

Negotiating the Safety of Strangers in Protracted Crisis Spaces: A Human Rights Perspective

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Abstract

Ugandan refugee experiences indicate emerging trajectories of protecting strangers in protracted crisis spaces. It demonstrates how both Uganda's formal justice system and the refugees' own traditional justice mechanisms fail to guarantee the safety and protection of those made vulnerable by the crisis. While the refugees' traditional justice mechanisms do not meet international human rights standards, especially regarding non-discrimination as well as fair and equal treatment of all, the shortcomings of the national formal justice system pose a formidable challenge for Uganda and its humanitarian partners' goal of effectively protecting strangers residing in the country. The argument is based on qualitative research involving refugees, their leaders, and state and humanitarian officials within settlements. In response, the paper recommends a human rights-based approach to improve access to the national legal system and ensure traditional justice mechanisms promote fair and equal treatment of all. Moves in this direction should begin by educating refugees' leaders about their obligations as duty-bearers under national and international human rights law.

Recommendations

- ◆ The Uganda Human Rights Commission to sensitise and provide human rights education to all stakeholders in refugee protection and management.
- ◆ The Uganda Human Rights Commission to ensure that human rights principles guide refugee protection programmes.
- ◆ The OPM should continuously provide legal awareness and oversee the operations of RWCs and RTCs.
- ◆ The Uganda Government, UNCHR and other partners to provide more funding for refugee human rights education and support to mobile courts.

Keywords: *Safety, Protection, Traditional Justice Mechanisms, Access to Justice, Human Rights-Based Approach, Human Rights Education*

1. Introduction

Uganda has hosted refugees since World War II (Lwanga-Lunyiigo, 1993). As of 2023, Uganda has over 1.5 million refugees fleeing from wars, violence, persistent economic crises, and political instability in the Great Lakes region and the numbers are increasing due to the recent outbreak of fighting in the DRC between the M25 rebel group and the Congolese Army (UNHCR, 2022).

Uganda's refugee policies have been internationally recognised for their rights-based dimension (Amnesty International, 2017). The government's partners in refugee protection include NGOs and INGOs such as the United Nations High Commissioner for Refugees (UNHCR).

The policy debate on the best way to guarantee the safety of strangers, whether those targeted by belligerents or refugees that have fled to countries such as Uganda, is continuous (Allen 2005; Allen 2015; Mimiya, 2016). The content of protection is debated due to its various locally contextualised forms: security of persons and property and the human right to food, health, education, and access to justice.

This policy paper explores access to justice, defined as 'a process which enables people to claim and obtain justice and remedies through formal or informal institutions of justice in conformity with human rights standards' (UNDP, 2005:5). Drawing upon qualitative research among refugees and those responsible for their protection in Uganda's settlements, it explores how traditional justice mechanisms and the state's formal legal system tend to discriminate against women, girls and children who are rendered vulnerable by ongoing regional crises. It

highlights the ineffective guarantee of refugee safety in settlements, driven by issues like the incompatibility of traditional reconciliatory justice with statutory justice, thereby creating a protection gap that carries liabilities for the state and its partners. This policy recommends the application of a human rights-based approach to both the formal and informal justice systems in Uganda, starting with a human rights education for the entire justice system, public authorities, and refugees' leaders as duty-bearers. It considers it the most plausible approach to securing the safety of strangers in the context of conflicting judicial provisions.

2. Literature Reviewed

This policy paper is informed by three sets of overlapping literature: the first concerns donor organisations' efforts to support the rule of law in both developmental and humanitarian contexts (Carothers, 2006; Armytage, 2012; Kleinfeld, 2012). Its authors have coalesced around the recognition that the political economy of justice systems is as important as their institutional forms. In fragile conflict and post-conflict settings, this means that specific regions, groups, or identities face difficulty accessing justice mechanisms because of practical and political barriers (Ezennia 2015). Moreover, when they do, they may not have the means to afford a fair hearing or even be denied it by systems biased toward them. In some contexts, elites may use justice mechanisms to further their own aims, such as pursuing rivals or rubber-stamping their predatory activities. This can all make donor-funded reform efforts challenging, as changes may threaten the interests of powerful stakeholders.

