

## A step forward in the protection of urban refugees: The legal protection of the rights of urban refugees in Uganda

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### Summary

*Forced displacement and rising numbers of urban refugees over the past three decades have emerged as a burning human rights concern. The rights of refugees and their protection by states have long been recognised by international law. The primary international human rights instruments that promote and protect the rights of refugees in Africa are the 1951 UN Convention Relating to the Status of Refugees, its 1967 Protocol, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Uganda, a state party to the 1951 Convention and the 1969 Convention, has adopted laws to promote and protect the rights of refugees in this country. These include the 1995 Constitution, the Refugees Act of 2006 and the Refugees Regulations of 2010 which guarantee the rights of refugees to reside in on-camp settings, and to work and make a living. However, it is argued that one of the gaps in the national framework is the protection of the rights of refugees residing in urban settings. The international and regional refugee laws are not clear on the benchmark against which to appraise state compliance. In light of*

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*the foregoing, the article explores the normative content of the 1995 Constitution and Ugandan Refugee Act of 2006, and observes that these laws and policies are progressive and yet generally fall short of most international human rights standards and best practices. Therefore, it argues that the progressive legal framework is not sufficient if not backed by a responsive and appropriate administrative system that is procedurally fair and just.*

**Key words:** *forced migration; international human rights law; refugee law; refugees; urban refugees*

## 1 Introduction

The world's refugee problem<sup>1</sup> is one of the most complicated challenges facing the international community today.<sup>2</sup> Studies estimate that there are millions of refugees in Africa who are vulnerable to abuse and, therefore, are in need of protection to ensure that their human rights and fundamental freedoms are not violated. More than half of the world's refugees reside in urban areas.<sup>3</sup> In Uganda it is particularly urban refugees<sup>4</sup> that require special protection since the Refugees Act of 2006 provides that refugees who live outside of the provided camps do not qualify for protection and humanitarian assistance from the government and the United Nations High Commissioner for Refugees (UNHCR).<sup>5</sup> The Ugandan government argues that '[i]n practice, this provision encourages refugees to reside in settlements to their own advantage in terms of physical protection and material support as well as in the interest of national security',<sup>6</sup> and discourages those who cannot support themselves from remaining in the city.<sup>7</sup>

This practice obliquely coerces refugees to dwell in rural resettlements. Consequently, most urban refugees who do not want to reside in the settlements end up residing in 'slums' or informal

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1 The 1951 Convention defines a refugee as a person who 'owing to a 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country'. See art 1(A)(2) of the UN Convention Relating to the Status of Refugees, 28 July 1951. The 1969 OAU Convention offers an extended definition to include 'people fleeing external aggression, occupation, foreign domination or events seriously disturbing public order'. See art 1(2) of the 1969 AU Convention Governing Specific Aspects of Refugee Problems in Africa.

2 UNHCR *World at war: Global trends: Forced displacement in 2014* (2014) 2.

3 UNHCR (n 2 above) 13.

4 Kibreab defines urban refugees as those refugees who drift to cities and towns in pursuit of making a living. See G Kibreab 'Eritrean and Ethiopian urban refugees in Khartoum: What the eye refuses to see' (1996) 39 *African Studies Review* 154.

5 Art 44 Ugandan Refugees Act 21 of 2006.

6 J Bernstein & MC Okello 'To be or not to be: Urban refugees in Kampala' (2007) 24 *Refugee* 47.

7 Bernstein & Okello (n 6 above) 48.

settlements on the fringes of urban areas.<sup>8</sup> This circumstance impedes the protection and realisation of their rights, including access to services and opportunities that exist in the urban areas.<sup>9</sup> International refugee law guarantees the rights of all refugees, including the right to housing;<sup>10</sup> the right to work;<sup>11</sup> the right to education;<sup>12</sup> the right to access the courts;<sup>13</sup> the right to freedom of movement within the territory;<sup>14</sup> as well as the right to be issued with identity and travel documents<sup>15</sup> for refugees to live decent lives.<sup>16</sup>

Uganda is a state party to the 1951 UN Convention Relating to the Status of Refugees (1951 Convention) and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention).<sup>17</sup> Uganda adopted the Refugees Act 21 of 2006<sup>18</sup> to domesticate these international instruments. Since Uganda adopts the dualist approach to international law,<sup>19</sup> an international instrument becomes part of domestic law only after the government through parliament has passed an enabling Act to give force to that particular treaty.

The enforcement of the above-mentioned treaties has been characterised by major complications and sensitivities.<sup>20</sup> Referring explicitly to the protection of refugees, Goodwin-Gill argues that '[p]rotection policies must be derived from the principles explicit or implicit in the existing law as developed and interpreted in practice as well as from the principles of fundamental human rights acknowledged by the international community'.<sup>21</sup> He contends this has become necessary as 'it appears that protection had lost ground to the politics of solutions and to the even more uncertain politics of

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- 8 A Lucia 'Challenges and livelihood strategies of Darfuriian refugees living in Kampala, Uganda' MA thesis, University of San Francisco, 2012 2.
- 9 S Pavanello & M Montemurro 'Displacement in urban areas: Implications for humanitarian action' (2010) 34 *Forced Migration Review* 57.
- 10 Art 21 1951 Convention (n 1 above).
- 11 Arts 17, 18 & 19 1951 Convention.
- 12 Art 22 1951 Convention.
- 13 Art 16 1951 Convention.
- 14 Art 26 1951 Convention.
- 15 Arts 27 & 28 1951 Convention.
- 16 ZA Lomo 'The struggle for protection of the rights of refugees and IDPs in Africa: Making the existing international legal regime work' (2000) 18 *Berkeley Journal of International Law* 6.
- 17 N Omata & J Kaplan 'Refugee livelihoods in Kampala, Nakivale and Kyangwali refugee settlements: Patterns of engagement with the private sector' (2013) 95 *Refugee Studies Centre Working Paper Series* 6.
- 18 Ugandan Refugees Act (n 5 above).
- 19 This implies that international treaties to which Uganda is signatory are not part of Ugandan law until they have been adopted through domestic statute.
- 20 M Shah Alam 'Enforcement of international human rights law by domestic courts: A theoretical and practical study' (2006) 53 *Netherlands International Law Review* 400.
- 21 GS Goodwin-Gill 'The dynamic of international refugee law' (2014) 25 *International Journal of Refugee Law* 651.

migration'.<sup>22</sup> In a different study Goodwin-Gill further argues that 'the conception of the refugee as an unprotected individual should be divorced from the politics of the moment and located in a space where the refugee can be recognised as a person with dignity, worth and basic human rights'.<sup>23</sup>

Conversely, Lucia argues that the emergence of urban refugees and their peculiar challenges pose numerous challenges to host states, the UNHCR and non-governmental organisations (NGOs) providing protection services to them.<sup>24</sup> These challenges affect their performance and service delivery and make it difficult for the rights of urban refugees to be protected. It is within this context that the protection of the rights of urban refugees in Uganda is discussed. The article examines the existing domestic laws and policies on refugee rights protection in Uganda, and critically assesses their compliance with international human rights standards.<sup>25</sup> After the introduction follows a descriptive overview of the international and regional laws that safeguard the protection of urban refugees. Section three examines the legal mechanisms for protecting the rights of urban refugees in Uganda with an emphasis on those rights in the 2006 Refugees Act that particularly fall short of regional and international human rights standards. Section four concludes that the existing national legislation provides insufficient protection to the rights of refugees and makes some suggestions as to how this situation can be improved.

