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Increasing access to education for refugees in Uganda

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ABSTRACT

This article investigates the scope of the right to education as enjoyed by refugees in terms of domestic (Ugandan), regional (African) and international law. One of the main obstacles to accessing education for refugees in Uganda is financial constraints, which the principle of burden sharing seeks to ameliorate in refugee hosting countries in the Global South. This principle of burden sharing lies at the heart of the Global Compact on Refugees (GCR) which was adopted by the United Nations General Assembly to realise a more equitable distribution of refugee populations, who are disproportionately found in the Global South within States whose financial resources are severely strained. This article explores whether the GCR will increase access to the right to education of refugees in such a country, namely, Uganda. This right is considered to be a “multiplier” right as the degree of access to education impacts the level of enjoyment of other human rights. The article considers whether the international and regional frameworks are likely to increase access to education for refugees in

Uganda. Finally, recommendations are made to other stakeholders, namely, the Ugandan government and the United Nations High Commissioner for Refugees (UNHCR), on how to facilitate access to education for refugee children in Uganda.

Keywords: Uganda; refugee law; education; global compact on refugees.

“If there is one lesson to draw from the past few years, it is that individual countries cannot solve [large-scale refugee movements] on their own. International cooperation and action ... must be strengthened.”¹

1 INTRODUCTION

The principles of dignity and freedom lie at the heart of the international human rights framework.² The enjoyment of these principles is disrupted when the basic needs of individuals, such as, education, housing, health, employment, water and food, are not satisfied. These claims are the basis of the socio-economic rights that the 1951 United Nations Convention Relating to the Status of Refugees³ (1951 UN Convention) provides to refugees. This instrument provides refugees with access to basic necessities to enable them to live healthy and dignified lives.⁴ Therefore, the protection of these rights is vital for the sustenance and survival of refugees in their host country because it facilitates the stable, predictable and consistent satisfaction of their needs.⁵

Uganda is a Party to the 1951 UN Convention which recognises the following primary social and economic rights: the right to work; the right to education; the right to social security; and the right to housing.⁶ This article focuses on Uganda’s implementation of refugees’ rights to elementary and secondary education, as contained in Articles 21(1) and (2) of the 1951 UN Convention, and seeks to answer the following questions: How can refugee children in Uganda access education? ; What role can the Global Compact on Refugees (GCR) play in this regard?

First, this article examines the intended benefit of the right to education in the 1951 UN Convention. Secondly, Uganda’s normative framework, ie the relevant domestic, regional and international laws for the right to education for refugees, is discussed and critiqued where relevant. Proceeding from the above, the article will assess whether the

¹ United Nations General Assembly “In Safety and Dignity: Addressing Large Movements of Refugees and Migrants: Report of the Secretary-General” (2016) at para 3, available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/59&=E%20 (accessed 4 November 2021).

² Lal R “Social and economic rights of refugees under international legal framework: an appraisal” (2018) 53 *Indian Journal of International Law* 469.

³ Adopted 28 July 1951.

⁴ See Lal (2018) at 469.

⁵ There are three recognised durable solutions, namely, resettlement in a third country, local integration and voluntary repatriation.

⁶ See Arts 17-22.

protection of the right to education in Uganda's domestic legal framework results in refugees receiving the same access to, and standard of, education as Ugandan nationals as required by Article 22 of the 1951 UN Convention.

Despite Uganda's best efforts, the first portion of the article will show that it has been unable to provide adequate education for refugees. The second portion of the article, therefore, will consider whether international intervention, in the form of the GCR, can offer a solution. Accordingly, the potential of international and regional frameworks to ameliorate the problem of refugees' lack of enjoyment of the right to education in Uganda will be assessed. First, a brief description of the GCR is provided. Secondly, the failure of the GCR to attract funding for its response plans, and its lack of strategy, are explained. This is followed by a discussion of the positive impact that the GCR has had on access to the right of education for refugees in Uganda. Lastly, this article will make recommendations on how the GCR could be adapted to strengthen its efficacy.

This article will determine that a lack of financial resources is the main obstacle to refugees enjoying the right to education in Uganda. Despite the GCR's intention to attract financial support for countries with large refugee populations, its lack of a mandatory donation system severely hampers its efficacy. The article then makes recommendations to the Ugandan government and the United Nations High Commissioner for Refugees (UNHCR) to increase refugee children's access to education in Uganda.

2 THE IMPORTANCE OF THE RIGHT TO EDUCATION FOR REFUGEES

The right to education is universally accepted as a fundamental constituent of human rights.⁷ It facilitates the economic and social empowerment of marginalised and vulnerable groups, thereby improving their quality of life. Refugees require education in order for them to enjoy other human rights which are conferred upon them.⁸ Typically, refugees enjoy low standards of living in conditions which are detrimental to their health. Education's importance lies in the fact that it allows them to escape conditions of poverty. In addition to poverty, refugees often encounter the challenge of the host population's hostility towards them that typically stems from the belief that refugees drain public resources and are, therefore, an economic liability.⁹ Education can assist in challenging these beliefs by enabling refugees to contribute positively to the host

⁷ See Art 13 of General Comment No 13: The Right to Education (1999) available at [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13_TheRighttoEducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13_TheRighttoEducation(article13)(1999).aspx) (accessed 4 November 2021).

⁸ Magos K & Margaroni M "The importance of educating refugees" (2018) 5 (4) *Global Education Review* 1 at 3.

⁹ Duvell F & Jordan B "Immigration, asylum and welfare: the European context" (2002) 22(3) *Critical Social Policy* 498.

country's economy.¹⁰ Accordingly, education has the potential to reduce the level of hostility that refugees face from host populations.

Furthermore, education is significant for refugee children, in particular, as it facilitates the improvement of their psychological stability through the provision of an environment that engenders a sense of order and routine. This sense of normality ameliorates the psychological challenges that they may experience, as a result of being in a foreign country and leaving their country of origin in the face of crises.¹¹

Quality education has a central role in Uganda's development policy agenda as laid out in the Sustainable Development Goals (SDGs).¹² Therefore, improving access to education is a key policy goal for the country. A shortage of skilled workers has been identified as a factor that constrains Uganda's economic growth.¹³ The Government of Uganda, in cooperation with development partners, such as, the World Bank and the UNHCR, has agreed that education should be prioritised. Accordingly, refugees have been included in Uganda's National Development Plan (NDP) through the Settlement Transformative Agenda, which sets out the government's comprehensive refugee response strategy.¹⁴

In recognition of the relevance of education and its multiplier effect, and pursuant to Uganda's Constitution's provisions on education,¹⁵ the government has implemented policies to improve both the demand for, and supply of, educational services. Those policies which seek to increase access to education include: training, hiring and retraining of teachers; renovating and building skills; curriculum changes; addressing staff absenteeism; and purchasing adequate instructional materials.¹⁶ Furthermore, national policies related to increasing access to education include the Universal Primary Education (UPE) programme and the Universal Secondary Education (USE) programme¹⁷ which are addressed in more detail below.

¹⁰ See Art 13 of General Comment No 13: The Right to Education (1999).

