

ACCESS TO JUSTICE

A photograph of a person in a red shirt holding a mobile phone, with a makeshift structure made of sticks and branches in the background. The image is partially obscured by a blue banner at the top and a blue banner at the bottom.

Baseline Survey Report on Access to Justice for Forced Migrants

Mbarara, Isingiro, Kyegegwa, Fort Portal, Hoima
and Kiryandongo Districts

Refugee Law Project
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**Mbarara, Isingiro, Kyegegwa, Fort Portal,
Hoima and Kiryandongo Districts**

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List of Acronyms

AAHI:	Action Africa Help International
ARC:	American Refugee Committee
CID:	Criminal Investigation Department
DRC:	Danish Refugee Council
DRC:	Democratic Republic of Congo
DGF:	Democratic Governance Facility
DPC:	District Police Commander
FGM:	Female Genital Mutilation
FRC:	Finnish Refugee Council
GBV:	Gender Based Violence
GIZ:	German International Corporation
IDPS:	Internally Displaced Persons
JLOS:	Justice Law and Order Sector
LCs:	Local Councils
OC:	Officer in-Charge
OPM:	Office of the Prime Minister
REC:	Refugee Eligibility Committee
RWCs:	Refugee Welfare Committees
RDO:	Refugee Desk Officer
RLP:	Refugee Law Project
RSA:	Resident State Attorney
SSP:	Senior Superintendent of Prisons
SGBV:	Sexual & Gender Based Violence
ULS:	Uganda Law Society
UNHCR:	United Nations High Commissioner for Refugees
WFP:	World Food Program

Foreword

Forced migrants are one of the most vulnerable in Uganda. They face double vulnerability as victims of war, conflict or natural disasters and having been displaced from their homes. Access to justice for forced migrants has for a long time been neglected by the JLOS actors. Program implementation is majorly aimed at only Ugandans yet forced migrants are often exposed to the same violations as nationals and sometimes more because of their peculiar circumstances. Forced migrants have a right to access justice, yet face a number of additional challenges compared to their national counterparts.

At a basic level, many forced migrants - especially refugees - originate from countries with different legal regimes and are often unaware of legal processes in their country of asylum. The language barriers confronting forced migrants and their hosts can result in serious miscarriages of justice, including unduly long periods in detention without trial. Even where attempts have been made by a few to access justice, lack of understanding of the system and its workings has resulted in frustration and lack of trust in the system.

This survey offers an important set of insights into not only the perceptions of forced migrants on access to justice but also the current gaps in service provision. It is our hope that it will contribute to the development of an inclusive and comprehensive access to justice strategy in Uganda.



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The team greatly recognizes and appreciates the refugee and IDP communities in Nakivale, Oruchinga, Kyaka II, Kyangwali and Kiryandongo settlement for their eagerness, cooperation, engagement and participation during the entire visit and the community leaders for co-ordinating and organizing meetings even on short notice.

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Executive Summary

The baseline survey conducted in November to December 2012 was intended to guide activity implementation for the Access to Justice Project for forced migrants funded by Democratic Governance Facility in the districts of Mbarara, Isingiro, Hoima, Masindi and Kiryandongo. The survey was carried out to explore access to justice realities in order to inform RLP's project implementation and ensure provision of need based services. The findings from the study will also inform the Justice, Law and Order Sector on critical areas for intervention.

Specifically the baseline survey aimed at:

1. Understanding the knowledge of forced migrants on justice and justice seeking procedures.
2. Establishing Law related problems or issues arising in forced migrant communities that require intervention by the justice system.
3. Identifying the extent to which Justice institutions and legal services exist in the settlements.
4. The social, economic, procedural and cultural factors that influence justice seeking behaviours.

The baseline survey was conducted in six districts in the western part of Uganda namely Mbarara, Isingiro, Kyegegwa, Hoima, Fort Portal and Kiryandongo. Focused group discussions were conducted with forced migrant communities in the settlements and key informant interviews were conducted with staff of the Office of the Prime Minister (OPM), UNHCR, NGOs/Implementing partners on Justice, Police officers, Refugee Welfare Committee leaders, Prison in-mates, judicial officers, Prison officers, State Attorney, Prosecutors and court clerks at the settlement and district levels.

The survey revealed that Forced Migrants encounter several problems that need to be addressed by justice institutions. Most of these problems are criminal in nature and are believed to be on the rise. Formal and informal justice systems exist in and out of the settlements. The formal systems include police, courts and prisons while the informal include Refugee Welfare Committees, Local Councils and Service Providers such as OPM. The communities have a clear understanding of the existence of these systems but are ignorant about procedures involved especially in the formal justice system. Forced migrants generally expressed a lack of confidence in the formal structures and preferred the informal structures. This is mainly because the leaders are community members who understand and experience their problems.

The justice institutions that serve forced migrants are inadequate to meet their needs. Police posts and stations are few and far from the people, courts and prisons are non-existent in the settlements. Language barrier is a big issue when it comes to court processes and legal representation is usually unavailable especially for the accused persons. Legal officers in the

settlements are almost non-existent. Where found, they are too few and overwhelmed by numbers.

The high crime rates in the settlements have been attributed to cultural and social beliefs and these have a great influence on justice seeking behaviors. Most GBV cases go unreported as forced migrants see them as normal and acceptable.

The informal justice system especially the Refugee Welfare Committees and Local Council are making significant contribution in promoting access to justice. They are respected and accepted by the communities. However, they lack adequate knowledge of the existing laws, policies and procedures to adequately address issues.

Generally, service providers lack adequate knowledge on forced migration issues and as a result are ill prepared to handle cases involving forced migrants.

In order to adequately promote access to justice for forced migrants, the respondents raised several recommendations. These included; provision of legal services to forced migrants, continuous legal awareness on laws and policies in Uganda, increase in number of police stations and staff especially female staff in the settlements, establishment of courts in the settlements or introduction of mobile courts, support of the informal structures such as the LCs and RWCs, and capacity building of service providers on the laws, policies and ways of dealing with forced migrants.

1.0 Introduction and background to the study

Forced migration is not a new phenomenon in Uganda. Uganda has experienced wars and natural disasters leaving millions within its borders displaced. The protracted war in Northern Uganda displaced over 1.8 million people. Natural disasters, land disputes and forced evictions continue to fuel internal displacements especially in the Eastern, Western and Northern parts of the country. Uganda has also had a long-standing history of hosting refugees and asylum seekers especially from the Great Lakes region. The Majority of the over 150,000 refugees in Uganda are from the Democratic Republic of Congo, Rwanda, Burundi, Somalia, Ethiopia, Eritrea, South Sudan and the Central African Republic. With on-going political instability in the Democratic Republic of Congo, Uganda is experiencing an influx of refugees from the DRC¹.



