

OXFORD BROOKES UNIVERSITY

GUILLAUME CLICHE-RIVARD

VIOLATING INTERNATIONAL LAW AND DOMESTIC LEGISLATION: A CASE STUDY OF
UNHCR'S RECOMMENDATION AND UGANDA'S DECISION TO INVOKE THE CESSATION
CLAUSE ON RWANDAN REFUGEES

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UNDER SUPERVISION OF SENIOR LECTURER RICHARD CARVER

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Abstract

The Cessation Clause is a provision of the 1951 Convention Relating to the Status of Refugees, which, when invoked, puts an end to the international protection provided to a specific group of refugees. This disposition of the international convention strips the targeted individuals of their refugee status and forces them back into their country of origin. In 2011, the United Nations High Commissioner for Refugees (UNHCR) took the decision to recommend the invocation of the Cessation Clause for the Rwandan refugees who fled their country between 1959 and 1998; thereby assessing that Rwanda had now become safe for these refugees to return.

Currently, UNHCR recommends all Member States to invoke cessation by 30 June 2013 for more than 100,000 individuals worldwide. This 'recommendation' raises important concerns about the role and the impartiality of the agency, as human rights organizations severely condemn violations of civil and political rights in Rwanda. Moreover, even if the final decision to invoke the Cessation Clause remains in the hands of the state providing protection to the refugee population, in the case of Uganda, international pressure has made such a decision unavoidable. Notwithstanding international refugee law, domestic legislation and the principle of *non-refoulement*, the Government of Uganda (GoU) is about to force the return of more than 10,000 refugees back to a country they are still fearing.

This dissertation aims to address the international law violations entailed in UNHCR's decision to recommend the invocation of the Cessation Clause. In the case of the Government of Uganda, the dissertation challenges Kampala's threatened decision to implement the Cessation Clause in the light of its domestic legislation and international law standards.

Dedication

This thesis is dedicated to the thousands of Rwandan refugees about to face cessation in Uganda and in the world. May UNHCR hear reason.

Acknowledgments

Recalling and reaffirming the importance and universality of the Nairobi Code – Model Rules of Ethics for Legal Advisors in Refugee Cases.

A special thank you to Doctor Barbara Harrell-Bond whose passion and fight for refugee rights is a model and inspiration for all human rights activists and to Richard Carver for your time and guidance.

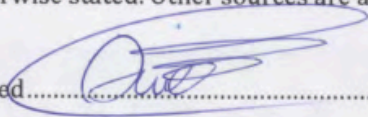
Manzi, for your bravery, courage and humanism.

Dieudonné, Alexis and Andrew: Murakoze Cyane!


France Cliche, Claude Rivard, Evi Kyprioti and Leticia Villeneuve for your support and encouragements.

Statement of Originality

This thesis is the result of my own independent work/investigation, except where otherwise stated. Other sources are acknowledged by explicit references.

Signed  Date: 25 January 2013

I hereby give consent for my thesis, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

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Statement of Ethics Review Approval

This dissertation involved human participants. A Form E1BE for each group of participants, showing ethics review approval, has been attached to this dissertation as an appendix.

Acronyms

1951 Convention	1951 Convention Relating to the Status of Refugees
DRC	Democratic Republic of Congo
ExCom	Executive Committee
GoR	Government of Rwanda
GoU	Government of Uganda
HC	High Commissioner for Refugees
ICVA	International Council of Voluntary Agencies
IRRI	International Refugee Rights Initiative
NGO	Non-Governmental Organization
OAU Convention	Convention Governing the Specific Aspects of Refugee Problems in Africa
OPM	Office of the Prime Minister
RDO	Refugee Desk Officer
REC	Refugee Eligibility Committee
RLP	Refugee Law Project
RPF	Rwanda's Patriotic Front
RSD	Refugee Status Determination
UDF	United Democratic Forces of Rwanda
UNHCR	United Nations High Commissioner for Refugees
UNHCR's Handbook	UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status in the 1951 Convention and the 1967 Protocol Relating to the Refugee Status

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1. Introduction

The Convention Relating to the Status of Refugees¹ was drafted in 1951 (hereafter, 1951 Convention), as a response to the massive population displacement caused by the Second World War and its aftermath in Europe. The 1967 Protocol relating to the Status of Refugees² expanded its geographical scope and eliminated the time limits of protection.³ As of 1 April 2011, 144 states were parties to the 1951 Convention and 145 were parties to the 1967 Protocol.⁴ Article 35 of the Convention declares that the United Nations High Commissioner for Refugees is responsible for supervising the respect of the rights accorded in the Convention; Articles 2 and 3 of the 1967 Protocol reinforce this mandate.

Article 1 of the 1951 Convention, read together with the 1967 Protocol, provides a specific definition of a refugee under international law. Refugee Status Determination (RSD) is conducted by States or UNHCR, depending on governments' will and capacity to do so.⁵ To be granted refugee status, an asylum-seeker needs to demonstrate 'a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'.

There are two regional conventions that extended this definition. The Cartagena Declaration on Refugees for Latin America, Mexico and Panama of 1984, which includes in its definition 'persons who flee their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or *other circumstances which have seriously disturbed public order*'

¹ UN General Assembly, 'Convention Relating to the Status of Refugees', 28 July 1951, *United Nations*, Treaty Series, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html> [accessed 24 October 2012].

² UN General Assembly, 'Protocol Relating to the Status of Refugees', 31 January 1967, *United Nations*, Treaty Series, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html> [accessed 24 October 2012].

³ UNHCR, 'Refugee Status Determination – Identifying Who is a Refugee', September 2005, available at: <http://www.unhcr.org/refworld/pdfid/43141f5d4.pdf> [accessed 24 October 2012].

⁴ UNHCR, 'States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol', April 2011, available at: <http://www.unhcr.org/3b73b0d63.html> [accessed on 19th September 2012].

⁵ UNHCR, 'Refugee Status Determination Project', 2007, available at: <http://www.unhcr.org/pages/4a16b1d06.html> [accessed on 19th February 2012].

[emphasis added]⁶. The Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter, the OAU Convention),⁷ drafted in 1969, includes ‘any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or *events seriously disturbing public order* in either part or the whole of his country of origin or nationality’ [emphasis added]. This specific addition allows states to grant refugee status to individuals fleeing ‘events seriously disturbing public order’ and delimits an important difference between the 1951 and 1969 refugee definitions.⁸ By December 2006, 45 African states had ratified the Organization of African Unity (OAU) Convention.⁹

The 1951 Convention confers international protection to individuals entitled to refugee status. However, such protection can be terminated.¹⁰ Article 1C (1) to (6) defines the so-called ‘Cessation Clause’. This clause, when invoked, ceases refugee status and its conferred international protection. Sub-Articles 1C (1) to 1C (4) express how a refugee can *voluntarily* put an end to his or her status by re-availing him or herself of the protection of his country of origin, of his country of asylum or of a third country. Moreover, sub-Article 1C (5) expresses how states can terminate a refugee’s status without his or her consent: ‘ [...] he [the refugee] can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality’.¹¹ Article 1C (5) thus provides an incentive for states to cease the refugee status of a group of persons based on the fact that the

⁶ Americas – Miscellaneous, ‘Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama’, 1984, Cartagena (Colombia), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b36ec> [accessed on 19 February 2012].

⁷ Organization of African Unity, ‘Convention Governing the Specific Aspects of Refugee Problems in Africa (‘OAU Convention’), 10 September 1969, 1001 U.N.T.S. 45, available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html> [accessed 21 November 2012].

⁸ International Council of Voluntary Agencies, ‘Refugees and Displacement’, 2005, available at: www.icva.ch/ro_06_module2_fr.doc [accessed 21 November 2012].

⁹ African Commission on Human Rights and Peoples’ Rights, ‘AU Convention Governing Specific Aspects of Refugee Problems in Africa’, 2012, available at: <http://www.achpr.org/instruments/refugee-convention/> [accessed 31 March 2012].

¹⁰ UNHCR, ‘The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – Questions and Answers’, September 2011, available at: <http://www.unhcr.org/4ec262df9.pdf> [accessed on 19th September 2012].

¹¹ *Op. Cit.*, UN General Assembly, ‘Convention Relating to the Status of Refugees’.

circumstances that led to their flight have ceased to exist.¹² Article 1.4 (e) of the OAU Convention similarly provides that status can be ceased when the refugee ‘can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality’.¹³

Since 2002, the Government of Rwanda (GoR) has repeatedly requested the United Nations High Commissioner for Refugees to invoke this clause on Rwandan refugees who are unwilling to return to their country of origin.¹⁴ In 2009, the pressures intensified as the UNHCR Executive Committee’s (ExCom) 60th Session (2009) recommended invoking the clause in 2011.¹⁵ In response to UNHCR’s decision, Non-Governmental Organizations (NGOs) and concerned individuals drafted a petition arguing that the time was not right for such an invocation.¹⁶ The strategy succeeded in postponing the recommendation, but has not achieved its withdrawal as UNHCR now recommends that states ‘commence to progressively implement throughout 2012 all aspects of cessation of refugee status (including the exemption procedures) for Rwandan refugees who had fled Rwanda as of and including 1998, so as to enable their status definitively to cease, latest by 30 June 2013’.¹⁷

¹² Article 1C (6) defines the same provision for stateless persons.

¹³ *Op. Cit.*, Organization of African Unity, ‘Convention Governing the Specific Aspects of Refugee Problems in Africa (‘OAU Convention’)’.

¹⁴ The Fahamu Refugee Programme, ‘Rwanda; Cessation of Refugee Status is Unwarranted – Memo of Fact and Law’, September 2011, available at:

<http://www.refugeelegalaidinformation.org/sites/srlan/files/fileuploads/Memo%20of%20Fact%20and%20Law.pdf> [accessed on 19th September 2012].

¹⁵ UNHCR, ‘UNHCR Executive Committee 60th Meeting’, 2009, available at:

<http://www.unhcr.org/pages/4a8bc9286.html> [accessed on 19th September 2012].

¹⁶ Fahamu Networks for Social Justice, ‘Fahamu Mounts Petition Drive, Releases Report Opposing Cessation of Protection for Rwandan Refugees’, September 2011, available at:

<http://pambazuka.org/en/category/features/76557> [accessed on 19th September 2012] and Rwanda Refugees and Asylum Seekers Community in Uganda, ‘Petition of Rwandan Refugees and Asylum Seekers Living in Uganda to UNHCR Over The Premature and Ungrounded Invocation of Cessation Clause To Our Refugee Status’, 2011, available at: <http://ppdr.info/wp-content/uploads/2012/03/PETITION-OF-RWANDAN-REFUGEES-AND-ASYLUM-SEEKERS-LIVING-IN-UGANDA-TO-UNHCR-OVER-THE-PREMATURE-AND-UNGROUND-ED-INVOCATION-OF-THE-C.pdf> [accessed on 19th September 2012].

¹⁷ UNHCR, ‘Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR’s recommendations on the Applicability of the ‘Ceased Circumstances’ Cessation Clauses’, 31 December 2011, available at: <http://www.unhcr.org/refworld/docid/4f33a1642.html> [accessed 21 November 2012].

To implement such a decision, the refugee protection agency announced, in 2011, a 'Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the "Ceased Circumstances' Cessation Clauses" ', which presented three main components to 'solve' the Rwandan refugee situation: (i) enhancing promotion of voluntary repatriation and reintegration of Rwandan refugees in Rwanda, (ii) pursuing opportunities for local integration or alternative legal status in countries of asylum, and (iii) elaborating a common schedule leading to the definitive cessation of refugee status.¹⁸ The strategy was accompanied by a specific timeline, intended to ensure that states' invocation enters into force at the recommended time.

The document recalls that 'from August 1994 to October 2002, some 3.1 million Rwandan refugees returned home. Between October 2002, when UNHCR started promoting returns, and the end of November 2011, 150,519 refugees repatriated with the assistance of the Office, including 6,855 assisted returns in 2011'.¹⁹ In its strategy, the refugee agency recommends that states apply cessation to those refugees 'who fled the country between 1959 and 31 December 1998 as a result of the different episodes of inter-ethnic violence between 1959 and 1994, the genocide and its aftermath, and the renewed armed conflict that erupted in north-western Rwanda from 1997 to 1998'.²⁰ All Rwandan refugees who fled the country *after* 1998 are, in theory, exempted from the Cessation Clause. To date, more than 100,000 Rwandans still live in asylum, most of whom are reluctant to return.