¹¹ O'Rourke J "Education for Syrian refugees: the failure of second-generation human rights during extraordinary crises" (2015) 78 *Albany Law Review* 711 at 725.

¹² Tsimpo C, Etang A & Wodon Q "Education and health services in Uganda: quality of inputs, user satisfaction and community welfare levels" (2017) Policy Research Working Paper No 8116 Washington DC : World Bank (2017) at 2.

¹³ See Tsimpo et al (2017) at 2.

¹⁴ Uganda Solidarity Summit on Refugees "Translating New York Declaration Commitments into Action: Requirements for a Comprehensive Refugee Response in Uganda" (2017) at 10 available at http://solidaritysummit.gou.go.ug/sites/default/files/UgandaComprehensiveRefugeeResponse_20_June_2017.pdf (accessed 24 September 2021).

¹⁵ See Arts 30 & 34.

¹⁶ See Tsimpo et al (2017) at 2.

¹⁷ See Tsimpo et al (2017) at 2.

3 THE RIGHT TO EDUCATION IN INTERNATIONAL REFUGEE LAW

In the light of the preceding Part , it is clear that the right to education is a fundamental socio-economic right for refugees. The protection of this right is promoted through the implementation of international, regional and domestic laws.

3.1 Article 22(1) of the 1951 UN Convention

Article 22(1) of the 1951 UN Convention states that refugees should receive treatment at a level that is at least on par with the host country's nationals with respect to elementary education. However, the Article does not define the term "elementary education"¹⁸ which is assumed to be equivalent to "primary education".¹⁹ Such an interpretation appears to be consistent with the UNHCR's view that education includes grades 1 to 8 and covers a total of eight years of education.²⁰

Whilst there is uncertainty regarding the definition of the term "elementary education", the beneficiary class of Article 22(1) is clear in that elementary education should be enjoyed by "refugees". The provision does not qualify the class by providing that only refugees "lawfully in" or only refugees "lawfully staying in" the host country should enjoy the right. Therefore, Article 22(1) applies to both non-resident and resident refugees.²¹ The only limitation of Article 22(1) is in its title, namely, "Public Education". This limitation is notable for two reasons. First, refugees are not entitled to education that is provided by institutions that are not government funded. Secondly, as a result of the narrow nature of the limitation, refugees are entitled to receive education whilst their status is being determined.²²

Article 22(1) obligates States Parties to treat refugees and nationals identically with respect to elementary education. When complying with this obligation, States Parties are prohibited from discriminating on any basis.²³ In terms of the provision, States Parties may not favour nationals and, thus, deny refugees education. However, refugees

¹⁸ Blay S & Tsamenyi M "Reservations and Declarations under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees" (1990) 2 *International Journal of Refugee Law* 547.

¹⁹ Hathaway J *The rights of refugees under international law* Cambridge : Cambridge University Press (2005) at 596.

²⁰ United Nations High Commissioner for Refugees "Education Field Guidelines" (2003) available at <https://www.unhcr.org/protection/operations/40586bd34/education-field-guidelines.html> (accessed 4 November 2021) at para 3.1.1.

²¹ Grahl-Madsen A *Commentary on the Refugee Convention 1951* Geneva : Division of International Protection of the United Nations High Commissioner for Refugees (1997) at 50.

²² Robinson N *Convention Relating to the Status of Refugees: its history, contents and interpretation* Geneva: Division of International Protection of the United Nations High Commissioner for Refugees (1953) at 163.

²³ See Hathaway (2005) at 602.

are not entitled to greater access to primary education than nationals.²⁴ The State must use its educational facilities to benefit both nationals and refugees equally even when resources are limited. Burden sharing may also be used to ensure that the education rights of refugees are not neglected.²⁵

3.2 Article 22(2) of the 1951 UN Convention

Article 22(2) provides that, with respect to secondary education, refugees cannot be treated less favourably than aliens who are non-citizens and non-nationals of the host country.²⁶ This provision constitutes a limitation on refugees' access to this form of education as it is contingent on their ability to pay for tuition. In addition, the incorporation of refugees with aliens, with respect to access to post-elementary education, is discriminatory. Aliens, unlike refugees, live in a host country as a result of their own volition. Also, unlike refugees, aliens are still protected by their home governments. Therefore, equating these two classes of persons in relation to a right of such import is regrettable. For example, it is policy in Tanzania that refugees constitute a part of the two per cent quota of foreign nationals who are permitted to be admitted to secondary education and, in Zambia, refugees must apply for the same costly study visa that foreign nationals require.²⁷ It is submitted that refugees' increased vulnerability should result in preferential treatment.

4 THE RIGHT TO EDUCATION IN REGIONAL REFUGEE LAW

The Convention Governing the Specific Aspects of Refugee Problems in Africa²⁸ (OAU Refugee Convention) was established to address Africa's refugee challenges. However, the instrument does not provide for socio-economic rights. Therefore, the right to education is excluded even though it is a fundamental enabling right for children who constitute a majority of refugees at both the regional and international levels.²⁹ Arguably, this omission was an intentional response to deal with the phenomenon of mass movements of persons on the African continent in the belief that providing refugees with elaborate rights will discourage African governments, which typically have limited financial resources, from accepting refugees.³⁰ Regardless of the justification for such an omission, scholars have attempted to argue both in favour of

²⁴ See Hathaway (2005) at 602.

²⁵ See Hathaway (2005) at 602.

²⁶ Goldman R & Martin S "International legal standards relating to the rights of aliens and refugees and United States immigration law" (1983) 5 *Human Rights Quarterly* 3.

²⁷ See Hathaway (2005) at 611.

²⁸ Adopted 10 September 1969.

²⁹ Martin SF, Davis R, Benton G & Waliy Z "International responsibility-sharing for refugees" (2018) Global Knowledge Migration Partnership on Migration and Development (KNOMAD) Working Paper 32 Washington DC : World Bank at 6.

³⁰ Barutciski M "The development of refugee law and policy in South Africa: a commentary on the 1997 Green Paper and the 1998 White Paper/Draft Bill" (1998) 10 *International Journal of Refugee Law* 714.

and against the proposition that individuals, who are refugees in terms of the OAU Refugee Convention, enjoy the socio-economic rights enumerated in the 1951 UN Convention.³¹ However, both sets of arguments suffer from a dearth of legal reasoning.³²

The OAU Refugee Convention's *travaux préparatoires* indicate that refugees enjoy the socio-economic rights enumerated in the 1951 UN Convention. Preliminary versions of the OAU Refugee Convention contained a comprehensive rights framework that mirrored that of the 1951 UN Convention.³³ The drafts' rights framework was only abandoned following the adoption of the Optional Protocol Relating to the Status of Refugees.³⁴ Moreover, prior to the text of the OAU Refugee Convention being finalised, the Organization of African Unity's (OAU) Assembly of Heads of State and Government, at almost every meeting, encouraged Member States to ratify the 1951 UN Convention.³⁵ This indicates that the OAU viewed the 1951 UN Convention as being supplementary to the OAU Refugee Convention.

