

**Report on  
Rule of Law,  
Access to Justice,  
and Security Needs  
in Refugee  
Settlements and Host  
Communities in Arua  
and Isingiro Districts**





*Empowered lives.  
Resilient nations.*

# REPORT ON RULE OF LAW, ACCESS TO JUSTICE AND SECURITY NEEDS IN REFUGEE SETTLEMENTS AND HOST COMMUNITIES IN ARUA AND ISINGIRO DISTRICTS

**February 2019**



GOVERNMENT OF UGANDA



# Acknowledgement

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The study was coordinated by the Legal Aid Service Providers Network in collaboration with the Justice, Law and Order Sector and the Office of the Prime Minister.

While UNDP and UNHCR commissioned this report, the views and opinions contained in this document were gathered from various stakeholders and may not necessarily reflect those of the two agencies.



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## Joint Foreword from UNDP and UNHCR

As home to the largest number of refugees in Africa, Uganda currently hosts over 1.2 million refugees, providing safety to those fleeing from South Sudan, Democratic Republic of Congo, Burundi and Rwanda, amongst others.

Hailed as the one of the most progressive refugee protection regimes in the world, the Refugees Act 2006 and the Refugee Regulations 2010 of Uganda grant refugees the rights to legal documentation, to own property, access to social services including health facilities and schools, freedom of movement as well as the right to work and start businesses. However, it is key to acknowledge the unique vulnerabilities of refugees, which make them more susceptible to facing obstacles in accessing services including access to justice. It is also important to understand the cross-cutting nature of these challenges, including the high cost of accessing justice and the weak judicial management of Sexual Gender Based Violence (SGBV) cases, which equally affect both refugees and host communities.

It is for the above reasons that this in-depth and comprehensive needs assessment, analyzing the rule of law, access to justice and security needs of refugees and host communities, was embarked on. In addition, the assessment responds to a call through a joint communique (2017) from the UNDP Administrator and the High Commissioner for UNHCR, to strengthen partnership and collaboration between UNDP and UNHCR. This is in view of the strong link between the humanitarian and development nexus and the need to holistically identify key priority areas that will respond to the “inclusion of the most vulnerable and marginalized”. This collaboration and partnership over the past year has proved to us that working together offers an opportunity for a better response to the protection priorities and durable solutions, both for the refugees and host communities.

Targeting the refugee hosting districts of Arua and Isingiro, the report was developed through engagement with refugees, communities surrounding the settlements, local leadership both at the local government and community level, members of the Judiciary, Uganda Police Force, and local Civil Society Organizations, among others.

The work undertaken, the findings, the proposed measures and recommendations incorporated in this Report were made with the aim of encouraging discussions between all relevant actors on how best to tackle the growing justice issues affecting both the refugees and the communities hosting them. As the report notes, strong efforts are being made by government at both national and local levels, by donors and Non-Government Organizations on the ground through the provision of interpretation services, court representation and support for use of Alternative Dispute Resolution mechanisms. Increased collaboration and coordination will be vital in ensuring a comprehensive response, such that no one is left behind.

Under the Comprehensive Refugee Response Framework (CRRF) for Uganda, the country launched the Education Response Plan for refugees in 2018 and the Health Sector Integrated Refugee Response Plan in January 2019. A similar sector response plan for water and environment is also currently being prepared. It will now be crucial to ensure that there is holistic cross sector planning for refugee hosting regions, which includes the Justice, Law and Order sector. The findings of this report provide a first step in identifying solutions to the address gaps in areas such as policing, quality of court proceedings and facilities and operational logistics. Bearing in mind the need for alignment with the Refugee and Host Population Empowerment framework for Uganda (ReHoPE), we must also ensure that opportunities that benefit both refugees and the communities are explored.

For UNDP and UNHCR, strengthening the humanitarian development nexus remains a priority, through making sure basic needs are met whilst also ensuring that refugees and host communities are fully integrated into planning across all sectors and at national, district and local levels.

We stand strong in our commitment to refugees, and the communities throughout Uganda that continue to display this country's generosity by welcoming those seeking sanctuary.



Ms. Almaz Gebru  
**Resident Representative a.i.**  
**UNDP**



Mr. Joel Boutroue  
**Resident Representative**  
**UNHCR**



## Message from the Minister of Justice and Constitutional Affairs

The Ministry of Justice and Constitutional Affairs appreciates the United Nations specifically the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR) for supporting this assessment of rule of law, access to justice and security needs in refugee settlements and host communities in Isingiro and Arua districts. This report does not only help to inform strategic interventions to address the challenges of Rule of Law, security and access to justice in refugee settlements and host communities, but also gives a stakeholder mapping which helps to raise awareness on which the institution is mandated to provide specific service for the people in these areas.

Issues concerning refugees are as tremendous as their numbers, not only in these two districts of Isingiro and Arua where the needs assessment was conducted, but also in the entire country. The challenge at hand is thus enormous, but positive steps have been taken by the Government to respond. The Government of Uganda through the Office of the Prime Minister (OPM) and I, must commend them for this, and coming up with a Refugees and Host Population Empowerment Strategic Framework (ReHOPE).

ReHOPE is a transformative strategy and approach to bring together a wide range of stakeholders in a harmonized and cohesive manner to ensure more effective programming that responds to the needs of refugees. The Justice Law and Order Sector (JLOS) has made use of this framework.

As rightly indicated in the report the JLOS is mandated to address the gaps found in the rule of law, access to justice and security needs of refugees and host communities. The JLOS fourth Strategic Development Plan 2017-2019 indeed acknowledges the new

emerging challenge of the refugee influx as well as the provisions of SDG 16 on Peace, Justice and Accountable Institutions and integrates these in its planning and strategies for delivery in the sector.

We welcome the findings and recommendations of the needs assessments, these will be invaluable in informing the rollout of the JLOS strategic sector plan. I encourage all stakeholder to read and make use of the report. I take note of the recommendations that have been made in the report to mention a few:

Provision of police officers with specialized training on refugee issues, increase in the number of female police officers deployed in the settlements and surrounding communities so as to improve quality of services provided to women and the handling of Gender Based Violence (GBV) crimes, increase in availability of translation services, particularly for the police and judiciary to solve the delay in managing cases , support for legal aid services, improvement in facilities and bringing on board local government stakeholders, on matters concerning refugees. I encourage all duty bearers and stakeholders to take note of these recommendations and take action.

I must note though, that with the guidance of ReHOPE and the Comprehensive Refugee Response Framework (CRRF), Government of Uganda specifically the JLOS Sector with the support from the development partners have managed to tackle a number of issues to address some of these challenges although, a lot more is still required. And as reported in the JLOS Annual Report 2017/2018, some of these interventions include;

The provision of policing services. A refugee Desk was set up at police headquarters to handle refugees' affairs headed by an Assistant Commissioners of Police (ACP). This desk is responsible for coordinating refugee issues in the 12 settlements across the country, in liaison with OPM and other stakeholders on matters of refugees; ensuring security in the settlements and centres as well as follow up on all investigations concerning refugees.

Due to the increasing human rights violations in the camps, the Uganda Human Rights Commission (UHRC) conducts sensitizations to create awareness in the refugee settlements and hosting districts. The sensitizations focus on responsible living, rights and avoiding to become victims of crime.

The Sector has also funded a special program to enhance access to justice in the settlements. Special mobile courts involving key players are set up in refugee settlements. Uganda Law Society (ULS) also holds legal information sessions in settlements, and refugees were sensitized on refugee rights and obligations, Sexual and Gender Based violence, Succession and Administration of estates.

Support to Legal Aid in Refugee settlements, ULS established permanent staff and presence to offer free legal services to refugees. Free legal services are offered to refugees through ULS offices in the following regions:



- a) Arua district to Refugee settlements in Bidibidi, Omugo, Rhino, Imvepi,
- b) Gulu Legal Aid Office in Palabek,
- c) Kabarole Legal Aid Office in Kamwenge Refugee settlement,
- d) Kabale Legal Aid office in Kisoro Bunagana border post and Nyakabande Refugee transit centre.

All the above-mentioned interventions benefit both the refugees and the host communities.

Finally, given the peculiar challenges of refugees and how this impacts on host communities I see a need for more prominence of access to justice, rule of Law and Security issues in the Comprehensive Refugee Response Framework (CRRF). As a sector we look forward to working with all stakeholders and providing thoughtful leadership and guidance in the respective areas.



**KAHINDA OTAFIIRE**  
**MAJ GEN (RTD)**  
**MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS**



## Message from the Minister of Relief, Disaster Preparedness and Refugees

Through its open-door policy, Uganda provides refugees with land, freedom of movement, equal access to government-provided social services including education and healthcare, as well as the right to work. Our framework is praised across the world and it is one we are proud to say represents our countrys longstanding hospitality and warmth to our neighbors and beyond.

In adopting an integrated approach to refugee issues, our response had been incorporated into the second National Development Plan through the Governments Settlement Transformation Agenda and with development of the third National Development Plan underway, it will continue to be incorporated in all planning. This further reiterates our commitment to the 2030 Agenda and ensuring *we leave no one behind*.

With respect for rights and integrated service delivery as part of the five pillars under the Comprehensive Refugee Response Framework (CRRF) for Uganda, it will now be key for our National Action Plan to address the rule of law, access to justice and security challenges raised in this Report. With the Frameworks model now shifting from providing mainly humanitarian support to more long-term development initiatives, addressing access to justice and security issues across refugee hosting districts will be key.

In continuing to ensure the protection of rights, security of all, particularly those in the settlements who have fled war and insecurity, remains a priority. Earlier this year, government increased the number of Police and UPDF personnel deployed within some settlements, to respond to fears raised by communities. Ugandas open-door policy allows refugees to flee conflict, but the porosity of our borders must not then put those same lives at risk. If implemented, the recommendations found in this report, particularly on the providing of special training on refugee issues to Police and military at the border, will go far in dealing with the challenges at hand.

Government is now adopting more long-term and sustainable solutions in our refugee response, as can be noted in several sector plans such as Uganda’s Health Sector Integrated Refugee Response Plan and the Education Response Plan, as well as the Justice Law and Sector Development Plan – IV.

This report, which is a joint effort by a national Civil Society Organization - Legal Aid Service Provides Network, Office of the Prime Minister, Justice Law and Order Sector and the United Nations and involving wide consultation in the refugee settlements and host districts further demonstrates the existing commitment in Uganda to ensure we collectively find sustainable solutions to issues faced by both the refugees and the communities that host them.

The participatory process used throughout the Assessment guarantees that the views of all those concerned, including refugees, host communities and local district leadership and Government, are captured and considered for any future programming. This is particularly important as these actors will be the very ones leading the response to refugees.

This comprehensive Assessment on Rule of Law, Access to Justice and Security for Refugees and Host Communities will now serve as a reference document, to guide all of us key stakeholders in access to justice and the refugee response. The key findings and recommendations will assist government and our partners in ensuring that access to justice and security challenges raised are considered during the planning, budget allocation and implementation processes. We also pledge to provide the needed support to refugees and the communities that host them, until peace and stability return to their countries of origin.

The Department for Refugees under the Office of the Prime Minister thanks UNDP and UNHCR for commissioning this Assessment. We look forward to working in partnership with all Government Ministries Departments and Agencies, development partners, civil society and the private sector in enabling access to justice in refugee settlements and host communities.



**HON. HILLARY ONEK**  
**Minister for Relief, Disaster Preparedness and Refugees**  
**Government of Uganda**

## List of Acronyms

CAFOMI	Care and Assistance to Forced Migrants
CFPU	Child and Family Protection Unit
CPA	Comprehensive Peace Agreement
CRRF	Comprehensive Refugee Response Framework
DCC	District Chain-linked Committee
DPC	District Police Commander
DRC	Danish Refugee Council
FGDs	Focus Group Discussions
HiIL	Hague Institute of Internalization of Law
INGO	International Non-Governmental Organization
JLOS	Justice Law and Order Sector
LASPNET	Legal Aid Service Providers Network
LDC	Law Development Centre
NGOs	Non-Governmental Organizations
ODDP	Office of the Director of Public Prosecution
OPM	Office of the Prime Minister
PILAC	Public Interest Law Clinic
PEP	Post-Exposure Prophylaxis
PSWO	Probation and Social Welfare Officer
PTSD	Post-Traumatic Stress Disorder
RCC	Regional Chain-linked Committee
REC	Refugee Eligibility Committee
ReHoPE	Refugee and Host Population Empowerment
RLP	Refugee Law Project
RPC	Regional Police Commander
RPF	Rwanda Patriotic Front
RWCs	Refugee Welfare Councils
SGBV	Sexual Gender Based Violence

SPLA	Sudanese Peoples' Liberation Army
SRS	Self Reliance Strategy
STA	Settlement Transformation Agenda
TAT	Tax Appeal Tribunal
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
ULRC	Uganda Law Reform Commission
ULS	Uganda Law Society
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UPF	Uganda Police Force
UPS	Uganda Prisons Service
WLAC	Women's Legal Aid Centre

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## Executive Summary

One of the manifestations of humanitarian crises in the world today is the increasing number of people migrating across borders. Of these are persons who by international standards fit the definition of a “refugee”. A refugee is “a person who, owing to well-founded fear of being prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail him or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>1</sup>

Within the African context, the term refugee is applied more widely to “every person who, owing to external aggression, occupation, foreign domination or other events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.”<sup>2</sup>

By 2017, the global refugee population was estimated to be over 25 million people. The Great Lakes Region has the largest proportion of refugees compared to other parts of the continent. This Region is afflicted by several conflicts, with DRC and South Sudan experiencing the most intense, violent and brutal civil war. Moreover, the Region is surrounded by conflicts in some countries of the Horn of Africa, including in Central African Republic, Ethiopia, Eritrea, and Somalia. This means that the Great Lakes Region will continue generating refugees until the root causes of the conflicts in the Region are addressed in a sustainable manner. Uganda is hosting the largest number of refugees in this Region and has one of the most progressive refugee policies in the world.

It is within the above context that this Report should be understood. The report was commissioned to assess Rule of Law, Access to Justice and Security needs in refugee settlements and host communities in Isingiro and Arua districts of Uganda.

### A. Objectives of the Study

**Overall Objective:** To conduct a comprehensive assessment of Rule of Law, Access to Justice and Security needs in refugee settlements and host communities in Arua and Isingiro districts. The study further aimed to support the design of strategic interventions in terms of outreach, efficiency and accessibility to justice needs for refugees and host communities in order to bridge gaps/shortages in service delivery.

**Specific Objectives:** The study mainly focused on 2 critical aspects, including: (i) Review of existing coordination mechanisms and map actors’ activities in enhancing Rule of Law, Access to Justice and Security of refugees in Arua and Isingiro districts and (ii) Identify service gaps among formal and informal justice institutions including courts of law and police in enhancing Rule of Law, Access to Justice and Security of refugees and host communities in Arua and Isingiro districts.

1 United Nations Convention relating to the Status of Refugees, 1951.

2 Organisation of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.

## B. Scope and Methodology

The scope of the study focused on two districts of Arua and Isingiro as case studies and as a pilot. In light of the available resources and timeframe, only a sample could be covered. The plan was to start with a needs assessment as a pilot, but coverage of the other refugee settlements and host districts, is desirable available.

The two districts were sampled because they provide for good geographical, socio-economic and demographic representation. They have relatively high concentration of refugees i.e. for the Northern and Western regions of Uganda. The composition of refugees in these Districts is also of diverse backgrounds given that they are from different countries i.e. South Sudanese, Congo, Rwandan, and Somali, Ethiopia, among others.

Note, beyond the two districts, there was an extension to Mbarara due to the presence of JLOS and other government institutions which serve refugees in Isingiro (Nakivale and Oruchinga). Whereas for the case of Arua the study focused within that particular district covering different JLOS, government institutions and two refugee settlements i.e. Rhino and Imvepi.

Anchoring on the findings of the scoping mission by UNDP and UNHCR of February 2018, it was recommended that a comprehensive assessment conducted in the two districts could inform programming in the other refugee settlements and hosting districts.

The study was conducted using a combination of methodologies, including a desk review, household surveys in Isingiro and Arua, key informant interviews and video and photography. To effectively utilise these methodologies, a team comprising of legal experts, an economist, security experts and documentation specialists was employed. The geographical scope was Arua and Isingiro. However, in the case of the latter, the study extended to Mbarara since it hosts some of the justice institutions serving Isingiro.

In terms of the thematic scope, the study examined Rule of Law, Access to Justice and Security of refugees. Conceptually, the United Nations definition of “Rule of Law” was adopted for the study. This to the effect that it is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, and accountability.<sup>3</sup>

Access to justice is used to mean “access by people, in particular poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights

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3 <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (accessed on 20th February 2019)

control of abuse of power and resolution of conflicts.” It includes the ability of such persons to seek and get a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions.

Under the study, the definition adopted for “security” refers to “the state of being free from danger or threat.”<sup>4</sup> In this scope, it means not only the prevalence of safe conditions but also the measures taken to guarantee safety. Expanding on this definition, the broader conditions of human security have also been considered. In using the United Nations definition of threats to human security, as shown below, the focus areas of this study were Personal, Community and Political Security, with the cross cutting issues related to Economic, Food, Environmental and Health security also discussed.

**Table 1: Possible Types of Human Security Threats**

Type of Security	Examples of Main Threats
Economic Security	Persistent poverty, unemployment
Food Security	Hunger, famine
Health Security	Deadly infectious diseases, unsafe food, malnutrition, lack of access to basic health care
Environmental security	Environmental degradation, resource depletion, natural disasters, pollution
Personal security	Physical violence, crime, terrorism, domestic violence, child labor
Community security	Inter-ethnic, religious and other identity based tensions
Political security	Political repression, human rights abuses

Based on the UNDP Human Security Report 1994 and the Human Security Unit, Office for the Coordination of Humanitarian Affairs (HSU – OCHA)

### C. Uganda’s refugee response and policy

Uganda is one of the largest refugee hosting countries in the world. Since it attained independence in 1962, the country has been hosting an average of approximately 161,000 refugees per year. This comprises of refugees displaced by conflicts in the Great Lakes Region and the Horn of Africa. As of 31<sup>st</sup> January 2019, the country was hosting up to 1,205,913 refugees.<sup>5</sup> With the continuing civil unrest in the region, the numbers are likely to keep growing. While there is corresponding intensification in the protection measures in the country, however, many a time this is inadequate. In this Report, Uganda’s legal response to refugees is extensively discussed and the efforts the country has taken under the Office of the Prime Minister and other government agencies are too discussed.

4 See English Oxford Living Dictionaries at < <https://en.oxforddictionaries.com/definition/security>>

5 See, Government of Uganda Office of the Prime Minister Uganda (Refugees & Asylum Seekers as of 31-January-2019)

The legal framework on refugee protection is defined in the first place by the Constitution of the Republic of Uganda, 1995 at the helm. The Constitution emphasises equality and non-discrimination, which is a right guaranteed to all persons found on the territory of Uganda. The refugee specific framework is embodied in the Refugees Act (no. 8 of 2006) and the 2010 Refugees Regulations, which have been described as model laws.

The country's policy approach is embedded and articulated in various instruments and strategies—including the Comprehensive Refugee Response Framework (CRRF) which focuses on among others, emergency response, resilience and self-reliance of refugees. Further to the above, is the Refugee and Host Population Empowerment (ReHoPE) Strategic Framework. ReHoPE is a transformative strategy and approach to bring together a wide range of stakeholders in a harmonized and cohesive manner to ensure more effective programming. The mandate of ReHoPE is discussed extensively in the Report.

The Report also discusses the challenges Uganda faces as a host nation. It specifically focuses on the numbers of refugees and the protracted nature of the problems that threaten government policy of allocating land to refugees.

## **D. Findings**

In respect to rule of law, the Report notes that there are some gaps which compromise the performance, integrity and capacity of the Justice Law and Order Sector (JLOS) institutions in the execution of their mandates. These include limited personnel and operational facilities. The situation becomes a little complex in the context of Isingiro and Arua because of the presence of refugees in the two host districts, some of whom permeate through the porous borders with arms. For instance, Isingiro has 1 police officer for every 2,780 people, far below the recommended international ratio of 1:450. The JLOS institutions in both Arua and Isingiro also have challenges meeting the needs of vulnerable groups amongst the refugees, especially children in conflict with the law, victims of Sexual and Gender Based Violence (SGBV) and the general refugee community. This Report highlights the plight of these groups of people, who are in a refugee setting, which makes their predicament special. For instance, in both Arua and Isingiro, there is a limited number of police women to serve the needs of female victims of SGBV. Many refugee women were not comfortable reporting their cases to policemen. They complained that these had no time for them. There are performance, integrity, transparency, and accountability deficits that are illustrated in the Report. The welfare of police officers remains a challenge and this compromises their performance. One such challenge is the lack of good accommodation facilities.

Access to Justice has been explored in this Report, with a particular emphasis on its indicators, which include the following: Cost of accessing justice; quality of the procedure; and quality of the outcome of the process. The Report indicates that because of the challenges of corruption and the costs of justice, communities have in some cases

been forced to resort to informal methods of disputes resolution. This is in addition to using the Local Council Courts. One of the reasons why both refugees and host communities prefer informal mechanisms and local courts is because these are familiar, flexible, and provide quick dispute resolution.

Accessing courts for refugee communities is unaffordable to most because of the long distances between the settlements and the courts of law. Access to justice by refugees is also compromised by negative attitudes by local communities, as well as language challenges since some do not understand English, and require translation services at both police and courts. In addition to the above, there are gaps in accessing legal services. Refugee and host communities cannot afford private legal services, which are moreover not locally available in Isingiro. The communities rely on the limited legal aid services available to them. In the criminal justice system, refugee suspects have challenges getting bail because they cannot prove having a fixed place of abode, which is usually a pre-requisite for grant of bail by courts of law. Moreover, it is hard to get people ready to stand surety for them.

In respect to security, the study found that both Arua and Isingiro face “situational security threats” as well as “incidents of criminality.” The situational threats and contradictions include: food insecurity; inter-community hostilities; porous borders; undocumented refugees; and land disputes. The ethnic conflicts exist mainly within refugee communities, especially among those from South Sudan. Land disputes exist especially in Isingiro over grazing fields. . Furthermore, the security fragility of the region has seen some security threats spill over to the settlements in form of inter-community hostilities as well as inter-ethnic disputes among refugees for example between the Dinka and the Nuer from South Sudan. Other incidents are related to occurrence of crime such as SGBV. Moreover, the Police in both places faces challenges investigating and prosecuting cases related to SGBV, as well addressing the needs of victims.

While community policing activities help in reducing crime, this law enforcement strategy has not been adequately rolled out in the refugee communities in the districts of Arua and Isingiro. This has created the perception that the only time the police shows up is to effect an arrest. It is only then that police presence is felt, but not through community policing activities and patrols. Indeed, there is a general lack of police visibility in the refugee settlements, which portends a security risk. In the Household Survey, 71% of participants in host communities indicated that in the last one month, they have not seen any police patrol in their areas. The percentage was at 63% in refugee communities. In Isingiro, 76% indicated that they had not seen such patrols, while 61% expressed a similar view in Arua.

## **E. Recommendations**

This Report offers practical short term and long-term resolutions to tackle the challenges of rule of law, access to justice and security, briefly mentioned below.

**a) Special Training on refugee issues (*Refugee Specific*)**

**In the short-run**, there is need for a programme to train police officers on refugee issues. To realise this, a simple and short curriculum should be designed for police officers in host districts such as Arua and Isingiro.

**b) Formation of Special Police Unit (*Refugee Specific*)**

**In the long-term**, the trainings should be a build-up to the creation of a unit in the police responsible for refugee matters managed by comprehensively trained and equipped officers. The unit should be appropriately integrated in the police structure and adequately resourced. To permanently sort the problem of language barrier, this section of the Police should have professional translators and interpreters trained to provide communication services.

**c) Assign more police women (*General recommendation*)**

There are serious deficits in the number of police women deployed in the settlements. This affects the quality of services provided to women in both host and refugee communities. For this reason, there is need to work closely with the human resource department of the Police to have more women assigned to the settlements in both Arua and Isingiro.

**d) Facilities and infrastructure (*General recommendation*)**

The Police in both Arua and Isingiro is in dire need of logistical and operational facilities to enable them effectively service both the host and refugee communities. Some of the facilities are capable of being provided in the short-term while others require the long-term. **In the long-term**, there is need to address the problem of justice delivery infrastructure, especially for purposes of serving the needs of juveniles, Persons with Disabilities and victims of SGBV. This includes special detention facilities for juveniles and rooms for interview in order to guarantee safety of victims of SGBV. In addition to the above, there is need to enact the Witness Protection Bill to ensure protection of witnesses in SGBV cases.

**e) Strengthen community policing (*General recommendation*)**

Communities play an important role in maintaining law and order in society. One of the most effective ways of ensuring community involvement is through community policing, which takes several forms. These include creating awareness on security threats in the community, sensitising community members to be vigilant and establish a collaborative working relationship between the Police and the community.

**f) Support mobile courts (*Refugee specific*)**

**In short-term**, the Judiciary should be supported to plan and hold mobile courts in the settlements in Isingiro and Arua. This will involve preparing all court-users, including the lawyers, prosecutors, and litigants and their witnesses, in addition to securing appropriate infrastructure to meet the needs of the population including Persons with Disabilities. **In the long-term**, the Judiciary needs to recruit more judicial officers in the districts of Arua, Isingiro and Mbarara.



### **g) Local Governments and other services (*General recommendation*)**

There is need to support and involve local governments in refugees matters in Arua and Isingiro to enhance their capacity to handle the challenges that come with hosting refugees. Most important, these governance institutions should be involved in making decisions pertaining to rule of law, access to justice and security for refugees.

### **h) Sensitisation and awareness creation (*General recommendation*)**

**In the short-term**, there is need to create a programme for sensitisation and awareness creation for the informal justice mechanisms in both Arua and Isingiro. The sensitisation should focus on creating awareness on the criminal justice system, its procedures and the jurisdiction of the various courts.

### **i) Standardise the informal mechanisms and their procedures (*Refugee specific*)**

There is need to standardise informal mechanisms other than the LC Courts, whose procedures are already defined by law. It should be noted, however, that some of the mechanisms need to be handled with caution. This is because of the emotive nature of the structures and the slow pace at which they evolve their traditions. In the **short-term**, the Refugee Welfare Councils (RWCs) should be supported to standardise their procedures.

### **j) Legal awareness (*General recommendation*)**

**As a short-term** measure, there is need to create a programme to promote legal awareness in both Isingiro and Arua. The programme should aim and have activities that educate both refugee and host communities about their rights, as well as legal obligations. This is in addition to sensitizing them on the legal processes and procedures.

### **k) Legal services (*General recommendation*)**

As illustrated above, access to legal services remains a big challenge for communities in Arua and Isingiro. In the short and long-term, Legal Aid Service Providers (LASPs) should be supported to enhance and extend their services to the settlements. One area requiring urgent support is to enable the LASPs employ and pay qualified and licensed advocates to provide the needed services, and supported by qualified paralegals as required by law. The number of duty counsel, as provided by Uganda Law Society (ULS), should be bolstered and made available to Isingiro and Arua in adequate numbers to support refugees that are subject to the criminal justice system. In addition, there is need to first track state funded legal aid scheme through enactment of the National Legal Aid Bill to ensure provision of legal aid to vulnerable groups including children, women and the elderly both within refugee settlement and host communities.

### **L) Economic Empowerment (*General recommendation*)**

Economic empowerment is among the recommendations proposed. There is need to empower both men and women in refugee settlements and host communities to ensure self-sustenance but also mitigate and minimize opportunities for SGBV. This can be done through providing opportunities such as access to credit facilities and

markets for products made by refugees and the host communities. As a result, this will help to close service gaps and reduce on the competition for scarce resources which often instigate conflicts.

**f) Conflict Prevention (General recommendation)**

In order to mitigate the risk of conflict between refugees and host communities there is need to promote joint social activities such as games, music, dance and drama as well as embark on peace messaging through radio and television programmes both in the settlements and host communities and the entire country. Furthermore, as the peace policy for Uganda gets finalized it will be prudent to reflect on how it responds to the context of vulnerable groups such as refugees but also the host communities.

# 1

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## **Introduction and Background**

## 1.1 INTRODUCTION

Uganda is historically a haven for refugees, with hospitality dating as far back to the Second World War when the country hosted European refugees fleeing from conflict and violence. In recent times, Uganda has mainly hosted refugees displaced by conflicts in the Great Lakes Region and the Horn of Africa. As of 31<sup>st</sup> January 2019, the country was hosting up to 1,205,913 refugees.<sup>1</sup> The study has established that Arua and Isingiro are among the refugee-hosting districts with the highest number of refugee population. The former mainly hosts refugees from South Sudan and has a refugee population of 155,107. On the other hand, the refugee population in Isingiro district comprises people with different nationalities. These include: Congolese, Somalis, Ethiopians, Burundians and Rwandans, totalling to 110,339 refugees.<sup>2</sup>

The influx of refugees in the two districts has come with a number of Rule of Law, Access to Justice and Security challenges. Various agencies responsible for ensuring rule of law, access to justice and security have tried to manage the situation. For instance, the Judiciary has initiated the mobile court system in the refugee settlements so as to enhance access to justice for refugees and the host communities. The Police has deployed in the settlements, and even created a National Coordination Office for Refugee Affairs at its Headquarters. The local governments have scaled up the provision of services to both refugees and host communities. Civil society actors have also invested time and resources to provide not only humanitarian but also legal and related services.

While the efforts of the different agencies described above are commendable, however, they face challenges. The performance of the different entities and agencies is largely hampered by capacity deficits, which affect their efficiency and effectiveness in addressing the needs of the community. The people most affected by the institutional weakness are women and children, the latter mainly being juveniles in conflict with the law. Sexual and Gender-Based Violence (SGBV) is rampant in both Arua and Isingiro districts, and especially in the settlements, with limited capacity on the part of the agencies to address the vice. Moreover, culturally inspired attitudes foment SGBV. The general refugee communities also remain vulnerable with limited means to access justice. Distances to courts of law are a problem, so is the limited access to legal services as well perceptions of corruption. Some of these challenges have forced refugees to resort to informal systems of justice, with mixed successes and failures.

The districts, and specifically the settlements, are prone to several security threats. This includes threats arising from situational factors, such as food insecurity, land conflicts and inter-community conflicts, especially for resources. In Arua, ethnic conflicts among refugees in the settlements, especially those from South Sudan, has been a problem. The porous borders that are in some cases associated with incidents of inflow of undoc-

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1 See, Government of Uganda Office of the Prime Minister Uganda (Refugees & Asylum Seekers as of 31-January-2019)

2 As above.

umented “refugees” are a problem too. Incidents of criminality are also prevalent, including SGBV and theft, among refugees and host communities. The problem of youth unemployment and perceptions of bias on part of host communities that refugees are favoured at their expense is a recipe for conflict.

The Report makes a number of proposals to deal with the rule of law, access to justice and security challenges enumerated above. Key among these is building the capacity of the various institutions, including the Police, Judiciary and local government, to enable them to discharge their mandates effectively and efficiently. Training is proposed for the Police and formation of a special refugee police unit. This is in addition to bolstering the human resource potential of the Force in the settlements that takes into account gender-based needs, and availing more operational facilities and infrastructure to plug deficits. For all institutions, there is need to build their capacity in language translation and interpretation. In addition, the Judiciary should be supported to clear case-backlog and institutionalise and effectively run mobile courts. Local governments need logistical and financial support, and greater integration in handling refugee affairs in their districts.

In addition to the above, it is proposed that the informal justice mechanisms as well the Local Council Courts are supported. This is because a large portion of the population prefers and uses these fora. These need short and long capacitation measures to help them appreciate the basics of the law and further standardise their procedures. Generally, it is necessary to sensitise and create legal awareness in the general community of refugees and hosts in order to achieve legal empowerment. There should be specific focus on SGBV, its effects and the law. Supporting the provision of legal aid services, especially through Legal Aid Service Providers (LASPs), can go a long way in bridging these capacity deficits through training and provision of legal assistance.

## 1.2 BACKGROUND

Throughout history, people from different corners of the world have been forced to flee their home countries in search of safety from persecution, political violence and/or armed conflict. Since the 19<sup>th</sup> Century, European countries have attempted to accommodate large influxes of refugees. The climax of this crisis in Europe, and which spread to the rest of the world, came with World War II and the Holocaust. In the aftermath of World War II and the Holocaust, issues of refugees and displaced persons were placed high on the international agenda. At its first session in 1946, the United Nations General Assembly (GA) recognized not only the urgency of the problem, but also the cardinal principle of *non-refoulement*. In 1950, the GA created the Office of the United Nations High Commissioner for Refugees (UNHCR) with the mandate to “assume the function of providing international protection and of seeking permanent solutions for the prob-

lem of refugees.”<sup>3</sup> It is in exercise of this mandate that the UNHCR has become the most important agency in as far as addressing the refugee problem is concerned. By 2017, the number of people forcibly displaced worldwide as a result of persecution, conflict or generalized violence was estimated at 68.5 million people, majority of whom (25.4 million people) were refugees.<sup>4</sup>

At the African level, the continent hosts approximately one quarter of the refugees in the world. According to the Chairperson of the African Union Commission, “a total of 6.2 million refugees and asylum seekers in Africa have sought protection outside of their countries, while more than 12 million people are internally displaced.”<sup>5</sup> The problem of refugees and asylum seekers in Africa pre-dates the independence of most African states. As a response to the challenges posed and faced by refugees and asylum seekers in Africa, in 1969, the Organisation of African Unity adopted Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>6</sup>

Uganda is one of the largest refugee hosting countries in the world. Since achieving independence in 1962, the country has been hosting an average of approximately 161,000 per year.<sup>7</sup> These refugees come from the Democratic Republic of Congo (DRC), Ethiopia, Eritrea, Somalia, South Sudan, Rwanda, and Burundi. Today, Uganda is home to over 1,205,913 refugees and asylum seekers.<sup>8</sup> The country has one of the most progressive refugee approaches which grants refugees freedom of movement, the right to seek employment and establish businesses, and access to public services such as education, health care and justice. In refugee hosting districts, services are integrated with government service delivery systems. At the 2016 United Nations Summit for Refugees held in Kampala, Uganda’s approach was hailed as a model to emulate.<sup>9</sup> The 2006 Refugee Act and 2010 Refugee Regulations allow for integration of refugees within host communities, thereby allowing refugees to access the same public services as nationals. This, to some extent, has resulted into a strain on existing public resources, especially where refugees go beyond the immediate confines of the gazetted settlement regions.

