

**THE HUMAN RIGHTS DIMENSIONS OF REFUGEE STATUS
DETERMINATION PROCEDURES IN UGANDA:
A CRITICAL ANALYSIS OF THE RIGHT OF ASYLUM SEEKERS
TO A FAIR HEARING**

By

SARA T. Beraki (LL.B)

Reg. No: 2005/HD09/3829

Stud. No: 205020843

**A DISSERTATION SUBMITTED TO THE GRADUATE SCHOOL IN
PARTIAL FULFILLMENT FOR THE AWARD OF THE MASTER
OF LAWS (LL.M) DEGREE OF MAKERERE UNIVERSITY**

MAY, 2009

DECLARATION

I, **Sara Teklebrhan Beraki**, hereby declare that this dissertation is original and has never been published or submitted for any other ward to any other institution before. I also declare that any secondary information used in this dissertation has been dully acknowledged.

Signature_____ Date_____

This dissertation was submitted to the School of Graduate Studies of Makerere University for examination with the approval of the following supervisors:

1. J. Oloka-Onyango,

Signature_____ Date_____

2. Henry M. Onoria,

Signature_____ Date_____

© 2009 by Sara T. Beraki
All Rights Reserve

DEDICATION

I am dedicating this dissertation to Deutscher Akademischer Austausch Dienst (DAAD) – German Academic Exchange Service - that sponsored my postgraduate study. I am immensely privileged and honored to receive DAAD scholarship award in such a very crucial time in my life. It would have been very difficult to accomplish my Master of Laws (LL.M) Degree at this time without your financial help. For your support and encouragement I am dedicating this dissertation to you.

Long live DAAD!

ACKNOWLEDGEMENT

It would have been extremely difficult to accomplish this dissertation without the professional guidance of my supervisors and the moral and financial encouragement and support from my family and friends. I am deeply grateful to my first supervisor Prof. Joe Oloka-Onyango who skillfully and tirelessly directed me throughout my work and my second supervisor Dr. Henry M. Onoria whose guidance and encouragement enabled me to complete the study. I would like to extend special thanks to both of you.

My special thank also go to all those who contributed to the accomplishment of the study in various ways, professionally and materially, namely Mr. Zachary Lomo, Mr. Musinguzi Bernard, Ms. Oyella Vivian, Rev. Fr. Pontiano Beetunguura and Ms. Grace Nakasi. I would also like to thank the institutions which played a major role as a source of information and encouragements which include the Faculty of Law of Makerere University, Office of the Special Branch Police, Office of the Prime Minister (OPM) Directorate of Refugees, Human Rights and Peace Center, the Library of the Refugee Law Project, School of Graduate Studies of MUK, and the DAG Hall Community.

I also deeply thank my beloved husband Mr. Awet Haile Okba, whose love, care, and professional advice enabled me to complete this dissertation, and my first born daughter Absera Awet Haile whose smile and laugh filled me with joy and energy to work hard.

Moreover, I would like to thank my late father, Mr. Teklebrhan Beraki and Mother, Mrs. Tinsue Adhanom who selflessly supported and molded me to reach this level.

Thank You Very Much All!!!

ABBREVIATIONS

- ACHR** African Commission for Human Rights
- ACHPR** African Charter on Human and People's Rights
- CARA** Control Alien Refugees Act
- CAT** Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- CRC** Convention on the Rights of the Child
- ECHR** European Convention for the Protection of Human Rights and Fundamental Freedoms
- ECRE** European Council on Refugees and Exiles
- EU** European Union
- ExCom** UNHCR Executive Committee
- ICCPR** International Covenant on Civil and Political Rights,
- ICESCR** International Covenant on Economic Social and Cultural Rights
- JRS** Jesuit Refugee Services
- OHCHR** Office of the High Commissioner for Human Rights
- OPM** Office of the Prime Minister
- OAU** Organization of African Unity
- OAUC** OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
- REC** Refugee Eligibility Committee
- RLP** Refugee Law Project, Faculty of Law, Makerere University
- RSD** Refugee Status Determination
- UDHR** Universal Declaration of Human Rights, 10 December 1948

UN United Nations

UNHCR United Nations High Commissioner for Refugees

TABLE OF CONTENTS

DECLARATION	II
DEDICATION	III
ACKNOWLEDGEMENT	IV
ABBREVIATIONS	V
TABLE OF CONTENTS	VII
WORKING DEFINITIONS	IX
ABSTRACT	X
CHAPTER ONE.....	1
GENERAL OVERVIEW OF THE STUDY	1
1.1 BACKGROUND TO THE STUDY.....	1
1.2 STATEMENT OF THE PROBLEM.....	9
1.3. OBJECTIVES OF THE STUDY	10
1.4. CONCEPTUAL FRAMEWORK	11
1.5. RESEARCH METHODOLOGY AND THE SCOPE OF THE STUDY.....	12
1.6. LITERATURE REVIEW	13
CHAPTER TWO.....	19
APPLICABILITY OF HUMAN RIGHTS LAW IN REFUGEE STATUS DETERMINATION PROCEDURE.....	19
2.1. THE NEXUS BETWEEN HUMAN RIGHTS LAW AND REFUGEE LAW	19
2.2 THE CONCEPT OF FAIR HEARING IN THE CONTEXT OF RSD PROCESS.....	21
2.3 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS	25
2.4. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.....	27
2.5 THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS	35
2.6 CONCLUSION	40
CHAPTER THREE.....	43
REFUGEE STATUS DETERMINATION PROCEDURE IN UGANDA	43
3.1 THE RIGHT TO FAIR HEARING OF ASYLUM SEEKERS IN THE UGANDAN RSD PROCESS	43
3.1.1. <i>The Constitution of Uganda</i>	43
3.1.2. <i>Right to Fair Hearing under the Ugandan Refugee Law</i>	45
3.2. THE CURRENT PROCEDURE OF APPLICATION FOR REFUGEE STATUS	52
3.3. INDIVIDUAL REFUGEE STATUS DETERMINATION BY THE REC	55
3.4. AFTER THE DECISION OF REFUGEE STATUS	59
3.4.1. <i>Notification of Decisions</i>	59
3.4.2. <i>The Problem of obtaining a Refugee Identity Card</i>	60
3.4.3. <i>The Process of Referring Refugees to the Settlement Camps</i>	63
3.5. ASYLUM SEEKERS’ LIVELIHOOD DURING RSD.....	65
3.6 THE MINIMUM BASIC REQUIREMENTS OF PROCEDURAL FAIRNESS VIS-À-VIS THE PRACTICE IN UGANDA.....	68
3.6.1 <i>The Right to Information Regarding the Procedures to be followed</i>	69
3.6.1.1 <i>International Refugee Law Standards on Right to Information</i>	69
3.6.1.2 <i>The Practice in Uganda</i>	70
3.6.2. <i>The Right to a Competent Interpreter</i>	74
3.6.2.1. <i>International Standards on the Right to a Competent Interpreter</i>	74
3.6.2.2. <i>The Practice in Uganda</i>	75
3.6.3 <i>The Right to an Oral Hearing</i>	78
3.6.3.1 <i>The Practice in Uganda</i>	78

3.6.4 <i>The Right to Legal Counsel and Representation</i>	79
3.6.4.1. <i>International Standard</i>	80
3.6.4.2 <i>The Practice in Uganda</i>	81
3.6.5. <i>Written Reasons for Rejection</i>	82
3.6.5.2 <i>The Practice in Uganda</i>	84
3.6.6 <i>The Right to Independent Appeal</i>	85
3.6.6.1 <i>International Standards on the Right to Independent Appeal</i>	86
3.6.6.2 <i>The Practice in Uganda</i>	88
3.7 CONCLUSION	88
CHAPTER FOUR	91
MAJOR CHALLENGES TO THE REFUGEE STATUS DETERMINATION PROCEDURE	91
4.1 AN OVERVIEW OF THE MAJOR CHALLENGES	91
4.2 THE PROBLEM OF POLITICIZING THE PROTECTION OF REFUGEES	94
4.3 ROLE OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN THE PROTECTION OF REFUGEES	97
4.4 CONCLUSION	98
CHAPTER FIVE	99
CONCLUSION	99
BIBLIOGRAPHY	102

WORKING DEFINITIONS

A) ‘Applicant/s or asylum seeker/s’ means foreign country national or a stateless person who applied for protection from a country of asylum, seeking refugee status according to Geneva Convention;

B) ‘Country of origin’ means the country or countries of nationality or, for stateless persons, of former habitual residence;

C) ‘The Geneva Convention’ means the Geneva Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951,

D) ‘The Protocol’ means the New York Protocol to the 1951 Geneva Convention, of 31 January 1967

E) ‘Refugee’ means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 1F of the 1951 Geneva Convention does not apply;

F) ‘Refugee status’ means the recognition by country of asylum of a third country national or a stateless person as a refugee.

Abstract

Refugee Status Determination (RSD) has a central role in the protection of persons who are forced to flee their home countries owing to persecution. The identification of genuine applicants involves making decisions which may have life saving implications. Granting refugee status to genuine applicants promotes the right to life which is the most important aspect of human rights. On the other hand, wrong decisions during refugee status determination have the risk of exposing asylum seekers' life into a great danger. The dissertation discusses the relationship between international and regional human rights law and municipal law relating to the rights of refugees in Uganda, with particular emphasis to the right to a fair hearing during the Refugee Status Determination process. It analysis various relevant international human rights and refugee law provisions, national refugee legislations, and challenges related to the application of human rights principles during RSD process in the light of both previous and current practices. The study concludes that much as Ugandan refugee law framework has shown dynamic progress in the recent years, there are a number of limitations that, unless measures are taken now at the early stage, can negatively affect the overall progressive nature of the new Refugees Act 2006.

CHAPTER ONE

GENERAL OVERVIEW OF THE STUDY

1.1 Background to the Study

Refugee Status Determination (RSD) has central role in the protection of persons who are forced to flee their home countries owing to persecution. The identification of genuine applicants involves making decisions which may have life saving implications. Granting refugee status to genuine applicants promotes the right to life which is the most important aspect of human rights. On the other hand, wrong decisions during refugee status determination have the risk of exposing asylum seekers' life into a great danger.

The 1951 Geneva Convention Relating to the Status of Refugees (Geneva Convention)¹ and its 1967 Protocol² are the premier International Refugee Laws. Regionally the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)³ incorporates the provisions of the Geneva Convention and applies to the special situation of African refugees. According to the general definition in the Geneva Convention a refugee is a person who:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unwilling to return to it.⁴

In addition to its adoption of the definition of refugee under the Geneva Convention without the deadline and the geographical limitations, the OAU

¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (hereinafter referred to as the Geneva Convention).

² Protocol Relating to the Status of Refugees, October 4, 1967, 606 U.N.T.S. 267 (hereinafter referred to as the 1967 Protocol).

³ OAU Convention Governing Specific Aspects of Refugee Problems in Africa, September 10, 1969; U.N.T.S. No.14 691, (hereinafter referred to as OAU Convention).

⁴Article 1A (2) of the Geneva Convention, op. cit note 1. This definition of a refugee has been amended by the 1967 New York Protocol that, among others, abolished the deadline of events and geographical limitations.

Convention has introduced a new definition of a refugee which suits the situation of refugees in Africa. It defines a refugee as:

Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

In order to get refugee status one has to meet the requirements of the above refugee definition. However, the assessment of refugee status is not an easy process. Given the nature of the definition, it involves a complex of subjective and objective factors. To reach a good decision on the complex subjective and objective factors of the definition it needs to provide the applicant the right to be heard according to due process of law. Goodwin-Gill speculates that:

The mere fact that a state treats refugees separately from others will not be conclusive evidence of effective protection. A refugee enjoys fundamental human rights common to citizens and foreign nationals; where there are generally assured, where due process of law is acknowledged, and where measures of appeal and judicial review permit examinations of the merits and the legality of administrative decisions, then the refugee also may be sufficiently protected.⁵

The Geneva Convention and the OAU Convention are widely adopted by a number of states.⁶ Despite the central role the adjudication process plays in the protection of refugees, these instruments are silent on the procedures to be adopted for the RSD.⁷ RSD is left to each contracting state to establish the procedure it considers the most appropriate in conformity with its particular legal system.⁸ It was because the drafters viewed that laying a universal procedure would contradict state sovereignty.⁹ The determination as to who

⁵Guy Goodwin-Gill, *THE REFUGEE IN INTERNATIONAL LAW*, 2nd ed., (Oxford University Press, London, 1991), at 324.

⁶ As of February 2, 2006, 146 states had ratified the Geneva Convention and its Protocol. See, E. Odhiambo Abuya & G. Mukundi Wachira, "Assessing Asylum Claims in Africa: Missing or Meeting Standards", 2006, at 172, at: <<http://www.journals.cambridge.org>> (viewed on May 27, 2007).

⁷UNHCR, *HANDBOOK ON PROCEDURES & CRITERIA FOR DETERMINING REFUGEE STATUS*, 1992, (hereinafter referred to as UNHCR handbook), Para. 189.

⁸ See Para. 189 of the UNHCR Handbook.

⁹ See, Abuya and Wachira, op. cit. note 6, at 172.

comes within the definition of a refugee is always made by way of administrative proceeding carried out in receiving states.¹⁰ Therefore procedures adopted are largely determined by the state parties' domestic law. As a result, the procedures used to determine asylum claims vary from country to country. UNHCR observes the states' practice of RSD as follows:

In a number of countries, refugee status is determined under formal procedures specifically established for the purpose of determining refugee status. In other countries, the question of refugee status is considered within the framework of general procedures for the admission of aliens. In yet other countries, refugee status is determined under informal arrangements or ad hoc for specific purposes, such as the issuance of travel documents.¹¹

RSD in many Common Law and Civil Law countries appear to fall short of standards of procedural fairness.¹² Although it is impractical to enact a harmonized formal procedure applicable to all states, states have an obligation to observe fair procedures which guarantee protection of genuine applicants. This obligation of states derogates from three legal regimes, namely, Human Rights Law, the Geneva Convention itself and the standards of the United Nations High Commissioner for Refugees (UNHCR).

Human rights law applies to all people regardless of their status in the country where they live. The most important protection for refugees in international human rights law is the principle of non-discrimination which insures that refugees, even though they are not citizens of the asylum country, are entitled to the same fundamental rights and freedoms as citizens. In general, the rights set out in common Article 3 of the International Covenant on Civil and Political rights (ICCPR)¹³ and International Covenant on Economic Social and Cultural Rights (ICESCR)¹⁴ apply to citizens and non-citizens. According to the common Article 3 of these Covenants, state parties to the

¹⁰Michael Bliss, "Serious Reasons for Considering: Minimum Standards of Procedural Fairness in the Application of 1F Exclusion Clauses," in Lawyers Committee for Human Rights, *EXCLUSION FROM PROTECTION*, 12 *INTERNATIONAL JOURNAL OF REFUGEE LAW: Special Supplementary Issue on Exclusion*, 2000, at 99.

¹¹ UNHCR Handbook, op. cit. note 7, at Para. 191.

¹² Bliss op. cit. note 10, at 97.

¹³ International Covenant on Civil & Political Rights, December 16, 1966, U.N.G.A. Res. 2200 A (XXI) (hereinafter referred to as the ICCPR).

¹⁴ International Covenant on Economic, Social & Cultural Rights, December 16, 1966, U.N.G.A. Res. 2200 A (XXI), (hereinafter referred to as the ICESCR).

Covenants undertake to ensure equal right of men and women to the enjoyment of all civil, political, economic, social and cultural rights set forth in the Covenants.¹⁵ Seeking asylum from persecution in the country of origin/nationality is also an integral part of the human rights law principles. Article 14 of the Universal Declaration of Human Rights (UDHR) explicitly provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”¹⁶ Similarly, Article 12(3) of the African Charter on Human and Peoples’ Rights (ACHPR) has clearly put the right to seek asylum, stating that “every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.”¹⁷ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides for all persons protection from refoulement, or forced return, to situations where there is a substantial risk of torture.¹⁸ The Convention on the Rights of the Child (CRC) applies to all children without discrimination, including child refugees and asylum seekers.¹⁹ The CRC specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in that Convention and in others to which the host State is a party. Moreover, the right to a fair hearing is provided in Article 10 of the UDHR and Articles 13 and 14(1) of the ICCPR.

According to the Black’s Law Dictionary, fair hearing means “a judicial or administrative hearing conducted in accordance with due process.”²⁰ In other words, the concept of fair hearing involves the duty of a decision making authority to comply with the legal standards and principles and the rights of the person who has a case to be accorded by all the legal safeguards that help to reach a just decision. The parameters of a fair hearing extend from the beginning of a case up to the decision making stage, including an appeal. In an asylum case, it starts from the time an applicant approaches

¹⁵ Id., Article 3.

¹⁶ Universal Declaration of Human Rights, December 10, 1948, U.N.G.A. Res. 217A (II), (hereinafter referred to as UDHR), Article 14.

¹⁷ African Charter on Human & Peoples’ Rights June 27, 1981, International Legal Materials, No. 21, p.59, Article 12 (3).

¹⁸ Convention against Torture and other Cruel, Inhuman or Depredating Treatment or Punishment, December 10, 1984, U. G. A. R. 39/46, (hereinafter referred to as CAT), Article 3.

¹⁹ Convention on the Rights of the Child, November 20,, 1989, U.N.G.A. Res. 44/25 (hereinafter referred to as CRC).

²⁰ Black’s Law Dictionary, (1999) Seventh Ed., at 725,(West Group, U. S. A.)

the authority with intent to seek asylum and it goes up to the final decision either to grant or reject refugee status. Compliance to human rights principles and standards during decision making could meet the basic requirements for a fair hearing.

The provisions of the Geneva Convention have largely incorporated human rights norms, particularly, the preamble to the convention calls on member states to ensure asylum seekers are granted the widest possible exercise of fundamental rights and freedoms without discrimination.²¹ Although the Geneva Convention does not expressly outline the procedures for determining refugee status, its object and purpose require fair procedural safeguards without which full implementation of the Convention cannot be possible. The purpose of Geneva Convention is to give surrogate protection to refugees. This cannot be achieved without guaranteeing asylum seekers the right to fair hearing in their application for asylum. States parties to the Geneva Convention are required to ensure that they fulfill their obligation to act in good faith in their treaty obligations.²² If a state party to the Geneva Convention is conducting RSD for asylum seekers in a mere formalistic way and does not afford the basic elements of fair hearing to asylum seekers, it could be argued that the State is not acting ‘in good faith’, and therefore is violating its obligations under the Geneva Convention. A number of scholars and states’ practice acknowledge that the Geneva Convention requires RSD process be guided by the principles of fair hearing.²³

UNHCR has also standards on the issue of fairness in RSD which are designed to guide RSD procedure conducted by states parties and by the agency itself. Considering the fact that RSD is not specifically regulated by the Geneva Convention and the impracticability of states parties to have harmonized procedures, the UNHCR Executive Committee (*ExCom*) recommended to states parties that their RSD procedure should satisfy certain basic requirements.²⁴ These basic requirements are established to ensure that asylum seekers are provided with fair procedures in their application for refugee status. UNHCR has recognized and identified the core procedural safeguards necessary

²¹ See the Geneva Convention, op. cit. note 1, Paragraph 2, and Article 3.

²² See Bliss, op. cit. note 10, at 95-96.

²³ Id., at 96.

²⁴ See UNHCR handbook, op. cit. note 7, at Para. 192.

to preserve the integrity of the asylum regime as both fair and efficient.²⁵ Although it is soft law, the UNHCR standards are international standards central to states parties' RSD procedures as they have an obligation to cooperate with UNHCR in the protection of refugees.²⁶

Uganda has a long and well-appreciated history of hosting refugees. This can be inferred from its history of receiving refugees dated back to the post Second World War and the current trends of refugee-hosting in the country.²⁷ The first wave of refugees came in the 1940s as a result of the Second World War. The second wave came from Sudan in 1955 and from Kenya towards the end of the 1950s.²⁸ In addition, in 1955 around 178,000 Sudanese refugees fled to Uganda.²⁹ The crises in Rwanda and Congo created more refugees in subsequent years. In 1959 during the Rwandan Crisis Uganda received 80,000 refugees from Rwanda. In 1961, as a consequence of the assassination of Patrice Lumumba, 33,000 Congolese refugees entered to Uganda.³⁰ The country also received a number of refugees from Ethiopia as a consequence of the war between Eritrea and Ethiopia in 1998, and Somalia since the outbreak of the civil war in the country in 1991.³¹ Currently, Uganda is hosting refugees from many countries such as Burundi, Sudan, Rwanda, DRC, Ethiopia, Eritrea and Somalia.³² Statistical data from the US World Refugee Survey shows that Uganda is placed among the major refugee hosting

²⁵ UNHCR, Global Consultation on International Protection 2nd Meeting, Asylum Process: Fair and Efficient Asylum Procedures, May 31, 2001, (hereinafter referred to as UNHCR Global Consultation) at: <www.unhcr.org> (viewed on May 27, 2007).

²⁶ Article 35 of the Geneva Convention and Article II of the 1967 protocol contains an agreement for states parties to cooperate with UNHCR in the exercise of its function and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties.

²⁷ Samuel B. Tindifa, *Refugees and Human Rights in Uganda: A Critical Assessment of the Law, Policy and Practice*, 5 EAST AFRICAN JOURNAL OF PEACE & HUMAN RIGHTS 1, (1998), at p.56.

²⁸ See, Lomo, Naggaga and Hovil, *The Phenomenon of Forced Migration in Uganda: An Overview of Policy and Practice in Historical Context*, *Refugee Law Project (RLP) Working Paper No. 1* (hereinafter referred to as RLP working paper no. 1).

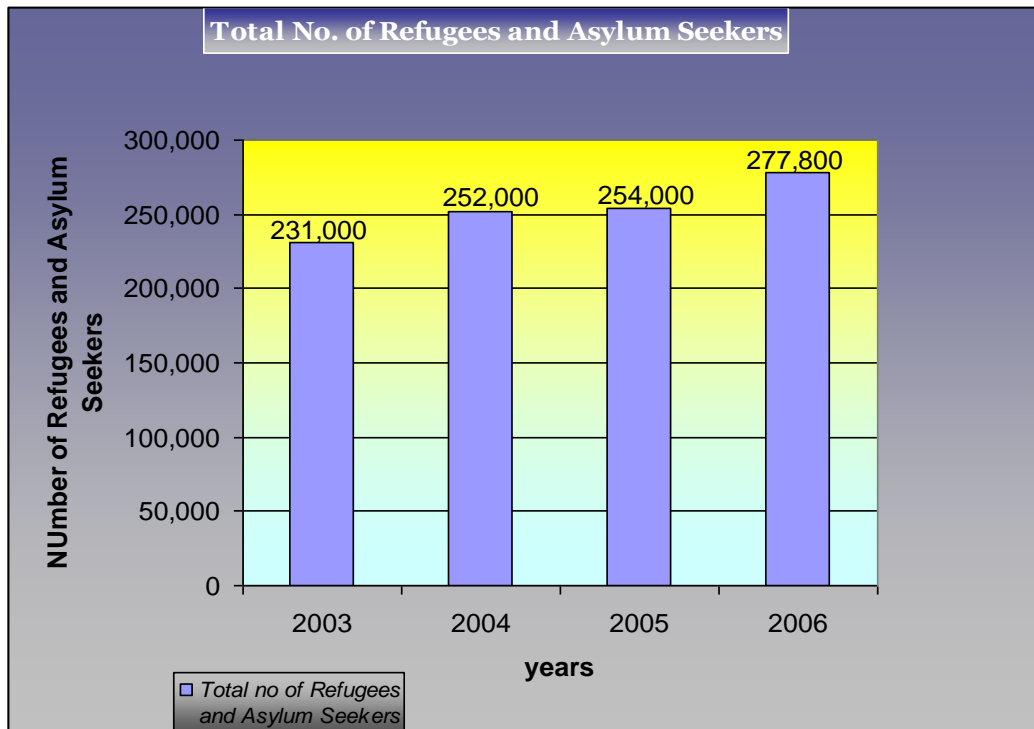
²⁹ Louise Pirout, *Refugees in and from Uganda in the Post- Colonial Period*, in 24 UGANDA NOW (1988) (H.B. Hansen and M. Twaddle, eds.) cited in Abraham Kiapi, "The Legal status of Refugee in Uganda", EAST AFRICAN JOURNAL OF PEACE & HUMAN RIGHTS, vol. 3, no.1, 1997, at 115.

³⁰ Uganda after Amin: The Case of Displacement and Discrimination against the Banyarwanda Population (*International League for Human Rights, New York*, 1985) cited in Kiapi, op. cit. note 29, at 115.

³¹ See RLP working paper no. 1, op. cit. note 28, at 3.

³² Human Rights Watch, *Hidden in Plain View: Refugees Living without Protection in Nairobi and Kampala*, 2003, (hereinafter referred to as HRW), at 75, at: <www.myspace.com> (Viewed on August 28, 2007).

countries. The following graph shows the number of asylum seekers and refugees Uganda hosted from 2003 through 2006.³³



Source: U.S. Committee for Refugees and Immigrants, World Refugee Survey 2004-2007, at 4.

Uganda is signatory to the Geneva Convention and its Protocol,³⁴ the ICCPR,³⁵ and the OAU Convention.³⁶ These conventions are the major international and regional instruments that set standards of protection for refugees at international and regional level. However, their provisions are not enforceable in local courts without first having been domesticated through the enactment of enabling legislation by the Ugandan parliament. Previously the legal regime governing refugees was the Control Alien Refugee Act of 1960 (CARA).³⁷ As the title of the Act suggests, the CARA was a law that was meant to ‘control’ alien refugees in Uganda rather than to ensure their

³³ U.S. Committee for Refugees and Immigrants, World Refugee Survey, 2004- 2007, at: <www.refugees.org> (Viewed on August 24, 2007)

³⁴ Uganda ratified the Geneva Convention, op. cit. note 1, and the 1967 Protocol, op. cit. note 2, on September 27, 1976.

³⁵ Uganda ratified ICCPR, op. cit. note 13, on June 21, 1995.

³⁶ Uganda ratified the OAU Convention, op. cit. note 3, on July 24, 1987.

³⁷ Control of Aliens Refugees Act, 1960, available at Chapter 64, Laws of Uganda, 1964, (hereinafter referred to as CARA).

protection. Its provisions were directly in contradiction with the provisions of the Geneva Convention, the OAU Convention, Human Right Law and the 1995 Constitution of Uganda. Under the CARA there was no specific criteria of RSD that safeguards refugees' rights worth of mentioning.³⁸ As a result, following the promulgation of the 1995 Constitution, the government of Uganda was not applying the provisions of the CARA strictly. Instead, the government adopted practices which are partly consistent with the international instruments on refugees to which Uganda is a party. Under this practice individual status determination was done by a committee called Refugee Eligibility Committee (REC). The Committee adopted the definitions of a refugee in the Geneva Convention and OAU Convention and introduced partly protection oriented procedures. However the practice was not fully out of the essence of the CARA. Restricting refugees in designated areas was the main object of the CARA and the practice remained the same. In the existing practice refugees were referred to one of the settlement camps right after their status is determined.³⁹ RSD under this practice appears to fall short of the *basic requirements* which guarantee the right to fair hearing of an asylum seeker. During the application for refugee status asylum seekers had no access to interpreter, legal adviser, information regarding the procedure to be followed and independent appeal body. They had no right to present and defend their cases before the REC and were not given written reasons for rejection.

