



Refugee Law Project

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Land and Ethnicity in Nakivale Refugee Settlement: The Need to Resolve Competing Claims and Address Tensions

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Background

Following on from the Refugee Law Project (RLP) Working Paper No. 8, [*Land Problems in Nakivale Settlement and the Implications for Refugee Protection*](#),¹ the RLP returned to Nakivale settlement in September 2004 to investigate news reports of land grabbing and the repatriation of Rwandan refugees.² A subsequent brief will follow regarding repatriation, while this document focuses on land grabbing and ownership. Based on interviews with settlement and district officials, refugees, and Ugandans living in the area, the RLP has established the following:

+ Competing interests in land ownership identified by previous research have not been reconciled or resolved. The potential for violence between Ugandans and refugees, as well as amongst refugees themselves, has heightened considerably.

The recent RLP research team witnessed groups ranging from 20 to 100 persons armed with hoes and pangas setting land demarcation stones within Nakivale settlement proper. Many of those holding land titles in the settlement are Tutsi; whereas the majority of recently arrived refugees are Hutu. Research presented below will suggest that the potential for violence also now exists within the refugee community itself. As one Mbarara District official put it: "These Rwandese are coming to settle their differences of Rwanda here in Uganda."³

+ Elected leaders and government officials have begun grabbing land within the settlement.

This situation does not reflect isolated acts of a few individuals, but rather explicitly orchestrated actions. The RLP was informed of elected leaders and government officials who have also claimed considerable amount of land in Nakivale.⁴ It was also reported

¹ See *Land Problems in Nakivale Settlement and the Implications for Refugee Protection*, Refugee Law Project Working Paper Number 8, May 2003, online at:

<http://www.refugeelawproject.org/working%20papers/RLP%20WP8.pdf>

² See, for example, "Refugees storm Mbarara," *The New Vision*, Pg. 8, 17 September 2004; "UNHCR to close Rwandan camps," *The New Vision*, Pg. 3, 8 September 2004; "Police Stop Encroachers of Govt Land," *The Monitor*, Pg. 6, 29 September 2004.

³ Interview with Mbarara District Official, 07 September 2004.

⁴ The Minister of Disaster Management and Refugees, Moses Ali, has also expressed concern regarding the processing of land titles to elected leaders in Nakivale Settlement. See letter from Moses Ali to Chairman of District Land Board, Mbarara District, on file with the Refugee Law Project.

that the Camp Commandant of Nakivale is being charged with trespassing—as an individual and not in his official capacity—for assigning Hutu refugees the same land where a Tutsi claims to have acquired a land title.⁵ Overt threats made against refugees were also recorded.

+ *Local Ugandans, as well as Rwandan Tutsis with connections in local government, have increasingly begun encroaching on settlement land.*

Local Ugandans as well as Rwandan Tutsis are being incited to grab land by some local government officials and elected leaders. As Rwandan Tutsis are largely represented in the local council structure (LC I –III), they have claimed land in the settlement with ease. As a result, Ugandan nationals living in hillsides around Nakivale have become increasingly frustrated. Encroachment on settlement land has thus continued; one Ugandan district official encouraged other Ugandans to make claims in order to save land for the nation.⁶

The GoU has taken mainly administrative steps in an attempt to resolve this crisis. In addition, recently police in Mbarara have arrested Ugandans for demarcating government land in Nakivale.⁷ However, whether or not Nakivale refugee settlement is actually government land remains under dispute. In fact, according to the Ministry of Water, Lands, and Environment, only two refugee settlements in all of Uganda have been surveyed.⁸ In addition, and as required by Ugandan law, when the government wishes to acquire land for public use, a number of steps must be taken before title of land can be transferred to the government. In the case of Nakivale, none of these steps have been taken. These steps are found in the Land Acquisition Act, and are detailed below.

This situation calls for immediate and careful mediation, which includes active participation from all groups involved and allows for grievances to be voiced. Without conscious efforts to find mutually agreeable solutions to the conflict and rebuild positive relations between nationals and refugees, the potential for conflict will remain.