Uganda-DRC border-incoming refugees

A significant number of forced migrants (Refugees, asylum seekers and IDPs) have been resettled in the Western parts of the country. The districts of Isingiro, Hoima, Masindi and Kiryandongo house some of the biggest refugee settlements in Uganda, namely Nakivale, Kyangwali, Kyaka II and Kiryandongo respectively. IDPs from northern Uganda self-settled in Masindi, Kiryandongo, and Hoima, while IDPs from Eastern Uganda were resettled in Kiryandongo district following natural disasters in 2010.

¹ 2012 UNHCR country operations profile – Uganda available at www.unhcr.org

With funding from the Democratic Governance Facility (DGF) a baseline survey was carried out in the districts of Mbarara, Isingiro, Hoima, Fort Portal, Kyegegwa and Kiryandongo. The aim of the survey was to assist Refugee Law Project get an understanding of access to justice issues confronting forced migrants in these districts. The study would then guide Legal service provision for forced migrants from the settlements.



Map of Uganda showing refugee and IDP settlements²

² UNHCR Maps accessed at www.unhcr.org

2.0 Survey design and Research methodology

This baseline survey was designed based on the understanding that forced migrants are entitled to the internationally recognised right of Access to Justice. As a vulnerable group, forced migrants experience several challenges in seeking and accessing Justice. This survey therefore sought to understand Access to Justice as understood by the forced migrant community, the problems that the communities face that relate to access to justice and the extent to which Justice services exist in the settlements.

In light of the above, the survey was designed and conducted using qualitative methodologies namely, key Informant Interviews and Focus Group Discussion (FGD) guides.

Prior to the data collection, RLP developed a set of interview guides for key informant interviews and FGDs. The open ended interview guide provided room for open discussion and interaction. The FGDs were carried out in the five refugee/IDP settlements of Nakivale, Oruchinga, Kyaka II, Kyangwali and Kiryandongo. The FGDs targeted women, men and children and each of these categories was met separately. The FGD participants came from villages that were carefully selected with some villages being close to the settlement services' centre and those far away. This was to allow comparison in regard to access to Justice for different villages. The participants were mobilized by their community leaders and the discussions lasted between 1 to 2 hours. In total 11 FGDs of between 10-15 people each were held.

34 key informant interviews were carried out in all the five settlements and with key JLOS Institutions in the districts. The key informants in the settlements were the Office of the Prime Minister (OPM), UNHCR, NGOs/Implementing partners on Justice, Police officers, Refugee Welfare Committee leaders, Prison in-mates. Key informants in JLOS institutions were judicial officers, Prison officers, Police officers at the district level, State Attorneys, Prosecutors and Court clerks. The key informants were selected on the basis that they offer services to forced migrants and are expected to be aware of issues that affect them in regard to access to justice.

At the start of the discussions and interviews, informed consent was sought from the respondents. During the introductory remarks the respondents were assured of confidentiality of their responses and that the information would only be used for purposes of the study and program implementation. The interviews took place in refugee and IDP communities under trees, community leaders' compounds, shelters constructed for community meetings, Prisons and offices of various service providers.

FGD and key informant interviews with forced migrants were conducted with the help of interpreters. Interpreters were freely chosen by the forced migrants from their communities. In instances where the FGD had participants from various nationalities, RLP team ensured that each community had an interpreter and every language interpreter was given an opportunity to explain to his community once a question was asked or a response given. Interviews with prison in-mates were conducted with the help of prison officers who knew

the language. In instances where some RLP team members knew the language spoken, interviews would be conducted in that language.

Quantitative data was collected from court, prison and service providers' records.

Data was collected by two teams. One team visited Nakivale and Oruchinga settlements and another visited Kyaka II, Kyangwali and Kiryandongo settlements. The teams developed preliminary reports that were synchronized to write this report.

2.1 Challenges and Limitations

During the survey, the research team experienced some challenges. The team was not allowed to have discussions with refugees and service providers in Kyaka II settlement. Though the settlement is under the RDO of Mbarara and permission had been granted to visit Nakivale and Oruchinga, the team was denied access because Kyaka II settlement did not expressly appear on the permission letter. The team nevertheless conducted interviews at police stations, courts and prisons outside the settlement which serve forced migrants from Kyaka II settlement.

The distances between the settlements were considerable and as a result a lot of time was spent traveling, leading to exhaustion of team members. The team that visited Kyaka II in Kyegegwa district, Kyangwali in Hoima district and Kiryandongo in Kiryandongo district travelled long distances moved from one district to another and ended up spending more days than planned.



One of the Access roads in the settlement

The survey was conducted during the rainy season and many of the murrum roads were impassable. This made the already long distances to the settlements even longer. On several occasions the vehicle got stuck in the mud and the tyres went flat. The local communities were, however, always willing to push the vehicles out of the mud and the experienced drivers though with difficulty made it through the roads. The rainy season also meant that most forced migrants were in their gardens. They were however flexible and agreed to meet with us in the afternoons.

Despite the fact that the team was granted permission by the Commissioner of Prisons to access prisons in Uganda, the team was denied access into Mbarara prison because of the outbreak of Marburg disease and Hoima Prison because the officer in-charge was not around. As a result the team did not get one-on-one interviews with most in-mates. Nevertheless, the team met with the prison officers and conducted 1 interview with an in-mate in Mbarara Prison.

The survey was conducted towards the end of the year and most service providers were busy finalizing yearly reports and activities. This meant that some targeted informants such as heads of organizations were busy but they at least availed other officers to speak with us.

RLP teams experienced negative attitudes from some service providers who believed that we were conducting a survey to evaluate their work. Some were very unco-operative and others refused to speak to us. As a result, their information that could have provided an insight or reinforced some findings could not be captured and reflected in this study.

3.0 Presentation and discussion of findings

This section analyses and presents the study findings as discussed by the target groups and individual key informants in the community. The findings are presented based on the interview guide questions

3.1 Demographic information on study area

The baseline survey was conducted in six districts in the western part of Uganda namely Mbarara, Isingiro, Kyegegwa, Hoima, Fort Portal and Kiryandongo. Mbarara and Isingiro districts are predominantly occupied by the Banyankore speaking community while Kyegegwa, Hoima, Fort Portal and Kiryandongo are predominantly occupied by the Batooro and Banyoro speaking communities.

