

*“Courts can never solve problems  
in the community!”*



**A Study of Informal Justice Structures in  
Refugee Settlements in Uganda**

**2016**



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# **A Study of Informal Justice Structures in Refugee Settlements in Uganda**

**With funding support from;**



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## List of Acronyms

AAH	Action Africa Help
ACORD	Agency for Cooperation in Research and Development
AHA	Africa Humanitarian Action
ARC	American Refugee Committee
CID	Criminal Investigations Department
DRC	Danish Refugee Council
DRC	Democratic Republic of Congo
DGF	Democratic Governance Facility
DPC	Division Police Commander
FGM	Female Genital Mutilation
FRC	Finnish Refugee Council
GBV	Gender Based Violence
HIJRA	Humanitarian Initiative Just Relief Aid
IPs	Implementing Partners
JLOS	Justice Law and Order Sector
LCs	Local Councils
LWF	Lutheran World Federation
OC	Officer in-Charge
OPM	Office of the Prime Minister
RWC	Refugee Welfare Council
RLP	Refugee Law Project
RSA	Resident State Attorney
SSP	Senior Superintendent of Prisons
SGBV	Sexual and Gender Based Violence
UNHCR	United Nations High Commissioner for Refugees
WFP	World Food Program

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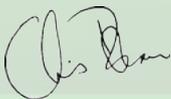
## **Foreword**

In pre-colonial African communities, disputes were resolved through traditional structures presided over by community elders. During the colonial period, a more centralized system of resolving disputes through formal courts was introduced but to date has not diminished the legitimacy of traditional structures and leaders. Indeed, in many communities, traditional systems and more recently introduced formal court systems run parallel. In post-independence Uganda, the revival of cultural and traditional institutions by Article 246 of the 1995 Constitution was a state-level recognition of their continuing popularity.

Refugees and asylum seekers in Uganda originate from communities in the Great Lakes and Horn of Africa where indigenous structures also remain relevant. Since Refugee Law Project (RLP) began providing free legal aid and psychosocial support to forced migrants in 1999, we have frequently encountered cases that are only reported at RLP after one or more dispute resolution mechanisms have failed. Since extending our services to forced migrants in refugee settlements in Western Uganda in 2012, RLP has further confirmed the existence of community structures adjudicating cases and administering justice. The Justice Law and Order Sector in its Third Strategic Investment Plan SIPIII clearly stipulates the need for a deeper knowledge and understanding of the informal justice systems in order to bridge the gap between formal and informal justice systems and promoted access to justice. RLP therefore set out to understand the community structures to which refugees report cases.

This survey offers an important set of insights into the informal justice structures in refugee settlements, the nature of cases they handle and the procedures they follow. Given the limited number of justice actors in refugee settlements, an understanding of these systems will allow for designing appropriate interventions to promote justice. It is our sincere hope that this study will contribute to the development of a comprehensive access to justice strategy in Uganda.

Dr. Chris Dolan



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**Refugee Law Project,**  
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## Executive summary

This research provides information on informal structures within refugee communities, the processes they follow and nature of cases they handle. It highlights the benefits and challenges that refugees encounter when using these systems and provides recommendations. This study will guide relevant stakeholders on critical areas for intervention. The study understands informal justice systems to include persons or bodies that are involved in resolving disputes but are not part of the judiciary as established by law, and that the procedures or structures of these persons or bodies are not based on any statutory law.

The study aimed at:

- » Identifying typical problems or issues that refugee communities face that require intervention of justice systems
- » Establishing community /informal structures that address these problems
- » Exploring the refugee communities' views on informal structures

The research was conducted in six districts in western and southwestern Uganda, namely Mbarara, Isingiro, Kyegegwa, Hoima, Fort Portal and Kamwenge. Focus group discussions were conducted with refugee communities in the settlements and key informant interviews included staff of the Office of the Prime Minister (OPM), UNHCR and its implementing Partners, police officers, Refugee Welfare Council (RWCs) leaders, community elders, prison officers and judicial Officers.

The study revealed there are a number of justice related issues that arise in refugee communities including domestic violence, rape, defilement, theft, and child neglect. The most prevalent problems were criminal in nature including defilement, rape, domestic violence, assaults and thefts. While crimes were reported in all refugee settlements visited, Rwamwanja refugee settlement in Kamwenge district appeared to have the highest crime rate.

The study confirmed that several informal justice systems exist in refugee settlements including Refugee Welfare Councils (RWC), Community elders, family heads and "Nyumba Kumi" committees. The Community Elders system was generally liked because it adopts customs that are well known and understood by people, and the leaders do not ask for bribes. The RWC system is well structured with levels running from RWCI to RWC III. Other justice structures refer cases to the RWC system where dispute resolution has failed. The RWCs in turn refer failed or difficult cases to the Police or the Office of the Prime Minister.

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These structures play a significant role in dispute resolution within the communities particularly in issues relating to debts, contracts, land, inter-tribal conflict and crimes such as assaults, theft and domestic violence. Matters are resolved in a timely fashion with the longest period being one week. Bottlenecks such as language barrier and costs which inhibit justice in formal justice institutions are addressed since communication is done in languages spoken and most processes are free of charge.

However, some structures, particularly the RWC system was said to be corrupt and partial. They reportedly ask for facilitation from complainants and at times receive bribes from perpetrators. In cases involving their relatives and friends, RWC members are alleged to favour them over the complainant or accused.

Despite these gaps, the majority of respondents showed support for the informal justice systems. Many were optimistic that with additional support, these structures will promote justice for refugees alongside formal structures.

Recommendations included formalizing the operations of RWCs in Uganda with rules and regulations that govern them, logistical support to the informal structures and capacity building of informal structures and service providers on the laws and policies on forced migration.

