 police officers, 36 local hosts (6 locals from each of the 6 sub-counties bordering Nakivale), 1 expert on refugee studies and 2 officials from the Rwandan High Commission in Kampala. In the second visit, a total of 182 respondents participated in the study. 4 FGDs each with 10 Rwandan refugees were organized in 4 zones of Nakivale settlement; Base Camp, Juru, Rubondo and Kabazana. The 5<sup>th</sup> FGD with 10 Rwandan refugees was organized in Oruchinga

'recyclers'<sup>6</sup>were identified through snowball sampling. In the first three study visits, the Rwandan refugees and other categories of respondents answered questions on themes like refugee physical security, refugee rights and obligations, voluntary and forced repatriation, local integration, resettlement, the so-called cessation clause, refugee-host relations and, in general, avenues to find durable solutions.<sup>7</sup> In the fourth visit, refugees responded to these themes and the implementation of the 2006 Refugees Act. Thematic and content analysis were used in data analysis. The analysis further made use of secondary data, both scholarly articles and grey literature.

The paper is structured as follows: The first section deals a brief history of refugees and legal regime in Uganda. This is followed by the analysis of the law and practice with regard to the Act. This is done by looking at the provisions enshrined in the Act and analyzing the actual practice. In other words, the paper analyzes the extent to which the Act has been implemented or adhered to. Lastly, it concludes with policy and methodological implications.

## **2. Brief History of Refugees and Legal Regime in Uganda**

Uganda's experience with refugees started during the Second World War when Europeans displaced by the war were settled on its territory.<sup>8</sup> The 7000 Polish refugees were running away from the devastation of the World War II. They were settled at Nyabyeya in the present day Masindi district and Kojja (Mpunge) Mukono district. This influx was soon followed by numerous

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settlement. I interviewed 10 refugee leaders from each of the 4 zones in Nakivale. 10 refugee leaders were interviewed in Oruchinga settlement. Apart from the refugees, I interviewed 16 recyclers (10 in Nakivale and 6 in Oruchinga), 10 new asylum seekers (6 in Nakivale and 4 in Oruchinga), 6 OPM officials (4 in Nakivale and 2 in Oruchinga), 4 Isingiro district officials, 34 local hosts (24 in Nakivale and 10 in Oruchinga), 10 NGOs staff (6 in Nakivale and 4 in Oruchinga) and 2 officials from the Rwandan High Commission in Kampala. In the third visit, a total of 48 respondents participated. In Nakivale settlement, 24 Rwandan refugees, 4 recyclers and 2 OPM officials were interviewed. In Oruchinga, I interviewed 14 refugees, 2 recyclers and 2 OPM officials. In the fourth visit, a total of 130 respondents participated. In Nakivale settlement, I interviewed refugees and asylum seekers as follows: 10 Rwandans, 8 Congolese, 8 Burundians, 6 Eritreans and 6 Ethiopians. 5 Ugandan local hosts, 2 OPM and 3 NGO officials were interviewed. In Oruchinga, I interviewed asylum seekers and refugees as follows: 8 Rwandans, 10 Burundians, 10 Congolese, 6 Ugandan hosts, 2 OPM and 3 NGO officials. In Kampala, I interviewed asylum seekers and refugees as follows: 8 Congolese, 8 Eritreans, 8 Ethiopians, 4 Rwandans, 4 Burundians, 6 Ugandan local hosts, 2 OPM and 3 NGO staff.

<sup>6</sup> Recyclers are Rwandan refugees who have been repatriated to Rwanda but have returned to Uganda claiming human rights violations, insecurity, persecution and inability to recover land and property in Rwanda. Their views helped in triangulating information got from refugees in Uganda.

<sup>7</sup>The study observed ethical principles in research. The study was cleared by the Office of the Prime Minister and Isingiro District in Uganda. During the data collection exercise, the respondents were briefed on the purpose of the study which was purely academic. Their confidentiality, informed consent and voluntary participation were observed and respected.

<sup>8</sup>Gingyera, P. (1998), *Uganda and the problem of refugees*, Kampala, Makerere University: 5.

refugees generated by unrest in the aftermath of the various struggles for independence in neighboring countries.<sup>9</sup>

Uganda received Sudanese refugees in 1955 who were later repatriated following the 1972 Addis Ababa agreement. These were followed by Kenyans who fled the Mau Mau rebellion in the 1950s. The country later hosted Rwandan Tutsi refugees who fled political turmoil in their country in 1959 to the early 1960s. The conflicts in Zaire/DRC in the 1950s and 1960s in the aftermath of Independence and Lumumba's assassination in 1961 forced thousands of Congolese to flee into Uganda. Since then the country has continued to host refugees from neighboring countries and the region due to prolonged conflicts, violence and human rights violations<sup>10</sup>. Uganda has had to enact laws to regulate the refugee influx.

As noted above, in 1955 there was a wave of Sudanese refugees and the British government enacted a law that would regulate this influx called the Control of Refugees from the Sudan Ordinance.<sup>11</sup> Later, there were conflicts in Rwanda and Burundi which generated refugees into Uganda. Because of this new influx, the colonial government passed the Control of Alien Refugees Ordinance in July 1960, which repealed the Control of Refugees from Sudan Ordinance.<sup>12</sup> This time the government had passed one legal regime to govern all the refugees instead of enacting a law for each refugee nationality. The Control of Alien Refugees Ordinance would become the Control of Alien Refugees Act when Uganda gained its independence from Britain in October 1962.<sup>13</sup>

The Control of Alien Refugees Act (CARA), 1960 has been described as a draconian law hostile to refugees. Kiapi notes that the CARA "appears to make refugees intruders who are not readily

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<sup>9</sup> Ibid.

<sup>10</sup> For a slightly detailed explanation on the history of refugees in Uganda, see Ahimbisibwe, F.(forthcoming), "The 2006 Refugees Act at 15 in Uganda: An appraisal", ISIL Year Book of International Humanitarian and Refugee Law.

<sup>11</sup> Ordinance No. 35, 1955.

<sup>12</sup> Mujuzi, J.D, "From archaic to modern law ", op.cit.

<sup>13</sup> Ibid.

welcome and who, therefore, have to be strictly confined to remote settlements”.<sup>14</sup> Sharpe and Namusobya have argued that “the CARA violated many of the refugee rights Uganda agreed to respect by the 1951 Convention”.<sup>15</sup> Moreover, the CARA became unconstitutional in several respects in 1995 with the adoption of the new Constitution.<sup>16</sup>

The CARA therefore became an outdated law and needed to be repealed. The Uganda government started the process for the enactment of a new refugee legal regime. In 2003 the First Deputy Prime Minister and Minister of Disaster Preparedness and Refugees tabled the Refugees Bill in Parliament, and it was gazetted in the Uganda Gazette on 21 November 2003.<sup>17</sup> After consultations with the relevant stakeholders, the Refugees Bill was debated in Parliament and passed into an Act, and assented to by the President of Uganda on 24 May 2006.<sup>18</sup> It came into force in 2008 and regulations to operationalize it were passed in 2010.<sup>19</sup>

### **3. The 2006 Refugees Act: Analysis of Law and Practice**

The discussion below looks at the provisions of the Act and shows how these have not been adhered to in the context of Uganda’s practice.

#### **3.1 Right to asylum**

The spirit of the Act is that persons who qualify for refugee status<sup>20</sup> should be received and hosted in the country. This means being able to access Uganda’s territory. Whereas Uganda has

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<sup>14</sup> Kiapi, A. (1997), “The legal status of refugees in Uganda” *East African Journal of Peace and Human Rights*, 3(1):115.

<sup>15</sup> Sharpe, M. & Namusobya, S., “Refugee status determination”, op.cit: 564.

<sup>16</sup> Ibid.

<sup>17</sup> Bills Supplement No. 8, Bill No. 20, Uganda Gazette Volume XCVI, No. 58 quoted by Mujuzi, J.D, “From archaic to modern law “, op.cit.

<sup>18</sup> Ibid.