## 2 Protection of urban refugees: International and regional laws

The peculiar protection and material needs of urban refugees in recent decades have received much-needed attention. Urban refugees as a class of refugees are entitled to protection under international law, more particularly under international human rights law and international refugee law.<sup>26</sup> These laws provide the framework within which the protection of and assistance to refugees should be undertaken. Over the past three decades urban refugees have been regarded as atypical and, at times, as illegal and offensive to the state establishment. This view is particularly prominent in most African countries where urban communities are now hosting a bulk of the forcefully-displaced population. The unwillingness or rebuff of

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22 Goodwin-Gill (n 21 above).

23 GS Goodwin-Gill 'The politics of refugee protection' (2008) 27 *Refugee Survey Quarterly* 8.

24 Lucia (n 8 above) 2.

25 Office of the United Nations High Commissioner of Human Rights (OHCHR) *Frequently-asked questions on a human rights-based approach to development cooperation*: HR/PUB/06/8 (2006) 15.

26 Goodwin-Gill (n 23 above).

governments to recognise urban refugees is contradictory to historic and customary practice, where 'people recognised as refugees have been of urban origin and have established a safe haven in urban environments'.<sup>27</sup> This is because in the urban environment refugees can locate places of transitory protection, where they are more dependent on their own networks and personal resilience,<sup>28</sup> since the UNHCR provides minimal support to this vulnerable group of refugees in the areas of accommodation and food, livelihood, and limited access to education and healthcare.<sup>29</sup>

Governments, international institutions and agencies often have minimal information on urban refugees<sup>30</sup> as compared to encamped refugees 'who are generally supervised with their identity and location known'.<sup>31</sup> For instance, urban refugees are usually unmanaged, discrete and unregistered, and are regarded as 'spontaneous' or 'self-settled' refugees – those who have abandoned the encampment regime.<sup>32</sup> Different from the camps, urban refugees are scattered, making it more difficult for service providers to correctly appraise their needs.<sup>33</sup> For example, a 2008 report by UNHCR revealed that 'about 30 per cent of the essential needs of refugees are not being met'.<sup>34</sup> These most basic needs include livelihoods, health and education for their children.<sup>35</sup> The ability of refugees to access education and health, particularly in an urban context, depends on their ability to generate an income.

Urban refugees face other extreme challenges that do not affect those residing in camps and settlements.<sup>36</sup> Campbell contends that '[w]hile refugees who remain in camps and settlements have access to basic provisions such as shelter, food and water, refugees residing in urban areas have no choice but to be self-reliant'.<sup>37</sup> The International Rescue Committee contends that in most cases urban refugees do not have legal recognition and protection in the host country, making it more complicated to access basic services as well as exposing them to abuse and exploitation.<sup>38</sup> Even though they lack proper identification

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27 G Hoffstaedter 'Between a rock and a hard place: Urban refugees in a global context' in K Koizumi & G Hoffstaedter (eds) *Urban refugees: Challenges in protection, services and policy* (2016) 1-10.

28 As above.

29 UNHCR *UNHCR policy on refugee protection and solutions in urban areas* (2009) <http://www.unhcr.org/refworld/docid/4ab8e7f72.html> (accessed 7 April 2017).

30 P Marfleet "'Forgotten", "hidden": Predicaments of the urban refugee' (2007) 24 *Refugee* 36-45.

31 As above.

32 As above.

33 See Hoffstaedter (n 27 above) 1-10.

34 Voice of America *UNHCR: Thousands of refugees in camps, urban areas left without basic aid* (2008).

35 See Hoffstaedter (n 27 above) 1-10.

36 As above.

37 EH Campbell 'Urban refugees in Nairobi: Problems of protection, mechanisms of survival, and possibilities of integration' 2006 (19) *Journal of Refugee Studies* 396.

38 International Rescue Committee *Urban refugees* (2012) 1.

and documents, Bailey argues that 'they must find employment and face the threat of detention, deportation or forced relocation'.<sup>39</sup> Even in countries where they do have legal recognition and protection, urban refugees are frequently faced with harassment by police, including physical abuse, intimidation, illegal detention and demands for bribes. Women refugees are particularly vulnerable to physical and sexual abuse.<sup>40</sup>

In most African countries plagued by economic crises and social problems, refugees are used as convenient scapegoats. For instance, in Sudan, Buscher observes that 'the local population accuses refugees of being responsible for higher rents, intermittent shortages of basic necessities, overcrowded schools and inadequate healthcare facilities, increasing crime rates and other urban ills'.<sup>41</sup> In most African countries 'landlords and employers often take advantage of urban refugees who do not have legal protection by charging them higher rents or paying them less than locals with equivalent skills'.<sup>42</sup> There is also a misconception among governments that refugees in urban areas cause an increase in crime rates in the cities.<sup>43</sup> Meanwhile, Landau and Jacobsen observe that 'migrants and refugees are far more likely to be victims of crime or police harassment than locals'.<sup>44</sup> Particularly, the experiences of urban refugees in cities such as Cairo, Johannesburg, Kampala and Khartoum are typified by a high level of helplessness due to the subjective enforcement of international and national protection regimes.<sup>45</sup> In practice, therefore, the laws are often an impediment rather than a solution. For example, these laws are used to perpetuate their status as refugees indefinitely.<sup>46</sup> In light of the foregoing, the international and regional mechanisms governing the protection of refugees are discussed with reference to refugees in urban settings.

## 2.1 Protecting urban refugees under the international human rights system

Six decades after the adoption of the 1951 Convention, the fundamental rights and freedoms of refugees and asylum seekers are still being contested on political, economic, legal and humanitarian

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39 B Sarah 'Is legal status enough? Legal status and livelihood obstacles for urban refugees' MA thesis, The Fletcher School, Tufts University, 2004 31.

40 Marfleet (n 30 above) 36-45.

41 B Dale 'Case identification: Challenges posed by urban refugees' Annual Tripartite Consultations on Resettlement, June 2003.

42 As above.

43 See Hoffstaedter (n 27 above) 1-10.

44 LB Landau & K Jacobsen 'Refugees in the new Johannesburg' (2004) 19 *Forced Migration Review* 44-46.

45 A Fábos & G Kibreab 'Urban refugees: Introduction' 2007 (24) *Refugee* 3-8.

46 G Kibreab 'Refugeehood, loss and social change: Eritrean refugees and returnees' in P Essed et al (eds) *Refugees and the transformations of societies: Agency, policies, ethics and politics* (2004) 19-30.

grounds.<sup>47</sup> The Universal Declaration of Human Rights (Universal Declaration) can be considered as the bedrock of international human rights law.<sup>48</sup> Although declarations are non-binding, United Nations (UN) declarations with the backing of the UN General Assembly (UNGA) present strong expressions of the principles of international law.<sup>49</sup> The Universal Declaration offers some level of protection for urban refugees, despite its non-binding nature, as well as its lacking a treaty body to monitor member states' compliance with the obligations imposed by it. The 1968 Proclamation of Tehran calls the Universal Declaration 'a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community'.<sup>50</sup> Therefore, it has been argued that the Universal Declaration has acquired the status of *jus cogens* through the frequent reaffirmations by the UNGA, other international institutions and governments.<sup>51</sup> *Jus cogens*, unlike treaty law, is binding on all states, cannot be derogated from<sup>52</sup> and evolves through 'consistent and general practices of states emanating from a sense of legal and moral obligation'.<sup>53</sup> Undoubtedly, the Universal Declaration has incontestable 'political standing and symbolic significance'<sup>54</sup> as a universally-recognised enumeration of fundamental human rights and freedoms.<sup>55</sup> Article 14(1) of the Universal Declaration provides that 'everyone has the right to seek and to enjoy in other countries asylum from persecution',<sup>56</sup> thus representing the first attempt to make the right to seek refuge a universal right.