Whilst academic debate on this issue continues, the matter is essentially immaterial in practice as most African States that are party to the regional refugee treaty are also party to the 1951 UN Convention.³⁶ Accordingly, most individuals recognised as refugees in terms of the OAU Refugee Convention will enjoy the rights enumerated in the 1951 UN Convention. There are two regional human rights treaties to which Uganda is a State Party that are relevant to refugees' rights to education. First, the African Charter on the Rights and Welfare of the Child³⁷ (African Children's Charter) guarantees refugee children's right to education. Secondly, the African Charter for Human and Peoples' Rights (ACHPR) guarantees the right to education for all individuals, regardless of age.³⁸

The African Children's Charter requires States Parties to ensure that refugee children receive appropriate assistance and protection in enjoying the rights enumerated in the document.³⁹ Therefore, Article 23, read with Article 11, qualifies refugee children to receive free and compulsory basic education. In terms of Article 11,

³¹ Sharpe M "The 1969 African Refugee Convention: innovations, misconceptions, and omissions" (2012) 58 *McGill Law Journal* 128.

³² See Sharpe (2012) 128.

³³ Sharpe M *The regional law of refugee protection in Africa* Oxford : Oxford University Press (2018) AT 105.

³⁴ Adopted 4 October 1967.

³⁵ See the Optional Protocol Relating to the Status of Refugees.

³⁶ United Nations High Commissioner for Refugees "Key Legal Considerations on the Standards of Treatment of Refugees Recognized Under the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa" (2017) available at <https://www.refworld.org/docid/5a391d4f4.html> (accessed 4 November 2021) at 6.

³⁷ Adopted 1 July 1990.

³⁸ Adopted 1 June 1981. See Article 17.

³⁹ See Art 23 African Children's Charter.

States Parties are further obliged to take necessary actions to ensure that the right to education is fully realised. These measures include building educational institutions, and providing teaching and learning materials as well as appropriately trained teachers. In order to act in compliance with this right, nationals and non-nationals must each receive an equitable share of a country's educational resources.⁴⁰

The African Children's Charter, unlike Article 13(2) (c) of the International Covenant on Economic, Social and Cultural Rights, does not require Member States to provide or progressively realise access to tertiary education.⁴¹ This omission is unfortunate as various bodies, such as the UN General Assembly, have recognised the value of education for vulnerable groups, which includes refugees, and for the provision of "universal access to quality education *at all levels*" (my emphasis).⁴² It is postulated that the limited resources of developing countries in the international community served as justification for this omission.

The ACHPR grants the right to education to "every individual".⁴³ This provision must be read together with Article 2 which prohibits discrimination against non-nationals.⁴⁴ Accordingly, refugees, irrespective of their age, are entitled to education. Whilst the African Court on Human and Peoples' Rights has not examined Article 17's content, the Economic Community of West African States Community Court of Justice has found that the ACHPR's Article 17 is a legal entitlement that individuals enjoy and not a mere policy directive.⁴⁵

Therefore, it is essentially required that refugees (including children) in Uganda are provided equal rights as per the dictates of Article 2 of the ACHPR to which Uganda is a party without reservations.⁴⁶ Similarly, Article 18(3) requires States to extend protection of the child rights without discrimination as provided for in other

⁴⁰ See *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative v The Government of Kenya* (2011) Communication No 002/2009 at para 65 available at <https://www.refworld.org/cases/ACERWC.4f5f04492.html> (accessed 4 November 2021).

⁴¹ Chirwa D "The merits and demerits of the African Charter on the Rights and Welfare of the Child" (2002) 10 *The International Journal of Children's Rights* 157 at 162-163.

⁴² United Nations General Assembly "Transforming our world: the 2030 Agenda for Sustainable Development" (2015) available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (accessed 4 November 2021) at para 7.

⁴³ See Art 17 of the ACHPR.

⁴⁴ *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (2000) Communication No 32 at para 35 available at <https://www.refworld.org/cases/ACHPR.51b6f3524.html> (accessed 4 November 2021).

⁴⁵ *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission*, No ECW/CCJ/APP/0808 at para 20 available at https://www.escri-net.org/sites/default/files/SERAP_v_Nigeria.pdf (accessed 4 November 2021).

⁴⁶ The Government of the Republic of Uganda signed and ratified the ACHPR without reservation on 27 May and 18 August 1986, respectively. Hence agreed to be bound by its provisions.

international human rights treaties. Hence, Uganda, as a State Party, has a duty and obligation to implement provisions concerning child rights that are enshrined in other international treaties.

5 THE RIGHT TO EDUCATION IN DOMESTIC REFUGEE LAW

This Part will demonstrate how Uganda’s legal framework, including the Constitution of the Republic of Uganda, 2005 (Constitution) and legislation, protects the right to education. This domestic protection stems from Article 30 of the Constitution which provides all individuals with the right to education. Nevertheless, two major concerns exist. First, it appears that the standard of education that refugee children receive, especially in rural environments, is inadequate.⁴⁷ This is significant as 74 per cent of refugees in Uganda reside in eight rural host districts in the eastern and northern regions of the country.⁴⁸ Accordingly, the remainder of this article will focus on the challenges that refugees in rural Uganda face in accessing education. Secondly, a review of Uganda’s education legislation will demonstrate that Uganda, in conflict with its international law obligations, prioritises providing basic education to citizens over refugees and, whilst primary education is available without cost, payment is required for secondary education.

5.1 The Constitution

The Constitution provides every individual with the right to education.⁴⁹ Furthermore, Article 34 entitles every child to basic education and stipulates that both the State and parents are jointly obligated to ensure that children enjoy access to basic education. These Articles are unqualified. Furthermore, children are protected from economic or social exploitation which will prevent them from accessing education.⁵⁰ Accordingly, the Constitution comprehensively guarantees the right to education and safeguards individuals from discriminatory practices. To give effect to Articles 30 and 34 of the Constitution, the Education (Pre-Primary, Primary and Post-Primary) Act⁵¹ and the Children’s (Amendment) Act of 2016 were enacted. These pieces of legislation are quite recent and their provisions remain largely untested by judicial bodies.

5.2 The Children’s (Amendment) Act

⁴⁷ See Tsimpo et al (2007) at 6.

⁴⁸ Ruaudel H & Morrison-Métois S “Responding to refugee crises: lessons from evaluations in Ethiopia and Uganda as countries of destination” OECD Development Cooperation Working Papers No 38 Paris : OECD Publishing (2017) at 38.

⁴⁹ See Art 30 of the Constitution of the Republic of Uganda, 2005.

⁵⁰ Article 34(2)(b) of the Constitution of the Republic of Uganda, 2005.

⁵¹ Education (Pre-Primary, Primary and Post-Primary) Act 13 of 2008.

The Children's (Amendment) Act prohibits discrimination on the grounds of nationality, social origin, citizenship or any other condition.⁵² It is unclear whether the phrase "any other condition" includes "refugee status" as the term has never been interpreted by a Ugandan court. However, the *ejusdem generis* doctrine, which has been confirmed by the Supreme Court of Uganda,⁵³ could be used to justify the position that refugees are included in the phrase "or any other condition" as "refugee status" is arguably "of the same kind" as the other listed grounds.