3.1.1 Nakivale and Oruchinga

Nakivale and Oruchinga refugee settlements are located in Isingiro district with populations of 64,373³ and 5,789⁴ respectively. Nakivale is the largest refugee settlement in Uganda with 185sq.kms, and is comprised of 68

³ UNHCR statistics as at 31st December 2012

⁴ Ibid

villages. Oruchinga on the other hand covers 8sq.kms⁵. At the time of the study, the numbers were expected to increase due to the influx of asylum seekers from the Democratic Republic of Congo as well as Burundians from Tanzania due to closure of the refugee settlements in Tanzania. These two settlements accommodate refugees from the Democratic Republic of Congo, Somalia, Ethiopia, Eritrea, Rwanda and Burundi and most recently from Sudan (Darfur region).⁶



A view of Nakivale settlement

3.1.2 Kyaka II

Kyaka II refugee settlement located in Kyegegwa district is 85sq.km and has a population of 18,055⁷. It was established in 1983 when Tutsi Rwandans living among the nationals in the Central, South and Western regions of Uganda were moved to one settlement⁸. It currently has refugees of various nationalities including Congolese, Kenyans, Rwandans, Sudanese, Ethiopians, Central African Republic, Malawians and Burundians.⁹

⁵ Ibid

⁶ Interview with the Assistant Camp commandant Nakivale Settlement 27/11/ 2012

⁷ UNHCR statistics as at 31st December 2012

⁸ RLP field report 2011

⁹ Ibid

3.1.3 Kyangwali

Kyangwali refugee settlement on the other hand is located in Hoima district. It is 97sq.kms and it has 14 villages. It has a population of about 21, 280 refugees and asylum seekers. The settlement is comprised of Congolese, Southern Sudanese, Rwandese, Burundians, Somalis, Kenyans and Sudanese from Darfur. Refugees are settled in mixed communities and no specific areas are given to particular nationalities.¹⁰



A sign post to Kyangwali refugee settlement

3.1.4 Kiryandongo

Kiryandongo Refugee and Internally Displaced Peoples'(IDPs) settlement in Kiryandongo district was established in 1992 following an influx of IDPs from Northern Uganda displaced by the LRA conflict. It has a population of 3,652¹¹ people and currently sits on two former government ranches, 1 and 37. Ranch 18 was de-gazetted and now hosts IDPs from Bududa. The majority of the refugees in the settlement are Sudanese followed by Kenyans, Congolese and Rwandans¹². Most of the IDPs are from Bududa and those from Acholi sub-region have settled in nearby Kiryandongo town.

¹⁰ Interview with the Data Clerk, OPM Kyangwali settlement.

¹¹ UNHCR Statistics as at 31December 2012

¹² Interview with the Camp commandant Kiryandongo settlement

3.2 Service Provision in the settlements

The settlements are under the Office of the Prime Minister (OPM) - Directorate of refugees and headed by the camp commandants. OPM is in-charge of general security and protection in the settlement. It allocates land to refugee families (depending on family size) and ensures that they are settled on their pieces of land. It also oversees activities of other service providers in the settlement. OPM works together with police in handle cases of encroachment on land and crop destruction by animals. The Police prevent and detect crime in the settlement and carries out sensitization on the law.

The settlements have various service providers including United Nations High Commission for Refugees (UNHCR) responsible for protection, its implementing partners Action Africa Help International (AAHI) and German International Co-operation (GIZ) in the area of health, legal aid, education, livelihood and community services, Finnish Refugee Council (FRC) for Adult Education, and American Refugee Committee (ARC) for assistance to survivors of Gender Based Violence, Norwegian Refugee Council (NRC) in-charge of food distribution, World Food Program (WFP), Danish Refugee Council (DRC) and Right to Play. The settlements are divided into villages and every village has a Refugee Welfare Committees (RWCs) and IDPs are divided into zones with zone chairmen and the Local Council (LC) structures.

This survey looks at the problems encountered by forced migrants in the settlements with particular interest in those related to justice, the existing access to justice structures at the settlement and district level, services offered by the structures, the perceptions of forced migrants in seeking justice through these institutions, the challenges faced and recommendations as raised by the communities and service providers.

4.0 Problems encountered by forced migrants in their communities

Forced migrants experience various problems in their communities. These problems include inadequate food, clothing, poor education and health services and crime. For this specific study the findings presented are on those problems related to the formal and informal justice systems.

4.1 Crime

Cases that usually arise in their communities include theft, assault, domestic violence, child neglect, witchcraft, rape, defilement, Malicious damage to property, house breaking, burglary, threatening violence, arson, criminal trespass and animals destroying their crops¹³. Illegal trade in medical drugs (unlicensed clinics) was cited in Kyaka II settlement.¹⁴ Murder and armed robbery also occur though rarely.¹⁵ Since 2006 two murder cases have been reported in Nakivale settlement.¹⁶

¹³ Interview with forced migrant communities and service providers

¹⁴ Interview with the OC CID Kyegegwa police station.

¹⁵ Interview with Protection Officer of UNHCR on 29/11/ 2012

¹⁶ Meeting with RWCs in Rubondo Nakvale settlement 1/12/12

According to GIZ, the number of cases reported usually depends on the season. Most cases such as theft, assault and burglary occur during the harvest season. This is mainly because during this time, people sell their harvest and have money. In the Month of October 2012, GIZ handled 20-30 crime-related cases¹⁷.

The communities also cited Inter-tribal conflicts as a cause of crime within the settlement. The conflicts were attributed to different cultures and negative stereotypes about nationalities in the settlement¹⁸. These conflicts usually result into assault and threatening violence cases¹⁹.

In all settlements visited, Gender Based Violence (GBV) cases were cited and cases such as rape, defilement and domestic violence listed among the most commonly reported cases. It was also noted that many refugees and asylum seekers are sexually abused during conflict in their Countries of Origin. Such cases are hard to deal with in regard to justice and most victims present with psycho-social needs²⁰.

4.1.1 Gender Based Violence (GBV)

On average 10 GBV related cases are reported per month in Nakivale²¹ settlement while in Kiryandongo settlement, 5 cases are reported per month²². These cases mainly include rape, defilement, denial of resources and domestic violence. The victims are mainly women and girl children but boys and men have also been reported as victims. The major perpetrators are men.

Several GBV cases however go unreported because of cultural beliefs and the stigma related to reporting such cases. According to OPM in Nakivale, many cases are resolved at the community level and compensation is paid to the complainant or victims family while in others cases the communities simply do not report.

