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# **Rwandan Refugee Rights in Uganda: Between Law and Practice—Views from Below**

Frank **Ahimbisibwe**

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# **Rwandan Refugee Rights in Uganda: Between Law and Practice-Views from Below**

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## ABSTRACT

Uganda is a host country to refugees from neighboring countries including Rwanda. By the end of 2015, Uganda was the 8<sup>th</sup> and 3<sup>rd</sup> top refugee hosting country in the world and Africa respectively with around 512,968 refugees on its soil. This number had increased to over 900,000 by December 2016. By May 2017, Uganda was the second refugee hosting country in the world, with over 1.2 million refugees. Although Uganda has been praised world wide as being friendly to refugees, its policy and treatment of Rwandan refugees has been inconsistent with international obligations. There is a discrepancy between the rights they are entitled to under international and municipal law and the ones they enjoy in practice. This article analyzes this discrepancy from the refugees' point of view by focusing on specific rights like non-discrimination, life, asylum, liberty and security of person and the principle of non-refoulement. The paper inquires into the factors behind Uganda's violation of Rwandan refugee rights and proposes measures for enhancing the protection of their rights.

Key words: Rwandan refugees, Refugee rights, Human rights law, Refugee law, Uganda, Rwanda

## 1. INTRODUCTION

According to UNHCR, "by the end of 2015, 65.3 million individuals were forcibly displaced as a result of persecution, conflict, generalized violence or human rights violations. Out of 65.3 million, 21.3 million persons were refugees<sup>1</sup>, 40.8 million Internally Displaced Persons and 3.2 million asylum seekers".<sup>2</sup> Developing regions hosted 86 percent of the world's refugees under UNHCR mandate.<sup>3</sup>

The UNHCR's annual Global Trends report further notes that, by the end of 2015, Uganda was hosting 512,968 refugees and asylum-seekers, the highest number in the country's history. Uganda has now become the 8th-largest refugee hosting country in the world and the third largest in Africa.<sup>4</sup> This number had increased to over 900,000<sup>5</sup> by December 2016. By May 2017, this number stood at over 1.2 million.<sup>6</sup> The majority of these refugees come from neighboring countries and the region like South Sudan, Democratic Republic of Congo, Burundi, Somalia, Rwanda, Kenya, Ethiopia and Eritrea among others. Around 17,176 of these were Rwandan<sup>7</sup> who came during and after the 1994 Rwandan genocide.

Uganda is a party to international refugee and human rights law, including the 1951

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[1] Out of the 21.3 million refugees, 16.1 million refugees are under UNHCR's mandate and 5.2 are Palestinian refugees registered by United Nations Relief and Works Agency.

[2] UNHCR (2016), *Global Trends: Forced Displacement in 2015*, Geneva, UNHCR:2, Available at <http://www.unhcr.org/576408cd7>, [Accessed on 19<sup>th</sup> September 2016]

[3] Ibid.

[4] Ibid: 16.

[5] "Uganda Seeks World Support to Handle Region's Refugees", *The Independent*, 15 December 2016, available at <https://www.independent.co.ug/uganda-seeks-world-support-handle-regions-refugees/> (Accessed on 15<sup>th</sup> December, 2016).

[6] Mafabi David & Ainebyoona Emmanuel (2017), "Uganda struggling to feed refugees-Government", *Daily Monitor*, 10 May 2017, Available at <http://www.monitor.co.ug/News/National/Uganda-struggling-to-feed-refugees---govt/688334-3920468-jdp7byz/index.html> [Accessed on 17<sup>th</sup> May 2017].

[7] UNHCR (2016), *Uganda-Monthly Refugee Statistics Update*, February, Available at [data.unhcr.org/drc/download.php?id=1216](http://data.unhcr.org/drc/download.php?id=1216), [Accessed on 22<sup>nd</sup> September 2016].