In 2011 alone, some 3,000 Rwandans sought asylum in Belgium, Uganda and Malawi (to mention only these three countries as examples).²¹ The continuous flight of Rwandans up to this day, and testimonies of those who repatriated during the past years but faced persecution and fled again, clearly, to understate the obvious, elevates doubt on UNHCR's

¹⁸ *Ibid.*, p. 1.

¹⁹ *Ibid.*, p. 2.

²⁰ *Ibid.*, p. 6.

²¹ UNHCR, 'Statistical Online Population Database', 2012, available at: http://apps.who.int/globalatlas/includeFiles/generalIncludeFiles/listInstances.asp?LINK=1&PRG=UNHCR&cb_yearStart=2009&cb_yearEnd=2011&boID=367&boCatID=450102000000&boCatIDLvl=3&Periodicity=y&cb_adminLevel=0&cb_scheme=08000000&L=E&BID=367%A6&BNAME=Originating+From%A6&BCAT=%A6&B LVL=0%A6&BPRD=y%A6&ISOCTRY=RW [accessed 21 November 2012].

assessment.²² Human rights organisations' reports raise important concerns regarding the protection of fundamental civil and political human rights under Kagame's administration, especially concerning freedom of expression and the right to a fair trial related to vague charges of promoting 'genocide ideology'.²³ The 2012 sentencing of Ingabire Victoire²⁴, Chairperson of the United Democratic Forces of Rwanda (UDF) and the arrest of her lawyer²⁵, Peter Erlinder, in 2010, constitute just two examples of how political opposition is oppressed within the country.²⁶ Kagame also seems to be involved in similar activities outside the country. The repeated murder attempts on former General Kayumba Nyamwasa²⁷, the assassination of the Rwandan dissident Ingabire Charles in Kampala in 2011²⁸ and alleged planned eliminations of Rwandan refugees in the United Kingdom during the same year²⁹ represent examples of Rwanda's treatment of exiled political opponents.

UNHCR's decision to recommend the invocation of the Cessation Clause for Rwandan refugees raises important concerns about the role and the impartiality of the organization.

²² IRIN, 'Migration: Rwandan Refugees Reluctant to Repatriate', November 2011, available at: <http://www.irinnews.org/printreport.aspx?reportid=94029> [accessed 21 November 2012].

²³ Amnesty International, 'Rwanda Annual Report 2011', 2011, available at: <http://www.amnesty.org/en/region/rwanda/report-2011> [accessed 21 November 2012]; Amnesty International, 'Rwanda urged to end clampdown on dissent as Charles Ntakirutinka released', December 2012, available at: <http://www.amnesty.org/en/news/rwanda-urged-end-clampdown-dissent-charles-ntakirutinka-released-2012-03-01> [accessed 21 November 2012]; Amnesty International, 'Vague laws used to criminalise criticism of government in Rwanda', 2010, available at: <http://www.amnesty.org/en/news-and-updates/report/vague-laws-used-criminalise-criticism-government-rwanda-2010-08-31> [accessed 21 November 2012] and Human Rights Watch, 'Human Rights in Rwanda', 2012, available at: <http://www.hrw.org/africa/rwanda> [accessed 21 November 2012].

²⁴ Daily Nation, 'Rwanda Jails Opposition Leader for 'denying genocide'', October 2012, available at: <http://www.nation.co.ke/News/africa/Rwanda+opposition+leader+jailed/-/1066/1607522/-/sew9xc/-/index.html> [accessed 1 November 2012].

²⁵ The Guardian, 'Peter Erlinder Arrest a Blow to International Law', June 2012, available at: <http://www.guardian.co.uk/law/2010/jun/29/peter-erlinder-arrest-international-law> [accessed 1 November 2012].

²⁶ Human Rights Watch, 'World Report 2012: Rwanda', 2012, available at: <http://www.hrw.org/world-report-2012/world-report-2012-rwanda> [accessed 21 November 2012].

²⁷ France-Rwanda Tribune, 'Attempt Murder Trial Exposes Rwandan Opposition Crackdown', August 2012, available at: <http://www.france-rwanda.info/article-attempted-murder-trial-exposes-rwandan-opposition-crackdown-109519288.html> [accessed 21 November 2012].

²⁸ BBC News, 'Rwandan Journalist Charles Ingabire Killed in Uganda', December 2011, available at: <http://www.bbc.co.uk/news/world-africa-16012659> [accessed 21 November 2012].

²⁹ The Proxy Lake, 'UK: Rwandan Refugees Warned of Elimination Plans', January 2011, available at: <http://www.theproxylake.com/2011/01/rwandan-embassy-in-uk-and-its-evil-plan-to-silence-dissident-refugees/> [accessed 21 November 2012].

This dissertation addresses the international law violations implicit in UNHCR's decision. In the case of the Government of Uganda, the dissertation addresses Uganda's decision, its implementation and its application of the Cessation Clause with regard to domestic legislation and international law. In summary, this dissertation aims to answer two principal questions: 1) Is UNHCR respecting international law by recommending the cessation of Rwandan refugees status? and 2) Is Uganda's implementation and process of the Cessation Clause respecting its own domestic legislation and international law?

2. Research Methodology

This research for this dissertation was led in four steps: a review of the literature on cessation, an analysis of the legal texts, interviews with legal experts and extensive fieldwork in Uganda. First, between 1 March and 15 May 2012, I conducted preliminary research in Oxford (United Kingdom) at the Fahamu Refugee Legal Aid Programme under the supervision of Dr. Barbara Harrell-Bond. This first segment of the research was based on an extensive literature review. The literature I reviewed is documented throughout this thesis and/or cited in the bibliography. During this time, I developed significant knowledge of international refugee law and the Rwandan refugee situation across East Africa. The relevant monographs and publications on the topic were consulted.³⁰

The second step of this research was to analyse the legal framework governing the Cessation Clause and the refugee rights in Uganda. Concerning international law, the 1951 Convention, the 1967 Protocol, the 1969 OAU Convention, the Cartagena Declaration and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were studied. UNHCR's Handbook, UNHCR's Comprehensive Strategy on Rwanda, UNHCR's Guidelines on Cessation Procedures, UNHCR's Guidelines on Exemption Procedures and UNHCR's Note of Suspension of Cessation constituted the principal sources. The 1995 Ugandan Constitution, the 1999 Citizenship and Immigration Control Act, the 2006 Refugee Act and the 2010 Refugee Regulations represented the primary sources of domestic law.³¹

³⁰ J. Hatzfeld, 'Life Laid Bare: The Survivors in Rwanda Speak', *Other Press*, 2007; J. Waller, 'Becoming Evil: How Ordinary People Commit Genocide and Mass Killing', *Oxford University Press*, 2002; Mahmoud Mamdani 'When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda', *Princeton University Press*, 2001; E. Zorbas, 'Reconciliation in Post-genocide Rwanda', *African Journal of Legal Studies*, Volume 1, Number 1, 2004, p. 29-52; Marie-Beatrice Umutesi, 'Surviving the Slaughter', *University of Wisconsin Press*, 2004; Johan Pottier, 'Re-Imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century', *Cambridge University Press*, 2002; B. S. Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation', *Oxford University Press*, 2003; James C. Hathaway, 'The Meaning of Repatriation', *International Journal of Refugee Law*, Vol. 9, No.4, 1997; R. Bonoan, 'When is International Protection No Longer Necessary?', Working Paper No. 8, *Inter-University Committee on International Migration*, 2001 and more.

³¹ These documents are referenced through the text.

The third step of this research consisted of interviews with relevant refugee law experts and UNHCR focal points on cessation. During this period, interviews were conducted at UNHCR's headquarters in Geneva with Isabelle Marquez (Senior Legal Officer for the Africa Bureau) and Alice Edwards (Senior Protection Officer for International Protection Department). Moreover, communications (via telephone or email) were held with Michele Cavinato (Policy Officer Bureau of Europe for UNHCR), Dr. James C. Hathaway, Dr. Galya Ruffer and Deirdre Clancy (Co-director, IRRI). This third step allowed understanding the principal challenges that such type of research faces and helped to prepare the fieldwork. It also provided up to date information on the situation in Uganda and on the sensitivity of the issue in that country. Finally, these contacts provided an in-depth understanding of the contentious questions in international refugee law and of the different approaches that these experts use to answer the relevant issues.

Fieldwork in Uganda commenced on 1 July and ended 15 December 2012. It was possible to interview government officials, UNHCR staff, international refugee law experts, Ugandan lawyers and refugees. The fieldwork was done in collaboration with the Refugee Law Project (RLP), the main providers of legal assistance for refugees in Uganda, and with the International Refugee Rights Initiative (IRRI).

A combination of social and legal methodology was used to conduct this research. The data collected from a social research qualitative approach were set against doctrinal legal sources such as international treaties, law, guidelines and standards. Open-ended interviews were conducted with relevant experts. From June to December 2012, 17 interviews were conducted targeting specific aspects and actors involved in the cessation exercise. For government officials, Commissioner for Refugees Apollo Kazungu and Senior Protection Officer Douglas Asiimwe were interviewed at the Office of the Prime Minister of Uganda (OPM). The Refugee Desk Officer (RDO) for Mbarara, Walter Wolver, was also interviewed prior to our visit to the settlement. Moreover, discussions were held with UNHCR Senior Protection Officer, Esther Kiragu. A number of Ugandan refugee lawyers were also interviewed at RLP, IRRI and with Zachary Lomo, refugee law lawyer who had directed the RLP earlier. Data was collected and interviews were conducted with refugees

in the settlement of Nakivale from 15 July to 01 August 2012; many refugees were also interviewed in Kampala. The handwritten testimonies of more than 400 Rwandan refugee families (1,818 individuals) unwilling to return to Rwanda were collected and analysed for the purpose of this research. The Refugee Law Project team, of which I was a member, collected these testimonies during our visit to Nakivale, July-August 2012. These were collected in order to prepare cases for exemption based on international guidelines. Thus, the testimonies of 16% of the Rwandan population facing cessation in Uganda (1,818/11,700) were assessed.

The difficulties and the limits of this research were numerous. First and foremost, this thesis challenges decisions and actions taken by UNHCR and the Government of Uganda in the invocation of the Cessation Clause. As cessation is a very sensitive topic, governmental and UNHCR officials were often reluctant to provide information. It is indicative that the Government of Uganda denied permission to access the settlements even after multiple requests, while access to Nakivale was granted for only 7 days.

In terms of accessing primary data, the language barrier was also a problem as the majority of the refugees living in Nakivale had very little knowledge of French or English. An interpreter was present at all time. However, interpreters were not familiar with the legal language governing cessation; many words (i.e. 'cessation', 'revocation' or 'ceased circumstances'), do not directly translate in Kinyarwanda. As mistrust and lack of confidence prevails among the Rwandan refugee population, engaging in open dialogues with individuals constituted an important challenge in accessing primary data. In many cases, since refugees could only tell us that they did *not* trust their interpreters *through the interpreter*, we could only assume the consequences.

3. Discussion: Confronting Law and Practice

In this chapter, the decision to invoke cessation, its implementation process and the consequences it creates will be examined in light of international law, norms, standards, guidelines and domestic law. This chapter will evaluate if 1) UNHCR respects international law and standards by recommending the cessation of Rwandan refugees status; and if 2) Uganda's implementation and process of the Cessation Clause respects domestic and international law.

3.1 UNHCR Policies and International Legislation

It is important to mention that the 1951 Convention and the 1969 OAU Convention remain silent on the process of the application and the implementation of the Cessation Clause. In treaty law, the Cessation Clause is only mentioned at Article 1C of the 1951 Convention and at Article 1.4 of the OAU Convention. Therefore, this chapter discusses the standards and guidelines, mostly produced and defined by UNHCR. Even if UNHCR's guidelines and procedures are not binding, these documents have important implications on the interpretation of the 1951 Convention and cannot be disregarded.

This first section will determine if UNHCR is acting within the limits of its mandate when recommending the invocation of the Cessation Clause. The second section will analyse if the decision follows general practices in international refugee law. Finally, the third section will address UNHCR's assessment of the situation in Rwanda.

