



Refugee Law Project

Faculty of Law, Makerere University



**REPORT OF ASSESSMENT VISIT BY THE LEGAL AID
AND COUNSELING DEPARTMENT TO KENYA
BORDER REFUGEE CAMPS 11 – 13 MARCH 2008**

Refugee Law Project

Vision

Human rights for all people in Uganda irrespective of their legal status. This vision is informed by relevant international laws as well as the Constitution of Uganda.

Mission

To empower asylum seekers, refugees, deportees, IDPs and host communities in Uganda to enjoy their human rights and lead dignified lives.

Mandate

- **To promote the protection, well-being and dignity of forced migrants and their hosts.**
- **To empower forced migrants, communities and all associated actors to challenge and combat injustices in policy, law and practice.**
- **To influence national and international debate on matters of forced migration, and justice and peace, in Uganda.**
- **To be a resource for forced migrants and relevant actors.**

All of the above is achieved through a combination of activities broadly categorized under legal aid and counseling, research and advocacy, and training and education.

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KENYA BORDER TRIP REPORT

11-13 March 2008

Executive Summary

In the wake of violence triggered by Kenya's disputed presidential election outcome, hundreds of Kenyan refugees have fled across the border into Uganda. On a recent field visit to the Kenyan border, the Refugee Law Project (RLP) investigated the human rights situation in refugee reception and transit centres and the possibility of return for Kenyan refugees. Through interviews with refugees, government officials and service providers, the team discovered that despite the recently signed power-sharing agreement between the political leaders, an overwhelming majority of the refugees do not wish to return home. Consequently, the Government of Uganda, UNHCR and other service providers must prepare for the long-term accommodation of this growing population of refugees and ensure that a durable solution is reached.

Background Information

In December 2007, Kenya held presidential elections that resulted in a disputed victory for sitting President Mwai Kibaki over the leading challenger, Raila Odinga, triggering ethnic conflict throughout the country. As Odinga challenged the outcome, accusing Kibaki of rigging the vote, violence broke out in opposition strongholds between supporters of Odinga's Orange Democratic Movement (ODM) and members of Kibaki's tribe, the Kikuyu¹. After two months of negotiations, Odinga and Kibaki finally signed a power-sharing agreement in February 2008 to create a new coalition government. In the meantime, hundreds of thousands of Kenyans have been forced to leave their homes as conflict on the ground continues. While some have remained in the country as internally displaced persons (IDPs), many have fled across the border into Uganda.

In order to assess the human rights situation of Kenyan refugees in Uganda and determine their possibility of return, the Refugee Law Project (RLP), based in Kampala, Uganda, conducted a field visit to the Kenyan border in early March 2008. The team conducted interviews with government officials, immigration officers, UNHCR representatives, service providers and refugees themselves. The trip included visits to the Transit Centre in Mulanda and to two border towns, Busia and Malaba. The team's findings are detailed below.

Arrival in Uganda

When the Kenyan refugees first started to arrive, they stayed in border towns at temporary reception centres managed by UNHCR. At the time of the influx, local facilities were overwhelmed by the vast number of refugees flooding into border towns. There was insufficient housing, the health centre was overwhelmed, and there were sanitation problems.

¹ *The New Vision*, 7 January 2008

In late February 2008, the refugees were relocated to a Transit Centre in Mulanda. UNHCR maintains three pick up points, Busia, Malaba and Rwakaka, for new arrivals. While there are some individuals that are still fleeing from post-election violence and instability, many new entrants say they have left Kenya to escape land-related clashes in the Mt. Elgon area. There are very few people coming in through Busia and Malaba. In Busia, the Uganda Red Cross Society supplies some raw food items and lodging for refugees who are waiting to be transported to Mulanda. However, in Malaba there are no service providers to assist newly arrived refugees.

Not all refugees have chosen to relocate to Mulanda. Indeed, there is a significant number that has chosen to settle locally in the border towns, living among Ugandans and often with family and friends. Some of these individuals travel to Mulanda to receive food assistance. In general, the presence of these self-settled refugees has not caused any marked rise in crime and the refugees tend to live peacefully alongside their Ugandan neighbours.

Transit Centre – Mulanda

The transit centre was established 23 January 2008, when the first group of Kenyan refugees were relocated from border towns. 1,184 individuals and approximately 700 households are registered with UNHCR. As none of the refugees have gone through the official asylum seeking process and received official refugee status, UNHCR does not provide identification documents. However, all registered refugees are given ration cards.

Similar to other refugee settlements in the country, living conditions in the transit centre are poor. Shelter is a primary concern, since the transit centre is seen as a temporary settlement, and refugees are given tents as opposed to more permanent housing. Still, in some regards the Kenyans are better off than other refugees, owing to the high level of international attention the Kenyan crisis has received. As a result, donors and service providers have supplied generous amounts of aid to support the Kenyan refugees.

Health

Several organisations have moved in to provide health services at the transit centre. There is an emphasis on HIV/AIDS care, with Plan International, TASO and the Aids Information Centre all providing HIV/AIDS counselling, ARVs, and antiretroviral therapy. Psychosocial services are limited and are mainly provided to HIV/AIDS patients. Access to further health care is hindered by limited drug supplies and lack of an ambulance.

Education

Children in the transit centre have access to a nursery school and primary school through an informal program run by Save the Children. Teachers come from the refugee population and are able to follow the Kenyan curriculum, which helps to minimize disruption to education. However, school instruction is compromised by limited resources. At times, different class levels are combined because there are not enough classrooms. Consequently, some older students do not attend school because they have already studied the material being taught. The centre lacks a secondary school, and there is no access to university education. Other educational challenges include conflicts

between local Ugandan laws and normal Kenyan cultural practices, such as physical discipline in classrooms.