Convention<sup>8</sup> and its 1967 Protocol<sup>9</sup> and the 1969 OAU Convention on Refugees<sup>10</sup> which together form the international and regional refugee regime. Uganda has also ratified international human rights law instruments including the 1948 Universal Declaration of Human Rights<sup>11</sup>, the 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>12</sup>, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>13</sup>, the 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>14</sup>, the 1989 Convention on the Rights of the Child<sup>15</sup>, the 1979 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>16</sup> Uganda is also a party to regional human rights instruments: the 1981 African Charter on Human and Peoples' Rights (ACHPR)<sup>17</sup>, the 1990 African Charter on Rights and Welfare of the Child (ACRWC)<sup>18</sup> and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as "Maputo Protocol").<sup>19</sup>

The above international refugee and human rights legal instruments have been domesticated with the enactment of the 2006 Refugees Act and other domestic human rights laws including the 1995 Constitution and the 1997 Children's Act. All these are aimed at protecting the rights of refugees and nationals. Refugee and human rights law further provides for state obligations towards refugees. "Under international law the government has a duty to ensure that the rights of refugees under those treaties are promoted, protected and fulfilled".<sup>20</sup>

Although Uganda has been praised as a generous and friendly country to

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[8] UN (1951), *Convention Relating to the Status of Refugees*, adopted on, July 28 (hereafter '1951 Convention') by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 14, 1950, entered into force April 22, 1954. Uganda acceded to the 1951 Convention on 27<sup>th</sup> September 1976.

[9] UN (1967), General Assembly, *Protocol Relating to the Status of Refugees*, 31st January, (hereafter '1967 Protocol'), United Nations, Treaty Series, Vol. 606, p.267, Available at: <http://www.refworld.org/docid/3ae6b3ae4.html>. Uganda acceded to this Protocol on 27 September 1976

[10] OAU (1969), *Convention Governing The Specific Aspects of Refugee Problems in Africa* (hereafter '1969 OAU Convention'), Assembly of Heads of African States and Governments, Addis Ababa, September 10, 1969, 1001 U.N.T.S. 45, entered into force June 20, 1974. Uganda acceded to the OAU Convention on 24<sup>th</sup> July 1987.

[11] UN (1948), *Universal Declaration of Human Rights* (hereafter UDHR), adopted by General Assembly Resolution 217A (III) of December 10, 1948.

[12] UN (1966), *International Covenant on Civil and Political Rights* (hereafter ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, UN.Doc.A/6316 (1966), 999 U.N.T.S, entered into force March 23, 1976. Uganda acceded to the ICCPR on 21 September 1996.

[13] UN (1966), *International Covenant on Economic, Social and Cultural Rights* (hereafter ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entered into force January 3, 1976. Uganda acceded to the ICESCR on 21 April 1987.

[14] UN (1984), *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, (hereafter CAT), UN GAOR Supp. (No. 51) at 197, U.N.Doc.A/39/51, adopted by General Assembly resolution 39/46 of December 10, 1984, entered into force June 26, 1987. Uganda acceded to the CAT on 26 June 1987.

[15] UN (1989), *Convention on the Rights of the Child*, (hereafter CRC), G.A. res.44/25, 1989, annex, 44 U.N.GAOR Supp. (No.49) at 167, U.N.Doc.A/44/49, entered into force September 2, 1990. Uganda ratified it on 16 September 1990.

[16] UN (1979), *Convention on Elimination of All Forms of Discrimination against Women*, (hereafter CEDAW), G.A.res.34/180, 1979, 34 U.N. GAOR Supp. (No.46) at 193, U.N.Doc.A/34/46, entered into force September 3, 1981. Uganda ratified CEDAW on 21 August 1985.

[17] OAU (1981), *African (Banjul) Charter of Human and People's Rights*, (hereafter ACHPR), OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1981), adopted June 27 1981, entered into force on October 2, 1986. Uganda ratified it on May 10th, 1986.

