RWANDAN REFUGEE RIGHTS IN UGANDA: ANALYSIS OF LAW AND PRACTICE

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Uganda is a host country to refugees from neighboring countries including Rwanda. According to UNHCR, by the end of 2015, Uganda was the 8th and 3rd top refugee hosting country in the world and Africa respectively. It hosted over 500,000 refugees. This number had increased to over 1 million by February 2017. Although Uganda has been praised worldwide as being friendly to refugees, its policy and treatment of refugees and asylum seekers has been inconsistent with international obligations. There is a discrepancy between the rights refugees are entitled to under international and municipal law, and the ones they enjoy in practice. This article analyzes this discrepancy. It focuses on specific rights like non-discrimination, life, asylum, liberty and security of person and the principle of non-refoulement. The paper inquires into the factors behind Uganda’s violation of refugee rights.

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According to UNHCR, “by the end of 2015, 65.3 million individuals were forcibly displaced as a result of persecution, conflict, generalized violence or human rights violations. Out of 65.3 million, 21.3 million persons were refugees, 40.8 million Internally Displaced Persons and 3.2 million asylum seekers.” Developing regions hosted 86% of the world’s refugees under UNHCR mandate.

The UNHCR’s Annual Global Trends report further notes that, by the end of 2015, Uganda was hosting more than 512,968 refugees and asylum-seekers, the highest number in the country’s history. Uganda has now become the 8th largest refugee hosting country in the world and the third largest refugee-hosting country in Africa. This number has increased to over 900,000 by December 2016. By February 2017, this number had increased to over 1 million. The majority of these refugees come from neighboring countries and the region like South Sudan, Democratic Republic of Congo, Burundi, Somalia, Rwanda, Kenya, Ethiopia and Eritrea among others. Out of all these refugees, by February 2016, Uganda was a host to around 17,176 Rwandan refugees.

Uganda is a party to international refugee and human rights law. Uganda is a party to the 1951 UN Convention and its 1967 Protocol and

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1 Out of the 21.3 million refugees, 16.1 million refugees are under UNHCR’s mandate and 5.2 are Palestinian refugees registered by United Nations Relief and Works Agency.
3 Ibid.
the 1969 OAU Convention on Refugees\textsuperscript{10} which form the international and regional refugee regime. Uganda has also ratified international human rights law\textsuperscript{11} including the 1948 Universal Declaration of Human Rights,\textsuperscript{12} the 1966 International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{13} the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)\textsuperscript{14}, the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,\textsuperscript{15} 1989 Convention on the Rights of the Child\textsuperscript{16}, 1979 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).\textsuperscript{17} Furthermore, Uganda is a state party to regional human rights instruments namely; 1981 African Charter on Human and People’s Rights (ACHPR)\textsuperscript{18}, the 1990 African


\textsuperscript{12}UN, \textit{Universal Declaration of Human Rights} (hereafter UDHR), adopted and proclaimed by the General Assembly Resolution 217A (III) of December 10, 1948.


Charter on Rights and Welfare of the Child (ACRWC)\textsuperscript{19} and 2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (also known as “Maputo Protocol”).\textsuperscript{20}

The above international refugee and human rights legal instruments have been domesticated with the enactment of the 2006 Refugees Act and other domestic human rights laws including the 1995 Constitution and Children’s Act. All these are aimed at protecting the rights of refugees and nationals. Refugee and human rights law further provides for state obligations towards refugees. “Under international law the government has a duty to ensure that the rights of refugees under those treaties are promoted, protected and fulfilled, where necessary”\textsuperscript{21}

Although Uganda has been praised as a generous and friendly country to refugees,\textsuperscript{22} this paper argues that this has not been the case with Rwandan new caseload refugees.\textsuperscript{23} This paper based on text interpretation of theoretical texts and research findings; found that Uganda has been unfriendly and hostile to them. This paper analyzes violations of selected rights: non-discrimination, right to asylum, right to life, liberty and security of person and the principle of non-refoulement. It will analyze the factors for the violation of Rwandan refugee rights.

This article is based on two research visits carried out at different intervals in Nakivale and Oruchinga settlements in south western Uganda. The first visit was June 2010 to December 2011. A second visit took place between June to August 2016. The study focused on Rwandan new caseload refugees that came to Uganda after 1994 and used a qualitative research methodology. Semi-structured and key informant interviews, Focus Group


\textsuperscript{23} 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 to early 1960s. The majority returned to Rwanda after the genocide while a significant number stayed in Uganda.
Discussions (FGDs), observation and documentary evidence were the main research techniques. Purposive criterion sampling was used to select the study respondents, namely Rwandan refugees, Rwandan and Ugandan government officials, UNHCR and NGOs officials, as well as local hosts around Nakivale settlement, Isingiro District. In addition, “recyclers” were identified through snowball sampling. 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 and, in general, avenues to find durable solutions. The analysis further makes use of legal sources and secondary data, both scholarly articles and grey literature.

