

FEATURE

Leaving Nobody Behind: The Access-to-Justice Challenges of Refugees in Uganda

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Goal 16 of the SDGs is to ‘promote peaceful and inclusive societies for sustainable development by providing access to justice for all and building effective accountable and inclusive institutions at all levels’. SDG 16.3 commits the international community to ‘promot[ing] the rule of law at the national and international levels’ and to ensuring ‘equal access to justice for all’ by 2030. In the light of the overarching aim the SDGs to ‘leave nobody behind’, the access-to-justice needs of refugees require attention too if Goal 16 is to be achieved.

The world faces a global migration crisis of a magnitude not witnessed since the Second World War. The increased movement of people across borders is driven by the search for better opportunities in the case of economic migrants, while for refugees it is driven by the flight from persecution or war in their home countries. While the issue of refugees has only recently become a global challenge, it has plagued Uganda, and sub-Saharan Africa in general, for a long time.

Ever since it hosted its first refugees from Poland during the Second World War, Uganda has been both a source and host for refugees (Pincwya 1998). It has hosted various generations of refugees, including those displaced by the first Sudanese civil war, the Rwandan genocide and rebel conflicts in the DRC spanning the last three decades. The latest round of refugees is a result of civil war in South Sudan and the renewal of rebel activities in the eastern DRC. The official figures of the United Nations High Commissioner for Refugees (UNHCR) indicate that at the end of 2018 Uganda was host to 1.2 million refugees, the highest number in its history – but a number that is set to rise even higher.



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Uganda has received global acclaim for its progressive refugee laws and policies. In contrast to the developed world, which generally treats refugees and migrants with apprehension or indifference, Uganda’s attitude towards hosting refugees is unusually warm. Many of the communities that host refugees, for instance those in northern Uganda, are resource-strapped because they are recovering from decades of armed conflict perpetrated by the rebel Lord’s Resistance Army (LRA); nevertheless, they have responded with generosity to refugees by offering land on which they can be hosted and allowing them to set up shelters and gardens.

Under Ugandan law, specifically the Refugees Act of 2006 and Refugee Regulations of 2010, refugees

enjoy freedom of movement, access to the same social services as nationals, for example basic health care and primary education, and are allowed to start businesses or seek employment (sections 29 and 30 of the Refugees Act). Uganda's refugee response is also guided by the 1951 Refugee Convention and the Protocol of 1967, together with the principle of non-refoulement, which is the cornerstone of refugee protection.

The major case touching on the rights of refugees in Uganda is *Center for Public Interest Law Ltd & Salima Namusobya v Attorney-General* (Constitutional Petition No. 34 of 2010), where the Constitutional Court considered whether the prohibition of refugees from acquiring citizenship by registration under article 12(2)(c) of the 1995 Constitution of Uganda (read together with section 14(2) of the Uganda Citizenship and Immigration Control Act and section 6(1)(d) of the Refugee Act) was unconstitutional. The Court held that the provisions were constitutional since refugees could still apply to acquire citizenship by naturalisation under article 13 of the Constitution.

Access-to-justice challenges of refugees

When people flee their homes and seek refuge in foreign countries, they become highly vulnerable to poverty and marginalisation. This in turn limits their enjoyment of human rights, the right to access justice being chief among them. Furthermore, poor or vulnerable persons who are blocked from accessing justice are sometimes either forced to take justice into their own hands through illegal or violent means, or to accept unjust settlements (ISER 2019).

The United Nations defines access to justice as 'a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice in conformity with human rights standards'. For refugees in Uganda, barriers to access to justice take various forms. Some are occasioned by the structure of the justice system in Uganda, while some are a direct result of the vulnerability of the refugees themselves, poverty



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being the most prominent factor in this condition.

In the first place, access to justice for refugees is hampered by the long distances between the courts of law and the refugee settlements. It should be noted that refugees in Uganda are hosted in settlements rather than camps. Usually, the only vacant land available to establish these settlements is in sparsely populated areas that are far away from the urban areas or important installations such as the courts of law, police posts and roads. As a result, refugees have to travel long distances, either on foot or by incurring great expense, whenever they or their relatives have matters pending before the courts of law. This situation is exacerbated by the slowness with which the judicial system resolves cases.