## 1.0 Background to the research study

Uganda hosts about 525,968 refugees originating from countries in the Great Lakes Region and Horn of Africa, namely; Democratic Republic of Congo, Rwanda, Burundi, Somalia, Ethiopia, Eritrea, South Sudan and the Central African Republic.<sup>1</sup> The majority reside in the western part of the country in the settlements of Nakivale, Oruchinga, Kyangwali, Kyaka II, Kiryandongo and Rwamwanja. Of these settlements, Nakivale, located in Isingiro district, hosts the biggest number of refugees in Uganda, with a population of about 107,051 refugees.<sup>2</sup>

Many refugees and asylum seekers in Uganda are poor and unable to afford the costs in the formal justice system. The language and procedures adopted in the formal justice system are foreign and complicated to follow. As a result, refugees seek remedies from informal justice structures that are near to them. In order to enable justice for refugees in the formal justice system, RLP has since 1999 provided free legal aid and psycho-social services to refugees and asylum seekers. In 2012, RLP with funding from DGF extended its legal aid services to forced migrants in refugee settlements in western Uganda. During its service provision, it was noted that some cases are reported to RLP after one or more community structures have failed to resolve the issue. The statistics revealed that among those provided with legal support, Rwandans were the majority and Somalis the least.<sup>3</sup> The low numbers of Somalis is partly attributed to the Somali long-standing culture of settling disputes informally through their leaders.<sup>4</sup> It also noted that the judiciary in Uganda faces a sizeable case backlog and that the courts in Isingiro, Mbarara and Fort Portal that in particular handle many cases involving refugees are no exception to this.<sup>5</sup> Government prisons are full to

1 Statistics from Office of the Prime Minister as of 4<sup>th</sup> April 2016

2 Statistics from Office of the Prime Minister as of 4<sup>th</sup> April 2016

3 Source: Monthly Activity statistics for the Access to Justice Programme

4 This finding came out of interactions with Somali refugee communities during RLP's field visits in 2012 and 2013

5 See Refugee Law Project, *Supra* note 3 , According to Daily Monitor of October 1, 2015, 55.2 percent of prisoners in Uganda are currently awaiting trial and have since overstayed the Constitutional limit on pre-trial detention. Available on line at <http://mobile.monitor.co.ug/News/55--prisoners-not-tried-says-report/-/2466686/2892520/-/format/xhtml/-/4wrbs2z/-/index.html>. [Accessed on 20th October 2015]. There have been efforts by JLOS to reduce the backlog of cases through a two years case backlog reduction programme. However, this programme has not solved the problem, as more cases continue to be registered. See: The Working Paper on case referrals from Court to Justice Centres by Justice Centres Uganda at p.5. Available online at <http://www.justicecentres.go.ug/index.php/publications-reports/activities-reports/lira-2010-2011/9-concept-note-on-proposed-networking-with-courts-of-law/>

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capacity as courts regularly send suspects on remand.<sup>6</sup> With numerous cases on committal in prisons many refugees experience long periods of detention. This case backlog delays justice for the accused persons who, according to Article 28 (3) (a) of the 1995 Constitution of the Republic of Uganda, are presumed innocent until they have pleaded or been proven guilty by the State. Notably, most of the cases involving forced migrants that reached the Courts were petty in nature according to the law such as simple assault cases and petty thefts, which could have been easily solved before reaching the formal court system. RLP therefore sought to understand the informal justice structures that resolve disputes in the communities, the nature of cases presented before these structures and people’s view on their role in promoting justice. This study was conducted with the belief that understanding these structures will inform the design of appropriate strategies to strengthen the structures to deliver justice.

## **1.1 Research Objectives**

The overall objective of the study was to delineate the range of informal justice systems that exist in refugee communities in the settlements. RLP sought to understand how these systems operate, the nature of cases that they handle, and their capacity in understanding the law vis-à-vis the system of dispute resolution. Through this research, RLP hoped to identify ways through which these systems can be developed and used to promote access to justice. The objectives of the study were;

- a) To establish problems or issues arising in forced migrant communities requiring intervention by the justice system.
- b) To establish community/informal structures that address these problems
- c) To explore the communities’ views on the extent to which these structures promote justice

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file [Accessed on 20th October 2015].

<sup>6</sup> In an interview with Daily Monitor, Mr. Frank Baine, the Uganda prisons spokesperson, confirmed that they are overstretched with remand prisoners outnumbering convicts; that in the last few months, they have seen the number of prisoners rise from 44,000 to 45,314. He attributes this to improved police services and fewer Judges and Magistrates available to dispose of the cases. See Daily Monitor of October 1, 2015. Available online, *ibid* 7

## 2.0 Research Methodology

This baseline survey was designed based on the understanding that informal justice systems are increasingly gaining prominence in the discussion on justice reform in Uganda and are recognized for promoting the internationally recognised right of access to justice. This survey therefore sought to understand the justice problems that the communities face, the informal structures that they turn to in search of a remedy and their views on whether or not these systems promote justice.

The research study adopted qualitative research methods. Face-to-face interviews were conducted with key informants as well as Focus Group Discussions (FGD). 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. Nine FGDs were conducted in the five refugee settlements of Nakivale, Oruchinga, Kyaka II, Kyangwali and Rwamwanja and a total 199 people participated.<sup>7</sup> Separate FGDs were conducted with women, men and youth. The FGD participants came from villages that were carefully selected to reflect a spectrum of geographic access to major services. This was to allow comparison in regard to access to justice for different villages. Community leaders mobilized between 10 and 15 participants for each FGD and the discussions lasted between 1 to 2 hours.

In total, 39 Key Informant Interviews were carried out in the five settlements and with key JLOS Institutions in the districts of Mbarara, Isingiro, Kyegegwa, Hoima, Fort Portal and Kamwenge. The key informants in the settlements were the Office of the Prime Minister (OPM), UNHCR and its Implementing Partners in the respective settlements; Police officers, Refugee Welfare Council leaders, Elders, community members and former Prisoners. Key informants in JLOS institutions were judicial officers, prison officers and Police officers at the district level. These key informants were selected on the basis that they offer services to forced migrants in the refugee settlements and are expected to be aware of issues that affect them regarding access to justice.