The paper is structured as follows: The first section deals with the analysis of the law and practice with regard to Rwandan refugee rights. This is done by looking at the rights enshrined in the law and analyzing the actual practice. Subsequently the paper looks at the factors that explain Uganda’s violation of refugee rights. Lastly, it concludes with policy and methodological implications.

I. RWANDAN REFUGEES’ RIGHTS: ANALYSIS OF LAW AND PRACTICE

The discussion below looks at the provisions of refugee rights under refugee and human rights law and shows how these legal entitlements have

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24 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 5th FGD with 10 Rwandan refugees was organized in Oruchinga 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 Kampa.

25 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.

26 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.

27 These include: refugee and human rights law conventions, protocols and case law.
been violated in practice.

A. Non-discrimination

The obligation of states to guarantee the basic human rights and physical security extends to refugees and asylum-seekers on their territories. The Human Rights Committee expressly affirmed that all civil and political rights must be guaranteed by states without discrimination between citizens and aliens.28

The right of non-discrimination is provided for under various refugee and human rights law instruments. The 1951 UN Convention provides for non-discrimination of refugees as to race, religion or country of origin.29 The 1969 OAU Convention calls for non-discrimination of refugees as to race, religion, nationality, membership of a particular social group or political opinions.30 The Uganda 2006 Refugees Act also entitled a recognized refugee to “fair treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion”.31

International human rights law provides for the right of non-discrimination32, as does the Ugandan Constitution. It provides for non-discrimination on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.33

Despite the entitlement of Rwandan refugees to the right of non-discrimination, Uganda’s practice and handling of Rwandan refugees violates this right. Since 2009, Rwandan refugees were banned from cultivation and their food rations reduced. This coincided with the deadline for refugees to return, first on July 31, 2009 and later extended to August 31.

Amnesty International has argued that the ban on cultivation directly discriminates against Rwandan refugees on the grounds of nationality and as

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29 1951 UN Convention, Article 3.
30 1969 OAU Convention, Article 4.
31 Refugees Act, Article 29 (1c).
32 ICCPR: Article 12(1) and Article 26; ACHPR Article 2.
33 The 1995 Uganda Constitution (hereafter “Uganda Constitution”), Article 21 (2); Article 21(3) defines “discriminate” as “to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability”.

such violates Article 3 of the 1951 Refugee Convention.\textsuperscript{34} The ban on cultivation and reduction of food rations were meant to force Rwandan refugees to repatriate since there was a belief that they were not returning because of the “better conditions” in the settlement. Whatever the intentions of the above policies, it is to stop a particular refugee group, and not others, from cultivating and reduce their food ration amounts to discrimination against them on the account of their nationality.\textsuperscript{35}

Likewise, the International Refugee Rights Initiative, Refugee Law Project & Social Science Research Council argue that Rwandan refugees have been discriminated against. The report observes that reductions, denial of food rations and other humanitarian assistance to refugees without independent capacity for their own basic support violate the right of non-discrimination.\textsuperscript{36}

Courts and other judicial bodies have ruled on the principle of non-discrimination. The Constitutional Court in South Africa ruled that the exclusion of refugees from accessing social security was unfair discrimination contrary to international law.\textsuperscript{37} In another case, the African Commission on Human and People’s Rights in the case of Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea\textsuperscript{38}, found that a speech by the then President Lasana Conte made over national radio stating that Sierra Leonean refugees should be arrested, searched and confined to refugee camps resulted in widespread violence against them. The commission ruled that the presidential speech and the subsequent popular reaction had violated Article 4 of the 1969 OAU Convention and Article 2 of the African Charter on Human and People’s Rights which prohibit discrimination.\textsuperscript{39}

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\textsuperscript{35} Ibid.
\textsuperscript{39} Ibid.
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B. Right to Life

The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not to be unjustly killed by another human being. The ICCPR states inter alia that “every human being has the inherent right to life”40 and that “no one shall be arbitrarily deprived of this right”.41 Article 22 (1) of the Constitution of the Republic of Uganda also provides for the right to life.