<sup>19</sup> Sharpe, M. & Namusobya, S., “Refugee status determination”, op.cit.

<sup>20</sup> See Section 4(a) “Owing to a well-founded fear of being persecuted for reasons of race, sex, religion, nationality, membership of 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 country”; Section 4(b) “not having a nationality and being outside the country of his or her former habitual residence owing to a well-founded fear of being persecuted for reasons of race, sex, religion, membership of a particular social group or political opinion, that person is unwilling or unable to return to the country of his or her former habitual residence”; Section 4(c) “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, that person is

always been an open country to refugees and asylum seekers, this practice is being challenged and likely to change with the outbreak of coronavirus pandemic. On 25<sup>th</sup> March 2020, Musa Ecweru, Uganda’s Minister of State for Disaster Preparedness and Rosa Malango, the United Nations representative in Uganda briefed the media that the country had suspended receiving of new arrivals with immediate effect for a period of 30 days.<sup>21</sup> Until 21<sup>st</sup> March 2020, when Uganda closed its borders, it was continuing to receive new refugees and asylum seekers daily and respond to the protection and assistance needs of the new arrivals from mainly three countries; South Sudan, DRC and Burundi.<sup>22</sup> While we understand the health concerns of Uganda due to Coronavirus pandemic, it is possible that a number of people could be stranded and exposed to persecution in their countries of origin especially South Sudan, Burundi and DRC. There are a number of questions to the Uganda government: Was there an alternative to closing borders? Was it possible to receive refugees and asylum seekers and subject them to mandatory quarantine procedures with the support of UNHCR and other agencies? Is it possible that by closing borders, Uganda has denied asylum to a number of people fleeing persecution?

The United Nations High Commissioner for Refugees, Filippo Grandi has argued that “the core principles of refugee protection are being put to test – but people who are forced to flee conflict and persecution should not be denied safety and protection on the pretext, or even as a side effect, of responding to the virus”.<sup>23</sup> He further notes that “securing public health and protecting refugees are not mutually exclusive. This is not a dilemma. We have to do both”.<sup>24</sup> As people flee from relatively fragile countries of origin or transit, the lack public health services and closing borders may put these persons at great risk especially in situations where health care and quarantine measures are absent or not adequate.<sup>25</sup> UNHCR therefore calls upon states to

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compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality” and Section 4(d) “owing to a well-founded fear of persecution for failing to conform to gender discriminating practices, that a person is compelled to leave his or her place of residence in order to seek refuge in another place outside the country of origin or nationality”.

<sup>21</sup> Batte, B. (2020), “Uganda closes borders to new refugees, asylum seekers”, 25 March, available at <https://ugandaradionetwork.net/story/uganda-closes-borders-to-new-refugees-asylum-seekers> (accessed on 02 May 2020).

<sup>22</sup> Ibid.

<sup>23</sup> UNHCR (2020), “Beware long-term damage to human rights and refugee rights from the coronavirus pandemic”, 22 April, Geneva, UNHCR, available at <https://www.unhcr.org/news/press/2020/4/5ea035ba4/beware-long-term-damage-human-rights-refugee-rights-coronavirus-pandemic.html>, (accessed on 7 May 2020).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

manage border restrictions in ways that also respect international human rights and refugee protection standards.<sup>26</sup>

### 3.2 Freedom from persecution

Section 2 explains the meaning of persecution in the context of the Act.<sup>27</sup> Refugees escape persecution and the host country has an obligation of protecting refugees including their rights and freedoms as enshrined in the Act and other laws. Although the Act provides for protection of refugees from persecution, there is evidence to show that refugees are persecuted by agents of country of origin and at times with the cooperation of agents of the country of asylum. There are cases of refugees who have been extradited and returned without due legal process. The persecution, harassment, abduction and kidnap of Rwandan and Burundian refugees show the extent of this practice.

To begin with, Rwandan refugees have faced physical insecurity in Uganda.<sup>28</sup> For example in September 2019, UNHCR raised a concern of inadequate security in Uganda's settlements where refugees were being threatened by foreign elements.<sup>29</sup> It reported that this mostly affected Rwandan refugees who were being kidnapped and murdered by Rwandan elements.<sup>30</sup> This harassment was more pronounced in settlements in south western Uganda.<sup>31</sup> It is important to note that the majority of Rwanda refugees are hosted in Nakivale, Oruchinga and Kyaka II settlements- all located in south western Uganda.

The government of Rwanda infiltrated Uganda police force then led by Kale Kayihura and was using it to systematically conduct abduction and illegal repatriations of Rwandan refugees and

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<sup>26</sup> Ibid.

<sup>27</sup> "persecution includes any threat to the life or freedom, or serious violation of the human rights of a person on account of that person's race, religion, nationality, sex, political opinion or membership of a particular social group; and as long as a person is threatened with any harm which can reasonably be seen as part of a course of systematic conduct directed against that person as an individual or as a member of a class of persons, on account of race, religion, nationality, sex, political opinion or membership of a particular social group, that person is being persecuted for the purposes of this Act".

<sup>28</sup> See Ahimbisibwe, F. (2017), "Rwandan refugee physical (in) security in Uganda: Views from below", *Working Paper No. 2017.03*, (Institute of Development Policy and Management (IOB), University of Antwerp).

<sup>29</sup> Gyagenda, M. (2019), "UNHCR says security in refugee settlements insufficient, apportions role to government", 12 September, available at <https://www.softpower.ug/unhcr-says-security-in-refugee-settlements-insufficient-apportions-role-to-govt/>, (accessed on 4 May 2020).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

nationals seeking asylum in Uganda.<sup>32</sup> In August 2018, Kale Kayihura was charged with failure to protect war materials, supervise arms and aiding and abetting the kidnapping of Rwandan refugees from Uganda.<sup>33</sup> Six Ugandan police officers, one Rwandan security officer and one Congolese national were also on trial for their involvement in the abduction and forced return of Rwandan refugees.<sup>34</sup> One would call these actions as failure to protect refugees by the Ugandan government. Examples of refugees that have been abducted and returned to Rwanda include: Lt. Joel Mutabazi<sup>35</sup>, Jackson Karemera, Sgt. Innocent Karisa, Oliver Sebakara, Protais Hakizimufura. The extradition and return of these refugees did not follow the law.<sup>36</sup> At the time, there was no binding extradition treaty binding between Rwanda and Uganda. Others have been executed on Uganda's soil and they include, Charles Ingabire and Jerome Ndagijimana to mention but a few.<sup>37</sup> These abductions and executions of Rwandan refugees continue to be reported by Ugandan newspapers.<sup>38</sup>

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> International Refugee Rights Initiative (IRRI) (2018), *Abuses against Rwandan refugees in Uganda: Has time come for accountability?* 31 August, available at <https://reliefweb.int/report/uganda/abuses-against-rwandan-refugees-uganda-has-time-come-accountability> (accessed on 11 May 2020).

<sup>35</sup> This was a former body guard of Rwandan President, Paul Kagame. He was abducted and returned to Rwanda by Ugandan military and police officials. He was sentenced to life imprisonment by a Rwandan court.

<sup>36</sup> According to Section 40(1), "The Minister may, after consultation with the Minister responsible for internal affairs, order the expulsion of any recognized refugee from Uganda, if the Minister considers the expulsion to be necessary or desirable in the interest of national security or public order"; Section 41 (1) stipulates circumstances in which a person may be extradited. It provides that the minister may, after consultation with the minister responsible for internal affairs and the Attorney-General, order the extradition of a refugee to answer criminal charges or has been convicted by a court of a non- political serious criminal offence. This will be done in the framework of a treaty, an international tribunal or any extradition arrangements between Uganda and a country making extradition request; Section 42 (1) provides that "....no person shall be refused entry into Uganda, expelled, extradited or returned from Uganda to any other country or subjected to any similar measures if, as a result of such refusal, expulsion, return or other measure, that person is compelled to return to or remain in a country where"-(a) "he/she may be subjected to persecution on account of race, religion, sex, nationality, membership of a particular social group or political opinion"; or (b) "his or her life, person or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in a part of or in the whole of that country".

