

# HANDBOOK ON MIGRATION AND HUMAN RIGHTS



Supported by:



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# LIST OF ACRONYMS

CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women	IDs:	Identifiers/ Identity documents
CESCR:	Committee on Economic, Social and Cultural Rights	IOM:	International Organisation for Migration/ UN Migration
CIVIPOL:	Technical Cooperation Operator of the French Ministry of the Interior	OAU:	Organisation of African Unity
EU:	European Union	OPM:	Office of the Prime Minister (of Uganda)
ICCPR:	International Covenant on Civil and Political Rights	OSIEA:	Open Society Initiative for Eastern Africa
ICERD:	International Convention on the Elimination of All Forms of Racial Discrimination	UDHR:	Universal Declaration of Human Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights	UHRC:	Uganda Human Rights Commission
ICRMW:	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	UN:	United Nations
IDPs:	Internally Displaced Persons	UNESCO:	United Nations Educational, Scientific and Cultural Organisation
		UNHCR:	United Nations High Commissioner for Refugees
		UNODC:	United Nations Office on Drugs and Crime
		UYDEL:	Uganda Youth Development Link

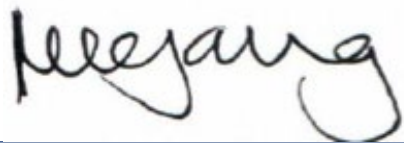
# ACKNOWLEDGEMENTS

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We hope that everyone who benefits from this Handbook will feel empowered to promote and protect the human rights of migrants in Uganda and beyond.



**Ejang Margaret Lucy**  
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**UGANDA HUMAN RIGHTS COMMISSION**

# FOREWORD

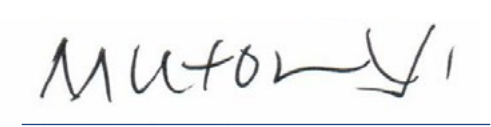
Millions of people are on the move around the world for different reasons, and Uganda is a transit as well as on the receiving and sending end of this cycle. Whereas migration is not a new phenomenon in the country, the volume of movement of persons has grown over the years and with this, are increasing tensions and dynamics. Public institutions, duty bearers and personnel face complex challenges of ensuring that migration is safe, orderly and regular.

The Uganda Human Rights Commission (UHRC), as Uganda's National Human Rights Institution, is at the centre of ensuring that rights of migrants are protected and promoted. Although there is no specific law to protect migrants in Uganda, there exist some laws and policies on migration and Uganda has a fairly good record of ratification

of treaties/conventions protecting the rights of migrants. However, duty bearers are not at the same level of capacity in terms of knowledge and implementation of proper practice around migration, which often translates into violations of human rights of migrants.

The Commission recognises that duty bearers have a critical role to play to ensure a meaningful, balanced and informed response to migration, and to guarantee respect to human rights norms and standards. This handbook aims to facilitate the understanding of the rights of migrants and freedoms by clarifying international law concepts. It is particularly intended to assist actors involved in migration, including human rights defenders, police officers, prosecutors, judges, magistrates and lawyers. This easy to read handbook makes easy reference and linkages between migrants' rights and international human rights instruments.

Through utilization and popularization of this handbook, we hope that national authorities and agencies will have strengthened capacity in human rights-based management of safe, orderly and regular migration and, the prevention of trafficking in persons within Uganda and beyond.



**Mariam Wangadya**  
**CHAIRPERSON**  
**UGANDA HUMAN RIGHTS COMMISSION**

# ABOUT THE HANDBOOK ON MIGRATION AND HUMAN RIGHTS

This handbook aims to strengthen the rights-based management of migration in the context of the challenges it presents to key duty bearers in Uganda. It is intended to help actors understand how to effectively carry out their responsibilities for ensuring safe, orderly and regular migration and the enhanced protection of the human rights of migrants in light of the expanding and globalizing nature of migration, as well as knowledge of international and regional human rights instruments that promote and protect the rights of migrants. It highlights the phenomenon of migration, causes, forms, human rights implications and duties of key actors.

Different sections of the handbook focus on pertinent issues of migration at the international and national levels including trends and patterns of migration, human rights of migrants, state obligations, relevant legal framework and a human rights-based approach to migration management. The handbook also highlights key actors and practical steps in implementing and monitoring programmes on migration.

In particular, the handbook focuses on migrants, refugees, trafficking in persons and smuggling of human beings which are key features of the migration cycle in Uganda. The key duty bearers targeted by this handbook include government

agencies working on migrant issues such as the Ministry of Gender, Labour and Social Development (MoGLSD), Uganda Human Rights Commission, Equal Opportunities Commission, Coordination Office for Prevention of Trafficking in Persons (COPTIP), law enforcement agencies such as Interpol, Police- Anti-Trafficking in Persons Department and the Directorate of Public Prosecutions, Courts of Law, civil society actors and recruitment agencies.

Ultimately, the information presented in this handbook should prove to be an indispensable aid for key duty bearers in ensuring safe, orderly and regular migration in Uganda.

# 01

## CHAPTER ONE

### Understanding Migration: Forms and Trends

#### 1.1 Introduction

Migration of people is a timeless phenomenon integral to human society. Whether motivated by the need to flee conflict, or by the desire to seek a better quality of life elsewhere, the movement of people across national borders is inevitable. Internal and external conflicts, political oppression, discrimination and other human rights abuses have led to mass movements and displacements, leading to the presence and creation of varying numbers of migrants in the world today.

#### 1.2 What is Migration?

Migration is the movement of people – individuals, family units or large groups – from one place to another with the intention to settle there permanently or temporarily. Migration occurs at a variety of scales. It can either be internal within the same country, or more specifically, international, where persons cross the frontiers that separate one country from another. The latter can be intercontinental (between continents) or

intra-continental (between countries on a given continent).

Migration has occurred throughout human history and the largest migration in Africa was that of the Bantu-speaking people to the southern part of the continent. Other large migrations include

Europeans to North and South America; Chinese to Southeast Asia; Jews from Europe to North America and Israel; Mexicans northward to the United States of America and Africans to the Middle East, North America and southwards towards South Africa.



*Photo credit: migrants on a ship intercepted offshore near the town of Gohneima, east of Tripoli, June 2018, Libyan Coast guard via AP)*



### 1.3 Types of Migration

Migration can take different forms such as:

- **Population Transfer:** (also called “involuntary” or “forced” migration) occurs when a government forces a large group of people out of a region on ethnic or religious grounds.
- **Impelled Migration** (also called “reluctant” or “imposed” migration) occurs where individuals are not forced out of their country, but leave because of unfavorable situations such as warfare, political problems, or religious persecution.
- **Step Migration:** A series of shorter, less extreme migrations from a person’s place of origin to final destination—such as moving from a farm, to a village, to a town, and finally to a city.
- **Chain Migration:** A series of migrations within a family or defined group of people which begins with one family member who sends money to bring other family members to the new location. Chain migration results in migration fields—the clustering of people from a specific region into certain neighborhoods or small towns.
- **Seasonal Migration:** The process of moving for a period of time in response to labour or climate conditions, such as farm workers following crop harvests.

**Nomadic movements** are normally not regarded as migration as there is no intention to settle in the new place and because the movement is generally seasonal. Also, the temporary movement of people for the purpose of travel, tourism, pilgrimages, or the commute is not regarded as migration, because it lacks an intention to settle in the new location.

### 1.4 Categories of Migrants

A migrant is a person who has moved from his/her usual place or residence to another place within the same country or across an international border from one country to another with intention of settling there temporarily or permanently. A migrant can either be an emigrant (a person who is leaving one country to live in another); an immigrant (a person who is entering a country from another to make a new home) or a refugee / asylum seeker (a person seeking international protection as a refugee whose claim has not yet been determined.) All the types of migrants fall within two main categories:

**Regular migrant:**  
This is someone who enters a country lawfully and remains in the country in accordance with his or her admission conditions and / or obtains a work permit and/or other required documents to be lawfully employed in the country.



**Irregular migrant:**  
This is a person who enters a country without possessing all the documentation in line with the law and immigration requirements of that country or one who overstays the period of his/her visa period. The latter may also be referred to as an *undocumented migrant*.

### 1.5 Key Terms and Definitions

**Alternatives to detention:** Any legislation, policy or practice, formal or informal, aimed at preventing the unnecessary detention of persons for reasons relating to their migration status.

**Assisted voluntary return and reintegration:** Administrative, logistical or financial support, including reintegration assistance, to migrants who decide to return to their country of origin.

**Asylum seeker:** A person who is seeking international protection as a refugee, but whose claim has not yet been determined.

**Bilateral labour migration agreements:**  
Legally binding agreements concluded between two states aimed at inter-state cooperation on labour migration.

**Border governance:** The effective utilisation of borders to promote peace, security and stability while facilitating easy movement of people, goods, services and capital among states.

**Border management:** The facilitation of authorised flows of persons across a border while detecting and preventing irregular entry of

non-nationals into a given country.

