

The Principle of Non-Refoulement in International Law; Challenges in Protecting Refugees in Conflict Zones: Case Study Uganda and South Africa

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ARTICLE INFORMATION	ABSTRACT
Article history: Published: October 2026 Keywords: Non-Refoulement International Law Refugee Protection Conflict Zones Uganda and South Africa	The doctrine of non-refoulement occupies a central place in the global framework for refugee protection. It prohibits states from sending refugees, and in appropriate circumstances asylum seekers, to countries where they face persecution, torture, grave human rights abuses, or other serious and irreversible harm. Although Article 33 of the 1951 Convention Relating to the Status of Refugees remains the primary treaty source of this obligation, the principle has been further developed through international human rights law, regional refugee protection instruments, and national court decisions, and its significance is especially evident in contexts of armed conflict, where violence, insecurity, and institutional collapse force individuals to seek safety beyond their national borders. This article analyses the role of non-refoulement in safeguarding refugees and asylum seekers escaping armed conflict, focusing comparatively on Uganda and South Africa. Using a qualitative doctrinal and comparative methodology, the study examines international and regional legal instruments, domestic refugee legislation, judicial decisions, institutional documents, and relevant academic commentary, considering how the principle functions in practice rather than merely in formal law. The article demonstrates that both Uganda and South Africa have incorporated important protections against refoulement within their legal and institutional frameworks. However, effective realisation of these protections remains constrained by large refugee movements, national security concerns, limited institutional capacity, delays in asylum processing, and weaknesses in removal procedures, all of which heighten the risk of return to persecution or serious harm. The comparative analysis further shows that, despite similar international obligations, differing institutional arrangements and migration contexts generate distinct implementation challenges. The article recommends improved implementation of existing legal duties, protection-oriented border governance, efficient asylum procedures, stronger institutional capacity, effective judicial supervision, and deeper regional cooperation, so that non-refoulement functions as a genuine, enforceable safeguard rather than a purely formal commitment for refugees fleeing conflict in both jurisdictions.

1. Introduction

Armed conflict, political instability, and serious human rights violations continue to force millions of people to flee their homes and seek protection across international borders. For many displaced persons, flight is not a matter of choice but a response to persecution, violence, insecurity, and threats to life or liberty. However, arrival in another state does not automatically guarantee safety. Protection depends on whether the receiving state allows access to asylum procedures and refrains from returning individuals to places where they may face serious harm. The principle of non-refoulement is central to international refugee law. Article 33(1) of the 1951 Convention Relating to the Status of Refugees prohibits states from returning refugees to territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion (United Nations, 1951). This protection may also extend to asylum seekers whose claims have not yet been finally determined, especially where removal would expose them to persecution or other serious violations of fundamental rights. International human rights law reinforces this obligation, particularly through Article 3 of the Convention against Torture, which prohibits returning a person to a state where there are substantial grounds for believing that they would face torture (United Nations, 1984). This article critically examines the application of non-refoulement in protecting refugees and asylum seekers fleeing armed conflict, with specific reference to Uganda and South Africa. It argues that effective protection requires more than formal legal recognition. It depends on accessible asylum procedures, competent and adequately resourced institutions, individualised risk assessment, judicial oversight, and effective remedies against unlawful removal.

1.1 Statement of the Problem

The principle of non-refoulement is a central safeguard in international refugee protection. Article 33 of the 1951 Convention Relating to the Status of Refugees prohibits states from returning refugees to territories where their lives or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion (United Nations,

1951). This protection is reinforced by the 1967 Protocol, the 1969 OAU Convention, and international human rights law, particularly the prohibition of torture and cruel, inhuman, or degrading treatment (Organization of African Unity [OAU], 1969; United Nations, 1967, 1984).

Despite this legal framework, the continued displacement of millions of people shows that formal recognition of non-refoulement does not always result in effective protection. According to UNHCR (2026), more than 117 million people remained forcibly displaced globally at the end of 2025, many from countries affected by armed conflict, political instability, and widespread violence. This pressure creates tension between immigration control and refugee protection. States have legitimate interests in regulating borders, maintaining national security, and managing irregular migration. However, border-control measures, detention, deportation procedures, and administrative delays may prevent individuals from accessing asylum procedures or expose them to removal before their protection needs are properly assessed. In conflict situations, such failures may result in return to persecution, indiscriminate violence, torture, or other serious harm.

Uganda and South Africa provide useful comparative contexts for examining this problem. Uganda has maintained a relatively progressive refugee framework and hosts large numbers of refugees from conflict-affected neighbouring states, including South Sudan, the Democratic Republic of the Congo, and Sudan. However, the scale of arrivals places pressure on registration, reception, documentation, and refugee status determination systems. The problem addressed by this study is therefore not the absence of legal recognition of non-refoulement, but the persistent gap between legal protection and practical implementation. The effectiveness of the principle depends on how it is applied at borders, during refugee status determination, in detention and immigration proceedings, and in decisions concerning expulsion, deportation, transfer, or return. A comparative assessment of Uganda and South Africa is necessary to identify common weaknesses, contextual differences, and practical measures for strengthening compliance with non-refoulement while allowing states to pursue legitimate immigration, border-management, and national-security objectives.

