

RIGHTS IN EXILE POLICY PAPER

Eritrean refugees in Kampala and the Ugandan asylum system

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THAT FOCUS ON KEY ISSUES OF REFUGEE POLICY AND REFUGEE
RIGHTS.

ABOUT THE INTERNATIONAL REFUGEE RIGHTS INITIATIVE

The International Refugee Rights Initiative (IRRI) was founded in 2004 to inform and improve responses to the cycles of violence and displacement that are at the heart of large-scale human rights violations. Over the last 13 years, we have developed a holistic approach to the protection of human rights before, during, and in the aftermath of displacement, by:

- identifying the violations that cause displacement and exile,
- protecting the rights of those who are displaced, and
- ensuring the solutions to their displacement are durable, rights respecting, safe and timely.

We work to ensure the voices of the displaced and conflict affected communities are not only heard but heeded at the international level through our evidence based advocacy that is built on solid field based research and analysis.

We are registered as a non-profit organisation in the US, the UK, and Uganda.

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Cover image: A view of central Kampala from Old Kampala (IRRI, 2017).

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Introduction

In the past decade, Eritrea, though a small country, has become a major source of refugees, with diaspora communities extending all the way from the Horn of Africa to North America, Europe and South Africa. From the mid-2000s, the number of Eritreans leaving their country skyrocketed. While neighbouring Ethiopia and Sudan became the first destinations for Eritrean refugees, many of these refugees moved on to seek protection elsewhere, in Europe, Israel and in other African countries including Uganda.¹

Until the late 2000s, there were hardly any Eritreans who were officially registered as refugees or asylum seekers in Uganda, but in the last decade and following the introduction of new Refugee Status Determination (RSD) mechanisms under the 2006 Refugee Act, their number has steadily increased. According to official statistics (which are based on government data), by the end of 2017 there were 14,592 registered Eritrean refugees and asylum seekers in Uganda. Less than a third (4,566 individuals or 31 percent) of them are recognised refugees. The rest are asylum seekers whose applications are pending.²

These numbers do not represent the size of the entire Eritrean community in Uganda, as they do not include those Eritreans who have an Eritrean passport and stay in Uganda with work permits or under other legal arrangements. Some of these Eritreans, though not all of them, may also face persecution and abuse if they return to their country of origin, even though they did not formally seek asylum in Uganda. For the reasons discussed in this paper, alternative legal solutions that

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allow individuals to avoid the asylum process altogether are usually perceived as more reliable and therefore preferable. However, they can only be accessed by those with better social connections, financial means or an Eritrean passport, conditions many of the individuals fleeing Eritrea do not fulfil.

The vast majority of Eritreans in Uganda live in Kampala. While some of the more diverse neighbourhoods of the capital such as Kabalagala, Kasanga and Old Kampala are known to host Eritrean hubs (and indeed hubs of many other foreign communities in Uganda) and various Eritrean-owned businesses and popular meeting spots, many Eritreans also live elsewhere around the city and its suburbs, in areas that are not necessarily identified with the Eritrean community or foreigners more broadly.

Eritreans and the Ugandan asylum system

To be recognised as refugees, Eritrean nationals in Uganda have to apply to the Refugee Eligibility Committee and go through an individual RSD process. The process is regulated by the Refugee Act of 2006 and the Refugees Regulations of 2010 and applies to all asylum seekers in Uganda except those who are currently eligible for *prima facie* refugee status (namely, South Sudanese

¹ IRRI, "Tackling the root causes of human trafficking and smuggling from Eritrea," November 2017, available at: <http://refugee-rights.org/wp-content/uploads/2017/11/IRRI-KP-final.pdf> (accessed 2 April 2018).

² UNHCR (Uganda), "Statistical summary as of 31 December 2017," available at: <https://ugandarefugees.org/wp-content/uploads/December-2017-Statistics-Package.pdf> (accessed 7 April 2018).

and Congolese who are claiming asylum in the refugee settlements in Uganda's Northern and Western districts). While their application for refugee status is pending, a temporary document is issued granting them the right to remain in Uganda legally as asylum seekers.