**Brain gain:** The benefit to a country as a result of the immigration of a highly qualified person.

**Circular migration:** The fluid movement of people between the country of origin and the country of destination or a third country. It can be beneficial to all involved if it occurs voluntarily and is linked to the labour needs of countries of origin and destination.

**Clandestine migration:** Normally refers to persons who enter a country through clandestine means.

**Climate migration:** The internal or international movement of a person or groups of persons who, predominantly for reasons of sudden or progressive change in the environment due to climate change, are obliged to leave their habitual place of residence either temporarily or permanently.

**Country of origin:** The country that is a source of migratory flows (regular or irregular).

**Country of transit:** A country, different from the country of origin, which migrants pass through in order to enter a country of destination.

**Determinants of migrants’ vulnerability:**  
Indicators that have been developed to identify, protect and assist migrants who have experienced or are vulnerable to violence, exploitation and abuse before, during or after migrating and to guide the development and implementation of interventions to reduce such

vulnerability.

**Ethical recruitment:** A recruitment process through which migrant workers are protected from exploitation (including financial and social hardship), discrimination, abuse and lack of access to basic social rights during the process of seeking jobs.

**Forced migration:** A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes.

**Humanitarian admission:** An expedited process offering a pathway for admission into a country on a temporary or permanent basis to persons or groups of persons with protection needs.

**Humanitarian visa:** A visa granting access to and temporary stay in the issuing state for a variable duration to a person on humanitarian grounds as specified in the applicable national or regional law.

**Identity document** A document that asserts a unique single civil identity and defines such person’s identity in relation to the issuing state.

**Immigration:** A process by which non-nationals move into a country for the purpose of settlement.

**Integrated border management:** Refers to national and international coordination and cooperation among all relevant authorities and agencies involved in border security and trade

facilitation aimed at having open, but well-controlled and secure borders.

**Integration:** The process by which immigrants become accepted into society, both as individuals and as groups.

**Interception:** Refers to all measures applied by a state, outside its national territory, to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination.

**Internally displaced persons (IDPs):** Persons (or groups) who have been forced to flee or to leave their homes to avoid the effects of armed conflict, violations of human rights or natural disasters, and who have not crossed an internationally recognised state border.

**Irregular migration:** Movement of persons that takes place outside the regulatory norms of the sending, transit and receiving countries and mostly occurs without the necessary authorisation or documents required under immigration regulations.

**Labour migration:** Movement of persons from one state to another, or within their own country of residence, for the purpose of employment.

**Migrant:** A person who has moved across an international border or within a State away from her/his home.

**Migrant worker:** A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.

**Migration:** Movement of a person or a group of persons, either across an international border or within a state, to settle there permanently or temporarily.

**Migration chain:** The social process by which potential migrants are influenced by family members, friends or community members who have previously migrated.

**Migration cycle:** Stages of the migration process encompassing departure, in some cases transit through a state, immigration in the state of destination and return.

**Migration flows:** Refers to the number of migrants entering or leaving a given country during a given period of time, usually one calendar year.

**Migration governance:** The combined frameworks of legal norms, laws and regulations, policies and traditions as well as organisational structures (subnational, national, regional and international) and the relevant processes that shape and regulate states’ approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation.

**Migration management:** Encompasses numerous governmental functions within a national system for the orderly and humane

management of cross-border migration, particularly managing the entry and presence of foreigners within the borders of the state and the protection of refugees and others in need of protection.

**Migration profile:** An analysis of available accurate and disaggregated data on some or all migration-relevant aspects of a country’s national context, prepared in consultation with a broad range of stakeholders, which can be used to enhance policy coherence, evidence-based policymaking on migration and the mainstreaming of migration into development plans.

**Migrant stock (international):** The total number of international migrants present in a given country at a particular point in time.

**Mixed flows:** These are complex population movements including refugees.

**Points of entry:** Passages for international entry of travelers, baggage, cargo, containers, conveyances, goods and postal parcels, as well as agencies and areas providing services to them on entry.

**Push-pull factors:** Push factors are those that drive people to leave their country (such as economic, social or political problems) and the pull factors are those that attract them to the country of destination, such as higher wages or better working conditions.

**Receiving country:** The country of destination. In the case of return or repatriation, the receiving

country is also the country of origin.

**Referral pathways:** These are trusted avenues where migrants can seek service provision in order for them to meet their basic life needs during migration.

**Refugee:** A person who, “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.” (Definition used in the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol).

**Remittances (migrant):** Private international monetary transfers that migrants make, individually or collectively.

**Safe, orderly and regular migration:** The movement of persons from their usual place of residence to a new place of residence, keeping within the laws and regulations governing exit from, entry and return to and stay in states and with states’ international law obligations, in a manner in which the human dignity and well-being of migrants are upheld, their rights are respected, protected and fulfilled and the risks associated with the movement of people are acknowledged and mitigated.

**Statelessness:** A situation where a person is

“not considered as a national by any state under the operation of its law”. (Definition by the 1954 Convention relating to the Status of Stateless Persons.)

**Student migration:** The movement of students who study outside their country of birth or citizenship for a period of 12 months or more.

**Undocumented migrant:** A person who violates the conditions of entry of a country.

**Trafficking in persons:** The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threats or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

**Smuggling of persons:** The procurement, in order to obtain directly, a financial or other material benefit of the illegal entry of a person into a country of which the person is not a national or a permanent resident.

**Separated Children** have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

<sup>1</sup> United Nations Department of Economic and Social Affairs. (2021). International Migration 2020 Highlights. Available at <https://www.un.org/en/desa/international-migration-2020-highlights> (Accessed on 27 December 2021.)

<sup>2</sup> Ibid.

<sup>3</sup> Eric Reidy (Ed). (2021). Q&A: South-South migration has long been overlooked. Why?. The New Humanitarian, 8 July 2021. Available at <https://www.thenewhumanitarian.org/interview/2021/7/8/why-south-south-migration-has-long-been-overlooked> (Accessed on 27 December 2021.)

**Unaccompanied Children** have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

### Global Hosting Statistics

Country	National Population	Refugee Population	% refugee vs. population
Germany	83.24m	1.2m	1.4%
Turkey	84.34m	3.7m	4.4%
Pakistan	220.89m	1.4m	0.6%
Uganda	48.96m	1.5m	3.1%

(Source: UNHCR 2021)

## 1.6 International Migration Trends and Patterns

The United Nations (UN) states that growth in the number of international migrants has been robust over the last two decades, reaching 281 million people living outside their country of origin in 2020<sup>1</sup>. This represents just over three per cent of the world’s population and would rank such migrants, if living within the same territory, as the world’s fifth largest country<sup>2</sup>. From the table above, Uganda has the biggest percentage of refugees per population.

International migration generally follows these trends and patterns:

- “Globalising” and expansion. This means that there are growing numbers of migrants from more



countries across the world.

- More people migrate within the Global South (around 37 percent of all migrants) than from the Global South to the Global North (around 35 percent). When it comes to refugees, 85 percent are hosted in the Global South<sup>3</sup>.
- Migration involves movement of both lower-skilled and highly skilled and trained persons (brain drain/brain gain).
- Migrants from less developed economies are adopting more sophisticated, daring, and evasive methods to elude increasingly tight border controls and enter countries in the developed North.
- Migration also includes trafficking in persons and smuggling of human beings through force, fraud or coercion with the aim of exploiting them for profit.

### 1.7 Migration Trends in Uganda

In Uganda, migration is within the border areas into as well as out of Uganda. Pastoralists in Karamoja migrate within different parts of Uganda in order access pasture and water; escape from pests and diseases and to conserve the environment from degradation.<sup>4</sup>

In recent times, about 165,000<sup>5</sup> young Ugandans have gone to the Middle East in search of greener pastures. Similarly, many refugees have also made their way into Uganda. Today, almost 1.5 million refugees live in Uganda, making it the top refugee-hosting country in Africa and one of the top five refugee-hosting countries in the world.<sup>6</sup> Most of the refugees come from South Sudan, the Democratic Republic of the Congo (DRC), Burundi and Somalia.<sup>7</sup>



*IOM provides 100 stranded Ugandan women with return assistance from the Kingdom of Saudi Arabia. Source: IOM 04 December, 2020*

<sup>4</sup> The Open Society Initiative for Eastern Africa (OSIEA). (n.d). Enabling migration moves pastoralists in Kotido, Karamoja, Uganda towards attaining food security. Available at [https://www.osiea.org/amplifying\\_voices/enabling-migration-moves-pastoralists-in-kotido-karamoja-uganda-towards-attaining-food-security/](https://www.osiea.org/amplifying_voices/enabling-migration-moves-pastoralists-in-kotido-karamoja-uganda-towards-attaining-food-security/) (Accessed on 26 December 2021.)