1.2 Methodology

Doctrinal legal research involves the systematic identification, organization, interpretation, and critical analysis of legal rules and principles contained in authoritative legal sources (Hutchinson & Duncan, 2012). It is particularly appropriate for legal research concerned with determining the content of legal rules, examining their development, and evaluating how different sources of law interact. The study relies primarily on primary legal sources, including international treaties, regional instruments, national legislation, and judicial decisions. Particular attention is given to the 1951 Convention Relating to the Status of Refugees, especially Article 33, which establishes the prohibition against refoulement, together with the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The study also considers relevant human rights instruments, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly Article 3, which prohibits the removal of a person to a state where there are substantial grounds for believing that they would be in danger of being subjected to torture (Organization of African Unity [OAU], 1969; United Nations, 1951, 1967, 1984). This research further examines the domestic legal frameworks of Uganda and South Africa. In Uganda, particular consideration is given to the Refugees Act, Cap 312, which provides for the recognition, protection, and management of refugees and gives domestic effect to Uganda's international and regional refugee obligations. In South Africa, attention is given to the Refugees Act 130 of 1998, as amended, which regulates the reception of asylum seekers, determination of refugee status, and rights and obligations arising from refugee status. South African legislation expressly requires its interpretation and application to be consistent with the 1951 Refugee Convention, the 1967 Protocol, and the 1969 OAU Convention. The study also considers relevant constitutional provisions and judicial decisions that have addressed asylum, deportation, detention, and protection against removal. These domestic sources are important because they demonstrate how international and regional obligations are incorporated into national legal systems and how courts respond when immigration-control measures conflict with refugee-protection obligations.

The article also draws on secondary legal and institutional sources, including peer-reviewed journal articles, academic books, scholarly commentaries, reports, guidelines, and publications of international and regional organizations. Publications of the United Nations High Commissioner for Refugees (UNHCR) are particularly relevant because they provide authoritative guidance on the interpretation and implementation of international refugee law. UNHCR has consistently identified non-refoulement as a cornerstone of international refugee protection and has emphasized that the principle may apply to asylum seekers before their refugee status has been formally determined (UNHCR, 1977, 2007). Institutional reports also assist the study in examining practical conditions affecting refugee protection, including mass displacement, access to asylum procedures, border management, administrative capacity, detention, and deportation.

The doctrinal analysis involves examining the development, content, and scope of non-refoulement across different bodies of law. The study considers the relationship between Article 33 of the 1951 Refugee Convention and complementary human rights protections against removal to situations involving torture or other serious and irreversible harm. It also examines the interaction between non-refoulement and related obligations concerning access to asylum procedures, expulsion, deportation, detention, and effective remedies. This is important because non-refoulement cannot be examined solely as a prohibition against physical return; its practical effectiveness may also depend on whether individuals are given a genuine opportunity to present protection claims before removal takes place. UNHCR guidance recognizes the importance of protecting asylum seekers against return while their claims are being considered (UNHCR, 1997, 2007).

The doctrinal approach further enables the study to identify legal gaps, inconsistencies, and areas of uncertainty within the applicable frameworks. Hutchinson and Duncan (2012) explain that doctrinal research requires legal scholars to clearly identify and critically engage with the sources and processes through which legal knowledge is developed. Accordingly, this study does not merely describe treaty provisions or domestic legislation. It interprets the relevant rules, examines judicial approaches, and considers whether national frameworks provide adequate safeguards against refoulement in circumstances involving armed conflict and mass displacement.

A comparative legal approach is used alongside the doctrinal method to examine Uganda and South Africa. Comparative legal research involves the systematic examination of different legal systems to identify similarities, differences, and possible explanations for divergent legal approaches (Zweigert & Kötz, 1998). The comparison in this study focuses on the legal recognition of non-refoulement, access to asylum procedures, border management, refugee status determination, detention, deportation and removal, national security considerations, institutional capacity, judicial oversight, and available legal remedies.

Uganda and South Africa provide useful comparative settings because both countries have extensive experience in receiving refugees and asylum seekers while operating within different regional, institutional, and migration contexts. Uganda has experienced substantial refugee movements associated with conflicts in neighboring countries, particularly South Sudan and the Democratic Republic of the Congo. South Africa, by contrast, functions as a major destination and transit country for asylum seekers from different parts of Africa and has faced significant pressures relating to irregular migration, documentation, asylum backlogs, and immigration enforcement. Comparing the two jurisdictions therefore makes it possible to examine how states with different refugee-migration experiences respond to broadly similar international and regional legal obligations.

The comparative analysis does not seek simply to establish which jurisdiction has the stronger refugee protection system. Rather, it examines how differences in legal rules, institutional structures, administrative practices, judicial oversight, and available resources influence the practical implementation of non-refoulement. This distinction is important because the existence of legislation recognizing refugee rights does not, by itself, establish that those rights are effectively enjoyed in practice. A state may have comprehensive legal safeguards while administrative delays, limited capacity, inadequate documentation, restrictive border practices, or ineffective remedies create significant protection gaps. The research is therefore qualitative and library-based, relying exclusively on documentary analysis. The materials are purposively selected according to their relevance to the research objectives, legal authority, scholarly credibility, and usefulness in explaining the protection of refugees and asylum seekers. International and regional instruments provide the broader normative framework, while domestic legislation and judicial decisions are examined to determine how those obligations have been incorporated and interpreted at the national level. Scholarly literature and institutional reports are then used to contextualize and critically evaluate the operation of the legal frameworks.