At the commencement of all discussions and interviews, informed consent was sought from the respondents. The respondents were during the introductory remarks assured of confidentiality of their responses and that the information would only be used for purposes of the study and program implementation. This report therefore keeps the identity of informants confidential where necessary. FGD and key informant interviews with forced migrants were conducted

7 Out of the 199 participants, 91 were male while 108 were female.

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with the help of interpreters chosen by the forced migrants from within their own communities. In instances where the FGD had participants from various nationalities, the RLP team ensured that each community had an interpreter and every language interpreter was given an opportunity to explain to his/her community once a question was asked or a response given. During the study, quantitative statistics were collected. Informants from prisons<sup>8</sup> provided statistics on refugee prisoners, police<sup>9</sup> availed information on cases they receive and those they resolve through mediation. Africa Humanitarian Action (AHA) availed us information on the number of SGBV cases they handle and resolve.

Data was collected in three phases. Phase 1: Nakivale, Phase 2: Oruchinga and Kyangwali, Phase 3: Kyaka II and Rwamwanja. Reports from each phase were combined to write this report.



***The photo showing the participants in a focus group discussion conducted on 8<sup>th</sup> June 2015 with community members at Ntenungi zone in Rwamwanja Refugee Settlement.***

8 Specifically Kyegegwa Government prison in Kyegegwa District

9 Specifically Isingiro and Rwamwanja Police Stations were helpful on this



***The photo showing the participants in a focus group discussion with a group of women in Busheka village, Oruchinga Refugee settlement***

## **2.1 Challenges and Limitations of the study**

During the research, the team experienced some challenges. Some service providers declined to participate in the research despite the fact that they were consulted prior to the commencement of this research. As a result their information that could have enriched this research could not be captured and reflected in this report. Likewise, some refugee respondents walked away after the team introduced the research and explained that there was no direct material benefit to be attained from participating in the research.

### **3.0 Demographic information on study area**

The research was conducted in six districts in the western and south-western part of Uganda namely Mbarara, Isingiro, Kyegegwa, Hoima, Fort Portal and Kamwenge. Mbarara and Isingiro districts are predominantly occupied by the Banyankore speaking community while Kyegegwa, Hoima, Fort Portal are predominantly occupied by the Batoro and Banyoro speaking communities. Respondents were derived from various forced migrant communities and service providers in and outside the settlements including police officers, judicial officers, and officers of the OPM and UNHCR’s implementing partners. The community members were composed of people from various nationalities in refugee settlements.

#### **3.1 Nakivale and Oruchinga**

Nakivale and Oruchinga refugee settlements are located in Isingiro district with populations of about 107,051<sup>10</sup> and 6,563<sup>11</sup> respectively. Nakivale is the largest refugee settlement in Uganda and the 8<sup>th</sup> largest in the world, comprised of 3 zones (Rubondo, Base camp and Juru) and 79 villages spread over 185km<sup>2</sup>.<sup>12</sup> Oruchinga on the other hand is comprised of 5 zones with 13 villages.<sup>13</sup> At the time of the study, numbers were expected to increase due to the influx of asylum seekers from Burundi caused by the political unrest in their country. These two settlements accommodate refugees from the Democratic Republic of Congo, Somalia, Ethiopia, Eritrea, Rwanda, Central African Republic, Liberia, Kenya, Burundi, Sudan and South-Sudan.

#### **3.2 Kyaka II**

Kyaka II refugee settlement located in Kyegegwa district is 81.5sq.km and has a population of 28,366.<sup>14</sup> It was established in 1983 when Tutsi Rwandans living among the nationals in the Central, South and Western regions of Uganda were

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10 Statistics from Office of the Prime Minister as of 4<sup>th</sup> April 2016

11 Ibid

12 UNHCR Uganda, Nakivale Factsheet, 2014. Nakivale refugee settlement was established in 1958 and officially recognized as a refugee settlement in 1960 through the Uganda Gazette General Notice No.19.

13 Interview with HIJRA official, Oruchinga Settlement. As at 31<sup>st</sup> March, 2014, Oruchinga refugee settlement had 15 villages seated on 8km<sup>2</sup>. It was established in 1959 as a transit centre to receive Rwandan asylum seekers of Tutsi origin due to a tribal conflict in Rwanda. Later in 1961, it was officially designated a refugee settlement through the Uganda Gazette General Notice No. 1433. See UNHCR Uganda Oruchinga Factsheet, 2014.

14 Statistics from Office of the Prime Minister as of 4<sup>th</sup> April 2016

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moved to one settlement.<sup>15</sup> It currently has refugees of various nationalities including Congolese, Rwandese, Ethiopians, Somalis, and Burundians.<sup>16</sup>



*Sign posts at Kyaka II refugee settlement. In the background is the Police Post.*

### 3.3 Kyangwali

Kyangwali refugee settlement is located in Hoima district. It is 97sq.kms and has 15 villages.<sup>17</sup> It has a population of about 42,262 refugees.<sup>18</sup> The settlement is comprised of Congolese, Southern Sudanese, Rwandese, Burundians, Kenyans and Sudanese from Darfur. Refugees are settled in mixed communities and no specific areas are given to particular nationalities.<sup>19</sup>

### 3.4 Rwamwanja

Rwamwanja refugee settlement is located in Kamwenge district in Western

15 RLP's Baseline Survey Report on Access to Justice for Forced Migrants, 2013, p.12

16 Ibid, p.12

17 Interview with OPM official Kyangwali Settlement

18 Statistics from Office of the Prime Minister as of 4<sup>th</sup> April 2016

19 Interview with OPM official Kyangwali Settlement

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Uganda. It sits on 49.1 sq. miles and has a total number of 11 zones and 34 villages.<sup>20</sup> As of January 2015 it had a population of 48,242<sup>21</sup> refugees, including Congolese, Rwandese, and Burundians.<sup>22</sup>



***Sign posts at Rwamwaja refugee settlement. Lutheran World Federation is the lead UNHCR Implementing Partner in Rwamwanja Refugee Settlement***

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20 Interview with OPM Officials Rwamwanja Settlement  
21 Statistics from Office of the Prime Minister as of 4<sup>th</sup> April 2016  
22 Ibid.

