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FROM REFUGEES' RIGHTS TO STATES' INTERESTS:

THE EXPIRATION OF RWANDAN REFUGEE STATUS

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Declaration of Authenticity

I hereby declare that the dissertation submitted is my own and that all passages and ideas that are not mine have been fully and properly acknowledged. I am aware that I will fail the entire dissertation should I include passages and ideas from other sources and present them as if they were my own.

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Abstract

Refugees bear incredible political significance for states of asylum and states of origin. Despite the shibboleth that hosting refugees is not an ‘unfriendly political act’, their very existence carries negative implications about state failure and state cooperation.

In the same way, protracted refugee caseloads operate as tangible evidence of sustained state negligence, violence, and responsibility. Refugees are political, social and economic burdens to hosting states and can undermine the legitimacy of those in power in the state of origin.

Refugee issues, as with other trans-sovereign issues, are managed through state cooperation and global governance mechanisms. The legal instruments and the bodies administering refugee protection are most heavily financed by and headquartered in developed/Northern/OECD states, while the absolute majority of refugees in states of asylum in the Global South. The end of the Cold War had significant impacts on global interests resulting in a greater deferment of responsibility upon states of first asylum in the Global South, not just in hosting refugees but in finding durable solutions as well. Here, the state of Uganda finds itself, as host to hundreds of thousands of refugees fleeing from conflict and the fear of persecution in East Africa.

This thesis contributes to the investigation of how lack of oversight and legitimate veto points in refugee decision-making, together with disproportioned responsibilities and regional factors affecting states of asylum in the Global South, has allowed for international refugee law to succumb to national interests and become increasingly instrumentalised by states to the detriment of refugee populations.

This thesis investigates why Rwandan refugees, who fled in the period 1959-1998 and reside in Uganda, will lose the recognition of their status on 30 June 2013. It presents a longitudinal view and understanding of where the decision to revoke refugee status from Rwandan refugees fits in the nexus of refugee protection and presents analysis and recommendation to amend and legitimise the application of durable solutions to protracted refugee caseloads.

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Introduction

This thesis textualises the worrying discussion among forced migration scholars, lawyers and human rights NGOs on the insecurities and future trajectories of the 16,500 Rwandan refugees in Uganda following the United Nations High Commissioner on Refugees' (UNHCR) recommendation that Uganda and other African rescind their status on the 30th of June 2013.¹ In 2009, the UNHCR initiated a series of working groups and discussions with African states of asylum to address the remaining Rwandan refugees after *voluntary* repatriation exercises had not fully resolved the Rwandan refugee situation (UNHCR 2011a). In 2010, Uganda, Rwanda and the UNHCR, acting as a Tripartite Committee, announced plans to implement the Cessation Clause and facilitate the repatriation of Rwandan refugees in Uganda with the conceived notion that Rwanda had already achieved a 'fundamental, stable and durable change' as required by the 1951 Refugee Convention Relating to the Status of Refugees² (ibid.). On 30 June 2013 the internationally protected refugee status of Rwandans that fled in the period from 1959 to 1998 will no longer be recognised by the state of Uganda or the UNHCR. Nine other states with significant Rwandan refugee populations in Sub-Saharan Africa are also set to apply the Cessation Clause on the 30 June, meaning that refugee protection under international law to Rwandans will be denied throughout the African continent.³ Prior and since the Tripartite Committee's decision, legal experts, human rights activists and NGOs have exhaustively addressed the outstanding challenges, difficulties and security concerns which have inhibited voluntary repatriation to Rwanda (Human Rights Watch 2010 and 2008; Hovil et Al. 2010; Purdeková 2008; Waldorf 2006; Crisp 2005). Refugee law experts and legal aid providers working on this issue have extensively examined and challenged the grounds for implementing the Cessation Clause by making numerous arguments. Their motivation being that without protected status, Rwandans would most likely be compelled by their poor circumstances or by coercion from state agencies to repatriate when it is not safe for their return. Collectively their arguments have cited:

¹ The number of Rwandan refugees in Uganda is difficult to determine. Statements made by the UNHCR, the government of Uganda and the media have placed this figure to be around 16,500.

² Hereafter may be referred to as the 1951 Convention.

³ These states include: Burundi, the Democratic Republic of Congo, the Republic of Congo, Kenya, Malawi, Mozambique, South Africa, Zambia, and Zimbabwe.

- evidence of the present dangers of persecution Rwandans face at the hands of the Rwandan government and its agents both internally and externally;
 - restrictions on political freedoms and expression and human rights violations the Rwandan government perpetrates against its citizens;
 - aggressive rhetoric and threats made by the Rwandan government, government officials and government agents on Rwandans in exile including refugees and political opponents;
- and
- the failure of the UNHCR and hosting states, Uganda in this case, to adequately carry out procedures mandated by international, regional and domestic legal instruments to investigate the conditions of the origin country before invoking the Cessation Clause.

A consultation with works by lawyers, NGOs, and academics working in Uganda highlighted the increasing antagonism Rwandan refugees have faced in Uganda at the hands of the Ugandan governments agents, echoed in the rhetoric of its representatives, as well as the spreading of constructive-cessation practices – the withdrawal of refugee services and protection before the official cessation date (Fahamu 2011; McMillan 2012; IIRI 2010). These complications exist in spite of the Tripartite Committee’s positive assessment and endanger the safety of Rwandans in the period leading up to 30 June 2013 and thereafter.

The investigation that has taken place in preparation for this thesis has been primarily focused on understanding how the UNHCR and the government of Uganda’s decision to withdraw refugee status from Rwandans fits into the overall scheme of global refugee protection. Initially, this inquiry attempted to understand whether Rwanda has truly undergone significant changes representing a full realisation of the global refugee regime’s legal instruments and governance mechanisms. A review of the sources citing the concerns listed above and interviews conducted with academics, NGOs, and Rwandan refugees in Uganda, Belgium, and the UK quickly revealed that this was not that case and that the legal, procedural and ethical tenets contained within the 1951 UN Refugee Convention and relevant regional agreements were to some extent being compromised.⁴

⁴ The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems is the regional instrument relevant to this case.

In 2010, the International Refugee Rights Initiative, the Refugee Law Project, and the Social Science Research Council published a report on the refugee situation of Rwandans in Uganda and their reluctance to repatriate citing the fear of reprisals due to stereotypes, political repression and obstacles to re-access property upon return (IRRI 2010). Forced migration experts and lawyers with larger purviews have also brought forth a number of concerns and recommendations more generally addressing the legal application of the Cessation Clause, as well as the proliferation of prolonged refugee caseloads and the increasing duration of exile (Siddiqui 2011; Fitzpatrick and Boanan 2003; Tarwater 2000).

Research Question and Goal

This investigation of the application of the Cessation Clause in Uganda has taken place within and during a complex nexus of issues, which shaped a critical lens that was adopted for content analysis. The links made between (1) an extensive review of scholarly work and the analysis of legal conventions, language and policy relevant to refugee issues; (2) reports by NGOs in the interests of human rights, and (3) a steady stream of media coverage of the on-going refugee crisis in Syria, and (4) my interactions with refugees issues outside of my work on the Cessation Clause have reinforced the notion that this case is not an island unto itself. The subjects, processes and agents are multifarious, complex and reside in a much larger field, crosscutting international relations, global governance, and international refugee protection. All things considered, this thesis critically discusses the appropriateness of the rescinding refugee status and questions the objectives the UNHCR has identified as its role to fulfil. This thesis explores the dynamic interests underpinning the global system of refugee protection and questions whether the decisions being made are legitimate.

Therefore the guiding research question is:

How can we understand and place UNHCR's decision to recommend the implementation of the Cessation Clause to Rwandan refugees in Uganda within the realm of international refugee protection?

The answer to these questions may perhaps be already clear to some, but it requires extensive knowledge of the UNHCR's functioning and institutional development as well as particular familiarity with the Rwandan and Ugandan contexts. Furthermore, the topic of the Rwandan context is a highly challenging and controversial topic in itself, which in all its complexity could easily exceed the scope of a thesis that is focused on a case example of questionable refugee policy. The purpose of this thesis is to introduce those not particularly familiar with the UNHCR and refugee protection to how states and the UNHCR have evolved as decision-makers in refugee protection and how they measure up with regards to accountability to agreements and guidelines on refugee issues. For those that are already well acquainted with the state of global refugee burden and responsibility, this thesis presents another case documenting the UNHCR's transformation into a humanitarian actor that is being increasingly instrumentalised by states for national interests. While generally, the contemporary discussion on the instrumentalisation of refugee and immigration policy has been focused on how the European Union and OECD states have externalised their borders and exerted pressure on states in the Global South, this thesis is distinct in that it is focused on only states in the Global South and their manipulation of refugee policy. This will contribute to a broader understanding of which actors and which factors can and do influence the implementation of the so-called 'durable solutions' to refugee caseloads particularly when dealing with protracted refugee situations, which are by and large based in the Global South. This will advance the forced migration discipline's ability to map the diffusion of responsibility in refugee protection and the resulting gaps of protection that exist. This thesis allows us to critically think about much needed reforms to the way the UNHCR does its business, the strengthening of its accountability, and the reaffirmation of refugees' rights, not states' interests.

The Structure of the Thesis

In the first chapter, this thesis will fit itself within the discourse of forced migration studies, which also belongs to a larger context of field of political science, international relations and other crosscutting disciplines. This thesis recognises that the concepts and theories used in forced migration discourse can be at times subjective to specific academics, institutions and academic disciplines. Therefore in the first chapter it identifies what was found to be the most useful and

relevant discussions related to the type of analysis and conclusions this thesis attempts to make of this example of the Cessation Clause. Some discussions may seem obvious to those more familiar to the Cessation Clause while irrelevant to others who may be in the position of assisting refugees and following developments in the wake of the imminent expiration date of refugee status. This thesis attempts to stay relevant to the concerns of refugee academics and specialists while conducting an examination of the Cessation Clause that relates and can be reviewed by political scientists generally. The first chapter also explains the methodology that was employed during research and the production of this thesis. It concludes with reflecting on the concept of an increasingly complicated global refugee protection regime.

The second chapter attempts to quickly and succinctly detail the origin of refugee protection and presents the international, regional and domestic legal instruments, which are relevant to Rwandan refugees in Uganda. The third chapter will explain the trends observed in the UNHCR and greater 'refugee' regime since the end of the Cold War, highlighting the promotion of repatriation culture. It also discusses the notion of states instrumentalising humanitarian policy for their own interest. This chapter will also explain the conditions and procedure of the expiration of refugee status under the relevant international, regional and domestic legislation.

The fourth chapter will present the events surrounding the implementation of the Cessation Clause, including its declaration. It begins by presenting a brief overview of the history of Rwandans seeking refuge in Uganda and a relevant example of Rwandan refugees losing their status in Tanzania in 1997. It then details the declaration and strategy of bringing Rwandan refugee caseloads to a close in Uganda along with some of the reactions and responses to this oncoming or rather on-going event. This chapter will also include a brief overview of the situation in Rwanda, allowing the reader to understand why refugees do not desire return. The fifth chapter uncovers the findings on how the expiration of refugee status has affected the lives of Rwandan refugees and reveals that refugees have long been in a precarious situation due to individual persecution and threats of the Rwandan government and more broad coercive practises of the Ugandan government.⁵

⁵ Rwandan refugees have been subject to harassment and experienced insecurity from the actions of the Rwandan government and its agents in not just Uganda but throughout many countries. This section will detail some example validating this statement.

The sixth chapter will present the analysis of the combination of the different events and processes observed linked to the declaration and implementation of the Cessation Clause. It attempts to discern and weight the different variables that have led to the UNHCR and Uganda to conclude that protection for Rwandan refugees is no longer necessary under refugee legislation. It will also include an update on how the timeline of the removal of refugee status has been affected by the recent UNHCR-NGO consultations and the African Ministerial strategy meeting. This chapter will link to what other academics working in refugee issues and global governance have presented on decision-making and refugee resolution. It will finally question if our conclusions about the Cessation Clause being applied to Rwandans is actually useful and whether problematic decision-making in refugee protection is amendable.

Chapter 1

Theoretical Framework and Methodology

This chapter will introduce the academic and theoretical environment in which it discusses refugee protection, the expiration of refugee status and interaction of states with the UN High Commissioner for Refugees (UNHCR). It begins with an overview of global refugee policy within the realm of political science, international relations and global governance. Then, the methodology of the research and writing of this thesis will be explained, along with some of the limitations involved.

1.1 Global Refugee Policy

A number of academics and experts that work on forced migration issues use Global Refugee Policy (GRP) to define what they understand to be the amalgamation of policies and policy processes affecting the lives of refugees (Bauman and Miller 2012, 3; Miller 2012; Betts and Loescher 2011; Betts 2009; Loescher 2001; Forsythe 2001; Skran 1995; Zolberg et Al. 1989). This focus of this thesis also falls into this category while acknowledging that there remains a "vagueness around what is meant by such processes and how they can be conceptualized in light of the experiences of forced migrants" (Bauman and Miller 2012, 3). In some sense there is no 'correct' answer because 'what is meant' is dependent on the subject or object of inquiry: the policies and the actors that create, influence, or apply them; and/or the recipients of such policies and their complex lives. The study of forced migration issues may thus derive from a number of fields: including political science and international relations or anthropological and sociological approaches (Miller 2012, 2-4). This thesis finds itself in the former camp as it observes and attempts to understand the role that a particular policy and policy mechanism have in the grander scheme of Global Refugee Policy (GRP).

The political science/international relations approach takes the state as the main object of study, and GRP is itself nestled as a chapter within the literature on Global Public Policy (GPP). GRP seeks to "understand how international organisations and governments can collectively deal with global problems" (Miller 2012, 2; Soroos 1986). GPP literature is based on premise that the

increasingly globalized world, with its escalating interdependence, has made it easier for states to address border-crossing issues through cooperative efforts. The creation of the 1951 Convention and the UNHCR, an international organisation created to uphold its tenets - exemplifies just that. Since its emergence, GRP has been modified when faced with particular regional issues and changing states' interests. Some of the more visible events in GRP include the creation of the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa; the Cartagena Declaration on Refugees (Central America, Mexico and Panama); and the EU Asylum Qualification Directive. In each of these cases, regional blocs established a set of rules to harmonize the implementation of the 1951 Convention [and refugee protection policies] in their regions with the specific types of refugee flows being encountered in line with states' interests.

The last 60 years have been marked by the institutional proliferation and the emergence of new international and regional instruments. While only a few of these global governance mechanisms focus solely on refugee issues, many still have implications for refugee protection and thereby overlap with the traditional mandates of the UNHCR and the 1951 Convention.⁶ Yes, these include the regional agreements mentioned above, but they also include for example the Human Rights regime, and the Travel regime (Betts 2010, 13; Koslowski 2009). Therefore Alexander Betts notes that “in this context it no longer makes sense to speak of the ‘refugee regime’, [...] instead, there is what may be described as a ‘refugee regime complex’”, in which “different institutions overlap, exist in parallel to one another and are nested within one another in ways that shape states’ responses toward refugees” (2009, 53-58). Multifarious institutions can complement or contradict each other, offering states pathways to engage in cross-institutional strategies (Betts 2010, 14).

Three types of cross-institutional strategies result: regime-shifting, forum-shopping, and strategic inconsistency (Alter and Meunier 2009). Regime-shifting occurs when states choose to address problems through parallel-regimes that have purview over crosscutting issues. For example the World Health Organization and the World Trade Organization may have equal jurisdiction over

⁶ The 1951 Convention, whose full name is the 1951 Convention Relation to the Status of Refugees, is an international legal document created by the United Nations that defines ‘who is a refugee, their rights and the obligations of states’. See part 2.2 of this thesis.

disputes regarding patents on essential medicines (Heifer 2004). Forum-shopping occurs when states choose a certain international institution over another to decide on an issue, based on which venue will yield the most positive results. This has been seen already when member-states from North American Free Trade Agreement (NAFTA) have chosen to bring up cases that could be easily settled by NAFTA to the WTO or vice-versa, based on a different expected result supported by precedent decision-making (Busch 2007). Strategic inconsistency occurs when a parallel regime will “create contradictory rules with the intention of undermining a rule in another agreement” (Betts 2010, 14). One such example is the UN Convention on Bio-Diversity whose text includes language which made Intellectual Property rights “subservient to environmental protection and development objectives [contravening] the contents of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)” (Raustiala and Victor 2004, 302).

International migration is one of the most visible signs of globalization, which has caused great interdependence at the international level. In the case of the global refugee regime, it is an issue that goes beyond simply describing formal multilateral institutions. Betts (2011) has highlighted that global migration governance operates on three levels: multilateralism, embeddedness and trans-regionalism. As global governance is dependent equally on states’ interests and unforeseen externalities, it is challenging albeit necessary to identify normative implications for how migration and more specifically refugee issues are governed in different contexts. A more nuanced understanding of how the international state system approaches specific issues in force migration and how such dynamics are influenced by north-south, south-south dynamics, among others, contributes to anticipating the coordination and negotiation of international responsibilities and duties.