However, there were cases of refugees being persecuted by their country of origin and murdered for political reasons. Fahamu Legal Aid Newsletter notes that the lives of Rwandan refugees in Uganda were in danger. It gives many examples of refugees killed in Uganda.42

Likewise leading refugee studies scholar and activist Barbara Harrell-Bond notes that on July 14, 2010, 1,700 Rwandans were forced at gunpoint and returned in Rwandan military lorries.43 In the process, two men jumped off trucks en route to Rwanda and died. Many refugees including children and pregnant women were injured while others escaped into the bush.44

Furthermore, forced repatriation of refugees may violate their right to life. This is because refugees are returned to their countries of origin where their lives may be in danger due to persecution, harassment, torture, imprisonment and murder. Uganda has been involved in forced repatriation of Rwandan refugees and asylum seekers as will be explained in subsequent sections. The African Commission on Human and People’s Rights ruled that forced repatriation of Sierra Leonean refugees violated the right to life.45

The International Justice Resource Center notes that “Additionally, both regional and domestic courts have interpreted the rights to life and freedom from torture to include a prohibition against refoulement. See R (on the application of) ABC (a minor) (Afghanistan) v. Sec’y of State for the Home Dep’t [2011] EWHC 2937 (Admin) (UK); ECtHR, Case of M.S.S v. Belgium and Greece [GC], No.30696109, ECHR 2011, Judgment of 1

40 ICCPR, Article 6(1).
41 Ibid.
44 Ibid.
45 See Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea; see ACHPR, Article 4 provides for the right to life.
C. Liberty and Security of Person

The right to personal liberty is one of the most fundamental human rights as it affects the vital elements of an individual’s physical freedom. The Universal Declaration of Human Rights provides for the right to liberty and security of person. Under the ICCPR, which gives it the broadest meaning, the right to personal security is understood as the right to the protection of the law in the exercise of the right to liberty. This means that the right to security extends to situations other than the formal deprivation of liberty. For instance a state may not ignore a known threat to the life of a person under its jurisdiction; it has an obligation to take reasonable and appropriate measures to protect that person. In the same vein, this right is also laid down in the African Charter on Human and People’s Rights.

At the domestic level, Article 23(1) of the Constitution of Uganda provides that no person shall be denied personal liberty except by an order of a court, upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda, for preventing the spread of an infectious disease and for education or welfare of a person below the age of eighteen years.

Rwandan refugees in Nakivale settlement have been targets of abortive and successful assassinations, arrests, detentions, abductions and disappearances. This has put the lives of Rwandan refugees in danger in violation of their right to liberty and security guaranteed under domestic and international law.

There were reports and claims in Nakivale of Rwandan agents who sometimes come to Uganda to spy on or to kidnap refugees. Harrell-Bond pointed out the issue of a Rwandan spy network and abductions of Rwandan refugees in Uganda. She notes that the Rwandan Patriotic Front (RPF), in

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47 Article 3 states that “Everyone has the right to life, liberty and security of the person”.
49 Article 6 states that “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”.

collaboration with Ugandan military and police, has been engaged in abductions of any Rwandan suspected of collaborating with the Hutu militia, the Interahamwe.\textsuperscript{50} For example, the Ugandan Human Rights Commission publicly condemned the External Security Organisation (ESO) and the Internal Security Organisation (ISO) for collaborating with the Rwandan intelligence to abduct Rwandan Hutu refugees from Uganda.\textsuperscript{51}

Amnesty International also raised this issue and called “attention to these same cases of abduction and deportation, arbitrary arrest and extrajudicial execution of Rwandan nationals within Uganda”.\textsuperscript{52} Today, these abductions and executions of Rwandan refugees continue to be reported by Ugandan newspapers.\textsuperscript{53} Examples of Rwandan refugees who have been abducted include Joel Mutabazi, Oliver Sebakara, Protais Hakizimufura and Innocent Kaliisa among others. Examples of those executed include, Charles Ingabire and Jerome Ndagijimana to mention but a few.\textsuperscript{54}

Domestic and regional courts have ruled that forced repatriation of refugees and asylum seekers is a violation of the right to liberty and security of person. For example, in the Haitian Centre for Human Rights etc. v. United States case, the Inter American Commission on Human Rights ruled that “The United States has breached the ‘right to liberty’ contained in Article 1 of the American Declaration with regard to Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo and unnamed Haitian interdictees”.\textsuperscript{55} This was after the United States forcefully repatriated Haitian asylum seekers back to Haiti.

In the same spirit, in the Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission Internationale des juristes, Union interafricaine des droits de l'Homme v.
Rwanda case, the African Commission on Human and People’s Rights ruled that “The arrests and detentions of the Rwandan Government based on grounds of ethnic origin … constitute arbitrary deprivation of the liberty of an individual. These acts are clear evidence of a violation of Article 6”. According to the above case law, the arrest, detention, forced return or expulsion of Rwandan refugees and asylum seekers in Uganda violates their right to liberty and security of person.

D. Right to Asylum

Human rights and refugee law provides for the right to seek asylum from persecution. The Universal Declaration of Human Rights and African Charter on Human and People’s Rights provide for the right to asylum. The host state has an obligation to grant refugee status to people with well founded fear of persecution. However a good number of Rwandan asylum-seekers were denied refugee status in Uganda. Reports of refugees’ limited options of getting refugee status are confirmed by other sources. In fact the forced return of Rwandan asylum-seekers on July 14, 2010 involved what the Uganda government called “rejected asylum-seekers”, Rwandans who had no well founded fear of persecution. These deported Rwandans were never given a chance to appeal the Refugee Eligibility Committee decision that denied them refugee status.