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3 See para 1 of Statute of the Office of the High Commissioner for Refugees [hereafter the Statute], as revised by General Assembly [hereafter GA] res. 58/153, 22 December 2003.

4 See United Nations High Commissioner for Refugees Global Trends: Forced Displacement in 2017, available at < <http://www.unhcr.org/globaltrends2017/>>

5 See: Statement of the Chairperson of African Union Commission on the occasion of Africa Refugee Day, June 20, 2018. <https://au.int/en/pressreleases/20180620/statement-chairperson-african-union-commission-occasion-africa-refugee-day>

6 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45

7 An Assessment of Uganda’s Progressive Approach to Refugee Management, UNHCR <https://openknowledge.worldbank.org/bitstream/handle/10986/24736/An0assessment00o0refugee0management.pdf?sequence=1&isAllowed=y>

8 See, Government of Uganda Office of the Prime Minister Uganda (Refugees & Asylum Seekers as of 31-January-2019).

9 See United Nations, UN Summit for Refugees and Migrants, available at <<https://refugeesmigrants.un.org/summit/>>, (accessed on 25th September 2018)



One area of interest to this study is in respect to the extent to which refugees and host communities are accessing justice, enjoying rule of law and security. It is no doubt that the influx of refugees has exerted pressure on the Justice, Law and Order Sector (JLOS). As a matter of fact, the different JLOS agencies such as the Uganda Police Force (UPF), Courts of Law and Uganda Prisons Services (UPS) were not adequately prepared for the sudden and drastic increase in the demand on their services. This notwithstanding, the existing services for nationals are not sufficient. The facilities and manpower available for these institutions appear inadequate, thereby compromising access to (and the quality of) justice. There are, for instance, no juvenile detention structures and rehabilitation centres in many of the refugee settlements, resulting in some cases of incarceration of juveniles with adults.

Security remains a big concern among refugees and asylum seekers as well as host communities. Refugees as well as host communities often encounter physical threats that range from theft, Sexual Gender Based Violence (SGBV)—including rape, defilement, assault and domestic violence. Together with host communities, refugees also face challenges arising from rule of law deficits, especially in the context of seeking services from the Police, formal Courts of Law and informal adjudication bodies.

It is against the above context that an assessment of the rule of law, access to justice and security needs in refugee settlements and host communities in Isingiro and Arua will be done and the overall study should be understood. Between 11th and 16th February 2018, a mission led by the Policy Specialist at the UNDP Headquarters was conducted in cooperation with UNHCR to identify areas of engagement on rule of law that could contribute to the Comprehensive Refugee Response Framework (CRRF) process.<sup>10</sup> It was also for purposes of facilitating a joint programming partnership in the country. At the end of the mission, the team recommended that an assessment of Rule of Law, Access to justice and Security needs be conducted in the districts of Arua and Isingiro as case studies to articulate the needs of national partners, in coordination with JLOS. It was agreed that the assessment focuses on service delivery in the two districts. It was further agreed that the identified national partners provide support in conducting the needed assessment and analysis that would be the basis to develop a Programme Document for a pilot project to respond to the identified refugee needs. The Programme Document would be informed by a comprehensive assessment of the rule of law, access to justice and security needs of refugees and host communities in Isingiro and Arua districts.

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<sup>10</sup> The CRRF was adopted by 193 states in 2016 as part of the New York Declaration for Refugees and Migrants. It specifies an approach that should be adopted when dealing with large movements of refugees. Its objectives include easing pressure on host counties, enhancing refugee self-reliance, expanding access to third countries and supporting conditions in countries of origin for safe return.

## 1.3 OBJECTIVES OF THE ASSESSMENT

### 1.3.1 Overall Objective

The overall objective of this study was to conduct a comprehensive assessment of the access to justice, rule of law and security needs of refugee and host communities in Arua and Isingiro to provide a basis for UNDP and UNHCR to strategically design interventions in terms of outreach, efficiency and accessibility to justice needs for refugees and host communities in order to bridge gaps/shortages in service delivery.

### 1.3.2 Specific Objectives

- i) To review existing coordination mechanisms and map actors' activities (INGOs, NGOs, and UN agencies) in enhancing rule of law, access to justice and security for refugees in Arua and Isingiro districts; and
- ii) To identify service gaps among formal and informal justice institutions including courts of law and police in enhancing rule of law, access to justice, human rights and security for refugees and host communities in Arua and Isingiro districts.

## 1.4 METHODOLOGY

LASPNET set up a team of researchers and document specialists drawn from the Academia, a refugee policy expert, a security expert, an economist, a monitoring and evaluation expert, a photo/videographer, a retired Judge of the High court, and an expert from the JLOS Secretariat. With the expertise of these researchers, the assessment was conducted using qualitative, quantitative and investigative approaches of data collection methods. In addition, triangulation of data was relied on by using different data collection tools such as:

- i) Questionnaires which were pre-tested and applied in the field;
- ii) Desk review of existing international, regional and national strategies, policies, frameworks and plans;
- iii) Photos and videography;
- iv) Key informant interviews which were used with help of a semi-structured interview guide for international, national, local government officials, and regional partners;  
Focus Group Discussions (FGDs) with refugees and host communities
- v) Direct coordination with UNDP and UNHCR staff to offer experiences and contacts in the field.

In addition to this, bi-weekly meetings were held with the Researchers, the UNDP and UNHCR national partners to review the Project progress, provide technical input and research support as and when the need arose. A team of researchers also attended a High-Level Dialogue on Access to Justice for South West Province held in Mbarara

on 23<sup>rd</sup> and 24<sup>th</sup> October 2018. Finally, the Rule of Law, Access to Justice and Security Needs Assessment Report, was validated by the key stakeholders on 11<sup>th</sup> December 2018 while the Programme document was validated on 4<sup>th</sup> February 2019.

### 1.4.1 Sampling of Households for Interview

The sampling frame used for the survey was the Uganda Population and Housing Census conducted on August 2014.<sup>11</sup> According to the Census, Arua and Isingiro have 142,627 and 101, 623 households respectively. In addition, Arua has two Refugee settlements, Imvepi and Rhino. Isingiro too has two settlements, Nakivale and Oruchinga. Based on the sample sizes of the two districts in the 2016/17 Uganda National Household Survey and estimated settlement population (see Table 1), 840 households were sampled.<sup>12</sup> Of these, 600 households were sampled from Arua and 240 from Isingiro. Furthermore, the sample consisted of 640 households from refugee settlements and 200 households from host communities. With respect to gender, 327 female headed households were surveyed compared to 509 male headed households. The sample below considered the requirement to measure accurately access to justice estimates, costs and considerations especially relating to logistics of data collection.

Table 2: Distribution of Sample by District, Type of Residence and Gender<sup>\*</sup>

District	Location	Refugees		Host community	
		EA/Villages	Households	EA/Villages	Households
Arua	Imvepi refugee settlement	8	160	3	60
	Rhino refugee settlement	15	300	4	80
Isingiro	Nakivale refugee settlement	9	180	3	60
	<b>Total</b>	<b>32</b>	<b>640</b>	<b>10</b>	<b>200</b>
		<b>Gender of Household Head</b>			
	<b>Female Headed</b>	-	287	-	40
	<b>Male Headed</b>	-	350	-	159

In regard to the actual villages sampled, and based on the information provided by the settlement commandant/administrative head of settlement, each settlement was divided into zones. The villages were randomly selected from the zones. During the pre-test mission which was conducted from 2<sup>nd</sup> - 6<sup>th</sup> October 2018, the enumeration areas/villages were selected and the list availed to local enumerators. Once the village was selected, 20 households were randomly selected for enumeration. A questionnaire was administered to the head of the selected household or his/her representative. The

11 See UBOS *National Housing and Population Census (2016)* UBOS: Kampala.

12 Within the methodology, the questionnaire provided for instances where surveys, though initiated, were not undertaken or concluded for one of the following reasons: (i) were only partly completed; (ii) survey refused; (iii) head of household temporarily absent or inadequate informant used. Hence the variance in the number sampled and actual interviews conducted.

above strategy applied to two refugee settlements in Arua (Rhino and Imvepi). For Nakivale, the sampling strategy took into account the different nationalities in Nakivale and the fact that the residence for nationalities are NOT randomly distributed in the 3 different refugee settlements. Specifically, each selected village/Enumerated Area within Nakivale targeted to interview only one specified nationality. The following nationalities were targeted in Nakivale: Burundi, DRC, Rwanda, Somali and Ethiopia/Er- itrea combined.

### 1.4.2 Qualitative Surveys: Focus Group Discussions and Key informant interviews

The quantitative survey was supplemented with a qualitative component comprising of targeted FGDs and key informant interviews. The qualitative component provided more in-depth feelings, attitudes, perceptions and beliefs as well as recommendations to improve the rule of law, access to justice, and security of selected settlements in the two districts. In this, LASPNET identified some of the underlying norms, attitudes and practices that either perpetuate insecurity or offer opportunities to address grievanc- es and disputes among the refugees and host population. Key informant interviews were conducted with relevant stakeholders who included the implementing and op- erating partners in the refugee settlements, settlement commandants, actors in JLOS and district local government officials from Arua and Isingiro/Mbarara districts as well as UNHCR. The scope of the qualitative assessment and techniques used is outlined in table 2.

Table 3: Qualitative data collection tools and techniques

Instrument type	Study participants	Purpose
<ul style="list-style-type: none"> <li>In total, 19 FGDs 11 Isingiro and 8 in Arua.</li> <li>12 with host com- munities</li> <li>7 with refugee communities</li> </ul>	<ul style="list-style-type: none"> <li>Refugees who have been in Uganda for more than five years</li> <li>Relatively new refugees (less than two years year)</li> <li>Women and men representing differ- ent refugee nationalities</li> <li>Men and women representing differ- ent age groups in host communities, making sure to involve youths and persons with disabilities</li> <li>Opinion leaders from the host com- munity</li> </ul>	<ul style="list-style-type: none"> <li>To understand the level of JLOS service delivery in the community and the extent to which service needs of the population have been met</li> <li>To identify informal methods of dispute resolution</li> <li>To understand contex- tual or structural im- pediments to access to JLOS services amongst host communities and refugees</li> </ul>

<ul style="list-style-type: none"> <li>• 17 Key Informant Interviews in total</li> <li>• 11 in Arua and 6 in Isingiro/Mbarara (based on number of settlements covered)</li> </ul>	<ul style="list-style-type: none"> <li>• Settlement commandants (3)</li> <li>• Refugee Welfare Committee (3)</li> <li>• Police (3)</li> <li>• Other JLOS institutions (Courts, ODPP) 2</li> <li>• Implementing partners in JLOS sectors (protection, SGBV etc)3</li> <li>• Sub-county leaders 3</li> </ul>	<ul style="list-style-type: none"> <li>• To provide a community profile</li> <li>• To provide expert insights on key issues related to access to justice, rule of law, and security, understand vulnerabilities and opportunities.</li> <li>• To identify contextual or structural impediments to access to justice, rule of law and security amongst host communities and refugees</li> </ul>
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### 1.4.3 Photo/Videography Protocols and Ethical Considerations

A photo/videography expert to execute activities related to photo and videography was contracted. Based on the data requirements for the videos as reflected in the objectives of the Study data collection largely embraced qualitative approaches and was complemented by a quantitative approach. The photo/video expert utilised the following participatory data collection methods:

- i) Key Informant Interviews (KIIs);
- ii) Direct observation of success stories from the beneficiaries;
- iii) Case studies (narratives); and
- iv) Most Significant Change (MSC) methods and document/records review.

Following the fieldwork, the raw footage was previewed and the handwritten notes from the qualitative methods assembled and typed into word documents. All the qualitative interviews were logged. Relevant sound bites were identified and integrated into the video.

The photo and video activities were guided by observance of a number of ethical rules. These included the following considerations:

- i) Express written consent of all participants for this production were sought before interviews;
- ii) Participation in this exercise by the respondents/participants was voluntary and they were free to decline the invitation or withdraw if they so wished;
- iii) Privacy and confidentiality of the information given by participants was ensured; and
- iv) Only the production crew had access to the raw data.

Ethical guides and protocols provided by UNDP, UNHCR and the Office of the Prime Minister were also utilised.

## 1.5 SCOPE

### 1.5.1 Thematic Scope

The thematic scope of this assessment was guided by the concepts of rule of law, access to justice and security. Underlying these concepts are the human rights principles which impact on or are impacted on by rule of law, access to justice and security.

#### *i) Rule of law*

In this Study, the United Nations definition of “rule of law” has been adopted:

*It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability.<sup>13</sup>*

Using the above definition, the United Nation has defined a set of indicators that could be used to determine the extent to which “rule of law” has been attained in specific context.<sup>14</sup> It is these that have been adopted for purposes of this assessment. The indicators are grouped around four dimensions:

- i) Performance;
- ii) Integrity, transparency and accountability;
- iii) Treatment of members of vulnerable groups; and
- iv) Capacity.

The United Nations elaborates each of these indicators as below:<sup>15</sup>

**Performance:** Institutions provide efficient and effective services that are accessible and responsive to the needs of the people.

**Integrity, transparency and accountability:** Institutions operate transparently and with integrity, and are held accountable to rules and standards of conduct.

**Treatment of members of vulnerable groups:** How justice institutions treat minorities, victims, children in need of protection or in conflict with the law, and internally displaced persons, asylum-seekers, refugees, returnees, and stateless and mentally ill individuals.

**Capacity:** Institutions have the human and material resources necessary to perform their functions, and the administrative and management capacity, to deploy these resources effectively.

13 United Nations Office of the High Commissioner for Human Rights. *The United Nations Rule of Law Indicators: Implementation Guide and Project Tools* (2011), p. iv.

14 As above.

15 As above.

In using the above dimensions and attendant indicators, two institutions are assessed: Police and the Judiciary. With respect to the Judiciary, the study is based on the understanding that in addition to the formal dispute resolution mechanisms, refugees use informal mechanisms as well, such as the Refugee Welfare Committees. This is also the case with respect to host communities. Also used are the local council courts, which, though formal, function more-less like the informal mechanisms. These too will be part of the access to justice assessment.

## ii) Access to Justice

On its part, access to justice for purposes of this study is defined as access by people, “in particular poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights control of abuse of power and resolution of conflicts”.<sup>16</sup> This includes the ability of such persons to seek and get a remedy through both formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions.<sup>17</sup> Of particular interest are disadvantaged persons such as children, Persons with Disabilities, as well as persons in detention places among others. Access to Justice is viewed as a “corner-stone” for development interventions across the world. Further to note, it is a critical tool to steer development, combat poverty as well as prevent and resolve disputes. From a practical perspective, Access to Justice means the opportunity or right of people to experience or to benefit from fair and reasonable processes and means of resolving disputes and enforcing rights.<sup>18</sup> It has been argued that “by providing Access to Justice, governments enhance their legitimacy, improve their ability to create social change and facilitate development”.<sup>19</sup> Thus, according to LASPNET:

*[T]he barriers to justice that are attitudinal, procedural or physical have the effect of denying these groups the appropriate standard of justice that is critical for resolving some root causes of marginalization, discrimination, poverty and vulnerability.*<sup>20</sup>

According to the UNDP,<sup>21</sup> Access to Justice goes beyond improving an individual’s access to courts, or guaranteeing legal representation. That it must be defined in terms of ensuring that legal and judicial outcomes are just and equitable. Therefore, this requires multi-pronged engagement and support across the chain, linking both the de-

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16 UNDP Access to Justice Practice Note (2004) UNDP, P. 6.

17 Bedner, A. ‘Towards Meaningful Rule of Law Research: An Elementary Approach’, MS Unpublished, VVI, (2004), Leiden.

18 Akijul, 2010. Training Manual on Understanding Access to Justice: Principles, Structures and Key Issues in the Karamoja Region. p. 21.

19 William Davis and Helga Turku ‘Access to Justice and Alternative Dispute Resolution’ (2011) *Journal of Dispute Resolution* 47, p. 47.

20 Legal Aid Service Providers Network *Access to Justice for the Poor, Marginalised and Vulnerable People of Uganda* (2015), available at < <http://www.laspnet.org/joomla-pages/reports/research-reports/377-access-to-justice-for-the-poor-marginalised-and-vulnerable-people-of-uganda/file>> (accessed on 26th October 2018), p. 14.

21 UNDP *Access to Justice Practice Note* (2004), p. 6.

mand and supply side in order to address the multi-dimensional nature of access to justice.

*Justice is closely related to UNDP's mandate — poverty eradication and human development. There are strong links between establishing democratic governance, reducing poverty and securing access to justice. Democratic governance is undermined where Access to Justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent. Access to justice is also closely linked to poverty reduction since being poor and marginalized means being deprived of choices, opportunities, access to basic resources and a voice in decision-making. Lack of access to justice limits the effectiveness of poverty reduction and democratic governance programmes by limiting participation, transparency and accountability.<sup>22</sup>*

As indicated elsewhere, there is no known universal measurement for justice that could be used to determine the extent of access to justice in particular cases or in favour of a specific group. However, one of the approaches is the Human Rights Based Approach (HRBA) which could be used to determine the extent to which rights are protected or realised, including fair trial rights, non-discrimination and right to remedy.<sup>23</sup>

In the Kenyan case of *Okenyo Omwansa & Anor vs. AG & Ors*,<sup>24</sup> the term “access to justice” was defined to include the enshrinement of rights in the law; awareness of and understanding of the law; easy availability of information pertinent to one’s rights; equal right to the protection of those rights by the law enforcement agencies; easy access to the justice system particularly the formal adjudicatory processes; availability of physical legal infrastructure; affordability of legal services; provision of a conducive environment within the judicial system; expeditious disposal of cases; and enforcement of judicial decisions without delay.

LASPNET adopted the Tilburg Institute for Interdisciplinary Studies for Civil Law and Conflict Resolution Systems (TISCO), a developed methodology for measuring access to justice. This methodology focuses on three dimensions that look at the procedures of accessing justice:

- i) Costs of the procedures;
- ii) Quality of the procedures;
- iii) Quality of the outcomes.<sup>25</sup>

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22 As above, p. 3.

23 See Legal Aid Service Providers Network (LASPNET) *Needs and Access to Justice for Youth in Uganda: Vulnerability, Poverty and Corruption Hindrances* (2018 - ongoing).

24 *Okenyo George Omwansa & Anor vs Ag & Ors* [2012] eKLR.

25 Hague Institute for the Internationalisation of Law *Measuring Access to Justice in a Globalising World: The Hague Model of Access to Justice* (April 2000) available at <[http://hiil.org/data/sitemanagement/media/HiiL\\_final\\_report\\_Measuring\\_260410\\_DEF.pdf](http://hiil.org/data/sitemanagement/media/HiiL_final_report_Measuring_260410_DEF.pdf)> (accessed on 10th September 2018).



Using this methodology, The Hague Institute for the Internationalisation of Law (HiIL) has developed indicators for each of the above dimensions.<sup>26</sup> These are indicated in the table below:

Table 4: Indicators for the Dimensions that look at the Procedures of Accessing Justice

	Indicators
Cost of the Procedures	<b>Money spent</b> (out-of-pocket costs for legal fees, travel, advisors)
	<b>Time spent</b> (time spent to search for information, attend hearings, travel)
	<b>Stress and negative emotions.</b>
Quality of the Procedures	<b>Voice &amp; neutrality</b> (process control, decision control, neutrality, consistent application of rules)
	<b>Respect</b> (respect, politeness, proper communication)
	<b>Procedural clarity</b> (timely explanation of procedures and rights)
Quality of outcomes	<b>Fair distribution</b> (distribution is fair according to needs, equity and equality criteria)
	<b>Damage restoration</b> (fair compensation for monetary damage, emotional harm and damage to relationships)
	<b>Problem resolution</b> (extent to which the problem is solved and the result has been enforced)
	<b>Outcome explanation</b> (the extent to which the people receive access to outcome information)

The Study used the above the indicators in assessing the extent of access to justice for refugees and host communities in Isingiro and Arua.

### iii) Security

The United Nations has adopted a broad definition of “security”, which it has calibrated with the “human” component to broaden it to “human security.” This has produced what has been referred to as a human-centred approach to security. In this regard, “human security” is defined in its broadest sense to embrace far more than the absence of violent conflict. That it encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfil his or her potential. Accordingly, every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict.<sup>27</sup> However, the scope of this assessment does not allow for this broad definition. Rather, a narrow definition of “security” is used to mean the state of being free from danger or

26 As above.

27 Kofi Annan. “Secretary-General Salutes International Workshop on Human Security in Mongolia.” Two-Day Session in Ulaanbaatar, May 8-10, 2000. Press Release SG/SM/7382

threat.<sup>28</sup> In this narrow respect, it means not only safety but also the measures taken to guarantee that safety.

The scope of this study limits security to the existence of institutions and services that guarantee the safety of refugees and host communities. This is in addition to the extent to which these are accessible. It is at this point that “security” integrates with “rule of law” and “access to justice”. Moreover, the underlying rights for security guarantees come in handy, including access to justice, fair trial, person security and liberty and measures on non-discrimination. These are guided by accountability on the part of the duty bearers especially institutions with mandate to guarantee Rule of Law, Access to Justice and Security. In a more particular manner, the study looked at the extent of safety in the selected refugee settlements and host communities, the measures in place to guarantee safety as well as the efficiency and effectiveness of the security institutions entrusted with this function. The premise of this study was that while refugees and asylum seekers have almost similar security concerns with Ugandan citizens, they are a more vulnerable group of persons. The above notwithstanding, their security needs cannot be addressed in isolation of the security needs of the host communities.

It may be fear of direct physical attack or of a conflict where rape, torture and ethnic cleansing are part of military strategy. In their attempts to escape, many refugees dodge bullets in a war zone, are chased by human traffickers or risk their lives crossing stormy seas on leaky boats. Even if they survive these dangers and make it to another country, they may find that their threats and fears follow them. The conflict or tormentors they tried to escape from may have an extra territorial reach, and their lives and dignity continue to be threatened.

### **1.5.2 Geographical Scope**

The study was geographically confined to the districts of Arua and Isingiro with components of Mbarara. Arua is located in West-Nile region of Uganda, while Isingiro is located in South-western Uganda. Table 4 shows the key socio-economic and demographic characteristics of the two districts. As of October 2018, the refugee population in Arua was estimated at 151,349, and the District was ranked third among highest refugee hosting districts after Yumbe and Adjumani.<sup>29</sup> Isingiro is in fifth position with a population of 106,026.<sup>30</sup>

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28 English Oxford Living Dictionaries. (2010) Oxford University Press.

29 See <<https://ugandarefugees.org/en/country/uga>>.

30 As above.

**Table 5: Key Social and Demographic Characteristics of Arua and Isingiro**

	District		Uganda
	Arua	Isingiro	
Area (square kilometers)	3,236	2,655	241,038
Navikale refugee camp (area square kilometers)		185	
Population (Mid-year 2018)	862,700	553,200	38,823,000
Proportion of the district population that are refugees	23.0%	19.0%	3.8%
Proportion of the population resident in urban areas (%)	7.9%	11.4%	21.4%
Number of households	146,675	101,590	7,306,942
Average household size	5.3	4.8	4.7
Literacy rates for population aged 18 years and above	68.2%	68.9%	
Literacy rates for female population aged 18 years and above	57.3%	62.8%	
Proportion of households that received remittances during past year	22.6%	9.9%	17.0%
Households that are 5 km or more to the nearest Police Post/Police Station	38.0%	45.7%	

Source: UBoS (2016) National Population and Housing Census and MFPEd (2018)

## 1.6 STUDIES ON RULE OF LAW, ACCESS TO JUSTICE AND SECURITY OF REFUGEES IN UGANDA

There are various studies and surveys that have been conducted in Uganda relevant to the subject of rule of Law, access to Justice and security for refugees. It is evident that these studies and surveys have been piecemeal with limited scope on subjects of Rule of Law, Access to Justice and Security as is done by the current study. Nonetheless, the findings of some of the studies and surveys provide some indicators on the Rule of Law, Access to Justice and Security issues affecting refugees in Uganda. In addition to examining the effectiveness of the legal framework governing refugees and the extent to which these translate into Rule of Law and Access to Justice.

Previous studies and surveys have examined the implementation of the framework as well as the Rule of Law and Access to Justice challenges refugees face. For instance, in an undated work, and in the context of the Rule of Law, the Refugee Law Project (RLP) critiqued the 2006 Refugee Act.<sup>31</sup> While the critique finds the Act progressive and human rights oriented, it also uncovers some gaps relevant to Rule of Law and Access to Justice for refugees. One such critique is in relation to Section 5 of the Act, which disqualifies a person who has committed a crime against peace, a war crime or crime against humanity as defined in any international instrument to which Uganda is a party. It was observed that the wording of Section 5 begs two interrelated questions. First, what exactly is the standard of proof and/or how is the guilt of the asylum seeker determined? Second, will there need to be a separate procedure to determine the guilt of the asylum seeker before a decision on exclusion is made? It is essential that certain procedural safeguards are laid out to ensure against an erroneous determination which could lead to people being excluded on mere suspicion.<sup>32</sup> Concerns were also raised about the appeal processes from the decisions of the Refugee Eligibility Committee

31 Refugee Law Project 2006, Critique of the refugees Act, Viewed 6 October 2018, [https://www.refugeelawproject.org/files/legal\\_resources/RefugeesActRLPCritique.pdf](https://www.refugeelawproject.org/files/legal_resources/RefugeesActRLPCritique.pdf).

32 Commentary 10.

(REC) to the Appeal Board, arising from the fact that the Board does not have power to set aside a decision of the REC. However, there is opportunity to address these gaps in an ongoing legislative review process for the Refugee Act by the Uganda Law Reform Commission.

Other earlier studies by the RLP in 2001 and 2005 respectively found that restrictions on freedom of movement by refugees affected them in rule of law terms. In some cases, it was reported refugees were harassed by officials whenever they tried to exercise their right to freedom of movement.<sup>33</sup> However, the circumstances have since changed and Uganda has been praised locally and internationally for its progressive refugee policies that encourage self-sustenance and free movement.

A 2013 research by Erick Anderson resulting into a Master of Laws thesis faulted prohibition of refugees from participating in politics, largely because of the vagueness of this prohibition.<sup>34</sup> The research revealed that various stakeholders interpreted the allowed scope of political activity differently, with some being more restrictive than others in terms of what refugees can and cannot do.

There have also been some surveys relevant to Access to Justice. The most recent is a 2018 Report published by the United Nations High Commissioner for Refugees. In its *Legal and Physical Protection Thematic Report*, UNHCR finds that in Adjumani and South Western Uganda, legal assistance has improved with the presence of RLP.<sup>35</sup> The Project provides legal services to persons of concern including legal representation and pre-trial counselling. This was the case in Kampala as well where there is a presence of an urban refugee caseload.

Annual and mid-year reports by the RLP also stand out as important sources of information on the Rule of Law, Access to Justice and Security challenges faced by refugees in Uganda. These include: long stays on remand without trial; and bribery/corruption of the police.<sup>36</sup>

In August 2015, War Child Canada and the RLP conducted field research in Kampala,<sup>37</sup> with the aim of assessing the Gender-Based Violence (GBV) risks facing urban refugees. This is in addition to the services they are seeking and the challenges they face in securing access to the same. The Study revealed that many women reported that they faced a range of GBV risks in their daily lives in Kampala, as well as a range of types of violence

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33 See Refugee Law Project 2005, *"We are all stranded here together": The Local Settlement System, freedom of movement and Livelihood Opportunities in Arua and Moyo districts*; and Refugee Law Project, *Refugees in Arua District: A Human security Analysis Working Paper No.3* 2001.

34 Erik Andersson *Political Rights for Refugees in Uganda A Balance Between Stability in the State and Respect for Human Rights* (2013) unpublished LLM Thesis, Umea University.

35 UNHCR Uganda 2018, *Legal and Physical protection Thematic Report*.

36 Refugee Law project, *Annual report 2014, Annual report 2015, Access to justice mid-year review presentation 2016, Access to justice mid-year review presentation 2017*.

37 Refugee Law project, Women's refugee Commission, *Gender-Based Violence Prevention and Response: Key Risks Facing Urban Refugees in Kampala*.

including physical, sexual, emotional, and economic. Women reported being raped and sexually assaulted when trying to earn money. Regarding domestic violence, women said that among married couples, domestic violence happened more often in Kampala than it did in their countries of origin (mostly DRC) because of increased tension in the household due to economic pressures and the difficulties of being foreigners. In addition, the Study investigated issues pertaining to human trafficking, faced mainly by refugee children and women especially those in the urban centers. Also, refugees with disabilities indicated discrimination by many service providers, who exhibited a lack of understanding of the issues and challenges of this category of people.

In addition, a 2016 Report by RLP examined conditions in detention facilities and the extent to which they impact on the psychological well-being of refugee inmates.<sup>38</sup> The districts of focus included Masindi, Hoima, Kyegegwa, Fort Portal, Mbarara and Isingiro. Of the 109 respondents, it was found that 76.5% experienced inadequacy in information on their court case; 76.3% felt sleeping space was inadequate; and 65.4% felt that sanitary facilities were inadequate. The Study revealed that inadequacies in sleeping space, information on their court cases, legal representation and medicine made the respondents feel stressed. Some cases of Post-Traumatic Stress Disorder (PTSD) were found. Although this Study focused on refugees, one could argue that the conditions described may not be restricted to refugees but to the general prison population in Uganda.

Similarly, in 2016, the RLP carried out another study focusing on the informal justice structures in refugee settlements in Uganda.<sup>39</sup> The objective of the Study was to identify the access to justice related problems refugees face of refugees and how the community /informal structures address these. Focus was on 3 districts: Mbarara, Isingiro and Kyegegwa. The Study findings show there were a number of justice related issues that arise in refugee communities. These included domestic violence, rape, defilement, theft, and child neglect. The Study found that the most prevalent cases were criminal in nature and included sexual offences such as defilement and rape. Other prevalent crimes were domestic violence, assaults and thefts. There was overwhelming preference for informal justice systems to deal with the crimes above as well as other justice issues. These included the RWCs, Community elders, family heads and “*Nyumba Kumi*” committees. The reasons for the above preference was that: cases were resolved expeditiously; bottlenecks in the formal justice such as language barrier and costs of services were absent in the informal justice systems. Several recommendations were made with respect to improving the informal justice systems and these included: formalizing the RWCs rules and regulations; resources support to the informal justice system; and capacity building of actors in informal justice system on the laws and policies

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38 Refugee Law Project *The Mental Health State of Refugees in Prison, A Case-study from Western Uganda* (2016)

39 Refugee Law Project “Courts can never solve problems in the community”. A Study of Informal Justice Structures in Refugee Settlements in Uganda (2016).

on forced migration.

Research has also been done on security and refugees in Uganda. One such research is a 2009 Master of Laws Thesis by Susan Alupo completed at the University of Oslo.<sup>40</sup> The Thesis analysed the physical security of refugees in Uganda in relation to the state's legal responsibility of refugee protection. Among others, the research assessed the security challenges facing refugees in settlements in Uganda. This is in addition to assessing the response of the Government of Uganda to these challenges. Alupo concludes that refugees are in the most unstable regions of the country and live in a state of constant fear due to inadequacy of protection by the state within the settlements. Among others, the Thesis calls for an amendment of laws to better protect refugees.<sup>41</sup> While the study thoroughly examined the legal basis for refugee protection, its analysis of security threats in Ugandan refugee settlements was limited and generalized.

Another study on security and refugees in Uganda is by Alex Pommier, focusing particularly on the Security of South Sudanese Refugees in Uganda.<sup>42</sup> Pommier's study assessed the physical security implications of ethnic conflict-induced displacement in 2014. It stressed the urgent need to address the security challenges of refugees, making reference to primarily the security of women and girls who required protection against all forms of SGBV. The Study identified challenges facing South Sudanese refugees that threatened the viability of seeking safe refuge in Uganda. This related mainly to ethnic conflict that induced this influx. The Study also identified Uganda's unique settlement policy and the resulting close relationship between the host and refugee communities as another source of concern for the security of South Sudanese refugees in Uganda. Finally, the Study identified SGBV, crime, potential military recruitment, and tensions with aid workers as further issues that must be addressed to ensure the safety of those displaced by the violence in South Sudan.

Research by Hovil, although dated and overtaken by events, focused on refugees and the security situation in Adjumani.<sup>43</sup> The paper found that refugees lived in constant fear of attacks by Joseph Kony's LRA and of SPLA recruitment. Hovil provides a useful history of the refugee situation in Uganda and conveys how threats to the physical security of refugees can vary widely based on the causal conflict.

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40 Alupo, S. (2009, September 1). State responsibility for the rights of refugees: a critical analysis on the security of refugees in Uganda (Faculty of Law Master Thesis). Oslo: University of Oslo, <http://urn.nb.no/URN:NBN:no-23614>.

