

**International
Institute of
Social Studies**



**Prospects of Durable Solutions in Changed Circumstances:
The Case of Former Rwandan Refugees in Uganda Post the
2013 Cessation Agreement**

A Research Paper presented by:

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In partial fulfilment of the requirements for obtaining the degree of
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

**Human Rights, Gender and Conflict Studies
Social Justice Perspectives (SJP)**

Specialization: Human Rights and Conflict studies

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February 2017

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This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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Map 1.1. Map showing Major refugee settlements inhabited by Rwandan refugees in Uganda

List of Acronyms

AHMR	African Human Mobility Review
CEDAW	Convention on Elimination of All forms of Discrimination Against Women
CERD	Convention on Elimination of all forms of Racial Discrimination.
CRPD	Convention Relating to Persons with Disability
DFID	Department for International Development
EU	European Union
FAO	Food and Agriculture Organization
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
IRR	International Refugee Rights Initiative
ISS	Institute of Social Studies
NGO	Non-Governmental Organizations
OAU	Organization of African Unity
RPF	Rwanda Patriotic Front
RLP	Refugee Law Project
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRSR	United Nations Convention Relating to Status of Refugees
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
USDS	United States Department of State

Acknowledgements

My heartfelt gratitude to my Supervisor Dr. Jeff Handmaker for the support, encouragement, guidance and patience with me throughout the process of this research and the MA course. Your inspiration has always kept me looking towards great heights in my career prospects. Much appreciation also for the support of my second reader Dr. Rachel Kurian. Her comments contributed greatly to this final product. Am also grateful to Dr. Helen Hintjens, to the key informants and to organizations that supported this research process. My discussants Pia Olea Ubillas, Rajin Qa and Jeanette Kindipan- Duwalan did a great job. The entire SJP staff and students helped with knowledge shared during the Masters program. Lastly, especial thanks to my family, friends, Brother Ronnie Makabai, the ETM International Mission Team, Ms. Rosette Muzigo Morrison and family. Thanks to all of you for the moral, spiritual and material support you gave me throughout my study. "I will give thanks to you O' Lord my God, with all my heart and will glorify your name forever" (Psalms 86:12). Thank you and God Bless!

Abstract

In 2003, a Tripartite Agreement between Uganda, Rwanda and UNHCR for the voluntary repatriation of Rwandan refugees that had been displaced between 1959 and 1998 was signed. It is upon the success of the programs under this agreement that the Cessation Clause under Article (1) (C) 5 of the 1951 Refugee Convention would be based. On the 30th June 2013, the cessation was declared and consequently protection of all Rwandans within its scope came to an end. Using legal and socio-legal theories, together with the concept of social exclusion, this study gives a background to the Cessation Agreement of 2013 on Rwandan refugees in Uganda and evaluates the implementation of its processes conducted through the Tripartite Agreement of 2003. The study reveals the social problems posed to the Rwandan population in exile in Uganda following the 2013 Cessation Agreement. It shows how these problems stem from ineffective implementation of the Tripartite Agreement. The study concludes that arrangement between the host state, the state of origin and UNHCR to finalise the cessation programs within a very limited time period, by December 2017, will leave a number of former Rwandan refugees undocumented and without a solution. If previous conditions that drove them into exile are not resolved, it is hard to envisage any durable solution to their social exclusion and the human rights violations they may face.

Relevance to Development Studies

Given the increasing challenges of war and conflict that has continued to displace a number of people across the globe and the great lakes region in particular, emphasis have been mostly made to the new emergencies with some countries considering it as a refugee crisis and threat while others offering strong reception to the displaced for rights protection. As focus is made to new groups of refugees, those whose conditions such as cessation that need specific attention than being generalized are over looked, posing risks of continued human rights violations against them. This paper will contribute to the body of literature in development studies within that line.

Keywords

Cessation Clause, local integration, refugees, Rwandans, repatriation, social exclusion; Uganda.

Chapter 1 : Introduction

This chapter introduces the problem analysed, the objectives of the research and research questions, the background and context of the problem, the methods and processes of data collection and generation, and the justification of the choice of topic. The chapter ends with an outline of the chapters that follow.

1.1. Statement of the problem

In 2013 a Cessation Agreement was signed by Rwanda and Uganda being derived from Article 1(c) 5 of the 1951 Convention Relating to the Status of Refugees (Geneva Convention) which authorises state parties to terminate refugee status and protection of those whose circumstances that had led to their displacement have ended. Accordingly, the Agreement concluded the legal refugee status of Rwandans that had fled to Uganda between 1959 and 1998 from ethnic and political conflicts at the time.

UNHCR (1997:9) guidelines warn host states not to invoke the Cessation Clause without finalizing the exemption processes of those with justifiable grounds. Full consideration should also be given, under these guidelines, to the human rights of those to be affected by Cessation Clauses. Otherwise, any action taken would amount to premature application of the Cessation Article and would contradict international standards for refugee protection.

In the case of Uganda, according to at least one authoritative scholarly source, application of the Cessation Agreement with Rwanda on Rwandan refugees took place long before its invocation (Harrell- Bond 2011:10-11) and therefore a breach of the country's international obligations in ensuring voluntary repatriation. Its operation alongside the tripartite Agreement more so made it difficult for specific human rights as procedural fairness in determination of Legal Status of those without the desire to return to Rwanda, property ownership rights and the right to identity documents to be observed. Having been forced into hiding for the above fears, Rwandan refugees started to live as undocumented immigrants which condition would further expose or exposes them to risks of social exclusion and other forms of human rights violations.

Prior to the implementation of the Cessation Agreement in Uganda was the 2003 Tripartite Agreement on Voluntary Repatriation of the Rwandan refugees. According to the Tripartite, it was essential for Uganda government to put in place proper and just administrative procedures for individual cases of persons with reasonable grounds against return to country of origin

in order to be facilitated alternative long-lasting or durable solutions of voluntary repatriation, Local Integration and Resettlement (UNHCR 1996:12).

With regard to voluntary repatriation, under the Cessation Agreement, the Ugandan government would ensure that no undue influence or duress in any form whatsoever comprising evictions from property, denial of identification documents was imposed on the Rwandan refugees to compel their return to Rwanda. (UNHCR 1996:10).

On the contrary, facts indicate that the obligations in the implementation of the Tripartite were not fulfilled and preceding the signing of the 2013 Cessation Agreement, many Rwandans were unlawfully deported and others forced to escape from legal channels and authorities for fear of being sent back to Rwanda against their will (Parker 2015:10).

Much as Uganda government had agreed to adopt the strategies under the 2003 Tripartite mentioned above to the 2013 Cessation Agreement, during the Ministerial Meeting on Comprehensive Solutions Strategy for Rwandan refugees held in May 2013 in Pretoria South Africa (Ministry of Foreign Affairs Rwanda 2013), it was under no mandatory obligation to fulfil them since as highlighted by (Sniderman 2015: 609), “Cessation Clauses merely set parameters that govern when refugees can lose their status and be forcibly returned to their country of origin” what other scholars refer to “Legal, involuntary repatriation” (Tarwater 2000:15) or “mandated repatriation” (Hathaway 2005:26).

The situation of returned Rwandan refugees resonates with what Bantekas et al (2013:346) indicate is a lack of justice for vulnerable groups in society, exposing them to vicious cycles that further intensify their vulnerability to human rights violations. The non-fulfilment of state obligations under the Tripartite Agreement of 2003 prior to the 2013 Cessation Agreement signing, indicated the lack of proper respect for justice that in turn worsened conditions for former Rwandan refugees Uganda, up to today. The same situation makes it difficult for those in hiding to obtain durable solutions before the Cessation program is finally phased out in December 2017.

1.2. Background to the problem

The invocation of the Cessation Agreement on 30th June 2013 took place after a long period of contestation and negotiations between the Government of Rwanda, the Government of Uganda, the UNHCR and various international and national human rights institutions and activists. Meetings had been held among Rwandan refugee host states, including Uganda, UNHCR and Rwandan government representatives. The aim was to discuss ways in which the Cessation Clause would be effectively implemented, conceding that fundamental changes would result from the situation that led to the 1959-1998

Rwandan refugees' displacement in Uganda and other host countries. The basis for these negotiations was that significant changes had taken place in the country of origin, Rwanda, and that therefore such a review was required by law (Article 1(5) c 1951 UN General Assembly)

Among the most important of these meetings were the 18th April 2013 Comprehensive Solutions Strategy Ministerial Meeting in Pretoria South Africa and the later 26th June 2013 symposium hosted by the Uganda government, and involving different refugee support organisations and institutions in Uganda. In the June symposium, particularly, participants discussed ways forward for effective implementation of the Cessation Clause, within a set of strategies agreed upon during the Pretoria meeting¹. These strategies included: reinforcing facilitation of voluntary repatriation through intensified information campaigns to those who still resisted returning to Rwanda, and individualized procedures to facilitate local integration as another durable solution. All these were to be organised in cooperation with Rwanda and the UNHCR (UNHCR 1996).

Importantly, the implementation of some of the strategies under the Cessation Clause had failed in the initial programmes of the Tripartite Agreement of 2003. In light of the events that followed, this was because of some experiences of rights violations against returning Rwandan refugees from Uganda. These events are expounded on in the following sections. Although it was questionable whether there would be any improvement after the 2013 Cessation Clause, implementation of the clauses was required even if there was no mandatory obligation to fulfil the rights of former refugees (Sniderman 2015:609 & Tarwater 2000:15).

In question, too was the government of Uganda's conviction that previous tripartite programme, required before invocation of the Cessation Clause, had been a success (UNHCR 1996). Whether signing of the Cessation Agreement would remedy previous prejudices around the tripartite agreement, enabling Rwandans to choose for a durable solution to their plight, was not clear. Their choice was among voluntary repatriation, local integration in the host communities or resettlement in a third state. Moreover, the government had not resolved a matter before the judiciary on inconsistencies and unclarified position of the law about refugees and citizenship rights.

These questions had over the years prevented Rwandan refugees from accessing their rights to justice and recognition within Uganda as pointed out in the case of *Public Interest Lawyers and Another vs Attorney General* (2010)) and the structural challenges in the refugee status administration as indicated in (Sharpe et al 2012:562).

¹ 26th June 2013, Sheraton Hotel Kampala Symposium minutes (Obtained Post discussion with Key Informant 2, 13th August 2016)

Although Rwanda had agreed to assist in providing Rwandan passports to some former refugees still living in Uganda, and had provided some of these, not all former Rwandans felt able to access the Embassy, in part to do with reasons of suspicion about contacting the Rwandan government (Hovil 2010:21). Those who remained hidden had heard of other cases where such campaigns of legalisation had been a government program to trick Rwandans into revealing themselves for the purposes of making possible their forced deportations. Frustration came from such rights violations, from Rwandan refugees' deprivation from the right to own property and even to an official, legal identity. During the implementation of the Tripartite agreement, such rights deprivations remained commonplace, as this study will suggest.

1.3. Facts and figures

The actual numbers of former Rwandan refugees still living in Uganda are not very clear. Estimates are provided by three main organizations; (i) the United States Department of State (USDS) Country Human Rights Reports, (ii) UNHCR Global Operations Reports and (iii) Human Rights Watch Reports. The United State Department of State (USDS country reports of 2015), estimates there were 4000 (former) Rwandan refugee in Uganda by end of 2015, who were still unwilling to return to Rwanda under the Cessation Agreement of 2013 (USDS 2015:12).

However, dating back to period of the initiation of the Cessation Clause, in 2010, the USDS reported a sluggish trend in Rwandan repatriation figures. One would wonder at the criteria used by USDS to come up with an estimate of only 4000 for former Rwandan refugees remaining in Uganda by the end of 2015. In 2011, USDS had reported no repatriation of Rwandan refugees (USDS 2011:10), in 2012, 170 Rwandans had been repatriated (USDS 2012:12), and in 2013, approximately 363 Rwandans were reported to be repatriated according to their estimates (USDS 2013:13).