The forced repatriation of Rwandan refugees as evidenced by deportations, deadlines to return, ban on cultivation, reduction of food rations and impending cessation of refugee status are all an indication of the denial of the right to asylum. Courts have stated that forced repatriation of refugees without an opportunity for a fair hearing or appeal is a violation of the right to seek asylum. In the Organisation mondiale contre la torture,
Association Internationale des juristes démocrates, Commission Internationale des juristes, Union interafricaine des droits de l'Homme v. Rwanda case, the African Commission on Human and People’s Rights stated that Rwanda had violated the right to asylum by expelling Burundian refugees.62

The 1997 Case of the Haitian Centre for Human Rights etc. v. United States found that the United States had violated the right to seek asylum for the deported Haitian asylum seekers. Paragraph 188 states that “The United States has breached the right to seek and receive asylum as provided by Article XXVII of the American Declaration”. It was further noted that the United States had breached the right to resort to the courts of law for the deported asylum seekers. In line with this case law, Uganda seems to have violated the right to seek asylum of Rwandans who were forcefully returned to Rwanda and were denied the right of appeal to complete their refugee status claims up to the end.

E. The Principle of Non-refoulement

According to Goodwin-Gill and McAdam, “The international legal status of the refugees necessarily imports certain legal consequences, the most important of which is the obligation of states to respect the principle of non-refoulement through time”.63 Refugee and human rights law provides for the right of non-refoulement for refugees who have well-founded fear of being persecuted in their countries of origin.

Furthermore, the right of non-refoulement is provided for in the 1951 Convention and is also contained in the 1967 Protocol and ostensibly protects recognized refugees from being expelled from countries that are signatories. Article 33(1) of 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.64 The African Charter on Human and People’s Rights prohibits mass expulsion of non-nationals.65 The 1969 OAU

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64 The principle of non-refoulement is international customary law and it applies to all states regardless of whether or not they have ratified the 1951 UN Convention.
65 Article 12(5) provides that “the mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups”.

Convention makes reference to the right of non-refoulement. By putting emphasis on voluntary repatriation, the convention outlaws any attempts at forcing refugees to return home where they have well-founded fear of being persecuted. Voluntary repatriation essentially emphasizes the principle of non-refoulement. At the domestic level, the 2006 Uganda Refugees Act also provides for non-refoulement.

According to UNHCR, ensuring the voluntary nature of repatriation includes the following:

- The decision to repatriate is made freely.
- The refugees are making an informed decision based on an accurate country profile.
- The decision is made expressly.

In other words, voluntariness means that there should be no pressure on the refugee to repatriate.

This was not the case with Rwandan refugees in Uganda. As already explained, Rwandan refugees have since 2009 been banned from cultivation and their food rations were reduced. They have been issued with several deadlines to return in 2009, 2011 and 2013. 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. The refugees are forced to make a decision to return even when they are not willing to return or have well-founded of persecution. Although Uganda has not been strict with these deadlines, a number of Rwandan refugees chose to return for fear of consequences arising out of not returning. Also, in October 2007 and July 2010, Uganda forcefully returned Rwandan refugees and asylum seekers contrary to the principle of non-refoulement.

Furthermore Rwandan refugees also face the possibility of invocation of the cessation of refugee status as recommended by UNHCR in December 2011. It is very clear that the threats of declaration and implementation of the cessation clause violates refugee rights and undermines the voluntary

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66 Article V (1) states that “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”.
67 Section 42 (1) states 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 …”. 
nature of repatriation. In circumstances where refugees are not given optional durable solutions like local integration or resettlement, invocation of cessation of refugee status means forced repatriation to Rwanda.\textsuperscript{70}

Domestic and regional courts have noted that refoulement of refugees is a violation of fundamental human rights. In the Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission Internationale des juristes, Union interafriqueaine des droits de l’Homme v. Rwanda case, the African Commission on Human and People’s Rights in para. 33 stated that “There is ample evidence in this communication that groups of Burundian refugees have been expelled on the basis of their nationality. This constitutes a clear violation of Article 12(5) of the African Charter”. The African Commission on Human and People’s Rights found that Guinea violated Article 12(5) that prohibits mass expulsion of non-nationals and right of non-refoulement in the Institute for Human Rights and Development in Africa (on behalf Sierra Leonean refugees in Guinea) v. Guinea 2004 case.