3.1.1 Overstepping its Mandate: UNHCR's Decision to Invoke the Cessation Clause

The invocation of the Cessation Clause requires an assessment of the situation in the country from which refugees fled. According to UNHCR's Executive Committee (ExCom) Conclusion No. 69 (XLIII) issued in 1992, 'in taking any decision on application of the Cessation Clauses based on 'ceased circumstances', *states* must carefully assess the fundamental character of the changes in the country of nationality or origin, including the

general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist' [emphasis added].³² The statement highlights that the responsibility to assess the situation in the country of origin of the refugees remains in the hand of the states. Even though UNHCR can assist and monitor such an assessment,³³ it remains unclear whether the UNHCR should do such assessments itself.

Nevertheless, in the case of Rwanda, UNHCR undertook the responsibility for *pronouncing* on the situation in the country of origin; in its Comprehensive Strategy for Rwanda, UNHCR states that 'Rwanda has undergone rapid, fundamental and crucially positive changes. The country has changed significantly since the 1994 genocide, and today enjoys an essential level of peace and security'.³⁴ In practice, this declaration seems to allow UNHCR to recommend the invocation of the Cessation Clause for the refugee population and excuse states' from their responsibility to assess the situation in Rwanda.³⁵ However, the ExCom Conclusion declares that UNHCR and the High Commissioner (HC) retain only a supervisory role: 'the application of the Cessation Clause(s) in the 1951 Convention rests exclusively with the Contracting States, but the High Commissioner should be appropriately involved, in keeping with the role of the High Commissioner in *supervising* the application of the provisions of the 1951 Convention as provided for in Article 35 of that Convention' [emphasis added].³⁶

It should be noted that even if many States have expressed doubts about Rwanda, UNHCR currently continues to pressure governments to implement *its* recommendation. An

³² UNHCR, 'Cessation of Status', October 1992, ExCom Conclusions 69, available at: <http://www.unhcr.org/3ae68c431c.html> [accessed 31 March 2012].

³³ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html> [accessed 27 November 2012].

³⁴ *Op Cit.*, UNHCR, 'Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the "Ceased Circumstances' Cessation Clauses', Article 15.

³⁵ UNHCR, 'Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention [Global Consultations on International Protection/Second Track]', May 2001, available at: <http://www.unhcr.org/refworld/docid/3bf925ef4.html> [accessed 22 November 2012].

³⁶ *Op Cit.*, UNHCR, 'Cessation of Status'.

internal report from the International Council of Voluntary Agencies (ICVA) – UNHCR Informal Meeting of 24 October 2011, indicated that neither the Democratic Republic of Congo (DRC), nor the Republic of Congo were likely to invoke cessation.³⁷ At this meeting, UNHCR could not say whether Uganda and Zambia were to invoke the Cessation Clause. Considering that discussions between these countries have been ongoing since 2002, it remains unclear whether UNHCR is *recommending* or *imposing* the invocation of the Cessation Clause on these states. Assuming the latter, there is no justification either in the 1951 Convention nor in UNHCR’s mandate for such an action.

Such uncertainty demonstrates states’ reluctance to respect UNHCR’s recommendation. In the case of Uganda, less than eight months before the cessation recommendation is to be implemented, Uganda’s Senior Protection Officer, Douglas Asiimwe, stated that his government ‘was not yet talking about cessation’,³⁸ suggesting that invoking the Cessation Clause did not represent a priority for the Government of Uganda. Considering that discussions have been ongoing for more than ten years and that, in the case of Uganda, the decision to invoke cessation was taken by the GoU more than two years ago,³⁹ it is quite clear that the country is not especially anxious to implement such a decision.⁴⁰ Additionally, further communications indicated that the GoU was unlikely to achieve the full implementation of UNHCR’s comprehensive strategy on cessation by 30 June 2013.⁴¹

Discussions with the Ugandan Commissioner for Refugees, Apollo Kazungu, on 26 September 2012, revealed that there were internal disagreements as to how cessation was going to be implemented in Uganda and how strictly the process was going to follow

³⁷ International Council of Voluntary Agencies, ‘UNHCR Informal Meeting On Invocation of Cessation for Rwandan Refugees’, *Unofficial*, 24 October 2011.

³⁸ Personal communication with Apollo Kazungu, Commissioner for Refugees at Office of Prime Minister Uganda, 3rd of October 2012.

³⁹ UNHCR, Government of Uganda and Government of Rwanda, ‘Joint Communiqué of the 8th Tripartite Commission Meeting’, Uganda, May 2010, on file with author.

⁴⁰ Such apparent hesitancy in 2012 is in sharp contrast to Uganda’s position before (see *Op Cit.*, Barbara Harrell-Bond, ‘Cessation Clause Ugandan Style’); the change in attitude is only explicable because of the change in personnel at the ministerial level.

⁴¹ Personal communication with the Office of Prime Minister Uganda, 21st of October 2012.

international guidelines.⁴² Even if it seems clear today that Uganda is going to invoke cessation, it is also clear that the agenda and the timeframe of such a process are not being set by Uganda. Officers at OPM Uganda have expressed being under international pressure to invoke cessation ‘in time’. It remains unclear whether this pressure comes from UNHCR, Rwanda or both.

Furthermore, if Uganda is reluctant to implement the cessation clause, EU member states may decide to ignore such a recommendation altogether.⁴³ According to Michele Cavinato, Policy Officer at UNHCR’s European Bureau in Brussels and focal point for Rwandan Cessation Clause in Europe, European States are unlikely to follow UNHCR’s recommendation to invoke the Cessation Clause for Rwandan refugees.⁴⁴ While Mr Cavinato noted that the majority of Rwandans have been locally integrated in their host states, the concern was expressed for those currently seeking asylum in Europe. Mr Cavinato assured that Europe will normally not consider Rwanda as a safe country of origin, and hopes that the recommendation will not affect the new refugees who are seeking asylum from persecution occurring after 1998. Thus, Geneva seems to be pushing a decision that creates friction between itself and its regional offices, or at least in the case of Africa and Europe.

The fact that very few States have officially invoked cessation creates important inequalities: Rwandan refugees residing in countries invoking cessation will be repatriated, but those living in another country may be ‘spared’. There is a clear injustice based on refugees’ country of asylum considering that UNHCR’s recommendation was set to be ‘global’. In fact, refugees will be repatriated based on their country of asylum rather than on the assessment of their on-going claims. Thus, UNHCR’s incapacity to convince states to

⁴² Personal communication with Apollo Kazungu, Commissioner for Refugees at Office of Prime Minister Uganda, 26th of September 2012.

⁴³ Hungry of Truth, ‘Les réfugiés rwandais ne peuvent rentrer dans un enfer’, February 2012, available at: <http://hungryoftruth.blogspot.com/2012/02/fin-du-statut-de-refugie-les-rwandais.html> [accessed 10 November 2012].

⁴⁴ Telephone conversation with Michele Cavinato, Policy Officer at UNHCR’s European Bureau in Brussels and focal point for Rwandan Cessation Clause in Europe 17 April 2012.

implement such recommendation directly challenges the fundamental principle of the 'ceased circumstances Cessation Clause'.

Forcing individuals unwilling to return to their country is not going to terminate any refugee situation, but will rather create situations further endangering their lives. The forceful repatriation of Rwandan refugees residing in Tanzania in December 1996 perfectly demonstrates such risk.⁴⁵ At that time, hundreds of Rwandan refugees in Tanzania sought asylum in Uganda in order to escape forced repatriation to Rwanda. Reports demonstrate that many refugees died trying to reach Uganda at that time.⁴⁶ Moreover, a significant number of the refugees who were forcefully repatriated to Rwanda in 1996 faced persecution upon return and fled Rwanda again.⁴⁷ In June 2013, the majority of Rwandan refugees, once expelled from Uganda, will probably act the same way and could seek refuge in unsafe countries such as DRC, thus creating a new series of problems and certainly not resolving these refugee's situation.

3.1.2 Reforming General Practices, Creating Law and Reinterpreting the Convention

UNHCR's should normally have the sole role supervising cessation operations.⁴⁸ According to Alice Edwards, Senior Protection Officer, UNHCR, Geneva, the refugee agency bases its authority to make such decision as to recommend the invocation of the Cessation Clause on the High Commissioner's mandate.⁴⁹ However, how the HC's mandate can be interpreted as to include cessation recommendations is unclear. According to law, governments wishing to

⁴⁵ Beth Elise Whitaker, 'Changing Priorities in Refugee Protection: The Rwandan Repatriation From Tanzania', February 2002, available at: <http://www.unhcr.org/3c7528ea4.pdf> [accessed on 22 November 2012] and Joel Frushone, 'Repatriation of Rwandan Refugees Living in Tanzania', January 2003, available at: <http://reliefweb.int/report/united-republic-tanzania/repatriation-rwandan-refugees-living-tanzania> [accessed on 22 November 2012].

⁴⁶ Amnesty International, 'Human Rights Overlooked in Mass Repatriation', 1997, available at: http://www.essex.ac.uk/armedcon/story_id/Human%20Rights%20Overlooked%20in%20Mass%20Repatriation.pdf [accessed on 15 July 2012] and Amnesty International, 'Rwanda and Burundi - The return home: rumours and realities, 1996, available at: <http://www.amnesty.org/en/library/info/AFR02/001/1996> [accessed on 15 July 2012].

⁴⁷ Jesuit Refugee Service, 'Is Rwanda Safe? An Inquiry into the Reluctance of Rwandan Refugee Community to Repatriate', 2004 available at: <https://www.jrs.net/assets/Publications/File/Rwanda.pdf> [accessed on 22 November 2012].

⁴⁸ *Op Cit.* UNHCR, 'Cessation of Status'.

⁴⁹ Interview with Alice Edwards, Senior Protection Officer at UNHCR Geneva, 23 April 2012.

invoke cessation on the Rwandan population should have conducted their own assessments of the situation in Rwanda and presented their findings to UNHCR.⁵⁰ Had this been done, UNHCR could counter-check it on the basis of NGO reports, for example. Such a procedure would have respected and reaffirmed the organisation's supervisory role.⁵¹

Instead, UNHCR's decision has increased uncertainty around the international framework governing the Cessation Clause and has overstepped its authority to impose procedures that are not justified in law. From 1951 to 2008, the Cessation Clause was invoked about 25 times, mostly in the Global South following regime change, states' democratization or independence.⁵² Thus, UNHCR's triple recommendation to invoke cessation for Liberian, Angolan and Rwandan refugees in 2012-2013 represents an increase of this strategy to terminate refugees' status.⁵³

International refugee law experts have raised concerns with regard to UNHCR's recommendation to invoke cessation and have questioned the agency's work by raising important legal concerns. It has been argued that UNHCR concentrates on finding solutions to refugeehood rather than offering solutions to refugees.⁵⁴ Such a drastic consequence as refugee status cessation should not be regulated by standards and guidelines, but should rather constitute an independent, state-motivated decision, which UNHCR should supervise but certainly not lead.

⁵⁰ Merissa Elizabeth Cwik, 'Forced to Flee and Forced to Repatriate? How the Cessation Clause of Article 1C (5) and (6) of the 1951 Refugee Convention Operates in International Law and Practice', 2011, Vanderbilt Law School, available at: <http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Cwik-CR.pdf> [accessed on 14 June 2012].

⁵¹ Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance', *International Organization*, Vol. 50 NO. 3, 2000, available at: <http://www.jstor.org/stable/2601340> [accessed on 14 June 2012].

⁵² Yasmeen Siddiqui, 'Reviewing the Application of the Cessation Clause of the 1951 Convention Relating to the Status of Refugees in Africa', 2009, Oxford University.

⁵³ UNHCR, 'Protracted Refugee Situations In Liberia and Angola to Finally End', June 2012, available at: <http://www.unhcr.org/4fed81049.html> [accessed on 14 July 2012] and UNHCR, 'Comprehensive Solution Strategies for Angolan, Liberian and Rwandan Refugees Affected by Cessation of Refugee Status', July 2012, available at: <http://www.unhcr.org/4ffd435d9.html> [accessed on 4 September 2012].

⁵⁴ James C. Hathaway, 'Refugee Solutions, or Solutions to Refugeehood?', Centre for Study of Human Rights, *Refuge*, Volume 24, Number 2, available at: <http://www.questia.com/library/1G1-178453436/refugee-solutions-or-solutions-to-refugeehood> [accessed 23 November 2012].