Security

Refugees living in the transit centre in general feel secure. Although there was an attempted food poisoning in one of the reception centres, there have been no reported security problems since the relocation to Mulanda. However, some refugees remain uneasy about being close to the border and fear that people will come to find and harm them in the camps.

Problems among refugees include drug abuse, rape, defilement, theft and alcoholism, but the local police are very efficient in terms of keeping law and order. However, the local police force has not received additional support to help them handle the refugee caseload. Officers complain of inadequate staffing, poor facilities, low allowances and lack of uniforms. They also do not have any means of transportation, which becomes a large problem particularly when criminals must be taken to the courts in Tororo.

Relations with local community

In general, relations with the local community are friendly. There is some tension with Ugandan businessmen because of trade competition, but overall the community appreciates the economic benefits from hosting refugees.

Freedom of Movement

The refugees' right to freedom of movement is restricted by the fact that they do not possess refugee identification documents. Before moving out of the camp, refugees must get a permit from UNHCR. In order to obtain the card, they must give their reasons for leaving camp and leave their ration card in exchange. Many people leave the camp without getting the permit and move around without identification, which can result in arrest for illegal stay in Uganda.

Family Reunification

The Uganda Red Cross Society handles family reunification matters for the refugees, including a programme for unaccompanied minors. Capitalizing on the International Committee of the Red Cross's (ICRC) international network, several families have successfully been reunited.

Return and Resettlement

Reasons for flight

The majority of refugees started to enter Uganda amid post-election violence in Kenya. However, several refugees believe the elections were merely a spark that ignited long-standing conflicts over land. Many said that the violence had been planned for a long time and the conflict was bound to happen, no matter what the election results were. Some speculated that perhaps it would have been even worse if Odinga had won because he would have had the army backing him.

Some refugees who arrived recently fled from tribal clashes with the government in Mt. Elgon. This conflict reportedly originated when the Kenyan Government planned to

redistribute land belonging to the Sabaoti, and in reaction the Sabaoti armed themselves to fight against the government.

Return

Some refugees registered at the Mulanda transit centre have voluntarily repatriated, but the majority of refugees do not wish to return to Kenya, even with the signing of the power-sharing agreement. In a UNHCR survey, more than 60% of the refugees in Mulanda said that even with the agreement they would not return because the agreement was only for the government and not for the people.

The main reason that people do not want to return is because they fear persecution. Even with the power-sharing agreement, refugees fear for their lives because the agreement is between the leaders and not between the villagers, and it is the villagers who are doing the killing. Furthermore, while the agreement calls for amendments to the Constitution, the refugees do not believe this will solve any problems because there is no respect for rule of law.

Refugees are also reluctant to return because of the losses they have incurred, land especially. Refugees who have lost their property say that they would return only on the condition that the Kenyan government assists them to resettle. This was especially true for people who came from areas where they were a tribal minority and want to be resettled in a new place where their tribe is the majority. In similar situations in the past, the government has not come through with such assistance.

For many refugees, life is better in the camps, which could be another reason they do not want to return. In Kenya, it is the dry season, but in Uganda they get free food. There is also better security in Uganda. One refugee said that he feels at peace in the centre, which is better than living in fear back in Kenya, even if basic living conditions in the transit centre are not as good.

Kenyan officials visit Mulanda and encourage the refugees to return. Following the signing of the agreement, it was thought that many refugees would go back. However, the refugees say they still fear to go back, and they cannot be forced to return. Furthermore, when the refugees were told by the Kenyan government that they would be placed in reception centres in Kenya and live as IDPs before being resettled, many rejected this proposal and opted to stay in Uganda.

Relocation

A majority of the refugees wish to be relocated to a more permanent location within Uganda. At first people had resisted relocation to Western Uganda, but given the option of returning to Kenya or relocating within Uganda, many now say they would like to be relocated. Idleness is a main reason why the refugees want to move out of the transit centre. In the centre, they do not have access to land for farming, and there are few opportunities to engage in business. Also, housing the temporary housing in Mulanda is not adequate, especially in bad weather.

Access to formal education is also of concern to many families. Primary education is available, but it is neither sufficient nor sustainable given the lack of teachers and facilities. Secondary education is not provided in the transit centre.

Security risks play into some refugees' desires to be relocated further inland, away from the border. At the same time, others appreciate the proximity to the border because it makes it easier to go back and forth. The Kikuyu also feel insecure in the transit centre because people from the local community in Mulanda are related to rival tribes back in Kenya.

In general, the refugees are unaware of their rights and do not know what they should or should not do in terms of their future in Uganda.

Recommendations

Although the recently-signed power-sharing agreement allowed Kibaki and Odinga to settle their differences, on the ground there remain fundamental land conflicts that continue to instigate violence and unrest among the people. The Government of Uganda (GoU), UNHCR and other service providers thus need to recognize that a large number of Kenyan refugees are not planning to return home in the near future. Accordingly, GoU must formalise the refugees' status, issue them with identification and consider durable solutions, including relocation to a more permanent settlement.

Looking forward to the refugees' eventual return home, the Government of Kenya must strive to address the fundamental issues behind the conflict in Kenya. UNHCR must also fulfil its role as the international protector of refugees and ensure that Kenyan refugees in Uganda live in safety and dignity.

Meanwhile, donors and service providers must ensure continued support to the refugees in the Mulanda transit centre as well as re-establish services in border towns for those who are still entering the country. While the humanitarian community is to be commended for providing unprecedented amounts of aid to the Kenyan refugees, it must be ensured that assistance will be provided as long as necessary. In addition, improvements must be made to the transit centre's health services, education programmes and security, with urgent attention given to establishing a secondary school and increasing support for local police.