41 As above, at 57.

42 Pommier, A. "The Security of South Sudanese Refugees in Uganda: Assessing the Physical Security Implications of Ethnic Conflict-Induced Displacement" (2014). Independent Study Project (ISP) Collection. Paper 1777, [http://digitalcollections.sit.edu/isp\\_collection/1777](http://digitalcollections.sit.edu/isp_collection/1777).

43 Hovil, L. Refugees and the security situation in Adjumani District, Refugee Law Project Working Paper 2, 2001, June.

# 2

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**The International,  
Regional and National  
Context**

## 2.1. THE INTERNATIONAL CONTEXT

### 2.1.1 Historical context

The phenomena of forced migration and refugees are not recent. It is an issue the world has grappled with as way back as the 1<sup>st</sup> Century. In more recent history, the refugee problem became more pronounced in the post-Second World War period. The War had forced many to migrate from their home countries in search of safety and a livelihood. It is reported that as a result of the War, 10 – 12 million people from over twenty countries and speaking 35 languages were forced to move in search for a place to stay.<sup>44</sup> This figure has however been disputed, with some arguing that it could be higher. This is because historical reviews of the post-world war crisis have been Euro-centric and exclude migrations which took place outside Europe.<sup>45</sup>

Following the war, the next episode of migration in Europe is said to have occurred after the Hungarian Revolt in 1956 and the Prague Spring in 1968. This resulted into thousands migrating to the West where they were easily welcomed as victims of communism.<sup>46</sup> There was calm in Europe, until the late 1970s to the early 80s when an upsurge of refugees entering Europe ranging from approximately 20,000 to 150,000. This time, this comprised of asylum seekers from all parts of the world, including Asia, the Middle East and Africa.<sup>47</sup> The Yugoslavian civil war-instigated migrations followed in the 1990s. Over 600,000 people migrated as a result.

According to the UNHCR, by the end of 2017, the number of people forcibly displaced worldwide as a result of persecution, conflict or generalized violence had hit a glaring 68.5 million, with refugees forming a majority (25.4 million people).<sup>48</sup> Children below the age of 18 years constituted about half of the refugee population in 2017, up from 41% in 2009. For the past 4 years, Uganda, Turkey and Pakistan have provided asylum to the largest number of refugees. In the case of Uganda, by October 2018, the refugee population stood at 1,150,000. It is also notable that more than 2/3 (68%) of all refugees worldwide came from just 5 countries. That is, Syrian Arab Republic (6.3 million), Afghanistan (2.6 million), South Sudan (2.4 million), Myanmar (1.2 million) and Somalia (986,400). The refugee problem has been on the radar of countries and international agencies for over 60 years. Responses to this problem have been characterised by both international policy and legal responses. The policy responses have largely evolved, while the legal responses are stable. These responses are discussed below.

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44 Leo Lucassen 'Peeling an onion: the "refugee crisis" from a historical perspective' (2018) 41 *Ethnic and Racial Studies*, 383.

45 Gil Loescher History and current state of historical research in Refugee Studies, available at <<https://fluechtlingsforschung.net/history-and-current-state-of-historical-research-in-refugee-studies/>> (accessed on 17th October 2018).

46 Lucassen (note 42 above)

47 As above.

48 *The Global Trends: Forced Displacement in 2017*, the UNHCR <http://www.unhcr.org/globaltrends2017/>



## 2.1.2 The international policy and legal response

The international policy response has generally looked at the refugee problem as one calling for collective action and shared obligations. Indeed, in the Preamble to the 1951 Convention Relating to Refugees, it is indicated that:

*Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.*<sup>49</sup>

The shared obligations approach is also reflected in the Second Draft of the Global Compact on Refugees. Here, the United Nations General Assembly (GA) and the UNHCR consider those obligations while attempting to establish the basis for more predictable and equitable burden-and responsibility-Sharing among states and other stakeholders.<sup>50</sup> The 2016 *New York Declaration for Refugees and Migrants*<sup>51</sup> puts in place the *Comprehensive Refugee Response Framework* (CRRF) to enable implementation of the refugees' guarantees. The main aim of this approach is to ensure that refugees are included in the communities from the very beginning. It is anticipated that when refugees gain access to education and labour markets, they can build their skills and become self-reliant. As a result, they can also contribute to local economies and fuel the development of the host communities. The approach of integration also helps to pursue the 2030 Agenda for Sustainable Development Goals pledge to "leave no one behind".<sup>52</sup>

In the New York Declaration, Member States recognize that refugee camps "should be the exception," and a temporary measure in cases of emergency. Instead, refugees should be allowed to live among host communities. The object is to enable refugees thrive and not just survive which would lessen refugees' dependence on humanitarian aid.

The UNHCR is expected to work with a wide range of partners including Governments, NGOs, refugees and other UN agencies, but also the private sector, international financial institutions and civil society, including think tanks, academia and faith leaders. The goals here are to: Ease pressure on countries that welcome and host refugees; build self-reliance of refugees; expand access to resettlement in third countries and other complementary pathways; and foster conditions that enable refugees voluntarily to return to their home countries.<sup>53</sup>

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49 Convention, para 3 of the preamble.

50 The Global Compact on Refugees (Draft 2) (as at 30 April 2018), <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/05/Global-Compact-on-Refugees-UNHCR.pdf>.

51 <http://www.unhcr.org/57e39d987>.

52 See UNHCR 2030 *Agenda for Sustainable Development*, at < <http://www.unhcr.org/afr/2030-agenda-for-sustainable-development.html?query=2030> > (accessed on 24th October 2018).

53 *Comprehensive Refugee Response Framework*, UNHCR <http://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html>.

## i) *The 1951 Convention Relating to the Status of the Refugees*

The 1951 Convention Relating to the Status of Refugees was adopted by the GA on 28<sup>th</sup> July 1951. This Convention establishes the essential minimum norms relating to the treatment of refugees. These norms must be applied without discrimination as to race, religion or country of origin. The Convention is the key legal document in defining a refugee, the rights of refugees and the legal obligations of state parties in this regard. Article 1A (2) of the Convention defines a refugee as one who:

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

The Convention spells out the kind of legal protection, other assistance and social rights a refugee is entitled to. This is in addition to the basic human rights of (such as freedom of religion and movement, the right to work, education and accessibility to travel documents). These should, in principle, at least be equivalent to freedoms enjoyed by foreign nationals.

Under the 1951 Convention, host governments are primarily responsible for the security and protection of refugees. The state parties agree to cooperate with UNHCR in its cardinal role, which is the promotion of international agreements that provide for the protection of refugees and overseeing their application.<sup>54</sup> UNHCR can intervene, if necessary, to ensure that displaced people that fall under the definition of refugees are granted asylum and are not forcibly returned to countries where their lives are in danger.

Article 3 of the 1951 Convention imposes on states the obligations to treat refugees the same way and should never discriminate against refugees on account of race, religion and nationality among other differentiations. Overall, the 1951 Convention outlines the rights of refugees Articles (2-34) and in this regard defines the corresponding obligations of states. The Convention, under Article 33(1), prohibits the forcible return of any refugee to a country where his or her life or freedom would be threatened. To this end, it states as follows:

*No Contracting State shall expel or return (refoul) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*

<sup>54</sup> Article 35(1) of the 1951 Convention.

## ii) 1967 Protocol Relating to the Status of Refugees

The 1951 Convention originally applied only to persons who were displaced by war before 1 January 1951 in Europe. However, the years following 1951 showed that refugee movements were not merely the temporary results of the Second World War and its aftermath. Throughout the late 1950s and 1960s, new refugee groups emerged, in particular in Africa. Thus, Article 1(2) and (3) of 1967 Protocol Relating to the Status of Refugees revised the global definition of refugee to remove the time and geographical limitation on the qualifying circumstances that caused the refugees to migrate.<sup>55</sup> The Protocol extended the application of the Convention to the situation of “new refugees”, persons who, while meeting the Convention definition, had become refugees as a result of events that took place after 1 January 1951.<sup>56</sup>

### 2.1.3 Pertinent legal issues in the international framework

#### i) Determination of Status Refugee Status

A critical aspect in the legal protection of refugees is the determination of their status because it is on the basis of that status that they are entitled to the special protection accorded to them. In the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, the UNHCR does not stipulate strict guidelines on determination of refugee status.<sup>57</sup> UNHCR specifically emphasizes that recognition of refugee status does not therefore make one a refugee but declares him/her to be one.

Goodwin-Gill notes that Article 1A (1) of the 1951 Convention applies the term ‘refugee’, first, to any person considered a refugee under earlier international arrangements. Then, Article 1A (2), read now together with the 1967 Protocol and without time or geographical limits, offers a general definition of the refugee as described above. Stateless persons may also be refugees in this sense, where the country of origin (citizenship) is understood as ‘country of former habitual residence’.

As indicated below, the OAU (now AU) Convention expands the definition of the refugee to include every person who, *owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or 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*<sup>58</sup> In a *Guide to Interna-*

55 Protocol relating to the Status of Refugees (1967), The Office of the United Nations High Commissioner for Refugees (UNHCR), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>.

56 UN Office of the High Commissioner for Human Rights, Fact Sheet No.20, Human Rights and Refugees, July, No. 20 (1993), available at <http://www.refworld.org/docid/4794773f0.html> (last visit May 20, 2014).

57 *Handbook And Guidelines On Procedures And Criteria For Determining Refugee Status Under The 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3 <http://www.refworld.org/docid/4f33c8d92.html>.

58 *OAU Convention Governing The Specific Aspects of Refugee Problems in Africa*, Organisation for African Unity (OAU), [http://www.achpr.org/files/instruments/refugee-convention/achpr\\_instr\\_conv\\_refug\\_eng.pdf](http://www.achpr.org/files/instruments/refugee-convention/achpr_instr_conv_refug_eng.pdf).

*tional Refugee Protection and Building State Asylum Systems (Handbook for Parliamentarians N° 27, 2017)*, UNHCR and the Inter-Parliamentary Union draw distinctions between refugees, asylum seekers and migrants.<sup>59</sup>

“Asylum-seeker” is a general designation for someone who is seeking international protection. In some countries, it is a legal term referring to a person who has applied for refugee status and has not yet received a final decision on his or her claim. Not every asylum-seeker will ultimately be recognized as a refugee. However, an asylum-seeker should not be sent back to his or her country of origin until the asylum claim has been examined in a fair procedure. On the other hand, migrants are understood to be persons who choose to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons. Unlike refugees, migrants do not have a fear of persecution or serious harm in their home countries. Migrants continue to enjoy the protection of their own governments even when abroad and can return home.

UNHCR and the Inter-Parliamentary Union emphasize that a person is a refugee as soon as the criteria contained in the 1951 Convention’s definition are fulfilled. In other words, a person does not become a refugee because of a positive decision on an application for protection. Recognition of refugee status is declaratory: it confirms that the person is indeed a refugee. While this seems to be a technicality, it is the reason why asylum-seekers should not be returned to their countries of origin until their claims have been examined.

## **ii) Asylum Status**

The institution of asylum, which derives directly from the right to seek and enjoy asylum from persecution set out in Article 14 of the Universal Declaration of Human Rights (UDHR),<sup>60</sup> is among the most basic mechanisms for the protection of refugees. Article 14(1) stipulates that:

**Everyone has the right to seek and to enjoy in other countries asylum from persecution.**

In a Guide to international refugee protection and building state asylum systems (*Handbook for Parliamentarians N° 27, 2017*), UNHCR and the Inter-Parliamentary Union asserts that the legal framework established by the 1951 Convention and 1967 Protocol derives directly from the right to seek and enjoy asylum affirmed in the Universal Declaration<sup>61</sup>.

59 A Guide To International Refugee Protection And Building State Asylum Systems: Handbook For Parliamentarians N° 27, 2017, Inter-Parliamentary Union and the United Nations High Commissioner for Refugees, 2017 <http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>.

60 *Universal Declaration of Human Rights* (Paris, 10 December 1948).

61 *A Guide To International Refugee Protection And Building State Asylum Systems: Handbook For Parliamentarians N° 27, 2017*, Inter-Parliamentary Union and the United Nations High Commissioner for Refugees, 2017

Also relevant is the *Resolution on Asylum to Persons in Danger of Persecution*, adopted by the Committee of Ministers of the Council of Europe on 29 September 1967. In this Resolution, it is recommended that member governments should be guided by the following principle:

**They should act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory.**

In a paper discussing the Principle of *Non-refoulement*, David Weissbrodt and Hortreiter found that the right to seek and enjoy asylum has been interpreted consistently as the right of the sovereign state to grant or deny asylum to those within its territory, rather than the absolute right of the individual to be granted asylum.<sup>62</sup> At the same time, the principle of “*non-refoulement*” guarantees that individuals have the right not to be forcibly returned to countries where they face persecution.

### **iii) Rights of Refugees under Basic Human Rights Law**

In addition to the protection extended by the international instruments which are specific to the rights of refugees, refugees and asylum seekers are entitled to the rights guaranteed by the various international and regional human rights instruments. These include rights in the International Bill of Rights as defined by the Universal Declaration of Human Rights;<sup>63</sup> the International Covenant on Civil and Political Rights;<sup>64</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>65</sup> Other instruments at the regional level, in the case of Africa, include the African Charter on Human and Peoples’ Rights. This is in addition to those instruments at both the international and regional levels that protect the rights of certain groups, including children;<sup>66</sup> women,<sup>67</sup> persons with disabilities;<sup>68</sup> and migrant workers and members of their families.<sup>69</sup> Other treaties deal with themes such as racism;<sup>70</sup> enforced disappearance;<sup>71</sup> and torture.<sup>72</sup>

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62 The Principle of Non-Refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement Provisions of Other International Human Rights Treaties, 5 Buff. Hum. Rts. L. Rev.1 (1999), [https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty\\_articles](https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1366&context=faculty_articles)

63 Adopted on 10<sup>th</sup> December 1945.

64 Adopted on 16<sup>th</sup> December 1966.

65 Adopted on 16<sup>th</sup> December 1966.

66 UN Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20th November 1989.

67 UN Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on 18<sup>th</sup> December 1979.

68 UN Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations General Assembly on 13th December 2006.

69 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), adopted by the UN General Assembly on 18<sup>th</sup> December 1990.

70 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the UN General Assembly on 21<sup>st</sup> December 1965.

71 International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 20th December 2006.

72 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 10th December 1984.

Indeed, the human rights instruments are pertinent in defining rights which relate to rule of law issues, access to justice and security for refugees. One key right that runs through all these instruments and which is vital to refugees is that of non-discrimination. Other rights pertaining to civil and political liberties, as well as economic, social and cultural rights too are protected. In addition, there are instruments which protect the rights of specific vulnerable groups, including children, women and migrant workers. Although there are other human rights instruments, however, these are not the subject of discussion for this Report.

## 2.2 THE REGIONAL CONTEXT

In Africa, civil war, inter-ethnic conflicts and forced displacements for economic exploitation have led to the emergence of refugees. It has been illustrated that in the mid-1980s, at least 1 in every 200 Africans was a refugee.<sup>73</sup> On the continent, the figure of refugees increased from 400,000 in 1964 to 2.5 million in 1986.<sup>74</sup> In 2014, the UNHCR reported that Africa's refugee population stood at 2.9 and had arisen mainly from the crises in the Central African Republic (CAR), Mali, Nigeria and South Sudan.<sup>75</sup> However, it is not clear why countries such as Somalia and the Democratic Republic of Congo (DRC) — which have experienced protracted conflicts — were omitted from the list.

It should be noted that in Africa, the most affected region as far as the refugee crisis is concerned is the Great Lakes Region. Some scholars have identified the Great Lakes Region in a broader sense as consisting of not only the DRC, Uganda, Burundi, Rwanda, Kenya and Tanzania, but also including South Sudan, Somalia, Sudan, Angola, Ethiopia, Eritrea, Zambia, Malawi, Zimbabwe, Mozambique and Central African Republic (CAR).<sup>76</sup> As indicated above, this is one of the regions in Africa that has been affected by a high number of refugee-related problems such as conflicts, famine and violence, that have pushed millions of people away from their places of origin within the Great Lakes. For several decades, the region has also been engulfed in violent intrastate and proxy interstate conflicts.<sup>77</sup>

According to the UNHCR,<sup>78</sup> Central Africa Republic (CAR) and the Great Lakes sub-region are greatly affected by a high concentration of multiple, complex and often inter-connected displacement situations. Such displacements were on the rise in 2017 and it is estimated that the sub-region now hosts 6.6 million people of concern. This

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73 BC Nindi 'Africa's Refugee Crisis in a Historical Perspective' (1986) 15 *Transafrican Journal of History*, 96.

74 As above.

75 UNHCR, Background paper for the high-level segment of the 65th session of the Executive Committee of the High Commissioner's Programme on "Enhancing International Cooperation, Solidarity, Local Capacities and Humanitarian Action for Refugees in Africa, Geneva, 29 - 30 September 2014.

76 Omeje, K. and Hepner, T.R. (eds) (2013), *Conflict and Peacebuilding in the African Great Lakes Region*. Bloomington: Indiana University Press, p. 3

77 Accord 2016, *Refugees in the Great Lakes Region: Challenges to Peacebuilding*, viewed 10 October, <http://www.accord.org.za/conflict-trends/refugees-great-lakes-region/>

78 UNHCR 2018, *Central Africa and the Great Lakes*, viewed 13 October 2018, <http://reporting.unhcr.org/node/33?y=2018>.

is largely due to the continuing instability in Burundi, the significant deterioration of the security situation in DRC as well as the CAR. Currently, these two countries are the major sources of internal displacement and refugee outflows. It was further observed that in 2018, unless the political situation is sustainably resolved, the refugee outflows are expected to continue in the region, albeit at a lower scale than in 2017. This year, the UNHCR reported that there were 4.5 million people displaced inside DRC as of December 2017.<sup>79</sup> Of these, 735,000 are now refugees in Sub-Saharan Africa and over 541,000 were in the DRC as of 31<sup>st</sup> March 2018. Unfortunately, the conflicts in the DRC have continued despite the efforts to resolve them. The fighting in the Eastern part of the country continues to generate refugees despite the presence of one of the largest United Nations Peace Keeping Operations in the world.

South Sudan is also underlined as one of the leading sources of refugees in the region. Since December 2013, conflicts in this country have been raging and have so far claimed thousands of lives and driven nearly 4 million people from their homes. While many remain displaced inside the country, more than 2 million have fled to neighbouring countries such as Ethiopia, Sudan and Uganda.

It is anticipated that the Great Lakes region will continue facing the refugee problem for many years to come. This is because of the continuous conflicts which have caused a protracted refugee problem. In Burundi, the conflict has persisted with President Nkurunziza still in power. The mediation facilitated by President Museveni of Uganda and former President Benjamin Mkapa of Tanzania has stalled. Despite the Inter-Governmental Authority on Development (IGAD)-led peace process to end the conflict, fighting continues in several parts of the country. The August 2015 Peace Agreement between South Sudan People's Movement/Army in Government (SPLM/A) and forces loyal to former Vice President Riek Machar (South Sudan People's Movement/Army in Opposition) has been violated several times. However, the signing of the peace accord between President Saliva Kiir and Riek Machar in September 2018 in Addis Ababa and the subsequent return to South Sudan by the former at the end of October, gives a ray of hope that peace would finally return to the troubled country.

## 2.2.1 The regional policy and legal response

Africa's policy and legal response has been guided mainly by the international response, with UNHCR playing a central role in coordination with regional bodies, including the African Union (AU). In legal terms, the main instrument governing aspects of refugees on the African continent is the 1969 OAU Convention Governing the Specific Aspects of Refugees.<sup>80</sup> This Convention not only broadens but also reformulates the definition of a refugee. In Article 1(2), it provides that:

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79 UNHCR 2018, *DR Congo emergency*, viewed 11 October 2018, <http://www.unhcr.org/dr-congo-emergency.html>.

80 Adopted on 10 September 1969 by the Assembly of Heads of State and Government. CAB/LEG/24.3. Uganda acceded to the OAU Convention on 24th July 1987.



The 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.

This broader definition of a refugee recognizes the legitimacy of flights in situations of generalized danger not limited to individual persecution.

The Convention states that “member states of the AU shall use their best endeavours to receive refugees”.<sup>81</sup> This implies that states have the obligation to grant asylum to those that qualify for refugee status under the Convention. The OAU Convention has a similar Article to the 1951 Convention prohibiting refoulement (Article 2(3)). The Convention also contains important provisions on voluntary repatriation (Article 5) and on the prohibition of subversive activities by refugees (Article 3). Also therein, states are required to use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees. This is in respect to persons who for well-founded reasons are unable or unwilling to return to their country of origin or nationality. Furthermore, Article IV obliges states to treat refugees without any discrimination. Thus, states undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality and membership of a particular social group or political opinions.

### **2.2.2 A snapshot of approaches in East Africa**

It should be noted that the East African sub-region does not have a policy and legal regime dealing with aspects of refugees. This is the case even when the region has a volatile history and faces contemporary refugee problems. It is therefore necessary for the sub-region to consider having in a place a legal regime for refugee protection consistent with the UN and AU regimes. That notwithstanding, it is worthwhile to examine the approaches of some of the countries in the East African sub-region towards the refugee problems.

#### **The case of Kenya**

Kenya is one of the biggest refugee-hosting countries in Africa. By February 2018, the country was hosting 490,000 refugees, making it the 10th largest refugee-hosting country in the world and the 4th largest in Africa.<sup>82</sup> Kenya has over time maintained a strict encampment policy, compelling nearly all refugees to live in camps in the country’s North Eastern and Rift Valley provinces. To a large extent, legal and judicial respon-

81 Article 2(1) of the 1969 OAU Convention.

82 Alexander Betts, Naohiko Omata, Olivier Sterck *Refugee Economies in Kenya: preliminary study in Nairobi and Kakuma camp*, RSC WORKING PAPER SERIES NO. 120. p. 6.



sibilities in refugee camps were left to informal traditional systems of justice by refugee elders and traditional judges who are either elected or appointed—and can arbitrate disputes, assign guilt, and impose punishment. In November 2017, a new courthouse was constructed in Dadaab Refugee Camp. The absence of a courthouse in Dadaab made it difficult for refugees to access justice and resolve disputes formally. Prior to setting up the courthouse, refugees would travel over 100 kilometres to Garissa town for hearings and other legal services. Local Kenyans of Somali origin from the host community also benefit the services provided by the courthouse.

### **The case of Tanzania**

As of 31 July 2018, Tanzania was hosting 340,669 people of concern, with 255,796 coming from Burundi, 84,262 from the Democratic Republic of Congo (DRC) and 611 from other countries. The country is currently implementing a Kigoma Joint Programme, which is an area-based UN joint-programme that connects or involves multiple sectors to improve development and human security in Kigoma region. The programme was developed in cooperation with the regional and district authorities based on the development needs of Kigoma. The programme applies a comprehensive approach to address a wide range of issues facing both the refugees and migrants in the region as well as the surrounding host communities.<sup>83</sup> Under this programme, women and children are empowered to stay safe while also increasing awareness on the negative effects of female genital mutilation (FGM) and child marriage. Local Government Authorities (LGAs) are encouraged to incorporate Violence Against Women and Children (VAWC) components in governing public spaces, and positive parenting skills have been introduced to households. The programme increases accountability in the legal systems meant to respond and provide services to cases of VAWC.

A community-based approach has also been adopted by the Women's Legal Aid Centre (WLAC) in Tanzania with the aim of assisting refugee women and girls to access justice. Paralegal units were established in Mtabila and Nyarugusu refugee camps in Western Tanzania, where refugees based at the camps were trained to provide legal advice. Another initiative has been the establishment of a refugee police force, whose officers are elected by refugees, who were provided training in the laws of their host country, particularly on women's rights.

### **The Case of Rwanda**

Rwanda is home to 150,000 refugees and asylum seekers, with about 68,500 coming from Burundi in the past 3 years, and approximately 76,500 Congolese who have lived in the country for many years, or even decades. The country has adopted various strategies on Rule of Law and Access to Justice, including refugees, by provision of legal aid in partnership with Rwanda Bar Association and other partners to serve vulnerable persons, including survivors of SGBV, persons with disabilities and inmates.

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<sup>83</sup> See <<https://tanzania.unfpa.org/sites/default/files/pub-pdf/Kigoma%20Joint%20Programme%20-%20FINAL.pdf>> (accessed on 20th November 2018).

In Rwanda, traditional mediation methods have long been relied on in providing access to justice to all citizens, particularly in land disputes, civil cases and even some criminal cases. Mediation Committees, or the *Komite z'Abunzias*, is a free, accessible and participatory forum which acts as a mandatory preliminary mechanism for resolving disputes before they are referred to the formal courts. The Committees are made up of local mediators. This means that justice is delivered to the locals by locals, allowing for a sense of community ownership, as well as the speedy conclusion of cases and preventing a backlog within the formal system. This informal mediation mechanism pre-dates colonialism in Rwanda, and it is the fully recognized form of conflict resolution under the law. The 2006 Organic Law has popularized the system further and allowed for the effective implementation of the decentralization of justice. The Abunzi Committees are recognized as an official public service provider. This means that they too are subject to Article 10 of the 2003 Rwandan Constitution which states that at least 30% of positions in decision-making bodies must be occupied by women. This provision promotes the active participation of all citizens at the local level as well as builds confidence in the system from those women lodging cases.

## 2.3 THE UGANDAN CONTEXT

Uganda has had a long and protracted experience with refugees. This has arisen among others, from the country's physical location in a region of Africa that has some of the most protracted conflicts in the world. The relative peace and political stability in the country since 1986 in most parts of the country, and 2006 in Northern Uganda, has provided safe haven for refugees fleeing neighbouring countries. The choice of Uganda by refugees has also arisen from the country's progressive policy and legal framework. The influx has however, as already indicated, come with several challenges in several areas, including Rule of Law, Access to Justice and Security.

A recent verification by OPM has put the number of refugees in Uganda at 1,205,913.<sup>84</sup> Majority of these come from neighbouring countries and the wider region of South Sudan, DRC, Burundi, Somalia, Rwanda, Kenya, Ethiopia and Eritrea, among others. The most recent exposition of the history of refugees in Uganda is by Frank Ahimbisibwe.<sup>85</sup> Uganda's experience with refugees is not recent; it started during the Second World War when the country hosted several Europeans affected by the War. Among these was a group of 7,000 prisoners of war, mainly Polish nationals, in addition to Germans, Romanians and Austrians. Later, long after the war, influxes were generated by the conflicts in the aftermath of the struggles for self-rule in countries neighbouring Uganda.

Ahimbisibwe has illustrated that some influxes in 1955 were generated by the Anglo-Egyptian Condominium of the Sudan. Equally so, the Anyanya conflict that involved

84 See, Government of Uganda Office of the Prime Minister Uganda (Refugees & Asylum Seekers as of 31-January-2019).

85 Frank Ahimbisibwe Uganda and the Refugee Problem: Challenges and Opportunities, Institute of Development Policy, University of Antwerp, Working Paper 2018.05.

South Sudanese fighting for self-rule forced many to flee to Uganda. Moreover, more than 80,000 Sudanese are said to have crossed into Uganda as a result of the Sudanese mutiny.<sup>86</sup> In 1972, some of these were repatriated. The refugee Uganda-Sudan connection however resumed from 1983 to 2005 as a result of the Sudan People's Liberation Army/Movement (SPLA/M) armed rebellion against the Khartoum Government. A second wave of returns took place after the signing of the 2005 Comprehensive Peace Agreement (CPA). Stability was however short-lived, with a new influx happening in December 2013. This was after a new wave of fighting, this time between the South Sudanese themselves. While there have been episodes of calm, South Sudanese refugees continue to flee into Uganda, with the population, as seen above, estimated at 784,104.

Further to note, Ahimbisibwe demonstrates that Kenya too has since the 1950s generated refugees for Uganda, starting with those displaced by Mau Mau anti-colonial rebellion. The most recent push from Kenya however, was following the 2007 post-election violence that brought the East African country to its knees. Rwanda has also had a long refugee connection with Uganda, stretching way back to 1959 and early 1960s when ethnic turmoil forced some Tutsi to flee to the latter country. Many of these were settled in Nakivale, Oruchinga in Mbarara District, areas which are now in Isingiro District. Some were settled in Rwamwanja, Kyaka and Kamwengye in Kyenjojo and Kabarole districts. The 1994 Rwandan genocide generated even more refugees for Uganda. While some refugees returned back to their home country a few years later, others remained.

Historically, conflicts in what was then Zaire (now DRC) in the 1950s and following the 1961 assassination of the country's then Prime Minister Patrice Lumumba, saw hordes of Congolese flee into Uganda. A good number of these were settled in Kyaka I, which is in present-day Kyenjojo District. Since then, DRC has never been peaceful, especially the Eastern part. The conflicts in this part of the country have generated up 284,265 refugees for Uganda.

Other countries which have generated refugees for Uganda include Burundi (33,657); Eritrea (14,313); Somalia (22,064); and Ethiopia (2,336).

### **2.3.1 Access to Justice and Rule of Law context in Uganda**

Uganda has a history of political instability, human rights violations and institutional decay. This has historically greatly impacted on the state of Rule of Law, Access to Justice and Security aspects. While the period since 1986, when the current Government took over state of power, has witnessed political stability, the country has not fully overcome its Rule of Law and Access to Justice related deficits. As a matter of fact, Uganda has an institutional framework for the protection of the Rule of Law and Access to Justice. In addition, there is a legislature in place, and the country holds elections every

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<sup>86</sup> As above.

5 years for positions of Members of Parliament, the President, as well as local leaders. The above leadership or institutions have been at the forefront of promoting Access to Justice and the Rule of Law. Government initiatives to enhance Access to Justice are targeted at both the demand and supply sides of justice. Government justice institutions are organised under a sector-wide arrangement – the Justice, Law and Order Sector (JLOS) — and have functional partnerships with non-state actors. The partnership between the state and non-state actors is aimed at extending justice services to the poor and vulnerable persons. The Fourth JLOS Sector Development Plan (SDP IV) explicitly notes that refugees are a vulnerable constituency that requires targeted access to justice services. Programming therefore takes into account the peculiar needs of refugees, as well as the need to have robust structures to address conflict within the settlements and with neighbouring host communities.

The informal justice systems, legal aid structures and local council courts are recognised as some of the key mechanisms to enhance Access to Justice within the refugee settlements and host communities.<sup>87</sup> In the Financial Year 2017/2018, JLOS set aside over US\$2.2bn additional funding targeting special justice needs for refugees. Under this funding, priority was given to issues related to legal aid and awareness, handling SGBV cases, enhancing presence and coverage of courts of law and other justice services, among others.<sup>88</sup> In addition, during the same financial year, magisterial areas were increased to 82 from 49 following the gazetting of new magisterial areas that include some refugee settlements such as Rhino refugee settlement in Arua district.<sup>89</sup> In addition, elections for Local Councils I and II were conducted at village and parish levels countrywide to pave way for a functional grassroot justice mechanism. It is at these levels that Local Council Courts are now functional among host communities and these developments serve to reduce physical barriers and distances travelled to access justice by especially vulnerable people.

Although these sustained strategic efforts by JLOS actors have yielded positive strides in enhancing Access to Justice as assessed by various surveys, there remains more demands to be addressed. According to the Legal Aid Service Providers Network (LASPNET)'s *State of Access to Justice Report 2017*, public trust in JLOS institutions increased from 49% to 59%. Relatedly, the Hague Institute for the Internationalisation of Law (HiIL) Report entitled *Family Justice in Uganda 2017*, shows that the public rated solutions provided by dispute resolution institutions on a scale of 1 to 5, translated to 76% satisfaction.

Despite these positive developments, various reports have consistently displayed rule of law deficits, characterised among others, by violation and abuse of human rights. The Uganda Human Rights Commission (UHRC) has, in its annual reports to Parliament,

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87 JLOS, Justice, Law and Order Sector Fourth Strategic Development Plan, 2017 -2020 (2017), p. 36.

88 JLOS, Annual Work Plan, 2018/19.

89 It should be noted, however, that the magisterial areas are yet to be operationalized, due to resource deficits.

consistently document cases of violation of human rights, especially by state agencies. For instance, in its 20<sup>th</sup> Annual Report, the UHRC documents several challenges which have undermined the right to a fair hearing.<sup>90</sup> Some of the challenges documented included: Prolonged detention of suspects of crime in police facilities; delayed police investigations; use of torture as a method of investigation; parading of suspects before the media; and invasion of courts and re-arrest of accused persons upon their release on bail, among others.<sup>91</sup> Others included: long pre-trial detention; inadequate number of judicial officers; and limited access to legal representation. The Office of Director of Public Prosecutions (ODPP) also suffers from a number of deficiencies, including: Inadequate geographical presence of the DPP and the courts; inadequate human and financial resources; inadequate access by vulnerable persons; mob action; and lack of a legal aid scheme.<sup>92</sup>

Both Rule of Law and Access to Justice have also been negatively affected by deficits in the judicial arm of the state. The country has a judicial institutional structure, with courts established from the Supreme Court, Court of Appeal/Constitutional Court, High Court and other subordinate courts, including magistrate courts. The Judiciary, however, faces several challenges. For many years now, perception surveys have ranked the Judiciary as one of the most corrupt institutions in Uganda.<sup>93</sup> The general perception, resulting from this, is that a poor person can never win a case. Most affected are vulnerable groups, who may not have the financial resources to navigate through the system. In addition, the effectiveness of the courts is affected by the limited financial and human resource at their disposal. This, among others, has resulted into a huge case-backlog. A 2016 Judicial Case Census Report showed that the case-backlog stood at 114,809 cases,<sup>94</sup> of which 52,221 were criminal in nature. The recent expositions from the ODPP paint a grim picture about the problem of backlogs, with statistics indicating that by the end of Financial Year 2016, there were 395,962 criminal cases in the system, of which only 56,000 were cleared.<sup>95</sup> However, with the intervention of JLOS, there have been a total reduction in backlog of 12.5% in the year 2017/2018 and an overall 70% reduction since 2015.<sup>96</sup>

Similarly, the Police has for many years, based on perception surveys, been ranked as the most corrupt institution. This is confirmed by the 2015 Uganda National Bureau of Statistics *National Service Delivery Survey*.<sup>97</sup> Some studies have revealed a poor record

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90 Uganda Human Rights Commission, *The 20th Annual Report*, 2017.