The core objective of the Universal Declaration, namely, that of culminating in binding human rights instruments,<sup>57</sup> came to fruition when the International Covenant on Civil and Political Rights

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47 Goodwin-Gill (n 21 above).

48 WA Schabas *The Universal Declaration of Human Rights: The travaux préparatoires Vol 1, October 1946 to November 1947* (2013) 37.

49 J Morsink *The Universal Declaration of Human Rights: Origins, drafting, and intent* (1999) 146.

50 Proclamation of Teheran, Final Act of the International Conference on Human Rights UN Doc A/CONF 32/41 3 (1968) para 2.

51 H Hannum 'The status of the Universal Declaration of Human Rights in national and international law' (1995) 25 *Georgia Journal of International and Comparative Law* 287.

52 *Portugal v India* 1960 ICJ 123 135. Fernandez J was of the opinion that '[i]n principle, special rules prevail over general rules but there are exceptions to this principle because no special rules prevail over *jus cogens*'.

53 Art 38(1)(b) of the Statute of the International Court of Justice states that '[s]ources of international law applied by the Court includes international custom evidenced by general practice accepted as law'.

54 K Decker et al 'Human rights and equitable development: Ideals, issues and implications' background paper for the World Development Report (2006) 10.

55 L Henkin 'The International Bill of Rights: The Universal Declaration and the Covenants' in R Bernhardt & JA Jolowicz (eds) *International enforcement of human rights* (1987) 1.

56 Arts 14(1) & (2) Universal Declaration.

57 TRG van Banning *The human right to property* (2002) 42.

(ICCPR)<sup>58</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>59</sup> were adopted in 1966. Discrimination on the grounds of a person's status is proscribed by both Covenants.<sup>60</sup> The ICESCR guarantees the rights of refugees to the enjoyment of just and favourable conditions of work,<sup>61</sup> to an adequate standard of living, including adequate food and housing,<sup>62</sup> and intellectual property.<sup>63</sup> Through General Comments, the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) has also considered the application of the principle of non-discrimination to specific covenant rights, including the rights to housing, food, education, health, water, work and social security.<sup>64</sup>

On the other hand, the ICCPR provides that '[e]veryone lawfully within the territory of a state shall within that territory have the right to liberty of movement and freedom to choose his residence'.<sup>65</sup> This right, however, may, be restricted through the provisions of national law.<sup>66</sup> It also protects 'aliens' from illegal expulsion.<sup>67</sup> The Human Rights Committee (HRC) explains that article 12 implies that<sup>68</sup>

[t]he enjoyment of Covenant rights is not limited to citizens of States Parties but also available to all individuals, regardless of nationality or statelessness, such as asylum seekers and urban refugees, who may find themselves in their territory or subject to their jurisdiction,

thus guaranteeing the enjoyment of rights in the ICCPR also to urban refugees.

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58 ICCPR, 19 December 1966, 999 UNTS 171.

59 ICESCR, 16 December 1966, 993 UNTS 3.

60 Art 2(2) ICESCR; arts 2(1) & 26 ICCPR.

61 Art 7 ICESCR.

62 Art 11 ICESCR.

63 Art 15(b) ICESCR.

64 The UN Committee on Economic, Social and Cultural Rights (ESCR Committee) General Comment 4 on the right to adequate housing (1991); General Comment 13 on the right to education (art 13) (1999); General Comment 14 on the right to the highest attainable standard of health (art 12) (2000); General Comment 18 on the right to work (art 6) (2005); and General Comment 19 on the right to social security (2008).

65 Art 12(1) ICCPR.

66 Art 12(3) of the ICCPR states that '[t]he above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant'.

67 Art 13 of the ICCPR states that '[a]n alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law'.

68 Human Rights Committee General Comment 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant states that '[t]he Covenant rights apply to all persons who may be within their territory and to all persons subject to their jurisdiction'.

Since its adoption the 1951 Convention has remained the bedrock of refugee-specific rights under international law. Central to the provisions in this Convention is 'access to work and social security',<sup>69</sup> as is clearly emphasised by the *Ad Hoc* Committee on Statelessness and Related Problems, who stated in 1950 that<sup>70</sup>

[t]he new refugee convention should make refugees self-reliant in the host countries. They must be integrated into the economic system of the countries of asylum and should be able to provide for their own needs and those of their families, unless they consent to repatriation. This is necessary because it is critical for the refugee to enjoy an equitable and stable status as well as to lead a normal existence and be integrated rapidly.

This implies that refugees are entitled to basic survival and dignity rights, as well as access to domestic courts for the enforcement of such rights. The 1951 Convention also recognises the risk of economic marginalisation and exploitation for refugees and, therefore, enfranchises refugees within the social welfare system of the host state.<sup>71</sup>

It must, however, be noted that all the substantive rights other than non-discrimination, freedom of religion, access to the courts and *non-refoulement* may be waived during the signing or ratification of or accession to the Convention by a state.<sup>72</sup> This loophole has the potential of weakening the protection that the 1951 Convention offers to urban refugees as repressive states can waive other critical rights that are crucial to the basic and survival needs of refugees, in general, and urban refugees specifically.

In order to establish a body to oversee the application of the conventional rights enshrined in the 1951 Convention, article 35(1) obliges state parties to<sup>73</sup>

co-operate with the UNHCR or any other agency of the UN which may succeed it in the exercise of its functions and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

This provision further charged the UNHCR to 'supervise international conventions providing for the protection of refugees and recognise that the effective co-ordination of measures taken to protect the rights of refugees will depend upon the co-operation of States with the UNHCR'.<sup>74</sup> This demand underscores the critical role of the co-operation between the UNHCR and states in protecting the rights of all refugees. Kalin considers these obligations as highly versatile and

69 International Refugee Organisation 'Communication from the International Refugee Organisation to the Economic and Social Council' UN Doc E/1392, 11 July 1949 35–37.

70 Memorandum by the Secretary-General to the *Ad Hoc* Committee on Statelessness and Related Problems UN Doc E/AC.32/2, 3 January 1950 6–7.

71 JC Hathaway *The rights of refugees under international law* (2005) 96.

72 The UNHCR Executive Committee 'Agenda for Protection' UN Doc EC/52/SC/CRP.9/Rev1, 26 June 2002 Part III, Goal 1, Point 1.

73 Art 35(1) 1951 Convention (n 1 above).

74 As above.

evolutive.<sup>75</sup> However, since article 35(1) of the 1951 Convention does not put a time or functionality restriction on the relationship between state parties and the UNHCR, 'the duty to co-operate also follows the evolutive duties of the UNHCR'.<sup>76</sup>

In 2009, the UNHCR adopted the Policy on Refugee Protection and Solutions in Urban Areas (Urban Refugee Policy) to safeguard and protect the rights of urban refugees. The policy is underpinned by two key principled objectives:<sup>77</sup>

[f]irst, to guarantee the recognition that urban areas are legitimate places for refugees to live and enjoy their rights; and second, to expand the protection space entitled to urban refugees as well as the organisations that assist them.

Based on these objectives, the policy stresses that '[u]rban refugees like other refugees are entitled to protection and other durable solutions and hence they must be able to enjoy their rights provided in the 1951 Convention as well as in other refugee and international human rights laws'.<sup>78</sup> Therefore, it advances that the rights of refugees and the obligations of key actors<sup>79</sup> towards them are not affected by their location, their means of arrival in urban areas or their status (or lack thereof) in national legislation.<sup>80</sup>

The rights of refugees have also been recognised in some group-specific treaties. Adopted in 1954, the Convention Relating to the Status of Stateless Persons (1954 Statelessness Convention), while not expressly providing for the rights of refugees, contains several provisions requiring states to respect the rights of 'non-nationals' to association,<sup>81</sup> access to courts,<sup>82</sup> wage-earning employment,<sup>83</sup> housing,<sup>84</sup> education<sup>85</sup> and public relief,<sup>86</sup> by obliging state parties to treat aliens staying lawfully in their territories the same as their nationals. The 1961 Convention Relating to the Reduction of Stateless Persons (1961 Statelessness Convention) contains similar provisions.<sup>87</sup>

Article 15(4) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges member states to

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75 W Kalin 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and beyond' in E Feller et al (eds) *Refugee protection in international law: UNHCR's global consultations on international protection* (2003) 615.