Refugee law expert James Hathaway emphasizes how multilateral institutions, international law and human rights obligations are misunderstood by states which strictly identify refugee issues within the issue area of migration and immigration and have therefore disproportioned states’ duties, obligations, responsibilities and rights (Margabandhu 2007, Bedlington 2004, Canberra 2004, Hathaway 1991 and 1990; EXCOM 1989). There are also non-western voices such as Chimni (2004) and Mutua (2000) of the TWAILers (Third World Approach to International

Law) who claim that the regime of international law is an illegitimate and “predatory system that legitimises reproduces and sustains the subordination of the Third World by the West” (Mutua 2000, 31). This particular perspectives consider international institutions such as the United Nations to be the “cloaked hegemony of the West” (Mutua 2000, 38) and the imposition of universal conventions and declarations as suspicious. An appropriate analysis of the 1951 Convention in the international state system must consider and reference these impressions. An apt investigation of the policies and practices of refugee care requires duly adopting the lens of the state and its political/socio/economic/cultural contexts.

Until now, the increasing politicisation and visibility of international migration has failed to develop a coherent, multilateral, global governance framework. The UNHCR is one of the few institutions, which regulates international migration through thin multilateralism. At the same time, documents such as the UNCHR’s 1951 Convention signify the embeddedness of governance, where refugee issues are implicitly and explicitly regulated. With recognition that global migration governance is dependent upon states’ interests and the externalities involved within the categories of migration, the normative implications for global migration governance are the focus of ongoing academic research and investigation. As Betts points out “[G]lobal migration governance is...based on a range of different formal and informal institutions operation at different levels of governance ...[it is] a different type of global governance that goes beyond the formal and inclusive multilateralism that characterized the post-Second World War consensus...[it is] a complex tapestry of diverse and contested institutions ” (2011, 8-9).

Koslowski (2011) has identified that within international migration, there are three broad global mobility regimes. These are the refugee (UNHCR), international travel (ICAO⁷), and labour migration (ILO⁸) regimes. In addition to the three mobility regimes, there are pre-existing institutions of global governance that have a role in regulating states’ behaviours in relation to the remaining categories of migration. Within the bodies of governance and laws that are relevant to international trade, security and human rights, Betts finds that migration is already embedded and implicitly regulated (Betts 2011, 15). Due to the number of existing institutional

⁷ ICAO: the International Civil Aviation Organization.

⁸ ILO: the International Labour Organization.

frameworks, there is a tendency to avoid creating new binding structures and one to find new ways of working within the pre-existing system. As a result, existing laws have been reinterpreted and state's roles rationalized so that they may be relevant to different areas of migration and to justify the jurisdiction of global institutions. This has been best illustrated by the Guiding Principles on Internal Displacement in which existing international human rights laws and humanitarian standards were brought together in a single document and then has been independently influential on states' behaviour (Betts 2011, 16-17; 210-223).

The third level of global migration governance operates through trans-regionalist levels. These are formal and informal networks that arise through bilateral, regional and inter-regional relationships between states and non-state actors. This type of governance gives greater significance to recognizing international cooperation when it is organized with a North-South or South-South dimension. These types of networks can be highly political. There are also relationships between non-state actors participating at this level that circumvent the states in influencing migration processes and events.

The politics of migration governance are best understood with insights from the field of international relations (Betts 2011, 313). At each level of global governance, the implications for migration governance are conditional upon hierarchies of power, state interests and ideas about what migration, immigrants, and refugees mean. These features allow us to identify the ways in which cooperation and collective action problems rise and can be overcome, since international cooperation occurs through policy coordination and action collaboration.

In response to the increasingly adverse environment of refugee management Hathaway (2005, 6) advocates for the strengthening of institutions and mechanisms, which already exist, and a development of the system of rights, which is already rooted in the "deeper principles in legal obligation". Despite the lobbying of states, the "challenges of enforceability stem [...] from the fact that the Refugee Convention does not include an independent supervisory mechanism to monitor state compliance with the Convention's obligations" (Western 2007, 408; Hathaway 2005, 8).

Politically-minded refugee specialists agree that “forced migration [has] enormous relevance for International Relations [touching] upon issues relating to international cooperation, security, human rights international organizations, regime complexity, the role of non-state actors, regionalism, north-south relations, and security” (Betts and Loescher 2011; Betts 2011; Harrell-Bond 1986; Arendt 1951). Cognisant of this, it is appropriate therefore to examine the protracted refugee situation of Rwandan refugees and expiration of their refugee status in Uganda. However doing so requires aptly framing the history, development and decision-making processes influencing policy changes from a macro-political perspective.

1.2 Methodology

A qualitative approach has been identified as the most appropriate for the framework and objective of this thesis’ research. The methodology included data collection, content analysis and interviews with private individuals, academics and members of the private and public sector. Interviews were carried out in Uganda, Belgium and the UK. Relevant communiqués, declarations, reports, articles, and publications by the members of the Tripartite Committee underwent content analysis and review.⁹ These were found to be available online and also acquired through personal inquiries to the UNHCR, various NGOs and through personal contacts. Content analysis carried out in the instance of this thesis involves close readings and coding to identify and compare themes, topics and rhetoric that was frequently utilised. Content analysis of relevant international conventions, national legislation, guidelines and protocols was also undertaken. In the case of Uganda, these include but were not limited to the 1951 Convention and 1967 Protocol, the OAU Refugee Convention and the Ugandan Refugees Act of 2006. An interpretation of the relationship between the three will be used to valorise the political, legal and social nature of the Tripartite Committee and its members’ actions in this case of refugee management.

Secondly, ten interviews were held with Rwandans, seven being refugees in the Nakivale Refugee Settlement in Uganda and the remaining residing in Belgium, Canada, and the UK. The objective of these interviews were to collect and understand the ‘Rwandan’s’ perspective of the conditions in Rwanda and how this fits into the notion of a legitimate application of the Cessation Clause to them. Additionally, as a part-time intern with the Fahamu Refugee

⁹ The Tripartite Committee consists of the Government of Rwanda, the Government of Uganda and the UNHCR.

Programme during the period of April - June 2013, I was able to share experiences and knowledge with Rwandan asylum seekers and activists concerned with human rights in Rwanda.

In Uganda, interviews were also held with Ugandan government officials including the Ugandan Nakivale Refugee Settlement commandant, the Minister of Disaster Preparedness, Emergencies and Refugees of the Office of the Prime Minister of Uganda, a UNHCR Uganda staff member, and NGO administrators working in refugee services in refugee camps including HIJRA, GIZ (German Organisation for International Cooperation), the American Refugee Committee (ARC) and the International Refugee Rights Initiative (IRRI). A consultative meeting was also held with law professor at the Law School at Makerere University. Dr. Barbara Harrell-Bond, current co-director of the Fahamu Refugee Programme in the UK also provided guidance and access to resources and contacts.

1.3 Sampling Technique and Limitations

Interview participants were identified through academic and social links. Potential interviewees were approached about participating in interviews and providing information related to the scope of this research's topic in advance of a scheduled interview. The respondents in the Nakivale Refugee Settlement were identified through the aid of a village chairmen, who himself was a Burundian refugee of Hutu ethnicity. The seven interviewees in Nakivale were verified to be Rwandan, identifying with the Hutu ethnicity, and originating from various regions in Rwanda. They are all the head of their households, which range in size from three to seven family or extended family members, and reside in the same village in the Nakivale Refugee Settlement. Four interviewees are female and three are male. The females' ages range 20-27, while the males range 27-31 with one being 55. They all fled from Rwanda to Uganda during the period of 1997-2001. They are all engaged in subsistence farming; predominantly the matoke or ibitooke plant. With the exception of the older man, all were still in primary or high school when they fled and did not complete secondary education. The oldest male respondent was a judge in Kigali. There was no language in common, therefore an interpreter fluent in Kinyarwanda and English was used. In Belgium the interviewees were identified at a conference of Rwandan civil society organisations. The two respondents were male, 53 and 57 years old, identified with the Hutu ethnicity and were highly educated. They are not refugees, but moved to Europe to earn terminal degrees in the mid-80s and have resided abroad ever since. One works for a pharmaceutical

company while the other is a mechanical engineer. The correspondent in the UK is a refugee that fled Rwanda in 2003 and arrived in the UK in 2007. He is 39, and a former engineer. He is of the Hutu ethnicity with a wife seeking asylum in Belgium and two children registered as asylum seekers in Uganda. The participant was identified through social links. The latter three respondents' interviews were carried out in English. These interviews were semi-structured and allowed the participants to tell their narratives and express their opinions and knowledge about certain issues in a manner most comfortable to them with some direction and steering provided by the interviewer.

The second group of interviews was conducted in a more structured manner. The group of individuals identified for potential interviews were previously consulted for their profession and demonstrated willingness to disclose their knowledge and opinions, to speak on the behalf of their organizations, state agencies and expertise. Due to their professional backgrounds and the series of events which led to them being approached, a structured rigid interview was used when possible those representing the OPM and UNHCR Uganda agreed to be interviewed on the basis of strict anonymity and that they not be quoted. Due to the political sensitivity and nature of their roles in the government, they agreed to discuss various issues informally and off the record. Their input therefore is more evident in the direction, analysis and conclusion this thesis has taken.

There are a number of barriers and issues which problematise such findings and carry the potential to cause difficulty when conducting research, carrying out interviews, and asking questions with regards to the scope of the research. First, there is the political sensitivity of suggesting or opening the discussion that Tripartite Committee may be implicit in violating the refugee and human rights of Rwandans. As not being Ugandan nor a East-African, the notion of a western and foreign researcher carrying out an investigation into the domestic and regional politics of African states has certain implications stemming from the conception of a post-colonial, north-south relations, and institutional imperialist construct. Therefore it is important to emphasize that this body of work has concerned itself with the political and legal aspects of the on-going Cessation Clause case study. The approach in person-to-person and person-to-institution interactions reflects that the purpose of this academic study is not to be a truth-finder or truth-teller, nor is it to produce a journalistic piece. It has been clearly expressed to interview

participants and informants that the purpose of the research has been to understand how states like Uganda manage their international responsibilities with regional politics and internal pressures in order to recognize the challenges and strategies used to cooperate and legitimize domestic policies and practices.

Furthermore when interviewing Rwandans and in particular refugees, special precautions have been taken as to not jeopardize their status in Uganda, their relationship with the state of Rwanda, the UNHCR or diaspora communities located in other places including Belgium and the UK. As mentioned above, sensitivity and confidentiality has been used interviewing government officials, refugee experts and academics when appropriate.

The aforementioned interviews and sources linked with keeping up to date with the developments in the Cessation Clause issue form of the foundation this thesis' research.

Chapter 2

Where does Refugee Policy come from?

The purpose of this section is to detail the relevant institutions and legislation that states have agreed upon which relate and apply to Rwandan refugees in Uganda. It will begin with a short introduction to the origins and development of refugee protection in order to present a few of the initial motives and strategies governing powers may have had when choosing to recognise the plight of refugees.¹⁰ It continues with the formalisation of international refugee protection at the conclusion of the Second World War. A subsection follows on how academic experts have theorised on refugee policy in the context of broader social, political and economic lenses. It then presents an overview of the regional and domestic legal instruments relating to refugees in Uganda. The decision to present refugee policy through this longitudinal perspective is to show how protection has translated in tandem with the development of refugee policy from international, to regional, to domestic contexts, and comment on the way refugee policy is being studied.

2.1 Origins of the Global Refugee Regime¹¹

“Although the phenomenon of people forced to flee their home has always existed”, it was the emergence of the modern state system whose principles were initiated by the Peace of Westphalia (1648) that brought about the first true recognition and policy response to a refugee crisis – the Huguenots, French Protestants fleeing France in 1685 (Barnett 2002, 239; Simeon 2010, 183).¹²

¹⁰ This relates, unfortunately, solely to what may be considered the Western context, as this is what has been most extensively documented and linked in the study of the origins of the UNHCR and modern refugee regime.

¹¹ A regime is “a system of explicit rules and implicit norms guiding the actions of states and individuals, together with institutions or organizations expressing these rules or norms” (Barnett 2002, 238). A regime can also be defined as “government arrangements constructed by states to coordinate their expectations and organize aspects of international behavior in various issue areas” (Kratochwil and Ruggie 1986, 753).

¹² It has been argued that one of the first instance of ‘refugee movements’ mitigated by state powers occurred as a result of the Peace of Augsburg (1555) with regards to how it sought to deal with religious minorities. The Treaty of Augsburg concluded with phrase: *cuius regio, eius religio*, meaning: *whose realm, his religion*. The Holy Roman Empire’s states’ princes were allowed to choose Lutheran or Catholicism for their domains. Citizens, subjects, and residents which did not want to conform to the state’s religion were given a set period of time to migrate to other regions where their religions were accepted. See ‘Introduction’ in Golden (1988, 1-23).

In 1598, King Henry IV proclaimed the Edict of Nantes in an effort to quell over thirty years of civil war between the French Catholics and the French Protestants, the Huguenots (Golden 1988, 183-185). The edict created a temporary peace by granting various civil rights to the Huguenots, including granting amnesty and allowing them to bring grievances to the king. Henry IV's grandson, Louis the XIV, revoked the edict with his own, the Edict of Fontainebleau (1685), and returned France to a state where only one majority religion would be tolerated (ibid.). This was accompanied with orders to destroy Huguenot schools and churches and moreover denied the Protestant community exit. From this complex set of circumstances arose the argument for the principle of *jus emigrandi*, the right to emigrate (ibid.). A mass exodus took place with over 200,000 Protestants fleeing to neighbouring kingdoms and states including England, Denmark, the United Provinces (the Dutch Republic), Sweden, Denmark, Brandenburg-Prussia and regions in North America (Barnett 2002, 239). With hundreds of thousands of French Protestants making their way across still-not-firmly-formalised borders, many of the receiving regimes in power initiated some of the earliest agreements and *ad hoc* strategies to recognise and organise the reception of refugees.

The modern state system has evolved “reflecting changes in international law, politics, economics and ideology” and with it so has the global refugee regime (Simeon 2010, 184; Barnett 2002, 1). Throughout the 18th and 19th centuries, refugees were an integral part and testament of state building and revolution in Europe (Betts and Loescher 2011, 7). In tandem with the incremental hardening of borders and formalisation of states, there were parallel developments in unilateral and cooperative regimes that sought to manage forced migration. The first refugee policies were generally *laissez-faire*, with border officials being unable to distinguish between immigrants and refugees (Barnett 2002, 240). Frederick William, Elector of Brandenburg and Duke of Eastern Prussia, welcomed Huguenots to his territory due to religious kinship (ibid.). However, by the time, “émigres fled France in 1789”, politics played a much larger role in the decision whether or not to accept refugees (ibid.). An alliance of Austria, Prussia, Russia and England was willing to assist refugees and foster resistance, in order to protect the balance of power in Europe from what they say were the “increasingly hegemonic goals” of the new French Republic (Ibid). Barnett (2002, 241) notes that this is the point when

the refugee regime took on an “international shape” as refugees came to represent potential shifts in the European power balance”.

In the nineteenth century, Europe saw a rise of nationalist and political revolutions (Markoff 1996). At this time, refugees began being perceived no longer as just political dissidents fleeing violence, but as potential violent actors and external threats to those in power in the countries of origin (Barnett 2002, 241). England and Switzerland, with their generous border practises, were seen as safe havens for revolutionary exiles (ibid.). In 1832, France expelled the Italian politician, journalist and revolutionary Giuseppe Mazzini at the request of Italian officials (Marrus 1985, 17-22). The historian Marrus (2002, 17-25) notes that this created some of the first politicking the world has seen over refugees, with France and Austria chastising England’s for lax border policies for hosting exiles.

The twentieth century was the greatest period of political upheaval and mass flight the world had ever seen and it would lead to creation of the chief precursor to the current refugee institution managing refugee issues; the UNHCR was established over the course of this period as a result. From 1917-1921, one million would flee the Russian Revolution, followed by an exodus of over 350,000 Jews from Central Europe in the build-up to the Second World War (Barnett 2002, 242; Joly et al. 1990, 6). In response to these flows, the League of Nations established a High Commissioner for Refugees (HCR) specifically for Russian refugees in 1921, and an HCR for refugees fleeing Germany in 1933 (Betts and Loescher 2011,7; UNHCR 2005, 5-6). From the beginning, the League of Nations did not establish a general definition of a refugee, instead working with a category-oriented approach (Barnett 2002, 242). In 1938, a definition was created by the Convention Relation to the Status of Refugees, recognising refugees on the basis of lack of protection and possession of no nationality (ibid.). The refugee regime at this stage was focused on repatriation and resettlement, evident in the distribution of Nansen passports to refugees (ibid.).¹³ Although this obligated states to recognise refugees, states were not required to receive or host refugees, leading to cases such as the Netherlands sending Jews back to

¹³ Nansen passports were named after the HCR for Russian Refugees, Dr. Fridtjof Nansen, who established them. These passports were first limited to Russians then extended to other groups.

Germany, if they “could not prove ‘immediate danger to life’” (Barnett 2002, 243; Luccassen and Luccasen 1997).

In 1945, over 30 million people were displaced and were unwilling or unable to return home due to shifting borders and changes in governance (Betts and Loescher 2011, 7; Barnett 2002, 243). The League of Nations disbanded due its failure to prevent Second World War, and was replaced by the emerging United Nations (UN). In 1943, the UN created the United Nations Relief and Reconstruction Agency (UNRRA) which was itself replaced by the International Refugee Organization (IRO) in 1947 (UNHCR 2005, 6; Barnett 2002, 244). Both refugee agencies received their funding from voluntary contributions from a small group of states. Over the short duration of its existence UNRRA had been subject to accusations of preventing return to states in Eastern Europe to address the Allies’ need for labour in the reconstruction effort; however it did “assist in forced repatriation to the Soviet Bloc until 1945” (Barnett 2002, 245). The IRO actually established a definition for refugee albeit, a very Euro-centric one, conditional to the events of the Second World War, which reflected the attitudes of states that refugee assistance would be temporary (ibid.). While the UNRRA had facilitated the repatriation of about 7 million people, the IRO repatriated only around 70,000 and assisted the resettlement of 1 million to the United States, Canada, Australia and Israel (ibid.). In 1950, there were still 1,25 million refugees in Europe, and with the backdrop of the Cold War, the IRO became engendered by East/West tensions, leading to the creation a new refugee agency (UNHCR 2005, 6-7; Barnett 2002, 245).