91 As above, 34 - 37.

92 As above, 42 - 44.

93 Cheyanne Scharbatke-Church and Diana Chigas *Facilitation in the Criminal Justice System: A Systems Analysis of Corruption in the Police and Courts in Northern Uganda* Institute for International Security Occasional Paper (2016).

94 The Judiciary of Uganda *The Report of the Judiciary National Court Case Census* (2016).

95 See Worsening case backlog worries DPP, *New Vision Newspaper*, 26th October 2018.

96 JLOS Annual Performance Report, 2017/2018, 2018, p. xiii.

97 Uganda Bureau of Statistics *The National Service Delivery Survey* (2016).

of the police as far as complying with the law is concerned. It has in this regard been indicated that the Police arrests people without adequate cause, keeps them in prison or 'safe houses'.<sup>98</sup> Torture and excessive use of force have been highlighted as some of the indicators of failure to comply with the law.

The measures Government has adopted to enhance access to justice need to be acknowledged. From a legal perspective, The Poor Persons Defence Act provides that if it is desirable that a prisoner should have legal aid to prepare their defence and such person is not able to access legal services using their means, the state will provide such a service.<sup>99</sup> In civil matters, the Civil Procedure Rules provide for a procedures that allows "paupers" to file suits without having to pay legal fees.<sup>100</sup> In addition, there are some Government funded legal aid initiatives such as Justice Centres Uganda (JCU) and the Legal Aid Clinic of Law Development Centre (LDC). In 2012, the School of Law, Makerere University established the Public Interest Law Clinic (PILAC), which is accredited to provide legal aid services. The Uganda Law Society (ULS), a statutory body, has since 1992 run a legal aid clinic under the Legal Aid Project (LAP). The services of some of these agencies are extended to refugees and host communities as well. This notwithstanding, there are some bottlenecks as far as access to justice is concerned. These are exacerbated, however, by the absence of a comprehensive legal aid policy and legal framework. The barriers include physical barriers, arising from the inaccessibility of services, especially for rural communities since most of these services are found in urban areas.<sup>101</sup> Corruption and other direct and indirect costs of accessing justice remain a big hindrance, as well as the technical nature of the law which many people find hard to understand.<sup>102</sup>

A 2016 Survey by Hague Institute for Internationalisation of Law (HiiL), found that 9 in every 10 Ugandans have experienced one or more problems in resolving a dispute.<sup>103</sup> HiiL found that the most prevalent justice needs of Ugandans were in the areas of land, family and crime most prevalent.<sup>104</sup> With respect to refugees, a 2016 study by the RLP disclosed that the most prevalent justice needs of refugees rotated around domestic violence, rape, defilement, theft, and child neglect.<sup>105</sup> From the criminal justice side, SGBV related crimes were prevalent.

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98 Commonwealth Human Rights Initiative *The Police, the Peoples, the Politics: Police Accountability* (2006), at p 7.

99 Section 2 of the Poor Persons Defence Act, Chapter 20 of Laws of Uganda.

100 See Order XXXIII of the Civil Procedure Rules, SI 71-1.

101 Legal Aid Service Providers Network *Access for the Poor, Marginalised and Vulnerable People of Uganda* (2015), available at < <http://www.laspnet.org/joomla-pages/reports/research-reports/377-access-to-justice-for-the-poor-marginalised-and-vulnerable-people-of-uganda/file>> (accessed on 26th October 2018), at p 13.

102 As above.

103 Hague Institute for Internationalisation of Law *Justice Needs in Uganda* (2016), at p 40.

104 HiiL, at p 42.

105 Refugee Law Project *"Courts Can Never Solve Problems in Community" A Study of Informal Justice Structures in Refugee Settlements in Uganda* (2016), available at <[https://www.refugeelawproject.org/files/others/courts\\_can\\_never\\_solve\\_problems\\_in\\_the\\_community.pdf](https://www.refugeelawproject.org/files/others/courts_can_never_solve_problems_in_the_community.pdf)> (accessed on 26th October 2018), at p 11.

Therefore, despite the various justice services provided by Government and non-state actors, there is a lot more support required to enable vulnerable persons such as refugees to access justice. Enhanced physical access, increased institutional capacity and more efficient business processes in the delivery of justice are a must. In addition to strengthening the supply side of justice, corresponding empowerment of seekers and users of justice services is what will complete the realisation of access to justice in practice.

### 2.3.2 The Challenges in Uganda as host country

While Uganda has opened its borders to refugees and has one of the most progressive refugee policies in the world, the country is facing some challenges connected to the presence of refugees. These challenges, if not addressed, could have implications on the future of the country's response. For instance, the plans by the Uganda Government to send back Rwandan refugees to their home country, Rwanda, could be as a result of the challenges Uganda faces in hosting the refugees.<sup>106</sup> As illustrated by Ahimibisibwe,<sup>107</sup> broadly, the challenges are related to the huge influx of refugees and the protracted nature of the problem. This is in addition to security related challenges.

One of the challenges Uganda is facing is the high level of refugee influx in the country.<sup>108</sup> As already indicated, Uganda is situated in an unstable region of Africa, where conflicts continue to generate refugees. For example, the South Sudan conflict alone has generated more over 700,000 refugees. According to the recent verification conducted by the OPM, the refugee population in Uganda currently stands at 1,205,913. The numbers and the protracted nature of the problem also threatens the government policy of allocating land to refugees. Indeed, Government is starting to change its policy in this regard. New arrivals of South Sudanese refugees now get 30x50 meters, instead of the previous 30x30. It should be noted that the increasing population of Ugandans is likely to cause a shift in policy as Government would have to attend to the demands of the citizens as well. Uganda has one of the fastest growing populations in the world, with an annual growth rate of 3.28%.<sup>109</sup> This means that the country also faces major challenges of meeting the demands of its nationals.

On security, refugees pose direct and indirect threats for the host countries. To understand these threats, Ahimibisibwe has made reference to James Milner, who distinguishes between these two elements:

*First there are direct threats from 'refugee warriors' and armed exiles causing a 'spill-over' of conflict.... The direct threat, posed by the spill-over of*

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106 See "Rwandan refugees in Uganda may be thrown out – Minister Onek", Daily Monitor Newspaper, 15th November 2018.

107 Ahimibisibwe, *supra* note 86.

108 As above.

109 World Population Review, 2018.



*conflict and refugee warriors, is by far the strongest link between forced migration and conflict. Secondly, there are indirect threats posed by refugees through altering either the levels of 'grievance' or the 'opportunity structure' in a country of asylum.<sup>110</sup>*

Going by Milner's theory, direct security threats are those that result from activities of such groups as warriors and armed exiles engaging in rebel and military activities in a host state. Uganda has already experienced this kind of threat. For instance, in 1998, the military bombed some parts of Northern Uganda in its fight against the SPLA in refugee camps. Similarly, the Rwanda government in 2003 threatened to attack Nativale and Oruchinga settlements alleging that these settlements harboured Rwandan rebels. Indirect threats could include: refugees' involvement in crimes such theft; incidents of resource-based conflicts; and competition for employment with nationals, among others. These have actually manifested in the settlements in Isingiro and Arua as elaborated in Chapter 3.

Ahimbisibwe has also illustrated that refugees also have an impact on the environment in the host areas.<sup>111</sup> This is because they, among others, depend on the environment for firewood, construction poles, cultivation and fishing in lakes, rivers and swamps. This inevitably results into abuse of the environment which is accelerated whenever there are influxes of large number. This has been seen in both Arua and Isingiro.

### **2.3.3 The Legal and Policy Framework in Uganda**

#### ***i) The Policy Framework***

It should be noted from the start that unlike the legal framework, there is no single instrument or document which defines Uganda's policy on refugees. The country's policy approach is only deduced from various frameworks, strategies, plans and official pronouncements, in addition to the practices of Government towards refugees. Despite this, the country has received global recognition, including from the Pope, for its progressive approach towards refugees. Such international recognition of Uganda's policies and efforts is an opportunity for refugees. In Uganda, refugees are kept in refugee settlements where they, among others, are supported to be self-reliant.

Uganda ratified the 1951 UN Convention and its 1967 Protocol as well as the 1969 OAU Convention on Refugees, in addition to almost all the international and regional human rights instruments. At a policy level, since the late 1950s, Uganda has generally pursued an "open door policy." As a result, the country's admission rate is one of the highest in the world, which makes Uganda unique. In the settlements, refugees are

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110 Milner, J. *Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security*, Refugee Studies Centre Working Paper No. 4, University of Oxford, May 2000, at p17.

111 Ahimbisibwe, *supra* note 86.



provided land, which they can till for a living. According to Government policy, refugees who are self-sufficient are allowed to stay in urban areas, while those in need of humanitarian assistance reside in settlements”.<sup>112</sup>

The following have been underlined to characterise the progressive nature of Uganda’s refugee approach: (i) opening door to all asylum seekers irrespective of their nationality or ethnic affiliation; (ii) granting refugees relative freedom of movement and the right to seek employment; (iii) providing prima facie asylum for refugees of certain nationalities; and (iii) giving a piece of land to each refugee family for their own exclusive (agricultural) use.<sup>113</sup>

Although not officially articulated, refugees in Uganda have also contributed to the country’s economy. They have supported the local businesses through exercising their purchasing power as customers. Besides providing manual labour, refugees also employ Ugandans in Nakivale settlement, which contributes to the development of the local economy in the settlement and its environs. In addition, “while refugees impose a variety of security, economic and environmental burdens on host countries, they also embody a significant flow of resources in the form of international humanitarian assistance, economic assets and human capital”.<sup>114</sup>

The country’s policy approach is, among others, embedded in the Refugee and Host Population Empowerment (ReHoPE) Strategic Framework. ReHoPE is a transformative strategy and approach to bring together a wide range of stakeholders in a harmonized and cohesive manner to ensure more effective programming. This Framework is a response to specific challenges faced in delivering protection and achieving social and economic development for both refugee and host communities. ReHoPE supports the Government of Uganda’s integration of refugees into the National Development Plan II (NDPII, 2015/16–2019/20), through the Settlement Transformation Agenda (STA). This makes refugees part and parcel of the national development agenda.

ReHoPE is a key component in the application of the Comprehensive Refugee Response Framework (CRRF), as stipulated in the New York Declaration on Refugees and Migrants (19 September 2016). It is a key building block of a comprehensive response to displacement in Uganda, led by the Government of Uganda and the UN. This is in partnership with the World Bank, development partners, national and other international and national civil society actors, as well as the private sector (Government of Uganda, United Nations & World Bank, 2017: vii). As a result, among other factors, surrounding districts where refugee settlements are located have gradually started to witness improvements in public service delivery in some sectors such as health and educa-

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112 UNHCR, 2011.

113 World Bank *Uganda’s Progressive Approach to Refugee Management* available at <<http://www.worldbank.org/en/topic/fragilityconflictviolence/brief/ugandas-progressive-approach-refugee-management>> (accessed on 18th October 2018).

114 Jacobsen (2002: 577).

tion for both the host communities and the refugees. Kiranda, Ojok & Kamp argue that “through this initiative, host communities and refugees are envisaged to build strong social ties and create a better environment for economic engagement”.<sup>115</sup>

Uganda’s approach has also been informed by the Self-Reliance Strategy (SRS). UNHCR defines self-reliance as the ability of an individual, household or community to depend (rely) on their own resources (physical, social and natural capital or assets), judgment and capabilities with minimal external assistance in meeting basic needs. Dryden-Peterson and Hovil note that “the SRS was jointly designed by the Office of the Prime Minister (OPM) and UNHCR Uganda in May 1999, the culmination of a process that officially began in 1998”. The SRS was developed as a result of the need to respond to the protracted nature of refugee situations, especially the Sudanese refugees in West Nile and Northern parts of Uganda, in the late 1990s. It was later extended to other refugee settlements. The SRS has received global recognition as one of the most progressive refugee policies.<sup>116</sup>

Refugee protection requires a combined effort of all the stakeholders, including civil society. Non-Governmental Organisations (NGOs), Community Based Organizations (CBOs), the churches, media, professional bodies and the business community have played a role in Uganda. For example, NGOs have interventions, programmes and projects in refugee settlements. Several NGOs and religious bodies are implementing partners of UNHCR in the refugee settlements where they provide assistance and services to the refugees. It was for instance reported in the New Vision Newspaper of 6th March 2018 that the Seventh Day Adventist Church was fundraising for Congolese refugees in Uganda. The Catholic and Anglicans churches have also mobilized support for refugees. Caritas and Catholic Relief Services—both aligned to the Catholic Church—have provided humanitarian assistance to refugees in Uganda. The churches have also urged their followers to welcome refugees especially in the refugee hosting areas. These messages by religious leaders are encouraging and make refugees feel welcome. Since churches have influence on their followers, they have the potential of improving refugees-host community relations.

In addition, the media in Uganda has been instrumental in reporting and writing about refugees. For example, the New Vision and Daily Monitor newspapers have been consistently writing stories and editorials on refugees. The television stations like NTV, NBS, and UBC also report and hold talk shows on refugees. This is a positive development since it sensitizes the country, including host communities, about refugees, their rights, protection and the country’s obligations. The business community has started supporting refugees. In the academic context, the RLP of the School of Law, Makerere University has exhibited itself as a centre of excellence for refugee, conflict and migra-

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115 Kiranda, Ojok & Kamp (2017: 12).

116 See United Nations Development Programme, 2017.

tion studies. RLP has engaged in research, advocacy and litigation in these issues and has worked closely with a number of partners on access to justice issues.<sup>117</sup>

## ii) *The legal framework*

The legal framework is in the first place defined by the Constitution of the Republic of Uganda, 1995. One thing the Constitution emphasises is equality and non-discrimination, which is a right guaranteed to all persons found on the territory of Uganda.<sup>118</sup> The refugee specific framework is embodied in the Refugees Act (no. 8 of 2006) and the 2010 Refugees Regulations, which have been described as model laws. An early review of the Act found that the law had injected new blood into the veins of the administration policies and procedures for refugees. The Act not only contains international law components but is also reflective of Uganda's determination to uphold the principles relating to human rights and freedoms in the Constitution, as well as in relevant international and regional human rights instruments.<sup>119</sup>

The 1995 Constitution of Uganda guarantees all people rights, including the right to own property, freedom of movement and the right to work. Other rights include the right of association (as regards non-political and non-profit making associations); the right to access courts of law, including legal assistance under the applicable laws of Uganda; and rights of refugee children and women refugees. These rights are vital for the purposes of enabling refugees establish their own livelihoods and attain some level of self-reliance thereby reducing dependency on humanitarian assistance.

This Chapter presents the findings of the study which, as indicated in Chapter one above, are based on information obtained through the household survey as well as interviews with key informants from Isingiro and Arua districts. Key informants from various sectors were also interviewed at the national level, mainly in Kampala as well as Mbarara. This is because some Government agencies responsible for matters relevant to Rule of Law, Access to Justice and Security in Western Uganda are based in Mbarara. Indeed, the regional office in charge of refugees for South Western Uganda is located in Mbarara.

The presentation of the findings in this Chapter is guided by the indicators of Rule of Law, Access to Justice and Security as described in Chapter one.<sup>120</sup> With respect to Rule of Law, the indicators include performance; integrity, transparency and accountability; treatment of members of vulnerable groups; and the capacity of institutions. Access to Justice is measured using three broad parameters: cost of access to justice procedures; quality of these procedures; and the quality of the outcome of the procedures. As in-

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117 RLP has worked with both international and local civil society organisations as well as intergovernmental agencies, in addition to academic institutions.

118 Article 21.

119 Jamil Mujuzi From Archaic to Modern Law: Uganda's Refugees Act 2006 and her International Treaty Obligations (2008) 14 *East African Journal of Peace and Human Rights* 399.

120 See section 1.5.1 of Chapter One.

dicated in Chapter one, the indicators for security cannot entirely be divorced from Rule of Law. This is to the extent that security assessments in addition to the risks and threats people face look mainly at the existence, efficiency and effective of institutions with the mandate to ensure security. Moreover, accessibility of these institutions covers elements of Access to Justice. Indeed, the parameters of measuring Rule of Law as elaborated above apply with equal force to security institutions.

This Chapter is divided into three parts. Part one looks at the findings with respect to Rule of Law. Part two presents the findings relevant to Access to Justice. The last part looks at findings that relate to Security. In aggregation, it is found that while the state, through its agencies, and with the support of various agencies such as CSOs, has taken steps to enhance Rule of Law, Access to Justice and Security in Arua, there are several deficits that need to be addressed. This arises mainly from capacity gaps in some of the institutions, as well as lack of legal empowerment on the part of communities.

# 3

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## Key Findings

## 3.1 RULE OF LAW

It should be noted that the state of Rule of Law in Isingiro and Arua districts cannot be divorced from the general state of Rule of Law in the country. As elaborated in Chapter Two,<sup>121</sup> Uganda has put in place structures and institutions mandated to guarantee Rule of Law. This includes legislative and executive bodies, as well as judicial institutions. However, as illustrated above, there exist gaps, which compromise the performance, integrity and capacity of these institutions in the execution of their mandates. This includes limited personnel and facilities. The situation becomes a little complex in the context of Isingiro and Arua because of the presence of refugees in the two host districts host, some of whom permeate through the porous borders with arms and perpetrate extra territorial crimes.



*The biggest Rule of Law deficit in Arua and Isingiro is related to the capacity of the various agencies, including JLOS and other state institutions to effectively and efficiently execute their mandate.*

The findings from the two districts show that the biggest Rule of Law deficit in Arua and Isingiro is related to the capacity of the various agencies, including JLOS and other state institutions, to effectively and efficiently execute their mandate. This in turn compromises the capacity of these institutions to protect such vulnerable groups as women and children, both in the refugee and host communities. Moreover, the general refugee community as a vulnerable group remains greatly affected by the deficits. The capacity gaps result not only from the inadequacy of resources on the part of the institutions but as well from human resource capacity in terms of the skills to deal with some of the unique Rule of Law needs. One of the institutions with serious deficiencies is the Police. These deficiencies compromise not only Rule of Law but also Access to Justice and security as illustrated in sections 3.2 and 3.3 below.

### 3.1.1 Performance

Performance, as indicated in Chapter One,<sup>122</sup> connotes the fact that institutions provide efficient and effective services that are accessible and responsive to the needs of the people. This indicator has a close relationship with the capacity of the institutions, and this is extensively discussed below.<sup>123</sup> Nonetheless, there could be instances where the institution has the capacity but nevertheless performs poorly. For instance, where the institution deliberately fails to follow the law and thereby meet the needs of the people

<sup>121</sup> Section 2.2 of Chapter Two.

<sup>122</sup> Section 1.5

<sup>123</sup> Section 3.1.4 below.

it serves. In the case of the police, one example is the failure to arraign suspects before courts within 48 hours of their arrest as required by the law.<sup>124</sup> It was indicated that this was done as they wait for fuel to transport the suspects. In spite of this, the factors that affected the performance of both security and justice institutions were largely related to capacity gaps. This ranges from deficiencies in logistics such as lack of transport and fuel to human resource gaps. As is demonstrated below, security agencies, including the Uganda Police and Uganda Prisons, do not have sufficient human resources in the two districts and do not meet the international ratio of police officer to population or officer to prisoner. Inadequacies in facilities also affect the performance of the institutions in handling certain matters. The example demonstrated above is illustrative of the challenges the institution of the police faces with respect to handling SGBV cases and matters involving juveniles.



*Security agencies, including the Uganda Police and Uganda Prison Services do not have sufficient human resources in the two districts and do not meet the international ratio of police officer to population or officer to prisoner.*

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### **3.1.2 Integrity, Transparency and Accountability**

The quality of services provided by the state among others hinge on integrity, transparency and accountability. In the context of this study, the integrity, transparency and accountability of JLOS institutions such as police, prisons and courts is critical. Without this element of Rule of Law, refugees and host communities will not get equitable access to services, let alone access the services in an effective and efficient manner. This is in addition to wasting away of resources committed to addressing the needs of refugees and host communities. As illustrated in Chapter one, generally, there are some integrity gaps with respect to the performance of some JLOS institutions. There are indications that while refugee communities prefer using the informal justice structures available to them, these are in some respects not immune to corrupt tendencies. As illustrated above, in a 2016 study, RLP established that there were incidents of corruption in the informal justice mechanisms in Mbarara, Isingiro and Kyegegwa. This was especially the case with respect to the RWCs.<sup>125</sup> It was indicated that some RWCs sometimes ask for money to enable one to win a case. That on some occasions they asked for payment before they sat to resolve a case.

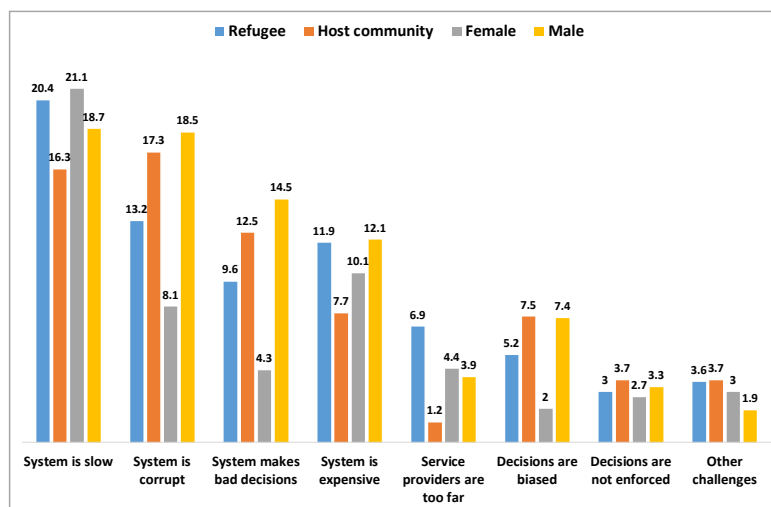
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124 See Article 23(4)(b).

125 See RLP, *supra* note 31, p. 23.

In the current study, similar allegations were made against the RWCs in Insiro.<sup>126</sup> However, there were no accusations made against other informal justice structures in the area. The only accusation levied against these and the Somali elders in Nakivale refugee settlement in particular, was that they tended to exhibit dictatorial tendencies.<sup>127</sup> As illustrated in the figure below regarding the challenges of using informal justice systems, dictatorial tendencies may be manifested through either biased decisions or bad decisions made.

**Figure 1: Challenges faced in accessing formal justice systems and LC courts by refugee status and gender (%)**



Source: Household survey

The figure above shows the perceptions of respondents in as far as accessing services under the informal justice systems is concerned. Based on the household survey, requests for payments were more common among host communities compared to refugees (42% versus 9%). Furthermore, refugees in Insiro were twice more likely to report paying for informal justice systems than their counterparts in Arua (14% versus 6%). For respondents who indicated payment for informal justice systems, two out of every three indicated that the fees were for “reporting the case.” Other reasons for paying fees include bribes and settlement/compensation fees. It is worth noting that payment of bribes was only mentioned by refugees in Insiro (15.4%) and hardly mentioned in Arua. Furthermore, Figure 1 above shows the main challenges faced by persons using the informal justice system. Among refugees, the most frequently cited challenge is that the system is very slow (27.6%), followed by decisions lacking enforcement (13.5%). Corruption is more frequently cited by non-refugees (13.3%) compared to refugee respondents (10.9%).

<sup>126</sup> Interview with Tasebura Kirya Amos, Assistant Settlement Officer – OPM -Mbarara Refugee Desk South West, on 29th October 2018.

<sup>127</sup> As above.



This consistent finding requires that focus should be placed on the RWCs and working on ways of improving their integrity as they remain key structures for promoting access to justice in the settlements. There is also need to make the other structures, including the Somalis structures, more participatory in their decision-making processes. This, however, requires a careful study of the cultural context in which this system works to avoid distortion and rejection by the Somali refugee communities.

Allegations of corruption were also made against some medical personnel for taking bribes before they complete Police Form 3.<sup>128</sup> This form provides medical evidence in cases of SGBV. While no specific incidents of this and names of culprits were provided, this would mainly affect women who are usually the victims of SGBV. Yet, by their vulnerable nature and poverty, the women would not have the money to pay the bribes.

In addition, as is illustrated in section 3.2 below, there are serious integrity deficits with respect to institutions charged with the responsibility with ensuring access to justice. This related mainly to acts of corruption, especially on the part of the Uganda Police. Perceptions of bias in favour of either refugees in access to services or host communities in the justice sector also raises questions of integrity.

### **3.1.3 Protection of vulnerable groups**

The JLOS institutions in both Arua and Isingiro have challenges meeting the needs of vulnerable groups in both host and refugee communities, especially children in conflict with the law, victims of SGBV and the general refugee community.

#### ***i) Children in conflict with the law***

It is an international norm that children in conflict with the law are to be separated from adults in detention facilities.<sup>129</sup> Such facilities should be adequate and conducive, considering the vulnerability and fragility of the children. This standard has not been met in Isingiro which faces a problem of inadequacy and absence of the juvenile detention and rehabilitation facilities, including detention and rehabilitation facility. At Isingiro Police Station, as much as there is what should be a separate detention room for juveniles, the same serves as the office space of the Children and Family Protection Unit (CFPU) of the area and is used for this purpose during the day and turned into a cell during the night.<sup>130</sup> During this time, the children are monitored only by ensuring that they do not leave the precincts of the station. There are no such facilities in Nakivale refugee settlement either. Moreover, the available facility, in addition to its competitive use, does not even have such facilities as beddings.

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128 Interview with SP Richard Erimu, DPC Isingiro.

129 See Article 37 of the UN Convention on the Rights of the Child.

130 Interview with ASP Patience Aharimpisya.

At Kashwojwa Police Post within Nakivale refugee settlement, juveniles are guarded at the counter<sup>131</sup> while in Arua, the CFPU is housed in a Unipot, (a metal tin shelter). The Unipot is not big enough to guarantee privacy. Based on this, among others, it was observed that the: “police station is poorly planned and not up to standard. Maybe police management can consider building a better design of a modern police station”.<sup>132</sup>

The problem of detention facilities is bigger than its manifestation in Isingiro and is a regional problem. It was confirmed that there is indeed no remand home for children in region with options of either Kabale or Fort Portal which are a distance away. Not even in Mbarara,<sup>133</sup> a seemingly affluent area as far as JLOS services is concerned. Indeed, the nearest remand homes are located far away in Fort Portal (180 kilometres) and Kabale (140 kilometres). This takes away the benefits of detaining children separate from adults. The benefits are related to physical and psychological protection during the period of detention with the accompanying reform and rehabilitation and other long-term benefits for the child.<sup>134</sup> In the case of Arua, while there is a remand home, the Arua Regional Remand Home, the police still face challenges when dealing with children in conflict with the law. It was reported that even when remanded to these homes by the courts, staff of the Home never collect the children, even when requested to do so. As a matter of fact, the relationship between the Police in Arua and the Remand Home is not amiable.<sup>135</sup> There is therefore an urgent need to mend this relationship and establish collaborative working methods. The reasons for the strain need to be investigated further and resolved. According to the In-charge of the Home, it services 9 districts in the region. In spite of this, the Home is logistically constrained. For instance, it has only one vehicle.<sup>136</sup> The same vehicle is used to collect children from police, from the communities and for all other transport needs.

The Arua Central Police Station did not have adequate facilities to handle juvenile offenders. Yet, this is the biggest station in the region and should be the well-equipped. One would not think that smaller stations were better equipped. According to a Police Officer at the Station:

*“In this station we should see a separate room for interviewing victims, cells built for male and female juvenile suspects. Can we have a separate bathing shelter for juveniles separate from adults? Maybe we can offer them special meals.”<sup>137</sup>*

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131 Interview with D/C Happy Alexander. CID Kashwojwa Police Station, on 22nd October 2018.

132 Focus Group Discussion with police officers at Arua Central Police Station.

133 Interview with Resident High Court Judge for Mbarara, Justice Duncan Gaswaga, on 22nd October 2018 at Lake View Hotel, Mbarara.

134 See Eva Manco “International Law- A Commentary on Article 37 of the United Nation Convention on the Rights of the Child” (2015) 7 Amsterdam Law Forum 55 .

135 Focus Group Discussion with police officers at Arua Central Police Station.

136 Interview with Mr. Okurut Moses, Incharge, Arua Regional Remand Home, on 29th October 2018.

137 Participant in Focus Group Discussion for police officers at Arua Central Police Station.

In addition, the courts do not have the infrastructure which is appropriate to try children in conflict with the law as well child witnesses as victims of crime. This includes such facilities as cameras.<sup>138</sup>

Besides the inadequacies of the juvenile detention facilities, there are some gaps regarding the appropriateness of handling cases involving children in conflict with the law by the Police. It was for instance indicated that in some cases juvenile offenders are tried as adults and thereby denied the rights and procedures that would apply to them under the Children's Act.<sup>139</sup> This law establishes Family and Children's Courts with friendly procedures and defines more conducive penal measures for children.<sup>140</sup> In Isingiro, it was indicated that in some cases police officers falsify the ages of persons who are otherwise children by putting these above the age of 18 years so that they are tried as adults.<sup>141</sup> This subjects children to criminal justice procedures that are inconsistent with their vulnerability. When convicted, this exposes children to criminal sanctions which are not appropriate and in their best interests. In Arua, police officers admitted that they lacked the requisite skills for handling these cases and require training to improve their capacity.<sup>142</sup> In Isingiro, it was also alleged that in some cases parents are incarcerated for offences committed by their children and only released upon payment of a bribe. According to one person:

*"When a child has committed a crime, they are not taken to jail instead the father is the one taken to jail and the father is the one who pays for the child because there is a certain amount of money, they charge you."<sup>143</sup>*

There were however no particular cases cited by the participants of the FGDs where the above had happened.

The probation and social welfare services in the district are inadequate, yet these are necessary in handling cases in which children are involved.<sup>144</sup> For instance, under the Children Act, in the trials of children in conflict with the law, the officers are expected to present to court reports on the child.<sup>145</sup> These reports are supposed to indicate "the social and family background, the circumstances in which the child is living and the conditions under which the offence was committed".<sup>146</sup> Unfortunately, in some cases

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138 Interview with Resident High Court Judge for Mbarara, Justice Duncan Gaswaga, on 22nd October 2018.

139 Chapter 59 of Laws of Uganda.

140 See Part IV of the Act.

141 Interview with His Worship Wandera Wilson, Grade I Magistrate, Isingiro District at Isingiro Magistrates court chambers, on 24th October 2018.

142 Focus Group Discussion with Police Officers at Arua Police Station on 19th October 2018. on 19th October 2018.

143 FGD participant, Nakivale, 23rd October 2018.

144 Interview with His Worship Wandera Wilson, Grade I Magistrate, Isingiro District, on 24th October 2018.

145 Section 95.

146 As above.

the reports never come through. It was reported that there is an element of neglect as far as these services are concerned.<sup>147</sup>

## **ii) Handling SGBV cases**

Equally so, the JLOS institutions both in Arua and Isingiro have no facilities for handling victims of SGBV, especially as far as psychological support and rehabilitation is concerned. For instance, there are no special shelters as well as special interview spaces for the victims, both in and outside the settlements in Isingiro.<sup>148</sup> It has been indicated that child-friendly rooms have been created at ODDP /HQs where victims of SGBV are interviewed separately, privately and in a child-friendly manner.<sup>149</sup> However, this is yet to be extended to other parts of the country.



***There are no special shelters as well as special interview spaces for the victims of SGBV, both in and outside the settlements in Isingiro***

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This is the case with all police facilities visited during the field survey. When the need arises, interviews are done using improvised space.<sup>150</sup> This has an effect on the victims' welfare, as well as their capacity to get justice. The Police should, however, be commended for creating a special unit — the SGBV Squad — to deal with SGBV cases. The challenge though is that members of this squad have not been given any special training on how to handle these cases.<sup>151</sup> This is the case in Mbarara and Arua.

At Arua Central Police Station, there are five officers who run the SGBV Desk. Unfortunately, they too have not received any special training on how to handle these cases.<sup>152</sup> The few officers who have gone through training have only attained this through attending workshops on the subject. No specialized training has been given.<sup>153</sup> Moreover, with the practice of transfers, sometimes the station loses officers with the experience and training.<sup>154</sup> While there is a squad in the Rwizi Police Region which handles cases of SGBV,<sup>155</sup> it is admitted that this squad is not adequately skilled to handle these cases.<sup>156</sup> The other gaps that relate to handling SGBV cases in both Arua and Isingiro are discussed in detail in section 3.3 below.

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147 Interview with SP Ibanda David, Ag Regional Police Commander/Regional CID, Rwizi on 22nd October 2019.

148 Interview with Tasebura Kirya Amos, Assistant Settlement Officer, Office of the Prime Minister, Mbarara Refugee Desk, on 19th October 2018.