76 V Turk *The UNHCR's supervisory responsibility* (1992) 162.

77 UNHCR (n 29 above) 5.

78 As above.

79 Key actors include the UNHCR, governments and other humanitarian organisations delivering services to refugees.

80 UNHCR (n 29 above) 3.

81 Art 15 1954 Statelessness Convention.

82 Art 16 Statelessness Convention.

83 Art 17 Statelessness Convention.

84 Art 21 Statelessness Convention.

85 Art 22 Statelessness Convention.

86 Art 23 Statelessness Convention.

87 Art 13 UN Convention Relating to the Reduction of Stateless Persons.

'accord to men and women the same rights with respect to the law relating to the movement of persons and the freedom to choose their residence and domicile'.<sup>88</sup> Similarly, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) describes a migrant worker as a person who engages in a paid activity outside his country of nationality,<sup>89</sup> while article 1(1) declares that the Convention is applicable to all migrant workers except otherwise provided by law without distinction to ethnic or social origin, nationality, economic or other status.<sup>90</sup> In addition, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) guarantees 'the adequate development and protection of vulnerable racial groups for them to enjoy their human rights and fundamental freedoms'.<sup>91</sup>

The 1989 Convention on the Rights of the Child (CRC) obliges 'State Parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status *inter alia* of the child's parents, legal guardians or family members'.<sup>92</sup> Specifically addressing the situation of refugees, article 22 obliges state parties to<sup>93</sup>

take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the Convention and in other international human rights or humanitarian instruments to which the states are parties.

This provision obliges states to adopt measures to guarantee that refugee children are accorded appropriate protection and humanitarian support as set out in the various refugee and human rights instruments. Finally, the purpose of the Convention on the Rights of Persons with Disabilities (CRPD), as set out in article 1, is to seek 'to promote, protect and guarantee the full and equal enjoyment of all human rights and basic freedoms by all persons with disabilities (PWDs)'.<sup>94</sup> Similar to other group-specific treaties, all the rights contained in this Convention cover refugees with disabilities.

From the previous analysis, it may be concluded that refugee protection represents a point of concern for all the major universal human rights treaties.

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88 Art 15(4) CEDAW.

89 Art 2(1) ICMW.

90 Art 1(1) ICMW.

91 Art 2(2) CERD.

92 Art 2(2) CRC.

93 Arts 22(1) & (2) CRC.

94 Art 1 CRPD.

## 2.2 Protecting urban refugees under the African human rights system

When analysing the African human rights system, it is clear that the 1981 African Charter on Human and Peoples' Rights (African Charter) contains similar provisions as enshrined in other regional instruments. It affirms that '[e]very 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'.<sup>95</sup> Scholars contend that the wording of article 12(3) of the African Charter – 'in accordance with the laws of those countries and international conventions' – could be used as a claw-back clause, limiting the impact of this right.<sup>96</sup> Subsequently, article 11(3) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa<sup>97</sup> (African Women's Protocol) reinforces the specific protection needs of women refugees in Africa, obliging state parties<sup>98</sup>

to protect asylum-seeking women and refugees against all forms of violence, rape and other forms of sexual exploitation, and that their perpetrators are brought to justice before a competent criminal jurisdiction.

This requirement implies that states have a duty to protect refugee women from all forms of violence and exploitation due to their sexuality and vulnerability, as well as to ensure that perpetrators are penalised.

Similarly, the African Charter on the Rights and Welfare of the Child (African Children's Charter) provides for the protection of rights of refugee children in Africa. The Charter obliges state parties to<sup>99</sup>

take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the Charter and other international human rights and humanitarian instruments to which the state is a party.

This provision contextualises the CRC provision on refugee children in Africa and reinforces the special place of the child in the African context. It further ensures that the special needs of refugee children

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95 Art 12(3) African Charter.

96 G Okoth-Obbo 'Thirty years on: A legal review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa' (2001) 20 *Refugee Survey Quarterly* 79.

97 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa AHG/Res.240 (XXXI) June 1995, Addis Ababa, Ethiopia.

98 Art 11(3) African Women's Protocol.

99 Art 23(1) African Children's Charter.

are duly recognised, promoted and guaranteed at the regional level. Additionally, article 23(3) provides that<sup>100</sup>

[w]here no parents, legal guardians or close relatives of the refugee child can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

In 1969, the Organisation of African Unity (OAU) – now the African Union (AU) – adopted a regional refugee convention which provides for the definition of a refugee,<sup>101</sup> which is considered more inclusive and progressive than other regional conventions.<sup>102</sup>

Dealing with the specific protection needs of refugees in Africa, article 2(1) of this Convention obliges<sup>103</sup>

member states to use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

Despite the relevance of this provision to protecting the rights of urban refugees in Africa, oppressive states can exploit the excesses by adopting repressive laws to the contrary. Additionally, the Convention provides that ‘granting asylum to refugees is a peaceful and humanitarian act which shall not be treated as an unfriendly act by any member state’.<sup>104</sup> Oloka-Onyango has observed that article 2(1) of the 1969 OAU Convention is one of the most significant contributions to refugee jurisprudence in general.<sup>105</sup> The facilitative role of the UNHCR in international refugee protection is underscored in the Convention by obliging all member states to co-operate with its activities.<sup>106</sup> It further observes in the strongest terms that ‘[t]he Convention shall be the effective regional complement to the 1951 Convention in Africa’.<sup>107</sup> Rwelamira states that ‘[a]lthough the legal purposes of the Convention are essentially limited ... it is a landmark

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100 Art 23(3) African Children’s Charter.

101 The definition of refugee in art 1 of the 1969 Convention incorporates the definition of the 1951 Convention removing the temporal or geographic restrictions with further extension in the definition. Para 2 of art 1 provides that ‘[t]he term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’.

102 J Crisp ‘Africa’s refugees: Patterns, problems and policy challenges’ (1999) 16 *UNHCR New Issues in Refugee Research* 6.

103 Art 2(1) 1969 OAU Convention.

104 Art 2(2) 1969 OAU Convention.

105 J Oloka-Onyango ‘Plugging the holes: Refugees, OAU policy and the practices of member states’ (1986) USC Issue Brief, Washington DC.

106 Art 8(1) 1969 OAU Convention.

107 Art 8(2) 1969 OAU Convention.

event for refugee law and policy'.<sup>108</sup> Okoth-Obbo, however, contends that the central role assigned to national legislations in granting asylum under the Convention implies that if a state adopts a stringent refugee policy, in effect it can undermine the realisation of the provisions in the Convention.<sup>109</sup>

At the sub-regional level Uganda is a member of the Common Market for Eastern and Southern Africa (COMESA), the International Conference on the Great Lakes Region (ICGLR), the Inter-Governmental Authority on Development (IGAD) and the East African Community (EAC). There are various provisions in the treaties and related protocols of these regional bodies that are pertinent to the protection of refugees. For instance, article 104(1) of the EAC Treaty obliges member states to adopt measures to achieve the free movement of persons, labour and services and to enjoy the right of establishment of their citizens within the community.<sup>110</sup> Article 124(4) also obliges member states to establish common mechanisms for the management of refugees in the community.<sup>111</sup> Although the treaty does not directly contain provisions that protect the rights of refugees, article 104 has the potential to be applied to refugees in terms of movement, employment and residence. Also, article 10(2)(b) of the Protocol to the EAC Treaty on Peace and Security tasks member states to incorporate the 1951 Convention and the 1969 OAU Convention into their national legislations.<sup>112</sup> Member states are also to institute mechanisms to facilitate the family reunification of refugees.<sup>113</sup>

Article 164 of the COMESA Treaty provides for member states to<sup>114</sup>

adopt at the individual, bilateral and regional levels appropriate measures to progressively realise the free movement of persons, labour and services as well as to ensure the enjoyment of the right of establishment and residence by their citizens within the common market.