2.2 The United Nations High Commissioner for Refugees and the 1951 Convention

The International Refugee Organisation was replaced by the current global refugee agency, the United Nations High Commissioner for Refugees (UNHCR). The UNHCR came into existence on 1 January 1951 and its mandate includes that it operates on a humanitarian basis and is non-political (UNHCR 2005, 7). It was established under the United Nations General Assembly originally as a temporary agency. Its functions are defined in the Statute of the Office of the UNHCR and various subsequent resolutions adopted by the General Assembly (UNHCR 1950).

The United Nations’ Convention Relating to the Status of Refugees of 28 July 1951, enacted in 1954, codifies the rights of refugees and is based on a consolidation of previous legal instruments

guiding refugee protection. The 1951 Convention's tenets with exception of its temporal and geographic limits make it the single fundamental legal instrument underpinning international, regional, and domestic refugee law, policy today. The 1951 Convention defines the qualifications which an individual or group must fulfil in order to have their refugee status recognised, outlines the basic responsibilities and duties of signatory states to refugees, and also firmly anchors refugee protection and assistance in the conceptualization of refugee status as a temporary phenomenon.¹⁴

Definition of the Term "Refugee" found in Article 1 of the Convention Relation to the Status of Refugees

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) [...]¹⁵

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return it...¹⁶

The 1967 Protocol Relating to the Status of Refugees amended the 1951 Refugee Convention for the first and only time by removing its geographic and temporal limits; thereby permanently institutionalising the United Nations Refugee Agency - the United Nations High Commissioner for Refugees and expanding its applicability.¹⁷ Together, the 1951 Convention and the 1967 Protocol, have influenced and shaped regional and domestic refugee policy. While the 1951 Convention was a fantastic contribution to the protection of refugees, with tenets that are still

¹⁴ In addition to providing exemption from Legislative Reciprocity (Article 3), Contracting States are obligated to: ascribe refugees with Juridical Status (Articles 12-16); facilitate Gainful Employment (Articles 17-19); and for the Social and Public Welfare of Refugees (Articles 20-24), including rationing, housing, public education, public relief, labor legislation and social security.

¹⁵ Part 1 acknowledges and subsumes individuals and groups that were previously identified as refugees in previous international agreements and conventions overseen by the League of Nations.

¹⁶ This provisional and regional restriction of the definition of a refugee was amended in the 1967 Protocol, which globalised the definition of a refugee and the mandate of the UNHCR.

¹⁷ As of April 2011, 144 states were party to the 1951 Refugee Convention including 55, out of a total of 57 states considered to be a part of the African continent. And 145 States were party to the 1967 Protocol.

relevant and valuable today – it also faces criticism for not being able to deal with many of the issues that have proliferated since its creation and strain the system of refugee protection today.¹⁸

Under the Statute of the UNHCR, the agency assumes the function of providing international protection to refugees that fall within the definition of the 1951 Convention by working with states and non-governmental organisations to respond and seek permanent solutions to humanitarian and refugee situations through the facilitation of voluntary repatriation and assimilation to new national communities (UNHCR 1950). The UNHCR's operations are to varying extents guided by the Executive Committee of the High Commissioner's Programme (EXCOM). EXCOM was created by the UN's Economic and Social Council (ECOSOC) – a body which oversees all of UN's economic and social programming.¹⁹ EXCOM advises, reviews UNHCR's programming and approves annual budgets and funding appeals. The UNHCR's budget depends almost exclusively on voluntary contributions with 93 per cent coming directly from governments (UNHCR 2013a, 68-75). It is important to note that programme or regions may be specifically targeted by voluntary contributions at the state's discretion. Therefore, in the wake of a refugee crisis, the UNHCR's budget allocation reflects the attention, interest and response of states to certain issue areas. When this thesis refers to the global refugee regime, it refers to the system of refugee assistance, protection and management produced by the UNHCR and its partners, and encompasses subsequent overlapping legislation, agreements, and institutions.

2.3 The OAU Convention and the Uganda Refugees Act

A number of regional and domestic instruments have emerged to address the particularities of refugee situations in specific contexts (UNHCR 2007). The documents that relate to the concern of the thesis's topic are the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugees in Africa and the Uganda Refugees Act 2006. The OAU

¹⁸ One argument is that because the 1951 Convention was meant to be limited in scope to Western Europe in the 1950s, it does not contain the provisions necessary to deal with contemporary flows of migration/waves of migration in a world no longer demarcated by the division of the Cold War. National interests today would most likely prevent many governments from signing on to the 1951 Convention if given a blank slate. This highlights a problem we see developing in refugee protection; the blurring of lines between refugees and migrants. A prudent example of the 1951 Convention's problematic nature is that the issue has been hotly discussed in the Australian context where illegal 'boat' migrants attempt to claim asylum on arrival. This has been accompanied with a call by Australia to withdraw from the 1951 Convention. See Milbank (2000).

¹⁹ See the United Nations Economic and Social Council at <http://www.un.org/en/ecosoc/index.shtml>.

Convention has been ratified by 50 African states and was created as *complement* to the 1951 Convention when dealing with refugees on the African continent. What is noteworthy about the OAU Convention is that it expands the definition of a refugee provided by the 1951 Convention. Whereas the 1951 Convention has defined a refugee as someone who has been subject to or holds the fear of deliberate and intentional persecution; the OAU Convention holds the term refugee shall also:

“apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”. (Article 2)

The OAU Convention’s definition introduces more objective criteria, which has lowered the threshold for individuals and groups seeking the recognition of their refugee status when the conditions in the country of origin do not suffice as evidence of deliberate persecution. When the UNHCR operates in Africa it uses the term refugee according to the OAU Convention’s definition in addition to that of the 1951 Convention (UNHCR 1994, para. 32). Additionally, cognisant of the nature of refugees and exiles in Africa, the OAU Convention explicitly addresses the prohibition of subversive activities against any state member of the African Union (Article 3). A recognised refugee acting in violation of this tenet will experience the loss of refugee status. This is something important to keep in mind, not only with regards to the political significance of refugees fleeing political violence or a government in power but also as to how refugees are perceived in Africa generally. This cannot be more underscored especially when considering that current Rwandan government itself originated in the refugee settlements of Uganda before it seized control of Kigali at the conclusion of the Rwandan Civil War.

Generally, what can be taken away is that the OAU Convention was innovative and brought positive contributions to refugee protection where the 1951 Convention was lacking (Okoth-Obbo 2001). The OAU Convention strengthens the notion of its member states providing asylum while reiterating that asylum is still at the discretion of the state (Sharpe 2013; Okoth-Obbo 2001). The OAU Convention also expresses the responsibility of states to participate in burden-sharing, reflecting the nature of responding to refugee flows experienced in Africa at the time of its drafting and an indication of the issues that were already evident (Article 2, para 4).

OUA Convention, Article II

[...]

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum.

In his review of the OAU Convention on its 30th Anniversary, UNHCR's Africa Bureau Director George Okoth-Obbo (2001) has also highlighted the legal instrument's shortcomings (para. 39-63). An issue to consider is that, while the expansion of the refugee definition increased the size and number of refugee caseloads, the OAU Convention did not move to improve the existing the set of standards for refugee status determination when dealing with "*mass-flux* or so-called *group situations*" (Ibid., para. 41). With regards the securitisation of refugees, the OAU Convention highlighted the existing problems of refugees threatening the stability of States through politicisation and militarisation (Ibid., para. 42-56). Yet in response to how refugee operations harmonises with comprehensive solutions that are concerned with security, the OAU Convention is silent (Ibid., para. 44). The OAU Convention has also been insufficient in guaranteeing an adequate quality of life for refugees. A lack of standards has created a void of where there should be community and social rights, systematising the status of refugee as a status of degradation and "imbedding refugees deeper into dependency on relief assistance" (Ibid., para. 50-53).

For all its shortcomings, a continuing impact of the OAU Convention has been the promotion of and revision of domestic legislation in its African member states in refugee matters where there has previously been a "pre-occupation of the 'control of refugees. The Ugandan Act of 2006 is a delayed acknowledgement of the OAU and 1951 Convention as it replaced an older piece of legislation, entitled the Control of Alien Refugees Act of 1964 (CARA) (Sharpe and Namusobya 2012, 561-562). The Refugees Act aligned Ugandan domestic legal framework with Ugandan's obligations under the 1951 and OAU Refugee Conventions as it had already acceded to the 1951 Convention, with reservations, and the 1967 protocol in 1976, and the OAU Convention in 1987 (UNHCR UPR, 2011). In their appraisal, Sharpe and Namusobya (2012, 562) state that, while the Refugees Act "is 'progressive' [and] human rights and protection oriented [...] a significant

improvement over CARA” it remains deficient in certain areas, which result in its implementation permitting a “protection situation characterized by the widespread and systematic violation of critical refugee rights”. Recalling the points Okoth-Obbo (2001) brought up on the OAU Convention’s failure to establish a minimal quality of life for refugees, the Uganda Refugees Act also did not reaffirm the articles of the 1951 Convention relating to welfare rights such as “rationing, housing, public relief, and labour legislation and social security” (Sharpe and Manusobya 2012, 567). This omission may be understandable owing to the fact that Uganda is unable to even provide these guarantees for its own citizens.

The Refugees Act also goes beyond what is stated in the 1951 and OAU Conventions by explicitly recognizing that ‘refugees have the right to be permitted to remain in Uganda’ (Sharpe and Namusobya 2012, 567). Yet this and other rights lose their merit by when considering that the protective framework of the Refugees Act is only applicable to formally recognised refugees (Ibid., 571). This results in asylum-seekers without “protections beyond those provided by human rights law more generally and violating the ‘government’s legal duty to grant convention rights to all persons under its jurisdiction who are in fact refugees’, whether or not they have been authenticated as such” (ibid.; Hathaway 2003, 4). In addition, the Refugees Act places limitations on the freedom of residence and freedom of movement of refugees (Sharpe and Namusobya 2012, 573). Essentially the Refugees Act recognises the rights refugees have but holds that refugees are required to follow Uganda law and are subject to the discretion of the Ugandan Minister for Refugees’ policies. Refugees are also only eligible for humanitarian assistance in refugee settlements – areas designated and supervised by the Ugandan government (ibid.).

Protective yet problematic, the conventions, and legislation introduced above give shape to the refugee policy that affect refugees in Uganda and presents a brief overview of how the situation may be in other contexts. It is important to take away the dichotomy of the pertinent conventions and legislation, which exists. Refugee policy was created to uphold refugees’ rights as the human rights they are, yet within it, engineered loopholes that causes refugees’ rights to come second to the sovereignty and interests of states.

Chapter 3

Protracted Refugee Situations and the Cessation Clause

This chapter builds upon an understanding of the origins of refugee policy presented in Chapter 2 by observing how the definition of refugee coupled with the changing global interests have promoted repatriation and the revocation of refugee status.²⁰ This chapter also provides an overview of when 'ceased-circumstances' (the Cessation Clause) may be implemented and the mechanism's relation to voluntary repatriation. This chapter summarises and builds upon the findings of previous work that has been done on the repatriation culture by submitting that these developments are the result of a changing hierarchy of states, organisation of states and the transformation within states as well as the institutional effect of rules on refugee protection. While the focus of this thesis is always on the Cessation Clause, the importance of discussing repatriation culture lies in the fact that repatriation, when voluntary, may occur before the expiration of refugee status and that repatriation after cessation can be forced. This chapter will end on a note on states' instrumentalisation of humanitarian and refugee policy.

3.1 UNHCR and Current Challenges

The United Nations High Commissioner for Refugees identifies its mandate as to "lead and coordinate international action for the worldwide protection of refugees and to resolve refugee problems" (UNHCR 2012a, 3). The UNHCR's objectives are to ensure that individuals and groups have the ability to exercise their right to seeking asylum in foreign states and return home voluntarily. Asylum is defined as "the grant by a State, of protection on its territory, to persons from another State who are fleeing protection or serious danger" (Ibid., 185). Indicated in this notion of asylum is the concept of *non-refoulement* and humane standards of treatment (ibid.). Preventing *refoulement* becomes complicated when the UN agency operates on a donor budget and balances its responsibilities between old and emerging refugee caseloads.

²⁰ While the definition of 'global refugee regime' in this thesis has come to mean the UNHCR and its regional, state partners and NGOs which comprehensively provide protection and humanitarian assistance to refugees, this section's focus on the UN agency 'influence it exerts as a result of the interests it reflects.

UNHCR's mandate was created to respond to and relieve what it thought would only be temporary crises of displacement. In spite of this in 2011 three-fourths of the 10,4 million refugees who fell under the UNHCR mandate were in 'protracted refugee situation' predominantly in 26 different developing states (UNHCR 2011a, 2). The UNHCR defines a protracted refugee situation (PRS) as one in which 25,000 or more refugees of the same nationality have been in exile for five years or longer in any given asylum country (Ibid., 12). PRS were not foreseen or accounted by the 1951 Convention and the UNHCR at the time of their creation and emergence as global institutions. These unforeseen issues are exacerbated by burden sharing between states, which provide assistance by hosting refugees, and states, which assist by funding the UN agency.

In UNHCR's 2012 annual *Global Report*, it announced an unprecedented number of refugee crisis. In the first nine months alone, more than 700,000 new refugees from the Democratic Republic of Congo, Mali, Sudan, and the Syrian Arab Republic sought asylum (UNHCR 2013a, 5). The UNHCR's capacity to respond to emerging refugee crisis and protracted refugee situations is being tested in new ways as its resources are stretched to their limits. States of first asylum provide the most important immediate role in providing refugees safety and security through their open borders. It is under the recognition of the principle of *non-refoulement* which obligates states provide asylum to individual and groups that arrive mass-influx (ibid.). This role, however, as the UN Commissioner for Refugees Antonio Guterres has stated, must be complemented, by "strong, timely, and sustained international solidarity, in the form of financial, technical and political support" (Ibid., 6). Alarming, in face of the increasing number and volume of new refugee situations, the average duration of a protracted refugee situation is approaching twenty years (Milner and Loescher 2011, 3).

3.2 The Expiration of Refugee Status

"The refugee law regime envisages refugee status as a temporary phenomenon which should last as long as international protection is needed". (UNHCR 1997, para. 39)

Enshrined in the United Nations' 1951 Refugee Convention and the Statute of the United Nations High Commissioner for Refugees is the global refugee regime' systemic objective to resolve refugee situations (UNHCR 1950). This can occur through in three possible ways from

resettlement to a third country, integration into the host country, and repatriation to the country of origin.

Statute of the Office of the High Commissioner for Refugees

The General Assembly,

[...]

2. Calls upon Governments to co-operate with the [UNHCR]...by:

[...]

(d) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;

(e) Promoting the assimilation of refugees, especially by facilitating their naturalization;

(f) Providing refugees with travel and other documents such as would be normally provided to other aliens by their national authorities, especially documents which would facilitate their resettlement;

[...]

Of the three durable policy solutions available, the notion of integration receives little enthusiasm from states of first asylum where integration is anticipated as exacerbating social, economic and political friction between refugees and the national population. While the UNHCR, NGOs, and state donors finance the hosting of refugees in camps and settlements and provision of services in urban areas, integration solutions are expected to consume national finances and resources. Moreover, contextual factors such as socio-economic development and the political climate may discourage refugees from wanting to integrate in the first place. Resettlement, meanwhile, requires for a high degree of political and logistical coordination between states and international bodies. It is also subject to oscillating waves of support and interest from third countries. As such, both donor and host states of asylum are more inclined to promote the return to the state of origin.

The history of solutions to the global refugee problem previous to how they are implemented today can be divided into two distinct phases. “In the first phase, which lasted roughly from 1945

to 1985, the solution of resettlement was promoted in practice, even as voluntary repatriation was accepted in principle as the preferred solution” (Chimni 2004, 55). The second phase, itself may be divided into three periods. In first period taking place from 1985-1993, voluntary repatriation, with an emphasis on the *voluntary* aspect of it, became the preferred solution. From then, until 1996, ‘safe return’ became a widely used term as it lay somewhere between the conception of voluntary and involuntary repatriation (ibid.). In 1996, ‘imposed return’ became a term used as a moniker for involuntary repatriation in order to convince the greater international community to accept the practices that states in the Global South were carrying out (ibid.). Here it is important to note that, due to the wording of the cessation clause in the UN Refugee Convention, voluntary repatriation is completely irrelevant because, the clause only requires that the practice of safe return be accessible (UNHCR 1997).

3.3 The 1951 Convention’s Cessation Clauses and Guidelines

There are a number of ways in which refugee status may cease. The parts of refugee conventions and legislation, which address this issue, are known as ‘cessation clauses’. For the case of Rwandan refugees, and generally most refugee cases, the expiration of refugee status and repatriation is argued on the basis of evidence of the ‘ceased-circumstances’ of events in the country of origin which caused refugees to flee.

