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Respecting her international obligations? Analyzing Rwanda's 2014 Law Relating to refugees

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Abstract

Rwanda enacted the 1966 presidential decree on the reintegration of refugees and later the 1984 ministerial decree on identity papers for refugees as its first laws in dealing with refugees. However, the above decrees were meant for regulating the reintegration of Rwandan refugees returning from exile. The first law to deal with refugees from other countries was enacted in 2001 and later modified and complemented by a 2006 Law. In 2003 a new Constitution (amended in 2015) with a comprehensive Bill of Rights was promulgated. Because of these developments, it was necessary to enact a new law and make it fully compatible with Rwanda's national, regional and international obligations. As a result, in May 2014, Rwanda passed the Law Relating to Refugees which integrates its obligations into the refugee legal regime. This article critically reviews the 2014 Law Relating to Refugees and Rwanda's refugee obligations in light of its international human rights obligations. The article argues that the 2014 Law substantially reflects Rwanda's international and regional obligations under the relevant refugee and human rights instruments, but finds that some gaps, such as the non-recognition of environmental refugees, a weak appeals mechanism and the need to clarify the role of the department in charge of immigration and emigration in reviewing asylum applications.

Key words: Forced displacement, refugees, refugee rights, refugee law, human rights law, obligations, Rwanda

1. Introduction

As of end of March 2023, Rwanda hosted 132,305 refugees, asylum seekers, and other displaced populations. The population comprises of 80,917 (61%) refugees and asylum seekers from the Democratic Republic of the Congo (DRC), 50,596 (38%) from Burundi, 674 (0.5%) evacuees from Libya under the Emergency Transit Mechanism (ETM) and 118 (0.1%) refugees and asylum seekers from other nationalities.¹ Out of the total population, 94% live in camp locations (Kigeme, Kiziba, Mugombwa, Nyabiheke and Mahama) while the remaining 6% live in urban areas.² In addition, while the refugee situation in Rwanda has largely been a protracted one, increasing instability in Eastern DRC during the latter part of 2022 and early 2023 has forced people to flee across the border into Rwanda.³

Rwanda is party to international refugee and human rights law, including the 1951 Convention⁴ and its 1967 Protocol⁵, and the 1969 OAU Convention⁶ which together form the regional and international refugee regime. Rwanda has also ratified international human rights law instruments, the 1966 International Covenant on Civil and Political Rights (ICCPR)⁷, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸, the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or

¹UNHCR (2023a), *Rwanda: Strategy for 2023-Situation Analysis*, available at <https://reporting.unhcr.org/operational/operations/rwanda> [Accessed on 3 July 2023].

² Ibid.

³ Ibid.

⁴ UN (1951), *Convention Relating to the Status of Refugees*, adopted on July 28 (hereafter '1951 Convention') by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 14, 1950, entered into force April 22, 1954. Rwanda acceded to the 1951 Convention on 26 January 1982.

⁵UN (1967), *Protocol Relating to the Status of Refugees*, January 31 (hereafter '1967 Protocol'), United Nations, Treaty Series, Vol. 606, p.267, available at <http://www.refworld.org/docid/3ae6b3ae4.html>. Rwanda acceded to this Protocol on 26 January 1982.

⁶ OAU (1969), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (hereafter '1969 OAU Convention'), Assembly of Heads of African States and Governments, Addis Ababa, September 10, 1969, 1001 U.N.T.S. 45, entered into force June 20, 1974. Rwanda acceded to the OAU Convention on 26 January 1982.

⁷ UN (1966), *International Covenant on Civil and Political Rights* (hereafter ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, UN.Doc.A/6316 (1996), 999 U.N.T.S, entered into force March 23, 1976. Rwanda acceded to the ICCPR on 16 April 1975.

⁸ UN (1966), *International Covenant on Economic, Social and Cultural Rights* (hereafter ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entered into force January 3, 1976. Rwanda acceded to the ICESCR on 16 April 1975.

Punishment⁹, the 1989 Convention on the Rights of the Child¹⁰, and the 1979 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹. Rwanda is also a party to regional human rights instruments: the 1981 African Charter on Human and Peoples' Rights (ACHPR)¹², the 1990 African Charter on Rights and Welfare of the Child (ACRWC)¹³ and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as "Maputo Protocol").¹⁴

At the domestic level, refugees are protected by the 2014 Law on Refugees (hereafter the 2014 law), the 2003 Constitution as amended 2015, and other national laws that guide refugee protection in Rwanda. The policy and legal frameworks in Rwanda continue to facilitate the inclusion of refugees within national systems in line with the 2018 Global Compact on Refugees (GCR). From health to education, there are attempts at granting refugees the same level of access and services as Rwandan citizens. In recent years this has been facilitated through the issuance of refugee ID cards by the Government of Rwanda and built on by pledges made at the 2019 Global Refugee Forum (GRF).¹⁵

This article critically reviews the 2014 Law Relating to Refugees and Rwanda's refugee obligations in light of its international human rights obligations. The article argues that the

⁹ UN (1984), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, (hereafter CAT), UN GAOR Supp. (No. 51) at 197, U.N.Doc.A/39/51, adopted by General Assembly resolution 39/46 of December 10, 1984, entered into force June 26, 1987. Rwanda acceded to the CAT on 15 December 2008.

¹⁰UN (1989), *Convention on the Rights of the Child*, (hereafter CRC), G.A. res.44/25, 1989, annex, 44 U.N. GAOR Supp. (No.49) at 167, U.N.Doc.A/44/49, entered into force September 2, 1990. Rwanda ratified it on 24 January 1991.

¹¹UN (1979), *Convention on Elimination of All Forms of Discrimination against Women*, (hereafter CEDAW), G.A.res.34/180, 1979, 34 U.N. GAOR Supp. (No.46) at 193, U.N.Doc.A/34/46, entered into force September 3, 1981. Rwanda ratified CEDAW on 02 March 1981.

¹²OAU (1981), *African (Banjul) Charter of Human and People's Rights*, (hereafter ACHPR), OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1981), adopted June 27 1981, entered into force on October 2, 1986. Rwanda ratified it on 17 May 1983.

¹³AU (1990), *African Charter on the Rights and Welfare of the Child*, (hereafter ACRWC), OAU Doc.CAB/LEG/24.9/49 (1990), adopted on June 27, entered into force on November 29, 1999. Rwanda ratified it on 11 May 2001.