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It is commonly argued by Eritreans in Uganda that it is rare for people of their nationality to be recognised as refugees in Uganda. Some members of the Eritrean community who already spent several years in Uganda claim that in recent years accessing refugee status has become even more challenging for people of their nationality.³

Partly accounting for a relatively low recognition rate is OPM's application of a "first country of asylum" principle when assessing refugee claims. This is a loosely defined doctrine that is interpreted as allowing for the rejections of asylum claims of those applicants who – as explained by OPM – "pass through many countries before reaching Uganda and do not necessarily bother to apply for asylum in those countries or demonstrate why they did not apply for asylum in those countries."⁴

Another common argument made by Eritreans is that the asylum system in Uganda is rife with corruption. Many allege that applicants are often required to pay an informal fee in order to access the system and file an application, and that refugee status is only granted to those who can afford pay for it.⁵ While Eritreans are not the only group of asylum seekers that is affected by such informal practices in Uganda, different communities are impacted by them in different ways.⁶

IRRI has not been able to evaluate these allegations, assess the precise levels of corruption in the asylum system or investigate specific cases of corruption. Moreover, it appears that it is often not necessarily Ugandan officials that directly request payment for services that are formally meant to be provided free of charge, but informal interlocutors who assist applicants who are unfamiliar with the bureaucratic requirements and do not have sufficient knowledge of English.

In response to IRRI's inquiry on the matter, OPM explained that: "The Refugee Eligibility Committee and Refugee Appeals Board do not interact directly with Eritrean Asylum seekers

³ According to statistics provide to IRRI by the Office of the Prime Minister (OPM) Departments for Refugees (OPM letter to IRRI, 26 April 2018, on file with IRRI), in 2016, 1,196 asylum applications of Eritreans were assessed, and 333 were granted refugee status while 863 were rejected. In 2017, 578 applications were assessed, 300 were granted status while 278 were rejected. These numbers differ from UNHCR's data as published on its website (http://popstats.unhcr.org/en/asylum_seekers). According to the data published by UNHCR, in 2016, 522 Eritrean applications were accepted while 1,252 were rejected, and in 2017, 1,557 applications were accepted and 3,013 were rejected. IRRI approached both OPM and UNHCR and inquired about the reasons for the discrepancy. UNHCR officials explained that their numbers are based on government statistics and OPM officials explained that the numbers they provided IRRI with are correct.

⁴ OPM letter to IRRI, 26 April 2018 (on file with IRRI).

⁵ IRRI interviews with Eritrean asylum seekers in Kampala, December 2017. See also Georgia Cole, "Questioning the value of 'refugee' status and its primary vanguard: the case of Eritreans in Uganda," Working paper series no. 124 (Refugee Studies Centre, University of Oxford), May 2018, available at: <https://www.rsc.ox.ac.uk/publications/questioning-the-value-of-refugee-status-and-its-primary-vanguard-the-case-of-eritreans-in-uganda> (accessed 6 June 2018).

⁶ See, for another recent example, Charles Ogeno and Ryan Joseph O'Byrne, "The Illegal Economy of Refugee Registration: Insights into the Ugandan Refugee Scandal," Africa at LSE blog, 8 March 2018, available at: <http://blogs.lse.ac.uk/africaatlse/2018/03/08/the-illegal-economy-of-refugee-registration-insights-into-the-ugandan-refugee-scandal-publicauthority/> (accessed 7 April 2018).

[sic], therefore, its [sic] not correct that, they pay to access refugee status.” With regard to the role of interlocutors, OPM explained that these are beyond its control, but that “there are however some known cases of brokers and these have been reported to the police. The office continues to sensitize asylum seekers about such fraudsters.” OPM further adds: “There are daily sessions introduced to brief asylum seekers on such fraudsters and messages are pinned warning asylum seekers not to pay or interact with such groups/persons.”⁷

However, low recognition rates, the proliferation of informal interlocutors and corruption are linked together in a feedback loop: the less accessible refugee status is, the higher the price individuals are willing to pay to get it, and the greater the demand is for informal interlocutors that can guide applicants through the asylum process. These factors mutually reinforce the effects of each other and increasingly undermine the integrity and impartiality of the asylum system. Ultimately, they can also deter potential applicants from turning to the asylum system altogether, as it is deemed too expensive and time consuming.

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The implications of a backlogged system

Many Eritreans remain “stuck” in the asylum process for a long time with their applications pending. They wait for months and sometimes more than a year for their initial RSD hearing; then they wait for the decision; and after being rejected, the “[m]ajority of the rejected cases have applied for review of their asylum applications and others appealed to the Refugee Appeals Board” which means that their application is reviewed again.⁸

However, Eritreans do not necessarily view the slowness of the process as negative. Knowing that they are likely to be rejected when their application is finally considered, which will leave them with no status at all and vulnerable to detention and, theoretically, expulsion, some try to prolong the time that they remain within the asylum system. As long as they are in the asylum process, they can enjoy the status of an asylum seeker. Precarious as it might be, it is still better than nothing.