Also, article 13A of the Agreement Establishing the IGAD obliges member states 'to respect the basic rights and fundamental freedoms of the peoples of the region to benefit from emergency and other forms of humanitarian assistance'<sup>115</sup> and to 'facilitate repatriation and reintegration of refugees, returnees and displaced persons in co-operation with appropriate government and non-governmental organisations in accordance with international, regional and national

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108 MR Rwelamira 'Two decades of the Convention Governing the Specific Aspects of Refugee Problems in Africa' (1989) 1 *International Journal of Refugee Law* 557.

109 Okoth-Obbo (n 96 above) 79.

110 Art 104(1) EAC Treaty.

111 Art 124(4) EAC Treaty.

112 Art 10(2)(b) Protocol to the EAC Treaty on Peace and Security (EAC Peace Protocol).

113 Art 10(2)(e) EAC Peace Protocol.

114 Art 164(1) COMESA Treaty.

115 Art 13A(q) Agreement Establishing the Intergovernmental Authority on Development (IGAD Agreement).

laws'.<sup>116</sup> Furthermore, article 12 of the Pact on Security, Stability and Development,<sup>117</sup> adopted by the ICGLR, makes specific provision for displaced people.<sup>118</sup> Article 13 of the related Protocol to the Pact on Property Rights of Returning Persons<sup>119</sup> encourages member states to protect the property of displaced persons. In addition to specific pacts on displacement, the ICGLR has provisions on freedom of movement and residence for citizens of the Great Lakes region which are potentially applicable to refugees. On this premise the laws governing refugee protection in Uganda are examined below.

### 3 Protecting the rights of urban refugees in Uganda: Analysis of the legal framework

Uganda has committed itself to protecting the rights of urban refugees by ratifying several international and regional human rights instruments that guarantee the rights of refugees. These include the 1951 Convention which Uganda ratified on 27 September 1976;<sup>120</sup> the CERD ratified on 21 November 1980;<sup>121</sup> the ICCPR and ICESCR ratified on 21 June 1995 and 21 January 1987 respectively;<sup>122</sup> and the CEDAW that was ratified on 22 July 1985.<sup>123</sup> Furthermore, the CRC was ratified on 17 August 1990,<sup>124</sup> and the Convention on Migrant Workers and CRPD were ratified on 14 November 1995<sup>125</sup> and 25 September 2008<sup>126</sup> respectively.

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116 Art 13A(s) IGAD Agreement.

117 ICGLR 'The pact on security, stability and development for the Great Lakes region' December 2006, amended November 2012.

118 ICGLR 2004 Protocol on the Protection and Assistance to Internally-Displaced Persons.

119 ICGLR 2006 Protocol on the Property Rights of Returning Persons.

120 UN Treaty Collection, Convention relating to the Status of Refugees 28 July 1951 [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en) (accessed 10 October 2015).

121 UN Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination 7 March 1966 [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en) (accessed 10 October 2015).

122 UN Treaty Collection, ICCPR of 16 December 1966 [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (accessed 10 October 2015); UN Treaty Collection, ICESCR of 16 December 1966 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (accessed 10 October 15).

123 UN Treaty Collection, Convention on the Elimination of All Forms of Discrimination, 18 December 1979 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (accessed 10 October 2015).

124 UN Treaty Collection, Convention on the Rights of the Child 20 November 1989 [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en) (accessed 10 October 2015).

125 UN Treaty Collection, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 18 December 1990 [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-13&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-13&chapter=4&lang=en) (accessed 10 October 2015).

126 UN Treaty Collection, Convention on the Rights of Persons with Disabilities

At the regional level, Uganda ratified the African Charter on 10 May 1986,<sup>127</sup> the African Women's Protocol on 22 July 2010<sup>128</sup> and the African Children's Charter on 17 August 1994.<sup>129</sup> The Constitution, along with several laws, subsidiary legislation and policies, relate to the rights of urban refugees in Uganda. Amongst them the most relevant are the Constitution, the Refugee Act of 2006 and its Regulations of 2010, discussed below.

### 3.1 Setting the basis for the protection of refugee rights in Uganda: Role of the 1995 Constitution

Article 45 of the Constitution provides that '[t]he rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically provided under the Bill of Rights shall not be regarded as excluding others not specifically mentioned'.<sup>130</sup> This provision implies that the human rights enshrined in international and regional instruments ratified by Uganda cannot be excluded from the rights guaranteed in the Bill of Rights. However, the impressive international legal framework has not always in practice translated into respect for the human rights of urban refugees. The rule of law and respect for and promotion of human rights remain weak. For instance, Human Rights Watch and other human rights organisations have continually observed gross human rights violations, such as arbitrary detention and the use of torture by the government.<sup>131</sup> Since Uganda's independence, although human rights have received at least some legislative attention, 'the specific rights of refugees have been neglected notwithstanding the country's long history as a refugee-hosting nation'.<sup>132</sup> After a history of political and constitutional instability, the Constituent Assembly of Uganda promulgated a new Constitution in 1995.<sup>133</sup> The new Constitution

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13 December 2006 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=iv-15&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en) (accessed 10 October 2015).

127 AU 'Ratification Table: African Charter on Human and Peoples' Rights' <http://www.achpr.org/instruments/achpr/ratification/> (accessed 10 October 2015).

128 AU 'Ratification Table: Protocol to the ACHPR on the Rights of Women in Africa' <http://www.achpr.org/instruments/women-protocol/ratification/> (accessed 10 October 2015).

129 African Commission 'States – Uganda' <http://www.achpr.org/states/uganda/ratifications/> (accessed 10 October 15).

130 Art 45 Ugandan Constitution (1995).

131 See Human Rights Watch 'Uganda: Act swiftly on long-term detainees' Press Release, <http://www.hrw.org/en/news/2009/06/24/uganda-act-swiftly-long-term-detainees> (accessed 23 October 2015); and Human Rights Watch 'Uganda: Kenyan activists at risk of torture' Press Release <http://www.hrw.org/en/news/2010/09/16/uganda-kenyan-activists-risk-torture> (accessed 23 October 2015).

132 M Sharpe & S Namusobya 'Refugee status determination and the rights of recognized refugees under Uganda's Refugees Act 2006' (2012) 24 *International Journal of Refugee Law* 563.