In light of our findings the RLP recommends the following:

- + All parties involved should promote and respect the rule of law in resolving land disputes. RLP Working Paper No. 8 established that it is unclear if the land in Nakivale was ever legally acquired by the Ugandan Government (GoU) as required by the Land Acquisition Act and because of this, the Government may have no legal claim to the land. Simply nullifying land claims within the settlement will not address competing claims and may result in legal challenges.

⁵ Interviews with District Security Officials, 28 September 2004.

⁶ Ugandan District Officials, 27 September 2004.

⁷ See “Police hold eight over Nakivale Land,” *The Monitor*, Pg. 8, 11 October 2004 and “8 Arrested,” *The New Vision*, Pg. 3, 11 October 2004.

⁸ “Records in the National Survey and Mapping Centre Entebbe indicate that only two (2) Refugee Settlements, namely, Kyangwali and Kyaka 1 have been surveyed.” Letter from Minister of State for Lands/Holding Portfolio of Minister of Water, Lands, and Environment to Minister of State for Disaster Preparedness and Refugees, Office of the Prime Minister, 10 March 2003. On file with the Refugee Law Project.

In addition, as there is a very real potential for violence, nullifying land claims may escalate tensions. A process for dealing with the conflicting claims must immediately begin within the framework of the laws governing land in Uganda, including the Land Acquisition Act, the 1998 Land Act, and the 1995 Constitution of the Republic of Uganda.

- + When the GoU wishes to use public land for refugee settlements in the future, it should meticulously follow the necessary legal steps found in the Land Acquisition Act. In the case of Nakivale, none of the steps required for acquisition have yet to be taken. As a matter of urgency, the GoU should immediately begin to take these steps in an attempt to legally acquire land in Nakivale as well as the other refugee settlements throughout Uganda.
- + Government officials and elected leaders should avoid making inflammatory statements. Instead of exacerbating tensions, all parties involved should use language that will eventually yield reconciliation. Any attempts to resolve the conflict through unilateral or arbitrary measures will only serve to polarize the situation and increase the risk of violence.
- + OPM, with support from UNHCR, should immediately survey and demarcate the original boundaries of Nakivale Settlement. However, in accordance with the land laws in Uganda, those claiming title or a right to the land must be accorded due legal process. If their claims are legitimate, the Government must offer fair and adequate compensation for the loss of their claim.
- + A functional land distribution process should be developed and implemented in Nakivale settlement taking into account the interests of both refugees and nationals. This process, as well as any future initiatives, should allow for greater involvement of refugees, nationals, and the district land board in generating resolutions.
- + The government should re-visit the rural settlement policy in order to allow refugees to choose other options as a means to reduce pressure on land in rural areas.

UNRESOLVED LAND CLAIMS

Ownership Under Dispute

Though most refugee settlements in Uganda remain un-surveyed, in a letter to the Minister of State for Disaster Preparedness and Refugees, the Ministry of Water, Lands, and Environment advised that all public land owned by government departments and ministries before the 1995 Constitution should remain government land according to Article 237 (4) of the Constitution.⁹ The Ministry of Water, Lands, and Environment has

⁹ Ibid.

also cited the Land Amendment Bill of 2002 that provides for statutory titles to government departments in their utilization of former public land.¹⁰ The legal interpretation of the Ministry has one fundamental flaw – The Land Acquisition Act has been completely ignored. The Ministry assumes that ownership of land is automatically transferred to the government by provisions of the 1995 Constitution, the 1998 Land Act, and the Land Amendment Bill of 2002. This assumption disregards the legal procedures set out in the Land Acquisition Act that must be followed if the government acquires land for public use. Moreover, bills are not law and have no effect on the current dispute.

