

## **Issues for inclusion in the Universal Periodic Review Report under the Refugee and forced migrants cluster**

### **1.0 Introduction**

1.1 Uganda is home to forced migrants resulting from both international and national displacements. Refugees and asylum seekers form the bulk of international displacement while internally displaced persons (IDPs) stem from national displacements. *Refugee Law Project is a community outreach project of the Faculty of Law, Makerere University, and its mandate is to promote the human rights and dignity of forced migrants and their hosts in Uganda.*

### **2.0 Refugees and asylum seekers – salient issues**

2.1 *Uganda hosts refugees from around the world:* Uganda hosts refugees and forced migrants from the Great Lakes region, East and Horn of Africa, West Africa and other countries such as Chad, Malawi, Kuwait, Pakistan, Iran, Iraq, Palestine, Bangladesh, USA, Canada, and Greece most of whose flight is politically motivated.<sup>1</sup>

2.2 *Refugee Status Determination is very slow:* the government of Uganda reserves the right to grant asylum and refugee status to forced migrants. There are currently serious delays in the grant of status, resulting in arrest, detention and sometimes deportation of asylum seekers as illegal immigrants because they are found without proper legal documents. Whereas asylum seekers are allowed to remain and reside in the country whilst their application for refugee status is processed, they do not have the right to work and employment thus affecting their livelihoods.

2.3 *The full appeals process for rejected asylum seekers is not yet in place:* The asylum situation is further compounded by gaps in implementation of the domestic refugee law. The Refugee Appeals Board, which should enable rejected asylum seekers to access independent and impartial bodies such as the courts of law on refugee status determination, has not yet been established. The absence of this body has drastically affected particular refugee nationalities such as Rwandans and Sudanese who are being forcibly repatriated.

2.4 *Urban refugees receive no assistance:* Refugees granted status settle either in urban areas or in rural refugee settlements managed by the Office of the Prime Minister – Directorate of Refugees (OPM) in conjunction with the United Nations High Commissioner for Refugees (UNHCR) and its Implementing Partners. Government policy towards refugees promotes rural settlements as the preferred option, and reinforces this by restricting assistance with basic needs (food, shelter, health care, education) to those in the rural settlements. With the exception of a tiny handful of cases who are assisted by UNHCR's implementing partner, Interaid, urban self-settled refugees receive no assistance at all.

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<sup>1</sup> As of March 31, 2010 the UNHCR estimated the total number of refugees in Uganda both in the settlements and in Kampala to be at 127,345 (UNHCR, January 2011).

2.5 *The regulations to the 2006 Refugees Act have yet to be fully operationalised:* Until recently, refugees and forced migrants were governed under obsolete laws i.e. the Control of Aliens and Refugees Act (1964) which was inconsistent with the UN 1951 Convention Relating to the Status of Refugees and OAU 1969 Convention Governing Specific Aspects of Refugee Problems in Africa. The Refugee Act 2006, places greater emphasis on refugees and asylum seekers' rights, such as freedom of movement, but the Act has yet to be fully operationalised. In 2010, the Regulations to the Act were rolled out but are yet to be tested.

2.4 As a result, refugees and asylum seekers still grapple with the recognition and respect of their rights, particularly the right to work and employment: Refugees are required to obtain work permits from Immigration as though they are simply aliens or economic migrants (which was the spirit of the antiquated 1964 Act). As noted in 2.2 above, the right to access socio-economic services (education, healthcare, shelter and water) is severely restricted.

2.5 Even though some of these services, such as health care in main referral hospitals and primary education in government schools, are subsidized by the state, refugees and asylum seekers have met with difficulties accessing them largely because of discrimination and poverty. It is common for refugee children to drop out of school at primary level because they cannot afford secondary education. A majority also cannot afford vocational training. In settlements where these services are brought nearer to the refugees, services are shared with the host communities thus spreading thin available resources resulting in inadequacies, services being unsupervised and sometimes absent. The self-reliance strategy requiring settlement based refugees to cultivate plots of land (50x100 decimals) in order to sustain themselves has left refugees and asylum seekers at the margins of assistance provision and protection. For self-settled refugees i.e. urban refugees, the situation is dire as these plots of land are not available to them. One is therefore required to find work to be able to sustain themselves in the urban areas; many employers disregard the protection of refugees' right to employment, and are extremely exploitative.