The second, often ethnographic, body of literature concerns informal justice mechanisms in places affected by conflict or where the state is unable or unwilling to be the sole arbitrator of the law (Baines, 2007; Isser, 2011; Allen and Macdonald, 2015). Researchers from this pool argue that multiple systems and notions of justice may ignore, compete, or collaborate with one another within a single context (Tamanaha, 2007). Furthermore, many of them may not conform to the normative assumptions that guide development, humanitarian and state legal frameworks, and their outcomes may be considered illiberal or oppressive. Nonetheless, authors agree that they cannot simply be treated as hangovers from previous eras or beliefs and that they must be taken

seriously as mechanisms that, in many places, provide the first forum to which people turn for a modicum of justice.

The last set of literature has explored how to engage and reform informal justice systems in conflict-affected places, often as part of transitional justice efforts (Chirayathet *et al.*, 2005; Allen and MacDonald, 2014). This includes situations where refugees have settled and mechanisms have arisen to resolve disputes and dispense justice (Griek, 2006; da Costa, 2006; Purkey, 2011; Donnelly and Muthiah, 2019; Bender, 2021). Throughout, the risks and trade-offs of propagating or legitimising particular practices and powerholders that preside over them on the way to more equitable justice provision are hotly debated. Indeed, many argue that such moves are necessary to help spread and uphold human rights.

To add to this literature, this paper contributes empirical data on discriminatory practices against women and children in refugee settlements in Uganda. Furthermore, it advances policy recommendations permeated by a human rights-based approach to refugee protection. In so doing, it joins others that have come to similar conclusions in comparative settings, yet it focuses on why refugees must themselves be considered rights holders and duty bearers, and why education across the entirety of Uganda's interacting justice system is key (UNDP, 2005; Larsson, 2019; Sepulveda *et al.*, 2012:18). In short, it concurs with the view that an “uncompromised persistence on rights is the only guarantee for refugee protection and assistance in the long run” (Crawley, 2017:4).

3. Methodology

The data informing this paper was collected using various qualitative interview techniques, focus group discussions (FDGs), and archival reviews of police records and programme reports between June 2021 and April 2022. The research sites were the Maaji, Nyumanzi and Pakelle refugee settlements in Adjumani District. Purposefully sampled Key informant interviews were conducted with the Settlement Commandant, OPM representative, Asst. Settlement Commandant, Refugee Welfare Committee (RWC) I, II & III Chairpersons, 2 Police Officers, UNHCR Protection Officer, LWF Protection Officer, Refugee Law Project Officer, 3 Refugee Traditional Courts officials, 3 local government officers, and 3 host community opinion leaders.¹⁸ refugee leaders identified by community members were also interviewed by 2

research assistants. 14FDGs (2FDGs with 8 women, 1FDG with 8 men each, 1FDG each with 8 girls 15- 20 years old, and 1FDG each with 8 disabled people) were conducted from Maaji, Nyumanzi and Pakelle. In total 150 people participated in these sessions. The data was recorded on notepads, responses triangulated, and a content and thematic analysis conducted.

As a senior lecturer at Gulu University, the researcher was assisted by two students on Masters in Peace and Conflict Transformation studies. These students work for refugee-supporting NGOs in Adjumani. They facilitated my access to the settlements, key informants and opinion leaders. This research is part of the *“Safety of Strangers: Understanding the Realities of Humanitarian Protection”* in Uganda and South Sudan, by the London School of Economics, funded as indicated above. The researcher was sub-granted by LSE through Gulu University. The project received a general ethical clearance for this research from the Gulu University Ethical Clearance Committee.

4. Findings on Access to Justice through Traditional Justice Mechanisms in Refugee Settlements

Traditional justice mechanisms can be understood as customary, informal, grassroots, community-based, indigenous and local mechanisms (Allen & Macdonald, 2013). They are used in dispensing justice while in the refugees' country of origin (OHCHR, 2016); as such, they are a 'living customary law' in the sense that they are dynamic, flexible and are easily applicable to particular circumstances (OHCHR, 2016). They 'invoke superior compliance of the communities concerned than court orders' (Braithwaite, 2014; Heider, 2016). However, their efficacy in providing a sense of justice for all in refugee situations is contestable.