149 Interview with the Director of Public Prosecutions Hon Justice Mike Chibita on 31st January 2019.

150 Interview with SP Murungi Gad, Mbarara District Police Commander, on 23rd October 2018.

151 Interview with SP Erimu Richard, Isingiro District Commander, on 22nd October 2018.

152 Focus Group Discussion with Police Officers at Arua Central Police Station.

153 Interview with SP Murungi Gad, Mbarara District Police Commander.

154 Interview with SP Ibanda David, Ag Regional Police Commander/Regional CID, Rwizi on 22nd October 2019.

155 The Rwizi Region comprises of the districts of Mbarara, Ibanda, Ntungamo, Kiruhura, Bushenyi and Isingiro.

156 Interview with SP Ibanda David, Ag Regional Police Commander/Regional CID Officer, Rwizi Region.



The office of the Resident State Attorney, Isingiro District. This JLOS institution is charged with prosecuting SGBV cases. Its work is largely hampered by inadequate capacity largely because of funding gaps.

### iii) Negative attitudes and language barriers

The capacity of some officials in Isingiro to address the needs of refugees as a vulnerable group is also compromised by negative attitudes and stereotypes about refugees. While there could be cases of refugees who are difficult to handle, this cannot be generalized and used to profile all refugees as, according to one officer, “big headed”. According to this officer:

*“You know, these refugees are pampered because they are given this and that and are cared for by both national and international agencies which make them think they are too big. Some Refugees would think they have an international immunity and therefore they would commit any crime with that feeling of protection, but now, we treat them like any other people.”*

There could be refugees whose conduct is not acceptable and should suffer the consequences of this, including through sanctions in criminal law. Nonetheless, in some cases, such behaviour may be bred by the challenges these people go through. What would be required in this situation are skills to handle this. Unfortunately, some of the Government officials dealing with refugees in both Isingiro and Arua have not been equipped with these skills.

In addition, the capacity of the state to protect refugees as a vulnerable group is compromised by language barriers. The refugees in Isingiro come from various countries and speak a multitude of languages. The nationalities in the refugee settlement include Ethiopians, Eritreans, Congolese, Rwandans, Somalis and Burundians. There is therefore a cocktail of languages: French, Lingala, Kinyarwanda, Kiswahili, Kirundi, Amharic, Tigrinya, Somali and Arabic. In Arua, the refugees came mainly from South Sudan, some with limited knowledge of English. They mainly speak Juba Arabic, Dinka and Nuer, Kakwa, and kuku. Indeed, a number of legal aid service providers<sup>157</sup> and Government officials alluded to language as a communication challenge.<sup>158</sup> This problem was compromising access to justice services and other services provided by the Local Government.<sup>159</sup> In Arua, the Chief Magistrate stated that they only get to know of the need for translation after the accused has taken the stand.<sup>160</sup> For Isingiro, it was established that the District administration did not have any bilingual or multi-lingual employees;<sup>161</sup> however, the UNHCR has trained some interpreters. The RLP has also over the last ten years trained 176 interpreters in a number of languages including English, French, Kiswahili, Lingala, Kirundi, Kinyarwanda, Somali, Tigrinya, Juba Arabic, Dinka, Nuer, Acholi and Madi.<sup>162</sup> RLP has noted that:

*“Skilled interpreters can make the difference between an individual client accessing justice, health care, psychosocial support, and being turned away. They can be the key that unlocks the doors of prison cells for detainees unable to explain themselves. They can also assure that the voices of forced migrants more broadly are heard in critical dialogues, research and policy fora.”<sup>163</sup>*

As commendable as the work of both UNHCR and RLP is, there still appears to be a high demand for translators and interpreters to be integrated in the formal state institutions which provide services to refugees, such as JLOS and local governments.

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157 Interview with Listowella Atto, Legal Officer, FIDA Uganda Arua Office, on 29th October 2018.

158 Interview with Mr. Muhangi Herbert, Resident District Commissioner (RDC), Mbarara, on 27th October 2018.

159 Interview with Aloysius Gumisiriza, Assistant Chief Administrative Officer and District Refugee Liaison Officer, Isingiro, on 24th October 2018.

160 Interview with His Worship Lubowa Daniel, Chief Magistrate Arua, on 30th October 2018.

161 See, section 1.6 of Chapter One. See also, section 2.2 of Chapter Two.

162 Refugee Law Project, RLP's Community Interpretation Unit @10 Years (2008 - 2018), available at <<https://www.refugeelawproject.org/rlp-resumes-direct-support-to-refugees/520-rlp-s-community-interpretation-unit-10-years-2008-2018>> (accessed on 10th November 2018).

163 As above.





*The Isingiro Magistrate Court: Lack of interpreters for refugees in conflict with the law has led to intermittent adjournments delaying justice and therefore a major hindrance to a fair trial.*

In Arua, the problem of language was said to be compounded by the lack of language skills to provide services to persons with special needs. This is especially with respect to persons with disabilities such as speech impairments requiring sign language and the visually impairments requiring brail facilities.<sup>164</sup>

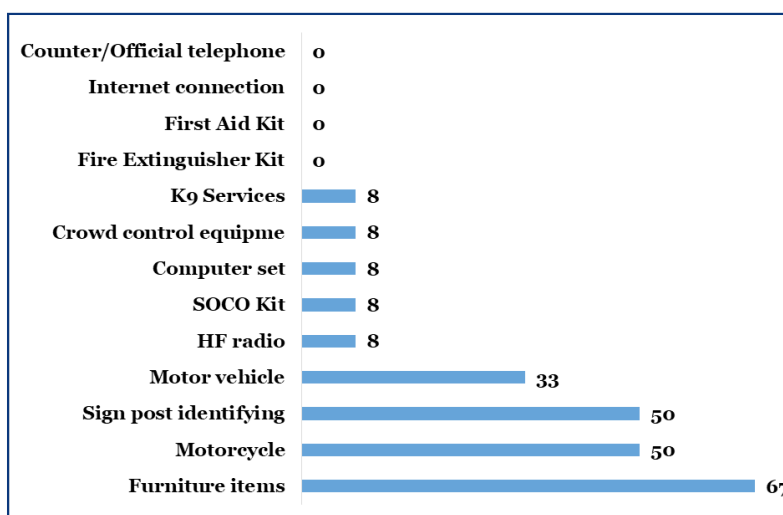
### **3.1.4 Capacity**

As demonstrated above, the capacity of state institutions to execute their mandates is a key element of Rule of Law.<sup>165</sup> Findings of the study show that both local government and JLOS institutions have serious capacity deficiencies. These relate mainly to inadequacy of human and material resources to perform their functions. Table 4 below shows the availability of materials in the police stations based on the survey of police stations in the two areas. Although majority of them have furniture and one in two has a motorcycle, the availability of other materials is poor. For instance, only 8 percent of the surveyed police stations had an HF Radio or K9 services.

164 Focus Group Discussion with police officers at Arua Police Station on 19th October 2018.

165 Section 1.5.1 of Chapter One.

Figure 2: Availability of materials at police stations (percent)



Source: Police survey in Arua and Isingiro

The JLOS institutions are facing serious logistics and human resources deficiencies. In Isingiro, for instance, most of the key institutions, including the Probation and Social Welfare Officer (PWSO), the District Liaison Officer and Officers of the CFPU did not have transport.<sup>166</sup> Without means of transport, it is not possible for these officials to move from one place to another, a prerequisite for them to discharge their functions effectively and efficiently. Yet, even those that have means of transport still face challenges with fuel. For instance, the District Police Commander (DPC) of Isingiro is given only UGX 900,000 for fuel each month to run operations in the entire District. Similarly, the Regional Police Commander (RPC) is given UGX 800,000 to run operations in the entire Rwizi Region.<sup>167</sup> Arua was facing similar fuel problems, where telephone airtime allowances of UGX 10,000 per officer were also found to be inadequate. It was described as “nothing”.<sup>168</sup> In Arua, the Chief Magistrate indicated that they received only UGX 800,000 for fuel for a quarter, which they also sometimes use to travel to Kampala (497 kilometres) for administrative reasons.<sup>169</sup>

166 Interview with Aloysius Gumisiriza, Assistant Chief Administrative Officer and District Refugee Liaison Officer, Isingiro, on 24<sup>th</sup> October 2018

167 Interview with SP Ibanda David, Ag Regional Commander/ Regional CID officer, Rwizi Regional Police, on 23rd October 2018.

168 Focus Group Discussion with police officers at Arua Police Station on 19th October 2018.

169 Interview with His Worship Daniel Lubowa on 30th October 2018.





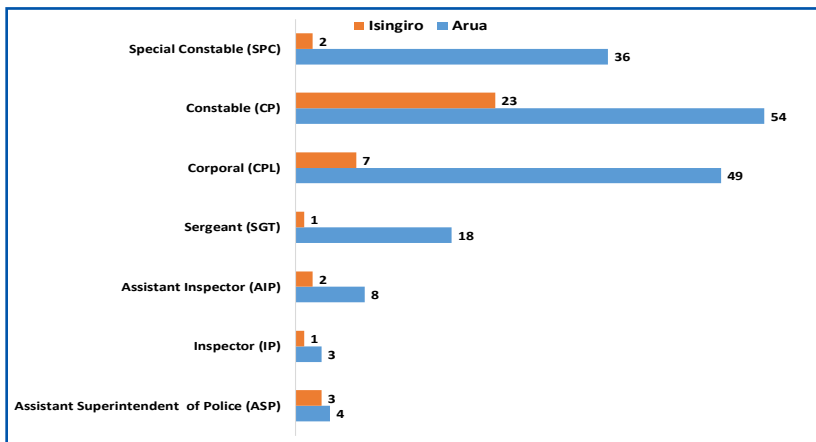
There is 1 police officer for every 2780 people, far below the recommended international ratio of 1:450. Moreover, only 20% of these are women.

RWIZI REGIONAL ESTABLISHMENT																		
DATE	ACF	SSP	SP	ASP	IP	AIP	SGT	CPL	CONS.	DRV	SPC	CLEERS	TOTAL	POPULATION	AREA	BIKE RIDERS	BIKE CHIEF	BIKES
22/10/2018	-	-	03	12	08	03	11	02	16	06	04	04	69	-	-	05	09	-
RWIZI REGIONAL HEADQUARTERS	-	-	01	20	10	27	46	70	110	03	13	03	307	142,350	1,460	03	37	03
MBARARA	-	-	01	14	07	14	23	63	91	05	-	01	219	140,000	1,000	05	43	14
NTUNGAMO	-	-	13	04	12	22	26	44	04	92	01	218	140,000	1,000	04	38	04	
KIRUHURA	-	-	01	13	03	10	20	23	46	02	62	03	183	140,000	1,000	02	28	02
IBANDA	-	-	01	13	07	20	26	43	41	03	35	02	191	140,000	1,000	04	38	01
ISINGIRO	-	-	01	13	07	20	26	43	41	03	35	02	191	140,000	1,000	04	38	01
TOTAL	-	-	07	85	39	86	149	273	349	23	206	14	1183	16,514,000	142,350	23	193	24

A board at Rwizi Regional Headquarters in Mbarara shows the population of each of the 5 districts and the numbers of police officers and transport capacity for the districts. The districts' resources are stretched because of the increase burden of hosting refugees.

In respect to human resources, there were gaps in the number of police officers in Isingiro. The District, according to the DPC, has only 199 police officers, of which 55 are in the Settlements.<sup>170</sup> Going by the population demographics illustrated in Chapter One above,<sup>171</sup> there is only 1 police officer for every 2780 people, far below the recommended international ratio of 1:450.

Figure 3: Number of Police Officers in Isingiro and Arua



170 Interview with SP Richard Erimu, DPC Isingiro, on 22nd October 2018.

171 Section 1.5.2

Moreover, only 20% of these are women. This means that police services to women are limited since there are few women at the police station to serve them. According to a female participant in a focus group discussion in Nakivale:

*“We also want police women on board at the police station, we always find men when at time we have problems as women and want to talk to fellow women.”*

Another female respondent in Isingiro remarked:

*“The challenge I have is that the police stations don't have women whom we can open up to when we have our complaints. When you come to the police station its only men we find there and usually they don't have time for us.”<sup>172</sup>*

With respect to women officers, it was indicated that one of the reasons women shun working in the settlements is because there are no gender-sensitive facilities that would enable them work comfortably.<sup>173</sup> Similar deficits exist in the prisons service. For instance, at Isingiro prison, the ratio of uniformed officer to prisoners is 1:12 as opposed to the international standard of 1:3.<sup>174</sup>

Moreover, there are logistics issues related to the welfare of police officers. This includes the inadequate accommodation.<sup>175</sup> Isingiro, for instance, has no police barracks. Security officers of other agencies, in the District face a similar challenge.<sup>176</sup> As already indicated, the District has only 3 vehicles, of which 2 are in the settlement and only one is available for the rest of the District. This vehicle also serves as the official means of transport for the DPC. Transport constraints have in some cases resulted into victims of crime and suspects being transported in the same vehicle.<sup>177</sup> This was also said to be the case in some places in Arua.<sup>178</sup>

In both Arua and Isingiro, the UNHCR working through the OPM should be commended for giving all police officers deployed in the refugee settlements a top-up allowance of UGX 6,000 per day. This compliments the rather modest salaries police officers. Nonetheless, the allowance is still considered inadequate and needs to be improved upwards.<sup>179</sup>

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172 FGD participant, New Hope village, Nakivale Settlement, 20th October 2018.

173 Interview with Claire Hawkins Coordination Specialist, Focal Point for Peace, Security and Humanitarian Action, at UN WOMEN, Kampala on 5th December 2018.

174 Interview with ACP Byamugisha Frank, Regional Prisons Commander Western, interviewed on 23rd October 2018.

175 Interview with SP Richard Erimu, DPC Isingiro, on 22nd October 2018...

176 Interview with Mr. Weijahe Godfrey, Isingiro District Internal District Officer, on 22nd October 2018.

177 Interview with His Worship Twakirye Samuel, Chief Magistrate Mbarara, on 25th October 2018.

178 Interview with Mr. Okwera O/C Yoro Rhino refugee settlement Police Station on 20/10/2018.

179 Interview with Inspector of Police Afayo, Officer in Charge of Imvepi Police Station on 25th October 2018.

Moreover, some police stations in the area have limited holding cell capacity. For instance, Kashwojwa Police Station has one holding cell, which is only for male inmates.<sup>180</sup> Female suspects are temporarily transported to Kabahenda Police Post.<sup>181</sup> There was no comprehensive assessment of the existence and cell capacity of all the police posts in both Isingiro and Arua. A study into these issues would establish not only the capacity, but the state of facilities as well as accommodation of juveniles and female suspects.

In addition to the above, judicial services were also overstretched, with the High Court circuit based in Mbarara, for instance, serving areas as far as the Tanzanian border and up to Kasese. As of April 2018, the region had a case-backlog of over 1,459 criminal cases and 1,064 civil cases,<sup>182</sup> and was being served by only two judges.<sup>183</sup> The performance of the courts is also affected by the human resource deficiencies in the Office of the Director of Public Prosecutions (ODPP). By November 2018, Mbarara Regional Office had three staff, one Principal State Attorney, a Data Clerk and Office Assistant.<sup>184</sup> Isingiro has one state attorney and one prosecutor. These officers are overstretched. In some cases, they are required to appear in different courts at the same time which is not feasible.<sup>185</sup>



***Performance of courts is affected by human resource deficiencies in the Office of the Director of Public Prosecutions. The Office does not have enough manpower to provide effective prosecution services.***

The pressure on the JLOS services is not exceptional to Isingiro or Arua. This is the case with all parts of the country. However, the problem is compounded in the districts experiencing influxes of refugees. It was for instance revealed that Mbarara prison, which serves Isingiro, was designed to house a maximum of 400 inmates but now has 1613.<sup>186</sup> On its part, Arua Prison which was constructed to hold 270 inmates now has 800.<sup>187</sup>

Court human resource in Isingiro is inadequate. The Magistrate's Court which serves the whole District of 100,000 persons has only one Grade I Magistrate, whose court has only 9 support staff.<sup>188</sup> The Chief Magistrate who oversees Isingiro is the Chief Magis-

180 Interview with D/C Happy Alexander. CID Kashwojwa Police Station, on 22nd October 2018.

181 As above.

182 See the Judiciary of Uganda "PJ Assesses Mbarara Performance" available at < <http://judiciary.go.ug/data/news/529/PJ%20Assesses%20Mbarara%20High%20Court%20Performance.html>> (accessed on 11th November 2018).

183 Interview with Justice Duncan Gaswaga, Resident Judge Mbarara.

184 See <[http://www.dpp.go.ug/docs/Regional\\_Offices\\_Staff.pdf](http://www.dpp.go.ug/docs/Regional_Offices_Staff.pdf)> (accessed on 12th November 2018).

185 Interview with His Worship Twakirywe Samuel, Chief Magistrate Mbarara, on 25th October 2018.

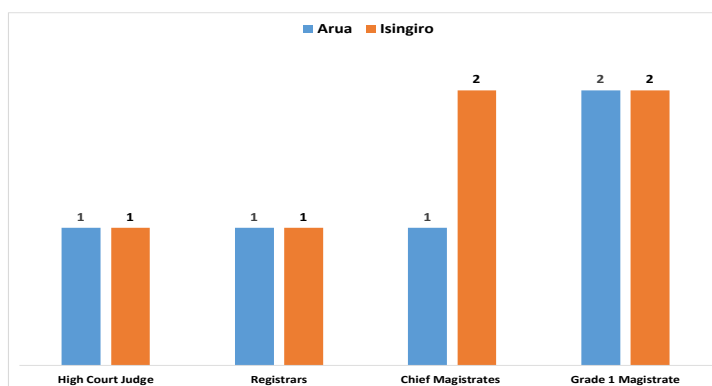
186 Interview with Frank Byamugisha, Regional Prisons Commander, on 24th October 2018.

187 Revealed at meeting with RCC and DCC on 29th November 2018.

188 Interview with His Worship Wandera Wilson, Grade I Magistrate, Isingiro District, on 24th October 2018.

trate of Mbarara and is overstretched since he also acts as the Registrar of the Mbarara High Court circuit.

Figure 4: No of Judicial Officers in Arua and Isingiro



Source: JLOS Secretariat (2018)

Efficient provision of justice services requires reference to legal materials. This includes statute books and casebooks. With modern technology, it is also critical for judicial officers to have access to modern ICT facilities for processing information. This includes computers, printers and other facilities. On a positive note, judicial officers in Mbarara and Isingiro confirmed access to reference materials, the only challenge faced is that the effective use of these was being constrained by space.<sup>189</sup>

### 3.2 ACCESS TO JUSTICE

There is a close relationship between Rule of Law and Access to Justice. Rule of Law deficits automatically and directly translate into access to justice deficits. For this reason, the status of Rule of Law in Isingiro and Arua as described above has implications for access to justice for host communities and refugees in the two districts. By way of example, failure to address the needs of vulnerable groups such as victims of SGBV means that they may not be able to access remedies. If they eventually do, it could come at a high cost not only monetarily but also physically and emotionally. Based on this, this sub-section partly builds on the Rule of Law discussions in the previous sub-section to illustrate the status of Access to Justice in Isingiro and Arua. The sub-section is arranged around the indicators of Access to Justice as illustrated in Chapter One above,<sup>190</sup> which include the following: Cost of accessing justice; quality of the procedure; and quality of the outcome of the procedure. As indicated in Chapter 2 above,<sup>191</sup> the Government of Uganda has taken several steps, including legislative and policy measures, to promote Access to Justice in Uganda.

<sup>189</sup> Interview with His Worship Wandera Wilson, Grade I Magistrate, Isingiro District, on 24th October 2018.

<sup>190</sup> See sub-section 1.5.1 above.

<sup>191</sup> See section 2.3.1. of Chapter 2.

### 3.2.1 Cost of accessing justice

The cost of accessing justice involves various expenses which users of justice services have to incur. This includes formal fees such as legal and court fees, as well as incidental costs such as those associated with travel and legal fees. Moreover, the costs of justice extend beyond monetary costs associated with such things as emotional stress and time wasted. The poverty which afflicts some members of the refugee and host communities makes it hard for them to afford these costs. Moreover, the costs are compounded by corruption. Several complaints of corruption were made against the Police, in both Isingiro and Arua. One focus group participant in Isingiro for instance decried the prevalence of the practice:

*The Police ask for money before they handle your complaint. I lost the trust I had for them and I would rather take my complaint to the church elders.<sup>192</sup>*

Similar sentiments were expressed in Arua:

*"It is better not to report cases to police because we think the cases will not be solved fairly. Sometimes they ask for money to solve the issue. So, we better report them to clan leaders."<sup>193</sup>*

As a result, some genuine criminal cases go unresolved, when the complaints cannot afford the cost of bribing the officers to handle the case. This perception of the corrupt nature of the case has deterred complainants from reporting even what would appear serious crimes as rape. In some cases, suspects have to pay to secure their release on police bond and if they cannot afford the same, they will remain in custody. This is irrespective of the fact that in principle police bond is free. It was alleged that in some cases the bail money asked is as high as UGX 300,000.<sup>194</sup>

In some cases, besides costs associated with bribery, those who seek services from Police are forced to pay what out rightly appear to be illegal fees. For instance, one complainant reported having been forced to provide food for a suspect he reported to Police:

*"Yes, I have ever reported my case to the police station, after reporting my case the person was put in prison, but the police told me that I should be bringing for the prisoner food every time all else he will be released. So, when I missed one day, I found the prisoner had been*

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192 Focus Group Discussion participant at Kabahinda C village in Nakivale Refugee Settlement, on 23rd October 2018.

193 Participant in Focus Group Discussion Odubo II Zone, Rhino refugee settlement, on 21st October 2018.

194 As above.

*released and the next day he was at my door laughing at me and said that you stopped bringing for me food and now I have been released. In other words, the police did not help us.”<sup>195</sup>*

It could however not be established whether this was a widespread practice or an isolated incident. According to the District Internal Security Officer (DISO) of Arua, the corruption referred to in the police was also perceived and not real:

*“Corruption by the Police is just perceived but not real. But when complaints against a given police officer become rampant, such officer is transferred away from that position or punished under the police professional/ethical code of conduct.”<sup>196</sup>*

One is not sure whether transferring a police officer against whom a complaint has been levied is a solution. This simply transfers the problem to another location. The most appropriate response would be investigation and prosecution. In Arua, it was disclosed that the Police Professional Standards Unit (PSU), deals with some of the complaints of corruption, including extortion, mismanagement of cases and illegal arrests, among others.<sup>197</sup>

In some refugee communities, the formal courts were not trusted. The courts were accused of favouring the nationals at the cost of refugees.<sup>198</sup> Interestingly, reverse sentiments were expressed in host communities, accusing the systems of favouring refugees:

*“South Sudanese offenders are sometimes treated fairer than Ugandans. It is as if they are a special people; they are even handed shorter jail sentences. Their problems are solved faster than Ugandans’. Even when the locals report them to the police, they are handled with leniency. Some of the nationals have resorted to reporting cases against.”<sup>199</sup>*

The sentiments of the host communities were separately confirmed by the Officer in Charge of Imvepi Police Post:

*“The refugee suspects often benefit from legal assistance from development partners. When we arrest refugees, we get so many people intervening for their release. Even courts tend to be*

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195 Focus Group Discussion participant, New Congo village, Nakivale Refugee Settlement, on 22nd October 2018.

196 Interview with Stephen Dravu, District Internal Security Officer (DISO) Arua on 19/10/2018.

197 Interview with Vuata Evans of Police Standards Unit, Arua, on 29th October 2018.

198 Focus Group Discussion at Odubo II Zone, Rhino refugee settlement, on 21st October 2018.

199 Focus Group Discussion at Point J Trading Centre, Imvepi, on 25th October 2018.

*sympathetic with refugee offenders by handing them light sentences compared to the offences committed. This often does not go down well with the national, who have to face the full wrath of the Law.”<sup>200</sup>*

This is confirmation of the failure on the part of host communities to understand the vulnerabilities of refugees and the fact that they need special attention. At the same time, it is important to deal with these perceptions, which if left unaddressed can heighten the tensions between the refugees and the host communities, thereby posing a security risk.



*Imvepi Police Post. Host communities in the area think that refugee suspects often benefit from legal assistance from development partners unlike the host communities who are left on their own.*

### **3.2.2 Resort to Informal justice mechanisms and local council courts**

The lack of confidence in the formal justice institutions due to corruption and the costs of justice were pushing communities to resort to the informal methods of disputes resolution. This is in addition to the Local Council Courts, especially by the host communities. These are considered to be less corrupt, less costly and more accommodative. The informal justice systems preferred for this purpose include religious and cultural leaders, who are also considered more placed to handle domestic issues. This was also largely practiced in the host communities.<sup>201</sup> This preference is also compounded with familiarity and strong cultural ties of refugees to informal or non-state-based mechanisms of dispute resolution. Based on the household survey, about one out of every four respondents had used informal justice systems in the past year (25% for refugees and 23% for host community). The most common informal systems used by refugees are RWCs (57%) followed by LC (31%) and cultural/traditional leaders (15.6%). On the other hand, host communities mainly use LCs (58%) followed by clan leaders (11%).

200 Interview with Inspector of Police Afayo, Officer in Charge, Imvepi Police Post.

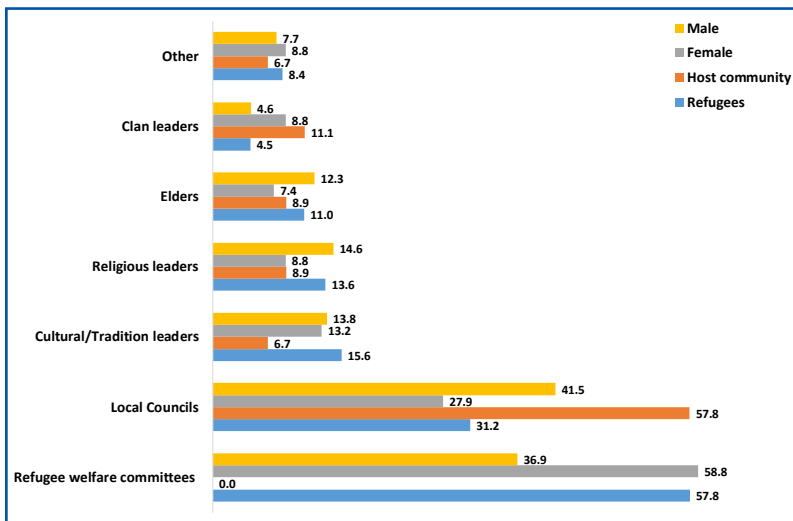
201 FGD interviews in host communities of Mbare, Rugaga and Isingiro Town Council on 25th and 23rd October respectively.



*Those who prefer religious leaders are motivated by the use of the known principles in the Bible by these leaders to resolve disputes. Similarly, those who use cultural leaders are motivated by the use of cultural rules of norms that are widely known.*

Based on the household survey, about one out of every four respondents had used informal justice systems in the past year (25% for refugees and 23% for host community). The most common informal systems used by refugees are RWCs (57%) followed by LC (31%) and cultural/traditional leaders (15.6%). On the other hand, host communities mainly use LCs (58%) followed by clan leaders (11%). Based on gender Figure 4 also shows that female headed households were more likely to report using RWCs (59 percent) followed by Local Councils (28 percent) and Cultural leaders (13 percent). On the other hand male headed households report using LCs more (41.5 percent) followed by RWCs (36 percent).

Figure 5: Types of informal justice system and LC courts used in the past 12 months by refugee status and gender (%)



Source: Household survey

In some cases, matters are taken to the NGOs working in the area.<sup>202</sup> Those who prefer religious leaders are motivated by the use of the known principles in the Bible by these leaders to resolve disputes. Similarly, those who use cultural leaders are motivated by the use of cultural rules of norms that are widely known. This is to some extent evidence and reason for the negative attitude towards the formal legal structures and the law they use, which is not understood by the most refugees and some host commu-

202 As above.



nities. There is a general feeling that informal systems accord participants appropriate respect, irrespective of their social or economic status<sup>203</sup> and administer restorative justice. A participant in an FGD in Isingiro illustrates the comfort of communities in using the informal system:

*“When I go to the pastor, he even prays for me and there isn’t any corruption when listening to you and even the pastor settles the cases as fast as possible. The other thing is that the informal justice sector doesn’t ask money in order to listen and adjudicate your case or problem.”<sup>204</sup>*

In the Muslim Somali community, the Quran takes the place of the Bible as used in the Christian communities.<sup>205</sup> Indeed, in some refugee communities, the preference for the informal systems, especially the elders, is a cultural imperative. This is the case especially in the Somali refugee communities, who view the elders as the most appropriate forum to settle matters.<sup>206</sup> It was indicated that in Arua, these mechanisms were dealing with such cases as inheritance; marital disputes; and other matters relating to custom.<sup>207</sup> The qualitative household survey shows that in the host communities, 95% of the people were confident the informal mechanisms understood their justice needs, while in the refugee communities the figure stood at 92%.



***In some refugee communities, the preference for the informal systems, especially the elders, is a cultural imperative.***

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The duration of cases under the formal justice system, including the Police, featured prominently as a source of concern and was partly responsible for preference for the informal justice systems and for the local council courts. Indeed, as illustrated in figure 3 above, the slow nature of the process under the formal justice system was the most cited challenge among refugees (20.4 percent). According to a participant in a FGD discussion in Isingiro:

*“If the case is at the Chairman’s place it takes a week but with the police it takes months and at times it may take forever to come to end.”<sup>208</sup>*

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203 Focus Group Discussion with Somali refugees in Nakivale, on 24th October 2018.

204 Focus Group Discussion participant, New Hopevillage, Nakivale Refugee Settlement, on 20th October 2018.

205 Focus Group Discussion with Somali refugees in Nakivale, on 24th October 2018.

206 Focus Group Discussion with Somali refugees in Nakivale, on 24th October 2018.

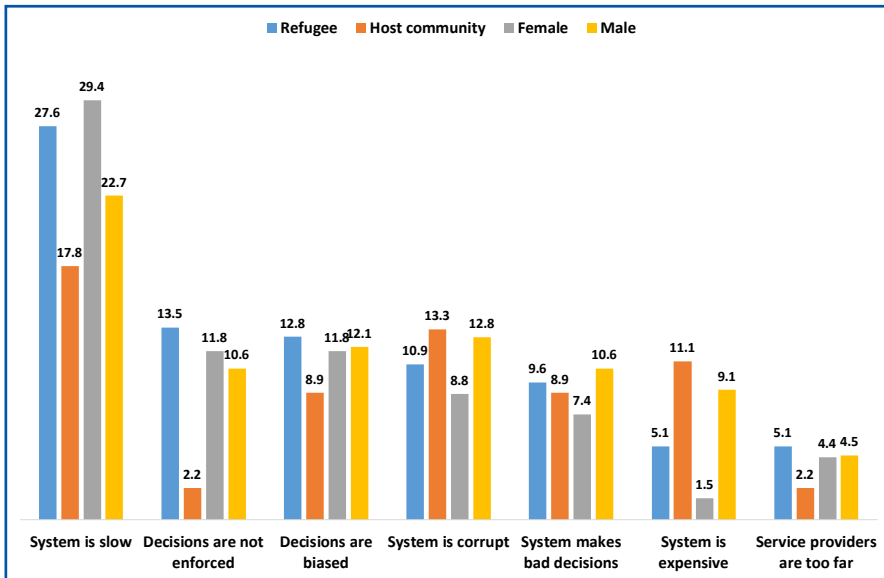
207 Interview with Listowel Atto, Legal Officer, FIDA Uganda Arua Office, on 29th October 2018.

208 As above.



Congolese refugees attending a focus group discussion at New Hope Village, Nakivale Refugee Settlement. The refugees think informal justice systems are more efficient and effective in resolving disputes as opposed to the formal ones.

Figure 6: Challenges of using informal justice systems by refugee status and gender (%)



Source: Household survey

Figure 5 shows the main challenges faced by persons using the informal justice system. Among refugees, the most frequently cited challenge is that the system is very low (27.6 percent), followed by decisions lacking enforcement (13.5 percent). Corruption is more frequently cited by non-refugees compared to refugee respondents (13.3 versus

10.9 percent respectively). By gender Figure 1 shows that a higher proportion of female headed households than male headed households indicate that the informal justice system is slow (29.4 vs 22.7 percent). The largest gender differences are with respect to cost of informal justice systems—9.1 percent of male headed households indicate that the system is expensive compared to only 1.5 percent for female headed households.

Interestingly though, from the results of the qualitative household survey, there was a variance in responses between host communities and refugee communities when asked whether the informal system available to them required some form of payment. In the host communities, aggregating both Arua and Isingiro, 42% of respondents confirmed that the mechanisms required payment and 48% said they did not. Conversely, for refugee communities, only 14% asserted that payment was required. However, as seen above, some of the informal mechanisms, especially the RWCs are not immune from acts of corruption.<sup>209</sup> This could be the costs element that is mentioned.



*Overall, there is a demonstrable preference of the informal justice mechanisms.*

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Nonetheless, on the potential of the informal justice mechanisms to provide remedies such as compensation, both host (100%) and refugee communities (99%) answered in the affirmative. In spite of this though, the figures generally show limited utilisation of the mechanisms. In Arua, it was established that only 19% of the respondents had used the mechanisms in the last 12 months. In Isingiro, the figure stood at 37%. This though could be explained by the fact that those who have not used the system in the last 12 months have not had the need to do so, even when they trust the mechanisms.

Overall, there is a demonstrable preference of the informal justice mechanisms. This is not only because of the shortfalls and costs within the formal justice system, but also the pull factors associated with traditions, religious persuasion and flexibility. The formal justice system therefore has to create functional linkages with streamlined and formally recognised informal justice structures within the target communities.