¹⁴"The Maputo Protocol" (hereafter 'Maputo Protocol') was adopted by the African Union on 11 July 2003 at its second summit in Maputo, Mozambique and it entered into force in November 2005. Rwanda ratified it on 25 June 2004.

¹⁵UNHCR (2023b), *Rwanda: Operational Data Portal Refugee Situations-Overview*, Available at <https://data.unhcr.org/en/country/rwa?ref=blog.mondato.com> [Accessed on 3 July 2023].

2014 Law substantially reflects Rwanda's international and regional obligations under the relevant refugee and human rights instruments, but finds that some gaps, such as the non-recognition of environmental refugees, a weak appeals mechanism and the need to clarify the role of the department in charge of immigration and emigration in reviewing asylum applications.

The paper is structured as follows: The next section looks at a brief history of refugees and the legal regime in Rwanda. Subsequently, it critically reviews the 2014 law and identifies areas where it either complies or is not in line with the national, regional and international instruments. A conclusion follows.

2. A Brief History of Refugees in Rwanda

Rwanda has hosted refugees for several decades. The refugees are mainly from Burundi and DRC that have experienced conflicts since independence. The ethnic conflicts between the Hutu and Tutsi in Burundi have always displaced tens and hundreds of thousands across the border into Rwanda. The conflicts in Eastern DRC since the 1990s to date have displaced Congolese to the Rwandan territory. These refugees are trapped in a protracted situation with no durable solutions. This is partly due to the unending conflicts in the countries of origin that have made repatriation difficult.

In addition, Rwanda also hosts the Emergency Transit Mechanism (ETM) which was established in September 2019 by UNHCR, in collaboration with the Government of Rwanda (GOR) and the African Union (AU). Its aim is to temporarily host refugees and asylum-seekers who have undertaken voluntary evacuation from Libya while solutions are found.¹⁶ In 2022, Rwanda signed an agreement to receive, process and host asylum seekers and refugees from the United Kingdom (UK). There were similar arrangements with Israel and Denmark. However, unlike Israel which carried out deportations to Rwanda, UK and Denmark had not done so. Rwanda has also been a producer of refugees since its independence, but discussion of this issue is beyond the scope of this article. The refugee influx meant that Rwanda had to enact legislation to manage them.

¹⁶ Ibid.

3. Putting in place the legal regime to govern refugees in Rwanda

Although Rwanda has hosted refugees in the past, it took time to enact a law on refugees. The management of refugees was always done in the context of the 1951 Convention and its 1967 Protocol and the 1969 OAU Convention on Refugees until 2001 when a national law was enacted to regulate refugees. The first laws were meant for handling Rwandan refugees returning to the country.

3.1. 1966 Presidential Decree No. 25/01 on the Reintegration of Refugees

This decree was put in place to manage the return and reintegration of Rwandan refugees from exile. These were the Tutsi refugees that fled Rwanda in 1959 to the early 1960s. The Presidential Decree focused on issues like the reinstatement procedure, identity documents, role of government authorities, areas for settlement, land acquisition or reacquisition to mention but a few. This decree was not applicable to refugees from other countries hosted in Rwanda.

3.2. 1984 Ministerial Decree No. 232/04 on Identity Papers for Refugees

This decree was meant to complement the 1966 Presidential decree specifically article 1 on the identity papers of the Rwandan returnees. It stipulates the procedure for issuance of identity papers, their features like serial and order numbers and the government authorities responsible for these procedures. It was much later that Rwanda enacted a law to regulate asylum seekers and refugees to which the paper now turns.

3.3. 2001 Law Relating to Refugees

The transitional national assembly enacted the 2001 Law Relating to Refugees (hereafter the 2001 law) in line with the Constitution of June 10th 1991 and the Arusha Peace Protocol. The 2001 law makes reference to the fact that Rwanda is a signatory to the 1951 Convention, its 1967 Protocol and the 1969 OAU Convention. It considers that Rwanda has an obligation of protecting the rights of refugees as enshrined in the above instruments. It recognizes that the problems of refugees must be approached in a humanitarian way to find a solution for them.

The 2001 law considers among others the definition of a refugee according to international instruments. In article 1, it specifically adopts the 1951 and 1969 Conventions, which was a

great improvement and an indication that it reflected Rwanda's regional and international obligations. The law further provides the grounds for rejection of refugee status which is more or less similar to the 1951 and 1969 Conventions.

In articles 3 and 4, the 2001 law also provide for the National Council for Refugees, a body composed of representatives of various government ministries and departments. Article 5 provides for the roles of this body, as follows: (a) implement the policy framework governing refugees in general; (b) ensure respect for the rights of refugees in Rwanda; (c) examine and decide on applications for refugee status; (d) withdraw the right to asylum from a refugee who does not comply with the law and refugee regulations; (e) review the report on refugee activities prepared by the Executive Secretary; (f) prepare the budget for refugee-related activities; (g) submit the activity report to the Ministry having refugees in its attributions.

Furthermore, the 2001 law clearly stipulates the procedure for obtaining refugee status, the application process, period, appeals mechanism. Most important is that the law provides for the rights and obligations of refugees as enshrined in international conventions ratified by Rwanda. Although it provides some rights as found in the 1951 and 1969 Conventions, other rights are missing in the law. The law also provides for the duties of refugees.¹⁷

Lastly, the 2001 law provides for the loss of refugee status¹⁸ similar to what is provided in the 1951 Convention and 1969 OAU Convention. There was a fair attempt to align the refugee law to reflect Rwanda's regional and international obligations. However, it still missed a number of aspects like the cessation of refugee status, the principle of non-refoulement, durable solutions, refugee status determination body and procedures, a complete set of refugee rights and a framework for settling refugees, in this case the camps and their management. These were later added in the 2014 law that are discussed later in the paper.

¹⁷ Article 24 states that "The refugee must comply with the laws and regulations in force in Rwanda and measures taken to maintain public order while refraining from any activity that could harm the interest of the Rwandan state."

¹⁸ Chapter V, Article 25.