2.6 *The Cessation Clause has been invoked for Rwandan Refugees:* The question of the application of the Cessation Clause on 16,300 Rwandan refugees<sup>2</sup> and the consequent expulsion of Rwandan rejected asylum seekers, is a matter of urgent concern. At the 8<sup>th</sup> Tripartite Commission Meeting, the Governments of Uganda and Rwanda; and the Office of the United Nations High Commissioner for Refugees (UNHCR) agreed to invoke the Cessation Clause on Rwandan refugees by December 2011.<sup>3</sup> Whereas most Rwandan refugees and asylum seekers have expressed unwillingness and reluctance to return, the Governments of Rwanda and Uganda have decided that **all** Rwandans living in exile return at all costs.

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<sup>2</sup> Office of the United Nations High Commissioner for Refugees (UNHCR), *2011 UNHCR Country Operations Profile – Uganda*; see section 2011 UNHCR planning figures for Uganda, available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483c06> [accessed 23 February 2011].

<sup>3</sup> Joint Communiqué of the 8<sup>th</sup> Tripartite Commission Meeting, 13 May 2010 held at Lake View Hotel Mbarara.

2.7 *Forcible returns have already taken place:* In this regard, the Governments of Uganda and Rwanda have previously conducted 2 forcible returns of both Rwandan refugees and asylum seekers totaling 4,700 persons;<sup>4</sup> contravening all international obligations under international refugee and humanitarian law; and in particular violating the principle of *non-refoulement*.<sup>5</sup> Forcible returns were also conducted in a manner that violated rights of the affected population in that, the governments used the military who applied excessive force, coercion; deceit and trickery to get the Rwandans assemble in one area.<sup>6</sup> Thereafter, as the Rwandans realized what was going on and trying to flee the round up, they were shot at, some died trying to jump off moving tracks, sustained injuries from the stampede and bullet wounds and the forcible removals resulted in separation of families and premature stripping of international protection.<sup>7</sup>

2.8 *The criteria for invoking Cessation have yet to be made clear:* As the two governments conduct forcible returns, new cases of asylum arrivals and returnees have been registered manifesting that all is not well in Rwanda and that invocation of the Cessation Clause is perhaps premature.<sup>8</sup> The UNHCR Rwanda is to come up with a global road map on application of the Cessation Clause, and indicators and parameters to be applied by governments hosting Rwandan refugees on the implementation of the Cessation Clause.<sup>9</sup> However, this road map is not yet available and the indicators and parameters have yet to be made public. The Government of Uganda and UNHCR Uganda also agreed at the 8<sup>th</sup> Tripartite Meeting to come up with a mechanism to be applied in assessing Rwandans who claim that they cannot return after the application of the Cessation Clause; but what form it will take and how it will operate has yet to be made public.

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<sup>4</sup> The Monitor, *Uganda: Country deports 3000 Rwandans*, 5 October 2007. Available at <http://allafrica.com/stories/200710050012.html> [accessed 22 February 2011]; also IRIN, *Rwanda-Uganda: Kampala urged to end 'gunpoint' deportations*, 15 July 2010, available at <http://www.irinnews.org/PrintReport.aspx?ReportID=89847> [accessed 23 February 2011].

<sup>5</sup> The UN Convention Against Torture and other cruel, inhuman or degrading treatment or punishment; article 3.

<sup>6</sup> Amnesty International, (2010), *Uganda forcibly returns 1700 Rwandan asylum seekers*, available at <http://www.amnesty.org/en/news-and-updates/uganda-forcibly-returns-1700-rwandan-asylum-seekers-2010-07-16> [accessed 23 February 2011].

<sup>7</sup> Human Rights Watch, (2010), *Uganda/Rwanda: Halt forced returns of refugees*, Available at <http://www.hrw.org/en/news/2010/07/16/ugandarwanda-halt-forced-returns-refugees> [accessed 23 February 2010].

<sup>8</sup> AfriqueAvenir, *Over one million Rwandan refugees face forced repatriation from Uganda*, 16 May 2010, available at <http://www.afriqueavenir.org/en/2010/05/16/over-one-million-rwandan-refugees-face-forced-repatriation-from-uganda/> [accessed 23 February 2011].

<sup>9</sup> Great Lakes Voice, *Rwandans in asylum to lose refugee status by next year*, 28 February 2010 available at <http://greatlakesvoice.com/?p=6> [accessed 01 March 2010].

### **3.0: Recommendations re. Refugees & Asylum Seekers**

- 3.1 The government of Uganda speed up the processing of the backlog of refugee status determination
- 3.2 The Government establishes the Refugee Appeals Board to deal with rejected asylum cases and open up the avenue to accessing courts of law on refugee status determination.
- 3.3 Government negotiate with UNHCR to increase assistance to urban refugees, in particular increased access to employment, health care and educational opportunities
- 3.4 The regulations to the 2006 Refugees Act be operationalised without further delay
- 3.5 The Governments of Uganda and Rwanda must respect the principle of voluntary return.
- 3.6 The decision to invoke the cessation clause with effect from December 2011 should be reviewed as further investigations are conducted to the modalities of implementing the Cessation Clause.
- 3.7 Where deportations of rejected asylum seekers are to take place, it should be done in a humane manner in line with international standards.