At the initiation of the cessation program in 2010, reports by Human Rights Watch (2010:13) had indicated that 15,000 Rwandan refugees would be affected by the Cessation Clause in Uganda. By 2014 only 31 Rwandans had been repatriated (Human Rights Watch 2014: 18). Human Rights Watch Reports for 2011, 2012 and 2013 showed no estimates of the number of those repatriated. UNHCR global operations report (2014:1) recorded just 24 Rwandan refugees repatriated in 2014 and UNCHR Global Operations report 2015) indicated no repatriations of Rwandans in 2015.

The reports from the three organizations do not seem to consider un-registered former Rwandan refugees, and those scattered in areas unknown to the authorities. The new numbers from births given the fact under the law that Former Refugee children are also refugees (Government of Uganda 1995

Constitution, Article 12 (1)). Moreover, these groups fall within the category of the Cessation Clause and would require equal treatment. Resettlement is another one of the three durable solutions recognised by international law and the UNHCR. This could reduce figures of refugees in asylum countries but according to UNHCR Population statistics, only 375 persons were resettled to other countries across the African continent from Uganda between 2003 and 2015 (UNHCR Population Statistics 2016). The report does not distinguish their original nationalities.

In reference to the above trends and breakdown, it is difficult to fully rely on the figure (4000) by USD 2015 as they might be an under estimate to the actual numbers of former refugees still living in Uganda post the cessation agreement of 2013. Nevertheless, irrespective of the estimates in figures, there is need to resolve the three specific human rights challenges that the Cessation Clause has posed. These three are:

- procedural fairness rights,
- property ownership rights and
- identity documents rights

Whenever Rwandan refugees in Uganda talk of the need for durable solutions for their own status as Rwandans and those that support them, these are the three key goals that have to be achieved, three key aspects of their dispossession have to be addressed before the Cessation Clause will be workable.

1.4. Research Objective

The aim of this research is to examine the ways in which the strategies under the 2003 Tripartite Agreement were implemented before the invocation of the 2013 Cessation Clause Article 1(5) C of the 1951 Convention relating to the status of Rwandan refugees in Uganda.

A second aim is to reveal how the failure to take into account specific human rights considerations during the implementation phase, resulted in strategies that raised the spectre of social exclusion against former Rwandan refugees in Uganda prior to and post the 2013 Cessation Agreement. To achieve these objectives, the research was guided by two main questions and four sub questions.

Main Questions

In what ways were specific human rights of Rwandan refugees violated prior to and since the 2013 Cessation Agreement? What have been the social consequences of these specific violations?

Sub questions

- i) How were former Rwandan refugees' procedural rights violated between the 2003 Tripartite Agreement and the 2013 Cessation Agreement?
- ii) How did the failure to respect property rights of former Rwandan refugees contribute to unfair implementation of the 2003 Tripartite Agreement?
- iii) How has a failure to provide former Rwandan refugees with identity documents prior to the Cessation Agreement led to further violations of their rights?
- iv) How have these specific rights violations resulted in and reinforced social exclusion of former Rwandan refugees in Uganda?

1.5. Short History of Rwandan Refugees in Uganda

This section sets out the historical overview of Rwandan refugee movements into Uganda, the end of conflict period leading to the 2003 Tripartite Agreement that was later succeeded by the 2013 Cessation, taking the crucial phases 1959-1998; and then considering the changes since the Rwanda genocide in 1994.

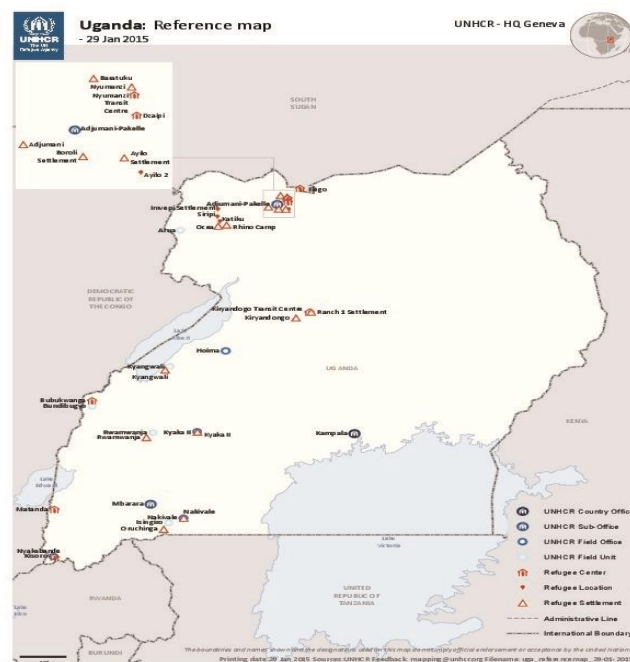
1.5.1 1959 to 1998: Rwandan Refugees Move to Uganda

Rwandan Refugee movements into Uganda date back to the period between 1959 and 1964 when the first group of about 78,000 Rwandan Tutsis and Hutus were displaced by ethnic conflicts preceding independence in their country. The second phase was in 1972/73 and followed a political upheaval in which a group comprising an estimated 20,000 (Twenty thousand) Rwandans, arrived in Uganda, also seeking refuge (Verdirame and Bond 2005:1-3). Later, in 1994-1998, around 2 million people displaced by fear for the Genocide and the post genocide insurgency in some parts of their country also sought refuge in Uganda among other countries (Hovil 2010:13). All these groups were settled in Kyaka II, Rwamwanja, Kyangwali, Nakivale, Kahunge, Orukinga and Ibunga refugee settlements, located in the West and south-west of Uganda. After 1998, new groups of Rwandan refugees have continued to move into Uganda. The reasons for new influxes of refugees have been associated with experience with human rights violations in Rwanda, and the fear of such violations (McMillan 2012, Hovil 2010, Amnesty International 2011).

This research focuses only on those Rwandan refugees that fled to Uganda between 1959 and 1998, from events described above. Given the scope of Article 1 (5) C of the 1951 Geneva Convention, the Cessation Clause invoked into Uganda, this group in particular is targeted for return to Rwanda, since their cause for fear of persecution is said to be at an end.

Uganda has been recognized for its generally good refugee reception policies (according to UNHCR news 2015: 1-2 & BBC news 13th May 2016). Besides Rwandan refugees, Uganda has been and continues to host more groups of refugees from other neighbouring countries like the Democratic Republic of Congo, South Sudan, Somalia, Kenya and most recently from Burundi. Uganda also subscribed to the 1951 Convention Relating to the Status of Refugees in 1967 and the OAU Convention on Specific Aspects of Refugees from Africa in 1968, obligating the government of Uganda to protect and promote refugee rights. In addition, Uganda's 1955 Control of Alien Refugee Ordinance, a colonial law, was modified and became the Control Alien Refugee Act 62, aimed at accommodating aliens from territories comprising the former Belgian Congo and Rwanda, mainly Tutsi fleeing persecution. This Act prohibited the control of refugee movement and activities in a way that could violate the basic rights of refugees. (Control of Alien Refugee Ordinance 1995)

Figure 1: The Map Showing Location of Major Refugee Settlements in West and Western Uganda Inhabited by Rwandan Refugees



Source: <http://maps.unhcr.org> published on 05/29/2015

By domesticating the 1951 and the 1969 OAU conventions on refugees alongside other major conventions like the 1966 International Convention on Civil and Political Rights (ICCPR) & The 1966 International Convention on Economic, Social and Cultural Rights (ICESCR), The 1965 Convention on Elimination of All forms of Racial Discrimination (CERD) and The 1981 Convention on Elimination of All forms of Discrimination against Women (CEDAW) into its national legislations, refugee protective provisions were included in the Constitution of 1995 which is the supreme law of the Uganda.

Subsequent Acts governing refugee and asylum seekers movements in the country included The Control of Alien Refugee Act 62 of 1960, the Uganda Citizenship and Migration Act of 1999 and the Refugee Act of 2006. Uganda has therefore fully conceded to the international responsibility to protect the rights of refugees, asylum seekers and any other groups of people without discrimination, even under circumstances where refugee status has ceased but continues to require protection.

1.5.2 1994: Transition to peace and the 2003 Tripartite Agreement

In 1994, the Rwanda Patriotic Front (RPF) invaded Uganda in 1990, but ended the 1994 Genocide as well, and took over governance of Rwanda. The record of the RPF has been mainly one of rapid economic progress, with visible promotion of peaceful development. As the law requires, however, an assessment of durable changes was conducted to determine whether it was appropriate for those in exile to return to the country. Accordingly, given the presumption that conditions in Rwanda were stable, agreements were entered into with the Rwandan refugees' home asylum countries, including Uganda. These measures were explicitly to facilitate the repatriation of Rwandans within the scope of Articles 1(c) of the 1951 Convention and Article 1(4) of the 1966 OAU Convention on specific Aspects of Refugees in Africa.

In Uganda, the Tripartite Agreement of 2003 between Rwanda, Uganda and UNHCR was one such agreements. Known as 'the Tripartite', this agreement provided a legal and operational framework for the voluntary repatriation of over 25,000 (twenty-five thousand) Rwandan refugees in Uganda at the time. UNHCR report (23rd June 2003). Putting into account the repatriation guidelines in (UNHCR 1996), the agreement set obligations for its parties including provisions on information for refugees on the prevailing conditions in their country of origin, ensuring return in safety and dignity, ensuring and contributing to voluntary repatriation.

Uganda's role under the Agreement was to provide information on the prevailing situation in Rwanda to inform refugees in their decisions about whether to return. The wider goal of the government was:

“To ascertain the voluntary character of repatriation with regard to individual refugees and with regard to large scale movements for the protection of those with compelling reasons of not returning from refoulement” (UNHCR 1996:12).

This protection would take the form of fair and efficient legal administrative procedures in specific consideration to “Vulnerable groups such as the elderly, the children, persons with disabilities, victims of trauma and torture, and other persons requiring special attention” as under (Section 22, 2006 Refugee Act of Uganda) in order to secure them alternative solutions, including local integration in form of naturalization or assimilation and resettlement to third states.

The procedures included being allowed access to asylum procedures, guidance on the procedures, services of competent interpreters, legal representation, information in writings on outcomes of application, right to appeal and adequate time before repatriation as the refugee awaits final decision. (UNHCR 2011:37-38) in accordance to Articles 16 of the 1951 convention on refugees, Article 8 of the UDHR on the right to effective remedy enshrined under Article 28 of the 1995 Constitution of Uganda among other legal instruments.

UNHCR was mandated by the Security Council to “establish voluntary repatriation, cooperate with the government of Rwanda and Uganda in assisting refugees to repatriate, advise refugees on prevailing conditions in Rwanda and monitor the situation of returnees thereto.” (UN General Assembly 2004:2-3, A/AC.96/1003. No. 101) Hence ensure the refugees right to return in safety, security and dignity.

1.6. Methods and Sources of data collection

This section explains the methods applied in the research, how they were applied, sources of data collected, ethical considerations, limitations and data analysis methods and tools.

1.6.1. Methods and processes

To answer the set questions by this study, a qualitative approach was applied with Document analysis as main tool of data collection and analysis for the generation of new data as recommended by (O'Leary 2004:177). The reason for this approach was the researcher's inability to travel to Uganda given the fact that her fellowship could not cover the research expenses and the approach was the only convenient for the long-distance research.

Documents being of various types for example “images, sound and objects as photographs, maps, pictures, films, video recordings, stone inscriptions, tape records, works of art plus more” (Finnegan 2011:3 & 5, O’Leary 2004:177), this research considered “documents of written words/texts or reproduced typographically words/texts” (Finnegan 2011:5). They were obtained from books, News Papers, Refugee law Journals, Journals for Refugee studies, Magazines, Websites, Refugee protection organizations’ reports like Human rights Watch reports, Amnesty International reports, UNHCR and its other agencies’ reports, The United States Department of States Country Reports, Office of Prime Minister Department of Refugee Affairs Website Reports Uganda, MINIFERA Rwanda, Rights in Exile NGO’S in Uganda reports, working papers and internal communications.