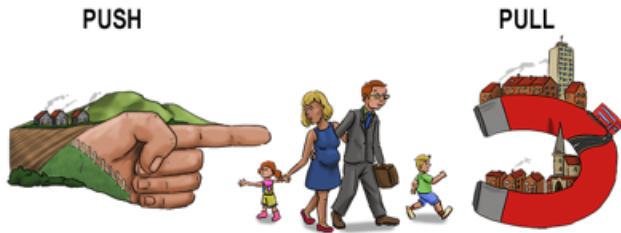
<sup>5</sup> Uganda Association of External Recruitment Agencies (UAERA) 2020 Report.

<sup>6</sup> Evan Easton-Calabria. (2021). Uganda has a remarkable history of hosting refugees, but its efforts are underfunded. The Conversation, 26 August 2021. Available at <https://theconversation.com/uganda-has-a-remarkable-history-of-hosting-refugees-but-its-efforts-are-underfunded-166706> See also: Statista. African countries with the most refugees as of 2020. Available at <https://www.statista.com/statistics/1232812/african-countries-hosting-most-refugees/>

<sup>7</sup> Sulaiman Momodu. (2019). Uganda stands out in refugees hospitality. Africa Renewal, December 2018 - March 2019. Available at <https://www.un.org/africarenewal/magazine/december-2018-march-2019/uganda-stands-out-refugees-hospitality>

Many young Ugandan emigrants are trafficked out of the country to work as labourers, security officers, domestic workers, construction workers and other forms of untrained labour. Trafficking also happens internally with children as young as seven years old being exploited in forced labour and commercial sex. Currently, Uganda appears on the Tier 2 Watch List<sup>8</sup> meaning that despite efforts, the government of Uganda does not fully meet the minimum standards for the elimination of trafficking.

### 1.8 Reasons for Migration: Push and Pull Factors



Motives of migration vary with early humans having migrated due to changing climate and landscape and inadequate food supply; and the next batch leaving for trade, desire for exploration, seeking raw materials, making war and colonialism. Today, migration is motivated by a wide range of economic, political, environmental and social factors. Poverty, wars, famine and repression being the major causes,

but a common factor is the need to negotiate societal options and constraints in pursuit of life-plans.

Often, a distinction is made between voluntary and involuntary migration or between persons fleeing undesirable conditions such as political conflict or natural disaster as against economic or labour migration, but these distinctions are difficult to make and partially subjective, as the motivators for migration are often correlated. Factors causing migration are divided into two groups: push and pull factors.

**Pull factors** apply when positive attributes are perceived to exist at the new location, such as better living conditions (education / healthcare), professional opportunities, more political and/or religious freedom. They can also be traced to an excess demand for labour in foreign countries.

**Push factors** arise when negative home conditions impel the decision to migrate and they are generally traceable to excess supply of labour at home and manifested in low wages and high unemployment. They include, for instance, conditions of famine, war, political fear or persecution, poor medical care and natural disasters.

#### Examples of pull factors

Better chances for decent work and employment, higher income and wages, growing urbanisation, reduction in the cost of transport and communications with increasing interactions among societies and establishment of migration networks by previous migrants.

#### Examples of push factors

Lack of gainful employment or decent work, human security and individual freedoms in source countries, civil / armed conflict, famine, repression and widespread violations of human rights, the absence of human rights protection and other reasons threatening life or safety.

### 1.9 Changes in Migration

With time, the nature and form of migration has undergone changes from people mainly responding to push factors only. These days, both pull and push factors apply, for example:

- Globalisation has accentuated uneven development between countries and generated significant pressure for the movement of labour across borders for work.
  - Communication technologies such as television and transport infrastructure have attracted people to better conditions of life elsewhere.
- From a gender perspective, decisions to emigrate may be shaped by women and girls wishing to escape sexual violence and abuse, the social pressure to get married or the impossibility to achieve professional fulfillment at home. Some groups of women who are single mothers strive to make ends meet for their families whilst widows or lesbians may face even more pressing risks if they stay put in countries that are phobic to different sexual orientation.

<sup>8</sup> United States of America Department of State. (2021). 2021 Trafficking in Persons Report. Available at <https://www.state.gov/reports/2021-trafficking-in-persons-report/> (Accessed on 26 December 2021.)



### 1.10 Consequences of Migration

Migration has consequences for both receiving and sending countries with positive and negative attributes such as:

**Economic development** and social well-being in both destination and origin countries. Migration provides the grease that allows for non-inflationary adjustments in labour markets to economic fluctuations while helping reduce the unemployment problems of countries with excess supplies of labour.

**Improved economic conditions** of migrant families and their communities due to migrants' remittances which are also a source of development finance. Besides sending remittances, migrant communities abroad are seen as investors, welfare providers, knowledge communities and technology harbingers to their home countries.

**Increased burden on receiving countries** which must balance the burden of supporting migrants while fulfilling the welfare needs of their own citizens. This makes some receiving states unable to provide equitable conditions of life for non-nationals. In some countries, immigrants become a burden on host societies because they extract more from public services and welfare payments than they contribute in terms of taxes and social security contributions. With scarce resources, migrants in developing

economies have to endure unbearable conditions of living and hostility.

**Number control** through restrictive visa requirements for some countries and visa waivers for others. Uganda is widely praised for its open-door policy to refugees and there is free movement of persons within the East African Community.<sup>9</sup> Uganda has visa exemptions for some countries but, generally, does not have strict entry requirements for visitors.<sup>10</sup>

Other 'receiving states' attempt to control migrant numbers because of the popular misconceptions of migratory flows as an invasion. These approaches reinforce migration as an unwanted phenomenon and migrants as unwelcome 'visitors'. Migrants, especially those from Africa, are stereotyped as poor, uneducated and bringing high crime rates with them. In response to this negativity, international travel has seen a dramatic realignment of international visa and stricter border control measures. Some countries have responded to this through a selective approach, allowing nationals from some countries, and not others. This dual approach of selectivity poses questions of double standards and raises concerns of unequal treatment.

**Regard to welfare** is limited by prioritisation of border control over welfare and human rights of those involved in migration. Irregular migrants

are often subjected to detention in deplorable conditions and may even face deportation.

**Challenges of living and adjusting** to life in a new country, particularly for those who may have had difficult journeys, is not always easy. The integration of migrants into society is not always simple especially if they are irregular and undocumented.

**Brain drain** has a social cost in terms of reducing overall productivity of enterprises and industries and can lead to the loss of employment for other workers.

**Social costs** such as the pain of leaving loved ones behind, opportunities missed at home and increase in the number of broken families.

**Changes in the social fabric** as a result of entry of new migrants, especially those from very different ethnic origins, entails adjustments in society as the newcomers usually have very different values, language, religion and ways of doing things. In some instances, the reaction may be negative, bringing about xenophobia and racism.

**Poor working conditions** arising from the hazardous jobs that migrant workers usually undertake results into work-related illnesses and injuries and labour exploitation through underpayment or non-payment of wages, especially among those with irregular status.

### 1.11 Gender and Migration

Although both men and women migrate, migration is not a gender-neutral phenomenon. Over the years, migration has become more feminised to include more women going abroad on their own, for overseas employment. While migration presents new opportunities for women and may be a means for their economic empowerment through wider participation, it may also place their human rights and security at risk. The differences between female and male migrants are manifest in the sectors

of work into which they migrate, the forms of abuse they suffer and the consequences thereof.

There is need to focus on gender issues in migration because women appear to encounter greater risks and more limited opportunities.

#### Specific risks of women migrants

**Inequalities** Uganda as a sending country experiences social, economic and cultural between women and men. Similarly, many of

the destination countries in the middle east also exhibit the same tendencies.<sup>11</sup> This patriarchal dominance reproduces and intensifies the existing unequal power relations between men and women in these societies. Male officials, brokers or employers are usually in a position of authority, while the women migrants are in a subservient position.

In most countries, the staff of organisations dealing with migrant workers, including private recruitment agencies, immigration and labour authorities, are predominantly men.



<sup>9</sup> Article 104 of the Treaty for the Establishment of the East African Community.

<sup>10</sup> Government of Uganda. (n.d). Requirements for Entry into Uganda. Available at <https://www.gou.go.ug/content/requirements-entry-uganda> (Accessed on 26 December 2021.)

<sup>11</sup> Uganda was ranked 126th out of 160 countries on the UNDP's Gender Inequality Index for 2018 while Jordan was at an even worse position at 138th. Similarly, the latter was at 145th ranking in women's economic participation and opportunity, 81st in educational attainment, and 103rd in health and survival.



**Discrimination** mostly through unequal pay for work of equal value. Women migrant workers often suffer from double discrimination – first as women and second as migrants.

**Poor labour rights at work** because women mostly work in the informal economy, such as domestic service, sweatshop manufacturing and the entertainment and sex industry where labour protection laws and regulations in both origin and receiving countries are not effective.<sup>12</sup> The nature of their work removes them from public protection and scrutiny, thereby resulting into serious violations of their human rights. For instance, women migrant workers in domestic service generally have long working hours (sometimes over 15 hours a day) without compensation for overtime and must be on call to the members of the household day or night.