The study does not employ interviews, questionnaires, surveys, or other empirical research instruments because its primary objective is to examine legal rules, judicial reasoning, institutional frameworks, and documented practices rather than to collect primary data from human participants. This approach is consistent with the nature of doctrinal legal research, which is concerned principally with the identification and critical evaluation of legal authorities and their interpretation (Hutchinson & Duncan, 2012).

2. The Concept and Evolution of Non-Refoulement

2.1 Meaning and Significance of Non-Refoulement

The term non-refoulement is derived from the French word *refouler*, which means to repel, drive back, or force back. The concept refers to the obligation of a state not to return an individual to a country or territory where that person may face persecution, threats to life or liberty, torture, or other serious harm. Article 33(1) of the 1951 Convention Relating to the Status of Refugees provides the principal treaty basis for this obligation by prohibiting states from expelling or returning a refugee to territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion (United Nations, 1951).¹ The significance of non-refoulement lies in its role as a core safeguard within the international refugee protection system. It protects displaced persons from the gravest consequence of forced migration: being returned to the conditions of persecution, violence, or insecurity that compelled them to flee. Without this protection, the broader refugee protection regime would be substantially weakened, as individuals could be removed before their need for protection is properly assessed. In this sense, non-refoulement gives practical effect to the ability of individuals to seek asylum. The right to seek international protection would have limited value if a receiving state could return an asylum seeker before examining the substance of the claim.

The principle of non-refoulement imposes both substantive and procedural obligations on states. Substantively, states must refrain from returning individuals to places where they face prohibited risks, including persecution, torture, or other serious and irreversible harm. Procedurally, states must provide an effective opportunity for those risks to be identified and assessed before any expulsion, deportation, removal, or return is carried out. Accordingly, the effectiveness of non-refoulement depends not only on the legal prohibition of return, but also on the existence of fair asylum procedures, careful risk assessment, access to remedies, and institutional safeguards capable of preventing unlawful removal.

2.2 Non-Refoulement and Human Rights

International human rights law has significantly broadened the protective scope of non-refoulement. While refugee law is principally concerned with protection against persecution within the meaning of the 1951 Convention Relating to the Status of Refugees, human rights law may prohibit removal where an individual faces a real risk of torture, cruel, inhuman or degrading treatment, or other serious violations of fundamental rights, even if that individual does not meet the technical definition of a refugee (United Nations, 1951, 1984). The distinction between refugee-law protection and human-rights-based protection is therefore legally significant. A person escaping armed violence may not always be able to establish persecution on the basis of race, religion, nationality, membership of a particular social group, or political opinion. Nevertheless, return may expose that person to torture, arbitrary deprivation of life, serious ill-treatment, or other grave violations of human dignity. In such circumstances, human rights law operates as an additional safeguard by limiting the power of states to remove individuals where removal would result in exposure to prohibited harm. The interaction between refugee law and human rights law reflects a broader development in international protection. The

¹ United Nations. (1951). Convention relating to the status of refugees. *United Nations Treaty Series*, 189, 137.

principle of non-refoulement is no longer understood only as a rule attached to refugee status; it is increasingly linked to the protection of fundamental human dignity and the prevention of serious and irreversible harm. Accordingly, the interpretation and application of refugee law are shaped by human rights standards, particularly where removal would place an individual at risk of torture, inhuman treatment, or other grave violations. This complementary relationship strengthens the protection available to refugees, asylum seekers, and other persons fleeing armed conflict or serious insecurity.

2.3 Non-Refoulement in Armed Conflict

Conflict often results in the destruction of homes and livelihoods, mass displacement, the weakening or collapse of state institutions, and widespread violence against civilians by both state and non-state actors. Individuals fleeing such conditions may reach national borders without identity documents, travel papers, or other evidence capable of clearly demonstrating the risks they face. They may also be unable to provide detailed accounts of their experiences because of trauma, insecurity, or the urgency of flight. In these circumstances, receiving states must assess protection claims in a manner that reflects the realities of armed conflict. A rigid evidentiary approach that requires extensive documentary proof may fail to account for the conditions under which refugees and asylum seekers are forced to leave their countries. Protection authorities should therefore consider the broader country conditions, patterns of violence, risks to civilians, and the individual circumstances of the applicant when determining whether removal would expose the person to persecution, torture, or other serious harm.

At the same time, states retain legitimate interests in maintaining border security, public order, and national security. The presence of armed conflict in a country of origin may raise concerns about the movement of combatants, trafficking networks, or other security risks. However, such concerns must be addressed through fair, individualised, and protection-sensitive procedures rather than through blanket exclusion, automatic rejection, or summary removal. The need to manage security risks does not displace the obligation to respect non-refoulement. The central challenge is therefore one of balance. States must be able to regulate their borders and respond to genuine security concerns, but border control must not be applied in a manner that prevents access to international protection. Decisions concerning expulsion, deportation, removal, or return must be based on a careful assessment of the risks that the individual may face in the receiving territory. In situations of armed conflict, the practical effectiveness of non-refoulement depends on procedures that are accessible, context-sensitive, and capable of distinguishing between legitimate security concerns and the protection needs of persons fleeing serious harm.