Furthermore, in recommending cessation, UNHCR has included exemptions for Rwandan refugees unwilling to return.⁵⁵ The first category of exemption includes refugees still retaining a well-founded fear of persecution. UNHCR is recommending a full re-evaluation of these refugees' claim considering their assessment of fundamental changes in Rwanda. However, a significant number of these refugees were granted refugee status upon individual evaluation of their cases once they reached their country of asylum.⁵⁶ By such a new practice, UNHCR is recommending that states re-assess refugee status on the basis of 'still existing' well-founded fear of persecution. How often does the organization intend to recommend such procedure? How often will refugees be expected to demonstrate that they still qualify to keep their status? Moreover, how can a refugee be expected to demonstrate individual and specific proofs of a permanent well-founded fear of persecution in their country more than ten years after fleeing?

Refugee status is granted, in the strict understanding of the 1951 Convention, to an individual who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. According to UNHCR's recommendation in this case, such fear has to be permanent in order to remain a refugee. The fact that a state party to the Convention properly assessed a refugee's claims and decided to grant status does not seem to have an impact on the temporal validity of such status. Is UNHCR suggesting that well-founded fear does not simply have to be proven upon entry, but at any point in time? Well-founded fear of persecution has to be permanent for refugee status to be permanent? If such understanding does not contradict the 1951 Convention, it clearly challenges states' general practice, as no state seems to have defined a mechanism of periodic re-assessment of refugee status. If many States have developed mechanisms to *revoke* refugee status in concordance to the 1951 Convention, such a mechanism was not defined for 'ceased circumstances' cessation.⁵⁷ Considering the number

⁵⁵ UNHCR, 'Guidelines on Exemption Procedures in respect of Cessation Declarations', December 2011, available at: <http://www.unhcr.org/refworld/docid/4eef5c3a2.html> [accessed 22 November 2012].

⁵⁶ Human Rights First, 'A Decade of Unrest: Unrecognized Rwandan Refugees in Uganda and the Future of Refugee Protection in the Great Lakes', 2004, available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/Decade-of-Unrest.pdf> [accessed on 14 June 2012].

⁵⁷ UNHCR, 'Note on the Cancellation of Refugee Status', November 2004, available at: <http://www.unhcr.org/refworld/docid/41a5dfd94.html> [accessed 26 November 2012].

of refugees in protracted situations across the world who are not facing periodic re-assessment of their claims, general state practice does not seem to require *permanent* well-founded fear of persecution, but only well-founded fear upon entry.

The 1951 Convention stipulates that individuals have to demonstrate an individualized well-founded fear of persecution.⁵⁸ However, UNHCR recommends a '*global*' cessation of individually granted status.⁵⁹ The fact that individual fear can be determined as having ceased based on a global assessment creates fundamental problems. If refugees have an opportunity to challenge such assessments individually through exemption procedures, UNHCR's recommendation transfers the burden of the proof on the applicants.⁶⁰ This understanding of global 'ceased circumstances' liberates states from providing proof of individual ceased circumstances. Thus, since the 'global' refugee is not at risk anymore, refugees still having a well-founded fear have to refute this global assessment with individual proofs.

The 1951 Convention addresses the rights of *a* refugee [emphasis on the use of singular]. Group or global cessation does not exist in the 1951 Convention, the 1967 Protocol or the OAU Convention. Thus, the recommendation of general or partial cessation finds no reference in international treaty law. If refugee status is granted on an individual basis, it should be ceased the same way. Such fact is even acknowledged by UNHCR's Guidelines on Cessation at Article 17: 'the 1951 Convention does not preclude cessation declarations for distinct sub-groups of a general refugee population from a specific country, for instance, for refugees fleeing a particular regime but not for those fleeing after that regime was deposited'.⁶¹ This suggests that UNHCR is attempting, without their consent, to create law and to reinterpret the 1951 Convention signed by more than 145 states.

⁵⁸ *Op Cit.*, General Assembly, 1951 Convention, Article 1.

⁵⁹ *Op Cit.*, UNHCR, 'Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the "'Ceased Circumstances' Cessation Clauses', Article 22.

⁶⁰ *Op Cit.*, UNHCR, 'Guidelines on Exemption Procedures in respect of Cessation Declarations', Articles 58-59.

⁶¹ UNHCR, 'Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "'Ceased Circumstances'" Clauses)', 10 February 2003, HCR/GIP/03/03, available at: <http://www.unhcr.org/refworld/docid/3e50de6b4.html> [accessed 2 December 2012], Article 17.

The fact that the Cessation Clause is related to individual persecution and/or to an event (external aggression, occupation, foreign domination), the absence of criteria for stability or peace in the country of flight and the legal confusion about the fundamental and durable changes criteria create uncertainty in the cessation of refugee status.⁶² With the current mechanism of exemptions defined by UNHCR, refugees would have no opportunity to reach the 1969 definition of a refugee and to argue being unable to re-avail themselves of the protection of their state due to ‘events seriously disturbing public order’ or more. There is no guarantee that UNHCR’s Guidelines would protect a refugee against forced repatriation to ‘unsafe’ territories where he does not face targeted persecution. UNHCR, regional organizations and states should be pressed to develop exemptions based on extended definitions of refugees in order to avoid such scenario. At this point in time, in the hypothetical case where cessation would be invoked on DRC refugees who fled the country before 2000, the refugees would have no forum and no legal basis to convey that they still deserve refugee status based on the 1969 OAU Convention.

UNHCR has presented two possible exemptions to the Cessation Clause in its Guidelines.⁶³ The first exemption, based on continued well-founded fear of persecution, was presented earlier in this chapter. The second exemption is provided to refugees having ‘compelling reasons arising out of past persecution’ and that could therefore not be forced back to their country of origin. This exemption covers refugees, or any family members, ‘who have suffered very serious persecution in the past and will therefore not cease to be a refugee, even if fundamental changes have occurred in his [her] country of origin’.⁶⁴

According to UNHCR’s 2011 Exemption Guidelines, there is ‘no fixed definition or scale on which acts of persecution are so severe that an exception’ can be warranted.⁶⁵ ‘Sufficient severity can be inferred from the act itself, e.g. acts *including but not limited to genocide, torture and other degrading treatment, detention in camps or prisons, acts or threat of severe violence, including mutilation, rape and other forms of sexual assault*’ [emphasis

⁶² These criteria are analysed under Section 4.1.3.

⁶³ *Op Cit.*, UNHCR, ‘Guidelines on Exemption Procedures in respect of Cessation Declarations’.

⁶⁴ *Ibid.*, Article 25.

⁶⁵ *Ibid.*, Article 27.

added].⁶⁶ Therefore, in order to qualify for such exemption, refugees are required to detail the serious past persecutions they experienced.

However, the lack of an officially recognised definition of ‘compelling reasons’ and the fact that UNHCR does not provide examples of what the agency understands as ‘compelling reasons’ create problems. Such a definitional vacuum could allow states to impose a very high threshold for such an exemption. During interviews with refugee leaders in Nakivale, it was alleged that the camp authorities declared it would be ‘easier for a camel to go through a needle's eye than for them to qualify for an exemption’.⁶⁷ Such a statement, if its sentiments were to be acted upon, represents an important violation of the fundamental concept of due process.⁶⁸ Considering that the settlement authorities have not even had the opportunity to acquaint themselves with these refugees’ claims, how could they have determined that they will likely be rejected?

Nevertheless, according to Mr Simon Ndaula, clinical psychologist and specialist of refugee clientele in Uganda, such a procedure could itself be extremely dangerous.⁶⁹ In order to continue their lives, a significant number of these refugees have ‘stuck these memories in the back of their mind and have tried to live without acknowledging them’. This defence mechanism was explained as allowing refugees to continue their lives without having to deal with the constant psychological implications of such memories. For nearly 20 years, these refugees have lived trying to forget the 1994 events. Ndaula argues that the exercise

⁶⁶ *Ibid.*, See footnote 21 on the definition of ‘severe persecution’: ‘Stemming from obligations according to e.g. the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 7; 2002 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 3; 1989 Convention on the Rights of the Child, (CRC), Article 37; 1948 Convention on the Prevention and Punishment of the Crime Genocide; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.’

⁶⁷ Interview with a refugee leader, Nakivale Settlement, 28 June 2012.

⁶⁸ UN General Assembly, ‘International Covenant on Civil and Political Rights’, 16 December 1966, *United Nations Treaty Series*, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> [accessed 27 November 2012], Articles 9, 14 and 15.

⁶⁹ Interview with Mister Simon Ndaula, Clinical Psychologist and Specialist of the refugee clientele in Uganda, September 2012.

of remembering could easily recreate traumas as these memories are forced to the surface and could endanger the mental stability of a significant number of the applicants.⁷⁰ UNHCR's assessment of the 'compelling reasons' exemption is mostly based on revealing these memories, even if such consequences are acknowledged in the agency's international guidelines: 'it is important to bear in mind that reviving traumatic memories after many years can result in worsening of or reigniting symptoms of trauma'.⁷¹ Surprisingly, UNHCR recommends a procedure that itself recognizes at risk of jeopardizing the mental health condition of the applicants.⁷² Moreover, for Ndaula, some refugees might simply prefer not to register for exemptions in order to avoid such trauma. For some, it might simply be impossible to recall such events. Such a requirement represents a concrete misunderstanding of the mental stress to which refugees can be exposed.

Moreover, the exemption mechanism is condemned to fail in assessing refugee's claims. According to the clinical psychologist, for a traumatic or post-traumatic symptom to be assessed, an expert would need at least six hours of consultation with the applicant. However, as the exemption interviews are not likely to last more than three hours, it is rather clear that the procedure will not meet its goal and will fail to properly assess the applicants' mental health condition.⁷³ According to this professional, this is one of many examples where UNHCR has failed to properly incorporate clinical psychology and mental health issues into its work.

As noted earlier, the cessation of refugee status, which was initially recommended to be invoked on 30 December 2009, has been postponed to 30 June 2011 and postponed again to 30 June 2013.⁷⁴ Such a situation in itself impacts on refugees' mental health and certainly

⁷⁰ See also: UN Office of the High Commissioner for Human Rights, 'Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('Istanbul Protocol')', 2004, HR/P/PT/8/Rev.1, available at: <http://www.unhcr.org/refworld/docid/4638aca62.html> [accessed 27 November 2012].

⁷¹ *Op Cit.*, UNHCR, 'Guidelines on Exemption Procedures in respect of Cessation Declarations', Paragraph 51.

⁷² *Ibid.*, Paragraph 52.

⁷³ RCK Kenya, 'Refugees, Asylum Seekers and Returnees', available at: www.rckkenya.org [accessed 27 November 2012].

⁷⁴ *Op Cit.*, The Fahamu Refugee Programme, 'Rwanda; Cessation of Refugee Status is Unwarranted – Memo of Fact and Law'.

created an intense source of stress for those unwilling to return.⁷⁵ Some Rwandan refugees have been living in such an uncertain situation, worrying about the future of their legal status and of their possibility to remain in their country of asylum for more than three years now. As a significant number of refugees, throughout interviews, have compared forceful repatriation to Rwanda to a death sentence,⁷⁶ the psychological impact and the mental stress caused by such imbroglio are unacceptable.

3.1.3 Assessing 'Ceased Circumstances' and Effective Protection

UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status in the 1951 Convention and the 1967 Protocol Relating to the Refugee Status (UNHCR's Handbook) mention that the Cessation Clause is 'based on the consideration that international protection is no longer justified on account of changes in the country where persecution was feared, because the reasons for a person becoming a refugee have ceased to exist'.⁷⁷ The Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation mentions that 'the changes that have occurred must be of a fundamental and durable character'.⁷⁸

The use of different legal terms in the documentation published by UNHCR creates misunderstandings. Paragraph 135 of UNHCR'S Handbook states that the Cessation Clause will be invoked when 'fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution' have occurred.⁷⁹ Paragraph 115 states that the Cessation Clause can be invoked only if 'the reasons for a person becoming a refugee have

⁷⁵ *Op Cit.*, Interview with Mister Simon Ndaula, September 2012.