The research also referred to legal instruments and documents that protect refugee and asylum seekers’ rights from international, regional and national levels. Some of these documents included, the 1951 Geneva Convention on Refugees, the International Convention on Civil and Political Rights 1966, The Convention on Economic Social and cultural rights 1964, UN Conclusions and Resolutions, The African Charter on people’s and Human Rights, the 1969 OAU Convention on Specific Aspects of refugees from Africa and Ugandan laws to that respect to mention but a few. These documents were used to demonstrate what was expected of Uganda by international standards in the protection of Rwandan refugees as it implemented the cessation programs.

Court cases both reported and unreported were also applied to evaluate the practice of refugee law in Uganda. The reported cases are those that can be publicly obtained and unreported are those that have not yet been put up for public view. Some of these cases are; - Centre for public Interest Law Ltd & another Vs Attorney General (Constitutional Petition No. 34 of 2010 (2015), Uganda Vs Mbashurimana Emmanuel and 13 others Criminal Case No. 1163 of 104 (CRB 1716/2014) - 02/06/2015 (Unreported) and Uganda Vs Rwagitera Evode Criminal Case No. 210 of 2014 (CRB 486/2014) 29th /04/2015(Unreported).

Data collection, review and analysis commenced in May 2016 and came to an end in October 2016. It involved thorough scrutiny of information obtained, contrast of the views from different articles to prove validity and background checks on authors for credibility and reliability. Because of the different interpretations different authors have to the law, the legal analysis in this paper is greatly based on the interpretation of the original legal texts by the researcher to this paper. Information on refugees’ perceptions, experiences and attitudes towards the cessation programs were obtained from documents of authors that conducted field research and interviewed the Rwandan refugees in Uganda.

In the process of obtaining some the different documents used, discussions with eight key informants from five Rights in Exile Non- Governmental institutions in Uganda including UNHCR were held. Rights in exile NGO's are organizations that operate on refugee concerns in countries of asylum. It is important to note that the five institutions are not the only Rights in Exile institutions in the country but are the few of what the researcher could access from a distance having not gone to Uganda, alongside the fact that lengthy institutional procedures for consent to research had delayed access for others. It is for the same reason the Office of the Prime minister could not be communicated to directly.

Of the eight discussions held, six were through Skype meetings and long phone calls, each of which lasted between forty-five minutes and one hour and two were held face to face. One of the face to face discussion was held from Poland and the other in The Hague. These discussions played a leading role to documents acquisition and data generation.

To find access of the above mentioned key informants, and in order to obtain unpublished private documents among other relevant but not publicly available documents for the research, the researcher in July 2016 travelled to Poland for a one week IASFM 2016 conference themed "Rethinking Migration and Forced Displacement" which was attended by researchers, academicians, migration experts from various institutions across the world.

It was from the conference that some contacts were obtained, recommendations for documents made and references by persons with close working relations with some of the key informants to this research were obtained. The research supervisor also played an important role in recommending the researcher to some of the key institutions and informants. The entire process was very interesting yet quite challenging; a lot was discovered and lessons learned.

At some point, overwhelmed by the massive human rights violations faced by Rwandan refugees in Uganda, the researcher was agitated with the desire handle each of them for solutions but got limited by the nature of the paper (academic) as told by the supervisor. It was for that argue that the framing of specific questions was seen as a limitation and very tricky, until later when in a discussion with and assistance of the supervisor, the current research questions were formulated.

1.6.2. Ethical Considerations

At the commencement of each discussion, the purpose of the phone or Skype call was made clear to each of the participants which was, getting documents from their institutions or recommendations for relevant documents in relation to the research. Prior to these discussions, emails containing the research

topic, objective and questions had been sent as guidelines for search of relevant documents by the informants.

However, it was later realized that the facts from the discussions were as well very relevant to the paper, as supplementary and confirmatory information to the findings from documents. As such, basing on the proposal by Webb and others 1966 in (Bryman 2012:275), that in research one can use more than one method, with one as the main source of data and another as an investigation to the former to verify and create more confidence in research findings.

Consent of the participants had to be sought for use of some of their information from the discussions. For that purpose, the information from those who consented is referenced in this paper. But, for security and confidentiality reasons arising out of the sensitivity of this subject, the names of the participants to this research and their institutions are withheld and replaced by pennames. The codes to these pennames were selected according to dates of discussions.

1.6.3. Data analysis methods

To evaluate the human rights violations and social conditions arising out of the improper implementation of the cessation programs, a legal theory, socio-legal theory and the concept of social exclusion were embraced. The legal theory as one of the approaches to doing research involves analysis of behaviours through formal rules, regulations and authorities to explore the gaps between their principles in theory and in practice. These rules and regulations include international laws, national laws, and cases.

The theory is not new since it has been used by a number of scholars over time. In refugee and human rights studies, (Goodwin-Gill 1996) used the theory to evaluate the responsibilities of individuals and states in the protection of refugees under international law, (Cwik et al 1998) used the theory to evaluate the application of Cessation Clauses of international into practice, (McMillan 2012) also applied the theory in her study to evaluate some aspects of the Cessation Clause in Uganda, in order to draw conclusions for lessons in international protection, among other scholars.

The researcher is a lawyer and having used this approach before, during legal studies, it was very difficult to distance herself from it and given the fact that the social issue handled originates from the irregularities of practice of law in Uganda, it made the approach handy. As was highlighted in (Cotterrell 1997:1) that for “legal ideas to adequately be analysed, there is a need to look at their social origins, conditions of existence and social consequences”, the socio-legal theory and the concept of social exclusion had to be adopted alongside.

Socio-legal theory on its own is an emerging approach that links the law and social sciences to understand the different perspectives society have about the law and how different factions of society are affected by the law intended for their welfare. (Banakar 2015:1-23) although the approach has not yet fully permeated contemporary studies, it is encouraged by socio-legal scholars because of its in-depth attention to details in evaluation of human rights standards (Schmidt et al 2004, Banakar 2015).

Among other scholars, the socio-legal approach was used by (Sally merry 2006) to reveal the role of mediators in translating international law to domestic norms, (Murray et al 2004) to investigate the effectiveness of national human rights institutions. It is upon that inspiration and the fact that it blends well with the legal approach that the socio-legal approach was applied to this research, to evaluate the experiences of Rwandan refugees with the law on cessation, their reactions towards its implementation and the effects it has had on their lives. These two approaches were later linked to the concept of social exclusion which the research discusses as a consequence of the Cessation Agreement of 2013 on Rwandan refugees in Uganda.

1.7. Justification to the study and Relevance

The explanation for this study was based on two main reasons. The researcher's experience having lived with and encountered Rwandan refugees during the previous employment as legal assistant at a law firm in Uganda, who now because of the cessation that was initiated way back before its declaration in the early 2000's, can no longer identify themselves as Rwandans, share their history with others or seek justice through formal legal procedures except in extreme situations. This paper was seen as a platform to reveal their plight for a way forward towards durable solutions for these former refugees.

Second, the existing gap in the body of knowledge within the line of social, economic, cultural and political consequences of the Cessation Clause to prospects of durable solutions for former Rwandan refugees in asylum countries particularly Uganda during, changed circumstances in country of origin. A lot of research has been conducted on this topic, but most earlier research focussed on the implementation of the cessation visa vie International law principles, International refugee legal principles' and changes of conditions in country of origin.

Lucy Hovil & Zachary Lomo (2015) in their study on Rwandan refugees in the African Great Lakes Region, looked at the relationship between causes of conflict in Rwanda and the citizenship dilemma in the region. Cwik and Howland (1998) also evaluated the role of UNHCR in facilitation of voluntary repatriation and its relation with states' capacity to invoke cessation in changed circumstances using a case study of Rwanda. The Refugee Project,

Amnesty International, Human Rights Watch, UNHCR and other International and National Institutions wrote a large number of reports, policy documents and recommendations about the implementation of the Cessation Clause on Rwandan Refugees. (Amnesty International 2011) for example, looked at the interaction of the Cessation Clause with citizenship, identity, belonging and conditions in country of origin and offered recommendations. These reports differ in some meaningful way from my own interpretation. Further, (McMillan 2012) analysed the cessation on Rwanda visa via international protection principles on long-term solutions for Rwandan refugees.

On the contrary, Parker (2015) had attempted to trace some aspects of the consequences of the cessation but used different approaches thus rights based approach and partly legal analysis of international principles on refugees' protection, to evaluate Rwandan refugees' reactions, right to speak and community involvement in refugee decision making, which is different from this research. There is no other study in academic literature of which I am aware that has explored the social, economic, cultural and political consequences of the Cessation Clause. This study aims to fill this identified gap, therefore.

1.8. Chapter outline

This concludes Chapter 1, which has provided background and context of the problem under scrutiny and outlined the main methods used. Therefore, the chronology of the following chapters is as follows: Chapter 2 sets out the conceptual and analytical framework to the study, Chapters 3 and 4 evaluate the research findings and Chapter 5 provides a summary of key arguments and conclusions to the study.

Chapter 2: Theoretical, Conceptual and Analytical Framework

This chapter explores the legal and socio-legal theories of analysis and the concept of social exclusion plus its relation to the analytical theories mentioned. First is a discussion of the legal theory which sets out laws and procedures that regulate protection of refugees from international and national perspectives, followed by a discussion of how socio-legal theory can contribute to the study, and also the concept of social exclusion. These tools will be used to analyse and generate data in Chapters 3 and 4.

2.1. Legal Theory

The legal theory evaluates the international, regional and national laws and regulations that govern protection of refugee rights before and after cessation circumstances in Uganda. Because of the immensity of protection provisions under these laws and the limited scope of the research, specific consideration is made to the meaning of Refugees, and the Cessation to refugee recognition, refugee status determination procedures, and durable solutions with emphasis to Voluntary Repatriation but to a less extent local integration.

2.1.1. Definition of refugee and the Cessation Clause

The Refugee definition was provided under the 1951 Convention relating to the status of refugees to enclose:

“Any person owing to a well-founded fear of being persecuted for reasons of, race, religion, membership of a particular social group or political opinion that person is outside his/her country of nationality and is unable or owing to that fear is unwilling to return to avail himself or themselves of the protection of that country” (UN General Assembly 1951, Article 1).

The definition was stretched by Article 1(2) of the OAU Convention on refugees to include persons fleeing other events that would threaten their lives other than those under the Geneva Convention, and when such events cease to exist, the refugee status and all benefits that accrue to it comes to an end.

According to Article 1(c) 5 of the 1951 Convention,

“The term refugee ceases to apply where an individual’s circumstances in connection to which he has been recognized as a refugee has ceased to exist and continues to refuse to avail himself of the protection of the country of his nationality”.

This Article is commonly referred to as the Cessation Clause. The Clause authorizes states to end protection of refugees and as pointed out by McMillan (2012:27) “Upon cessation, refugees become subject to usual state rules of

migration control”. It is also known as “Legal Voluntary repatriation” (Tarwater 2000:15).

However, states are warned to apply the Cessation only when well convinced that there have been major changes in circumstances that caused displacement of refugees falling within its scope. These circumstances should include “changes in the general human rights situation, as well as the particular cause for fear of persecution” (UNHCR ExCom No. 69 XLIII 1992:3-5). The recommended changes in these situations are, “improved mechanisms that respect and protect both political, social and cultural human rights, tolerance of Human Rights Organizations to monitor violations and advocate for remedies” (UNHCR1996:14, Amnesty International 2011:8-9).

Not withholding fair hearings for those with reasonable grounds against cessation of their status and against deportation, through formal legal procedures (UNHCR 1996:12) as mandated by the Cessation Exemption Clause: -

“The cessation shall not apply to any person who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality” UN General Assembly 1951, Article 1(C) 5b 1951.

Accordingly, prior to or upon application of the Cessation Clause, which would “waiver residential status or lead to deportation of refugees, procedures should be established” to allow individuals with reasonable causes to challenge the application of the cessation upon them (UNHCR 1992 ExCom No. 69(XLIII), UNHCR 2008: Paragraph 35, C-175/08).

