



Political Rights for Refugees in Uganda

A Balance Between Stability in the State and Respect for
Human Rights

Erik Andersson

Fall semester 2013

Master thesis, 30 hp

Law program, 270 hp

Mentor: Erik Persson

Abstract

The refugee situation in Africa has been causing tensions between and within states. In order to reduce these tensions, refugees' political rights has been restricted. Section 35 (d) and (e) of the Ugandan Refugees Act 2006 and Article 3 of the Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU 69) both contains restrictions for refugees political rights. This paper seeks to determine whether the restrictions in political rights (with focus on freedom of expression) for refugees in Uganda is in accordance with Uganda's constitution, the International Covenant on Civil and Political Rights (ICCPR) and the African Charter for Human and Peoples' Rights. The scope of the Refugees Act and the OAU 69 has therefore been one of the crucial issues. The research has been done through a qualitative text analysis of case law and doctrine in addition to a minor field study executed in Uganda. The results indicates that the Refugees Act is applied and interpreted differently in Kyangwali Refugee Settlement than in Kampala. It does not either seem to be a coherent understanding of the scope among people who work and/or get affected by the law. Whereas some restrictions' validity may be discussed, prohibition for refugees from writing any political articles ought to, at least, be a violation of Article 19 of the ICCPR. The problem with refugees not being able to express themselves will not, however, be solved by merely changing the law since the reason for refugees abstaining from expressing themselves are also due to threats which is interlinked to corruption.

Contents

Abstract.....	2
Contents.....	3
Preface and acknowledgments.....	5
Abbreviations.....	6
1 Introduction.....	7
1.1 Political freedom and tension between states in Africa.....	7
1.2 Circumstances in Uganda.....	8
1.3 Purpose.....	9
1.4 Limitations.....	9
1.5 Perspective and Theory.....	10
1.6 Institutions.....	11
1.6.1 Refugee Handbook.....	11
1.6.2 Human Rights Committee.....	11
1.7 Method and material.....	12
1.8 Outline.....	13
2 The Refugees Act's coherence to the Constitution and international law.....	14
2.1 Restriction of freedom of expression in Uganda.....	14
2.2 Same Section, different interpretations.....	16
2.2.1 UNHCR and government officials.....	16
2.2.2 Refugee organizations.....	17
2.2.3 Refugee journalist.....	18
2.2.4 In Kyangwali refugee settlement.....	19
2.2.5 Conclusions from the interviews.....	20
2.3 Freedoms for every person according to the Constitution.....	21
2.4 Case law on freedom of expression.....	22
2.4.1 Onyango Obbo.....	22
2.4.2 Muwanga Kivumbi.....	26
2.4.3 Andrew Mujuni Mwenda.....	27
2.5 Conclusion of the coherence with the Constitution.....	28
2.5.1 Subsection (d).....	28

2.5.2 Subsection (e).....	31
2.6 Uganda's international commitments.....	32
2.6.1 African Charter.....	33
2.6.2 Refugee Convention.....	34
2.6.3 ICCPR – Right to vote.....	34
2.6.4 ICCPR – Freedom of expression.....	35
3 The OAU 69's coherence with international law.....	39
3.1 Regional restriction of freedom of expression in Africa.....	39
3.2 Conclusions of the coherence with international law.....	40
4 Conclusions and final remarks.....	42
Bibliography.....	46
Annex.....	50

Preface and acknowledgments

This paper has largely built upon information collected during a two month field study in Uganda that was made possible through the financial support from SIDA. I therefore like to thank SIDA for the generous grant and I hope that students in the future will also be able to get the same opportunity as I have had. However, the greatest support has been given by individuals who have lend me their valuable time in exchange for nothing. The least thing I could do is give them my gratitude. Some of you who have helped me are omitted from the enumeration due to concern for your anonymity and security, but you are nevertheless remembered by me.

Thank you Amar, Amos, James, Jacob, Kassim, Moses, Maja, Salima, Sofia, Susan, Pape, Patricia, Ramlat and Ronald.

Erik Andersson

January 5, 2013

Abbreviations

AU	African Union
FRC	Finish Refugee Council
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental organization
OAU	Organization for African Unity
OAU 69	Convention Governing the Specific Aspects of Refugee Problems in Africa
PPDR	People for Peace and Defense of Rights
RLP	Refugee Law Project
UNHCR	United Nations High Commissioner for Refugees
WODIDEF	Women for Dignity and Development Foundation

1 Introduction

1.1 *Political freedom and tension between states in Africa*

The refugee situation in Africa can be linked to the anti-colonial movement and the independence of many African states that started in the late 1950s.¹ The Algerian war of independence was the first nationalist struggle in Africa to create a major stream of refugees but there were many to come. During the coming decades national liberation struggles were also becoming more frequent south of Sahara. The people fleeing were often granted refuge by neighboring states as an act of solidarity but the struggles against the regime in the country of origin were, however, not necessarily given up after having fled the country. In some cases, the governments of the countries granting asylum even supported the fights against the regimes in the countries of origin, which in turn led to greater instability in the region in the form of tension, both within and between states.

This issue was brought up at the Organization for African Unity (OAU) Council of Ministers in 1964 which established a Commission on Refugee Problems in Africa. This commission was in turn supposed to investigate how to deal with the political part of the refugee problems in Africa.² At the time there were already two other sub-committees connected to the Liberation Committee of the OAU that were investigating the refugees' living conditions. The Commission on Refugee Problems in Africa found that the stream of refugees did contribute to tensions between states and accordingly drafted a set of guiding principles on how all African states should act when receiving asylum seekers. This laid the ground for the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU 69) that was signed in 1969.³ It is thus important to bear in mind when looking at the OAU 69 that the purpose was to create stability in the region.

Article 3 of the OAU 69 contains a prohibition for refugees to engage in “any subversive activities against any Member State of the OAU.” The states also have a corresponding duty to prohibit refugees residing on their territories “from attacking any State Member of the

1 James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Basingstoke: Palgrave Macmillan, 2009), 18.

2 *Ibid.*, 23.

3 *Ibid.*

OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.”

1.2 *Circumstances in Uganda*

Uganda is located in East Africa, a region that has been subjected to a number of armed conflicts during the last 50 years and still is. On the very day this minor field study ended, a military coup was taking place in South Sudan. All of these conflicts have led to a great number of refugees fleeing across the borders. In the middle of 2013 there were 192 000 refugees in Uganda, 550 000 refugees in Kenya and 223 000 refugees in South Sudan, according to the United Nations High Commissioner for Refugees (UNHCR).⁴ Some of the refugee flows have led to instability between the states. Rwanda after the genocide in 1994 is one example. More than two million people left the country. According to Milner, many believed that the mass emigration was a strategic move from the former government in order to delegitimize the new government of Rwanda and to receive material assistance from the international community. The former government then took part in launching attacks on Rwanda from the refugee camps. This in turn led the new government in Rwanda to support opposition movements in neighboring Zaire where most of the Rwandan refugees were. This was because Zaire did not prevent the refugees from attacking Rwanda. The Rwandan support of opposition groups eventually led to the overthrow of the government in Zaire.⁵ As this example shows, one important difference between refugees in Sweden and in Uganda is that the refugees in Uganda come from neighboring countries and as the example furthermore shows, it can effect national security, which was the very issue the OAU 69 was designed to deal with.

Uganda is bound by the OAU 69 but since it is a dualist country, the convention needs to be incorporated into the national system in order to be applicable. The Refugees Act 2006 is covering the convention's regulations on “subversive activities”. Section 35 (d) and (e) of the Act, however, does not use the same wording as the convention since it is prohibiting refugees from engaging in “any political activities within Uganda.” The question arises what this prohibition actually means. What is the scope of “political activities”?

4 “UNHCR - East and Horn of Africa,” accessed January 5, 2014, <http://www.unhcr.org/pages/49e45a846.html#>.

5 Milner, *Refugees, the State and the Politics of Asylum in Africa*, 31.

The scope is important because it determines the degree to which refugees may be involved in politics, which is important because refugees very often stay in the country of asylum for many years. The refugees interviewed for this paper had all been in the country of asylum for more than five years and some for much longer, without obtaining citizenship and the associated political rights. It is therefore important that even refugees political rights are respected and protected.

1.3 Purpose

The purpose of this essay is to examine whether Uganda's prohibition for refugees to engage in any political activities is in accordance with the Constitution of Uganda, the African Charter for Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR). The prohibition for refugees to perform subversive activities towards other states, according to the OAU 69 and the African Charter, will also be discussed since the Ugandan Act originates from the these documents.

1.4 Limitations

One could claim that political activity involves the right to freedom of assembly, freedom of association and freedom of expression. It is, however, the latter of these that will receive the focus in this paper, as it is crucial for political activity and often subjected to restrictions by governments, perhaps more often than the other two freedoms mentioned above. However, where a restriction in freedom of expression is deemed unconstitutional, a similar argument can often be used for the other two freedoms. That being said, this paper is not arguing that the conclusions reached here also directly apply to the other two freedoms, though it may be possible to use the arguments in this paper to build a line of argument regarding restrictions of freedom of assembly and freedom of association, too. The rights to vote and to stand for elections will also be covered in this paper.

There will also be some limitation of the evaluation of Section 35 (e). The Section contains the prohibition for political activity but it also demands that refugees do not contravene the Charter of the United Nations or the Statute of the African Union. It is, however, only the prohibition of political activity that will be analyzed in this paper. This is due to that the focus

of this paper is on the national law of Uganda and its coherence to the Constitution and applicable international law. The OAU 69's coherence to other international law will, however, be analyzed but only because the national law at hand is based on that convention. In other words, the Charter of the United Nations and the Statute of the African Union is not to be scrutinized.

1.5 Perspective and Theory

It can be argued that since every individual has experiences and with these experiences comes convictions, every individual have a perspective when looking at an issue. Nobody can be completely neutral. One can try to take on different perspectives in order to seek to understand an issue from someone else's point of view, to see the issue in a new light, but your own experiences and convictions are hard to suppress. I shall therefore aim to disclose my own perspectives here so that the reader of this paper can be aware of in what light the issue at hand here are looked at.