The introduction of new practice and departure from the implementation of the CARA created a lacuna and gave rise to the need to enact a new law with which to repeal the CARA. After a long process the government of Uganda enacted the Refugees Act, 2006.⁴⁰ The new Refugees Act legalized the existed practices and came with a better approach towards the perception of refugees than the CARA. The Refugees Act reflects international legal standards of refugee protection as provided in refugee law and human rights law. As stated in its title, the Refugees Act has clearly made reference to the Geneva Convention and other international obligations of Uganda. The Act is enacted to make new provisions for matters relating to refugees in line with international refugee

³⁸ See section 5(2) of CARA.

³⁹ Interview with Oyella Vivian, OPM Legal/Protection officer as well as member of the Refugee Eligibility Committee (hereinafter referred to as REC), Kampala, October 16, 2007.

⁴⁰ The Refugees Act 2006, the Uganda Gazette No.47 Vol. XCVIX, August 4, 2006.

instruments; establish office of refugees, and to repeal the CARA.⁴¹ Previously, asylum seekers were not given the right to appear before REC and defend their cases before the REC, which is possible under the new Act.⁴² However, the Act has some limitations too, especially when it comes to fair hearing. For example, the Act has not provided asylum seekers with the right to information and the right to oral interview. Although the Act has addressed asylum seekers' right to legal advice and representation,⁴³ the way it has been drafted does not reflect the interest of asylum seekers. The provision on the right to appeal has also major procedural limitations.⁴⁴ Furthermore, over one year since the Refugees Act came into force on May 2007, very little change has been shown on the ground with almost all the institutional structures and regulations under the provisions of the Act yet to be implemented.⁴⁵

The study discusses the application of international and regional human rights law provisions in the process of RSD with emphasis in Uganda. This has been discussed in light of the human rights principles, the experiences of international and regional human right bodies, and states practices. Particularly, the study focuses on the application of human rights laws in the protection of asylum seekers with particular emphasis to the right of asylum seekers to a fair hearing during the RSD process. The study analyses Ugandan refugee law framework from human rights principles perspective with particular interest to the right to a fair hearing. It also discusses the current practices of RSD procedure in Uganda.

1.2 Statement of the Problem

The Geneva and the OAU Conventions are silent on the procedures to be adopted during RSD. This has led to the development of various procedures of RSD among member states of these Conventions. The main problem with the absence of conventional

⁴¹ Id., see the title to the Refugees Act.

⁴² Id., section 24 (2) of the Refugees Act.

⁴³ Id., See section 24 (3) of Refugees Act.

⁴⁴ Id., section 16 and 17 of the Refugees Act.

⁴⁵ Office of the Prime Minister, Department of Disaster Management, Refugees and Relief-DAR Secretariat, *“Uganda’s Development Assistance for Refugees and Host Communities (DAR): An Appropriate Strategy in Empowering Beneficiaries for Self-Reliance and Brining Prosperity for all to Refugees and Host Communities”* DAILY MONITOR, Wednesday June 20, 2007, no. 171, at 44, Kampala, Uganda.

RSD procedures and criteria is that member states tend to adopt procedures which are contrary to the words and spirit of the conventions. In this scenario, the parameter would be to assess a state's RSD process in the light of not only refugee conventions but also all other relevant human rights law instruments in their respective areas. As noted above, Uganda has been among the top refugee recipient countries. As its historical and current situation reveals, the flow of refugees into Uganda has been a constant part of its history. To handle this situation Uganda has been practicing a largely unstructured set of administrative procedures for RSD, albeit with a number of flaws. Yet, the new Act has also come out with several flaws. There is a fear that the procedures which do exist could result in the denial of status to genuine refugees. Uganda is a signatory to both the Geneva and OAU refugee Conventions and other international and regional human rights law instruments which can play a pivotal role in safeguarding the rights of refugees to a fair hearing during the RSD process. This study, therefore, addresses the issue of whether the current Ugandan practices of RSD procedure and refugee laws comply with its obligations under the relevant international and regional human rights instruments to which it is a signatory.

1.3. Objectives of the Study

The main objective of the study is to assess the human rights dimensions of the Refugee Status Determination procedures in the Republic of Uganda with a particular emphasis to the right of asylum seekers to a fair hearing. Based on this general objective the study addresses the following specific objectives:

- 1) Examine the applicability of provisions of human rights law in the Refugee Status Determination process;
- 2) Examine Uganda's Refugee Status Determination procedure in the light of international law standards, and
- 3) Examine the challenges of the right of an asylum seeker to fair hearing at international and domestic levels.

The principal research questions which guided the study are the following:

- Do international and regional human rights laws prescribe standards of procedure which can apply in refugee status determination?
- Is Uganda’s refugee status determination procedure compatible with international standards, and,
- What are the main factors hindering the realization of the right of an asylum seeker to a fair hearing?

1.4. Conceptual Framework

The relationship between human rights law, particularly the application of the right to a fair hearing and refugee status determination can be conceptualized as a two stage relationship where a set of basic factors impact on a number of underlying factors, which in turn determine the final outcome in terms of safeguarding asylum seekers right to a fair hearing. The basic factors in this case are political, economic and socio-cultural stability, human rights law informed national refugee law legislation and policy, and institutions that implement the legislation. The underlying factors include institutional capacities to enforce the refugee law such as qualification of the authorities responsible for RSD and the state’s ability to empower them.

Any attempt to assess the effectiveness of the RSD in the light of human rights law must therefore take into account the existing refugee law and policy and the institutional environment that implements the legislation such as consistency of the law with human rights standards and the material and human power constraints within the institutions which will all influence the extent to which reform will cause a change in the underlying factors. In addition, even if a state adopts a good refugee law framework and put in place institutions that implement the legislation, it does not necessarily follow that the right of asylum seekers to a fair hearing will always be guaranteed. For example, if the international community through the UNHCR or other means does not acknowledge the refugees burden Uganda is shouldering and extends its support and assistance, yet the country has its own economic problems. In other words, the realization of the right of asylum seekers to a fair hearing is context specific.

Therefore, under the assumption that political will to ensure rights of refugees as provided in international and regional human rights laws exists, promulgation of refugee law that corresponds to international law standards and principles, and well equipped institutions with qualified authorities can result into a better refugee protection including right of asylum seekers to a fair hearing.

1.5. Research Methodology and the Scope of the Study

This research was principally qualitative, mainly focusing on the experiences of refugees and asylum seekers, but also learning from key informants, including Refugee Eligibility Committee (REC) members, UNHCR Senior Protection Officer, and Senior Legal Officer from Refugee Law Project (RLP). Qualitative methodologies were used because many of the questions asked were about individual experiences and decisions, which cannot be easily summarised or pre-defined. The focus was on individual semi-structured interviews, to enable personal experiences to be explored, and to allow flexibility.

The target respondents were consist of mostly urban based refugees and asylum seekers, because they are a readily accessible population, and individual refugee status determination takes place only in Kampala. To ensure feasibility and balanced representation, the target populations were from most nationalities of the refugee community in Uganda, namely, Rwanda, Somalia, Eritrea, Ethiopia, Democratic Republic of Congo, and Sudan. This gave an opportunity for the various challenges, related to the right to a fair hearing, asylum seekers face during RSD to be explored alongside the specific issues that relate to country of origin of the respondents. Amongst the respondents, all possible effort was made to speak to an equal balance of both men and women, and younger and older refugees, since they are likely to have different experiences and concerns.

In addition, desktop including Universal Resource Locators (URLs) sources such as books, journals, collections (compilation) and articles were also reviewed extensively. To provide a contrast, a number of relevant cases to the right to a fair hearing from other jurisdictions were examined alongside the international, regional and municipal human rights and refugee law frameworks.

The study is limited to Uganda's RSD procedures with particular emphasis on the rights of an asylum seeker to a fair hearing, namely, the right of an asylum seeker to information regarding the procedure to be followed, right to a competent interpreter, right to legal adviser or representation, right to written reasons for their rejection and the right to appeal against a negative decision. The substantive aspects of RSD are beyond the scope of this study. All discussions and analysis do not apply to any changes that may take place in the subject matter after May 2008.

1.6. Literature Review

Although the procedural aspects of the principles of refugee law incorporated in the Geneva Convention are left for member countries to apply discretionarily, they should do so in conformity with the international law. Consequently, this study is interested in analyzing the rights of asylum seeker to a fair hearing in international law and in Ugandan refugee law and practice. Although there are considerable literatures dealing with the issue of RSD in general, the case of rights of asylum seeker to a fair hearing in the light of international and regional human rights instruments has not got the attention it deserves. Following is a review of relevant literatures that discuss RSD process by UNHCR and some examples of states parties. The literatures under review are selected due to the crucial importance to the study and reflect the subject matter in the international and regional context. Then follows the literature dealing with the law and practice in Uganda regarding the right of asylum seekers to a fair hearing.

Michael Alexander examines the practice of RSD by UNHCR in a number of Asian countries.⁴⁶ He highlights the provisions of the ICCPR and the European Convention on Human Rights (ECHR) with respect to the right of fair hearing. In addition, he assesses RSD conducted by UNHCR in many Asian countries in light of international human rights law comparing with the practice of many governments. He found that the practice within the UNHCR Offices differs from one office to the other. In some respects, Alexander finds the standards which UNHCR lays down for governments

⁴⁶ Michael Alexander, "Refugee Status Determination Conducted by UNHCR", 11 INTERNATIONAL JOURNAL OF REFUGEE LAW, NO.2, 1999, at 251.

are not complied within the practice of UNHCR itself. He observes that the UNHCR's RSD practice lags international human rights law comparing to the practice of many states.⁴⁷ Alexander argues that international human rights law prescribes standards for RSD, and UNHCR is bound to comply with these standards. Even though Alexander's main focus is RSD conducted by UNHCR, his article is relevant to this study because he discusses the nexus between RSD and international human rights law.

Michael Bliss examines the requirements for procedural fairness in the context of exclusion clause.⁴⁸ Bliss has discussed the general concept of procedural fairness, and urges states parties to the Convention to observe some minimum requirements of procedural fairness.⁴⁹ Bliss analyses the lacuna between the Geneva Convention and states parties' domestic law regarding determination procedure. He outlines the likelihood of states to resist criticism of their RSD procedure as those practices are usually rooted in their domestic law. He remarks on the severity of an erroneous decision, and further urges decision makers to apply the exclusion clause in a restrictive manner and to adhere to rigorous standards of procedural fairness when applying them in order to ensure that those persons deserving protection are not incorrectly excluded.⁵⁰ Bliss argues that it is not only possible but necessary to identify the core of procedural fairness safeguards which derive from International Law.⁵¹ Although Bliss's article mainly focuses on the application of the exclusion clause, it has crucial relevance to this study in that he discusses the application of international law principles of fair hearing in the RSD procedures.

Edwin Odhiambo Abuya and George Mukundi Wachira review the process by which asylum applications are decided in Africa.⁵² The authors outline the general procedures that UNHCR uses to assess refugee applications in Kenya and Egypt. According to their analyses, the practices fall short of international standards. They discuss the issue of access to territory and the extent to which the idea of surrogate protection is promoted. They argue that effective refugee protection requires asylum-

⁴⁷ *Id.*, at 255.

⁴⁸ Bliss, *op. cit.* note 10, at 93.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, at 99.

⁵² See Abuya & Wachira, *op. cit.* note 6.

seekers to have access to host countries' territory and be given the opportunity to file their application.⁵³ They describe African borders as generally porous and inadequately policed, compared to the contemporaneous situation in western countries. As a result African migrants generally have less difficulty in crossing the border of neighboring countries. According to them, those states that adopt policies that seek to deny forced migrants' entry into their territories or try to deflect them to other states, fail to meet one of the fundamental requirements of due process, namely, the right to be heard.⁵⁴

Abuya and Wachira describe the existing RSD framework in Kenya and Egypt as being inadequate in relation to information designed to assist asylum seekers to lodge their claims, legal knowledge and assistance, the competence of officials and the appeals procedure. Their study is relevant to the present one in that it explores the issues surrounding due process of law within the RSD procedure. What makes it different is that it was limited to Kenya and Egypt.

J. Oloka-Onyango examines the previous refugee law under the CARA in Uganda which was the principal legislation on refugees in Uganda.⁵⁵ He argues that there was no law which can protect refugees in Uganda. The first reason was that the previous law did not address itself to the protection of refugees; the concern was more with the control, management, exclusion and suppression of refugees.⁵⁶ The second reason is that it was unconstitutional.⁵⁷ He described CARA as being enacted to control refugees rather than to protect their rights.⁵⁸ Oloka-Onyango has discussed the policy of the government on the issues of the segregation of refugees, the right to citizenship and the impact of the 1995 Constitution from historical and political perspectives. Finally, he concludes that CARA was inconsistent with the provisions of International Law governing refugees including the Geneva and the OAU Conventions as it did not provide any sort of right based protection to refugees. Oloka's paper is relevant to this study in that it reviewed

⁵³ Id, at 178.

⁵⁴ Id.

⁵⁵ J. Oloka-Onyango, "*Domestic Legislation and the Protection of Refugees in Uganda: For Whom Does the Bell Toll?*" (Unpublished Paper presented at a Refugee Law Project (hereinafter RLP) workshop held at Hotel Africana, Kampala, on October 26, 2001, at 1.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id, at 2.

the previous refugee law of Uganda and helps the researcher to identify the historical background and existed drawbacks in the previous refugee law framework in Uganda.

In a report entitled “A Drop in the Ocean: Assistance and Protection for Forced Migrants in Kampala,”⁵⁹ the Refugee Law Project (RLP) examines the issue of the refugee in a wider sense. It discusses their methods of arrival to Kampala, the assistance and support available to them upon arrival, the determination procedure of their application for refugee status, their livelihoods and sustainability in Kampala and their need for broader protection. The report has discussed the Ugandan refugee settlement policy and its problems. The study criticizes this policy for undermining the right of refugees to choose their place of residence in Uganda as stipulated in Article 26 of the Geneva Convention.⁶⁰

The RLP study highlighted some persistent problems in the RSD process. Although it points out that to some extent RSD procedures have been standardized, a previous study describes RSD procedure in Uganda as largely unstructured.⁶¹ The study at subject outlines the hierarchical steps to which asylum seekers were following in pursuing their applications and highlights the main flaws in the RSD procedures. The RLP study is relevant to this research as it gives an overview of the refugee situation in Kampala in general and provides some limitations of RSD procedure and its general drawbacks in which the researcher can start with. It maintains that there is a real problem regarding refugee protection system in Uganda. The RLP study is different from this research for at least three reasons. In the first place the RLP study is more general with no emphasis to RSD procedure. Secondly, it does not make any mention of the right of fair hearing. Thirdly, what have been discovered on the ground regarding RSD procedure is not viewed in light of the Human Rights Law perspective.

In a report entitled, “Hidden in Plain View: Refugees Living without Protection in Nairobi and Kampala,” the Human Rights Watch has examined the situation of refugees

⁵⁹Kirk Huff & Ronal Kalyango, A DROP IN THE OCEAN: ASSISTANCE AND PROTECTION FOR FORCED MIGRANTS IN KAMPALA, Refugee Law Project Working Paper No. 16, (hereinafter referred to as RLP Working Paper No. 16), 2006.

⁶⁰Id., at 8.

⁶¹Id., at 15.

living in Nairobi and Kampala.⁶² The report reveals that even though the policy of Kenya and Uganda requires refugees to be confined in camps except those in urban caseload, there are a number of refugees who live in these two cities without any safeguards.⁶³ The study by the Human Rights Watch also discusses the situation of refugees in the camps in both countries, and considers the rationale of why refugees are directly headed to Kampala rather than staying in other parts of the country. This study highlights some procedural deficiencies in Uganda. In this study Ugandan RSD Procedure is described as “largely unregulated set of administrative practices”⁶⁴ Despite its criticisms, the study appreciates Ugandan administrative system comparing to Kenyan administrative system in hosting refugees.. The Human Rights Watch study is relevant to this research in that it discusses the situation of asylum seekers in Kampala and highlights some drawbacks in RSD procedure. The study is different from this research in that it does not look into RSD procedure exhaustively. Furthermore, it does not relate RSD procedure with the relevant Human Rights Law principles.

There are many other major contributions to the area of study including the UNHCR Handbook,⁶⁵ UNHCR Global Consultations in International Protection,⁶⁶ the European Council on Refugees and Exiles (ECRE) Guidelines on Fair and Efficient Procedures for Determining Refugee Status,⁶⁷ and the UNHCR Executive Committee (ExCom) Conclusions numbers 8⁶⁸ and 30.⁶⁹ In general, these literatures call for the adoption of basic procedural safeguards that would be followed during the RSD process. These basic procedural safeguards are meant to protect the rights of asylum seekers to a fair and just procedure of RSD that complies with the provisions of international law. Most of the literatures reviewed also agree that RSD is the centerpiece of the whole

⁶² HRW, op. Cit. note 32.

⁶³ Id ., at 17-25.

⁶⁴ Id. at 115.

⁶⁵ UNHCR Handbook, op. cit.

⁶⁶ UNHCR Global Consultation op cite note 25.

⁶⁷European Council on Refugees and Exiles, Fair and Efficient Procedures for Determination of Refugee Status, 1999, (hereinafter referred to as ECRE guidelines), at: < <http://www.ecre.org>.> (Viewed on July 25, 2007).

⁶⁸ UNHCR’s Executive Committee Conclusion No.8, Fair and Expeditious Asylum Procedures, 1977 (hereinafter referred to as ExCom Conclusion).

⁶⁹ ExCom Conclusion No 30, Fair and Expeditious Procedure, 1983.

refugee protection regime. Hence employing minimum *basic guarantees* in RSD procedure is of particular significance.

The study consists of five chapters. The first chapter deals with an overview of the study. The second chapter deals with international and regional human rights instruments, and mainly focuses on the provisions of human rights instruments that are applicable to the RSD procedures. Chapter three discusses the application of international law standards in the Ugandan RSD procedure. In this chapter Uganda's laws and practices regarding RSD procedure have been discussed in comparison to the rights of asylum seekers to fair hearing as provided in international law. The chapter emphasizes the right of an asylum seeker to information regarding the procedure to be followed, right to a competent interpreter, right to legal adviser or legal representation, right to written reasons for rejection and right to appeal. The fourth chapter deals with the challenges that hinder the application of right to a fair hearing at both the international and the domestic level. The final chapter provides an overall conclusions and practical recommendations intended to alleviate the limitations identified in the discourse.

CHAPTER TWO

APPLICABILITY OF HUMAN RIGHTS LAW IN REFUGEE STATUS DETERMINATION PROCEDURE

2.1. The Nexus between Human Rights Law and Refugee Law

Refugees have the right to benefit from human rights law just like other individuals. Being a refugee does not prevent someone from invoking human rights protection. Refugee law itself is based on human rights principles. This approach is supported by the arguments of many scholars. As Zachary Lomo has stated:

Refugees have at least three bodies of law that provide for their rights and protection. These are human rights law, humanitarian law and refugee law. Refugee law is part and parcel of development of international human rights law.¹

The link between human rights law and refugee law is a gradual development.² Pirkko Kourula states that until the late 1980s, human rights and refugee issues were perceived as falling under separate legal and institutional regimes.³ This separation has gradually given way to a realization of the essential connections between human rights law and refugee problems.⁴ The basic instrument for the application of human rights law to refugees is the UN Charter. In reaffirming faith in fundamental human rights, dignity and worth of the human person, the UN Charter makes no distinction between refugees and other individuals. As Lomo has argued:

All human rights instruments derive their legal basis from the UN Charter. However, because of their peculiar personality, refugees have additional rights guaranteed by international and regional conventions, namely, the 1951 UN Convention Relating to the Status of Refugees and its Protocol

¹Zachary Lomo, “*The Right Of Refugees & Internally Displaced Persons: The Case Of Uganda*”, Paper Presented At The Sudan Human Right Association (hereinafter referred to as ‘the SHRA’) seminar on “POPULARIZING HUMAN RIGHT CONCEPTS AMONG REFUGEES IN CAMPS AND DISPLACED PERSONS IN CONFLICT AREAS,” held at Hotel Equatorial, Kampala, Uganda, on Thursday 28th May, 1998.

²Amnesty International, *THE UN AND REFUGEES’ HUMAN RIGHTS: A MANUAL ON HOW UN HUMAN RIGHTS MECHANISMS CAN PROTECT THE RIGHTS OF REFUGEES*, (Amnesty International, United Kingdom, 1997), (herein after referred to as *Amnesty International Manual*), at 4.

³ Pirkko Kourula., *BROADENING THE EDGES: REFUGEE DEFINITION & INTERNATIONAL PROTECTION*, (Martinus Nisjhoff Puplichers, The Hague, 2000), at 23.

⁴ Id.

of 1967 and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.⁵ Amnesty International has also listed the following links between human rights and the protection of refugees:

1. In most cases, the reasons underlining refugee movement relate to violations of internationally recognized human rights. Whether people flee persecution directed at them as individuals, as members of ethnic minorities, religious or linguistic groups, or as a result of public disorder and armed conflict, it is the threat to their life and liberty which forces them to flee across international borders.
2. The right of people to leave their countries and seek asylum abroad is one of the fundamental rights in the UDHR.
3. The right of those genuinely at risk not to be forcibly returned to a country where their human rights will be violated (*non-refoulement*) is also a fundamental human right and, if this right is respected, it is an effective means of preventing further human rights violations.
4. The manner in which refugees are treated in the country of asylum raises many human rights questions, such as arbitrary detention, protection of family life and protection against racism and discrimination.⁶

In addition, the nexus between human rights law and refugee law can be traced from the provisions of the Geneva Convention. The Geneva Convention has largely incorporated human rights norms, particularly the preamble of the Convention which calls for member states to ensure that asylum seekers are granted the widest possible exercise of fundamental rights and freedoms without discrimination.⁷

The most important legal protection for refugees in the international human rights law is the principle of non-discrimination which provides that refugees in the international human rights law are entitled to the same fundamental rights and freedoms as citizens. For example the rights set out in the common Article 3 of ICCPR⁸ and ICESCR⁹, equally apply to citizens and non-citizens.

The right to seek asylum has been provided explicitly in Article 14 of the UDHR which states: “everyone has the right to seek and to enjoy in other countries asylum from

⁵ See Lomo, *op. cit.* note 1, at 2.,

⁶ Amnesty International, *op. cit.* note 2, at 4.

⁷ The preamble of the Convention Relating to the Status of Refugees, July 28, 1951; 189 U.N.T.S. 137 (hereinafter referred to as the Geneva Convention).

⁸ International Covenant on Civil and Political Rights, December 16, 1966; U.N.G.A. Res. 2200 A (XXI).

⁹ International Covenant on Economic, Social and Cultural Rights, December 16, 1966; U.N.G.A. Res. 2200 A(XX).

persecution.”¹⁰ In a similar way, Article 12 (3) of the ACHPR provides that “every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.”¹¹ It is, therefore, clear from these international and regional human rights instruments that human rights law is applicable to asylum seekers and refugees.

2.2 The Concept of Fair Hearing in the Context of RSD Process

According to the Black’s Law Dictionary fair hearing is defined as: “A judicial or administrative hearing conducted in due process.”¹² It refers to the fairness of the procedure followed from the beginning of an application of a particular case up to the final decision including appeal process. Thus, in the case of application for refugee status, fair hearing refers to the whole process of RSD. Procedural fairness requires that a legal determination concerning the rights or interests of an individual be reached in a manner which is fair to that individual.¹³

Procedural fairness is the fundamental principle for adjudicating a case in any legal system. In Common Law systems, procedural fairness draws from the concepts of natural justice and due process. On the other side, in Civil Law systems, general principles of fairness have long been recognized as fundamental to both civil and criminal proceedings. In most countries procedural fairness principles are contained in statutes. For example, in Australia, certain elements of procedural fairness are guaranteed by the Administrative Decision (Judicial Review) Act 1977,¹⁴ while in France, they exist as unwritten principles of law.¹⁵ The basic idea of the principle of procedural fairness is that the individual concerned has the right to unbiased procedure and the right to be heard.

¹⁰ Universal Declaration of Human Rights, December 10, 1948; U.N.G.A. Res. 217A (II), Article 14.

¹¹ African Charter on Human & Peoples’ Rights June 27, 1981, Article 12 (3).), International Legal Materials, No. 21, p.59.

¹² BLACK’S LAW DICTIONARY, Seventh Ed.,(West Group, U. S. A. 1999), at 725.

¹³See, Michael Bliss, “*Serious Reasons for Considering: Minimum Standards of Procedural Fairness in the Application of IF Exclusion Clauses*”, EXCLUSION FROM PROTECTION, 12 INTERNATIONAL JOURNAL OF REFUGEE LAW: SPECIAL SUPPLEMENTARY ISSUE ON EXCLUSION, 2000, at 93.

¹⁴ Id., at 94.

¹⁵ Id.

This section aims at identifying the importance of procedural fairness in the context of RSD. Procedural fairness when it comes to RSD procedure has more importance than in any other field of adjudication. First, often asylum seekers lack a thorough understanding of the legal system to which they are subjected, the resources to effectively navigate that system and the language skills to participate independently in that system. Secondly, the consequences of an incorrect decision are severe and usually may lead to torture or death upon return to the home country.¹⁶ Given these problems, it is apparent that strong procedural safeguards are required to ensure a fair RSD system. Despite the precarious situation of asylum seekers, many states in practice provide substantially limited procedural safeguards in their RSD system comparing to other administrative proceedings. In some countries, administrative procedures for processing asylum claims no longer carry out adequate legal safeguards of due process.¹⁷ In a number of receiving countries, RSD procedures, where they exist, do not ensure a full and fair hearing of an individual claim. Basic guarantees of procedural and substantive due process are missing. Notable, in this context, is the absence of the right to appeal. In many countries, decision making authorities determine refugee status based on an inadequate understanding of the applicable principles and lack training in this regard.¹⁸

As stated in Chapter One, the Geneva Convention does not provide any specific guidance as to the procedure to be applied by states when undertaking RSD. In effect, the procedures used to determine asylum claims vary from country to country.¹⁹ As states' legal systems vary it may be impractical to build a harmonized procedure binding for all states. However, it is generally agreed that states should adopt certain minimum guarantees that have to be followed in determining refugee status. To achieve this, many scholars,²⁰ Excom,²¹ the UNHCR and

¹⁶ Id., See, also E. Odhiambo Abuya & G. Mukundi Wachira, “Assessing Asylum Claims in Africa: Missing or Meeting Standards”, 2006, at: <<http://www.journals.cambridge.org>> (viewed on May 27, 2007), at 172.

¹⁷ See, UNHCR, Note on International Protection, UN doc. A/AC.96/882 1997, Para.10.

¹⁸ See, UNHCR, Note on international protection, UN doc. A/AC.96/777, 1991.

¹⁹ See UNHCR, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS, 1992, Para.191.

²⁰ Goodwin-Gill, THE REFUGEE IN INTERNATIONAL LAW, (Oxford University Press: Oxford, 1996), at 324-37, , See also Bliss op. cit. note 13, at 99-100.