## 4.0 Presentation and discussion of study findings

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

### 4.1 Justice related problems in refugee communities

Law related problems faced by refugees include; domestic violence, rape, defilement, assault, child neglect, threatening violence, murder, criminal trespass, kidnap of children, burglary, malicious damage to property, destruction of crops by animals, arson and land wrangles. Others relate to use of and being in possession of narcotic drugs.<sup>23</sup> The most prevalent and commonly reported crimes are defilement, rape, domestic violence, assaults and thefts.<sup>24</sup>

On average 16 sexual and gender based violence related cases including rape, defilement and domestic violence are reported at police stations in Kyangwali settlement<sup>25</sup> while 10 are reported in Oruchinga per month.<sup>26</sup> The victims are mostly women and girls but boys too are affected.<sup>27</sup> Domestic violence is common across all nationalities in the settlement and it manifests itself in physical assaults, denial of resources and emotional abuse.<sup>28</sup> Domestic violence cases increase during harvesting and food distribution periods when people have sold their crops and have money.<sup>29</sup> Misuse of money, high levels of alcohol abuse<sup>30</sup> and arguments over money were cited as the proximate cause of assaults and domestic violence during this period.<sup>31</sup> In some instances, these assaults have led to splitting of family attestation cards and couples living under the same roof have separate attestation cards.<sup>32</sup> It was noted by respondents that among the Congolese, a wife has no say in a home, her duties relate to maintenance of the

23 Interview with refugee communities and service providers

24 All police officers interviewed pin-pointed these as the most reported cases in their respective refugee settlements

25 Interview with OC-CID Kyangwali Police Station

26 Interview with OC-CID Oruchinga Police post, who mentioned that of the 10 cases of domestic violence reported he is able to settle half and forward the other half to court.

27 During interview with the OPM Protection Assistant Kyangwali he stated that 60% of SGBV victims are women, 25% are girls, and men stand at 15%.

28 Interview with service providers and refugee communities

29 Interview with the Assistant Protection Officer, OPM in Nakivale refugee settlement

30 Interview with service providers and refugee communities

31 Interview with OC-CID Kyangwali settlement and ARC officer in Kyaka II settlement

32 Interview with OPM, Nakivale Refugee Settlement

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household and the husband is left with all the decision making.<sup>33</sup>

Land related problems were also reported usually arising from trespass on land and destruction of crops by animals.<sup>34</sup> The land wrangles are very sensitive because refugees want more land for livelihood.<sup>35</sup>

The communities also cited inter-tribal conflicts within the settlement majorly stemming from differences in culture and customs of various nationalities in the settlement.<sup>36</sup> Conflicts also arise when someone from one ethnic group offends a person in another ethnic group. The accused is protected by his or her tribes’ mates and fights between the two groups begin.<sup>37</sup> Hatred, vendettas and interpersonal conflicts that already existed in the country of origin are at times exported by refugees in the settlements and fuel further conflicts.<sup>38</sup>

Rwamwanja refugee settlement was found to have the highest crime rate among all the settlements visited with about 200 cases of thefts and assaults being registered per month. An interview with the OC Rwamwanja Police Station revealed that over 100 assault cases are recorded every month, while theft can be slightly above 50 cases a month.<sup>39</sup> As to capital cases,<sup>40</sup> statistics from Rwamwanja settlement showed police was registering a minimum of three (03) cases a day. However, due to community sensitization through community policing, the number had reduced to four (04) cases per month at the time of the research.<sup>41</sup>

## **4.2 Understanding the informal Justice structures in refugee settlements**

When people are faced with problems they set out on a journey to seek advice or solutions. The survey revealed that these people approach both formal justice and informal justice structures. The findings presented are on the informal/

33 FGD with women in Rwamwanja Settlement

34 FGD at Kyaka II refugee settlement

35 Interview with the OPM Protection Assistant in Rwamwanja refugee settlement

36 Interview with community leaders at Base camp Nakivale refugee settlement

37 Interview with officer of LWF in Rwamwanja refugee settlement

38 Interview with ACORD official in Rwamwanja refugee settlement

39 Interview with OC station Rwamwanja police station. He was not certain on the number of ADR cases that have been successful this year. He however noted that out of 200 petty cases reported in a month, 100 are fully investigated, out of which only 10 can be taken to Court and the rest are mediated at Police.

40 Capital cases are those criminal cases only triable by the High Court and include but are not limited to murder, rape and defilement.

41 Interview with OC station Rwamwanja police station

community structures that respondents approach and the problems they present before these structures.

The research revealed that refugees seek assistance from a number of structures namely the Refugee Welfare Councils (RWCs), community elders, case management committees, peace building committees, religious leaders, family heads and service providers.

#### **4.2.1 Refugee Welfare Council (RWC) system**

The Refugee Welfare Council (RWC) is a system that operates in the refugee settlements. It is similar to the local council system in Uganda and it operates in a manner similar to the formal court system. RWCs have three (3) levels of administration namely, RWC I, RWC II and RWC III.<sup>42</sup> RWC I has representatives at the block level, RWC II has representatives at village level and the RWC III heads the council at the settlement level. Cases can be referred from RWC1 through to the RWCIII.<sup>43</sup> Members to the council are democratically elected through elections organized by Office of the Prime Minister. The majority, if not all of the RWC chairpersons, are male.<sup>44</sup> Within the RWC levels are various committees including the education and security committees and the persons that sit on these committees represent different sectors and groups of persons including the youth, children, Persons with Disabilities and Women.<sup>45</sup>

#### ***Nature of cases***

The councils handle cases that are civil in nature. These cases include debts, contracts, land boundary disputes and conflicts within the community. Their mandate is akin to that of the local council system for Ugandan nationals created by the Local Council Courts Act, 2006.<sup>46</sup>

#### ***Proceedings before the Refugee Welfare Council***

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42 In all settlements except Rwamwanja where there only exists RWC I and RWCIII. In Kyangwali Refugee Settlement the RWC I is referred to as Block Leader

43 Interview with RWC leaders in refugee settlements

44 Virtually all the RWCs chairpersons the research team interacted with are men; it is only in Oruchinga refugee settlement that the team interacted with a woman. Even then, this was a deputy to RWCIII chairman who was not around and delegated his assistant.

45 Interview with RWC leaders in refugee settlements

46 Under the 2006 Local Council Courts Act local council Courts have been given power to adjudicate cases of a civil nature, including debts, contracts, assaults and battery, damage to property, trespass and disputes governed by customary law. See Section 10 of the Local Council Courts Act, 2006 and the second and third schedules thereof.