133 Preamble, para 1 1995 Constitution (n 130 above).

seeks to strengthen the framework for the protection and preservation of fundamental human rights and freedoms.<sup>134</sup> To realise this goal, Chapter Four contains a Bill of Rights which guarantees the fundamental human rights and freedoms that must be respected and upheld by all organs of state, private entities and individuals alike.<sup>135</sup>

Although the rights of urban refugees are not explicitly provided for, the Bill of Rights guarantees an entire set of human rights to 'all persons' and, in some instances, 'everyone'. Article 21(1) provides that '[a]ll persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law'.<sup>136</sup> In this regard, Mulumba and Olema contend that the phrase 'all persons' includes refugees and, therefore, it may be argued that this guarantees the rights of urban refugees to equality and freedom from discrimination.<sup>137</sup> On the other hand, the same authors have observed that in practice refugees have been denied certain privileges guaranteed under the Bill of Rights.<sup>138</sup> For instance, refugees residing in urban areas are denied protection and humanitarian assistance by the government and the UNHCR in compliance with the Act on the ground that they must reside in approved rural settlements or camps in order to qualify for this.<sup>139</sup> The Constitution further guarantees the right of every person to own property either individually or with others,<sup>140</sup> although non-Ugandans can claim only leaseholds under the Land Act, and not absolute ownership. Nevertheless, as in the case of many constitutions, this right may be limited based on requirements enshrined in the Constitution.<sup>141</sup>

Article 28(1) provides for the right to a fair hearing in the determination of civil rights and duties or criminal charges.<sup>142</sup> Critical to the rights of refugees, article 29(1) guarantees and protects the right of every person to freedom of conscience, expression, movement, religion, assembly and association.<sup>143</sup> Article 30 entitles all persons to the right to education.<sup>144</sup> In strong wording, article 32(2) prohibits all laws, cultures, customs and traditions which are against

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134 Preamble, para 3 1995 Constitution.

135 Art 21(2) 1995 Constitution.

136 Art 21(1) 1995 Constitution.

137 D Mulumba & WM Olema *Policy analysis report: Mapping migration in Uganda* (2009) 27.

138 Mulumba & Olema (n 137 above) 28.

139 Art 44 Ugandan Refugees Act (n 5 above).

140 Art 26(1) 1995 Constitution (n 130 above).

141 Art 26(2) of the Constitution (n 48 above) entitles the state to compulsorily acquire the property of any description when the following conditions are met: (a) the acquisition is necessary for public use or in the interest of defence, public safety, public order or public health; and (b) the acquisition is made under a law which provides for prompt payment of fair and sufficient compensation with the grant of access to court for any aggrieved party.

142 Art 28(1) 1995 Constitution (n 130 above).

143 Art 29(1) 1995 Constitution.

144 Art 30 1995 Constitution.

the dignity, welfare or interests of women or any other marginalised groups covered by article 32(1).<sup>145</sup> As argued above, refugees are globally recognised as a marginalised group<sup>146</sup> and, hence, fall within the ambit of this constitutional provision. However, the Constitution consists of principles that can be weighed against each other, and the rights guaranteed in article 29 may consequently be limited and weighed against other rights. For instance, article 43 provides for limitations to the rights enshrined in article 29 in order to respect the fundamental rights of others or the public interest. Nevertheless, the limitations based on public interest may not go beyond what is acceptable and demonstrably justifiable in a free democratic society, or what is provided for by the Constitution.

Article 40 provides for the right of all persons to work under satisfactory, safe and healthy conditions as well as guaranteeing equal payment for equal work without discrimination.<sup>147</sup> It further guarantees the right of every person in Uganda to practise their profession and to undertake any lawful occupation, trade or business.<sup>148</sup> It also entitles any person appearing before any administrative body or official the right to be treated fairly and justly as well as the right to apply to a court of law regarding any administrative decision taken against them.<sup>149</sup>

Furthermore, the Constitution entitles a child to basic education the provision of which shall be the duty of the state and the parents of the child.<sup>150</sup> This particular provision makes it difficult for refugee children to access basic education when their parents cannot fulfil this duty due to their economic conditions. It further provides that no child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of any religious or other opinion.<sup>151</sup> Article 34(7) states that '[t]he law shall accord special protection to orphans and other vulnerable children'.<sup>152</sup> These provisions are to be welcomed, but face enforcement challenges due to other counteractive government policies and laws. For instance, a study conducted by the Women's Refugee Commission revealed that many urban refugees are vulnerable and live in extreme poverty, unable to pay for their basic needs such as rent, and therefore sleep on the streets, eat less frequently and engage in negative economic strategies.<sup>153</sup> These situations can adversely affect their children who

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145 Art 32(2) 1995 Constitution.

146 M Sommers 'Urbanisation and its discontents: Urban refugees in Tanzania' (1999) 4 *Forced Migration Review* 22.

147 Arts 40(1)(a) & (b) 1995 Constitution (n 130 above).

148 Art 40(2) 1995 Constitution.

149 Art 42 1995 Constitution.

150 Art 34(2) 1995 Constitution.

151 Art 34(3) 1995 Constitution.

152 Art 34(7) 1995 Constitution.

153 Women's Refugees Commission *The living ain't easy: Urban refugees in Kampala* (2010) 2.

may drop out of school to take up work. The study further indicates that, due to the lack of physical protection, some refugee women and girls walk in groups to avoid sexual harassment.<sup>154</sup>

The Constitution further provides that every person who has legally and voluntarily migrated to and has been residing in Uganda for a minimum of 20 years shall be registered as a citizen upon application for such purpose.<sup>155</sup> However, studies have revealed that the acquisition of citizenship in Uganda is extremely difficult due to the cumbersome process, which makes it difficult for refugees to acquire citizenship.<sup>156</sup>

Moreover, since refugees are forcefully displaced, no amount of time can alter their migration status and, hence, this disqualifies them from seeking citizenship based on article 13 of the Constitution. Unless this constitutional provision is amended to accord refugees the ability to apply for registration as citizens, the provision would continue to be a mockery of the length of stay of urban refugees in Uganda. Without explicitly mentioning 'refugees' in the clause, it could be argued that the word 'persons' encompasses 'refugees' as well and, as a consequence, the provision could have given urban refugees the right to regularise their stay in Uganda. Unfortunately, there has not been any court decision on the inclusion or exclusion of refugees based on this provision.

The progressive provisions in the Constitution are welcome steps since they ensure a largely human rights-compliant approach to protecting the rights of urban refugees. However, a critical assessment of these provisions reveals some inherent weaknesses. First, the failure to explicitly recognise the rights of refugees is a major gap and generates controversy in claiming the rights of refugees, in general, and urban refugees particularly. Such non-recognition can be used to justify various administrative and judicial actions that hinder the rights of urban refugees in Uganda. International best practice requires that the rights of refugees should be clearly guaranteed in national constitutions in order to offer effective protection.<sup>157</sup>

### **3.2 A step forward to protection: The Refugees Act of 2006 and the Refugees Regulations of 2010**

The Refugees Act was tabled in parliament in 1998 and passed in 2006. It entered into force in 2008, and became operational by the passing of the Refugees Regulations in 2010. Buwa argues that developments in Uganda from the 1990s, including progress in political, economic, social and legal spheres, reinforced the government's resolve to measure up to international standards in

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154 As above.

155 Art 13(2) 1995 Constitution (n 130 above).

156 Refugee Law Project *Refugees in the city: Status determination, resettlement and changing nature of forced migration in Uganda* (2002) 6 Working Paper 9.

157 Mulumba & Olema (n 137 above) 27.

refugee protection.<sup>158</sup> The 2006 Act, therefore, was adopted to give effect to these treaties.<sup>159</sup> This desire becomes apparent when considering the government's admittance of the repealed Control of Aliens and Refugees Act (CARA) as wholly inadequate in protecting refugees.<sup>160</sup> The Refugee Act of 2006 provides a comprehensive legislative framework for the protection of the rights of urban refugees and other related matters.<sup>161</sup> Although it was expected that the Act would make more elaborate provisions to particularly fill most of the gaps in the Constitution relating to refugee protection, it failed for several reasons.