**Harassment, abuse and violence** irrespective of the nature of their employment. Those in domestic service or in the entertainment industry are especially at risk.

**Physical and sexual abuse** suffered by women domestic workers. Cases of corporal punishment have also been documented.

**Abuse of sexual and reproductive rights** through compulsory periodic pregnancy tests in some countries contrary to the Maternity Protection Convention, 2000 (No. 183). If they test positive, they may be immediately deported.

**Trafficking** on a transnational basis with increasing numbers of documented cases of women migrants being kept virtually as prisoners by their employers.

Therefore, it is important to adopt a gender perspective when examining the issues faced by women migrants. The Committee on the Elimination of Discrimination against Women (CEDAW) in General Recommendation No. 26 on Women Migrant Workers (UN doc. CEDAW/C/2009/WP.1/R) provides guidance on this issue. It calls on states to comply with the human rights treaties that they have ratified especially those impacting on migration and to respect, protect and fulfil the human rights of women throughout the migrant cycle.

1.12 Children and Migration

Children have always been part of migration and are affected by it in different ways. Those left behind by migrant family members are affected by separation from family members and other children are migrants themselves. Children move across borders with their parents or other adults and within mixed migration flows. In such instances, migration potentially enhances the child’s opportunities and future choices. Children are also increasingly seeking migration opportunities to move across borders autonomously and unaccompanied. Sometimes, children fall prey to transnational

organised crime and exploitation practices including smuggling, trafficking in persons and contemporary forms of slavery. The potential benefits of migration may be eroded for both undocumented children and children with an irregular migration status, who are exposed to the denial of rights, such as arbitrary deprivation of liberty and limited or no access to health-care services and education. Children who are unaccompanied or separated from their parents are particularly vulnerable to human rights violations and abuses at all stages of the migration process.

1.13 Trafficking in Persons

Trafficking in persons is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation includes prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime also*

*known as the Palermo Protocol*).

**The Palermo Protocol** is a comprehensive treaty that requires the criminalisation of all forms of trafficking, such as trafficking for purposes of forced labour, exploitative labour in factories, domestic work under slavery-like conditions or forced marriage.

At the regional level, the Africa Union (AU) Commission adopted an anti-trafficking initiative aimed at ‘galvanising activities’ towards coordinated action to combat trafficking in persons in Africa and implementation of the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children.

In Uganda, young women have been the main victims of trafficking of persons with some trafficked to different countries under the guise of finding them employment but they end up in sex slavery. Some are tortured while others end up in prison. As a result, Uganda’s ranking in terms of compliance with anti-trafficking standards is still low and it appears on Tier 2 Watch List for the second consecutive year.<sup>13</sup>

Migrant smuggling

Human trafficking and migrant smuggling cases are often confused.<sup>14</sup> ‘Smuggling’ is an illegal business which involves helping people to cross international borders of a country illegally without valid documentation and without

following the required entry and residency conditions.

Understanding the differences between the two is critically important to properly address each of these issues.<sup>15</sup>

- Human smuggling is, by definition, a transnational crime whereas trafficking in persons is not;

- Human smuggling generally involves the consent of the person smuggled. Trafficked victims have either never consented, or their consent has been rendered meaningless by the improper means used by the trafficker;

- Smuggled persons are generally free to do what they want once they arrive at their country of destination. In contrast, trafficked persons

have their liberty curtailed and are compelled to provide their labour or services.

- The source of profit for human smuggling is the fee associated with the smuggling act. In trafficking cases, profits are made through the ongoing exploitation of the victims.



<sup>12</sup> Only 35 countries globally have ratified the 2011 ILO Convention No. on Domestic Workers. These do not include any of the middle east countries. It has also been shown through studies of the attitudes of employers of domestic workers in Lebanon, Jordan and Kuwait, commissioned by the ILO in 2015-16, that there is a significant degree of misinformation and noncompliance with existing laws and regulations.

<sup>13</sup> United States of America Department of State. (2021). Trafficking in Persons (TIP) Report, June 2021.  
<sup>14</sup> Government of Canada. (n.d.). A Handbook for Criminal Justice Practitioners on Trafficking in Persons. Available at <https://www.justice.gc.ca/eng/rp-pr/cj-jp/hcjpotp-gtpupjp/p1.html> (Accessed on 26 December 2021).  
<sup>15</sup> Ibid.



## CHAPTER TWO

### Human Rights and Migration

#### 2.1 What are Human Rights?

**H**uman rights are claims/entitlements that are inherent to all human beings and cannot be taken away by anyone despite one's age, gender, colour, origin, religion or any other status. Human rights are universal, inalienable, indivisible and interdependent and the human rights of migrants must be protected and respected irrespective of their migratory status.

Chapter Four of the 1995 Constitution of the Republic of Uganda (as amended) provides for all human rights and fundamental freedoms recognised in Uganda and other rights are provided for in international human rights instruments, regional treaties and domestic laws.

The state and its agents have a duty to fulfil, observe, respect, promote and protect the

enjoyment of human rights of persons under its territory. Further, under international law, states have rights to admit/exclude immigrants within their territories. In principle, this means that states are free to exercise their territorial sovereignty in regulating the entry, residency, and departure of people from its territory (the right to freedom of movement). However, this freedom is not absolute. The right to freedom of movement and freedom to choose one's residence is applicable not only to nationals of the country concerned, but also to 'everyone lawfully within [the] territory' of any state. Foreigners who meet this condition are, therefore, also protected.

#### 2.2 Human Rights of Migrants

Human rights of migrants largely include the following:

- Right to life.
- Right to security of person.
- Right to dignity and respectful treatment.

- Right to receive medical treatment in emergency cases.
- Right to communicate with one's family or lawyer upon detention.
- Right to access justice through a due process of law before deportation or imprisonment.
- Right to humane treatment during detention.
- Right to equality before the law.
- Freedom from torture, inhumane and degrading treatment and slave-like practices.
- Right to non-discrimination.
- Right to hold documentation; e.g. passports and IDs.
- Right to apply for citizenship or asylum in accordance with the laws of the destination country.
- Right to social security and benefits such as medical care, education and unemployment benefits where applicable.
- Right to family reunification.
- Right to freedom of movement.



2.3 Key Human Rights and their Legal Sources

Equality and non-discrimination	What it entails
<p>Discrimination means giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.</p> <p>It is prohibited by the law (See Article 21 of the Constitution of Uganda, Section 29(1) (c) of the Refugees Act,2006, Article 26 of the ICCPR, Article 2 (2) of ICESCR and Articles 1 and 2 of the CEDAW).</p> <p>Non-discrimination is the foundation upon which migrant workers enjoy all the rights applicable to them as a special group of persons.</p> <p>However, non-discrimination is not absolute because there are rights and freedoms that are restricted to nationals or persons who are legally present in a country, for example voting (See Article 59 of the Constitution of Uganda, Article 25 of ICCPR, Article 41 of ICRMW, Sections 29(1)(g) and 35(d) of the Refugees Act, 2006) and freedom of movement (See Article 12 ICCPR)</p>	

Enjoyment of economic, social and cultural rights	What it entails
<p>Whereas Objective XIV of Uganda’s Constitution restricts the state’s obligation to provision of economic, social and cultural rights to Ugandans, migrants and their families are also expected to enjoy these rights by accessing education, decent shelter, health care and other social services. It is usually the refugees who are in need of these rights because they depend on others for such basic needs as food, clothing and shelter.</p> <p>Note, however, that the enjoyment of economic rights in the developed world cannot be the same like in the developing countries; it is for this reason that Article 2(3) of the ICESCR gives developing countries some leeway regarding the extent to which non-nationals can enjoy economic rights.</p>	

<sup>16</sup> United Nations High Commissioner for Human Rights. Fact Sheet No. 20, Human Rights and Refugees 1993, Available at <https://www.ohchr.org/Documents/Publications/FactSheet20en.pdf>

<sup>17</sup>Article 2 (3) of the International Covenant on Economic, Social and Cultural Rights.

<sup>18</sup> Uganda Human Rights Commission 21st Annual Report, 2018, at pages 91-92.

<sup>19</sup> Uganda Human Rights Commission 19th Annual Report, 2016, at page 105.

<sup>20</sup> Uganda Human Rights Commission 21st Annual Report, 2018, at page 96.

<sup>21</sup> Evan Easton-Calabria. Uganda has a remarkable history of hosting refugees, but its efforts are underfunded. The Conversation, 26 August 2021. Available at <https://theconversation.com/uganda-has-a-remarkable-history-of-hosting-refugees-but-its-efforts-are-underfunded-166706> (Accessed on 17 September 2021.)

<sup>22</sup> Uganda Human Rights Commission 19th Annual Report, 2016, at pages 103.

<sup>23</sup> Uganda Coalition Against Trafficking in Persons (UCATIP). (2020). Ending Human Trafficking: Coalition Against Trafficking in Persons Uganda Five Year Status Report, September 2020, at page 54.

