



Refugee Law Project

Faculty of Law, Makerere University



**REPORT ON A VISIT BY THE LEGAL AID AND
COUNSELING DEPARTMENT NAKIVALE REFUGEE
SETTLEMENT CAMP, 10 – 24 OCTOBER 2006**

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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PART ONE:

1.0 INTRODUCTION

1.1 Background and structure of the report:

As part of its outreach programme to the camps, the Legal Aid Department of the Refugee Law Project, Faculty of Law Makerere University organized a 14 days field trip to Nakivale from 10th -24th October 2006. The team comprised two legal officers, a psychologist and a staff driver. The purpose of this trip was to get an understanding of welfare and living conditions of refugees in Nakivale, identify protection needs, establish the state of mental health service provision in the camp and to establish contact with actors in the camp. The field trip also intended to build on earlier studies carried out by the Refugee Law Project in Nakivale. The report is divided into two parts; the introduction which gives a background to the field trip, methodology and an overview of the settlement. Part two gives a presentation of the findings and recommendations. This is an interim report that highlights the plight of asylum seekers in 'kibati' zone with a view to seeking a quick, emergency response. A full detailed report will follow shortly.

1.2 Methodology:

The fieldwork mainly adopted an open ended, ethnographic approach attempting to draw out the story and concerns of each interviewee or groups of interviewees. The team conducted Focus Group discussions with members of different ethnic communities in the camp, comprising; Somalis, Rwandans, Ethiopians, Burundians, Sudanese, Kenyans and Congolese. Participants were randomly selected from specific zones representing these communities. The zones visited were mainly chosen basing on the population concentration of a particular community. We also made endeavors to reach communities living in the least accessible areas of the camp. There was an endeavor to take into consideration the linguistic differences among the communities. Separate meetings were also held for distinct groups such as the women and children. The team also had individual interviews with refugees from a cross section of the communities represented as well as key informant interviews with actors in the settlement. Effort was also made to reach a group of rejected Rwandan and Burundian asylum seekers living outside the settlement in a place called "kibati"

Refugees and actors in refugee protection were asked a common set of questions with regard to land issues, food distribution, security, water and sanitation, health, security, access to justice, status determination, education and protection mechanisms for the most vulnerable. The team was a result able to obtain qualitative information, composed of direct quotations and quantifiable information about refugees in Nakivale.

1.3 Overview of the settlement:

Nakivale refugee settlement is the oldest refugee settlement in the country having been established in 1960 to accommodate Rwandan refugees. It has been open since then up to date, save for an attempt to close it last year, 2005. According to official figures obtained from the office of the Camp Commandant, as at August 2006, the settlement had a refugee population of 19,471. Rwandans were 10,998 representing 56 % of the total population. The breakdown for the other communities was as follows; Congolese were 3,870, Sudanese 152,

Burundians 853, Somalis 3, 489, Ethiopians 98, Kenyans 6 and Eritreans 5. By the time of our visit to the camp, the number had increased. There are currently 21,000 recognized refugees while 1,000 are asylum seekers pending the refugee status determination process. A group of about 8,500 rejected Burundian and Rwandan asylum seekers also live in a small piece of land outside the settlement.

The camp is under the authority and control of the Office of the Prime Minister working alongside the UNHCR and its implementing partner GTZ.

2.0 FINDINGS:

2.1 The “Kibati” case load

2.1.1 Overview of the situation:

A population of about 8,500 rejected asylum seekers live in the “kibati” area without any form of official assistance from the UNHCR, OPM, local government authorities or any humanitarian agency. They have no access to food, healthcare, shelter and education. This has led to a very high death rate of about 4-6 people per day. The situation in kibati can best be described as a humanitarian disaster.

There are about 2,500 Burundians and 6,000 Rwandans. Many of these have gone through the individual refugee status determination process conducted by the Refugee Eligibility Committee and have been rejected for “lack of grounds”. It is quite apparent that the rejection rate is too high for there to have been a true sense of fairness and justice. It is estimated that the rejection rate stands between 95-99%¹. This raises the issue of the appropriateness of the individual status determination for this group of people. Further, the Burundian case load particularly raises serious issues of a durable solution and questions of statelessness.

2.1.2 Background to the crisis:

The background to this current crisis can be traced to a meeting held in Geneva in 2002 between UNHCR, Rwanda and Tanzania aimed at finding durable solutions to the problems of Rwandese refugees in Tanzania. The governments of Tanzania, Rwanda and the UNHCR agreed on three conclusions. First, that changes in Rwanda’s socio-political environment made it unlikely that refugees in question would be persecuted upon return to Rwanda. Second, many of the Rwandese refugees in question were thought to be either economic migrants or fugitives from justice (having been complicit in the 1994 genocide), in which case they were not entitled to refugee status. Third, it was asserted that some of the refugees constituted a threat to Tanzania’s own security. This thinking has very much informed refugee policy and practice in neighboring Uganda, leading to the crisis that “kibati” is today. A tripartite agreement was reached to the effect that Rwandese refugees had to be repatriated and what followed was an arbitrary and involuntary repatriation which did not take into consideration security fears of each individual, thus many refugees chose to flee to Uganda.

