



Refugee Law Project



Update: Repatriation of Rwandese Refugees from Uganda Refugee Law Project March 2005

Following on from previous Refugee Law Project (RLP) updates¹ on the repatriation process for Rwandese refugees in Nakivale refugee settlement, in September 2004 the RLP returned to Nakivale to investigate the ongoing repatriation process for Rwandese refugees. As of February 2005, approximately 2300 Rwandese refugees have been repatriated, and 300 Rwandese refugees are registered for repatriation.² Additionally, approximately 3-400 Rwandese returnees have returned to Uganda after being repatriated.³ Based on interviews with settlement and district officials, refugees, UNHCR representatives, and NGOs, the RLP below presents: A) a summary of our key findings and recommendations and B) further analysis of the main issues.

1. Key Findings:

• **In principle, the repatriation process for Rwandese refugees remains voluntary, despite disturbing statements made by some Ugandan government officials.** Rwandese government officials have met the Rwandese community in Nakivale to talk about the repatriation process and conditions in Rwanda. In addition, Ugandan officials have also informed Rwandese refugees in Nakivale about the situation in Rwanda. Rwandese refugees themselves were also taken to Rwanda to study the repatriation process, and their observations were shared with the wider refugee community in Nakivale. The RLP views these developments as positive steps towards promoting the voluntary nature of repatriation. However, recent statements made by Office of the Prime Minister (OPM) officials regarding the status of Rwandese refugees are cause for concern. In November 2004, Gen. Moses Ali, First Deputy Prime Minister and Minister for Disaster Preparedness and Refugees, visited Nakivale and told a group of Rwandese refugees: “You came here when you had problems at home and we granted you asylum. Today your country is very peaceful, why don’t you want to go home?”⁴ In addition, Christine Aporu, State Minister for Disaster Preparedness and Refugees, has told Rwandese refugees: “Pack your bags and go home. Rwanda is ready to receive you.”⁵

• **Despite the voluntary nature of the repatriation process, many Rwandese who have been repatriated have returned to Uganda.** Upon returning to Rwanda, many claim that men especially are forced to join “night patrols,” or that youth are being mobilized at night and then disappear and are never heard from again. In addition, due to ethnic differences or involvement in prior Rwandese government institutions, many

¹ See <http://www.refugeelawproject.org/current-issues.htm>, “Update on the Repatriation of Rwandese Refugees in Uganda.”

² Interview, UNHCR Senior Protection Officer, Kampala, 02 February 2004.

³ *Ibid.*

⁴ “Ali Cautions refugees,” *The New Vision*, Pg. 7, 10 November 2004.

⁵ “Rwanda nationals whose refugee status cease dare to be deported,” *The New Vision*, 18 December 2004.

returnees are facing difficulty reclaiming their land and property. This process in itself has led to arrests and disappearances. Rwandese returnees living in the Kibati zone (see below) also stated that when they repatriated to Rwanda, they lived in camps near the border where out of thirty men taken for “night patrols,” only ten would return.⁶

• **Rwandese refugees are increasingly reluctant to return to Rwanda. As a result, the numbers of Rwandese refugees registering for return are extremely low. New Rwandese refugees also continue to arrive in Uganda seeking asylum.** Rwandese living in Nakivale hear the experiences of those who have repatriated to Rwanda and, understandably so, have become progressively more wary of returning themselves. Returnees report that upon returning to Rwanda, they are placed in ‘temporary’ camp-like settings while they wait to gain access to their land. In essence, our findings indicate that refugees leave Uganda to become internally-displaced within Rwanda. Citing claims related to ethnic persecution and harassment, our findings also indicated that Hutus are especially reluctant to return. Newly arrived asylum-seekers are placed in Kibati zone, and as of September 2004, some of these asylum-seekers reported a lack of access to a refugee status determination process. Given these claims, further research in Rwanda is needed.

• **Rwandese refugees from Tanzania, as well as those who have been repatriated from Uganda and since returned, are being placed in ‘Kibati,’ a temporary location within Nakivale settlement. These refugees have not been registered, and are barred from receiving any material assistance.** It was reported to the RLP that if a refugee identifies him or herself as being from Kibati medical care is denied. Drinking water within Kibati is found in puddles or gutters. Many refugees living in Kibati are in fact aware that, as they are not ‘budgeted for’ by UNHCR or the Ugandan Red Cross (UNHCR’s implementing partner in Nakivale), they are ineligible for assistance. Due to this situation, many refugees have fled Kibati for other zones within Nakivale or have gone to Kampala and as far away as Malawi to seek asylum there.⁷ For UNHCR and the Ugandan Red Cross to deny assistance to people who need it simply because they are not registered or budgeted for is a negation from basic ideals of humanitarianism.