3. International and African Regional Framework

The 1951 Convention Relating to the Status of Refugees remains the central international instrument governing refugee protection. Article 33(1) prohibits states from expelling or returning a refugee to any territory where that person's life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion (United Nations, 1951). This prohibition is closely connected to other Convention safeguards, particularly Article 31, which restricts the penalisation of refugees for irregular entry or presence in specified circumstances, and Article 32, which limits the expulsion of refugees lawfully present in a state's territory. The 1967 Protocol Relating to the Status of Refugees strengthened the international refugee protection framework by removing the temporal and geographical limitations originally attached to the 1951 Convention (United Nations, 1967). Although the Protocol does not create a separate rule of non-refoulement, it incorporates the substantive provisions of the 1951 Convention and extends their application to refugees more broadly. In doing so, it reinforces Article 33 as a continuing obligation of states parties. The contemporary relevance of the Convention and Protocol is especially evident in situations of armed conflict and mass displacement, where individuals may cross borders urgently and before their refugee status has been formally determined.

International human rights law further reinforces the protection against refoulement. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits a state from expelling, returning, or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture (United Nations, 1984). Similarly, the International Covenant on Civil and Political Rights protects the right to life and prohibits torture and cruel, inhuman, or degrading treatment or punishment (United Nations, 1966). These protections are significant because they may operate independently of formal refugee status. A person who does not satisfy the technical definition of a refugee may nevertheless be protected against removal where return would expose them to a real risk of torture, arbitrary deprivation of life, or other serious violations of fundamental rights. Human rights law therefore complements refugee law by broadening the circumstances in which removal may be legally prohibited.

The African regional framework adds an important dimension to this protection. The Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Organisation of African Unity in 1969, was developed in response to the particular patterns of forced displacement experienced on the continent (Organisation of African Unity [OAU], 1969). Unlike the 1951 Refugee Convention, the OAU Convention expressly includes within its refugee definition persons compelled to leave their country because of external aggression, occupation, foreign domination, or events seriously disturbing public order. The 1969 OAU Refugee Convention also reinforces the importance of non-refoulement within the African refugee protection system. Its provisions require states to respect the principle while recognising the particular challenges associated with mass influxes and the need for regional solidarity. This is especially relevant to countries such as Uganda and South Africa, which have experienced significant refugee and asylum movements arising from conflicts and instability within the African region. The African framework therefore supplements the universal refugee regime rather than replacing it. It adapts refugee protection standards to the continent's displacement realities and provides a broader basis for protecting persons fleeing armed conflict and serious public disorder.

The African Charter on Human and Peoples' Rights provides an additional layer of regional protection. Although the Charter does not expressly use the term non-refoulement, its guarantees of the right to life, human dignity, and freedom from torture and cruel, inhuman, or degrading treatment have important implications for the removal of persons to situations where those rights would be

at serious risk (OAU, 1981). Article 12 is also relevant because it protects freedom of movement and establishes safeguards concerning the expulsion of non-nationals.

The interaction between refugee law and human rights law is particularly important in situations of armed conflict. Refugee protection cannot depend exclusively on whether an individual has already been formally recognised as a refugee. Where return would expose a person to persecution, torture, arbitrary deprivation of life, or other serious harm, international and regional human rights obligations may independently limit the state's power to remove that person. The combined operation of refugee law and human rights law therefore creates a more comprehensive protection framework and reduces the risk that individuals will fall through legal gaps simply because their refugee status has not yet been determined. The international refugee framework recognises that non-refoulement is not entirely without qualification under refugee law. Article 33(2) of the 1951 Refugee Convention provides a limited exception where there are reasonable grounds for regarding a refugee as a danger to the security of the host country or where, having been convicted by a final judgment of a particularly serious crime, the refugee constitutes a danger to the community (United Nations, 1951). However, such exceptions must be interpreted cautiously and applied consistently with other binding human rights obligations. In particular, protections against torture and other forms of irreparable harm may impose stricter limits on removal. National-security concerns therefore do not automatically authorise a state to return an individual to a place where they may face prohibited treatment.

4. Non-Refoulement in Uganda

The Refugees Act, Cap. 312, Vol. 13, provides the principal domestic legal framework for refugee protection in Uganda and operates alongside the Constitution of the Republic of Uganda, 1995, as well as Uganda's obligations under international and regional refugee instruments (Government of Uganda, 1995, 2006). Uganda is a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and is also bound by the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Organization of African Unity [OAU], 1969; United Nations, 1951, 1967). These commitments reflect Uganda's acceptance of international and regional standards for the protection of refugees and, in particular, the principle of non-refoulement. Ratification of, and accession to, these instruments is significant because it reinforces the state's responsibility to ensure that persons seeking international protection are not returned to situations where they face persecution or other serious harm. Large-scale refugee movements can place considerable pressure on registration systems, reception arrangements, border-control mechanisms, and refugee status determination procedures. When these systems become overstretched, delays and procedural weaknesses may increase the risk that vulnerable individuals will not receive timely protection. In such circumstances, the gap between Uganda's formal commitment to international and regional refugee protection standards and their practical implementation may become more pronounced.

5. Non-Refoulement in South Africa

South Africa provides a distinct but equally important context for examining the application of the principle of non-refoulement. Its refugee protection system is principally governed by the Refugees Act 130 of 1998, which establishes mechanisms for recognising and protecting refugees and asylum seekers (Republic of South Africa, 1998). The Act operates within the broader constitutional framework established by the Constitution of the Republic of South Africa, 1996, which places considerable emphasis on human dignity, equality, and the protection of fundamental rights (Republic of South Africa, 1996). South Africa is also a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. These international and regional commitments reinforce South Africa's obligation to protect individuals who face persecution or other serious harm upon return (Organization of African Unity [OAU], 1969; United Nations, 1951, 1967).