3.4. 2006 Law Modifying & Complementing the 2001 Relating to Refugees

The law to modify and complement the 2001 law was enacted in 2006 (hereafter the 2006 law) following the promulgation of the 2003 Constitution and the 2004 Law determining the organization, functioning and jurisdiction of courts. The 2006 law revisited the 2001 law especially in its articles 3, 5, 8, 17, 18 and 19. The modification and complements were mainly on the National Refugee Council and its responsibilities, the office of the Executive Secretary of the National Refugee Council and responsibilities, the change of appeals procedure from the Council of State to the High Court. It states that “the National Refugee Council shall implement an irrevocable judicial decision”¹⁹, in this case of the High Court.

3.5. Law Relating to Refugees in Rwanda, 2014

As earlier observed, although the 2001 and 2006 laws were progressive and improved legislation, they still missed a number of aspects enshrined in regional and international instruments to which Rwanda was a party. Because of the need to streamline refugee management and improve the previous laws, the government decided to enact a new and progressive law that is fully consistent with Rwanda’s national, regional and international obligations. The Law Relating to Refugees was adopted by parliament on 21st May 2014 and published in the Official Gazette number 26 of 30th June 2014.

3.5.1. Purpose of the Law

Article 1 states the purpose of the law, namely governing refugees and asylum seekers in Rwanda. The governance of refugees and asylum seekers includes issues like determination of refugee and asylum status, application for asylum and refugee status, administrative matters relating to refugees, rights and duties of refugees, refugee camps and their management and durable solutions. The purpose of the 2014 law is generally similar compared to the refugee acts of other countries in East Africa.

For example, in Uganda, the 2006 Refugees Act seeks to make new provision for matters relating to refugees, in line with the 1951 Convention Relating to the Status of Refugees and other international obligations of Uganda relating to the status of refugees; to establish the

¹⁹ Article 6.

Office of Refugees; to repeal the 1960 Control of Alien Refugees Act (CARA)²⁰; and to provide for other related matters. In Kenya, the 2006 Refugees Act makes provision for the recognition, protection and management of refugees and for connected purposes. A similar purpose is provided under the 1998 Tanzania Refugees Act, thus: “An Act to make provision for the enactment of the Refugees Act, National Eligibility Committee, asylum seekers and refugee administration and to repeal the Refugee (Control) Act and for connected matters”.

Overall, the 2014 law provides for a national legislation for the management and protection of refugees in Rwanda in line with the 1951 Convention, 1967 Protocol and the 1969 OAU Convention.

3.5.2. Refugee Status Determination Committee

The 2014 law provides for the administrative structures for its implementation. It establishes the Refugee Status Determination Committee (RSDC) (hereafter the Committee).²¹ It is stated that “A Prime Minister’s Order shall determine its organization and functioning”.²² The Prime Minister’s Order No 112/03 of 19/06/2015 Determining the Organization and Functioning of the National Refugee Status Determination Committee and Benefits Granted to its Members was published in the Official Gazette number 26 of 29/06/2015.

According to the 2014 law, the Committee has the following responsibilities: to consider and decide on asylum applications made by those applying for refugee status in Rwanda²³, to revoke refugee status in accordance with the provisions of the law²⁴ and to submit to the Minister an activity program and report each year and whenever necessary.²⁵ The law further provides for the composition of the Committee²⁶ made up of members from different government ministries and entities.²⁷ The inclusion of the ministries of defence,

²⁰ This was Uganda’s refugee legislation at the time of independence that was inherited from the British colonial government. It was repealed by the 2006 Refugees Act.

²¹ Chapter II, Article 3.

²² Article 3.

²³ Article 4(1).

²⁴ Article 4(2).

²⁵ Article 4(3).

²⁶ Article 5.

²⁷ The members are: Prime Minister’s Office; Ministry in charge of refugees; Ministry of foreign affairs; Ministry in charge of local government; Ministry in charge of justice; Ministry in charge of defence; Ministry in charge of natural resources; Ministry in charge of internal security; Ministry in charge of health; National Intelligence and Security Service and National Human Rights Commission.

internal security and National Intelligence and Security Service among others on the Committee shows the extent to which Rwanda views refugees as a national security issue. This is rightly so given the fact that the Rwandan Patriotic Front/Army (RPF/A) was started in exile by the Tutsi refugees. Also, Rwanda understands very well the impact of refugees, asylum seekers and displaced persons on national and regional security in the volatile Great Lakes region of Africa and beyond.

The RSDC was a replacement of the National Refugee Council (NRC) and the National Council for Refugees (NCR) that were provided under the 2006 and 2001 laws respectively. The establishment of the RSDC shows Rwanda's willingness to meet her international obligations by providing for the administrative and institutional framework in charge of asylum and refugee status applications and consideration.

3.5.3. Application for asylum and refugee status

Chapter III provides for application for asylum and refugee status specifically obtaining asylum, application for refugee status, appeal by a refugee status applicant, granting refugee status to refugees in mass influx situations, rejection of refugee status application, revocation and cessation of refugee status.

i. Obtaining asylum

Section 1, Article 7 provides for requirements for obtaining asylum²⁸. Similar to the Refugees Act of Uganda²⁹, Kenya³⁰ and Tanzania³¹, the 2014 law quotes the 1951 Convention³² and its 1967 Protocol and the OAU Convention³³ on the conditions for obtaining refugee status. However, the law does not provide for other grounds for qualifying as a refugee. For example, the Uganda Refugees Act recognizes persons who become refugees as a result of failing to conform to gender discriminating practices.³⁴

Furthermore, similar to the majority of African countries, the Act does not recognize persons who become refugees as result of environmental factors. In 2002 and 2021,

²⁸ Article 28 of the Rwandan 2003 (amended 2015) Constitution recognizes the right to seek asylum.

²⁹ Section 4(a).

³⁰ Section 3(1) (a).

³¹ Section 4(1) (a).

³² Article 1(2).

³³ Article 1(2).

³⁴ Section 4(d).