Despite the above legal provisions and case law on non-refoulement, states continue to violate this principle. States forcefully return refugees and asylum seekers to places and countries where they have well-founded fear of being persecuted. Uganda has violated this right for Rwandan refugees and asylum-seekers.\textsuperscript{71}

II. WHY VIOLATION OF RWANDAN REFUGEES’ RIGHTS?

A. Refugees as Actors in International and Regional Politics

Refugee movements can have an influence on interstate relations. During the post-Cold War period, due to the changing nature of conflicts, refugees sometimes became active participants in wars. Refugees are

\textsuperscript{70} Ahimbisibwe Frank, The Host State and Refugee Security in Uganda; Amnesty International, Memorandum to the Government of Uganda; Interview with a Protection Officer, Centre for Refugee Rights, Mbarara on 1 July 2016.

therefore no longer only seen as victims but as a security threat. For example, the hosting of millions of Hutu refugees mixed with former genocidaires and Interahamwe by the Zairian government in the Eastern side of the country greatly affected the relations between the two central African neighbors resulting in the war that overthrew Mobutu’s regime. Burundi and Tanzania had problems in their relationship because of the latter’s hosting the former’s refugees who were a security threat. Loescher et al. noted that protracted refugee situations can influence diplomatic relations between states.

Long-standing refugee populations can place additional strain on diplomatic relations between host states and the refugees’ country of origin. The prolonged presence of Burundian refugees in Tanzania, coupled with allegations that anti-government rebels were based within the refugee camps, led to a significant breakdown in relations between the two African neighbors from 2000 to 2002. The prolonged presence of Myanmar refugees on the Thai border has been a frequent source of tension between the governments in Yangon and Bangkok. Similarly, the elusiveness of a solution for the Bhutanese refugees in Nepal has been a source of regional tensions, involving the host state and the country of origin, as well as regional powers such as India.

Alexander Betts and Gil Loescher further discuss the agency of refugees in international and regional politics that. During the Cold War, superpowers supported combatants to fight in the proxy wars in developing countries. Also the colonial liberation wars were often waged by nationalist groups in exile. For example, the African National Congress (ANC) in parts of Southern Africa in the 1970s and 1980s, the Nicaraguan Contras in Honduras in the 1980s and the Rwandan Patriotic Front (RPF) in Uganda from the 1970s until the early 1990s. Refugee camps have also been used as sanctuaries and bases for combatants. For example, after the 1994


73 Loescher Gil et al., Protracted Refugee Situations and the Regional Dynamics of Peace Building, 7(3) CONFLICT, SECURITY AND DEVELOPMENT 494 (1 October, 2007), available at http://dx.doi.org/10.1080/14678800701556602 (last visited October 20, 2016).

Rwandan genocide in 1994, Hutu Interahamwe sought refuge in the camps of Eastern Democratic Republic of Congo (DRC). This can make refugees “spoilers” in peace processes.\(^7^5\)

Rwanda regards all the refugees outside her territory as either enemies or potential ones given the history of the RPF’s struggle that started in refugee camps in Uganda. President Kagame formerly a refugee in Uganda knows the potential of refugees in fueling cross border conflicts. Rwanda has therefore made the repatriation of Rwandan refugees in neighboring countries one of her top foreign policy objectives. A lot of effort and resources have been invested in having all her nationals return to Rwanda whether by force or not as a strategic move to prevent current and future security threats.\(^7^6\)

Uganda therefore has found herself in a dilemma where she has to choose between the obligations to protect refugees or the political-diplomatic interests of Rwanda. Uganda has chosen the latter and this has put the rights of Rwandan refugees at risk.\(^7^7\) The two countries cooperate in forced return operations. These actions and policies are meant to maintain good bilateral relationships which had been fluctuating in the recent past. A senior government official in the Office of the Prime Minister noted:

Certainly the relationship between the two countries has an impact on refugees. It is incumbent upon the host to determine the nature of the situation. It is like your wife running away to your neighbor that you are battering her. Obviously you must go to your neighbor and demand the return of your wife. Certainly Uganda is under pressure from Rwanda to encourage and support the return of Rwandan refugees.\(^7^8\)

For example in the October 2007 and July 2010 forced return operations of Rwandan refugees and asylum seekers, it is said that Rwanda provided the logistical support including trucks and lorries for transporting the returnees.\(^7^9\) In the 1996, Tanzania found herself in the same dilemma and it forced the majority of Rwandan refugees to return to Rwanda. This

\(^7^5\) Ibid.
\(^7^6\) International Refugee Rights Initiative, Refugee Law Project & Social Science Research Council, A Dangerous Impasse; Ahimbisibwe Frank, The Host State and Refugee Security.
\(^7^7\) Although the relations between the two countries were poor around 1999 to the early 2000, they have since improved at least on the surface.
\(^7^8\) Interview with the Commissioner for Refugees, OPM, Directorate of Refugees, Kampala on August 27, 2016.
\(^7^9\) On July 14, 2010, the author saw cars with Rwandan number plates accompanying trucks carrying Rwandan refugees and asylum seekers.
was done partly to maintain good relations between Tanzania and Rwanda.\(^{80}\)