²¹ See UNHCR, ExCom Conclusion No.8, Fair and Expeditious Asylum Procedures, 1977.

the ECRE²² have called for the adoption of minimum requirements for RSD which are provided in international human rights law.

In emphasizing the need for fair refugee status determination procedure, Guy Goodwin-Gill observes that effective implementation of the Geneva Convention as well as the OAU Convention require at least some form of procedure whereby genuine refugees can be identified.²³ Although the Geneva Convention does not formally require RSD procedures as a precondition for the full implementation of the Convention, it is clear from the object and purpose of the Convention that practical protection of refugees would necessitate the adoption of internal measures to fulfill the fundamental rights and freedoms of refugees. In adopting UNHCR statute in 1950, the General Assembly urged governments to cooperate with the UNHCR not only by becoming parties to the international convention, but also by taking the necessary steps in implementation.²⁴ In the succeeding years, the General Assembly has repeated this call, inviting states in particular to improve the legal status of refugees residing in their territory.²⁵ Goodwin-Gill has stressed the need to consider the *minimum basic procedural requirements* for effective RSD process.²⁶

In his discussion on the necessity of procedural safeguards, Bliss has also espoused the same view, stating that “it is not only possible but necessary to identify a core of procedural fairness safeguards which derive from international law, one universal nature, and essential to a fair RSD process.”²⁷ Accordingly, he pointed out the following minimum requirements of procedural fairness in RSD:

1. An individual determination of the claim for protection;
2. The right to be informed of the nature of the proceedings;
3. The right to an oral hearing or interview;
4. The right to have evidence on which the decision maker intends to rely presented to him or her, and to be given an opportunity to comment on it;
5. Right of an interpreter if required ;
6. Right to assistance;

²² ECRE Guidelines on Fair and Efficient Procedures for Determination of Refugee Status, 1999, at: <http://www.ecre.org> (viewed on July 25, 2007).

²³ See Goodwin-Gill, *op. cit.* note 20, at 324.

²⁴ *Id.*, at 326.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Bliss *op. cit.* Note 13, at 99.

7. Right to written reasons for decision; and
8. Right to appeal a first instance decision to exclude.²⁸

The ExCom urges governments to establish a formal procedure for determining refugee status, which should include the following procedural requirements, namely,

1. The competent official, to whom applicants address themselves at the border or in the territory of a contracting state, should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. The officials should be required to act in accordance with the principle of *non-refoulement* and to refer such cases to a higher authority;
2. Applicants should receive the necessary guidance as to the procedures to be followed;
3. There should be a clearly identified authority, whenever possible a central authority, with responsibility for examining requests for refugee status and taking a decision in the first instance. Applicants should be given the necessary facilities, including the service of competent interpreters for submitting their cases to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of the UNHCR;
4. Applicants recognized as refugees should be informed accordingly and issued with certifying refugee status;
5. Applicants not recognized as refugees be given time to appeal for a formal recognition of the decision, either to the same or different authority, whether administrative or judicial, according to the prevailing system; and
6. Applicants should be permitted to remain in the country pending decision on the initial request by the competent authority referred to in paragraph (3) above, unless it has been established by that authority that the request is clearly abusive. They shall also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.²⁹

Similarly, the ECRE has stated that:

In assessing whether an asylum procedure satisfies the basic minimum standards set by Conclusion No. 8 ...there are many different aspects to be considered. [...] By fair hearing should be understood a full interview and examination of asylum claim by a specialized authority, and appropriate legal assistance. Certain minimum standard should govern such hearings:

²⁸ Id., at 99-100.

²⁹ See, UNHCR, HANDBOOK ON PROCEDURES & CRITERIA FOR DETERMINING REFUGEE STATUS, 1992, (hereinafter referred to as UNHCR handbook), at para.192.

asylum- seekers should be given a reasonable time to prepare their case, to communicate with and seek advice from their lawyer or appropriate non-governmental organizations, and to obtain whatever background information is necessary in support of their claim; asylum- seekers should be provided with legal assistance throughout the procedure.³⁰

More importantly, the ECRE in its guidelines on “Fair and Efficient Procedures for Determination of Refugee Status” called upon governments to follow the minimum requirements listed by Ex Com.

In the Global Consultation on International Protection in 2001, it has been stated that:

Appropriate counseling of asylum seekers on the meaning and nature of the asylum procedure, on his/her rights and responsibilities, and on the consequence of not cooperating have proven helpful in promoting cooperation of asylum seekers in complying with certain requirements, such as in assisting to confirm her/his identity. Access to UNHCR, relevant NGOs, and legal advice can also play an important role in giving the asylum seeker greater confidence and in understanding of the procedure. The better procedures are those in which these factors are built.³¹

Fair hearing or procedural fairness on the context of RSD is a combination of many rights which comprises, among others, the minimum requirements stated above. Therefore in order the procedures to be fair asylum seekers must be granted at least the right to information regarding the procedure to be followed, a competent interpreter, legal representation, an oral hearing or interview, written reasons for rejection and right to appeal. The next sections discuss the major international and regional human rights instruments and states practices with the object of identifying the core human right law provisions that can apply, directly or indirectly, in the RSD process.

2.3 The Universal Declaration of Human Rights

The UDHR provides the inspirational foundation for international human rights law. With regards to refugees and asylum seekers the Declaration is important because, in many instances, it supports the recognition of broader rights than those accorded under refugee law. In particular, it recognizes a right to seek asylum. As stated above, the right

³⁰ ECRE Guidelines, op. cit note 22.

³¹ UNHCR, Global Consultation on International Protection, 2nd meeting, Asylum Process: Fair and Efficient Asylum Procedures, May 31, 2001, para.37, at: <www.unhcr.org> (viewed on May 27, 2007).

to seek asylum is guaranteed explicitly in Article 14 of the UDHR which provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”³²

As its full title indicates the UDHR is universal in nature. The Declaration’s importance for refugees and asylum seekers lies in the fact that it provides unconditional guarantees comparing to the limited or conditional guarantees available under refugee law and humanitarian laws. Numerous rights that are only guaranteed under the Geneva Convention insofar as they accord with the most favorable treatment accorded to refugees, are unconditionally granted to all human beings, including refugees under the UDHR. These rights include the right to ownership of movable, immovable, and intellectual property;³³ the right of association;³⁴ the right to work,³⁵ and the right to freedom of movement and residence.³⁶

The UDHR also guarantees asylum seekers a number of other rights which are not provided in the Geneva Convention. These include the right to life, liberty, and security of person;³⁷ the right to protection from slavery, torture and arbitrary arrest, detention or imprisonment;³⁸ the right to a fair and public hearing and a presumption of innocence when charged with a criminal offence;³⁹ the right to protection from *ex post facto* criminal and the right to participate in the cultural life of the community;⁴⁰ the right to freedom of thought, opinion, and expression;⁴¹ the right to rest and leisure and an adequate standard of living.⁴²

However, the implementation of the UDHR is limited as it is not a legally binding treaty instrument that authoritatively lays down rights. This is made clear in the conclusion to the preamble which states that the UDHR is proclaimed “as a common standard of achievement for all people and all nations, to the end that every individual

³² See Article 14 of the UDHR, op. cit. note 10.

³³ Id., Articles 17 and 27 (2).

³⁴ Id., Article 20.

³⁵ Id., Article 23.

³⁶ Id., Article 13.

³⁷ Id., Article 3.

³⁸ Id., Articles 4, 5 and 9.

³⁹ Id., Articles 10 and 11(1).

⁴⁰ Id., Article 11(2).

⁴¹ Id., Articles 18 and 19.

⁴² Id., Articles 24 and 25.

and every organ of society, keeping this declaration in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.” Despite the generosity in terms of protection it accords, the UDHR ordinarily does not provide a basis for a legal claim. Asylum seekers and refugees must, instead, look to UN treaty instruments and the regional human rights conventions in order to claim the principles laid down in the UDHR.

2.4. The International Covenant on Civil and Political Rights

The ICCPR seeks to implement the principles of human rights contained in the UDHR. The Covenant provides civil and political rights in which a number of them are replicated from the provisions of the UDHR. These rights include the right to life;⁴³ the right to protection from torture, slavery, servitude and inhuman imprisonment;⁴⁴ the right to liberty and security of person;⁴⁵ the right to freedom of movement;⁴⁶ the right to equal protection of law, including the right to a fair hearing, to counsel and to protection from self-incrimination;⁴⁷ the right to protection from ex post facto criminal laws;⁴⁸ the right to privacy;⁴⁹ the right to freedom of thought, opinion and expression;⁵⁰ the right to peaceful assembly;⁵¹ the right of association.⁵²

The main point here is how the provisions of the ICCPR apply to asylum seekers and refugees. It is clearly understood from the meaning of Articles 3 and 26 of the Covenant that the rights of asylum seekers and refugees are guaranteed by the provisions of ICCPR. Article 3 of the Covenant applies equally to citizens and non citizens. It clearly states that “the States Parties to the present Covenant undertake to ensure the

⁴³ See Article 6 of the ICCPR, *op. cit.* note 8.

⁴⁴ *Id.*, Articles 7, 8 and 10.

⁴⁵ *Id.*, Article 9.

⁴⁶ *Id.*, Article 12.

⁴⁷ *Id.*, Articles 14 and 26.

⁴⁸ *Id.*, Article 15.

⁴⁹ *Id.*, Article 17.

⁵⁰ *Id.*, Articles 18 and 19.

⁵¹ *Id.*, Article 21.

⁵² *Id.*, Article 22.

equal right of men and women to the enjoyment of all civil and political rights set forth in the present covenant.”⁵³ Similarly, Article 26 states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition, the Human Rights Committee, established under Article 28 of the Covenant to monitor state parties’ compliance with the provisions of the Covenant, has clearly stated that each right which is provided in the Covenant “must be guaranteed without discrimination between aliens and citizens”.⁵⁴ The Committee adds that:

although the Covenant does not recognize the right of aliens to enter or reside in the territory of a state party ..., in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when consideration of non-discrimination , prohibition of inhuman treatment and respect for family life arise.⁵⁵

Although the Covenant fails to mention the right of asylum seekers and refugees explicitly, it provides that aliens lawfully within the territory of a state party to the Covenant may only be expelled in accordance to due process of law. Article 13 of the ICCPR provides procedural guarantee in relation to expulsion of “an alien lawfully in a territory” as follows:

An alien, may be expelled only in pursuance of the decision reached in accordance with the law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority.⁵⁶

⁵³ Id., Article 3.

⁵⁴ Lawyers Committee for Human Rights, Refugee Project, “the *Human Rights of Refugees and Displaced Persons: Protections Afforded Refugees, Asylum Seekers and Displaced Persons under International Human Rights, Humanitarian and Refugee Law*”, RSP Documentation Centre, A briefing Paper (herein after referred to as Lawyers Committee for Human Rights), New York, 1991, at 14.

⁵⁵ Human Rights Committee, General Comments 15 (27), at 17, UN doc. CCPR/C/21/Rev.1/ADD, 1989, cited in Lawyers Committee, Id, at 15.

⁵⁶ Lawyers Committee for human Rights, Id.

As has been stated by the Human Rights Committee, the intent of this provision is “clearly to prevent arbitrary expulsions.”⁵⁷ This Article indirectly guarantees the right of asylum seekers and refugees to a fair hearing. Protection of aliens from arbitrary expulsion guarantees them the right to fair hearing. Asylum seekers and refugees should have been accorded much more rights than aliens because they are forced to seek asylum as a result of their rights being violated by others at the place where they come from. By the mere fact of being human being asylum seekers and refugees are entitled to human rights law and by the mere facts of their vulnerability they are also protected by refugee law, whereas aliens are protected by human rights law. Therefore the applicability of Article 13 of the ICCPR to asylum seekers and refugees is unquestionable.

The most important thing is that unlike the UDHR the ICCPR sets up remedies for breach of its provisions. First, under Article 2(3), states parties to the Covenant undertake “to ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” and “to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities.” The Covenant thus effectively guarantees at least the existence, if not the granting, of a domestic remedy. Secondly, according to Article 40 states parties have to appear before the Human Rights Committee to submit reports “on the measures they have adopted to give effect to the rights recognized in the covenant.” Thirdly, where all domestic remedies have been invoked and exhausted, the matter may be referred, under Article 41, to the Human Rights Committee.

The right to fair hearing has also been provided in Article 14(1) of the ICCPR which states:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, every one shall be entitled to fair and public hearing by a competent independent and impartial tribunal established by law...

Now, the question is how the concept of fair hearing embodied in ICCPR applies to RSD.

⁵⁷ Id., at 19.

The right to a fair hearing which is provided in this Covenant refers to “every one” with regard to two kinds of proceedings: (1) in the determination of criminal charges; and (2) in the determination of rights and obligations in a suit at law.

It is obvious that RSD is not a criminal proceeding although it may take a quasi-criminal nature in the application of exclusion clauses.⁵⁸ The question which follows is whether RSD can qualify to fall within the phrase ‘suit at law’. This issue has been a subject of debate among scholars. There are arguments that support RSD is ‘suit at law’. The Human Rights Committee is of the view that the rights set forth in the Covenant apply to everyone irrespective of her or his nationality or statelessness. However, the Committee has not made a specific decision as to whether the RSD is covered by the fair hearing under Article 14(1). Nowak observes that:

Article 14 (1) contains an institutional guarantee that obliges States Parties to take extensive positive measures to ensure this guarantee. They must *set up* by law independent, impartial *tribunals* and provide them with a competence to hear and decide on ...rights and obligations in *suits at law*.⁵⁹

The Committee interprets the term ‘suit at law’ broadly. For example, in *YL v. Canada*, the Committee found that a claim by a former army member for a disability pension was a ‘suit at law’. In this case the Committee stated that:

The concept of ‘*suit at law*’... is based on the nature of the right in question rather than on the status of one of the parties (government; parastatal or autonomous statutory entities) or else on the particular forum in which individual legal systems may provide that the right in question is to be adjudicated upon.⁶⁰

In another case, *Pinkney v. Canada*, a claim by a US citizen that he had been denied a fair hearing and review of his case in regard to a deportation order was declared inadmissible by the Committee on the ground that he failed to exhaust his domestic remedies.

⁵⁸ See Article 1 (F) of the Geneva Convention, *op. cit.* note 7, which excludes certain category of persons for their previous criminal acts relating to crimes against peace, war crimes, and crimes against humanity, non-political crimes and acts contrary to the UN Charter. More information on Article 1F can be found in Awet H. Okba, “The Application of Exclusion Clause to Refugees Under the International and Municipal Law in Uganda”, LL.M dissertation submitted to the School of Graduate Studies, MUK, 2008.

⁵⁹ Manfred Nowak, *CCPR Commentary*, Engel, Kehl and Rhein, 1993, at 241, cited in Michael Alexander, “*Refugee Status Determination Conducted by UNHCR*”, *INTERNATIONAL JOURNAL OF REFUGEE LAW*, No.2, 1999, at 257.

⁶⁰ Alexander, *Id.*, at 257.

However, there was no suggestion that the appeal was not a ‘suit at law’.⁶¹ In *VRMB v. Canada*, where it was argued that Article 14 (1) covers immigration hearings and deportation proceedings, the committee found that the communication was inadmissible as the facts did not disclose a violation of Article 14 (1), but did not dispute that the proceedings were a ‘suit at law’.⁶²

In a recent asylum seekers’ case, *A v. Australia*, the Committee ruled that:

The issue whether the proceedings relating to the determination of the author’s status under the Migration Amendment Act nevertheless fall within the scope of Article 14, paragraph 1, is a question which should be considered on its merits.⁶³

According to Alexander “the Human Rights Committee did not ultimately find it necessary to make a decision on the applicability of Article 14 (1), as they found against Australian law.”⁶⁴

In its submission to the Human Right Committee, Australia claimed that Article 14 (1) does not apply to RSD. Australia raised three arguments.⁶⁵ The first argument was that proceedings relating to the RSD do not deal with civil rights or obligations, and that a decision to allow entry into its territory was a matter for the state concerned and not a determination of civil rights. It provided a confusing argument stating that:

A right of entry into a State of which one is not a national does not exist under either Australian national law or under international law. Even if a person is found to be a refugee, international law prevents *refoulement* to the country in which persecution is feared but does not give that person a right of permanent entry into the country of refuge.⁶⁶

The second argument was that the provisions of Article 13 of the ICCPR, which deals specifically with the expulsion of aliens, are more appropriate to RSD than those in Article 14(1). This is because Australia asserted that Article 13, while requiring procedural fairness, envisages something less than the full public judicial proceedings contemplated by Article 14(1). As its third argument Australia referred to some decisions

⁶¹ Id., at 258.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

of the European Commission on Human Rights (ECHR) ruling that Article 6(1) of the European Convention does not apply to entry or deportation of aliens.⁶⁷

There are some observations on the soundness of these arguments. Alexander observes that:

All [the] three arguments (deliberately) confuse the process of refugee status determination with determination of entry and deportation. Although these two processes may be intertwined in practice, there is a clear conceptual distinction, and many states are careful to distinguish between the two processes.⁶⁸

He supported his argument of the distinction between the right of entry and deportation by referring to the arguments in the US Supreme Court decision in the famous case of *INS v. Cardoza-Fonseca*.⁶⁹ He further criticized the arguments raised by Australia as:

[Australia] exposed the flaws in its own argument when it claimed that recognition as a refugee does not give a right of permanent entry, for Australia too makes this distinction. However as a matter of international law, the right of *non-refoulement* flows from recognition as a refugee.⁷⁰

The arguments raised by Australia contradict the principles of human rights law and refugee law. Article 14(1) of the ICCPR is applicable in proceedings of RSD at least for two reasons. The first reason is that, as discussed in section 2.1 of this chapter, Article 3 of the Covenant has made it clear that all the provisions of the Covenant are applicable to all persons without discrimination.⁷¹ Secondly, the argument that the proceedings relating to refugee status do not deal with civil rights is not true always. Civil rights are rights granted by a state. All the states which are signatory to the Geneva Convention have an obligation to protect refugees' rights according to the provisions of the Convention. The rights of refugees provided in the Convention are civil rights as long as a state is signatory to the Convention. A state becomes party to a particular convention supposedly to grant the rights embodied in that convention to the concerned

⁶⁷ Id., at 258-259.

⁶⁸ Id., at 259.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ The only exception to this rule is that political right such as the right to vote is not applicable to asylum seekers or refugees. See Amnesty International, op. Cit., at 13.

individuals. When a state becomes a signatory to the Geneva Convention, it is obliged to protect refugees by providing the rights embodied in the Convention.

It is obvious that effective refugee protection requires asylum seekers to have access to territory. There is no specific article in the international human rights instruments and the Geneva Convention which deals with the right of entry of asylum seekers into a territory. However, the Geneva Convention imposes an obligation upon state parties not to impose penalties, on account of asylum seekers' illegal entry or presence.⁷² The mere absence of the right of an asylum seeker to enter into a territory in the human rights instruments does not mean that the asylum seeker has no right to enter a territory and it does not preclude asylum seekers from their right to a fair hearing. In order to safeguard the surrogate nature of refugee protection, the principle of *non-refoulement* should be interpreted broadly. It should not be only applied to non-expulsion of asylum seekers and refugees from inside a territory, but also against forced return of asylum seekers at the border. Moreover, the overall objectives and spirit of human rights law and refugee law should be considered.

International human rights law advances the principle of *non-refoulement*. Article 13 of the ICCPR obliges states not to expel aliens lawfully in the territory save for compelling reasons of national security. Aliens should be given an opportunity to present their case, to have adverse decisions reviewed and to be represented for that purpose before a competent authority. The principle of *non-refoulement* has been well established in Article 3 of the CAT. It provides that:

(1) No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. (2) For the purpose of determining whether there are such grounds, the competent authority shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁷³

Unlike the *non-refoulement* provision of the Geneva Convention, which requires that protection be linked to a fear of persecution because of person's race, religion,

⁷² Article 31 (1) of the Geneva Convention, op. cit.

⁷³ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments, December 10, 1984; U. G. A. R. 39/46, (hereinafter CAT), Article 3.

nationality, membership of a particular social group, or political opinion, *non-refoulement* provision under the CAT is absolute. In addition, no exception may be made to the CAT *non-refoulement* obligation. Moreover, unlike the Geneva Convention, the CAT does not have any provision excluding perpetrators of particularly serious crimes or other undeserving persons from its protection.

Similarly Articles 32 and 33 of the Geneva Convention prohibit states from returning asylum seekers to a state where their life will be in danger. Article 32 obliges states not to expel refugees lawfully staying in their territory. It states:

(1) The contracting States shall not expel a refugee lawfully in their territories save on grounds of national security or public order.

(2) The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.⁷⁴

In addition Article 33 (1) has made it clear that:

No contracting state shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontier of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.⁷⁵

Unlike the international human rights instruments and the Geneva Convention, the OAU Convention provides a specific provision on right of entry of asylum seekers to a territory. According to Article II (3) of the Convention:

No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened ...⁷⁶

⁷⁴ Article 32 of the Geneva Convention, *op. cit.*

⁷⁵ *Id.*, Article 33.

⁷⁶ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, September 10, 1969;

U.N.T.S. No.14 691, (hereinafter referred to as OAU Convention), Article II (3).

ExCom has also declared its concern for refugee host states to give border officials clear instructions how to deal with asylum seekers at the frontier, especially to act in accordance with the principle of *non-refoulement*.⁷⁷

The second argument of Australia which asserted that Article 13, while requiring procedural fairness, envisaged something less than the full public judicial proceedings contemplated by Article 14(1) sounds vague. Article 14(1) and Article 13 are two different Articles in which the presence of Article 13 does not set aside the application of Article 14. Article 13 is applicable “in case of expulsion”, while Article 14(1) provides the right to fair hearing in general. The intent of Article 13 is clearly to prevent arbitrary expulsion and deportation of asylum seekers and refugees. On the other hand, the intent of Article 14 is to guarantee the right to fair hearing to all persons regardless of their status at any time.

2.5 The African Charter on Human and Peoples Rights

The African Charter on Human and Peoples Rights (ACHPR)⁷⁸ enshrines fundamental individual rights, which include the right to seek asylum and the right to a fair hearing.

Article 12 provides that:

- (1) Every individual shall have the right to freedom of movement and residence within the border of a State provided he abides by the law.
- (2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
- (3) Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.
- (4) A non-national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
- (5) The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

⁷⁷ UNHCR Handbook, op. cit. note 29, at Para 192 (i).

⁷⁸ African Charter on Human and Peoples Rights, op. cit. note 11.

Under this Article an asylum seeker may not be refused entry into a country and his application for refugee status should be heard in due process. This provision also provides individuals with the right to move freely within a country, the right to freely choose one's place of residence within the borders of a country and the right to leave one's country and to freely return to it.

The African Commission on Human and Peoples' Rights, which is empowered to oversee the implementation of African Charter, has decided several cases regarding the violation of provisions of Article 12 and Article 7 of the Charter. In Communication 96/93, *Rencontre Africaine pour la Defense des Droits de l'Homme v Mauritania*, it was alleged that thousands of black Mauritians had been expelled to Senegal and Mali, 55,000 of whom were staying in the Senegal River Valley in extremely difficult conditions. The Commission held the case admissible under Article 12, and decided to send an 'on the spot' investigating mission to Mauritania.⁷⁹ This shows the fact human rights provisions can apply to refugees in their host country. The Charter explicitly recognizes seeking asylum as a human right. The protection of asylum seekers and refugees by human rights law is explicitly guaranteed under Article 12(3) which provides the right to seek asylum.

In Communication Nos. 27/89, 46/91, 49/91 and 99/93 (*Organisation Mondiale Contre La Torture (OMCT), Association Internationale des Juristes Democrates(AIJD), Commission Internationale des Juristes (CIJ) and Union Inter africaine des Droits de l'Homme (UIDH) v Rwanda*), a communication regarding expulsion of Burundian nationals from Rwanda who have been refugees in Rwanda for many years, the Commission held that Article 12(3) should be read as including a general protection of all those who are subject to persecution, that they may seek refuge in another state. It interpreted sub-paragraph (4) to prohibit the arbitrary expulsion of such persons from the country of asylum. The Commission found that the Burundian refugees in this case were expelled in violation of Article 12 of the African Charter.⁸⁰

It is a general human rights principle that a foreigner lawfully residing in a state may not be expelled from that state except pursuant to due process of the law. This

⁷⁹ University of Minnesota Template Page: Decisions of African Commission on Human & Peoples' Rights, at: <www.humanrights.law.monach.edu.au/africa/comcases/>.html (viewed on July 23, 2007).

⁸⁰ Id.

guarantees the right of the asylum seeker and refugee to a fair hearing in the case of deportation. Also a country should not carry out mass eviction of foreigners from its territory based on such subjective criteria as nationality, racial, ethnic or religious groups. In the Communication No. 27/89, 46/91, 49/91, 99/93 above, the Commission held that groups of Burundian refugees had been expelled on the basis of their nationality and this constituted a violation of Article 12(5) of the African Charter.⁸¹ Similarly, in Communication No.159/96, *Union Inter Africaine des Droits de l'Homme and 4 other NGOs v. Angola*, the Commission applied its ruling of Communication No.71/92, that mass expulsion was a special threat to human rights, and that mass expulsions of any category of persons, whether on the basis of nationality, religion, racial or other consideration constitute a violation of Article 12(5) of the African Charter.⁸²

The Charter requires states to adhere to basic principles of procedural fairness. Article 7(1) of the Charter provides that:

Every individual shall have the right to have his cause heard. This comprises:

- (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;..
- (c) the right to defense, including the right to be defended by counsel of his choice;...

Under this Article the right of every individual to a fair hearing is well articulated. The African Commission has made it clear that this provision is applicable to cases of deportation of foreigners. In Communication No.71/92, *Rencontre Interafricaine pour la Defense des Droits de l'Homme v Zambia*, the Commission held that the deportation of foreigners from Zambia without giving them the opportunity to be heard by the national judicial authorities violated Article 7 (1) of the African Charter.⁸³ Therefore, the right to a fair hearing, as provided in Article 7(1), is extended to asylum seekers and refugees.

The right to a fair hearing is also provided by resolution of the African Commission on fair trial adopted by the OAU General Assembly in 1992. Under this resolution the right to legal aid for indigent persons, the right to interpreters and the right

⁸¹ Id.

⁸² Id.

⁸³Id.

to appeal to a higher court are guaranteed.⁸⁴ The African Commission on Human Rights publishes its decisions as part of its annual report to the OAU submits.⁸⁵ While the Commission is the only body that considers complaints, the OAU and the Commission have drafted a protocol to the African Charter which, if adopted, will create an African Court on Human and People's Rights which is expected to conduct its hearing in public.⁸⁶ The Human Rights Committee has pointed out in its General Comment 13 (21) that public hearings is an important safeguard in the interest of the individual and society, and even where the trial proceeding is not open (to protect the interest of justice), the judgment should be made public.⁸⁷

Other regional human rights instruments and legal systems also require adherence to basic principles of procedural fairness. The ECHR,⁸⁸ European Community Law⁸⁹ and the American Declaration on the Rights and Duties of Man⁹⁰ contain provisions on fair hearing.