These pressures raise important questions about the relationship between immigration control and refugee protection. South Africa has a legitimate interest in regulating entry and residence, but those powers must be exercised consistently with its constitutional, statutory, and international obligations. In particular, individuals requiring international protection should not be returned to situations where they may face persecution, threats to life or freedom, or other serious harm. Section 2 of the Refugees Act expressly gives domestic legal effect to this protection by prohibiting refusal of entry, expulsion, extradition, deportation, or return where a person may face threats to life, physical safety, or freedom (Republic of South Africa, 1998). Judicial oversight has consequently assumed an important role in South African refugee protection. Courts can examine whether administrative decisions affecting refugees and asylum seekers comply with constitutional guarantees, domestic legislation, and international obligations. Effective judicial review is particularly important where removal decisions may expose individuals to serious and irreversible harm. South African courts have therefore played an important role in ensuring that immigration powers do not undermine the protection guaranteed by refugee law. For example, in *Ruta v Minister of Home Affairs*, the Constitutional Court emphasised that an individual's claim to refugee protection should be considered before steps are taken that could result in removal, particularly where the individual has expressed a fear of persecution (*Ruta v Minister of Home Affairs*, 2019).

6. Comparative Analysis

Uganda and South Africa share a fundamental commitment to refugee protection through international, regional, constitutional, and domestic legal frameworks. Both states are parties to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and both have enacted domestic legislation to regulate refugee protection (Organization of African Unity [OAU], 1969; United Nations, 1951, 1967). Uganda's framework is principally governed by the Refugees Act, 2006, while South Africa's refugee protection system is primarily regulated by the Refugees Act 130 of 1998 (Government of Uganda, 2006; Republic of South Africa, 1998). Despite this common legal foundation, the two countries operate within significantly different refugee-protection environments. Uganda's experience is strongly influenced by its geographical position within the Great Lakes and East African regions, where recurring armed conflicts

and political instability have generated large and sometimes sudden movements of refugees. The resulting pressure is particularly visible in border reception, registration, settlement management, and refugee status determination. Uganda has consequently developed considerable experience in responding to large-scale refugee movements, although the scale of displacement can place substantial pressure on available institutional and financial resources (United Nations High Commissioner for Refugees [UNHCR], 2023). South Africa, by contrast, faces a more complex combination of refugee protection and immigration-management pressures. Its geographical and economic position makes it a significant destination for migrants and asylum seekers from different parts of Africa and beyond. The country has had to manage substantial asylum caseloads alongside irregular migration, border-control concerns, documentation challenges, and pressure on the institutions responsible for processing protection claims. The difference between the two jurisdictions is therefore not primarily one of legal commitment, but rather of the circumstances in which that commitment must be implemented. Uganda's principal challenge is closely connected to recurrent regional conflicts and mass refugee influxes, which can place significant pressure on its reception and refugee-management systems. South Africa faces a broader migration-management environment in which refugee protection must operate alongside extensive immigration controls and large asylum caseloads. In both situations, however, pressure on administrative systems can create risks for individuals whose protection claims have not yet been adequately assessed.

A particularly important similarity is that formal recognition of non-refoulement does not necessarily guarantee effective protection. The existence of a statutory prohibition against refoulement is only the first step. Effective protection requires individuals to have meaningful access to asylum procedures, to be identified as persons potentially in need of international protection, to present their claims before competent authorities, and to receive a fair and timely determination. Where administrative systems are inaccessible, delayed, or inadequately resourced, the practical value of the legal protection may be significantly reduced (UNHCR, 2007).

The comparison also reveals the importance of border procedures. In Uganda, the scale and suddenness of refugee movements may make it difficult for authorities to conduct adequate screening and registration, particularly during periods of mass influx. In South Africa, stringent immigration and border-control measures may create different challenges where individuals enter irregularly or have difficulty accessing the asylum system. In both contexts, the manner in which officials respond at the point of entry is critical. Refugee status determination represents another important point of comparison. In Uganda, the effectiveness of the determination process may be affected by the volume of new arrivals and the administrative demands associated with large refugee populations. In South Africa, substantial asylum caseloads and administrative backlogs have similarly raised concerns about delays and the ability of the system to process claims effectively.

The role of judicial and administrative review also distinguishes the practical operation of refugee protection in the two countries. South Africa's constitutional framework provides a particularly significant basis for judicial scrutiny of administrative decisions affecting asylum seekers and refugees. The courts have played an important role in ensuring that immigration authorities exercise their powers consistently with constitutional rights, statutory requirements, and the principle of non-refoulement (Republic of South Africa, 1996; *Ruta v Minister of Home Affairs*, 2019). Uganda also provides legal mechanisms through which decisions affecting refugees may be challenged, although the practical accessibility and effectiveness of available remedies remain important considerations. The comparison further demonstrates that institutional capacity is a decisive factor in translating legal norms into actual protection. Both countries have established statutory and administrative structures for refugee protection, but these structures operate under different forms of pressure. Uganda's institutions must frequently respond to large-scale and rapidly developing refugee emergencies, while South African institutions operate within a highly contested migration-management environment. In both cases, insufficient resources, administrative delays, inadequate coordination, or weaknesses in decision-making can undermine the effectiveness of non-refoulement even where the principle is formally recognised.