[18] AU (1990), *African Charter on the Rights and Welfare of the Child*, (hereafter ACRWC), OAU Doc.CAB/LEG/24.9/49 (1990), adopted on June 27, entered into force on November 29, 1999. Uganda ratified it on August 17, 2004.

[19] AU (2003), "The Maputo Protocol" (hereafter 'Maputo Protocol') was adopted by the African Union on 11 July 2003 at its second summit in Maputo, Mozambique and it entered into force in November 2005. Uganda ratified it on 22 July 2010.

[20] Vienna Convention on the Law of Treaties, 1969, quoted by Mujuzi, Jamil Ddamulira (2008), "From Archaic to Modern Law: Uganda's Refugees Act 2006 and Her International Treaty Obligations", *East African Journal of Peace and Human Rights*, Vol.14:2, December: 399-422.

refugees<sup>21</sup>, this paper argues that this has generally not been the case with Rwandan new caseload refugees.<sup>22</sup> Based mainly on interviews with refugees in Nakivale and Oruchinga settlements, it finds that Uganda has been unfriendly and hostile to them. Although in theory Rwandan refugees are entitled to rights as spelt out in refugee and human rights law, in practice their rights have been violated and abused. Refugee claims are verified by the external points of view of stakeholders. This paper analyzes violations of selected rights: non-discrimination, asylum, life, liberty and security of the person and the principle of non-refoulement.

This study is based on two research visits carried out at different intervals in Nakivale settlement and Oruchinga settlement in south western Uganda. The first visit was June 2010 to December 2011. A second visit took place between June to August 2016. The study focused on Rwandan new caseload refugees that came to Uganda after 1994 and used a qualitative research methodology. Semi-structured and key informant interviews, Focus Group Discussions (FGDs), observation and documentary evidence were the main research techniques. Purposive criterion sampling was used to select the study respondents, namely Rwandan refugees, Rwandan and Ugandan government officials, UNHCR and NGOs officials, as well as local hosts around Nakivale settlement, Isingiro District.<sup>23</sup> In addition, 'recyclers'<sup>24</sup> were identified through snowball sampling. Rwandan refugees and other categories of respondents answered questions on themes like refugee physical security, refugee rights and obligations, voluntary and forced repatriation, local integration, resettlement, the so-called cessation clause and, in general, avenues to find durable solutions.<sup>25</sup> The analysis further makes use of secondary data, both scholarly articles and grey literature.

The paper is structured as follows. The first section addresses the views of Rwandan refugees verified by the external points of view of stakeholders on violation of their rights. Subsequently, the paper analyzes the factors leading to the violation of refugee rights and proposes measures for enhancing their protection. Based on this analysis, the paper concludes with methodological and policy implications.

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[21] See, Human Rights Watch (2002), *Hidden in Plain View: Refugees Living Without Protection in Nairobi and Kampala*, New York: Human Rights Watch: 133; VemuruVaralakshmi et.al (2016), *An Assessment of Uganda's Progressive Approach to Refugee Management*, Washington, DC, World Bank Group, May.

[22] Rwandan new case load refugees refer to Hutu that came during and after the 1994 genocide. Before them, Uganda hosted old case load Rwandan Tutsi refugees who arrived in 1959 to early 1960s. The majority returned to Rwanda after the genocide while a significant number stayed in Uganda.