Article 6 of the ECHR provides that:

In the determination of his civil rights and obligations or of any criminal charge against him, every one is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...⁹¹

In this provision the right to a fair hearing is guaranteed in the case of determination of "civil rights" and "criminal charges". The European Commission of Human Rights has consistently expressed the opinion that the decision whether or not to authorize an alien

⁸⁴ African Commission Resolution on the Right to Recourse and Fair Trial adopted by the OAU General Assembly at its 11th Ordinary session in Tunis, Tunisia, in March 1992

⁸⁵ See Amnesty International, *op. cit.*, at 16.

⁸⁶ *Id.*

⁸⁷ [University of Minnesota Human Rights Library](http://www1.umn.edu), Human Rights Committee, General Comment 13, Twenty-first session, 1984, Article 14, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*; UN. Doc. HRI/GEN/1/Rev.1, 1994, at 14, at: <www1.umn.edu> (viewed on July 28, 2007).

⁸⁸ The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, November 4, 1950, at: <www.hri.org> (viewed on July 28, 2007).

⁸⁹ Council of Europe, Human Rights and Legal Affairs, Resolution (77)31, (Adopted by the Committee of Ministers on 28 September 1977 at the 275th meeting of the Ministers' Deputies).

⁹⁰ American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States, 1948, (hereinafter referred to as ADRDM).

⁹¹ Article 6 (1) of the ECHR, *op. Cit.* note 88.

to stay in a country of which he is not a national does not entail any determination of his civil rights or obligations or of any criminal charge against him within the meaning of Article 6 (1) of the ECHR. The Commission has held in one case that a decision to deport a person does not involve determination of his civil rights and obligations, and of any criminal charge against him within the meaning of Article 6 (1) of ECHR.⁹²

Furthermore, Article 13 of the ECHR requires that everyone “whose rights and freedoms as set forth in the ECHR are violated shall have an effective remedy before a national authority”. On the other hand, Article 3 of the ECHR states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Given that refugees should be protected by Article 3 of the ECHR, it is arguable that the absence of fair hearing during RSD procedure deserves an ‘effective remedy’ in the light of Article 13. In the case *Chahal v. UK*, the European Court of Human Rights critically pointed out that in one of the procedures in question “sufficient procedural safeguards for the purposes of this Article were lacking”, as the applicant, *inter alia*, “was not entitled... to legal representation [and] he was only given an outline of the grounds for the notice of intention to deport”.⁹³ In another more recent case, *Hilal v. UK*, it was argued that Article 3 of the ECHR itself requires the states to put in place fair procedures which will ensure that there is no violation of Article 3.⁹⁴

Article 1 of Protocol No. 7 of the ECHR affords minimal guarantees to aliens in the event of expulsion from the territory of a Contracting Party. It states that:

An alien lawfully resident in the territory of a State shall not be expelled there from except in pursuance of a decision reached in accordance with law and shall be allowed:

- (a) to submit reasons against his expulsion;
- (b) to have his case reviewed; and
- (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority...⁹⁵

In this case aliens are guaranteed the right to due process of law during expulsion. During the procedures to decide whether or not to expel the aliens concerned, aliens

⁹² See, ECHR: *Maaouia v. France* Publication: 2000-X, at <<http://www.sim.law.uu.nl>> (viewed on July 25, 2007).

⁹³ See *Chahal v. UK.*, (22414/93) [1996] ECHR 54 (15 November 1996).

⁹⁴ *Hilal v. UK.*, (45276/99) [1999] ECHR (6 March 2001).

⁹⁵ Protocol No. 7 of the 1950 ECHR; ETS 117; Nov.1, 1988, Article 1(1), at: <www.conventions.coe.int> (viewed on July, 2007).

have some minimum rights including the right to be represented before the competent authority or a person or persons designated by the authority. This provision also applies to asylum seekers and refugees and provides them the right to fair hearing during deportation.

Moreover the European Court of Justice in the *Nachi Fuchi Fujikoshi Corporation and others v Council of the European Communities* stated:

It is a fundamental principle of Community law that, before an individual measure or decision was taken, of such a nature as to affect directly the interests of a particular person, that person has a right to be heard by the responsible authority...⁹⁶

In addition, the Committee of the Council of Europe has recommended that:

Member states should observe a number of principles in administrative law, including the right to be heard (with argument and evidence), access to information about the relevant factors, assistance and representation in administrative procedure, and that reasons be stated in writing.⁹⁷

The right of an asylum seeker to a fair hearing is also embodied in American Declaration on the Rights and Duties of Man. Article XVIII of the Declaration states:

Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.⁹⁸

The right of access to the courts embodied in this provision has been held to apply in the case of claim for refugee status. In addition, states parties to the Geneva Convention are required to implement the Convention in good faith that includes an 'effective procedure.'⁹⁹

2.6 Conclusion

Persons who are eligible for international protection are clearly defined under the Geneva and OAU Conventions. In order for a person to be a refugee he/she must fall

⁹⁶ *Nachi Fuchi Fujikoshi Corporation and others v Council of the European Communities* Sky, E.C.R 1363, 1979.

⁹⁷ See Council of Europe, Resolution 31 (77), op. cit. note 89.

⁹⁸ See Article XVIII of the American Declaration on the Rights and Duties of Man, op. cit. note 86.

⁹⁹ See Bliss, op. cit., note 13, at 96.

under those definitions. Individual status determination is done according to the definition of refugees under the Geneva Convention. *Prima facie* status is given to refugees who fall under the OAU definition of refugees since the OAU Convention expands the definition to include persons compelled to seek refuge from “external aggression, occupation, foreign domination, or events seriously disturbing internal order in either part or the whole of [the] country of origin.” Granting *prima facie* status is an easier process since it is recognition of asylum seekers as a group. However, individual refugee status determination is a delicate process. The nature of the definition of refugee under the Geneva Convention involves a complex mix of subjective and objective factors.

The Geneva and OAU Conventions provide refugees with a cluster of rights. However neither of these Conventions provides procedures as to how a particular person is recognized as a refugee. These Conventions leave the RSD procedure to be done according to states parties’ legal systems. As a result, the methods used to decide whether to recognize someone as a refugee vary around the world, reflecting the variety of legal traditions, local circumstances and national resources. Many states’ RSD procedures fall short of international law standards which put asylum seekers at risk of the unfair denial of their claim. RSD is the basic element in the protection of refugees. If RSD procedures are not designed to give a fair hearing to the claims of asylum seekers, people in danger of persecution at home are likely to be incorrectly rejected, putting them in danger of deportation. Thus, the right to seek asylum requires that individual asylum seekers have access to fair and efficient procedures for the examination of their claims. It is the responsibility of states parties to identify refugees in order to give effect to their obligations under the Geneva Convention and to prevent *refoulement*. States have to respect their obligations in order to give effective protection to refugees by observing international law principles in their RSD systems.

International refugee law is part of a larger mosaic of international human rights law. Human rights law constitutes the broad framework within which refugee law provisions should be seen. Nearly all of the provisions of ICCPR apply to non citizens. The right to a fair hearing is well established in Articles 13 and 14 (1) of the ICCPR. There are many arguments on the applicability of the right to a fair hearing under Article 14 (1) of ICCPR to RSD. In addition, the Human Rights Committee is of the view that

the rights set fourth in the ICCPR apply to everyone irrespective of her or his nationality or statelessness.

The ACHPR has provided the right to a fair hearing in its article 7(1). The ACHR has made many decisions depending on the provision of fair hearing under the ACHPR. Article 12 of the ACHPR also provides the right to seek asylum and the right to no expulsion of aliens. The African Commission for Human Rights has also passed its decisions on a number of communications on the applicability of the provision of non-expulsion of aliens in RSD. In addition, depending on the human rights principles of fair hearing the ExCom identified some basic minimum requirements of fair hearing that are crucial to RSD and recommends states parties to follow them.

Asylum seekers and refugees are entitled to two partially overlapping sets of rights, namely, those rights accorded to them as individuals and guaranteed under international human rights standards and national laws, and those specific rights related to their status as refugees. The adoption of national refugee legislation that is based on international standards is a key to strengthening of asylum law, making protection more effective and providing a basis for seeking solutions to the plight of refugees. Therefore, incorporating international law principles into national refugee legislation is particularly important in areas on which the Refugee Convention is silent such as RSD.

CHAPTER THREE

REFUGEE STATUS DETERMINATION PROCEDURE IN UGANDA

3.1 The Right to Fair Hearing of Asylum seekers in the Ugandan RSD Process

Governments can have their greatest impact on the protection of refugees by adopting legislation consistent with international law. In particular, national procedures for determining refugee status should be given a high focus by governments because those procedures are essential to the protection of refugees. This is particularly important as the Geneva Convention has left the content of such procedures to be determined by the country of asylum. This Chapter examines Uganda's refugee law framework and practice governing the right to fair hearing of asylum seekers.

3.1.1. The Constitution of Uganda

The 1995 Constitution of Uganda provides rights for all persons in Uganda, irrespective of status, except citizen rights which may not be applicable for refugee. The fundamental rights and freedoms of refugees are explicitly recognized by the 1995 Constitution of Uganda. Article 20 (1) of the Constitution of Uganda states that “fundamental rights and freedoms of individuals are inherent and not granted by the state”¹ These rights and freedoms include right to equality and freedom from discrimination, right to life, right to personal liberty, right to protection from inhuman treatment, and right to a fair hearing.

. In addition, as Uganda is signatory to the provisions of the ICCPR, CAT, ACHPR, the Geneva and the OAU Conventions, except those articles in which Uganda has made reservations,² which are applicable to refugees in Uganda (See the discussion in Chapters One and Two). The right to fair hearing has been provided under Article 28 of

¹ Republic of Uganda, Constitution of the Republic of Uganda, 1995, (hereinafter referred to as the 1995 Constitution of Uganda), Article 20 (1).

² Uganda has made reservations on Articles 7, 8, 9, 13, 15, 16(2), 17, 25 and 32 of the Geneva Convention, See, US Committee for Human Rights, WORLD REFUGEE SURVEY 2006: RISKS AND RIGHTS, at 99.

the Constitution of Uganda. This article describes the right to fair hearing in a similar way to Article 14(1) of the ICCPR, which states:

- (1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.
- (2) Nothing in clause (1) of this article shall prevent the court or tribunal from excluding the press or the public from all or any proceedings before it for reasons of morality, public order or national security, as may be necessary in a free and democratic society.³

Like Article 14 of the ICCPR, the right to fair hearing in this article is also provided for in the case of civil rights and criminal charges. It is obvious that RSD procedure can not be related to cases of criminal charges except in the case of the application of exclusion clause.⁴ However, determining ones refugee status is crucial to the applicant's civil rights.⁵ Uganda provides refugee rights by virtue of the 1995 Constitution, the Refugees Act⁶ and its obligations under the Geneva Convention, the ACHPR and the OAU Convention. Therefore, it can be argued that the right to a fair hearing provided in the Constitution is also applicable to the RSD process.

Under the 1995 Constitution the right to a fair hearing is among the non derogable rights. Article 44 states:

Notwithstanding anything in the constitution, there shall be no derogation from the enjoyment of (a) freedom from torture and cruel, inhuman or degrading treatment or punishment; (b) freedom from slavery or servitude; (c) right to fair hearing; (d) right to an order of habeas corpus.⁷

In cases of administrative decisions, Article 42 of the Constitution provides the right to just and fair treatment stating:

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to a court of law in respect of any administrative decision taken against him or her.⁸

³ Article 26 of the 1995 Constitution of Uganda, op. Cit. note 1.

⁴ See discussion in section 2.4 of Chapter Two, *supra*.

⁵ Id.

⁶ The Refugees Act 2006, the Uganda Gazette No.47 Vol. XCVIX, August 4, 2006.

⁷ Article 44 of the 1995 Constitution of Uganda, op. cit. note 1.

⁸ Id., Article 42.

The right to apply to a court is thus regarded as an important component of just and fair treatment in administrative decisions. This provision is more appropriate to RSD procedure in Uganda as it follows administrative proceedings in RSD process. The 1995 Constitution has clearly provided that the right to a fair hearing is a crucial aspect of any adjudication including in the process of RSD.

3.1.2. Right to Fair Hearing under the Ugandan Refugee Law

The previous Ugandan refugee law—the Control of Alien Refugees Act (CARA)⁹—was clearly in contradiction with provisions of the Geneva and OAU Conventions, human rights law and the 1995 Constitution of Uganda.¹⁰ The CARA had given power to an executive officer to admit or reject an alien into Uganda without giving reason.¹¹ This is contrary to the principles of international refugee law, particularly the contents of the Geneva Convention, to which Uganda is signatory. Some of the provisions that restricted rights of refugees include Section 5 of the CARA that restricted the freedom of movement of refugees, sections 7 and 9 that permitted arbitrary arrest and the detention of refugees without trial, and section 20 that provided for deportation and return of refugees to their home country.

The inconsistencies in the CARA had been the concern of many scholars. Oloka-Onyango argued that there was in fact no law protecting refugees in Uganda, because the CARA contradicted the constitutional rights of refugees, making it unconstitutional.¹² He observed that as its name suggested, CARA was designed not to address the rights of

⁹ Control of Aliens Refugees Act, 1960, available at Chapter 64, Laws of Uganda, 1964, (hereinafter referred to as CARA).

¹⁰ Section 1(2) of CARA gives the appropriate minister power to declare who a refugee is whereas the Geneva Convention and the OAU Convention define who a refugee is and should be. None of the basic human rights and freedoms provided under Chapter IV of the 1995 Constitution of Uganda were recognized by CARA. The right of association in Article 15, the right to gainful employment under article 17, 18 and 19, the right to freedom of movement under Article 26, the right of non *refoulement* under Articles 32 and 33, and the right to naturalization in Article 34 of the Geneva Convention are some of the rights which were not incorporated in CARA.

¹¹Id., section 1(2).

¹² J. Oloka-Onyango, *Domestic Legislation and the Protection of Refugees in Uganda: For Whom Does the Bell Toll?* (Unpublished Paper presented at a Refugee Law Project (hereinafter RLP) workshop held at Hotel Africana, Kampala, on October 26, 2001) at 1.

refugees but rather, to control them.¹³ Similarly, Samuel B. Tindifa stated that “the law appears to make refugees intruders who were not readily welcome and who, therefore, had to be strictly confined in remote settlements.”¹⁴ Abraham Kiapi also pointed to the legal discrepancies between the Geneva Convention and Ugandan refugee law. In the words of Kiapi:

The legislation governing the area of refugees in Uganda remains archaic and behind the times. Not only does it fail to accord with the basic tenets of the framework established by the Geneva Convention, it also falls short of spirit of the 1969 OAU convention. This means there is a serious lacuna in the regime.¹⁵

As a result of criticism by scholars and human rights activists about the CARA, the Ugandan government adopted practices which were at least partly consistent with the international instruments on refugees. Unlike in the CARA, under the adopted practices RSD was done according to the refugee definitions in the Geneva and OAU Conventions. However the practice does not provide asylum seekers the right to a fair hearing in their application for refugee status.¹⁶

The Refugees Act 2006 was enacted out of the need to fulfill Uganda’s obligation towards the protection of refugees under international law. The Refugees Act adopted a different approach from the CARA towards the perception of refugees. The Act reflects international legal standards of refugee protection provided in the Geneva and OAU Conventions. It has largely adopted the provisions of the Geneva and OAU Conventions. Section 28 of the Act states:

...every refugee is entitled to the rights and shall be subjected to obligations provided for or specified in-(a) the Geneva Convention; (b) the OAU Convention; and (c) any other convention or instrument relating to the rights and obligations of refugees to which Uganda is a party.¹⁷

According to section 4, the Act has adopted the definition of refugee as provided under the Geneva and OAU Conventions. Section 42 of the Act grants asylum seekers

¹³ Id., at 2.

¹⁴ Samuel B. Tindifa, “*Refugees and Human Rights in Uganda: A Critical Assessment of the Law, Policy and Practice*,” EAST AFRICAN JOURNAL OF PEACE & HUMAN RIGHTS, Vol.5, No. 1, 1998, at 57.

¹⁵ Abraham Kiapi, “*he Legal Status of Refugee in Uganda*”, EAST AFRICAN JOURNAL OF PEACE & HUMAN RIGHTS, vol. 3, no.1, 1997, at 129.

¹⁶ See discussion in section 3.6 of Chapter Three, *infra*.

¹⁷ Id., section 28.

and refugees the right to *non-refoulement*. The principle of *non-refoulement* is imported from Articles 33 and II (3) of the Geneva and OAU Conventions, respectively. Section 29 of the Act provides a list of rights which are almost identical to the rights of refugees provided in the Geneva Convention. This list of rights include the right to obtain a refugee identity card, the right to remain in Uganda, right to work, right to movable and immovable property, and the right of free access to courts of law. The Act also provides for the establishment of a department of refugees for the purpose of processing asylum claims, handling complaints from refugees and advising the government on refugee policy.¹⁸ As a matter of fact, the structure provided in the Act already operated in practice. Even though the Act came out with some improvements to existing practice, it still has many flaws.¹⁹ The UNHCR senior protection officer in Kampala has said that “it [Refugees Act] is on the right track, but far from international law standards”²⁰ He also described the efficacy of the new Refugees Act as “putting a new engine into a hundred years old truck”²¹

The Act has incorporated some elements of the right to a fair hearing that should be followed in the RSD procedure. The Act requires an asylum seeker to “make a written application to the Refugee Eligibility Committee for the grant of refugee status within thirty days after the date of his or her entry into Uganda.”²² Although it is a good idea to have a regulated application procedure for refugee status, the requirement for a written application sounds unrealistic since it presumes that asylum seekers are all educated and can read and write or they will receive some form of assistance in the preparation of their applications. Some asylum seekers may be illiterate, and even if educated they may need assistance to articulate their claim. An Officer at Special Branch Head Quarters, the branch of Uganda Police in charge of registering and interviewing asylum seekers, says:

¹⁸ Id., section 7.

¹⁹ See RLP, Critique of the Refugees Act 2006, at: <www.refugeelawproject.org>, (Viewed on October 20, 2007).

²⁰ Interview with Mostafa Khezry, UNHCR Senior Protection Officer, Kampala, October 16, 2007.

²¹ Id.

²² Section 19 (1) of the Refugees Act, op. cit note 6.

Written application!!! I don't think it is reasonable. When we interview them we guide them somehow, the written application cannot help. If they go to someone for some help he can guide them wrongly.²³

The practicality of the 30 days deadline is also questionable and may result in the dismissal of a large number of genuine refugee claims. Imposing such a deadline assumes that applicants will make a written application within that time frame and deliver the application to the department of refugees. When asylum seekers enter Uganda they find themselves in a totally new environment and it becomes difficult to access information. In such a case, it may not be possible for the applicant to realize that he/she has to submit an application within that deadline. This is particularly true with regard to those who enter Uganda when sick and traumatized.

In addition, the Act has given the REC 90 days within which individual refugee status claims should be decided. According to section 20(2) “the Eligibility Committee shall, within ninety days after the date of reception by the Commissioner, consider and determine the refugee status of the applicant...”²⁴ This section will enable the cases of asylum seekers to be quickly determined and will also reduce the excessive hardships caused by the lack of humanitarian assistance. Currently, asylum seekers awaiting decision on their application for refugee status do not get any form of official assistance except small material assistance from the Jesuit Refugee Service (JRS).²⁵

In contrast to existing practice, the Act has provided that asylum seekers should be given written reasons in case of a rejection. Section 20 (4) of the Act states that where an application is rejected the Eligibility Committee must state the reasons for its decision in writing and the applicant must be provided with a copy of the statement.²⁶ This provision is of crucial importance to asylum seekers. Written reasons for rejection can enable a refugee to build an appeal or to accept that he/she is outside the legal definition of a refugee. Without written reasons it is impossible for asylum seekers to make a meaningful appeal. The Act also provides asylum seekers with the right to be given

²³ Interview with Musinguzi Bernard, Head of Office, at the Special Branch who is also member of REC, Kampala, October 10, 2007.

²⁴ Section 20(2) of the Refugees Act, *op. cit.* note 6.

²⁵ Humanitarian assistance is limited to refugees who live in the settlements camp. See also discussion in section 3.5 of this Chapter, *infra*.

²⁶ Section 20 (4) of the Refugees Act, *op. cit.*

temporary documentation until all rights connected with or incidental to the application for refugee status are exhausted.²⁷ Temporary documentation is essential for applicants in order to identify themselves as asylum seekers. This section will also be helpful to enable asylum seekers identify themselves as asylum seekers during the appeal procedure.

Most importantly, the Act provides asylum seekers with the right to defend their cases during the decision of their status and if necessary to be accompanied by a competent interpreter. Section 24 (2) states that “the applicant is entitled to a hearing during the consideration of his or her application (and) where necessary the state shall provide the service of a competent interpreter to the applicant.”²⁸ This provision is the most crucial aspect of a fair hearing in RSD. The nature of status determination requires that asylum seekers have the right to an oral hearing, because fundamental interests are at stake as the consequences of an incorrect decision are severe, and the decision requires information personal to the knowledge of the asylum seeker. Hence, the provision of a competent interpreter by the state is crucially important to asylum seekers, and is a fundamental component of the right to a fair hearing. It is obvious that without an interpreter the majority of asylum seekers would not be able to exercise their right to be heard. Quality interpretation is critical to ensure a correct understanding of an applicant’s testimony. Poor interpretation can distort a refugee’s testimony. Therefore, having a competent interpreter during a hearing on refugee status is an inseparable part of the right to a fair hearing.

The Act provides asylum seekers with the right to representation during a hearing for the determination of refugee status, but at the expense of the asylum seeker. Section 24 (3) states that in exercising of his or her rights including the right to a hearing the applicant may be represented or assisted by a person of his or her own choice, including an advocate at his or her own expense.²⁹ The provision of legal assistance during the decision making on refugee status by the REC is a good idea. However, the provision of legal representation at the asylum seeker’s expense is unrealistic. This section has forgotten the fact that most asylum seekers have been impoverished by the circumstances

²⁷ Id., section 24 (1) (a).

²⁸ Id., section 24 (2).

²⁹ Id., section 24 (3).

that forced them to flee their homes. Most asylum seekers flee into exile without even the mere necessities of life. Therefore, there are no possibilities of securing the resources to cover the expenses of legal representation.

The creation of an independent appeals body is one of the notable features of the Act. The Refugee Appeals Board, which hears appeals from asylum seekers whose application for refugee status is rejected in the first instance, is established under section 16 (1). The establishment of an appellate body represents important progress in providing asylum seekers the right to a fair hearing. The Appeals Board is a guarantee for those who are unfairly denied status. The creation of the Board offers an opportunity for an independent evaluation of the case. However, the establishment of the Appeals Board may have a little impact on maintaining the expectations of an appellate body because its power is substantially restricted. The Board has the power to dismiss the appeal but it has no power to make a decision actually granting refugee status. The limited power of the Appeals Board is explicitly provided under section 17 of the Act:

- (1) The Appeals Board may receive and hear appeals from the decisions of the Eligibility Committee on questions of law and procedure.
- (2) In any appeal before it, the Appeals Board may-
 - (a) Confirm the decision of the Eligibility Committee;
 - (b) Set aside the decision of the Eligibility Committee and refer the matter back to the Committee for further consideration and decision;
 - (c) Order a rehearing of the application; or
 - (d) Dismiss the appeal.
- (4) For the avoidance of doubt, the Appeal Board shall not make a decision granting the status of refugee to an applicant.³⁰

According to this provision the sole appeals body lacks the power to re-evaluate the whole case on its merits. The REC has remained the only body that makes final decisions both at the first application and after appeal. In the existed practice appellate decisions were made by the same body that decided the application at first instance, the REC. The Act has simply legalized exiting practice.

Despite the enormous power of the REC in determining refugee status, the Act failed to mention the required qualification of its members. On the other hand, section 16(2) specifies the qualifications by which the members of the Appeal Board are

³⁰ Id., section 3(2).

selected: “the members of the Appeals Board shall be appointed from among persons having knowledge of or experience in refugee law or matters relating to immigration, foreign affairs, national security, local administration, human rights and refugees generally.”³¹ This implies that members of the REC can be of any qualification with no prior skill and experience in these fields. Apart from the limited power the Appeal Board has, its decision is final, thus, no right for appeal to the court of law. As discussed above, the Constitution of Uganda provides any person the right to apply to a court of law in respect of any administrative decision taken against him or her. In this case asylum seekers who are not satisfied with the final decision of the REC should have been given the right to appeal to the court of law.

Pursuant to section 4 of the Act, a person qualifies to be granted refugee status if he or she fulfills the criteria which are laid down under the definition of a refugee in the Geneva and OAU Conventions. At the same time, the Government of Uganda has the sovereign right to deny refugee status as section 3 (2) of the Act states that “the Government of Uganda has the sovereign right to grant or deny asylum or refugee status to any person.” Although the state has the sovereign right to grant asylum, the granting of refugee status is bound by the provisions laid out in the Geneva and OAU Conventions, particularly the principle of *non-refoulement*.

The sovereign right of the Government of Uganda to grant refugee status, which is derogation from the international conventions that the Act purports to uphold, weakens the provisions in the Act that lay out the principles for granting refugee status. There is a fear that the provision may lead to the arbitrary denial of refugee status by the REC in the name of sovereign right. It is obvious that an arbitrary denial of refugee status could also lead to a *refoulement* of genuine applicants in violation of the principle of *non-refoulement* under the international refugee law. Otherwise, issue of sovereignty of states including Uganda is well established in international law.

Although the Act has addressed several elements of the right to a fair hearing that have to be followed in the RSD procedure, there are aspects of the right which have considerable importance to asylum seekers, and which are not included in the new law. The Act has not made any mention of the right to information on the procedures to be

³¹ Id., section 16 (2).

followed during an application for refugee status. The Act requires asylum seekers to submit their written application to the REC. However, in addition to language and literacy barriers, asylum seekers are largely ignorant of the RSD procedure. It is therefore, important that asylum seekers are given some clue about the criteria and procedures used in determining refugee status. Information concerning the appeal procedure and the right of a fair hearing during status determination is also an important aspect of the right to fair hearing. Moreover, the Act provides the right for legal representation during a hearing but it does not provide any form of legal assistance or counsel during the preparation of the applicant's case both at the initial stage and on appeal. The right to legal counsel or assistance is, however, an integral tenet of a fair hearing which is crucial during the RSD process, at both the initial and appeal stages,.

3.2. The Current Procedure of Application for Refugee Status

According to the place of registration, asylum seekers in Uganda are grouped into two categories. One category represents those who register at the reception centers established near the refugee camps. The Office of the Prime Minister (OPM), which is in charge of handling asylum cases, has a registration desk for asylum seekers in the Northern and Western borders of the country.³² After registration for refugee status at the reception centers, these groups of refugees are referred to the settlement Camps and their application for refugee status is decided there.³³ Presently Uganda is receiving a mass influx of asylum seekers, fleeing war, from the Eastern part of Democratic Republic of Congo (DRC).³⁴ OPM and UNHCR receive these asylum seekers at the reception centers at the border and grants them *prima facie* refugee status. The second category represents those asylum seekers who file applications for refugee status in Kampala. All asylum seekers who enter Uganda are supposed to be registered at the borders on their first arrival.³⁵ However, many asylum seekers come directly to Kampala and register at Old Kampala Special Branch.