To begin it is important to reflect on what the very first UNHCR commissioner G.J. Van Hueven Goedhart stated, that refugee status should:

“not be granted for a day longer that was absolutely necessary, and should come to an end... if, in accordance with the terms of the Convention or the Statute, a person had the status of de facto citizenship, that is to say, if he really had the rights and obligations of a citizen of a given country.” (UNHCR 1997, para. 4)

What needs to be noted is that this quotation was cited by the Executive Committee of the High Commissioner’s Programme (EXCOM) in its *Note on the Cessation Clauses* produced in 1997 as expressing the “underlying rationale for the cessation clauses” (ibid.). This ‘rationale’ was expressed during the drafting the 1951 Convention, before the implementation of the 1967 Protocol when the UNHCR became concerned with refugee populations outside of Second World War – European context (ibid.).

Article 1

C. This convention shall cease to apply to any person falling under the terms of section A²¹ if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it ; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
- (5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article 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;

- (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.”

The 1951 Convention presents two categories of cessation clauses. The first four sub-paragraphs of Article 1C constitute a cessation of refugee status as a result of the refugee’s own actions. Sub-paragraphs five and six address the “objective change in circumstances which formed the basis for the recognition of refugee status” (UNHCR 1994, para. 5). The latter is referred to as the ‘ceased-circumstances’ cessation clause.

An increasing emphasis on resolving refugee situations through the Cessation Clause can be traced to 1991 when EXCOM produced Conclusion No. 65 addressing international protection (UNHCR 1991). Conclusion No. 65, extensively ”emphasized, reaffirmed, underlined, noted, and welcomed” the UN agency’s commitments to human rights and refugee protection rights

²¹ This includes the definition of refugee, and the guidelines for its recognition.

then presented the possibility of the use of the cessation clauses in situations where applicable. This was a result of the concern with the “persistence and complex dimension of refugee problems” observed at the time (Ibid., para. 1). In 1992, EXCOM Conclusion No. 69 acknowledged that the “application of cessation of status rests exclusively with the Contracting States” and urged that states seeking to implement it critically evaluate if cessation is appropriate (UNHCR 1992).

While EXCOM Conclusions No. 65 and 69 were brief 1 to 2 page documents, the *Note on Cessation Clauses* produced in 1997 in its ten substantive parts provided a more nuanced interpretation of the cessation clauses and refugee status generally. The vision of refugee status promoted indicates that the global refugee regime is more engrossed with defining and recognising refugees through a restrictive and expiring definition than upholding a universal one. The document justifies the applicability of the cessation of refugee status due to the fact that above all thing “stateless persons are not entitled to the diplomatic protection of any State” (UNHCR 1997, para. 24).²² In the *Notes* penultimate section, ‘Procedures Relating to Application of the Cessation Clauses’, the document is completely void of providing any rubric on how the Cessation Clause is to be carried out and reiterates in the usefulness of circular self-reference that cessation must result of a “careful approach which uses clearly established procedures” (Ibid., para. 34). The UNHCR released an unofficial document, *The Cessation Clauses: Guidelines on their Application*, in 1999. In its section on the ‘Procedures for the Application of the Cessation Clauses’, the UNHCR yet again reiterated the importance of a ‘careful approach’ in the application of the cessation, while adhering to “clearly established procedures” (UNHCR 1999, para. 32). It also recalls the Statute of the UNHCR, which gave the UN agency the responsibility of evaluating whether “conditions in the country of origin of application have sufficiently changed to warrant the application of the ‘ceased circumstances’ clause” (Ibid., para, 35-36). The *Guidelines on International Protection: Cessation of Refugee Status under Article 1(C)(5) and (6)*, produced in 2003 do provide a number of considerations which must be taken into account during the assessment of changes in the country of origin and develops on the particularities of

²² In addition, the Note on the Cessation Clauses addresses how refugees may voluntarily re-avail protection of their country of nationality; reacquire lost nationality; acquire new nationality and protection; voluntary ‘re-establish’ themselves in the country of origin; demand for a series of procedural and substantive requirements to be attentively realised, which include conducting an exhaustive assessment to determine whether a “fundamental, stable and durable” change of circumstance in the country of origin has occurred.

applying cessation to mass influx refugees recognised on a *prima-facie* basis (UNHCR 2003a, para. 18-24).

Cessation is addressed in the OAU Convention by adopting the same language of the 1951 Convention with only two additions. Protection under the OAU Convention ceases to apply to refugees that commit serious non-political crimes in the state of asylum or whose actions have “infringed upon [the OAU’s Conventions] purposes and objectives” (OAU 1969, Article 1 (4) F and G). The Refugees Act of Uganda follows in this fashion and repeats the tenets of both conventions. The Refugees Act, however, also includes that the Ugandan Refugee Eligibility Committee is responsible for evaluating, applying and notifying refugees of the cessation of status (Refugees Act, para. 39).

3.4 Institutional Transformation

The end of the Cold War brought about a change in global interests, which has been argued as altering the objectives of the global refugee regime and the way UNHCR operates (OAU 1969, Article 1 4F and G). It would be more prudent to say that the end of the Cold War revealed what the objectives of the refugee regime are in the absence of such polarised political interests. Refugees no longer carry the significance as votes for/against distinct political models. Krever (2011, 588) critically assesses mainstream narratives which credit the end of the Cold War for relieving “UNHCR of geo-political obstacles – anachronistic pieties such as State sovereignty – to providing at-source assistance” allowing the UN refuge agency to realize its true ‘humanitarian potential’. This change is not ‘altruistic’ as it may seem, Krever argues, but rather reflects a “reaction to and compromise with competing, political and financial pressures” (Ibid., 589-592). The mandate of the UNHCR as created in the 1950s was to be politically neutral, focused on refugee protection (without provisions on providing material assistance to refugees), and with a heavy emphasis on identifying possible durable solutions for refugees with respect to *non-refoulement* (Ibid., 592). Repatriation as a possible solution was promoted with emphasis on its voluntary nature, giving refugees the final say on their continued exile or return (Ibid., 592).

The experiences of the UNHCR in northern Iraq (1991), the former Yugoslavia (1992-1995), and Rwanda (1994-1996) demonstrated the importance for material assistance in mass-influx refugee

emergencies and the need for coordination in large-scale humanitarian operations (Ibid., 592). Over this period, the Security Council of the United Nations and the UN Secretary General made statements in which the UNHCR was increasingly called upon to assume a leading role in humanitarian responses (Ibid.; Chimni 2000, 243 and 256). Krever (2012, 593-594) has found that, based on an analysis of the UNHCR's operations in the 1990s and the conclusions by Guy Goodwin-Gill (1999) on the formal 'disinclination to characterise the UNHCR as a protection agency', there is evidence that "the principles of neutrality and *non-refoulement* – have been undermined". Changes in the financial and structural organisation of the UN refugee agency have also reflected these changes (Krever 2012, 584). UNHCR's headquarters have been divided into two branches since the 1960s with one responsible for protection and the other for operations. Gil Loescher points out that in the late 1980s the head of protection at the UNHCR was actually 'demoted' and made "equal in seniority to the Directors of the individual Regional Bureaus" (Loescher 2001, 152). These structural changes occurred visibly in the 1990s as the number of general field staff increased manifold in relation to the number of protection officers (Krever 2012, 594).

As the UNHCR increased its presence on the ground in the midst of crises, there was rise in the frequency of collaborations with military actors for logistical support, to the point where military operations were being directed straight out of UNHCR headquarters (Krever 2012, 595-596; Ogata 2005, 55-59). This kind of partnership created situations in which humanitarian assistance was withheld until local populations cooperated with the demands of military/national actors, such as the giving up of suspected war criminals (Krever 2012, 596). Moreover, it led to the UNHCR's compliancy with *refoulement* during the crises in Northern Iraq and Kosovo, when the agency felt "powerless to object or even vocally criticize – the closing of borders to refugees by countries hosting NATO bases" (Krever 2012, 597; Ogata 2005, 28-32). The UNHCR's most controversial actions were in its attempts to resolve the Great Lakes refugee crisis. With more than million Rwandan refugees displaced by the genocide and civil war, the UNHCR found "return to be the main solution" (Prunier 2009, 4-6; Krever 2012, 598). This policy decision was made in spite of the evidence that violence at the hands of the invading Rwandan Patriotic Front (RPF) was being carried out in various parts of the country, killing as many as

45,000 civilians from April-August 1994 as a “policy of political control through terror” (Krever 2012, 599; Pruner 2009, 20).

The UNHCR has always been dependent on donor state funding. As a result, of funding being voluntary, the agency’s programming is subject to the influence of donor states that at their discretion may specify which activities and specific situations their finances should go to especially in the outbreak of a humanitarian crisis. In June 2013 the UNHCR (2013b) published the number and value of contributions to the UNHCR for the 2012 budget year. The grand total of contributions for the 2012-year budget was 2,32 billion USD. Of this, 93,6 percent came from state governments or private donors; while the remaining funds were raised by the United Nations and NGOs-driven pooled funding mechanisms. The United States’ contribution of 793,5 million USD accounted for 34 percent of the UNHCR’s total budget. The next 9 contributors which include the European Union accounted for the next 38 percent of the total budget.²³ With the majority of the UNHCR’s funding originating from small group of nations, the agency is dangerously vulnerable to narrow political interests. In Rwanda, the United States and many western nations eagerly accepted the new RPF government and thus “insisted on repatriation, regardless of its forced or voluntary nature” (Krever 2012, 604; Prunier 2009, 25-28). In the late 2000s the UNHCR has faced increased pressure from European asylum nations that it is already time to return Iraqis what are considered ‘safe zones’ (Krever 2012, 607). In 2013, the United Nations made its biggest appeal ever, requesting 4,5 billion USD to assist the 4,25 million individuals displaced by the Syrian Civil War (UN 2013). The influence of the largest donors in the humanitarian response and pressure for durable solutions is yet to come.

3.5 Rhetoric of Cessation and Involuntary Repatriation

Accepting UNHCR has changed and been influenced by narrow political interests of some states allows for an understanding of the transformation of cessation in UNHCR rhetoric and how this rhetoric allows for involuntary repatriation. The UNHCR’s guidelines state that, in order to apply cessation, changes in the country of origin must be *fundamental, enduring* and results in “not just

²³ Japan, European Union, Sweden, Netherlands, United Kingdom, Norway, Germany, Canada and Denmark. Figures are rounded to the nearest whole number.

the eradication of the well-founded fear of persecution but the *restoration of protection*” (Hathaway 2005, 922; UNHCR 2003, para. 10-16). By ‘fundamental change’, the UNHCR has meant “complete political change” (ibid.). Evidence of such political change is the most typical situation in which the Cessation Clause has been applied (Tarwater 2000). Depending on the grounds for flight, significant reforms altering the basic legal or social structure of the state may also amount to fundamental change, as may democratic elections, declaration of amnesties repeal of oppressive laws and dismantling of former security services” (UNHCR 1992, para. 20). The importance of evaluating ‘fundamental change’ when considering cessation relates directly to the second requirement, that the changes be *durable*’ (Hathaway 2005, 924). The UNHCR has suggested that before a cessation is contemplated, a minimum of twelve to eighteen months should pass after ‘fundamental change’ has been argued (UNHCR 1992, para. 21). The rationale being that “all developments which would appear to evidence significant and profound changes be given time to consolidate before any decision on cessation is made” (ibid.). However in practice, the process of ‘consolidation’ is context-specific (Hathaway 2005, 924). An evaluation of the durability of fundamental changes may sometimes occur after a short period of time, such as when “changes occur peacefully, through a constitutional process, elections are free and fair - reflecting real change in government and there is evidence of respect for human rights” (Hathaway 2005, 926; UNHCR 2003, para. 13-14). However, when changes have involved violence, “the human rights situation needs to be especially carefully assessed” (UNHCR 2003, para. 13-14). One risk is that the “result of premature termination [can result in] refugees coming back to the former host state” or seeking refuge in another state of asylum (ibid.).²⁴

The final requirement for the implementation of the Cessation Clause is that fundamental and durable changes result in ‘restoration of protection’ to the refugee. This links “to the core concern of the refugee definition itself, namely whether it can be truly be said that the refugee can presently “avail himself [or herself] of the protection of his or her home state” (Hathaway 2005, 927). In accordance with this concern, the UN Committee on the Elimination of Racial Discrimination (UNERD) has found that “refugees...have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal

²⁴ Outside the perimeters of the Nakivale Refugee Settlement, for example, reside hundreds of Rwandans, former refugees, who were forcibly repatriated from Tanzania in 1996.

access to public services and to receive rehabilitation service” (UNERD 1996, para. 2). Unfortunately states are prone to evaluate this requirement by simply deferring to formal evidence of changes (Hathaway 2005, 925).

States may also interpret UNHCR repatriation activities as a sign that they may carry out their own general repatriation activities, thereby circumventing the requirements needed for the cessation of refugee status (Hathaway 2005, 926). The fact is that ‘voluntary’ repatriation can take place at a lower threshold than is needed to evidence ‘fundamental, durable changes and the restoration of protection’. Repatriation activities prior to the cessation of status conceptually occur at the “express wish of the refugee, who may also have personal reasons to repatriating, regardless of the situation prevailing in the country of origin” (UNHCR 2003, para. 29).

The most dangerous aspect of the 1951 Convention and the Cessation Clause is that hosting countries bear the bulk of the responsibility for determining whether or not the conditions in the country of origin have improved in a meaningful and sustainable manner (Chimni 2004, 73). For the first few decades following the UNHCR’s founding, it was ‘northern’, ‘western’, and ‘developing’ states, which bore this responsibility.²⁵ Academics from the developing world have interpreted this process as long having been contextualized by objective and subjective factors stemming from the North-South divide in the era of politics (ibid.). This not only affected the conditions which refugees had to meet in order to fulfil the requirements for official refugee status but the political significance it carried for states of asylum to recognize, accept and receive thousands of individuals which were ‘voting with their feet’. As previously mentioned this gave ‘dominant states’ full discretion over which solution to promote (ibid.).

In the last two decades, promoting involuntary repatriation has become the preferred solution for ‘northern’ states (Ibid). With the politics of the Cold War behind, support for developing states have diminished. The delegation of responsibility to developing states with waning financial and resource support is used, what some consider, to “sustain the subordination of the Third World of

²⁵ Here I begin to refer to scholars, known as TWAILers from the Third World Approach to International Law (TWAIL). The language of ‘northern, southern, western, non-western’ are not my own as an academic, but I use them here to give due credit to the etymology of academics from developing states which make sense of international relations and have established their own approach to deconstructing international relations and law.

the West” (Mutua 2000, 31). Nonetheless, international relations and force migration specialists generally agree that there is no question that multilateral institutions, international law and human rights obligations have disproportioned states’ duties, obligations, responsibilities and rights (Margabandhu 2007; Bedlington 2004; Canberra 2004; Hathaway 1991 and 1990).

The costs which build up from protected refugee situations in addition to the increasing cases of refugees –generally - has resulted in their legal status increasingly being called into question (Western 2007, 407). In both the Global North and Global South contexts, navigating pathways to attaining the legal recognition and protection of a refugee status has become increasingly difficult (ibid). The conditions of refugees’ physical, economic and social securities have subsequently greatly deteriorated. These changes in refugee protection and security are widely influenced by changed in the political climate, domestic and regional factors. This bodes to be a dangerous habit in the regression in upholding the human rights of refugees.

As mentioned above, protracted refugee situations as defined by the UNHCR are situations in which refugees have remained in exile for more than five years without any real prospects of a solution. Currently over two-thirds of refugees are in protracted refugee situations (PRS), in developing states where resources are scarce. The average duration of a PRS is now approaching twenty years (Milner and Loescher 2011, 3). Seeing as how East Africa ranks first it is little wonder that Cessation Clause implementation and repatriation programmes have been promoted there.

EXCOM states that while “voluntary repatriation, local integration and resettlement are the traditional durable solutions for refugees [...] voluntary repatriation is the preferred solution, when feasible”(EXCOM 1985, para. 1). According to refuge law expert James C. Hathaway, “the routines use of the terminology of *voluntary* repatriation becomes problematic when considered along with the language of the UNHCR Statute and the understood rights of states that follows” (Hathaway 2005, 917; UNHCR Statute 1950, Art. 8(d)). The UNHCR is mandated to *promote* voluntary repatriation, meanwhile the 1951 Refugee Convention conceives two ways to bring refugee status to an end, voluntary establishment [through naturalisation]

and "repatriation consequent to a fundamental change of circumstance"(Hathaway 2005, 917 – 918; Barutciski 1998, 236).

According to Barutciski (1998, 245):

"[w]e should not lose sight of the fact that international law concerns the imposition of obligation on States. It may be in the individual's best interest actually to remain in the host country and continue his or her life in exile but is the State obliged to provide refuge if conditions in the country of origin have become safe within a reasonable time period?, Clearly States never agreed to such legal obligations".