**B. Refugee Militarization**

According to Muggah and Mogire, refugee militarization refers to “the involvement of individual (or groups of) refugees and/or exiles (diaspora) in militaristic activities within and outside refugee camps. These activities can include political violence, military training, explicit or tacit support for combatants and armed resistance”.\(^{81}\) While there is no clear evidence involving Rwandan refugees in Uganda in militarization, Rwanda at one time accused Uganda of arming the refugees living in Kibati zone of Nakivale settlement. According to Human Rights First,

In January 2003, newspaper reports began circulating that a Congolese rebel had arrived in Rwanda claiming that the Ugandan government was training 500 anti-Rwanda rebels in Nakivale and another 1,500 in Kyangwari camp in Masindi (the second largest concentration of Rwandan refugees in Uganda).\(^{82}\)

Furthermore, there were accusations in early 2003 that there were interahamwe in Uganda. This prompted the Rwandan government to seek permission to inspect Oruchinga and Nakivale refugee camps on allegations that dissidents were allowed to train from there. On March 11, there were rumors of massive deployment on the border with Uganda, which was denied by Rwanda but it confirmed that it would defend its security interests.\(^{83}\)

Rwanda continued to issue threats that it would attack Kibati in Nakivale and forcefully repatriate the Rwandan refugees. Earlier in 1996, Rwanda issued the same threats and intervened in the DRC (former Zaire) and killed and forcefully returned Rwandan refugees. While the accusations of the militarization of this refugee group could not be substantiated, there was a possibility that the continued presence of these refugees in Kibati,

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\(^{81}\) Robert Muggah & Edward Mogire, *Arms Availability and Refugee Militarization in Africa: Conceptualizing the Issues* in Muggah Robert, No Refuge: The Crisis of Refugee Militarization in Africa (London & New York, Zed Books, 2006, 7); Muggah and Mogire define a related concept of “refugee camp militarization” as “the combination of military and armed attacks on refugees within camps; the storage and diffusion of weapons, military training and recruitment; the presence of armed elements, political activism and criminal violence within camps; and the exploitative use of relief/development resources by non-refugee residents and their dependents”.


\(^{83}\) Human Rights First, *A Decade of Unrest*, at 24.
Nakivale was seen as a potential group that could be recruited for military activities by groups opposed to Rwanda like the Democratic Forces for the Liberation of Rwanda (FDLR). For example during the data collection exercise in Nakivale settlement, the author and the research team were told of stories of young Rwandan refugee men disappearing for military activities in the DRC. Uganda’s decision to forcefully repatriate the Kibati Rwandan refugees in October 2007 could have come as a result of the accusations by Rwanda that Uganda was arming this group. Uganda therefore had to prove that she was not interested in this refugee caseload for any military activities by expelling them from her territory.

C. Protracted Refugee Situation of Rwandan Refugees

In 2003 the Uganda government signed a tripartite agreement with Rwanda and UNHCR to repatriate some 25,000 Rwandan refugees. The agreement stressed the voluntary nature of return in safety and dignity. However, around late 2004, Uganda got concerned about the slow pace of the repatriation exercise as the majority of the refugees remained adamant in their refusal to return. Uganda government ministers dealing with refugees are reported to have issued threats telling Rwandan refugees to return home.

Over time, the Ugandan government realised that the Rwandan refugee situation was not to end soon as more refugees kept on coming up to the present period.

As Kabwegyere said,

If Rwandan refugees insist, we shall chase them or they can contact UNHCR so that they are relocated elsewhere. This is the government position, UNHCR knows about it and they should arrange with Rwandan refugees and take them to another country. This is not a holiday camp. These people were told that the

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85 Ibid.


87 Kabwegyere Tarsis is the former Ugandan Minister for Refugees and Disaster Preparedness.
conditions [in Rwanda] were conducive for them to go back home.\textsuperscript{88}

This statement by the Ugandan Minister revealed the impatience of the Ugandan government towards the Rwandan refugees. One respondent said that

These forced repatriations of Rwandans in Uganda reveal the frustration of host countries on hosting refugees without a durable solution to them. Hosting refugees is associated with economic, environmental, political and security burdens. States cannot bear these burdens permanently and they resort to measures like forced repatriations and other human rights violations. Uganda just like other countries cannot host permanent refugees.\textsuperscript{89}

Gil Loescher and others\textsuperscript{90} have written extensively on the human rights implications associated with protracted refugee situations. They have argued that states tend to violate rights of refugees trapped in protracted displacement like forced repatriation, encampment and restricting freedom of movement among others. This is the reality in which Rwandan refugees find themselves in Uganda.