³² Interview with Oyella Vivian, OPM Legal/Protection officer, as well as member of the REC, Kampala, October 16, 2007.

³³ Id.

³⁴ Id.

³⁵ Id.

Most of the asylum seekers who come directly to Kampala have no knowledge of the refugee camps located in the remote parts of the country. This is because most transportation that enters Uganda from neighboring countries heads directly to Kampala. In addition, there are no registration facilities for newly arrived asylum seekers at the entrance points. For example, most of asylum seekers who come from Ethiopia, Eritrea and Somalia enter Uganda through the Kenyan border and come directly to Kampala.³⁶ Upon arrival in Uganda some asylum seekers state that they face police harassment for not holding valid documents permitting them to enter the country. For example, one Somali Bantu asylum seeker informed the researcher that he left his country after his parents and ten brothers were slaughtered in a mosque by a group of Moslems allegedly for siding with the Somali government. When he and his wife and their two children entered Uganda through the Malaba border he was asked to produce a valid passport.³⁷ He said that since he did not have any document the police asked him to pay US\$150. When he explained that he did not have that amount of money, he was arrested and detained for three months.

Furthermore, asylum seekers who come to Uganda from neighbouring countries do not feel protected at the border given that it is close to their home country.³⁸ They feel that their persecutor can easily abduct them from the camps. For example, Sudanese refugees sometimes come directly to Kampala without stopping in one of the camps closer to the Ugandan-Sudanese border. Even some of the asylum seekers who first go to the camp leave it subsequently.³⁹ They leave the camps for reasons such as inadequate humanitarian assistance, general insecurity, fear of attack from rebel groups, and insecurity for particular individuals.

The application process for refugee status in Uganda consists of multiple steps. Before the enforcement of the new Refugees Act of 2006 there were between four and six steps in the process of seeking asylum in Uganda. Asylum seekers first used to

³⁶ Id.

³⁷ Interview with an asylum seeker, Kampala, December 7, 2007.

³⁸ Kirk Huff & Ronal Kalyango, A DROP IN THE OCEAN: ASSISTANCE AND PROTECTION FOR FORCED MIGRANTS IN KAMPALA, Refugee Law Project Working Paper No. 16, (hereinafter referred to as RLP Working Paper No. 16), 2006, at 17.

³⁹ Human Rights Watch, Hidden in Plain View: Refugees Living without Protection in Nairobi and Kampala, 2003, (hereinafter referred to as HRW), at 75, at: <www.myspace.com> (Viewed on August 28, 2007).

register with the Old Kampala Police station. Then they were interviewed by the counselor at InterAid (the UNHCR implementing partner), followed by the UNHCR protection officer who referred the asylum seeker to the OPM. If the case did not fall under *prima facie* status, OPM sent the applicant to the Special Branch.⁴⁰ After the interview, if UNHCR believed that the applicant fell under the category of *prima facie* status, UNHCR wrote a letter to the settlement camp the refugee was being referred to acknowledging that status had been granted. OPM endorsed this letter and sent the refugee to InterAid for transportation arrangements to one of the settlement camps.

Today, the above procedure has changed to some extent. Since the entry into force of the new Refugees Act on May 2007, the UNHCR involvement in the application for refugee status process has been restricted. Under the current procedure, asylum seekers do not need to go to the Old Kampala Police Station, InterAid and the UNHCR in their application for refugee status. RSD process is done fully by the Government of Uganda through the Office of the Special Branch and the OPM.⁴¹

Asylum seekers who come directly to Kampala have to register at the Special Branch in Old Kampala.⁴² Staff of the Special Branch interview the asylum seekers and take notes. At this stage the police record initial biographical facts and the reasons for the refugee's flight in general. Once the Special Branch has interviewed the applicant, they send him or her to the OPM with the notes taken during the interview. By referring to the notes sent by the Special Branch, OPM decides whether the applicant should be given *prima facie* status. The OPM grants *prima facie* status by virtue of the definition of refugee under the OAU Convention and the new Refugee Act.⁴³ If the OPM finds out that the applicant does not deserve *prima facie* status, it sends the case back to Special Branch for further screening.⁴⁴ Asylum seekers who are sent back to the Special Branch for further screening are given a form entitled "Questionnaire for Assessment of Refugee Status" that is to be filled out by the applicant and returned to the office. Upon the return

⁴⁰ Interview with Vivian, op. cit. note 32.

⁴¹ Id.

⁴² The Special Branch Police station in Old Kampala is different from the Old Kampala Police Station in Old Kampala at which newly arrived refugees used to be registered. Previously the office of the Special Branch was in Kololo, but now it has moved to Old Kampala.

⁴³ Interview with Vivian, op. cit. note 32. See also, Article I (2) of the OAU Convention and Section 4 (c) of the Refugee Act.

⁴⁴ Id.

of the form, one of the officers conducts a detailed interview of the applicant. A brief note, abstracted from the interview, and the form filled out by the applicant are forwarded to the OPM for a decision by the REC. Individual refugee status is thus determined on the basis of the note prepared at the Special Branch. Some asylum seekers have complaints about the quality of service at the Special Branch.⁴⁵ They allege that priority is always given to those who can afford to bribe the officers. One refugee from Somalia said:

There is a lot of problem in the Special Branch; they have no concentration on refugees. They like those people who come as translators with refugees, because they give them some money. It takes a lot of time to be registered unless you give them some money. Priority is given always to those who are willing to give money.⁴⁶

A Rwanda asylum seeker also stated that the interviewing police officer asked him to pay money for the service.⁴⁷ A number of Eritrean asylum seekers and refugees whom I had an informal conversation with confirm that at the Special Branch you have to pay money to get interviewed instantly, otherwise you face two months long appointment.⁴⁸

3.3. Individual Refugee Status Determination by the REC

Presently, REC has 15 members drawn from nine ministries and the UNHCR. The UNHCR attends the meeting in order to provide country of origin information and to advise the REC in their legal capacity, but has no voting power.⁴⁹ To decide refugee status, the Committee conducts various meetings and sometimes sits for sessions that take from one up to five consecutive days.⁵⁰ In the years before 2007 the REC meetings were not regular.⁵¹ For example in 2006, REC had only one session.⁵² As a result, delay in the refugee status determination process was a common scenario. There was a time the RSD

⁴⁵ Interview with an asylum seeker, Kampala, November 5, 2007.

⁴⁶ *Id.*

⁴⁷ Interview with an asylum seeker, Kampala, November 5, 2007.

⁴⁸ Informal conversation with an Eritrean asylum seeker, Kampala, September 23, 2007.

⁴⁹ Interview with Vivian, *op. cit.* note 32. See also Section 11 (3) of the Refugee Act which provides that UNHCR may sit in REC meeting in an advisory capacity.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

process took up to three years.⁵³ However, since 2007 the problem of delay is being improved. A member of REC admitted that delay in deciding refugee status was a real problem for refugees.⁵⁴ He also noted that currently RSD process does not take more than six months. In the year 2007 the REC conducted a number of meetings and decided many cases. As a result, the situation has improved in comparison to the previous years.⁵⁵ For example the REC did not conduct any meeting to decide refugee status from August 2006 up to January 2007. In 2007 the Committee conducted two sessions and four meetings, and decided a total of 1286 cases.⁵⁶ The sessions were held 14th to 16th March and 7th to 10th August, whereby 766 and 534 cases were decided, respectively.⁵⁷

The number of cases decided varies from session to session depending on the availability of applicants' country of origin information. For example the REC spends little time on deciding cases of Somali refugees as the situation in Somalia is a common knowledge. A member of the REC explains the practice as follows:

The number of cases to be decided in a meeting depends on the information we have about the country of origin. For example if it is for Somalis, in a single meeting the Committee can decide up to 100 cases, but if it is for Burundians or Rwandans we may decide up to 20 cases in a meeting because we have to look at the cases very carefully.⁵⁸

Accordingly the number of cases that are rejected or granted refugee status in a session depends on the country of origin information the Committee has, and, of course, on the merits of individual cases.

Even though the current RSD process is generally viewed as having made substantial progress over previous years, interviews with asylum seekers in Kampala indicate that problems still persist. An Ethiopian refugee who was granted refugee status after two years stated:

I waited for a decision of my application for two years. I was very lucky to get my application decided after such long time because there are my friends who applied for refugee status with me and have not heard

⁵³ Interview with Salima Namusbya, Senior Legal Officer/ Head of Legal Aid & Counseling Department, Refugee Law Project, October 8, 2007.

⁵⁴ Interview with Bernard, op. cit. note 23..

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Interview with Vivian, op. cit. note 32.

anything about their application yet. It is unfortunate to stay for about two and a half years with an asylum seeker document and renew it every three months at the OPM.⁵⁹

Others have waited for a longer time and their cases have not been decided for the last three years. For example, a Rwandan asylum seeker told the researcher that it had been almost three years since he applied for refugee status and had not received any response.⁶⁰ He stated that the delay had adversely affected him, because he had secured a scholarship for study in the USA and passed the TOEFL exam,⁶¹ but he missed the opportunity because he could not get Conventional Traveling Document (CTD) as his application for refugee status had not been decided.⁶² Another Eritrean asylum seeker who applied for refugee status in March 2006 stated that she had been checking for her name on the list of decided cases at the OPM for the last one year and six months. In September 2007, she went to the Special Branch to check if her case had been sent to the OPM. The Special Branch searched for her file and found that it had been misplaced. Her application was not decided until the end of February 2008. It is not uncommon to see some late applications decided before earlier ones. The researcher asked an officer in the Special Branch about these allegations and he replied: “we are not accurate in the filing system, sometimes we mix files.”⁶³ It seems that the main cause of delay is the filing system at the Special Branch. By the end of 2007 REC was deciding applications made in late 2006 and early 2007.⁶⁴

The delay in determining applications for refugee status has a major effect on the applicant’s fate. Being an asylum seeker, the rights of the applicant are highly precarious. One of the main problems the applicant faces is that he/she cannot secure basic subsistence assistance while awaiting his or her application to be decided. Resettlement to a third country is one of the durable solutions to the problem of

⁵⁹ Interview with a refugee, Kampala, October 23, 2007.

⁶⁰ Interview with an Asylum seeker, Kampala, November 5, 2007

⁶¹ TOEFL—Test of English as a Foreign Language—is a basic requirement for admission to students from non English speaking countries.

⁶² Interview with an Asylum seeker, op. cit. note 60.

⁶³ Interview with a member of the REC, op. cit., November 7, 2007.

⁶⁴ Id.

refugees.⁶⁵ However, it is offered only to refugees while asylum seekers are not considered in such resettlement programmes. For example, one Ethiopian refugee informed the researcher that in 2004 there was a resettlement programme from Nakivale settlement camp to the USA, but he could not get the chance because he was an asylum seeker.⁶⁶ More importantly, most of the rights provided in international refugee law are applicable to someone who is granted refugee status.

Today, RSD process is progressing towards fulfilling the period of time required for RSD by the Refugees Act, although it has not achieved it yet. According to section 20(2) of the Act “the Refuge Eligibility Committee shall, within ninety days after the date of receipt of the application by the Commissioner, consider and determine refugee status.” Until February 2008, the earliest decided application lasted 6 months. According to a legal officer at the OPM, “the REC is trying hard to fulfill the demands of the refugees but it has a shortage of resources to conduct the meetings frequently and decide cases as intended by the Refugees Act.”⁶⁷ It is UNHCR which arranges and covers the costs of the sessions and meetings.⁶⁸ The UNHCR Senior Protection Officer said that “UNHCR is the one who pays them to sit for the meetings.”⁶⁹

The absence of some members in the arranged meetings is another cause for delay in RSD process in Uganda.⁷⁰ There are some members of the REC in whose absence the Committee cannot pursue the meeting.⁷¹ Another problem is that the members of the REC carry double burdens, given that they have their own working schedules in their respective ministries. In effect, it is difficult to expect them to work in the RSD as effectively as in their premier jobs. To ensure an effective RSD procedure as provided in the new Refugees Act, members of the Committee should be tasked solely for handling refugee status determination.

⁶⁵ International community recognizes three ‘durable solutions’ to the problem of refugees, namely, repatriation, local integration, and resettlement to a third country. See, Kirk Huff & Ronal Kalyango, *REFUGEE IN THE CITY: STATUS DETERMINATION, RESETTLEMENT, AND THE CHANGING NATURE OF FORCED MIGRATION IN UGANDA*, Refugee Law Project working paper no 6, (hereinafter referred to as RLP Working Paper No. 6), at 20.

⁶⁶ Interview with a refugee, November, Kampala, 5, 2007.

⁶⁷ Interview with Vivian, *op. cit.* note 32.

⁶⁸ *Id.*

⁶⁹ Interview with Mostafa, *op. cit.* note 20.

⁷⁰ Interview with Vivian, *op. Cit.* note 32.

⁷¹ *Id.*

3.4. After the Decision of Refugee Status

Refugee status determination procedures do not end once a decision has been reached. Notification of the RSD decision requires certain procedures which would guarantee the rights associated with the decision. For instance, applicants should be notified in writing of the RSD decision. This section of the study discusses the way RSD decisions are notified to applicants in Uganda. In addition, it examines the problems related to the issuance of refugee identity cards for those who are granted refugee status. Furthermore, this section also addresses the issue of referring refugees to the settlement camps.

3.4.1. Notification of Decisions

After the decision has been rendered by the NEC, notification is given to asylum seekers by posting the names and respective nationalities on the bulletin board at the OPM. An applicant whose name appears on the notice board presents him or herself to the receptionist in order to hear the decision that will determine his or her future status in Uganda. Considering the protection needs of refugees this form of notification is not preferable. Some of the refugees are of sufficiently high profile and have a credible fear that the authorities of their home country or foreign based agents can easily locate them.⁷² The protection needs of refugees may not be adequately addressed as the posted decisions clearly state the names and nationalities of refugees and are accessible to anybody. Many refugees approach RLP in search of safe third countries because of security reasons as they still fear attack by the authorities or agents from their countries of origin.⁷³

OPM provides a short letter of decision that informs the applicant whether the decision is positive or negative. The letter which is given to the rejected asylum seekers states that the asylum seeker's application for asylum in Uganda has been rejected by the REC based on the facts provided by the applicant. In a negative RSD decision, applicants are not informed of the reasons for the rejection of their application, which is clearly a loophole in the procedure.

⁷² See, RLP Working Paper No. 6, op. cit. note 65.

⁷³ A number of the refugees I interviewed on November 2007 at RLP informed me that they come to RLP in search of help for resettlement for security reasons in Uganda.

3.4.2. The Problem of obtaining a Refugee Identity Card

The legacy of CARA is still reflected in the administration of refugees. The policy of the government to put refugees in designated areas is still in place. Once their refugee status has been determined, they are referred to the settlement camps. The letter given to the refugees states:

This is to inform you that the Refugee Eligibility Committee of ...considered your case and granted you refugee status in Uganda, in accordance with relevant legal provisions. ...you are advised to contact the UNHCR at InterAid for referral to ...refugee settlement

Generally, refugees are not given a Refugee Identity Card unless they prove 'self-sufficiency' to live in Kampala without assistance from UNHCR and the Government of Uganda. After proving their 'self-sufficiency' and intention to remain in Kampala, the OPM issues them an identity card. To prove that they are 'self-sufficient,' refugees must apply for issuance of the ID Card. The application should state their intention to remain in Kampala and their ability to support themselves. To prove his or her 'self-sufficiency' the refugee must provide a letter from his employer or school (if he/she is a student), together with a copy of a residence ID card from his or her chairman of the area. In addition to the proof of 'self-sufficiency', refugees are required to sign a paper declaring that they will not seek any assistance from the government of Uganda and UNHCR.

Even if refugees prove that they are 'self-sufficient', OPM is not responsive to requests for identity cards. Refugees who wish to remain in Kampala and prove their 'self-sufficiency' also have difficulties in obtaining identity cards. The receptionist who is in charge of delivering the identity cards makes refugees continuously return to OPM for a prolonged time.⁷⁴ When refugees approach OPM for their identity cards, the receptionist does not inform them of the documents required in order to obtain an identity card. As a result of the lack of information, refugees visit OPM from three up to four times to get their refugee identity cards. Sometimes, the whole process of issuing the identity card takes up to one month and three weeks.

⁷⁴ I was able to verify the problem of obtaining identity cards when I visited OPM several times to interview refugees, August to November 2007.

The problem of getting identity card at the OPM was raised in a UNHCR-Refugee meeting. Bayisa Waka-Woya—the deputy country representative of UNHCR in Uganda—explained that he had approached OPM regarding this problem. OPM, however, denied that there was indeed a problem, saying that any refugee could bring four passport sized pictures and receive an identity card.⁷⁵ He said that if refugees continue to have this problem in future, they should note the date and person to whom they spoke, so that UNHCR is armed with specifics the next time they approach OPM. He also rightly stated that he suspects the problem is with the person at reception rather than with the officers at OPM. Bayisa also stated that the current delay in receiving identity cards may be due to a recent massive intake which has created a backlog.

Despite assurances that these problems would not recur, many refugees state that the repeated and prolonged appointment at the OPM is an indirect way of asking money from refugees in exchange for the identity cards. It is also not uncommon to see some refugees who get their identity cards within two weeks. A Congolese refugee who was at the OPM office with his wife and had been told to come again after three weeks said:

I gave him the photocopies of all the documents he asked me three weeks ago, now he is telling me to come again after three weeks. At the same time I saw him to give ID card to someone who gave his documents with me. I think this man wants some money, so I have to come tomorrow and do something.⁷⁶

Similarly, one Eritrean refugee told the researcher that she gave UGX.10,000 to the receptionist and received her identity card within two weeks.⁷⁷ Refugees who have money prefer to pay for bribes rather than insisting on their rights. As aliens they have no confidence to demand justice. In most cases, the language barrier which bars them from effectively communicating with the authorities makes them even less confident. In such cases, money serves as the perfect medium of communication.

The main victims of this injustice are refugees who have no money even to cover their daily expenses. Even if a refugee has proof of ‘self –sufficiency’ it does not mean that she/he has a viable means of living. Most refugees who claim to be ‘self-sufficient’ are either dependants on remittance from their relatives abroad or they are engaged in

⁷⁵ UNHCR-Refugees meeting, Kampala, at UNHCR Office, Kololo, September 28, 2007.

⁷⁶ Interview with a refugee, Kampala, October 22, 2007.

⁷⁷ Interview with a refugee, Kampala, October 18, 2007.

informal employment, like cleaning, selling food, and washing cars, among others. The income from these activities barely covers hand to mouth living expenses. It is almost impossible for this category of refugees to pay bribes and secure their identity cards.

Regardless of the practice, the policy of issuing identity cards only to those refugees who are able to prove 'self-sufficiency' is inconsistent with international refugee law. It creates a link between refugee status and 'self-sufficiency' which undermines the meaning of a refugee as defined in international refugee law. The result of the policy is that no refugee is allowed to have refugee ID card and live in Kampala without proving self sufficiency. This is contrary to Uganda's obligation under the Geneva Convention, according to which Uganda must accord to all refugees the right to choose their place of residence and to move freely within its territory.⁷⁸ Uganda also has an obligation to issue identity papers to all refugees in its territory.⁷⁹ It should also be noted that refugees can be aided to become 'self-sufficient' when they get identity cards as it proves their legal status, and may help them to secure access to work. Most refugees enter Uganda empty handed. How can they be 'self-sufficient' unless they have been given favorable conditions to reestablish their lives?

Holding a refugee ID card has another critical importance to refugees. For example, refugees who wish to study pay the same school fees as Ugandans. This is crucially important for refugees as the school fees for foreigners may at times be over double of what the Ugandans pay. Similarly, in the private section of Mulago Hospital while refugees with ID cards pay UGX.5,000/=, which is the same as Ugandan nationals, those without must pay UGX.20,000/=, the same as foreigners. Thus, the identification card by itself is a means of helping refugees to survive. Furthermore, self-sufficiency is not necessarily a permanent situation. It is a state that can exist for some time and easily disappear due to many factors. A refugee can be self-sufficient today and empty handed tomorrow as is the case with any other human being.

For example most of the Eritrean and Ethiopian refugees live in Kampala for the reason that most of them came from urban places and it is hard for them to get used to the rural life of the settlement camps. Most of them live by the remittances of their brothers,

⁷⁸ Convention Relating to the Status of Refugees, July 28, 1951; 189 U.N.T.S. 137 (hereinafter referred to as the Geneva Convention), Article 26.

⁷⁹ Id., Article 27.

sister or relatives abroad. As time goes by their supporters become tired of sending money every month for the reason that they have to build their own lives. As a result, many refugees end up without any support. Refugees lose jobs, have children who may become ill, and have fluctuating incomes.⁸⁰ Therefore self-sufficiency should not be used as the basis for granting identity cards.

Even the new Refugees Act 2006 does not seem to change the current restrictive policy of the government in relation to the issue of the freedom of movement of refugees and asylum seekers. Section 30(1) of the Refugees Act provides refugees the right to freedom of movement in Uganda. However, the freedom of movement granted under this provision is subject to restrictions specified in section 30(2) which states:

Free movement of the recognized refugees in Uganda is subject to reasonable restrictions specified in the laws of Uganda, or directions issued by the Commissioner, especially on grounds of national security, public order, public health, public morals or the protection of the rights and freedoms of others.⁸¹

To make restrictions by law is rational. However, directions issued by the Commissioner may be arbitrary. There are no detailed criteria upon which the commissioner may issue directions to restrict freedom of movement. Furthermore, section 44 (1) of the Act empowers the minister to create settlement camps for the resettlement of asylum seekers and refugees in designated areas on public land. Section 44 (2) states that “an applicant or refugee who may wish to stay in a place other than the designated places or areas may apply to the Commissioner for permission to reside in any other part of Uganda.” This section impliedly obliges asylum seekers and refugees to live in the designated settlement areas.

3.4.3. The Process of Referring Refugees to the Settlement Camps.

Refugees who cannot prove ‘self-sufficiency’ are referred to camps. They have to see UNHCR at the InterAid office at Mengo for referral. At InterAid, UNHCR takes the bio-data of the refugees and their pictures by a computerized camera. They print out the record of the refugee, together with the picture and send it to the UNHCR office at

⁸⁰ RLP Working Paper No.16, op. cit. note 65, at 20.

⁸¹ Section 30 (2) of the Refugees Act, op. cit. note 6.

Kololo for signature. After the letter is signed by the UNHCR protection officer it is sent back to InterAid on Tuesdays and Thursdays. InterAid gives refugees the letter and some money for transportation.⁸² For example, refugees referred to Nakivale resettlement camp are given a sum of UGX.14,000/= to UGX.16000/=. However, the process of getting the money is not easy because refugees have access to UNHCR staff only on Tuesdays and Thursdays at InterAid. The appointment for registration usually takes more than a week. Yet, after registration refugees have to wait for more than one month to get the referral letter and the money for transportation to the settlement.⁸³

Many refugees blame InterAid for the delay. They suspect that the InterAid either doesn't give the records to the UNHCR on time or that it hides the referral letters when UNHCR delivers them in order to secure bribes from the refugees. InterAid staff give contradicting reasons when asked about the allegation. For example, two Eritrean refugees who have kept checking at InterAid for their referral letters for one and half months were allegedly told that the letters had not been issued for the reason that the lady in charge of typing the letter gave birth.⁸⁴ Another refugee was told that the computer used to type on the referral letter was damaged. The OPM and UNHCR office at the settlement camps do not accept refugees who come without a referral letter. The requirement of a referral letter as a prerequisite to admission to the camps seems overly-bureaucratic and it means a loss of time and money. As long as refugees hold the letter which declares that they have been granted refugee status, they should be free to register and settle in the settlement camps. Basically, OPM sends refugees to UNHCR in order to be given transportation assistance to go to the camps.⁸⁵ However, many refugees opt to go on their own because of the difficulties of getting the money from InterAid.

During the UNHCR-Refugees meeting the deputy country representative of UNHCR stated that "InterAid has not been treating refugees humanely-InterAid has been harassing refugees, calling police to arrest them, treating them as criminals/terrorists."⁸⁶

⁸² Sometimes they send them by the big World Food Program trucks which usually deliver foods and other materials to refugees in the camps. Interview with a refugee, Kampala (RLP), November, 2007.

⁸³ When I visited InterAid office in October 2007, refugees informed me that no referral letters had been given for more than a month. I witnessed refugees waiting at the premise to check if their referral letters have been issued.

⁸⁴ Interview with refugee, Kampala, November 6, 2007.

⁸⁵ Interview with Vivian, op. cit. note, 32.

⁸⁶ UNHCR-Refugees meeting op. cit. note 80

He admitted that InterAid had been harassing refugees and that such treatment was unacceptable.⁸⁷ He also stated that plans were afoot to give training to InterAid staff on their behavior, if necessary, police would be brought in to monitor their activities.⁸⁸ However, he also tried to justify the harassment of refugees at InterAid stating that it was not easy to work with refugees and some workers become desensitized.⁸⁹ He also explained that InterAid's duties had recently changed.⁹⁰ Whereas they used to be involved with the asylum seekers' claim, they now only provide services and the asylum claim remained confidential with the government of Uganda and the UNHCR. His hope was that InterAid would have more time to provide services. However, as stated above, refugees are still facing the same difficulties in getting access to InterAid services which is a major problem that requires more attention from the UNHCR.

3.5. Asylum Seekers' Livelihood during RSD

Asylum seekers who apply for refugee status in Kampala are the most vulnerable urban refugee group in terms of humanitarian assistance.⁹¹ Whereas mass influx of asylum seekers who arrive at the borders receive some form of immediate assistance at the reception centers, asylum seekers in Kampala do not receive any kind of assistance either from the UNHCR or government, either upon arrival or during the period awaiting determination of their status.⁹² Almost all of the asylum seekers enter Kampala empty handed because they have been impoverished by the circumstances that forced them to flee their homes. A few lucky ones may have relatives abroad who can help. The government policy, which is also supported by UNHCR, is that assistance should be provided only in refugee settlement camps.⁹³ Thus, UNHCR's Senior Protection officer

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ There are four groups of refugee who live in Kampala: (1) asylum seekers, (2) refugees (allowed and not allowed to settle in Kampala), (3) unregistered self settled refugees and (4) UNHCR Urban Case load. The 4th group of refugees is few refugees who are referred by UNHCR from the settlement camps to stay in Kampala for security or medical reasons who get some help from the UNHCR in Kampala. See, Michela Macchiavello, NEW ISSUES IN REFUGEE RESEARCH, FORCED MIGRANTS AS AN UNDER-UTILIZED ASSET: REFUGEE SKILLS, LIVELIHOODS, AND ACHIEVEMENTS IN KAMPALA, UGANDA, UNHCR Working Paper No. 95, 2003, at 3-4, at: <www.unhcr.org> (viewed on May 6, 2006).

⁹² See RLP Working Paper N. 16, op. cit. note 39, at 15-18.

⁹³ Id., at 15. See also Michela Machiavello, op. cit. note 91. at1.

told the RLP that UNHCR does not consider asylum seekers as ‘persons of concern’ until their status has been determined.⁹⁴ The slow process of RSD is a serious problem for asylum seekers as they cannot access any form of assistance before their cases are decided.