• **There is confusion between Rwandese refugees who arrived in the 1960s and those who arrived in 1994.** Refugees who arrived in 1994 are being encouraged to return, while those who arrived in the 1960s seem to be ignored in the current repatriation program. The presence of new Rwandese asylum-seekers has also added to this confusion. The RLP has previously noted that those Rwandese refugees who arrived in the 1960s have been able to secure positions as local councillors (LC) and attain land, which has led to increased animosity and tension between the local Ugandan population and refugees living in Nakivale.⁸

Given the low numbers of refugees willing to return to Rwanda, and the fact that those who have been repatriated to Rwanda are returning to Uganda, it is imperative that this

⁶ Interview, returnee, Kibati Zone, Nakivale Settlement, 29 September 2004.

⁷ Interview, OPM Official, Nakivale Settlement, 28 September 2004.

⁸ See RLP Update: “Land and Ethnicity in Nakivale Refugee Settlement: The Need To Resolve Competing Claims and Address Tensions,” <http://www.refugeelawproject.org/current-issues/nakivale%20update.pdf>.

situation be re-examined, especially in light of Rwanda's ability to absorb returnees in safety and dignity.

In light of the findings above, the RLP⁹ suggests the following:

1.1 Recommendations:

• **While the current repatriation exercise appears to have been voluntary, exerting pressure using the media or by other means undermines the voluntariness of the process. Therefore responsible officials for refugee affairs in Uganda should remember Uganda's obligations enshrined in the 1951 Convention and in other related human rights instruments, and avoid any acts or statements that would lead to any involuntary or forced return of refugees to Rwanda. Actions or statements that result in forcible return would constitute a breach of the principle of voluntary return and may constitute refoulement.**¹⁰

• **The repatriation process should remain fully voluntary, as required by international law.** Article V of the OAU Convention stipulates the "essentially voluntary character of repatriation," should be maintained and that return arrangements should be safe. In addition, numerous ExCom Conclusions note that repatriation should be voluntary and take place under safe and dignified circumstances.¹¹ UNHCR should also observe the principles it has made to governments on the subject of repatriation in its Handbook, which state that repatriating refugees should return under conditions of safety (including legal and physical security, and material security) and dignity.¹² Without a declaration of cessation of refugee status, involuntary repatriation, or forced return, amounts to refoulement.¹³ Creating intolerable conditions or using language that suggests to refugees that they are no longer wanted undermines the voluntary nature of repatriation. As part of information provided about the voluntary repatriation program, it

⁹ Note that in April 2004, Human Rights First published "A Decade of Unrest, Unrecognized Refugees in Uganda and the Future of Refugee Protection in the Great Lakes," available at www.humanrightsfirst.org. This report focuses primarily on the Kibati group, and makes many helpful suggestions as how to best address the protection and assistance needs of the Kibati group. In addition, the report also provides an in-depth background which explains the origins of the Kibati group, or those located within the Kibati zone.

¹⁰ Article 33 of the 1951 Convention states: "No Contracting State shall expel or return ("refoule") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion," *The 1951 Convention Relating to the Status of Refugees*, G.A. Resolution 429 (V) of 14 December 1950 [online], http://www.unhcr.ch/html/menu3/b/o_c_ref.htm (retrieved Jan 5, 2005). In addition, UNHCR's ExCom has affirmed the vital importance of non-refoulement: "The fundamental humanitarian principle of non-refoulement has found expression in various international instruments adopted at the universal and regional levels and is generally accepted by States," ExCom Conclusion No. 6 (XXVIII) – 1997).

¹¹ See ExCom Conclusion No. 18 (XXXI), No. 40 (XXXVI), No. 68 (XLIII), and No. 79 (XLV).

¹² *Handbook Voluntary Repatriation: International Protection*, UNHCR, Geneva, 1996. Section 2.4.