[23] The first visit involved 162 respondents. 1 FGD, each with 12 Rwandans was organized in each of the 3 zones in Nakivale; Base Camp, Juru and Rubondo. In each of the zones, I interviewed 10 refugee leaders. I also interviewed 10 recyclers, 10 Isingiro district officials, 11 Officials from Office of the Prime Minister (OPM), 16 NGOs staff, 10 police officers, 36 local hosts (6 locals from each of the 6 sub-counties bordering Nakivale), 1 expert on refugee studies and 2 officials from the Rwandan High Commission in Kampala. In the second visit, a total of 182 respondents participated in the study. 4 FGDs each with 10 Rwandan refugees were organized in 4 zones of Nakivale settlement; Base Camp, Juru, Rubondo and Kabazana. The 5<sup>th</sup> FGD with 10 Rwandan refugees was organized in Oruchinga settlement. I interviewed 10 refugee leaders from each of the 4 zones in Nakivale. 10 refugee leaders were interviewed in Oruchinga settlement. Apart from the refugees, I interviewed 16 recyclers (10 in Nakivale and 6 in Oruchinga), 10 new asylum seekers (6 in Nakivale and 4 in Oruchinga), 6 OPM officials (4 in Nakivale and 2 in Oruchinga), 4 Isingiro district officials, 34 local hosts (24 in Nakivale and 10 in Oruchinga), 10 NGOs staff (6 in Nakivale and 4 in Oruchinga) and 2 officials from the Rwandan High Commission in Kampala.

[24] Recyclers are Rwandan refugees who have been repatriated to Rwanda but have returned to Uganda claiming human rights violations, insecurity, persecution and inability to recover land and property in Rwanda.

[25] The study observed ethical principles in research. The study was cleared by the Office of the Prime Minister and Isingiro District in Uganda. During the data collection exercise, the respondents were briefed on the purpose of the study which was purely academic. Their confidentiality, informed consent and voluntary participation were observed and respected.

## 2. RWANDAN REFUGEE RIGHTS: VIEWS FROM BELOW

All the refugees interviewed reported that they had experienced violations of their rights. They noted that the year 2009 was a turning point. That year a decision was made to ban cultivation activities for all the Rwandan refugees in the settlement. It is the same year that deadlines were imposed on the refugees to return, first on 31 July 2009 and later extended to 31 August. Since then deadlines have been imposed although not enforced. The refugees noted that since 2009, food rations were reduced, and they faced verbal attacks from fellow refugees and humanitarian officials insisting that their stay in Uganda had expired. They also pointed out cases of refugees being abducted and murdered both in the settlement and in urban areas like Mbarara and Kampala. The refugees emphasized the violation of rights of non-discrimination, life, asylum, liberty and security of person and non-refoulement.

The concerns of refugees were shared by some officials of OPM, UNHCR and NGOs. They however observed that efforts were in place to protect the rights of all refugees. One of the government officials admitted that protection of human rights of refugees was still a challenge in Uganda. Thus “We now don’t give refugee status to all Rwandans, it’s just a few who get refugee status now. Also Rwandans have been told to stop all cultivation activities and I don’t know why”.<sup>26</sup>The same view was expressed by the UNHCR Protection official: “We as UNHCR continue to engage government that the ban on cultivation for Rwandans may be interpreted as discrimination whatever reasons government has. Also, the deadlines for return in 2009 and beyond have put a question mark on the voluntary nature of repatriation”.<sup>27</sup>I now address a number of violations as alleged by the refugees themselves. I first relate their point of view, and then check these claims against opinions of other stakeholders.

### 2.1. Non-discrimination

As already mentioned, the Rwandans observed that they were being treated differently from the other refugees. This was in terms of access to humanitarian assistance and services, land for cultivation, and forced repatriation. They wondered why other refugee nationalities were not subjected to these conditions. The following excerpts from interviews and Focus Group Discussions express the concerns of the refugees.

“The conditions are not good generally because of inadequate food on the side of Rwandan refugees compared to others. For example they give us 7 kgs of maize whereas other refugee nationalities get 15 Kgs. We get less kg of maize and litres of cooking oil compared to other refugees. They do not give us soya, soap, salt like other refugees. Today, we were surprised to hear that our wives were called to get soap from Rubondo Health Centre. As if that is not enough, the Government of Uganda took away our land claiming that we had refused to go back to Rwanda. We are thus poor because our livelihoods depended on land. This is because we used to cultivate, sell and get money to buy ourselves things like clothes, soap and other items”.<sup>28</sup>

“Our rights have been violated. We are denied access to land and yet other refugee nationalities are given land. This is besides the cutting of food rations. When we complain no one listens to us. Yet other groups like Congolese are listened and attended to very fast”.<sup>29</sup>

“Rwandans are treated like second class people. But we have learnt to accept and move on with our

[26] Interview with Deputy Settlement Commandant, Juru zone, Nakivale on 26<sup>th</sup> August 2016.