Furthermore, the provision arguably protects refugee children from discrimination under the ground of "nationality". Whilst "nationality" is a contested term in law,⁵⁴ policies that differentiate between children on the ground of nationality will become more difficult to justify as the length of a refugee's stay in a country is prolonged. In these circumstances, a refugee's need for integration, which education satisfies, will increase and refugees are readily distinguishable from the larger class of immigrants in respect of which immigration control justifications are more convincing.

5.3 The Education (Pre-Primary, Primary and Post-Primary) Act (Education Act)

This statute provides that all individuals should enjoy basic education. This provision is unqualified and, therefore, also applies to refugees. Section 9 of the Education Act seeks to increase access to education by removing financial barriers. This provision bars individuals from charging learners levies in any educational institution that is part of the universal free education programme. Despite the existence of section 9, fees are charged for all children, whether refugees or nationals, to write national examinations at the conclusion of both primary and secondary school.⁵⁵ Similarly, additional charges for registration, development and feeding have been imposed by some schools.⁵⁶ The fees charged by the Ugandan National Examination Board at the end of primary and secondary school, to write the respective examinations, prevent many children from completing these levels of schooling.⁵⁷

President Museveni has condemned these practices by labelling them illegal as they impose burdens on guardians and parents. He emphasised that "the government put

⁵² See s 4(j) Education (Pre-Primary, Primary and Post-Primary) Act.

⁵³ *Registered Trustees of Kampala Institute v Departed Asians Property Custodian Board* (Civil Appeal No 21/93) [1994] UGSC 18 available at <https://ulii.org/ug/judgment/supreme-court-uganda/1994/18> (accessed 4 November 2021).

⁵⁴ Khan F & Schreier T *Refugee law in South Africa* Cape Town : Juta Publishers (2015) at 64.

⁵⁵ Okoth C "UPE Schools still charge exam fees" (2017) available at https://www.newvision.co.ug/new_vision/news/1341618/upe-schools-charge-exam-fees (accessed 24 September 2021).

⁵⁶ Sebano J 'Museveni warns UPE School on charging fees' (2015) available at <https://www.monitor.co.ug/News/National/Museveni-warns-UPE-schools-charging-fees/688334-2860488-%20juouu5/index.html> (accessed 24 September 2021).

⁵⁷ See generally Okoth (2017).

money into Universal Primary Education (UPE) to ensure all pupils get free basic education”.⁵⁸ Nevertheless, the above-mentioned fees have forced many children to drop out of school before completing the seven-year cycle of primary and four-year cycle of secondary education systems, both under the free UPE programme and the USE programme, because they cannot afford the fees and other related costs, such as photographs and fees for mock examinations.⁵⁹ In 2012, *New Vision* newspaper revealed that over one million children who enrolled for primary one in 2006 under the free UPE programme did not complete the cycle, representing a 71 per cent dropout rate.⁶⁰

5.4 The Refugees Act and the 2010 Refugees Regulations Act⁶¹

These two statutes contain numerous freedoms and protections for refugees in Uganda. The Refugees Act,⁶² in particular, confers on every refugee child the right to enjoy, without discrimination, those rights enumerated in both regional and international human rights treaties.⁶³ Refugee children are expressly granted access to basic education and may not receive less favourable treatment than nationals.⁶⁴ Consequently, refugee children may benefit from Uganda’s free UPE programme. However, section 29(1) (e) subjects refugees seeking secondary education to the same treatment accorded to aliens in similar circumstances (that is, if they can afford it). Therefore, legally, refugee children are ineligible for the free USE programme despite the fact that, in terms of Uganda’s international obligation, it is required to make secondary school generally accessible and available to every child.⁶⁵ Although, in practice, many attend private and public secondary schools (provided that they can afford the fees), the availability of secondary schools, especially in rural refugee settlements, poses a barrier to learning. This is significant as most refugee settlements in the country are situated in rural areas where education services are limited.⁶⁶

6 UGANDA’S EDUCATION SYSTEM: IN PRACTICE

The government of Uganda, acting in terms of its domestic, regional and international obligations, has taken steps to increase access to education through the building and enlargement of schools; curriculum reform; hiring, training and retraining teachers; and

⁵⁸ See Sebano (2015).

⁵⁹ See generally Okoth (2017).

⁶⁰ Kagolo F “UPE: Staggering 71% drop-out rate so far” (2012) *The New Vision*, available at https://www.newvision.co.ug/new_vision/news/1309819/upe-staggering-71-drop-rate (accessed 26 July 2021).

⁶¹ Refugees Regulations Act 9 of 2010.

⁶² Refugees Act 21 of 2006.

⁶³ Section 32(2) Refugees Act.

⁶⁴ Section 2 read with s 34(1) Refugees Act.

⁶⁵ See Art 28(1) of the Convention on the Rights of the Child, 1989. See also Art 13(2)(b) of the International Covenant on Economic, Social and Cultural Rights, 1966.

⁶⁶ See Tsimpo et al (2007) at 6.

purchasing books and other study materials for learners.⁶⁷ These education reforms have resulted in an increase in admission rates; however, they have failed to keep up with the demand for education from both nationals and refugees.⁶⁸ Educational institutions are experiencing overcrowding due to limited physical infrastructure as well as constrained human and financial resources.⁶⁹ Therefore, the provision of quality education in Uganda has been severely compromised.

Refugees in Uganda benefit from the free UPE programme. However, as most of Uganda's refugees reside in rural areas in the north of the country,⁷⁰ the majority of these children receive substandard education as a result of teacher absenteeism that has a significant negative effect on learners' educational ability.⁷¹ It has been shown that the high rates of absenteeism result in learners receiving low marks in standardised tests.⁷² A further disadvantage that refugee children encounter, by virtue of disproportionately residing in rural areas, is the quality of their teachers. Research shows that teachers in rural areas have less knowledge of the subjects they teach and fewer pedagogical skills than their urban counterparts.⁷³

There are numerous further problems in the education sector in rural Uganda. These include : high dropout rates; substandard quality of education; high teacher-to-pupil ratios at about 1:150;⁷⁴ inadequate accommodation for children with disabilities; a shortage of appropriately trained teachers; and relatively low numbers of pupils in secondary schools.⁷⁵ These challenges can be attributed to an inadequate allocation of financial resources to training and compensating teaching staff.⁷⁶ In addition, in 2005, the Committee on the Rights of the Child found that poor living conditions and limited access to sanitary materials has resulted in a high dropout rate among refugee girl

⁶⁷ See Tsimpo et al (2007) at 6.

⁶⁸ See Tsimpo et al (2007) at 6.

⁶⁹ See Tsimpo et al (2007) at 6.

⁷⁰ See Tsimpo et al (2007) at 6.

⁷¹ See Tsimpo et al (2007) at 6.

⁷² Obeng-Denteh W, Yeboah EA, Sam C & Monkah JE "The impact of student and teacher absenteeism on student performance at the junior high school: the case of the Kumasi-Metro School District" (2011) 4 *Continental Journal of Education Research* 1 at 12.

⁷³ See Tsimpo et al (2007) at 16.