According to respondents, violence against women and girls includes sexual assault, wife battery, indecent assault, defilement, rape, female genital mutilation, incest, forced prostitution, unsafe abortions, female infanticide, domestic violence, forced marriages, and son preference (from FDGs).

Reasons for lack of access to justice through traditional justice mechanisms include: i) incompatibility between cultural practices and Uganda's legal system; ii) the Refugee community's preference for traditional justice mechanism over the Uganda legal system to resolve

their disputes; iii) community discrimination against individuals; and iv) biased RTC decisions towards women.

On incompatibility between the two justice mechanisms, one respondent revealed how a traditional leader endorsed the marriage of a 13-year-old girl in one of the settlements without the knowledge of the RWCI. To avoid arrest, the couple ran back to South Sudan and returned to the settlement when the girl was 18 years old and with two kids (Interviewed Women Secretary, 5.3.2022). Relatedly, there is a strong community preference to use traditional justice mechanisms to resolve their disputes because, the aggrieved party is compensated. Consequently, some defilement and rape cases are suppressed and not reported to the RWCI for police action because the defilers are secretly forced to pay a dowry and marry the young girls (WVFO, Adjumani 22.04.2022). Moreover, not much is expected from reporting a case to the police. For instance, one respondent narrated how a Ugandan policeman was arrested for eloping with a refugee-married woman. But the fine for adultery in Uganda is 600/= shillings, yet if the case was before traditional justice mechanism, the policeman would have been fined 7 cows: five for the husband and two for the South Sudan government (Opinion Leader, Adjumani 3.10. 2021).

An example of community discrimination against an individual is a case where an old man paid 70 cows and married a 17-year-old girl. While the parents and the girl 'accepted', the RWCI Chairperson tried in vain to stop the teenage marriage. He feared enforcing the law, as doing so would cause more chaos and disharmony among the refugees (RWCI Chairperson, Adjumani 14.11. 2021). Here the parents seemingly sacrificed the rights of the girl for wealth, and the community preferred harmony to the girl's justice.

In all, our findings indicated that the decisions made by Refugee Traditional Courts often favour men and are biased towards women, and normally such decisions must be followed even when they are unfair.

5. Findings on Access to Justice in the State Justice System in Refugee Settlements

Delivery of justice is hindered by three main categories of obstacles:- i) Lack of access; ii) Discrimination and iii)Corruption.

Under lack of access to the courts of law, a number of obstacles were identified, including long distance to courts of law; lack of money to meet court expenses; language barriers; inability to prosecute

perpetrators; and delays in deciding cases, as explained by one respondent:

... corruption among RWCs and police; long distances from settlements to the courts; long time taken before an issue is addressed; discrimination in treatment between refugees and host communities; poverty; limited staff and resources among partner organisations; poor police investigations and an inability to persecute perpetrators (RWCI Chairperson, Nyumanzi, 22.09. 2021).

Long distances on marram roads from camps to the Magistrate's Court in Adjumani prevent women GBV survivors from accessing justice before the courts of law. They are too poor to afford local transport. While mobile courts provide some relief in this regard, they are usually held at the base camp in a particular zone, yet the distance from other zones to the base camp is still far for women victims to walk. Moreover, limited funds impede increasing the frequency of mobile courts, as they cannot cover the cost of transporting judicial officers, prosecutors, defence counsels, and persons on remand. (Official, RLP, 23.9.21).

Language presents a major challenge for access to justice before the Ugandan justice system. The refugees speak different native languages, and yet most Ugandan lawyers use English. The cost of translation is high, and yet translations often alter information. The language barrier curtails police investigations too, as not many police officers understand the languages spoken by refugees, thus leading to a miscarriage of justice.