<sup>37</sup> See Amahoro People's Congress, Rwanda National Congress & FDU-Inkingi (2013), *Open letter to the president on the treatment of Rwandan asylum seekers and refugees living in Uganda*, 7 November, available at <http://www.fdu-rwanda.com/wp-content/uploads/2013/11/Letter-to-President-Museveni-on-Rwandan-refugees.pdf> (accessed on 15 January 2014).

<sup>38</sup> Musisi, F. & Kasasira, R. (2014), "Police foil kidnap of another Rwandan refugee", *Daily Monitor*, Saturday 12, April, available at <http://www.monitor.co.ug/News/National/Police-foil-kidnap-of-another-Rwandan-refugee/-/688334/2275862/-/15gcw6uz/-/index.html> (accessed on 12 April 2014); Mujuni, R. (2014), "Rwanda denies kidnapping refugees in Uganda", *New Vision*, 16 April, available at <http://www.newvision.co.ug/news/654615-rwanda-denies-kidnapping-refugee-in-uganda.html> (accessed on 17 April 2014).

Harrell-Bond, a leading refugee studies scholar notes that the Rwandan Patriotic Front (RPF), in collaboration with Ugandan military and police, has been engaged in abductions of any Rwandan suspected of collaborating with the Hutu militia, the Interahamwe.<sup>39</sup> For example, the Ugandan Human Rights Commission publically condemned the External Security Organization (ESO) and Internal Security Organization (ISO) for collaborating with Rwandan intelligence services to abduct Rwandan Hutu refugees.<sup>40</sup>

Similar activities by the Rwandan government have been reported in other countries like South Africa, Kenya and United Kingdom. In fact, Kayumba Nyamwasa, a critic of the Rwandan regime, has survived assassination attempts in South Africa. His colleague, Patrick Karegeya was murdered in Johannesburg in January 2014 and investigations by the South African government revealed that Rwandan elements were responsible for these criminal activities.<sup>41</sup> It has been reported that the Rwandan regime has sent agents to kill its opponents in the United Kingdom.<sup>42</sup>

Another category of refugees facing kidnaps, disappearances and murder are the Burundian refugees in Nakivale and Oruchinga settlements. A report by the International Refugee Rights Initiative (IRRI) reveals complaints of insecurity and lack of safety by the Burundian refugees in Nakivale settlement.<sup>43</sup> The refugees accused the Burundian government and its militia, the Imbonerakure of following them up in the settlement. IRRI reports that “during their visit to Nakivale settlement in December 2017, they spoke to 31 Burundian refugees who all expressed concern over their safety in the settlement”.<sup>44</sup> The report further notes that many refugees “said they had seen individuals who they suspected of belonging to the Imbonerakure in the

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<sup>39</sup>See Harrell-Bond, B. (2011), *Cessation clause Uganda style*, keynote speech delivered at the Northwestern University Conference on Human Rights, 23 January, Working Paper 11-001.

<sup>40</sup> Ibid.

<sup>41</sup> Gatehouse, G. (2014), “Patrick Karegeya: Mysterious death of a Rwandan exile”, *BBC News*, 26 March, available at <https://www.bbc.com/news/world-africa-26752838> (accessed on 4 May 2020).

<sup>42</sup> Milmo, C. (2011), “Rwandan assassin sent to kill dissidents in UK”, *Independent*, 20 May, available at <https://www.independent.co.uk/news/uk/crime/rwandan-assassin-sent-to-kill-dissidents-in-uk-2286712.html> (accessed on 4 May 2020); The Rwandan (2015), “Rwandan spies and operatives networks in UK under investigation”, 3 October, available at <http://www.therwandan.com/rwandan-spies-and-operatives-networks-in-uk-under-investigation/> (accessed on 4 May 2020).

<sup>43</sup> Plotkin, A. (2018), “‘There is no security here’: Fears of Burundian refugees in a Ugandan refugee settlement”, International Refugee Rights Initiative, 16 March, available at <http://refugee-rights.org/there-is-no-security/> (accessed on 4 May 2020).

<sup>44</sup> Ibid.

settlement”.<sup>45</sup> “Several spoke of being followed and photographed, of receiving threatening text messages or phone calls from what they believe to be Imbonerakure or Burundian security agents, or heard men banging at their door in the middle of the night”.<sup>46</sup> IRRI was told stories of “recent attacks on Burundian refugees in the settlement”.<sup>47</sup> The refugees had reported these cases to police, UNHCR and the protection NGOs.<sup>48</sup>

During my interviews with Burundian refugees in Oruchinga and Nakivale settlements, stories of threats of Imbonerakure operations, kidnaps and attacks were reported.<sup>49</sup> They expressed fear for their lives and wondered whether they were safe in the settlement.<sup>50</sup> Other sources confirm the threats faced by Burundian refugees. According to IRRI, “the UN Commission of inquiry on Burundi in 2017 stated that some refugees they interviewed outside Burundi, including in Uganda, said they had recognised intelligence agents and *Imbonerakure* in their country of exile”.<sup>51</sup> As a result of insecurity, the refugees had formed a community protection group called “La Défense”.<sup>52</sup> “According to the refugees, its members are elected by the refugees and their head reports incidents to the police”.<sup>53</sup>

### 3.3 Cessation of refugee status

Section 6 of the Act provides grounds for losing refugee status.<sup>54</sup> A close look at Uganda reveals a discrepancy between the Act and its practice. We will analyze this discrepancy by looking at

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Focus Group Discussion with Burundian refugees, Settlement Community Centre, Oruchinga settlement on 16 August 2019; Interview with a Burundian refugee man, Base Camp, Oruchinga settlement on 15 August 2019; Interview with a Burundian refugee man, Base Camp, Nakivale settlement on 10 September 2019.

<sup>50</sup> Ibid.

<sup>51</sup> Plotkin, Ariel, “There is no security here”, op.cit.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Thus a person shall cease to be a refugee if- (a) that person voluntarily re-avails himself or herself of the protection of the country of his or her nationality, or voluntarily re-establishes himself or herself in the country of origin”; (b) that person surrenders his or her refugee status; (c) having lost his or her nationality, he or she acquires it again; (d) that person becomes a citizen of Uganda or acquires the nationality of some other country and enjoys the protection of the country of his or her new nationality; (e) the circumstances in connection with which that person was recognized as a refugee have ceased to exist, but he or she without compelling reasons arising out of previous persecution- (i) continues to refuse to avail himself or herself of the protection of the country of origin or nationality; (ii) continues to refuse to return to the country of former habitual residence or to take on another available nationality; (f) being of a class of persons declared to be refugees in accordance with section 25 of this act- (i) that person has committed a serious non-political crime outside Uganda after admission into Uganda as a refugee; (ii) that person has seriously infringed the purposes and objectives of the Geneva Convention or the OAU Convention.

the Rwandan refugee case load. The recommendation for cessation of refugee status for this case load falls under section 6(1)(e) of the Act.<sup>55</sup> In 2011, the UNHCR established the Comprehensive Strategy for the Rwandan Refugee Situation to bring their status to a proper closure.<sup>56</sup> According to the UNHCR strategy, The strategy comprised four components: (i) enhancing promotion of voluntary repatriation and reintegration of refugees in Rwanda; (ii) pursuing opportunities for local integration or alternative legal status in countries of asylum; (iii) continuing to meet the needs of those individuals unable to return to their country of origin for protection-related reasons; and, (iv) elaborating a common schedule leading to the cessation of refugee status foreseen to commence as of 31 December 2011.<sup>57</sup> However, this recommendation did not apply to Rwandan refugees that fled after 1998. The Comprehensive strategy targets refugees who fled between 1959 and 1998. Unlike refugee flows from Rwanda after 1998, the above-mentioned period shares the character of group or large-scale forced population movements as a result of armed conflict, events seriously disturbing public order and/or the presence of a consistent pattern of mass violations of human rights including genocide.<sup>58</sup> In 1959 and the early 1960s, Rwandans fled because of the mass killings and violence that targeted Tutsi. The majority of these refugees returned to Rwanda in and after 1994. The other caseload of refugees includes the Hutu who fled the civil war in the early 1990s, the genocide in 1994 and the insecurity that followed up to 1998. It is argued that all these conditions have since stopped and “Rwanda has now normalized and is a secure country”.