⁷⁴ Thulare T, Spoolstra C, Dombrowski E et al "A comparative policy analysis of the Comprehensive Refugee Response Framework in Uganda and Kenya" in Wiseman A (ed) *Comparative perspectives on refugee youth education: dreams and realities in education systems worldwide* Milton, United Kingdom: Taylor & Francis Group (2019) at 138.

⁷⁵ Lutheran World Federation et al "Republic of Uganda Joint Submission to the UN Universal Periodic Review: 26th Session of the UPR Working Group" (2016) available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2992&file=EnglishTranslation> (accessed 4 November 2021) at 17.

⁷⁶ United Nations Human Rights Council "Universal Periodic Review: Uganda" (2011) available at <https://www.refworld.org/topic.50ffbce51b1.50ffbce5208.4e9c10452.0...UGA.html> (accessed 4 November 2021) at para 79.

children⁷⁷, and that teachers have not been adequately trained to handle the particular challenge of educating refugee children.⁷⁸ The curriculum remains a challenge as the language of instruction in Ugandan primary schools is unfamiliar to refugees as, in rural areas, indigenous local languages are largely used as the language of instruction.⁷⁹

In terms of the Refugees Act, refugees are not entitled to access the free USE programme, which is governmental policy aimed at opening access to, and creating opportunities for poor students to attend, secondary schools by abolishing school fees in certain schools.⁸⁰ Nevertheless, the government maintains that refugees do, in practice, enjoy free access to the USE programme.⁸¹ Even if the financial burden is not currently enforced in Uganda, refugees' access to secondary schools is hindered by the reality that there are an insufficient number of secondary schools in rural areas of Uganda to meet the demand.⁸²

A number of legal and structural limitations that prevent refugees from enjoying the right to education in Uganda have been identified. Refugees can approach the courts to challenge their access to education.⁸³ Notably, the issue of the refugees' right to education has never come before a court in Uganda ; therefore the provisions of Uganda's domestic framework have not been interpreted and have thus evaded judicial scrutiny. This means that the blatant ineffectiveness of the current legal regime is likely to remain in the absence of judicial intervention.

7 THE PROBLEM OF BURDEN SHARING IN UGANDA

At the end of 2017, Uganda was Africa's largest refugee hosting country and the third largest internationally.⁸⁴ As a result of Uganda's "open door policy" for refugees and its geographical location, it is a popular destination for those seeking asylum in the Great

⁷⁷ United Nations Committee on the Rights of the Child "UN Committee on the Rights of the Child: concluding Observations, Uganda" (2005) available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&docid=45377eb70&skip=0&publisher=CRC&coi=UGA&query=i=uganda%20&searchin=fulltext&sort=date> (accessed 4 November 2021) at para 61.

⁷⁸ United Nations Committee on the Rights of the Child "UN Committee on the Rights of the Child: concluding Observations, Uganda" (2005) available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&docid=45377eb70&skip=0&publisher=CRC&coi=UGA&query=i=uganda%20&searchin=fulltext&sort=date> (accessed 4 November 2021) at para 61.

⁷⁹ Akello L & Timmerman G "Local language a medium of instruction: challenges and way forward" (2017) 26 *Education Action Research* 317.

⁸⁰ Molyneaux K "Uganda's universal secondary education policy and its effect on 'empowered' women: how reduced income and moonlighting activities differentially impact male and female teachers" (2011) 6 *Research in Comparative and International Education* 1 at 62.

⁸¹ Uganda Solidarity Summit on Refugees (2017) at 6.

⁸² Uganda Solidarity Summit on Refugees (2017) at 11.

⁸³ See s 29(h) of the Refugees Act.

⁸⁴ United Nations High Commissioner for Refugees "Global Trends: Forced Displacement" (2018) available at <https://www.unhcr.org/globaltrends2017/> (accessed 4 November 2021) at 3.

Lakes region, an area that is plagued by conflict.⁸⁵ Due to this, Uganda's human and financial resources have been placed under enormous pressure by two factors. First, since 2005, Uganda's refugee population has increased exponentially as a result of conflicts in South Sudan, the Democratic Republic of Congo, Burundi and Somalia. The South Sudan conflict alone has resulted in the presence of one million refugees.⁸⁶ Secondly, there is the issue of protracted refugee situations in Uganda in terms of which refugees find themselves in a state that is both intractable and long-lasting.⁸⁷ The financial burden caused by exponentially growing refugee populations and protracted refugee situations that has placed on refugee hosting countries has led to serious concerns about the uneven distribution of State responsibilities for hosting refugees.⁸⁸

At the centre of these tensions lies the following set of principles: solidarity, international cooperation and burden sharing between States in the refugee regime. These tensions resulted in the renewed academic and policy interest in the burden sharing principle which culminated in the adoption of a Global Compact on Refugees by the General Assembly in 2018, with the goal of ensuring a more equitable and predictable burden and responsibility sharing.⁸⁹

The burden sharing principle recognises that refugee matters are an issue of international concern and that, therefore, there is a need for international cooperation between States as hosting refugees and that granting asylum creates challenges in many States.⁹⁰ The need for burden sharing has been expressed in numerous international instruments, such as Recital 4 of the 1951 UN Convention, in addition to binding regional treaties⁹¹ and non-binding international treaties.⁹² However, at the time of

⁸⁵ United Nations High Commissioner for Refugees "Global Trends: Forced Displacement" (2018) available at <https://www.unhcr.org/globaltrends2017/> (accessed 4 November 2021) at 64.

⁸⁶ Ahimbisibwe J "Uganda and the refugee problem: challenges and opportunities" (2019) 13 *African Journal of Political Science and International Relations* 5 at 64.

⁸⁷ See Ahimbisibwe (2019) at 9.

⁸⁸ Inder C "The origins of 'burden sharing' in the contemporary refugee protection regime" (2017) 29 (4) *International Journal of Refugee Law* 523 at 524.

⁸⁹ See Inder (2017) at 524.

⁹⁰ See Inder (2017) at 524.

⁹¹ See, for example, "OAU Refugee Convention", Article II(4); "Consolidated Version of the Treaty on the Functioning of the European Union" Adopted on 26 October 2012, Article 67(2) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> (accessed 4 November 2021).

⁹² See, for example, "Declaration on Territorial Asylum" (1967) Article 2(2) available at https://legal.un.org/avl/pdf/ha/dta/dta_e.pdf (accessed 4 November 2021); United Nations General Assembly "Millennium Declaration" (2000) at para 26 available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Millennium.aspx> (accessed 4 November 2021); United Nations High Commissioner for Refugees Executive Committee "International Solidarity and Refugee Protection" (1988) paras 3 and 4 available at <https://www.unhcr.org/excom/exconc/3ae68c433c/international-solidarity-refugee-protection.html> (accessed 4 November 2021).

writing, the principle does not play a substantive role in a binding international refugee instrument. Accordingly, whilst the principle has been lauded for being desirable (or even necessary), it is not a “hard” legal principle in international refugee law and is commonly referred to as a “soft law principle”.⁹³

This principle is undermined by the international community’s chronic reluctance to provide adequate financial support to developing countries that host large refugee populations.⁹⁴ This underfunding has negatively affected refugees’ rights to education in a number of manners identified in the previous Part of this paper, such as : poor infrastructure; impractical teacher-to-pupil ratios; and a shortage of secondary schools. Therefore, Uganda’s hospitality towards refugees, exemplified by its generous and progressive refugee policy, is threatened by insufficient assistance from the international community.