As a researcher one can afford some luxury that a legislator can not. For example, one can be extremely theoretical and ignore some of the practical issues. In other words, one can look at the problem and ignore the discrepancy between theory and practice that often occurs when the law is applied. A theoretical approach can nevertheless serve to determine whether the national law is in coherence with the Constitution and the states' international obligations. The question that the arises is the practical matter of whether the country can or should act according to their international obligations. What if the convention is not suitable for the national context? If that is the case, the state should not have ratified the convention and later pretend that it has acted in coherence with the convention. A strict juristic approach, where the practical issues of reality is disregarded, is therefore of value in order to determine if the state is acting the way it claims to do. This paper shall accordingly use this strict juristic perspective in chapter two and three. However, a paper that would only adopt a strict juristic perspective would be of little practical value for how the law should be formulated. The fourth and final chapter will therefore discuss the practical issues as well and thus adopting a more practical perspective there.

Restrictions on freedom of expression will furthermore be examined in light of the balance required between stability in the area on one hand and respect for human rights for individuals on the other. “Stability” here means a peaceful and conflict free status. My theory is thus that both individuals' human rights and stability in the area, which is more a right for a group of people, are two fundamental elements in a democratic society, which both must be respected but which conflict each other to some degree.

1.6 Institutions

There are a number of institutions that must be explained in order to better understand this paper. A short explanation of the key institutions shall therefore be made.

1.6.1 Refugee Handbook

In order to guide the governments in interpreting the Refugee Convention, UNHCR has published and re-published a Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Refugee Handbook). The Refugee Handbook is not a convention that can be ratified and it is not legally binding but it is an authority that ought to be respected.

1.6.2 Human Rights Committee

Associated with the ICCPR is a committee, The United Nations Human Rights Committee (Human Rights Committee). It consists of independent experts monitoring the states implementation of the Covenant.⁶ The state parties to ICCPR shall submit reports to the Human Rights Committee, explaining what measures they have taken to implement the Covenant. The Human Rights Committee shall study these reports and make general comments.⁷ These general comments can be used to interpret the Covenant. In addition, the first Optional Protocol to the ICCPR gives the Human Rights Committee the power to consider communications from individuals who claim that their rights guaranteed by the Covenant have been violated. Since it is a optional protocol, this power is only granted to the

6 See Article 28 ICCPR.

7 See Article 40 ICCPR.

Human Rights Committee by, and concerning, states that have ratified the protocol. The individual complaints can nevertheless be used to interpret the ICCPR.

1.7 Method and material

The Refugees Act and the Constitution have been studied together with case law in order to determine whether Uganda is contravening its Constitution. A qualitative text analysis has also been used to evaluate other researchers argument on the topic. Uganda's fulfilling of its international obligation have been scrutinized by comparing the Refugees Act with the African Charter and the ICCPR. A qualitative text analysis of other researchers' work has also been adopted to examine this. There are a few researchers who have analyzed the Refugees Act in general and touched upon the restrictions on freedom of expression. Sharpe's and Namusobya's *Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006*⁸ and the Refugee Law Project's (RLP) *Critique of the Refugees Act (2006)*⁹ both addresses freedom of expression. This paper tries to evaluate the views in those articles, find support in case law and develop their arguments. I have furthermore recognized the practical obstacles that refugees encounter when using their freedom of expression. Through this I have sought to move outside legal centralism by recognizing other factors than law that impact on the refugees' use of their right to freedom of expression.

The OAU 69's restrictions on freedom of expression has also been examined before by Hathaway in *The Rights of Refugees in International Law*¹⁰, the Lawyers Committee for Human Rights in *African Exodus*¹¹ and by Nowak in *U.N Covenant on Civil and Political Rights*¹². The views brought up in these publication have been scrutinized from the perspective explained above including practical obstacles for the freedom of expression.

8 Marina Sharpe and Salima Namusobya, "Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006," *International Journal of Refugee Law* 24, no. 3 (January 10, 2012): 561–578, doi:10.1093/ijrl/ees036.

9 Mindrea Godwin Buwa, "Critique of the Refugees Act (2006)" (Refugee Law Project, Unknown).

10 James Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005).

11 *African Exodus : Refugee Crisis, Human Rights and the 1969 OAU Convention : A Report of the Lawyers Committee for Human Rights* (New York: Lawyers Committee for Human Rights, 1995).

12 Manfred Nowak, *U.N. Covenant on Civil and Political Rights : CCPR Commentary* (Kehl: Engel, 2005).

In addition to these methods has a minor field study been executed in Uganda. Government officials, legal aid personnel, researchers and refugees have been interviewed. The interviewees have been chosen for their connection to the refugee field and the selection is made with the ambition to get as many perspectives as possible. The interviews has been used to collect information regarding the government's arguments for the prohibition and the views from the legal aid personnel on the subject. The refugees that was interviewed contributed with their view of the reality they live in. The information received through interviews have not always been possible to validate and are therefore to be viewed as the opinions and views of the interviewees and not as unquestionable facts. Since some of the interviewees have revealed sensitive information and some of them are subjected to threats already, anonymity will be upheld where necessary. This will render it harder to scrutinize the information received during the interviews, but is, however, the only option.

Since personal security is an issue for many of the interviewees, it can be expected that it has affected the interviews. It can be assumed that some have been reluctant to talk about everything due to security concerns, but it can also be argued that some exaggerate in order to make the government look worse. These shortcomings ought to be kept in mind.

Primary sources have been used throughout the paper. I was, however, unable to locate UN documents regarding the issue of pre-censorship during the drafting debate of the ICCPR, which is why a secondary source is used there, see footnote 69. Some legal cases are available only online in html format, and with neither page nor paragraph numbering for such cases it has been hard to give precise references.

1.8 Outline

Chapter 2 presents the restrictions in the Refugees Act. These are described through both the relevant Section in the Act and the interviewees' interpretations. This is then compared to the freedoms granted by the Constitution, which is interpreted by case law. A conclusion is then presented whether the restrictions in the Refugees Act is in accordance with the Constitution. Uganda's international commitments concerning freedom of expression are then presented in

Chapter 3 together with conclusions regarding the consistency between the commitments and the Refugees Act. The regional restriction of freedom of expression in Africa is then discussed and its coherence with ICCPR and the African Charter is evaluated. Chapter 4 is the final chapter and ties the paper together and discusses possible changes that could be made. An annex with the most important Sections and Articles of the legal documents is found on the last pages.

2 The Refugees Act's coherence to the Constitution and international law

2.1 Restriction of freedom of expression in Uganda

Uganda's refugee legislation is found in the Refugees Act of 2006. This paper focuses on Section 35 (d) and (e):

Subject to this Act, a recognized refugee shall –

(d) not engage in any political activities within Uganda, whether at local or national level;

(e) not engage in any activity contrary to the principles of the Charter of the United Nations and the Statute of the African Union, and in particular, shall not undertake any political activities within Uganda against any country, including his or her country of origin.

The crucial issue concerns the scope of “political activity”. A narrow interpretation would prohibit participation in the parliament and voting in elections. A more extensive interpretation, on the other hand, may very well also cover writing articles that concern human rights or about the way that governments are handling different issues. It may also concern organizing in groups that have an agenda to achieve change in society, even through peaceful means.

According to Section 48 of the Refugees Act, the Refugee Minister has the possibility to regulate the interpretation of the Act. This has been done through the Refugee Regulations of 2010 but there is no directions on how to interpret “political activity”.

The Hansard¹³ from the parliamentary debate shows that the original bill to the Refugees Act did not contain the same Subsection (d) as the Act eventually did. The Section was suggested by the Committee of Presidential and Foreign Affairs that wrote a report on the bill to be presented before the parliament. The report stated that the original bill allow refugees to engage in political activity within the country. This would be wrong, according to the Committee, because leadership in the country is for citizens. Accordingly, the Committee recommended that the bill be “redrafted to bar refugees from participating in the politics of Uganda, either directly or indirectly.”¹⁴ Seemingly, at least political activities such as voting and stand for elections ought to be covered by the Act's scope. To “indirectly” take part may be interpreted as to vote for someone, as in an indirect democracy, or it may be interpreted as in trying to influence politicians and others through the expressing of one's opinions. However, in the justification for the adding of Subsection (d), reference is made to the electoral laws of Uganda, which prescribe that only citizens may stand for elections, see Section 4(1)(a) Parliamentary Elections Act 2005. This in turn indicates that Subsection (d) only regards voting and standing for elections.¹⁵

Subsection (e), by contrast, was never discussed in the parliament and shall according to some of the interviewees be interpreted as meaning the same thing as “subversive activities” in Article 3 of the OAU 69.¹⁶ Since Uganda is obligated to follow the OAU 69 it may be the reason why it was never debated. It may, however, have been evaluated in the report from the Committee on Presidential and Foreign Affairs but the report that is referred to in the Hansard could not be found by the Parliamentary Library of Uganda, hence it can not be used in this paper to interpret the Subsection. Sharpe and Namusobya claim, unlike the Legal Officer at

13 The official transcript of the debate in the parliament.

14 *Hansard from Debate on the Refugees Bill (2003)*, 2006, 49.

15 *Ibid.*, 83.

16 Interview with Legal Officers at the Refugee Law Project, 2013; Interview with Legal Officer at InterAid, 2013.

InterAid, that the meaning of “political activity” is broader than “subversive activities”.¹⁷ They are supported by the RLP in their *Critique of the Refugees Act (2006)*¹⁸, even if the Legal Officers from the organization interviewed for this paper seemed to be of a different view. According to the *Critique of the Refugees Act (2006)* “political activity” could include involvement in a political party in opposition, participating in NGO:s that are criticizing governments, or writing articles of a political nature.¹⁹ From the wording of the Subsection it is not unnatural to come to such a conclusion. Why use a different formulation than “subversive activities” if it is supposed to mean the same thing?

2.2 Same Section, different interpretations

During the research for this paper a number of persons that have different connections to refugees and freedom of expression issues were interviewed, all contributing with their perspectives. As stated in the Introduction to this paper, the information from the interviews are my interpretation of what was said during the meeting. Only a very limited amount of this information has been verified, due to both the impossibility to investigate these matters and the amount of time it would consume to do it where it was possible.

