

Local Justice and Peace Interventions for Peaceful Coexistence among South Sudanese Refugees

Policy Brief

International Refugee Rights Initiative

Introduction

Uganda is considered to have a progressive migration policy, which includes open borders, an extended refugee definition and *prima facie* refugee status determination for South-Sudanese refugees (Meili 2022, p. 136). Even more so considering the fact that Uganda hosts the most refugees in sub-Saharan Africa, with over 1.5 million people mainly from South-Sudan, the Democratic Republic of Congo and Burundi seeking refuge in Uganda (UNHCR 2021). The Ugandan migration policy is focused on self-settlement rather than encampment, in which refugees are supposed to integrate in host communities (Kaiser 2006). The policy provides refugees with a plot of land to cultivate, free movement and promotes cooperation with host communities. Research shows however that the land provided is poor and there is no access to other types of employment nor infrastructure, care and education (Bohnet & Schmitz-Pranghe 2019). Moreover, the struggle to provide both citizens and refugees with livelihood creates tensions between the former and the latter. (Oloka-Onyango, 2022). The conditions in which refugees and Ugandan citizens find themselves placed, leads to conflict both within and between both communities which are often not solved in a formal court (Vancluysen & Ingelaere 2020). This brief examines the hardships that South-Sudanese have in enforcing their traditional justice mechanisms to promote peaceful coexistence among themselves in the refugee settlements. It includes recommendations for the Ugandan government and non-governmental organizations to enhance the use of traditional justice mechanisms.

Why is it important to strengthen informal justice?

The right to access to justice is codified in Article 14 of the United Nations Covenant on Civil and Political Rights. The United Nations defines access to justice as ‘a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice in conformity with human rights standards’. (Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (A/RES/67/1). Both formal and informal justice is recognized in the right of having access to justice. Formal justice refers to state regulated justice mechanisms whereas informal justice refers to traditional, indigenous, customary and non-state justice mechanisms. Access to justice for refugees is codified in the 1951 UN Refugee Convention (article 16). The Uganda 2006 Refugee Act in article 29 sub h states that refugees ``(h) have free access to courts of law, including legal assistance under applicable laws of Uganda.” and in article 28 sub a it mentions, “every refugee is entitled to the rights and shall be subject to obligations provided for or specified in— (a) the Geneva Convention ”. The Ugandan law does not make any mention of informal justice systems, thus only giving the right to formal justice. Research shows however that access to formal justice mechanisms is highly limited for refugees in Northern Uganda (Ntungwerisho 2019). Allowing, advocating and enhancing the use of informal justice could strengthen the overall right to justice that refugees have according to both Ugandan, and international law. It alleviates some of the difficulties that refugees currently facing in accessing (formal) justice.

Current situation

South Sudan gained its independence from Sudan after 21 years of civil conflict causing the loss of life and massive displacement of people. The CPA was signed between the Government of Sudan and the Sudan's People Liberation Movement/Army (SPLAM/A) (UNMIS). This agreement gave way to an Independent South Sudan, a move that was received with excitement and a lot of hope for the future of this country, which would later become part of the East African Community (EAC) in 2016 (EAC).

Unfortunately in 2013, South Sudan slipped into a conflict only two years after it had achieved independence, seeing a violent contest of power and political strife that would further lead to the displacement of people from a series of various political settlements. Sudan's wealth and resources seem to be more evasive to its people including the oil wealth. This conflict in 2013 was different in nature; it involved South Sudan internal strife within the ruling Sudan People's Liberation Movement (SPLM) party and rebel factions and the State's military forces in the capital city Juba, and steadily spiraled into protracted, ethnic-based armed conflict across the country (Human Rights Council, 2020). The conflict has resulted in mass atrocities and gross human rights violations committed against South Sudanese civilians, both by the State and its allies as well as by opposition forces, including mass killings, enforced disappearances and abductions, rape, sexual slavery, torture, forced displacements, and has triggered a devastating humanitarian crisis (Human Rights Council, 2020). After several years of failed peace agreements, in 2018 the R-ARCSS agreement was signed.

As a consequence of ongoing conflict, there are currently over 2 million South-Sudanese refugees harboring in neighboring countries (UNHCR, 2023). Uganda currently hosts 40% of those refugees.

Access to Justice

South Sudan's varied communities each have their own intricate and time-honed traditional justice mechanisms, making the country's judicial system a fascinating tapestry of contrasts. The young country is home to several different ethnic groups, each of which has its own cultural standards, values, and ways of dealing with misconduct among its members.