At times, refugees effectively avail themselves of refugee status by exercising their right to simply return home, even though they are objectively at risk of being persecuted. Hathaway (2005) has stated that return back to the country of origin, should not be considered as repatriation (918). "In many situations, 'repatriation' is the wrong term, because there has been no restoration of the bond between citizen and fatherland. 'Return' is a better term because it relates to the fact of going home without judging its content" (Stein 1992, 2). The distinction between 'return' versus 'repatriation' is important because, as it has already been implied, the implementation of the Cessation Clause presents the risk of *refoulement*, as Hathaway (2005) has argued: "Because refugee protection is conceived as protection for the duration of risk in the country of origin, state parties are not obliged to honor refuge rights when the underlying risk comes to an end" (919-920). Moreover, former refugees may not claim 'surrogate protection' once it has been decided that the "circumstances in connection to their recognition as refugees have ceased to exist" (Hathaway 2005, 920).²⁶

In the application of the 'ceased circumstances' Cessation Clause presents a gap in protection, which allows the forced return of former refugees. This is because the "legal basis" for the Cessation Clause "is the restoration of a bond between citizen and state" (Hathaway 2005, 921). Once it has been demonstrated that the state of origin is able or willing to protect the individual concerned, there is no basis that repatriation following the implementation of the cessation clause must be voluntary (Ibid., 922). In addition, because the Cessation Clause results from the recognition that there is no longer at risk at the state of origin, *refoulement* is no longer a risk to

²⁶ See also Bartuciski (1998, 245).

be considered in the forced repatriation of former refugees (*ibid.*). According to the UNHCR guidelines, “Cessation under Article 1C(5) and 1C(6) does not require the consent of or a voluntary act by the refugee. Cessation of refugee status terminates rights that accompany that status” (UNHCR 2003a, para. 7)

Chapter 4

The Application of the Cessation Clause to Rwandan Refugees in Uganda

4.1 Rwandans in Uganda

Rwandans have been seeking asylum in Uganda since before the 1951 Convention applied to refugees outside of Europe. Their presence in Uganda has had profound effects on the socio-political environment (Pottier 2002, 23). A suitable reference point to begin with is in the late 1950s, as the UNHCR has recommended applying the Cessation Clause to all Rwandans that have been in refuge from 1959-1998. Throughout the second half of the 20th century, mass movements into exile and return have been part and parcel of post-colonial regime changes – such as what has occurred in Rwanda. Rwanda, like many other Sub-Saharan African states, is made of different ethnic groups. In Rwanda there are the Hutus, which today comprise 84 per cent of the population, the Tutsis, 14 percent, and the Twa, who make up 1 percent (CIA 2013). Together they are called the Banyarwanda, which means ‘those that come from Rwanda’. They speak the same language, Kinyarwanda, and share the same religious beliefs. There is discord among experts on whether the pre-colonial distinction between the groups was ethnic, or socioeconomic, similar to social castes or social classes (Mamdani 1996, 5-8; Uvin 1997, 92). The minority Tutsi were of an upper class that reared cattle and they ruled over the more agriculturally-occupied Hutus. Whatever the perceived difference may be, it has been significance in the relations and behaviour between the two groups, setting them apart and it is important to be mindful of in order to understand the tension and violence between Tutsi and Hutu (Uvin 1997, 94). Another important division was geographic, between the northwest and the remaining regions of Rwanda (ibid.). While a Tutsi Kingdom ruled over most of Rwanda from the central region, Hutu kingdoms in the northwest resisted Tutsi rule until colonisers in the late 19th and early 20th century brought the northwest under the control of the central region and promoted the Tutsi group (Ibid., 94-96).

In the late 1950s the two-fold process of decolonisation and overthrow of the Tutsi oligarchy known as the Hutu Revolution created an eruption of violence against the Tutsi in various parts of Rwanda (ibid.). Hundreds of Tutsis were killed, and thousands were chased off of their lands and fled to neighbouring countries (Uvin 1997, 96). In 1960, the Ugandan government demarcated an 86 square mile patch of land in south-western Uganda near Lake Nakivale, 35 miles from the closest point of the Ugandan-Rwandan border, and established its first refugee settlement as a response to the thousands of Tutsi Rwandans fleeing the Hutu Revolution (Bagenda et Al. 2003, 6). The Nakivale refugee settlement continues to host an estimated 11,000 Rwandans as of June 2012 (Tabaro 2012). By February 1963, sustained violence had resulted in 130,000, one-third of all Rwanda's Tutsis, to flee and reside in neighbouring Uganda, Tanzania, Burundi and Zaire (UNHCR 1964). Over the decades more refugees continued to flee across borders in oscillating waves in response to political unrest, stability and violence in Rwanda. There were multiple failed attempts of Tutsi aligned groups to invade Rwanda. This resulted in violent repercussions for Tutsis in Rwanda causing additional refugee waves. The Hutu regime used these events as evidence to perpetuate its ideology of a social revolution against the Tutsi as part of its stratagem to legitimise its rule (Uvin 1997, 92-96). The ever-present threat of a Tutsi invasion, coupled with the ethnic violence against Hutus that took in neighbouring Burundi in 1965 and 1972, where a Tutsi state ruled, solidified racial prejudices to the point where both groups would incorporate the "mental representation of traumatic events into their very own identity" (ibid.).

In Uganda, Rwandan refugees were restricted to refugee camps and settlements in Western Uganda, like Nakivale, according to the Control of Alien Refuges Act (CARA), under the notion of 'once a refugee, always a refugee' (Mamdani 2002, 162-164). There were already Banyarwanda in western Uganda due to proximity to Rwanda and labour and migratory flows, but refugees were distinct (ibid.). The Rwanda Tutsi that fled to Uganda in 1959 were initially welcomed due to their connection with the Ugandan Bahima ethnic group (Pottier 2002, 15). However, refugees faced 'popular prejudice and official discrimination' and thus kept a strong sense of Rwandan identity (Mamdani 2002, 165). In reaction to a post-colonial Ugandan state that, in attempting to define 'indigeneity' (who truly is a Ugandan vis-à-vis European, Asians and other tribes and nationalities), drew the line between national and immigrant, Rwandans in

Uganda (not just refugees) began taking part in the military and political struggle to bring to power and overthrow various Ugandan leaders (Mamdani 2002, 166). When President Milton Obote was overthrown in 1971, some joined his successor Idi Amin - entering his military and secret service (ibid., 167). In the anti-Amin war in 1979, a young Yoweri Museveni, from the southwest of Uganda, would also recruit many Ugandan Rwandans into his Front for National Salvation (FRONASA) (Mamdani 2002, 167). When Museveni went on to contest the Obote II regime, leading to an armed rebellion against the state, there was a violent backlash against Banyarwanda in Uganda which in turn prompted more young Rwandan men to join Museveni (ibid., 168). When Museveni took power in 1987, he made the current president of Rwanda, Paul Kagame, chief of Uganda's military intelligence and placed other Tutsi in high military and public posts (ibid., 173). Even with the initial inclusion of Banyarwanda in the Ugandan government, Rwandans became the subjected to the question of Ugandan 'indigeneity' yet again.

On the 1 October 1990, 4,000 Rwandans deserted their barracks in Uganda in what Mamdani has called an 'armed repatriation of refugees', and entered Rwanda under the banner of the Rwandan Patriotic Front (RPF) with the objective of taking back their country. As the Rwandan Civil War unfolded, the RPF recruited local Tutsis to join its cause and began fighting its way towards to the capital, prompting the Hutu government to launch reprisal attacks on Tutsis in other regions (Pottier 2002, 8). When the Rwandan President Habyarimana and his plane were shot down over Kigali, the genocide of Tutsi "which [had been] carefully planned [...] was meticulously executed" (Bagenda et Al. 2003, 10; Uvin 1997, 97). The Rwandan Civil War and Genocide drew to a close in July 1994, when the RPF took over Kigali and then subsequently the rest of the country (Mamdani 2002, 185-233). The violence in Rwanda caused upwards of 2 million Rwandans, both Hutus and Tutsis, to flee "in every direction of the compass" (Wilkinson, 1997). Scores of Burundians and Zairians were also caught up in mass displacement (Ibid.). The Great Lakes Region Crisis continued, after July 1994 - with the militarisation of refugee camps in Zaire by Hutu officials and soldiers associated with the previous regime and Genocide; Tutsis being expelled from Zaire; and the fall of the Zairian government to Kabila, due to the involvement of the Rwandan and Ugandan armed forces (Ibid.).²⁷ Mass repatriations, from many states, but not

²⁷ For more on the Great Lakes Crisis and the Congolese Wars see Prunier (2011) and Stearns (2012).

including Uganda, took place in the late 1990s to resolve mass displacement (Chaulia 2002). In 2009, Rwanda reported at a UNHCR EXCOM meeting in 2009, that over 3 million Rwandan refugees "had been repatriated and successfully integrated the since the 1994 genocide" (UNHCR 2009, 8). However, as of March 2012 more than 100,000 Rwandan refugees, predominantly Hutu, were still residing in neighbouring countries, including more than 15,000 in Uganda (IRIN 2012). Today, Rwandans continue to flee and seek asylum in neighbouring and overseas states (Sserunjogi 2013).

4.2 The Tripartite Agreement

Since 2002, the Rwandan government has requested for UNHCR to declare and, for other states, to invoke a general cessation for Rwandan refugees (Fahamu 2011). In 2003 the UNHCR, Uganda and Rwanda signed a tripartite agreement on the voluntary repatriation of 25,000 Rwandan refugees (UNHCR 2003b). However, because many refugees have chosen to remain in Uganda, the usefulness of the Cessation Clause became clear. As a result of the Rwandan government's efforts, in 2009, the UNHCR committed to evaluating the possibility of implementing the Cessation Clause for refugees, which fled in the period 1959-1998, and commenced consultative tripartite meetings with African states of asylum and the government of Rwanda (UNHCR 2009a, 38; UNHCR 2009b, para. 35). In May 2010, at the 8th Tripartite Meeting, Uganda, Rwanda, and the UNHCR agreed that Rwandan refugees should return, because the country was deemed safe and that Uganda would invoke the Cessation Clause, terminating refugee status by 30 December 2011 (Dolan 2010).

Under the 1951 Convention and UNHCR Guidelines on the Cessation Clause, Uganda was tasked with carrying out an evaluation to determine if Rwanda had undergone changes which were *fundamental, enduring* and resulting in "not just the eradication of the well-founded fear of persecution but the *restoration of protection*" (UNHCR 2003a, para. 20-16; Hathaway 2005, 922). However, due to the opacity of the Tripartite Commission's investigation, states of asylum and Human Rights' NGOs raising numerous concerns, and the apprehensiveness of Rwandan refugees to repatriate, the date of implementation was pushed back to 30 June 2012 and then once more to 30 June 2013 (UNHCR 2011b, Rwirahira 2012).

At the sixty-second session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (EXCOM) in October 2011, the representative of Uganda stated that the announced that Tripartite agreements were in place with the governments of the Democratic Republic of the Congo, Rwanda, Kenya and the Sudan, and that negotiations with Burundi on the signing of an agreement were under way (UN, 2012, 6-7). Voluntary repatriation programmes for Rwandan refugees globally began in 2002. In Uganda repatriation programmes began in 2004, and roughly 6,000 Rwandan refugees had repatriated by 2011, resulting in roughly 16,000 refugees remaining in-country (Ibid.). 2011 saw 8,600 Rwandan refugees repatriate globally, resulting in UNHCR reporting a total of 151,000 repatriations since 2002 (Ibid.). The Ugandan representative further stressed the issue of protracted refugee caseloads in Ugandan especially those of the Rwandans and Congolese. The Uganda representative proceeded to request that UNHCR find durable solutions to deal with refugees, which no longer had ties with their countries of origin or had no desire to return home (Ibid.)

4.3 Tanzania – A previous Case of Cessation or forced Repatriation?

The UNHCR has promoted the Cessation Clause in the African states that hosted substantial numbers of Rwandan refugees. These include: Burundi, the Democratic Republic of Congo, Kenya, Malawi, Mozambique, the Republic of Congo, the Republic of South Africa, Uganda, Zambia and Zimbabwe (UNHCR 2013c). Missing here is Rwanda's eastern neighbour Tanzania, which in 24 hours on the 28 April 1994 experienced a massive influx of 200,000 Rwandan refugees and by the middle of 1995 was host to a Rwandan refugee population of 500,000 (Wilkinson 1997). This is because in December 1996, the Tanzania government announced that "all Rwandan refugees are expected to return home by 31 December 1996", and then forcibly repatriated them (Whitaker 2002, 1-2; Human Rights Watch 2009). The UNHCR provided the Tanzanian Ministry of Home Affairs with 1,5 million USD for "extra equipment and personnel expenses associated with the operation" (Whitaker 2002, 2). Tens of thousands of Rwandan refugees tried to escape forced return by leaving for Ugandan and Kenya, but they were forced to turn back by roadblocks set up by the Tanzanian military (Ibid.). A few thousand Rwandans managed to appeal the repatriation exercise and remain in Tanzania. However, in 2001 Tanzania began issuing statements that Rwandans were no longer welcome (IRRI 2008). This caused thousands of refugees to yet again flee to Uganda and created thousands of 'recyclers' (Ibid.)

These – ‘recyclers’ still refugees, returned to Rwandan for a period of time in between, then fled once again, this time settling at the fringes of the Nakivale refugee settlement.

Neither the Tanzania government nor the UNHCR ever clarified whether Tanzania had carried out an evaluation of the conditions in Rwanda as per the UNHCR guidelines on the application of the Cessation Clause in the 1996 repatriation exercise or in the early 2000s. Whitaker (2002) has explained that Tanzania’s actions in 1996 were an attempt to prevent the country being drawn into regional conflicts in which the RPF had attacked Rwandan refugees on foreign soil, as had been already witnessed in the eastern Congo (12). The refugees who arrived in Uganda, either directly from Tanzania or after a brief return to Rwanda, are known as the ‘Kibati group’ because they settled in the Kibati section of the Nakivale refugee settlement. The Kibati refugees are in a precarious situation, where Uganda does not recognise them as refugees because they had been accepted and then lost their status from the government Tanzania.²⁸ While they were not forced to leave (at first), they were denied refugee assistance, food rations and aid. In October 2003, Uganda at the behest of Rwanda began the forced repatriation of about 3,000 Kibati refugees (Muramila 2007). Currently, the Kibati group’s numbers are in the low hundreds, and it is difficult to ascertain what the group’s exact size is because the UNHCR has forbidden its partnering NGOs to assist them. In addition new recyclers from different refugee caseloads arrive and leave all the time.

4.4. Is Rwanda Safe for Return?

When questioned on repatriation, a Rwanda refugee in Uganda stated:

“no Rwandan refugee of any profile, either urban or rural, has expressed [a] willingness to return back home...Conditions, which could make [a] safe return with dignity [do not exist] in Rwanda” (IRIN 2012).

The Rwandan Patriotic Front has been in power of for two decades and in that time has transformed the dense, landlocked nation of subsistence farmers into one of the world’s fastest growing economies, chasing the goal of becoming a middle-income country and leading Africa in economic information and communications technology (Crisafulli and Redmond 2012). Its economic development has earned much praise and inspired such book titles as *Rwanda Inc.*

²⁸ Interview with Nakivale Camp Commandant, August 2012.

How a Devastated Nation Became a Model for the Developing World (Crisafulli and Redmon 2012). Yet despite Rwanda economic accomplishments, a trend of human rights deterioration has been documented and highly criticised (Human Rights Watch 2013; Amnesty International 2012). Some of the accusations against Rwandan government include illegal detentions, torture, and the assassination of political opponents (Ibid.). Using a broad policy that condemns diversionist ideology the government has threatened, and imprisoned numerous journalists and political opponents (Human Rights Watch 2013). In 2010, in the thick of an election campaign, André Kagwa Rwisereka, vice-president of an opposition political party, was found beheaded (Ibid.). Victorie Ingabire Umuhoza, is another worrying case (Ibid.) She was a leader of opposition parties while in exile in the Netherlands and has helped found a reconciliation organisation that sought material and psychological relief for the victims of the Great Lakes Crisis. When she returned to Rwanda in 2010, after 16 years in exile, she made a speech at a Genocide Memorial in which she stated that *all* perpetrators of genocide and war crimes should be brought to justice. Four months later she was charged with acts of terrorism, conspiring against the state and promoting divisionist/genocide ideology. On 30 October 2012, Victoria was sentenced to 8 years imprisonment by the High Court of Kigali for "conspiracy against the country through terrorism and war" and "genocide denial." (Ibid.).

Interviews with Rwandan refugees in Nakivale in September 2012 revealed that a major concern for many Hutu refugees is that upon return that they will be subjected to persecution by state and society based on accusations that they participated in the genocide. After the violence of Rwandan Civil War and Genocide subsided, the government empowered *gacaca* courts, a system of local community justice, led by elected judges, to try more than 2 million cases (Clark 2010). Sentences can be as harsh such as life imprisonment with hard labour or reconciliation and return to rebuild communities (Ibid). Although these courts were reported to come to a close in June 2012, refugees are fearful of being detained and undergoing trial. Courts. There are many 'horror stories' of repatriation that worry refugees. One refugee, who repatriated to Rwandan in 1997, reported being arrested on genocide charges upon return, and after being found innocent by court of law was arrested again when he returned to his home village (Fahamu 2011). He was starved and transferred to various prisons over a period of several months because he engaged with

Human Rights organisations while in detention. This led to accusations against his wife for supporting opposition parties. The refugee testified for the International Criminal Tribunal and continued receiving multiple threats resulting in him fleeing to Uganda (Ibid.).

Rwanda's history of conflictual ethnic/tribal relations can be traced back centuries. However, understanding the Rwandan narrative has become highly complicated by the competition of histories that has taken place since the coming to power of the Rwandan Patriotic Front at the conclusion of the Rwandan Civil War (Pottier 2002). Rwandan experts have said that the 'guilt of the West' for its inaction during Rwandan genocide has resulted in academics, which are 'new' to the topic of Rwanda to accept a narrative which has been promoted by the RPF government at face value (Strauss and Waldorf 2011; Pottier 2002). Pottier, an anthropologist specializing in Rwanda and the DRC, has accused new 'mental crusaders' to the Rwandan case of embracing a "model of Rwandan society and history which simplifies complex relations and obscures relevant contexts" (Pottier 2002, 3-10). This has resulted in much praise over what Rwanda has accomplished since the mid-1990s and muted criticism of the infringement on individual rights and free speech in the political and social environment.