2.2.1 UNHCR and government officials

The Associate Protection Officer at UNHCR that was interviewed proclaimed the scope of “political activity” to be greater than that of “subversive activities” but maintained that the refugees themselves may interpret “political activity” to be wider than it actually is, thus thinking that they are allowed to do less than they actually are.²⁰ Two Protection Officers from the Refugee Department were also interviewed. As they work for the government, they ought to know the law they are using. The first Officer proclaimed that refugees are not allowed to vote and participate in the formal area political arena and that the Act also prohibits them from returning to their country of origin to engage in those activities there. Refugees are additionally prohibited from starting a newspaper and writing about the government in the

17 Sharpe and Namusobya, “Refugee Status Determination and the Rights of Recognized Refugees under Uganda’s Refugees Act 2006,” 576.

18 Godwin Buwa, “Critique of the Refugees Act (2006),” 18.

19 Ibid.

20 Interview with Associate Protection Officer at UNHCR, 2013.

country of origin, it was claimed.²¹ The second Protection Officer alleged that there is freedom of expression for refugees and that refugees do express themselves but could not answer whether they are prohibited to criticize the governments of their country of origin or not. It was also explained that the Commissioner for the Refugee Department is to make a case-by-case assessment as to whether a refugee has committed a prohibited act. If the determination is positive, the Commissioner reminds the refugee that he or she is not supposed to engage in political activity.²²

2.2.2 Refugee organizations

Two refugee organizations that engage or had engaged in political activity were also interviewed. People for Peace and Defense of Rights (PPDR) is a refugee organization based in Uganda. They work with education, research, gender based violence and corruption. Some of their research and articles are available online.²³ According to them, it is not allowed for refugees to think, speak or write about anything related to politics – both the government of Uganda and UNHCR allegedly reminded PPDR representatives of this.²⁴ The UNHCR Protection Officer also stated that UNHCR at meetings with refugees sometimes reminded them of the prohibition of political activity, although the Protection Officer did not thereby verify that the refugees were prohibited to think, speak or write anything related to politics.²⁵ PPDR were nevertheless challenging the prohibition and continued publishing.

Women for Dignity and Development Foundation (WODIDEF) was an organization that closed down due to threats on members life and personal security. The organization was working for refugee women's rights and they were publishing reports of their findings. In 2009 they started receiving threats through phone calls and they were sometimes shadowed in the streets. The organization decided to keep a low profile after consulting with Amnesty International and the RLP. An human rights organization founded in Ireland called Front Line Defenders published an article about the threats WODIDEF was receiving and according to the article, one of the phone calls was directly linking their work with the threats.

21 Interview with Refugee Protection Officer No. 1, 2013.

22 Interview with Refugee Protection Officer No. 2, 2013.

23 See <http://refugeeseducation.blogspot.se/>.

24 Interview with PPDR, 2013.

25 Interview with Associate Protection Officer at UNHCR.

“You and your colleague, you have been passing false information to the international community that criticise the Government of Uganda and the criminal justice system of the country, so you have got a serious problem with security. For more information, let me inform you that you are under security watch! You will not escape. Now, we will see what the international community will do in relation with your problem. This will be a lesson to you people.”²⁶

The members of the WODIDEF were confident that the threats were coming from the government. Even though the organization kept a low profile, the Chairperson was subsequently kidnapped and assaulted, other members were raped and their office was broken in to and the computers with all their material got stolen. WODIDEF closed down entirely after this and the Chairperson were resettled to a third country while some of the other members are still struggling to find resettlement to a third country.²⁷

2.2.3 Refugee journalist

Some refugees in Uganda are actually writing articles and advocating for human rights. Kiflu Hussain is from Ethiopia and is one of them. He has criticized both the government of Uganda and Ethiopia and until just before he was interviewed for this paper he had not encountered any problems.²⁸ However, about a month before being interviewed, Kiflu was called to the Immigration Office in Kampala. During the interrogation Kiflu got the feeling that he had been watched by those who were now interrogating him. They were asking him about his work and his personal life. Before going to the interrogation he had learned that other Ethiopians also had been summoned, among these his wife and a colleague. Kiflu was concerned that the Ethiopian government might try to go through the government of Uganda to stop him from writing and expressing himself.

26 “Uganda: Threats against Human Rights Defenders, Ms Eugenie Mihigo Vumiliya and Mr Aaron Kamondo Byemba | Front Line,” April 21, 2009, <http://www.frontlinedefenders.org/node/1895>.

27 Interview with WODIDEF, 2013.

28 Kiflu Hussain, “A Civilised Society Does Not Need Draconian Laws,” *Monitor*, October 2010, <http://www.monitor.co.ug/OpEd/Commentary/-/689364/1026818/-/13v71ncz/-/index.html>.

Legal personnel from NGO:s, government officials and refugees provided sometimes conflicting responses to question posed during interviews. While some of the contradictions encountered may stem from the interpretation of those responses, it seems very likely that there are differences in opinions. It also seems to be some uncertainty between the persons interviewed as to what type of conduct is prohibited. The interviews above were all conducted in Kampala. A smaller part of this field study was, however, carried out within one of the refugee settlements, Kyangwali in the district of Hoima, north west of Kampala.

2.2.4 In Kyangwali refugee settlement

The refugee settlements are spread out over the country and it is within them the refugees are supposed to live according to Section 44 of the Refugees Act. They are, however, allowed to go outside the settlement for a limited amount of time if they obtain a permission from the Commandant of the settlement. A refugee may also apply to live outside the settlement but they will then not obtain any financial support. The Kyangwali settlement is inhabited by about 34 000 refugees and it is divided into villages that all have elected refugee leaders who are collaborating with the government when it comes to some of the administrative tasks of the running of the settlement. The village leaders in turn choose a chairperson among them. The Chairperson of Kyangwali settlement proclaimed that refugees were discouraged by the government to engage in politics and that it was against the law. They were furthermore not allowed to write about anything that were happening in their country of origin and this was due to threats towards the refugees from the country of origin. The refugees security could not be guaranteed by the state of Uganda. No threats had been carried out but the refugees had been receiving them via phone calls and the Chairperson alleged that they came from security agents from the countries of origin.²⁹

There used to be a newsletter in Kyangwali where the refugees could write articles. It was being published by the help of the Finish Refugee Council (FRC), an NGO within the settlement that is working with adult education among other things. This newsletter was only to write about things that were happening within the settlement. According to the staff at FRC it was important that the newsletter was objective. They also alleged that refugees would be

²⁹ Interview with Chairperson of Kyangwali Refugee Settlement, 2013.

allowed to criticize their country of origin.³⁰ The newsletter had been turned over to the refugee community but it had not managed to come out with any more issues since. The reason for this seemed to be financial.

A former writer for the newsletter and journalist in his country of origin proclaimed that he could write about the situation in his country of origin. However, he did not do so since it was not possible for him to find a place to be published and he did not get enough information about what was going on in his country of origin when he stayed in the settlement.³¹

The Settlement Commandant of Kyangwali, Amos Kirya, asserted that the policy regarding political activity was very clear and that all refugees knew it. Refugees were not allowed to participate in any political activity, write political articles or support a political party in a text. According to him, there could be no need for the refugees to be politically active. The issue of security furthermore made it impossible. If the refugees were to engage in politics it would create division among them, that in turn could lead to violence. Their countries of origin would also pose a threat towards both the security of the refugees and the state of Uganda since the refugees articles could cause tension between the states. The Commandant did, however, claim that the refugees were allowed to criticize the Ugandan government's running of the settlement, as long as they could produce evidence. This was denied by the writers of the newsletter. Even though refugees are not supposed to engage in political activity there was an exemption made during the referendum in Sudan regarding the self determination of South Sudan and the Sudanese refugees were allowed to vote.³²

2.2.5 Conclusions from the interviews

From the treatment the refugees interviewed claim to be subjected to in Kampala, it seems likely that the government does not interpret the scope of Section 35 of the Refugees Act to cover writing articles and publishing research that is regarding politics. If it were prohibited to write and publish critique about the government of Uganda or the government of the refugees' countries of origin, the government of Uganda would not have to threaten or attack the refugees

30 Interview with the Finish Refugee Council, 2013.

31 Interview with refugee in Kyangwali, 2013.

32 Interview with Settlement Commandant, 2013.

in the way the refugees claim that they have done. The government could just have pointed to the law itself and prohibited the refugees from writing, via the formal way. Although, one of the Protection Officers at the Refugee Department in Kampala did claim that the refugees were not allowed to start their own newspaper and criticize the government of the country of origin. The assaults, kidnappings and rapes that the refugees claim to have been subjected to bear witness of that there are some individuals within the country, and possible even within the government, that opposes the refugees right to write articles about politics and conduct research that criticizing governments. To what degree this is sanctioned by higher officials is hard to determine.

The situation in the refugee settlement of Kyangwali differed to some extent from the situation for refugees residing in Kampala. The Commandant was very clear in pointing out that the refugees were not allowed to write articles about politics. This was also confirmed by the refugees. There is thus a different official interpretation of the law in the settlement than in Kampala. However, the interpretation in the settlement seem to be inline with the in-official interpretation in Kampala where refugees allege that they are threatened and persecuted by security personnel from the government.

Accordingly, there seems to be, at the very least, two official interpretations. One where voting and standing for elections is prohibited, and the other where writing political articles is prohibited in addition to voting and standing for elections. There seems furthermore like it is some uncertainty among researchers and legal aid personnel regarding what the scope of Section 35 (d) and (e) is. The question then is if either one of these interpretations is in accordance with the Constitution and the international obligations undertaken by Uganda.

2.3 Freedoms for every person according to the Constitution

Article 29 of the Constitution proclaims that “every person” shall have the right to freedom of speech and expression, freedom to assembly and freedom of association. The wording “every person” ought to be interpreted as including everybody lawfully in Uganda, thus including refugees. Subsection 2 of the same Article has the wording “every Ugandan”, which

furthermore leads to the conclusion above since it indicates that “every person” is not to be interpreted as only covering Ugandan citizens. Why would there be two different wordings in the same Article if they meant the same thing? However, the Constitution do not consists of rules that either apply or do not apply. It consists of principles that can be weighed against each other and the rights enshrined in Article 29 may accordingly be limited and weighed against other rights. Article 43 states that limitations may be made to the rights in Article 29 in order to respect the fundamental rights of others or the public interest. Limitations made for the public interest may not not go “beyond what is acceptable and demonstrably justifiable in a free democratic society, or what is provided by this Constitution”. Thus, the crux lies in what is acceptable and demonstrably justifiable in a free and democratic society.