Following arrival and the waiting period for a decision on their application, asylum seekers face a lot of problems such as the lack of accommodation, food and medical assistance in Kampala. Jesuit Refugee Services (JRS) is the only organization that has an official programme of providing material assistance to asylum seekers in Kampala. That program provides asylum seekers with food assistance for a maximum of six months and rent allowances for a maximum of two months.⁹⁵ The budget of JRS to assist asylum seekers is very small compared to the number of asylum seekers in Kampala. JRS has the capacity to assist only 350 asylum seekers per month, while they receive up to 450 requests for assistance every month.⁹⁶ There are also many asylum seekers who do not approach JRS because of a lack of information about this facility. Furthermore, the money that is provided for accommodation is very little; resulting in asylum seekers facing difficulties in locating adequate housing.⁹⁷ The program officer at JRS told the RLP that providing food to asylum seekers is a difficult task, since only a few of them benefit and such assistance is meant to act as a supplement to the asylum seeker’s own resources.⁹⁸ JRS also refers asylum seekers to Agape House, a house maintained by St. Matia Mulumba Catholic Church in Old Kampala.⁹⁹ Agape has room for 30 asylum seekers at any time and, due to high demand and the government of Uganda’s and UNHCR’s insistence on focusing the provision of assistance on settlement camps, asylum seekers can only stay for up to three months.

Due to the considerable gap between the demands for assistance and the amount of assistance that is actually available, many asylum seekers sleep out on the streets and in other public places. For example a number of asylum seekers live outside the offices of InterAid, UNHCR and RLP. There are also asylum seekers who engage in petty trade or

⁹⁴ RLP Working Paper No. 6, op. cit. note 65, at 16.

⁹⁵ See, Working Paper No. 16, op. cit. note 39, at 16.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ RLP Working Paper No. 6, op. cit. note 65, at 18.

⁹⁹ Id., at 17.

solicitation in order to get daily food. For example, during an interview with asylum seekers, a 19 year old Liberian asylum seeker who lives behind the RLP asked the researcher to buy him some food. A handicapped Congolese refugee, with his three children and a wife with psychological problem, told the researcher that he had been living for about three months under the big tree opposite the office of RLP. He survives by begging on the streets and sometimes goes to the market places to pick up some fallen cassavas.¹⁰⁰ The UNHCR and the government forcibly move asylum seekers from outside the offices of the refugee agencies. Bayisa explained:

The camps outside of the UNHCR and RLP must stop. This is not a matter of asylum policy but is rather a matter of internal security for it is a crime to squat on others' property. If they do not leave, the police are planning to take them away by force starting next Tuesday [October 2, 2007]. UNHCR will not intervene if the government decides they need to be moved. However, UNHCR will provide two trucks next Tuesday [October 2] to go to Kyaka and Nakivale.¹⁰¹

One Somali asylum seeker who lived behind the RLP told the researcher that in the early October 2007 UNHCR brought two trucks and took 44 asylum seekers from behind RLP, 34 to Nakivale and 10 to Kyaka settlement camps.¹⁰² He also said that UNHCR promises to give assistance if they go to the camp, however, the assistance is limited to those who have refugee status.¹⁰³

InterAid has suggested the need for a reception center for asylum seekers in Kampala. However, this is yet to be implemented.¹⁰⁴ This reluctance hinges on the practicability of the option and the fear of encouraging flight to Kampala.¹⁰⁵ Given the increase in the number of asylum seekers and the hardships they face during the period awaiting a decision on their application, it is necessary to establish reception centers and provide basic emergency needs to the asylum seekers.

¹⁰⁰ Interview with Congolese asylum seeker, Kampala, November 6, 2007.

¹⁰¹ UNHCR-Refugee meeting, op. cit. note 80.

¹⁰² Interview with an asylum seeker, Kampala, December 7, 2007.

¹⁰³ Id.

¹⁰⁴ RLP Working Paper No .6, op. cit. note 65, at 16.

¹⁰⁵ Id.

3.6 The Minimum Basic Requirements of Procedural Fairness vis-à-vis the Practice in Uganda

In its 1977 session, the ExCom urged governments to establish formal procedures which consider at least *basic requirements* of procedural fairness. The Committee identified a list of certain *basic requirements* and recommended that governments follow them.¹⁰⁶ Recently, UNHCR also recognized the core procedural safeguards necessary to preserve the integrity of the asylum regime as both fair and efficient.¹⁰⁷ The agency called up on governments to adopt a fair and efficient asylum procedure in the application of the provisions of the Geneva Convention. The importance of fair and efficient procedure cannot be overemphasized as a wrong decision could cost the person's life or liberty.¹⁰⁸ The UN General Assembly emphasized on the necessity of access for all asylum seekers to fair and efficient procedure during RSD and the granting of asylum to genuine applicants, consistent with relevant international and regional instruments.¹⁰⁹ Pursuant to the Geneva Convention member states are duty bound to follow ExCom resolution which provides the minimum *basic requirements* for RSD.¹¹⁰

Fair hearing in RSD is extremely important because the stakes are high, and people can end up detained, tortured or killed if a mistake is made in the RSD process. The refugees who need protection most are most likely to fall through the cracks when correct procedural standards are not implemented. The lack of fair procedure can cause dangerous errors even if the staff that work with refugees are highly trained and strongly committed to refugee welfare. An adjudicator may make a decision in good faith, and not realize that critical information has been left out or misunderstood. For example, if an asylum seeker is not informed the reasons for the rejection of his or her application or cannot see the evidence relied on it will remain difficult for the applicant to establish argument during an appeal. A case that appears weak at first may become strong after a fair and open process. In addition, the refugee definition in itself is a complicated legal

¹⁰⁶ See chapter two section 2.2, supra.

¹⁰⁷ UNHCR, Global Consultation on International Protection 2nd Meeting, Asylum Process: Fair and Efficient Asylum Procedures, May 31, 2001, (hereinafter referred to as UNHCR Global Consultation) at: <www.unhcr.org> (viewed on May 27, 2007).

¹⁰⁸ UNHCR, Training Module, Determination of Refugee Status, (RLD2), 1989, Definition of Refugee status, chapter 2, at: <www.uhcr.org> (viewed on May, 2006).

¹⁰⁹ See UN General Assembly, RESOLUTION 51/75, UN. Doc., A/RES/51/75, Adopted at the 82nd Plenary Meeting, 12 Dec. 1996.

¹¹⁰ See Article 35 of the Geneva Convention, op. cit. note 78.

area and sometimes mistakes in applying the law are normal and expected. Fair procedures provide the safeguards necessary to correct such mistakes. Fair hearing can help to accomplish three essential factors in RSD procedure. First of all, they eliminate any appearance of arbitrariness, and give applicants confidence that their cases will be considered impartially. Secondly, they ensure that all relevant facts come out before a final decision is made. Thirdly, they establish safeguards against human error in the decision-making process.

3.6.1 The Right to Information Regarding the Procedures to be followed

The notion of refugee status is not always clearly understood by refugees themselves; and most refugees do not know the legal procedures of the country in which they are seeking asylum. Unfortunately, many refugees rely on advice from uninformed sources, which can often complicate their cases. Provision of information about the RSD process partly makes national procedures more fair and efficient. Providing information regarding the procedure to be followed enables the asylum seekers to meaningfully exercise their right to be heard. Furthermore, provision of adequate information regarding the process helps asylum seekers to present their case with honesty.

3.6.1.1 International Refugee Law Standards on Right to Information

As part of the general RSD procedure, the asylum seeker should be given general information regarding the definition of a refugee and the responsibilities of each organ which involves his or her claim for status. According to international refugee law an asylum seeker has the right to be informed of the nature of the proceedings. This is a fundamental element of RSD procedure. The ExCom conclusion states that “an applicant should receive the necessary guidance as to the procedure to be followed.”¹¹¹ Similarly, the UNHCR guidelines establish that it is essential for UNHCR to provide asylum seekers full and accurate advice and information about the refugee status determination procedure.¹¹² The European Union’s Resolution on Minimum Guarantees states that

¹¹¹ UNHCR, HANDBOOK ON PROCEDURES & CRITERIA FOR DETERMINING REFUGEE STATUS, 1992, (hereinafter referred to as UNHCR handbook), UNHCR Handbook, Para 192.

¹¹² UNHCR Global Consultation, op. cit. note 107, Para. 50 (g).

“asylum seekers must be informed of the procedures to be followed and of their rights and obligations during the procedure, in a language that they can understand.”¹¹³ This means that written information concerning the procedure must be available and accessible to asylum seekers and their counselors.¹¹⁴

The need of informing asylum seekers has been given due consideration in a number of countries. In the Canadian case of *Singh et al v. Minister of Employment and Immigration*, the Supreme Court of Canada considered whether the statute based RSD procedure was in accordance with ‘fundamental justice’ and stated “at the minimum, the [RSD] procedure should provide the asylum seekers with an adequate opportunity to state their case and to know the case they have to meet.”¹¹⁵ A number of other Canadian asylum decisions have considered whether the country’s determination procedures accord with ‘fundamental justice,’ as required by the Canadian Charter of Rights and Freedoms.¹¹⁶ In another case, *Malouf v Canada*, the Federal Court of Canada held:

...the failure on the part of the adjudicators to notify the applicant in an effective and timely way of the fact that it was proposing to rely on Article 1F (b) and provide an opportunity to present evidence and make representation at any stage of the proceeding amounted to a failure to observe a principle of procedural fairness.¹¹⁷

The right to information is an integral part of the principle of procedural fairness and should be strictly provided in any adjudication of asylum cases.

3.6.1.2 *The Practice in Uganda*

There is no adequate information available to asylum seekers in Uganda. All the asylum seekers and refugees interviewed for this study stated that they got the information on how to peruse their application from fellow refugees. Similarly, the head of the Legal Aid Department of RLP stated that “there is no formal way of getting

¹¹³ European Union, Resolution on minimum Guarantees for Asylum procedure, Para. 13.

¹¹⁴ Pieter Boeles & Ashley Terlouw, ‘Minimum Guarantees for Asylum Seekers’, 9 IJRL 472, 481, 1997 cited in Michael Alexander, “*Refugee Status Determination Conducted by UNHCR*”, 11 INTERNATIONAL JOURNAL OF REFUGEE LAW, NO.2, 1999, 267.

¹¹⁵ *Singh et al v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177.

¹¹⁶ See Article 7 of the Canadian Charter of Rights and Freedoms, the only Charter of Rights entrenched in the Canadian Constitution, came into force on 17 April 1982. It states that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principle of fundamental justice.

¹¹⁷ *Malouf v Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 537 (T.D.).

information [for asylum seekers] about the process of claiming asylum in Uganda. Asylum seekers get information from their friends.”¹¹⁸ Office of the Special Branch and the OPM often refer asylum seekers to OPM without informing of the precise circumstances surrounding their applications. The OPM officials think that directing the asylum seekers where to go is a sufficient enough way of informing refugees. A Legal Officer for the OPM stated that “asylum seekers know about the procedures of application for refugee status because the Special Branch sends them to us and we send them back to Special Branch for detailed interview. Above all, they have strong networks among themselves.”¹¹⁹ However, many asylum seekers stop in the middle of their application process thinking that they have finished with their application.

As noted above, asylum seekers start their application by registering at the Special Branch. The Officer interviews them briefly, although it is not considered when REC decides their application, and send direct them to go to OPM. OPM informs them to come back with two photographs on the next working day. When they return, the OPM simply gives them their asylum seeker document—a document used for identifying themselves as asylum seekers—without informing them that an interview, up on which decision of their application for refugee status depends, is yet to take place in the Special Branch. When asylum seekers get their asylum seeker document they normally think that they have finished with the application process and wait for their status without being interviewed for the purpose of RSD at the Special Branch. The interview at the special Branch is the only record on which the REC depends for deciding applications for refugee status. Many asylum seekers go to Special Branch after months or even after years, when they learn about the need to apply for refugee status at the Special Branch. For example, many Eritrean asylum seekers whom the researcher talked to revealed that they went to Special Branch to apply for refugee status after one year from the date they received their asylum seeker document from OPM. Similarly, a Somali asylum seeker stated that “at the Special Branch I assisted two Eritrean asylum seekers in filling out the form. They spent eight months without coming to Special Branch after they got their

¹¹⁸ Interview with Salima, Head of LAC RLP, op. cit. note 35.

¹¹⁹ Interview with Vivian, op. cit. note 32.

asylum seeker document because they didn't know that they have to go back to Special Branch.”¹²⁰

Furthermore, directing asylum seekers where to go next is not enough. Most of the asylum seekers do not know the responsibilities of the offices in the application process, what a refugee means, what their entitlements are and where they should go for assistance. For example, many asylum seekers do not go back to Special Branch even if they are informed to go back there because they do not receive clear information that their status is going to be decided depending on the interview they have to make at the Special Branch. Many asylum seekers realize the need to have interview at Special Branch when they face difficulties to renew their asylum seeker document at OPM. The asylum seeker's document is renewable every three months until the application for refugee status has been finally decided. Ideally, the OPM refuses to renew the asylum seeker document after two years from the date it was issued because the OPM presumes that asylum decisions are made within two years.¹²¹

The Legal Officer at OPM is of the view that “if someone is an asylum seeker he has to be curious and ask us. We are here to provide services to them; if one staff is busy the other can listen to them.”¹²² However, most of the asylum seekers have language barriers in communicating with the officers and most of the staff, especially the receptionist, are not welcoming for inquiry. To get access to the authorities is not easy. A number of asylum seekers state that they wanted to see the senior protection officer at OPM, but it was impossible to get access to him.¹²³ Moreover, most asylum seekers were not aware of their rights that emanate from their refugees status. They are unaware that there was set of legal criteria and administrative procedure to secure refugee status. They perceive themselves as refugees. As a result there are people who fled from persecution in their home country but remained unregistered as asylum seekers. An Eritrean national who fled his home country all the way through Ethiopia and Kenya said that “once we left our beloved country it is known that we are refugees.”¹²⁴

¹²⁰ Interview with an asylum seeker, Kampala, November 6, 2007.

¹²¹ Interview with Vivian, *op. cit.* note 32.

¹²² *Id.*

¹²³ Interview with an asylum seeker, Kampala, November 7, 2007.

¹²⁴ Interview with Eritrean asylum seeker, Kampala, December 12, 2007.

The absence of humanitarian assistance to refugees is also a factor that discourages them from applying for refugee status. However, getting refugee status is much more important than humanitarian assistance as it gives rights and protection which the applicant could not get in his or her own home country. Asylum seekers and refugees do not have the capacity to appreciate the rights associated with refugee status because they are not aware of the consequences of not having such status. The government of Uganda broadly categorizes those who fled persecution in their home country as illegal immigrants without taking account of the inadequate information available to them.¹²⁵ Presently these categories of persons are living in Uganda with no legal status and, thus, face deportation.

Furthermore, when asylum seekers secure information from their fellow refugees they think that they have got credible information although it may be misguided and often damaging advice. Sometimes refugees give advice to newly arrived asylum seekers to tell untrue stories in order to secure refugee status. As a result, some asylum seekers give false reasons for their escape from their home country although, in fact, they have a true case which would make them eligible for refugee status. An asylum seeker from Somalia claimed refugee status on the ground that he fled his home country because his girl friend committed suicide and her family tried to kill him for the death of their daughter.¹²⁶ After he learned the criteria for refugee status he confessed that the case he presented was not true. He stated that he actually fled from his home country because of the war. He stated that he created the story because of the wrong information he received from his refugee community. They advised him to create that story in order to attract the attention of the UNHCR that he is still under the surveillance of his girl friend's family so as to improve his chances of getting onto the resettlement program. With such circulating misinformation, many genuine applicants face the consequence after their case has been rejected for the lack of a conventional ground. The implication of the rejection of genuine applicants is very serious as it undermines the central object of refugee law. According to the notification letter given to rejected asylum seekers any rejected asylum

¹²⁵ RLP Working Paper, No. 6, op. cit. note 65, at 6.

¹²⁶ Interview with a refugee, Kampala, November 2, 2007.

seeker should leave Uganda within three months unless he/she regularizes his or her stay in Uganda with the immigration authorities.

Asylum seekers need to know the operating RSD procedure in order to avoid fabricated cases and the consequent unnecessary rejection of refugee status. They also need to know the legal entitlements of refugees, the duties and responsibilities of each organization which is involved in their affairs and the role of each interview they make. Most of the problems that asylum seekers in Uganda face, such as unnecessary rejection of refugee status, remaining as illegal immigrants without seeking asylum and risk of deportation, are attributable to the lack of information. Therefore, informing asylum seekers and refugees regarding the operating RSD procedure is an important means of providing them with the right to a fair hearing.

3.6.2. The Right to a Competent Interpreter

The right to a competent interpreter is a fundamental aspect of RSD procedure.¹²⁷ It is obvious that without an interpreter, the majority of asylum seekers cannot exercise their right to be heard. The role of an interpreter during RSD is extremely crucial especially in an environment whereby there are various languages refugee communities, like in Uganda. Considering the fact that asylum seekers who enter Uganda come from various countries with different *lingua francas*, it is important to appoint competent interpreters for all the languages understood by the asylum seekers. The following section discusses the rationale behind the appointment of a qualified interpreter and its role in securing the right to fair hearing.

3.6.2.1. *International Standards on the Right to a Competent Interpreter*

Hasty interviews and poor interpretation fall far short of international standards of RSD. The ExCom Conclusion has stated that “applicants should be given the necessary facilities, including the services of a competent interpreter for submitting their case to the authorities concerned”¹²⁸ Similarly, the UNHCR guidelines require the availability of

¹²⁷ See Michael Bliss, “*Serious Reasons for Considering: Minimum Standards of Procedural Fairness in the Application of IF Exclusion Clauses*”, EXCLUSION FROM PROTECTION, 12 INTERNATIONAL JOURNAL OF REFUGEE LAW: SPECIAL SUPPLEMENTARY ISSUE ON EXCLUSION, 2000, at, 103.

¹²⁸ See the UNHCR Handbook, op. cit. note 111, at Para. 192 (V).

“qualified and impartial interpreters”¹²⁹ for refugee applicants. The guidelines also allow applicants to request an interpreter of the same gender, which would be provided “to the best extent possible.”¹³⁰

In the case *Maricus v. Lewis et al*, the US Court held that “procedures [in RSD] must also include the services of a translator otherwise an applicant’s procedural right would be meaningless in case where the judge and asylum seeker cannot understand each other during the hearing”¹³¹ The right to have a competent interpreter has also been recognized as crucial in the context of proceedings for refugees accused of international crimes.¹³²

3.6.2.2. *The Practice in Uganda*

Interviews conducted with refugees, asylum seekers and authorities dealing with refugees reveal that the language barrier is the biggest problem that impedes asylum seekers from presenting their cases accurately. Both the Special Branch and the OPM do not provide interpretation services to asylum seekers. One of the members of staff of the Special Branch stated that “here we have no permanent interpreter.”¹³³ Similarly, a Legal officer at the OPM explained:

For the Camps, we [OPM] have interpreters who are selected from amongst the refugees’ community. In Kampala, we don’t have interpreters because we are under staffed but rationally we are supposed to have some who represent the general refugee population. However, knowledge of various languages is one of the major criteria in recruiting staffs here at our office. For Example, I personally speak English Kiswahili and French.¹³⁴

The medium of communication at OPM and Special Branch are English and Kiswahili only. Asylum seekers who do not speak English or Kiswahili are required to bring their own interpreters. Sometimes Special Branch officers randomly choose an interpreter from the queue of asylum seekers waiting outside the office. The problem is that most of them lacks command of the language as they do not have any prior training for the

¹²⁹ UNHCR Global Consultation, op. cit. note 107, at Para. 50 (g).

¹³⁰ Id., Para. 50 (n).

¹³¹ *Maricus v. Lewis et al*, 92 F. 3d 195, 204 (3rd Cir. 1996).

¹³² See Bliss, op. cit. note 127, at 104.

¹³³ Interview with Vivian, op. cit. note 32.

¹³⁴ Id.

purpose of interpretation. For example a Rwandese asylum seeker stated that “the interpreter who interpreted for him during an interview could not translate Kinyarwanda to English. He was selected without any assessment of his skill. He was willing to interpret only because he wanted to earn some money from us.”¹³⁵ The abovementioned officer of the Special Branch admittedly stated that he could not deny the fact that the interpreters they had are incompetent. He attributes the problem to lack of money for training and hiring interpreters.¹³⁶ In this situation, it remains difficult for asylum seekers to get a qualified interpreter who would pass their story to the interviewing officer correctly. An Ethiopian asylum seeker shared with me his experience:

For me to get the interpreter was very difficult. I spent a lot of money and time to get him and he was not confident. He could not even explain about himself. The first question was about him, when the officer asked him who is he, he started shaking. Then the officer refused to continue the interview and asked me to bring a better interpreter. Another day I went with another interpreter. Even the second interpreter was not confident; he was using the same words repeatedly. Now I am concerned whether my story was conveyed to the officer. My application for refugee status could be rejected because simply because of the interpreter’s fault.¹³⁷

Furthermore, choosing an interpreter from the refugee community or from among the waiting refugees creates serious security risks. Refugees, especially Rwandans, are suspicious about the impartiality of the interpreters. A Rwandan asylum seeker stated:

I did not feel safe to tell the interpreters about my case, because some times you don’t know exactly who these interpreters are. I preferred to hide some information because I was not sure whether the interpreter belongs to the Hutu or Tutsi tribe. Yet, the officer asked me to which tribe I belong.¹³⁸

As a result of the poor translation system many asylum seekers opt to give their testimony without interpreters even though they have problems in expressing their stories correctly. A Congolese refugee said “the language that I can speak without problem is French and there was no service in French. I have a problem to express myself in English

¹³⁵ Interview with an asylum seeker, Kampala, October 5, 2007.

¹³⁶ Interview with Bernard, a member of the REC, op. cit. note 23.

¹³⁷ Interview with an asylum seeker, November 5, 2007.

¹³⁸ Interview with an asylum seeker, Kampala, November 27, 2007.

but I tried my best because I was not sure about the qualification of those refugees and asylum seeker interpreters.”¹³⁹

At the Special Branch the ‘questionnaire for assessment of refugee status’ is given to be filled out by the asylum seekers themselves from outside the office. The form is in English. Asylum seekers often have problems in filling out the form. The majority of them do not read and understand English very well. Even the interpreters who assist them have no capacity to put in writing what they speak and their capacity to understand the implications of the questions in the ‘form’ is poor. One day, I found an Ethiopian asylum seeker crying in the corridor of the Special Branch.¹⁴⁰ Upon inquiry, she told me that she could not fill out the form. She spoke only Amharic and Oromo, and had brought along a friend hoping that she would assist her, but even the friend knew only a little English.

During the UNHCR-Refugees meeting, the UNHCR deputy country representative was candid with the refugees that the quality of interpretation is a big problem. He acknowledged that “all refugees are entitled to a trustworthy interpreter who is truly fluent, for they have a right to have their case translated the way it is said.”¹⁴¹ In order to fulfill this need, he requested that the refugees from the various language groups give him names and contact information of interpreters they could trust.

Quality interpretation is crucial to ensure a correct understanding of an applicant’s testimony. Poor interpretation can leave an applicant’s testimony incoherent. For instance, a Congolese refugee said that “one refugee I know told UNHCR that someone wanted to kill him, and the translator translated this as someone wanted to kill someone else”¹⁴² In another case, an asylum seeker’s statement “I was tortured” was translated as “I tortured” by the interpreter.¹⁴³ The RLP head of Legal Aid Department said that “it is really gambling that the police and the OPM have no interpreters at all.”¹⁴⁴ The existing

¹³⁹ Interview with a refugee, Kampala, October 8, 2007.

¹⁴⁰ November 13, 2007, Kampala, Uganda.

¹⁴¹ UNHCR/Refugee meeting, op. cit. note 80.

¹⁴² Human Rights Watch, *Hidden in Plain View: Refugees Living without Protection in Nairobi and Kampala*, 2003, (hereinafter referred to as HRW), at 75, at: <www.myspace.com> (Viewed on August 28, 2007), at 116.

¹⁴³ RLP Working Paper No. 6, op. cit. note 65, at 115.

¹⁴⁴ Interview with Salima, Head of Legal Aid and Counseling Department, RLP, op. cit. note 53.

poor interpretation system is really a damaging scenario on the decision of the asylum seekers case. Moreover, it compromises asylum seekers right to fair hearing. The inevitable result of it may be the rejection of genuine applicants.

As discussed above, UNHCR promised refugees to hire interpreters from the refugee communities, but as at the time of writing, nothing had changed. Furthermore, hiring interpreters is not a sufficient solution. Considering the extremely serious consequences of an erroneous decision of a claim for asylum as well as the necessity of maintaining confidentiality during asylum interviews, all interpreters involved in the RSD process should receive adequate training on the requirements of formal interpretation.

3.6.3 The Right to an Oral Hearing

Procedural fairness requires that an adjudicator must hear the claims directly from its author. Decisions on refugee status should, therefore, depend on the information provided by the asylum seeker before the decision making authority. In the Ugandan case, asylum seekers should get access to present their claim for asylum before the REC members. Decision makers must hear the oral testimony of an asylum seeker in order to reach a sound decision. The right to be heard is a basic aspect of a fair hearing. The nature of status determination requires that the asylum seeker has the right to an oral hearing because the fundamental interests of the asylum seeker are at stake and the consequences of an incorrect decision are severe. UNHCR recognizes that refugee applicants must have access to a personal interview at first instance.¹⁴⁵

3.6.3.1 *The Practice in Uganda*

As discussed above, all asylum seekers are given an oral interview at the Special Branch. Although the new Refugee Act has given asylum seekers the right to present their cases before REC, the current practices do not allow asylum seekers to appear before the REC during both the first instance and appeal stages. Although articulating asylum seekers' case by giving them an oral interview is an important part of a fair

¹⁴⁵ UNHCR Global Consultation, op. cit. note 107, at Para. 50 (h).

hearing, allowing asylum seekers to be present before the REC during the decision of their cases is the more important part of fair hearing in the RSD. It is far from due process of law to decide someone's case in his or her absence.

The Legal Officer of OPM said that “there is no need for asylum seekers to come before the REC because the members of the REC from Special Branch help us in clarifying ambiguous cases.”¹⁴⁶ However, one of the two members of the REC from Special Branch said that “we participate in the same way as the other members of the REC, we cannot give comment on particular cases, because we cannot remember each and every applicant”¹⁴⁷ The interview by the police is not appreciated by refugee advocate bodies. For example, the Head of Legal Aid Department of the RLP in her comment regarding the fairness of RSD practice in Uganda said that “currently the practice is not fair because first, the interview by the police is not appropriate; secondly there are no trained interpreters; thirdly, the person who interviews does not sit before the REC.”¹⁴⁸ On the other hand, one of the officers of the police stated that “when refugees are in the hands of the police they cannot be attacked, the police can protect them, police is the one who maintains law and order”¹⁴⁹ There are research findings that demonstrate a number of asylum seekers remain unregistered because of a fear to register with the police.¹⁵⁰

3.6.4 The Right to Legal Counsel and Representation

Considering the vulnerable situation of asylum seekers in an alien environment, it is important that on arrival they receive the appropriate legal counseling to submit their application and legal representation during the hearing of their case.¹⁵¹

¹⁴⁶ Interview with Vivian, a member of the REC, op. cit. note 32.