<sup>24</sup> Uganda Human Rights Commission 21st Annual Report, 2018, at page 99.

Economic, Social and Cultural Rights of Migrants

Housing
<p>The right to housing is provided for under Article 25(1) of the UDHR, Article 11(1) of the ICESCR and General Comments 4 and 7 by the CESCR and Article 21 of the Convention relating to the Status of Stateless Persons and the Convention relating to the Status of Refugees.</p> <p>Adequate housing considers the space allocated, ventilation of that space and access to a toilet facility.</p> <p>Government of Uganda provides free housing to refugees in settlements located across 11 districts and UHRC has undertaken monitoring visits to these settlements and found poor shelters for unaccompanied refugee minors and inadequate shelter because most refugees reside in either tents or grass-thatched houses.</p> <p>Uganda fosters self-reliance of refugees by not confining them to the settlements and allowing those with financial means to live in urban areas. Some organisations offer shelter; for example, the International Committee of the Red Cross, Dwelling Places, Rahab, Hope for Justice, Willow, UYDEL and Unseen Uganda.</p>
Education
<p>The right to education encompasses free and compulsory primary education, available and accessible secondary education, equal access to higher education on basis of capacity and quality education, among others.</p> <p>See Article 30 of Uganda’s Constitution, Article 26 of the UDHR, Article 22 of the Convention relating to the Status of Refugees, Articles 13 and 14 of the ICESCR, Article 17 of the African Charter and Article 1 of the UNESCO Convention Against Discrimination in Education, all of which prohibit any discrimination in accessing education. Children’s right to education is protected by Article 30 of ICMW, and Article 22 of the Convention relating to the Status of Stateless Persons.</p>
<p>The essential features of the right to education (known as the 4 As)</p>

Health
<p>should be in place; these are availability, accessibility, acceptability and adaptability.</p> <p>Ugandans and migrants have equal access to health care services and they are for free in government-owned facilities. Government of Uganda, through the Office of the Prime Minister, together with other agencies such as Medical Teams International (MTI) and Office of the High Commissioner for Human Rights provide health care services at the settlement centres. However, the enjoyment of the right to health is affected by drug shortages and shortage of staff in public hospitals.</p> <p>Therefore, it is important for migrants who need essential treatment arising from torture, rape or other serious forms of psychological, physical or sexual violence and women to receive free reproductive and sexual health services (family planning services). Children should also access basic or elementary education like the nationals and adequate housing should also be provided where the economic situation permits.</p> <p>See Article 25 of UDHR, Articles 12 of ICESCR and 16 of the African Charter, Article 28 of ICMW, all of which permit migrant workers and members of their families to receive any medical care that is urgently required for the preservation of their lives or the avoidance of irreparable injury.</p> <p>Since women have some unique needs, their access to health care including family planning is protected by Article 12 (1) of CEDAW and Article 14 of the Protocol to the African Charter.</p> <p>The essential elements of the right to health are availability, accessibility, acceptability and quality.</p>

Civil and Political Rights of Migrants

Freedom from slavery, servitude and forced labour	What it entails
<p>Forced labour is a situation where a person is forced to work against their will and without pay. Slavery, on the other hand, is a situation where a person loses individual independence and he/she is reduced to the status of an object. (Siliadin v France, 73316/01, 26 July 2005)</p> <p>Freedom from slavery and servitude are non-derogable rights, meaning that their enjoyment should not be limited in any way. They are guaranteed by Article 44(b) and Article 25 of Uganda’s constitution which prohibits slavery, servitude and forced labour. Also by Articles 4 and 5 of UDHR, Article 8 of ICCPR, Article 11 of ICMW, Article 5 of the African Charter on Human and Peoples’ Rights.</p> <p>In relation to migration, this freedom protects migrant workers from being held against their will and being forced to work. The Kafala sponsorship system popular in the Middle East, which permits sponsors (an individual employer or kafeel) to keep the worker’s travel documents and use them as a means to determine the domestic worker’s freedom to enter, transfer employment or when the migrant worker leaves the country, violates this freedom.</p>	
Trafficking for forced labour	What it entails
<p>Trafficking for forced labour occurs when the migrant is denied freedom to leave or change employment due to physical captivity or psychological coercion, use of physical violence or threats, lacks control over working hours, payment of his/her salary and right to take time off work (leave) and these are usually achieved through the employer or recruiting agency remaining in possession of the migrant worker’s travel documents.</p> <p>The United Nations Convention Against Transnational Organised Crime defines “trafficking” as: “...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.</p>	

<sup>25</sup> Uganda Human Rights Commission 21st Annual Report, 2018, at page 99.

<sup>26</sup> Ibid.

Movement rights	What it entails
<p>This includes movement of persons, including free movement within host countries, the right to leave and return to a country, as well as restrictions on such movement.</p> <p>Movements rights are protected by Article 29(2) of Uganda’s Constitution, Section 30(1) of the Refugees Act, Article 13(1) of UDHR, Article 12 (1) of ICCPR, Article 5 (i) (ii) of ICERD, Article 21 and 39 of ICMW, Article 26 and Article 28 of the 1951 Refugee Convention, Article 39 of ICMW, Article 12(1) of the African Charter and Articles 7 and 10 of Protocol on the East African Community Common Market.</p>	
Non-refoulement and protection against arbitrary expulsion	What it entails
<p>Non-refoulement refers to the obligation of states not to return, remove, expel or extradite a person to a country where his or her life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion (Section 42(1) of the Refugees Act).</p> <p>Non-refoulement prohibits the return of a migrant to a state where his or her physical security would be at risk and would expose him or her to serious human rights violations, including torture and cruel, inhuman or degrading treatment or punishment; lack of necessary medical treatment; or being threatened with the risk of onward refoulement.</p> <p>Non-refoulement is provided for under Section 42(1) of the Refugees Act, Article 13 of ICCPR, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2 of the African Refugee Convention, Article 33(1) of the 1951 Convention relating to the Status of Refugees and Article II (3) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969.</p>	

Right to information and protection of privacy	What it entails
<p>Migrant workers cannot enjoy their rights if they do not know about them. Therefore, they have a right to seek, receive and impart information and ideas of any kind, either orally, in writing or in print or in the form of art or through any media of their choice. In addition, their privacy should not be arbitrarily or unlawfully interfered with.</p> <p>The right to information is protected by Article 41(1) of Uganda’s Constitution, Article 19 of the UDHR, and Article 19(1) and (2) of the ICCPR. However, it can be restricted in certain circumstances; for example, on grounds of public interest or security.</p> <p>The right to privacy is provided for under Article 27(2) of Uganda’s Constitution, Article 17 (1) of ICCPR, Article 14 of ICMW, Article 16 (1) of the Convention on the Rights of the Child. It protects migrants from interference with the privacy of their home, correspondence, communication or other property.</p>	
Right to family reunification	What it entails
<p>Family reunification/reunion is “the right of non-nationals to enter into and reside in a country where their family members reside lawfully or of which they have the nationality in order to preserve the family unit.” The family is the natural and basic unit of society and is entitled to protection by society and the state. (See Objective XIX of Uganda’s Constitution and Article 16 of the Universal Declaration of Human Rights.)</p> <p>Family unity is protected by Article 23 of the ICCPR, Article 10 of the ICESCR, the Preamble of the Convention on the Rights of the Child of November 1989 and Article 18 of the African Charter on Human and Peoples’ Rights.</p>	

Affirmative action for female migrants	What it entails
<p>Article 32(1) of Uganda’s Constitution includes women and children among the marginalised groups and provides for specific rights to them under Articles 33 and 34 respectively. This is because of the special care and assistance that is tied to motherhood and childhood (Article 25 (2) of the UDHR). Migrant mothers are covered under these provisions.</p>	

<sup>25</sup> Uganda Human Rights Commission 21st Annual Report, 2018, at page 101.

Access to justice	What it entails
<p>Access to justice is the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards. It basically covers the means through which migrants can protect their rights.</p> <p>Access to justice is provided for under Article 50 of Uganda’s Constitution, Article 10 of UDHR, Article 2 (3) (a), Article 2 (3) (c) and Article 14 of ICCPR, Article 18 of ICMW, and Article 7 of the African Charter.</p> <p>In order to have access to justice, migrants should know their rights and the relevant criminal, administrative, civil and labour justice procedures. The OPM, UNHCR and the UHRC often sensitise the refugees on the Ugandan laws.<sup>25</sup></p>	

2.4 Obligations of Migrants

While migrants have rights under the law, they also have obligations towards the state and individuals in the communities in which they stay.

Obligations of migrants include:

- To obey the laws of Uganda (at the point of entry, residence and exit)
- To report to the nearest Immigration offices at the border point and consulate offices upon their arrival to any country for purposes of security.

- To adhere to the immigration procedures and practices of the country of destination.
- To respect the rights and freedoms of other people within Uganda.
- To maintain public order and abstain from causing any insecurity.
- To seek the necessary work permits in the country for migrant workers.
- To pay taxes, duties and other compulsory fees as prescribed.