2.4 Case law on freedom of expression

There have been no cases in the Constitutional Court of Uganda regarding the constitutionality of the Refugees Act's Section 35. However, a number of cases have been decided regarding Article 29 and 43 of the Constitution.

2.4.1 Onyango Obbo

Charles Onyango Obbo and Another v Attorney General³³ is about two journalists, citizens of Uganda, who had published a story in a newspaper about politicians who had received gold from the President of Democratic Republic of Congo as payment for “service rendered” during the President's fight against a former military dictator. The information about the transaction was first published in a newspaper outside Uganda.

The two journalist were arrested one month after the publication in accordance with Section 50 of the Penal Code Act, which prohibits publishing of false news. They were acquitted from the charges after 16 months but decided to nevertheless pursue the case at the Constitutional Court. There they urged, among other things, that the Court should declare the prosecution against them and the law it was based on as inconsistent with Article 29 and 43 of the Constitution. The Constitutional Court ruled against the petitioners with 4 votes against 1.³⁴

33 Charles Onyango Obbo and Another v Attorney General (Supreme Court of Uganda 2004).

34 Charles Onyango Obbo and Another v Attorney General (Constitutional Court of Uganda 2000).

The majority came to its conclusion without any longer line of arguments, without any references made to case law from within or outside Uganda and without any references to any doctrine. The dissenting judge, however, had a long and convincing line of arguments mainly based in case law from other Commonwealth states and his position was later adopted almost verbatim by the Supreme Court where the case ended up after the petitioners appeal.

The question of interest for this paper was hence whether Section 50 of the Penal Code Act was in contravention of the Article 29 and 43 of the Constitution. In other words, was the infringement of the journalists freedom of expression acceptable and demonstrably justifiable in a free democratic society? A number of cases was referred to of which the most relevant for this paper will be given account of.

The case of Major General David Tinyefuza v Attorney General³⁵ was referred to regarding the principles of interpretation of the Constitution. The case proclaimed that provisions relating to human rights should be given interpretation so that the freedom or right could be enjoyed at maximum rate. It furthermore stressed that if the state or any person seeks to derogate rights and freedoms under Chapter Four of the Constitution, (which contains Article 29) the burden of proof, that the act or law is consistent with the Constitution, is on the State or that person. In line with this case, Section 35 of the Refugees Act should be interpreted as giving as much freedom of expression as is possible.

The petitioners in the Onyango Obbo case also claimed that even false statements should be protected. This was accepted by the Supreme Court. In support of this, references were made to *Zundel v The Queen and Others*³⁶ from the Supreme Court of Canada who have a similar right and limitation of freedom of expression. The Canadian Supreme Court had firstly pointed out that even lies can have a value for a democracy and interlinked that argument with their second in stating that a lie may not be easily determined and it could very well vary between cultures and people what is a lie and what is not. Of essence for this paper is the Canadian Supreme Court's statement that since freedom of expression is an extremely

35 Major General David Tinyefuza v Attorney General (Constitutional Court of Uganda 1997).

36 *Zundel v The Queen and Others* (Supreme Court of Canada 1992).

important right; in order to not protect the right, there needs to be complete certainty that the type of statement should not be protected. Since there were no such certainty when it came to false statements, the Canadian Supreme Court ruled that it should be protected. Thus, the question that arises is if there is such a certainty when it comes to freedom of expression for refugees when they are criticizing their government of origin. In order to evaluate the certainty, the Canadian Supreme Court compared the benefits arising from the restriction to the drawbacks from it. The test for this paper will accordingly be if the benefits of restricting refugees from expressing themselves regarding political issues will outweigh the drawbacks from it.

“[A] free and democratic society”, which is a part of the requirement for restricting freedom of expression according to Article 43 of the Constitution, was determined in *Onyango Obbo* through references to *R. v. Oakes*³⁷ case. The Supreme Court of Canada proclaimed in that case that the Court needed to be guided by the principles of a free and democratic society when determining issues regarding freedom of expression. One of the principles enumerated in the case was “faith in political institutions which enhance the participation of individuals and groups in society.”³⁸ This last quote was only referred to by the dissenting judge of the Constitutional Court but not by the Supreme Court. This does not, however, mean that it could not be used as a persuasive argument in a different case even though it would not be binding on the court. The Canadian Supreme Court nevertheless acknowledged the importance of participation from individuals and groups in society. In other words, it is important that individuals and groups engage in political activity. This regards the comparison between the drawbacks and the benefits mentioned above and thus adding another benefit.

R. v. Oakes also defines the limit to what is “acceptable and demonstrably justifiable”, which is another requirement in Article 43 of the Constitution regulating limitations of freedom of expression. The objective of the limitation must firstly be of “sufficient importance to warrant overriding a constitutionally protected right or freedom. It is necessary, at a minimum, that an objective relate to concerns, which are pressing and substantial in a free and democratic

37 *R. v Oakes* (Supreme Court of Canada 1986).

38 *Ibid.*, para. 64.

society before it can be characterized as sufficiently important.”³⁹ Secondly, there must be a proportionality test according to the Canadian Supreme Court. This test requires that the limitation is carefully designed to achieve the objective of it and should impair as little as possible on the right. There must also be proportionality between the effect and the objective of the limitation.⁴⁰ The Supreme Court of Uganda did not refer to this part of the case but instead referred to *Mark Gova Chavunduka and Another v The Minister for Home Affairs and Another*⁴¹ where the Zimbabwean Supreme Court demanded the same requirements when determining an almost identical issue.⁴² The Ugandan Supreme Court furthermore concluded that the standard must be an objective one and through that disregarded the respondents argument that consideration needed to be taken to the special context of Uganda.⁴³ Accordingly, this too turns in to a comparison, a proportionality test, but first it must be established that the objective of the limitation, security and stability, is of sufficient importance.

The Supreme Court of Uganda also discussed the requirement of preciseness on the limiting law and in support of this again referred to the *Mark Gova Chavunduka* case. “The measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations.”⁴⁴ This goes well together with the test laid down in the *R v. Oakes* case referred to above where the Court emphasized the importance of a law that is achieving its objective and that is not too limiting. The interviewees to this paper have not given a coherent interpretation of the scope of the Section, which indicate that there are some vagueness to it.

The *Onyango Obbo* case also defined freedom of expression as “freedom to hold opinions and to receive and impart ideas and information without interference.”⁴⁵ In doing this the court

39 *Ibid.*, para. 69.

40 *Ibid.*, para. 70.

41 *Mark Gova Chavunduka and Another v The Minister for Home Affairs & Another* (Supreme Court of Zimbabwe 2000).

42 *Charles Onyango Obbo and Another v Attorney General*, 27 (Supreme Court of Uganda 2004), 27.

43 *Ibid.*, 25.

44 *Ibid.*, 27.

45 *Ibid.*, 9–10.

referred to the definition in Article 19⁴⁶ of the ICCPR and to Article I of the Declaration of Principles on Freedom of Expression in Africa⁴⁷ where the African Commission on Human and Peoples' Rights (African Commission) declares among other things that freedom of expression is to be granted across frontiers and that everyone shall have equal opportunity to exercise the right. Article 3 of the Declaration is not mentioned in the case, however, the Commission there points out that freedom of expression imposes obligations on the state to take positive measures to promote access to communication for refugees, among others.

2.4.2 Muwanga Kivumbi

Muwanga Kivumbi v Attorney General⁴⁸ is from the Constitutional Court of Uganda. The case concerned the right to hold peaceful rallies and demonstrations. This was restricted by Section 32 of the Police Act where the police were given the right to deny people these rights. Hence the crux is the same as in Onyango Obbo; is the restriction acceptable and demonstrably justifiable in a free and democratic society? The Court ruled in favor of the petitioner and ruled that the power given to the police was unconstitutional. The case builds upon the Onyango Obbo case to a great extent but points out a few issues of interests for this paper.

The restriction in the Police Act was according to the Court prohibitive rather than regulatory, most likely since it only gave the power to prohibit and not to contribute to make the demonstration safe in any way, and thus differing from regulations in other countries which the State of Uganda was referring to and accordingly made it unconstitutional. Section 35 of the Refugees Act can be argued to be, in the same manner as the Police Act was, prohibitive rather than regulatory since there is just a blank prohibition instead of, for example detailed regulations of what a refugee can and can not do and in what way this will be limited.

46 The Court has in the case written that they refer to Article 10 but the text quoted in the case is from Article 19.

47 African Commission on Human and Peoples' Rights, "Declaration of Principles on Freedom of Expression in Africa," 2002.

48 Muwang Kivumbi v Attorney General (Constitutional Court of Uganda 2008).

2.4.3 Andrew Mujuni Mwenda

Andrew Mujuni Mwenda and Another v Attorney General⁴⁹ is a precedent from the Constitutional Court of Uganda and it also relied greatly upon the Onyango Obbo case. A journalist had during a live radio show criticized the President and the government, in particular for failing to provide security for the Vice President of Sudan while he was in Uganda resulting in him being murdered. The journalist was then charged with sedition and promoting sectarianism. There was also an NGO that in public interest petitioned that the same Sections of the Penal Code Act were inconsistent with the Constitution. The question at hand was thus whether the prohibition of seditious offenses in Section 39 and 40 of the Penal Code Act, and whether the prohibition of promoting sectarianism in Section 41 of the Penal Code Act were unconstitutional with regard to Article 29 and 43 of the Constitution. Thus, the crux was the same in this case as for Onyango Obbo and Muvang Kivumbi mentioned above; is the restriction acceptable and demonstrably justifiable in a free and democratic society?

The Court first assessed the sedition charges and found that the major flaw of the prohibition was the vagueness of it. A person using the right to freedom of expression would not know where the boundaries of criminal behavior started. Accordingly, the limitations were not acceptable and demonstrably justifiable in a free and democratic society. The Court relied heavily upon the Onyango Obbo case and the precedents that were referred to there in coming to their conclusion. Seeing as some of the interviewees that are legally trained had problems with defining the scope of Section 35 of the Refugees Act, it is imaginable to assume that refugees also may have some issues with determining what is prohibited and what is not. As stated above, Section 35 may be accused of being somewhat vague.