Rwanda received refugees from the Democratic Republic of Congo (DRC) due to the volcanic eruptions of Mount Nyiragongo. This paper argues that persons who are displaced by such natural disasters and cross international borders, should have a ground for obtaining asylum and refugee status. With increased cases of disaster induced displacement, one would have expected the Act to cater for these new grounds of refugee status qualification. Without this recognition, there is a risk of denying refugee status to persons in need of international safety and protection.

ii. Application for refugee status

Section 2, Article 8 states the procedure for application of refugee status. Article 8(1) states that a person who applies for refugee status must be on the Rwandan territory. Article 8(2) adds that the person must report immediately to the local authority nearest to his/her point of entry for the protection of fundamental human rights. The local authority to whom the asylum seeker reports shall take him/her to the nearest immigration and emigration office within twelve (12) hours. This office shall register the asylum seeker within twenty four (24) hours from his/her arrival.³⁵

Article 8 further states that “the department in charge of immigration and emigration shall review the case of the asylum seeker and grant to him/her a temporary residence permit valid for three (3) months.” Furthermore, “the department in charge of immigration and emigration shall submit the file of refugee status applicant to the Refugee Status Determination Committee within fifteen (15) days”.³⁶

In Article 9, the RSDC shall consider and analyze the application for refugee status and decide thereon within forty-five (45) days. The decision of the RSDC shall set out the reasons for granting or refusing to grant refugee status. Article 10 instructs the Chairperson of the RSDC to give the refugee status applicant a written notice of decision on his/her applicant within ten (10) days from the date the decision is made.

However, the above procedure can only apply to individual demands, but not to mass arrivals as occurred from Burundi and DRC. For example, “between 24 and 26 April, 2015, the number of refugees crossing the Rwandan frontier every day surged to between 15,000

³⁵ Article 8.

³⁶ Ibid.

and 23,000 in the runner up to the presidential elections in Burundi”.³⁷ By May 2015, the number crossing the border into Rwanda stood at 200 per day.³⁸ Rwanda has also received similar numbers from the DRC fleeing the M23 fighting in late 2022 and early 2023. Therefore, with such mass arrivals, it becomes problematic to follow the above procedure for application of refugee status.

Furthermore, there have been reports of some delays in granting refugee status to the applicants.³⁹ According to a UNHCR report, the “RSDC’s capacity needs to be built, with currently only one eligibility officer assessing all of the cases”.⁴⁰ It further adds that “UNHCR, despite its observatory role, is often not invited to attend the Refugee Status Determination (RSD) - reviewing panel discussions. The basis of the RSD decisions, particularly rejection, are not known or properly explained including to the asylum seekers”.⁴¹

Furthermore, the 2014 law states that “the department in charge of immigration and emigration shall review the case of the asylum seeker.....”.⁴² This role of reviewing asylum applications needs further clarification.” According to UNHCR, “the role in the previous laws was to ‘notify’ the National Refugee Status Determination Committee of all applications”.⁴³ The change from the term ‘notify’ to ‘review’ should be clarified.⁴⁴ Relatedly, it is clearly stipulated in the 2014 law that “the department of immigration and emigration shall submit

³⁷ K. Sullivan (2015), “Burundi refugees say there is no turning back as fears grow of reprisals at home”, *The Guardian*, 19 May, London, Available at <https://www.theguardian.com/global-development/2015/may/19/burundi-refugees-rwanda-no-turning-back-fears-grow-reprisals> [Accessed on 1 July 2023].

³⁸ Ibid.

³⁹ UNHCR (2020), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review 3rd Cycle, 37th Session-Rwanda*, Geneva, UNHCR, p.4, Available at <https://www.refworld.org/country,COI,UNHCR,,RWA,,607763c64,0.html> [Accessed on 8 June 2023].

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Article 8.

⁴³ UNHCR (2015), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: 2nd Cycle, 23rd Session-Rwanda*, Geneva, UNHCR p.6, Available at <https://www.refworld.org/docid/56371c604.html> [Accessed on 4 June 2023].

⁴⁴ Ibid.

the file for refugee status applicant to the RSDC within 15 days”.⁴⁵ UNHCR has argued that the law obliges the immigration and emigration department to transfer all applications.⁴⁶

iii. Appeal by a refugee status applicant

According to Article 11, there is a provision for appeal by a refugee status applicant. It states that a person not satisfied with the decision of the RSDC may appeal to the Minister within a period of thirty (30) days from the date he/she was notified of the decision. The Minister has a period of one (1) month to decide on the appeal.

However, the provision that appeals should be made to the Minister in charge of refugees raises questions as to the independence of the appeal process. How do you appeal to the Minister who is part of the RSDC and is responsible for the rejection of one’s application for refugee status? It is possible that the Minister will not be independent in deciding on the appeals made by applicants. A UNHCR report raised this challenge. Thus, “the practice of appeal decisions being taken by the Minister of Ministry in charge of Emergency Management (MINEMA) poses questions as to the independence of the appeal process and could further result in bottlenecks once a larger number of applications needs to be processed”.⁴⁷ However, in 2018 the government enacted the Law Determining the Jurisdiction of Courts which sets out the right of appeal to the High Court.⁴⁸ In this case, an asylum seeker who is not satisfied with the decision of the Minister can appeal to the High Court. Despite this legal provision, asylum seekers might face challenges accessing the High Court. The state, UNHCR and Non-Governmental Organizations (NGOs) should assist asylum seekers in their appeals to the High Court.

iv. Granting refugee status to refugees in mass influx situations

Article 13 of the 2014 law provides for the granting of refugee status to refugees in mass influx situations. It states that “Refugees in mass influx situations may be unconditionally granted prima facie refugee status”. It adds that such a decision shall be taken by the

⁴⁵ Article 8.

⁴⁶ UNHCR (2020), “Submission by the United Nations High Commissioner for Refugees”, op.cit

⁴⁷ Ibid: 4-5.

⁴⁸ Article 47 states that “The High Court also adjudicates cases relating to the applications for asylum.”

Minister. Furthermore, it stipulates that the grant of prima facie status does not stop the RSDC from analyzing individual applications where it is necessary.

The law also provides for what should be done in mass influx refugee situations that include soldiers or members of armed groups. Thus, relevant organs shall be required to do the following:

1° to separate civilians from soldiers and other armed elements;

2° to take weapons and other military equipment away from those in possession thereof;

3° to transfer former armed elements to a specific guarded settlement and record their identification;

4° to ask formerly armed elements to withdraw from military activities.

In a situation where the armed elements withdraw from military activities, they will be eligible to apply for refugee status. This is important in order to protect the humanitarian character of asylum. It should be noted that the 2014 law is generous in granting prima facie status to refugees. In this case asylum seekers are granted refugee status on the basis of their nationality and without going through individual determination of whether they meet the definition of a refugee under the law.⁴⁹ It is common practice that African states grant prima facie status to refugees in mass influx situations. Granting refugee status to mass influx situations is the common practice given the mass arrivals received by Rwanda especially from Burundi and DRC. Although, the 2014 law provides for ways of handling mass influx situations, it should have explained this in great details to reflect the reality on ground.

v. Rejection of refugee status application

Section 3 deals with the rejection of refugee status application. Article 14 states the grounds on how a person can be ineligible for refugee status. These include:

⁴⁹Norwegian Refugee Council (NRC) (2018), *Refugees Status Determination: A Study of the Process in Uganda*, Kampala, NRC.