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Before a case is heard by the RWCs a fee has to be paid.<sup>47</sup> Uganda shillings 10,000 for registration of the case and at times a fee of 5,000 UGX for transport facilitation for the defense of the area to secure the presence of the defendant before the committee where the person has resisted or is at a faraway place.<sup>48</sup> Once the fee is paid, a date is set for hearing. On the day of hearing, each party is given an opportunity to state their case, present witnesses and evidence.<sup>49</sup> After the hearing, the council then deliberates in their absence. Once a decision is reached the parties are called back and the decision of the Council is delivered, with reasons for that decision given to both parties.<sup>50</sup> The loser (plaintiff or defendant) is required to compensate the winner in monetary terms. Further, if the defendant loses the case he is required to pay the complainant UGX. 10,000/= as costs. This fee is not part of the compensation. If the defendant/loser is dissatisfied with the decision of RWCI then the matter can be forwarded to RWC II who will hear the case in form of an appeal. The decision of RWCI is appealable to RWC III and if the matter fails at RWCI level, then it is forwarded to the police or service providers within the settlement. A case is not required to go through all levels of the RWC system.<sup>51</sup> The complainant has the option of taking it directly to the council level she or he believes will handle it well.<sup>52</sup>

#### **4.2.2 Community Elders**

These are either culturally appointed or selected elderly members of society assigned the duty of handling and resolving disputes within their communities.<sup>53</sup> This structure exists in the Somali, Congolese and Sudanese communities. The elders in these communities are held in high esteem. For instance, “Bazee babaraza” – the elders of the Bagerere community (a group of Congolese) are highly respected in the community and, as such, have been co-opted by service providers and are involved in every meeting of RWCs.<sup>54</sup> They handle cases of domestic violence particularly physical violence and other family disputes. They also handle cases of child abuse and often advise parents not to mistreat their children.

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47 FGD at Ntenungi, Rwamwanja Refugee Settlement

48 Ibid

49 FGDs with men, women and youth in the five refugee settlements and interview with the RWC III, Kyangwali Refugee settlement on 19 May 2015.

50 Ibid

51 Ibid

52 Ibid

53 FGD in Kyangwali refugee settlement on 19<sup>th</sup> May 2015

54 Interview with legal officer AHA, Kyaka II refugee settlement.



*Elderly women performing a traditional dance during Women's day Celebrations 2016*

### ***Proceedings before community elders***

When a case is reported to the elder of a village, he summons the party complained against to defend himself/herself or he visits the party immediately and inquires about the allegation.<sup>55</sup> Once the parties are before him, he listens to the case as presented by each party. If the accused party accepts the case, then the elders sits the parties down and helps them to reconcile.<sup>56</sup> If the matter is complex, the elder to whom it has been reported will involve another elder

55 FGD in Kyangwali refugee settlement

56 Ibid

*“Courts can never solve problems in the community!”*

to help counsel the parties before the case can be resolved.<sup>57</sup> The guilty party is given a punishment which can be compensation of a sum of money.<sup>58</sup> After resolution of the case, the elder asks the parties to contribute something that can be shared as a sign of reconciliation. This could be porridge or money that all parties will share to signify reconciliation.<sup>59</sup> If one of the parties is dissatisfied with the decision of elders, his or her case is forwarded to RWC1. Those cases are usually resolved in a day in a period of one to two hours.<sup>60</sup>

#### **4.2.3 Protection Team/Case Management Committee**

The protection team/ case Management Committee team is comprised of representatives from the different service providers/implementing partners operating in the different settlements and police for each of the settlements.<sup>61</sup> The committee deals predominantly in case management within the settlement. They hear and consider cases that have been categorized as problematic, and offer interim solutions to resolve disputes such as putting victims/endangered persons in a protection house and relocating such persons to other settlements through OPM.<sup>62</sup> In some domestic violence cases where the parties can no longer stay together, property is divided and parties are separated through relocation.<sup>63</sup> The team reserves the right to forward cases to court.<sup>64</sup>

#### ***Procedure adopted by the Protection Team/Case Management Committee***

This system adopts what they refer to as Complaint Response Mechanisms (CRM), such as complaint boxes and toll free lines for receiving complaints established by service providers in refugee settlement.<sup>65</sup> These are put in villages, market places and schools. In Rwamwanja settlement, the Inter-agency transparency committee moves around to collect complaints from the boxes.<sup>66</sup> After complainants are collected, the team analyses the information and holds

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57 Ibid

58 Punishment could be compensation of money sum

59 It could be porridge or money that all parties will share to signify a reconciliation

60 FGD in Kyangwali refugee settlement

61 In Rwamwanja Refugee Settlement, the protection team is comprised of representatives from OPM, LWF UNHCR, AHA and police. Interview with OC-Station Rwamwanja Police Station on 8<sup>th</sup> June 2015.

62 Interview with OC-Station Rwamwanja Police Station on 8<sup>th</sup> June 2015.

63 Ibid

64 Interview with OC-Station Rwamwanja Settlement on 8<sup>th</sup> June 2015

65 Interview with LWF officer on 8<sup>th</sup> June 2015

66 Ibid

dialogue meetings together with the RWCs.<sup>67</sup> It is through such meetings that local leaders are guided on how to handle unique cases.<sup>68</sup> The protection team decides whether the problematic case that has been identified should be taken to court or whether the person should be located to another settlement through OPM.<sup>69</sup> In the meantime, the victim is put in a protection house as the case is being handled.<sup>70</sup>

#### **4.2.4 Peace Building and Conflict Resolution Committee**

The Peace Building and Conflict Resolution Committee was organized and trained in peace building and conflict by Lutheran World Federation (LWF) in Rwamwanja Refugee Settlement.<sup>71</sup> It handles cases involving people of different nationalities and it is not tagged to a particular clan or nationality.<sup>72</sup>

#### ***The composition of and procedure adopted by the committee***

The Peace Building and Conflict Resolution Committee works hand-in-hand with the RWCs to resolve cases and reconcile parties.<sup>73</sup> Village elders and pastors are also part of this committee. The team counsels the parties first and then requests them to reconcile.<sup>74</sup> When the parties fail to reach an agreement, the case is referred to RWCs for hearing.<sup>75</sup>

#### **4.2.5 Religious leaders**

Religious leaders such as pastors, priests, sheikhs and reverands within refugee communities also play a significant role in dispute resolution.<sup>76</sup> They are considered to be of good moral standing and neutral since they stand for unity and harmony among the people and are highly respected. They use prayer and counseling as a tool to resolve parties' issues.<sup>77</sup> In Rwamwanja Settlement, the Burundian and Rwandese communities reportedly seek religious assistance in the first instance, and only when that fails do they resort to RWC.<sup>78</sup>

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67        Ibid

68        Ibid

69        Ibid

70        Ibid

71        Interview O/C police Station, Rwamwanja settlement and FGD at Ntenungi in Rwamwanja Settlement on 8<sup>th</sup> June 2015.