The prohibition of promoting sectarianism were not ruled to be unconstitutional by the Court. The petitioners referred to their arguments made under the sedition part. The Court, however, simply stated that there was nothing unconstitutional with the prohibition without declaring any of the evaluations made in reaching the conclusion. This shows that there can be no certainty regarding the constitutionality of Section 35, even if it can be argued that the

49 Andrew Mujuni Mwenda and Another v Attorney General (Constitutional Court of Uganda 2010).

vagueness of the prohibition of promoting sectarianism is less than the vagueness of Section 35 of the Refugees Act.

2.5 Conclusion of the coherence with the Constitution

2.5.1 Subsection (d)

Section 35 (d) seems to prohibit refugees from voting in the elections within Uganda and standing for elections within Uganda. This was the motivation found in the Hansard and the two Protection Officers at the Refugee Department furthermore concluded with this. According to Article 59 of the Constitution, every Ugandan has the right to vote in the elections and Article 38 states that every Ugandan has the right to participate in the affairs of the government. There is no right in the Constitution for refugees to vote or stand for elections and the prohibition is therefore in line with the Constitution. However, the Settlement Commandant for the refugee settlement in Kyangwali proclaimed that the refugees are not either allowed to support a political party within Uganda in a newspaper article and thus contributed with a different and more extensive interpretation of what “political activity” in Subsection (d) means. First of all, that interpretation does not give room for as much freedom of expression as possible, as stipulated in the Onyango Obbo case. The interpretation made by the Settlement Commandant may therefore be questioned. Writing an article is furthermore covered by the right to freedom of expression in Article 29 of the Constitution, which applies to every one and not only citizens. If the prohibition for “political activity” is to be in coherence with the Constitution, the act of writing an article that supports a political party needs to be infringing on the fundamental rights or freedoms of others or of the public interest, according to Article 43(1). Furthermore, these limitation needs to be acceptable and demonstrably justifiable in a free and democratic society, according to Article 43(2).

It could be claimed that the writing of a political article would risk leading to political instability in Uganda, which could perhaps escalate in to an infringement of a fundamental right of the public interest. Even if that quite far fetched argument would be accepted, the limitation consisting of banning the writing of all kinds of political articles would also need to be acceptable and demonstrably justifiable in a free and democratic society. The test laid

down in the R v. Oakes case, referred to in Onyango Obbo case above, is used to evaluate this. Firstly, political stability needs to be deemed as sufficiently important as an objective for the limitation, which it is, if it is pressing and substantial in a free and democratic society that there shall be political stability. Even if it is important with political stability, a free and democratic society ought to be able to endure some political instability, at least if the instability does not lead to violence. To claim that the writing of an article on a political topic by a refugee would lead to violence leads to the second part of the test. The limitation of freedom of expression must be designed to achieve the objective of political stability but impairing as little as possible on the right to freedom of expression. This is also confirmed in the Mark Gova Chavunduka case that is also referred to by the Court in Onyango Obbo. If the objective is to avoid violence due to political instability, the prohibition of all political articles is not carefully designed to impair as little as possible on the freedom of expression. It would be better if the prohibition was directed against instigation of violence in order to achieve that objective. As the limitation is designed now, there is no proportionality between the effect and the objective where the effect being heavy restrictions to the refugees freedom of expression and no possibilities to take part in the political discussion in the country where they are residing, and the objective being political stability. This also runs foul of the definition of “a free and democratic society” relied upon in Onyango Obbo where participation in society by individuals and groups are emphasized. Furthermore, the Constitutional Court have in Muwang Kivumbi ruled against a law that was prohibitive rather than regulatory. The interpretations of Section 35 (d) that stops refugees from writing political articles seems therefore to be violating the Constitution on that ground as well.

As stated above, the Court in Onyango Obbo also referred to Zundel v The Queen and Others where another test was laid down. The benefits of the restriction of the right needs to be outweighed by the drawbacks from it. Refugees who flee from their countries do this for different reasons. Some flee because the general situation in the country is unbearable, others flee because they, as individuals, are not longer safe due to persecution. The reason for them not being safe in their country of origin can often be connected to the political situation, including human rights abuses. The refugee's opposition to this is vital in order to bring about change in the country but is also putting him or her in danger. Thus, if a refugee is not allowed to continue the fight against these abuses through peaceful means when he or she has entered

another country, some of these individuals might be more reluctant to flee since fleeing will be equal to giving up. This will in turn leave them in greater danger of being killed or persecuted in any other way. Furthermore will it be easier for a government that is abusing human rights to continue doing this if refugees fleeing are prohibited to speak up about the situation. These regimes will be stable and there may not be any armed conflicts, but human rights violations will continue. The drawback of prohibiting refugees from writing political articles is that it could create tension between states and make the region unstable. However, if instability occurs due to critique of a state's human rights abuses, it can not be a legitimate reason to restrict that critique through restrictions in the freedom of expression. That would be to accept abuses in one place in order to not risk the infringement of other's right to stability in the region. The drawback of restricting the freedom of expression for refugees thus outweighs the benefits. Grahl-Madsen furthermore alleges that general international law does not include more responsibility for refugees than for others when it comes to the refugees acts against other countries.⁵⁰ This too makes it questionable to restrict only refugees freedom of expression.

The conclusion is thus that the interpretation of Section 35 (d) made by the Settlement Commandant in Kyangwali, containing that refugees are not allowed to write articles regarding politics directed towards Uganda, is violating the Constitution. He did not present one single legal argument that shows that the banning of political activities is in accordance with the Constitution, yet the burden of proof lies upon the part that is limiting a freedom or a right, that the limitation is in accordance with the Constitution, according to the Major General David Tinyefuza case referred to in Onyango Obbo.

There is thus two different conclusions on the two different interpretations of Section 35 (d). It could be claimed that the Settlement Commandant of Kyangwali is just one single individual that has misinterpreted the Section and that the Section therefore is in coherence with the Constitution. However, if the misinterpretation is due to the vagueness of the Section it may be argued that the whole Section 35 (d) is violating the Constitution. In the Andrew

⁵⁰ Atle Grahl-Madsen, "Political Rights and Freedoms of Refugees," in *African Refugees and the Law : [proceedings from a Conference in Uppsala 1977]* (Uppsala: Scandinavian inst. of African studies [Nordiska Afrikainst.];, 1978), 47.

Mujuni Mwenda case the Court emphasized the importance of a clear law. As there are two different interpretations among the few government officials interviewed for this paper, the law seems to be rather vague. The opinions of the rest of the interviewees have also contributed to a quite shattered picture of what the scope of the Section actually is. Furthermore, one governmental official described the determination of the scope of Section 35 as a case by case assessment and when confronted with the fact that the Section has never been tried in court he referred to that the Commissioner of the refugee department contacts refugees and reminds them when they are in violation of the law. This indicates the possibility of arbitrary determinations and a lack of safeguards towards it, even outside the settlements. This system gives the power to one individual to interpret a section of the law, which scope is contested. The fact that no refugee ever taken the issue to court indicates that at least there are no *de facto* safeguards against this. There is also a possibility for refugees to bring the matter to the Human Rights Commission. The Commission is a part of the Ugandan government with the mission to investigate human rights violations, according to Article 52 of the Constitution. No case regarding this have reached the Commission and the Commission have not made any assessments regarding the Refugees Act's constitutionality.⁵¹

It can not either be argued that due to the special political and demographic context in Uganda and since its long history as an area of conflict, freedom of expression should be interpreted differently. This argument was rejected in Onyango Obbo case.

2.5.2 Subsection (e)

Section 35 (e) seems to regulate the same thing as (d) but with the difference that the “political activity” is directed towards other countries than Uganda. When it comes to freedom of expression, the line of argument used about Subsection (d) can therefore be used here as well since Article 29 and Article 43 of the Constitution does not withhold any geographical limitations. The Supreme Court have also declared in the Onyango Obbo case that the freedom of expression shall be granted across frontiers when referring to Article 19 of the ICCPR and Article 1 of the Declaration of Principles on Freedom of Expression in Africa. One of the Protection Officers at the Refugee Department interpreted the Subsection as not

⁵¹ Interview with the Director of Monitoring and Inspections at the Ugandan Human Rights Commission, 2013.

allowing refugees to start a newspaper and write articles that is criticizing the government of their country of origin. This is consequently in violation of the Constitution with the same line of argument as for Subsection (d). There are thus two interpretations of this Subsection too. The Settlement Commandant was of the same view regarding this Subsection as he was for Subsection (d), hence concurring with the Protection Officer mentioned above. In a similar way as security was invoked as the justification under Subsection (d), the Protection Officer defended the position and argued that the restriction is in place to ensure that individuals would not be attacked. There is, however, nothing in the Constitution that permits the state to limit the freedom of expression due to not being able to provide security for the individual who wants to use it.

When it comes to the right to vote and stand for elections in other countries than Uganda, the Constitution is quiet. It is therefore consistent with the Constitution of Uganda to prohibit refugees from voting or standing for elections in their country of origin. Subsection (e) is, however, only covering conduct “within Uganda” according to the wording of it. The Subsection is therefore not likely able to apply in order to prohibit refugees from voting in their country of origin. The interpretation of Subsection (e) in that regards, made by one of the Protection Officers at the Refugee Department, is therefore highly questionable.

2.6 Uganda's international commitments

Even if Uganda were to change the Constitution or if the Constitutional Court would come to a different conclusion than the one reached here and rule that Section 35 (d) and (e) would be consistent with the Constitution, the Subsections may still violate Uganda's international obligations. Section 28 of the Refugees Act regulates the entitlements for refugees under international conventions. It states that every refugee is entitled to the rights provided for in the Refugee Convention, the OAU 69 and “any other convention or instrument relating to the rights and obligations of refugees, which Uganda is a party.” This poses the question whether the refugees are entitled to the rights enshrined in the ICCPR and the African Charter since those conventions are not refugee conventions *per se*.