[27] Interview with UNHCR Protection Officer, Mbarara on 20<sup>th</sup> August 2010.

[28] Focus Group Discussion, Rubondo zone, Nakivale on 12<sup>th</sup> July 2016.

[29] Interview with a refugee man, Juru zone, Nakivale settlement on 30<sup>th</sup> June 2010.



lives. What do we do in such circumstances? We are powerless”.<sup>30</sup>

“Being a Rwandan is a crime here in Oruchinga. They treat us as if we are not refugees. Other refugee nationalities are attended to when they have problems. When a Rwandan goes with a problem to the offices, they chase us away saying that there is no assistance for us. Our fellow refugees abuse us, saying that we don’t belong here”.<sup>31</sup>

“These days, it is hard for our children to access scholarships. We have been told that there are no longer any scholarships for Rwandan refugee children. They say that our scholarships are in Rwanda and not here in Nakivale. Because of this, we are struggling to educate our children in Ugandan schools. For example, my children are studying in Mbarara. My first born is at the university in Kampala. I am lucky that I have got money to educate my children. I know many Rwandan refugees who have failed to educate their children”.<sup>32</sup>

“All the time we go to health centres for medical assistance we are told Rwandans don’t have medicine. We ask why there are no drugs for us? All we are told is that we have refused to go home. We struggle on our own to get drugs in private drug shops. Life is not easy for us Rwandans. I think we are cursed”.<sup>33</sup>

In the eyes of Rwandan refugees, being treated differently from the rest of refugees raises questions of discrimination and unfair treatment. Without clear explanation on issues of land access, reduction of food rations, deadlines for return, forced return operations and threats of cessation clause, the refugees would be justified to interpret all these actions as discrimination. Discrimination against Rwandan refugees has been reported elsewhere as well.<sup>34</sup>

OPM and NGO staff acknowledged that Rwandan refugees had been barred from cultivation. They also observed that food rations for Rwandans had been reduced. They however stated that the policy to reduce food rations had been made considering the time refugees have been in the settlement. Since Rwandans have been in the settlement for long, they were expected to be self-reliant.<sup>35</sup> This view however was contradictory considering the fact that the food rations of other long staying refugees like Burundians, Ethiopians and Somalis had not been reduced. Also one wonders how Rwandans were expected to be self-reliant without access to land to cultivate and get food. The timing of the ban on cultivation coincided with the deadlines to return which they saw as forced repatriation and discrimination.

## 2.2. Right to life

Rwandan refugees pointed out the right to life as one of the rights violated in Uganda. They showed me lists of refugees who were killed in Nakivale, Mbarara or Kampala. Some of the names on the lists have been reported in newspapers.<sup>36</sup> The murder of Patrick

[30] Focus Group Discussion, Juru zone, Nakivale settlement on 30<sup>th</sup> July 2016.

[31] Focus Group Discussion, Oruchinga settlement on 29<sup>th</sup> August 2016.

[32] Interview with a male refugee leader, Sangano, Base Camp, Nakivale settlement on 12<sup>th</sup> June 2016.

[33] Interview with a female refugee leader, Kabazana village, Nakivale settlement on 14<sup>th</sup> June 2016.