1° he/she has committed a crime against peace, war crime, crime of genocide and other crimes against humanity as defined by international conventions ratified by Rwanda;

2° he/she has committed acts contrary to the main purposes and principles of the United Nations and of the African Union;

3° he/she is prosecuted for any felony other than a political crime before he/she takes refuge in Rwanda

It is understandable that as much as the law provides for grounds for qualification of refugee status, it gives the conditions under which a person may not be recognized as a refugee. The above provisions are in line with the Article 1F of the 1951 Convention and Article 1(5) of the OAU Convention. It is argued that this section shows Rwanda's commitment in ensuring that its refugee law is in line with its national, regional and international obligations. The Refugee Acts of Uganda⁵⁰, Kenya⁵¹, Tanzania⁵² and DRC⁵³ also provide for the same grounds of disqualification of refugee status.

vi. Revocation and Cessation of refugee status

Section 4, Article 16 provides for the revocation of refugee status in case it is found that it was granted contrary to the law. It further states that, "A person granted the refugee status on a prima facie basis may have his/her status revoked by the Refugee Status Determination Committee for reasons of territorial integrity and security of the nation".

Refugee status can be revoked if it was granted on grounds that are against the law. Also, this imposes an obligation on refugees not to use the cover of refugee status and endanger the territorial integrity and security of the nation. In fact, under article III of the OAU Convention, refugees are prohibited from engaging in subversive activities. Failure to respect this principle puts the safety of refugees at risk.

Article 17 of the law states the circumstances in which a person ceases to be a refugee in Rwanda. Being a refugee is not a permanent condition but comes to an end due to the

⁵⁰ Section 5.

⁵¹ Section 4.

⁵² Section 4(4).

⁵³ Section II, Article 2.

conditions spelt out in the refugee law. It states that refugee status shall cease for any person who:

1° has voluntarily re-availed him/herself of the protection of the country of his/her nationality;

2° having lost his/her nationality, has voluntarily re-acquired it;

3° has acquired a new nationality, and enjoys the protection of the country of his/her new nationality;

4° has voluntarily re-established him/herself in the country which he/she had fled;

5° had been granted refugee status but can no longer continue to avail him/herself of the protection of the country of asylum, because the circumstances in connection with which he/she has been recognized as a refugee has ceased to exist;

6° has no nationality and being in a position to return to the country of his/her former habitual residence because the circumstances in connection with which he/she had been recognized as a refugee have ceased to exist.

Similar to other provisions of the law, Article 17 is in line with the relevant articles of the 1951 Convention⁵⁴ and the OAU Convention⁵⁵ on the cessation of refugee status. This further shows Rwanda's determination to ensure that its refugee legislation reflects its obligations under international law. Also, the 2014 law is similar to the refugee acts of East African countries like Uganda⁵⁶, Kenya⁵⁷, Tanzania⁵⁸ and DRC.⁵⁹

3.5.4. Rights of refugees in Rwanda

Article 18 of the 2014 law provides for rights of refugees as provided for by international instruments. It states that "...any person having obtained refugee status in Rwanda shall enjoy the rights and liberties provided for by international instruments on refugees ratified by Rwanda." However, Rwanda entered some reservation on the 1951 Convention.

⁵⁴ Article 1(c).

⁵⁵ Article 1(4).

⁵⁶ Section 6(1).

⁵⁷ Section 5.

⁵⁸ Section 4(3).

⁵⁹ Section II, Article 4.

i. Reservation to the 1951 Geneva Convention

For reasons of public policy (ordre public), the Rwandese Republic reserves the right to determine the place of residence of refugees and to establish limits to their freedom of movement. With this reservation, the right of refugees to choose their place of residence & move freely within Rwanda's territory is subjected to the state's limitations and control. For example, the government has designated camps where refugees can stay. Also, refugee movements can only take place after authorization by the government authorities.

Apart from the above reservation, it appears that refugees enjoy most of the rights as enshrined in the 1951 Convention, its 1967 Protocol and the 1969 OAU Convention. In fact, the Ministerial Instructions of 2016 determining the management of refugees and refugee camps mention some refugee rights and freedoms. Article 12 states some rights such as:

- (a) Right to non-discrimination
- (b) Freedom to religion and belief
- (c) Right to immovable and movable properties
- (d) Right to intellectual property
- (e) Membership to association of forums with non-political orientation
- (f) Access to justice and legal representation
- (g) Right of residence
- (i) To be protected and assisted by the government

Generally, the rights that refugees are entitled to on the Rwandan soil include:

ii. Rights of refugees as stipulated in international instruments

I. Refugees should receive the same treatment as is accorded to Rwandan nationals as follows:

- (a) be entitled to fair and just treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion;
- (b) freedom to practice their religion and religious education of their children;
- (c) be entitled to artistic rights and industrial property such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic, and scientific works;
- (d) have free access to courts of law including legal assistance under the applicable laws of Rwanda;
- (e) have the same treatment as nationals as regards rationing;
- (f) right to elementary education;
- (g) same treatment with respect to public relief and assistance;
- (h) be issued with identity papers stating the refugee status of the holder for purposes of identification and protection;
- (i) same treatment as nationals on fiscal charges;
- (j) same treatment as nationals as regards labor legislation and social security under the relevant laws of Rwanda;

II. Receive at least the same treatment accorded to aliens generally in similar circumstances under the Constitution and any other law in force in Rwanda relating to:

- (a) movable and immovable property and other rights pertaining to property and to leases and other contracts relating to movable and immovable property;
- (b) the right to transfer assets held and declared by a refugee at the time of entry into Rwanda, including those lawfully acquired into Rwanda;
- (c) have a right of association as regards non-political and non-profit making associations and trade unions;

(d) the right to have access to employment opportunities and engage on gainful employment;

(e) the right to self-employment in agriculture, industry, handicrafts, commerce and establish commercial and industrial companies in accordance with the applicable laws and regulations in force in Rwanda;

(f) the right to practice the profession of the refugee who holds qualifications recognized by the competent authorities in Rwanda and who wishes to practice that profession;

(g) same treatment as aliens on the right to housing;

(h) right to administrative assistance by the authorities in Rwanda

(i) freedom from expulsion except on grounds of national security or public order and shall be only in pursuance of a decision reached in accordance with due process of Rwanda's laws.