Regardless of Section 28, Uganda has ratified the ICCPR and is therefore bound by it. Article 2(1) of the ICCPR states that there shall be no discrimination in the rights enshrined in the rights of the convention. The UN Human Rights Committee have furthermore expressed that the general rule is that there shall be no discrimination between citizens and aliens when it comes to the rights in the convention.⁵² However, since Uganda is a dualistic country, the rights in the ICCPR can not be directly used in Uganda by the refugees or any other citizen until they are implemented or incorporated in the domestic law. The same line of argument can be used for the African Charter since it too forbids discrimination but can not be used directly if it is not implemented or incorporated in the domestic law. Thus, regardless of the interpretation of Section 28 of the Refugees Act, the state of Uganda is bound by the two conventions, but whether the refugees may use the rights in court or not is depending on the interpretation of Section 28. In the light of Section 35 (d) and (e) it is likely that the legislator did not intend to give the refugees the right to use the two conventions. This conclusion was also reached by Sharpe and Namusobya.⁵³

Since the state of Uganda is bound by the two conventions, an assessment shall nevertheless be made regarding the coherence of Section 35 (d) and (e) compared with the African Charter and ICCPR. The two conventions that are explicitly mentioned in the Act shall naturally also be analyzed. Both of the two interpretations of Section 35 (d) and (e), that refugees are prohibited to vote and stand for elections, and that refugees are prohibited to write political articles in addition to the prohibition on voting and standing for elections, will be assessed.

2.6.1 African Charter

Article 9 of the African Charter guarantees the right to freedom of expression but the freedom may only be enjoyed “within the law”, thus implying that national law may circumscribe the right enshrined. However, the meaning of the wording “within the law” has been explained by the African Commission on Human and Peoples' Rights in the case Article 19 v. Eritrea⁵⁴ and it is to be interpreted as within the international obligations the state has, including the African

52 United Nations Human Rights Committee, “General Comment No. 15: The Position of Aliens Under the Covenant,” 1986, para. 2.

53 Sharpe and Namusobya, “Refugee Status Determination and the Rights of Recognized Refugees under Uganda’s Refugees Act 2006,” 571.

54 Article 19 v Eritrea, 92 (African Court on Human and Peoples’ Rights 2007).

Charter. If it were to be interpreted as within national law it would withdraw the power from the African Charter. Article 2, furthermore, states that “every individual” shall be entitled to the rights and freedoms in the Charter “without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” According to the Lawyers Committee for Human Rights, which is an international human rights organization based in the United States⁵⁵, refugees ought to qualify under this provision.⁵⁶ The limiting of refugees right to freedom of expression seems therefore not to be in conformity with Article 2 or 9 of the African Charter, with regard to freedom of expression both within Uganda and towards other countries. However, since this line of argument lacks case law supporting it, some degree of certainty remains.

2.6.2 Refugee Convention

Uganda has also ratified the Convention Relating to the Status of Refugee (Refugee Convention) from 1951 and its additional Protocol from 1967, albeit with a number of reservations and declarations. The Refugee Convention, however, does not guarantee freedom of expression. Article 7.1 states that refugees should be granted the same treatment as other aliens generally. Uganda has, however, made a reservation towards the Article explaining that they understand the Article as not conferring any legal, political or other enforceable rights, which leaves it up to Uganda itself to decide in what way they should treat the refugees.⁵⁷ Thus, Section 35 is not violating the Refugee Convention.

2.6.3 ICCPR – Right to vote

The ICCPR have also been ratified by Uganda but without reservations.⁵⁸ As mentioned above, the general rule shall be that there is no discrimination between aliens and citizens.⁵⁹ Article 25, however, does only cover citizens and refugees are therefore not entitled to vote

55 When the book referred to was written, they were called Lawyers Committee for Human Rights but have now changed in to Human Rights First.

56 *African Exodus*, 93.

57 United Nations, “UNTC,” *UN Treaties - Refugee Convention*, accessed October 2, 2013, http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en#EndDec.

58 United Nations, “UNTC,” *UN Treaties - ICCPR*, accessed October 2, 2013, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-4&chapter=4&lang=en%23EndDec#EndDec.

59 United Nations Human Rights Committee, “General Comment No. 15: The Position of Aliens Under the Covenant,” para. 2.

and the other political rights enumerated there. Prohibiting refugees from voting or standing for elections in Uganda is therefore not violating ICCPR. Although, according to Namusobya, the prohibition of voting in the country of origin may be a violation of Article 25.⁶⁰ Since voting is a protected right for citizens, it could be argued that prohibiting a citizen of another country from voting in their country of origin would mean to not interpret the convention in good faith as stipulated in Article 31 of the Vienna Convention on the Law of Treaties. An argument from one of the Protection Offices at the Refugee Department against letting refugees vote in their home country was that it would be assumed that the refugee had re-availed him- or herself of the protection of that country if the refugee were to go there and vote and thus lose the refugee status, in accordance with Article 1(c)1 of the Refugee Convention.⁶¹ However, it can be questioned if voting would really mean that the refugee has re-availed him- or herself of the protection since, according to the Refugee Handbook, that requires not only that the act is voluntary, but also that the refugee intend to re-avail him- or herself of the protection and that protection is obtained.⁶² The refugees from southern Sudan, nevertheless got to vote in the referendum for independence of South Sudan. The government of Uganda thereby acknowledged the benefits of political activity, even among refugees. It leads to the conclusion that the law is too vague and can be interpreted as it suits the one who is applying it. An independent South Sudan most likely made Sudanese refugees to go back, which meant fewer refugees in Uganda from Sudan, which in turn could have been the reason for the interpretation.

In conclusion, it is hard to tell whether the prohibition on voting in the country of origin would be against Article 25 of ICCPR. Since it is not explicitly covered it may very well be within the margin of appreciation of the state to decide.

2.6.4 ICCPR – Freedom of expression

Article 19 of the ICCPR does not have the citizen-limitation as Article 25 have. It is directed towards everyone and refugees are therefore also given the same rights as every one else. That non-citizens also should have the right to hold opinions and to express them and that there

60 Interview with Salima Namusobya, 2013.

61 Interview with Refugee Protection Officer No. 1.

62 United Nations Human Rights Committee, “Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,” 1992, para. 119.

should be no discrimination in this matter has also been pointed out by the Human Rights Committee in one of their General Comments.⁶³ Article 19's first paragraph guarantees the right to hold opinions without interference, which is purely a private matter and therefore a non-derogable right.⁶⁴ The second paragraph includes the right to freedom of expression, regardless of frontiers. This means that the refugees have the same right to use their freedom of expression towards other countries as they have towards Uganda. The freedom, however, comes with duties and responsibilities and may therefore be subjected to restrictions. The third paragraph lists the possibilities to restrict the freedom of expression and the requirements are that the restriction shall be provided by law and that it is necessary for the respect of the rights or reputation of others, or that it is necessary for the protection of national security, public order, or public health or morals. According to Nowak, "provided by law" demands that it is specified in what way restrictions on the freedom can be made.⁶⁵ The necessity requirement shall, according to the Human Rights Committee, be interpreted as demanding proportionality in severity and intensity in the restriction towards the objective.⁶⁶ Limitations should furthermore, according to Nowak, not become the rule.⁶⁷ The Human Rights Committee have in a similar way also pointed out that restrictions on freedom of expression shall not jeopardize the right itself.⁶⁸ In addition, pre-censorship was discussed and rejected in the drafting of ICCPR. It was said that restrictions were to be limited to subsequent criminal or civil prosecution.⁶⁹

Several countries have nevertheless made restrictions in aliens' rights to freedom of expression. Hathaway mentions Switzerland where non-citizens need a permit to make a political speech and argues that it might be in coherence with ICCPR as long as the grounds for denial are the ones enumerated in Article 19(3) ICCPR and the approval system does not create an unreasonable obstacle to the freedom.⁷⁰ However, Article 2(1) prohibits

63 United Nations Human Rights Committee, "General Comment No. 15: The Position of Aliens Under the Covenant," para. 7.

64 United Nations Human Rights Committee, "General Comment No. 34: Freedom of Opinion and Expression (Art. 19)," 2011.

65 Nowak, *U.N. Covenant on Civil and Political Rights*, 460ff.

66 United Nations Human Rights Committee, "General Comment No. 34: Freedom of Opinion and Expression (Art. 19)," para. 34.

67 Nowak, *U.N. Covenant on Civil and Political Rights*, 460.

68 United Nations Human Rights Committee, "General Comment No. 34: Freedom of Opinion and Expression (Art. 19)," para. 21.

69 Nowak, *U.N. Covenant on Civil and Political Rights*, 457–458.

70 Hathaway, *The Rights of Refugees under International Law*, 893.

discrimination regarding the rights in the convention. It may therefore be questioned if Switzerland is not violating Article 2(1) when only non-citizens needs a permit since that may be discriminating on the basis of nationality. Hathaway is also considering this but refers to the states margin of appreciation when doubting the success of such a claim.⁷¹ Even if nationality is not explicitly mentioned in Article 2(1) it is covered by “other status”, which is enumerated . This is according to the Human Rights Committee in the case of Gueye et al v. France.⁷² Albeit the refereed case concerns Art. 26, the same ought to go for Article 2(1) according to Ramcharan.⁷³ Article 2(1) does not, however, prohibit different treatment altogether. If the different treatment is motivated by a reasonable and objective criteria it is permitted according to the Human Rights Committee.⁷⁴

Security have been pointed out by all of the interviewees from the government as a reason for restricting the political freedom for refugees. Even if the emphasis have been on the security of the individual who is using his or her political freedom, national security have also been emphasized. The stability of local regions was also pointed out by the Settlement Commandant of the Kyangwali Settlement and by the Legal Officer from InterAid as a concern for the restrictions.⁷⁵ The restriction is thus motivated by national security and *ordre public* as required in Article 19(3). The question then is if the law sufficiently specifies the possibilities for restrictions and if these restrictions are necessary.

Since there seems to be more than one interpretation of what the law is restricting, there is a lack of preciseness. The state have thus failed to remove the vagueness, which it could have done for example through the Regulation to the Refugees Act 2010 mentioned above. Regarding the necessity of limiting the freedom of expression in order to protect national security, the Human Rights Committee's *Womah Mukong v. Cameroon*⁷⁶ case is of guidance. *Womah Mukong* was arrested accused of intoxication of national and international public opinion and thus responsible for subversive activities. He had criticized the President and the

71 Ibid.

72 Gueye et al v France, 9.4 (Human Rights Committee 1989).

73 Bertrand G Ramcharan, “Equality and Non-Discrimination,” in *The International Bill of Rights : The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), 246 ff.