¹ According to information obtained from a member of the Refugee Eligibility Committee

Secondly, the crisis is being fueled by a flawed interpretation of EXCOM Conclusion No.58 (XL) of 1989 (the problem of Refugees and Asylum Seekers who move in an irregular manner from a Country in which they have already found Protection), specifically paragraph (f) recognises that movement by refugees from one country to another poses problems to the existing international assistance structures, however, it requires states to protect refugees in their territory. In other words, they should not be sent back if they have reason to fear persecution. To date the government has met its obligation by allowing the refugees to remain in Uganda, in line with Conclusion 58. However, the UNHCR has failed to offer any protection or assistance to these group of refugees, contrary to the provisions of Paragraph (f) which clearly states that, where refugees or asylum seekers have already moved in an irregular manner, two possible actions can be taken: either have them returned to the country where they have come from (which must be balanced against the cardinal principle of non-refoulement) or, where return is not possible, *'permit them to remain in the host country and be treated in accordance with recognized basic human rights standards until a durable solution is found for them'*.

UNHCR declared 2004 as the year of return and emphasized repatriation over other durable solutions. Undue pressure was placed on Rwandan and Burundian refugees to return. Many refugees who returned to Rwanda have since come back to Uganda.

Consequently, Rwandan refugees who have passed through Tanzania, returnees and new Rwandan asylum seekers and lately Burundians are sent to kibati. There seems to be a deliberate plan to deny them refugee status. They are also denied food rations and medical assistance.

2.1. 2 Burundian refugees

Refugee character

This is a group of refugees who have gone through waves of displacement from 1972, moving between Burundi, Rwanda, Congo, Tanzania, back to Burundi and finally Uganda. They have been back to Burundi twice or three times but have failed to settle, owing to the land pressures and ethnic tensions between the Tutsi and Hutus. There is also a negative sentiment against them by their fellow Burundians at home. They considered to be outcast due to the fact that they speak the languages of their countries of asylum and not their local Kirundi dialect. This is compounded by the fact that there is a generation that was born outside Burundi and without any links to Burundi at all. Interviews with the refugees reflect a group character or trait.

“The first lot of Burundian refugees in kibati came to Uganda on 25th June 2005 and the second group arrived on 14th July 2005 and more came in later”²

“This is not the first time for us to be refugees. We have been refugees since 1972 when we settled in Rwanda. In 1993 when Melchir Ndadaye won the Presidential elections we thought there was hope for the country, so we returned home. All the returnees were taken to Gahinga camp in Bubanza province. We were unable to reclaim our land and many of the returnees were targeted and killed. Further, in a sad turn of events, three months after our return, President Ndadaye was assassinated forcing us to flee to Tanzania. When there was a

² Interview with Burundian asylum seeker in Kibati on October 21st 2006

change of regime in 2003, following the assumption of power by President Ndayize we again returned home, but it was evident we were not welcome. We were accused of belonging to FNL rebel group. We kept wandering from place to place with no place to call home. The authorities kept shifting us from camp to camp. One would be allocated a place to settle but in the night, the house would be set on fire. This situation forcing a significant portion of people to flee to Rwanda in 2005 but our stay there was short lived. The Burundian and Rwandan government entered a bilateral agreement to repatriate each other's refugees. We felt scared, since it was a similar situation we had been in before, so we decided to flee to Uganda"³

"I fled to Rwanda in 1988, but we were forced back to Burundi the same year. In 1993 another round of ethnic conflict broke out forcing us to flee Burundi again. While in Burundi, we were being massacred. People used to pick our people at night and kill them. My son was picked up and killed in an allegation of being a member of the FNL and plotting to kill the President"⁴

"Many of us where born in refugee life and are still in a refugee situation. What is our hope?"⁵

Humanitarian situation:

"Since our arrival here, we have received no help. There is no food or any form of assistance. No water, no food and all we have to eat is roots"⁶

"we eat wild berries pounded with roots. This is what we live on"⁷

"As you can see here, we have not been helped at all. We feel even if someone has committed a wrong, they should at least be availed with some assistance. We can not even access assistance from the health center or elsewhere"⁸

Refugee status determination/Protection:

There is a total lack of protection for this group of refugees. One hundred fifty family heads were interviewed for refugee status by the Refugee Eligibility Committee (REC) and they were all rejected. They continue to live without any form of recognition or assistance.