## CHAPTER THREE

### The Law on Migration

#### 3.1 Introduction

**U**ganda has ratified a number of international and regional treaties on migration to guarantee migrants human rights. However, Uganda does not have a national law or policy on migration yet. The Uganda Citizenship and Immigration Control Act, Cap 66 is the only national law that provides for citizenship, registration of citizens, immigration control and passports. At regional and international level, Uganda has ratified a number of treaties/conventions for the protection of migrants and this section will highlight the numerous laws governing migrant rights and the categorisation of the different types of migrants.

Laws/ Date of adoption/ Ratification	Specific human rights
<b>STATELESS PERSONS</b>  <b>Definition:</b> A stateless person is one who is not considered as a national by any state under the operation of its law. This does not include the following persons: recipients from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; persons recognised by countries in which they have taken residence as having rights and obligations attached to the possession of nationality of that country; persons who are alleged to have committed a crime against peace, a war crime or a crime against humanity; persons who are guilty of having committed a serious non-political crime outside their country of residence prior to admission to that country; or those who are guilty of acts contrary to the purposes and principles of the United Nations (See Convention relating to the Status of Stateless Persons, 1954).	
<b>Convention relating to the Status of Stateless Persons</b>  Ratified by Uganda on 15 April 1965.	<ul style="list-style-type: none"><li>Articles 3 and 7 – Freedom from non-discrimination.</li><li>Article 4 – Freedom to practice their religion and religious education of their children.</li><li>Article 12 (2) – Right to family.</li><li>Article 15 – Right to association.</li><li>Article 16 (1) – Access to courts/justice.</li><li>Article 17 (1) – Right to engage in wage-earning employment.</li><li>Article 18 – Right to self-employment.</li><li>Article 19- Right to practice a liberal profession.</li><li>Article 21 – Right to housing.</li><li>Article 22 – Right to elementary education.</li><li>Article 23 – Right to public relief and assistance.</li><li>Article 25 – Accord administrative assistance.</li><li>Article 26 – Freedom of movement.</li><li>Article 27 – Issuance of identity papers to those who do not possess valid travel documents.</li><li>Article 28 – Issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory.</li><li>Article 31 (1) – Freedom from expulsion except on grounds of national security.</li><li>Article 32 – Facilitation of assimilation and naturalisation.</li></ul>
<b>Convention on the Reduction of Statelessness</b> (Adopted 30 August 1961, entered into force on 13 December 1975)  Uganda is not a party.	<ul style="list-style-type: none"><li>Article 1(1) – Right to a nationality by birth, operation of law or by application being lodged.</li><li>Article 2 – Presumption of nationality for children found within territories of contracting states.</li><li>Article 9 – Freedom from discrimination.</li></ul>

CHILD MIGRANTS	
<b>United Nations Convention on the Rights of the Child</b>  Ratified by Uganda on 17 August 1990 and domesticated under the Children's Act, Cap 59 as amended.	<ul style="list-style-type: none"><li>Article 7 (1) – Right to registration after birth, a name and to acquire a nationality.</li><li>Article 9(1) – Right not to be separated from parents against their will.</li><li>Article 10 (1) – Right to reunification of a child with their family.</li><li>Article 22 (1) – Appropriate protection and humanitarian assistance for refugee children.</li><li>Article 24 – Right to the enjoyment of the highest attainable standard of health.</li><li>Article 11 – Requirement for the state to take measures to combat illicit transfer and non-return of children abroad.</li><li>Article 35 – Prevention of abduction, sale or trafficking of children.</li></ul>
<b>African Charter on the Rights and Welfare of the Child</b>  Ratified by Uganda on 17 August 1994.	Article 6 – Right to a name and nationality. Article 22 – Rights of refugee children to receive appropriate protection and humanitarian assistance. Article 23 – Provision of appropriate protection and humanitarian assistance to refugee children Article 15 – Protection from all forms of economic exploitation. Article 24 – Ensure that inter-country adoption does not result into trafficking of children. Article 27 – Protection from all forms of sexual exploitation. Article 29 – Requirement to put in place appropriate measures to prevent abduction, sale or trafficking in children.

REFUGEES	
<b>The Convention Relating to the Status of Refugees, 1951 and the Protocol Relating to the Status of Refugees, 1967</b>	<ul style="list-style-type: none"><li>This Convention is the centerpiece of international refugee protection today</li><li>It was originally limited in scope to persons fleeing events occurring before January 1951 and within Europe</li><li>The 1967 Protocol removed these limitations and gave the Convention universal coverage</li><li>Since then it has been adopted by various regional systems including the African Union for the protection of refugees</li></ul>
<b>OAU Convention Governing the Specific Aspects of Refugee Problems in Africa</b>  Ratified by Uganda on 24 July 1987.	<ul style="list-style-type: none"><li>Article 2 – Right to seek asylum</li><li>Article 4 – Right to non-discrimination</li><li>Article 5 – Right to non-refoulement.</li><li>Article 6 – Right to travel documents.</li></ul>
<b>Refugees Act, 2006</b>	<ul style="list-style-type: none"><li>Section 29 – Rights of refugees while in Uganda: be issued with an identity card, permitted to remain in Uganda, non-discrimination, right to property, education, medical services, employment, association, and access to courts of law.</li><li>Section 30 (1) – Freedom of movement.</li><li>Section 31 (1) – Right to a travel document for travel outside Uganda.</li><li>Section 32 – Rights of refugee children.</li><li>Section 33 – Rights of women refugees; equal opportunities, affirmative action.</li></ul>
<b>The Refugees Regulations, 2010</b>	<ul style="list-style-type: none"><li>Regulation 13 – Refugee applicant to be issued with a temporary pass of 90 days.</li><li>Regulation 64 – Access to employment.</li><li>Regulation 65 – Access to land use.</li><li>Regulation 67 – Eligibility of refugees to apply for citizenship.</li></ul>

WOMEN	
<b>Convention on the Elimination of All Forms of Discrimination Against Women</b>  Ratified by Uganda on 22 July 1985.	<ul style="list-style-type: none"><li>Article 6 – Prohibits trafficking of women.</li></ul>
<b>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</b>  Ratified by Uganda on 22 July 2010.	<ul style="list-style-type: none"><li>Article 2 – Elimination of discrimination against women.</li><li>Article 11 – Protection of women in armed conflicts.</li></ul>



TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS	
<b>UN Convention against Transnational Organised Crime, 2000</b>	
<b>Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000</b>	<ul style="list-style-type: none"><li>Article 5 (1) – Duty of the state to adopt legislative and other measures to establish criminal offences.</li><li>Article 6 (1) – Right to privacy of victims..</li><li>Article 7 (1) – Duty on the state to adopt measures to permit victims to remain in territory.</li><li>Article 8 – Facilitation of repatriation of victims who are nationals.</li><li>Article 9 (1) – Protection of victims especially women and children from revictimisation.</li></ul>
Signed by Uganda on 12 Dec 2000, no ratification yet.	
<b>Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime</b>	<ul style="list-style-type: none"><li>Article 5 – Exemption of migrants from criminal prosecution for offences under Article 6.</li><li>Article 6 (1) – Duty on state to adopt legislative and other measures to establish criminal offences.</li><li>Article 11 – Duty on state to strengthen border controls.</li><li>Article 12 – Duty on state to secure and control travel and identity documents.</li><li>Article 15 – Duty on state to undertake public awareness.</li><li>Article 18 – Facilitation for the return of smuggled migrants.</li></ul>
Signed on 12 December 2000, no ratification by Uganda yet.	
<b>Prevention of Trafficking in Persons Act, 2009</b>	<ul style="list-style-type: none"><li>Section 3 (1) – Offence of trafficking in persons (15 years’ imprisonment).</li><li>Section 4 – Offence of aggravated trafficking in persons (Imprisonment for life).</li><li>Section 5 – Trafficking in children (Liable to suffer death).</li><li>Section 8 – Offences related to trafficking in persons (Five years’ imprisonment).</li><li>Section 11 – Non-discrimination of victims.</li><li>Section 12 – Assistance and support for victims of trafficking.</li><li>Section 13 – Right to privacy/ Confidentiality.</li><li>Section 14 – Repatriation of victims.</li><li>Section 15 – Right to restitution.</li><li>Section 16 – Right to compensation.</li></ul>