Article 3(2) grants the government the discretionary right to grant or deny the application for refugee status of any person.<sup>162</sup> This discretionary right derogates from international refugee law standards it aims to uphold.<sup>163</sup> The article also establishes an Office for the Commissioner for Refugees and other procedural matters regarding the administration of refugees and related matters. The Office undertakes all administrative matters relating to refugees in Uganda and, in that capacity, co-ordinates both government and non-governmental activities concerning refugees.<sup>164</sup> The establishment of a specialised office for the administration of refugee matters is very progressive and strengthens the institutional mechanism for the protection of urban refugees.

Article 11 establishes the Refugee Eligibility Committee (REC) tasked to consider and handle all applications for refugee status.<sup>165</sup> The REC consists of officials from 10 different government departments, with the UNHCR attending in an advisory capacity. The omission of civil society from the REC may create the perception that the government prioritises state interests instead of the protection needs of refugees and asylum seekers, since there is limited participation by civil society organisations that usually act as a watchdog over government actions. The UNHCR is also allowed to receive applications for refugee status on behalf of the Office of the Commissioner for Refugees.<sup>166</sup> This permission is commendable in view of the high volume of applications the Commissioner's office handles and the inadequate staff and logistical resources it faces.

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158 MG Buwa 'Critique of the Refugees Act, 2006' (2007) Refugee Law Project Policy Paper 1.

159 Arts 28(a) & (b) Ugandan Refugees Act (n 5 above).

160 Buwa (n 158 above) 1.

161 Art 8 Ugandan Refugees Act (n 5 above).

162 Art 3(2) Ugandan Refugees Act.

163 Buwa (n 158 above) 6.

164 Art 8(1) Ugandan Refugees Act (n 5 above).

165 Art 12 Ugandan Refugees Act.

166 Arts 19(2) & (3) Ugandan Refugees Act.

Article 16 sets up the Appeals Board with appellate functions<sup>167</sup> regarding decisions of the REC on issues of law and procedures.<sup>168</sup> The Board lacks the power of an appellate body despite its ability to set aside the decisions of the REC, and the fact that the decision of the Board is final.<sup>169</sup> This causes the appeal process to fall short of the constitutional imperative of just and fair administrative actions as well as the right to apply to a competent court against any decision taken against them.<sup>170</sup> However, Sharpe and Namusobyá contend that applicants whose applications are rejected during the appeal may apply for a judicial review at a court of competent jurisdiction.<sup>171</sup>

Progressively, article 28 entitles urban refugees to all the rights guaranteed under the 1951 Convention and the 1969 OAU Convention and other relevant international treaties to which Uganda is a party.<sup>172</sup> Therefore, all refugees have the right to be issued with identity cards for purposes of identification and protection,<sup>173</sup> and to stay in Uganda.<sup>174</sup> Nevertheless, there appears to be a discrepancy between the law and what is on the ground. For example, it has been reported that the office of the Prime Minister has begun to permit refugees to remain in Kampala as well as other cities by providing them with identity documents on condition that they can prove 'self-sufficiency'.<sup>175</sup> The office argues that by demanding evidence of employment and residency, refugees who cannot sustain themselves in the cities are discouraged from remaining in the cities. However, limiting the issuing of identity documents to refugees who can prove 'self-sufficiency' by using such arbitrary criteria is discriminatory and violates the letter and spirit of the 1951 Refugee Convention. The 1951 Convention does not link refugee status to their economic status.

The Act further provides for urban refugees to own property<sup>176</sup> and to transfer assets,<sup>177</sup> to have access to education, and accords them the same treatment as nationals regarding basic education.<sup>178</sup> To assist urban refugees to become self-reliant, the Act guarantees their right to engage in agriculture, industry, commerce and crafts and to set up other ventures in accordance with applicable laws.<sup>179</sup> Refugees

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167 Art 17 Ugandan Refugees Act.

168 Art 21 Ugandan Refugees Act.

169 Art 21(4) Ugandan Refugees Act.

170 Art 42 Ugandan Refugees Act.

171 Sharpe & Namusobyá (n 132 above) 561.

172 Art 28 Ugandan Refugees Act.

173 Art 29(1)(a) Ugandan Refugees Act.

174 Art 29(1)(b) Ugandan Refugees Act.

175 D Ssemugenyi 'Challenges to refugees' freedom of movement in Uganda: A case of self-settled refugees In Kisenyi, Kampala' unpublished MA thesis, Norwegian University of Science and Technology, 2011.

176 Art 29(1)(e)(i) Ugandan Refugees Act (n 5 above).

177 Art 29(1)(e)(ii) Ugandan Refugees Act.

178 Art 29(1)(e)(iii) Ugandan Refugees Act.

179 Art 29(1)(e)(iv) Ugandan Refugees Act.

also have the right to practise their qualified professions.<sup>180</sup> Refugees enjoy the same level of protection regarding intellectual property as nationals.<sup>181</sup> This measure reinforces the rights of urban refugees to be gainfully employed and to contribute to the sustainable socio-economic development of the host country. In practice, however, this situation is different, since the Act provides that refugees have the right to work just like 'aliens in similar circumstances'.<sup>182</sup> For instance, it is reported, contrary to the claims by the office of the Prime Minister, that once a refugee is in the country he or she is allowed *de facto* to work,<sup>183</sup> the Immigration Department wrongfully interprets 'aliens in similar circumstances' to mean that refugees require work permits just as aliens require work permits to enter the country.<sup>184</sup> This lack of clarity, as well as the varied enforcement of the provision guiding employment of refugees, implies that government officials, potential employers and refugees are often deceived. Employers, therefore, are wary of hiring refugees. It is also reported that refugees who engage in formal work are frequently besieged by government and immigration officials and are consistently exploited and discriminated against in accessing employment.<sup>185</sup>

The Act also guarantees the right of urban refugees to non-political associations.<sup>186</sup> This right emanates from article 3 of the 1969 OAU Convention forbidding refugees from engaging in subversive activities against any state. In this sense, the Act bans refugees from engaging in any political activity, which seriously affects the rights of urban refugees to expression, association, assembly and academic freedom as guaranteed, for instance, in the Constitution,<sup>187</sup> the Universal Declaration,<sup>188</sup> the ICCPR<sup>189</sup> and the African Charter.<sup>190</sup> The scope of this provision is thus too wide.

The Act further provides for the right of refugees to access a court of law, including legal assistance, in compliance with the relevant laws.<sup>191</sup> The freedom of movement of refugees within and outside Uganda is also guaranteed<sup>192</sup> and they are entitled to be issued travelling documents.<sup>193</sup> This right, however, can be restricted on the

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180 Art 29(1)(e)(vii) Ugandan Refugees Act.

181 Art 29(2) Ugandan Refugees Act.

182 Arts 29(e)(v) & (vi) Ugandan Refugees Act.

183 Women's Refugees Commission (n 153 above) 9.

184 As above.

185 As above.

186 Art 29(1)(g) Ugandan Refugees Act.

187 Arts 29(1) & (e) 1995 Constitution (n 130 above).

188 Arts 19 & 20 Universal Declaration.

189 Art 19 ICCPR.

190 Art 10 African Charter.

191 Art 29(1)(h) Ugandan Refugees Act.

192 Art 30(1) Ugandan Refugees Act.

193 Art 30(2) Ugandan Refugees Act.

grounds of national security, public health, public order and public morals as well as for the protection of the rights of others.<sup>194</sup> In this regard, Buwa has argued that the restrictions imposed on this right curtailed its protective value since the directives given by the commissioner may be arbitrary.<sup>195</sup> Despite the legal rights of refugees, it has been reported that refugees are unable to easily cross international borders due to limited access to conventional travel documents.<sup>196</sup> Furthermore, although refugees who may wish to travel outside Uganda are entitled to conventional travel documents, experience has shown that not all refugees are entitled to these documents as they are issued only to those refugees travelling for resettlement or on health grounds. This situation encumbers businesses and trading activities operated by refugees in Uganda with Rwanda, Kenya and South Sudan.