74 Gueye et al v France, 9.4 (Human Rights Committee 1989), para. 9.4.

75 Interview with Settlement Commandant; Interview with Legal Officer at InterAid.

76 *Womah Mukong v Cameroon* (Human Rights Committee 1994).

government and accused them of corruption and he was furthermore fighting for multiparty democracy. The state of Cameroon argued that consideration needed to be taken to the particular political context in Cameroon with its history of political instability. The committee, however, ruled in favor for the petitioner and, although recognizing the objective of strengthening national unity under difficult circumstances, proclaimed that this can not be achieved at the cost of human rights.⁷⁷ Accordingly, Uganda's objective of national security and *ordre public* is a legitimate objective but it can not be achieved on the cost of freedom of expression. The proportionality test is therefore not fulfilled. The conclusion is therefore that the restriction is neither appropriately provided by law or necessary. To prohibit refugees from writing political articles is accordingly a violation of Article 19, regardless of whether the articles are directed towards Uganda or any other country. Although, there are possibilities for derogations under the Covenant according to Article 4. These are, however, derogations and not something that should be the main rule and stated in the law.

Even if the restriction would have been appropriately provided by law and deemed necessary it would still most likely be a violation against ICCPR if the limitation would have contained pre-censorship in the manner practiced in the refugee settlement of Kyangwale. This is due to that pre-censorship was discussed and ruled out during the drafting of the Covenant.⁷⁸ It could also be argued that my interlocutors are just single individuals that has misinterpreted the law and that the state of Uganda is not violating the ICCPR. However, the Human Rights Committee has explained that it is the states' responsibility that every single part of the state respect the freedom of expression. The obligation furthermore requires the state to protect individuals from private actors that are limiting the freedom of expression.⁷⁹ This means that even if the victims of persecution fail to show that it is security agents from the state of Uganda that has carried out actions in order to suppress freedom of expression, it is still a violation if that state does not take action against the perpetrators, as was the case for WODIDEF mentioned above.

⁷⁷ Ibid., para. 9.7.

⁷⁸ Nowak, *U.N. Covenant on Civil and Political Rights*, 457–458.

⁷⁹ United Nations Human Rights Committee, “General Comment No. 34: Freedom of Opinion and Expression (Art. 19),” para. 7.

3 The OAU 69's coherence with international law

3.1 Regional restriction of freedom of expression in Africa

Uganda's restrictions of political freedoms for refugees does not exist in a vacuum but has sprung out of the OAU 69 convention, which has been ratified. The African Union (AU) replaced the OAU in 2002 but conventions from the OAU are still in place and valid. Article 3 of the OAU 69 convention contains the ban on subversive activities committed by refugees.

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Accordingly, it is the responsibility of both the refugee and the state that the refugee abstain from any subversive activities against any State Member of the OAU. The African Charter also contains a prohibition of subversive activities for refugees in Article 23 Subsection 2.

For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

It has been claimed, by Namusobya among others, that a change in the Refugees Act to a prohibition of “subversive activities” instead of “political activity” would be to prefer.⁸⁰ It would align the Ugandan law with the regional one, but the question then arises if the prohibition of “subversive activities” is in line with the ICCPR. The scope of what “subversive activities” consist of is therefore a crucial issue. By reading the second paragraph of Article 3 of the OAU 69 convention it is clear that use of arms is prohibited. Furthermore is the press and radio explicitly mentioned as prohibited to use for subversive activities. Even if the wording “subversive activities” is not used in the second paragraph, it is linked to the first one, hence it may be interpreted that the states responsibility to prohibit refugees from creating tension between states corresponds with the refugees duty not to engage in any subversive activities. The same interpretation has been made by the Lawyers Committee for Human Rights. “Subversive activities” might not, however, be limited to the enumeration of “use arms, through the press, or radio.” It can be presumed that the provision also restrict political parties and other political associations among refugees.⁸¹

3.2 Conclusions of the coherence with international law

Sharpe and Namusobya proclaims that “political activity” in the Refugees Act is much broader than “subversive activities”.⁸² This view is supported by the RLP in their *Critique of the Refugees Act (2006)* and by the representative from UNHCR interviewed for this paper.⁸³ Even though the legal officers at the RLP claimed that “subversive activities” and “political activity” is the same, there seems to be an understanding among most legal personnel that “subversive activities” is somewhat narrower but it seems hard to define the exact scope of it.⁸⁴ This indicates that a change of wording in Section 35 of the Refugees Act from “political activity” to “subversive activity” could still be in violation of the Constitution since it is the vagueness of the prerequisites that opens up for governmental officials to interpret the law themselves, and this would not improve by the change of wording.

80 Interview with Salima Namusobya.

81 *African Exodus*, 93.

82 Sharpe and Namusobya, “Refugee Status Determination and the Rights of Recognized Refugees under Uganda’s Refugees Act 2006,” 576.

83 Godwin Buwa, “Critique of the Refugees Act (2006),” 18; Interview with Associate Protection Officer at UNHCR.

84 Interview with Legal Officers at the Refugee Law Project.

The Human Rights Committee have previously, furthermore, not been keen to accept states assurance that restrictions are required in order to suppress subversive activities. More specific information have been requested to make it possibly for the Committee to evaluate the restriction's conformity with the ICCPR.⁸⁵ A change to the wording “subversive activities” may therefore also be in contradiction to the ICCPR.

It may even be questioned if the ban on “subversive activities” is violating the African Charter too. The Lawyers Committee on Human Rights argue that Article 3 of the OAU 69 convention is consistent with Article 9 of the African Charter but is violating Article 2.⁸⁶ They do, however, argue that it is not contravening Article 9 due to that Articles limitation of “within the law”. That limitation has, as mentioned above, been interpreted by the African Commission to mean within international law. It is therefore possible to argue that the prohibition of “subversive activities” in Article 3 of the OAU 69 convention would violate Article 2 and 9 of the African Charter in the same way as the ban on “political activity” does. However, Article 23 of the Charter explicitly prohibits a person who has received asylum to engage in any “subversive activities” against his country of origin or any other member state to the Charter. This renders a few possibilities. Either the prerequisite “subversive activities” in the Charter is to be interpreted differently from “subversive activities” in the OAU 69, or; it could be that the concept used in the Charter is not in conformity with itself between Article 23 on one hand and Article 2 and 9 on the other, or; the scope of subversive activities is only to be defined by what is permissible under the exemptions in Article 19(3) and Article 20 of the ICCPR and is thus in coherence with the ICCPR and thereby in coherence with Article 9 of the African Charter, which refers to the ICCPR by its wording “within the law.”

It is possible, but unlikely, that “subversive activities” means different things in the two documents since they are drafted by more or less the same states. The OAU 69 was drafted by the OAU, which later became the AU, which in turn drafted the African Charter. It is even less likely that the African Charter is not in conformity with itself since that would mean that the document is not very thought through. It is also possible that “subversive activities” is only what would be permissible according to Article 19(3) and 20 of the ICCPR, thus only

⁸⁵ *Pietraroia v Uruguay*, 15 (Human Rights Committee 1984).

⁸⁶ *African Exodus*, 93.

restricting freedom of expression in the same way as ICCPR and prohibiting propaganda for war as stipulated in Article 20 ICCPR. However, some states have interpret “subversive activities” to be wider. Regardless of which assumption is correct, the definition is too vague and leaves too much margin of appreciation to the states. It has made it possible for states to choose which opinions that shall be allowed and which shall not. The Lawyers Committee for Human Rights points out the situation in Kenya where Ugandan refugees have only been allowed to engage in political activities if they supported a party that was also favored by the Kenyan government.⁸⁷ The stability purpose of the prohibition may therefore even be reversed if the country that is receiving refugees may choose which views that shall be allowed in order to politically attack the country of origin.

4 Conclusions and final remarks

As stated above, Section 35 (d) and (e) of the Refugees Act is violating Article 29 of the Constitution when it is interpreted as prohibiting refugees from writing political articles about the situation in Uganda or any other country. The interpretation prohibiting this is possible partly due to the vagueness of the wording in the Subsections, which therefore is one of the major flaws of the law. It also seems very likely that Section 35 (d) and (e) violates Article 2 and 9 of the African Charter, which prohibits discrimination and protects freedom of expression. Section 35 (d) and (e) furthermore runs foul of Article 19 of the ICCPR, which protects freedom of expression for everyone across frontiers.

Since the Subsections are inconsistent with the Constitution, the ICCPR and possibly with the African Charter, they ought to be amended. If the wording would be changed from “political activity” into “subversive activities” it would still be possible to interpret the law in the same manner as now, since “subversive activities” too suffers from the same vagueness. It would therefore be preferred if the law was more detailed and described what conduct was prohibited and what was allowed. This would lead to fewer differences in interpretation among the governmental officials and it would be easier for the refugees to know what they are allowed to do. It would furthermore be easier to determine whether the law is contravening the Constitution, the African Charter or the ICCPR.

⁸⁷ Ibid., 94.

However, ideally, I would suggest, from a strict juristic perspective, that the refugees would only be obliged to obey the national law in general and that there would be no specific restriction for refugees when it comes to freedom of expression. The line of argument presented above proclaims that refugees shall have the same right as citizens. Although, there might be practical issues standing in the way of realizing those rights for refugees. It can be presumed, and the interviewees have concurred with this, that the reason for the restrictions in the refugees freedom of expression is motivated by security concerns. Removing the restrictions is believed to create tension between refugees and Ugandans, and between refugees themselves. It has also been claimed that it will create tension between Uganda and other states. Both security for the individual and for the nation is thus the alleged reasons. As was pointed out in the beginning of this paper, the region has a history of violence and there has been problems with militarization within refugee communities. But does this mean that stability in the area shall be prioritized at any cost? It shall first of all, as stated above under chapter 2.5.2, be stressed that there is nothing in the Constitution nor in the ICCPR that permits the state to restrict the freedom of expression of an individual in order to protect that person from persecution from others. A person should be able to take the risk of expressing him- or herself if he or she is willing to.