72        Ibid

73        Ibid

74        FGD at Ntenungi Rwamwanja Refugee settlement

75        Ibid

76        FGD with men and women at Ntenungi community Rwamwanja

77        Interview with Protection Assistant OPM Kyaka II Settlement, Interview with Project Assistant at ACCORD in Rwamwanja refugee settlement

78        Interview with AHA official on 11<sup>th</sup> June 2015.

*“Courts can never solve problems in the community!”*

#### **4.2.6 “Nyumba Kumi” Committees**

The ‘nyumba kumi’ committees were identified in Nakivale and Kyangwali refugee settlements.<sup>79</sup> This is a system where the leader is selected for every ten households and he or she is in charge of hearing disputes/issues that arise in these ten households.<sup>80</sup> The leader handles cases of theft, quarrels between spouses and insults by neighbors.<sup>81</sup> When he or she is unable to handle a case, it is referred to RWCs and other authorities within the settlement.<sup>82</sup> The system allows for privacy compared to the RWC system where all committee members attend and proceedings are open to the entire community.<sup>83</sup>

#### ***Procedure adopted by ‘nyumba kumi’***

When a case arises from or a crime is committed in any of the households within the ‘nyumba kumi’ (ten households), it is reported to the ‘nyumba kumi’ leader.<sup>84</sup> The leader will convene a meeting of the parties concerned.<sup>85</sup> Each party is given an opportunity to present their case and the leader will act as a mediator to guide the parties to an amicable solution. If the parties fail to reach an agreement, the matter is referred to the RWC II, RWCIII or police.<sup>86</sup>

#### **4.2.7 Family heads**

Many refugee families also resolve their issues without necessarily involving local leaders. Family heads including fathers, uncles or grandparents call for meetings to resolve issues once a dispute arises within a family.<sup>87</sup>

#### **4.2.8 OPM and other service providers**

OPM handles cases of encroachment on land and crop destruction by animals.<sup>88</sup>

79 ‘Nyumba Kumi’ is a Swahili term meaning ‘ten houses’. In Kyangwali refugee settlement they are known as Block leaders.

80 FGD at Juru, Nakivale refugee settlement on 20<sup>th</sup> May 2015. “Nyumba kumi” system is different from the RWC system. The former handles issues before forwarding them to the RWCs. Every ten village houses have a leader.

81 FGD in Kyangwali refugee settlement on 20<sup>th</sup> May 2015

82 Ibid

83 Ibid

84 Ibid

85 Generally, family members of the parties concerned can attend the meeting but where the matter is between husband and wife, children will be excluded from the meeting in order for the parties to get privacy.

86 Ibid

87 Interview with FGD at Kyangwali on 20<sup>th</sup> May 2015. The same was stated by women at Rwamwanja settlement.

88 Interview with the camp commandant and Protection Assistant, Kyaka II Refugee settlement on 12/6/2015. According to the commandant, land management is strictly for OPM and that they maintain an open door policy for those who cannot afford

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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 Africa Humanitarian Action (AHA) and ARC deal with GBV cases and usually counsel the parties.<sup>89</sup>

Procedure adopted by AHA

According to AHA, a referral can be made to AHA at any stage of RWC resolution process or a refugee can report directly to AHA.<sup>90</sup> Where the RWC has failed to resolve the case brought before it or where one of the parties disagrees with the decision made, a referral to AHA is made in writing by the RWC leader. Upon receiving the referral AHA convenes a meeting with the RWC and the parties to find out how and why the process failed or why the said decision was taken.<sup>91</sup> If AHA agrees with the explanation given, it (AHA) will uphold the decision; otherwise the decision will be varied and the matter heard a fresh. Where the matter was heard by the chairman alone it is sent back to the RWC for re-hearing and an AHA representative must be in attendance to ensure that justice is done.

### 4.3 Challenges faced by informal justice system

Most of the challenges were raised by the RWC leaders. Informal justice structures particularly the RWCs lack spaces or offices to handle cases. Most cases are handled under trees or in their homes and this impacts negatively on record keeping and management.<sup>92</sup>

RWCs are ignorant of Ugandan law.<sup>93</sup> They do not have simplified information about the Ugandan law to help them in handling cases. The available literature about the laws is transcribed in English which they cannot easily understand.<sup>94</sup> RWCs in particular expressed dissatisfaction with the manner in which police and paying fees and fines charged by RWCs.

89 Interview with AHA and OPM officials. According to the Protection Assistant in Nakivale refugee settlement, OPM handles minor cases of domestic violence if referred directly to it. Other than domestic violence, the cases are reported to police.

90 Interview with the legal officer SGBV project, Africa Humanitarian Action (AHA), Kyaka II refugee settlement

91 Ibid

92 Interview with RWCs from Rwamwanja, Kyaka, Nakivale, Kyangwali and Oruchinga settlements

93 Ignorance of the law by RWCs was identified as one of the gaps in the informal justice system. This was by refugees themselves who participated in a focus group discussion at Ntenungi in Rwamwanja Refugee Settlement.

94 According to the Protection officer Danish Refugee Council there is need for concerted effort to have the laws translated in different languages spoken and understood by refugees so that RWCs are able to read and interpret the law while resolving disputes.