¹³ As a signatory to the 1951 Convention, the Ugandan government may invoke the cessation clause of the 1951 and OAU Conventions. Though to do this to a group of nationality specific refugees (i.e. Rwandese), the burden rests on Uganda to evidence the fact that circumstances which led to initial flight and granting of refugee status have ceased to exist. Research findings in this report, as well as in many others, would suggest that the circumstances which led to initial flight for Rwandese who fled in 1994 still remain.

should be made clear that those refugees who wish to remain in Uganda are legally allowed to do so.¹⁴

- **Newly arrived asylum-seekers from Rwanda should have their asylum claims assessed immediately by OPM with support from UNHCR.** Those located in the Kibati Zone should also have their claims assessed in an effort to identify their protection needs.¹⁵ ExCom Conclusion No. 12 reminds Contracting States of the internationality of refugee status. The Conclusion states that “ a decision by a Contracting State not to recognize refugee status does not preclude another Contracting State from examining a new request for refugee status made by the person concerned.”¹⁶ Unless there are reasonable grounds to believe that they should be excluded from international protection under Article 1F in the 1951 Convention and Article X in the OAU Convention, international refugee law imposes that Uganda offer protection to the refugees in question.

- **As a matter of urgency, UNHCR should extend humanitarian assistance to those located in the Kibati zone, as provided for in ExCom Conclusion No. 58.** ExCom Conclusion No. 58 requires Uganda and UNHCR to ensure “humane treatment for refugees and asylum-seekers who, because of the uncertain situation in which they find themselves in, feel impelled to move from one country to another in an irregular manner.”¹⁷

- **Although voluntary repatriation is the favoured durable solution, OPM and UNHCR should re-visit local integration and resettlement as viable options for Rwandese refugees.** The fact that many refugees may want to voluntarily repatriate should not hinder a comprehensive durable solution plan that includes both resettlement and local integration.

2. Obstacles to Return:

While in Nakivale, the RLP had the opportunity to interview those refugees who had repatriated to Rwanda and have returned to Uganda. Citing difficulty re-accessing land and property, as well as reporting rights abuses such as disappearances and arbitrary arrests, these refugees decided to return to life in exile in Uganda. Conflicts around land and property rights, exacerbated by ethnic tension between Hutu and Tutsi, were also reported as reasons for return to Uganda.

¹⁴ The UNHCR Handbook on Voluntary Repatriation also notes that “voluntariness...means that he or she should not be prevented from returning [to the country of refuge], for example by dissemination of wrong information or false promises of continued assistance,” Handbook *Voluntary Repatriation: International Protection*, UNHCR, Geneva, 1996. Section 2.3.

¹⁵ ExCom Conclusion No. 91, Clause (G), urges states to : “to take all necessary measures to register and document refugees and asylum-seekers on their territory as quickly as possible upon their arrival, bearing in mind the resources available, and where appropriate to seek the support and co-operation of UNHCR.”

¹⁶ ExCom Conclusion No. 12 (XXIX) – 1978, *Extraterritorial Effect of the Determination of Refugee Status*.

¹⁷ ExCom Conclusion No. 58 (XL) – 1989, *Irregular Movement of Refugees and Asylum-Seekers from a Country in Which They have Had Already Found Protection*.

Rwandese refugee representatives from Nakivale recently visited Rwanda to monitor the return process, and found that returnees remained in transit or temporary camps near the border for up to three months.¹⁸ One returnee in the Kibati zone told RLP researchers that after he crossed back into Rwanda, he remained in a camp for seven months.¹⁹ Reports of young men disappearing, or being taken for night patrol from these camps were also registered. Thus, Rwandese refugees from Uganda are returning to become internally displaced persons within Rwanda.

2.1 Disappearances, Detention, and other abuses

The most common abuse reported by returnees, refugees, and settlement officials are “night patrols,” where young men are recruited and taken at night to patrol local areas and then disappear. One returnee told the RLP that “You go [return to Rwanda] for two to three weeks then you realize that out of twenty men fifteen men are missing. They have been taken in the night and so the remaining five men decided to come back to Uganda.”²⁰ OPM officials added that youth especially are being mobilized at night upon repatriation to Rwanda, and this is one reason why many have returned to Uganda.²¹ One informant noted that those mobilized for night patrols are often feared dead, and that as it is able-bodied men who are being mobilized, there is an implication that Rwanda may soon come under attack.²² As it is usually men who are the target of such abuse, women and children are being left behind in Rwanda while men return to Uganda or flee elsewhere.²³

In addition, reports have noted that Rwandese refugee returnees from Burundi, the Democratic Republic of the Congo (DRC) and Uganda are being detained and remobilised to assist Rwandese forces operating in the DRC.²⁴ The fact that forcible recruitment is already happening to some Rwandese who have returned from various countries opens the very real possibility that this practice may widen. This issue is grave and requires further research and attention.