Freedom of expression is furthermore one of the cornerstones in a democracy, but with that freedom comes a certain degree of instability and the national security can thus be threatened to some degree. Accordingly, freedom of expression can lead to political change, which can result in a less stable situation in the country. Freedom of expression is, however, a must for a society if it is to develop and a certain degree of instability may therefore have to be tolerated. However, the instability shall not be the one created by an armed conflict. That is why there needs to be laws in place that prevents the freedom of expression to lead to an armed conflict. Those laws should not, however, suppress the freedom of expression altogether but instead be carefully designed not to interfere more than necessary. This act of balance is crucial but even if it is executed in a perfect way there may still be obstacles standing in the way of freedom of expression.

During the time this minor field study was conducted, a former body guard for the Rwandan President was in Uganda as a Refugee. He had fled to Uganda in 2011 and was since then wanted by the Rwandan government who accused him for murder, armed robbery, terrorism and treason. In 2012 his house was sprayed with bullets by an unknown gunman and in 2013 he got abducted by Rwandan security agents who tried to smuggle him out of Uganda. He was fortunately rescued before they reached the border. On the 25th of October he got arrested by the Ugandan police and extradited to Rwanda in accordance with an international arrest warrant from Rwanda. The Ugandan government denied involvement in this and proclaimed the extradition was a mistake that should never have happened and they hoped that the trial in Rwanda would be fair against the former refugee.⁸⁸ UNHCR condemned the extradition and said that it violated the international refugee law.⁸⁹

In 2011, another Rwandan refugee who was an active journalist, writing what would have to be considered as political articles, got shot in a restaurant. The Rwandan government denied having anything to do with it but the Rwandan refugees in Uganda still blamed them.⁹⁰

What these examples and the WODIDEF incidents mentioned above shows must not be missed. There is a reality that sometimes does not reflect what the law or the Constitution proclaims. Refugees have furthermore reported that they are afraid of being killed or mistreated and some are therefore reluctant to use their freedom of expression. According to some of the interviewees there is impunity for these crimes. If the victim does not know who did it, the police will or can not do anything. These security concerns will not change just because the law would allow the refugees to express themselves more freely. Another factor that should not be overlooked is corruption. Uganda is ranked 140 out of 177 countries by Transparency International where number 1 is the least corrupted.⁹¹ The police was the

88 “Brig Muhoozi Denies Role in Rwandan Refugee Arrest,” November 3, 2013, <http://www.monitor.co.ug/News/National/Brig-Muhoozi-denies-role-in-Rwandan-refugee-arrest/-/688334/2058182/-/yuf59gz/-/index.html>.

89 “UNHCR in Uproar over Kagame Ex-Bodyguard Handover,” November 6, 2013, <http://www.africareview.com/News/UN-in-uproar-over-Kagame-ex-bodyguard-handover/-/979180/2062282/-/12qdsjtz/-/index.html>.

90 Palash Ghosh, “Exiled Rwandan Journalist Killed in Uganda,” *International Business Times*, December 3, 2011, <http://www.ibtimes.com/exiled-rwandan-journalist-killed-uganda-378234>.

91 “Transparency International - Country Profiles,” accessed January 4, 2014, http://www.transparency.org/country#UGA_DataResearch.

institution accused of being most corrupted. Refugees with little money does not benefit from the corruption and impunity for crimes against refugees is therefore likely to prevail until corruption decreases.

However, a law that is prohibiting refugees from writing political articles is not helping to overcome those practical obstacles. The first step is therefore to remove the restriction on freedom of expression. The second step is to remove the practical obstacles. The latter will not be easy and requires, among other things, a significant decrease in corruption and a greater respect for human rights in general and thus a better working democracy in Uganda. Those are huge issues that, however, are outside the scope of this paper.

In conclusion; the law can be changed to the better, according to the suggestions above regarding details and thus removing the vagueness, but it will not change the reality.

Bibliography

Precedents

Andrew Mujuni Mwenda and Another v Attorney General (Constitutional Court of Uganda 2010).

Article 19 v Eritrea (African Court on Human and Peoples' Rights 2007).

Charles Onyango Obbo and Another v Attorney General (Constitutional Court of Uganda 2000).

Charles Onyango Obbo and Another v Attorney General (Supreme Court of Uganda 2004).

Gueye et al v France (Human Rights Committee 1989).

Major General David Tinyefuza v Attorney General (Constitutional Court of Uganda 1997).

Mark Gova Chavunduka and Another v The Minister for Home Affairs & Another (Supreme Court of Zimbabwe 2000).

Muwanga Kivumbi v Attorney General (Constitutional Court of Uganda 2008).

Pietraroia v Uruguay (Human Rights Committee 1984).

R. v Oakes (Supreme Court of Canada 1986).

Womah Mukong v Cameroon (Human Rights Committee 1994).

Zundel v The Queen and Others (Supreme Court of Canada 1992).

Litterature

African Exodus : Refugee Crisis, Human Rights and the 1969 OAU Convention : A Report of the Lawyers Committee for Human Rights. New York: Lawyers Committee for Human Rights, 1995.

Godwin Buwa, Mindrea. "Critique of the Refugees Act (2006)." Refugee Law Project.

Grahl-Madsen, Atle. "Political Rights and Freedoms of Refugees." In *African Refugees and the Law : [proceedings from a Conference in Uppsala 1977]*. Uppsala: Scandinavian inst. of African studies [Nordiska Afrikainst.] ;, 1978.

Hathaway, James. *The Rights of Refugees under International Law*. Cambridge: Cambridge University Press, 2005

Milner, James. *Refugees, the State and the Politics of Asylum in Africa*. Basingstoke: Palgrave Macmillan, 2009.

Nowak, Manfred. *U.N. Covenant on Civil and Political Rights : CCPR Commentary*. Kehl: Engel, 2005.

Ramcharan, Bertrand G. "Equality and Non-Discrimination." In *The International Bill of Rights : The Covenant on Civil and Political Rights*. New York: Columbia University Press, 1981.

Sharpe, Marina, and Salima Namusobya. "Refugee Status Determination and the Rights of Recognized Refugees under Uganda's Refugees Act 2006." *International Journal of Refugee Law* 24, no. 3 (January 10, 2012): 561–578. doi:10.1093/ijrl/ees036.

International legal documents

African Commission on Human and Peoples' Rights. "Declaration of Principles on Freedom of Expression in Africa," 2002.

United Nations. "UNTC." *UN Treaties - Refugee Convention*. Accessed October 2, 2013. http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en#EndDec.

United Nations. "UNTC." *UN Treaties - ICCPR*. Accessed October 2, 2013. http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-4&chapter=4&lang=en%23EndDec#EndDec.

United Nations Human Rights Committee. "General Comment No. 15: The Position of Aliens Under the Covenant," 1986.

United Nations Human Rights Committee. "General Comment No. 34: Freedom of Opinion and Expression (Art. 19)," 2011.

United Nations Human Rights Committee. "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees," 1992.

Online newspaper articles

"Brig Muhoozi Denies Role in Rwandan Refugee Arrest." *Monitor*; November 3, 2013. <http://www.monitor.co.ug/News/National/Brig-Muhoozi-denies-role-in-Rwandan-refugee-arrest/-/688334/2058182/-/yuf59gz/-/index.html>.

Ghosh, Palash. "Exiled Rwandan Journalist Killed in Uganda." *International Business Times*, December 3, 2011. <http://www.ibtimes.com/exiled-rwandan-journalist-killed-uganda-378234>.

Hussain, Kiflu. "A Civilised Society Does Not Need Draconian Laws." *Monitor*, October 2010. <http://www.monitor.co.ug/OpEd/Commentary/-/689364/1026818/-/13v71ncz/-/index.html>.

"Uganda: Threats against Human Rights Defenders, Ms Eugenie Mihigo Vumiliya and Mr Aaron Kamondo Byemba" *Front Line*, April 21, 2009. <http://www.frontlinedefenders.org/node/1895>.

"UNHCR in Uproar over Kagame Ex-Bodyguard Handover." *Africa Review*, November 6, 2013. Accessed January 4, 2014. <http://www.africareview.com/News/UN-in-uproar-over-Kagame-ex-bodyguard-handover/-/979180/2062282/-/12qdsjtz/-/index.html>

Interviews

Interview with Associate Protection Officer at UNHCR, 2013.

Interview with Chairperson of Kyangwali Refugee Settlement, 2013.

Interview with Legal Officer at InterAid, 2013.

Interview with Legal Officers at the Refugee Law Project, 2013.

Interview with PPDR, 2013.

Interview with refugee in Kyangwali, 2013.

Interview with Refugee Protection Officer No. 1, 2013.

Interview with Refugee Protection Officer No. 2, 2013.

Interview with Salima Namusoby, 2013.

Interview with Settlement Commandant, 2013.

Interview with the Director of Monitoring and Inspections at the Ugandan Human Rights Commission, 2013.

Interview with the Finish Refugee Council, 2013.

Interview with WODIDEF, 2013.

Other

Hansard from Debate on the Refugees Bill (2003), 2006.

“Transparency International - Country Profiles.” Accessed January 4, 2014.
http://www.transparency.org/country#UGA_DataResearch.

“UNHCR - East and Horn of Africa.” Accessed January 5, 2014.
<http://www.unhcr.org/pages/49e45a846.html#>.

Annex

African Charter

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Constitution of Uganda

Article 29

- (1) Every person shall have the right to—
- (a) freedom of speech and expression which shall include freedom of the press and other media;
 - (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;

- (c) freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution;
- (d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and
- (e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

(2) Every Ugandan shall have the right—

- (a) to move freely throughout Uganda and to reside and settle in any part of Uganda;
- (b) to enter, leave and return to, Uganda; and
- (c) to a passport or other travel document.

Article 43

(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this article shall not permit—

- (a) political persecution;
- (b) detention without trial;
- (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.

ICCPR

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

OAU 69

Article 3

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.

2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Refugee Convention

Article 7(1)

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

Refugees Act

Section 35

Subject to this Act, a recognized refugee shall –

(d) not engage in any political activities within Uganda, whether at local or national level;

(e) not engage in any activity contrary to the principles of the Charter of the United Nations and the Statute of the African Union, and in particular, shall not undertake any political activities within Uganda against any country, including his or her country of origin.