8 HOW THE GLOBAL AND REGIONAL FRAMEWORKS FAIL TO SOLVE UGANDA’S BURDEN SHARING PROBLEM

8.1 The global framework

The 2016 New York Declaration for Refugees and Migrants (New York Declaration), adopted by the UN General Assembly on 19 September 2016, includes a set of commitments for refugees and migrants. This Declaration called on the UNHCR to develop and initiate the Comprehensive Refugee Response Framework (CRRF), which identifies important aspects for a comprehensive response to large movements of refugees. The New York Declaration was adopted by 193 Member States of the UN, and CRRF plans were rolled out in 15 countries, including Uganda.⁹⁵ The CRRF aims to facilitate greater cooperation among stakeholders in response to forced migration whilst devising innovative means to foster the self-sufficiency of refugees and to better support their host communities. Accordingly, the CRRF is a document which envisions a change of culture and conduct in response to refugee situations.⁹⁶

The CRRF formed part of the GCR that the UN General Assembly affirmed in December 2018. These two documents have identical objectives intended to address the financial challenges that developing countries with large refugee populations, such as Uganda, encounter. While the GCR is not legally binding, it expresses the commitment of

⁹³ Hurwitz A *The collective responsibility of states to protect refugees* (2009) Oxford : Oxford University Press (2009) at 164.

⁹⁴ See Ahimbisibwe (2019) at 65.

⁹⁵ Carciotto S & Ferraro F “Building blocks and challenges for the implementation of the global compact on refugees in Africa” (2020) 8 (1) *Journal on Migration and Human Security* 83 at 87.

⁹⁶ Thomas M “Turning the comprehensive refugee response framework into reality” (2017) 56 *Forced Migration Review* 69.

UN Members to abide by its guiding principles and implement its Program of Action.⁹⁷ The GCR provides a framework to distribute responsibility sharing among stakeholders while the CRRF offers guidelines for synthesising these tools to best respond to specific refugee situations. The GCR's primary objective is to provide a framework for equitable and predictable responsibility sharing for the supporting and hosting of the world's refugee population among all Member States of the United Nations and other relevant stakeholders.⁹⁸ The GCR has four primary objectives, namely : reducing the burden on host countries; increasing the self-reliance of refugees; encouraging third country agreements; and increasing the feasibility of return through the improvement of conditions in host countries.⁹⁹

The willingness of countries in the Global North to commit to the GCR can be seen as an extension of their externalisation policies which prevented asylum seekers and refugees from reaching a particular "destination" country or region, and/or from being able to claim or enjoy protection there.¹⁰⁰ As refugee inflows, especially since 2015, have become a politically charged domestic issue in Europe, Western nations have sought to abdicate their responsibilities through so-called "you host, I pay" schemes. In such schemes, host States, which are typically in the Global South and host 85 per cent of the world's refugees, depend on donor aid, and the sole assistance that they receive from high-income countries, which receive a relatively small number of refugees,¹⁰¹ comes in the form of donor aid.¹⁰² Accordingly, the GCR provides political protection for governments in the Global North by restricting the inflow of "unwanted" refugees and placing the burden of their protection on the developing world.

The GCR recognises the importance of meeting refugees' socio-economic rights, as enumerated in the 1951 UN Convention, by addressing how refugees can be supported in enjoying these rights.¹⁰³ With respect to the right to education, the GCR states that national education laws and policies should, with the assistance of host countries, donor States and relevant stakeholders, increase the quality of education and expand access to

⁹⁷ Türk V "The promise and potential of the global compact on refugees" (2018) 30 (4) *International Journal of Refugee Law* 580.

⁹⁸ Carrera S & Cortinovis R "The EU's role in implementing the UN global compact on refugees. Contained mobility vs international protection" CEPS Paper No 2018-04, April 2019 Brussels : Centre for European Policy Studies (2019).

⁹⁹ United Nations General Assembly "Global Compact on Refugees" (2018) available at <https://www.unhcr.org/5c658aed4.pdf> (accessed 4 November 2021) at para 7.

¹⁰⁰ United Nations High Commissioner for Refugees "UNHCR Note on the 'Externalization' of International Protection" (2021) available at <https://www.refworld.org/pdfid/60b115604.pdf> (accessed 4 November 2021) at 5.

¹⁰¹ United Nations High Commissioner for Refugees "Global Trends: Forced Displacement in 2017" (2017) available at <https://www.unhcr.org/5b27be547.pdf> (accessed 4 November 2021) at 3.

¹⁰² Khan F & Sackeyfio C "Situating the global compact on refugees in Africa: will it make a difference to the lives of refugees 'languishing in camps'" (2021) 65 (S1) *Journal of African Law* 1 at 44.

¹⁰³ United Nations General Assembly (2018) at para 7.

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it for refugees and children in host communities.¹⁰⁴ It is envisioned that this goal will be achieved through direct financial support which will lead to an increase in educational facilities and teaching capacities.

A lack of financial resources is one of the key factors that hinder refugees in Uganda from enjoying the right to education. This deficiency affects the number of schools, the quality and number of teachers and the educational materials. Roughly 75 per cent of the donor funding directed towards refugee matters is in the form of humanitarian assistance, whilst the remaining 25 per cent is development funding.¹⁰⁵ The funding in the humanitarian sector, which focuses on saving lives and alleviating suffering in the immediate aftermath of a crisis, is grossly inadequate. For example, in the past three years, Uganda has requested funding from donors, in terms of the CRRF, but the highest percentage that it has received from donors is 57 per cent of the original request.

In 2019, Uganda received only 20 per cent of the funds it requested in terms of the CRRF.¹⁰⁶ Despite Uganda's progressive legal and policy framework for the inclusion of refugees, the lack of financing indicates donors' reluctance to meet the actual costs of burden sharing. Whilst donors maintain that the levels of refugee inclusion should be increased, they show an unwillingness to assist in establishing sustainable national systems that facilitate such inclusion. As a result of underfunding in this sector, basic needs of refugees have taken preference over longer term needs, such as, the environment and livelihoods, which includes education.¹⁰⁷

A positive impact of the GCR and CRRF is the recognition that refugee assistance is not solely a humanitarian concern and that economic development in refugee hosting areas must be increased. This recognition is laudable as a focus on development funding has been associated with achieving conflict reduction targets and increasing the self-sufficiency of communities which reduces the overall costs of relief projects.¹⁰⁸ In terms of development funding, which addresses structural issues that impede social, economic and institutional development, donor funding has been grossly inadequate.¹⁰⁹ The bilateral funding that targets the developmental needs of refugees primarily predates the CRRF and the GCR. Whilst financial assistance from institutions, such as the World Bank, began prior to the CRRF and GCR processes, they do not appear to be linked to them.¹¹⁰

¹⁰⁴ United Nations General Assembly (2018) at para 68.