"We have presented our problems to the authorities but no one seems to care"⁹

"In all our troubles, we feel very bitter because refugees from other nationalities other than Burundians such as Ethiopians, Somalis, Sudanese and Congolese are immediately helped upon arrival. We do not know what crime we committed against the government of Uganda. If no immediate help is availed, we might all die soon. We have buried many our children

³ Interview with Burundian asylum seeker in "kibati" on 21st October 2006

⁴ Interview with Burundian asylum seeker on 21st October 2006

⁵ Interview with Burundian asylum seeker on 21st October 2006

⁶ Interview with Burundian asylum seeker on 21st October 2006

⁷ Interview with Burundian asylum seeker on 21st October 2006

⁸ Interview with Burundian asylum seeker on 21st October 2006

⁹ Interview with Burundian asylum seeker on 21st October 2006

here in a burial ground we created here. We don't know what to do now that we have been rejected by the government of Uganda. We are told to wait but waiting means more deaths for us. What should we do?"¹⁰

"We were forcefully thrown out of the base camp by the then Camp Commandant. We are liked children who are chased by a parent and rejected by the one next door whom you run to"¹¹

"we feel we fled to a country where we committed an offence or that our parents committed an offence"¹²

2.1.3 Rwandan refugees

Refugee character:

This group consists of two categories; an old group of refugees who have been in "kibati" for close to five years and new arrivals from Rwanda. The total population is about 6,000 Rwandans. A big number of the new arrivals from Rwanda are largely fleeing the injustices of the 'gacaca' courts, relating to the lack of due process, victimization on grounds of ethnicity. There are also cases of flight related to administrative weaknesses, nepotism and corruption by local leaders in the provinces as well as individual cases of persecution based on ethnicity.

" I fled Rwanda in 1994 to Tanzania then returned to Rwanda in 1996. I spent nine years in Rwanda then fled again"¹³

"I fled Rwanda in May 2006. My husband and children were killed by the RPF soldiers. Some of my relatives fled to Tanzania but I stayed in Rwanda, receiving assistance from well wishers and good Samaritans. However, the killings continued, they would come and kill people at night. I went to the gacaca courts in April 2006 to complain about the killings, instead I was accused by some people in the village of complicity in the 1994 genocide. My house was burnt, forcing me to flee"¹⁴

"My husband was killed in 1997 and I remained with my three sons. One of my sons joined the RPF, but he deserted and fled. I don't know where he is. The RPF soldiers began harassing me because of my son. I used to report my concerns to the authorities but I got no response, forcing me to flee"¹⁵

"I came from Rwanda in June 2006. Many people are being killed at night even without the knowledge of the government. The Local area chairman are aware of this problem and are perpetuating it. It has become almost impossible for a group of people to freely meet and discuss matters concerning them because you'll be accused to having genocidal ideas and

¹⁰ Interview with Burundian asylum seeker on 21st October 2006

¹¹ Interview with Burundian asylum seeker on 21st October 2006

¹² Interview with Burundian asylum seeker on 21st October 2006

¹³ Interview with Rwandan asylum seeker on 21st October 2006

¹⁴ Interview with Rwandan asylum seeker on 21st October 2006

¹⁵ Interview with Rwandan asylum seeker on 21st October 2006

hence a ground for harassment. This is being done mainly to the Hutu. I feel I have security here in Uganda, though I have nothing”¹⁶

“I left Rwanda in August 2006. If one goes to Rwanda, one can say there is peace at day time, but it is a different story at night. There are land problems orchestrated by the local authorities who are using their position and power to grab land. Secondly, there are areas in Rwanda where no people were killed during the genocide but all the same people are accused of having had a mind of genocide and that they could have facilitated the killings. Besides, one cannot follow up cases of the killing of relatives, you are simply told, *you can wait till your government comes to power, it is an RPF government, so why ask.* The general attitude in Rwanda follows after a Rwanda proverb, *If you don't revenge, you are like a vessel of water*”¹⁷

“Rwanda is our country and we know it. We are not politicians and neither are we educated, but now the consequences of the war are upon us. We thought that since the war is over, we would have an opportunity to live in peace and harmony with the new victors. During the day, there is peace in Rwanda and that is now everywhere. The young are in trouble in Rwanda. You can imagine even me as an old person I am forced to go and testify in the gacaca on things I do not know”¹⁸