Therefore, any action of states to deport any such persons without individualized assessments would expose the refugees to risks of persecution or other human rights violations in countries of origin upon return, an equivalent of refoulment prohibited by Article 33 (1) of the 1951 Convention.

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened-on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion” Article 33(1), UN General Assembly 1951.

In other words, exemption procedures have to be individually contextualized with strong awareness of refugees’ previous fear and, inquiries to the same be made in accordance so that “where a refugee fled a risk of imprisonment for membership in a political party, which has since taken power, fear of future harm is doubtful” (Fitzpatrick 2009:354).

This is because in the event the cessation was passed prematurely or without very reasonable grounds, those who would still need protection in asylum countries would not suffer the consequences of being forcibly sent back (UNHCR 1997 EC/47/SC/CRP.30. Para. 8). In Uganda, the Refugee Act

provides for procedures for termination of refugee status. The Act positions that:

When the commissioner has reasonable grounds to believe that a person who has been recognized as refugee has ceased, the commissioner shall refer the case to the Refugee Eligibility Committee (REC) for the determination of whether or not that person's eligibility should be withdrawn. That person shall be invited to make written submissions to justify his or her claim (Refugee Act 2006: Section 39(1) b & 2(b)).

Below are the procedures recommended for refugee status determination before one is repatriated to country of origin.

2.1.2. Procedural safeguards in Refugee status determination

According to (Goodwin-Gill 1996: 240),

"If refugee status is not recognized at law and if no procedure exists whereby claims to refugee status can be determined, it may be difficult if not impossible for contracting state to effectively implement international obligations".

Goodwin's argument was based on the regulations under the 1951 Geneva Convention which obliges states in performance of their duties to protect refugees from refoulement comprised in the "Non Refoulement" principle (Article 33 UN General Assembly 1951).

States are required to ratify or construct structures and procedures for assessment of individual concerns for exemption from forced deportations in cessation circumstances and to facilitate alternative solutions like local integration in asylum states or resettlement (UNHCR 2011:36-39). Goodwin also notes that, the aim of refugee status determination is not just about entry or removal of status but the privileges that status comes with. (Goodwin 1996:19). In other words once individuals are recognized under law they could then benefit from other international human rights law. And every one has the right to be recognised under law by virtue of (Article 6 of the UDHR, Article 9 of the ICCPR). Upon that background, it is recommended that once an individual has applied for status determination,

"An individual should be given possibility of having his or her case reconsidered on its own merits by way of procedures which would enable a fair hearing to be given to a refugee concerned and in the event, there is any doubt as to the application of the clause in a particular case, refugee status should be maintained" (UNHCR 1992 ExCom No.69 (XLIII), UNHCR (1997:9 paragraph 37).

Additionally, UNHCR (2010) para 5, the procedures should offer adequate safeguards at minimum equivalence of those required in administration of Article 32 of the 1951 convention on legal expulsion of refugees. The article provides; -

“Expulsion of a refugee from territory shall only be in pursuance of a decision reached in accordance with the due process of law”.

It is further emphasized that in implementation of such procedures, states should consider consistency with protection principles provided in universal refugee instruments and international standards (UNHCR No. 85 (XLIX)-1998). However, the 1951 convention provides no standard procedures for refugee status determination.

Non-mandatory guidelines are only provided in the UNHCR book (2011:96-103) (See Appendix I). Uganda adopted these guidelines in its legislation, the Refugee Act of 2006. In accordance to the guidelines, the Refugee Act established the Refugee Eligibility Committee to

“handle applications concerning refugee status and to review, revise cases previously dealt by it and make recommendations to the minister in cases of expulsion or extradition, cessation and resettlement” (Refugee Act 2006, Section 17).

An appeals Board was also established to hear appeals arising out of refugees concerns from decisions of the Refugee Eligibility Committee. The board has the power to confirm, set aside, order rehearing and dismiss applications against decisions of the REC, but has no power or authority to grant refugee status to applicants from the analysis of the provision below; -

“The appeals board shall not make a decision granting refugee status to an applicant” (Refugee Act 2006, Section 17(4)).

The procedures set in the Act reflect those set under the 1995 Constitution Article 28(1) being the supreme law of the country. Article 28(1) itself provides that:

“In determination of civil rights and obligations, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law”. (Government of Uganda 1995: Article 28(1).

This provision is commonly referred to the provision on right to fair hearing equivalent to Procedural Fairness in administrative processes. The right is not limited to only fair, speedy and public hearings before independent and impartial bodies goes beyond to include elements prescribed by the Refugee Act of 2006 Part IV with respect to the UNHCR guidelines which are; -

“Access to procedures, speedy hearings, being afforded services of interpreters, legal representation, written information with reasons for or against the grant of refugee status and an opportunity to Appeal”. (Refugee Act 2006: Sections 20-24).

These procedures are aimed at ensuring refugees rights and choices for long lasting solutions are enhanced and refoulement, protracted refugee situations or statelessness are avoided. In a bid to resolve long term refugee conditions that limit persons from exercising their full rights, cognisant of the fact that even after changed circumstances in countries of origin, some refugees might

still not want to return for a number of reasons and host states may not be willing to continue supporting refugees in their large numbers. UNHCR named voluntary repatriation, local integration and resettlement as the most appropriate long term solutions for end of refugee situations (UNHCR: 2003a:1-6). For purposes of this paper, attention shall be drawn more to voluntary repatriation and local integration.

2.1.3. Voluntary Repatriation

Since the 1950's, a number of General Assembly resolutions and conclusions have regarded voluntary repatriation as the most favourable of the other two long term solutions for ending refugee situation. The (UN General Assembly 1989: No.43/188) named it as "the most appropriate solution to solving the problems of massive influx of refugees in countries of asylum". In the UNHCR conclusion No. 85 (XLIX)-1998, states were further encouraged to facilitate voluntary repatriation as a long-term solution. Voluntary Repatriation is also a way of promoting other rights including that under (Article 12 (4) ICCPR 1966) to which every individual residing out of his or her country of origin has a right to leave or return.

It is more so another way of promoting the right against refoulement under the "Non refoulement principle" (Article 33- UN General Assembly (1951); Organization of African Unity (OAU) 1969- Article 4) that prohibits states from expelling refugees to countries or borders of countries where their lives would be at threat. But this does not imply that other named durable solutions do undermine the above rights, law makers must have considered the how some states might not desire to continue protecting large groups of refugees for a long term (UNHCR 2003a:1-6) and reducing refugee numbers through voluntary repatriation could be a feasible option.

In promoting voluntary repatriation, UNHCR is mandated to enter into special agreements with governments where it deems it fit that such agreements will improve the refugee situation. (UN General Assembly 1950 A/ARES/428(V): 8 a, b). This is only when convinced that conditions are conducive for return of the refugees and the program can be implemented on individual and group basis (UNHCR 1996:8).

Whereas Cessation Clauses authorize states to involuntarily send back refugees upon verification of fundamental changes in countries of origin, the principle of voluntary repatriation operates even when no significant changes have occurred, but when refugees would be secure in the circumstances, as long as they have freely decided to return home. (UNHCR 1996: 8-9). Therefore, voluntary repatriation is the first step to refugee protection before invocation of Cessation Clauses.

Countries of asylum, origin and UNHCR are further called upon to take necessary measures to enable refugees exercise freely their rights to return to their homes in safety and dignity (UNHCR No. 85 (XLIX) – 1998). Against that background, states should not “impose any form of pressure or coercion whether physical, material or psychological for example reduction of essential services that would influence refugees’ decisions to return to their countries of origin” (UNHCR 1996:10, 29-30). Much as the refugees would choose to return under arrangements of tripartite agreements, where changes considered are low compared to those under the Cessation, it is still recommended that safe and dignified return be ensured (Amnesty International 2004:15).

Return in safety and dignity is elaborated to comprise, legal and personal safety from all conditions that would subject refugee lives to danger, “security from armed attacks, material security (access to land and means of livelihood) worthy of honour and respect without being man handled or arbitrary separated from family members” (UNHCR 1996:11). In Uganda, voluntary repatriation provisions were included into national legislations like the 1995 Constitution, Refugee Act 2006 which set guidelines for protection of refugees in the country.

2.1.4. Local integration

Local integration is the second durable or long-term solution in refugee protection established under (Article 34 UN General Assembly 1951). Integration was defined as “a situation in which host and refugee communities are able to co-exist, share same resources both economic and social with no greater mutual conflict that which exists with host community” (Herald Bond cited in UNHCR 2003b:3).

Local integration was further defined to mean “the granting of full and permanent asylum, membership and residency status, by host governments which takes through processes of legal, economic, social and cultural incorporation of refugees” (Kibreab in UNHCR 2001: 1). Accordingly, Article 34 (Geneva Convention 1951) calls upon states to assist integration of refugees through assimilation and naturalization. And in application of this measure, states shall cooperate with UNHCR to facilitate the process (UNHCR 1996:12).

However, local integration is the least embraced solution by host states yet one of the potential solutions that would solve majority of human rights challenges faced by refugees especially long term refugees in countries of exile. (Fielden 2008:2). Majority of the states prefer voluntary repatriation to local integration due to fears for “the burdens involved in refugee protection and demographic change resulting from integration of asylum seekers” (Fitzpatrick 1998:342-344).

Hitherto, hosts states forget that refugees that have lived in exile for long time or throughout their life time may have no ties with countries of origin and more so sending back those with strong economic ties with host societies would limit the potential of economic development in these societies as attested by (McMillan 2012:4, Parker 2015:5, Fielden 2008:3).

In Uganda, local integration takes the form of naturalization prescribed under Section 16 (4) of the Citizenship and Immigration Act of Uganda which is subsequent to the 1995 constitution, the supreme law of the country. The Act outlines requirements for qualification of citizenship by naturalization and the status is granted upon a refugee applying through the set administrative structures and procedures established by law. The requirements are:

“Having resided in Uganda for a period of 20 years throughout, adequate knowledge of a prescribed vernacular language or English, good character and intent to reside permanently in Uganda” (Uganda Citizenship and Immigration Act 1998 section 16(4)).

2.2. Socio - Legal Theory

Socio-legal analysis is one of the theoretical research approaches in studies of law and society that explores the applicability and operation of given policies or regulations in societies (Banakar 2015: 41, Banakar et al 2005: 5-6). It deviates from the main stream legal theory that limits itself to understanding the operation of law in institutionalized, procedural manner, conducts and behaviour of persons regulated (Banakar et al 2005:7). The theory advocates for in-depth understanding of circumstances that give birth to the law in question and how such a law affects those circumstances as it is applied (Cotterrell 1997:3).

To understand those circumstances, the socio-legal approach “explores the different perceptions and perspectives of different actors in social settings towards the laws, policies and regulations implemented as they interact with each other for a specific outcome” (Banakar 2005:140). From (Schmidt et al 2004:8) supposition, without disregarding the above arguments, the way people perceive and experience the law determines their actions and attitudes, which actions or attitudes might be receptive or objective depending on the fairness or injustice of the law. Therefore, people’s perceptions or experiences have great impact on how they would identify with the law.

Whereas one group in society may look at a particular law as a tool for protection and will applaud it, the other may see it as a tool for suppression and oppose it. That’s why (Banakar et al 2005:6-7) supports the notion of first understanding the conditions in which we out to derive the law before applying it thereto, a major feature of socio-legal approaches.

There are different dimensions of socio-legal theory or framework, one dimension focuses on understanding issues within the law in force and the boundary or gap between law and the situation in which it is applied. For example, “regulation, enforcement and implementation issues, plus how they affect social behaviour and social conditions” (Banakar 2015: 48). Described by the same author as the Top-Bottom approach. The second dimension aims at understanding how “law shaped through processes of interpretation affect behaviours it was intended to address, with its actual effects being measured against its intended impact” (Schmidt et al 2004:8).