¹⁰⁵ Crawford N, O'Callaghan S, Holloway K et al "The comprehensive refugee response framework: progress in Uganda" Humanitarian Policy Group Working Paper 10 London : ODI (2019).

¹⁰⁶ See Crawford et al (2019) at 10.

¹⁰⁷ See Crawford et al (2019) at 10.

¹⁰⁸ See Macrae J "The bilateralization of humanitarian response: implications for UNHCR" UNHCR Evaluation and Policy Analysis Unit (2002) at 9.

¹⁰⁹ See Crawford et al (2019) at 10.

¹¹⁰ See Crawford et al (2019) at 10.

It is difficult to quantify the CRRF's success since, despite the presence of a well-staffed Secretariat in Uganda, there is currently no tracking of donor and government financial support of the CRRF.¹¹¹ Also, Ugandan governmental officials and Ministries have reported that there has not been an increase in donor funding following the CRRF.¹¹² Therefore, there is increasing scepticism that the CRRF will lead to a change in donor funding outcomes¹¹³ because no substantial donor commitments have been made to the CRRF response plans for health (which costs \$500m over five years) and education (which costs \$389m over three years).¹¹⁴ This affects the financial burden sharing objective of the GCR because it does not have a mechanism to guarantee more predictable and/or additional funding. Rather, these contributions are completely voluntary on the assumption that new approaches will lead to cost-efficiencies which will deal with the protracted funding shortfalls.¹¹⁵ However, this hope is predicated on the manifestation of two circumstances, neither of which has materialised in Uganda. First, the presence of sufficient development funding will incentivise host governments to facilitate the greater socio-economic inclusion of refugees, and, secondly, in the long-term, the provision of services through national systems to refugees will be cheaper than through aid agencies.¹¹⁶

A further issue with the CRRF and GCR is a lack of strategy and buy-in for response plans.¹¹⁷ These plans have large budgets; however, there is no discernible strategy for moving from the planning to the implementation stage. The Ugandan Education Response Plan (ERP) is an exception as it is prioritised and fully costed even though it is significantly underfunded.¹¹⁸

Despite the aforementioned challenges, stakeholders, including government officials and international organisations, have welcomed the shift of focus to development, which addresses systemic poverty.¹¹⁹ The CRRF and the GCR acknowledge that the long-term needs of refugees must be tackled through the development of refugee hosting districts and the local populations within them instead of solely attending to the needs of the refugees. For example, aid from the World Bank focuses on these districts and Uganda's ERP seeks to support both refugee and host children and adolescents. Since the establishment of the ERP, 936 teachers have been hired, the percentage of school age refugee children attending school has increased by

¹¹¹ See Crawford et al (2019) at 10.

¹¹² See Crawford et al (2019) at 11.

¹¹³ See Crawford et al (2019) at 10.

¹¹⁴ See Crawford et al (2019) at 10.

¹¹⁵ Crawford N & O'Callaghan N "The comprehensive refugee response framework: responsibility-sharing and self-reliance in East Africa" Humanitarian Policy Group Working Paper 4 London : ODI (2019) at 3.

¹¹⁶ See Crawford & O'Callaghan (2019) at 3.

¹¹⁷ See Crawford & O'Callaghan (2019) at 13.

¹¹⁸ See Crawford & O'Callaghan (2019) at 14.

¹¹⁹ See Crawford & O'Callaghan (2019) at 12.

13.5 per cent and approximately 550 classrooms have been built.¹²⁰ Northern Uganda's Palabek refugee camp, in particular, has been praised for the educational services that it provides through the collaboration between the government, faith-based organisations and the UNHCR.¹²¹

8.2 The regional framework

The Kampala Declaration on Jobs, Livelihoods, and Self-Reliance for Refugees, Returnees, and Host Communities was signed in March 2019 by the Intergovernmental Authority on Development (IGAD) Member States, including Uganda. The document contains commitments which are an important part of realising the objectives of the GCR in the IGAD region. The Kampala Declaration holds real potential for realising GCR objectives globally and builds on the 2017 Nairobi Declaration on Durable Solutions for Somali Refugees which was initially designed to address the lack of solutions available to the displacement of Somalis, but transformed into a discussion on solutions for all refugees in the East African region with annual meetings providing opportunities to discuss progress.¹²²

Unfortunately, these regional efforts are unlikely to lead to an increase in access to education for refugees in Uganda as they suffer from the same fundamental issue as the GCR, that is, that due to the absence of the binding commitments Uganda will have insufficient funds to realise refugees' rights to education.¹²³ Accordingly, there is a need for these regional efforts to be supported through predictable investments that create local economic opportunities and presuppose a new relation between refugees and development agendas.¹²⁴

9 RECOMMENDATIONS

9.1 The role of the Ugandan government

Education, at all levels, can play an important role in supporting and determining the future of both long-term and short-term refugees.¹²⁵ The 1951 UN Convention was drafted on the basis that refugee situations are temporary.¹²⁶ However, due to the

¹²⁰ See Carciotto & Ferraro (2020) at 91.

¹²¹ See Carciotto & Ferraro (2020) at 91.

¹²² Hopkins G & Buffoni L "The IGAD Kampala Declaration on jobs, livelihoods, and self-reliance: from declaration to reality" (2019) 5 *Palgrave Communications* 157 at 1.

¹²³ See Hopkins & Buffoni (2019) at 2.

¹²⁴ See Hopkins & Buffoni (2019) at 2.

¹²⁵ World Bank "The World Bank Annual Report 2016" (2016) available at <https://openknowledge.worldbank.org/handle/10986/24985> (accessed 4 November 2021) at 18.

¹²⁶ Edwards A "Temporary protection, derogation and the 1951 Refugee Convention" (2012) 2 *Melbourne Journal of International Law* 1.

increase of protracted refugee situations,¹²⁷ refugee children are spending increasing portions of their childhoods in exile. Accordingly, there is a need to address the current realities of refugee situations by shifting the perspective from survival interventions to long-term interventions. This need was emphasised by the UNHCR who noted that “education enables refugees to positively shape the future of both their countries of asylum and their home countries when they one day return”.¹²⁸ Equally, Uganda’s President acknowledged the need for refugee children in Uganda to receive quality education, as well as the obstacles that they face in receiving it. In order to illustrate his point, he used Rwandese refugees as an example stating: “When the refugees came from Rwanda, some of them were young, like Paul Kagame (Rwanda’s current President), but later, because of the education, they went back and changed their countries.”¹²⁹

Uganda’s government can consider several policy reviews in order to strengthen and streamline its compliance with international obligations. These reviews include, inter alia, amending the Refugee Act to provide free secondary education to refugee children; and enacting education policies to eliminate indirect financial barriers that refugee children face, such as, exam fees, school meals and school uniforms. Equally, greater coordination between the Ministry of Education, the Department of Refugees and the Office of the Prime Minister is needed to identify the policy challenges that are encountered by refugee children in accessing education.