(j) any other right that may legally be accorded to a refugee.

The above discussion shows how Rwanda has transformed its refugee law to promote the rights of refugees. As a country that has seen the displacement of its citizens abroad, it is understandable that it enacted a law that provides for refugee rights. It remains to be seen whether these rights are enjoyed practically by the refugees.

3.5.5. Naturalization

The 2014 law provides for naturalization of refugees. According to Article 19, "A refugee shall be granted Rwandan nationality in accordance with Rwandan laws." Once a refugee is naturalized and becomes Rwandan, he/she is no longer in need of protection as a refugee. The 2014 law envisages a situation where a refugee can obtain Rwandan nationality bringing to an end his/her refugee status. The question therefore is: can a refugee become a citizen under the 2008 Rwandan Nationality Law (hereafter the nationality law)? The answer is that the nationality law allows for the naturalization of refugees and asylum seekers married to Rwandan nationals⁶⁰ (3 years from the date of the marriage), for all children

⁶⁰ Article 11.

born in Rwanda to refugees and asylum-seekers after they reach adulthood⁶¹ and those applying for nationality by naturalization who are at least eighteen (18) years old and legal residents for at least five (5) years.⁶² Despite the above legal possibilities for naturalization of refugees, “the occurrence of naturalization is very rare in Rwanda”.⁶³ The “lack of information and sensitization regarding the existence of this provision seems to be one of the main reasons for its infrequent use”.⁶⁴

However, despite its rare use, we can argue that the 2014 law is in line with the 1951 Convention which provides for naturalization of refugees.⁶⁵ By providing for legal avenues on the naturalization of refugees, Rwanda has abided by its obligations under international refugee instruments, at least formally.

3.5.6. Marriage

The 2014 law provides for the marriage of refugees. Article 20 states that “The marriage of refugees shall be governed by Rwandan laws.” It is further stated that the civil status registrar shall issue the required documents for marriage of refugees. In cases where a refugee is married to a Rwandan, he/she will keep the refugee status until he/she acquires Rwandan nationality, three years after the marriage as stipulated in the nationality law.⁶⁶ The above provision on marriage is linked to the 1951 Convention. Its article 12(1) states that, “The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.” Article 12(2) adds that, “Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.” International human rights instruments provide for the right to marry and found a family: The Universal Declaration of Human Rights⁶⁷; the

⁶¹ Article 8.

⁶² Article 14.

⁶³ UNHCR (2015), “Submission by the United Nations High Commissioner for Refugees”, op.cit:9.

⁶⁴ Ibid.

⁶⁵ Article 34 states that “The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”

⁶⁶ Article 11.

⁶⁷ Article 16.

International Covenant on Civil and Political Rights⁶⁸; the African Charter on Human and People's Rights.⁶⁹ The Constitution also provides for the right to marry.⁷⁰ It can be argued that the 2014 law is consistent with the 1951 Convention, international human rights instruments and the constitution.

3.5.7. Principle of non-refoulement

Article 21 of the 2014 law provides for the principle of non-refoulement. It prohibits the return of a refugee to a country where his/her life or liberty may be compromised or endangered. It has been argued that the principle of non-refoulement is now part of international customary law and it applies to all states regardless whether or not they have ratified international instruments.⁷¹ In fact, the principle of non-refoulement is the cornerstone of refugee protection⁷². This principle is reflected in the 1951 Convention⁷³ and the 1969 OAU Convention⁷⁴ and human rights instruments like the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁷⁵ and the African Charter on Human and Peoples' Rights.⁷⁶

Domestic and regional courts have ruled on the principle of non-refoulement. They argue that refoulement of refugees is a violation of fundamental human rights. In the Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission Internationale des juristes, Union interafricaine des droits de l'Homme v. Rwanda case, the African Commission on Human and Peoples' Rights in paragraph 33 stated that "There is ample evidence in this communication that groups of Burundian refugees

⁶⁸ Article 23.

⁶⁹ Article 18.

⁷⁰ Article 17.

⁷¹ G.S Goodwin-Gill & J. McAdam (2007), *The Refugee in International Law*, 3rd Ed, Oxford, Oxford University Press.

⁷² J. Crisp & K. Long, (2016). Safe and voluntary refugee repatriation: From principle to practice, *Journal on Migration and Human Security*, 4(3):141-147.

⁷³ Article 33(1) states that "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

⁷⁴ Article V (1) states that "The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will." By putting the emphasis on voluntary repatriation, the 1969 OAU Convention outlaws the forced repatriation of refugees. Voluntary repatriation essentially emphasizes the principle of non-refoulement.

⁷⁵ Article 3(1) states "No state shall expel, return ("refouler") or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture."

⁷⁶ Article 12(5) provides that "The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups".

have been expelled on the basis of their nationality. This constitutes a clear violation of Article 12(5) of the African Charter”.⁷⁷ Also, the African Commission on Human and Peoples’ Rights found that Guinea violated Article 12(5) that prohibits mass expulsion of non-nationals and right of non-refoulement in the Institute for Human Rights and Development in Africa (on behalf Sierra Leonean refugees in Guinea) v. Guinea 2004 case.⁷⁸

In the Haitian Centre for Human Rights et al. v. United States case, the Inter American Commission on Human Rights ruled that “The United States has breached the ‘right to liberty’ contained in Article 1 of the American Declaration with regard to Jeannette Gedeon, Dukens Luma, Fito Jean, the four interviewees at Guantanamo and unnamed Haitian Interdictees”.⁷⁹ This was after the United States forcefully repatriated Haitian asylum seekers to Haiti.

By providing the principle of non-refoulement, Rwanda has made an effort to ensure that its 2014 law complies with its national, regional and international human rights obligations. It remains to be seen whether Rwanda will respect this principle.