¹⁴⁷ Interview with Bernard, a member of the REC., op. cit. note 23..

¹⁴⁸ Interview with Salima, Head of Legal Aid and Counseling Department, op. cit. note 53.

¹⁴⁹ Interview with Bernard, a member of the REC, op. cit. note 23.

¹⁵⁰ HRW, op. cit., note 142, at 115-116 & 120-124. See also RLP Working Paper No. 16 op. cit. note 65, at 22-24.

¹⁵¹ Michael Alexander, “*Refugee Status Determination Conducted by UNHCR*”, INTERNATIONAL JOURNAL OF REFUGEE LAW, No.2, 1999, at 269.

3.6.4.1. *International Standard*

Access to legal representation is one of the criteria to assess fair RSD process.¹⁵² UNHCR guidelines require that “at all stages of the procedure, including at the admissibility stage, asylum seekers should receive guidance and advice on the procedure and have access to legal counsel.”¹⁵³ The Preamble to the UN Basic Principles on the Role of Lawyers states:

adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires access to legal services provided by an independent legal profession.¹⁵⁴

In addition, Principle Number 2 of the same states:

Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction without distinction of any kind...The governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.¹⁵⁵

Furthermore, dealing with the right to legal representation during the RSD process, the ECRE has recommended that:

Each applicant for asylum should immediately be informed upon requesting asylum, of the right to qualified independent legal advice and representation and how to exercise it without delay. This involves, where the financial situation of the asylum seeker requires, the provision of free legal assistance by the host state. Legal assistance should be available throughout the procedure.¹⁵⁶

¹⁵² UHCR, REFUGEE PROTECTION: A GUIDE TO INTERNATIONAL REFUGEE LAW, Handbook to Parliamentarians No.2, 2001, (herein after referred to as UNHCR Handbook for Parliamentarians), at 49.

¹⁵³ UNHCR Global Consultation, op. cit., at Para. 50 (g).

¹⁵⁴ Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 & welcomed by the 45th General Assembly of United Nations in Resolution 45/121, 14 December, 1990.

¹⁵⁵ Id., Principle number 2.

¹⁵⁶ European Council on Refugees and Exiles, Fair and Efficient Procedures for Determination of Refugee Status, 1999, (hereinafter referred to as ECRE guidelines), at: < <http://www.ecre.org>.> (Viewed on July 25, 2007), at 3.

Provision of legal representation to asylum seekers is not uncommon, particularly in countries of the developed world. For example, in Canada, asylum seekers have access to legal aid.¹⁵⁷ Although funding cuts in recent years have led to some concerns about the quality of the service, lawyers are often involved at all stages of the process, including the hearing. In Australia, the Department of Immigration gives block contracts to private lawyers and community legal services to provide legal services to asylum seekers.¹⁵⁸ However, the access of asylum seekers to government-funded legal assistance has been reduced because of funding cuts. In The Netherlands, there is publicly funded legal advice and representation for asylum seekers, comprising a mixture of salaried legal advisers and lawyers in practice employed part time by legal aid.¹⁵⁹ In the United Kingdom, legal aid is available for initial advice, but not for representation on appeal.¹⁶⁰ However, there is legal aid for judicial review in the court.

3.6.4.2 The Practice in Uganda

In Uganda, asylum seekers have no access to legal representation at all stages of the RSD process. In the appeal stage the RLP usually supports applicants by writing their appeal cases.¹⁶¹ The RLP has requested to represent asylum seekers in person during their appeal proceedings, but they have not been given permission.¹⁶² Currently, the RLP is seeking permission to participate in the whole decision making process.¹⁶³ As discussed above, the importance of legal representation and legal counsel on the provision of fair RSD process has been set out in international refugee law and the practice of various states.

On the other hand, in a research finding of RLP, it has been stated that UNHCR argued that legal representation infringes upon the confidentiality for the asylum seeker.¹⁶⁴ At the same time, it is the UNHCR which laid down legal representation as a

¹⁵⁷ Alexander. *op. cit.*, note 151, at 271.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Interview with Salima, Head of Legal Aid and Counseling Department, RLP, *op. cit.* note 53.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ RLP Working Paper No. 6, *op. cit.* note 65, at 15.

pre-requisite for fair RSD.¹⁶⁵ Practically, UNHCR is providing access to legal representation in various countries where RSD is conducted by its office.¹⁶⁶ For example, in Egypt, UNHCR-Cairo's standard operating procedures and practice allows asylum seekers to obtain legal representation by licensed Egyptian lawyers, foreign lawyers and paralegals.¹⁶⁷ Moreover, the idea of infringement by legal representatives does not seem reasonable as legal representatives are professionals who have a vested interest in maintaining their client's confidentiality.¹⁶⁸ Moreover, to enable the secure operation of the work of legal representation, ethical code of conduct and standards of representation, including eligibility criteria for the legal representatives, can be laid down.

3.6.5. Written Reasons for Rejection

The right to fair hearing also requires provision of written reasons to the applicant when a negative decision on RSD has been reached.¹⁶⁹ Without written reasons for rejection it is difficult for the asylum seeker to make a good case for appeal. The reasons must include the facts and issues that led to the rejection and the application of the law to the facts at hand. Goodwin-Gill observes that "reasons for rejection are an essential prerequisite for fundamental justice, allowing the applicant for refugee status to know why his/her claim has been refused and to make a meaningful appeal or application for review."¹⁷⁰ It is obvious that a decision cannot be meaningfully challenged if the reasons are not clearly stated.

3.6.5.1 *International Standard on the Right to Written Reasons*

The UNHCR guidelines require that "all applicants should receive a written decision automatically, whether on admissibility or the claim itself. If the claim is

¹⁶⁵ See, UNHCR Global Consultation, op. cit. note 107, Para 50 (g), See also UNHCR Handbook for Parliamentarians, op. cit. note 152, at 49.

¹⁶⁶ Alexander, op. cit. note 151, at 268-269.

¹⁶⁷ See Kagan, M., Assessment of Refugee Status Determination Procedure at UNHCR's Cairo Office', American University, Cairo, FORCED MIGRATION AND REFUGEE STUDIES, Working Paper No. 1, 2002; at 22.

¹⁶⁸ See RLP Working Paper No. 6, op. cit. note 65, at 15.

¹⁶⁹ See Bliss op. cit., note 127, at 104.

¹⁷⁰ Guy Goodwin_Gill, THE REFUGEE IN INTERNATIONAL LAW, 2nd ed., Oxford University Press, Oxford, 1991, at 331.

rejected or declared inadmissible, the decision should be a reasoned one.”¹⁷¹ Similarly, the UNHCR Training Model on RSD provides a determination procedure checklist, which includes the requirement that “if the applicant is not recognized, the reasons on which the negative decision is based should be made available to him.”¹⁷² The OAU-UNHCR guidelines also state that “where the standing refugee body rejects an application for recognition of refugee status, it shall so notify the applicant and, where appropriate, shall inform him of the grounds for rejection.”¹⁷³

The EU Resolution on Minimum Guarantees for Asylum Procedure recognizes the importance of written reasons. It provides that “the decision on the asylum application must be communicated to the asylum seeker in writing, [and] if the application is rejected, the asylum seeker must be informed of the reasons.”¹⁷⁴ Similarly, the ECRE’s 1999 Submission contains the need to give reasons. It states:

Any decision on an asylum application should be communicated to the applicant in writing in a language s/he understands and to his/her legal advisor. If the written decision can only be provided in the language of the host country, then it should additionally be communicated orally to the asylum applicant in a language s/he fully understands. A negative decision should clearly and fully state the specific reasons for the rejection of that application, the evidence which was relied on, as well as provide information on the asylum seeker’s right to appeal against it, any applicable time limits and the provisions of the appeal procedure.¹⁷⁵

In line with the above, the European Court of Human Rights considered the right of an asylum seeker to be given written reasons for the rejection of their asylum claims. In the case, *van de Husic v. The Netherlands* the court held that a reasoned decision is implicit in the requirements of a fair hearing under Article 6 of the ECHR.¹⁷⁶ In another case, *Hadjianastassiou v. Greece*, which concerned a military court martial, the applicant had only five days in which to lodge his appeal, but did not receive written reasons for the first instance decision until two months later. Therefore, in his written appeal he was

¹⁷¹ UNHCR Global Consultation, op. cit., note 107, at Para 50 (o).

¹⁷² See UNHCR Training Model, Determination of Refugee Status, (RLD2) 1989, at: <www.uhcr.org > (viewed on May, 2006).

¹⁷³ OAU-UNHCR, Guidelines for National Refugee Legislation, with Commentary, 9 December 1980. HCR/120/41/80 / GE.81-0013.

¹⁷⁴ The EU Council Resolution on Minimum Guarantees for Asylum Procedure, O.J. (C 274) 1996, Para 15.

¹⁷⁵ ECRE Guidelines, op. cit. note 156, at 4.

¹⁷⁶ See *van de Husic v. The Netherlands*, Judgment of 19 April 1994, Series A, No. 288.

only able to rely on what he had been able to hear or gather during the hearing. The European Court of Human Rights found that Greece was in breach of Article 6 of the ECHR.¹⁷⁷

In *Northwestern Utilities Ltd. et al. v. Edmonton*, the Canadian Supreme Court made the following statement on the value of reasons in administrative decision making:

The law reports are replete with cases affirming the desirability if not the legal obligation at common law, of giving reasons for decisions...This obligation is a salutary one. It reduces to a considerable degree the chances of arbitrary or capricious decisions, reinforces public confidence in the judgment and fairness of administrative tribunals, and affords parties to administrative proceedings an opportunity to assess the question of appeal and, if taken, the opportunity in the reviewing or appellate tribunal of a full hearing which may well be denied where the basis of the decision has not been disclosed.¹⁷⁸

In deciding asylum claims, procedural fairness requires that the authorities should provide detailed reasons for their decision. Such reasons help the asylum seekers to exercise the right of appeal available to them. Therefore, the right to written reasons for rejection is an indispensable part of an asylum seeker's right to a fair hearing.

3.6.5.2 *The Practice in Uganda*

As discussed above, OPM provides asylum seekers the decision of the REC in form of a letter. However, the letter does not provide any legal reasoning as to why the claim was denied. It states that the REC rejected the asylum application either because of a lack of credibility or the lack of conventional grounds. It does not state any reason as to what makes the statement presented by the asylum seeker incredible or what are the grounds in which the applicant failed to meet. As a result, appeals are drafted with no understanding of the reason why the particular case was denied in the first instance.

The head of the Legal Aid Department of RLP is of the view that written reasons for rejection are crucially important in the RSD process. She states that "people [asylum seekers] should be given written reasons for rejection so that they can respond to wrong decisions and know what to say in the appeal."¹⁷⁹ On the other hand, officers in the OPM believe that there is a possible manufacturing of fraudulent claims, thus the provision of

¹⁷⁷ *Hadjianastassiou v. Greece*, Judgment of December 16, 1992, Series A, No. 252.

¹⁷⁸ *Northwestern Utilities Ltd. et al. v. Edmonton*, [1979] 1 SCR 684 (1978).

¹⁷⁹ Interview with Salima, Head of Legal Aid and Counseling Department, RLP, op. cit. note 53.

reasons may help asylum seekers know what type of claims are more likely to be accepted. The Legal Officer of the OPM said that “in the first instance decision, we give them the benefit of doubt, but we don’t give them written reasons for rejection because they will correct their case accordingly, that is what we are trying to avoid.”¹⁸⁰ This rationale contradicts the principle of international law, which provides asylum seekers the right to be given written reasons for the decision of their asylum claims in order to enable them to make a meaningful appeal. Giving detailed written reasons for rejection may be an opportunity to make fraudulent claims for some asylum seekers, but there could also be many innocent asylum seekers who are wrongly denied status.

As human beings, decision makers can make mistakes in deciding refugee status. Moreover, assessment of refugee status is a delicate process in which the probability of wrong decisions is high. Furthermore, in Uganda asylum seekers have no right to defend their claim before the members of the REC. This can widen the probability of making wrong decisions. Genuine applicants cannot be denied their right to a fair hearing for the simple reason that non genuine applicants could benefit from the law. The benefit of doubt should not be restricted only to the first instance decisions. Asylum seekers should be given the benefit of doubt throughout the whole RSD process. Moreover, the lack of specific reasons for rejection is not only problematic for asylum seekers, but it can also be problematic for the administration of the appeal procedure. The lack of specific reasons for rejection at first instance can increase the number of unnecessary appeals, since applicants cannot understand whether they have a sound ground for appeal.

3.6.6 The Right to Independent Appeal

The right of an asylum seeker to appeal against the first instance decision to an independent appellate body is a necessary part of fair hearing. The absence of right to appeal from first instance decision is a denial of basic guarantee of due process of law.

¹⁸⁰ Interview with Vivian, a member of the REC, op. cit. note 32.

3.6.6.1 International Standards on the Right to Independent Appeal

The ExCom's Conclusion on minimum requirements of fair hearing for determining refugee status state that "if the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or different authority, whether administrative or judicial, according to the prevailing system."¹⁸¹ In this requirement there is no assertion that the appellate body should be different from the first instance body. However, in recent years the UNHCR advances this requirement by adding that the appellate authority should be different from the first instance authority. In 2001, the UNHCR explained international legal standards regarding RSD appeals as follows:

A key procedural safeguard deriving from general administrative law and essential to the concept of effective remedy has become that the appeal be considered by an authority different from and independent of that making the initial decision.¹⁸²

Similarly the UNHCR in its Handbook for Parliamentarians has emphasized the responsibility of states parties to the Geneva Convention to provide asylum seekers with fair appeal procedure. The book states:

Asylum seekers whose requests have been rejected must be allowed a reasonable time to apply to have their cases formally recognized and must be informed of the procedure for doing so. The appellate body should be independent and impartial and empowered to review the facts, as well as the law, in any given case. It should be a different authority from that which denied the request, at a minimum should involve different individuals from those who comprised the initial authority.¹⁸³

The idea of an independent appellate body is also included in the UNHCR Training Module stating that "an appeal should always be reviewed by a person other than the original decision-maker(s)."¹⁸⁴ The standards in many states which are parties to the Geneva Convention are considerably higher than the minimum standards promulgated by the UNHCR. As discussed in Chapter Two of this study, Articles 14 of the ICCPR and 6 of the ECHR provide for a right of appeal from administrative decisions to a fair and public hearing...by an independent and impartial tribunal. The EU's Resolution on

¹⁸¹ UNHCR Handbook, op. cit. note 111, at 192 (vi).

¹⁸² UNHCR Global Consultation, op. cit. note 107, at Para. 43.

¹⁸³ UNHCR Handbook for Parliamentarians, op. cit. note 52, at 60.

¹⁸⁴ UNHCR Training Module, op. cit. note 172, discussion of case F.

Minimum Guarantees for Asylum Procedures recognizes the importance of the right to appeal in RSD procedures. It states that “in case of a negative decision, provisions must be made for an appeal to a court or a review authority which gives an independent ruling on individual cases.”¹⁸⁵

In the case *Chahal v. United Kingdom*, the European Court of Human Rights held that an asylum seeker facing expulsion from the UK was entitled to judicial review of the decision under article 5(4) of the ECHR.¹⁸⁶ In relation to expulsion proceedings the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stated that “in view of the potential gravity of the interests at stake a decision involving the removal of a person from a state’s territory should be appealable before another body of an independent nature prior to its implementation.”¹⁸⁷ This is also the practice in a number of other states parties. For example, in Australia the independent Refugee Review Tribunal conducts reviews on the merits of adverse RSD decisions by the Department of Immigration and Multicultural Affairs.¹⁸⁸ It is required to take into account all available evidence, including any new submissions or evidence. Hearings are conducted by a single member of the Tribunal along inquisitorial lines. The appellant has the right to an oral hearing, unless the Tribunal member decides to reach a positive decision on the basis of documentation and written submissions. The Tribunal makes detailed written decisions which are published and available on the Internet, except information which might identify the applicant. From the perspective of state obligations, the provision to asylum seekers of an opportunity to seek a review of a negative decision ensures the good faith discharge of the state’s international obligations.¹⁸⁹

The independent appeal system would provide the advantages not only of the right to a fair hearing to the asylum seeker, but also of increased consistency in the decision making, and, if decisions are published, more guidance to asylum seekers, their advisers, and to the governments.

¹⁸⁵ European Union, “Resolution on Minimum Guarantees for Asylum Procedure,” Justice and Home Affairs Council, Brussels, 21 Jun. 1995, Para 8.

¹⁸⁶ See *Chahal v. United Kingdom*, op. cit. note 93.

¹⁸⁷ Seventh Geneva Report on the Committee on the Prevention of Torture’s Activities Covering the Period 1 January 31 December 1996; Para 34 (1997).

¹⁸⁸ See discussion on the subject in Alexander, op. cit. note 151, at 281.

¹⁸⁹ Guy Goodwin-Gill, op. cit. note 170, at 332.

3.6.6.2 The Practice in Uganda

The letter given to the rejected asylum seeker states that the particular person who is denied status has the right to lodge an appeal within thirty days from the date he/she received the letter. The OPM sends asylum seekers who want to appeal to the Special Branch for a second interview for an appeal.¹⁹⁰ After interviewing the appellants, the Special Branch sends the notes of the interview to the OPM. Then the OPM presents the appellants' interview notes to the REC for decision. Appeals against the REC's decision are determined by the REC itself. In this case impartiality on review is compromised.

Furthermore, the Special Branch informs the appellant that appeal is permissible if the particular applicant has new information which was not included in the first instance interview. Considering the fact that asylum seekers are not provided with qualified interpreters, legal advisers or legal representatives, and in the light of the poor interviewing system, it is normal that the first instance interview notes are incoherent and poorly articulated. This can only be corrected by providing the asylum seeker a proper and independent appeal system. The idea of allowing appeals if an asylum seeker has only 'new information' presumes that the first instance evidence is correctly addressed, there are no misunderstandings, incoherence and the decision making authority cannot make mistakes.

3.7 Conclusion

The previous refugee law of Uganda, (CARA), was not enacted for the protection of refugees. It was contradictory to the provisions of the Geneva and OAU Conventions, and the 1995 Ugandan Constitution. The RSD under CARA was mainly vested in the discretion of a single officer. To improve its refugee law Uganda developed unregulated practices which partially fulfilled its obligations under International Law. Under these practices individual and group RSD are done according to the definition of refugees under the Geneva and OAU Conventions. However, such practices of the RSD procedures were full of many flaws. Under the current practice of Ugandan RSD procedure, the right of asylum seekers to a fair hearing is highly restricted. In particular

¹⁹⁰ Interview with Bernard, a member of the REC, op. cit. note 23.

rights such as the right to information, right to a qualified interpreter, right to appear before the decision making body, the right to legal advice or representation, the right to reasons for rejection, the right to appeal and the right to a “Refugee Identification Card” are extremely limited.

To avoid the existing lacuna and to fulfill its obligation to protect refugees under International Law Uganda enacted the new Refugees Act, 2006. This Act adopted the definition of refugees under the Geneva and OAU Conventions, and also adopted a bunch of refugee rights from the Geneva Convention. Although it has introduced some improvements to the existing practice of RSD system, the Act has not addressed fully and adequately the right of an asylum seeker to a fair hearing. The 90 day time frame for the RSD under the Act is good progress that could enable asylum seekers to receive fast decisions. Asylum seekers were and are suffering during the long waiting period of RSD since there is no humanitarian assistance given to asylum seekers particularly those in Kampala. The creation of a sub-committee to assist the REC in status determination is also good progress towards rendering fast decisions. Unlike previous practice, the Act has provided asylum seekers to be given written reasons in case of rejection.

The most important feature of the Act in providing asylum seekers the right to a fair hearing is that the Act provides asylum seekers the right to defend their cases during the decision of their status and, if necessary, to be accompanied by a competent interpreter. During the hearing the Act has also provided asylum seekers the right to representation at their own expense. However, this cannot be meaningful knowing that most asylum seekers are vulnerable. In addition, the Act provides for the establishment of an ‘Appeal Board.’ The ‘Appeal Board’ power is limited to the dismissal or comment on legal aspects of the case and sending it back to the REC for decision. The limited power granted to the ‘Appeal Board’ contradicts the standards of International Law that requires appellate bodies to be empowered to review both the facts, and the laws of a given case. It cannot be expected to bring change to the existing practice of appeal system since the REC will remain in control of the whole RSD process.

The Act requires an asylum seeker to “make a written application...within thirty days” of his/her entry to Uganda. This requirement is not reasonable because many

asylum seekers are not educated and there is no assistance available for them. The Act has not made any mention of the right to information on the procedures to be followed in applying for refugee status. Asylum seekers need to know the operating RSD procedure in order to know the whole process of RSD and make the best use of it. They also need to know the legal entitlements they have, the duties and responsibilities of each organization which is involved in the process of RSD determination. Moreover, the Act does not provide for any form of legal assistance or counsel during the preparation of the applicant's case both at the initial stage and on appeal. However, legal counseling or assistance at the initial and appeal stage are also indispensable parts of a fair hearing in RSD.

As a result of the policy of the Ugandan government to restrict refugees in designated areas, asylum seekers who are granted refugee status are not given their Refugee Identification Cards. The new Act grants refugees freedom of movement, but that freedom is subject to restrictions issued by the Commissioner. The Act also empowers the minister to create settlement camps for asylum seekers and refugees in designated areas. The Act further obliges asylum seekers and refugees to live within the designated areas unless they have got permission from the Commissioner approving the existing process under the previous refugee law.

Considering its flaws, the Act has not brought considerable improvement to the existing weak system of RSD procedure. Therefore the Act does not provide asylum seekers the right to a fair hearing. Generally it can be said that the act was enacted to give legal confirmation to the existing policy of the government on the protection of refugees. Furthermore, the few improvements in the right of an asylum seeker to a fair hearing that are included in the Act are not implemented yet. The practice is still the same as it was before, except the fact that the UNHCR was taking part in the RSD procedure. However, since the Act came into force, the agency backed out of the process and RSD procedure is now handled solely by the Government of Uganda.

CHAPTER FOUR

MAJOR CHALLENGES TO THE REFUGEE STATUS DETERMINATION PROCEDURE

4.1 An Overview of the Major Challenges

As the Geneva Convention does not indicate the necessary procedures to be followed for the RSD procedure, states are given the right to establish procedures that are suitable to them.¹ Although the Geneva Convention does not formally require procedures as a necessary condition for full implementation, however, its purpose and object of protection and assurance of the fundamental rights of asylum seekers urge for the adoption of fair RSD procedures.² As discussed above, the right to fair hearing is well provided in human rights law that is universal and thus common to citizens and non nationals. Asylum seekers can enjoy their fundamental human rights only when states are committed to fulfilling their obligations under international law. Moreover, UNHCR—with which states parties have an obligation to cooperate—urges states parties to follow fair and efficient RSD procedures.³ However, despite the urgent needs of asylum protection and the precarious situation of asylum seekers, in practice, many states provide fewer legal safeguards for the due process of law in their RSD procedures compared to other administrative proceedings.⁴ Bliss observed that “in some states a person contesting a taxation assessment or the reduction of a welfare payment in administrative proceedings benefits from far stronger procedural safeguards than [an] asylum seeker.”⁵

¹UNHCR, HANDBOOK ON PROCEDURES & CRITERIA FOR DETERMINING REFUGEE STATUS, 1992, (hereinafter referred to as UNHCR handbook), Para.189.

² Guy Goodwin-Gill, THE REFUGEE IN INTERNATIONAL LAW, 2nd ed., Oxford University Press, Oxford, 1996, at 326.

³ UNHCR, Global Consultation on International Protection 2nd Meeting, Asylum Process: Fair and Efficient Asylum Procedures, May 31, 2001, (hereinafter referred to as UNHCR Global Consultation), Para.50, at: <www.unhcr.org> (viewed on May 27, 2007)

⁴ Michael Bliss, “*Serious Reasons for Considering: Minimum Standards of Procedural Fairness in the Application of 1F Exclusion Clauses*,” in Lawyers Committee for Human Rights, EXCLUSION FROM PROTECTION, 12 INTERNATIONAL JOURNAL OF REFUGEE LAW: *Special Supplementary Issue on Exclusion*, 2000, at 97.

⁵ Id.

In both Common Law and Civil Law countries, RSD procedures fall short of fair procedures.⁶ For example, in the UK the system is not perceived to be fair by applicants or their representatives.⁷ This is because just as in the case of Uganda, the decision making body for asylum claims (Asylum Division) often reach decisions without contacting the asylum seeker directly. Furthermore, adequate reasons for rejection are not given to asylum seekers.⁸ The officers of the Asylum Division decide asylum claims by relying solely on information notes obtained from a brief interview by an immigration officer at an airport. Australia is known for the denial of the right of entry at its frontiers to asylum seekers arriving without legitimate documents.⁹ In Kenya, neither the practice nor the law provides asylum seekers the right to fair hearing.¹⁰ In Kenya there is no comprehensive legislation that provides rights and duties of refugees as provided in international refugee law.¹¹

As discussed in Chapter Three, RSD procedures in Uganda do not favor asylum seekers' right to a fair hearing. Resource limitations, poor professional capacity of REC members to decide refugee status and fraudulent claims made by some asylum seekers are identified as major challenges to RSD by the officers of refugee authorities.¹² According to an officer at the Special Branch, "language barriers to communicate with asylum seekers and resource limitations to hire interpreters are the main challenges that we have."¹³ The UNHCR senior protection officer in Uganda observes that poor professionalism of REC members in the area of refugee law is a big problem in Uganda's RSD process.¹⁴ Although members of the REC were given some introductory training

⁶ Id.

⁷ Id.

⁸ Id.

⁹ See Australia's obligation to Asylum seekers, at:

<www.action.amnesty.org.au> (viewed on September 4, 2007), See also AsiaSource: AsiaTODAY- A resource of Asia society, at: <www.asiasource.org> (viewed on September 4, 2007).

¹⁰ See George Mukundi Wachira, REFUGEE STATUS DETERMINATION IN KENYA AND EGYPT, A Dissertation Submitted to the Faculty of Law of the University of Pretoria, in Partial Fulfillment of the Requirements for the Degree of Masters of Law (LL.M Human Rights and Democratization in Africa), at: <www.chr.up.ac.za> (viewed on November 2, 2007).

¹¹ Id.

¹² Interview with Musinguzi Bernard, member of REC, Kampala, October 10, 2007.

¹³ Id.

¹⁴ Interview with Mostafa Khezry, UNHCR Senior Protection Officer in Uganda, Kampala, October 16, 2007.

concerning refugee matters, the efficacy of such short training to enable them to fairly decide refugee status is questionable.¹⁵

The problem in identifying Rwandans and Burundians asylum seekers from Congolese asylum seekers is also described as a challenging problem of RSD process in Uganda.¹⁶ It is a frequent practice of the asylum seekers to present themselves as Congolese when they claim for refugee status in order to take advantage of the government's *prima facie* recognition of asylum seekers from Eastern Congo.¹⁷ Barundi and Rwandese who are from the border with Congo have the same dialects as the Congolese people. Both speak Bagnamulenge which is also spoken by Congolese people and it makes difficult for the refugee authorities to identify them. The legal officer of the OPM stated that the asylum seekers tend to break and abuse the refugee system because they knew that we have problems to differentiate them.¹⁸

Apart from the fact that in many states RSD process is inconsistent with the principles of fair hearing as provided in human rights law and refugee law, critics argue that refugees are used as 'pawns' in the political relationship of states.¹⁹ In some countries the political relationship between the country of origin of an asylum seeker and a host country play a pivotal role in the admissibility of asylum claims. This is a challenging phenomenon to the concept of 'surrogate protection' of refugees. Furthermore, despite the fact that there are many human rights violations with regard to the protection of refugees, the issue has not been given serious attention by the UN mechanisms in charge of human rights.²⁰ The following sections examine these two major challenges to the RSD procedure.