Furthermore, the Socio-legal theory has three approaches or elements thus; - *Legal Consciousness*: Described in (Hertogh 2004:460-463) to refer to “all ideas about the nature, function and operation of law held by anyone in society at a given time” and/or “the aptitude, competence or awareness of the law or perceptions and images of the law that people have”. How people act towards the law is dependent on their awareness and how they think of it and in the first instance, when people are strongly highly ware of and think about the law, their degree of obedience to it is higher than for those having limited awareness and thoughts about the law.

Legal culture can be defined to mean “the network of values and attitudes relating to law which determine when, why and where people turn to law or legal institution or turn away” (Friedman 1969:34) summarily described by Banaker (b) in (Schmidt 2004) to comprise of the behaviours of both judiciary, the people, their knowledge of the law, attitudes and perceptions.

Legal Translation looks at how legal and human rights ideas, norms and customs are circulated from international arena to local societies, how they are interpreted upon circulation and applied in specific situations. On the other hand, it looks at how some ideas, norms and customs can circulate from local societies or levels to the international levels especially in formulation of legal instruments (Merry 2006:38-40).

The three approaches though related can be applied differently depending on the nature of the study, but can also be used in an integration through the broader Socio-legal framework. As such, a broader socio-legal approach was applied to this research to analyse the application of the Cessation Agreement Programs between 2003 and 2013 on Rwandan refugees in Uganda, the refugee’s perceptions and attitudes or behaviour towards them, and the impacts of the administration of these programs on the refugee rights, specifically the right to property and the right to identity documents mong other social conditions they face to date.

2.3. Social exclusion

The origin of the concept of social exclusion is not clear but has been associated to the French and English policy structures of the 1970's. The concept is said to have been later adopted as a modest substitute to the concepts poverty and deprivation in the European Union's policy framework for developing countries (De Haan 2000: 24-25, Peace 2001: 18). This could have been for the reason that characterisation of the under privileged with strong and negative terminologies would disable them from overcoming their conditions by themselves and could create more inequality in society.

Although the concept has mostly been applied to economic and poverty related discourses, the European Union (EU) as cited in Peace (2001:18) emphasises that it is a multidimensional concept and can therefore be applied to economic, social, political affairs and practices in societies. Such practices may include "exclusion from livelihood, employment, property, citizenship, legal and political rights, etc." (Sen 2000:5, De Haan 2000:26). Social exclusion has alternatively been defined as: "A process through which individuals or groups are wholly or partially excluded from full participation in society in which they live" (European foundation 1995:4). It was also defined to mean:

"The lack or denial of resources, rights, goods and services and inability to participate in normal relation and activities available to the majority of the people in a society whether in social, economic, political and cultural arenas affecting the quality of life of individuals and society as a whole" (Letvas et al 2007: 25).

Economically, individuals are excluded when they can no longer access economic assets like credit or property, socially, when they lose their relational touch with society, and politically when particular groups are denied their political and human rights (European Foundation 1995:4). It is revealed, social exclusion can also take the forms of

...lack of experience, weak relatedness, and loss of family ties, local community, and voluntary association, access to trade unions, or even nation and being disadvantaged in terms of access to their legal rights, lack of recognition, lack of access to land and property rights, citizenship rights among others (Sen 2005:27 & Peace 2001:23).

Further studies have indicated that exclusion occurs when circumstances it is resulting from are beyond an individual's control. For example, it is noted in Piachaud et al (1999: 229; see also Labonate 2004: 117),

"An individual is socially excluded if he or she is geographical resident in society but for reasons beyond her his or her control, he or she cannot participate in the normal activities of citizens in that society and he or she would like to so participate".

According to DFID, the reasons for exclusion can include "age, caste, descent, disability, ethnic, background, health status, migrant status, religion,

sexual orientation, social status” (DFID 2005). Like any social challenge, social exclusion has a number of consequences some of which being “psychological problems, relational problems, identity loss, and loss of purpose” (Peace 2001:25).

Additionally, the continuation of certain forms of exclusion would result into vicious cycles of exclusions from other opportunities such as formal employment, property ownership (Sen 2000:18-21). And it is the loss of such interests for instance “land rights in a peasant society, which may deeply handicap families within a society where without land it may seem like having no limbs of one’s own” (Sen 2000:14).

Since Labonate (2004:120) warns that, when looking at social exclusion, we should not only consider circumstances that excluded but also the structures that create such circumstances, it is also imperative to look at the structural causes. Beall and Piron (in Namusoke 2015:19) have illustrated that certain categories of people fail to participate in society due to their identity and because of institutional, structural and relational factors that obstruct equal opportunities to people. Some of those institutional, structural and relational factors have been named to embrace “effects of government policies that result to identity loss to the minority” (De Haan 2000: 27, Peace 1999: 400 & Sen 2000: 15).

To further illustrate this notion, Sen (2000:15-16) used an example of how European delayed systems in acquiring citizenship by settled immigrants deprives them of political rights by keeping them out of the systematic political process which he points out as an act of exclusion. It is upon the discussion from this concept that the social conditions of the now former Rwandan refugees in relation to the programs of their repatriation in Uganda since 2003 shall be evaluated.

Chapter 3: (Non) Implementation of the 2003 Tripartite Agreement an Evaluation

This chapter evaluates the implementation process of the Tripartite Agreement strategies between 2003 and 2013 and the specific human rights violations against Rwandan refugees at the time. The specific human rights considered in this paper are; - procedural unfairness in status determination, the right to property and the right to identity documents, their evaluation seeks to answer questions 1, 2 and 3 of this paper. To understand how these rights were violated, we first give a brief account of events that happened from 2003 to 2013 in Uganda. They are discussed using the legal and socio-legal theories as we describe in each section. We note that it is the failure to effectively put into consideration the obligations of the government of Uganda provided under the Tripartite Agreement of that these human rights violations occurred, and with the signing of the Cessation Agreement of 2013, the situation could not be easily redeemed.

3.1. The Implementation of Tripartite Agreement (2003 to 2013)

The implementation of the 2003 Tripartite was a step towards the end of Rwandan Refugee Situation in Uganda. Aimed at securing durable Solutions for Rwandan Refugees yet to be affected by Cessation Agreement which had awaited signing, The Tripartite Agreement offered obligations to each party to it. As illustrated in Chapter 1 to this paper, Uganda's obligation was to ensure voluntary repatriation and to facilitate efficient legal processes for individuals with concerns of their undesired to Rwanda (UNHCR 1996:12). In the implementation of these obligations the following events transpired.

In 2007 the government of Uganda in conjunction with Rwanda government conducted repatriations on over Three thousand Rwandan refugees, some of whom not having been accorded fair status determination and appeal procedures² (Relief Web 2007; Amnesty International 2008:322). In July 2010, the two governments, to the exclusion of UNHCR gathered 1700 Rwandan refugees from two major refugee settlements in Uganda under the mask of food distribution and collection of results from their asylum applications, forced them onto trucks by gun points and deported them to Rwanda (CNN 2010, Human Rights Watch 17th July 2010). Many of the repatriated

² <http://reliefworld.int/report/Uganda-esndsback-3000-rwandan-refugees>

refugees' individual Asylum claims had been rejected months before and had been denied appeals while others were in the middle of the process (Amnesty international News 16th July 2010).

It is reported that the rejection of the refugee claims for asylum were based the awaited Cessation Agreement (USDS: 2012:12). This leaves an open question on whether a law which does not exist would be binding to individuals. The actions also reveal how Uganda opted to omit its obligations under the Tripartite Agreement (UNHCR 1996:10-12), to its interest of getting rid of Rwandan refugees from the country. The Uganda government's interest of getting rid of the refugees was demonstrated by government defence of its actions through the then State Minister for Relief and Disaster Preparedness statement Musa Ecweru cited in (CNN 2010:1) that "No refugee was deported, what we did was deport those who were taking advantage of the economy, they did not qualify for asylum, we had to send them back"

His statement portrayed that proper asylum procedures had been conducted and those who did not qualify sent back to Rwanda yet the reports cited earlier in this paper indicated the contrary. It is demonstrated how the manner in which the deportations were conducted may not have fulfilled the government's obligations (UNHCR 1996: 10-12) and standards of international law (Article 33 UN General Assembly 1951).

Amnesty International in contest to its conduct had written to the government in 2011 reminding the Uganda authorities that they were expected to treat Rwandans who would be affected by the Cessation Clause according to international standards. In its memo, Amnesty International briefed the government on the need to first thoroughly assess conditions in Rwanda, and make selections of those that continued to fear persecution including those with broad based human rights violations (Amnesty International 2011:1-17).

Contestations against plan to invoke the Cessation Clause by global human rights institutions intensified, questioning how considerable change had been assessed to require return of Rwandan refugees to their country of origin. It has since been argued that the end of political violence should not be the final or sole indicator of peace. Hence the return of displaced persons, should also consider prevailing human rights conditions after the conflict ends and it is proposed that human rights conditions should be a paramount consideration before invocation of repatriation programs (McMillan 2012, Hovil 2010, Parker 2015).

Moreover, human rights and democratic indices still pointed Rwanda in the worst rates from Freedom House (2015:1-3). To that respect, "such continuous human rights and democracy circumstances would not satisfy guidelines for the application of the Cessation Clause" (McMillan's 2012:6). As noted by Hovil, generalized assumptions that the end of conflict indicates a safe reception for former refugees, ignores other evidence of persecution,

and could be misleading because of how: “war and violence may profoundly reshape a polity and in the process, create new threats to particular individuals who may continue to require protection as refugees” (Hovil 2010:2).

It is further propounded that “there are groups of Rwandans that fled from invading forces of RPF that ended the genocide and are in power, implying persecution of various nature still exists” (Parker 2015:8).

Uganda heeded to some of the concerns that had been raised and agreed to postpone the invocation of the Cessation Clause from 2011 alongside setting up mechanisms that would protect the refugees from *refoulement* (USDS 2012:12). The Ugandan government’s obligation to fulfil the obligations of law in implementation of cessation was reaffirmed in the meetings of the 18th April 2013 in Pretoria South Africa (UNHCR 2003 Joint Communique’) with Rwanda and UNHCR and in the later Symposium of 26th June 2013 among governments, UNHCR and NGOs (ibid note 1).

In these meetings, Uganda announced to declare cessation without neglecting the previously set strategies of ensuring effective implementation of the Cessation Agreement. The government declared that they would pay specific attention to individual cases of those with compelling reasons for not returning to Rwanda, and would adhere to principles of voluntary repatriation and would also consider alternative durable solutions, where required.

3.2. Procedural Unfairness in Refugee Status Determination

This section discusses the challenges encountered by Rwandan refugees in status determination procedures prior to the invocation of the 2013 Cessation Agreement in Uganda. These challenges undermined the procedural guidelines provided by UNHCR and human rights principles described in Chapter 2 of the paper. The section is discussed through the legal lens.

3.2.1. The lack of Information for informed decisions.

Rwandan refugees or asylum seekers lacked enough information about both the existing situation in their country of origin and the procedures for claims to retain refugee status or alternative status as Uganda and Rwanda prepared to bring into forth cessation. Notably, information about country of origin in (UNHCR 1996:28) and information on procedures go hand in hand to facilitating refugees’ decisions about their future before repatriation programs and pursuit of durable solutions for refugees.

In research conducted by RLP (2005:6), it was revealed that “(d)ue to no information or limited information, asylum seekers were totally unaware of the Refugee Status Determination Process”. Consequently, such refugees

could not claim their legal right to due process for a durable solution and could easily be exposed to risks of deportation. This situation did not change even during events of 2007 and 2010 where massive deportations were conducted by Ugandan government authorities in alliance with Rwanda. Many of the deported Rwandan refugees were not accorded proper hearings for alternative status determination as reported by Amnesty international (2010:1-5). This could be attributed to lack of information among some refugees.