The UNHCR in this Comprehensive Strategy<sup>59</sup> also argued that “the level of human rights protection has improved greatly”. They point at the adoption of the 2003 constitution, accession to international human rights treaties, establishment of the National Human Rights Commission, free and fair elections, abolition of the death penalty and promotion of women’s rights.

The practice of the cessation clause for Rwandans has been mismanaged. Uganda implemented the cessation of refugee status for Rwandan refugees before declaring it.<sup>60</sup> One would call it de

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<sup>55</sup> See, in this regard, section 6(1)(e).

<sup>56</sup> UNHCR (2011), *Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, Including UNHCR’s Recommendation on the Applicability of the “Ceased Circumstances” Cessation Clauses*, 31 December: 1.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid: 6.

<sup>59</sup> Ibid.

<sup>60</sup> Harrell-Bond, B., “Cessation clause”, op.cit.

facto implementation of cessation clause for Rwandans. Their food rations were reduced, access to social services denied, cultivation activities banned and plots of land given away to Congolese refugees.<sup>61</sup> The rejection rate for Rwandan asylum claims is high compared to other nationalities with little or no chance to appeal.<sup>62</sup> All these were based on the assumption that Rwandans “no longer had any reason of being refugees” in Uganda. This paper argues that although Rwandans fled generalized violence and conflicts of 1959, early 1960s, the civil war, genocide in 1994 and the insecurity that followed up to 1998 which have since stopped, the structural violence in present day Rwanda is a new ground for well-founded fear of persecution for many Rwandans.<sup>63</sup> In fact, Rwandan asylum seekers continue to come to Uganda claiming persecution, human rights violations and dictatorship in Rwanda.<sup>64</sup>

There are guidelines<sup>65</sup> for assessing the change of circumstances in the country of origin before the invocation of cessation clause. The guidelines explain the elements relevant in the assessment of change in the circumstances on which refugee status was recognized. These elements include the assessment of the fundamental character of change, the durable and stable nature of change and the restoration of protection for refugees in the country of origin.

Researchers, NGOs and International organizations have argued that conditions in Rwanda cannot be called fundamental, durable and stable change.<sup>66</sup> It is not clear whether refugees will

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<sup>61</sup> Amnesty International (2011), *Memorandum to the Government of Uganda about the cessation of refugee protection for Rwandans*, Index: AFR 59/021/2011, London, Amnesty International.

<sup>62</sup> Ibid.

<sup>63</sup> Ahimbisibwe, F. (2015), *The host state and refugee security in Uganda: The case of Rwandan refugees in Nakivale settlement*, (Doctoral Dissertation, unpublished), Mbarara, Mbarara University of Science and Technology.

<sup>64</sup> This is based on personal interviews, observations and interactions with new Rwandan Asylum seekers in Mbarara, Kampala, Oruchinga and Nakivale refugee settlements during the period June-August 2010, August 2016, September-November 2019. Rwandan asylum seekers include government officials, genocide survivors, journalists, students and ordinary people.

<sup>65</sup> UNHCR, *Guidelines on international protection No. 3: Cessation of refugee status under Article 1C (5) and (6) of the 1951 Convention Relating to the Status of Refugees (the Ceases Circumstances' Clauses)*, 10 February 2003, HCR/GIP/03/03 [hereinafter UNHCR Guidelines on International Protection].

<sup>66</sup> Reyntjens, F. (2013), *Political governance in post-genocide Rwanda*, New York, Cambridge University Press; Reyntjens, F. (2004), Rwanda, ten years on: From genocide to dictatorship, *African Affairs*, 103: 177-210; Thomson, S. (2011), “Reeducation for reconciliation: Participant observations on ingando” in: Straus, S. & Waldorf, L. (Eds), *Remaking Rwanda: State building and human rights after mass violence*, Madison & London, The University of Wisconsin Press: 331-339; Human Rights Watch (2011), *Rwanda justice compromised: The legacy of Rwanda’s community based courts*, New York, Human Rights Watch, May; Human Rights Watch (2008), *Law and reality: Progress in judicial reform in Rwanda*, available at <http://www.hrw.org/en/reports/2008/07/24/law-and-reality-0> (accessed on 30 June 2014); Fhamu Refugee Programme (2011), *Rwanda; Cessation of refugee status is unwarranted – Memo of fact and law*, September, available at:

be assured of protection when they return.<sup>67</sup> The Rwandan Patriotic Front is described as a dictatorial regime that tortures, imprisons and kills its opponents, silences civil society and the media, violates rights both at home and abroad.<sup>68</sup> In fact, scholars have argued that Rwanda is an active volcano waiting to erupt.<sup>69</sup> These circumstances cannot be called durable and stable. Uganda needs to understand changes in Rwanda in a deeper, objective and unbiased manner before taking decisions like the declaration and implementation of cessation of refugee status.<sup>70</sup>

### 3.4 Application and grant of refugee status

The Act provides for the Refugee Eligibility Committee<sup>71</sup> (REC) and its functions.<sup>72</sup> The Act further provides for procedure for the application<sup>73</sup> and grant of refugee status.<sup>74</sup> The Act also provides for group recognition, mass influx (prima facie status) and temporary protection.<sup>75</sup> Although the Act provides for a period of ninety days within which to determine application for refugee status, there were cases where REC goes beyond this period. A study done by the Norwegian Refugee Council (NRC) found that “non-prime facie asylum claims both in Kampala and settlements experienced delays”.<sup>76</sup> There were delays of over a year to have an initial decision on refugee status determination.<sup>77</sup> These delays were also experienced in the settlements especially the

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<http://www.refugeelaidinformation.org/sites/srlan/files/fileuploads/Memo%20of%20Fact%20and%20Law.pdf> (accessed on 27 January 2014).

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> See Reyntjens, “Political governance”, op.cit; Reyntjens, F. (2015). Rwanda: Progress or powder keg? *Journal of Democracy*, 26(3), 19-33.

<sup>70</sup> See Ahimbisibwe, F. (2017), “‘Voluntary’ repatriation of Rwandan refugees in Uganda: Analysis of law and practice”, *Working Paper No. 2017.08* (Institute of Development Policy and Management), University of Antwerp.

<sup>71</sup> Section 11.

<sup>72</sup> Section 12.

<sup>73</sup>Section 19(1) “Any person who enters Uganda and wishes to remain in Uganda as a refugee shall make a written application to the Eligibility Committee for the grant of refugee status within thirty days after the date of his or her entry into Uganda”.

<sup>74</sup> Section 20(1) “The Commissioner shall, as soon as is practicable, process the application for presentation before the Eligibility Committee and may- (a) require such further information from the applicant as may be necessary to support the application; and (b) carry out an inquiry or investigations as he or she may think fit; (2) The Eligibility Committee shall, within ninety days after the date of receipt of the application by the Commissioner, consider and determine the refugee status of the applicant and may, after making any inquiry or investigations as the Committee may consider necessary- (a) reject the application; or (b) grant refugee status to the applicant; (3) The Commissioner shall, within fourteen days after the date of the decision of the Eligibility Committee, inform the applicant in writing of the decision of the Committee; (4) Where an application is rejected under subsection (2) of this section, the Eligibility Committee shall state the reasons for its decision in writing and the applicant shall be provided with a copy of the statement.

<sup>75</sup> Section 25.

<sup>76</sup> Norwegian Refugee Council, (NRC) (2018), *Refugees status determination: A study of the process in Uganda*, Kampala, Norwegian Refugee Council: 17.

<sup>77</sup> Ibid.