With 369 inhabitants per square kilometre (2008 estimate), Rwanda has one of the highest population densities in Africa (UN Statistics Division 2011). Poverty and food insecurity is prevalent in areas outside of Kigali because agriculture continues to account for 80 percent of all economic production yet 59 percent of households have access to less than 0,5 hectares for subsistence farming (UN 2009). Rwanda's score on the Human Development Index (HDI) is .434 - falling below regional average for sub-Saharan Africa, and what is considered 'low human development' (UNDP 2013). Rwanda also ranked 57 out of 79 countries evaluated in the Global Hunger Index, experiencing 'serious' severity of hunger (IFPRI 2012).

Recalling that the 'ceased-circumstances' Cessation Clause of the 1951 Convention requires for fundamental, durable and sustainable changes to take place in the country of origin resulting in the restoration of protection. Rwanda has not undergone meaningful change that has made it safe for refugees to return. After all, the current government still produces refugees. Furthermore,

although the 1951 Convention makes no reference to material security, EXCOM Conclusion No. 65 states that repatriation must be carried out in safety and with dignity (UNHCR 1991, para. j). Although not legally binding, the UNHCR's Voluntary Repatriation Handbook has interpreted this notion to mean that consideration must be placed on material security upon returning to the country of origin under the safety rubric (Hathaway 2005, 944).

4.5 NGOs, Humanitarian, and Diasporic Pushback

In wake of the impending the cessation date, together with a lack of change in circumstances, a number of refugee advocacy groups and NGOs have channelled their efforts into forging alternative pathways for the continued protection of Rwandan refugees. Until now, advocates have lobbied the Rwandan and Ugandan governments and UNHCR for transparency in the procedures to implement the Cessation Clause, in addition to reconsider its implementation outright. This includes adequately providing refugees the opportunities to apply for exemption and a clarification of the refugee caseloads to be subjected to the cessation of refugee status. A number of Rwandan refugees arrived in Uganda prior or post to the genocide and returned home after the country stabilised in the mid-late 1990s. This group returned to Rwanda, only to once again flee from persecution and the fear of persecution by the Rwandan state. Many of these refugees arrived in Uganda, once again, in 1998 or thereafter. In light of such circumstances, one has to clarify: Which category do refugees which returned to Rwanda only to seek asylum yet again, fall into? And furthermore, how has this evidence of continued persecution and fear of persecution in Rwanda been considered during the discussion to implement the cessation clause, if it all?

In October 2011, a number NGOs presented a joint statement to the Executive Committee of the UNHCR's programme addressing international protection. In the statement, NGOs expressed their serious reservations concerning the invocation of the Cessation Clause. They cited the current climate in Rwanda and in hosting states where governments have come under pressure from UNHCR and Rwanda to encourage return as points of serious concern (EXCOM 2011, 2-3). In response criticisms and concern, the UNHCR stated that it would develop a 'roadmap' for the comprehensive strategy for Rwandan refugees. This roadmap would set out the UNHCR's position as to whether states should implement the cessation clause for specific caseloads of

Rwandan refugees (EXCOM 2011). The UNHCR also committed to developing a responsive strategy to ensure protection for refugees, which do not want to return to Rwanda (Ibid.).

Lawyers and researchers at the International Refugee Rights Initiative have made it a top priority to understand and discover whether there are pathways for refugees' exemption to the Cessation Clause. To date, there have been no tribunals or appeals boards organised to consider the appeals for exemptions from individual or group cases of Rwandans. There have been no statements or indications given by OPM that there will be any preparations to do so, in preparation for June 30. OPM has only remarked that the cases, which may qualify for exemption, will be dealt with after the date of cessation. Nor has there been any talk or discussion on behalf of the Ugandan and Rwandan governments and UNHCR on how to deal with the actual repatriation of the Rwandans to Uganda.

On April 18 and 19 2013, South Africa hosted a meeting to discuss the matter of Rwandan refugees, the invocation of the Cessation Clause and repatriation (Kabeera 2013). The meeting was attended by ministerial delegations representing African states that hosted large caseloads of Rwandan refugees. The states represented included: Burundi, the Democratic Republic of Congo, Kenya, Malawi, Mozambique, the Republic of the Congo, Rwanda, South Africa, Uganda, Zambia, and Zimbabwe (UNHCR 2013c). According to the UNHCR's Briefing Notes, which quoted a UNHCR spokesperson who attended the meeting:

“The Governments...unanimously reconfirmed their commitment to resolving this protracted refugee situation through principally, stepping efforts to promote repatriation which thus far has been limited. They also agreed to pursue feasible local integration opportunities, including facilitating for the refugees to attain alternative status in their countries of asylum including citizenship through naturalization.” (Ibid.)

However with regards to the implementation of the Cessation Clause, not all states were ready to invoke a general application of the cessation clauses by 30 June 2013 in line with the recommendations. The Democratic Republic of Congo was one of that states that would not be applying the Cessation Clause, stating that it found it an “impossibility” to do so (ibid.).

At the same time in Brussels, members of the Rwandan diaspora, academics and lawyers met to discuss the human rights situation in Rwanda and the proposed Cessation Clause.²⁹ Organized by the Rwandan Civil Society and Political Organizations (RCSPO) network, Rwandan refugees and exiles living in Europe, enumerated the past and ongoing human rights abuses in Rwanda, attributing them to the actions and policies of the RPF-led state. What is clear is that a large portion of the Hutu Rwandan diaspora population fear persecution from the RPF government should they return to Rwanda, and/or have been already harassed by government agents while living abroad. This relates specifically to the issues of security, property rights in Rwanda, and political rights and freedoms.

²⁹ The “Conférence internationale sur la protection des droits des réfugiés rwandais menacés par l’application de la clause de cessation a partir du 30/06/2013” took place on and 20 April 2013 in Brussels, Belgium. I was present at the meeting, which predominantly consisted of members from the Rwandan diaspora residing in Europe and North America whose date of exit vary from late eighties to the mid 2000s. Conference notes on file.

Chapter 5

Life as a Rwandan Refugee

5.1 Effects of the Cessation Clause on Rwandans in a Ugandan Refugee Settlement

Research in the Nakivale Refugee Settlement, repatriation and the Cessation Clause sought to translate what the preference of repatriation and the disproportionate burden of responsibility meant for the Rwandans in Nakivale. This group is importantly relevant to the study of the Cessation Clause in Uganda as Nakivale is the location of the majority of Rwandan refugees to be affected by the Cessation Clause. The following results are from interviews carried out with staff members and Rwandan refugees coupled with a review of news media and academics works.

In 2009, the Government of Rwanda publically threatened to strip refugees of their nationality, if they failed to return to Uganda by the end of the year (IRIN 2009). This prompts inferences as to what the political significance of having citizens choose exile over residing in country with a particular regime in power suggests in international politics. Furthermore, in April 2010, President Kagame of Rwanda allegedly referred to Rwandan refugees as human waste that needed to be excreted. What was quoted was “Those fleeing are like [the waste] being excreted” (Rwandinfo.com 2010). Reports by Amnesty International (2011) and Fahamu (2011), among others, have discussed how Rwandan refugees occupying neighbouring countries particularly embarrassed the government of Rwanda. Another reason why the state of Rwanda would be particularly alarmed by the having its own citizens reside in neighbouring countries stems from the fact that the RPF itself originated as a political movement and developed a military force in exile. With this history in mind, refugees are likely to be perceived as security threats to those in power in the country of origin.

The formation of the Tripartite Committee demonstrates just one of the mechanisms and forums in which the government of Rwanda has started to pressure the government of Uganda to

participate in the repatriation of Rwandans. The subsequent statements by Kagame among many others including those made by other government officials, which were not included here, illustrate the Government of Rwanda's increasing demands, anxious and impatient in nature, for the repatriation of its citizens.

5.2 February/March 2010: Farming Ban for the Rwandans & Halving of Food Rations

Semi-formal and group interviews with GIZ staff members, Rwandan refugees, and village chairmen substantiated claims that OPM and the government of Uganda has actively changed domestic policies and practice to coerce and compel Rwandan refugees to return to Rwanda. In early 2010, the government of Uganda began imposing a farming ban on all Rwandans living in refugee settlements (IRIN 2010). When questioned on the topic, the Government Minister for Disaster Preparedness, Relief and Refuges, Tarsis Kabwegyere stated:

“[the ban on cultivation will not be lifted anytime soon]...if the refugees insist, we shall chase them or they can contact UNHCR so that they are relocated elsewhere...This is the government position...This is not a holiday camp. These people were told that the conditions were conducive for them to go back home” (Ibid.)

An interview with a village chairman from a village in Juru section of Nakivale confirmed that Rwandans had indeed been told to stop farming back in 2010. The Nakivale Camp Commandant would send police to Rwandans' plots of lands to enforce the farming ban. A representative of the OPM would then facilitate transferring ownership of the fields to nationals living nearby or to refugees of different nationalities. However, in many cases the Rwandans continued to farm when possible - before ownership had been transferred and especially when there was no follow up by OPM. More recently (late 2012) police vehicles have started to drive through Rwandan-populated areas more frequently to harass and disrupt the Rwandans from farming.

In addition, my time in Nakivale, and participation in food distribution exercises, revealed that food rations from the World Food Program have been cut in half starting back in August 2009 (CNN 2009). Although this practice has fluctuated, the normal portion of rations resumed after

some time.³⁰ In late 2011, Samaritan Purse, the NGO in charge of distributing food rations, was told to officially to cut the rations distributed per household in half. Since then, no further changes have been made. Multiple day-to-day interactions with refugees revealed that these rations last at most, two weeks. Those that do not have their own land to farm or are unable to participate in small trade must choose between starving, begging or working for other refugees - earning the most minimum of compensations, or working for Ugandan nationals who often practise withholding payment.

5.3 Nakivale Refuge Settlement, 14 July 2010 - A Case of Forced Repatriation

On 14 July 2010, Ugandan security forces and Rwandan officials forced 1,700 Rwandan failed asylum-seekers and refugees from Nakivale and the nearby Kyaka II Refugee Settlement at gunpoint to leave the refugee settlements.³¹ “[A]rmed police officers rounded up asylum-seekers and forced them on to waiting trucks at the Nakivale and Kyaka II refugee settlements in Southwestern Uganda. (Amnesty International 2011, 276). When some asylum-seekers tried to escape, shots were fired in the air. “In the ensuing panic and stampede people were reportedly injured and children were separated from their parents (Amnesty International 2010).

According to the UN news agency – IRIN, a Rwandan community leader reported “When we were called to the camp office, we thought it was for a meeting but when we got there we found the police and camp commanders and about 12 trucks” (2010). He continues “the situation was very bad; we were held at gunpoint as the police and the commanders tied people’s hands and forced them into the trucks; those who escaped were shot at. I understand several people were injured in the chaos, and those that resisted were beaten” (ibid.). After the incident, another Rwandan refugee stated:

“They took many of my neighbours yesterday; I am too old to run or to return to Rwanda. What will happen to me? I am worried for my grandson who I take care of and who is in high school. I fear they might catch him and force him to go to Rwanda yet he was born

³⁰ Interview with Samaritan Purse Staff Member September 2012.

³¹ Reports say that it was police forces. However, interviews with refugees from Nakivale in August 2012 suggest that it might have been the military. In any case, there have been incidents in-country during which the Uganda’s military has donned the various uniforms of the police to conceal their identity and motives when moving about and carrying out operations.

here. My son, his father, is dead, he knows no other home. What will happen to us?"
(Ibid.).

Interviews with Rwandans in the villages of Juru-B, Kashojwa-A, and Kiretwa-A revealed that the deported had been gathered on the pretext of a food distribution exercise. The deported were not given the opportunity to take any of their belongings with them. Once the trucks were crammed full of people, they started driving toward Rwanda. During the drive, two men jumped off in effort to escape and died immediately (UNHCR 2010). The twenty-five people that managed to escape before the trucks had departed were subjected to severe beatings from security forces and a number of children were separated from parents that remained on the trucks. Of those beaten, six had been pregnant women that later suffered miscarriages (ibid.). During the incident, the UNHCR staff present, which had had no forewarning of the exercise to come, was told to leave. Some time later, the UNHCR tried to confirm if there was any truth to government of Uganda's statements, which clarified that, only failed asylum seekers, which refused to leave, had been returned to Rwanda. Their investigation concluded that "recognized refugees were among those that returned" (Ibid). Furthermore, the UNHCR reported that this forced repatriation occurred as a result of an agreement, which had been made between the government of Rwanda and the Government of Uganda without consultation or proper disclosure to the UNHCR (Ibid).

5.4 Go and See, Come and Tell: Refugees Visit Rwanda – 3-8 June 2012

In Nakivale, there has been a Christian NGO called Partners in Mission active in the facilitation of the voluntary repatriation of Rwandans on a weekly basis (The Rwanda Focus 2012). However, during my stay there (July-September), their activities were temporarily suspended because the UNHCR and OPM officials had accompanied 15 Rwandan refugees to Kigali, Rwanda for a 'go-and-see come-and-tell' programme. This visit occurred from 3-8 June 2012, in which the refugees were given a tour by the government of Rwanda of the country and its capital in order to understand that Rwanda is a safe place to return to and to see how it has developed. They were then to come back to Uganda and describe their experiences and motivate other Rwandans to voluntarily repatriate. However, based on two interviews with refugees that were a part of this group, the visit to Rwanda failed produce any positive results. The movement of the

refugees in country was limited to a specific program , of locations to visit, and their requests to see certain areas were denied. They were also denied meeting with family members that had travelled across the country visit them at the hotel where they were staying. The few interactions they did have with 'locals on the ground' confirmed their suspicion that the government was unjustly persecuting some of its citizens. This also includes events that transpired while visiting a state prison. Therefore the UNHCR, OPM and the refugees returned to Nakivale completely discouraged at the notion of [voluntary] repatriation. In my interview with the OPM in September 2012, the camp commandant failed to mention the visit's lack of success, and rather expressed praise that it had occurred at all. All in all, the Rwandan refugees returned to Nakivale, with unfavourable accounts about the situation in Rwanda. Voluntary repatriation stopped and Partners in Mission's activities were therefore temporarily suspended for the months of August and September 2012.

5.5 Nakivale Today: An Environment of Insecurity, Anxiety and Distress

In wake of the adverse circumstances, many Rwandans have simply left the Nakivale refugee settlement and sought to live undocumented in Ugandan villages, towns and cities or have sought to disappear into the Ugandan national population by taking on local names, bribing low-level government officials to be registered as nationals, and simply avoiding contact with authority figures. Others have also left Uganda and then sought to re-enter under the guise of Congolese refugees, who are entitled to *prima facie* refugee status. This is a practice seen often exhibited by new asylum-seekers from Rwanda which have by and large been unsuccessful in attaining refugee status. In the first half of 2010, for example, of the 3,320 Rwandans which applied for refugee status in Uganda, 98 per cent had been rejected (Amnesty International 2010). This raises serious concerns over the fairness and legitimacy of the procedures carried out by the government of Uganda.

Fieldwork in Nakivale included interviewing Rwandan refugees and the families of both Tutsi and Hutu tribal affiliation, having arrived in the settlement during the 1994 genocide or the early 2000s. None expressed any desire to return to Rwanda. The politics of RPF government and the fear of reprisals from *gacaca* courts – the courts the RPF created as reconciliation courts - were the two reasons, which were cited in every case. As long as the RPF and Kagame are still in

power, the state of Rwanda was seen as being too insecure and not able to offer adequate protection and/or a transition to 'normalcy' for its returning citizens. This leaves the Rwandans in Nakivale trapped in a suspension of uncertainty about what their future in the settlement and Uganda will be. Resettlement to a third-country is not an option, and many Rwandans have become sensitised to this fact. They are therefore constantly vigilant of what the latest updates are regarding the Cessation Clause, the conditions in Rwanda and the possibilities of forced repatriations.

There have been indeed, constructive cessation practices being carried out in Nakivale. The high number of Rwandan asylum seekers being rejected and forcibly deported illustrates the pre-invocation of the cessation clause. The farming ban and the halving of food rations are two of the biggest ways in which life has become difficult for Rwandans in Nakivale. So much so, that perhaps choosing to go 'off-the-grid' or returning to Rwanda may seem more promising. While the government of Uganda has publicly stated that they "will continue sensitising Rwandan refugees who remain in country to ensure that they voluntarily repatriate" the environment in Nakivale has communicated to the Rwandans clearly that the Ugandan government is actively seeking to get them out of Uganda (Kabeera 2010).

It is important to note that choosing to apply the Cessation Clause all inclusively works against the very nature of how refugee status has been granted and recognised to Rwandans in Uganda. Upon arrival, Rwandans had to demonstrate that their narrative and history fulfilled the tenets of the 1951 Refugee Convention on an individual basis. Rescinding refugee status without taking into consideration each case one at a time, works against the purpose of refugee law. OPM has stated that its objective is that "no Rwandan should remain a refugee" (Ibid.). However, if a Rwandan refugee requests to stay in their host countries and are successful in their application "so be it" (Ibid.). Given the lack of transparency, the high number of cases that need to be reviewed and the principles of sovereignty Uganda has in this case; it will be almost impossible to determine if this process will be carried out fairly.