⁷⁶ The testimonies of more than 400 Rwandans unwilling to repatriate were translated and analysed with the help of interpreters during this research. More than one hundred refugees also discussed issues related to cessation with the legal team of the Refugee Law Project during information and advocacy sessions hold in June 2012 (Nakivale and Oruchinga Settlements, Uganda).

⁷⁷ UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees', January 1992, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html> [accessed 27 November 2012], p. 19.

⁷⁸ *Op. Cit.*, UNHCR, 'Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'Ceased Circumstances' Cessation Clauses' p. 5.

⁷⁹ *Op. Cit.*, UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Paragraph 135.

ceased to exist'⁸⁰. However, 'reasons for a person becoming a refugee have ceased to exist' and 'fundamental and durable character' changes imply different standards as one is based on changes and the other on an event. On the other hand, 'fundamental and durable character' changes could also occur without necessarily meaning that the 'reasons for a person becoming a refugee have ceased to exist'. This last example takes on particular significance for 'political' refugees, that is people fleeing because of their political opinion or their presumed political opinion. It could be argued that a refugee who fled the 1994 genocide nowadays sees that the reasons of his flight have ceased (event), but this would not necessarily imply that fundamental and durable changes have occurred in the country, as reconciliation is debated in Rwanda (changes).⁸¹

Additionally, according to Marissa Elizabeth Cwik, 2011 J.D. Candidate at Vanderbilt University Law School, 'the host state must determine that changes are fundamental and durable, and effective protection must be available in the country of origin.'⁸² These factors are relatively defined in UNHCR's Note on the Cessation Clause: 'the right to life and liberty and to non-discrimination, independence of the judiciary and fair and open trials which presume innocence, the upholding of various basic rights and fundamental freedoms such as the right to freedom of expression, association, peaceful assembly, movement and access to courts, and the rule of law generally'.⁸³ The state invoking cessation must prove that 'effective protection is in fact available from the state of origin'.⁸⁴

⁸⁰ *Ibid.*, Paragraph 115.

⁸¹ Eugenia Zorbas, 'Reconciliation in Post-Genocide Rwanda', *African Journal of Legal Studies*, 2004, available at: <http://www.jonescollegeprep.org/ourpages/auto/2008/3/14/1205519349850/Reconciliation%20in%20Post-Genocide%20Rwanda.pdf> [accessed 2 April 2012]; Max Retting, 'Gacaca: Truth, Justice and Reconciliation in Postconflict Rwanda?', *African Studies Review*, December 2008, available at: <http://muse.jhu.edu/journals/arw/summary/v051/51.3.rettig.html> [accessed 2 April 2012] and Amnesty International Reports at footnote 97.

⁸² *Op. Cit.*, Merissa Elizabeth Cwik, 'Forced to Flee and Forced to Repatriate? How the Cessation Clause of Article 1C (5) and (6) of the 1951 Refugee Convention Operates in International Law and Practice', p. 724

⁸³ *Op. Cit.*, UNHCR, 'Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)', Article 16.

⁸⁴ *Op. Cit.*, Joan Fitzpatrick, Jeffrey Brotman and Susan Brotman, 'Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article I.4 of the 1969 OAU Convention', p.8.

Such requirement can hardly be reached in the case of Rwanda as NGO reports, such as that of Amnesty International, raise important concerns with regards to the political stability of Rwanda and the protection of fundamental human rights under Kagame's administration, especially considering the violation of freedom of expression and the vague charge of 'genocide ideology'.⁸⁵ There are also numerous concerns regarding Kagame government's claims of free and fair elections and substantive democratic reforms.⁸⁶ In light of the evidence that civil and political rights in Rwanda continue to be violated, how can it be argued that fundamental and durable change has occurred, justifying the invocation of the Cessation Clause? Given that the recommendation states that Cessation is not going to be applied on Rwandans who escaped the country after 1998, UNHCR clearly acknowledges Rwanda's unsafe conditions. This fact directly challenges the credibility of UNHCR's assessment of the situation in Rwanda and indicates that fundamental, durable, and positive changes have not occurred in Rwanda.

In its Comprehensive Strategy, UNHCR says that 'the vast majority of Rwandan refugees fled their country of origin as a result of the 1994 genocide and its aftermath, including armed clashes in north-western Rwanda that occurred in 1997 and 1998. Many others, however, left Rwanda before 1994, fleeing inter-ethnic violence that occurred following the death of the Rwandan monarch in 1959 and that continued episodically through to 1994'.⁸⁷ If such events have now ceased, the fundamental changes requirement in the country of origin has not necessarily been reached. Moreover, is UNHCR only recommending cessation for the individuals who fled such events? Would an individual who fled religious persecution before 1998 be targeted by cessation? Is the scope of cessation based on the events leading

⁸⁵ See Amnesty International, 'Rwanda Annual Report 2011', 2011, available at: <http://www.amnesty.org/en/region/rwanda/report-2011> [accessed 31 March 2012] and Amnesty International, 'Rwanda urged to end clampdown on dissent as Charles Ntakirutinka Released', December 2012, <http://www.amnesty.org/en/news/rwanda-urged-end-clampdown-dissent-charles-ntakirutinka-released-2012-03-01> [accessed 31 March 2012].

⁸⁶ Amnesty International, 'Vague laws used to criminalise criticism of government in Rwanda', 2010, available at : <http://www.amnesty.org/en/news-and-updates/report/vague-laws-used-criminalise-criticism-government-rwanda-2010-08-31> [accessed 2 April 2012] and Human Rights Watch, 'World Report 2011: Rwanda', 2011, available at: <http://www.hrw.org/world-report-2011/rwanda> [accessed 2 September 2012].

⁸⁷ *Op Cit.*, UNHCR, 'Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'Ceased Circumstances' Cessation Clauses', Article 6.

to flight or on the date of flight? Again, such uncertainty generates serious stress within the Rwandan refugees' communities and does not find any reference in international law.

Furthermore, the Comprehensive Strategy does not determine specific procedures for 'cyclical' refugees. Some refugees fled Rwanda in 1994, were forcefully repatriated from Tanzania in 1996 and decided to flee to Uganda after 1998. Since 1998, some of them also re-availed themselves to the protection of their State, but have fled again since.⁸⁸ In such cases, which date will be considered as the 'date of flight'? Will the first flight be considered as determinant or will the last request for asylum be taken into account? Additionally, as the 1951 Convention and the 1969 OAU Convention state that refugees' status can be terminated based on fundamental changes in the country of flight,⁸⁹ how can UNHCR explain that its recommendation to invoke cessation on Rwandan refugees sees its scope delimited by the dates 1959-1998? Such a decision represents a new practice to which no reference in international law can be found.

Moreover, the simple fact that UNHCR limits its decision to refugees who fled prior to 1998 demonstrates that the country is not safe for return. Is UNHCR assessing that post-1998 refugees' claims are not significant enough to prevent return of pre-1998 refugees? Rwanda still annually produces a significant number of refugees on grounds of political persecution.⁹⁰ Thus, by recommending the involuntary repatriation of pre-1998 refugees to Rwanda, is UNHCR denying civil and political rights to these forced returnees?

A report of a meeting held on the 18 February 2010 between Mr. George Kuchio, Senior Protection Officer of UNHCR Uganda and the Urban Community of Rwandan Refugees in Uganda quotes Mr. Kuchio as saying that: 'UNHCR Geneva has thoroughly examined the

⁸⁸ See the 400 exemption cases claims compiled in the Nakivale Settlement, on file at the Refugee Law Project.

⁸⁹ *Op. Cit.*, UN General Assembly, 'Convention Relating to the Status of Refugees', Article 1C (5).

⁹⁰ Refugee Law Project, 'A Dangerous Impasse: Rwandan Refugees in Uganda', June 2010, available at: http://refugeelawproject.org/others/10_06_28_A_Dangerous_Impasse,Rwandan_Refugees_in_Uganda.pdf [accessed 21 August 2012].; The Economist, 'Paul Kagame under Scrutiny', August 2010, available at: <http://www.economist.com/node/16750119> [accessed on 27 November 2012] and Ann Garrison, 'Rwanda's 1994 Genocide and the 2010 Elections', *Global Research*, January 2010, available at: <http://www.globalresearch.ca/rwanda-s-1994-genocide-and-the-2010-elections> [accessed on 27 November 2012].

situation in Rwanda and found conclusive evidences that it is premature to invoke the 'Ceased Circumstances Cessation Clause' to the refugee status of Rwandan Refugees'. He said that the 'country is experiencing on-going persecutions on the grounds of ethnic discrimination against Hutus, of political oppression and of complete absence of freedom of expression'. He also raised concerns about 'tyrannical laws, lack of rights to life, oppressive security services, non-independent judiciary, etc.'. He finally mentioned that 'UNHCR would never invoke the Cessation Clause, unless the RPF (Rwanda's Patriotic Front) Regime puts an end to such kind of persecutions'.⁹¹

Mr. George Kuchio' statement was presented to UNHCR Uganda and OPM during a meeting held with urban refugees on the 26 June 2012.⁹² The answer to the comment came directly from his successor, Esther Kiragu, UNHCR Senior Protection Officer in Uganda, who revealed that she had never visited Rwanda and thus was unable to defend empirically the 'ceased circumstances' cessation. Moreover, such evasive answer, given directly to Rwandan refugees and their representatives, represents a concrete misinterpretation of the fear they face.

Moreover, the fact the UNHCR's highest authority in Uganda cannot provide information on the situation in Rwanda raises questions on the existence of any report of UNHCR's assessment. If the report were available and accessible, Esther Kiragu could have directly referred to it in order to justify UNHCR's decision to invoke cessation. Moreover, the fact that she was not considered to be part of such assessment creates important concerns as Uganda hosts a significant number of Rwandan refugees. The input of UNHCR's highest authority in Uganda, considering the proximity between Kigali and Kampala and considering the political complexity of the Great Lakes Region, would have been essential to any assessment on Rwanda's situation.

⁹¹ Manzi Mutuyimana, Report of the Meeting between UNCHR and the Rwandan Urban Refugee Community in Kampala – 18th February 2012, *unofficial*, on file with author.

⁹² Manzi Mutuyimana, Report of the Meeting between UNCHR and the Rwandan Urban Refugee Community in Kampala - 26th June 2012, *unofficial*, on file with author.

Considering serious NGO critiques on the political and civilian rights situation in Rwanda⁹³, it seems unclear whether such assessment was ever conducted. During this research, many requests to access this report were made to UNHCR's local and international offices, but such permissions were always denied. Thus, to date, it becomes very difficult to determine if such assessment of the situation in Rwanda was ever really conducted.

3.2 The Government of Uganda Confronted to its Domestic Law And International Obligations

The Republic of Uganda ratified the 1951 Convention and its 1967 Protocol in 1976.⁹⁴ Moreover, Kampala endorsed the 1969 OAU Convention in 1987.⁹⁵ It is also bound by the African Charter of Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and other human rights treaties.⁹⁶ The 2006 Refugee Act of Uganda⁹⁷ governs refugee matters in the country along with its 2010 Regulations⁹⁸. The Act adopts the refugee definition included in both 1951 and 1969 conventions and additionally grants refugee status to individuals 'owing to a well-founded fear of persecution for failing to conform to gender discriminating practices'.⁹⁹ Up to 2010, 139,448 individuals¹⁰⁰ were recognized as refugees in Uganda, making the country one of 'the Sub-Saharan Africa's principal refugee hosting

⁹³ See footnote No. 22

⁹⁴ UNHCR, 'Universal Periodic Review: Uganda', 2011, available at: <http://www.unhcr.org/refworld/pdfid/4d806bc112f.pdf> [accessed 21 November 2012].

⁹⁵ *Ibid.*

⁹⁶ Geneva Academy, 'Uganda International treaties adherence', May 2011, available at: http://www.geneva-academy.ch/RULAC/international_treaties.php?id_state=163 [accessed 21 November 2012] and Hannah R. Garry, 'Applying the 'Plumb Line' of Uganda's Bill of Rights: Human Rights and the Draft Bill on Refugees', *East African Journal of Peace and Human Rights*, Vol. 5, No 1, 1998.

⁹⁷ Government of Uganda, 'The Refugee Act 2006', 24 May 2006, available at: <http://www.unhcr.org/refworld/docid/4b7baba52.html> [accessed 21 November 2012]. *Op. Cit.*, Government of Uganda, 'The Refugee Act 2006'.