Ultimately, the experiences of Uganda and South Africa demonstrate that the effectiveness of non-refoulement cannot be measured solely by examining whether the principle appears in legislation or international commitments. Its real effectiveness is determined by whether the state provides practical and accessible protection at every stage of the refugee protection process. This includes admission at the border, access to asylum procedures, refugee status determination, protection during the consideration of claims, and effective remedies against unlawful removal. The comparative analysis therefore suggests that the principal challenge is not the absence of legal recognition but the implementation gap between legal obligations and institutional practice.

The Uganda–South Africa comparison consequently supports a broader understanding of non-refoulement as both a substantive and procedural obligation. A state may formally prohibit refoulement, yet fail to provide effective protection if individuals cannot access its asylum system or if removal decisions are made without adequate assessment of the risks involved. Strengthening non-refoulement in both jurisdictions therefore requires not only continued adherence to international and regional refugee law but also investment in border screening, refugee status determination, institutional capacity, legal representation, administrative accountability, and judicial oversight. These measures are particularly important in conflict situations, where the failure to identify and protect an individual may result in consequences that cannot easily be reversed.

7. Challenges In Protecting Refugees in Conflict Zones

7.1 National Security

States have a legitimate responsibility to protect their populations, maintain public order, and safeguard their territorial integrity. International refugee law recognises that refugee protection does not require states to disregard genuine threats to national security. Article 33(2) of the 1951 Convention Relating to the Status of Refugees provides a limited exception to protection against refoulement where there are reasonable grounds for regarding a refugee as a danger to the security of the host country or where, following a final conviction for a particularly serious crime, the refugee constitutes a danger to the community (United Nations, 1951). The difficulty arises when national-security considerations are defined too broadly or applied without sufficient evidence and procedural safeguards. In situations of armed conflict and large-scale displacement, refugees and asylum seekers may be subjected to increased scrutiny because of their nationality, country of origin, irregular entry, or perceived association with armed groups.

Such approaches can create a risk of collective suspicion and may undermine the individualised assessment required in refugee protection. Irregular entry, in particular, should not automatically be treated as evidence that an individual poses a security threat, since persons fleeing conflict or persecution may have little opportunity to obtain travel documents or use regular migration channels. Article 31 of the 1951 Refugee Convention recognises this reality by limiting the penalties that may be imposed on refugees who enter or remain irregularly in certain circumstances (United Nations, 1951).

7.2 Mass Displacement

Armed conflicts frequently produce sudden and large-scale movements of people across international borders. Unlike ordinary migration, conflict-related displacement may occur with little warning and may involve people arriving without passports, identity documents, financial resources, or sufficient information about available asylum procedures. Large influxes can place considerable pressure on receiving states, particularly where registration systems, reception facilities, refugee status determination procedures, and essential humanitarian services are already operating with limited resources. The challenge is particularly significant in Africa, where many refugee movements are generated by protracted conflicts and where neighboring states often host large refugee populations for extended periods. Uganda illustrates this challenge because of its geographical proximity to several conflict-affected countries, including South Sudan and the Democratic Republic of the Congo. Its relatively progressive refugee protection framework and open-door approach have enabled it to provide protection to substantial numbers of refugees. However, continued arrivals can place significant pressure on registration, reception, settlement management, humanitarian assistance, and refugee status determination systems. UNHCR has repeatedly highlighted the increasing operational and financial pressures affecting refugee-hosting countries, demonstrating that the ability of states to maintain effective protection is closely connected to the availability of adequate resources and international support (UNHCR, 2025, 2026).

Mass displacement also creates particular challenges at border points. When large numbers of people arrive simultaneously, authorities may have difficulty conducting individual interviews and assessing protection needs before admission. Emergency border measures may consequently prioritize rapid movement management over individual protection assessments. Although states may establish temporary procedures to respond to exceptional circumstances, such measures should not result in the denial of access to asylum or the collective return of persons who may require international protection. The principle of non-refoulement remains applicable during periods of mass influx, and emergency conditions should not be treated as a general justification for abandoning minimum refugee and human rights safeguards (United Nations, 1951; UNHCR, 2014).

South Africa presents a somewhat different dimension of the problem. Although it does not face the same level of mass refugee inflows from immediate neighboring conflict zones as Uganda, it receives asylum seekers and other forcibly displaced persons within a broader mixed-migration environment. Large numbers of applications can contribute to administrative backlogs, difficulties in documentation, pressure on reception arrangements, and prolonged asylum procedures. Where asylum systems become congested, individuals may remain without secure legal status for extended periods, increasing the possibility of detention, exploitation, or removal before their protection claims have been adequately determined.

Mass displacement therefore requires a response based on preparedness, institutional capacity, international cooperation, and equitable burden-sharing, rather than the dilution of fundamental protection standards. Article II of the 1969 OAU Convention recognizes the importance of African solidarity and cooperation in responding to refugee situations, while the Global Compact on Refugees emphasizes responsibility-sharing as an important means of supporting countries and communities that host large refugee populations (Organization of African Unity [OAU], 1969; UN General Assembly, 2018). Financial assistance, technical support, expanded reception capacity, efficient registration systems, trained refugee-protection personnel, and cooperation between states and international organizations can help receiving countries respond to large movements without compromising individual protection. Mass displacement should not be regarded as a justification for treating refugees as a homogeneous group or for replacing individual protection assessments with blanket assumptions. Even during large-scale influxes, individuals may have different protection needs and may face different risks upon return. Effective implementation of non-refoulement therefore requires mechanisms capable of identifying persons who may be at particular risk, including survivors of persecution, children, persons with disabilities, and individuals fleeing serious conflict-related violence. Emergency responses should consequently strengthen, rather than weaken, safeguards against return.