2.2 Ethnic Differences

OPM officials stated that returnees are especially vulnerable to disappearance or arrest if the returnee had any association with the pre-1994 Rwandese government. Rwandese refugees also stated that if they returned to Rwanda, they would be especially vulnerable to abuse if they were Hutu,²⁵ although these claims could not be independently verified. One refugee stated: “Only one tribe has returned to Rwanda successfully.”²⁶ Another

¹⁸ Interview, Uganda Red Cross, Mbarara, 27 September 2004.

¹⁹ Interview, returnee, Kibati zone, 29 September 2004.

²⁰ Interview, Rwandese returnee/refugees, Nakivale settlement, 29 September 2004.

²¹ Interviews, OPM Officials, Nakivale settlement and Mbarara, 28 September 2004.

²² Interview, Refugee Desk Officer, Mbarara, 01 October 2004.

²³ Interview, Rwandese returnee, Kibati zone, Nakivale settlement.

²⁴ See *Protecting their rights: Rwandese Refugees in the Great Lakes Region*, Amnesty International, available at <http://web.amnesty.org/library/Index/ENGAFR470162004?open&of=ENG-2F4>, released 15 December 2004. Also see “DRC-Uganda: Kampala denies arms embargo violation charge in UN report,” IRIN, 1 February 2005.

²⁵ Interviews with both refugees and OPM officials, Nakivale settlement, 29 September 2004.

²⁶ Interview, refugee, Kigali village, Nakivale Settlement, 29 September 2004.

Hutu returnee informed the RLP that upon his return to Rwanda, he was told by Rwandese authorities that “we [Hutu’s] were sleeping with under aged children in order to reproduce faster and wage war against the Tutsi government of Rwanda...they wanted us to be guards.”²⁷

2.3 Land Issues

Refugees reported difficulty re-claiming their property and land. Many refugees noted that there was just no place to stay in Rwanda as the land has been taken by those who remained,²⁸ or that land had already been given out.²⁹ The process of reclaiming land for returnees is made difficult by claims that local leaders are unwilling or unable to assist returnees in their land claims.³⁰ One refugee noted: “When you go to Rwanda, you get that your house has been taken and there is nothing you can do.”³¹ Another refugee maintained, “if you get a ‘major’ on the land, you cannot order him out.”³² District and OPM officials in Nakivale as well as in Mbarara also noted the scarcity of land in Rwanda as an impediment to refugees registering for repatriation.³³

Refugees also raised concerns related to incidences of violence upon their attempts to reclaim their land. One returnee in Kibati Zone told the RLP that as a returnee, you are allowed to claim your land or house and occupy it for two weeks. After this time “they will knock at your door and you will be taken. Once you are taken, usually handcuffed, [you will] never [be] seen again.”³⁴ Another returnee in Kibati zone noted that once you share your property with the occupant you risk being killed.³⁵ While these claims could not be independently verified, they again present the need for further research in Rwanda.

3. The Kibati Group

Those living in the Kibati zone, located within Nakivale settlement have become known as the “Kibati group.” The group consists of Rwandese and Burundians who previously held refugee status in Tanzania or Burundi and are now seeking asylum in Uganda. The RLP also found Burundians and Rwandese asylum-seekers that had come directly from their countries of origin.³⁶ Although many of those refugees who had passed through Tanzania were initially granted refugee status by Uganda, in May 2003 the number of Rwandese entering Uganda through Tanzania began to rise. This was most likely due to

²⁷ Interview, Kibati Zone, returnee, 29 September 2004.

²⁸ Interview, Rwandese refugee, Kigali Village, Nakivale settlement, 28 September 2004.

²⁹ Interview, Rwandese returnee, Nakivale settlement, 29 September 2004.

³⁰ According to one informant, the process of re-claiming land and property in Rwanda involves former refugees sharing property with those that they find occupying land, Interview, NGO Representative, 29 September 2004. This process is in need of further objective research in Rwanda.

³¹ Interview, Rwandese returnee, Kibati Zone, 29 September 2004.