⁹⁸ Government of Uganda, 'The Refugee Regulations 2010', *Uganda Gazette*, No 13, Volume CIII, 26th February 2012.

⁹⁹ *Op. Cit.*, Government of Uganda, 'The Refugee Act 2006'.

¹⁰⁰ UNHCR, '2012 UNHCR Country Operations Profile – Uganda', 2012, available at: <http://www.unhcr.org/pages/49e483c06.html> [accessed 21 November 2012].

countries'.¹⁰¹ Out of the 13,000¹⁰² refugees originating from Rwanda, 11,700¹⁰³ are currently facing cessation in the country.

Writings on the refugee situation and experience in Uganda have described the country as an African leader on refugee rights and protection.¹⁰⁴ Reasons for this include its progressive 2006 Refugee Act and 2010 Regulations, its 'political stability' and its security in relation to other States of the region. Uganda's decision to invoke cessation and to follow UNHCR's recommendation creates a breach in this reputation, especially as the absence of a domestic framework governing cessation creates obstacles to civil society and legal advocates in gaining access to legal mechanisms for human rights protection.

Moreover, to accompany the formal cessation process, Uganda also developed a series of push factors in order to force Rwandans back to their country. Since 2010, the right to cultivate land has been suspended for Rwandans living in the settlements.¹⁰⁵ This same year, the violent and forcible repatriation of 1,700 Rwandans, who were gathered in the Nakivale and Kyaka II settlements to receive food aid and were forced into Rwandan military lorries to be driven back, was condemned; Uganda's and UNHCR's roles were highly controversial.¹⁰⁶ The decision to invoke cessation also has important repercussions on Rwandan asylum-seekers who are currently subjected to severe discrimination in Uganda. According to UNHCR's database, the asylum recognition rates have been gradually, then dramatically decreasing since 2000: from 100% in 2001, to 93% in 2004, 34.2% in 2008, 0.4% in 2010 and 0% in 2011.¹⁰⁷

¹⁰¹ Marina Sharpe and Salima Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees Under Uganda's Refugee Act 2006', May 2012, available at:

<http://ijrl.oxfordjournals.org/content/early/2012/08/16/ijrl.ees036.abstract> [accessed 15 June 2012].

¹⁰² UNHCR, '2011 Uganda Report', available at: <http://www.unhcr.org/4fc880a7b.html> [accessed 21 November 2012].

¹⁰³ Kelly E McMillan, 'Uganda's Invocation of Cessation Regarding its Rwandan Refugee Caseload: Lessons for International Protection', *International Journal of Refugee Law*, 10.1093/ijrl/ees025, May 2012, available at: <http://ijrl.oxfordjournals.org/content/early/2012/05/02/ijrl.ees025> [accessed 11 June 2012], p. 233.

¹⁰⁴ *Op. Cit.*, Marina Sharpe and Salima Namusobya, 'Refugee Status Determination and the Rights of Recognized Refugees Under Uganda's Refugee Act 2006'.

¹⁰⁵ *Op. Cit.*, Refugee Law Project, 'A Dangerous Impasse: Rwandan Refugees in Uganda'.

¹⁰⁶ *Op. Cit.*, Barbara Harrell-Bond, 'Cessation Clause Ugandan Style'.

¹⁰⁷ UNHCR, 'Statistic Online Population Database', 2012, available at:

<http://apps.who.int/globalatlas/includeFiles/generalIncludeFiles/listInstances.asp?LINK=1&PRG=UNHCR&c>

In this section, the 2006 Ugandan Refugee Law¹⁰⁸ and its 2010 Regulations¹⁰⁹ will represent primary sources of domestic law along with the 1995 Constitution¹¹⁰ and the 1999 Citizenship and Immigration Control Act¹¹¹. For international law, the 1951 Convention Relating to the Status of Refugees¹¹², its 1967 Protocol¹¹³ and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa¹¹⁴ will constitute the main sources of law along with other human rights treaties which Uganda is party to.

3.2.1 The Silence of the Law

Provisions for cessation of refugee status are defined in the Article 6 of the 2006 Ugandan Refugee Law. Such Article, mostly inspired from the 1951 Convention and the 1969 OAU Convention provide the rationale for invoking the cessation of refugee status once the circumstances that led to a refugee's flight have ceased to exist. The article also includes the 'compelling reasons' exemption. Additionally, Article 39 of the Act defines the 'Procedures for withdrawal of recognition of refugee status' in case of cessation at sub-article (1)(b): '(1) Where the Commissioner had reasonable grounds to believe that a person who had been recognised as a refugee under this Act – (b) has ceased to be a refugee under this Act, the Commissioner shall refer the case to the Eligibility Committee for a determination whether or not that person's eligibility status should be withdrawn'. In such case, the Act determines that the Commissioner shall refer the case of every refugee under the scope of cessation for further determination. In the current case, such disposition would require the

b_yearStart=2005&cb_yearEnd=2011&boID=367&boCatID=450102000000&boCatIDLvl=3&Periodicity=y&cb_adminLevel=0&cb_scheme=08000000&L=E&BID=367%A6&BNAME=Originating+From%A6&BCAT=%A6&B LVL=0%A6&BPRD=y%A6&ISOCTRY=RW [accessed 21 November 2012].

¹⁰⁸ *Op. Cit.*, Government of Uganda, 'The Refugee Act 2006'.

¹⁰⁹ *Op. Cit.*, Government of Uganda, 'The Refugee Regulations 2010'.

¹¹⁰ Government of Uganda, 'Constitution of the Republic of Uganda 1995', 22 September 1995, available at: <http://www.unhcr.org/refworld/docid/3ae6b5ba0.html> [accessed 27 November 2012].

¹¹¹ Government of Uganda, 'Uganda Citizenship and Immigration Control Act 1999', Chapter 66, 1999, available at: <http://www.unhcr.org/refworld/docid/4c59a2be2.html> [accessed 27 November 2012].

¹¹² *Op. Cit.*, UN General Assembly, 'Convention Relating to the Status of Refugees'.

¹¹³ *Op. Cit.*, UN General Assembly, 'Protocol Relating to the Status of Refugees'.

¹¹⁴ *Op. Cit.*, Organization of African Unity, 'Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Convention')'.

Commissioner to submit more than 10,000 cases to the Refugee Eligibility Committee (REC) for re-evaluation.

Article 39 also requires that each refugee whose status is under consideration should be provided a written notice informing themselves of (a) the 'fact that his or her refugee status is under consideration' and (b) 'inviting that person to make written representations regarding his or her status to the Eligibility Committee within fourteen days after the date of service of the notice on him or her'. However, according to UNHCR Guidelines of Cessation, such notification should include much more details, such as information on local integration, alternative status possibilities and the exemption process.

Furthermore, Article 39 calls on the Refugee Eligibility Committee to 'notify the person concerned in writing of its decision' and provided a right for appeal within seven days after notification. Such dispositions do not contradict UNHCR's Guidelines, but the total omission of an exemption procedure in the law creates important concerns. According to the law, the refugee might not even have a chance to appear before the REC; the targeted refugees are only invited to provide written representations. The right to legal representation and the right to an interpreter are also absent from the law. Thus, refugees who receive notifications will be invited to address the REC in writing and will wait for its decision. Evaluation of compelling reasons and assessment of trauma, and post-traumatic symptoms especially, finds no reference in the act. Moreover, if Article 39 provides the right for an appeal, legal representations and refugee hearings are not part of the mandate of the Appeals Board.

Even if Uganda has confirmed its intention to follow UNHCR's Comprehensive Strategy, which includes exemptions procedures, the mechanism to implement such steps has not been set out. At this point in time, if such decision is to respect the international guidelines made on a policy level by relevant authorities, the Ugandan law provides no grounds for lawyers to defend such rights. Uganda could decide not to respect such norms without any legal implications. Such legal vacuum creates important concerns for legal advocates and for refugees.

The 2010 Refugee Regulations do not provide any further relevant information on the process that cessation should follow under domestic law. Article 10 of the document is the only reference to cessation: 'A person may, regardless of the change of the circumstances in the country of origin decline to avail himself or herself of the protection of his or her country and remain in Uganda and in such an instance, he or she may re-apply for refugee status on individual basis'. Even if such article seems to allow refugees to remain in Uganda if they do not desire to repatriate once cessation is invoked, the law is unclear as how such provision should be processed. Will Uganda provide refugees a chance to re-access the Refugee Status Determination mechanism in cases where exemptions would be denied? The application of such a provision remains very unlikely. Moreover, considering that such regulations were adopted in 2010, more than a year after the decision to invoke cessation, the fact that the document omits to provide any references to an exemption procedure is unlikely to be a coincidence. Considering that cessation was formally on the agenda at that time, omitting to incorporate such procedure could be interpreted as a strategy to avoid judicial processes.

The Ugandan Refugee Act remains totally silent on any type of exemption procedure. Therefore, the mechanism developed by UNHCR and presented in the previous section of this chapter finds no reference in Ugandan law. If the Guidelines on Exemption define that refugees themselves should apply for exemption, domestic legislation only requests that the REC examines the individual case before such application. UNHCR's support of the GoU and pressure to implement cessation continue to raise questions, as domestic laws do not meet the criteria presented by the international guidelines. Considering the agency's supervisory role, UNHCR should be pressed to ensure the respect of its own guidelines and withdraw its support to the Ugandan government's process if such criteria were not to be respected.

3.2.2 Confronting Law and Practice

Considering the present 'legal vacuum', many questions were addressed to Walter Wolver, Refugee Desk Officer of Mbarara (RDO) concerning how the Cessation Clause was going to

be processed.¹¹⁵ RLP's team mentioned that the first important challenge for processing cessation was to identify which refugees fall under the scope of the cessation. If it seems that the Nakivale refugee settlement was initially divided in villages on the basis of ethnicity and date of arrival; such divisions have failed to be maintained as time passed and the settlement's population increased. Currently, it is not rare that Congolese, Rwandan, Burundi and Somali refugees live in the same village.¹¹⁶ If Nakivale's villages were founded at different points in time, such factor should allow identifying the group of refugees who fled before 1998. However, such division have failed to take account of time and refugees' movement in the camp. Thus, accurately identifying which refugees fall within the scope of the cessation should represent a significant challenge for authorities as the Joint Communiqué of the 10th Tripartite Commission Meeting between UNHCR, Uganda and Rwanda confirmed when Uganda was intending to invoke cessation specifically for Rwandans who fled between 1959 and 1998.¹¹⁷

According to the Refugee Desk Officer, the process of determining who will return to Rwanda will be based on information collected during an identity verification exercise conducted in 2009. The fact that Rwandans were targeted the first time is not a coincidence as cessation was already on the agenda in 2009. At the time, Rwandans were asked to provide information relevant to their arrival in Uganda, such as the names of their family members or the dates of their flight. Nevertheless, many refugees refused to provide accurate information to the RDO in order to avoid the upcoming invocation of cessation. Some refugees revealed such a situation to the RLP lawyers during advocacy meetings held in June 2012. It was alleged that some provided inaccurate information to the authorities regarding their date of entry in Uganda and even their nationality. Some indicated, for instance, that they had misrepresented themselves as Congolese or Burundian to the camp authorities. Such misrepresentation could reveal itself quite credible considering the

¹¹⁵ Meeting between the RLP and the Refugee Desk Office of Mbarara, Uganda, 17th July 2012.

¹¹⁶ IRIN, 'Rwanda-Tanzania: Thousands More "Rwandans" Step Forward for Repatriation, 2012, available at: <http://www.irinnews.org/printreport.aspx?reportid=40699> [accessed 27 November 2012].

¹¹⁷ UNHCR, Government of Uganda and Government of Rwanda, 'Joint Communiqué of the 10th Tripartite Commission Meeting', Uganda, September 2012, on file with author.

similarities between ethnicity and language; especially in the case of Burundi and Rwandan refugees.

These cases could become themselves extremely complicated if a Cessation Clause was to be invoked on Burundi or Congolese refugees in next years, as it will create statelessness situations. Genuine disguised Rwandans would be expelled to Burundi, but then be denied citizenship because they would be incapable of proving themselves as Burundian. If the current 'momentum' does not advantage Rwandans in Uganda, it should not be taken for granted that refugees from other nationalities will not face the same fate in the future. Again, the fact that this survey is viewed as accurate and complete by the RDO creates fundamental ethical and legal problems. Moreover, the fact that refugees who refuse to provide accurate information to the authorities get temporarily 'rewarded' by avoiding cessation sends a problematic example to other groups of refugees who could consider such 'evasion' in the future.