Moreover, while some are eager to be recognised as refugees – hoping that this will enhance their ability to be self-sufficient in Uganda or open doors for legal migration elsewhere – some also realise that the final refugee status will not necessarily grant them much more than the asylum permit does already, which is primarily the liberty to move freely without being harassed by the authorities.

Thus, the low recognition rate has the unintended consequence of encouraging the creation of a backlog in the asylum system. Coupled with the inefficiency of the system, it creates a situation in which the status of an asylum seeker, which is supposed to be a temporary one, is *de facto* becoming a permanent status for those Eritreans who cannot access any other legal status in

⁷ OPM letter to IRRI, 26 April 2018 (on file with IRRI).

⁸ Ibid

Uganda. Ultimately, it is only increasing the amount of work the bureaucracy faces and further undermines its efficiency.

Eritreans arriving from Israel

One reason for the rise in the total number of Eritreans in Uganda in recent years is the transfer of Eritrean and Sudanese asylum seekers from Israel to Uganda and Rwanda. It has been estimated that since late 2013, Israel transferred some 4,000 individuals to these two countries,⁹ and it is further believed that the vast majority of those transferred to Rwanda immediately continue to Uganda, making Kampala a known hub of Eritreans and Sudanese who previously sought asylum in Israel.¹⁰

While many of these Eritreans and Sudanese leave Uganda for other countries in the region or Europe without applying for asylum, some also stay in Uganda. Given the secrecy surrounding the Israeli transfers scheme and the fact that those transferred are not legally accepted in Uganda or Rwanda, it is difficult to know how many Eritreans who previously sought asylum in Israel currently live in Uganda. The number can conservatively be estimated to be in the hundreds.

The Ugandan government has consistently denied that it is a party to any transfer agreement with Israel.¹¹ This has not prevented Israel, however, from continuing to send Eritreans and Sudanese to Uganda, falsely promising them that they will be legally accepted upon arrival in Entebbe.¹² As late as April 2018, transfers from Israel to Uganda were ongoing.¹³

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Whether or not any clandestine arrangements between Israel and Uganda exist, the lack of transparency surrounding Israel's conduct leaves these Eritreans in an unclear position *vis-à-vis* the Ugandan authorities. On the one hand, they were sent into the country by Israel and promised that they will be granted a legal status. On the other hand, they know that the official Ugandan position is that they are not supposed to be in the country in the first place. As Uganda's

⁹ UNHCR, "UNHCR concerned over Israel's refugee relocation proposals," 17 November 2017, available at: www.unhcr.org/uk/news/press/2017/11/5a0f27484/unhcr-concerned-israels-refugee-relocation-proposals.html (accessed 2 April 2018).

¹⁰ IRRI, "'I was left with nothing': 'Voluntary' departures of asylum seekers from Israel to Rwanda and Uganda," 8 September 2015, available at: <http://refugee-rights.org/i-was-left-with-nothing-voluntary-departures-of-asylum-seekers-from-israel-to-rwanda-and-uganda/> (accessed 7 April 2018).

¹¹ Yotam Gidron, "How Israel's Secret Refugee Deals Collapsed in the Light of Day," Refugees Deeply, 3 May 2018, available at: <https://www.newsdeeply.com/refugees/community/2018/05/03/how-israels-secret-refugee-deals-collapsed-in-the-light-of-day> (accessed 13 June 2018).

¹² IRRI, "Statement on Israel's latest deportation scheme," 22 February 2018, available at: <http://refugee-rights.org/statement-on-israels-latest-deportation-scheme/> (accessed 7 April 2018).

¹³ Based on the data provided by the Israeli authorities to the Supreme Court on 24 April 2018 (on file with IRRI). See also: Lee Yaron, "Uganda Says Israel Gives Deported Asylum Seekers Fake Visas," *Haaretz*, 13 April 2018, available at: <https://www.haaretz.com/israel-news/.premium-uganda-says-israel-gives-deported-asylum-seekers-fake-visas-1.5994836> (accessed 6 June, 2018).

State Minister for Relief, Disaster Preparedness and Refugees Musa Ecweru stated: “If they are here, they are trespassers.”¹⁴

Eritreans who are transferred from Israel usually apply for asylum after friends or relatives advise them to do so. When they apply, however, they do not disclose the fact that they came from Israel, as they fear that it will put them in trouble with the local authorities, that they will be denied a legal status or that they will be assumed to have more money because they came from Israel and will therefore be asked to pay a higher bribe when applying for asylum. They are well aware that their ambiguous legal status makes them vulnerable to exploitation and abuse.