<b>Trafficking in persons Prosecution Guidelines 2020</b>	<ul style="list-style-type: none"><li>The Guidelines highlight effective practices and techniques in every phase of the prosecution process</li><li>The Guidelines assist investigators and prosecutors in enforcing Uganda’s human trafficking laws by helping to provide investigators and prosecutors with the tools to effectively identify and prosecute cases of human trafficking.</li></ul>
<b>The National Referral Guidelines for the management of victims of Trafficking in Uganda</b>	<ul style="list-style-type: none"><li>The Guidelines give the standardised approach to ensure assistance to victims of human trafficking taking into consideration their human rights.</li><li>Victims are identified for rescue and assistance through outreach programs and from referral by government officials, CSOs and other networks</li><li>Victims may be referred to an organization after conducting an initial needs assessment</li><li>Medical, psychological care, education, vocational skills, job placement and family reintegration or resettlement are provided.</li></ul>
<b>The National Action Plan (NAP II) for the Prevention of Trafficking in persons in Uganda 2020-2025</b>	<ul style="list-style-type: none"><li>The aim of the NAP II is to establish structures and systems to prevent trafficking in persons in a sustainable way</li><li>To carry out more trainings to systematically identify, protect and support victims of trafficking</li><li>To improve investigations and prosecution of perpetrators of human trafficking</li><li>To strengthen cooperation between the different actors at both the national and transnational levels.</li></ul>
<b>The COPTIP and its National Taskforce</b>	<ul style="list-style-type: none"><li>Provides platforms to improve coordination and foster partnerships including regional partnerships</li><li>Brings together government MDAs in relation to combating trafficking as well as CSOs to update each other on their activities, challenges and trends</li><li>Plans coordinated actions, problem solving and hold each other accountable.</li></ul>

MIGRANT WORKERS	
<b>Migration for Employment Convention (Revised), 1949 (No. 97)</b>	<ul style="list-style-type: none"><li>Article 5 – Right to medical services for departing and arriving migrants.</li><li>Article 6 (1) – Freedom from discrimination for immigrants lawfully within the territory.</li><li>Article 8 (1) – Migrants on permanent employment have a right to be accompanied/joined by their families.</li></ul>
Not yet ratified by Uganda.	
<b>Migration for Employment Recommendation (Revised), 1949 (No. 86)</b>	<ul style="list-style-type: none"><li>Article 3 (10) – Right to access adequate accommodation, food and clothing on arrival in the country of immigration, access to schools for migrants and members of their families.</li><li>Article 3 (11) – Right to access recreation and welfare facilities.</li></ul>
Not ratified by Uganda.	
<b>Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)</b>	<ul style="list-style-type: none"><li>Article 1 – Respect the basic human rights of all migrant workers.</li><li>Article 3 – Adopt measures to suppress clandestine movements of migrants of employment and illegal employment of migrants.</li><li>Article 14 – Right of geographical mobility.</li></ul>
Ratified by Uganda on 31 March 1978.	
<b>Migrant Workers Recommendation, 1975</b>	<ul style="list-style-type: none"><li>Article I – Equality of opportunity and treatment during employment.</li><li>Article II (A) – Reunification of families.</li><li>Article II (B) – Protection of the health of migrant workers.</li></ul>
Ratified.	
<b>The Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005.</b>	<ul style="list-style-type: none"><li>Regulation 53- provides for medical examination of workers</li><li>Regulation 67- provides for minimum standards of employment</li><li>Regulation 78- provides for the duties and obligations of a Ugandan migrant worker</li></ul>
<b>Citizenship and Immigration Control Act, Cap 66 as amended</b>	Section 16 (1) – Right to citizenship by naturalisation. Section 16 (5) – Qualifications for naturalisation included (b) a person that has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application.





A porous Ngomoromo border post between Uganda and South Sudan (source UNHCR)

## CHAPTER FOUR

### Human Rights-Based Governance of Migration

#### 4.1 Introduction

Every country has a right to protect its borders but it must balance this protection with the existing legal obligations. International governance of migration is a process in which the combined framework of legal norms and organisational structures regulate and shape how states act in response to international migration, addressing rights and responsibilities and promoting international cooperation.

#### 4.2 Human Rights-Based Governance of Migration

Human rights-based governance involves utilisation of the existing legal regime to regulate migration while respecting and protecting the rights of migrant workers.

##### Border control

Border control allows states to protect their borders by requiring non-citizens to obtain visas for entry purposes and individuals that decide to remain within the country's territory are expected to get residence or work permits. Irregular means of entry are prevented by the militarisation of borders and use of restrictions which limit the regular channels of migration and this usually results into migrants using dangerous and risky means of accessing the receiving country.

##### To note:

- Human rights-based governance and border control are different.
- Human rights-based governance ensures that the right to migration is guaranteed and that people can arrive and remain in another country without fear of prosecution.
- Border control regulates migration because any migrant that irregularly enters, lives or works in Uganda without proper immigration requirements

is detained and deported back to their country of origin.

Advantages of human rights-based governance of migration

1. Crossing borders without authorisation is an administrative matter and a migrant is a victim, and not a criminal.
2. It protects migrants from deportation and expulsion; states respect the principle of non-refoulement which prohibits return of a migrant to their place of origin if doing so would expose him/her to risks of torture or cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations or irreparable harm.
3. It respects the migrant's right to privacy and adheres to data protection laws and standards. Migrants can provide information to aid their applications for refugee status but there is a requirement that such information is treated with confidentiality.



In order to create a balance between migration control and the human rights-based governance of migration, human rights indicators are used to measure the extent to which states comply with their legal obligations.

4.3 Human Rights Indicators for Migration Governance

The Office of the High Commissioner for Human Rights (OHCHR) defines human rights indicators as “specific information on the state or condition of an object, event, activity or outcome:

- that can be related to human rights norms and standards;
- that addresses and reflects human rights principles and concerns; and
- that can be used to assess and monitor the promotion and implementation of human rights.” (OHCHR , 2012 ).

- The OHCHR’s Human Rights Indicators: A Guide to Measurement and Implementation outlines the importance of indicators thus:
- Indicators provide practical tools to operationalise human rights obligations into law, policy, and practice, and monitor implementation.
  - Indicators serve to concretise the positive and negative obligations on states to respect, protect, and fulfil human rights.
  - Indicators can also assist in the disaggregation of immediate and progressive obligations regarding economic, social, and cultural rights.
  - Indicators have also been a key tool in the field of international development, to measure global and national development and progress towards priority targets, most notably with the Sustainable Development Goals (SDGs).
  - Further, human rights indicators can be a useful

- tool to identify discrimination and inequality.
- Indicators will strengthen the capacities of duty-bearers to know their obligations in relation to migrants and their families and the links between human rights protection and positive development outcomes.
  - Indicators will assist in policy planning and evaluation, including developing strategies to protect, respect and fulfil rights in line with their obligations and other specific policy objectives in related fields.
  - Indicators, if developed and disseminated in partnership with key stakeholders, including governmental actors from all levels, human rights institutions and other supervisory bodies, and civil society, serve as a practical tool to improve monitoring of the human rights situation of migrants and improve policymaking based on evidence.

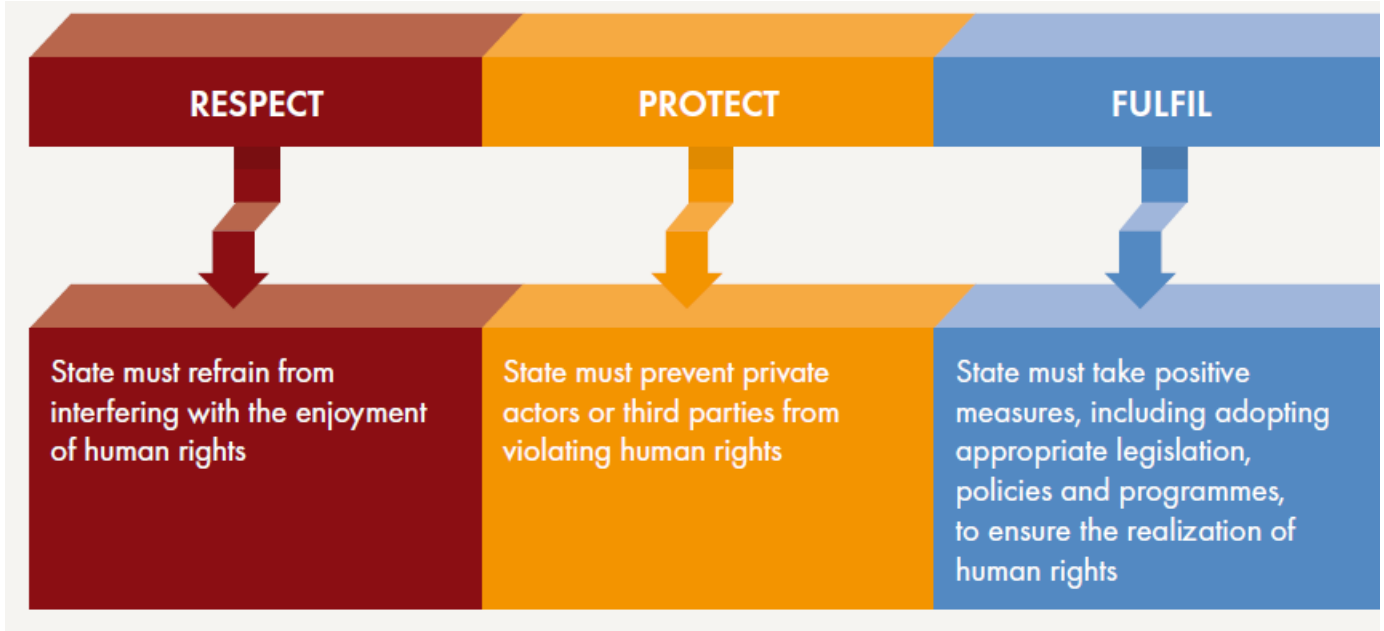
<sup>27</sup> OHCHR. (2012). Human Rights Indicators: A Guide to Measurement and Implementation. Available at [https://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf)