Ownership of land implies legal title or interest. The government can only acquire land titles for refugee settlements after following meticulously the procedures set out in the Land Acquisitions Act.¹¹ This act firstly requires that land be identified and surveyed.¹² As a result of these exercises, the Act then requires that the government pay compensation to any person who suffered damage from the surveying process.¹³ Section 3 requires that once the requirements in the previous sections are satisfied (identification of land, surveying, and compensation), that a statutory declaration be made specifying the location of the land, the area, and a plan for the land.¹⁴ Once this declaration has been made, Section 4 states that the land must be demarcated.¹⁵ After demarcation, Section 5 maintains that an assessment officer¹⁶ inform the public by exhibiting a gazette in convenient places on or near the land which states that an impending claim may be made. The gazette must also ask for any competing claims or interests to be made to the assessment officer.¹⁷ Section 6 allows for a public inquiry to be held by the assessment officer in an effort to ensure that compensation is paid, and that competing claims or interests are addressed.¹⁸ Once all of the above-mentioned procedural steps have been met, Section 7 allows the government to take legal possession of the land. Specifically, the section requires the assessment officer to forward a copy of the declaration accompanied by a signed certificate to the register of titles. Upon receipt of the declaration, the register of titles must ensure compliancy with the Registration of Titles Act. And finally, if all of the requirements have been met, the register of titles enters the declaration into the register book, and land ownership transfers to the government. As noted above, none of these steps have been taken for Nakivale refugee settlement. As a result, the actual size of Nakivale settlement is under dispute, and competing claims have yet to be resolved.

¹⁰ Ibid.

¹¹ Land Acquisition Act, *Preamble*, Commencement 2 July 1965.

¹² Ibid, Section 2.

¹³ Ibid.

¹⁴ Ibid, Section 3.

¹⁵ Section 4 of the Land Acquisition Act states: “the assessment officer shall cause the land to be marked out and measured.”

¹⁶ Section 1(b) of the Land Acquisition Act states that: “assessment officer’ means a public officer or other person appointed by the Minister to be an assessment officer for the purposes of this Act, either generally or in a particular case.”

¹⁷ Ibid, Section 5.

¹⁸ Ibid, Section 6.

Size Under Dispute

The actual size of Nakivale settlement is currently contested. The Office of the Prime Minister (OPM) maintains the size of Nakivale settlement to be 86 square miles.¹⁹ In February 2000, a District Survey Task Force was established and was headed by Ngoma Ngime, who was then the Resident District Commissioner (RDC) of Mbarara.²⁰ This Task Force, along with a “nationals and Local Task Force,” proposed the size of Nakivale be 30 square miles.²¹ It is alleged that the findings of the proposal were not formerly reflected in a report made by the Resident District Commissioner. The final report stated the size of Nakivale to be 68 square miles, whereas mysteriously, both task forces had recommended the size of Nakivale to be 30 square miles.²² However, this alteration was rejected by the Bukanga County Council.²³ The task forces’ proposal, in effect, would have reduced settlement land from 86 to 30 square miles. Not surprisingly, it was members of the task forces themselves who were grabbing land. The proposal was formerly made in 2002 and was rejected.²⁴ As formal boundaries and demarcations have not been established, even those grabbing land cannot be sure if the land they claim is inside or outside the settlement.

Rwandan Claims

In the area surrounding Nakivale there are large numbers of Rwandan Tutsi refugees who had repatriated in the 1990s, but returned shortly thereafter. There were also a number of Tutsis who had never left and instead integrated directly into the local community. Many now claim a Ugandan identity,²⁵ pay graduated tax²⁶ and serve on Local Councils.²⁷ Some are said to have family members in both Rwanda and Uganda and regularly travel from one country to the other. Others had large numbers of cattle and, as they were unable to find suitable amounts of land in Rwanda, returned to the Nakivale area. Using contacts in government and military,²⁸ these former refugees have been able to gain

¹⁹ Interview, Mbarara District Official, 28 September 2004. Also, interview, OPM Mbarara, 28 September 2004.

²⁰ “The duty of the Task Force was setting out the boundary between Nakivale/Orukinga settlements and the land of nationals,” *Report by the Survey Task Force on the Nakivale/Orukinga Settlements*, Pg. 2, 2000. On file with the Refugee Law Project.