In 2012, the UNHCR states that it was weakened by having its "financial reserves at zero" and not able to focus adequate attention on this case in Uganda because it is facing an 'unprecedented'

combination of crises” globally (UN News Centre 2012). As mentioned earlier, the conflicts in Syria has displaced thousands of refugees while the ongoing war in the Congo has caused +60,000 Congolese to arrive on the doorsteps of its East African neighbours (ibid.). Uganda in accepting these refugees has been cooperative with the international, regional and domestic documents and mechanisms that form refugee law.

Constructive cessation practices entail circumventing the official implementation of the cessation clause by pre-emptively turning away asylum seekers, reducing refugee services and support, and augmenting push factors within the state of asylum (McMillan 2012; Refugee Law Project 2011; IRRI 2010; Hathaway 2008, 2005, 1997). A literature review confirmed that not only have legal scholars, the international community and refugees raised concerns over the Tripartite Committee’s project to implement Cessation Clause 1C(5) but that the historical practice of implementing 1C(5) has been marked by numerous human rights violations with disregard for international law and conventions protecting the rights and status of refugees (McMillan 2012, Cwik 2011, Whitaker 2008, Chimni 2004, Loescher 2001, Harrell-Bond 1989, Rogge and Akol 1989). As overburdened states of first asylum move toward resolving protracted refugee situations, the significance of such practices must be evaluated in the context of the durability of international refuge

5.6 Insecurity in Kampala, Mbarara and Abroad

In addition to human rights deterioration, Rwanda experts have written about the disconcerting reach of the state into private life, and high levels of state surveillance (Purdeková 2011a; Purdeková 2011b; Clark and Kaufman 2011; Straus and Waldorf 2011). Purdeková (2011a) has found that despite trends toward decentralisation, the state has increasingly exerted voice and control at local levels. This is because governance in Rwandan society traditionally operates as a vertical system where power is spatially represented by a trickle-down system of decision-making by individuals that are part of the administration, while reporting and requests start at the lowest ‘most intimate levels’ and then trickles up (Purdeková 2011a, 477-478).

In 1996, in the name of ‘reconciliation’ the RPF established *ingando* ‘cultural and social’ camps in order to the re-establish solidarity and help society come to terms with the ‘legacies of mass

atrocities' (Mgbako 2005).³² The idea was to bring together the newly-repatriated Tutsi community with the Hutu to eat and sleep together, and learn about the [newly-constructed] history of the previous regime and current government programs and policies, so that they could learn to live together (Mgbako 2005, 209). These camps were made compulsory for ex-combatants and ex-soldiers and their families and lasted weeks, even months. Today, returnees, university entrants (including Rwandans going to study abroad), teachers, government officials, and 'social deviants' are required to participate in *ingando* camps (Purdeková 2011b, 20-21). Mgbako (2005) and Purdeková (2011b) reported, based on visits to these camps and interviews, that *ingando* camps operate as de-facto RPF indoctrination centres, offering optimistic views on socioeconomic circumstances in Rwanda and even providing basic military training. On administration over the camp, one *ingando* coordinator remarked "even if I am not here, there are so many eyes". The interplay of the social engineering of the *ingando* camps with the vertical dynamics of Rwandan administration has expanded the influence and power of the Rwandan government to all sectors and levels of social and political interaction. Rwandans returning because of cessation will also have to attend *ingando* camps.

While the RPF's jurisdiction does not extend past Rwanda's borders its presence is felt across borders by 'bulwarks' – individuals that emulate and represent the state (Purdeková 2011a, 493). This was a risk that I encountered during my research, making it important to discern if the Rwandans I interviewed could potentially be informants or covert agents for the Rwandan state. Rwandans have proven to be highly cautious of discussing political matters or sensitive personal information with each other. As a Rwandan told me in Mbarara:

You may think that you know your friend and that he is safe, but you do not know who he knows or what he's doing.

Over the course of the research, I encountered innumerable accounts of Rwandans receiving threats, harassment, and also disappearing for expressing views against the RPF, talking with journalists, or aiding NGOs and academic researchers. On 13 March 2013, Alex Gumisiriza was abducted at gunpoint by two men in an Mbarara bar who identified themselves as Ugandan

³² *Ingando* means 'unity' in Kinyarwanda. *Ingando* camps are an 'invented' Rwandan tradition created by the RPF, which has used such camps since the early 1990s aimed at grass-roots mobilization. See Mgbako 2005, 204.

intelligence.³³ Alex, was a Rwandan that was the first to notify refugees in Nakivale of the Cessation Clause in 2010 and helped an American professor and interns carry out interviews in Nakivale in July 2012. In November 2012, a Rwandan journalist, Charles Ingabire, creator of a news website *Inyenyeri News*, critical of the Rwandan government, was shot and killed in a Kampala bar by unidentified men (Rever 2013). Two months earlier he had been beaten by two individuals that stole his computer and warned him take down his website. In December 2011, Jerome Ndagijimana, a Tutsi refugee and member of an opposition political party, was found dead in a pool of blood in Kampala (Ibid.). In Kampala there were additional accounts of Rwandans refugees being visited and warned by unidentified individuals to stop meeting with and seeking legal assistance from various NGOs.³⁴ A middle-class Rwandan couple in Kampala, who were not refugees but had expressed disapproval of the RPF, told me that they had received threats over the phone and had the brakes on their personal vehicle removed several times.³⁵ Over the course of my stay in Uganda, a number of NGOs warned me to be careful with whom I discussed my research with, and to limit my visibility. There have been several reported attempts on individuals attempting to steal hard drives and laptops from private homes and offices.³⁶ After having repeated contact with a village chairman in Nakivale, he warned me that he had been receiving calls from an unidentified individual and been questioned on our interactions. To our mutual benefit, because I was an intern at an NGO that was providing services in the Nakivale, I was able to fly under the radar, but our discussions had to stop. This situation demonstrated for me a genuine risk of researching issues related to Rwanda.

I also attended a meeting of leaders from international Rwandan civil-society organisations in Brussels (Belgium) in April 2013. Everyone, including journalists and representatives of the Belgium governments was subjected to questioning on their background and purpose upon entering the meeting room. Rwandans that I interviewed stated that they had received warnings from family members to dissuade them from returning or visiting Rwanda out of safety concerns. There were also reported security threats in Brussels similar to what has been seen in Kampala. During the same period of time in April 2013, a journalist was conducting interviews with Hutu

³³ Personal email, 20 May 2013. Story also appeared in *The Voice of Rwanda*. Available at <http://www.umuvugizi.com/?p=8034&lang=en>. [accessed June 2013].

³⁴ Interviews January and February 2013.

³⁵ Interview February 2013.

³⁶ Interview with Co-Directors of International Refugee Rights Initiative, February 2013, Kampala.

refugees in Brussels, when an individual (later identified to be working at the Rwandan embassy) planted himself among the interviewees to listen in on their statements.³⁷ This person attempted to meet with the journalist in her hotel room at night, claiming that he wanted to give her a personal statement. A few days later, she was travelling in France by bus and train, when she noticed that a different African man had been following her despite her efforts to make deliberate changes in direction to try to lose him.

In the United Kingdom, refugees are also subject to threats and harassment from the Rwandan government and individuals operating on its behalf. In May 2011, two Rwandan men even received a ‘threats to life warning notice’ from the London Metropolitan Police Service that stated:

*“Reliable intelligence states that the Rwandan Government poses an imminent threat to your life. The threat could come in any form. You should be aware of other high profile cases where action such as this has been conducted in the past. Conventional and unconventional means have been used”.*³⁸

The lives of Rwandans in exile have been made precarious by the Rwandan governments, whose reach clearly extends past its borders. The dangers and risk refugees face, is only heightened by cessation and is only a precursor to future transgressions by the Rwandan government.

³⁷ Personal email, 23 May 2013.

³⁸ Photocopy of police notice on personal file.

Chapter 6

Factors behind the Cessation Clause

6.1 Cessation within Uganda's domestic and international legal Framework

Uganda's facilitation of forced repatriations of Rwandan refugees in 2007 and in 2010, coupled with the tripartite agreements with Rwanda and the UNHCR on voluntary repatriation in 2003 and for the implementation of the Cessation Clause in 2009, has demonstrated that the state has been, with little caution, dedicated to resolving the Rwandan refugee situation through return as a durable solution.³⁹ What has not been clear, throughout this process, however, is if the government of Uganda has attentively adhered to its duties under domestic, regional and international legislation while doing so.

Section 6 of the Ugandan Refugees Act of 2006, which addresses 'Cessation of refugee status', reflects the 1951 Convention Articles 1 (C) 5 and 6 and OAU Convention Article 4, since cessation is addressed in terms of removing refugee status from the individual and not a mass-influx refugee caseload - like it is being applied to the Rwandans now. Under Section 39 of the Ugandan Refugees Act, when the Ugandan Commissioner on Refugees, established by Section 9 of the Act, has grounds to believe that a person to has ceased to be a refugee under the Act, he "shall refer to the Eligibility Committee for a determination whether or not that person's eligibility status should be withdrawn" (Uganda Refugees Act 2006, 39 (1) B). The Ugandan Refugee Eligibility Committee (REC) consists of 11 government officials and permanent secretaries from various Ugandan ministries including the Ugandan Commissioner on Refugees. The UNHCR is not a member, but is invited to attend REC meetings in an advisory capacity (ibid., Section 11 (A) 3).

Bearing in mind the requirements of the Ugandan Refugees Act, there has been no evidence that the Ugandan Commissioner for Refugees has independently come to the conclusion that

³⁹ Uganda acceded to the 1951 Convention with reservations, one of which allows it expel refugees, although not to the prejudice of *non-refoulement* as per Article 33 of the 1951 Convention. See UNHCR (2011b).

Rwandan refugees no longer deserve refugee status. An interview an official at the Ugandan Office of the Prime Minister, in February 2013, confirmed that Uganda did not have a plan to implement durable solutions until Rwanda, EXCOM, and the UNHCR promoted repatriation and return in the UN General Assembly, EXCOM meetings and state consultations in the early 2000s.⁴⁰ Even though tripartite meetings with the UNHCR and Rwanda began before the Ugandan Refugees Act came into force in 2008, the cessation of refugee status still falls under the jurisdiction of the Commissioner and REC.

The OAU Convention defers to the 1951 Convention's requirements for the cessation of status, and furthermore encourages member states of the Organisation of Africa, now the African Union, to 'cooperate with the Office of the UNHCR' (OAU Convention, Articles 1(4) and 8). What is worrying and problematic here, as Siddiqui (2011) has noted, is that the Cessation Clause, as provided by the 1951 Convention, is being applied to refugees in Africa, which fall under the OAU expanded definition of 'refugee'. If the OAU Convention was created for the protection of African refugees because the 1951 Convention was not adequate for the particularities of refugee problems in Africa, how can the cessation of status from a narrow rubric then be invoked and applied to refugees recognised under an expanded framework?

Another question to be raised deals with the role of the UNHCR: Is the UNHCR capable of working with the refugee definition of the OAU Convention? The UNHCR has operated extensively in Africa with refugees who are recognised under the more expansive OAU Convention. The UNHCR's presence in Africa is a testament to that fact. However, the UNHCR recommending and overseeing cessation for OAU Convention refugees is problematic. As discussed in Chapter 2, UNHCR has not provided an adequate procedure on how to implement the Cessation Clause. One could argue that this is not entirely true, because in the UNHCR's Guidelines on the Cessation of Status, when addressing the 'assessment of change of circumstances in the country of origin', refers to refugees, who flee general violence and upheaval following regime change and emphasizes evaluating the general human rights situation (UNHCR 2003a, para. 8-16). However, the document refers to the Global Consultation on International Protection that attempts to develop a framework for the 'protection of refugees in

⁴⁰ Interview, February 2013.

mass influx situations’, which when closely read fails to provide any coherent procedure on how to apply durable solutions to *prima facie* refugees (UNHCR 2001).

Moreover, while the 1951 Convention holds that states have the responsibility of determining when refugees no longer deserve refugee status, the Statute of the UNHCR gives the UN Commissioner on Refugees competence over determining when refugee status ceases to apply (UNHCR 1950).⁴¹ This is the reason why this chapter, which began with an examination of Uganda’s adherence to domestic and international legislation, has developed into questioning UNHCR’s jurisdiction and competency in identifying durable solutions for mass-influx refugees. To put briefly, the Ugandan government has not adhered to its duties according to domestic and international legalisation because in the implementation of the Cessation Clause for Rwandan refugees, the state has entirely acquiesced to the UNHCR recommendations.

Yes, the government of Rwanda has played a major role in raising the issue of promoting the return of Rwandan refugees. However, it is the UNHCR, which has brought together states of asylum under its global protection mandate, had declared Rwanda safe for return and has promoted rescinding Rwandans’ refugee status. There has been little evidence to show that any of the African states of asylum, not just Uganda, have carried out any investigation of the circumstances in Rwanda, other than accepting at face value Rwanda’s own statements about its general stability and the UNHCR’s recommendation. As demonstrated in Chapter 5, Uganda, consented to the UNHCR’s recommendation, while cognisant of the insecurity Rwandan refugees already face in Uganda because of the Rwandan government. This, and the fact that Uganda continues to actually receive Rwandan refugees, calls to question the statements of the UNHCR concerning the applications of the Cessation Clause to Rwandans (Ssenkibirwa and Nakanwagi 2013).

6.2 June 2013 – Cessation Imminent?

The date of cessation for Rwandan refugees has already been delayed numerous times from the original 31 December 2011 to 30 June 2013 (UNHCR 2013c). In April 2013, the UNHCR co-

⁴¹ See Articles 1 (C) 5 and 6 of the 1951 Refugee Convention and section 2 (6) A of the Statute of the UNHCR.

chaired a Ministerial Meeting in South Africa to review the African timeline for cessation. In her opening remarks, South African Home Affairs Minister Ms GNM Pando declared that:

“...the position of the UNHCR in relation to Rwanda has created anguish and uncertainty among the refugee community in South Africa. As such it appears as though much work requires to be done on the part of the UNHCR to clearly articulate the reasons for the cessation declaration among the affected refugee community.”(South Africa 2013)

In early June 2013, Director of the African Bureau of the UNHCR, George Okoth-Obbo, announced at the annual UNHCR-NGO Consultation in Geneva, that only the three out of ten African States present at the African Ministerial meeting in April - Malawi, Zambia and Zimbabwe - will implement the Cessation Clause by the 30 June deadline.⁴² Recalling that the Cessation Clause was meant to be global (but the UNHCR was concentrating on Africa where most Rwandans are in exile), the lack of cohesion among African states of asylum on choosing to follow the recommendation speaks to the controversial role the UNHCR has taken on this issue. In the case of Zambia, Okoth-Obbo added that the government would grant 800 Rwandan refugees residence if they were able to produce Rwandan passports. This poses a considerable challenge for Rwandan refugees who have been living in exile since 1998 or before, notwithstanding the feasibility of providing documentation for Rwandans born abroad. In Zimbabwe it was stated that 94 refugees would receive residence based on marriage grounds, condemning another 619 to an illegal status and thus vulnerable to forced repatriations.

The governments of Uganda, South Africa, the Republic of Congo, and Kenya have told UNHCR that even if they were willing to, they would be unable to invoke the Cessation Clause by 30 June. The Democratic Republic of Congo and Mozambique announced that they had no intentions of implementing the Cessation Clause whatsoever. The African Bureau Director has asserted that although many African States have raised concerns over the legitimacy of revoking refugee status, the UNHCR is not dissuaded, and remains committed to its project of bringing all African States in line with UNHCR's objective of ending Rwandans' status as refugees.

⁴² Interviews with staff of the Fahamu Refugee Programme, which attended the UNHCR-NGO Consultations in Geneva, June 2013. As of June 2013 the UNHCR has not posted the declarations and statements of the UNHCR-NGO Consultations online, but UNHCR personnel affirmed via email that these documents will be posted online shortly.

6.3 Why is Cessation *really* on the Table?

The last few years of Ugandan-Rwanda relations has involved a lot of confidence building between the two states. There has been much effort and careful negotiating carried out by both regimes in power to make sure that Uganda and Rwanda do not clash politically or militarily again. This stems from the many linkages that the two states continue to share. The Congolese Wars and more recently the 2012 document which revealed that Uganda and Rwanda have been perpetuating violence in the Eastern Congo, and working with M23, evidence that the two governments are working together on promoting their vision of regional relations and stability (Lough and Hogg 2012). Interviews with Ugandan government officials and law professors made it clear that Rwandans who once served in the Ugandan People's Defence Force and Ugandan government have sustained many of their Ugandan-Rwanda linkages. Many Rwandan officers and bureaucrats completed their university education with their Ugandan counterparts. When high-ranking members fall out with the leadership of the RPF, the Ugandan government, , aids their exit out of the country and region even to the point where passport requirements are waived for them at airports.⁴³

Furthermore, Paul Kagame and many of those who hold high positions in the RPF actually know what it is to be a refugee. Not only did Kagame and his RPF colleagues actually grow up in the Nakivale refugee settlement, but they also politically organised and then orchestrated a successful invasion and takeover of the Rwandan state. The OAU Convention in its expansion of the UNHCR's refugee definition places restrictions on refugees' rights to politically organise. With the proven success of the RPF and the militarisation of refugee camps in the Congo during Great Lakes Region Crisis, it is plain to see why the politicisation of refugees is a concern in Africa. The numbers of upwards of a 100,000 Rwandan refugees in Africa is much smaller and less of a threat to the RPF's legitimacy than the RPF was to the previous regime. However, there is still a risk that exiles can actively undermine the Rwandan state.