### **3.2.2 Quality of the procedure**

The effective and efficient administration of justice and implementation is among others premised on the existence of coordination between the different institutions providing justice services. In Uganda, this coordination is achieved through bringing together the various institutions under one sector, JLOS. The 18 institutions under this Sector include: Uganda Registration Services Bureau (URSB); Uganda Prisons Services (UPS); Uganda Police Force (UPF); Uganda Law Society (ULS); Uganda Law Reform Com-

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<sup>209</sup> Section 3.1.2 above.

mission (ULRC); Uganda Human Rights Commission (UHRC); the Tax Appeals Tribunal (TAT); Ministry of Justice and Constitutional Affairs (MoJCA); Ministry of Internal Affairs (MIA); Law Development Centre (LDC); Office of the Director of Public Prosecutions (ODPP); Directorate of Citizenship and Immigration Control (DCIC); Centre for Arbitration and Dispute Resolution (CADRE); National Identification and Registration Services (NIRA), and Judiciary. In addition, the public is represented in JLOS committees by civil society organisations.

The JLOS structures permeate through down to the regional and district levels. At the regional levels, there are the Regional Chain Linked Committees (RCCs) and District Chain Linked Committees (DCCs) at the district levels. The DCCs are composed of representatives of all JLOS institutions in a district. RCCs and DCCs are composed of the JLOS institutions represented at those levels and also local leaders and civil society organisations. The primary mandate of the RCCs and DCCs is to oversee and coordinate improvements in the administration of justice and maintenance of law and order at those levels. Unfortunately, resulting from logistical challenges, the RCCs and DCCs were not fully functional in Mbarara and Isingiro. For instance, the meetings of the RCCs were not being held as frequently as they should, which should be quarterly.<sup>210</sup> This has resulted from budgetary constraints as well as the unavailability of the different members due to their busy schedules.<sup>211</sup>

As seen in Chapter One above,<sup>212</sup> voice and neutrality entail the extent to which the processes are neutral and has controls that guarantee the quality of justice. This is in addition to the element of respect for the users of the procedure, seen in politeness and proper communication. Another element of the quality of the procedure is procedural clarity, which includes timely explanation of processes as well as respect for rights. However, there are a number of challenges bedevilling the quality of justice delivered.

### ***i) The language challenge***

One rule of law challenge illustrated above relates to the difficulties refugees face to access services arising from language barriers. In the context of access to justice, this barrier impedes the quality of justice to the extent that it denies refugees the right to fair trial. One of the elements of this right as elaborated in Article 28 of the Constitution is the right of everyone charged of a criminal offence to “be informed immediately, in a language that the person understands, of the nature of the offence”.<sup>213</sup> This is in addition to the right to “be afforded, without pay by that person, the assistance of an interpreter if that person cannot understand the language used at the trial”.<sup>214</sup> Additionally, Article 23(3) provides that “[a] person arrested, restricted or detained shall be

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210 Interview with His Worship Twakiryre Samuel, Chief Magistrate Mbarara, on 25th October 2018.

211 As above.

212 Section 1.5.1.

213 Article 28(3)(b).

214 Article 28(3)(f).

informed immediately, in a language he understands of the reasons for the arrest ...” It was indicated that in Mbarara, the High Court was facing a problem of not having enough and committed interpreters.<sup>215</sup> The situation at the Isingiro Magistrate’s Court is not any different.<sup>216</sup>

## ii) Gaps in legal services

Both refugee communities and host communities in Isingiro and Arua face challenges accessing legal services. While access to legal services is a general problem in Uganda, it is worse in rural settings and even greater with respect to vulnerable groups such as refugees in light of the fact that there is no national state funded legal aid scheme. Information published by the Ministry of Justice and Constitutional Affairs shows that Uganda has 774 approved law firms, of which 636 are based in Kampala.<sup>217</sup> This means that the rest of the country shares only 138 firms. Moreover, even then those firms outside Kampala are in such urban centres as Jinja, Mbale, Mbarara, Masaka, Lira, Gulu, and Iganga, among others. Indeed, there is no single private law firm in Isingiro. In this place, only a few individuals are lucky to get the services of lawyers provided mainly by civil society entities. Nonetheless, the quality of the services provided to these individuals need to be interrogated. It was for instance indicated during the field survey that most of the lawyers who appear before the court in Isingiro do not have practising certificates.<sup>218</sup>



*Isingiro does not have even a single law firm. Those lucky to get legal services only access the same from a few legal aid service providers working in the area.*

There are Legal Aid Service Providers (LASPs) that offer legal services in Isingiro and Arua. In Isingiro, this includes organisations such as Care and Assistance for Forced Migrants (CAFOMI), HIJRA, ULS and RLP. CAFOMI, for instance, creates legal awareness among refugee communities in the areas of land and property rights, housing and legal documentation.<sup>219</sup> RLP is even able to access prisons and has secured a memorandum of understanding with Uganda Prisons Services for this purpose.<sup>220</sup> These organisations are however overstretched, and they have resource challenges. As result, some organisations, including CAFOMI, are not able to provide court representation.<sup>221</sup> In addition,

215 Interview with Justice Duncan Gaswaga, Resident Judge Mbarara, on 22<sup>nd</sup> October 2018.

216 Interview with His Worship Wandera Wilson, Grade I Magistrate, Isingiro District, on 24<sup>th</sup> October 2018.

217 See Ministry of Justice and Constitutional Affairs List of Approved Law Firms as at 20<sup>th</sup> September 2018, available at <<http://www.justice.go.ug/sites/default/files/APPROVED%20AND%20NOT%20APPROVED%20LAW%20FIRMS%202017.pdf>>.

218 Interview with His Worship Wandera Wilson, Grade I Magistrate Grade, Isingiro District, on 24<sup>th</sup> October 2018.

219 Interview with Ms. Namugere Florence, Protection Officer with Care and Assistance for Forced Migrants, Western Uganda, on 22<sup>nd</sup> October 2018.

220 Interview with Naggayi Noelin, Legal Officer - Refugee Law Project, on 22<sup>nd</sup> October 2018.

221 Interview with Ms. Namugere Florence, Protection Officer - Care and Assistance for Forced Migrants, Western

the organisations have concentrated their legal services on refugees, which defeats the integrated approach of ReHoPE which requires services in the areas with refugees to be provided in an integrated manner. This approach requires that the services are apportioned at 30% for the host communities and 70% for the refugee communities. One of the reasons given for failure to do this is the limited funding at the disposal of some of the organisations.<sup>222</sup> There are also questions regarding the sustainability of these services which are largely project-based and rely on donor funding.



*Part of Rhino Refugee Settlement in Arua.*

In Arua, World Vision has trained some child protection committees. ULS provides legal services as well as creating legal awareness. In addition, FIDA Uganda also has an office in Arua, from where it provides legal aid services to vulnerable women and children.<sup>223</sup> Like ULS, FIDA handles both civil and criminal cases. FIDA is also engaged in watching briefs in some criminal cases, especially those involving SGBV. ULS has also conducted some training of paralegals. However, the organisations have thin staff on ground and are not able to satisfy the legal needs of this vast region of West Nile with over five districts. Other organisations include the Danish Refugee Council, The Irish Refugee Council and the Norwegian Refugee Council. In Adjumani, Lamwo, Moyo and Yumbe, the Kampala UN Women office has supported the provision of legal aid services as well as case-management of SGBV cases.<sup>224</sup>

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Uganda, on 22nd October 2018.

222 As above.

223 Interview with Listowella Atto, Legal Officer, FIDA Uganda Arua Office, on 29th October 2018.

224 Interview with Claire Hawkins Coordination Specialist, Focal Point for Peace, Security and Humanitarian Action, at UN WOMEN, Kampala on 5th December 2018.



### iii) *The right to bail for refugees*

The vulnerability of refugees makes it hard for them to secure bail. This is because of their generally transient and migratory nature. Article 23(5)(a) of the Constitution entitles anyone arrested in respect of criminal offence to apply to court to be released on bail. The law gives various considerations which must be taken into account by a court in making a decision whether or not to release a person on bail. This includes the question of whether or not that person has a fixed place of abode, in addition to whether or not that person has persons to stand surety for them.<sup>225</sup> The person can also be released on their own cognisance if they deposit something of value in court like an article, property or sum of money. All these conditions are not favourable for refugees. This is because they are not considered to have places of fixed abode, yet, many times no one wants to stand surety for them. Indeed, state attorneys prosecuting refugees use their status as ground to argue against their release on bail.<sup>226</sup> According to one judicial officer:

*“At times, there is a specific sum of money that is needed as part of the bail terms and in most cases the refugees are not able to afford it and end up staying in prison. In terms of sureties, many times the refugees present none citizens and fellow refugees as their sureties and it only compounds the situation since one of the conditions for a surety is having fixed place of abode.”<sup>227</sup>*

This is especially the case with new arrivals who are trying to set up within the settlements.<sup>228</sup>



*Refugees from South Sudan attending a focused group discussion at Rhino Refugee Settlement. Lack of fixed places of abode is a major hindrance for refugees to get bail from courts of law.*

225 See sections 75 and 77 of the Magistrates Courts Act, Chapter 16 of Laws of Uganda.

226 Interview with Ms Harriet Adubango, Resident State Attorney, Arua, on 29th October 2018.

227 Interview with His Worship Twakirye Samuel, Chief Magistrate Mbarara, on 25th October 2018.

228 Interview with His Worship Wandera Wilson, Grade I Magistrate, Isingiro District, on 24th October 2018.

#### iv) Physical access to courts

Physical access to the courts remains a challenge for refugee and host communities and is a country-wide problem. The Judiciary has reported that by the year 2015/2016, 95% of the population in the country had access to a courthouse within 20 kilometres of their residence. That 53% had access within less than 5 kilometres.<sup>229</sup> By aggregation, the Judiciary reports that only 4.9% of the population has access to court in a distance of more than 20 kilometres. However, as a matter of fact, some refugee settlements, including in Isingiro and Arua are located in remote areas and clearly fall in areas where the 4.9% of the population resides. This poses challenges for the communities in these areas, including host communities, in accessing courts and to a certain extent increases the costs associated with accessing justice. For instance, distance from Imvepi Settlement to Arua Town, where the courts are found is 80kms and 70 kilometres for Rhino refugee settlement, both by gravel road access. Similarly, Nakivale is 65 kilometres from Mbarara and 35 from Isingiro Town. Oruchinga refugee settlement is 70 kilometres and 42 from Isingiro and is also only accessible by gravel roads. It should also be noted that the problem of physical access to courts is worse for the general population with disabilities including those from refugee settlements and host communities since there are no gazetted pathways to ease mobility of such persons to courtrooms.



*Refugee settlements in both Arua and Isingiro are found in remote rural locations far away from courts of law. This poses challenges for communities in trying to access justice in the courts.*



*Mbarara High Court. The Court is 65 kilometre from Nakivale Refugee Settlement. To try and bring the justice services closer to the people in the Settlement, some judicial officers have experimented with mobile courts by moving the courts to conduct dedicated court sessions there.*

229 The Judiciary of Uganda, Strategic Plan, 2016/17 - 2019/20, at p 5.



There are no courts in these refugee settlements. In Arua, the Chief Magistrate indicated that because of the distance, sometimes by the time refugees get to court, their cases have been adjourned.<sup>230</sup> To try and bring the justice services closer to the people in these locations, some judicial officers have experimented with mobile courts, where the officer moves into the settlement and conducts court proceedings from there. It has been reported that these courts do not only bring justice services closer to the people but also serve as avenues for communities to be educated on legal procedures and the law. Moreover, the mobile courts are only cost-effective if properly planned and all preliminary issues finalised so that proceedings do not have to be postponed. Based on this, and his experiences, the Chief Magistrate of Arua doubted the cost effectiveness of these courts:

*"I recently in September went for mobile courts in Imvepi. I was supposed to hear both civil and criminal cases. Heard about two or three cases, left the case in the middle and I did not find it cost effective."<sup>231</sup>*

This though is not the situation in some cases.<sup>232</sup> Yet, the initiation of the court provided an opportunity to understand the challenges for its effectiveness for purpose of addressing the same. The process is also smooth if there are suitable premises in the area, especially those housing local government institutions.

The paucity of courts in hard to reach areas has been aggravated by the processes of professionalising the Judiciary, which resulted into phasing out of the lay magistrates (Magistrates Grade II), who were operating at the sub-county levels and closer to the people. These were supposed to be replaced with professional Grade I magistrates, who are trained lawyers. Unfortunately, the recruitment of the Grade I magistrates has not been adequate enough to replace all the lay magistrates. By 2016, the Judiciary had only 43 lay magistrates in the system. Yet, of the required 386 Grade I magistrates, only 188 had been recruited, leaving the deficit of 198.<sup>233</sup> Moreover, budget cuts may result into closure of some courts. In Arua, the Chief Magistrate indicated that the District has only four magistrates, including him, and three others. Yet due to the budget cuts, the Maracha Court might be closed.<sup>234</sup>

The paucity of judicial officers means that some people, both hosts communities and refugees, find it hard to access the courts. This also increases the costs associated with accessing the services, as well as contributing to delays.

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230 Interview with His Worship Lubowa Daniel, Chief Magistrate Arua, on 30th October 2018.

231 Interview with His Worship Lubowa Daniel, Chief Magistrate Arua, on 30th October 2018.

232 Interview with Judge Paul Wolimbwa Gadenya, High Court Judge and Judge in charge of Planning and Budgeting, on 7th November 2018.

233 The Judiciary of Uganda, Strategic Plan, 2016/17 - 2019/20, at p 10.

234 Interview with His Worship Lubowa Daniel, Chief Magistrate Arua, on 30th October 2018.

### 3.2.3 Quality of outcome

The indicators of the quality of the outcome of justice processes are so much about the impact of the decision arising from the process on the participants. It is so much about the remedial outcomes of the process and whether these have resulted into fairness, defined by, among others, the extent to which there is a fair distribution of the benefits and burdens of the process. This is so much to do with the extent to which parties feel that they have obtained what they deserve from the process. It is also about having equity, based on the needs of the participants, taking into account the HRBA. In cases resulting into damage, it is so much about the extent to which there has been restoration. This could be in the form of either monetary compensation or other remedial measures that address the emotional and other forms of harm suffered. It is also about the extent to which the problem(s) giving rise to a matter have been addressed by the system and whether the results of the process can or have actually been enforced.

It has been indicated above that both refugees and members of host communities thought that the outcomes of the informal justice mechanisms were of better quality compared to those of the formal mechanisms. In addition to the low costs and timely nature of disposing of cases, the preference for the informal justice mechanisms is also informed by comfort with the outcome of these processes. These largely apply restorative justice outcomes.

Some participants in Isingiro expressed the view that the orders given by these mechanisms are easy to follow and abide with. With respect to decisions by religious leaders, there was comfort with the power of prayer:

*"I like my Pastors and the elders here. I usually take my issues to them concerning my family and some personal issues and they give me answers and even prayers work for me."<sup>235</sup>*

In criminal matters, some judicial officers and security personnel have tried to take into consideration the vulnerability of refugees in handling their cases. This has been done in cases of refugees by some individual security personnel extending "sympathy" to refugees, counselling and releasing them, even when an offence has been committed.<sup>236</sup> This, of course, may have its benefits and disadvantages and may be appropriate by virtue of the vulnerability of the refugees in some cases and not in others. Indeed, in some cases it may offend the law. There is need for this to be considered in exercising the "sympathy." Nonetheless, security personnel are legally entitled to caution and release suspects in some circumstances, but not for serious offences. With respect to judicial officers, some take into account the issue of vulnerability by sentencing refugees convicted of some minor offences to community services. While this may be ap-

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235 Focus Group Discussion participant, New Hope village, Nakivale Refugee Settlement, 20th October 2018.

236 Interview with Stephen Dravu, District Internal Security Officer (DISO) Arua on Fri. 19/10/2018.

appropriate in some cases, it also creates discontent on the part of victims of crime. This dilemma is summarised by the Commandant of Imvepi Settlement:

*“In my opinion, the community service sentence is well monitored and effective since it is done in the same community where the offender(s) committed the offence. This punishment is deterrent because it teaches the other community members not to involve in crime. However certain sections of both the refugee and host communities consider this mode of punishment as not fair to the victims and not deterrent enough. They believe that it only benefits refugees while the locals are sent to jail and more so the beneficiaries have high tendency of recidivism.”<sup>237</sup>*

This discontent may arise from ignorance on the part of the community that community service is a recognised form of criminal sanction in the criminal justice system and has a number of benefits. Section 3 of the Community Service Act provides that “where a person is convicted of a minor offence, the court may, instead of sentencing that person to prison, make a community service order”.<sup>238</sup> The Act defines “minor offence” as “an offence for which the court may pass a sentence of not more than two years imprisonment”.<sup>239</sup> However, the law provides that “before passing a community service order, the court shall consider the circumstances, character and antecedents of the offender and ask him or her whether he or she consents to the order”.<sup>240</sup> It was not possible to review the cases in which the punishment has been used and determine the appropriateness of the same. There is need for a comprehensive review of this, as well educating communities on the legality of this form of punishment.

As seen above, there are also perceptions that refugee interfacing with the criminal justice system were being favoured, at the expense of host communities.<sup>241</sup> Indeed, as illustrated above, some officials also express negative attitudes towards refugees, who they think are “pampered”.<sup>242</sup> These negative attitudes towards refugees foster perceptions that the justice system is not fair. This could lead to loss of confidence in the system with the attendant disadvantages arising from this. People could for instance resort to acts of mob justice, especially in cases involving refugees as perpetrators of crime.

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237 Interview with Dennis Mbaguta, Settlement Commandant, Imvepi, on 25th October 2018.

238 Section 3(1), Community Service Act, Chapter 115 of Laws of Uganda.

239 Section 2(g).

240 Section 3(2).

241 Interview with Inspector of Police Afayo, Officer in Charge of Imvepi Police Post on 25th October 2018. Also, Focus Group Discussion at Point J Trading Centre, Imvepi, on 25th October 2018.

242 See section 3.1.3(iii) above.



*Some officials also express negative attitudes towards refugees, who they think are “pampered”. This fosters perceptions that the justice system is not fair.*

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Therefore, it is important for the community to be educated on the vulnerabilities of refugees and for them to understand that the special considerations extended to refugees when they interface with the justice system is on account of their vulnerability. At the same time, it is important to educate refugee communities on their legal obligations when in Uganda.

### **3.3 SECURITY**

This sub-section assesses the security threats and incidents in Arua and Isingiro that threaten the safety of both host communities and refugees. It also looks at the challenges that the law enforcement agencies, especially the police, are facing in discharging their mandate of managing security in the two districts. Some of these challenges are already discussed above.<sup>243</sup> The findings here illustrate the situational threats. These are prevailing circumstances that have the potential to spark incidents of insecurity, including riots, fights and assaults and that causes serious disruptions in the community. The other category includes incidents of criminality which were observed in the community and which threaten the security of both refugee and host communities. The situational threats include food insecurity and inter-community hostilities. The incidents of criminality include theft; SGBV; suicide; and public disorders and the magnitude of these differs.

Ensuring the physical safety of refugees is one of the most pressing concerns of UNHCR and its partners and serves as a basis for this study. Moreover, the safety of refugees cannot be placed outside that of host communities. The refugee protection regime was created by the international community to shelter those fleeing direct threats to their lives. But this very fact has meant that refugee protection has always been profoundly affected by larger security issues. Real and perceived security threats not only influence the willingness of states to provide asylum to refugees, they also determine the quality of the refuge provided. At another level, insecure environments weaken the ability of UNHCR and allied humanitarian agencies to assist and protect refugees—and thus to uphold their basic rights.

Nonetheless, although refugees may have similar security concerns with citizens of host countries, they are a more vulnerable group of persons – both mentally and phys-

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<sup>243</sup> Sub-section 3.1 above.

ically. Refugees often encounter physical threats that range from theft, SGBV, rape, defilement, assault and domestic violence to child abuse/neglect, rape and human trafficking while in a foreign territory. Furthermore, in their vulnerable state refugees may be easily manipulated for political ends. It should also be noted that due to the changing nature of conflicts, refugees sometimes became active participants in wars or are a strategically retreating and regrouping faction in a war or conflict. In some contexts, refugees can not only be seen as victims but as a security threat.<sup>244</sup>



*Although refugees may have similar security concerns with citizens of host countries, they are a more vulnerable group of persons – both mentally and physically.*

It is against the above background that the state of security for refugees and host communities in Isingiro and Arua should be understood as illustrated in the sub-sections below.

### **3.3.1 The Situational threats**

There are four situational threats that require attention. These include food insecurity; inter-community hostilities; porous borders and undocumented “refugees”; and land disputes.

#### ***i) Food insecurity***

Food insecurity stands out as one of the indicators of vulnerability for refugees. “Food security” is said to be realised “when at the individual, household, national, regional and global levels all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”<sup>245</sup> The mass influx of refugees usually causes food security complexities, which affect not only the refugees but host communities alike.<sup>246</sup> The increased number of refugees automatically increases the demand for food, which if not matched with supply can result into serious food insecurity. To mitigate this problem, food aid becomes inevitable. This is the approach which has been used by humanitarian agencies in ensuring food security for refugees and host communities. However,

244 For example, the hosting of millions of Hutu refugees mixed with former genocidaires and Interahamwe by the Zairean government in the Eastern side of the country greatly affected the relations between the two central African neighbours resulting in the war that overthrew Mobutu’s regime. Burundi and Tanzania had problems in their relationship because of the latter hosting the former’s refugees who were a security threat.

245 World Food Summit, 13th - 17th November, Rome Italy.

246 See Arthur Masibo et al Refugees, food security, and resilience in host communities: Transitioning from humanitarian assistance to development in protracted refugee situations (2014) International Food Policy Research Institute, available at <[https://www.researchgate.net/publication/262640432\\_Refugees\\_food\\_security\\_and\\_resilience\\_in\\_host\\_communities\\_Transitioning\\_from\\_humanitarian\\_assistance\\_to\\_development\\_in\\_protracted\\_refugee\\_situations](https://www.researchgate.net/publication/262640432_Refugees_food_security_and_resilience_in_host_communities_Transitioning_from_humanitarian_assistance_to_development_in_protracted_refugee_situations)> (accessed on 20th November 2018)

the implementation of this approach has come with some challenges, which have necessitated various changes, especially in the way food aid distributed.

In Uganda, one visible change has been the streamlining of distribution points and verification procedures to determine the identity of beneficiaries. Field interfaces heard voices of discontent with the new procedures and, especially the reduction in number of the food distribution points (FDPs). In Rhino refugee settlement for instance, the FDPs were reduced from 42 to 10.<sup>247</sup> This reduction is identified as a cause of inconvenience. In addition, refugees have expressed dissatisfaction with the amount of food they get. There are such voices as ***“we are given 10 kilogrammes per person for 30 days, which is too little”***.<sup>248</sup> In what may appear as an isolated incident, yet could be a sign of a bigger problem, refugees at Omugo Reception Centre on 8th November 2018 rioted, protesting against what they termed as “little food”.



***Field interfaces heard voices of discontent with the new procedures and, especially the reduction in number of the food distribution points***

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Refugees in Arua riot over food, disarm police guard

**Observer Newspaper, November 8, 2018, Written by URN**

Refugees in Omugo reception centre in Arua district have staged a strike to protest against the little food given to them. The refugees rampaged on Wednesday evening and disarmed a special police constable deployed at the centre. They also took hostage some of the service providers. Josephine Angucia, the West Nile Region Police spokesperson, says it took the intervention of police from Arua town to calm down the situation, recover the fire arm and rescue the service providers. But no one was injured, Angucia said.

According to Angucia, the refugees who were waiting for relocation to Rhino Camp settlement had earlier complained about the little food distributed to them. “The Office of the Prime Minister and UNHCR are planning to distribute more food to the refugees later today,” she said. This is the second time this year; refugees in Omugo have rioted over food. Two months ago, refugees in Imvepi and Omugo blocked World Vision from accessing their stores to distribute food.

They beat up some of the staff accusing them of not giving them food for almost two months and ransacked the food stores. It took the deployment of police officers from Arua town to calm down the situation and apprehend the masterminds of the chaos.

Refugee agencies are struggling to keep up with the rising number of refugees. More than 20 South Sudan refugees report to Omogo refugee reception center each day where they are kept for three days before being relocated to Rhino camp and other settlement camps.

The problem of the insufficiency of the food is aggravated by the fact that some refu-

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247 Interview with Godfrey Mayengo, Deputy Commandant - Rhino refugee settlement on 20/10/2018.

248 FGD participants at Tika 4 Zone, 23rd October 2018.

gees sell off their food to provide themselves with other necessities of life. In addition, the system does not allow undocumented refugees to access food, which heightens the risk of them engaging in criminal acts to access food. It was also indicated that undocumented members of households were not accessing food. This is partly because of the new system which is not based on households but individual heads. The 8th November 2018 riot appears to be an indicator of simmering discontent, which needs to be addressed urgently.



*Some refugees sell off their food to provide themselves with other necessities of life*

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It has been indicated that ODPP has set up a special unit to work with the police and investigates cases of mismanagement of relief items in the refugee operation. That this unit within ODPP may stay on because it is now experienced on refugee matters and act as key resource persons in future.<sup>249</sup>

### ***ii) Porous borders and undocumented “refugees”***

As a matter of a high alert, the influx of undocumented persons crossing the border during, and sometimes after mass influx possess a challenge.<sup>250</sup> This, among others, arises from the porous nature of the borders, which provide room for various unmonitored entry points. Yet, even for documented refugees, while their movements are tracked using a refugee movement permit accessible at the commandants’ office, some ignore this requirement and move without permits. Very few refugees apply for these permits and opt to move in out of the settlements without them. This makes it hard to track their movements.<sup>251</sup> Indeed, some even sell their humanitarian portions and move out of the refugee settlements into the towns such as Arua, where, according to one security personnel, they become a security threat.<sup>252</sup> Some even sneak back and return to their home countries, something which is against the law. Moreover, although the Uganda Peoples Defence Force (UPDF) is committed to disarming those who cross with borders,<sup>253</sup> the porous borders may make this hard. This poses a big security threat and can even spark off diplomatic rows between the origin and host countries. There is therefore an urgent need to deal with the problem of the porous borders.

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249 Interview with the Director of Public Prosecutions, Hon Justice Mike Chibita on 31st January 2019.

250 Interview with Dennis Mbaguta, Settlement Commandant, Imvepi, on 25th October 2018.

251 Interview with Godfrey Mayengo, Deputy Commandant - Rhino refugee settlement on 20/10/2018.

252 Interview with Stephen Dravu, District Internal Security Officer (DISO) Arua on 19/10/2018.

253 Interview with Brigadier Charles Wacha, Office in Charge of the Human Rights Desk in the Uganda Peoples Defence Forces on 13th November 2018.

### iii) Inter-community hostilities

Inter-community hostilities are a matter of high alert. As seen above, the refugee settlements, both in Isingiro and Arua harbour refugees of different nationalities, including Somalis, Ethiopians, Eritreans, Burundians, Rwandans, South Sudanese and Congolese. In some cases, there are tensions between these nationalities, which spill over from their countries. For instance, until recently, there has been an outstanding dispute between Ethiopia and Eritrea, with the governments of these two countries, as well as the respective nationals maintaining a stand-off. These tensions emerge sometimes when these two nationalities are put in the same refugee settlements. The same applies between Rwandese and Burundians. Although no incidents have occurred yet, these tensions nevertheless need to be underscored as threats to security and appropriate precautions taken.

In addition, some tribal tensions exist even between refugees of the same nationality. The most prevalent are the tribal tensions in the South Sudanese community, especially between the Dinka and Nur.<sup>254</sup> During a conflict between these two communities in June 2018 at Tika, four Dinka were killed. It was revealed that there was information that the Dinka were plotting to avenge these deaths by killing Nuer in South Sudan.<sup>255</sup> One of the causes of this conflict has been identified as **“superiority complex by the Dinka group, who want to dominate and prevail over all other tribes in the settlement”**.<sup>256</sup> That the conflicts between these two groups have become perpetual. It was reported that there are still some intra-tribal conflicts between **Dinka-Bor, Moulule, Dinka-Gokand Dinka Bahel-Gazel** wrangling over leadership of the Blocks in Tika zone.<sup>257</sup> The problem is also that in some of these communities fighting is culturally considered a legitimate means of settling differences.<sup>258</sup> According to one Police Officer:



***Some tribal tensions exist even between refugees of the same nationality. The most prevalent are the tribal tensions in the South Sudanese community***

*“They (refugees) tend to use cultural punitive measures to solve criminal and civil offences such as caning of offenders, slapping hefty fines (cash or in-kind) and sometimes even forceful take the refugee*

254 Interview with Brigadier Charles Wacha, Office in Charge of the Human Rights Desk in the Uganda Peoples Defence Forces on 13th November 2018.

255 Interview with Armitage Basikania Settlement Commandant, Rhino refugee settlement on 22/10/2018.

256 Interview with Dravu Stephen, District Internal Security Officer (DISO) Arua on Fri. 19/10/2018

257 Focus Group Discussion with members of the Refugee Welfare Committee and Elders of Rhino refugee settlement at Tika Trading Centre on 23rd October 2018.

258 As above.



*offenders to South Sudan to have them punished or even killed there.”<sup>259</sup>*

In the settlements, this is avoided by separating different groups and putting them in different settlements.<sup>260</sup> This may however not completely remove the threats but nevertheless minimise them. Moreover, in some areas there is a mix of refugee inter-ethnic conflicts, on one hand, and inter-ethnic disputes among host communities. This is the case for instance in Arua between the Madi and Telego.<sup>261</sup>

Tensions between refugees and host communities are inevitable, especially in relation to competition for the resources in the area. The fact that host communities blame refugees for some of their problems, especially those that are social and economic in nature, is inevitable. Some host communities feel that they would be having better livelihoods if the refugees were not in the area.<sup>262</sup> Some host communities do not understand the vulnerability of refugees. For these reasons, some of these communities feel that the refugees are living a better life at their expense.<sup>263</sup> This can be a source of conflict. In almost all the FGDs in Isingiro, refugees felt that they are harassed by host communities whenever they try to access resources such as water, firewood and fishing grounds. Indeed, in Arua as well, it was indicated that in some cases harvesting of firewood and the use of other resources by refugees from land owned by host communities without consent causes violence.<sup>264</sup>

In Imvepi refugee settlement, the authorities were trying to mitigate this by creating joint livelihood projects for refugees and host communities. The Commandant indicated that they bring together 30 individuals (15 refugees and 15 host community members) and supported on a farming project from which they work together and share the proceeds. That under this arrangement, the host communities provide land while the refugees (with support) provide the seeds.<sup>265</sup> This approach could be replicated and implemented in other communities in Arua and Isingiro.

#### **iv) Land disputes**

Land remains one of the leading causes of conflict in Isingiro and a threat to security and safety. Figure 6 shows that land conflicts are twice more likely to be reported in Isingiro than in Arua. Land conflicts in this area manifest variously, including conflicts

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259 Interview with Senior Superintendent of Police, Mugweri Edward, Regional Police Commander West Nile on 20th October 2018.

260 As above.

261 Interview with Armitage Basikania Settlement Commandant, Rhino refugee settlement on 22/10/2018.

262 Interview with Gloria Nyaki, Protection Officer United Nations High Commissioner For Refugees in Mbarara, on 19th October 2018.

263 Interview with Dravu Stephen, District Internal Security Officer (DISO) Arua on Fri. 19/10/2018

264 Interview with Armitage Basikania Settlement Commandant, Rhino refugee settlement on 22/10/2018. Confirmed also by Solomon Osaka, the Refugee Desk Officer-OM Arua, in an interview on 25th October 2018.

265 Interview with Dennis Mbaguta, Settlement Commandant, Imvepi, on 25th October 2018.

in the dry spell when herders, both refugees and host communities, are in search of land and water for their animals.<sup>266</sup> In some of these communities, including in Arua, stray animals that damage crops in gardens are a source of conflict.<sup>267</sup> There are also encroachments by some members of the host communities on land reserved for refugees by Government.



*Land conflicts in Isingiro manifest mainly in the dry spell when herders, both refugees and host communities, are in search of land and water for their animals*

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*A young refugee boy at Rhino Settlement takes cows for grazing. Land conflicts in the settlements manifest variously, including conflicts in the dry spell when herders, both refugees and host communities, are in search of land and water for their animals.*

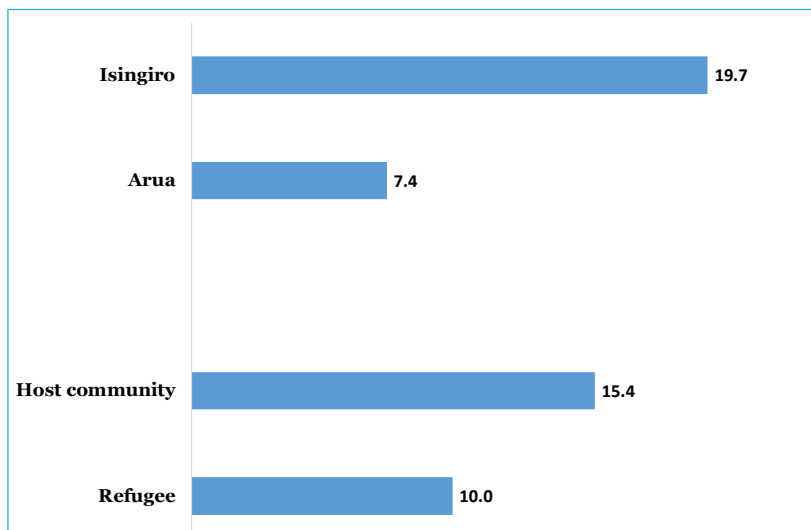
On some occasions, the locals allege that Government has grabbed their land and given it to refugees. Generally, however, all key informants in Arua opined that land was not a big problem and a cause of disputes. The problem had been managed by clear legal processes involving acquiring land by the OPM with the agreement of land owners. There were some disputes between land owners and the OPM but these were not common.