West Nile area since REC was not prioritizing this area due to few asylum seekers on non-prime facie basis.<sup>78</sup> Delays were also as a result of having one REC responsible for the whole country and being an inter-ministerial committee, coordinating all members of REC to sit is a challenging task.<sup>79</sup> As a result, asylum seekers were taking long before official recognition as refugees.<sup>80</sup> Other sources have documented the delays in refugee status determination in Uganda.<sup>81</sup>

A story of a Congolese asylum seeker quoted by NRC illustrates the challenges faced by asylum seekers.

“One Congolese asylum seeker in Kampala showed NRC her asylum seeker registration certificate indicating that her family had their refugee status interview in 2015 but until now (2018) there was no decision in her case. This has caused a number of problems as her family only has one identity document and so if they are outside the house separately they will be without valid identity. Her husband has been arrested a number of times for working and being without identity, which causes great stress for a family already experiencing significant financial and psychological hardship”.<sup>82</sup>

During my interaction with asylum seekers both in Nakivale and Kampala, I was told of stories of REC delays in responding to their applications for refugee status.

Thus,

“I applied for refugee status a year ago. I am still waiting for a decision from REC. I don’t know why it is taking long. I am worried that I may not get refugee status here in Uganda”.<sup>83</sup>  
“These days it is taking long before one is recognized as a refugee. We were told that we will get a decision within three months. It is now a year since I applied and up to now I have not

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<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> See IRRI (2018), *Eritrean refugees in Kampala and the Uganda asylum system*, July, Kampala, International Refugee Rights Initiative.

<sup>82</sup> Ibid: 17.

<sup>83</sup> Interview with a male Eritrean asylum seeker, Old Kampala, Kampala on 13 December 2019.

gotten any decision. I want to know the result of my application so that I get the way forward, whether to stay here or go to another country”.<sup>84</sup>

“There is late determination of refugee status these days for the new arrivals from Rwanda. We are not even assured whether we shall be recognized as refugees”.<sup>85</sup>

These delays in refugee status determination left asylum seekers more vulnerable to ‘brokers’ claiming they that they can speed up the process for a fee.<sup>86</sup> According to NRC “Each focus group discussion raised the problems faced by asylum seekers in having to pay brokers or bribes to progress their case. Brokers appear to be commonplace for all groups of asylum seekers interviewed and often share the nationality with the asylum seeker and act as a middle man to access the authorities”.<sup>87</sup> I was told the same stories of brokers during my interviews with refugees and asylum seekers in Kampala.<sup>88</sup> The use of brokers exposes these persons to exploitation, cheating and leaves them in a worse situation.

Another challenge experienced by asylum seekers was the high rejection rate for some nationalities. The NRC has observed that “the rate of acceptance of asylum seekers from Eritrea in Uganda is well below acceptance rates in other countries”.<sup>89</sup> The chances for being recognized as refugees are small. “The OPM has used the ‘first country of asylum’ principle when assessing refugee claims”.<sup>90</sup> This is a loosely defined doctrine that is interpreted as allowing for the rejections of asylum claims of those applicants who – as explained by OPM<sup>91</sup> – “pass through many countries before reaching Uganda and do not necessarily bother to apply for asylum in those countries or demonstrate why they did not apply for asylum in those countries”.<sup>92</sup>

Eritrean asylum seekers voiced their concerns about the high rate of rejection by OPM. Thus, “These days it is hard for Eritrean asylum seekers to get refugee status. Our applications are

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<sup>84</sup> Interview with a female Ethiopian asylum seeker, Old Kampala, 14 December 2019.

<sup>85</sup> Interview with a refugee man, Juru zone, Nakivale on 2 July 2016.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Interviews with asylum seekers in Kampala, 13 to 17 December 2019.

<sup>89</sup> NRC, “Refugee status determination”, op.cit: 14.

<sup>90</sup> IRRI, “Eritrean refugees in Kampala”, op.cit: 4.

<sup>91</sup> Ibid.

<sup>92</sup> OPM letter to IRRI, 26 April 2018 quoted by IRRI.

rejected. Even when we appeal, we are again rejected. We do not know why this is the case”.<sup>93</sup> Another respondent concurred, “The rejection rate for Eritreans is high. Uganda does not want Eritreans to be here as refugees. I submitted my application to REC and it was rejected. I appealed to REC and later Refugee Appeals Board (RAB) but my appeal did not succeed”.<sup>94</sup> In an interview with a OPM official, he stated that “Why should Eritreans cross a number of countries and seek refugee status here in Uganda. We expect them to apply for refugee status in neighboring countries like Ethiopia, Sudan or at least Kenya. Besides the reasons they present in REC interviews are not convincing as people with well-founded fear of persecution”.<sup>95</sup>

Another category with a high rejection rate are the Rwandans. During my visits to Nakivale and Oruchinga settlements, the refugees expressed their concern that it was increasingly becoming difficult for Rwandans to get refugee status in Uganda. They noted that the new arrivals are told that they don’t have any well-founded fear of persecution since their country is peaceful.<sup>96</sup> On the other hand, they noted that new arrivals from other countries were recognized as refugees.<sup>97</sup>

One of the refugee respondents complained that “we did interviews and out of 1500 only 100 passed. I am one of the many who did not make it as a refugee. I call myself a refugee but legally I am not yet a refugee”.<sup>98</sup> Another refugee stated that “the first time I came as a refugee I was accorded refugee status but when I went home and came back the second time it has been hard to get refugee status. I have now spent 11 months without refugee status. I now live on my own”.<sup>99</sup> Another respondent in a subsequent FGD said: “I was so lucky because when we arrived we were 160 people who were subjected to an interview but only 20 passed and were given refugee status. Those who were rejected have either been returned or live on their own without any support from UNHCR or OPM”.<sup>100</sup>

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<sup>93</sup> Interview with a male Eritrean asylum seeker, Old Kampala, Kampala, 13 December 2019.

<sup>94</sup> Interview with female Eritrean asylum seeker, Old Kampala, Kampala, 14 December 2019.

<sup>95</sup> Interview with a Protection Officer, OPM Offices, Kampala on 14 December 2019.

<sup>96</sup> Focus Group Discussion, Juru zone, Nakivale settlement on 30 July 2016; Focus Group Discussion Oruchinga settlement on 29<sup>th</sup> August 2016; Interviews with Rwandan refugees, Nakivale settlement, November 2019; Interviews with Rwandan refugees, Oruchinga settlement, September 2019.

<sup>97</sup> Ibid.

<sup>98</sup> Interview with a refugee woman, Kigali village, Nakivale on 23 June 2010.

<sup>99</sup> Interview with a refugee man, Sangano Base Camp, Nakivale on 24 November 2019.

<sup>100</sup> Focus Group Discussion, Sangano Base Camp, Nakivale on 24 June 2010.

In interviews with OPM officials, it was confirmed that the government no longer recognizes Rwandans as refugees except for few special cases. One official noted that the Rwandans are running away from Rwanda because they are looking for free land in Uganda.<sup>101</sup> Another official argued that Rwandans no longer have any well-founded fear of persecution. Rwanda is a peaceful country with remarkable progress in socio-economic development. Why don't the refugees return and participate in the socio-economic reconstruction of their country?<sup>102</sup> One of the government officials who participated in Refugee Eligibility Committee (REC) interviews in 2010 noted that "In 2010 we interviewed Rwandan asylum seekers and found that they had no genuine reasons for being refugees. They claimed that they don't have land in Rwanda but the issue of land has never been a reason for granting refugee status. These Rwandan refugees are just economic migrants seeking economic opportunities".<sup>103</sup>

### **3.5 Appeals by aggrieved parties**

The Act provides for appeal by an aggrieved applicant.<sup>104</sup> The REC has an appeals mechanism where an asylum seeker is free to appeal to REC after his/her application has been rejected. After one's appeal is rejected by REC, he/she is free to make an appeal to the Refugee Appeals Board (RAB).<sup>105</sup> "The Appeals Board shall expeditiously hear and determine any appeal referred to it and, in any case, shall make a decision within sixty days after the date of receipt of the appeal".<sup>106</sup> The Act adds that "an applicant shall be notified of the decision of the Appeals Board in writing within fourteen days after the date of the decision".<sup>107</sup>

In practice, the appeals mechanism within REC is said to have problems. Applicants' lawyers are not allowed to attend review interviews. For those who appeals are rejected, it is noted that

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<sup>101</sup> Interview with a Uganda Government Official, OPM, Mbarara on 30 July 2010.