Besides the long distances, refugees are often met by a new justice system and laws unlike those in their home countries. Ignorance of the law and of their rights becomes an impediment to the enjoyment of the rights. Refugees also tend to prefer their traditional justice systems and transitional justice to formal courts of law (Jjuuko 2018). Despite the potential of the traditional justice systems of various refugee communities to deliver justice and address the justice needs of the refugees, they have been little recognised and harmonised with the national laws, given that section 14 of the Judicature Act (Chapter 13 of the Laws of Uganda) accords written laws precedence over any customary or unwritten laws.

The preference for informal justice systems is not peculiar to refugees alone – a study by the Hague Institute of Innovation of Law finds that courts and lawyers are marginal to the experience of day-to-day justice of the people in Uganda, with less than 5 per cent of dispute resolution taking place in a court of

law, and with lawyers involved in less than 1 per cent of the cases (HILL 2016). Considering that the influx of refugees has stretched the staff of the Uganda Police and those of the judicial system, notably the courts, innovative use of the traditional justice system would localise the ability to access justice quickly and more affordably (UNDP, LASPNET 2019).

Similarly, it is difficult for refugees to secure bail when they find themselves in conflict with the law. Under Ugandan law, specifically the Trial on Indictments Act and Magistrates Courts Act, one must prove to the court that one has a fixed place of abode before one can be granted bail. This is a difficult requirement for refugees to meet because of their being refugees: their settlements are not permanent in nature but intended to be temporary until they are repatriated.

Another difficulty arises from the lack of credible sureties to secure bail. Naturally, the closest relatives to detained refugees are also refugees, and it is just as difficult for them to prove a permanent place of abode. Moreover, the court always assumes that refugees pose a high flight risk and will escape to their home countries once released on bail. As a result, this affects their right to a fair hearing. Another reason for the difficulty refugees have in securing bail is that the long distances to the courts hamper their relatives in attending court to stand surety for them.

The high cost of legal representation is another barrier to accessing justice. As highlighted above, poverty is one of the factors that make refugees vulnerable. As they flee from persecution and insecurity in their home countries, they have no time to carry along their assets in the desperate attempt to remain alive. Refugees thus lack the financial capacity to pay for legal representation in demanding their rights. The long distances from settlements to the urban areas also make it hard to access legal aid service providers situated far away from the settlements – there are few providers which, like the Refugee Law Project of Makerere University or War Child Canada, specifically target refugees. More widely, Uganda’s legal aid system is disorganised and operates in the absence of rules and regulations at the national level.

Due to the fact that the cause of displacement for

many refugees in Uganda is civil war in their home countries, many also experience psychological barriers in accessing justice. According to the UNHCR (2016), 50 per cent of refugees worldwide (including both men and women) are victims of sexual and gender-based violence, a problem that is too often ignored. Others have suffered torture at the hands of government and rebel forces and therefore harbour fear or distrust of the police and army. As a result, criminal cases involving refugee victims are seldom reported and, when they are, take a long time to be resolved.

The challenges above point in various ways to a justice system that is generally unfriendly to refugees and not flexible enough to respond to their specific justice needs as a vulnerable group.

How to enable refugees’ access to justice

To address the access-to-justice challenges of refugees in Uganda, a number of innovative solutions should be embraced and already existing initiatives, scaled up and introduced in all the refugee hosting areas. Efforts to address their needs in this regard should be directed not only at improving their access to advice and assistance but improving institutions such as the judiciary, police and prison services. A two-pronged approach would enable people to



The mobile court system should be adopted in refugee hosting districts

know their rights and how to demand them from a system that has the capacity to deliver on them (Manuel and Manuel 2018).