It is unclear as to why the camp authorities did not retain comprehensive and up to date data of the refugee population living in their settlement. The fact that some refugees could manage to 'disguise' themselves as Congolese and Burundian and that they could 'invent' a date of entry demonstrates important gaps in camp authorities' registration process. Normally, data about refugee arrivals and countries of origin should have been collected as the asylum-seekers register their entry in camps. The 2009 verification exercise leaves the collection of data highly imperfect, often inaccurate and incomplete. As a result, there is no reliable database of Rwandan refugees currently living in Uganda's settlements. Considering such a fact, Uganda should avoid invoking cessation rather than base its process on non-reliable information. Such problems become more evident in the case of urban refugees who 'integrated' Ugandan society. Considering that most of Ugandan citizens do not hold identification cards, it will be impossible for authorities to accurately identify persons who fall within the scope of cessation. In this case, again, the absence of accurate data jeopardizes the integrity of such a process.

Furthermore, despite provisional planning for the exemption process, the RDO's arrangements fail to take into account several significant practical barriers. For instance, provisions for translation services have not been made by the RDO; budget pressures have been cited as the major limitation preventing the access to interpreters. The majority of Rwandans living in refugee settlements speak only Kinyarwanda, and it remains unclear how they will be informed of the cessation process and its consequences, and how exemption claims and subsequent interviews will be conducted. UNHCR's Guidelines on Exemption guarantee the right to interpreters for the entirety of the cessation process, with a special emphasis on exemption procedures.¹¹⁸ Allowing this international standard to be compromised due to budgetary pressures will constitute a significant breach in the fairness and transparency of the cessation process.

On the domestic level, the 2010 Refugees Regulations (statutory instruments regulating the 2006 Refugee Act) provide the right to an interpreter only upon entry in the country. Article 15 expresses that 'a person who applies for refugee status but cannot speak English shall be provided with an interpreter for the purpose of communicating with the refugee reception officer at the time of entry in Uganda'. If the regulation only confirms this right 'at the time of entry in Uganda', no disposition confirms that interpretation will be provided during the exemption interviews. Limiting such provision becomes a problem in the case of cessation procedures. It remains unclear as to how Rwandan refugees will be able to communicate their claims to OPM staff.

It is also unclear how the difficult logistics of distributing and collecting exemption applications will be handled, especially for refugees living in isolated areas outside the camps. Guarantees to provide free legal aid have not been made, and no specifications have been made as to how confidentiality will be ensured. Even in cases where the exemption forms are successfully submitted, there is no clear infrastructure in place to notify refugees about the status of their cases. Whether those that wish to appeal their cases will be expected to travel to Kampala, where the appeals board sits, also remains to be seen.

¹¹⁸ *Op Cit.*, UNHCR, 'Guidelines on Exemption Procedures in respect of Cessation Declarations', Article 29.

UNHCR's 2003 Guidelines on Cessation state that the Cessation Clause does not 'require the consent of or a voluntary act by the refugee'.¹¹⁹ However, this interpretation has been contested. The First Secretary of the Rwandan High Commission in Uganda, Mr. John Ngarambe, at the 28 February 2012 meeting held in Nakivale Refugee Camp, stated that 'the Cessation Clause does not allow anyone to forcefully repatriate Rwandan refugees'.¹²⁰ However, according to the RDO, the 1951 Convention does not prevent forceful repatriation of 'ceased' refugees: since such individuals will not legally be refugees anymore, they will therefore not be covered by the protection of the international treaty.

Refugees who lose their refugee status but remain in Uganda will be considered illegal migrants under the Article 52 of the Uganda Citizenship and Immigration Control Act, and may become subject to deportation. In the same way, the Refugee Act does not provide dispositions for expulsion and extradition of 'ceased' refugees, as they would not benefit from such a legal status after cessation. The Refugee Regulations also prevents such type of repatriation at Article 68 (2): 'a refugee shall not be extradited to a country where he or she is likely to suffer persecution on the grounds of religion, ethnicity or gender'.¹²¹ However, the RDO remains clear: such individuals will not be legally considered as refugees once the cessation is invoked.

Such an interpretation of the 1951 Convention represents a fundamental violation of the principle of *non-refoulement*, the cornerstone of international refugee law. The principle, according to which it is forbidden to render victims of persecution to their persecutor, is a general principle of international law. The Convention Relating to the Status of Refugees provides that no state 'shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'¹²² This principle reflects the commitment of the international community to ensure all persons

¹¹⁹ *Op. Cit.*, UNHCR, 'Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)'.

¹²⁰ *Op. Cit.*, Mutuyimana Manzi, *Report of the meeting of the 28 February 2012 held in Nakivale Refugee Camp*.

¹²¹ *Op. Cit.*, Government of Uganda, 'The Refugee Regulations 2010'.

¹²² *Op. Cit.*, UN General Assembly, 'Convention Relating to the Status of Refugees', Article 33.

enjoy human rights. Moreover, as a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Uganda is prohibited from expelling, 'refouling', or extraditing 'a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture'.¹²³ The RDO's interpretation of the international standard represents a concrete violation of the customary international refugee law.

3.2.3 No Possibility for Local Integration

UNHCR's Guidelines on International Protection recommends that States consider appropriate arrangements for persons 'who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links'.¹²⁴ According to the Guidelines, 'in such situations, countries of asylum are encouraged to provide, and often do provide, the individuals concerned with an alternative residence status, which retains previously acquired rights, though in some instances with refugee status being withdrawn'.¹²⁵ Thus, if the document stresses that local integration is not an obligation, it also recommends it actively.

Moreover, to 'pursue opportunities for local integration or alternative legal status in the country of asylum' represents UNHCR's second 'focal step' in its 2011 Comprehensive Strategy for the Rwandan Refugee Situation. The document also confirms that the third of the Rwandans now exiled were born aboard and that 'many refugees have established family ties through marriage to nationals of the country of asylum'.¹²⁶ After decades of exile, the links of these individuals with their country of origin have weakened considerably. In such cases, UNHCR considers local integration or an alternative legal status to be the most

¹²³ UN General Assembly, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', 10 December 1984, *United Nations, Treaty Series*, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> [accessed 27 November 2012], Article 3.

¹²⁴ *Op. Cit.*, UNHCR, 'Cessation of Status'.

¹²⁵ UNHCR, 'Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)', Article 22.

¹²⁶ *Op. Cit.*, UNHCR, 'Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'Ceased Circumstances' Cessation Clauses', Article 15.

appropriate durable solution'.¹²⁷ Thus it is clear that local integration is an important response to the Rwandan refugees situation.

However, the legal framework for Rwandan refugees to obtain Ugandan citizenship remains in a state of limbo. A decision on Constitutional Petition No. 34/2010, which concerns the interpretation of the 'Citizenship Article' and would determine the fate of thousands of Rwandan refugees seeking Ugandan citizenship, is still pending in the Constitutional Court. According to the petitioners, the Constitution of Uganda 'renders refugees living in Uganda eligible to acquire Ugandan citizenship as long as such refugees satisfy the requirements under the legislation enacted in pursuance of the provisions of the Constitution of Uganda, in particular the Uganda Citizenship and Immigration Act (Cap. 66), the Uganda Citizenship and Immigration Control Regulations (S.I. No. 16/2004) and the Refugee Act 2006'.¹²⁸

According to Ugandan law, individuals can acquire citizenship by birth, registration or naturalisation. Each path requires applicants to satisfy different qualifications. Firstly, refugees are directly barred from acquiring citizenship by birth according to Chapter 3 - Article 10 of the Constitution:¹²⁹

The following persons shall be citizens of Uganda by birth— (a) every person born in Uganda one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926, and set out in the Third Schedule to this Constitution; and (b) every person born in or outside Uganda one of whose parents or grandparents was at the time of birth of that person a citizen of Uganda by birth.

Except for exceptional cases, refugees' parents are not members of the indigenous communities defined at sub-Article (a). Moreover, refugees will not meet the criteria of sub-Article (b) either, as it is expected that their parents or grandparents were either refugees or nationals of the country of origin. However, the sub-Article mentions 'one of whose parents' and therefore supposes that a newborn of a mixed-marriage (a Ugandan and a

¹²⁷ *Ibid.*

¹²⁸ Centre for Public Interest Law and Salima Namusobya, 'Interpretation of Articles 12 and 13 of the Constitution', *Constitutional Petition No. 34/2010*, on file at the Refugee Law Project, 2010.

¹²⁹ *Op. Cit.*, Government of Uganda, 'Constitution of the Republic of Uganda 1995', Chapter 3 Article 10.

refugee) should be granted citizenship upon birth. At this time, such provision remains unclear and in practice, it is impossible for refugees' children to acquire citizenship by birth in Uganda.¹³⁰

On the other hand, Chapter 3 Article 12 (2) of the Constitution defines the conditions to acquire citizenship by registration. Sub-article (2)(c) states that 'every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years' should be entitled to enquire citizenship by registration'.¹³¹ This provision should allow refugees residing in Uganda for at least 20 years to apply for citizenship by registration. Considering the number of Rwandans who sought asylum at the beginning of the 1990's, such interpretation would allow to a significant number of Rwandan refugees facing cessation to seek local integration in Uganda. Article 12(2)(b) also provides such right for 'every person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years or such other period prescribed by Parliament'.¹³² If it can be argued that a refugee having voluntarily chosen Uganda as a country of asylum (criterion b) and having resided more than 20 years in Uganda (criterion a) should be entitled to acquire citizenship by registration, Article 12(1)(a)(ii) however directly denies such right to refugees:

Every person born in Uganda— (a) at the time of whose birth— (i) neither of his or her parents and none of his or her grandparents had diplomatic status in Uganda; and (ii) *neither of his or her parents and none of his or her grandparents was a refugee in Uganda*; and (b) who has lived continuously in Uganda since the ninth day of October, 1962, shall, on application, be entitled to be registered as a citizen of Uganda [emphasis added].

The fact that the law directly makes reference to refugees creates uncertainty as to if refugees can acquire citizenship based on sub-article (b). Conservative interpretation of the provision would lead to the conclusion that the specificity of Article 12(1)(a)(ii), which is the only reference to refugees within this section of the Constitution, could prevent refugees to enquire citizenship based on the provisions of sub-article (b). However, Article

¹³⁰ Dispositions for citizenship by birth are also provided at Article 12 of the Ugandan Citizenship and Immigration law. The Article is a directly copied from the Constitution.

¹³¹ *Op. Cit.*, Government of Uganda, 'Constitution of the Republic of Uganda 1995', Chapter 3 Article 12 (2)(c).

¹³² *Ibid.*, Chapter 3 Article 12 (2)(b).

12(2)(a) of the Constitution, which provides that ‘every person married to a Ugandan citizen upon proof of a legal and subsisting marriage of three years or such other period prescribed by Parliament’, has been considered to allow to refugees to be granted citizenship upon three years of marriage with a national.¹³³ If 12(2)(a) can be read independently from 12(1)(a)(ii), the same should be the case for 12(2)(b).¹³⁴

The Constitution stresses that the conditions to qualify for citizenship by naturalisation are to be defined in law. Section 16 – Article 5 of the Uganda Citizenship and Immigration Control Act provides that:

The qualifications for naturalisation are that he or she— (a) has resided in Uganda for an aggregate period of twenty years; (b) has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application; (c) has adequate knowledge of a prescribed vernacular language or of the English language; (d) is of a good character; and (e) intends, if naturalised, to continue to reside permanently in Uganda.

Firstly, no requirement specifically seems to prevent refugees seeking citizenship by naturalisation. However, the fact that legislators have first prevented refugees to acquire citizenship through registration in the Constitution could be seen as a serious obstacle to the application of such provisions.