Several issues hindered the flow of information to Rwandan refugees who would have been refouled if they had not escaped into hiding, as well as those who were refouled during the implementation of the Tripartite Agreement. These issues included the fact that the information campaigns rarely reached all sections of the refugee settlements. This was despite refugee settlements being easier to reach than some other areas in which Rwandan refugees lived, such as in the capital Kampala. The same issue was confirmed by a key informant in a Skype discussion, who mentioned that:

“It is easy to reach out to Rwandan Refugees in refugee settlements due to the set leadership structures therein. These structures help in coordinating refugees for information sessions on different programs including awareness campaigns on refugee status determination and organized repatriation which is not the case outside refugee camps”³

Much as information easily spread to refugee camps than other areas, there were still challenges that prevented some individuals from accessing such information which were; the size of the camps being so large yet limited funds were available to conduct the program. This was pointed out during a skype discussion with a key informant who said; -

“Refugee settlements are too large that all corners can’t be reached, they are divided into villages, zones yet information sessions are held in quarterly basis. Moreover, even in Kampala where information sessions are held, it’s not easy to reach out to all refugees in the wide spread suburbs due to limited funding, they end missing out on important programs”⁴

Suspicion and mistrust by the refugees towards refugee programs organized by authorities was also reported (Hovil 2010:21, Amnesty International 2011: 14). These studies revealed that Rwanda’s involvement and persuasive powers to have refugees returned created anxiety. The new refugee groups that were still emerging from Rwanda and the refugees’ awareness of previous group deportations like the massive deportations in Kibati Refugee camp in 2007, led to distrust and fear (Amnesty International 2008:322 & Relief Web 2007). In addition, 2010 deportations of Rwandans from Nakivaale Settlement had further led to a lack of faith in the process of voluntary returns (CNN

³ Skype discussion 27th July 2016

⁴ Skype discussion 26th August 2016

2010, Human Rights Watch 7th July 2010). It is such suspicions and experiences that made some Rwandan refugees shun information campaigns making it difficult for voluntary repatriation to be effectively administered.

The UNHCR handbook prescribes various methods of designing and delivering information campaigns to refugees (UNHCR 1996:28). UNHCR advises that technical information, especially legal information on status determination, should be written in a form that does not require interpretation by those without basic legal knowledge. If only elites and authorities can understand the text, then this will reinforce the mistrust of authorities. Coupled with low literacy among Rwandan refugees and language problems, most legal documents are also in English, which is the official language of court and tribunals in Uganda under Article 6 1995 Constitution, Section 88 Civil Procedure Act 71 of Uganda. English is not familiar to most Rwandan refugees in Uganda, who fled Rwanda with a mostly Francophone background. These factors made information access difficult.

Finally, information access was also limited by the bureaucracy in the Uganda Immigration system and the extensiveness of refugee programs due to the large numbers of Rwandan refugees in Uganda, not all of whom were reached. In the words of a key informant:

“In Kampala, when refugees go to the Immigration Authorities at office of prime minister or refugee police desk, they are sometimes told to wait or refer to noticeboards, however in some instances information on noticeboards may have been removed and replaced by that for new events, limiting some asylum seekers from accessing information on administrative procedures” Key Informant 8⁵.

In this way, important information on particular processes in status determination ends could be missed out on by many of those directly affected

3.2.2. Limited Access to Asylum procedures

Whereas the Refugee Act gives the right to those who with a justification want to remain in Uganda, to apply/reapply for asylum or refugee status through the established authorities (Refugee Act 2006, section 20), it was very difficult for majority of Rwandan refugees who did not want to return Rwanda due to certain fears like fear for persecution, prior to the 2013 Cessation Clause to access these procedures. This was partly due to the conduct of Immigration Authorities of denying application forms to Rwandan refugees, based on the authorities' confusion about the provisions in Uganda laws

⁵ Informal discussion in The Hague Netherlands, 1st September 2016.

on Refugee protection with regards to refugee right to naturalization in Uganda.

It was on that basis that Public Interest Lawyers in Uganda backed up by other Rights in Exile Institutions in the country Launched a petition to the Constitutional Court of Uganda under the case of *Centre for public Interest Law Ltd & another Vs Attorney General (2010)*:

This petition sought interpretation of the provisions in the 1995 Constitution, the Refugee Act 2006 and Citizenship, Migration Control Act 66 for verification of the different contestations about refugee citizenship chances in Uganda.

The petition also sought court's order upon migration authorities concerned on refugee status determination to process applications of those refugees who met requirements of the law, if upon interpretation of the above laws, refugees qualified for citizenship in Uganda by naturalization.

The court verified the matter in 2015 in its ruling where it was stated that refugees who meet requirements under the Migration Act and Refuge Acts qualified for citizenship by Naturalization.

Whereas Article 12 (2) c of the 1995 Constitution, Section 45 Refugee Act, and Section 16 Citizenship Migration Control Act, qualified refugees who had lived in Uganda for over 20 years for citizenship by naturalization, Article 12 (1) a. ii. of the same Constitution Prevented registration of persons born in Uganda whose parents or grandparents arrived in Uganda as refugees, for citizenship. For those who had managed to access the asylum application forms, majority were rejected of refugee or citizenship status due to the confusion about the laws by officers in charge of administration of justice.

According to Amnesty International (16th July 2010 report), 98% of the Rwandan refugees who had applied for asylum in 2010 were rejected and most of them got deported during the massive operations conducted in Nakivaale and Kyaka II refugee settlements (Human Rights Watch 2010 17th July). Even after lodging this mass petition with the court, Rwandan refugees were continuously denied application forms and others were summarily deported without formal legal procedures being adhered to. This further undermined prospects of finding a long-term durable solution. The was in spite of the fact that, as noted already, the right to due process for Rwandan refugees was clearly provided for under Articles 14 of the ICCPR on fair hearings and under Articles 1(C)5b, 33 and 34 of the 1951 Geneva Convention on exemption procedures (Non-refoulement principle). The Ugandan Government had not met its obligations under these provisions to facilitate local integration for refugees with valid reasons.

Additionally, the signing of the Cessation Agreement did not await Court's interpretation of the law as petitioned in the above case, Uganda government decided to sign the Cessation Agreement, which disqualified Rwandan refugees within its scoop of International protection with less consideration to their legal right to fair hearing.

The government's action could have partly been due to the desire to safeguard its economy as showed in the Minister for Disaster Preparedness's (Musa Ecweru in CNN 2010:1) defence for government's actions of expulsion of Rwandan refugees. Unfortunately, access to asylum procedures was also limited by the refugees' lack of information due to factors illustrated in section 3.1 on information. Limited information about asylum processes arising out of suspicions on government which kept many in hiding, inadequate funds by government to facilitate information flow to all refugees, many Rwandan refugees were not able to access asylum procedures.

3.2.3. Limited Impartiality and independence of administrative bodies

International law, Article 14 of the ICCPR, the 1995 Constitution of Uganda Article 28, require the protection of individual's right to fair hearing an equivalent of procedural fairness, through independent and impartial tribunals. These provisions apply to everyone including refugees and asylum seekers.

We note that even though decisions concerning refugee status are made by independent bodies in Uganda as set out under Section 3 of the Refugee Act of 2006 which separates members of the Refugee Eligibility Committee from those of the Appeals Board in administration of duties, there are elements of impartiality in the processes. This is because the Appeals Board does not make decisions for grant of refugee status but refers cases to the Refugee Eligibility Committee for such decisions: "The Appeals Board shall not make a decision granting refugee status to an applicant" (Refugee Act 2006, Section 17(4)). The implication is that, where a refugee is denied asylum by the Refugee Eligibility and Committee in the first instance and he is referred back for grant of asylum by the Appeals board, the refugee would stand chances of being denied once gain.

Additionally, as the government of Uganda prepared to invoke cessation, it is reported that "there was reluctance by Tribunals that heard refugees' asylum cases to grant Rwandans refugee status pending the Invocation of the Clause of 2013" (USDS 2012: 6-7). Such reluctance by the tribunal officials could literally be termed as partiality since they processed applications of Rwandan asylum seekers with a bias that Rwandans have to return home. A factor that could have resulted to others being denied asylum hence forced deportation or refoulement, indicated in the (Amnesty International 16th July 2010 report & the UNHCR population statistics 2016). These forced deportations arising from partial hearings in tribunals contributed greatly to cases of refugees' disappearances for fear of Deportation reported in (Hovil 2010:4, Parker 2015:10).

3.2.4. No interpreters or legal representation

Fair procedures further call for being afforded interpreters into a language refugees understand best in determination of their applications in respect to the UNHCR guidelines (Appendix 1). The Refugee Act 2006, Section 24(2) states: “during hearing in consideration for his or her application, the state shall provide the services of a competent interpreter where necessary”. This provision puts into consideration individuals without full knowledge of the official language in legal or administrative proceedings like some of the Rwandan refugees were, yet to be affected by the 2013 Cessation Agreement.

Uganda’s official language in administrative and court procedures being English per the Constitution and Civil Procedure Act 71 as cited earlier, it was mandatory for Rwandan refugees to be accorded competent interpreters in the language they could fully understand, to avoid miscommunications and misinterpretations of testimonies during interviews. Rwandan Refugees were not provided the services of interpreters. As was noted: “(w)hen interviews are conducted at the special branch of police, no interpreters are made available to asylum applicants” RLP (2005:21-23). A recent study on-status determination and rights of refugees in Uganda confirmed that “interviews conducted both in settlements and Kampala refugee front desk office were provided no interpretation services and legal representation” (Sharpe et al 2012: 569).

The consequences were that many Rwandan refugees could not appropriately communicate their concerns and fears which could have contributed to rejection of their applications hence incidences of Refoulement and compelled disappearances. Additionally, Section 24 (3) provides for legal representation as another element of procedural fairness during determination of one’s application. The representative can be a person of the applicant’s choice or an official from UNHCR (Refugee Act 2006 Section 24 (3)). This provision however, limited majority of the Rwandan refugees who could not afford services of legal representatives due to their economic conditions. Many Rwandan refugees still relied on agriculture as a means of livelihood and income to supplement humanitarian assistance. Prior to the 2013 Cessation Agreement, however, many were prevented from accessing agricultural land for farming, and were unable to make a decent income to support themselves (Amnesty International 2011:12). For the same reason, they could not afford to pay legal representatives.

3.2.5. Delays in hearings

Slow procedures in legal hearings were yet another failing of procedural fairness in determination of Rwandan refugees’ applications. Although the time established by the Refugee Act to hear and determine asylum applications is three months (Refugee Act: Section 20 (20)) Rwandans applications took up

to over two years in some cases. See trends in UNHCR Statistics (UNHCR 2016: Population Statistics-data -Asylum seekers).

This is attributed to the high case backlog in tribunals given the number of asylum seekers received in Uganda each year. As we noted in the context, Ugandan not only hosted Rwandan refugees but is a host of too many other groups and recent flows from Sudan and Burundi intensify the challenge. All these refugees go through similar processes as former refugees from Rwanda.

In 2010 alone, UNHCR was to assist “15,700 Rwandan refugees and 1,200 new asylum seekers but had challenges” (UNHCR Global Report 2010). UNHCR reports further indicated that 95% of the asylum claims handled each year since 2010 are solely assisted by UNHCR. Such large sums of refugees and asylum seekers compared to the small number of service providers made it difficult for fair asylum procedures to be effectively and speedily administered. The right to speedy hearing was further undermined by the bureaucracy in the system.

This was confirmed by key informant 8, who asserted that

“In follow up of their applications for asylum, refugees are taken around through longer procedures than they expect and sometimes told to return some days or months later, yet still most are not given asylum status due to presumptions that Rwanda is peaceful. Because some of them travel from far distances which involve transport costs, have no stable sources of income, they get frustrated with the so long procedures and give up on their applications”⁶.

Such incidences were not exceptional to Rwandan refugees who were deported before determination of their claims and others who chose to go into hiding or remain undocumented in Uganda.

3.3. Property Rights for Rwandans Vs Voluntary Repatriation

Using the legal and Socio-legal theories, this section discusses how the right to ownership of property by Rwandan refugees in Uganda was violated during the implementation of the 2003 Tripartite Agreement, the reactions of the refugees after their experiences with the processes and how prospects of durable solutions for them were affected.