The delay in delivering justice for refugee cases is unacceptable. Some respondents complained that such cases could take two to four years to be sorted, while those of the host communities take two weeks (women secretary RWCII 11.7.2021). Discrimination happens also when refugees are denied bail for lack of fixed addresses or due to the fear that they might run away to South Sudan. An example is a case in the Pagirinya refugee settlement where a mob killed a female pastor in the presence of elders. But when the matter reached the police, the elders allegedly refused to identify and reveal the real killers, so the police arrested the elders, who have since been detained (Women FDG 11.4.2022).

Corruption of officials in refugee settings sometimes leads GBV survivors to mistrust the Ugandan justice system. One respondent narrated how she had to pay money to the RWCI Chairperson before her case could be forwarded, while the police demanded money before they would carry out investigations. A protection officer, Fin Church Aid, confirmed that 'some RWCI chairpersons ask for money since they are

not paid by the government' (FCA Officer 03.02.202). This is corroborated by Purkey's observation that 'the formal justice systems of the host state are... subject to numerous access barriers such as distance, language, cost, lack of knowledge and potential discrimination' (Purkey 2014:273). Securing a letter from the Refugee Welfare Committee (RWC) Chairperson before case referral does not come free of charge, yet many victims don't have money to pay.

6. Discussion

Discrimination against women happens when SGBV survivors fail to access justice, whether before the courts of law or the traditional justice mechanisms, due to various barriers and reasons. For example, traditional justice administrators in settlements are experts often not trained in conventional justice mechanisms (Police Officer Adjumani 4.7.2021). They normally dispense "justice" in line with their customary norms, and though their decisions might be seen by outsiders as discriminatory against women, they aim at maintaining community [cohesion] and family [unity] at the expense of individual rights, and thus, they are sources of trust and consistency that are resilient, adaptable and can contribute to human security" (Ibreck and Pendle, 2017:1). This explains why domestic violence and gender-based violence in refugee settlements are not cases to be reported to the police but solved at the settlement level, where women are biased against (Da Costa 2006). Our findings revealed that when a man assaults his wife, she cannot just run to her parents or divorce (FDG women refugees, Nyumanzi 6.12.2021). Instead, a committee of traditional/local leaders invites the two families of the couple to discuss the issues, and if the wife is not willing to go back to her husband, it is the responsibility of both sides either to accept divorce or for the husband to retain the wife under custody.

Despite Uganda's vast experience of protection and management and its acclimated open refugee policies, the reality in settlements is different regarding access to justice, especially for those refugees who have become most vulnerable (Reismann *et al.*, 2022). The implementations of those good policies and refugee response strategies do not seem to meet the spirit of the law in reference to access to justice for strangers (UCRRP, 2020:14). Some respondents from the three refugee settlements feel disappointed by their ineffective protection and safety, which might point to Uganda's state liability under the international law. When refugees are denied bail for lack of a fixed address or due to the

fear that they might run away to South Sudan if released on bail, it is discrimination.

Adopting a human rights perspective on the refugee plight can enhance their security and guarantee access to justice for everyone. The rationale is that “refugees have rights”(Holzer, 2013). As such, SGBV and all other discriminatory practices in the refugee settlement violate their rights and undermine their safety and protection as expounded in the OHCHR’s human rights assessment of the traditional justice systems in sub-Saharan Africa, in particular, the right to non-discrimination (OHCHR, 2016). Access to justice is a human right, and as Kirungi (2022) points out, it ‘should be treated with a principal reputation in the quest to achieve the promotion of human rights because it aims at equality of all persons and [without] discrimination.’

When elders pressurise SBGV survivors not to report cases to RWC, such cultural practices obstruct the course of justice and promote discrimination in law and practice. “Persons suspected of crimes in the host country should have their cases dealt with under the criminal laws of the country”(UNHCR, 2017:4).