³² Interview, Rwandese refugee, Kigali Village, Nakivale settlement, 29 September 2004.

³³ Interviews with District and OPM Officials, 27 September 2004.

³⁴ Interview, Rwandese returnee, Kibati Zone, 29 September 2004.

³⁵ Interview, Rwandese returnee, Kibati Zone, 29 September 2004.

³⁶ Research conducted by Human Rights First has identified a third category of “protection seekers” located in Kibati: Rwandan and Burundian nationals who spent time in Tanzania without identifying themselves to the relevant authorities, *A Decade of Unrest: Unrecognized Rwandan Refugees in Uganda and the Future of Refugee Protection in the Great Lakes*, Human Rights First, New York, 2004, Pg 40.

a fear of forced repatriation from Tanzania to Rwanda.³⁷ In response to the growing numbers, OPM officials discontinued status determinations for these refugees, leaving their status uncertain.³⁸ Interestingly, UNHCR in Mbarara informed the RLP that although those located in Kibati will not be registered as refugees, they will be able to register for repatriation.³⁹

The humanitarian situation in Kibati remains precarious.⁴⁰ Although some refugees in Kibati report receiving assistance, according to the Ugandan Red Cross (UNHCR's implementing partner in Nakivale), as Kibati has not been officially recognised or considered by UNHCR, the agency has no provisions for the refugees who reside there.⁴¹ Access to cultivating land for those located within Kibati has also been denied.⁴² This policy, whether written or informal, is being affecting Kibati's residents acutely. One Rwandese returnee living in Kibati told the RLP, "*one can not be given medicine as long as you go to the health centre and mention that you are from Kibati* (emphasis added)."⁴³ Sanitation is terrible, creating conditions for epidemics like cholera.⁴⁴ Concerns about shelter, education, and security are also major needs that must be addressed.⁴⁵

Given the socio-economic situation in Kibati, it is not surprising that district and settlement officials reported to the RLP that the numbers of Kibati residents are reducing. The RLP was told that some of Kibati's residents have gone to neighbouring districts seeking employment, whereas others have gone to Kampala and as far away as Malawi to seek asylum there.⁴⁶ Others have changed their names in an effort to integrate into the local population.⁴⁷

4. Conclusion

This Update brings attention to three issues; the current repatriation process for Rwandese refugees, conditions in Rwanda affecting returnees which impede repatriation, and finally protection issues relating to both asylum-seekers and refugees.

While the repatriation has semblances of being voluntary, the fact that UNHCR has labelled 2004 the 'year of return' questions the very notion of voluntariness in the repatriation process. In addition, the experiences of Rwandan returnees need to be seriously considered regarding future policy formulation on repatriation as they shed light on the current situation in Rwanda. It is clear that while Rwanda many have made progress in other spheres, conditions still exist that hinder many refugees from returning

³⁷ *Ibid*, Pg. 7-8.

³⁸ *Ibid*.

³⁹ Interview, UNHCR Mbarara Sub-Office, Mbarara, 30 September 2004. Human Rights First notes that this is contradictory; the repatriation agreement defines those eligible for repatriation assistance as "a refugee in Uganda," Human Rights First, 2004, Pg. 16.

⁴¹ Interview, Uganda Red Cross, Mbarara, 27 September 2004.

⁴² Human Rights First, Pg. 47.

⁴³ Interview, Rwandan returnee, Kibati zone, 29 September 2004.

⁴⁴ Interviews, Kibati residents, 29 September 2004.

⁴⁵ Human Rights First, Pg. 43-50.

⁴⁶ Interviews, District and OPM officials, 27-28 September 2004.

⁴⁷ Interview, District official, 27 September 2004.

in safety and dignity. In our view, refugees returning in safety and dignity is the *sine qua non* of voluntary repatriation.

Both UNHCR and the government of Uganda should put in place mechanisms for screening refugees and asylum-seekers in the Kibati zone in order to avail them to international protection. The mere fact that possible *genocidaires* may be amongst the Kibati group is not a sufficient reason for the GoU and UNHCR inaction and tantamounts to meting out collective punishment on an entire group of people including women, children, and the infirm.

The voluntary nature of repatriation should be encouraged by all parties and include refugee participation by not just taking refugee leaders to visit Rwanda, but also by creating an atmosphere where refugees individually can visit Rwanda and make a decision regarding repatriation in their own right.