9.2 The role of the UNHCR

Although the UN High Commission for Refugees is not a specialist education institution, it recognises education as “a core component of its international refugee protection and durable solutions mandate”¹³⁰, and that many refugee children do not enjoy access to education as guaranteed by international law. Whilst the agency’s strategic education intervention is emergency focused, it seeks to promote access to quality education by increasing the enrolment of refugee children into primary and secondary education.¹³¹ This can be achieved through developing strong relationships with national education departments in refugee hosting States in addition to partners who possess technical

¹²⁷ See Ahimbisibwe (2019) at 9.

¹²⁸ United Nations High Commissioner for Refugees “UNHCR reports crisis in refugee education” available at <https://www.unhcr.org/afr/news/press/2016/9/57d7d6f34/unhcr-reports-crisis-refugee-%20education.html> (accessed 21 August 2017).

¹²⁹ Museveni Y “President’s Statement at the Uganda Solidarity Summit on Refugees” (2017) available at <https://www.yowerikmuseveni.com/presidents-statement-uganda-solidarity-summit-refugees> (accessed 4 November 2021).

¹³⁰ United Nations High Commissioner for Refugees (UNHCR) “UNHCR Education Strategy, 2012-2016” (2012) available at <http://www.unhcr.org/afr/5149ba349> (accessed 24 September 2021) at 7.

¹³¹ See UNHCR (2012) at 8.

expertise in the education field. The agency advocates for refugee children to enjoy equal access to education in national education systems.¹³²

The recognition of the right to education under numerous international instruments to which Uganda is party, for instance, the Constitution, the Education Act and the Children's Act, has a key role to play in improving access to education for refugee children in Uganda. Furthermore, amending the discriminatory provisions of Uganda's Refugee Act would allow refugees to access education in Uganda, at all levels, on a par with Ugandan citizens. Most refugees do not have adequate funds to access secondary education. Moreover, despite Uganda's Constitution granting the right to education to all children without discrimination, refugee children are not eligible for the USE programme or any financial assistance from the government pursuant to section 29 of the Refugee Act, as explained above.

In order to improve access to education, the UNHCR can strategically partner with academic institutions, foundations and donors to increase the number of scholarships available to refugee children. Moreover, the UNHCR should fully adopt EXCOM Conclusion No 47 of 1987 which directs the provision of post-primary education for refugees under the UNHCR general programme of assistance.¹³³ Thus, the UNHCR should consider establishing a long-term education funding strategy to enhance its education response programme in a more sustainable manner than depending on emergency centred funding for education. Lastly, the agency should encourage States to adopt a further Protocol that focuses on refugee child rights to reflect the current trend of refugee movement as children form the largest constituency globally.

9.3 The role of the global compact on refugees

Arguably, the voluntary nature of the commitments made in terms of the GCR will render financial constraints to be the biggest obstacle to refugees' enjoyment of the right to education in Uganda. The GCR's voluntary nature is a result of the current global political climate being unfavourable to formulating a binding instrument that regulates the mass movement of refugees.¹³⁴ Therefore, the efficacy of the GCR is dependent on striking a suitable equilibrium between voluntariness, on the one hand, and consistent and stable financial contributions, on the other. This dilemma can be addressed through the popular tool of international human rights law called "naming and shaming", which involves international organisations, news media and non-governmental organisations

¹³² See UNHCR (2012) at 32.

¹³³ Executive Committee of the High Commissioner's Programme "Refugee Children No. 47 (XXXVIII)" (1987) at (p) available at <https://www.unhcr.org/excom/exconc/3ae68c432c/refugee-children.html> (accessed 4 November 2021).

¹³⁴ Hathaway J "The global cop-out on refugees" (2018) 30 *International Journal of Refugee Law* 591at 594.

criticising government action and agitating for a change in behaviour.¹³⁵ This tool has been found to be successful in changing the behaviour of States.¹³⁶

Naming and shaming can be facilitated in the implementation of the GCR by using an existing mechanism in the GCR, namely the Global Refugee Forum, which meets every four years to discuss the continuing efficacy of the measures for burden- and responsibility-sharing.¹³⁷ It is recommended that this Forum structures itself in a similar fashion to the UN Human Rights Council's Universal Periodic Reviews (UPRs), which have been shown to create peer pressure among States due to their bilateral nature that allows recommendations to be delivered by one governmental representative to another.¹³⁸ Furthermore, the frequency of the UPRs creates an additional aspect of pressure in terms of which governmental representatives feel the need to demonstrate to the international community that they have, in good faith, attempted to follow previously received recommendations.¹³⁹ It is recommended that adopting the practice of the UPR in the Global Refugee Forum will increase compliance with the objectives of the GCR, whilst ensuring almost universal adoption and buy-in from States by keeping its voluntary nature intact.

10 CONCLUSION

The mass movement of refugees and asylum seekers is a phenomenon that has acute social, economic and political ramifications for all countries in the international community. Despite this, developing countries, such as Uganda, host approximately 85 per cent of the world's refugee population.¹⁴⁰ The arrival of large numbers of people places a strain on the capacity, infrastructure and resources of these low-income countries. The unequal distribution of responsibilities gave rise to the GCR which seeks to facilitate burden sharing among States in the international community. In addition, the GCR aims to increase access to the socio-economic rights of refugees in order to establish development plans that benefit both the refugee population and its host community.

This article focused on the right to education of refugees in Uganda that is a State Party to the UN 1951 Convention. First, the article examined the scope of the right to education and its intended benefit in the 1951 UN Convention. Secondly, Uganda's

¹³⁵ Hafner-Burton E "Sticks and stones: naming and shaming the human rights enforcement problem" (2008) 62 *International Organisation* 689.

¹³⁶ See Hafner-Burton (2008) at 689.

¹³⁷ See United Nations General Assembly "Global Compact on Refugees" (2018) at para 103.

¹³⁸ Carraro V "Promoting compliance with human rights: the performance of the United Nations' universal periodic review and treaty bodies" (2019) 63 (4) *International Studies Quarterly* 1079 at 1084.

¹³⁹ See Carraro (2019) at 1084.

¹⁴⁰ Mlauzi K & Small M "Is the Global Compact on Refugees Fit for Africa's Purposes?" South African Institute of International Affairs Occasional Paper 3 Johannesburg : SAIIA (2019)

normative framework, in terms of relevant domestic, regional and international laws for the right to education for refugees, was considered and critiqued. It was concluded that, despite the protection of the right to education in Uganda's domestic legal framework, refugees have less access to education and a lower standard of education than their Ugandan national counterparts.

In the second portion of the article, the GCR's potential to ameliorate the problem of refugees' access to education was considered. After providing a brief description of the GCR, the failure of the GCR to attract funding to its response plans and the lack of strategy were explained. Furthermore, the positive impact that the GCR has had on refugees' access to the right of education in Uganda was briefly discussed. Finally, it was illustrated that the efficacy of the GCR can be improved by making changes to the Global Refugee Forum. A lack of financial resources is the main obstacle to refugees enjoying the right to education in Uganda. Despite the GCR's intention to attract financial support for countries with large refugee populations, the lack of a mandatory donation system severely hampers its efficacy and therefore the GCR is unlikely to appreciably strengthen refugees' access to education in Uganda. The article concluded by making recommendations to the Ugandan government and the UNHCR to increase access to education for refugee children in Uganda.

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