Despite these challenges, the police in Nakivale noted a growth in reporting of GBV cases. This was attributed to the facilitation provided to the police by other service providers to follow up these cases and trainings of refugee leaders on GBV issues which has led to dissemination of information on GBV in the communities.²³ There is also ongoing work on the GBV referral pathway and mobile courts to ensure that cases are handled in time. This will reduce GBV and the court sentences will act as a deterrent to other prospective criminals²⁴.

Some service providers noted that whereas cases reported may be genuine, some are fabricated in the hope of being resettled since UNHCR considers

¹⁷ Interview conducted with the team leader GIZ Nakivale settlement on 28th/11/2012.

¹⁸ FGD with women in Oruchinga 30/11/12

¹⁹ Interview with O/C CID Kyegegwa

²⁰ Interview with UNHCR protection officer in Nakivale

²¹ UNHCR 2012 SGBV Incidences report Jan-Nov 2012

²² Interview with AAHI officer in Kiryandongo

²³ Interview with the O/C Rubondo Police post on 28/11/12

²⁴ Interview with UNHCR protection officer 29/11/12

survivors of sexual violence in its resettlement criteria²⁵. A police officer at Kashojwa Police in Nakivale stated as follows;

“Most of these cases are not genuine, especially the cases pertaining to rape and defilement. The refugees create these cases to present them to UNHCR for resettlement and this has become a soft spot. In the last two months we have received over twenty [20] cases from women claiming that they have been rape by people who are unknown and we never find these ‘rapists’”

Rape and defilement

Statistics from Kiryandongo settlement showed that 12 girls were defiled and impregnated in the month of September 2012. In Kiryandongo, defilement was reported only in the refugee community and not the IDP community.²⁶ Generally, cases of defilement are not reported because families prefer to negotiate and marry off the girl rather than reporting to the authorities. Many families see this as an opportunity to enrich themselves. It was also noted that most cases of defilement arose out of early/forced marriages²⁷. The Congolese community was identified as being notorious for marrying off girls at an early age. This is because in Congo, marriage of girls below the age of 18 is acceptable and not a crime²⁸.

Domestic violence

Domestic violence is prevalent and cuts across all nationalities in the settlement²⁹. Domestic violence cases include physical assault, denial of resources and psychological/emotional abuse. UNHCR statistics for the year 2012 show that 32 cases were reported in relation to physical assault, 16 for denial of resources and 8 for emotional abuse³⁰. It was noted that refugees come into Uganda from different legal systems and do not know that certain acts such as wife beating amount to crime³¹. Though efforts to combat domestic violence are being undertaken, the police faces challenges when dealing with domestic violence relating to spouses. This is because the complainants (usually wives) after the initial report usually return to plead for the release of the suspect (husband) and refuse to co-operate with the police. In one Focused Group discussion, the women explained that when they report their husbands to the police, they are harassed by their communities. In most cases the husband is the bread winner and the family suffers when he is arrested. They would rather have him released and try to settle the matter at home.³²

Female Genital Mutilation (FGM)

²⁵ Interviews with UNHCR in Nakivale and AAHI in Kiryandongo

²⁶ Interview with AAHI officer and O/C CID Kiryandongo Police Station

²⁷ Interview with AAHI officer in Kiryandongo settlement.

²⁸ Interviews with service providers and RWCs in the settlements.

²⁹ FGDs with refugees and RWCs in Nakivale, Kyangwali and Kiryandongo

³⁰ UNHCR SGBV incidences in Nakivale Jan-Nov 212

³¹ Interview with RWCs I, II and III in Kyangwali settlement

³² FGD with Refugee Women in Kyangwali Settlement

Despite the passing of the Prohibition of Female Genital Mutilation Act 2010, the practice of Female Genital Mutilation (FGM), is being carried out in some communities in the refugee settlements. The survey revealed that the Somali community in Nakivale practices FGM. FGM is a recognised and acceptable cultural practice among the Somalis. As a result, most of these cases go unreported for cultural reasons and for fear of repercussions. The cases are only discovered when health complications arise³³.

4.1.2 Land disputes

These usually arise when land boundaries are not respected and forced migrants trespass on each other's land³⁴. Other cases arise when animals usually belonging to nationals destroy or graze in the garden. Such cases are reported to the police, OPM and the local leaders.

5.0 Causes of these problems

The crimes in the communities are attributed to various reasons such as poverty, extra-marital affairs, denial of conjugal rights, polygamy, disrespect among couples, drunkenness, drug abuse, encroachment on land and ignorance of the law.



A typical household in a refugee settlement

³³ FGD with the women Somali Community in Nakivale

³⁴ Interview with OPM in Kyangwali

According to forced migrants, culture is the major cause of gender based violence. Cultural practices such as FGM and, early marriages are considered as normal and acceptable in the Somali and Congolese communities respectively. Domestic violence in form of physical assault was also reported in the Sudanese community in Kiryandongo. The communities with the high occurrences of Gender based violence are Somalis, Sudanese and Congolese communities.

Most refugees come from areas experiencing war and breakdown in the rule of law with few or non-existent legal structures. The lawlessness in the countries of origin makes it difficult for them to abide by Ugandan laws. Coupled with the poor rehabilitation and psycho-social structures to deal with ex-combatants and victims experiencing trauma, these lead to conflicts with in the communities.

The settlements are big with few police posts that are inadequately staffed. As a result, police officers are overwhelmed and unable to adequately attend to the needs of the communities.

6.0 Addressing problems encountered in the community

The justice system is an important structure and provides a platform for addressing problems within the communities and ensuring that justice is done. The survey revealed that both formal and informal justice structures address issues in the forced migrant communities. Both the formal and informal justice structures are well known to the communities. Depending on the need, forced migrants utilise the most accessible and convenient structures.³⁵

6.1 The Formal Justice system

The formal justice system constitutes of structures established by law such as the Police, Courts of law and Prisons.

6.1.1 Police

The Uganda Police Force is established under Article 211 and 212 of the Constitution of the Republic of Uganda 1995 and the Police Act Cap 303 (with the Police Act, amendment 2006). The function of the police is to: Protect life and property; Preserve law and order; Prevent and detect crime and to co-operate with the civilian authority and other security organs established under this constitution and with the population in general.³⁶ Police is the only security organ mandated to operate in the settlement and it carries out its work hand-in-hand with the Office of the Prime Minister. The survey revealed that Police presence in the settlements is grossly inadequate to cater for the needs of the people. The Police posts are few, far apart and often under staffed. Kyangwali settlement³⁷ is served by two police posts and 4 police officers³⁸, Kyaka II has one police post and 5 police officers while

³⁵ Interviews with RWCs in the settlements

³⁶ See Article 212 of the Constitution of the Republic of Uganda 1995

³⁷ Kyangwali settlement covers 97 Sqkms and has 14 villages.