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266 Interview with SP Erimu Richard, District Police Commander, Isingiro, on 22nd October 2018.

267 Interview with Armitage Basikania Settlement Commandant, Rhino refugee settlement on 22/10/2018. Confirmed also in an interview with Dravu Stephen, District Internal Security Officer (DISO) Arua on Fri. 19/10/2018

Figure 7: Prevalence of land conflicts in the past 12 months (%)



Source: Household Survey.

Nonetheless, there were some land related situational factors in Arua that need to be watched, and if not well managed can be the source of conflict and thereby a threat to security and safety. The conflicts here include the long boundary standing dispute between the Madi community and the residents of Arivu Sub-county.

### 3.3.2 Criminality and other threats

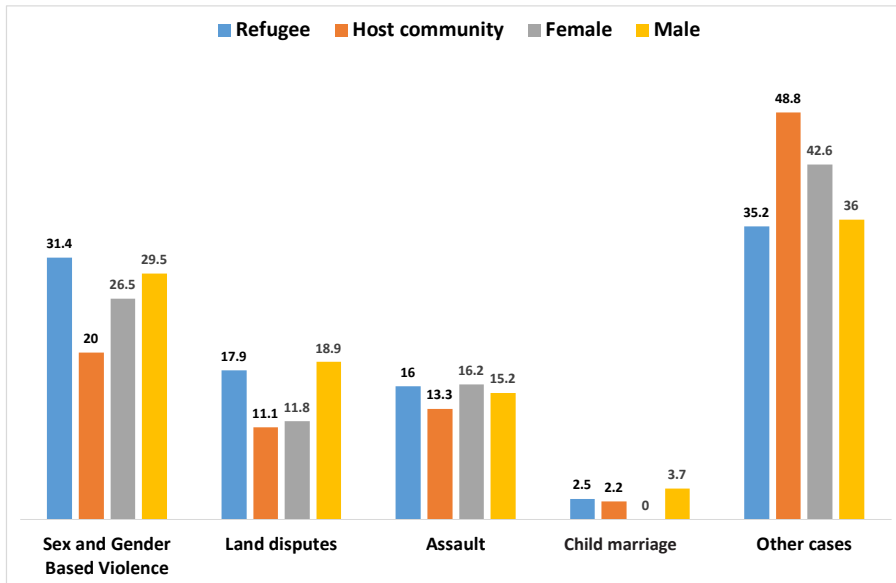
#### i) SGBV, the cancer

SGBV incidents are common in both Isingiro and Arua and are a matter of high alert. Incidents of SGBV in this regard include defilement, domestic violence, early marriages and sex work. In some respects, the perpetrators of these crimes take advantage of security lapses. Figure 7 shows that SGBV are the most frequently cited cases reported to informal justice systems—especially among the refugee communities (31.4%) regardless of gender. As is illustrated below, there are serious gaps in how these cases are handled. SGBV is followed by land disputes and assault cases. In Arua, at the Central Police Station (CPS), it was indicated that at least five cases of SGBV are reported every week. One organisation dealing with these cases at Rhino refugee settlement indicated that it has since January 2018 received up to 150 cases. These cases, according to the Deputy Commandant of Rhino refugee settlement, are many during the time when refugees have just arrived in the settlement. This is mainly because of the high levels of vulnerability of the new arrivals.



## *SGBV in Isingiro and Arua takes the form defilement, domestic violence, early marriages and sex work*

Figure 8: Types of cases reported to informal justice systems in the past 12 months by refugee status and gender (%)



Source: Household Survey

The occurrences in the settlement maybe be more than what have been documented since as is illustrated below, many cases are not reported. Moreover, not all perpetrators in these reported cases are prosecuted. This is among others because of the belated nature of reporting the cases in the settlements. Sex work is a common occurrence in both Isingiro and Arua, especially by refugee girls, pushed by their vulnerability.<sup>268</sup> There are therefore incidents of what one protection officer described as “survival sex”, were refugee girls and women subject themselves to sexual exploitation as a means of getting necessities of life.<sup>269</sup> Reports of sex work were however not restricted to refugee communities. It was also reported in host communities and among others attributed to moral decadency.<sup>270</sup>

268 Interview with SP Murungi Gad, M/Aged 42, 1 month as area DPC, Mbarara on 22nd October 2018.

269 Interview with Gloria Nyaki, Protection Officer United Nations High Commissioner For Refugees in Mbarara, on 19th October 2018

270 Focus Group Discussion in Point J Trading Centre, Imvepi, on 25th October 2018.



*There are incidents of “survival sex”, were refugee girls and women subject themselves to sexual exploitation as a means of getting necessities of life*

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As indicated above, there are capacity challenges with respect to handling SGBV cases. Moreover, in some cases some refugees enter the country when they have already become victims of SGBV and have issues that need to be handled. This makes these cases very complex to address, especially in the absence of facilities and resources for the same.<sup>271</sup> Additionally, cultural complexities aggravate the complexity of some of these cases, especially defilement.<sup>272</sup> For some communities, marriages of 14-year-old girls are culturally acceptable. This is the case with Somali and South Sudan communities. As a result, some of these cases are not reported. According to the Commandant of Rhino refugee settlement in Arua:

*“Some SGBV cases such as child marriages are not reported, we only learn about them when negotiations have failed or during refugee verification.”<sup>273</sup>*

The Chief Magistrate of Arua reported having a case of a 19-year-old male who defiled a girl of 17 years old and got her pregnant. The boy told court that the girl was his wife since he paid his cows from Southern Sudan. According to the Magistrate, the Court was in a dilemma in respect of such cases.<sup>274</sup> The man was convicted but only given a sentence of community service.

It should be noted that the problem of child marriages was not unique to the refugee communities mentioned above. It was also a problem in the host communities. This was the case especially in Arua, where it was reported that some parents in this region see nothing wrong with marrying off young girls. This was the case especially in cases where children would be forced to drop out of school due to pregnancy and then forced to marry the man (boy) responsible for the pregnancy, the latter being forced to pay dowry.<sup>275</sup> Indeed, some of the cases even when reported to Police are not prosecuted. This is because in some of these cases the parties choose to settle the matter outside the formal structures. In these cases, even when Police insists on prosecuting the cases, not much is achieved because the victims never come to court to give evidence, thereby frustrating the process.<sup>276</sup>

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271 As above.

272 Interview with Mr. Mbaguta Dennis, Settlement Commandant, Imvepi, on 25th October 2018.

273 Interview with Armitage Basikania Settlement Commandant, Rhino refugee settlement on 22/10/2018.

274 Interview with His Worship, Daniel Lubowa, Chief Magistrate, Arua.

275 Focus Group Discussion with Police Officers at Arua Police Station on 19th October 2018.

276 As above.



***In some cases, witnesses who would testify in SGBV cases in court shy away because of the fear of reprisals from community members who condone such SGBV incidents as child marriages.***

In Arua, it was reported that there are also cases where child victims of SGBV refuse to cooperate with Police and insist that they will not leave the Station until their “husband” is released.<sup>277</sup> This adds to the complexities of these cases. On these occasions, the police officers try to counsel the victims. The only problem is that they do not have counselling skills to apply in these cases. In some cases, once the case is settled between the parties, the Police receive a letter from the state attorney instructing them to record additional statement and close the file. Even when some NGOs have trained activists that could testify in court, some shy away for fear of reprisal against them in the communities, where SGBV is culturally condoned. The absence of a witness protection law in Uganda aggravated this problem, which in some cases forced complaints to withdraw cases because of fear.<sup>278</sup> The condoning of SGBV is expressed by the community in some cases by not cooperating with the Police to give up offenders, even when the life of victims is in danger. The story of a refugee female victim in Arua- Rena (not real name) is evidence of this situation. This story though was not verified fully:

*Rena is a mother of two children aged 4 and 2 years. The father of the children passed away during the war. Shortly before she moved to Uganda, she started co-habiting with another man. The man sold off all the items that she had been given by UNHCR including the tumpline, sauce pans and food items. When she tried to engage the man about his conduct, the man started heavy drinking and became violent. Rena reported him to the RWC who beat the husband 20 strokes. The man threatened to cut her again. She reported to Tika Police Post but they did not take her matter serious. She just chose to walk from Rhino refugee settlement to Arua town where a Good Samaritan got her and took her to police and she was handed over to police at Yolo base. A month ago, Rena went to visit a friend and the boyfriend found her at the friend's place, beat her and broke her arm. The police opened a domestic violence file but authorities have not yet been able to effect an arrest as they do not know the man and he has no permanent place of abode. Rena claims that the local leaders know him where to find the culprit but they have refused to disclose his whereabouts to police. Rena lives in fear that any meeting with this man may mean death to her. She wants to have him arrested.*

<sup>277</sup> Focus Group Discussion with Police Officers at Arua Central Police Station on 19th October 2018.

<sup>278</sup> Interview with the Director of Public Prosecutions, Hon Justice Mike Chibita on 31<sup>st</sup> January 2019.

In some of the situations, the local leaders, including the RWCs members, even hide serious of SGBV such as defilement and child marriages.

In Isingiro, it was revealed that while cases of defilement are common, these are not easy to investigate. This is among others because defilement is sometimes used by some refugees to justify the need for resettlement. For this reason, it is common for Police to encounter cases of framed incidents. Additionally, establishing the age of some victims is challenge. This arises from the fact that some refugees on verification reduce their ages to enable them access some relief items. As a result, in some cases, police have had cases where the declared age is far different from the age established by scientific tests, based on dental formula.<sup>279</sup>

In both refugee and host communities, in both Arua and Isingiro, the lack of facilities was making it hard to effectively investigate the cases and protect the victims. For instance, the lack of transport makes it hard for victims to be transported in time to get emergency HIV preventative treatment in the form of the HIV Post-Exposure Prophylaxis (PEP).<sup>280</sup> This exposes victims to the risk of HIV infection. It was indicated that while this issue has been raised with the DCC of Arua, not much had been done to address the problem.<sup>281</sup> At Tika, it was reported that Tika Police Post did not even have forms used in recording and collecting evidence in SGBV cases.<sup>282</sup>

In Arua, some organisations were trying to provide services to victims of SGBV. The organisations doing this include: DRC Plan International, and Windle International. These organisations were offering both preventive and response services. This includes reporting SGBV cases and helping the victims pursue justice.<sup>283</sup> The organisations have legal teams that help with this. This is in addition to helping victims access medical services, including PEP and sexually transmitted infections (STIs) management. The organisations have also partnered with OPM and UNHCR to provide some shelters for victims. The activities of organisations, such as Windle International, are to create awareness about SGBV in schools. One challenge which the organisations were however dealing with was that when they occurred, it takes long for the SGBV cases to be reported.<sup>284</sup> This in some cases gives perpetrators time to escape and avoid justice. Nonetheless, the organisations report that they have secured some convictions. According to the Danish Refugee Council, this year alone, it has secured 35 convictions, although this has been in magistrates' courts and none in High Court.<sup>285</sup>

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279 Interview with D/C Happy Alexander, CID Kashwojwa Police Post, on 22<sup>nd</sup> October 2018. Also confirmed by D/ CPL Atuhaire Herbert, CID Nakivale Post Post, on 22<sup>nd</sup> October 2018.

280 Focus Group Discussion with police officers at Arua Central Police Station on 19<sup>th</sup> October 2018.

281 As above.

282 Focus Group Discussion with members of the Refugee Welfare Committee and Elders of Rhino refugee settlements at Tika Trading Centre on 23<sup>rd</sup> October 2018.

283 Focus Group Discussion with organisations working in Rhino refugee settlement, on 22<sup>nd</sup> October 2018.

284 Interview with with Senior Superintendent of Police, Edward Mugweri in an interview on 20<sup>th</sup> October 2018

285 As above.

The District Police Surgeon for Arua illustrated serious challenges with how SGBV cases are handled at lower police posts. Second, was the fact that he is never invited by courts to testify although this was attributed to the fact that defence lawyers and court always admit such reports without contestation. According to Dr. Charles Madrama, in some cases, he is defeated in court because outposts and stations often refer to him only the perpetrators and not the survivors/victims which weakens the cases. Dr. Madrama was dismayed that out of the over 300 cases he had handled, he has never been invited by court to testify, not even once.<sup>286</sup> However, according to the Resident State Attorney the medical officer is usually never invited because his written evidence is admitted without the need for further testimony.<sup>287</sup> At Odubo Health Care Centre II, the medical officer there confirmed that in many cases, the complaints only go to the health centers to have the assaults medically confirmed when negotiations for payment by perpetrators have failed.

In addition, the lapse of time in many cases affects the collection and quality of the evidence. The Odubo Medical Officer also confirms that during the three years of his service, he has never been called to testify in court in an SGBV case.



***The prevalence of SGBV in the refugee settlements is explained by push factors which include earlier exposure of children or teenagers to sex.***

The prevalence of SGBV in the refugee settlements is explained by push factors which include earlier exposure of children or teenagers to sex. This is explained to result, among others, from the fact that in the settlements, there are many unaccompanied children living in child-headed households without adult supervision.<sup>288</sup> This is in addition to the nature of the housing in which children share bedrooms with their parents, most of which lacks privacy:

*“Exposure to sexual acts is due to poor accommodation in the settlements in form of tents shared by both parents and children. They live in makeshift structures separated by tumpine walls or rent single rooms so children get to learn what adults do. So, they tend to practice what they perceive. Other parents return home drunk and have sexual intercourse in the presence of their children.”<sup>289</sup>*

Domestic violence occurs mainly between couples, mostly likely arising from the pres-

286 Interview with Dr. Charles Madrama, Police Surgeon, Arua, on 20th October 2018.

287 In meeting held on 29<sup>th</sup> November 2018 in Arua, presided over the Chief Registrar of the Courts of Judicature, Esther Nambayo.

288 Participant in Focus Group Discussion with Police Officers at Arua Police Station on 19<sup>th</sup> October 2018.

289 As above.



asures related to their refugee status. The incidents here mainly take the form of beating of women, assault of both men and women, and threatening violence.<sup>290</sup> It was also revealed that domestic violence manifests in the form of “emotional violence”, and victims of this in some cases lack psycho-social support, ending up committing suicide.<sup>291</sup> In some communities, it was reported that the use of family planning by women without the permission of their husbands was a source of family disputes.<sup>292</sup>

SGBV poses serious challenges to both host and refugee communities. It is a serious security threat and is affected by many access to justice deficits. SGBV and the gaps on which it thrives need to be addressed as a matter of urgency.

## ii) Other factors

Security is also compromised by the nature of the housing refugees have, which is constructed mainly using tumpine. This material is easy to penetrate, which exposes the property of the refugees to the risk of theft.<sup>293</sup>

In addition, idleness, especially of youths, was identified as a factor that fuels recidivism and crime in some areas, both in host and refugee communities. This is in addition to gambling and drug and alcohol abuse. It was indicated thus:

*“Idleness in the settlement causes the youths to involve in gambling, alcohol and drug abuse. Some skilled youths are not engaged in productive work due to lack of job opportunities. They are abusing drugs and ‘mairungi.’”<sup>294</sup>*

To deal with some of the above problems, some communities had drafted by-laws.<sup>295</sup> However, these did not have the force of law since they had not been formalised according to law. There is need to interrogate both the appropriateness and legality of these laws. There is need to consider meaningful employment for youths and to involve them in other activities which would engage them. The problem of youth unemployment was also expressed as a problem in host communities. Indeed, these communities are disgruntled that their youths are not offered employment by the NGOs and humanitarian agencies.<sup>296</sup>

Lighting at night remains a big problem and especially in rural setting. This exposes both refugees and host communities to insecurity and the risk of being victims of

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290 Interview with Armitage Basikania Settlement Commandant, Rhino refugee settlement on 22/10/2018.

291 Focus Group Discussion with Police Officers at Arua Central Police Station on 19th October 2018.

292 Focus Group Discussion of Refugee at Imvepi on 25th October 2018.

293 Focus Group Discussion with members of the Refugee Welfare Council and Elders of Rhino refugee settlements at Tika Trading Centre on 23rd October 2018.

294 Participant in Focus Group Discussion at Ofua Zone III, Rhino refugee settlement on 23rd October 2018.

295 Focus Group Discussion at Ofua Zone III, Rhino refugee settlement on 23rd October 2018.

296 Interview with Solomon Osaka, Refugee Desk officer - OPM Arua on 25th October 2018. Separately confirmed by Senior Superintendent of Police, Edward Mugweri in an interview on 20th October 2018.

crime. From the SGBV perspective, women are insecure and exposed to this risk at water collection points especially in the evening and early morning.<sup>297</sup>



*A water point at Nakivale Settlement. Lighting at night remains a big problem. This exposes both refugees and host communities to insecurity and the risk of being victims of crime.*

Some of the capacity challenges of the Police, including human resource and such logistics resources as transport and space are already elaborated above.<sup>298</sup> In maintaining security, however, Police in the districts faces additional challenges. The inadequacy of manpower to enforce effect and responsive security remains key as is illustrated in discussing the capacity challenge of JLOS above.<sup>299</sup> It was for instance indicated that foot patrols are usually conducted by 6 men, instead of the recommended 12.<sup>300</sup>



*Researchers Interview SP Erimu Richard, The District Police Commander, Isingiro. Refugee host districts experience various additional capacity gaps in executing their duties.*

297 Interview with D/CPL Atuhaire Herbert, CID Nakivale Police Post...

298 Section 3.1.

299 Section 3.1.

300 As above.

Table 6 below based on the household survey illustrates some capacity gaps the Uganda Police Force experiences. For instance, both refugees and host communities indicated that patrols by police are rare—especially among host communities. At least 71 and 64 percent of host communities and refugees respectively report not observing a police patrol in the past one month. A slightly higher proportion also indicates that no community meeting has ever been held by police. With respect to responding to an emergency, Table 6 indicates that only 34 percent of refugees and 26 percent of host community respondents indicate that the police would be able to respond to emergency in less than 30 minutes. These deficiencies compromises not rule of law but access to justice and security.

**Table 5: Police Capacity for patrol and responding to emergencies (%)**

	Host community	Refugees
<b>How often did the Police conduct foot and or motorized patrols in your area in the last 30 days?</b>		
Once A Month	13.6	20.4
Twice A Month	8.5	8.4
More Than Twice A Month	7.0	7.6
Never Patrolled The Area	70.9	63.7
Sub Total	100	100
<b>How often does the Police hold community meetings to discuss security matters?</b>		
Once In The Last 3Months	16.1	15.8
Twice In The Last Three Month	5.5	8.4
More Than Twice A Month	1.0	5.2
Never Held Community Meeting	77.4	70.5
Sub Total	100	100
<b>How long do you think it take your area Police to respond to an emergency in your area?</b>		
Less Than 30 Minutes	25.6	33.8
Between 30Min To 1 Hour	27.6	22.0
1Hr To 3 Hrs	25.1	24.4
3 Hrs To 6Hrs	13.6	14.8
More Than 6Hrs	8.0	5.1
Sub Total	100	100

Source: Household Survey

Office equipment and supplies also remain a challenge. For instance, Isingiro Police Station has only one computer, yet such equipment is key for the efficient discharge of the duties of the station. In Mbarara, the DPC gets only 200 litres of fuel a month to carry out both administrative and patrol functions for both day and night duties.<sup>301</sup> Moreover, the centralisation of police logistics such as fuel allocations and many other logistics results into delays due to the administrative red-tape.<sup>302</sup> Scene of Crime Officer (SOCO) kits are also in short supply, which constrains the ability of investigative officers to collect evidence at scenes of crime affecting among others the investigation

<sup>301</sup> Interview with SP Murungi, Mbarara District Police Commander.

<sup>302</sup> Interview with SP Ibanda David, Ag. Regional Police Commander and Regional CID, Rwizi

of SGBV cases.<sup>303</sup> In Nakivale, the Police post is not even lit, torches and lanterns are used during night.



*Scene of Crime Officer kits are in short supply, which constrains the ability to collect evidence at scenes of crime affecting among others the investigation of SGBV cases*

The community policing activities were not reaching the refugee communities. This has created the perception that the only time the police shows up is to effect an arrest. It is only then that police presence is felt, but not through community policing activities and other police activities such as patrols.<sup>304</sup> Indeed, there is a general lack of police visibility in the refugee settlements, which portends a security risk.

In the Household Survey, 71% of participants in host communities indicated that in the last one month, they have not seen any police patrol in their areas. The percentage was at 63% in refugee communities. In Isingiro, 76% indicated that they had not seen such patrols, while 61% expressed a similar view in Arua. The Survey also shows that police were not holding community meetings in both districts, for host as well refugee communities as part of community policing. The Police has adopted the community policing model as one its strategies to deal with crime. As explained in the Force's Strategic Plan,<sup>305</sup> "[t]he strategy empowers communities to be proactive in crime prevention, and to provide support to the Police in devising strategies and finding solutions to crime". One of the elements of community policing is having regular interfaces with the community, which could among others be through regular meetings. When asked how often the Police held these meetings in Arua and Isingiro, 77% of participants in the host communities in both districts indicated that these had never been held. For refugee communities, 76% gave the same negative answer. In desegregation however, Isingiro has the biggest negative percentage at 86%, compared to Arua at 67%. Related to this, is the fact that community members did not have contacts of the security personnel in their areas. Results show that 90% of residents in host communities in both districts did not have these contacts. In refugee communities, it stands at an alarming 92%. Isingiro at 94% is higher than Arua at 90%.

Therefore, those with ill intentions do not feel undeterred to carry on with criminal activities, based on the perception that they will not be apprehended. While the problem of limited police presence may be a general problem in Uganda, especially in rural areas, the risks that arise from the pressures asserted by the influx refugees in Isingiro and Arua should demand for more police presence in these areas.

303 As above.

304 Focus Group Discussion, Nakivale, 23rd October 2018.

305 Uganda Police Force Strategic Plan, 2015/16 - 2019/20, at p 50.

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## **Conclusion and Recommendations**

## 4.1 THE CONTEXT AND UGANDA'S ROLE

The geographical location of Uganda has put the country in a position of being a haven for refugees coming from one of the most destabilised regions of the world. The Great Lakes Region is afflicted by several conflicts, most affected parts being DRC and South Sudan. Moreover, the Region is surrounded by various conflicts in other countries, including in Central African Republic, Ethiopia, Eritrea, and Somalia. This means that the Region will continue to generate refugees until the conflicts in the Region are resolved in a sustainable manner. Moreover, experience shows that resolution of conflicts does not immediately end the inflow and existence of refugees. This is because the resolutions sometimes never result into immediate repatriation. It is also true that the politics in many countries in the Region remains fragile, without clear indications of what the future holds for the stability of these countries.

Historically, Uganda has provided a home to hordes of refugees. What has characterised the country is its progressive approach when dealing with refugees. This Study has demonstrated that the country has operated an open-door policy. In this, the Country has left open its borders to all who seek asylum, including those who arrive individually, in small groups and as part of mass influxes, subject to formal procedures of receipt and settlement. Uganda's approach has uniquely included integrating refugees into local communities. The setup of the settlements of Isingiro and Arua, the subject of this Study, are an example of how this has been done. The integration has been realised among others through the ReHoPE Strategy. While the Country has committed a portion of its resources to addressing the needs of this vulnerable section of the population, the needs are still beyond its capacity. It is based on this that several international agencies, including UNDP, UNHCR and the World Bank, among others, have provided the necessary financial and technical support. In addition, both international and national civil society organisations have provided support in various ways. The Country has put in place a progressive legal framework, which accords refugees several rights, including freedom of movement.

Despite the above, Uganda is facing several challenges as a host country, which impacts on both refugee and host communities. One of the major challenges is the protracted nature of the refugee issue and the constant influxes of persons from the neighbouring countries. This has put strain on the country's resources and overstretched the institutions responsible for the refugees. This includes institutions with mandates that affect the welfare, health and security of both refugee and host communities. In addition, the security fragility of the region has seen some security threats spill over to the settlements. One example illustrated above are the ethnic conflicts from South Sudan that have on some occasions spilled over to settlements in Arua. The proximity of Isingiro to Eastern DRC, a theatre of conflict, leaves the area fragile. The country also faces rule of law, human rights and access to justice deficits, which are not restricted to refugees but extend to host communities as well. In the context of refugees and host



communities, these deficits are aggravated by the high demands on the institutions responsible for services related to rule of law, human rights and access to justice.

On a positive note, the Government of Uganda and many stakeholders have taken note of the gaps described above and have committed to taking steps to deal with these. Indeed, this Study and the ensuing programmes document is driven by this commitment. This committed is in relation to improving the Rule of Law, Access to Justice and Security for refugees and host communities. It should be noted however that some of the deficits in the host communities cannot be overcome in isolation of the rest of the country. Notwithstanding, the limitations in serving the refugees justice needs, this is not unique to their situation. The JLOS and other sectors have challenges in delivering public services to all people in Uganda because of development limitations.

It is in living up to these commitments that this Study was undertaken. The overall objective of the Study was to conduct a comprehensive assessment of the access to justice, rule of law and security needs of refugee and host communities in Arua and Isingiro for UNDP and UNHCR to strategically design interventions in terms of outreach, efficiency and accessibility to justice needs for refugees and host communities. In this regard, the assessment was aimed at generating an in-depth HRBA assessment report. This was realised by conducting an in-depth and comprehensive background review for relevant rule of law, access to justice, and security needs of refugees and host communities in the two districts. As illustrated above, among others, the assessment included a mapping of rule of law, justice, security and human rights issues affecting refugees and host communities.

As illustrated in Chapter 1, the Study was conducted using a combination of methodologies, including a desk review, household survey and key informant interviews, targeting key stakeholders and actors in the sectors directly dealing with refugees as well as those dealing with various aspects of rule of law, access to justice and security in the refugee and host communities.

## **4.2 SUMMARY OF FINDINGS**

### **4.2.1 Rule of Law**

As matter of fact, Uganda has a robust justice system and has established structures that promote rule of law. This is in spite of the challenges the institutions face. Indeed, this Study found that the various institutions responsible for rule of law have performance gaps. The performance of these institutions is largely affected by capacity deficiencies, affecting the quality of their services. This includes logistical gaps as well as the quality and size of the human resource at the disposal of the institutions. In both Arua and Isingiro, it was found that this affected both local government and JLOS structures. It was for instance found that law enforcement agencies were not adequately

equipped with such basic facilities as official telephones and internet connection. This is in addition, such facilities as ICT facilities, SOCO kits, HF radios, transport facilities, and furniture. Moreover, the infrastructure of the institutions also has some gaps, such as limited cell capacity of police stations, in both Arua and Isingiro, as well as the lack of such facilities in some parts of the settlements. The prisons in both Arua and Mbarara (which services Isingiro) were holding numbers far beyond their capacity, in some cases up to 3-fold the capacity of the facilities.

In terms of human resources, there are gaps in the number of officials available for various tasks. For instance, as seen in Chapter 3, Isingiro, with a population of 553,200 people, is served by only 199 police officers, far below the ratio defined by international standards of 1 police officer to 450 people. In the case of judicial services, limited number of judicial officers was contributing to case-backlogs, which affects the speed of dispensing justice. Moreover, the quality of the human resource, especially in the Police, is affected by welfare challenges, such as those arising from the inadequacy of decent accommodation for the officers.

In addition to the performance and capacity gaps, there are also integrity, transparency and accountability challenges. Corruption was reported as a challenge, especially in the formal justice system, but also in some respects in the informal systems. In addition, the results of the household survey show challenges of the formal system that affect their integrity. This includes the systems being slow. Decisions not being enforced, decisions are biased, and system makes bad decisions, among others. These issues have to a certain extent affected the trust of people in such institutions as the police and formal justice mechanisms.

With respect to the indicator of protecting vulnerable groups, some steps have been taken by both state and non-state actors in this regard. The measures have included those intended to protect women, as well as children, in addition to the wider refugee community as a vulnerable group. Nonetheless, the Study finds that there are several gaps that need to be closed. It was found for instance that there were serious gaps in dealing with children in conflict with the law, both in Arua and Isingiro. Most visible gaps relate to the lack of adequate facilities in the districts to deal with juveniles in conflict with the law. This includes detention and rehabilitation facilities. While Arua, unlike Isingiro, has a juvenile rehabilitation home, this too was constrained in terms of logistics and some JLOS actors held opinion that it was not functioning effectively. In addition, in both districts, probation services were in short supply.

One area affecting a vulnerable group, women and girls, is with respect to the handling of SGBV cases. In both districts, police should be commended for giving SGBV special attention, especially by designating special personnel to deal with these cases. Nonetheless, the Police and other JLOS actors in these locations is constrained in terms of facilities to handle the cases, especially as far as addressing the psycho-social needs



of victims is concerned. Also established is the fact that the officers, as committed as they are, have not been equipped with the all necessary expertise to handle the cases and victims.

The protection of refugees as a vulnerable group is also to some extent compromised by negative attitudes, as well as language barriers. It was established that some officials held negative stereotypes against refugees and associated them with negative practices such as being boastful and having a feeling of superiority. This was among others informed by the limited exposure of officials to studies or trainings that would help one understand the vulnerability of refugees. The provision of services to refugees was also to some extent affected by the language barrier, arising from the limited nature of translation and interpretation services for the benefit of the ethnically diverse community of refugees both in Arua and Isingiro.

#### **4.2.2 Access to justice**

The Study finds that while Government has taken steps to promote access to justice for both host and refugee communities, the cost of accessing justice, especially in the formal system, was having a negative impact. The formal justice is also perceived to be slow, makes bad decisions, providers of services are far in distance and decisions are not effectively enforced. As a result, persons were resorting to informal mechanisms, and to the local council courts as well as RWCs in the refugee communities. Other informal and cultural structures used include clan and cultural leaders, elders, and religious leaders.

Other factors affecting access to justice include the language challenge as translation and interpretation services at police stations and in courts of law were limited. Access to legal services also remains a huge challenge. While some CSOs are offering legal services, these were overstretched, and some had limited geographical scope and resource deficits. Lawyers are in short supply in the two districts, both in the judicial system and in legal practice. Also, the distance to courts is a challenge, especially for refugees in the settlements far away from the justice service points.

Again, in both Arua and Isingiro, both refugee and host communities felt that the outcomes of the formal justice system were of poor quality compared to the informal systems. Unlike the informal system, these outcomes were not easy to implement. It was also found that in deciding the outcomes of some legal processes, some judicial officials were mindful of the vulnerability of refugees, for instance by opting for non-custodial sentences such as community service. There are however objections from some quarters of host communities to the use of these non-custodial penalties, which they interpret as favouritism.

### 4.2.3 Security

The findings of this Study demonstrate that both host and refugee communities in both Arua and Isingiro are facing security threats. It is illustrated that the security threats take two broad forms: Situational threats; and incidents of criminality. The situational threats are those presented by the prevailing circumstances with a potential to spark incidents of insecurity. On the other hand, incidents of crimes are those that relate to cases of crime in the two settlements.

The situational threats include food insecurity, the problem of porous borders and undocumented refugees. This is in addition to inter-community hostilities, including inter-ethnic disputes among refugees.

Furthermore, it has been illustrated that land disputes, although minor, present themselves as a security threat. This included conflicts between refugees and host communities. These are more prevalent in Isingiro than Arua, although still of a small magnitude.

Criminality and other incidents included SGBV in both Arua and Isingiro. Most affected are refugee communities, where cases of SGBV reported stood at 31.4% of the crimes reported. One form of SGBV which is common in both host and refugee communities are child marriages. There are however various challenges in prosecuting this and other SGBV cases. This is largely because of the lack of cooperation from victims as well as gaps in facilities to handle these cases.

## 4.3 RECOMMENDATIONS

The object of this Study, was to document the rule of law, access to justice and security gaps in host and refugee communities in Isingiro and Arua, as well as illustrating the existing services in these areas and how these could be improved. It should be noted that rule of law, access to justice and security cannot be guaranteed to refugee communities in isolation of the needs of the host communities. For this reason, there is need for an approach that has responses directed for the benefit of both host and refugee communities. This is consistent with the strategy adopted by ReHoPE. Nonetheless, the arbitrary percentage-based distribution of benefits between host and refugee communities as done by ReHoPE may not have universal application, let alone being practical in some contexts. For example, when it comes to certain services, both refugees and host communities use the same facilities. This is the case with respect to police and judicial services. Moreover, it may not be possible, or even counter-productive, to apportion such services on a 30% and 70% basis. This though does not mean that the vulnerabilities of refugees should be ignored. It is necessary to factor this into the responses, guided though by realities and not arbitrary percentage apportionments.

It is proposed that responses to improve rule of law, access to justice and security in Isingiro and Arua should in the first-place focus on improving the capacity of some key

institutions responsible for mandates related to rule of law, access to justice and security. This includes the Police, Judiciary, Local Government and other key institutions that support rule of law, access to justice and security. This is in addition supporting the informal justice structures. Furthermore, there is an urgent need to promote legal and economic empowerment of both host and refugee communities, so as to mitigate opportunities for SGBV. Each of these recommendations is elaborated below. It should be noted that in addition to short and medium-term recommendations, there are recommendations which are general, as well as those which are refugee specific. This is indicated against every recommendation.