<sup>102</sup> Interview with an OPM official, Kampala on 1 June 2016.

<sup>103</sup> Interview with Refugee Desk Officer, Office of the Prime Minister, Mbarara on 27 August 2016.

<sup>104</sup> Section 21(1) "An applicant aggrieved by the decision of the Eligibility Committee may appeal to the Appeals Board within thirty days after receipt of the notice of the decision of the Eligibility Committee; (2) "Notwithstanding subsection (1) of this section, the Appeals Board may hear an appeal filed after the expiry of thirty days if the appellant has justifiable cause for having filed a late appeal"; (3) "At the hearing of an appeal under this section, the appellant may appear before the Appeals Board in person or may be represented by an advocate at his or her expense"; (4) "A decision of the Appeals Board shall be final".

<sup>105</sup> Section 16.

<sup>106</sup> Section 17(3).

<sup>107</sup> Section 17(5).

their rejection letters are written in English and handed over to them at OPM offices where confidentiality is compromised.<sup>108</sup>

Concerning the appeals to RAB, the NRC notes that the current operations are not clear. It states that “over the past years there have been problems in constituting the body”.<sup>109</sup> Just like it is hard to constitute REC, it is also challenging to constitute a RAB panel to review appeals made by the aggrieved parties.<sup>110</sup> The NRC quotes the Refugee Law Project, the main legal organization that provides legal representation before RAB that “they only have about 10-15 cases at the RAB and these cases have not been heard for a significant period – reportedly of up to year or more, and certainly outside the 60 days permitted by the law”.<sup>111</sup> The other challenge is that RAB does not have legal authority to grant refugee status but must refer the case back to REC for consideration which makes RAB impotent and lacks the power of an appellate body. Also, although the right to appeal exists from the RAB to the Courts in Uganda, in practice it appears that is rarely invoked.<sup>112</sup> It is possible that persons rejected by RAB may not have enough options aware that pursuing the courts of law in Uganda is a such a long and tedious process. As Addaney puts it “the appeal process falls short of the constitutional imperative of just and fair administrative actions as well as the right to apply to a competent court against any decision taken against them”.<sup>113</sup>

### **3.6 Naturalization of refugees**

The Ugandan municipal law provides grounds on how a person can acquire Ugandan citizenship. They include citizenship by birth, registration and naturalization. Refugees can acquire citizenship only through registration and naturalization.

The law provides for citizenship by registration. Article 12 (2) (c) of the Uganda Constitution and the Uganda Citizenship and Immigration Control Act Cap 66 (hereinafter referred to as UCICA), article 14(2) (c) provides for citizenship for “every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years.” However, other parts of the

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<sup>108</sup> NRC, “Refugee status determination”, op.cit: 14.

<sup>109</sup> Ibid: 15.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Addaney, M., “A step forward in the protection of urban refugees”, op.cit: 239.

legislation deny refugees citizenship by registration. Article 12(1)(ii) of the Constitution and Article 14(1)(ii) state that every person born in Uganda is eligible for citizenship by registration but only if, “neither of his or her parents and none of his or her grandparents was a refugee in Uganda.” In addition, Articles 12(2)(b) of the Constitution and 14(2)(b) of UCICA, which enable citizenship by registration for migrants who live in Uganda for more than 10 years according to the Constitution, 20 years according to the UCICA, provided they migrated “legally and voluntarily.” Since refugees are forced to flee, the requirement of voluntariness would appear to exclude refugees.<sup>114</sup>

The Constitution mentions naturalization in Article 13 which stipulates that “Parliament shall by law provide for the acquisition and loss of citizenship by naturalization.”<sup>115</sup> Section 45 of the Act adds that: “The Constitution and any other law in force in Uganda regulating naturalization shall apply to the naturalization of a recognized refugee.”

The UCICA is the operative law with respect to the naturalization of refugees. Five criteria must be met under Section 16(5) of UCICA<sup>116</sup>. The applicant:

- (a) Has resided in Uganda for an aggregate period of twenty years;
- (b) Has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application;
- (c) Has adequate knowledge of a prescribed vernacular language or of the English language;
- (d) Is of a good character; and
- (e) Intends, if naturalized, to continue to reside permanently in Uganda.

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<sup>114</sup>Citizenship Rights in Africa Initiative (2016), *The eligibility for refugees to acquire Ugandan citizenship*, available at <http://citizenshiprightsfrica.org/the-eligibility-for-refugees-to-acquire-ugandan-citizenship/> (accessed on 22 September 2016).

<sup>115</sup> According to the Ugandan Constitution, Parliament must adopt legislation on naturalization. The individual requests for citizenship are made directly to the Directorate of Citizenship and Immigration, Ministry of Internal Affairs. But as Parliament has yet to pronounce itself on the issue of naturalizing refugees, no refugee has been given a positive response until now.

<sup>116</sup> The five criteria are minimum criteria that must be met in order to be eligible. In other words, naturalization for now remains a favor of the Ugandan Parliament. Parliament will discuss and decide on who qualifies to be a citizen of Uganda in line with the laws on immigration and citizenship. Naturalization is not an enforceable right for refugees

Therefore, as Walker suggests, “nothing in Ugandan law would seem to prohibit a recognized refugee from being considered to ‘reside’ in Uganda for purposes of naturalization under section 16 of the *UCICA*”.<sup>117</sup> He further notes that “presumably, there is also no legal bar to refugees meeting the requirements of language, good character, and intention to settle in Uganda. Refugees should therefore be fully capable of becoming naturalized citizens”.<sup>118</sup> Interesting to note however is that a number of long staying refugees within Uganda have approached the Department for Immigration to apply for naturalization and have been denied it.<sup>119</sup>

On 30<sup>th</sup> August 2010, a petition was filed in court to secure an interpretation of the 1995 Uganda Constitution with regard to the possibilities of citizenship for the refugees by registration and naturalization in Uganda. The Constitutional Petition No. 34 of 2010 filed by the Centre for Public Interest Law and Salima Namusobya versus Attorney General in the matter of a petition for the interpretation of the Constitution under Article 137 (1) of the Constitution, sought an interpretation of provisions of articles 12 and 13 of the Constitution of Uganda (and, in that regard, sections 14 and 16 of the *UCICA*, Cap.66 and sections 6 and 45 of the *Refugees Act 2006*). The interpretation is in respect of the eligibility of refugees to apply for and acquire Ugandan citizenship by registration or naturalization. Paragraph 14 of the petition asked court to declare that a refugee who qualifies for citizenship by registration or naturalization under the laws of Uganda should be able to apply and acquire it. Also, the relevant government departments and/or agencies should process applications for citizenship by refugees who qualify.<sup>120</sup>

In the October 2015 Constitutional Court ruling, the judges declared that refugees could not access citizenship on the basis of registration. However, court ruled that refugees were eligible for citizenship under naturalization. The judges refused to grant the petitioners request that court orders the government to start considering applications for citizenship under naturalization. The judges argued that the petitioners had not presented evidence that government departments or agencies had failed to do so to date. The court was of the view that

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<sup>117</sup>Walker, S. G. (2008), *From refugee to citizen? Obstacles to the naturalization of refugees in Uganda* (Briefing Paper), available at [http://www.refugeelawproject.org/files/briefing\\_papers/Naturalisation\\_Of\\_Refugees.pdf](http://www.refugeelawproject.org/files/briefing_papers/Naturalisation_Of_Refugees.pdf), (accessed on 27 February 2014).