\textbf{D. Domestic Security Concerns}

Another possible explanation for the violation of Rwandan refugee rights is domestic security concerns. James Milner makes a distinction between direct and indirect security threats posed by refugees on the host countries.

First there are direct threats from “refugee warriors” and armed exiles causing a “spill-over” of conflict … The direct threat, posed by the spill-over of conflict and refugee warriors, is by far the strongest link between forced migration and conflict. Secondly, there are indirect threats posed by refugees through altering either the levels of “grievance” or the “opportunity structure” in a country of asylum.\textsuperscript{91}

From Milner’s analysis, direct security threats come as a result of refugee warriors and armed exiles engaging in rebel and military activities on the territory of the host state. This brings in retaliation from the country

\textsuperscript{88} IRIN, RWANDA-UGANDA: REFUGEES FACE HUNGER AS FARMING BAN BITES (March 18, 2010).
\textsuperscript{89} Interview with a Protection Officer, Centre for Refugee Rights, Mbarara on 1 July 2016.
of origin in attempts to neutralize the security threats posed by the armed refugee groups. Examples include the Rwandan invasion of Zaire in 1996 to neutralize the Interahamwe and ex-FAR living in refugee camps, Burundian bombing of refugee camps in Western Tanzania to neutralize Hutu rebels and Sudanese bombing of parts of Northern Uganda in trying to fight elements of the Sudanese People’s Liberation Army (SPLA) living in refugee camps. Among indirect security threats are refugees’ involvement in crimes like theft, resource based conflicts, competition for employment with the nationals among others.  

Rwandan refugees have been involved in land conflicts with other refugee nationalities (mainly Congolese) and local hosts in Nakivale settlement. These land conflicts have caused tensions and have led to general insecurity in and around the settlement. According to the research findings, Rwandan refugees and asylum seekers were pointed out as part of the groups causing insecurity through their involvement in theft, domestic violence, fighting and murder.

Perhaps the forced return of 1,700 Rwandan asylum seekers in 2010 could have partly been influenced by the fact that this group was a security threat in the settlement as they had been implicated in many criminal cases. For example, in 2010 a Rwandan refugee stole a gun from Juruj police post in Nakivale settlement. After a few weeks this stolen gun was found in Bushenyi, roughly 100 kilometers from Nakivale settlement. Part of the explanation why these asylum seekers were involved in criminal activities like theft was that they did not have any assistance from UNHCR and her implementing partners since they were not yet recognized as refugees. They were therefore on their own and had to look for their own survival.

E. The View that Rwanda Is “Peaceful”

According to Beth Elise Whitaker, one of the explanations for the
forced repatriation of Rwandan refugees from Tanzania in 1996 “was the adoption by policy makers of the view that the security situation within Rwanda had improved. Rwandans no longer had a legitimate claim to refugee status because the disturbances to public order at home had ended”.\(^9\) She further argued that “… the international community largely accepted the argument that peace and stability had been restored to Rwanda, and thus it was safe for the refugees to return home”.\(^9\) This is the view shared by UNHCR and the majority of neighboring countries including Uganda. The international community believes that the majority of Rwandan refugees fled because of the 1994 genocide, but that after close to 20 years, refugees cannot claim that they have well-founded fear of genocide.\(^1\) This is the view that has influenced Uganda’s policy towards Rwandan refugees.

However, this view is myopic and does not look at the bigger picture of the social-economic and political conditions in Rwanda. A number of reports by scholars, agencies and organizations have questioned the human rights situation inside Rwanda as a number of politicians, journalists and Rwandans continue to be harassed, especially those who dare oppose the government. The government remains hostile to its critics both inside and outside Rwanda.\(^2\) In other words, the end of the genocide and absence of generalised violence that characterised Rwanda between 1990 and 1998 does not mean that the country is automatically peaceful and secure. As refugees argued, there is a “silent war” going on in Rwanda that is not

\(^9\) Ibid.
\(^1\) Because of this view, in 2011, the UNHCR put in place a Comprehensive Strategy for the Rwandan Refugee Situation (there after the Comprehensive Strategy) that had as an important component the elaboration of a common schedule leading to the cessation of refugee status initially foreseen to commence as of 31 December 2011(UNHCR 2011: 1), later postponed to 30 June 2013 and suspended till further notice. After the 2016 UNHCR Executive Committee meeting in Geneva, the new proposed date for implementation of the cessation clause is December 2017. The Cessation Clause, when invoked, puts an end to refugee status and thus international protection. Rwandans would become illegal immigrants under the 1999 Uganda Citizenship and Immigration Act (UCIA) and therefore deported back to Rwanda.
acknowledged by the international community.  