7.3 Border Management

The principle of non-refoulement requires states to ensure that persons who may require international protection are not returned to situations where they face persecution, torture, or other serious harm without an appropriate assessment of their protection needs. This obligation is particularly important where individuals arrive through irregular routes. People fleeing conflict may be unable to obtain passports, visas, or other travel documents before leaving their countries. Irregular entry should therefore not, by itself, be treated as evidence that a person has no legitimate claim to protection. Article 31 of the 1951 Refugee Convention recognises the particular circumstances of refugees who enter or remain irregularly and limits the penalties that states may impose in such circumstances (United Nations, 1951).

States have legitimate interests in preventing unlawful entry, combating trafficking and smuggling, protecting national security, and maintaining effective control over their territories. However, measures such as border closures, summary removals, interceptions, pushbacks, or restrictions on access to territory may undermine non-refoulement where they prevent individuals from communicating a need for protection or result in their return without an individual assessment. UNHCR has consequently emphasised that border-control measures should incorporate appropriate safeguards to ensure that persons seeking international protection can access fair and effective asylum procedures (UNHCR, 2007). Large and sudden movements of people can place border officials under considerable pressure, especially where reception facilities and registration systems have limited capacity. In such circumstances, authorities may prioritise rapid movement control over the identification of individuals with protection needs.

Properly trained personnel, clear referral procedures, interpreters where necessary, registration mechanisms, and cooperation among immigration, refugee-protection, security, and humanitarian authorities can help ensure that border control does not become a barrier to asylum. Uganda's experience demonstrates the importance of maintaining protection-sensitive border systems in a country that receives significant numbers of people fleeing conflicts in neighbouring states. Uganda's refugee policy has generally favoured admission and protection rather than exclusion at the border. Nevertheless, continued refugee inflows place pressure on registration and reception systems and require sustained institutional and financial capacity. South Africa faces a different border-management environment, characterised by mixed migration, irregular cross-border movement, and substantial demands on its asylum and immigration systems. The challenge is to ensure that efforts to address irregular migration do not inadvertently prevent individuals with genuine protection needs from accessing the asylum system. Where immigration enforcement occurs before an individual's protection needs have been assessed, deportation or removal may take place without adequate consideration of the principle of non-refoulement. South African courts have consequently played an important role in examining the legality of immigration measures where they intersect with constitutional rights and refugee protection.

Protection-sensitive border management should therefore incorporate early identification, individual screening, referral to asylum procedures, access to interpreters and legal information, and effective safeguards against removal. Border officials should also receive appropriate training on refugee law, human rights standards, trafficking, child protection, and indicators of persecution and conflict-related harm. Ultimately, effective border management should not be understood as incompatible with refugee protection. The objective should instead be to develop a system in which states retain the ability to regulate their borders while ensuring that persons with potential protection claims are not summarily denied access to asylum. For Uganda and South Africa, strengthening protection-sensitive border procedures is particularly important because the effectiveness of non-refoulement may depend on what happens at the border before an individual reaches a formal asylum procedure. A border system that combines legitimate immigration and security controls with accessible protection mechanisms can therefore strengthen both state sovereignty and compliance with international refugee and human rights obligations.

7.4 Institutional Capacity

Even carefully drafted refugee legislation cannot protect people effectively where responsible institutions lack adequate personnel, funding, infrastructure or training. Institutional weaknesses may result in delays, inconsistent decisions and inadequate monitoring of removal practices. Strengthening institutions is therefore not merely an administrative matter; it is an essential component of fulfilling international refugee obligations.

7.5 Delays in Asylum Procedures

An effective asylum system must balance fairness, accuracy, and efficiency. Refugee status determination requires sufficient time for applicants to explain their circumstances, present relevant evidence, and have their claims assessed by competent authorities. However, excessive delays can undermine the very protection that asylum procedures are intended to provide. Applicants who remain for prolonged periods without a final determination may experience uncertainty regarding their legal status and may become increasingly vulnerable to detention, exploitation, homelessness, and other forms of abuse. Delays are particularly problematic where asylum systems experience large numbers of applications, inadequate staffing, limited financial resources, weak case-management systems, or insufficient reception facilities. UNHCR has identified the capacity of national asylum systems as an important factor in ensuring timely and effective access to international protection (UNHCR, 2019). In situations of armed conflict and mass displacement, sudden increases in applications can place additional pressure on refugee status determination authorities and contribute to significant administrative backlogs. Where applications remain unresolved for extended periods, individuals may be left in a prolonged state of legal and social uncertainty.

At the same time, efforts to reduce backlogs should not result in procedures that are so accelerated that applicants are denied a genuine opportunity to present their claims. Refugee status determination requires careful consideration of the applicant's personal circumstances, the conditions in the country of origin, and the potential risks associated with return. Inadequate interviews, insufficient interpretation, limited access to legal assistance, or failure to consider relevant evidence may result in incorrect decisions. A rushed procedure may therefore create a serious protection risk by increasing the possibility that a person in need of international protection will be denied refugee status and subsequently returned to a situation of persecution or serious harm. The relationship between procedural delay and non-refoulement is particularly important because protection against return should not depend exclusively on the speed with which a state processes an asylum claim. While states have authority to establish efficient procedures for determining refugee status, those procedures must provide effective safeguards against removal while a credible protection claim remains unresolved. The principle of non-refoulement would be significantly weakened if administrative delays or procedural deficiencies allowed an asylum seeker to be removed before the risks associated with return had been properly assessed (United Nations, 1951; UNHCR, 2007).