3.5.8. Obligations of refugees in Rwanda

The Rwandan law provides for obligations of refugees. According to article 22, “A refugee shall have the obligation to comply with laws, international instruments ratified by Rwanda, regulations in force in Rwanda as well as all measures taken for public security and order.” It is important that refugees respect their duties and do not engage in activities that may endanger the security and order of the host country. This is important in order to protect the humanitarian character of asylum and not compromise their protection. The Great

⁷⁷ Organisation mondiale contre la torture, Association Internationale des juristes démocrates, Commission Internationale des juristes, Union interafricaine des droits de l'Homme v. Rwanda, 27/89-46/90-49/91-99/93, African Commission on Human and Peoples' Rights, October 1996, Available at <http://www.refworld.org/docid/51b6f4374.html> [Accessed on 8 May 2014]; Article 12(5) of the African Charter states that “The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups”.

⁷⁸ Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea, 249/02, African Commission on Human and Peoples' Rights, December. 2004, Available at <http://www.refworld.org/docid/51b6fc794.html> [Accessed on 8 May 2014].

⁷⁹The Haitian Centre for Human Rights et al. v. United States, Case 10.675, 10.675, Inter-American Commission on Human Rights (IACHR), 13 March 1997, Available at <http://www.refworld.org/docid/3ae6b71b8.html> [Accessed on 8 May 2014].

Lakes region of Africa has in the past experienced episodes of refugees' involvement in subversive activities and this has put their safety at risk.

The 2014 law is not as detailed as some of the acts of neighboring countries. For example, Section 35 of Uganda's Refugees Act states that a recognized refugee shall- a) be bound by and conform to all laws and regulations currently in force in Uganda; b) conform to measures taken for the maintenance of public order; c) not engage in activities which may endanger state security, harm public interests or disrupt public order; (d) not engage in any political activities within Uganda, whether at local or national level; (e) not engage in any activity contrary to the principles of the Charter of the United Nations and the Statute of the African Union and in particular, shall not undertake any political activities within Uganda against any country, including his/her country of origin and (f) if engaged in gainful employment or fully integrated and has a source of income, pay taxes in accordance with the applicable taxes of Uganda.

It is important to note that the obligations under the 2014 law are less similar to those under the 1951 Convention⁸⁰ and 1969 OAU Convention.⁸¹ This is further evidence that Rwanda made an effort to align the 2014 refugee law with her obligations under regional and international instruments.

3.5.9. Refugee camps and their management

The 2014 law provides for refugee camps and their management. Article 23 states that "Refugees coming in mass influx situations shall be transferred to a settlement camp distant from the border. However, any other person granted individual refugee status shall be entitled to settle in a refugee camp". The law gives every refugee a right to shelter. The Minister has the powers to determine the location and management of camps in consultation with relevant organs. Article 25 makes it clear that the Minister is responsible for the authorization of staying and relocating from a camp. Refugees who wish to stay in other places outside camps need approval from the Minister. In addition to the 2014 law,

⁸⁰Article 2 states that "Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order".

⁸¹ Article III (1) states that "Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU".

the government adopted the 2016 Ministerial Instructions determining the management of refugees and refugee camps. These instructions provide guidelines on the running of refugee camps.

Similar to other East African countries like Kenya and Tanzania with the exception of Uganda, Rwanda practices the camp policy where refugees are placed in camps. However, the camps are associated with some challenges and tend to limit the rights of refugees like movement, work and livelihoods.⁸² Encampment policy makes refugees dependent on humanitarian assistance. The reductions in humanitarian assistance have complicated the refugee welfare and wellbeing. Rwanda has embarked on the implementation of the Global Compact for Refugees (GCR) and Comprehensive Refugee Response Framework (CRRF) to improve refugee livelihoods, access to jobs and self-reliance. However, one wonders how these will be achieved in a situation of encampment.

Furthermore, the law puts emphasis on locating camps distant from the border. This is in line with the 1969 OAU Convention which requires African states to settle refugees away from the border.⁸³ This is partly due to the need to protect refugees and also address the security concerns of states. This further shows that Rwanda is determined to make its refugee law reflect its regional and international obligations.

3.5.10. Durable solutions for refugees in Rwanda

Chapter VI provides for the quest for durable solutions for refugees. Article 27 spells out the modalities for quest for durable solutions for refugees. Three solutions are provided to this effect and they include; voluntary repatriation, relocation to a third country and resettlement. The 2014 law like other acts envisages a situation where refugee status will come to an end through the three solutions. Hathaway⁸⁴, argues that refugee status is temporary and not permanent.

⁸² S. Sytnik (2012), "Rights Displaced: The Effects of Long Term Encampment on the Human Rights of Refugees", *Working Paper No. 4*, Refugee Law Initiative; J. Milner (2009), *Refugees, The State and the Politics of Asylum in Africa*, Basingstoke, Palgrave Macmillan.

⁸³ Article II (6) states that "For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin." Although the concept of 'reasonable distance' has never been officially defined, UNHCR and state practice puts it at 50 kilometers.

⁸⁴ J.C. Hathaway (2012), "Refugees and Asylum" in: B. Opeskin., R. Perruchoud & J. Redpath-Cross, (Eds), *Foundations of International Migration Law*, Cambridge, Cambridge University Press: 177-204.

As noted above, one of the solutions is voluntary repatriation and it is the most emphasized durable solution in practice.⁸⁵ The solution is enshrined in international instruments like the OAU Convention.⁸⁶ Voluntary repatriation is closely linked to the principle of non-refoulement enshrined in the 1951 Convention.⁸⁷ The UNHCR Handbook makes a connection between voluntariness and non-refoulement as follows:

“The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement. A person retaining a well-founded fear of persecution is a refugee, and cannot be compelled to repatriate”.⁸⁸

The 2014 law further provides a second solution: relocation to a third country. It envisages a situation where a refugee may be relocated to a third country or second country of asylum due to some circumstances that may include: security reasons, burden sharing to mention but a few. The OAU Convention⁸⁹ provides for a situation where states can assist each other in lightening the burden of hosting refugees and this can involve relocation of refugees.

Thirdly, resettlement is provided as a third⁹⁰ solution in the 2014 law. Hathaway⁹⁰ argues that “this solution acknowledges the reality that time spent in an asylum State may afford a refugee the opportunity to explore and secure access to durable protection options better suited to his or her needs”. He further argues that the 1951 Convention “explicitly envisages the possibility of onward movement by way of resettlement from the first country of arrival, and requires the government in the refugee's initial host state to facilitate that process in

⁸⁵F. Ahimbisibwe (2015), *The Host State and Refugee Security in Uganda: The Case of Rwandan Refugees in Nakivale Settlement*, Doctoral Dissertation, Mbarara, Mbarara University of Science and Technology.