³⁸ Interview with OPM data clerk Kyangwali Settlement.

Kiryandongo has one police post and 5 officers serving refugees and one police station serving only IDPs and other nationals. Nakivale has five police posts and a mobile police unit. Police officers are overwhelmed by the numbers and cannot adequately attend to the client's needs³⁹.

The Child and Family protection Unit is non-existent in the settlements and only one female officer was found in each of the settlements visited. The absence of the Child and Family Protection Unit and inadequate female staff greatly inhibited access to justice for children and survivors of sexual and gender based violence. In one FGD, one female participant stated;

“The only female officer in the settlement is at Rubondo which is very far from here. I feel that police is very insensitive to our needs as women. It is very hard for us to explain what happened to us to male officers and because of this women do not report”⁴⁰

Table 1: Forced migrant population, number of police posts and staff in settlements

Settlements	Population	No. of police posts	No. of police officers
Nakivale	64,373	5	19
Oruchinga	5,789	1	4
Kyaka II	18,055	1	5
Kyangwali	21,280	2	4
Kiryandongo	3,652	1	5

Detention and detention facilities at police

The Constitution of the Republic of Uganda enshrines the right to personal liberty subject to several limitations. It further provides that upon arrest a person should be informed of the nature of charges in a language which they understand. The maximum detention period at police is stipulated as 48 hours.⁴¹

The study revealed that all settlements except Kiryandongo⁴² have separate detention cells for women and men, but that they have no cells for children. Forced migrants are detained for long periods beyond the statutory requirement. IDPs in Kiryandongo mentioned a case of a child (12) who had been detained for 4 days for allegedly stealing a goat. In Oruchinga settlement, oftentimes suspects are detained for a week or more before being taken to court and some are never notified of the reasons for arrest and only

³⁹Interviews with Police officers in the settlements.

⁴⁰ FGD with women at Base camp in Nakivale settlement

⁴¹ Article 23 of the Constitution

⁴² Kiryandongo police post lacks a female cell and detains female suspects in the reception room.

find out in court.⁴³ Police attributed long detention period and delays in forwarding cases to court to structural challenges. At Kyegegwa Police Station (serving Kyaka II refugee settlement), suspects are sometimes detained for a week because the district has no Resident State Attorney (RSA) to sanction files. Files are sent to Fort Portal and this creates delays, especially for aggravated offences.

Police bond

Generally forced migrants are aware of the right to apply for police bond and those that are not aware are usually informed by the police. Bond is granted at the discretion of police when conditions are met. Conditions that apply to nationals when applying for police bond apply to IDPs⁴⁴. Refugees on the other hand must produce evidence of refugee status, substantial sureties,⁴⁵ and a letter from the Assistant Settlement Commandant.⁴⁶ These satisfy police that the suspect is a refugee and not an illegal immigrant or failed asylum seeker who will disappear once bond is granted⁴⁷.

According to the communities, the right to apply for Police bond appears to be a matter of money rather than of right. Detainees are asked for money of up to Five Hundred Thousand shillings (500,000) for release⁴⁸. One man explained;

“It depends on how rich one is or how much property they own. If they know you own something then they ask you to pay depending on what you own. For example, they can charge you up to 500,000/= if they know you have money and when you fail to raise that amount, they keep on reducing the amount to what you can pay.....when you report a case, they ask you whether the suspect is rich and what he/she owns”.

Another added;

“It is only the ones with money who win cases at police and OPM. Many Congolese who had settled here in Oruchinga have moved from this settlement to others because of such injustices.”

During confinement at police, forced migrants are subjected to beatings. An example was given of a Congolese refugee whose arm was fractured as a result of being beaten in the police cell at the hands of police officers.

Discrimination on grounds of nationality was cited when it comes to detention. Refugees are detained for longer periods than nationals. In the event that a refugee reports a case against a national and he/she is arrested, the suspect is usually released after a short while yet when a refugee is arrested on

⁴³ Interview conducted at Mbarara main prison on the 1/12/ 2012

⁴⁴ Atleast one substantial surety.

⁴⁵ Must be a refugee and in position of responsibility.

⁴⁶ Assuring police that the suspect will not escape

⁴⁷ Interview with the O/C CID Kyegegwa Police Station.

⁴⁸ FGD held with men at Oruchinga settlement on the 30/11/ 2012

accusation by national; they are kept in police custody for three days or more days until money is paid for release. The communities generally expressed frustration with the way the police handles cases. Cases are never followed to their logical conclusion and police are alleged to be corrupt. Suspects are arrested and later released without redress to the victim. Cases are rarely taken to court and sometimes persons are arrested arbitrarily. According to the respondents, this was a clear denial of justice and where justice is provided, it is only accessed by the rich⁴⁹.

6.1.2 Courts

In the formal justice system, cases that are sanctioned by the Resident State Attorney (RSA) are referred to court from the police. The survey revealed that most cases do not reach the courts. None of the settlements visited have court structures. Forced migrants rely on courts that are outside the settlements. Kyaka II settlement is served by Kyegegwa Grade I & II Magistrate courts, Grade I Magistrate Court in Kyenjojo and High Court in Fort Portal. Kyangwali is served by the court in Hoima, Kiryandongo by Magistrate Grade I court in Kiryandongo and High Court in Masindi and Nakivale & Oruchinga by Magistrate court in Isingiro and High Court in Mbarara.

These courts serve nationals and are usually far from the refugee and IDP settlements. The nearest court to Nakivale and Oruchinga settlement is about 18-20 Kilometres (Kms) while that to Kyangwali is about 90kms.

Table 2: Distance from settlements to courts

Settlements	Magistrate Court	Approx. Distance (Kms)
Nakivale	Isingiro	45
Oruchinga	Isingiro	18-20
Kyaka	Kyegegwa	8
Kyangwali	Hoima	90
Kiryandongo	Kiryandongo	15

Complainants and witnesses find it difficult to access the courts due to transportation challenges. The survey revealed that most cases are dismissed because of the absence of the complainant or witnesses. In one Focused group discussion, forced migrants expressed dissatisfaction;

*“Transport is arranged by OPM and police for only the suspect/accused to the court but none for the complainants except for survivors of GBV who are assisted by ARC...what are the rest of us (complainants) who do not have GBV related cases supposed to do?.....when they mention that a case has been sent to Hoima, we know that that is the end...”*⁵⁰

The long distances not only hinder access to justice for the complainants but also for the accused especially, when it comes to the right to bail. The accused rarely apply for bail because relatives or friends who could have

⁴⁹ FGD with Men in Oruchinga settlement

⁵⁰ FGD with women in Kyangwali settlement.

stood as sureties cannot afford to travel along with them. Though applying for bail is a constitutionally protected right under Article 23(6)(c) it is extremely rare for the accused[if a refugee] to get bail.⁵¹ The court usually denies them bail on the pretext that they have no substantial sureties and no fixed abode within the area of court jurisdiction.⁵² Mandatory bail is granted to those that have stayed in detention beyond statutory period.⁵³

Findings revealed that the Judiciary is making significant improvements to bring services closer to the people.