[34] Amnesty International (2011), *Memorandum to the Government of Uganda about the Cessation of Refugee Protection for Rwandans*, Index: AFR 59/021/2011, London, Amnesty International Publications, December; International Refugee Rights Initiative, Refugee Law Project & Social Science Research Council (2010), *A Dangerous Impasse: Rwandan Refugees in Uganda*, June, 9, available at: [http://refugeelawproject.org/others/10\\_06\\_28\\_A\\_Dangerous\\_Impasse\\_Rwandan\\_Refugees\\_in\\_Uganda.pdf](http://refugeelawproject.org/others/10_06_28_A_Dangerous_Impasse_Rwandan_Refugees_in_Uganda.pdf)

[35] Interviews with Office of the Prime Minister officials, August 2016.

[36] Musisi Frederic & Kasasira Risdell (2014), “Police Foil Kidnap of Another Rwandan Refugee”, *Daily Monitor*, Saturday April 12, Available at <http://www.monitor.co.ug/News/National/Police-foil-kidnap-of-another-Rwandan-refugee/-/688334/2275862/-/15gaw6uz/-/index.html> [Accessed on 12th April 2014]; Mujuni Raymond (2014), “Rwanda Denies Kidnapping Refugee in Uganda”, *New Vision*, April 16, Available at <http://www.newvision.co.ug/news/654615-rwanda-denies-kidnapping-refugee-in-uganda>.

Karegeya and the attempted murder of Kayumba Nyamwasa in South Africa were used as examples of how Kagame targets Rwandan refugees abroad. The refugees noted that Rwandan government agents were behind the murders. It was observed that the Rwandan government was spying and targeting them. I was told of stories where refugees fearing for their lives had to change their place of residence for safety. The following excerpts from interviews are testimony of this experience:

“There are no rights for Rwandans here in Nakivale. Our colleagues are being abducted and harassed by RPF and Kagame. Haven’t you heard of our fellow refugees who are being killed in different parts of Uganda like Kampala? Our lives are in danger and we constantly live in fear”.<sup>37</sup>

“We live in fear here in Nakivale. We are being targeted and killed by Rwanda. There are many Rwandans who have been killed like Charles Ingabire, Jerome Ndagijimana, Jean-Marie Hategekimana, Godroi Ndayambaje and many others. I have a list showing all the Rwandan refugees that have been killed”.<sup>38</sup>

“These days Kagame is killing his own Tutsi colleagues. Didn’t you hear the murder of Patrick Karegeya and the attempted murder of Kayumba Nyamwasa in South Africa? Both Hutu and Tutsi are being targeted for murder as long as Kagame looks at you as an enemy. This has put our lives in danger”.<sup>39</sup>

“Rwandans die like insects. Just to give you an example, in July 2010 there was an operation to return Rwandans. During this operation some jumped off the lorries and died. Others were shot here in Nakivale. I know some of them who died. The life of Rwandans is not valued here”.<sup>40</sup>

“Most of us don’t sleep in our houses. We leave the children and wives in the houses and go to sleep elsewhere. Even when we sleep in the house, we have our special places where we hide for fear of being killed at night”.<sup>41</sup>

“We have colleagues here in the settlement who have died under mysterious circumstances. There is a Rwandan who was killed in Kibengo village in Ngarama sub-county in 2010. He was attacked and killed by the local hosts after he was suspected of stealing a generator. We have always complained to the settlement commandant that our lives are in danger. All they tell us is that they are going to investigate”.<sup>42</sup>

The refugees’ views illustrate their fears of living in danger and insecurity caused to a big extent by the Rwandan government. This insecurity is both real and perceived. The Rwandan government has been accused of targeting its opponents, asylum seekers and refugees abroad. The views raised by the refugees correspond with reports<sup>43</sup> on the activities of the

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[html](#) [Accessed on 17th April 2014].

[37] Focus Group Discussion, Juru zone, Nakivale settlement on 30<sup>th</sup> June 2010.

[38] Interview with a refugee man, Sangano Base Camp, Nakivale settlement on 10<sup>th</sup> June 2016.

[39] Focus Group Discussion, Kabazana village, Nakivale settlement on 15<sup>th</sup> June 2016.