¹⁵ Interview with, Bernard, a member of the REC, op. cit. note 12.

¹⁶ Interview with Oyella Vivian, a member of the REC, Kampala, October 16, 2007.

¹⁷ Id.

¹⁸ Id.

¹⁹ Kiflu Hussain, "When Refugees Became Pawns", DAILY MONITOR, Kampala, Uganda, June 20, 2007; No. 171, at 12.

²⁰ Amnesty International, THE UN AND REFUGEES' HUMAN RIGHTS: A MANUAL ON HOW UN HUMAN RIGHTS MECHANISMS CAN PROTECT THE RIGHTS OF REFUGEES, 1997, (herein after referred to as Amnesty International Manual), at 17-19.

4.2 The Problem of Politicizing the Protection of Refugees

It is a common phenomenon to see asylum seekers denied access to RSD or protection. Although many reasons have been given for this kind of action by the responsible states, there are arguments that relate the denial of refugee protection to the ulterior motives of states.²¹ For example, the good hospitality of the West to the asylum seekers from the Eastern block during the Cold war era has been associated with the existed political relationship between West and East.²² It has also been stated that “America who was receptive to the Vietnams in 1970s is not showing the same courtesy to the suffering of Iraqis today.”²³ It is also commonly known that the war against terrorism has brought a restrictive treatment of refugees in the West.²⁴ In Africa, mixing refugee protection with states diplomatic relations is not uncommon. For example, in the 1970s and beyond, the Sudanese government used Ethiopian refugees to destabilize the military regime in Addis-Ababa and the Ethiopian military regime reciprocated this action by using John Garang to unsettle Khartoum.²⁵

In Uganda, Rwandan asylum seekers blame Uganda’s policy towards them for not treating them like other nationals in their claim for refugee status.²⁶ One Rwandan asylum seeker stated that the government of Uganda either rejects or does not respond to Rwandese application for refugee status.²⁷ Similarly, another Rwandan asylum seeker told Human Rights Watch that “the Rwandan refugees are not accepted in this country as refugees. They are made to wait a long time at REC. They remain there. The government does not provide a place for them.”²⁸ Other research findings demonstrate that Rwandan asylum seekers express fears that the RSD process might expose them to

²¹ See Hussain, *op. cit.* note 19, at 12. See also Human Rights Watch, *Hidden in Plain View: Refugees Living without Protection in Nairobi and Kampala*, 2003, (hereinafter referred to as HRW), at 75, at: <www.myspace.com> (Viewed on August 28, 2007), 120-124.

²² Hussain, *Id.*

²³ *Id.*

²⁴ Kirk Huff & Ronal Kalyango, *REFUGEE IN THE CITY: STATUS DETERMINATION, RESETTLEMENT, AND THE CHANGING NATURE OF FORCED MIGRATION IN UGANDA*, Refugee Law Project working paper no 6, (hereinafter referred to as RLP Working Paper No. 6), at 28-29.

²⁵ See, Hussain, *op. cit.* note 19, at 12.

²⁶ For the Ugandan relationship with the government of Rwanda, See, HRW, *op. cit.* note 21, at 90-91.

²⁷ Interview with Rwandan asylum seeker, Kampala, November 5, 2007.

²⁸ HRW, *op. cit.* note 21, at 122.

danger.²⁹ For example, a Rwandan asylum seeker told the RLP “OPM said they lost my file, but I think the government of Uganda is sharing information [with the Rwandan government].”³⁰

Furthermore, recently Uganda has deported 3000 Rwandans from Nakivale and Kyaka II settlement camps.³¹ Reports show that on October 3, 2007, armed police personnel surrounded the Rwandan community in Kibati zone of Nakivale and Kyaka II settlement camps and approximately 3,000 Rwandan asylum seekers were loaded onto trucks and driven to Kigali. Although the government and the UNHCR claim that the return was voluntary, eye witnesses insist that it was forced.³² The majority of the deportees were asylum seekers. Among them were many rejected asylum seekers who had not exhausted the available appeal procedures.³³ Effective RSD requires that asylum-seekers have access to the procedures to apply for protection, and be allowed to remain in the host country while their cases are pending at both the first instance and at the appeal stages.³⁴ This calls for proper identification in order to prove that asylum seekers have a temporary right to remain in the host country as required by internationally-agreed standards. Most of the returned asylum seekers expressed their fear that returning to their home country would put their lives in danger.³⁵ The action was contradictory to the principle of *non-refoulement*, which forbids states from “expel[ling] or return[ing] (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³⁶ The action of returning these Rwandans was taken by the governments of Uganda, Rwanda and the UNHCR ‘Tripartite Agreement’ to repatriate Rwandan refugees to their

²⁹Kirk Huff & Ronald Kalyango, A DROP IN THE OCEAN: ASSISTANCE AND PROTECTION FOR FORCED MIGRANTS IN KAMPALA, Refugee Law Project Working Paper No. 16, (hereinafter referred to as RLP Working Paper No. 16), 2006, at 23.

³⁰ Id.

³¹Felix Basiime, Tabu Butagira and Emmanuel Gyezaho, “Uganda Deports 3, 0000 Rwandans”, DAILY MONITOR, Kampala, October 5, 2007, No. 278, at 1-2. See also Chris Dolan, “Burundians Fear Possibility of Forced Return”, DAILY MONITOR, Kampala, October 26, at 18.

³² Dolan, Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Convention Relating to the Status of Refugees, July 28, 1951; 189 U.N.T.S. 137 (hereinafter referred to as the Geneva Convention), Article, 33.

home country.³⁷ Critics argue that refugees are not involved in the ‘Tripartite Agreement’ and their unwillingness was not considered during the implementation of the agreement. However, the viability of the repatriation needs to be assessed with the involvement of refugees and independent observers aside from the UNHCR.³⁸

Despite the diplomatic assurance of the “Tripartite Agreement” that peace had been restored in Rwanda, many Rwandans fear that their lives could be in danger if they returned home. Many of them do not trust the concept of ‘reconciliation or forgiveness’ as they fear the risk of being persecuted as *genocidaires* upon return to Rwanda.³⁹ In the discussion on the issue of refugees at the UN General Assembly governments asserted that voluntary repatriation could not be successful without effective reconciliation.⁴⁰ Repatriation should always follow a serious assessment of the refugees’ country of origin situation such that the refugees would not be sent back to face persecution again.

Asylum seekers must be given the chance to be heard in a fair way before they are returned home. They must be given enough time to deal with the appeal process. As noted above, Rwandan and Burundian asylum seekers pretend to be Congolese nationals when they apply for status hoping that they can get better chance of getting refugee status. The RLP found this as evidence of the partial and unfair denial of asylum seekers.⁴¹

Other research findings demonstrate that several Sudanese refugees interviewed by Human Rights Watch had expressed the opinion that they were accused by OPM officials of fleeing a ‘just cause’ when they fled SPLA’s harassment. For example, a Sudanese asylum seeker who fled after the SPLA abducted his parents and wanted to recruit him, told Human Rights Watch that he was intimidated by the OPM officer who interviewed

³⁷ In recognition of the restoration of peace in Rwanda, the Ugandan Government signed a Tripartite Agreement with the Government of Rwanda and the UNHCR in order to help facilitate the return of Rwandans residing in Uganda to their home country. At the fifth meeting of the Tripartite Commission on Repatriation of Rwandan Refugees in Uganda (July 2007), the two counties reconfirmed their commitment to repatriate this group of Rwandans, establishing that “in cooperation with the Government of Rwanda, the Government of Uganda shall facilitate the repatriation of the Kibati case load within one month” (Joint Communiqué, July 26, 2007). See, Dolan, *op. cit.* note 31, at 18.

³⁸ Karin Landgren, “*The Future of Refugee Protection: Four Challenges*”, *REFUGEE STUDIES AND THE REFUGEE REGIME IN TRANSITION*, *JOURNAL OF REFUGEE STUDIES, SPECIAL ISSUES ON REFUGES*, volume 11, No. 4, 1998, 427.

³⁹ Dolan, *op. cit.* note 31, at 18.

⁴⁰ Landgren, *op. cit.* note 38, at 427.

⁴¹ Dolan, *op. cit.* note 31, at 18.

him by saying ‘why don’t you return to Sudan to fight’ and kicked him out of the office within 15 minutes without listening to his testimony.⁴² Similarly there are other findings that states there are many Sudanese asylum seekers who remained unregistered because they had suspected Uganda of supporting the SPLA.⁴³ They are also unwilling to register because registration leads to repatriation to Northern Uganda’s resettlement camps, which is an area of SPLA operation. It should be noted that the Ugandan Refugees Act gives the sovereign power to the government to grant or deny refugee status to anybody. There is a fear that such a provision may open a door for an arbitrary decision of denial and/or repatriation.

States parties to the Geneva Convention should ensure an impartial RSD procedure regardless of their political relationship with the asylum seekers’ country of origin. RSD must be applied in accordance with the law and should not be adversely affected by political considerations.

4.3 Role of the Office of the High Commissioner for Human Rights in the Protection of Refugees

The Office of the High Commissioner for Human Rights (OHCHR) is the main UN body which deals with human rights issues. The OHCHR is mandated to promote and protect the enjoyment and full realization of all human rights by all people. To examine the human rights situation in the world the OHCHR conducts a number of meetings within a year.⁴⁴ However, it has no agenda item dealing explicitly with refugee protection issues. The only agenda item related to refugees is a sub-item on “human rights, mass exoduses and displacement.”⁴⁵ It is even hard to raise broader questions of policy that affect refugees in the meetings.⁴⁶ This is because states are extremely reluctant to allow any discussion by such a prominent UN human rights body of their asylum policies.⁴⁷ Critics argue that the ‘Western European and Others Group (WEOG),

⁴² See HRW, op. cit. note 21, at 91-93.

⁴³ RLP Working Paper No 16, op. cit. note 29, at 22.

⁴⁴ See Office of the High Commissioner for Human Rights Mandate, at <http://www.ohchr.org/english/about/index.htm> (accessed on November 19, 2007).

⁴⁵ Id.

⁴⁶ See Amnesty International Manual, op. cit. note 20, at 17.

⁴⁷ Id.

which includes USA, Canada, Germany, Australia, New Zealand and Japan' is particularly sensitive to any asylum-related discussions.⁴⁸ Even the mass exodus item is originated with the intention to put limitations on countries which were violating human rights and thereby creating refugee movements. It was not intended to cover issues relating to refugees' reception and treatment in countries of refuge.⁴⁹ Thus the issue of refugee protection has never been given attention by the Commission.

4.4 Conclusion

There is no doubt that the good or bad political relation between the host country and the country of refuge can affect the protection of refugees. However, the point is that countries should separate political relationship from their obligations under the Geneva Convention to grant refugee status to those who meet the provisions of the Convention. The OHCHR should play a leading role in advocating for the rights of refugees in the host countries. Unfortunately, the OHCHR has no specific agenda on human rights violations of refugees in the host countries. Literatures show that the delegates of states in the OHCHR do not allow discussions regarding the policies on the refugee protections in their respective countries. This may show two things. First, it shows a lack of confidence towards the protection accorded to refugees in their respective countries. Secondly, it shows their unwillingness to apply human rights principles to the protection of refugees.

⁴⁸ Id.

⁴⁹ Id., at 19.

CHAPTER FIVE

CONCLUSION

Both the Geneva and the OAU Conventions do not explicitly provide the standards for RSD procedures including the right of asylum seekers to a fair hearing. However, human rights law instruments provide basic minimum requirements of an individuals' right to a fair hearing including asylum seekers. Uganda is a signatory to most of these human right instruments and has adopted most of the bill of rights provisions, which covers the individuals' right to a fair hearing, into the 1995 Constitution. As a result, Uganda has both conventional and constitutional obligation to accord to asylum seekers the right to a fair hearing during the RSD procedure.

The RSD process is the cornerstone of refugee protection as it is the means by which those who need protection are identified. In Uganda, there are two methods by which refugee status is granted. First of all, refugees who are fleeing events of war in their countries of origin are automatically recognized as refugees under the OAU Refugee Convention. Secondly, the government conducts individual RSD according to the definition of refugee under the Geneva Convention as has replicated into the Refugees Act 2006. Thus Uganda has implemented its obligations under the OAU and Geneva Conventions by affording *prima facie* and individual status determination. However, the procedures by which individuals are determined as refugees fall short of the minimum basic requirements of procedural fairness enshrined in international law. Given the existing flaws in the RSD procedure, it can be concluded that neither the law nor the practice in Uganda adequately provides the right of an asylum seeker to a fair hearing.

Based on the above discussions it is quite clear that some basic changes, both in the Ugandan refugee law framework and practice, are necessary to insure the human right of asylum seekers to a fair hearing throughout the RSD process. Although the promulgation of the new Refugee Act is a step forward, there is a serious need to amend the Act to incorporate the minimum requirements of asylum seekers right to fair hearing as established under international law. There is need to put a provision on the right of asylum seekers to access to necessary information regarding RSD procedure. Such a

provision will help asylum seekers to know the procedure they have to follow in the RSD process and it can reduce the number of unregistered asylum seekers in the country. The requirement that asylum seekers should file a written application within 30 days seems impractical and thus an initial oral interview is preferable. It is also crucially important to add a provision that guarantees the right of asylum seekers to legal assistance or counsel during the preparation of their cases both at the initial stage and on appeal. Noting that most of the refugees who enter Uganda have very low levels of education, if any, the provision of legal assistance or counsel would save many genuine asylum seekers from rejection and it would have a major impact in the development of refugee law jurisprudence in Uganda.

Among the major problems this study has identified is the lack of competent interpreters. The role of an interpreter in an endeavor to provide a fair RSD process can not be overemphasized. Therefore, the right to a competent interpreter should be put in the Act and the government in collaboration with all stakeholders should provide qualified interpreters for RSD. Moreover, considering the burden refugees impose to the host country and the severe consequence an erroneous decision has to the genuine applicant, only highly skilled personnel should be qualified to be REC members. Members of REC must have prior knowledge and experience in the area of human rights law and refugee law and they should get continuous training to get up-to-date on issues related to refugees. Qualification of the REC members is very crucial because refugee law is very dynamic and it evolves with political, social and economic changes in the world.

The Appeal Board—like any appellate court—should be empowered to reverse and substitute its own decision for the first instance decision rendered by the REC. In addition, a provision for the right to make a final appeal to the courts of law should be made. The Act has given too much power to the Commissioner in charge of refugee matters. For example, the Commissioner is vested with the power to issue directions for the restriction of the movement of refugees and they cannot live outside the designated refugee settlements without the permission of the Commissioner. These may restrict on the right of refugees to free movement within and outside the host country. It is, therefore, important that such provisions are amended in order to more closely reflect the

principles of international refugee law. Although difficult to give a conclusion, as the new Refugee Act is at its early stage, there is insignificant change in the RSD process on the ground. The government needs to work hard to fulfill its commitments to the international community and its people under the Geneva Convention and the new Refugee Act respectively.

The UNHCR and other stakeholders should provide oversight to the government of Uganda in adopting and implementing impartial, rigorous, and timely RSD procedures. The role of UNHCR in empowering the capacity of REC members, advocating for refugee rights before higher governmental authorities, and provision of material assistance is also of paramount significance to the development of refugee law in Uganda.

Bibliography

I. Books

Amnesty International, *THE UN AND REFUGEES HUMAN RIGHTS: A Manual on How UN Human Rights Mechanisms Can Protect the Rights of Refugees*, Lithosphere, London, 1997.

Feller E. et al, *REFUGEE PROTECTION IN INTERNATIONAL LAW*, UNHCR's Global Consultations on International Protection, Cambridge University Press, London, 2003.

Garner B. *BLACK'S LAW DICTIONARY*, Seventh Ed. West Publishing Co. U.S.A, 1999.

Goodwin-Gill G. and McAdam, J., *THE REFUGEE IN INTERNATIONAL LAW*, Oxford University Press: Oxford 2007.

Goodwin-Gill G., *THE REFUGEE IN INTERNATIONAL LAW*, Oxford University Press: Oxford 1996.

Gorman R. *COPING WITH AFRICA'S REFUGEE BURDEN: A TIME FOR SOLUTIONS*, The Hague, 1987.

Hathaway, J., *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW*, Ann Arbor, Michigan, 2004.

Hathaway, J., *THE LAW OF REFUGEE STATUS*, Butterworths Publishers, Toronto, 1991.

Jackson I., *THE REFUGEE CONCEPT IN GROUP SITUATIONS*, The Hague, 1999.

Kourula, P., *BROADENING THE EDGES: REFUGEE DEFINITION AND INTERNATIONAL PROTECTION*, Martinus Nishoff Publishers, The Hague, 2000.

Melander G. & Another (eds.), *AFRICAN REFUGEES AND THE LAW*, Uppsala, 1978.

UNHCR HANDBOOK ON PROCEDURES AND CRITERIA'S FOR DETERMINING REFUGEE STATUS, 1992.

UHCR REFUGEE PROTECTION: A Guide to International Refugee Law, Handbook to Parliamentarians No.2, 2001.

UNHCR THE STATE OF THE WORLD'S REFUGEES: Human Displacement in the New Millennium, 2006.

II. Legislations

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

Republic of Uganda, Control of Aliens Refugees Act, 1960, Chapter 64, Laws of Uganda, 1964.

Republic of Uganda, Refugees Act 2006, the Uganda Gazette No.47 Vol. XCVIX, August 4, 2006

III. Conventions

African Charter on Human and Peoples' Rights, 27 June 1981.

American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, 1948.

Charter of the United Nations, 1945.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984.

Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

Convention on the Rights of the Child, 20 November 1989.

Convention Relating to the Status of Refugees, 1951.

European Convention for the Protection of Human Rights and Fundamental Freedoms, November, 1950.

International Covenant on Civil and political Rights, December, 1966.

International Covenant on Economic, Social and Cultural Rights, December, 1966.

OAU Convention governing the Specific Aspects of Refugee Problems in Africa, September 1969.

Protocol Relating to the Status of Refugees, October 4, 1967, 606 U.N.T.S. 267.

Protocol No. 7 of the 1950 ECHR, ETS 117, Nov.1, 1988.

Statute of the Office of the United Nations High Commissioner for Refugees, 1950.

Universal Declaration of Human rights, December, 1948.

IV. Articles

Alexander, M., "Refugee Status Determination Conducted by UNHCR, *International Journal of Refugee Law*: vol.11 no.2, Oxford University Press, 1999.

Basiime F., Butagira T. and Gyezaho E., "Uganda Deports 3, 0000 Rwandans", DAILY MONITOR, Kampala, Uganda, October 5, 2007.

Bliss, M., 'Serious Reasons for considering': Minimum Standards of Procedural Fairness in the Application of Article 1F Exclusion Clause" *Special Supplementary Issue, EXCLUSION FROM PROTECTION*, vol.12 IJRL, 2000.

Byamukama, N., "The Practical Difficulties to Enjoyment of full Refugee Rights in Uganda", (unpublished) paper presented at workshop on Strengthening Linkages for the better Protection of Human Rights, Hotel Africana, Kampala Uganda, May 30-31, 2001.

Dolan C., "Burundians Fear Possibility of Forced Return", DAILY MONITOR, Kampala, Uganda, October 26, 2007.

Garry, H. R., "The Procedures and Criteria for Determining Refugee Status", (unpublished) paper presented at Sudan Human Rights Seminar on Popularizing Human Rights Concepts for Refugees in Camps and Displaced Persons in Conflict areas, Hotel Equatorial, Kampala, Uganda, May 28, 1998.

Geoffrey, M., "The Refugee Rights, Status and Asylum Determination Procedures", (unpublished) Personnel Training Seminar organized by Sudan Human Rights Association on *Building Rights Awareness for Refugees in Uganda*, Sudan Self Help Secondary School, Koboko Town, August 30-31, 1999.

Gorlick, B., "Common Burden and Standards: Legal Elements In Assessing Claims To Refugee Status", INTERNATIONAL JOURNAL OF REFUGEE LAW vol. 15, No.3, Oxford University Press, London, 2003.

Harrell-Bond, B., Hannah, G. and Lomo Z., THE ENJOYMENT OF RIGHTS BY REFUGEES IN UGANDA: A Socio-Legal Study, Annual Progress Report, Makerere Institute of Social Research (MISR), Kampala, 1998.

Huff K. & Kalyango R., A DROP IN THE OCEAN: ASSISTANCE AND PROTECTION FOR FORCED MIGRANTS IN KAMPALA, *Refugee Law Project Working Paper No. 16*, 2006.

Huff, K. and Kalyango, R., REFUGEES IN THE CITY: STATUS DETERMINATION, RESETTLEMENT, AND THE CHANGING NATURE OF FORCED MIGRATION IN UGANDA, *Refugee Law Project Working Paper No.6*, 2002.

Hussain K., "When Refugees Became Pawns", No. 171 DAILY MONITOR, Kampala, Uganda, June 20, 2007.

Karin Landgren, "The Future of Refugee Protection: Four Challenges", REFUGEE STUDIES AND THE REFUGEE REGIME IN TRANSITION, *Journal of Refugee Studies*, vol.11 No. 4, 1998.

Lawyers Committee for Human Rights, THE HUMAN RIGHTS OF REFUGEES AND DISPLACED PERSONS: Protections Afforded Refugees, Asylum Seekers and Displaced Persons under International Human Rights, Humanitarian and Refugee Law, RSP Documentation Centre, A Briefing Paper Refugee Project, New York, 1991.

Lomo Z., "The Right Of Refugees & Internally Displaced Persons: The Case Of Uganda", Paper Presented At The Sudan Human Right Association seminar on "Popularizing Human Right Concepts Among Refugees In Camps And Displaced Persons In Conflict Areas", Hotel Equatorial, Kampala, Uganda, May28, 1998.

Lomo, Z., Naggaga A. and Hovil, L., THE PHENOMENON OF FORCED MIGRATION IN UGANDA: AN OVER OF POLICY AND PRACTICE IN HISTORICAL CONTEXT, Refugee Law Project Working Paper No.1, Kampala, 2001.

Office of the Prime Minister, Department of Disaster Management, Refugees and Relief-DAR Secretariat, "Uganda's Development Assistance for Refugees and Host Communities (DAR): An Appropriate Strategy in Empowering Beneficiaries for Self-Reliance and Brining Prosperity for all to Refugees and Host Communities" No. 171 DAILY MONITOR, Kampala Uganda, June 20, 2007.

Oloka-Onyango J., "Domestic Legislation and the Protection of Refugees in Uganda: for whom does the Bell Toll?" (Unpublished) Paper presented at a Refugee Law Project (hereinafter RLP) workshop held at Hotel Africana, Kampala, Uganda, on October 26, 2001.

Kiapi, A. "The Legal status of Refugee in Uganda", EAST AFRICAN JOURNAL OF PEACE AND HUMAN RIGHTS, vol. 3, no.1, 1997.

Sudan Human Rights Association Report, Seminar on "Popularising Human Rights Concepts among Refugees and Displaced Persons", Hotel Equatorial, Kampala Uganda, May 28, 1998.

Tindifa, S., "*Refugees and Human Rights in Uganda: A Critical Assessment of the Law, Policy and Practice*," EAST AFRICAN JOURNAL OF PEACE & HUMAN RIGHTS, Vol.5, No. 1, 1998.

Tindifa, S., "International Legal Standards for the Protection of Refugees and Displaced Persons", (unpublished), paper presented at annual workshop on "CONSOLIDATING STRATEGIC ALLIANCES FOR THE PROTECTION OF REFUGEES RIGHTS IN UGANDA", Hotel Equatorial, Kampala, Uganda, May 30, 2000.

Verdrame, G., "Human Rights and Refugees: The Case of Kenya", JOURNAL OF REFUGEE STUDIES, Vol.12 No.1 Oxford University Press, 1999.

Wangadya, F., "Human Rights Concepts and Principles with Particular Reference to UNHCR, ICESCR, ICCPR, and ACHPR", (unpublished) paper presented at the Sudan Human Right Association, Lion Hotel, Kampala, Uganda, September 29-30, 1997.

V. Universal Resource Locators (URLs)

Abuya O., & G. Wachira M., "Assessing Asylum Claims in Africa: Missing or Meeting Standards", 2006, at 172, at: <<http://www.journals.cambridge.org>> (viewed on May 27, 2007).

Asia TODAY- A resource of Asia society, at: <www.asiasource.org> (viewed on September 4, 2007).

Australia's Obligation to Asylum Seekers, at:
<www.action.amnesty.org.au> (viewed on September 4, 2007).

Buwa G., "Refugee Law Project Critique of the Refugees Act 2006", at:
<www.refugeelawproject.org>, (Viewed on October 20, 2007).

Decisions of African Commission on Human & Peoples' Rights, at: <www.humanrights.law.monach.edu.au/africa/comcases/.html> (viewed on July 23, 2007).

European Council on Refugees and Exiles, Fair and Efficient Procedures for Determination of Refugee Status, 1999, at: <<http://www.ecre.org>> (Viewed on July 25, 2007).

Human Rights Watch, "Hidden in Plain View: Refugees Living without Protection in Nairobi and Kampala," 2003, at: <www.myspace.com> (Viewed on August 28, 2007).

Kagan M., "Assessment of Refugee Status Determination Procedure at UNHCR's Cairo Office", American University, Cairo, FORCED MIGRATION AND REFUGEE STUDIES Working Paper No.1, 2002, at: <www.aucegypt.edu> (viewed on July 6, 2007).

Macchiavello M., "New Issues in Refugee Research, Forced Migrants As An Under-Utilized Asset: Refugee Skills, Livelihoods, And Achievements in Kampala, Uganda", UNHCR WORKING PAPER No. 95, 2003, at: <www.unhcr.org> (viewed on May 6, 2006).

UNHCR Global Consultation on International Protection, "Asylum Process: Fair and Efficient Asylum Procedures", May 31, 2001, at: <www.unhcr.org> (viewed on May 27, 2007).

UNHCR, Training Module, Determination of Refugee Status, (RLD2), 1989, at: <www.uhcr.org> (viewed on May, 2006).

University of Minnesota Human Rights Library, “Human Rights Committee, General Comment 13, Twenty-First Session”, 1984, at: <www1.umn.edu> (viewed on July 28, 2007).

U.S. Human Rights Committee, “WORLD REFUGEE SURVEY”, 2004- 2007, at: <www.refugees.org> (Viewed on August 24, 2007).

Wachira M., “Refuge Status Determination In Kenya And Egypt”, A Dissertation Submitted to the Faculty of Law of the University of Pretoria, in Partial Fulfillment of the Requirements for the Degree of Masters of Law (LL.M Human Rights and Democratization in Africa), at: <www.chr.up.ac.za> (viewed on November 2, 2007).