



Refugee Law Project

Faculty of Law, Makerere University



Burundians Fear Possibility of Forced Return

In light of the forced return of nearly 3,000 Rwandans to their home country, Burundians seeking asylum in Uganda now fear a similar fate.

An estimated 8,500 Rwandan and Burundian asylum seekers were settled in the Kibati zone of the Nakivale refugee camp before threats of a deportation exercise began to circulate in mid-2007. While some managed to find alternative places to stay, for many this was not an option, and when armed police personnel arrived to shut down the area and forcibly relocate its residents, approximately 3,000 Rwandans living in Kibati were surrounded at 2 a.m. on October 3 and then 'voluntarily' loaded onto trucks to be driven to Kigali under the 'observation' of the UNHCR (see Daily Monitor, October 5, page 1). Yet despite claims by both governments that the exercise was voluntary, many Rwandans insisted that their return was forced. A majority of the asylum seekers claimed that it violated their right to *non-refoulement* and that returning home would put their lives in danger, while others argued that they had acquired official refugee status and were therefore legally entitled to remain in Uganda. In the meantime, the Burundian refugees who were living in Kibati fear that they too will be illegally forced to return home.

In light of this situation, key actors, including the Government of Uganda, UNHCR, and the international community, must reconsider their obligation to offer protection to refugees and asylum seekers and ensure that their rights are upheld throughout the status determination, return and resettlement process. Of particular concern are the following issues:

- The forced repatriation of officially recognized refugees
- The illegal deportation of asylum seekers
- Irregularities in Refugee Status Determination (RSD) procedures
- The violation of the international law principle of *non-refoulement*

In recognition of the restoration of peace in Rwanda, the Ugandan Government signed a Tripartite Agreement with the Government of Rwanda and UNHCR in order to help facilitate the return of Rwandans residing in Uganda to their home country. Special consideration was given to the population of 5,000 Rwandans living in Kibati, many of whom were formerly refugees in Tanzania. At the 5th Meeting of the Tripartite Commission on Repatriation of Rwandan Refugees in Uganda (July 2007), the two countries reconfirmed their commitment to repatriate this group of Rwandans, establishing that "in cooperation with the Government of Rwanda, the Government of Uganda shall facilitate the repatriation of the 'Kibati' caseload within one month" (Joint Communiqué, July 26, 2007). It was under this agreement that the Rwandans in Kibati were returned. Regardless of such larger diplomatic negotiations that served to justify the exercises at Kibati, there is evidence, however, that for many individuals, the return was involuntary and illegal.

First, although reports indicate that Ugandan officials screened for those with official refugee papers at Kibati, eye-witness accounts suggest that a few Rwandans with official refugee status were still deported. In addition, amongst those deported were many rejected asylum-seekers who had not exhausted all options to regularize their stay in Uganda, especially the review and appeal procedures.

Compounding these two instances of legal infringement is the view of many of the Rwandans in Kibati that their return home was forcible, and thus from a legal perspective qualifies as *refoulement*. Indeed, despite the diplomatic assurance that there is peace in



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Rwanda (as indicated by the Tripartite Agreement), several citizens still fear for their lives should they be returned home. Such fears stem from a variety of factors, including the risk of being persecuted as genocidaires, whether they are or not. The repatriation of Rwandans seeking refuge from such threats was thus in direct contradiction to the principle of *non-refoulement*, which prohibits states from "returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier or indirect *refoulement*" and is universally applicable regardless of refugees' formal recognition (UNHCR - *The Principle of Non-Refoulement*, 2001).

Consequently, the Burundians who were also residing in Kibati are now afraid that they too will be subject to an abrupt, 'voluntary' deportation, and many have expressed their fears that they will be persecuted if returned to Burundi.

RECOMMENDATIONS

Closer attention must be given to the procedures involved in returning asylum seekers to their countries of origin in order to ensure the respect of their rights and broader international law principles applicable to them. The Government of Uganda, UNHCR, and other key actors must endeavor, therefore, to improve the legal framework surrounding refugees and asylum seekers and its enforcement mechanisms, especially in regards to RSD and the principle of *non-refoulement*.

Refugee Status Determination

The RSD procedure must be impartial, applied in accordance with the law, and allow adequate time for refugees to meet the requirements of each step, especially the review and appeal phases. In addition, refugees should be given access to legal aid services throughout the RSD process in order to ensure that all of their options are exhausted before they are returned to their country of origin. Furthermore, should the government choose to implement return programs, authorities must verify the formal status of refugees at the deportation site in the presence of independent observers alongside government and UNHCR officials.

The implications of partial RSD process and unfair rejections must also be investigated. One of the visible impacts which is of particular concern is the common practice among refugees of claiming a different nationality with hopes of a better chance at gaining official refugee status or asylum. Among other instances, this is a frequent practice of Rwandan and Burundian refugees who wish to take advantage of the government's *prima facie* recognition of refugees from Eastern Congo and thus declare Congolese nationality. Such occurrences not only undermine the RSD process but also exacerbate pre-existing ethnic tensions between refugee groups, which can lead to violence.

Non-refoulement

The principle of *non-refoulement* must be respected at all costs and the safety of refugees upon return to their country of origin must be guaranteed before repatriation takes place. The decision to repatriate must be made based on credible, verifiable and in-depth information regarding the security situation in areas of return. The principle of *non-refoulement* must also be upheld in diplomatic affairs, and negotiations involving the exchange of refugees should prioritise ensuring that repatriation is voluntary, safe and dignified.

Alternative durable solutions



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In order to avoid a situation of statelessness, all actors should explore other durable solutions such as local integration and group resettlement for those who have been in a state of displacement for a long period and as such have lost a genuine link with their countries of origin.

It is recommended that before any further repatriation or deportation, the Government of Uganda should:

- implement an impartial, rigorous, and timely RSD process.
- make repatriation decisions based on credible verifiable and in-depth Country of Origin Information (COI).
- uphold international legal obligations regarding refugee protection and not use refugees as tokens of diplomatic favours.

It is also recommended that UNHCR:

- provide oversight to the Government of Uganda in implementing an impartial, rigorous, and timely RSD process.
- to exercise the option of granting Mandate Refugee Status and offer protection where the Government of Uganda denies status to otherwise deserving cases
- re-evaluate existing Country of Origin Information (COI) before endorsing further repatriation of refugees to ensure non-refoulement.
- provide protection to refugees within the East African Community who cannot find refuge within EAC countries by offering bloc-resettlement in third countries.

It is further recommended that the East African Community:

- design a uniform refugee policy that provides concrete guidelines for the protection of refugees in any member state from other member states, so as to avoid the disregard of refugee rights in regional relations.

Conclusion

Unless the Government of Uganda, UNHCR, and other international actors act with more vigilance when dealing with refugees, it is likely that refugees' rights in Uganda will continue to be violated. Such infringements cannot carry on, especially in the form of forced repatriation, which can put thousands of lives in danger. In the wake of the deportation of the Rwandans from Kibati, the most pressing concern now is the fate of the Kibati Burundians, who fear persecution should they be forced to return home.

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Dr. Chris Dolan, Director