There are a myriad of hardships that South-Sudanese face in accessing justice. Firstly, there are severe barriers to accessing formal justice which includes language and cultural barriers as well as unfamiliarity with legal procedures in Uganda (Hoff, 2019; Ntungwerisho 2019). Accessing lawyers, courts and being able to understand the legal implications of decisions are all challenges. Secondly, there is currently very limited support for South-Sudanese to maintain their informal justice systems to solve conflict. Consequently, traditional justice mechanisms are no longer applied in the settlements where they currently reside. There are several issues that contribute to this. First, there is a conflict with Ugandan laws, as some traditional practices violate human rights laws in Uganda. Second, the death of tribal leaders due to the South Sudan conflict has resulted in a lack of consultation with individuals possessing natural powers within tribes, hindering the application of traditional justice. Additionally, the absence of elders and traditional chiefs who returned to South Sudan has further impeded the practice of these mechanisms in the settlements. The Ugandan government also plays a role, denying refugees the right to practice their traditional justice mechanisms and restricting the expression of their cultural norms and values. Finally, the displacement of people within the settlements, with many scattered in different areas, has made it challenging to involve individuals in traditional justice mechanisms that require community participation. This is particularly impactful as many of those left in the settlements are youths.

Traditional justice mechanisms can provide the South-Sudanese refugees with a greater access to justice for a number of reasons. First, traditional mechanisms are more accessible and can address misunderstandings better than less understood formal legal systems. These systems prioritize reconciliation, peace, and justice, with a focus on community-centered approaches, promoting harmony among long-standing adversaries. Second, traditional justice offers more speedy, reliable and flexible access to justice, unlike more rigid legal systems. Last, traditional systems are often free of charge, making them more accessible compared to other dispute management methods. It is therefore that traditional justice mechanisms should be respected, supported and facilitated by the government and NGOs in providing access to justice.

Policy recommendations

Recommendations to the Ugandan Government:

Strengthen Traditional Justice Mechanisms: Allow refugees to use their traditional justice mechanisms alongside formal justice mechanisms especially in matters between people of South Sudanese origin as long as they do not violate human rights within the settlements. This may involve developing mechanisms such as RWC courts

Allocations of Refugees: There is a need to ensure that the refugees are allocated to stay within the same zones as those from their tribes or province. This will make the practice of traditional justice mechanisms easier as there is a common understanding of how conflicts are resolved in the said community.

Empower Traditional Leaders: There is a need to empower the different tribal traditional leaders from the different communities in South Sudan to freely exercise their mandates when it comes to matters within their threshold.

Recommendations to NGOs:

Support Refugees: There is a need to sensitize the refugees on the importance of informal justice mechanisms like traditional justice mechanisms and the roles they play in conflict resolution and ensuring peaceful co-existence.

Advocate: Advocate for the application of these traditional justice mechanisms within the settlements. This can be through workshops and seminars involving policymakers.

Conclusion

In South Sudan, there are indeed conflicts and misunderstandings between the various communities for which people have used and continue to use a variety of methods to try and clear up these understandings. Traditional justice systems have been crucial in resolving these issues, and have been beneficial in addressing the root causes of these conflicts. Currently, the challenges faced by South-Sudanese have caused a loss of the use of traditional practices, while at the same time not being able to access formal justice systems. Therefore, it is essential for both the Ugandan government and non-governmental organizations (NGOs) to enhance, support and advocate for informal justice mechanisms to create peaceful coexistence amongst South-Sudanese refugees in Uganda. South Sudan will gain from a more all-encompassing and comprehensive approach if traditional practices are acknowledged and included in the greater context of peace-building initiatives.

References

- Bohnet, H., & Schmitz-Pranghe, C. (2019). Uganda: A role model for refugee integration?.
- Hoff, K. (2019). The Ugandan Refugee Model Under Pressure: Protection and Justice in Refugee Settlements. *Mambo!*, [https-mambo.org/](https://mambo.org/).
- Human Rights Council. (2020). Transitional justice and accountability: a roadmap for sustainable peace in South Sudan. Conference room paper of the Commission on Human Rights in South Sudan . 4, p. 3. Human Rights Council.
- Kaiser, T. (2006). Between a camp and a hard place: rights, livelihood and experiences of the local settlement system for long-term refugees in Uganda. *The Journal of Modern African Studies*, 44(4), 597-621.
- Meili, S. (2022). *The Constitutionalization of Human Rights Law: Implications for Refugees*. Oxford University Press.
- Ntungwerisho, C. (2019). Leaving nobody behind: the access-to-justice challenges of refugees in Uganda. *ESR Review: Economic and Social Rights in South Africa*, 20(4), 9-13.
- Oloka-Onyango, J. (2022). Exploring the Multiple Paradoxes and Challenges of Uganda's Refugee Law, Policies and Practice. *Transnat'l Hum. Rts. Rev.*, 9, 1.
- United Nations High Commissioner for Refugees (2023). Refugees and asylum-seekers from South Sudan - Total. Retrieved from: <https://data.unhcr.org/en/situations/southsudan>.
- Vancluysen, S., & Ingelaere, B. (2020). Conflict resolution as cultural brokerage: how refugee leaders mediate disputes in Uganda's refugee settlements. *Journal of refugee studies*, 33(2), 300-315.