In the Nakivale settlement, conducting interviews with refugees on the possibility of return to Rwanda was a precarious feat. Refugees showed great insecurity at expressing their personal

⁴³ Interview with member of Uganda People's Defense Force (UPDF), Kampala, February 2013.

views due to the confirmed presence of Rwandan agents in the refugee settlement spying on refugees. Rwandans were highly suspicious of one another, not knowing whom to trust, even after years of amicable interactions.⁴⁴ Every interview or discussion I conducted was quickly relocated indoors or behind refugees' homes out of the sight of other refugees. There were also reports of certain refugees going missing, with suspicion that they were being killed for expressing anti-RPF sentiments or for proposing to align with Rwandan-Hutu political parties organised in exile.⁴⁵ Herein one possible explanation lies as to why Uganda would want to promote cessation. With the majority of its 15,000 Rwandan refugees in Uganda being of the Hutu group, hosting possible genocidaires or political opponents could be too polarising for Ugandan-Rwandan relations to make continued protection of refugees desirable. However, there has been no evidence of a risk of the refugee issue polarising inter-state relations. Furthermore, the UNHCR reports Uganda hosts 180,000 refugees (UNHCR 2013b, 88). Although this is a substantial figure, an 'overburden' of responsibility is not the reason why Uganda would want to implement the Cessation Clause. Donor fatigue on its own does not provide an adequate reason to why the return of Rwandan refugees is appropriate. UNHCR has been and will be cutting the budgets to African refugee caseloads in the wake of developing refugee crises such as in Syria and Mali (ibid.).

While there is no substantial reason for Uganda to *want* to implement the Cessation Clause for Rwandan refugees, the security concerns of the state of Rwanda, underscore that there it has something at stake with the prevalence of refugees outside its borders. The post-conflict Rwanda is developing and reinforcing its image as a democracy with hi-tech aspirations. While the RPF attempts to solidify its legitimate rule over Rwanda, the existence of refugees damages its credibility. The aspirations of Rwanda to repatriate its citizens for security and legitimacy reasons, coupled with the absence of motivation of hosting states to of their own accord repatriate refugees, has resulted in the UNHCR overreaching its mandate. The Rwandan government has been pressing states of asylum to repatriate Rwandan refugees, but the UNHCR has played the biggest role in making the cessation of status a reality. The biggest problem lies herein:

⁴⁴ Interviews with Refugees, Nakivale Refugee Settlement, August, November and February 2013.

⁴⁵ Ibid.

Why is the UNHCR recommending and promoting cessation, when the power belongs to the states?

6.4 How Scholarship explains Repatriation and the Cessation Clause

The increasing frequency of protracted refugee situations has confirmed that the UNHCR and the global refugee regime's approach to applying durable solutions have failed (Kaiser 2010; Monsutti 2008 and 2006; Van Hear 2003). The UNHCR has promoted repatriation as a natural procedure following the conclusion of war and conflict in the state of origin (Koser and Black 1999, 7-10). However, this must be compared with not only the self-perception of refugees of their flight but with the remaining durable solutions, which exist. Repatriation is more than just a physical return home in the same way, that resettlement to a third country and integration is more than just a physical change of location and legal acceptance of residency. Durable solutions are conceived as a return home or the formation of a new home in which the refugee can find meaningful restoration of life and livelihood (Hovil et Al. 2010).

Currently over two-thirds of refugees are in protracted refugee situations in developing states in which resources are scarce. The average duration of a PRS is now approaching twenty years (Milner and Loescher 2011, 3). Although the language of the Cessation Clause has been constructed in a coherent fashion, the case of Rwandan refugees demonstrates that the refugee regime still encounters problems in its attempt to apply it to protracted refugee situations or former mass-influx situations (Saddiqui 2011). These problems derive from the Cessation Clause being prematurely declared for cases in which fundamental, stable and durable changes have not been appropriately verified, in addition to circumstances in which refugees simply refuse to return, making them vulnerable to domestic legal consequences (Saddiqui 2011, 9; Fitzpatrick and Boanan 2005). The vast majority of refugees in the South cross international borders *en masse* and are recognised as refugees on a *prima facie* or group basis. While this is an ideal way to recognize and assist refugees amidst great calamity, it becomes a problem in the process, of seeking to resolve mass-influx refugee situations.

There are three procedural aspects of the Cessation Clause, which produce the greatest challenges. The first challenge is “[the] objective assessment of the situation in the country of

origin”, the second is “procedural fairness to ensure risk of persecution has been eliminated for individual applicants” while the third is the ”consideration of exceptions to the Clause” (Sadiqqi 2011, 9; Fitzpatrick and Boanan 2005). It is difficult to reconcile these three procedural aspects with the fact that the refugees flee for a number of reasons. Some of these reasons fulfill the definition of a refugee as recognized by the 1951 Convention. Others do not, but are refugee according to the OAU Convention. In this case, how does the UNHCR promote the application of the ‘ceased-circumstances’ Cessation Clause, if refugees were accepted according to a definition of ‘refugee’ not found within the 1951 Refugee Convention itself? Furthermore the reasons for fleeing as recognized by the OAU Convention are more likely to carry mixed-motives. This make makes the procedure by which to assess the necessary changes that have to occur in the country of origin for cessation of refugee status even more complicated. A rationale negotiation would therefore be to properly screen and evaluate the circumstance, which prompted each individual’s, or family’s flight, on a case-by-case basis. Under the 1951 Convention and UNHCR guidelines refugees must be allowed to appeal a cessation decision. However, more problems arise when one considers UNHCR’s audible and visual consent to the declaration of the Cessation Clause by the state of asylum. States repatriate and mobilize for the exit of refugees in advance of the date of cessation and this has a deteriorating effect on the lives and experience of refugees already living on the fringes of state protection.

Hathaway has said that that the change needed to justify a declaration of cessation needs to be one “of substantial political significance in the sense that the power structure under which persecution was deemed a real possibility no longer exists” (2005, 926). This begs repeating the question: How are hosting countries to discern which individuals still have claims to refugee protection and which do not if they have accepted them *en masse*? These situations are particular to the states in the Global South because of the size of refugee caseloads and the expanded definition of refugees under the OAU Convention. With regards to protracted refugee situations, there are “four kinds of ‘residual caseloads: those with a continuing risk of persecution’; those with ‘compelling reasons arising out of previous persecution’, those ‘eligible for protection against involuntary repatriation under human rights treaties’, vulnerable people, and those ‘who have developed close family and economic ties in the host country’” (Siddiqui 2011, 19). Distinguishing refugees from among these caseloads requires substantial resources and

additional personnel, things which are quite scarce in most countries in the Global South.

Hathaway points out - the “conflation of the rules for what are substantively distinctive frameworks for return under the singular rubric of voluntary repatriation...[make it]... too easy for governments simplistically to invoke UNHCR repatriation activities as authorization of repatriation in general avoiding the more exacting requirements of cessation of status which in fact bind them” (Hathaway 2005, 940). Goodwin-Gil as quoted by Fitzpatrick and Boanan (1998-1999) called the lack of text regarding the procedure to apply the ‘ceased circumstances’ Cessation Clauses within the text of the 1951 Refugee Convention “glaring and perverse” (518).

6.5 Language Problem?

Chimni (1993, 442-460) has discussed the semantics of global policy instruments as an independent variable on the role of the UNHCR in voluntary repatriation. In particular, Chimni identifies the synchronic use of ‘facilitation’ and ‘promotion’ [of voluntary repatriation] as primary directives found in the Statute of the Office of the UNHCR - to be problematic (Ibid., 448-449). Although they appear and are used interchangeably, ‘facilitation’ and ‘promotion’ carry different meanings. Stein and Cuny (1991, 3) note the difference is that the former calls “for assistance agencies to work with and react to the refugees’ decisions rather than attempting to design and direct return before seeking refugee participation”. They continue:

“The refugees are the main actors in the contemporary practice of voluntary repatriation. They are the main-decision makers and participate in determining the modalities of movement and the conditions of reception. Refugee-induced repatriation is a self-regulating process on the refugees’ own terms. The refugees apply their own criteria to their situation in exile and to conditions in their homeland and will return home if it is safe and better by their standards.” (Ibid., 4)

There are four preconditions that must be fulfilled for the UNHCR to participate in voluntary repatriation (Ibid., 4). These are: fundamental and durable changes in circumstance, the voluntary nature of the decision to return, tripartite agreements between states of asylum and states of origin, and return in safety and dignity (Ibid.).

The conditions that qualify the implementing the Cessation Clause reflect the first and latter two pre-conditions of voluntary repatriation because it operates identically as an end to a protracted refugee situation - one that has been 'managed' by the global refugee regime. Under the circumstances that alternative statuses that would permit legal residence (work permit, citizenship) are not offered from states of asylum, *repatriation* - not forced but not voluntary at the same time - is the poorly concealed objective. Therefore the promotion of voluntary repatriation and the Cessation Clause can be seen to be in absolute contradiction to the UNHCR's proper role in resolving a refugee situation. While it is clear is that the UNHCR's primary role in voluntary repatriation should be 'facilitation', rather than organisation, and the consideration of the knowledge and decision of refugees (Chimni 1993, 448). The implementation of the Cessation Clause needs to also take into account the disposition of the refugee community in exile.

As Chimni (1993) states, "the victims are made to bear the consequences of the lack of burden-sharing by the international community." Furthermore he continues:

"It is in my view that to replace the principle of voluntary repatriation by safe return, and to substitute the judgement of States and institutions for that of the refugees, is to create space for repatriation under duress, and may be tantamount to violating the principle of non-refoulement." (448)

Chimni (1993) alludes to constructive cessation practices that states would carry out against the refugees they host as a means to promote the repatriation agenda:

"Once this space is created it will be difficult to stop other negative practices like withdrawal of rations and services, restricting income generating opportunities, limiting freedom of movement and association, etc., in the State of asylum." (448)

The UNHCR Executive Committee Conclusions on Voluntary Repatriations has endorsed "the need for [voluntary repatriation] to be carried out under *conditions of absolute safety*" (EXCOM 1985). Why have the same conditions not been aptly applied nor adhered to during the application of the Cessation Clause to Rwandan refugees?

6.6 Conclusion

The Global Refugee Regime is organised such that populations of concern are wholly dependent on states, private organisations and the UNHCR for humanitarian action and international protection, yet they have limited influence and dialogue with these actors. The UNHCR's mandate in the international sphere - to coordinate humanitarian responses, provide and identify short and long term solutions and protection to vulnerable forced migration movements - "overlaps with those of states and other institutional institutions, [which] poses particular dilemmas]" (Türk and Eyster 2010, 159). Concurrently, the UNHCR holds an "international legal position", representing populations of concern, thereby representing refugees and "[exercising] quasi diplomatic and consular protection" on their behalf (Ibid., 163). Keeping this in mind, we must acknowledge and question why Uganda, Rwanda and the UNHCR have failed to demonstrate their accountability to the population of concern. Particularly, when there is visible opposition to the Cessation Clause among Rwandan refugees and Rwandans in exile globally. In order to correct the situation of power found presently in Global Refugee Regime, Türk and Eyster (2010, 162) call for a 'corresponding system of checks and balance'.

Türk and Eyster (2010) clarified that there is a 'methodology' by which the UNHCR aims to improve its accountability after undergoing a "three year structural and management reform process" (168). This too, has to be taken into consideration with regard to the Cessation Clause and the principle of *non-refoulement* (Ibid., 168-169). The relevant half, dubbed 'Result-Based Management' aims to "[achieve] the right results in the most efficient and effective manner" (Ibid., 168). This sort of project management exemplifies a systemic pitfall of the UNHCR. When the UNHCR supports Cessation [or repatriation] as part and parcel of approaching refugee protection as an issue to be measured by results, the humanitarian and human rights features of the Global Refuge Regime diminishes as migration management and control gain prominence.

The UNHCR has become increasingly subjected to state's interests while maintaining a certain level of independence that make it autonomous in its policymaking. As a result the UNHCR is only accountable to its budget, and no one, not states nor NGOs nor refugee are able to effectively question UNHCR's decision to implement Cessation Clause for Rwandan refugees. The United Nations must find a way to hold the UNHCR accountable to a responsible and ethical

interpretation of its mandate and prioritise upholding 1951 Convention's tenets in UNHCR operations. The establishment of a legal supervisory board, funded from outside of the UNHCR's budget, would be one way to realign the UNHCR with its core mandate and the principle of *non-refoulement*.

With regards to cessation "there is no legal basis for states to defer to UNHCR as an alternative to domestic adjudication" (Hathaway 2005, 941). Why has UNHCR therefore interpreted its mandate to promote cessation and why are states going along with it? At this point it is important to bear in mind that the UNHCR still represents state interests. Even though it is an international institution with a universal mandate, the UNHCR's funding is skewed and a small number of states are able to control which specific operations and regions receive financial assistance. What we have seen is that the 'quick' resolution of refugee situations is without a doubt the highest priority of the global refugee regime. The nature and circumstance of massive humanitarian crises in the Global South that also happen to be refugee flows have transformed the UNHCR into a humanitarian relief organisation by necessity. It is for this reason that the UNHCR has little problem in the early stages of a refugee situation with dealing with *prima facie* refugees that may or may not qualify as refugees under the 1951 Convention. However, the UNHCR's increasing averseness to providing integration and resettlement as durable solutions thus entitles the OAU Convention's refugee to only short-term relief. Under this framework, not only do states fail to conduct an investigation before promoting or forcibly repatriating refugees, but refugees are denied their right to appeal UNHCR or state's decisions.

Looking at what the UNHCR's biggest group of donors are doing, the European Union's Directive on Temporary Protection may have been an inspiration for the proliferation of diminishing refugee rights (ECRE 2013). Under the construct of 'temporary protection', asylum seekers are never recognised as refugees under the 1951 Convention and are only given protection for one year, with a maximum of two years. The policy was developed as a middle road for states that want to discourage refugees from seeking asylum in their state yet do not want to commit *refoulement*. Who holds the power of reviewing decision-making in refugee protection? How committed are states' to refugee protection, if, despite their funding of UNHCR,

they have taken political steps to exempt themselves from adhering to the tenets of the 1951 Convention?

These trends highlight the importance of understanding refugee protection as a global refugee regime or refugee regime complex as Betts (2009) has forwarded. While the 1951 Convention was expanded by the OAU Convention and other regional protocols to address particular issues and state interests, the emerging culture of stalwart cessation practices is a product of cross-institutional strategies affecting refugee protection. To the government of Rwanda's credit, it has successfully employed regime-shifting and forum shopping to invoke the UNHCR's universal mandate to work for the most positive achievement of its national interests. On the other side, the UNHCR familiar with producing strategic inconsistency to promote repatriation for donor states' by reinterpreting its mandate has excelled as a willing and motivated partner.

Explanations of forced migration are usually limited to the description of the triggers of flight or displacement. For the future of Rwandan refugees, their future trajectories have been subject to the institutional trends of the UNHCR and the transformation of state interests affecting international refugee protection. Since the end of the Cold War, refugees have lost value in the eyes of the international community. This may not be plain to see because the responses to refugee crises have indeed been more robust. But in what sense? The international community's responses to refugee producing situations, coordinated by the UNHCR, have been increasingly concerned with making sure to contain mass flows and then to identify solutions for return rather than protecting the dignity of refugees and upholding their rights. As Collinson (2011) has stated, this is a result of the "emergence of international refugee law and the nature of refugee producing crisis which [have created the]...notion that refugees are an aberration from an 'implied norm' of statecraft and development" (306). Displacement and exile is discussed in narrow terms, noting yet ignoring details, which form the 'bigger picture' while remaining adamant about reaching the end goal of resolving displacement and protracted cases of exile (Ibid.).

In the pursuit of durable solutions, the UNHCR is overstepping its boundaries and coordinating the future actions of asylum states at the request of other states. Considering the deterioration of human rights in Rwanda, the UNHCR's compliance with the state to repatriate refugees is

unacceptable. Throughout its 10-year commitment to the cessation of Rwandan refugees, the UNHCR has maintained a narrow focus on the date of cessation while ignoring signs which refute the notion that Rwanda is safe for return. The fact that Uganda and the majority of other African hosting states will not implement the Cessation Clause at the end of June is a mildly positive sign. Although it has not been made clear yet if Uganda has considered or re-evaluated the appropriateness of cessation in light of the context of Rwanda, it is positive to note that Uganda at times recognizes new Rwandan asylum seekers crossing its borders. For the meantime, Rwandan refugees are free from the risk of a forced repatriation. But for how long? A global recommendation on the cessation of status would only be acceptable under a transparent framework. States' evaluations for return need to occur with oversight from a body or institution outside of a partnership with the country being evaluated. The UNHCR cannot continue to keep the fate of Rwandan refugees in limbo by coercing states to fall in line with its recommendation. In order for refugee protection to develop towards its full potential, the UNHCR's oversight and voice must be curbed and checked. A state of origin should never be in the position where it can pressure a refugee institution to call upon states of asylum repatriate its refugees. Given Rwanda's particular context, one must always be cognisant of the fact that refugee protection has long been anchored in the notion that refugees represent changes in power and that refugees themselves are potential threats to power. States will always pursue the realisation of their interests. Therefore it is only fitting that an international institution, meant to protect the rights of stateless individuals, free itself from state interests.

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