In Uganda, continued refugee inflows from neighbouring conflict-affected countries place considerable demands on registration and refugee status determination systems. The country's large refugee population requires sustained administrative capacity to ensure that new arrivals are registered and that protection claims are processed effectively. Delays may be particularly difficult for individuals who arrive during periods of sudden mass displacement, when the number of persons requiring protection increases rapidly. Strengthening registration, documentation, case management, staffing, and coordination among relevant authorities is therefore important for maintaining timely access to protection. In South Africa, asylum backlogs and administrative difficulties have similarly presented long-standing challenges to the effective operation of the asylum system. Delays in determining applications and difficulties associated with asylum documentation can leave applicants in prolonged uncertainty and may expose them to immigration enforcement measures. South African courts have therefore repeatedly considered the relationship between immigration administration, access to asylum procedures, and the rights of persons seeking international protection. These

developments demonstrate that administrative efficiency is not merely a matter of institutional convenience but may have direct consequences for the enjoyment of fundamental rights.

The appropriate response is therefore not simply to process applications more quickly but to develop fair, accessible, and efficient asylum procedures. This requires adequately trained decision-makers, effective registration and case-management systems, sufficient interpretation services, access to legal information and representation where appropriate, clear procedural timelines, effective review and appeal mechanisms, and adequate resources. Digitalization may also improve case management and reduce administrative duplication, provided that it does not exclude applicants who lack digital access or create new barriers to the asylum process. For both Uganda and South Africa, reducing asylum backlogs should consequently be pursued alongside safeguards that preserve the quality and fairness of refugee status determination. A well-functioning asylum system should provide applicants with a meaningful opportunity to establish their need for international protection while ensuring that claims are determined within a reasonable period. The central objective should be to prevent both unreasonable delay and inadequate haste, since either extreme may undermine refugee protection. Ensuring timely and procedurally fair determination is therefore an essential component of giving practical effect to the principle of non-refoulement.

7.6 Indirect Refoulement

States must also guard against indirect refoulement, sometimes referred to as chain refoulement. This principle recognises that a state may violate its non-refoulement obligations even where it does not directly return a refugee or asylum seeker to the country in which the person faces persecution, torture, or other serious harm. A transfer to a third country may still expose the individual to a real risk of onward removal to the country of feared persecution or harm. Consequently, the legality of a transfer cannot be assessed solely by examining conditions in the immediate receiving state. Authorities must also consider whether that state is likely to provide effective protection against subsequent removal. This obligation is particularly important in conflict situations, where refugees and asylum seekers may be transferred between neighbouring states as part of border-control measures, readmission arrangements, or efforts to manage mass movements. Before effecting such a transfer, authorities should establish that the receiving state has an effective asylum system, respects the principle of non-refoulement, and will provide the individual with meaningful access to protection. A formal assurance from the receiving state may therefore be insufficient where there are substantial grounds for believing that the person could ultimately be returned to a place where they face persecution, torture, or other serious violations of fundamental rights (UNHCR, 2007).

The prohibition of indirect refoulement also reinforces the need for individualised assessment and effective procedural safeguards. Authorities should examine the circumstances of the person concerned, the protection framework of the receiving state, and the likelihood of onward removal before making a transfer decision. This is especially significant for refugees and asylum seekers fleeing armed conflict, where the absence of functioning institutions, safe reception arrangements, or effective asylum procedures in the receiving state may make onward refoulement a foreseeable risk. The protection afforded by Article 33 of the 1951 Refugee Convention must therefore be understood as requiring more than avoiding direct physical return. It also requires states to take reasonable steps to ensure that their actions do not place refugees or asylum seekers within a foreseeable chain leading to persecution, torture, or other serious harm (United Nations, 1951; UNHCR, 2007). In Uganda and South Africa, this principle is particularly relevant to the management of mixed migration, cross-border movement, and transfer or removal decisions. Both states have obligations under international and regional refugee law to ensure that measures regulating entry, transfer, removal, or return do not circumvent the substantive protection against refoulement.

8. Conclusion

The principle of non-refoulement remains a central safeguard of international refugee protection. Established under Article 33 of the 1951 Refugee Convention and reinforced by the 1967 Protocol, the 1969 OAU Convention, and international human rights law, it prohibits the return of individuals to situations where they face persecution, torture, or other serious harm. This study has shown that the main challenge lies not in the absence of legal protection, but in the gap between legal standards and their implementation. Border controls, national security measures, mass displacement, delays in asylum procedures, detention, deportation, and third-country transfers may expose refugees to direct or indirect refoulement where adequate safeguards are lacking.

The comparison between Uganda and South Africa demonstrates this problem in different contexts. Uganda's open refugee policy has enabled significant protection but has placed pressure on resources and asylum institutions. South Africa's mixed-migration context creates tensions between immigration enforcement and access to asylum. The study concludes that non-refoulement must be protected not only in law but also in practice. Uganda and South Africa should strengthen asylum procedures, reduce administrative delays, improve border screening, safeguard access to remedies, and prevent third-country transfers from resulting in onward refoulement. Regional and international cooperation is also essential to support states with significant refugee-protection responsibilities.

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