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> See Centre for Public Interest Law Ltd and Salima Namusobya v Attorney General, Constitutional Petition No. 34 of 2010, Constitutional Court of Uganda, Kampala. (On file with the author)

the petitioners should bring forward persons whose applications for citizenship had been rejected or not processed.<sup>121</sup>

It is not clear whether the petitioners will go back to the Constitutional Court with evidence of refugees who have been denied of citizenship or appeal this ruling in the Supreme Court of Uganda<sup>122</sup>. But what is clear is that for now refugees are not able to apply for citizenship until the legal ambiguities have been resolved. In an interview with an official from Refugee Law Project, he noted that: “We are still studying the Court ruling and will see the way forward. We shall advise our clients, the refugees to present their applications for citizenship to the government. If they are denied citizenship, we shall use this evidence and go back to the Constitutional Court with a stronger case. If they are granted well and good. Our interest is to see that refugees are able to get naturalization according to the existing laws in Uganda”.<sup>123</sup>

UNHCR notes that “during the 60th Commemoration of the 1951 Convention, the Government of Uganda pledged to explore opportunities for the local integration of protracted refugee groups”.<sup>124</sup> These refugee groups include: “Rwandans who fled the genocide and who now would fall within the scope of the Cessation Clause, (1959-1998); Congolese who fled after the assassination of Prime Minister Lumumba in 1961; and the South Sudanese who fled the previous civil strife and who never returned in 2005 after the attainment of self-determination in South Sudan”.<sup>125</sup>

Despite the legal obstacles mentioned above, the Government in cooperation with UNHCR “have identified a group of 15,000 refugees who have been in Uganda for over two decades and that have developed strong social and family links with little if any links with their Country of origin”.<sup>126</sup> In fact, “the Government has endorsed an alternative legal status such as long-stay

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<sup>121</sup> See Uganda Constitutional Court Judgment, 6<sup>th</sup> October 2015 in the case of Centre for Public Interest Law Ltd and Salima Namusobya v Attorney General, Constitutional Petition No. 34 of 2010, Constitutional Court of Uganda, Kampala. (On file with the authors).

<sup>122</sup> See Citizenship Rights in Africa Initiative, “The eligibility for refugees”, op.cit. In this article, it is confirmed that the judgment of the Constitutional Court can be appealed in the Supreme Court.

<sup>123</sup> Interview with a Refugee Law Project official, Mbarara on 9 August 2016.

<sup>124</sup> UNHCR (2016), *Submission by the UNHCR for the Office of the High Commissioner for Human Rights’ compilation report universal periodic review: 2<sup>nd</sup> cycle, 26<sup>th</sup> session- Uganda*, Geneva, UNHCR: 5.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

resident permits would be explored for the group as a pathway towards eventual naturalization”.<sup>127</sup>

However, Government has been slow on this matter. One would have expected it to have taken a step in working on this pledge, nine years on. It remains to be seen whether Government will remain committed and implement this pledge of facilitating the process of naturalizing the above categories of refugees.

### **3.7 Voluntary repatriation**

The Act notes that the decision to be repatriated shall be voluntary and will be expressed in writing to the Commissioner or UNHCR who will make arrangements for the repatriation of refugees.<sup>128</sup> This provision is inspired by regional and international refugee law. The 1951 Convention calls upon states not to expel or return refugees to countries where their lives and rights would be threatened due to race, religion, nationality, membership of a particular social group or political opinion.<sup>129</sup> The 1969 OAU Convention makes reference to the right of non-refoulement. It states that “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”.<sup>130</sup>

Despite the provision for voluntary repatriation in the Act, there are cases which show that Uganda has instead practiced forced repatriation. For example, in March 2019, the Minister of Disaster Preparedness and Refugees, Mr. Hilary Onek, said that refugees from stable countries such as Rwanda, Burundi, and South Sudan have to return home.<sup>131</sup> He was addressing delegates at the Intergovernmental Authority on Development (IGAD) high-level experts and a ministerial meeting on jobs, livelihoods, and self-reliance for refugees, returnees and host communities at

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<sup>127</sup> Ibid.

<sup>128</sup> Section 46(1) states that “a recognized refugee who wishes to be repatriated shall express his or her wish in writing to the Commissioner who shall, in consultation with the UNHCR cause arrangements to be made for the repatriation of that refugee”. Section 46(2) adds that “where an application for voluntary repatriation is received by the UNHCR, it shall inform the Commissioner accordingly.”

<sup>129</sup> Article 33(1).

<sup>130</sup> Article V(1).

<sup>131</sup> Region Week (2019), “Uganda tells Burundian and Rwandan refugees to return home”, 29 March, available at <https://regionweek.com/uganda-tells-burundian-and-rwandan-refugees-to-return-home/> (accessed on 4 May 2020); Daily Monitor (2019), “Uganda asks Rwandan, Burundian refugees to go home”, 29 March, available at <https://www.theeastafrican.co.ke/news/ea/Uganda-asks-Rwandan-Burundian-refugees-to-go-home/4552908-5047554-hl7fiv/index.html> (accessed on 4 May 2020).

Speke Resort Munyonyo in Kampala.<sup>132</sup> This was interpreted as a stance by the Uganda administration of forcing the repatriation of refugees hosted there.<sup>133</sup> It was reported that the minister also complained that some of the refugees, instead of reciprocating the hospitality afforded by the government and Ugandan hosts, had turned into enemies.<sup>134</sup> It is also not clear what the minister meant by calling the above three countries “stable”. To the contrary, these countries still generate refugees and asylum seekers into Uganda and the region. This rhetoric does not paint a good picture on Uganda’s commitment to its obligations towards refugees.

There have been incidences of forced repatriation of refugees and asylum seekers to especially Rwanda where they are likely to suffer persecution. The case of forceful repatriation of Rwandans was particularly disturbing as a number of the victims got life in jail.<sup>135</sup> As mentioned above, Rwandan refugees have since 2009 been banned from cultivation and their food rations reduced.<sup>136</sup> They have been issued with several deadlines to return in 2009, 2011, 2013 and 2017.<sup>137</sup> Issuing of deadlines against refugees is tantamount to refoulement because refugees are put in a situation where they have to make a decision to return for fear of being arrested and imprisoned.<sup>138</sup> The refugees are forced to make a decision to return even when they are not willing to return for fear of possible persecution.<sup>139</sup> Although Uganda has not been strict with these deadlines, a number of Rwandan refugees chose to return for fear of consequences of not returning.<sup>140</sup> Also, in October 2007 and July 2010, Uganda organized operations that involved her own and Rwandan security forces which forcefully returned Rwandan refugees and asylum seekers contrary to the principle of non-refoulement.<sup>141</sup>

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<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Fahamu Refugee Programme, “Rwanda: Cessation of refugee status”

<sup>136</sup> Ahimbisibwe, F., “The host state and refugee security in Uganda”, op.cit; Karooma C., “*Rwandan refugees and their attitudes to repatriation*”; Harrell-Bond, “Cessation clause Uganda style”; Amnesty International, “Memorandum to the Government of Uganda”, op.cit; International Refugee Rights Initiative, Refugee Law Project & Social Science Research Council, “A dangerous impasse”, op.cit.

<sup>137</sup> Ibid.