### **4.0 Internally Displaced Persons**

Article 11 (1) of The African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention, 2009), under Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation states:

‘States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and circumstances of safety and dignity’

In addition, article 3, (b) on General Obligations Relating to States Parties, notes that States Parties shall

“Respect and ensure respect and protection of human rights of IDPs, including humane treatment, non discrimination, equality and equal protection”<sup>i</sup>

Addressing the aftermath of the internal displacement caused by decades of war remains a significant challenge to the government of Uganda, especially with regard to the observance of international and national IDP frameworks. The majority of rural IDPs from Acholi, Lango and Teso sub-regions have returned to their places of origin with the help of domestic and international funding. Many returnees face difficulties in accessing, owning and using land, thus compounding their issues of livelihood and, in some instances, promoting lawlessness and escalating criminal activities. At the same time, displaced persons from places like Bududa that have been ravaged by land slides continue to be relocated to other parts of the country like newly created Kiryandongo district.

4.2 *PRDP does not consider certain vulnerable groups*: The government policy for rebuilding northern Uganda, the Peace, Recovery and Development Plan (PRDP), budgeted at US\$607 million, has four major objectives: consolidation of state authority; rebuilding and empowering communities; revitalization of the economy; and peace building and reconciliation. Gaps still exist especially with regard to livelihood, conflict-sensitivity, and gender-awareness, and certain vulnerable groups: Former child soldiers and a majority of former unaccompanied minors, child-headed families, single-mother headed families and unaccompanied elders who have no surviving relatives, have largely remained out of public conversations and considerations, as have urban IDPs: Internally Displaced Persons (IDPs) who sought refuge in urban areas like Kampala slums of Namuwongo, Naguru and Acholi Quarters, and in other districts like Gulu, Masindi, Mbale, Jinja, to mention a few places, continue to lack recognition by the government of Uganda. Calls for profiling have been ignored by the Office of the Prime Minister, and urban IDPs remain excluded from IDP resettlement planning processes and considerations. They live in a state of crisis and without any prospects for organized return.<sup>ii</sup>

## **5.0 Recent Developments in Transitional Justice in Uganda:**

5.1 Uganda's history is marred by violent conflicts across the country with the northern conflict involving the Lord's Resistance Army (LRA) as the most visible example. The legacy of such conflicts plagues Uganda and sustains the vicious circle of deep-rooted ethnic tensions, militarization, the country's north-south division, a fundamental governance deficit and a lack of civic trust in the government. Without addressing the causes and legacy of violence and widespread human rights violations by both state and non-state actors, violence is very likely to reoccur. Reminders of these largely ignored underlying issues are the violent riots that erupted in September 2009 in Kampala.

5.2 In the Karamoja Region, the governmental insistence on a military approach to problems and conflict, combined with forced sedentarization of the pastoralist Karimojong, illustrates a failure to recognize and adequately address the vulnerability and marginalization faced by the Karimojong, and a lack of respect for their cultural rights.

5.3 The 2011 elections, though with relatively limited overt violence, were characterized by heavy deployment of police and army and government intimidation aimed at preventing protests.

5.4 A comprehensive transitional justice process, addressing root causes of conflict and outstanding justice needs, is essential to address Uganda's legacy of violence and to pave the road towards national reconciliation and sustainable peace.

5.5 The Juba Peace Talks that took place between the LRA and the Government of Uganda (GoU), from July 2006 to March 2008, resulted in the signing of an accord on accountability and reconciliation. Agenda Item No. 3 provides, in clause 5.1, that parties shall:

*“promote national legal arrangements, consisting of formal and non formal institutions and measures for ensuring justice and reconciliation with respect to the [LRA] conflict...[and] recognizes the need for the parties to make modifications in the national legal system to ensure more effective and integrated justice and accountability responses.”*

5.6 Though neither of the parties signed the Final Peace Agreement, Agenda Item No. 3 was a clear commitment by the GoU to implement a transitional justice process aimed at accountability and reconciliation. This commitment entered a legal context where an Amnesty Act, in force since 2000 up to this date, precludes criminal prosecution of any rebel who reports, renounces rebellion, surrenders his or her weapons and is then granted an amnesty certificate.

5.7 A weakness of Agenda Item No. 3, which focuses solely on issues pertaining to the northern conflict involving the LRA, is that it does not envision addressing questions of justice, reconciliation and governance nationally. Therefore, transitional justice developments and initiatives need to be enriched by a deep national debate on what Uganda as a nation requires to achieving sustainable peace.