⁸⁶ Article V (1) states that “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”. Article V (2) adds that “The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.”

⁸⁷ Article 33.

⁸⁸UNHCR (1996), *Handbook on Voluntary Repatriation: International Protection*, Geneva, UNHCR: 10.

⁸⁹Article II (4) states that “Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.”

⁹⁰J.C Hathaway, “Refugees and Asylum”, op.cit: 199-200.

the spirit of international cooperation”.⁹¹ Also, the OAU Convention provides for resettlement.⁹² By and large the 2014 law reflects Rwanda’s commitment to its regional and international obligations.

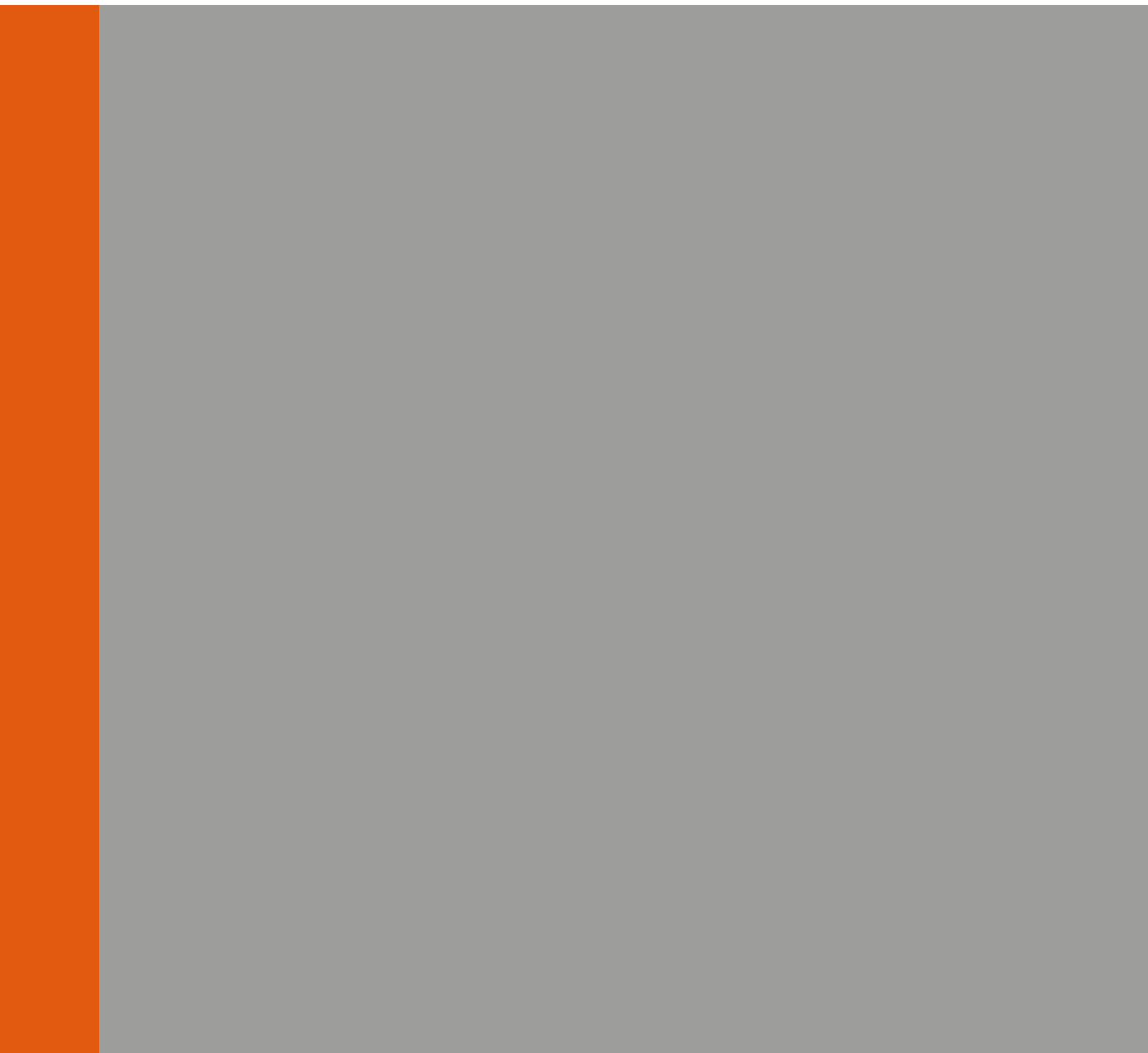
4. Conclusion

As shown above, Rwanda is a host country to refugees mainly from DRC and Burundi. These countries are still prone to conflicts and instability in the volatile Great Lakes region of Africa. This means that Rwanda might be a destination for these refugees in the foreseeable future. It is also a refugee producing country. A good number of Rwandans are outside as refugees, both as old and new caseloads. The enactment of the 2014 Law Relating to Refugees was a good step taken by Rwanda in meeting its national, regional and international obligations. Overall, the law reflects the norms and principles as enshrined in regional and international legal instruments.

However, there are still some gaps in the law that need to be addressed. As shown above, the law does not recognize persons displaced by natural disasters, what we can term as environmental refugees or displaced persons. Rwanda has from time to time hosted Congolese nationals fleeing the volcanic eruptions of Mount Nyiragongo, one of the active volcanoes in Eastern DRC. Also, as climate change continues to get worse, it is possible that environmental refugees will migrate in search of safety and protection. One wonders under which legal framework these refugees and asylum seekers will be managed. There is need for an amendment to recognize persons forcefully displaced by natural disasters. Also, the provision that appeals should be made to the Minister in charge of refugees raises questions as to the independence of the appeal process. Although in 2018, the government enacted the Law Determining the Jurisdiction of Courts which sets out the right of appeal to the High Court, asylum seekers may face challenges accessing the Court. It is recommended that the state, UNHCR and Non-Governmental Organizations (NGOs) should assist asylum seekers in their appeals to the High Court. Lastly, there is need to clarify the role of the department in charge of immigration and emigration in reviewing asylum applications. This will go a long way in enabling Rwanda meet her regional and international humanitarian obligations.

⁹¹ Ibid: 200.

⁹² Article II (5) states that “Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his re-settlement.....”



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