Relatedly, from a human rights perspective, the need to maintain social cohesion and harmony in the community should not justify the unfair treatment of individual victims (Allen 2015:366). Surely, the fairness of a law, whether customary or statutory is contingent on its equal treatment of all concerned, in contrast with the view that lack of ‘due process in formal state-led dispute resolution [should lead] citizens to similarly disregard procedures and standards of evidence when incriminating others as part of local justice processes’ (Leonardi *et al.*, 2010:6). Similarly, we concur with the International Rescue Committee’s (IRC) observation that

[Non- discriminatory] access to systems of justice... is essential to ensuring the protection of basic rights... [otherwise]social tensions are increasingly irresolvable, violence becomes cyclical or used as a tool to resolve conflicts, and essential rights are eroded. Moreover, the freedom to seek redress when rights are violated is the core function of protection under the rule of law... (IRC, 2019:2).

Without effective and timely remedies, abuse of the human rights of victims continues unabated among refugee settlements in Uganda, as confirmed by Larsson’s research findings in 2019 in the Nakivale refugee settlement in Southwestern Uganda. When local leaders/courts are not accountable for their decisions in the host state, “refugees may be vulnerable to abuse and human rights violations by their own leadership

as well" (Purkey, 2021:272). One respondent plausibly proposed the assimilation of traditional courts and practices using a human rights lens:

Fighting a traditional structure that is much more respected by the people might be counterproductive as their activities might go underground. Make them appreciate the human rights law through training them on human rights; the superiority of Uganda law over their traditional law. Help them to disvalue their practices and guide them on how they should operate. Otherwise, they might continue with their cultural practices in secret and conceal criminal and unlawful activities (UNHCR Officer, Adjumani, 08.01.2021).

Education can change cultural practices. The promotion of human rights education can be leveraged on the educational committees in the settlements, whose main role is to promote education in general, within or among refugee settlements. Since the committee participates in developing bylaws that affect the learners' education, it should ensure that such laws reflect human rights principles.

Human rights education enhances the promotion, protection, and fulfilment of refugee rights in settlements (Massoud, 2011). According to the 1989 CRC and the 1951 Refugee Convention, education is a basic human right. Human rights education people begin to appreciate the equal dignity of all human beings, prompting them to consciously align their cultural practices with modern thought and practice (Senyonjo, 2007). The State law might not succeed in forcing refugees to abandon their cherished cultural values and practices. For similar reasons, the laws fighting female genital mutilation (FGM) seem to fail. To many outsiders, FGM is a violation of girls' and women's human rights, a gender-based inequality and discrimination against women, yet the vice continues unabated in many African communities simply because those laws fail to make men who sustain cultural values disvalue such practices (Caitrionacox, 2022).

The testimonies from the field indicate how education is already changing the mindset of women. Uganda's comprehensive refugee policy might contribute enormously to skilling refugees to lead constructive lives if it promotes refugee human rights education, as testified by some women who became aware of their rights after being trained by UN-Women and the Refugee Law Project:

After training in leadership skills, I became block leader, that is RWC1. Now I encourage other women to do the same. In fact, others have assumed leadership as Vice Chairperson, Secretary Children Affairs, Environment, Disability, and Opinion Leader in the village (Woman Interview, Maaji I, 4.11.2021).

Human rights education enables women refugees not to misinterpret those rights, as demonstrated by the following respondent: 'When I went home, I slapped my husband who had been beating me up, but afterward I realised that knowing my rights does not mean I should revenge or be rude to my husband' (Women Secretary, Pakelle 3.9.2021). Another shared with colleagues how she had punished her husband and later apologised to him after realising her mistake (women refugee FDG, Adjumani 10.8.2021).

While it is reasonable to respect a community's notion of justice, the principle of justice must be universal for all members of that community. Justice is universal and not contextualised (Anderson 1997). Through human rights education, communities can know the best policies for them (Macdonald and Allen, 2015: 308). However, resources are required to support human rights education and access to information that individuals/groups need to reform their societies (Cherry *et al.*, 2010:84; Kurki, 2011:6). Moreover, adequate human rights training is imperative to promote coherent and unfragmented knowledge. When this is done, people are more likely to view the approach as an agency policy than as an added burden (Thomas, 2011).