During the Tripartite Implementation, Rwandan refugees were deprived of the right to own property particularly land by the Uganda government. First they were banned from accessing cultivating land (Amnesty International 2011:11-12) and thereafter their land confiscated and allocated to other refugee groups, as indicated in a survey conducted by Hovil in

⁶ Informal discussion in The Hague Netherlands 1st September 2016.

Nakivaale and Kyaka II refugee settlements in South Western Uganda. In the survey, she found out that “Rwandan refugees land had been allocated to Congolese and other refugees” (Hovil 2010: 1).

Land being one of the essential aspects in the UNHCR Global Strategy for livelihoods 2014-2018 (UNHCR 2014:19), Uganda’s self-reliance strategy for refugees and their supplementary source livelihood to humanitarian aid (UNHCR 2003c:2), it became evident that the deprivation and confiscation of Rwanda refugees land by the government of Uganda authorities was a way of indirectly influencing their decisions to return to Rwanda and because they could not live in an environment where they would not survive, they were forced to return or go into hiding.

From their testimonies, Rwandan refugees also interpreted and perceived these acts of government against their right to land as a measure being forced to return. One of the interviewees by Hovil (2010:20) mentioned how she felt the limitation to access her cultivating land and its allocation to Congolese refugees as being forced back to Rwanda.

Further testimonies of Rwandan refugees collected by Amnesty International from Kyaka II and Nakivaale refugee settlements revealed how the refugees “had been hindered from owning and utilizing land by settlement officials on grounds that Rwanda was safe and that Rwandan refugees should go back” (Amnesty International 2011:11-13). These Ugandan government actions contrasted its obligation to protect Rwandan refugees’ rights including the right to property ownership provided under Articles 2 of the ICCPR, 2(2) of the ICESCR, Articles 5 of the CEDAW and 15 of the CERD. The Articles call upon state parties to respect everyone’s rights and the right to property without discrimination of any nature. Article 17 of the UDHR 1948 also provides that; “Everyone has a right to own property alone or in association with others and that no one shall be deprived of this right”.

Article 13 UN General Assembly 1951 further calls upon its state parties to equally protect property ownership rights of refugees like any aliens in their territories. These Articles were domesticated under Uganda’s national legislation for example in Article 26 of the 1995 Constitution, as an entitlement to every resident of the country, refugees inclusive. The same constitution warns that no one shall be deprived of the right to own property unless it has been taken for public interest and adequate compensation made to victims. (Article 26(2) Constitution of Uganda 1995). For refugees, the right is extinguished when their legal status ceases by virtue of Section 6 Refugee Act 2006. The government of Uganda did not observe these laws.

On the other hand, the confiscation and violation of the Rwandan refugees’ rights to property also amounted to breach of Uganda’s obligation under the Tripartite Agreement of 2003, to ensuring and promoting voluntary repatriation, by refraining from actions that would induce, put pressure onto

the refugees to return to their home country (UNHCR 1996;10, 29-30). Deprivation from the right to property through land confiscation alone had amounted to material pressure upon these refugees.

In general, these actions against Rwandan refugees happened during the implementation of the Tripartite whose aim as mentioned earlier was to safeguard their rights while still under international protection by virtue of the refugee definition (Article 1 UN General Assembly 1951), prior to the signing of the Cessation Agreement. As argued by (Harrell-Bond 2011:10-11), this was equivalent to implementation of the cessation before its time. And upon its declaration in 2013, no better or different circumstances from the above would be guaranteed given the fact that upon cessation, refugees' international protection of any nature is waived off and they can be subjected to deportation (Sniderman 2015:609 & Tarwater 2000:15).

Had the Tripartite been implemented effectively and rights such as property rights put into consideration with respect to the government's obligations to ensuring voluntary repatriation as a foundation of cessation, continued instances of property confiscation like in the case of Evode given below would have been limited.

Evode, now a former Rwandan refugee by virtue of cessation, had been charged with a criminal offence of theft under trial case *Uganda Vs Rwigitera Evode, Criminal Case No. 210 of 2014 (CRB 486/2014) (Unreported)*, and remanded, upon serving some period of his sentence in jail he was released. In April 2015, Evode "returned to Nakivaale Refugee Settlement where he found that his house had been destroyed and his plot of land allocated to another refugee, efforts to secure another land and house as he pursues a legal status in Uganda have been futile"⁷ Informant 6's assertion through a skype discussion reveals more cases than the above mentioned. He mentioned that;

"Many Rwandan refugees that have lost land and houses to the authorities due to the cessation come to us, but what we can do is only offer them advice and refer them to UNHCR, this has been the case even before the cessation was passed"⁸.

As a result of being deprived of land to force their return to Rwanda, Rwandan refugees ended up into hiding within communities in Uganda and others pretending as Congolese nationals to continue tilling land, in search for means of survival and due to fear for being deported (Parker 2015:10, Hovil 2010:1-2). Their reactions by hiding could also be termed as a form of resistance to the repatriation program. This resistance is expressed in one of the refugee man's statement during Hovil's survey when he asserted that "I would rather commit suicide than return to Rwanda"⁹.

⁷ Key Informant 4, Phone Discussion 19th August 2016

⁸ Skype discussion with key informant on 27th August 2016.

⁹ "Refugee man, Nakivaale" as told to Hovil 2010:20

These reactions further demonstrate how as it was marked by (Banakar et al 2005) one group in society upon application of given policy or law thereto may applaud it, another group may resent it.

Going into hiding and continuously living under fear of deportation, is a result of how they experienced the Cessation Agreement programs (Hovil 2010:1-2, Parker 2015:10). Rwandan refugees lived in fear due to previous forced deportation of their colleagues (Amnesty International 2008:322 & Human Rights Watch 7th July 2010) demonstrated through forced evictions and confiscation of land as a persuasive measure to return. This confirms what other socio-legal scholars like (Hertogh 2004:460-463) and (Schmidt et al 2004:8) put across that how people experience, perceive and interact with the law and its implementers determine their actions and attitudes towards it. Rwandan refugees' experiences with the implementation processes that had led to property confiscation is the reason they went into hiding to resist forced return to Rwanda and to obtain means of survival within Uganda.

The unenjoyment of the right to property by Rwandan refugees was coupled with the lack of Identity Documents before and after the Cessation Agreement of 2013. The case of *Centre for Public Interest Law Ltd Vs Attorney General 2010* reveals this argument. Both being legal rights that Rwandan refugees should have benefited from prior to the Cessation Agreement if the strategies under the tripartite were well implemented. More details on the right to identity documents are provided under the proceeding section in answer to question 3 of the paper.

3.4. Identity Documents and Human Rights of Rwandan refugees

Legally, Rwandan refugees were entitled to identity papers for recognition and facilitation in their travel within Uganda, not withholding access to other forms protection and assistance while in the country. This is because, only recognised persons under the law can benefit from protection in country of residence (Goodwill-Gill 1996).

Recognition as a right is provided for under Article 6 of the 1948 UDHR and Article 16 of the ICCPR 1966 that “everyone has a right to recognition as a person before the law” and under the ACHPR 1989, Article 5,

“Every individual shall have a right to the respect of dignity inherent in a human being and to the recognition of his legal status”.

Particularly to refugees, as a form of recognition, Article 27 of the 1951 Geneva Convention obliges state parties to issue them identity papers where such refugees have no valid travel documents. As a customary practice of

international refugee protection, identity documents to refugees should be issued through formal procedures set within the structures of states as those recommended by UNHCR described under (UNHCR 2011:36-96).

Although it is very clear under law, it was noted that in some countries refugees arrive in large numbers and individualized procedures cannot be effectively and urgently administered, yet such refugees need documents to enable them to live in countries of asylum securely with no threats for expulsion or refoulement and deprivation of basic rights, as they wait final decision from formal processes of status determination. In such instances UNHCR recommended states to offer such people provisional documents to prevent them from facing such risks (UNHCR 1984:4 EC/SCP/33). In Uganda, however, no provisional identity documents are or were issued to refugees prior to the final status determination procedures prescribed under (Section 39 of the Refugee Act 2006).

Rwandan refugees were denied identity documents and others denied access to procedures of obtaining identification by Uganda authorities even before the invocation of the cessation. (Amnesty International 2010 16th July 2010 report). Harrell-Bond (2011:10-11) as noted earlier critiqued these actions as “implementation of the Cessation before its declaration” which was legally improper.

Like it was in depriving of property rights from Rwandan refugees, the violation of the right to Identity documents could as well have been away of pressurizing Rwandan refugees to return to Rwanda. This was despite the fact that imposing pressure on refugees in any manner influencing their decision contrasted the principle of Voluntariness (UNHCR 1996). The lack of identification subjected these former Rwandan refugees to forced deportation which amounted to Refoulment (Article 33 UN General Assembly 1951). Those who remained in Uganda could have limited access to services especially where identity papers are required and therefore opted to disappear from authorities into communities within Uganda or masquerade as Congolese refugees or Uganda Nationals in order to survive (Hovil 2010:1-2, Parker 2015:10).

In 2007 alone, out of the 5000 Rwandan refugee residents of Kibati refugee camp that was closed down by Uganda, 3000 were forcibly deported yet majority of them had not been given access to legal procedures for recognition (Relief Web 2007) Additionally, the remaining 2000 escaped after discovering of the plan to deport them. It is revealed that the denial of identity documents was based on the cessation that had not been declared (Amnesty international 2008:322).

Moreover because of the lack of identification, the international community could not intervene against their rights violations. A few days after

the deportations, a UNHCR official Khan Ayaz clarified that “The Commission was not involved in the repatriation because the group had not been recognized as refugees” (Relief Web 2007).

2010 was another year when the Rwandan refugees in Nakiivale and Kyaka II refugee settlements, still being denied access to procedure for identity documents and to others applications rejected on generalized grounds of peace in Rwanda, 1700 of them got deported (Amnesty International 16th July 2010, Human Rights Watch 17th July 2010) and in the process, it is reported that “families were disunited, lives lost, bodies injured and other refugees compelled to escape from the camps as a way of surviving deportation and its consequences” (Harrell-Bond 2011:10-11).

In the 2010 case, as well UNHCR did not take part and much as government argued that those deported did not require protection since they were taking advantage of Uganda’s economy, the State contradicted the principle of “Non-Refoulement” (Article 33 1951 Convention on Refugees) and international requirement of withdrawal of any form of protection whether temporary or long-term through formalized (UNHCR 2008, C-175/08) Procedures incorporated in (Section 39 of the Refugee Act 2008).

Declaring the Cessation in 2013 sealed the opportunities Rwandan refugees, now former refugees could have had in claiming their recognition rights and identity documents. Although under the Agreement Uganda had agreed to stick to its initial obligations of offering legal services on individualised basis for recognition or renewal of identity and status of the group affected, the country is not mandated to adhere to the obligation (Hathaway 2005:26).

In later Agreements during the Concluding meetings to the Cessation programs, most recent being the September 30th Comprehensive Solutions Strategy for Rwandan Refugees (UNHCR 2016 Joint Communique’:1-3), Uganda has continuously committed to sensitizing refugees to come up for legal processes in order to obtain Identity documents for a proper legal status. However, as seen in the facts and figures section, the turn up is still low.

As they will continue to live without identity documents upon phasing out of the Cessation Programs in December 2017, the former Rwandan refugees will continue living in exclusion from all forms of services.

Having analysed the different human rights that is, the right to procedural fairness through the legal theory, the right to property through legal and socio-legal analysis and the right to identity documents. The denial of rights under procedural fairness hence coupled with the pressure to the Rwandan refugees through being evicted from land undermined what was expected of Uganda in its Tripartite Agreement of 2003.

The Tripartite therefore was implemented alongside the Cessation since there was no respect of refugees' rights, identity documents were denied making Rwandan refugees to trace their way for survival or escape from deportations by going into hiding or pretending as other nationals. This is what we discuss in chapter four as the root causes of social exclusion.