A newly constructed court in Isingiro district

A Magistrate Grade I court was introduced in addition to the Magistrate Grade II court in Kyegegwa.⁵⁴ These courts share premises and the Grade I Court sits daily while Grade II sits once a week. The courts however lack a state attorney and the matters are handled by a State Prosecutor.⁵⁵ There are

⁵¹ Interview with the Principle State Attorney Mbarara conducted on the 29/11/2012

⁵² Section 77(2)(d) of the Magistrate court Act laws of Uganda provides that these are some of the conditions that have to be fulfilled before an application for bail is granted.

⁵³ Art 23(6) - 60 days for offences triable by both Magistrate and High Court and 120 for those triable by High Court

⁵⁴ It was upgraded on 21st September 2012

⁵⁵ Interview with Magistrate Grade I at Kyegegwa

ongoing efforts to have mobile courts operational in the settlements to counter the challenges that forced migrants face in accessing the courts.⁵⁶

Legal representation

Although Legal services are provided by Legal aid service providers such as Uganda Law Society (ULS) and a number of UNHCR implementing partners, the study confirmed that there is severe lack of legal representation to forced migrants.⁵⁷ ULS has only one office in Fort Portal while UNHCR legal officers only carry out protection related work and not legal representation for refugees. UNHCR through its implementing partners provides legal services in some settlements⁵⁸ but these remain grossly inadequate. Nakivale settlement has 2 legal officers serving over 60,000 refugees, Kyaka II 1 legal officer while Kyangwali⁵⁹ and Kiryandongo have none. Though IDPs share the settlement with refugees, legal and other services would not be extended to them since they are outside UNHCR mandate.

Table 3: Population vs No. of legal officers

Settlements	Population	Legal officers
Nakivale	64,373	2
Oruchinga	5,789	0
Kyaka II	18,055	1
Kyangwali	21,280	0
Kiryandongo	3,652	0

Legal officers are overwhelmed and unable to adequately attend to cases. The right to legal counsel at police is non-existent as police seldom permit consultation with a lawyer before the end of the initial interrogation process, yet this process is crucial to the outcome of the case.

The absence of legal representation has adverse effects on court cases and most especially for the accused persons. Court procedures such as application for production warrants for purposes of bail applications, cross examination and mitigation of sentences are unknown. An interview with an in-mate whose case is pending judgment revealed that where the complainant and witnesses appear in court, the accused forced migrants are required to cross examine the witnesses with no guidance while the complainant is assisted by a state attorney. The right to fair trial and equality before the law is in most cases eroded leading to miscarriage of justice. He explained;

“..... in court, the lawyer for the other people asked me questions which I did not understand. When I tried to ask him to explain, he did not explain properly....I was also given a chance to ask those people but I did not ask the lawyer questions because I feared him. The process was not fair because the other people had a lawyer to help them yet for me I had no one.”

⁵⁶ UNHCR has already held discussions with the Principle Judge.

⁵⁷ Previous RLP reports had revealed the same.

⁵⁸ Nakivale and Kyaka II

⁵⁹ ARC legal officer left.

One Magistrate highlighted the importance of legal representation in court processes when he mentioned that a Congolese refugee charged with theft was convicted and sentenced to ten months' imprisonment. If he had been represented, perhaps his sentence would have been mitigated.⁶⁰

The absence of advocates leaves the accused persons at the mercy of the judicial officers. The study revealed that in some cases, judicial officers might disregard the principles of criminal law such as the burden of proof and the duty of the prosecution to prove a case beyond reasonable doubt and passed sentences. In an interview with an inmate in Katojo Prison it was alleged that after attending court without the complainant showing up, she was sentenced to 6 months imprisonment with out any witness giving evidence.

Though free legal representation is guaranteed under the Constitution for the complainants and the accused (in capital offences),⁶¹ doubts have been raised about the quality of representation. Throughout the interviews with inmates, the issue of not meeting or knowing their lawyers before court came up. The lawyers never interview the complainants or accused and rely on information on the police file. When interviews are done, they are done so hurriedly⁶².

The survey found that in Mbarara Government prison alone, there are a total of 32 refugees charged with capital offences. Two are facing charges of rape and the rest have been charged with the offences of murder, aggravated defilement and robbery. Most of these are refugees from Rwanda.⁶³ The prisoners charged with murder have been committed for trial before the High court but have neither been taken to court nor availed with legal services. One has stayed on remand for 2 years since committal and has not been produced in court to stand trial.

Language Barrier

The findings show that language barrier is an impediment to justice for forced migrants. Majority of the refugees and asylum seekers come from countries whose official languages are different from that in Uganda while IDPs are usually resettled in areas where their native language is not spoken. Language barriers are a problem not only in court but at police, prison and with other service providers. In relation to access to Justice, the effects are usually felt while in court. The official language of the Court in Uganda is English. Courts serving forced migrants do not have trained court interpreters and usually rely on court clerks who interpret in the areas' native language (Rutooro or Runyakore, Acholi or Kiswahili). Forced migrants who have lived in the area for long may follow court proceedings but find it hard to express themselves.⁶⁴ Translation and comprehension becomes difficult in cases where the dialect and accent are different especially when dealing with Ugandan Kiswahili and Congolese Kiswahili (usually mixed with French and Lingala).

⁶⁰ Grade I Magistrate of Kyegegwa.

⁶¹ Article 28(3)(c) of the Constitution of the Republic of Uganda 1995

⁶² Usually before the court session starts

⁶³ Facts obtained from Mbarara Government Prison as of the 29/11/2012

⁶⁴ Rwandese Inmate in Kyegegwa Prison listened to proceedings in Runyakore.