Indicators for migration management: the three levels of obligations of states towards migrants:

4.4 Illustrative Indicators

The following illustrative indicators may be used to measure the recognition, protection and effective realisation of migrants’ rights on a number of purposes, such as:

- A. Comparing the level of human rights realisation between;
  - a. Migrants and Ugandan citizens, and
  - b. Groups of migrants, according to their sex, age, ethnic origin, national origin, migration or residence status and other social conditions;
- B. Analyzing migration policies and related public policies on matters such as labour/employment, housing, health care, and education policies, among others;
- C. Identifying policy or practical changes in regard to Uganda’s migrant domestic workers and access to justice by refugees living in camps in Uganda;
- D. Measuring the progressiveness or regressiveness of the rights of migrants and their families over time; and
- E. Monitoring the improvements in implementation of Uganda’s obligation regarding migrants’ human rights by UN bodies and other international and regional human rights mechanisms.



(Source: OHCHR. Human Rights Indicators: A Guide to Measurement and Implementation. 2012)



## CHAPTER FIVE

### Key Actors in Migration; Roles and Obligations

#### 5.1 Government of Uganda

**T**he Government of Uganda as overall duty bearer is mandated to uphold human rights of migrants at all times (at entry, in-country and at exit) and undertake the necessary service delivery in order to reduce human rights violations.





**The following are some of the obligations of the government; to:**

- Offer necessary services to migrants and uphold their human dignity. These include issuance of necessary paperwork to legitimise their stay in country, healthcare, access to free and compulsory primary and secondary education for children, labour protection, freedom of movement, freedom to practice religion, protection of the unity of families, reunification with spouses;
- Sign and ratify international human rights instruments on migrant rights such as the ILO Convention on Domestic Workers;
- Enact appropriate legislation to safeguard the rights of migrants. For instance, Article 5 of the Palermo Protocol requires states to criminalise trafficking. In accordance with this, the government of Uganda enacted the Prevention of Trafficking in Persons (PTIP) Act and Regulations. The government should also secure bilateral agreements with states where Ugandan migrants go to seek employment in order to ensure conducive and safe working environments for them;
- Comply with reporting obligations under international legal instruments as one way of ensuring compliance with rights of migrants;
- Create a conducive environment for migrants to live. This includes raising awareness and training

for nationals to avoid hostility and retaliation against migrants as well as capacity building of responsible government officers on handling of migrant cases.

- Facilitate government agencies working on migrant issues such as the Ministry of Gender, Labour and Social Development (MoGLSD), Uganda Human Rights Commission and the Equal Opportunities Commission, to ensure the practical application of migrant rights;
- Regulate and monitor recruitment agencies and other entities that deal with migrant issues in the country.
- Collect and update adequate disaggregated statistical data on migrant populations for use in developing policies and programmes to promote their equal opportunities in the Ugandan society. This should include an internal database to document and collect data on human trafficking cases.
- Enhance the security in IDP and refugee camps and take all necessary measures to protect especially children and women against sexual exploitation.
- Establish and facilitate tribunals and other justice mechanisms to investigate cases of violation of migrant rights and prosecute and sentence the perpetrators. For instance, in line with the PTIP Act, the government created the Coordination Office for Prevention of Trafficking in Persons (COPTIP) to co-ordinate counter-trafficking efforts in the country.

**5.2 Uganda Human Rights Commission**



The Uganda Human Rights Commission is charged with monitoring the enjoyment of human rights for all individuals in the country including migrants. In this regard, the UHRC may undertake the following functions:

- Investigate complaints made by migrants alleging any form of violation of human rights.
- Create awareness within the public on the rights of migrants informed by research on the status of migrants in the country and supported by law.
- Monitor government's compliance with international treaty obligations on rights of migrants.

**5.3 Judiciary**



Courts play a vital role in safeguarding, promoting, and protecting migrant rights. To achieve this, courts must administer justice in conformity with the laws and with the values, norms and aspirations of the people. They must be independent, and not be subject to the control or direction of any person or authority. In addition, the courts must be impartial, act without delay, treat all persons before them equally and ensure that refugees and migrants have access to a qualified and independent interpreter in preparation for and during all judicial proceedings.

- Advocate for domestication and alignment of national laws that conform to international standards on migrant rights.

- Advocate for the ratification of key treaties and protocols pertinent to migrants.

These include:

- The Convention on the Reduction of Statelessness
- UN Convention against Transnational Organised Crime
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organised Crime
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right to Residence and the Right to Establishment.
- The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption.

<sup>28</sup> Article 126 (1) of the Constitution of the Republic of Uganda.

<sup>29</sup> Article 128 (1) of the Constitution of the Republic of Uganda.

<sup>30</sup> Supra note 29, Article 28 (1).

<sup>31</sup> Article 126 (2)(b) of the Constitution of the Republic of Uganda.

<sup>32</sup> Article 126 (2)(a) of the Constitution of the Republic of Uganda.

### 5.4 Law Enforcement Agencies

- While dealing with migrants, law enforcement agencies should:
- Treat all persons equally and fairly according to their individual needs;
  - Respect all individuals, irrespective of their origin; and
  - Avoid prejudice and stereotyping.

### 5.5 Civil society organisations

- Civil Society Organisations should:
- Promote asylum seekers or undocumented migrants’ human rights since they are in close contact with local communities
- CSOs should review and monitor human rights policies and legislation adopted by lawmakers to ensure that they comply with international human rights standards
- Advocate for the rights of communities they represent and support vulnerable groups through projects and activities such as human rights educations, complaints handling and litigation.
- Form coalitions and hold regular meetings with government institutions to discuss rights of migrants

### 5.6 Networks and Partnerships

Networking constitutes an important part of the strategy for effective handling of migrant matters. It involves primary mutual cooperation and establishment of working relationships with other stakeholders directly involved with migrants. This could include; exchange of information, joint action, complementary actions through political/

operational support of other organisations and partnership in programmes.

Efficient handling of migrant issues calls for coordinated efforts between different actors. There is need for UHRC to work in collaboration with other stakeholders such as:

- a) Ministry of Gender, Labour and Social Development (which is responsible for licensing of labour recruitment agencies)
- b) Coordination Office for the Prevention of Trafficking in Persons (COPTIP)
- c) Interpol
- d) Police Anti-Trafficking in Persons Department
- e) Trafficking-specific desk in the Directorate of Public Prosecutions Office
- f) COPTIP National Task-Force on Trafficking led by the Ministry of Internal Affairs
- g) Uganda Association of External Recruitment Agencies (UAERA)
- h) Judiciary (Family and Criminal divisions)
- i) Immigration Department
- j) Directorate of Public Prosecutions
- k) Uganda Coalition Against Trafficking in Persons



(Photo credit: The Independent Newspaper)

(UCATIP)

- l) Legal Affairs Parliamentary Committee
- m) Uganda Law Reform Commission
- n) Equal Opportunities Commission
- o) Office of the Prime Minister
- p) Civil society actors.

### 5.7 Good Practice Principles of Working with Migrants

During the process of handling migrant clients, it is imperative to take the following into consideration:

- Maintain impartiality and respectfulness.
- Protect confidentiality and privacy of information.
- Protect safety.
- Facilitate access to immediate needs such as shelter, health and psychosocial support.
- Seek consent and agreement for choice of actions to be taken.
- Keep migrant clients informed of the progress of their cases.

## 5.8 Conclusion

Throughout history, people have been migrating for a number of reasons in order to improve their standards of living; to escape poverty; to flee from conflict; in search of better opportunities, among many other reasons. Migrants however face a number of challenges and human rights violations during transit and in the areas they migrate to and are usually a target of exploitation. Some of the violations they face threaten their lives, health and overall well-being. As a result, migrants need protection at all stages of the migration cycle including at recruitment, in transit as well as in the receiving countries. Migration is inevitable because governments on their own may not be in position to provide services such as employment to all citizens or guarantee security due to the ever changing dynamics in society. However in addressing the challenges that migrants face, it is imperative that the different actors across the migration cycle understand their roles and obligations in order to support the respect and enjoyment of the rights of migrants at all stages.

It is therefore hoped that the information in this handbook will strengthen the capacity of the various duty bearers across the migration cycle in Uganda to provide a human rights-based response to migration issues and ensure safe, orderly and regular migration and the prevention of trafficking of persons and the abuse of human rights of migrants within Uganda and beyond.

<sup>33</sup> Article 28 (3)(f) of the Constitution of the Republic of Uganda.



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