[40] Interview with a refugee woman, Rubondo zone, Nakivale settlement on 10<sup>th</sup> July 2016.

[41] Focus Group Discussion, Kabazana village, Nakivale settlement on 15<sup>th</sup> June 2016.

[42] Focus Group Discussion, Rubondo zone, Nakivale settlement on 12<sup>th</sup> July 2016.

[43] See Human Rights Watch (2014), *Rwanda: Repression Across Borders: Attacks and Threats Against Rwandan Opponents and Critics Abroad*, January 28, available at <https://www.hrw.org/news/2014/01/28/rwanda-repression-across-borders> [accessed on 28th November 2016]; Human Rights Watch, “Hidden in Plain View”, op.cit; Human Rights First (2004), *A Decade of Unrest: Unrecognized Rwandan Refugees in Uganda and the Future of Refugee Protection*

Rwandan regime.

The OPM, UNHCR and NGO staff confirmed that there are cases when Rwandan refugees have been abducted or murdered. They noted that the media has reported of Rwandan refugees being killed in Kampala and in other countries. They however observed that not every refugee is targeted. Those targeted are influential refugee leaders or those suspected of being enemies of the Rwandan government like critics, journalists, former soldiers and government officials or those suspected of having links to Democratic Forces for the Liberation of Rwanda (FDLR) rebels. One OPM official noted “I know of Rwandan refugees who moved out of Nakivale and went to stay in urban areas for fear of their lives. Up to now they say their lives are in danger”.<sup>44</sup> The settlement commandant observed that:

“I am aware that Rwandan refugees have complained of people who come to the settlement to target them. We have information that Rwandan agents at times come here to spy on the refugees. This naturally instills fear in them. However, some of the refugees engage themselves in criminal activities and they end up being killed. For example there is a Rwandan refugee who was killed in Kibengo village in Ngarama around July 2010. The local hosts accused him of stealing a generator”.<sup>45</sup>

In short there was consensus among the refugees, NGO and government officials that the lives of Rwandan refugees are threatened, but external stakeholders tend to either minimize or justify the violence.

### **2.3. Liberty and security of person**

The refugees observed that there were constant threats to their freedom and security. They lived in fear and uncertainty. They attributed this to their country of origin, but also to the host country, land conflicts and suspicions and tensions with Tutsi and Congolese refugees.

There were reports and claims in Nakivale of Rwandan agents coming to spy on or kidnap refugees. It was mentioned by a refugee who arrived in 2000 now living in Sangano trading centre that “Nakivale is just like a part of Rwanda....the Rwandan authorities know exactly what is taking place here. Nakivale is near Rwanda and there is easy accessibility by Rwandan state officials”.<sup>46</sup> Another Rwandan refugee man confirmed in an interview: “There is an example of a Rwandan refugee who was abducted here in Nakivale settlement and put in a car by unknown people. Fortunately enough, this person was rescued by the Ugandan police near Kabingo town. We later learnt that our colleague had been abducted by Rwandan agents who wanted to take him to Kigali”.<sup>47</sup>

In a Focus Group Discussion refugees observed that Rwandan refugees have moved out of the settlement to other areas in Uganda due to fear of forced repatriation or abductions.<sup>48</sup>

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*in the Great Lakes*, available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/Decade-of-Unrest.pdf> [Accessed on 30th June 2014]; Jude Rever & Geoffrey York (2014), “Assassination in Africa: Inside the plots to kill Rwanda’s Dissidents”, *The Globe and Mail*, May 02, available at <http://www.theglobeandmail.com/news/world/secret-recording-says-former-rwandan-army-major-proves-government-hires-assassins-to-kill-critics-abroad/article18396349/> [accessed on 28<sup>th</sup> November 2016]; Amahoro People’s Congress, Rwanda National Congress & FDU-Inkingi (2013), *Open Letter to the President on the Treatment of Rwandan Asylum Seekers and Refugees Living in Uganda*, 7<sup>th</sup> November, Available at <http://www.fdu-rwanda.com/wp-content/uploads/2013/11/Letter-to-President-Museveni-on-Rwandan-refugees.pdf>

[44] Interview with Office of the Prime Minister official, Mbarara on 10<sup>th</sup> June 2016.