It is worth noting that in the Act the description of family to include spouses, children and other dependents is in line with the African conception of family.<sup>197</sup> This description offers a protective tool in processing resettlement to third countries as durable solutions, especially as third-country resettlement is increasingly becoming inevitable in Uganda due to the overburdened case loads and resource constraints, as well as the protracted conflicts in neighbouring countries.<sup>198</sup> This situation requires burden sharing and extended protection through third-country settlement. Nevertheless, this broader definition of 'other dependents' may pose practical challenges that may impede third country and burden-sharing administrative processes.

The Act recognises the special protection needs of refugee women and children and guarantees their rights and welfare accordingly. It entitles refugee children to the rights and freedoms enshrined in the Ugandan Children Act,<sup>199</sup> the African Children's Charter<sup>200</sup> and the CRC.<sup>201</sup> However, this is not the reality. For example, even though the government provides universal primary education, making the seven years of primary school free for four children per family, government schools in Kampala commonly do charge fees.<sup>202</sup> Students also pay for uniforms, other educational supplies and meals, making the cost of primary school prohibitively high for both urban refugees and the urban poor alike. The Women's Refugees

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194 As above.

195 Buwa (n 158 above) 16.

196 Women's Refugees Commission (n 153 above) 2.

197 Art 2 para 19 Ugandan Refugees Act.

198 Buwa (n 158 above) 4.

199 Art 32(2)(a) Ugandan Refugees Act.

200 Art 32(2)(b) Ugandan Refugees Act.

201 Art 32(2)(c) Ugandan Refugees Act.

202 A Bonfiglio 'Learning outside the classroom: Non-formal refugee education in Uganda' UNHCR Policy Development and Evaluation Service No 193, November 2010.

Commission contends that other barriers, such as discrimination in admission procedures, by which limited seats go to non-nationals, language barriers, adjustment to a new curriculum, and the psychosocial needs of conflict-affected refugee children, affect the access of urban refugees to public schools. As a result, it is reported that more than half of the refugee children of school-going age in Kampala do not attend school, and less than 10 per cent of refugee students in Uganda are enrolled in secondary school.<sup>203</sup>

The Act also accords to refugee women equal enjoyment and protection of all human rights and freedoms regarding economic, social, cultural and other spheres as provided in the Constitution and other applicable laws in Uganda, including all the international instruments to which Uganda is a party, such as CEDAW<sup>204</sup> and the African Women's Protocol.<sup>205</sup> It also protects the right to marriage as respected by the laws of Uganda.<sup>206</sup>

In general, the Act complies with international refugee protection standards as grounded in the 1951 Convention and the 1969 OAU Convention. Nevertheless, there are some gaps and weaknesses which leave room for excesses due to glaring omissions in the Act. For instance, by focusing on protection for and assistance to encamped refugees, the Act undermines refugees' freedom of movement and the right to choose their place of residence, as enshrined by article 26 of the 1951 Convention. These weaknesses and gaps lower the compliance of the Act with international refugee law standards of protection and best practice.<sup>207</sup> Therefore, these gaps create several institutional and practical challenges that make it difficult for urban refugees to enjoy their rights.

To make the Act implementable, the Refugees Regulations of 2010, the first comprehensive regulatory framework, were formulated to address key issues in the management of refugees, including the rights of urban refugees.<sup>208</sup> The Regulations were introduced to guide the implementation of the Act<sup>209</sup> and, hence, contain similar provisions enshrined in the Act. The Regulations also recognise the general lack of consultation with urban refugees on issues pertinent to the protection of their rights.<sup>210</sup> They, therefore, emphasise as one of the principles the need for the participation of refugees in national and decentralised planning and policies at all levels.<sup>211</sup>

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203 InterAid *Socio-economic baseline survey for urban refugees in and around Kampala* (2009) 11.

204 Art 33(2)(a) Ugandan Refugees Act.

205 Art 33(2)(b) Ugandan Refugees Act.

206 Art 34(2) Ugandan Refugees Act.

207 Buwa (n 158 above) 1.

208 Preamble Refugees Regulations 9 of 2010.

209 As above.

210 Preamble Refugees Regulations (n 208 above).

211 Art 61 Refugees Regulations.

The Regulations also provide for other vulnerable groups, such as HIV-positive refugees. They protect the application and subsequent stay of HIV-positive applicants from discrimination or prejudicial actions in any form,<sup>212</sup> further providing that such persons shall be given the favourable treatment given to nationals regarding access to healthcare and treatment.<sup>213</sup> The Regulations also protect stateless refugees from arbitrary discrimination on the basis of their statelessness, and grants them the eligibility to apply for citizenship upon satisfying the constitutional prescription for residence in Uganda.<sup>214</sup>

The Regulations further accord refugees from the East African Community (EAC) member states the enjoyment of all rights and benefits that Community nationals are entitled to in the treaty and protocols establishing the EAC.<sup>215</sup> This provision is very important because, according to the most recent statistics released by the UNHCR, about 30 per cent of refugees in Uganda are from EAC countries.<sup>216</sup> As in the case of the Act, the Regulations are very progressive, but contradict several constitutional imperatives.

#### 4 Conclusion

The article aimed to establish whether the legal framework for protecting the rights of urban refugees in Uganda is in compliance with international human rights standards and best practices. The article confirmed that the rights of urban refugees have emerged at the international level through several factors; that they are specifically guaranteed in the Universal Declaration (which has emerged into a universal standard for human rights), through several subsequent group-based treaties and UNGA resolutions. In addition, the 1951 Convention and its 1967 Optional Protocol specifically protect the rights of urban refugees. Also, the rights of urban refugees are protected under the ICCPR, ICESCR, CEDAW and CRC, amongst others. The study also established that other soft law instruments developed by international organisations, including the UNHCR, provide additional clarity on procedural safeguards that should be adhered to in protecting the rights of urban refugees. Based on its international commitments, Uganda has followed suit and provided a progressive refugee protection regime, and recognises the rights of urban refugees in the Act and the Regulations. The article established that the adoption of the Refugees Act in 2006 and its Refugees Regulations in 2010 marked a significant achievement in terms of

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212 Art 7(1) Refugees Regulations.

213 Art 7(2) Refugees Regulations.

214 Art 8(2) Refugees Regulations.

215 Art 9 Refugees Regulations.

216 UNHCR '2015 UNHCR country operations profile – Uganda overview' (2015) <http://www.unhcr.org/pages/49e483c06.html> (accessed 11 October 2015).

bringing Uganda's domestic legal framework in line with its regional and international obligations, thereby enhancing the protection of the rights of urban refugees in its territory.

However, the relevance of international and regional human rights and refugee law is not clear under the Act as well as the Regulations. Some of the particular shortcomings of the Act result in certain rights guaranteed to refugees under international and regional laws still being systematically violated in Uganda. In particular, refugees experience an infringement of their freedom of movement and of residence, as well as of association and expression. Refugees' rights to work, education and healthcare under the Act are also problematic. For instance, while the legislative intent appears to be in compliance with Uganda's international and regional human rights and refugee rights commitments, the Refugees Act is not clear on how urban refugees should go about exercising their right to work. In light of this lack of clarity, Uganda should make improvements in certain sections of the Refugees Act: Section 44, articulating the settlement policy, and section 35, limiting refugees' political activity, should be eliminated. Finally, section 29(1)(e)(vi) on the right to work (employment) should be illuminated, specifying that refugees should be treated like permanent residents for the purposes of their right to work. These amendments would create a protection-oriented domestic refugee rights framework that is more reflective of Uganda's international and regional commitments.