<sup>138</sup> Ahimbisibwe, F., “Voluntary repatriation”, op.cit.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

Furthermore, as stated above, Rwandan refugees face the possibility of invocation of the cessation of refugee status as recommended by UNHCR in December 2011.<sup>142</sup> It is very clear that the threats of declaration and implementation of the cessation clause violate refugee rights and undermine the voluntary nature of repatriation. In circumstances where refugees are not given optional durable solutions like local integration or resettlement, invocation of cessation of refugee status can mean forced repatriation to Rwanda.<sup>143</sup>

### **3.8 Offices of Refugees and the Commissioner**

The Act establishes the Office of refugees in Uganda.<sup>144</sup> It is responsible for all administrative matters concerning refugees in Uganda and coordinates inter-ministerial and Non-Governmental activities and programmes relating to refugees.<sup>145</sup> Section 8(2), outlines the functions of the Office of refugees as follows: (a) be the secretariat of the Eligibility Committee; (b) advise the Government and the Eligibility Committee on policy and other matters relating to refugees; (c) advise the Government on international and regional conventions and Government's obligations relating to refugees; (d) protect refugees and coordinate the provision of services for their welfare; (e) identify and initiate projects for refugees and refugee affected areas; (f) advise and work in liaison with the UNHCR and other organizations on refugee programmes and their implementation; (g) implement national and regional development plans relating to refugees, in line with current international refugee practices; (h) promote and participate in inter-state and regional initiatives for voluntary repatriation of refugees; (i) promote Uganda's regional and international cooperation on refugee matters with other countries and international organizations; (j) obtain country of origin information about applications of asylum seekers; (k) be the custodian of government properties in refugee

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<sup>142</sup>The cessation of refugee status originally set for implementation by 30 June 2013 was suspended by the Uganda government till further notice. After the 2016 UNHCR Executive Committee meeting in Geneva, another date was proposed for 31st December 2017. Thereafter, the implementation of cessation clause was postponed indefinitely.

<sup>143</sup>Ahimbisibwe, F., "The Host State and Refugee Security in Uganda", op.cit; Amnesty International, "Memorandum to the Government of Uganda", op.cit; Interview with a Protection Officer, Centre for Refugee Rights, Mbarara on 1 July 2016.

<sup>144</sup> Section 7.

<sup>145</sup> Section 8.

settlements; (l) issue identity cards and recommendations for travel documents to refugees; and (m) ensure the maintenance of law and order in refugee settlements.

The Act also establishes the Commissioner for Refugees whose office shall be a public office and shall be appointed by the President, acting in accordance with the advice of the Public Service Commission.<sup>146</sup> The Commissioner is the head of the Office of the Refugees and is responsible for its day-to-day operations and for the administration, control and organization of its staff.<sup>147</sup>

The Act further provides for the following functions of the Commissioner for Refugees<sup>148</sup>: (a) advise the accounting officer on the soliciting of funds for the care and welfare of refugees and the rehabilitation of refugee affected areas; (b) liaise with the UNHCR and other agencies for the protection of refugees and the formulation of programmes for ensuring that adequate facilities and services for reception of refugees, settlement and integration are available; (c) inform and advise the Eligibility Committee on matters relating to refugees and refugee status; (d) receive and process applications for submission to the Eligibility Committee for consideration and decision; (e) report to and advise the Minister and the Permanent Secretary of the Ministry responsible for refugees on matters relating to refugees; (f) advise the Minister and the Permanent Secretary of the Ministry on technical matters relating to refugees; and (g) perform any other duties that may be assigned to him or her under this Act.

However, despite the above functions, allegations of corruption involving staff of Office of refugees and the Commissioner have since dented their image. One wonders the extent to which these offices are committed to their legal mandate? or whether officials pursue personal interests? In February 2018, the office was hit by a corruption scandal where funds meant for refugee welfare and services were embezzled. The scandal involved three major issues; “doubtful number of refugees in Uganda; abuse of funds and other resources by some officials and suspected trafficking in girls and women refugees”.<sup>149</sup> The allegations also included faking

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<sup>146</sup> Section 9.

<sup>147</sup> Section 9(2).

<sup>148</sup> Section 9(3)

<sup>149</sup>Sserunjogi, E.M. (2018), “OPM hit by refugee corruption scandal”, *Daily Monitor*, Monday 5 February, available at <https://www.monitor.co.ug/News/National/OPM-hit-refugee-corruption-scandal-/688334-4291600-13m30m6z/index.html> (accessed on 5 May 2020).

documents on delivery of food assistance and demanding refugees to pay bribes to access various services that should be free of costs.<sup>150</sup>

Because of the allegations, the United Nations ordered for an audit investigation. An audit carried out by the UN's Office of Internal Oversight Services revealed gross corruption and mismanagement of funds meant for the refugees through corruption, overpayments and double payments for contracts, fraud among others within the UN refugee agency, UNHCR.<sup>151</sup> The audit carried out between January and May 2018 covered the period between July 1, 2016, and December 31, 2017.<sup>152</sup> For example, the audit revelations found that UNHCR had spent at least £161 million (about Shs 725bn) in Uganda in 2017 and accused of colluding with the OPM officials to mismanage refugee funds. Among the discoveries unearthed by the audit, is the handing of \$320,000 (about Shs 1.2bn) to OPM to buy land for refugee registration activities yet the government's own valuation was about Shs 520m.<sup>153</sup> The auditors concluded that the price paid for the "land was inordinately high" since the government's own valuer had valued the plot at just \$140,000 (Shs 520m).<sup>154</sup> The auditors discovered that OPM paid monthly allowances to 72 possible 'ghost' civil servants totaling \$283,000 (Shs 1bn) annually.<sup>155</sup> It was also discovered that OPM paid some temporary labourers \$147,000 (Shs 547m) in cash in 2017.<sup>156</sup>

There was evidence of inflation of refugee numbers. In fact after the biometric verification exercise done by Office of the Prime Minister (OPM) and UNHCR, the refugee numbers reduced from 1.4 million to 1.1 million by December 2018 meaning that there was an excess of 300,000 refugees.<sup>157</sup> The aid funds meant for these refugees were stolen by colluding agencies and OPM officials.

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<sup>150</sup> Ampurire, P. (2018), "UNHCR worries OPM refugee 'corruption' could erode donor trust", 10 February, *Soft Power News*, available at <https://www.softpower.ug/unhcr-worries-opm-refugee-corruption-could-erode-donor-trust/> (accessed on 5 May 2020).

<sup>151</sup> Kisakye, F. (2019), "Corruption: Germany joins UK, Japan in suspending refugee funding in Uganda", *The Observer*, 6 August, available at <https://observer.ug/news/headlines/61556-germany-joins-uk-japan-to-suspend-refugee-funding-in-uganda> (accessed on 5 May 2020).

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Office of the Prime Minister & UNHCR (2018), *Uganda comprehensive refugee response portal*, available at <https://ugandarefugees.org/en/country/uga>, (accessed on 19 January 2019).

Some of the top Uganda's refugee donor countries like Germany, UK and Japan suspended and others threatened to cut funding.<sup>158</sup> The Commissioner for Refugees and other staff were interdicted pending investigations and prosecution. The donor countries continue to accuse Uganda of slow response and action towards the accused officials.<sup>159</sup> Despite being a top refugee hosting country in Africa, Uganda's image has been affected by this corruption scandal<sup>160</sup> including the one of offices of refugees and the Commissioner. With this corruption scandal, the integrity and role of Uganda's refugee institutions have come into question and this has betrayed the spirit of the Act to protect refugees.

#### **4. Conclusion**

This article has argued that much as the 2006 Refugees Act has been praised world wide as being generally progressive and meets international protection standards, there is a gap with its implementation. This paper has analyzed this discrepancy by focusing on specific provisions of the Act. The insights in this article have policy and methodological implications. From a policy perspective, this paper has shown that a country may have a progressive law, but this may not necessarily be translated into practice. It is not uncommon for countries to have good policies but fail at implementation. In this case, the law will remain on paper but will not be seen on the ground. Implementation of refugee law may be affected by various political, economic, social, humanitarian and diplomatic factors. There is need to understand the factors that affect a country's implementation of its refugee law. This is crucial for understanding states' compliance with international, regional and national obligations of refugee protection. This can be used as a basis for engaging states to improve their legal regimes and implementation. This will in the long run assist in securing refugee protection in a world where the asylum space continues to dwindle.

From a methodological perspective, this study focused on Uganda's implementation of the Act. There is need for future research on other African countries' refugee laws and their implementation. This would help us compare Uganda with other African countries. Such a

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<sup>158</sup> Kisakye, "Corruption: Germany joins UK, Japan", op.cit.

<sup>159</sup> Ibid.

<sup>160</sup> Ampurire, P., "UNHCR worries OPM", op.cit.

comparative study is justified since developing countries including African states host the majority of the world's refugees. Such experiences can help us understand the plight of refugees and also be used as lessons for other states in the world.