*“Courts can never solve problems in the community!”*

OPM operate. They feel disrespected especially when Police arrests a member from their village/zone on the orders of OPM without informing them. As leaders in the community, they felt that it is important for police or any service provider to notify them whenever an arrest is going to be effected in his/her area of jurisdiction. This would ease co-ordination and promote good working relations.<sup>95</sup> The RWCs were also concerned that the Office of the Prime Minister (OPM) handles cases that could be handled by RWCs thereby making them redundant. However, the Camp Commandant Kyaka II argued that it is because of fees charged by RWCs that community members who cannot afford those fees report their cases directly to OPM and other service providers instead.<sup>96</sup> OPM is however working on bye-laws to streamline operations of RWCs and to spell out their powers.<sup>97</sup>

RWCs work on a voluntary basis; they are not salaried or even facilitated especially when it comes to transporting suspects to Police in cases which they fail to resolve and those not within their jurisdiction. They have to ‘tap’ from their pockets to hire means to transport suspects to police, yet they are not remunerated or paid any allowances. As such, they (RWCs) do not devote adequate time to resolution of cases as they have to strike a balance between adjudication of disputes and cultivating their gardens which is their source of livelihood beside monthly food rations. The defense secretaries<sup>98</sup> are at times attacked and beaten by community members in order to remove suspects from them. In relation to this, the members of the Refugee Welfare Council risk being hated by the members of the losing party. This can make them fear to follow up cases or intervene in the members’ cases.<sup>99</sup>

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95 Interview with RWCs. Service providers interviewed like OPM, DRC and AHA revealed that they get referrals from RWCS and work together to resolve minor cases in communities.

96 Response from OPM and Refugee Communities. In a debrief meeting with the camp commandant Kyaka II, he maintained that OPM maintains an open door policy for those who cannot afford fines and fees charged by RWCs and come and report directly to his office.

97 Interview with Legal officer, AHA SGBV project-Kyaka II

98 As earlier explained in our introductory pages, the RWC system in refugee communities is akin to the local council system for nationals. A secretary for defence on a local council committee helps in effecting arrests within the village. That is exactly the same secretary that sits on the Refugee Welfare Committee (RWC) and does the same work like the defence secretary on an LC committee.

99 Interview with RWCs.

## 5.0 Community views on the informal justice system

This part explores the views of refugees on the informal justice systems in the communities, specifically on dispute resolution, the accessibility, availability, affordability of services and legitimacy.

### 5.1 Dispute resolution

Refugee communities stated that informal justice structures play an important role in dispute resolution.<sup>100</sup> They give an opportunity to each party to tell their story and later make a decision or help the parties reach an amicable settlement. The structures mainly aim at reconciling parties and ensuring harmonious living after the dispute.<sup>101</sup> The community elders' structure was pointed out as an important structure before which issues are resolved and ceremonies carried out to symbolize reconciliation.<sup>102</sup> The structures also provide solutions that are appropriate for the parties as compared to the formal justice system. In the formal structures for example cases of domestic violence are very difficult to manage because the complainants (usually wives) plead for the release of the suspect and fail to co-operate with police when the husband is apprehended.<sup>103</sup> Often, they simply want the authorities to speak to the husband about his behavior. A key informant emphasized this point by stating;

***“Courts can never solve problems in the community. For example, in cases of domestic violence a woman is asked by Court what to do with her husband who has been convicted and she cries.”<sup>104</sup>***

Further, cases before these structures are resolved in a faster manner than court, providing the parties with immediate or quick solutions.<sup>105</sup> The RWC system usually resolves disputes between parties in less than a day and, where investigation is required; it takes less than a week.<sup>106</sup> This is in contrast with the

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100 Interview with the Protection Officer, HIJRA in Oruchinga Refugee settlement. To her she prefers an informal justice system because Courts delay cases for up to six months yet RWCs resolve a case in a day. In her view, the informal justice structures are easily accessible to refugees and more reliable since the committees take it upon themselves to resolve the case on time. Virtually all service providers in all the settlements visited that we interfaced with expressed the view that informal justice structures would promote justice, if well managed.

101 The Community Elders System and Nyumba Kumi Committees

102 FGD with Men and Women in Kyangwali refugee settlement

103 Interview with Officer in Charge of Criminal Investigations Department Kyangwali Police Station 19<sup>th</sup> May 2015

104 Interview with O/C Rwamwanja Police Station

105 Protection Assistant OPM, Kyaka II

106 Interview with RWCs

***“Courts can never solve problems in the community!”***

1-3 months that are required for petty/minor cases to be resolved in court.<sup>107</sup>

## **5.2 Accessibility, availability and affordability**

Refugee communities find informal structures very convenient because they are near to them and physically accessible. In a focus group discussion, one refugee explained;

***“Each village or zone, however far from the base camp or a police station, has RWCs to whom the community members report their issues.”<sup>108</sup>***

As such, these RWCs help bridge the gap through bringing services nearer to the communities that are remote.<sup>109</sup> Regarding affordability, all structures except the RWC system provide free services.<sup>110</sup> The communities therefore rarely incur costs except where compensation is ordered in monetary terms.<sup>111</sup> Respondents however noted that the requirement of registration fees by the RWCs system was very unfair and often left complainants without a remedy. In a Focus group discussion at Ntenungi in Rwamwanja refugee settlement one woman explained;

***“...there is an old disabled Tutsi woman aged about 58 years, she had a conflict with her Hutu neighbour who did not want to live near a Tutsi in the area. She reported the case to the RWC1 for assistance but the RWC1 refused to handle the case on the ground that she had not paid registration fees of 10,000/- shillings.”***

## **5.3 Legitimacy and trust in the community**

Refugees generally expressed confidence in the work done by local leaders and believe they understand their problems better than the police. The RWCs members are elected by refugees themselves.<sup>112</sup> In principle they are chosen because the communities trust them and believe they can represent and serve them effectively. They also share past experience of conflict and as such are assumed to understand the community issues better.<sup>113</sup> In Kyangwali settlement, the Sudanese community uses cultural leaders to solve disputes while in Rwamwanja, Burundian and Rwandans seek assistance from religious

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107 Offences like Assault, theft, threatening violence

108 FGD in Kyangwali Refugee settlement

109 Interview with refugee communities and service providers

110 The RWC system charges registration fees and at times transport facilitation.

See Proceedings before RWC system

111 See RWC and Community Elders systems.

112 Interviews with RWCs in the settlements

113 Interview with DPC Isingiro District

### **A Study of Informal Justice Structures in Refugee Settlements in Uganda**

leaders before other structures.<sup>114</sup> The respect and support they enjoy makes them influential in mediating and resolving cases.<sup>115</sup> Language barriers, that are a major hindrance to access to justice in formal systems particularly the court, are not a hindrance for refugees seeking in the informal system.<sup>116</sup> Respondents stated that they prefer these structures because they use customs and languages which are well known by the people.