²¹ *Ibid*, Pg. 14.

²² Interview, Mbarara District Official, 14 October 2004.

²³ “The County Council categorically rejected Ngoma Ngime unilateral report to the Minister and resolved to abide by both resolutions of the Task Force... The boundary of Nakivale land settlement... covers an area of approximately 30 square miles,” Extraordinary Bukanga County Council Meeting Notes, Mbarara District Administration, 5 February 2002. On file with the Refugee Law Project.

²⁴ Interview, Mbarara District Official, 27 September 2004.

²⁵ The Nakivale Police Post explained that often those who claim land formerly identified themselves as refugees, and now are mobilizing other cattle keepers to attain land titles, and most importantly, claim to be Ugandan, interview, In-Charge, Nakivale Police Post, 28 September 2004.

²⁶ Interview, Ugandan nationals, 30 September 2004.

²⁷ One Ugandan national reported: “The composition of our leadership here is that most of them are land grabbers, and so this makes the matter very complex to solve. (A local councilor) is a land grabber and he is also said to be a Tutsi of Rwanda origin,” interview, Ugandan national, 27 September 2004.

²⁸ Interview, government officials, 29 September 2004. Also, interview, Ugandan, Kashwina Village, Nakivale Settlement, 30 September 2004.

access to parcels of land, including parcels of 100-1000 hectares, and have applied for leases ranging from 5-49 years.²⁹ The Local Councils have to verify and endorse applications for leases. In fact, the Land Ownership Verification Form even asks if the proposed lease will include land that is under dispute.³⁰ Thus it is unclear why leases are being granted when the land is contested, especially since the verification/application form explicitly questions if the land is under dispute.³¹ Some members of local councils, who are refugees themselves, are reported to hold land titles.³² In addition, the land office apparently makes little effort to verify the claims: “the land office don’t go to the field, but we give you an application form stating a number of issues.... The commissioner signs the deed plan. With the deed plan in your hand you can do anything with your land.”³³ It was also reported that a civil case involving trespassing has been brought against the Camp Commandant—for assigning refugees the same land where a Tutsi claims to have acquired a land title.³⁴

The research team observed in the Mbarara OPM office that there are 38 lease titles on settlement land; most of these titles were mainly issued between 1998 and 2004.³⁵ The leases have been obtained from the Mbarara District Land board. However, it should not be assumed that all the leaseholders were former refugees.³⁶ It was stated that individual government officials and some of those working in the Land Office also held certificates for land within the settlement, one government official reported, “Even the registrar of land himself has land in Nakivale.”³⁷

Ugandan Claims

For some time, Ugandan nationals who live in hillsides around Nakivale were annoyed that long time Tutsi refugees were seen to be acquiring land in what nationals perceived to be their land. “Most of the Tutsi are well positioned and well placed in government and so this makes it difficult to settle the land problems.”³⁸ As a result, nationals began openly claiming land within the settlement to prevent “foreigners” from acquiring additional holdings. Nationals usually claimed their rights to land either through ancestral rights or via customary land use. Many of them claimed to have *busuulu* tickets (a record of payment)³⁹ from landlords, or identified ancestral burial ground in the area.

²⁹ Interview, District Officials and Mbarara Land Board Office, 28 September 2004.

³⁰ Land Ownership Verification Form, First Schedule, Mbarara District, the Republic of Uganda, on file with the Refugee Law Project.

³¹ See Questions 8-10, Land Ownership Verification Form, First Schedule, Mbarara District, the Republic of Uganda, on file with the Refugee Law Project.

³² Interview with male #2, Kashwina, 30 September 2004, See also Monitor Newspaper, 29 September 2004, page 6.

³³ Interview, Mbarara District Land Board Office Representative, 27 September 2004.

³⁴ Interview, Camp Commandant, 28 September 2004. This case has been filed in the Mbarara District Land Tribunal.

³⁵ Interview, Mbarara District Official, 27 September 2004.