Research team conducting Key Informant Interviews

The study revealed that poor interpretation services often occasion miscarriage of justice and a significant number of refugees spend an unduly long periods in detention without trial.⁶⁵

Delays in court processes

Delay in the administration of justice is an endemic problem in Uganda's criminal justice system. It affects not only capital offenders but virtually every detainee including refugees charged with minor offences. Judicial officers remand inmates for long periods of time and there are numerous adjournments during trial.⁶⁶ On average petty offenders stay on remand for about 2-3 months and when witnesses or substantial sureties are presented the case is either concluded or bail granted. Some cases stay for as long as 6 months and are later dismissed when the complainant fails to show up in court. Cases committed to the High Court last for as long as 3-4 years before trial. A case in point is of a refugee charged with murder who has been on remand in Mbarara Prison since committal in 2010. He has never been produced before courts of law to date.⁶⁷ Delays in convening High Court sessions have been attributed to lack of funds.

⁶⁵ In one case, the in-mate stayed for one month in prison due to lack of an interpreter

⁶⁶ SSP of Mbarara Prison

⁶⁷ Interview conducted with one of the inmate at Mbarara Prison on the 1/12/2012

Although Article 28(8) of the Constitution provides for the period spent on remand to be taken into account during sentencing⁶⁸ which in effect means that time spent on pre-trial detention is counted towards the overall completion of the sentence, this does not solve the widespread problem of undue remand periods, particularly if the accused is subsequently found innocent. Refugee in-mates expressed uncertainty about their cases:

*“I wish we could have lawyers to help us so that our cases are listened to. We shall then know whether we are guilty or not instead of just living like this...”*⁶⁹

Most communities noted that delays do not only affect the accused but the complainants as well. Complainants get tired of going to court due to the numerous adjournments and costs and eventually give up. As the famous legal maxim goes “justice delayed is justice denied”

6.1.3 Prisons

Prisons lie at the end tail of the criminal justice system when the court has reached a verdict and the accused sentenced to imprisonment. The accused may however be detained on remand pending trial where bail has not been applied for, has failed or conditions set have not been met.

The survey revealed that prisons in western Uganda are congested. Mbarara main prison with a capacity of 300 prisoners currently accommodates over 1000 prisoners⁷⁰ while Katojo Prison in Fort Portal has 854 in-mates which is way above the standard limit. This congestion is partly explained by high numbers of in-mates on remand and committal. Katojo Prison has 586 on remand and 297 on committal⁷¹. Many in-mates are on remand and several have stayed on remand without trial for years. These over stays contribute to the growing population in prisons. They are attributed to delays in prosecution and the fact that Court does not follow sequence of admission but calls for files randomly⁷². Prison authorities have no say over court proceedings but only forward complaints of over stays to the court for quick intervention.

A number of refugees were identified in the Prisons. Mbarara Prison has 40 refugee in-mates (37 male and 3 female)⁷³ while Katojo has 7. The number in Katojo has been attributed to the creation of Rwamwanja refugee settlement.⁷⁴ Most refugee in-mates are of Rwandese and Congolese origin⁷⁵.

⁶⁸ Constitution of Uganda, Article 23(8); “where a person is convicted and sentenced to a term of imprisonment for and offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken in to account in imposing the term of imprisonment.”

⁶⁹ Mbarara Prison

⁷⁰ Information from Prison officer at Mbarara Prison

⁷¹ Interview with Data clerk at Katojo Prison

⁷² On average 40 files are handled per Court session in Fort Portal.

⁷³ Statistics from Mbarara Main Prison

⁷⁴ Supra 71

⁷⁵ Interview with Data clerk in Katojo prison and Prison officers in Mbarara

All Prisons visited have separate detention facilities for men and women. Forced migrants are treated like Ugandan in-mates without discrimination. They have visitation rights save for the fact that they rarely get visitors since prisons are very far from the settlement.⁷⁶ Upon admission into the prison facility after sentencing, the right of appeal is made known to the in-mates but there are no legal officers to assist the in-mates with the appeal process.⁷⁷ The in-mates are also provided with psycho-social support from trained prison officers. The biggest challenge they face with refugee inmates is language barrier as most refugees can neither speak English nor the local language. It is a daunting task to communicate for purposes of instruction and rehabilitation⁷⁸.

Female in-mates with babies are allowed to stay with them until they make 15 months after which they are given away to their relatives. Where there are none, the children are taken to Tooro babies' home⁷⁹.

6.2 Informal Justice Systems

The informal structures in the settlements are made up of service providers such as OPM, RWCs and the LCs.

6.2.1 Refugee Welfare Committees and the Local Councils

The Refugee Welfare Committees (RWCs) is a system that operates in the refugee settlements. It is similar to the Local Council system in Uganda. RWCs are divided into 3 levels of administration; RWC1 has representatives at the bloc level, RWC2 has representatives at village level and the RWC3 heads the committees at the settlement level. Within these levels are various committees including education and security. The Local Council system operates in the IDP settlement. In both systems the members are elected. The IDP community in Kiryandongo has not yet elected its members and those acting are merely volunteers.⁸⁰ These systems handle cases that are not criminal in nature such as debts, land boundaries disputes, conflicts with in the community, civil cases. A referral system lies from the RWC1 to the RWC3. Cases are then referred for further management to either the police or OPM when resolution fails. On average, it takes about 1-2 hours to resolve a case. Some cases are discussed and resolved with only the parties and in others public hearing are called. Public hearings are usually called for cases that involve disputes over land boundaries and destruction of crops by animals.⁸¹ Forced migrants generally expressed confidence in the work done by local leaders and preferred them to police because they are not corrupt and are community members who understand their problems.⁸² Community leaders explained that they are not well versed with the laws in Uganda and lack legal documents. Even though they solve cases, they lack the authority

⁷⁶ Interview with Female Prison officer in Katojo Women Prison.

⁷⁷ Supra 71

⁷⁸ Interview with in-charge \prison Kyegegwa

⁷⁹ Interview with in-charge Katojo women Prison

⁸⁰ FGD with IDPs from Bududa in Kiryandongo

⁸¹ Interview with RWC leaders in Kyangwali.

⁸² FGD with refugees in Kyangwali and IDPs in Kiryandongo.

with which to back up their decisions. Community leaders have been identified as hindering justice especially in cases related to defilement and early marriages. They participate in early marriage ceremonies and help families negotiate criminal cases out of police. Complainants report cases after the other party has failed to fulfil his/her obligations, and by then it is too late.

6.2.2 Service providers

OPM handles cases of encroachment on land and crop destruction by animals. These cases are handled through mediation and usually parties are asked to return to their pieces of land or for compensation where crops have been destroyed. Service providers such as AAHI and ARC deal with GBV cases and usually counsel the parties but do not offer legal aid.