Chapter 4. Living in Exclusion - former Rwandan Refugees Post the Cessation

This chapter discusses ways in which the violations of the rights to due process, right to property and identity documents by the Ugandan government during the implementation of the Tripartite Agreement of 2003 resulted into and reinforced social exclusion of former Rwandan refugees still living in Uganda. Implying that social exclusion among the former Rwandan refugees, is deeply rooted from the human rights violations which originated from the improper implementation of the Cessation Programs under the Tripartite Agreement of 2003.

The concept of social exclusion as earlier mentioned, is discussed in integration with the socio-legal and legal theories of analysis. Using the definition by Letvas et al (2007: 25) social exclusion in this paper refers to

“the lack or denial of resources, rights, goods and services and inability to participate in normal relation and activities available to the majority of the people in a society whether in social, economic, political and cultural arenas affecting the quality of life of individuals and society as a whole”.

To systematically track this discussion, it is also important to first understand, the causes of social exclusion are linked to one another, themselves were exclusions and their current consequences as well could result into other forms of exclusion. We focus on the results of the violations of the rights discussed in chapter three. This is why the Scottish office 1999 in (Sen 2005:27) asserted that “social exclusion is complex, its causes interconnected and its effects themselves become causes of further exclusions”.

It is further important to note that, what sociologists term as social exclusion is discrimination in the legal perspective hence a strong link between the legal and socio approaches, which is a justification for the integration of the two approaches in scrutinizing this challenge against the now former Rwandan refugees.

Moreover, it is contrary to the law for any person to be discriminated against for any reason beyond his or her control and states are prohibited by international rules from the same. Article 2 UDHCR, Article 2(1) ICCPR, Article 2(2) ICESCR, Article 5 (CEDAW) Article 15 CERD,

State parties to each of the conventions “*shall undertake the obligation to respect the rights of individuals within their territories, recognised under these instruments “without distinction of any kind such as race, colour, sex, political aspiration, national or social origin, property, birth or status”.*

To the contrary, due to of their national and social origin coupled with presumed notions of peace in Rwanda, the Rwandan refugees were discriminated or excluded from full or partial participation in both economic, social and

political arenas within Uganda. First through being denied access to and rejecting them identity papers for recognition in Uganda, reinforced by declaration of cessation that has further limited their chances of recognition in the country. Secondly through being denied property rights, which denial has further incapacitated many from full participation or enjoyment of other economic opportunities and benefits that come with such participation.

Each of the above rights violations contributed significantly to the political, social and economic exclusion of these Rwandans as seconded by (De Haan 2000:26). The exclusion or discrimination of Rwandan refugees along those lines confirmed Beall and Piron's argument in (Namusoke 2015:19) on how certain categories of people fail to participate in society due to their identity obstructing their opportunities.

Such exclusion originated from the initiation and implementation of repatriation programs derived from the law (Article 1© 5 UN General Assembly 1951) and as asserted by (Sen 2005:15, De Haan 2004:27; Peace 1999), what limits such people as (Rwandan refugees) to fully participate in society sometimes are the "effects of government policies that result to identity loss of minority groups". Once one is not recognized (Goodwin-Gill 1996: 240), one cannot therefore enjoy from the protection of the state in which he is resident.

Moreover, the lack of recognition itself is discrimination or exclusion and equivalent to identity loss described above. It too has got serious consequences on participation in other avenues. Beall and Piron cited in (Namusoke 2015:19) attest to it in their illustration on how people's failure to participate in society sometimes originates from institutional and structural factors that obstruct their opportunities. According to Sen, laws by governments that make minorities to loss of identity are examples of such institutional and structural factors (Sen 2000:15).

Identity documents being a way of obtaining one's identity and recognition, having no identity documents is equivalent to non – recognition in a given territory which implies being at risk of expulsion and deportation.

Like discussed earlier, Rwandans who had no will to return to their country of origin therefore opted to go into hiding from authorities as already indicated on 2007 when over 2000 refugees from Kibati settlement ran away for fear of being sent back to Rwanda or expelled, (Amnesty International 2008:322) and the 2010 incidences which continue to prevail (Human Rights Watch 2010 July).

After the signing of the Cessation Agreement in 2013, Rwandan refugees who had gone into hiding remained undocumented despite government programs to promote their turn up to claiming legal status in Uganda (Parker 2015:10). They are therefore excluded from protection since they continue to have no identity documents which are usually gateways to participation and

enjoyment of benefits from both economic, social and political avenues they would have loved to participate (Goodwin-Gill 1996:19).

Economically, the former refugees' exclusion or discrimination arises from what (European Foundation 1995:4; De Haan 2004:26) attribute to deprivation of property, employment, social exclusion, loss of relational touch with society. Politically, exclusion arises from loss of identity, recognition, human rights violations and lack of access to justice.

Being evicted from land was equivalent to economic exclusion. Some refugees had relied on agriculture for employment since it was difficult for them to obtain jobs in Uganda. Although the laws of Uganda such as the Constitution of 1995, the Employment Act of 2008 and Refugee Act of 2006 authorises refugees to work in the country, Rwandan refugees had limited opportunity based on their language French and Kinyarwanda. They could hardly compete with Ugandan nationals for formal work. Land was the only main option for their survival but once taken away, they were excluded from the agricultural production sector, excluded from livelihoods and the like.

In an interview with Hovil, a refugee had confessed on how having no work due to lack of access to land made him feel isolated. Another interviewee by the same researcher (Hovil 2010:19-20) had revealed how she could not support her children due to lack of land access. Therefore, as (Sen 2005:13-14) argued, the lack of access to land in peasant societies could incapacitate families where it may seem like having no limbs of one's own. Rwandan refugees were incapacitated. This incapacitation arose from lack of land rights among other rights and consequently, Rwandan refugees were forced to start living at the mercy of other refugees or Ugandan nationals after being evicted and their land allocated to other refugees (Amnesty International's 2011b:12-13).

Living at the mercy of others would imply having to tolerate any form of treatment against them whether inhuman and the fact that these Rwandans aren't recognised by law makes it difficult to resolve disputes formally through legal systems. In his statement from a phone discussion, a key informant from one NGO proved that,

“Rwandan refugees are often used as a source of cheap labour by nationals especially in cultivation and domestic work, many come to seek our assistance when they get contractual disputes because they fear reporting to police” Key Informant 3¹⁰

Socially, because of having no identity documents thus having no recognition by law, former Rwandan refugees cannot relate freely in society, are forced to masquerade as other nationals on suspicion they will be deported. (Hovil

¹⁰ Phone call discussion 23rd August 2016

2010, Parker 2015). This conforms to the European Union's description on social exclusion as the loss of relational touch with society.

Lastly, the denial of identity documents as refugees prior to the Cessation Agreement of 2013 made it difficult for the now former Rwandan refugees to claim legal rights to status. In the first instance, they were not recognised under the law originally and therefore though the Cessation Clause gives them a window to claim status, it is not mandatory that the state would grant to them full rights (Sniderman 2015:606).

According to Cacharani et al 2013 in (Parker 2015:9), due to unfair proceedings conducted in a number of Rwandan refugee host countries "Many other Rwandans see no point in pursuing the final option of seeking exemption and retaining refugee status through individualized status determination". Consequently, they would be and are subjected to other social problems and human rights violations as they continue to live undocumented.

The social problems faced by the former Rwandan refugees, arising from exclusion could not be discussed hereto due to the scope of this paper but briefly mentioning, they are - threats to lives, arbitral arrests and detentions without trial just like in the case of Uganda Vs Mbashurimana Emmanuel & 13 others Criminal Case No. 1163 of 2014 (CRB 1718/2014) (Appendix II) among others).

Chapter 5: Conclusions

The initiation of the Cessation arrangements and their implementation upon Rwandan refugees was the most challenging time for their lives in Uganda from early 2000. Although its initial program of Voluntary Repatriation under the Tripartite Agreement had been intended for a good purpose, of reducing the numbers living in protracted refugee situations, its ineffective implementation did not make it live to its purpose. Instead it resulted into a platform for the infringement of the rights of Rwandan refugees at the time and the subsequent effects to the violations. These conditions have left Many former Rwandans refugees today live without hope of the future ahead of them.

Entitled to the legal right to fair procedures in the claim of recognition, Rwandan refugees could not enjoy the right fully and have since been obstructed from the enjoyment of other human entitlements. Rwandan refugees hardly had information to make informed decisions, had limited access to procedures, interpreters, legal representation, appeals against rejected claims and worse still their claims had been heard before partial tribunals. This affected so many results from the claims, since a number of applications continued to be rejected, leading to refolement. Forced to go to hiding due to those conditions and fear of being deported under the Cessation Agreement of 2013, the former refugees remain undocumented.

Secondly, as a way of compelling Rwandan refugees out of the country, the government of Uganda imposed restrictions to land access against them. This contradicted the principles of international law in implementation of voluntary repatriation and contributed a lot to the unfair administration of the strategies under the Tripartite Agreement. Moreover, Rwandan refugees had been denied identity documents, a fundamental aspect in protection of many other economic, social, cultural and political rights of these people.

It is the failure to put into account the above discussed human rights of former Rwandan refugees in Uganda, the forced disappearance into hiding that has exposed and will expose those who continue living in Uganda undocumented into social exclusion if conditions resulting into these challenges are not corrected ahead of the phase out of the Cessation Agreement and programs by December 2017.

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APPENDICES

Appendix I

From

UN, High Commissioner for Refugees (UNHCR), *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, HRC/IP/4/ENG/REV.3, Accessed 18 October 2016 <http://www.refworld.org/docid/4f33c8d92.html>

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189. It has been seen that the 1951 Convention and the 1967 Protocol define who is a refugee for the purposes of these instruments. It is obvious that, to enable States parties to the Convention and to the Protocol to implement their provisions, refugees have to be identified. Such identification, i.e. the determination of refugee status, although mentioned in the 1951 Convention (cf. Article 9), is not specifically regulated. In particular, the Convention does not indicate what type of procedures are to be adopted for the determination of refugee status. It is therefore left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure.

190. It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs.

191. Due to the fact that the matter is not specifically regulated by the 1951 Convention, procedures adopted by States parties to the 1951 Convention and to the 1967 Protocol vary considerably. In several countries, refugee status is determined under formal procedures specifically established for this purpose. In other countries, the question

of refugee status is considered within the framework of general procedures for the admission of aliens. In yet other countries, refugee status is determined under informal arrangements, or *ad hoc* for specific purposes, such as the issuance of travel documents.

192. In view of this situation and of the unlikelihood that all States bound by the 1951 Convention and the 1967 Protocol could establish identical procedures, the Executive Committee of the High Commissioner's Programme, at its twenty-eighth session in October 1977, recommended that procedures should satisfy certain basic requirements. These basic requirements, which reflect the special situation of the applicant for refugee status, to which reference has been made above, and which would ensure that the applicant is provided with certain essential guarantees, are the following:

- (i) The competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non refoulement and to refer such cases to a higher authority.
- (ii) The applicant should receive the necessary guidance as to the procedure to be followed.
- (iii) There should be a clearly identified authority – wherever possible a single central authority with responsibility for examining requests for refugee status and taking a decision in the first instance.
- (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
- (v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
- (vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.
- (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph above, unless it has been established by that

authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

193. The Executive Committee also expressed the hope that all States parties to the 1951 Convention and the 1967 Protocol that had not yet done so would take appropriate steps to establish such procedures in the near future and give favorable consideration to UNHCR participation in such procedures in appropriate form.

Appendix II

From: Chief Magistrate's Court of Uganda.

Uganda Vs Mbashurimana Emmanuel & 13 others Criminal Case No. 1163 of 2014 (CRB 1718/2014) (Judgment passed 2 June 2015).

In this case, the accused former Rwandan refugees had been charged with illegal entry in Uganda upon complaints by camp authorities in Nakivaale Refugee Settlement. After the police search of homes in the settlement, the accused were found in possession of expired/invalid refugee identity cards by virtue of the Cessation Agreement, were arrested and detained for the above charge.

Upon intervention by a Rights in Exile NGO Lawyers and hearings in the Chief Magistrate's Court of Mbarara at Isingiro, the case was dismissed for want of prosecution and the accused persons set free.