***A legal officer taking a detailed account of a client's case in Nakivale Refugee Settlement***

It was however noted that corruption and soliciting for bribes existed in these structures. Refugee communities stated that while community elders do not ask for bribes, RWCs do. These allegations were re-echoed by several service providers. One officer explained;

***“Sometimes RWCs are partial; some are corrupt and they ask for ‘Pombe yawanawume’ before sitting to resolve the case that has been reported; one with more money is likely to win.”<sup>117</sup>***

114 Interview with AHA official on 11<sup>th</sup> June 2015.

115 See discussion on community elders

116 Baseline survey on Access to Justice, 2013. The Magistrate Grade I Isingiro Court noted that cases involving parties who only understand Kinyarwanda have been delayed due to lack of interpretation and as such justice is not served.

117 Interview with protection Assistant, OPM Rwamwanja Refugee Settlement “Pombe yawanawune” is Kiswahili term meaning “drink of the men” Similarly terms are used in Uganda such as soda, water normally referring to money.

***“Courts can never solve problems in the community!”***

Another added;

***“I don’t think the [informal] structures promote justice. The perpetrator bribes the RWC chairman in cases of SGBV and the committee will take Chairman’s position. In my view they don’t promote access to justice; there is bias.”***<sup>118</sup>

According to service providers, the partiality and corruption casts doubt as to the ability of the RWC system to promote justice especially for the poor.<sup>119</sup> As a result, some refugees prefer to report their cases to police and courts of law where they are more confident they will receive fair judgment.<sup>120</sup> It was also noted that the structures are dominated by men and that women can therefore find it difficult to access justice. In the Congolese communities where women are frequently regarded as sub-ordinate and men as superior, it is unlikely that women will receive a favourable judgment through the RWC system.<sup>121</sup> Community leaders were also identified for hindering justice in defilement cases by covering up evidence and not reporting such occurrences to the police or OPM.<sup>122</sup> One of the respondents stated thus:

***“RWCs at times handle criminal cases that are outside their jurisdiction despite having been sensitized on the same”***<sup>123</sup>

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118 Project Assistant at ACCORD, Rwamwanja Refugee Settlement

119 Interview with OC Rwamwanja Police Station

120 FGD with Rwandese community in Kyangwali on 20<sup>th</sup> May 2015

121 Interview with protection Assistant, OPM Rwamwanja Refugee Settlement

122 Ibid. The Assistant Protection Officer, Protection Assistant at UNHCR, Kyaka II, The Protection Assistant at ACCORD, Rwamwanja and Legal Officer SGBV, AHA, Kyaka II voiced this similar challenge.

123 Interview with the Protection Officer, Danish Refugee Council (DRC), Kyaka II

## Conclusion and Recommendations

Informal justice structures play a crucial role in dispute resolution in refugee communities. They specifically handle cases of domestic violence, assault, theft and civil cases relating to land and contracts. They are accessible to the people, affordable and provide quick and appropriate remedies to the people. RWC is a prominent system and the highest informal structure to which all structures refer cases in case resolution fails. Despite informal justice structures being popular and widely viewed by many as able to provide appropriate remedies, they at times fall short, particularly in terms of gender mainstreaming; Informal justice systems are dominated by men and are often discriminatory to women. They do not adhere to Ugandan laws and at times participate in early marriage ceremonies and negotiate criminal cases particularly defilement cases out of police. Some structures are corrupt and partial especially when their friends or relatives are involved and generally, the structures do not handle all criminal problems in refugee communities.

The respondents were of the view that stakeholders need to consider remuneration allowance and facilitation for the RWCs, peace-building committees and “nyumba kumi” committees. This is because these leaders are elected and/or selected and they dedicate most of their time resolving disputes in communities leaving them with less time to do their personal work like cultivating or starting a business. It is believed that this is the reason RWCs charge filing fees and take bribes, a practice that has scared away refugees from reporting cases to them.<sup>124</sup> Some service providers are already providing logistical support to these leaders.<sup>125</sup>

For the RWC system, leaders should be elected yearly and term limits instituted for those in power to hand over to others.<sup>126</sup> This will reduce instances of partiality and ensure independence of the party. OPM, UNHCR and other Implementing partners should also respect local leaders from the RWCs by informing them about measures such as arrests which they intend to take in their jurisdictions. There is a need for concerted effort by all stakeholders to raise awareness of Alternative Dispute Resolution (ADR) so that minor cases are resolved through

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124 Interview with the Protection Assistant-OPM Nakivale. According to her RWC IIs have motorcycles but need facilitation with fuel while RWCIIs and RWCIIs have no means of transport. She opined that facilitating these leaders with bicycles (at worst) would help them resolve refugee disputes with zeal

125 The Protection Assistant- OPM Nakivale also stated that ARC facilitates police with fuel to stop it from exploiting people.

126 Interview with men and women at Rwamwanja Refugee Settlement, Interview with ACCORD official

*“Courts can never solve problems in the community!”*

ADR. This will save the time and costs spent and incurred by refugees while pursuing justice in the formal justice systems and in the long-run promote harmony and peace with in refugee communities. Capacity building for service providers and community leaders through trainings and workshops on human rights, pertinent laws of Uganda and forced migration is essential in promoting justice for forced migrants. Since the RWC system operates like the LC system of Uganda, there is need to legalize their operations and prescribe offences and punishments for the cases that they handle to avoid abuse of discretion.

These and more recommendations can be taken to address the weaknesses and enhance the quality of services in the informal justice system. Initiatives taken should aim at addressing the weaknesses and quality of service in the systems. Above all they should be in line with the broader access to justice strategy which aims at promoting justice through both formal and informal justice systems.



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