³⁶ One District Official estimated that the majority of land titles belonged to refugees, interview, District Officials, 1 October 2004.

³⁷ Interview, Mbarara District Official, 27 September 2004.

³⁹ Interviews, male Ugandans, Kashwina cell, Nakivale Settlement, 30 September 2004.

The RLP was neither able to inspect the *busuulu* tickets; nor able to confirm burial sites. However, in what may have exacerbated tensions, it was alleged that on 23 September 2004, a local councillor announced in a public meeting that he held three land titles within the boundaries of the settlement. He also encouraged other Ugandans to make claims in order to save the land for the nation.⁴⁰

The current situation clearly does not reflect isolated acts of a few individuals, but a carefully orchestrated mass land grab. The RLP was informed that on 23 September 2004, “close to 400 Ugandans went to the settlement and started distributing land to themselves. They have instituted their own authorities to allocate the land because of the overwhelming number of land titles.”⁴¹ The RLP itself witnessed groups ranging in size from 20 to 100 persons armed with hoes and pangas setting claims to parcels of settlement land using demarcation stones. A district official attributed this to two local persons who were organizing large numbers of nationals to “grab land in Nakivale.”⁴² The situation has caused Ugandans who live in the area to voice opinions of alienation, xenophobia and bigotry towards those refugees who live in the settlement. As evidence, the RLP recorded numerous overt threats made by Ugandans against refugees.⁴³ Tensions are building: “Our relationship with the Tutsis, as of now, is not good at all. We cannot even pass through their land to go to the well and fetch water.”⁴⁴ A refugee also reported being told that rather than taking a human being to court, those claiming land inside the settlement would “rather contend with a corpse.”⁴⁵ Government officials also expressed fear that the socio-political conflicts in Rwanda may erupt in Nakivale, “These Rwandese are coming to settle their differences of Rwanda here in Uganda.”⁴⁶

RESOLVING THE LAND CRISIS

Competing interests over land in Nakivale have resulted in serious tensions and animosities developing between nationals and refugees, and amongst groups of refugees themselves. To date, the GoU has responded to this crisis mainly by taking administrative measures.⁴⁷ Recently, police in Mbarara have also arrested Ugandans for demarcating government land in Nakivale.⁴⁸ While the arrests show that the GoU is not ignoring this situation, the arrests also increase the need for a formal demarcation process to begin as

⁴⁰ Interviews, government and district officials, 27 September 2004.

⁴¹ Interview, Government official, 27 September 2004.

⁴² Interview, Mbarara District official, 27-9-2004

⁴³ One UPDF military official who owns land in Nakivale threatened to shoot anyone who tempers with his land, interview, Government Official, 27 September 2004.

⁴⁴ Interview, Ugandan national, Kashwina cell, Nakivale Settlement, 30 September 2004.

⁴⁵ Interview, refugee in Nakivale settlement.

⁴⁶ Interview, Mbarara District official, 27 September 2004.

⁴⁷ In 2000, a Survey Task Force on the Nakivale/Oruchinga, headed by the Resident District Commissioner and initiated by OPM investigated claims of land ownership by nationals living within the settlement and ascertained the boundaries of the physical settlement land. The only report by the Task Force obtained by the RLP was a one-page document stating that the conflict was fuelled by ambiguous boundaries of settlement land, and the proposed solution was a clear demarcation of settlement land and subsequent eviction of nationals living within the settlement.

⁴⁸ See “Police hold eight over Nakivale Land,” *The Monitor*, Pg. 8, 11 October 2004 and “8 Arrested,” *The New Vision*, Pg. 3, 11 October 2004.

soon as possible. Simple solutions, such as arrests and evictions, narrow the problem to one of demarcation of settlement land. This response is likely to exacerbate tensions and increase xenophobia towards refugees. The situation calls for careful mediation, which includes active participation from all groups involved and allows for all grievances to be aired and respected. Conscious efforts must be made to find mutually agreeable solutions to the conflict and rebuild positive relations.