Finally, these multiple questions don’t find answers in the Uganda Refugee Act either, which remains silent on the question. The only reference to naturalisation is included in Article 45, which defines that ‘the Constitution and any other law in force in Uganda regulating naturalisation shall apply to the naturalisation of recognised refugees’.¹³⁵ Such specific reference suggests legislators’ intention to allow refugees to become Ugandan citizens through naturalisation. Additionally, the Refugee Regulations Article 67 ‘Refugees attaining citizenship’ directly suggest the existence of such rights:

¹³³ Communications with Zachary Lomo, Former Director of the Refugee Law Project, November 2012.

¹³⁴ Dispositions for citizenship by registration are also provided at Article 14 of the Ugandan Citizenship and Immigration law. The Article is a directly copied from the Constitution.

¹³⁵ *Op. Cit.*, Government of Uganda, ‘The Refugee Act 2006’, Article 45.

A person holding refugee status in Uganda, who becomes eligible to apply for citizenship in Uganda may do so on his or her own behalf and that of his or her spouse and any dependant minor. (2) A person with refugee status who acquires Ugandan citizenship shall cease to be a refugee’.

However, it remains unclear whether such provisions are only entitling refugees seeking naturalisation upon a three-year marriage with a national.

In theory, if the domestic legislation seems to provide multiple paths for legal refugee integration, such rights have never been applied. Less than eight months prior to the final invocation of the Cessation Clause, refugees unwilling to return to Rwanda face nothing but the complete absence of alternative solutions. According to UNHCR’s Note on Suspension of ‘General Cessation’ Declarations in respect of particular persons or groups based on acquired rights to family unity (2011), arrangements should be made for persons who have acquired family rights to stay and have integrated their host community prior to a general cessation declaration.¹³⁶ In cases where such arrangements have not been made, as it is the case in Uganda, a suspension of cessation should allow persons with acquired family rights to continue to benefit from protection as refugees, including protection from *refoulement*.

However, the international provision for suspension of the Cessation Clause based on the right to family unity was flatly disregarded by the RDO representatives at the meeting in Nakivale. It is no coincidence that the RDO ‘ignores’ such suspension considerations recommended by UNHCR, as failure to recognise this recommendation may be another ploy to ensure the return of Rwandan refugees. Thus, up to know, there is no option for local integration in Uganda. This lack of opportunities violates an important number of UNHCR’s guidelines and its Comprehensive Strategy for the Rwandan Refugee Situation.

¹³⁶ UNHCR, ‘Note on Suspension of ‘General Cessation’ Declarations in respect of particular persons or groups based on acquired rights to family unity’, December 2011, available at: <http://www.unhcr.org/refworld/docid/4eef5a1b2.html> [accessed 27 November 2012].

3.2.4 Meanwhile, in the Camps

While many key questions regarding the Cessation Clause remain unanswered, Ugandan camp authorities have begun to exert pressure on Rwandan refugees for them to return to their country of origin. Regardless of their entry date, Rwandans are consistently discriminated against. Most significantly, many refugees in Nakivale have reported that they receive only half or one quarter of the food rations that Congolese and Somali refugees receive.¹³⁷ When the food issue was raised to the Commandant of the Oruchinga Settlement on 30 June 2012, the authorities denied the accusations. However, World Food Programme personnel stated to RLP staff that the situation was a 'known fact'.¹³⁸

Reduced rations are just one of several 'push' mechanisms implemented over the past several years designed to encourage Rwandan refugees to return to their country 'voluntarily'. A 2010 Refugee Law Project publication shows that Rwandan refugees in Uganda have been denied the right to own and cultivate land for the past two years.¹³⁹ These informal measures pursued by the Ugandan government have threatened some Rwandans with starvation, forcing them to relinquish hope of establishing a life in Uganda and agree to 'voluntary' repatriation.

The Ugandan government has also taken more dramatic steps to coerce Rwandans to repatriate. One well-reported example is the events that took place on 14 July 2010, when approximately 1,700 Rwandans were gathered in the Nakivale and Kyaka II refugee camps and violently forced into Rwandan military lorries that drove them back to Rwanda against their will. Separation of families, injuries, and deaths were reported during this process, and the role of the GoU and its cooperation with the Rwandan government in the violent affair was condemned by the international community.¹⁴⁰

¹³⁷ Refugee Law Project, 'Report of the Nakivale Mission on Cessation', July-August 2012, *unofficial*, on file with author.

¹³⁸ *Ibid.*

¹³⁹ *Op. Cit.*, Refugee Law Project, 'A Dangerous Impasse: Rwandan Refugees in Uganda'.

¹⁴⁰ *Op. Cit.*, Barbara Harrell-Bond, 'Cessation Clause Ugandan Style'.

Refugees who have fled to Uganda after 1998 are supposed to be able to apply for refugee status recognition, but many Rwandan refugees in the camps continue to live without formal status. Some Rwandan asylum-seekers attempting to register for refugee status at the Commandant's Office were turned away or never received a response after submitting applications. These delays in the RSD process seem to specifically target recent Rwandan arrivals in the camps, and imply an intention to repatriate even those Rwandans who fall outside of the official scope of the Cessation Clause through delays in bureaucratic process. Those who have not been granted refugee status are especially fearful, as they could be deported at any time for lack of official status.¹⁴¹

Senior legal officers at the RLP confirm that it has become extremely difficult for Rwandans to obtain refugee status in Uganda following the Tripartite Agreement on cessation, and it is all but impossible for these refugees to seek resettlement.¹⁴² Difficulties and delays in obtaining refugee status create a more immediate problem: newly-arrived Rwandan asylum seekers who have not been recognised as refugees are unable to obtain a food ration card, forcing them to rely on others for their survival. Furthermore, it has been reported that a significant number of children born in Uganda to Rwandan parents have not been registered at the Office of the Prime Minister. These children live in Uganda without any legal status, sometimes for many years. Even though many parents attempt to register their new-borns at the OPM in order to secure an extra food-ration, most are forced to abandon the process after experiencing endless delays.¹⁴³

A refugee living in the Nakivale Settlement contacted the RLP on 15 August 2012 with a complaint about the Commandant of Nakivale. The Commandant allegedly announced that every 'wealthy' Rwandan refugee with 'good financial resources' should be sent back to Rwanda. The refugee states that a list with the names of 'wealthy' refugees had been circulating, and that he was among those named.¹⁴⁴ This allegation, if true, represents a

¹⁴¹ *Op. Cit.*, Refugee Law Project, 'Report of the Nakivale Mission on Cessation'.

¹⁴² Introduction interview with the Legal and Psychosocial Department of the Refugee Law Project, 2 July 2012.

¹⁴³ *Op. Cit.*, Refugee Law Project, 'Report of the Nakivale Mission on Cessation'.

¹⁴⁴ Interview with a Rwandan refugee at Refugee Law Project, 15 August 2012.

clear violation of the rights granted in the 1951 Convention, the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, and the Ugandan Refugee Act. There is no existing provision for cessation based on financial resources. This announcement forced the refugee to leave the camp in order to avoid being forcibly repatriated to Rwanda. He also indicated that his refugee card expired in 2010, and that the Commandant's Office refused to issue him a new one. Like so many others, he currently has no legal status in Uganda.

5. Conclusion

Whether UNHCR's decision to recommend cessation violates international law revealed itself to be a complex question. Clearly, the agency's decision to recommend the invocation of the Cessation Clause on Rwandan refugees raises a series of concerns with regard to international law. This dissertation has argued that the agency has overstepped its mandate in assessing the situation in Rwanda and in pressuring states to follow its recommendation. Such a situation represents a new practice for the organization and finds no reference in international refugee law.

Moreover, by declaring Rwanda 'safe for return', UNHCR has also indirectly presented its understanding of legal concepts related to cessation, such as 'fundamental and durable changes', 'ceased circumstances', 'compelling reasons' and more. However, such description of the situation in Rwanda raises several issues as civil and political rights continue to be violated in the country and as President Kagame is now accused by the United Nations of supporting, both militarily and financially, the M23 rebel group in DRC. On the national level, the fact that UNHCR continues to support states only partly implementing its Comprehensive Strategy raises questions as to what the newly drafted guidelines stand for. In cases where states fail to offer local integration or alternative legal status to refugees who are unwilling to return to Rwanda, the agency should be urged to withdraw its support to the state actor.

UNHCR's role as a supervisor of the Convention is clearly affected by such new practices. The fact that the agency desires to play an active role in recommending refugee status cessation raises concerns, as the organization's role should rather be to ensure that the rights and the provisions included in the Convention are respected. Such behaviour finds no justification in the agency's mandate or in international law. UNHCR's decision to recommend the Cessation Clause, its pressure on states, its new definition of the process and legal concepts governing cessation, its complete disregard for the legal and psychological implications of the cessation of refugee status, and its support of states

offering no other choice than forced and involuntary repatriation represent a serious breach of the organization's mandate and the 1951 Convention, and therefore violate international refugee law.

Uganda's implementation and process of the Cessation Clause also raises important concerns with regards to both international law and its domestic legislation. The absence of accurate and reliable data on the refugee population in settlements and other rural/urban areas creates a situation where it becomes impossible to correctly identify who falls under the scope of cessation. This dissertation addressed the different concerns raised by the decision to proceed to cessation based on such inaccurate data. Additionally, as the refugee law remains silent on the requirements of the domestic legal framework governing cessation, declaring Uganda's implementation of cessation as lawful is unjustifiable. The rights to legal representation, to an interpreter or to an appeal, as provided for by UNHCR's guidelines, remain unsure for Rwandans facing cessation in Uganda.

Up to now, early 2013, Uganda has failed to respect the Comprehensive Strategy, as no alternative legal statuses are being offered to refugees unwilling to return to Rwanda. Such a situation disrespects Uganda's engagement, taken in the Tripartite Agreement, to define alternative remedies for refugees unwilling to repatriate. Less than six months prior to the invocation of cessation, it remains unclear whether the exemption procedure will be applied, and if refugees will have the chance to defend their claims. Likewise, push factors as the suspension of the right to cultivate, the significant reduction of food rations and the increased rejection rate of Rwandan refugees' status recognition demonstrate Uganda's clear intention to terminate Rwandan refugees' situation in the country. This dissertation has demonstrated the clear violations of domestic legislation and international law that Uganda is about to commit in the implementation and final invocation of the Cessation Clause.

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Appendix

FORM E1BE RESEARCH ETHICS FOR STUDENTS ON TAUGHT COURSES

Please read the Guidance overleaf

Section A - You and your research project

What is your name?

Guillaume Cliche-Rivard

What is your student number?

11012627

What is your email address?

11012627@brookes.ac.uk

What is your supervisor's name?

Richard Conyon

What is your supervisor's email address?

rho2905@brookes.ac.uk

In which Department are you studying?

- Architecture
 Planning
 REC

What course are you taking?

e.g. BA(Hons) Architecture

M.A. Development/Em.P.

What is the topic area of your research?

Refugee Law

On what kinds of topics will you be collecting data from the participants in the research?

Refugee Law, cessation, human rights

Section B - Your participants

What kind of participants will be involved in your research?

- 1 Professional/management group
 Members of the general public
2 Vulnerable individuals

Briefly describe these participants

1. Refugee Law experts
2. Refugees in camp

How many participants will be involved?

20 Number of people

How will the participants be selected?

1. expertise
2. representatives

Section C - Your data collection methods

How will you be collecting data from the participants?

- By in-depth interviews
 By face-to-face surveys
 By telephone
 By email
 By post
 Other, please specify

What kind of data will you be collecting?

- Quantitative/statistical/numerical
 Qualitative/written/text
 Images/drawings/maps

Will it be possible to avoid asking for personal data from the participants?

- Yes No

Will it be possible to ensure the participants are not being deceived in any way?

- Yes No

Will it be possible to ensure the participants remain completely anonymous?

- Yes No

Will it be possible to ensure the participants do not suffer any negative consequences?

- Yes No

Section D - Declaration

I declare that I will

- give all participants an information sheet conforming to university guidelines
- not contact any participant until my supervisor has approved my information sheet, research questions and methodology
- be sufficiently well-trained in necessary methods of data collection and analysis

Student signature	Date
<i>[Signature]</i>	01/07/12
Supervisor's signature	Date
Research Ethics Officer signature	Date

Fieldwork may commence when the form has been approved, signed and returned via the Supervisor. If a Form E2 is required, the student and the supervisor will be notified by email. Lynne Mitchell, School Research Ethics Officer, 01865 484296, l Mitchell@brookes.ac.uk