As a solution to the long distances that refugees often have to travel to access formal courts of law, the



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mobile court system should be adopted in refugee hosting districts. The benefits of mobile courts have been felt in the districts of Adjumani and Lamwo in northern Uganda, where they have been piloted by the Refugee Law Project in conjunction with the judiciary. This system allows court sessions to be taken out of the court premises and held in the settlements hosting refugees. Mobile courts also enable scarce human resources to be used more efficiently, in the sense that the services are taken directly and proactively to the people rather than waiting for them to report cases to the police and the courts of law.

In addition, the traditional justice systems of the refugees should be embraced, streamlined and supported in order to be aligned with the national laws. One of the strong points of the traditional justice systems is their emphasis on reconciliation rather than retribution. Considering that most refugees in Uganda are victims of war, or became refugees while trying to flee from conflict, the element of reconciliation is all the more attractive in that it encourages peaceful co-existence, both in Uganda and in their home countries when they are eventually repatriated. Inspiration for these courts should be drawn from the success of the *gacaca* courts in Rwanda, which were established in the wake of the 1994 genocide to deliver justice and reconciliation in a deeply divided country.

Addressing the access-to-justice needs of refugees must also involve deliberate efforts towards their

legal empowerment. Their disempowerment starts with language barriers, especially if they are unable to speak English, the official language of Uganda. To ensure that refugees have a say in decisions that affect them, they must be empowered to speak the national language of Uganda. Therefore, the government and civil society organisations should support the establishment of English classes for refugees, especially those who are adults and out of school. This would enable them to become stakeholders in the decision-making process for policies and laws that affect them, as well as to escape the silence often associated with being a refugee. Language skills also help ensure that refugees can defend themselves when they interact with the courts, be it as defendants or as plaintiffs demanding protection of their rights.

In addition, efforts should be directed towards providing transitional justice for victims of conflict-related sexual violence and torture. Due to the fact that many refugee communities are burdened by legacies of human rights violations, particular those relating to sexual and gender-based violence, it is important that initiatives to offer legal aid are complemented by psychosocial support (Dolan 2019). As such, the government and humanitarian actors should develop initiatives for providing counseling and psychosocial support to refugees to help them deal with the trauma associated with sexual violence, torture and loss.

Furthermore, more legal aid service providers targeting refugees should be established. Legal aid empowers refugees to demand their rights and ensures that they have access to legal representation when they are in conflict with the law. To cater adequately for the legal-aid needs of refugees, the Parliament of Uganda should fast-track the enactment of the Legal Aid Bill to regulate legal aid service providers. Similarly, the judiciary should train and hire more interpreters fluent in the languages spoken by refugees, for instance Arabic, Dinka and Nuer, for those from South Sudan, and French for those from the DRC. These measures, once implemented, would better protect refugees' right to a fair hearing.

The shift towards sustainable refugee management

It has become clear to humanitarian actors that a purely humanitarian approach to refugee situations is not sustainable. To overcome this challenge, development programmes are being integrated into humanitarian action. One of the reasons for this shift is that refugee situations are typically protracted affairs, with refugees remaining in a host country for up to 10 years. As a result, refugee programmes suffer when the long-term nature of conflicts is forgotten and donor fatigue sets in, leading to a significant reduction over time in the amount of resources available for refugee hosting programmes (Purkey 2013).

Thankfully, the New York Declaration and its Refugee and Host Population Empowerment (ReHoPE) programme have come up with a sustainable approach to refugee situations. The ReHoPE programme adds development interventions to the traditional humanitarian model and aims at making refugees self-reliant. It seeks to provide a comprehensive and sustainable solution to the current refugee crisis by catering for both the protection and socio-economic needs of refugees and the host communities. In Uganda, the ReHoPE programme has attracted assistance from the World Bank, traditionally a non-humanitarian organisation. This is a welcome move, as efforts directed at the economic empowerment of refugees will contribute to the sustainability of refugee hosting programmes in Uganda and reduce the vulnerability of refugees.

Conclusion

Apart from laying down international targets for justice, Goal 16 of the SDGs also serves to confirm that access to justice and development are closely interlinked. Therefore, in order to achieve sustainable development for refugees, access-to-justice programmes are one of the key elements that

need to be catered for in the new model of refugee response.

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