5.8 Inspired by the achievements of the Juba Peace Talks, a wide section of civil society and the GoU's Justice Law and Order Sector drafted and developed a National Reconciliation Bill that seeks to address questions of truth, accountability, national reconciliation and sustainable peace on a both regional and national level.

## **6.0 Achievements in place**

6.1 Following the signing by both the GoU and the LRA of Agenda Item No. 3, the Justice Law and Order Sector (JLOS) of the GoU established a Transitional Justice Working Group (TJWG) to work towards development of “a comprehensive transitional justice system for Uganda that will promote accountability and reconciliation”<sup>iii</sup>. Thus far, achievements in developing transitional justice mechanisms are the 2008 establishment of the War Crimes Division of the High Court of Uganda and the March 2010 passing of the ICC Act domesticating the Rome Statute and including war crimes, crimes against humanity and genocide in the Ugandan criminal legal regime. The GoU is further applauded for providing, at least initially, reparations to a number of victims of conflict, most notably the Acholi War Debt Claimants Association. It is hoped that this commitment will continue and benefit a wider section of victims on a more systematic basis.

## **7.0 Critique on GoU pertaining to transitional justice**

- Progress of the JLOS TJWG has been slow.
- National consultations conducted by the TJWG have received widespread criticism for being conducted with lack of transparency, and an unrepresentative selection of respondents.
- GoU arguably committed itself to a dual-track approach to accountability, with different approaches for government and non-state actors.
- The Amnesty Act remains in force but amnesty has not been granted to former LRA commander Thomas Kwoyelo, who is currently the only person committed to the War Crimes Division, raising questions of due process.
- The War Crimes Division still lacks rules of procedure or regulations on victim and witness protection. This might be the reason why Kwoyelo's case, though scheduled to start on January 31<sup>st</sup> 2011, was suspended.
- Disproportionate focus on formal accountability mechanisms thus far raises questions about the GoU's commitment to the attainment of a holistic form of justice involving for example acknowledgement, truth recovery, reconciliation, comprehensive forms of reparations and restoration of human dignity, i.e. a comprehensive transitional justice process.

- Political will to establish a systematic reparations programme is lacking. Development programmes by the government and international aid agencies have been misrepresented as a form of reparations.

## 8.0 Recommendations to the GoU

- 8.1 Ensure that JLOS has the necessary financial and human resources to not only design a national transitional justice policy but to also to implement such a policy in earnest and without undue interference.
- 8.2 Build trust in the GoU among victims of conflict by ensuring that persons most responsible for atrocities committed on both sides of conflicts (both state and non-state actors) are subject to the same prosecutorial process.
- 8.3 Ensure that a comprehensive reparations package, which may include individual compensations, is available to victims.
- 8.4 Support the National Reconciliation Bill and the establishment of a National Reconciliation Forum, as proposed in this Bill. In any case, convene a truth-telling body sensitive to the needs of survivors and ensure that its recommendations are implemented.
- 8.5 Engage in broad institutional reform based on the findings of the truth-telling body, in particular those aimed at rectifying historical marginalization.
- 8.6 Recognize that questions of accountability, sustainable peace and reconciliation need to be addressed on a national level.
- 8.7 Formally recognize existing traditional mechanisms intended to bring about reconciliation, including Mato Oput.
- 8.8 Ensure that government structures formally apologize for the role of state perpetrators in the conflict and involve themselves in memorialization/commemoration initiatives.
- 8.9 Encourage all conflict-affected communities to engage in reconciliation dialogue with each other to resolve lingering cross-ethnic hostilities.<sup>iv</sup>

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<sup>i</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala, Uganda, 2009).

<sup>ii</sup> Refugee Law Project, Faculty of Law, Makerere University, the Beyond Juba. Why Being Able to Return Home Should Part of Transitional Justice (Working Paper No.2 March 2010).

<sup>iii</sup> Report Justice Law and Order Sector “*Developing and Managing an Effective Transitional Justice System; Supplement for the 3<sup>rd</sup> Forum*” [www.jlos.go.ug/uploads/Supplement%20for%20the%203rd%20Forum.pdf](http://www.jlos.go.ug/uploads/Supplement%20for%20the%203rd%20Forum.pdf)

<sup>iv</sup> These recommendations are further explained in for example the BJP reports “*Why Being Able to Return Home Should be Part of Transitional Justice*” by Paulina Wyrzykowski and Bernard Okot and “*Tradition in Transition*” by Lyandro Komakech and Alex Sheff; [http://www.beyondjuba.org/working\\_papers/BJP.WP2.pdf](http://www.beyondjuba.org/working_papers/BJP.WP2.pdf)