F. The View that these Are not Refugees but Economic Migrants

A Uganda government official dealing with refugees observed that Rwandan refugees have been forced to return because they are considered economic migrants. The official noted that the Rwandans are running away from Rwanda because they are looking for vacant land in Uganda. This view maintains that since Rwanda is a small country it is not able to accommodate everybody and give them land. Rwanda has gone through a violent past and this has caused multiple displacements. People have claimed the same land especially when returnees go home.

This view influenced Uganda’s decision to ban all cultivation for Rwandan refugees in Nakivale and prohibit their farming activities. The question however is whether the Rwandans returned because of the ban on land access and cultivation activities. This policy has been enforced since 2009 and one would have expected the return of refugees since they lost the land that attracted them. But the majority of the Rwandan refugees still remain in the settlement without any interest in returning home. Furthermore, Rwandans owning land at home have sought refuge in Uganda too. A refugee noted: “I have land and shops in Rwanda but I left them and came here in Nakivale. The argument that we are here because of land is not true. Some of us were rich in Rwanda but the harassment became intolerable and we decided to flee”. Another refugee concurred: “I left my land back home. I had cows, cars and money. I was not a poor person in Rwanda. I was harassed, accused of genocide ideology and imprisoned. But the main reason for the harassment is that I did not support the RPF in the 2010 elections and they accused me of being a traitor”. During data collection I even met former government Tutsi Rwandan asylum-seekers and refugees. People like these cannot be considered economic migrants looking for land and other economic opportunities. This therefore falsifies the view that all Rwandan refugees are economic migrants. While it is possible that some refugees are in Uganda because of lack of land and related conflicts, there is need to look beyond the issue of land and analyze the socio-political conditions inside Rwanda.

102 Interviews with Rwandan refugees and asylum-seekers in Nakivale and Oruchinga settlements, June to August 2010 and June to August 2016.
103 Interview with a Uganda Government Official, OPM, Mbarara on 27 August 2016.
104 Interview with a refugee man, Sangano Base Camp, Nakivale settlement on 15 June 2016.
105 Interview with a refugee man, Juru zone, Nakivale settlement on 14 July 2016.
CONCLUSION

This article has argued that much as Uganda has been praised worldwide as being friendly and hospitable to refugees, its policy and treatment of Rwandan new caseload refugees have been inconsistent with international obligations. The paper has shown that there is a gap between the rights they are entitled to under refugee and human rights law and the ones they can practically enjoy.

The article further analyzed the factors behind Uganda’s practice. These were the agency of refugees, refugee militarization, domestic security concerns, protracted refugee situation, the view that Rwanda is peaceful and that refugees are economic migrants.

The insights in this article have policy and methodological implications. From a policy perspective, this paper has shown that Uganda’s refugee policy making is affected by political, diplomatic and security interests. This means that refugee rights are affected by a country’s national interests. There is therefore need to address the interests of states for effective and appropriate protection of refugee rights. Milner has argued that any system to protecting refugees must be mindful of the needs of states. There must be the realization that states have limits and interests. We need to cater for states’ security interests since security remains a core national concern.106

One way would be burden sharing where the international community works closely with host states especially in the global south that host three quarters of the world’s refugees. Areas of cooperation can be supporting states in protecting rights of refugees through direct support to state institutions dealing with refugees like ministries of refugees, police and local governments. This can be done through police training in refugee and human rights law, strengthening the rule of law in refugee hosting areas, supporting justice initiatives to refugees, disarming and separating armed elements from genuine civilian refugees and maintaining the civilian and humanitarian character of asylum. There is need to address indirect security threats associated with refugees by promoting co-existence, harmony and good relations between refugees and local hosts. With the increasing xenophobia against “foreigners” in refugee hosting countries in the global south, attention should focus on working with states to make refugees more acceptable in the host communities. Such initiatives can include joint projects and sharing of resources and services like schools, health centers,

In all these initiatives and interventions, the active role of UNHCR and civil society organizations is required for the promotion and protection of refugee rights.

From a methodological perspective, this study focused on Uganda’s violation of Rwandan refugee rights and the factors behind its practice. There is need for future research on Uganda’s responses and treatment of other refugee nationalities like South Sudanese, Burundians, Congolese and Somalis. Has Uganda practiced an open door policy to other refugee nationalities? Has Uganda been hostile to other refugee nationalities? What are the factors at play in explaining Uganda’s response? Studies should also be undertaken to compare Uganda’s treatment of the different refugee nationalities. On a broader level, comparative studies are needed on the way other countries in the region and across Africa deal with the challenge of hosting large numbers of refugees close to the border of their countries of origin. These studies will help us reach a conclusion whether Uganda is hospitable or hostile to refugees.

UNHCR and OPM are already implementing similar projects and initiatives in Nakivale and Oruchinga refugee settlements. During data collection, I observed schools, vocational institute, health centers, water sources and markets that were jointly used by the refugees and local hosts.