OPM has no separate official policy with regard to those Eritreans and Sudanese arriving from Israel. In response to IRRI’s inquiry, OPM explained: “Well as there are rumours of Eritreans in Uganda who could have arrived from Israel, the office is not aware of them, since they have not declared themselves to Office [sic].”¹⁵ Given that OPM applies the “first country of asylum” principle and the Ugandan government denies that Eritreans from Israel have been transferred into Uganda under a legitimate agreement between the countries, and given that Israel defines transfers to Uganda and Rwanda as “voluntary”, it is understandable that Eritreans fear that if they reveal that they came from Israel, the authorities will be able to claim that they are not genuine refugees but migrant workers.

Moving “forward”

Uganda is rarely viewed as a “transit” point for African migrants on the way to Europe. It is nonetheless important to note that many Eritreans do not see their future in Uganda and view it more as a place in which they can “wait” before moving elsewhere in Africa, Europe or North America. Overall, many feel that they are still “on the way” somewhere,¹⁶ and while some possess a clear plan for future migration, for example through family unification with relatives who have already acquired a legal status in Europe, others do not have an articulated plan but hope that opportunities will arise.

For those who have little faith in finding a legal way to migrate to the West, but nonetheless see no future in Uganda, traveling to Europe irregularly through Sudan and Libya has become another viable (yet, expensive) option, despite the fact that Eritreans are well aware of the dangers involved and the risk of death. This is a popular route taken by those Eritreans who were sent from Israel to Uganda and Rwanda.

Notably, there are well established networks of smugglers that facilitate the irregular movement of Eritreans (and others) not only to Uganda (from Sudan, Ethiopia and Kenya), but also from Uganda to other countries in the region, sometimes also for the purpose of onward migration beyond it. The most popular route is from Kampala, through Juba, to Khartoum, where migrants can make arrangements for onward movement to Europe. Smugglers are said to charge anything between USD 200 and 700 for the trip from Kampala to Juba. The route is well established and is

¹⁴ Associated Press, Reuters and Amir Alon, “Uganda 'considering' Israel's request to take 500 migrants,” *Ynet*, 13 April 2018, available at: <https://www.ynetnews.com/articles/0,7340,L-5229349,00.html> (accessed 12 June 2018).

¹⁵ OPM letter to IRRI, 26 April 2018.

¹⁶ Interviews with an Eritrean asylum seeker in Kampala, December 2017.

also taken in the opposite direction, by Eritreans who wish to leave Khartoum for Juba or Kampala.¹⁷ Alternatively, it is also possible to travel irregularly through Kenya to Ethiopia or to South Africa, though the latter does not seem to be a very popular option.

Recommendations

To the Office of the Prime Minister of Uganda (OPM)

- Continue to work to minimise the reliance of applicants on informal interlocutors when applying for asylum by making clear information on the asylum process easily accessible in all relevant languages, strengthening outreach mechanisms to ensure individuals are informed that payment is not required at any stage of the process, and working to ensure that officials at any level are not involved in, or implicitly encourage, such informal practices.
- Process asylum applications fairly and effectively in accordance with international standards. The principle of “first country of asylum” should only be applied where there are guarantees that the individual in question can be readmitted to that “first country”, be allowed to lawfully stay there, be protected from *refoulement*, and accorded all the rights he or she is entitled to in accordance with international refugee and human rights law.¹⁸
- Work with the Directorate of Citizenship and Immigration Control to address the situation of Eritreans and Sudanese arriving from Israel: agree on a process by which they will be able to acquire a legal status in Uganda and publish it.

To UNHCR

- Work with OPM to ensure that asylum applications are processed in a manner that is consistent with international standards and that the asylum process is accessible, transparent and free of corruption.
- Work with OPM, the Ugandan Directorate of Citizenship and Immigration Control, the Ministry of Internal Affairs and the Ministry of Foreign Affairs to ensure the situation of Eritreans and Sudanese arriving from Israel is addressed and that no further transfers take place before a formal policy is in place to guarantee the protection of those transferred.

¹⁷ See for example, Africa Monitors, “The Risky Journey of Rahwa,” 30 August 2017, available at: <https://africamonitors.org/2017/08/30/the-risky-journey-of-rahwa-3/> (accessed 8 April 2018).

¹⁸ See UNHCR, “Legal Considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries,” April 2018, available at: www.refworld.org/pdfid/5acb33ad4.pdf (accessed 6 June 2018).