### **4.3.1 Addressing the root causes of conflict**

There is need for urgent action to address the root causes of conflict and other factors that force people to flee their homes in search of refuge. The international community needs to work with Governments in the Great Lakes Region to build sustainable peace and deal with the root causes of conflict. As illustrated in Chapter Two, the Great Lakes region has had a long history of conflict. Moreover, the conflicts have extended to the Horn of Africa. The nature of these conflicts is multi-dimensional, including ethnic disputes, politically motivated civil wars and terrorism. The problem of porous borders too needs to be addressed. This has resulted into the proliferation of arms and insurgent groups, as well as terrorists and other criminals, across borders and getting bases they use to destabilise the Region. Countries in the region which are struggling to consolidate their democracy need to be supported in order to enable them reduce the incidence of politically motivated disputes, including civil wars. Also, in a special way, there is need to put on the radar and deal with the emerging disputes between some governments in the region. This for example applies to Burundi, Rwanda and Uganda. This is because, if these are not well managed, they can escalate into conflicts that could force people to flee their homes.

Additionally, there is need to induct the newly elected local councils, Refugee Welfare Committees and other relevant duty bearers and community members on peace building, mediation and dialogue as well as encourage local governments to support conflict management in refugee settlements and host communities. Furthermore, in order to mitigate the risk of conflict between refugees and host communities there is need to promote joint social activities such as games, music, dance and drama as well as embark on peace messaging through radio and television programmes both in the settlements and host communities and the entire country. As the peace policy for Uganda gets finalised it will be prudent to reflect on how it responds to the context of vulnerable groups such as refugees but also the host communities.

### **4.3.2 Capacity building**

As indicated in Chapter 3, the various institutions responsible rule of law, access to

justice and security have capacity challenges. For this reason, there is need for interventions which enhance the capacity of these institutions. This includes the Police, Judiciary, Local Government and JLOS support services, such as probation and welfare services. The capacity support needs to focus on two things. First, is ensuring that the institutions have the facilities and logistics they need to effectively execute their mandates. Second, is building their human resource capacity, in terms of adequacy and quality. As is illustrated below, some of the interventions could be short term while others could be long term.

## **i) The Police**

There is a need to build the capacity of the police to enable it effectively to deal with cases in its areas of jurisdiction to ensure rule of law, access to justice and security.

### **a) Special Training on refugee issues (Refugee Specific)**

**In the short-run**, there is need for a programme to train police officers on refugee issues.<sup>306</sup> To realise this, a simple and short curriculum should be designed for police officers in Arua and Isingiro. The curriculum should among others focus on illustrated below.

- Refugee and the international/regional context;
- Basics of the international and regional refugee legal framework;
- International and regional mechanisms responsible for refugee matters;
- Conflict and refugees in the Great Lakes Region;
- Vulnerabilities of refugees and responses;
- The role of host communities;
- Uganda's policy approach to refugees;
- Refugees and the legal framework in Uganda, with focus on the Constitution and the Refugee Act;
- Refugees, host communities and the security context; and
- Refugees women and girls' special vulnerabilities, with special attention to SGBV.

It is important that the design of the training is done in partnership and with the full participation of the police authorities. The police authorities should commit to giving the training full support, identifying police officers to take part in the training, as well as committing that officers trained will be allowed to serve in the settlements for a reasonable period of time without transfer. The Police could work with the School of Law, Makerere University, through RLP, to design and deliver the training and issue a certificate for the same. This will motivate the candidates to take the training seriously and commit to it.

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<sup>306</sup> This recommendation was supported by the Director of Public Prosecutions, in an interview on 31st January 2019.

Such training could however also be done as continuous or in-service training done at police training centers. It could even be at work by for instance using several hours per week or month dedicated to this kind of training. For all these trainings, a certificate could be issued and could even have an impact on the benefits and the career of the police officer.

There is also an urgent need to address the communication barriers at some of the Police stations in Arua and Isingiro. **In the short-term**, police in these areas should be provided with language interpretation services to enable them effectively to communicate with the various refugee nationalities. The provision of language services could take the form of translators at the disposal of the Police. These could be volunteers trained in language skills. Long term process should have translators employed by JLOS

### ***b) Formation of Special Police Unit (Refugee Specific)***

**In the long-term**, the trainings should build up to the creation of a unit in the police responsible for refugee matters managed by comprehensively trained and equipped officers.<sup>307</sup> The section should have a structure appropriately integrated in the police structure, even in an ad hoc manner. To permanently sort the problem of language, this section of the Police should have professional translators trained to provide the language service. The building of this structure should build on the existing structure in the form of the National Coordinator for Refugee Affairs.<sup>308</sup> Technical and other forms of support by UNDP, UNHCR and other stakeholders to enhance the capacity of the Police to handle refugee matters should be channelled through this structure.

It should be noted however that there could be questions regarding the sustainability and affordability of a specialised police structure. This is especially because of the costs and human resource requirements of building such a structure. This problem can be dealt with by ensuring that the special unit operates along-side the regular police units. It could take the form of officers specially trained in refugee matters work along-side regular officers but with a mandate to attend to security matters related to refugees. Indeed, of recent the Force has created many such units, including the mineral protection unit and the environment protection unit.

### ***c) Assign more police women (General recommendation)***

There are serious deficits in the number of police women deployed in the settlements. As illustrated in section 3.1.4., only 20% of the officers are women. This affects the quality of services provided to women in both host and refugee communities. For this reason, there is need to work closely with the human resource department of the Police to have more women assigned to the settlements in both Arua and Isingiro. These wom-

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307 This recommendation was supported by Ag. Commissioner for Refugees in the Office of the Prime Minister Gerald Simon Menhya in an interview 01/02/2019 at Department of Refugees Offices of OPM along Sir Apollo Kagwa road.

308 Position is currently held by ACP Joram Baryayanga.

en should also be trained in refugee issues as well as dealing SGBV cases, including handling victims. It is however important that the facilities in the settlements are made gender friendly to enable police women work there comfortably. This among other for instance requires comfortable gender sensitive accommodation.<sup>309</sup>

**In the long-term**, more women need to be recruited in the Police.

#### **d) Facilities and infrastructure (General recommendation)**

The Police in both Arua and Isingiro is in dire need of facilities to enable them effectively to service both host and refugee communities. Some of the facilities are capable of being provided in the short-term while others require the long-term.

**In short-term**, there is need to provide the Police in Isingiro and Arua with transport facilities which could take the form of vehicles and motor-cycles. In July 2018, RLP, working with The Netherlands Embassy donated two vehicles and eight motor-cycles to the Police to address the transport needs of the Police in refugee settlements in Northern Uganda.<sup>310</sup> This though is a drop in the ocean and needs to be bolstered. The vehicles were assigned to Lamwo and Adjumani districts. There is need for an urgent assessment of the transport needs of police in Arua and Isingiro and the short-term measures that could be taken to address this, even if partially.

In addition to transport, police should in the short-term be supported to acquire such facilities as communication gadgets, SOCO kits, office computers and printers, among others.

**In the long-term**, there is need to address the problem of infrastructure, especially for purposes of serving the needs of Persons with Disabilities, juveniles and victims of SGBV. This includes special detention facilities for juveniles and rooms for interview and safety of victims of SGBV. In some respects, this may require new police structures in the settlements and redesigning the existing police stations, many built over 80 years ago. Mbarara, which serves Isingiro and other districts in the region requires a remand home for juveniles. In some places, police stations are housed in rented premises not fit for police services. It is also necessary to address the welfare needs of police, especially in terms of accommodation. Isingiro, does not have a police barracks, yet, even for Arua, the barracks is in the urban area with nothing in the settlements. There is need for accommodation to be constructed for police officers in the settlements. Furthermore, there is need to enact the Witness Protection Bill to ensure protection of witnesses in SGBV cases.

#### **e) Strengthen community policing (General recommendation)**

309 Interview with Claire Hawkins Coordination Specialist, Focal Point for Peace, Security and Humanitarian Action, at UN WOMEN, Kampala on 5th December 2018.

310 See, *NGO Boosts Police Efforts to Protect Refugees*, available at <<https://kampalapost.com/content/news/ngo-boosts-police-efforts-secure-refugees>> (accessed on 6th December 2018).

Communities play an important role in maintaining law and order in society. One of the most effective ways of ensuring community involvement is through community policing, which takes several forms. These include creating awareness on security threats in the community, sensitising community members to be vigilante and establishing a collaborative working relationship between the Police and the community. As seen above, there are some gaps in community policing in the settlements in Arua and Isingiro. It is therefore necessary to strengthen community policing in the settlements in the two locations. Community policing in these locations should take into consideration the unique nature of the two districts, owing to the presence of refugees.

## **ii) Judiciary**

The capacity of the Judiciary needs to be enhanced to enable it handle the huge case-backlog as well as provide language interpretation services, in addition to being able to take services close to the settlements.

### **a) Translation services (General recommendation)**

**In the short-term**, like the Police, the Judiciary, especially in Isingiro and Mbarara, should be enabled to provide interpretation services to the people that seek services from these institutions. It is true that UNHCR and RLP have trained some interpreters. Nonetheless, the Judiciary indicated the lack of translators as a problem, as did the Police and local government. While the same approach could be adopted as is suggested for the Police, it should be noted that translation for court purposes is much more technical. For this reason, the translators that are to serve the Judiciary should get special training, especially in the basics of the law, procedures and legal terms. It should also be noted that court translation is a more professional service which may require committed persons and not just volunteers as may be the case with the Police. The Judiciary should also devise ways to ensure court interpreters are available to support the deaf, blind and dumb persons to follow court proceedings.

### **b) Handling case-backlogs (General recommendation)**

Case-backlogs remain a huge challenge for the Judiciary. While the institution has adopted several strategies for dealing with it, the problem still stands at 21% in 2018, down from 36% in 2017. For this reason, it is important that measures are adopted to support the Judiciary handle the problem in those districts.

**In the short-term**, the Judiciary should be supported to hold more special case-backlog sessions in Mbarara and Arua. Case-backlog sessions should also be held in Isingiro. To realise this, there is need to work with the Judiciary to establish the logistical and technical support required. In addition, the Judiciary needs support to educate court users in the target districts on court procedures and how to take advantage of such procedures as Alternative Dispute Resolution (ADR). Education, Information and Com-

munication (IEC) materials need to be developed on these matters. This is discussed further under legal empowerment.

**In the long-term**, the Judiciary needs to recruit more judicial officers in Arua, Isingiro and Mbarara. This will cover the human resource gap in those locations. Like the Police, these officers, as well as those currently on ground, should receive specialised training on refugee issues. Additionally, as one of the causes of case-backlog are the tedious court procedures, the Judiciary needs to be supported to review its rules and make them friendly such as by shortening some procedures. This requires both technical and financial support. This is in addition to training and mentoring judicial officers and other key actors in the sector on ethics, art of advocacy, legal writing and judgment preparation and writing. This will help judicial officers act in a more ethical manner and prepare judgments on time.

### *c) Support mobile courts (Refugee specific)*

As seen in Chapter 3, distance between the settlements and the courts of law make it hard for refugees and members of host communities to access judicial services. For those who can, it comes at a huge cost among others in transport fares. As indicated, while some judicial officers have experimented with mobile courts, this has not been very successful. This is largely due to logistical deficits as well as poor planning. In addition, the practice has not been institutionalised within the Judiciary, although there is commitment to do this in a more cost-effective way.

**In Short-term**, the Judiciary should be supported to plan and hold mobile courts in the settlements in Isingiro and Arua in a more effective and sustainable manner. What could be done includes preparing all court-users, including the lawyers, prosecutors, and litigants and their witnesses, in addition to securing appropriate premises for the courts. A couple of rounds in these settlements would help to reduce the backlog of cases from there, as well as ensure expeditious disposal of cases for the benefit of litigants.

**In the long-term**, the Judiciary needs to institutionalise mobile courts and have clear rules and procedures for the same, as well as acquiring the necessary logistics and infrastructure. These courts should be utilised across the country and should not be restricted to the settlements. Rather, they should be used in all hard-to-reach areas.

### *iii) Local Governments and other services (General recommendation)*

There is need to support and involve local governments in refugees matters in Arua and Isingiro to enhance their capacity to handle the challenges that come with hosting refugees. Most importantly, these structures should be involved in making decisions



pertaining to rule of law, access to justice and security for refugees, while of course not interfering with judicial independence. One of the avenues for common engagement are the DCCs and RCCs mechanisms. For now, some, officials especially in Isingiro, feel excluded. It is therefore important that all actors work with local governments. This in most cases brings quick results,<sup>311</sup> resulting from the fact that these structures are on ground. Like the Police and Judiciary, these structures too need support in logistical terms, as well building their capacity to understand refugee matters and being able to provide interpretation services. A programme that focuses on this should be designed.

The programme should also take on board other institutions, mechanisms and functions that work closely with the local governments, Police and the Judiciary. This includes the probation and welfare officers, community development officers as well as the structures responsible for juveniles. With respect to children, it is important that the districts are empowered to provide child protection services, especially in the context of access to justice.<sup>312</sup> Isingiro, Mbarara and the surrounding areas should in the long-term be enabled to construct and operate a remand home. With respect to Arua, the Remand Home should be engaged, supported logistically and helped to overcome the challenges it has. This includes creating an amiable relationship with other JLOS actors including the Police. In Isingiro, the probation officers should be provided with means of transport to enable them move about for effective functionality.

### 4.3.3 The informal justice system and LC Courts

As seen above, the informal justice systems and LC courts stand out as preferred avenues by both host and refugee communities for resolution of legal disputes. This notwithstanding, there are some gaps in these mechanisms. Examples here include challenges in handling SGBV cases. The functionality of the mechanisms could be improved by create awareness about the law and their jurisdiction as well standardising some of the structures and their procedures, especially the RWCs. Each of these is discussed below. It should be noted that while technically speaking LC courts are formal structures these will be discussed here together with the informal mechanisms because they have all the features of the latter and operate more-less in the same way.

#### *i) Capacity building in form of trainings (General recommendation)*

**In the short-term**, there is need to build capacity of () through a programme for sensitisation and awareness creation for the informal justice mechanisms in both Arua and Isingiro. The training n should focus on building capacity on the criminal justice sys-

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311 Interview with Claire Hawkins Coordination Specialist, Focal Point for Peace, Security and Humanitarian Action, at UN WOMEN, Kampala on 5th December 2018.

312 Interview with Kampala UNICEF staff Child Protection Specialist, Laura Fragiaco and child specialist in emergencies, Lisa Zimmermann on 4th December 2018.

tem, its procedures and the jurisdiction of the various courts. This is in addition to training on the rights of women and children, as well as such basic elements of the right to a fair trial like the right to be heard. There is need for specific attention to SGBV. With respect to the LC courts, since many of the members are newly elected, these should be educated on the law which governs their operations. This should focus on their composition, quorum, jurisdiction as well as remedial powers. In addition, both LCs and other structures should be given training on refugee matters, focusing on basics.

### *ii) Standardise the structures and their procedures (Refugee specific)*

There is need to standardise some of the procedures of the informal structures other than the LC courts, whose procedures are already defined by law. It should be noted however that some of the mechanisms need to be handled with caution. This is because of the emotive nature of the structures that are grounded in culture and tradition, and at the same time taking into account the slow speed at which they evolve their traditions.

**In the short-term**, the RWCs should be supported to standardise their procedures. This can take the form of engagements with members of the RWCs and together with them defining procedures they should follow. In addition to this, there is need to consider formalising the RWCs and defining them as legal structures recognised by the law. For this, advantage should be taken of the on-going review of the 2006 Refugee Act to have the RWCs recognised in the law. The RWCs should in the law mirror the LC courts in cases between refugees and should feed into the formal judicial system the same way LC courts do for purposes of appeal and enforcement.

With respect to the traditional mechanisms, standardising these should be handled with caution as a **long-term** enterprise. These need to be supported to evolve and reconsider some of their procedures, especially those that are negatively patriarchal and encourage such practices as child marriages. There is need to study these and see how best to catalyse change, while enhancing positive aspects of their approaches.

## **4.3.4 Legal empowerment**

One of the factors which affects rule of law and access to justice in Arua and Isingiro is ignorance on the part of host and refugee communities of their rights and legal procedures. This is in addition to ensuring access to legal services.

### *i) Legal awareness (General recommendation)*

**As a short-term** measure, there is need to create a programme to promote legal awareness in both Isingiro and Arua. The programmes should aim and have activities that educate both refugee and host communities on their rights, as well as legal obligations.

This is in addition to legal processes and procedures. Among others, awareness should be created around the justice mechanisms available to the communities and how these could be used. Focus should be on court procedures, ADR, as well as simplified mechanisms such as the small claims procedure.

In the programme, there should be specific focus on awareness creation around SGBV and educate the community on its manifestation and how best to respond to the same. These awareness programmes should build the knowledge of men and women on SGBV and how they can live and relate with one another. Different actors should be drawn into this programme, including JLOS and CSO actors. LASPNET could take the coordination role in this regard. The awareness creation could focus on creating basic legal literacy, including providing basic knowledge on legal processes and the mandates of different legal institutions.

It has been suggested that training manuals and user guides to enhance appreciation by the population of refugee needs should be developed and widely disseminated among stakeholders. That these could also be used in the curriculum of Police, Prison and Government training as had been done by RLP at one time,<sup>313</sup> including with the UPDF.<sup>314</sup>

## *ii) Legal services (General recommendation)*

As illustrated above, access to legal services remains a big challenge for communities in Arua and Isingiro. Legal services are in short supply for these communities. The few LASPs in the districts are understaffed, poorly resourced and overwhelmed. It is clear though that there is commitment on the part of these providers, with such entities as RLP, ULS, HIJRA and FIDA-U providing the services despite the constraints. Both in the short and long-term, these and other LASPs should be supported to enhance and extend their services to the settlements. One area requiring urgent support is to enable the LASPs employ and pay qualified and licensed advocates to provide the services, supported by paralegals as is required by law. The number of duty counsel, as provided by ULS, should be bolstered and made available to Isingiro and Arua in adequate numbers to support refugees going through the criminal justice system. Moreover, legal aid services should be extended to indigent members of host communities as well. Existing efforts to support and coordinate LASPs through LASPNET should be bolstered, focusing particularly on Arua and Isingiro. The joint legal aid programme provided by LASPNET, FIDA-U, PILAC and the Lwengo District Local Government should be replicated in Arua and Isingiro. It is also important to support LASPs to incorporate psychosocial support services in their legal aid activities.<sup>315</sup> In order to ensure sustainability in the

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313 Ag. Commissioner for Refugees in the Office of the Prime Minister Gerald Simon Menhya in an interview 01/02/2019 at Department of Refugees Offices of OPM along Sir Apollo Kaggwa Road.

314 Interview with Brigadier Charles Wacha, Office in Charge of the Human Rights Desk in the Uganda Peoples Defence Forces on 13th November 2018.

315 Interview with Claire Hawkins Coordination Specialist, Focal Point for Peace, Security and Humanitarian Action, at UN WOMEN, Kampala on 5<sup>th</sup> December 2018.

provision of legal aid for vulnerable groups including children, women and the elderly both within refugee settlement and host communities, there is need to first track state funded legal aid scheme through enactment of the National Legal Aid Bill.

It has been indicated that JLOS is trying to secure funds to make provision of specialised refugee legal aid services.<sup>316</sup> This will help to close the gaps in legal as illustrated above. However, to address the issues affordability of legal services, there is need to support economic empowerment programmes for both refugees and host communities. The ongoing livelihood initiative in the respective settlements are positive development to build on draw experiences from.

#### **4.3.5 Economic Empowerment (General Recommendation)**

Related to the above, there is need to empower both men and women in refugee settlements and host communities to ensure self-sustenance but also mitigate and minimise opportunities for SGBV. This can be done through providing opportunities such as access to credit facilities and markets for products made by refugees and the host communities. As a result, this will help to close service gaps and reduce on the competition for scarce resources which often instigate conflicts.

The ongoing livelihood initiatives in the respective settlements and host district are positive development . For instance, Danish Refugee Council supports women empowerment programmes in Rhino refugee settlement to engage in various economic activities such as making Vaseline and starch out of mangoes. UNICEF also bolsters small scale businesses such as catering, tailoring and hairdressing for both refugees and host communities in Arua. In Isingiro, HIJRA supports refugee groups with livestock and tree seedlings. Therefore, there is need to continue supporting such economic empowerment models or initiatives and if possible replicate them in other refugee settlements and host communities.

#### **4.3.6 Conflict Prevention (General recommendation)**

In order to mitigate the risk of conflict between refugees and host communities there is need to promote joint social activities such as games, music, dance and drama as well as embark on peace messaging through radio and television programmes both in the settlements and host communities and the entire country. Furthermore, as the peace policy for Uganda gets finalized it will be prudent to reflect on how it responds to the context of vulnerable groups such as refugees but also the host communities.

### **4.4 Concluding Remarks**

This Report has presented findings of an assessment of the rule of law, access to justice and security needs of both refugee and host communities in Isingiro and Arua. While

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<sup>316</sup> Interview with Margaret Ajok of the JLOS Secretariat, on 13th November 2018.

focus is on the two districts, the findings of this Study are intended to guide responses in addressing the rule of law, access to justice and security needs of refugee and host communities in Uganda.

It has been established that the state has commendably tried to address the rule of law needs of the two districts. This notwithstanding, there are some gaps which compromise the performance, integrity and capacity of the JLOS institutions in the execution of their mandates. These are enumerated in the Report to include limited personnel and operational facilities. The Report has highlighted the plight of victims of SGBV. By way of example, some women complained that most police officers are male, which makes it hard for them to report their cases. In addition, the Report has illustrated performance, integrity, transparency, and accountability deficits. The welfare of police officers remains a challenge and one which compromises their performance. One such challenge is lack of good accommodation facilities.

With respect to access to justice, corruption and the costs of justice, have in some cases forced communities to resort to informal methods of disputes resolution as well as to the LC courts. These are preferred because they are flexible, and provide quick dispute resolution. Accessing courts for refugee communities is unaffordable to most because of the long distances between the settlements and the courts of law. Access to justice by refugees is also compromised by negative attitudes by local communities, as well as language challenges since some understand neither local languages nor English, and require interpretation services at both police and courts. In addition to the above, there are gaps in accessing legal services.

The Report has also made some findings relevant to security in both Arua and Isingiro. The security threats are “situational threats” as well as “incidents of criminality. The situational threats and contradictions include food insecurity; inter-community hostilities; porous borders; un-document; and land disputes. The ethnic conflicts exist mainly within refugee communities, especially among those from South Sudan. Land disputes exist especially in Isingiro Arua, over grazing fields. Other incidents are related to occurrence of crime such as SGBV. Moreover, the Police in both places faces challenges investigating and prosecuting cases related to SGBV, as well addressing the needs of victims.

It is on the basis of the above findings that the Report makes a number of recommendations, both short and long-term. These recommendations are intended to guide programme and could be concretised during this process. The recommendations pertain to building the capacity of JLOs institutions, improving the informal justice system, as well as LC courts and promoting legal empowerment for both host and refugee communities.

In the long run, it is important to deal with the root causes of conflict that force people into refugee. The volatility in the Great Lakes Region needs to be addressed, as well as the conflicts and terrorism in the Horn of Africa.

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## List of Persons Interviewed

1. ACP Byamugisha Frank, Regional Prisons Commander Western, interviewed on 23rd October 2018.
2. Ms. Almaz Gebru, Resident Representative, UNDP on 26th February 2019
3. Ms. Annet Akimanzi, Communication Specialist, CRRF Secretariat on 5th February 2019
4. Ms. Anna Makalala, Analytical Advisor, CRRF Secretariat on 5th February 2019
5. Ms. Annet Mpabulungi Wakabi, Team Leader, Rule of Law and Constitutional Democracy, UNDP on 27th February 2019.
6. Mr. Armitage Basikania, Settlement Commandant, Rhino refugee settlement on 22nd October 2018.
7. Brigadier Charles Wacha, Office in Charge of the Human Rights Desk in the Uganda Peoples Defence Forces on 13th November 2018.
8. Ms. Claire Hawkins, Coordination Specialist, Focal Point for Peace, Security and Humanitarian Action, at UN WOMEN, Kampala on 5th December 2018.
9. D/C Happy Alexander, CID Kashwojwa Police Station, on 22nd October 2018.
10. D/CPL Atuhaire Herbert, CID Nakivale Post Post, on 22nd October 2018.
11. Dr. Charles Madrama, Police Surgeon, Arua, on 20th October 2018.
12. Mr. Dennis Mbaguta, Settlement Commandant, Imvepi, on 25th October 2018.
13. Mr. Dravu Stephen, District Internal Security Officer (DISO) Arua on 19/10/2018.
14. Mr. Ezra Rubanda, Senior Planning Officer CRRF Secretariat on 5th February 2019
15. Mr. Frank Byamugisha, Regional Prisons Commander, on 24th October 2018.
16. Mr. Gerald Simon Menhya, Ag. Commissioner for Refugees in the Office of the Prime Minister, 1st February 2019
17. Mr. Godfrey Kaima, Ag. Director, CRRF Secretariat on 5th February 2019
18. Mr. Gumisiriza Aloysius, Assistant Chief Administrative Officer and District Refugee Liaison Officer, Isingiro, on 24th October 2018.
19. Ms. Harriet Adubango, Resident State Attorney, Arua, on 29th October 2018.
20. His Worship Lubowa Daniel, Chief Magistrate Arua, on 30th October 2018
21. His Worship Twakiry Samuel, Chief Magistrate Mbarara, on 25th October 2018.
22. His Worship Wandera Wilson, Grade I Magistrate, Isingiro District at Isingiro Magistrates court chambers, on 24th October 2018.
23. Mr. Joël Boutroue, Representative, UNHCR on 18th February 2019
24. Hon. Judge Duncan Gaswaga, Resident High Court Judge for Mbarara, on 22nd October 2018.



25. Hon. Judge Paul Wolimbwa Gadenya, High Court Judge and Judge in charge of Planning and Budgeting, on 7th November 2018.
26. Hon. Judge Mike Chibita, Director of Public Prosecutions on 31st January 2019.
27. IP Afayo, Officer in Charge of Imvepi Police Station on 25th October 2018.
28. Ms. Komuhangi Doreen, Programme Analyst, GBV and Humanitarian, UNFPA,
29. Ms. Laura Fragiacomio, Child Protection Specialist, UNICEF on 4th December 2018
30. Ms. Lisa Zimmermann, Child specialist in Emergencies, UNICEF on 4th December 2018
31. Ms. Listowella Atto, Legal Officer, FIDA Uganda Arua Office, on 29th October 2018.
32. Ms. Margaret Ajok of the JLOS Secretariat, on 13th November 2018.
33. Ms. Margaret Atieno, UNHCR Assistant Representative Protection.
34. Mr. Mayengo Godfrey, Deputy Commandant - Rhino refugee settlement on 20th October 2018.
35. Mr. Muhangi Herbert, Resident District Commissioner (RDC), Mbarara, on 27th October 2018.
36. Ms. Naggayi Noeline, Legal Officer Refugee Law Project, on 22nd October 2018.
37. Ms. Namugere Florence, Protection Officer with Care and Assistant to Forced Migrants, Western Uganda, on 22<sup>nd</sup> October 2018.
38. Mr. Okwera O/C Yoro Rhino refugee settlement Police Station on 20/10/2018.
39. Mr. Osaka Solomon, Refugee Desk Officer-OPM Arua, on 25th October 2018.
40. SP. Edward Mugweri in an interview on 20th October 2018.
41. SP. Erimu Richard, Isingiro District Commander, on 22nd October 2018 .
42. SP. Ibanda David, Ag Regional Police Commander/Regional CID Officer, Rwizi Region.
43. SP. Murungi Gad, M/Aged 42, 1 month as area DPC, Mbarara on 22nd October 2018.
44. SP. Mugweri Edward, Regional Police Commander West Nile on 20th October 2018.
45. Mr. Tasebura Kirya Amos, Assistant Settlement Officer – OPM -Mbarara Refugee Desk South West, on 29th October 2018.
46. Mr. Vuata Evans of Police Standards Unit, Arua, on 29th October 2018.
47. Mr. Weijahe Godfrey, Isingiro District Internal District Security Officer, on 22nd October 2018.

## List of Persons who provided technical support

1. Ms. Shaima Hussein, Policy Specialist, Rule of Law, Justice, Security and Human Rights Team, UNDP Bureau for Policy and Programme Support.
2. Mr. Sofiène Bacha, Policy Specialist, Rule of Law, Justice, Security and Human Rights Team, UNDP Bureau for Policy and Programme Support.
3. Ms. Annet Mpabulungi Wakabi, Team Leader, Rule of Law and Constitutional Democracy Programme, UNDP.
4. Ms. Hadijah Nabbale, Programme Officer, Rule of Law and Constitutional Democracy Programme, UNDP.

5. Ms. Diva Mukisa, Programme Officer, Rule of Law and Constitutional Democracy Programme, UNDP.
6. Ms. Rahel Kibru, Human Rights Intern, Rule of Law and Constitutional Democracy, UNDP.
7. Mr. Tony Muhumuza, National Economist and Team Leader, Strategy and Policy Unit, UNDP.
8. Mr. Simon Peter Nsereko, Economic Analyst, Strategy and Policy Unit, UNDP.
9. Mr. Thierry Prouteau, Programme Specialist – Displacement, Emergency Response and Resilience Strategy for Refugees and Host Communities, UNDP.
10. Ms. Ji-Young Kim, Programme Officer, Emergency Response and Resilience Strategy for Refugees and Host Communities, UNDP
11. Ms. Carolyn Akello, Associate Protection Officer, UNHCR
12. Ms. Aida Namugenyi, Protection Intern, UNHCR
13. Mr. Yonna Tukundane, Communication/PI Associate, UNHCR
14. Ms. Rose Eyoru, Associate Solutions and Development Officer

## List of Persons who validated the report

1. Hon. Judge Gaswaga Duncan, Head of Execution of the High Court, Judiciary
2. His Worship Fred Waninda, Registrar Planning and Development, Judiciary
3. His Worship Daniel Bwambale, in charge of Law reporting Judicial Studies Institute, Judiciary
4. Mr. Ssembatya Joseph, Ag. Commissioner Policy and Legal Ministry of East African Affairs
5. Ambassador Martinez Mangusho Arapata, Head of Department, Ministry of Foreign Affairs
6. Mr. James Mbabazi, Uganda Law Reform Commission
7. Mr. Charles Birungi, Sociologist, Uganda Law Reform Commission
8. ASP Nairuba Diana, Legal Officer, Uganda Police Force
9. Mr. Samuel Olumo, Senior Legal Officer, Judicial Service Commission
10. Ms. Babirye Petoa, Principal Education Officer Equal Opportunities Commission
11. Ms. Betty B. Amony, Senior Human Rights Officer, Uganda Human Rights Commission
12. Mr. Akutu Andrew, Human Rights Officer, Office of the High Commissioner for Human Rights
13. Ms. Margaret Atieno, Assistant Representative Protection, UNHCR
14. Mr. Babacar Samb, Senior Protection Officer, UNHCR
15. Ms. Akello Carolyne, Associate Protection Officer, UNHCR
16. Ms. Diva Mukisa, Programme Officer, Rule of Law and Constitutional Democracy UNDP
17. Ms. Rahel Kibru, Human Rights Intern, Rule of Law and Constitutional Democracy, UNDP

18. Mr. Ali Soyer, Rule of Law Coordinator, International Rescue Committee
19. Mr. James Otim, Rule of Law Coordinator, International Rescue Committee
20. Mr. Denis Mbaguta, Commandant, Rhino refugee settlement, Office of the Prime Minister
21. Mr. Tasebula Kiirya Amos, Office of the Prime Minister
22. Mr. Armitage Baskania, Commandant, Imvepi Settlement, Office of the Prime Minister
23. Ms. Dorah Caroline Mafabi, Programme Manager, Democratic Governance Facility
24. Mr. Andrew Mwayi, Programme Manager, Justice Centres Uganda
25. Ms. Nakibuka Sandra, Legal Officer, Foundation for Human Rights Initiative
26. Ms. Nakalembe Judith, Senior Legal Officer, War Child Canada
27. Mr. Ssenoga Martin, Programme Manager, National Union of Disabled Persons in Uganda
28. Mr. Mutonerwa Vincent Ag. Executive Director, Uganda Christian Lawyers Fraternity
29. Mr. Mugero Jesse, Legal Officer, Refugee Law Project
30. Mr. Acaye Gabriel, Legal Officer, Uganda Law Society
31. Mr. Amawi Joseph, RWC III Rhino refugee settlement, Arua
32. Mr. Agele Cons, RWC III Imvepi refugee settlement, Arua
33. Mr. Edea Stellah, Women Representative, Arua
34. Mr. Ntugwerisho Colman, Makerere University
35. CP. Namutebi Hadijah, Uganda Police Force/Researcher
36. Prof. Christopher Mbaziira, Ag. Principal School of Law/ Lead Researcher
37. Dr. Kasirye Ibrahim, Researcher
38. Ms. Vivian Oyella, Office of the Prime Minister/Researcher
39. Ms. Nabankema Harriet, Lecturer Law Development Center/Researcher
40. Mr. Gard Benda, Executive Director, World Voices Uganda/Researcher
41. Mr. Musa Modoi, Technical Advisor Human Rights and Accountability, Justice Law and Order Sector/Researcher
42. Ms. Sylvia Namubiru Mukasa, Executive Director/Research Coordinator, LASPNET
43. Ms. Violah Ajok, Ag. Director Programs/Support Research Coordinator, LASPNET
44. Mr. Walusansa Badru, Research and Knowledge Management Officer, LASPNET
45. Ms. Nyanzi Cathie, Lobby and Advocacy Officer, LASPNET
46. Ms. Namuyanja Jamidah, Networking Coordination and Partnership Officer, LASPNET
47. Ms. Achen Daphine, P.A Research and Knowledge Management Officer, LASPNET
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49. Ms. Sumaiyah Semakal, Volunteer, LASPNET
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