7. Construing a Rights-based Refugee Protection

An RBA eliminates all forms of discrimination (E/CN.4/1999/68:160) in refugee settlements since we begin to consider all refugees as rights holders and all leaders as duty bearers (Thomas, 2011) and provision of justice to refugees as a normative obligation (Borchgrevink, 2021). Wojkowska (2006) gives numerous examples where UN bodies recommend addressing traditional justice through a human rights lens (UNDP 2005:5). Lima and Gomez (2020:2) used RBA to access justice and broadly discussed the legal complexity and concept of access to justice in both formal and informal justice systems, naming barriers to the promotion of access to justice.

RBA to refugee protection calls for the integration of the protection, promotion, and fulfilment of human rights explicitly as the main objective of Uganda's refugee response policy and programmes. Any protection practices in refugee settlements ought to reflect international human rights principles, including non-discrimination, participation, accountability, and indivisibility (Crawley, 2017). Participation requires women, girls, and the disabled to be represented in the refugee

traditional courts and have their voices heard. The principle of non-discrimination challenges power imbalances by questioning why women, girls, and children in refugee settlements are denied rights equal to those accorded to men. Instead, accountability defines the duty-bearers as the states, donors and refugee leaders in the settlements and makes them answerable for the protection, promotion, and fulfilment of all human rights for all. If RBA treats all refugees as right-holders, ‘do refugee cultural leaders cease to be rights-holders in the crisis situation? Thomas urges that under the RBA, the rights-holders also become duty-bearers to other segments of the population’- in this case, the refugee cultural leaders become responsible for the realisation of the rights of those under their care without segregation (Thomas, 2011). Interpreting Kofi’s views (1998) on the RBA to development, one sees how negotiating refugee protection from a human rights perspective makes it a society’s obligation to respond to the inalienable rights of individuals and how those made vulnerable by the crisis situation are empowered to demand justice as a right, not as charity, and gives the refugee ‘communities a moral basis to claim international assistance where needed (A/53/1, par. 174)’.

Many authors have argued that having justice is of paramount importance for those residing in refugee settlements and embodied in poverty, abuse, and exploitation (Ibreck and Pendle, 2017; UNGA, 2015). According to IRC, ‘access to justice programmes must aim at strengthening ‘the capacity of all people to exercise their rights, either as individuals or as members of a community... [and need to be] meaningful to ordinary people’ (IRC, 2019:4; WBR, 2011:167).

While the operationalisation of RBA might be difficult, it is feasible with proper participatory planning, in which all communities in the settlements are sensitised and made to appreciate the human rights principles and values (UNHCR, 2023). We are aware that “access to justice can be hindered by lack of financial capacity, limited legal and rights awareness, distrust of legal institutions, negative perceptions or community stigmas about reporting to legal institutions, or economic dependencies that can prevent reporting” (Van de Meene & van Rooij, 2008:12). However, RBA overcomes this with the cooperation of the Ugandan government and development partners in the region.

8. Conclusion

We have established that Ugandan refugees fail to access justice through both formal and informal justice mechanisms. Particularly, we have seen that the violation of the refugees' human right to non-discrimination is mainly due to the long distance between the settlements and the courts of law, poor police investigation, the long time taken to dispose of refugees' cases compared to those of host communities, corruption, and lack of funds, among others. Judgements of the traditional courts are sometimes biased against women and girls, in addition to presumed pressure on victims not to use the statutory judicial system to claim their rights. Having adumbrated a litany of human rights standards and authority in support of the promotion, protection and fulfilment of the refugee rights, we demonstrated that human rights education and application of an RBA to access to justice contribute to effective safety and protection of refugees in settlements in Uganda. Particularly, we established that an RBA to justice challenges the root causes of injustice that affect the marginalised group and enables societies to disvalue what cements injustices.

9. Recommendations

Therefore, this paper recommends a rights-based policy framework to effectively promote the safety and protection of refugees in Uganda. The Uganda Human Rights Commission is to be entrusted with sensitisation and provision of human rights education in refugee settings and the judiciary with handling refugee issues, and to ensure that human rights principles guide refugee protection programmes. The OPM should continuously provide legal awareness and oversee the operations of RWCs and RTCs. The Ugandan government, UNCHR and other partners provide more funding for refugee human rights education and support to mobile courts.

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