7.0 Conclusion

Forced migrants experience various challenges in accessing Justice. They are ignorant about the law, policies and procedures in the formal justice system. Many have been frustrated by the delays, corruption, long distances and high costs encountered in pursuit of justice. As a result, they have lost confidence in formal justice structures and prefer the informal community structures. Most service providers outside the settlements are ignorant about forced migrants and the laws that govern them. Forced migrants especially refugees and asylum seekers are looked at as foreigners who have no reason to be in Uganda. They are discriminated against in service provision and are prone to arbitrary arrests, extortion of money and unduly long periods of detention. There are no courts in the settlement and justice is dispensed by OPM and local leaders. These local leaders are often not aware of the laws and policies and make decisions based on personal judgment. Local leaders have also been identified as hindering justice especially in cases related to defilement and early marriages. Police posts and stations are few, far and inadequately staffed to meet the needs of the people. In the settlements, prisons are non-existent and as a result, forced migrants are detained far from the settlements making it difficult for their friends and families to visit them. The Ugandan local languages are used in court proceedings involving forced migrants making it difficult for forced migrants to follow proceedings and express themselves. This usually leads to miscarriage of justice. Legal service provision is inadequate and majority of the forced migrants go unrepresented. Cultural and social practices such as early marriages and FGM are high. Victims of such practices do not seek redress because the practices are considered normal and acceptable and those that have sought justice have been reprimanded by their communities.

8.0 Recommendations

Legal and human rights awareness

The communities and local leaders recommended community awareness on the law and processes in the justice system. Communities need to be trained on procedures including bond, bail and what to do in the absence of an advocate.

Legal representation

There is need for increase legal aid service provision in the settlements. Legal aid will greatly improve access to justice for forced migrants through legal representation before the courts and advice to forced migrants including the complainants and accused.

Police

Police posts, stations and staff should be increased in the settlements and gender should be taken into account while deploying the officers. A Children and Family Protection Unit should also be established in the settlements. This will promote access to justice for women and children.

Capacity building

Capacity building for service providers and community leaders through trainings and workshops on human rights and forced migration is essential in promoting justice. The RWC's structures were identified as critical to the improvement of access to justice particularly for women and children. In the course of administration of justice, if the RWC structures are to function professionally and effectively, there is need to support RWC structures to systematize and standardize their functions and procedure.

Court interpreters

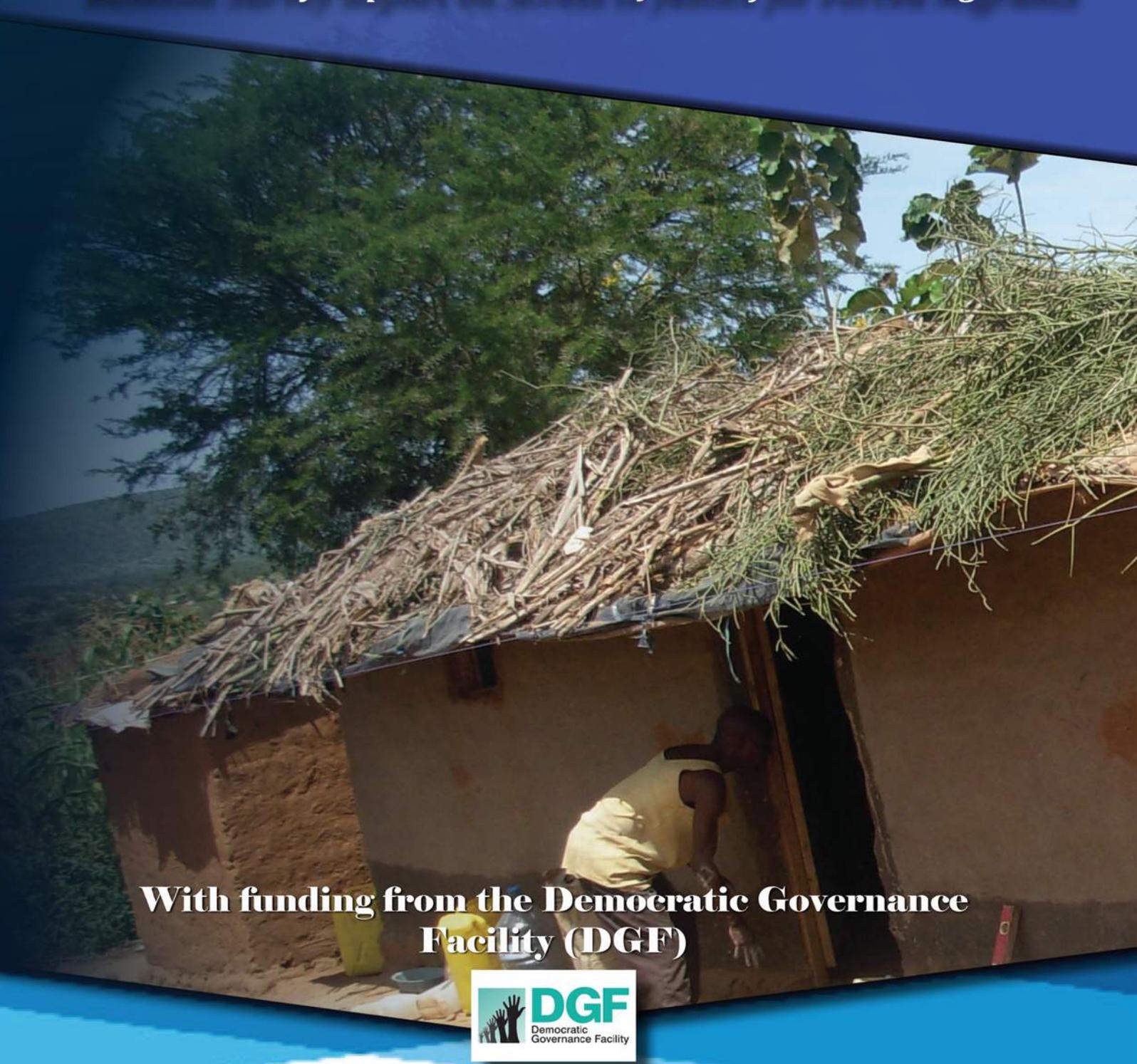
There is need for qualified and trained interpreters to ease communication between Court and accused/complainants and all the parties involved. This will reduce periods of detention and miscarriage of justice.

Link between prison and settlement authorities

There is need to strengthen the link between prison authorities and settlement authorities. This will assist forced migrants who are in prison for lack of sureties and whowould like to get in-touch with their families.

Community Involvement in program design and implementation

Forced migrants should be involved in program implementation as this will promote awareness and encourage ownership and sustainability of the programs.



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