“There is a trap called the gacaca. Every Hutu is recorded in a black book. We are not allowed to explain our positions in the court when summoned. When you appear before the gacaca, your charge is read out to you but you are not offered an opportunity to respond. Your sentence is decided before hand. There is no justice for the Hutu in Rwanda, they are just on the receiving end. Some who are lucky can flee to Uganda, but many end up in jail”¹⁹

Refugee status determination:

“I have all documents to show that I fled persecution in Rwanda, yet the REC told me I fled nothing”²⁰

“Our greatest need is asylum. Some of us have spent 5 years here in Kibati. We started to come here in 2000. We sought asylum but have not been granted. Since 2005, the REC has been visiting the camp to conduct interviews for individual status determination. The REC asks basically four questions; (i) Why did you flee your country, (ii) When did you arrive in Uganda, (iii) what mode of flight did you use?, and (iv) There is now peace in Rwanda, why cant you return?. Everybody has been responding and telling them the same thing that they can return only if there is peace since this is not their country, but all that the REC tells us is that you, you fled nothing and you should return to your country”²¹

¹⁶ Interview with Rwandan asylum seeker on 21st October 2006

¹⁷ Interview with Rwandan asylum seeker on 21st October 2006

¹⁸ Interview with Rwandan asylum seeker on 21st October 2006

¹⁹ Interview with Rwandan asylum seeker on 21st October 2006

²⁰ Interview with Rwandan asylum seeker on 21st October 2006

²¹ Interview with Rwandan asylum seeker on 21st October 2006

“We feel the REC is like another gacaca”²²

2.1.4 A way out

The situation in ‘kibati’ is an emergency, requiring an emergency response. It has actually emerged that there is a plan by the government to forcefully return these group of people to their countries of origin and this could be quite soon. It is hereby proposed that the RLP should carry out the following

- (i) A study to profile atleast half of the population in ‘kibati’ as an advocacy tool, with a view to presenting group appeal for review of rejection of grant of status. This should also serve as a tool in seeking a durable solution especially for the Burundians. This should be carried out jointly with Amnesty International and other partners.
- (ii) Review country of origin information on the current situation in Rwanda and Burundi, particularly on issues of concern to the group in Kibati. This will help establish the objective situation in the country of origin that gave rise to the current crisis. This information will form a basis of advocating for a prima-facie group determination for the asylum seekers.
- (iii) Lobby for urgent humanitarian assistance for this group especially food and non food items such as tents or plastic sheeting. UNHCR should be put to task to ensure it fulfils its obligation to this group of people. According to General Assembly Resolution A/RES/49/169 UNHCR is called upon to ensure respect for the principles of refugee protection and humane treatment of asylum seekers in accordance with internationally recognized human rights norms. Basically, UNHCR is duty bound to protect their basic rights, personal safety, dignity and welfare from the period of their arrival upto to the time their status is determined or a durable solution found.
- (iv) Contact should be made with individual members of the National Security Council to present the case of

2.2 Protection issues in the camp

UNHCR staff are mandated with the role of ensuring the protection of the refugees, however UNHCR does not maintain a permanent field presence in the camp and as a result, refugees do not understand UNHCR’s mandate and get the feeling that UNHCR staff are not open to the concerns of refugees. This places an unnecessary and misplaced burden on the Camp Commandant and UNHCR’s implementing partner GTZ. It also creates an avoidable communication gap.

2.3 Land issues and ethnic tensions

Refugees upon arrival are entitled to land on which to build and those from farming communities, could also access land for cultivation. Agriculture is therefore a major

²² Interview with Rwandan asylum seeker on 21st October 2006

preoccupation and source of livelihood. However, this is undermined by what is perceived as arrogance of Tutsi herdsmen who drive their cows into the fields of other refugees. This has created ethnic tensions and hatred towards the Rwandan Tutsi whom many refugees feel act with impunity.

2.4 Water and sanitation

There is no direct link between the incidence of disease and the water consumed, but there is a likelihood that the water has greatly contributed to water born diseases in the settlement. The settlement is served by one major water source, the nearby Lake Nakivale. The water is drawn from a water point very near the shores in a place that is full of mashes and sledge. The water under goes a purification process but the final product according to many does not still meet requirements for human consumption.

2.5 Education:

There are four primary schools in Kashojwa, Rubondo, Nyakagando and Juru supported by UNHCR. Peculiar problems facing all these schools is the teacher to pupils ratio, instruction in Kinyarwanda which is the dominant language which disadvantages a number of learners, large class sizes and compulsory monetary contributions initiated by teachers to supplement their income.

2.6 Health

The refugee settlement is served by two health centers, the main one at the base camp and the other at Rubondo. A national population of about 10,000 people also benefit from this service. This puts a strain on the service provider, GTZ, especially on the human resource and the limited supply of drugs as well as the limited physical infrastructure.