[45] Interview with Settlement Commandant, Nakivale settlement on 26<sup>th</sup> August 2016.

[46] Interview with a refugee man, Juru zone, Nakivale Settlement on 14<sup>th</sup> July 2016.

[47] Interview with a refugee man, Rubondo zone, Nakivale Settlement on 10<sup>th</sup> July 2016.

[48] Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 10<sup>th</sup> June 2016.

They further noted that forced repatriation of Rwandans in 2010 and the rumors of similar operations have created a lot of anxiety and uncertainty among the refugees.<sup>49</sup> The refugees also mentioned the pending cessation clause as a cause of insecurity. They noted that they have been threatened that soon they will lose refugee status and be returned to Rwanda.<sup>50</sup> One refugee man confirmed that “there is an official working with an NGO here in Nakivale who keeps on threatening us that any time the police and the army will come and evict all the Rwandans and hand them over to Kagame. This has created fear among us Rwandan refugees”.<sup>51</sup>

There were also suspicions between the Rwandan Tutsis and Rwandan Hutu refugees. The latter accuse the former of being President Kagame’s spies in Nakivale. There was a belief by the Rwandan refugees that all their activities and movements were closely monitored by Rwanda through the Rwandan Tutsi living in Nakivale.<sup>52</sup> One refugee man agreed that: “All of us are being monitored by Rwanda. We cannot engage in any activity against the Rwandan government. We will be killed. Our fellow Rwandan Tutsi who live here as Ugandans report to Kagame on everything happening in Nakivale. We are worried of them but we have no option”.<sup>53</sup> Another refugee leader observed that “We know of Rwandan soldiers who come to see their relatives here in Nakivale. They tell us that they know whatever we are doing in Nakivale. They threaten us that we will all be forced to return to Rwanda. They even accuse us of having killed people in the 1994 genocide”.<sup>54</sup>

The refugees also noted that land conflicts are a source of insecurity. They observed that there was increased enmity from the Ugandans over land. It was reported that they continued to be abused by local hosts and were continuously incited to go back to Rwanda. “Our relationship with Ugandans used to be okay. However, many of them started coming here in the settlement in search for land. The Ugandans argued that Nakivale land was their land and refugees should go back to their countries. We opposed them and this led to fights and quarrels”.<sup>55</sup> The same view was raised by refugees in Juru zone: “There are land conflicts between refugees and Ugandans. We all claim the same pieces of land. Last month the Settlement Commandant came to chase away the Ugandans but they refused to leave the land. They are telling us that instead refugees are the ones to vacate their land. Recently a group of Ugandans attacked cows belonging to a refugee and injured them. The case has been registered at Juru police post”.<sup>56</sup>

In 2010, the refugees reported land conflicts with the Congolese refugees commonly known as “Bakongomani”. They noted that: “We used to access land and grow our crops. We would then get food for our children. When the Banyamulenge<sup>57</sup> came, they took our land. The Banyamulenge tell us that we don’t have land here and should go back to Rwanda. This hurts

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[49] Focus Group Discussion, Oruchinga settlement on 29<sup>th</sup> August 2016.

[50] Focus Group Discussion, Juru zone, Nakivale settlement on 30<sup>th</sup> July 2016.

[51] Interview with a refugee man, Kigali trading centre, Nakivale settlement on 28<sup>th</sup> August 2016.

[52] The Rwandan government is suspicious of the Rwandan refugees outside their country of origin. The current government officials including President Kagame in Kigali were once refugees in Nakivale. The 1990 invasion by the RPF was planned and organized with the Tutsi refugees living in Nakivale and other settlements and areas in Uganda.

[53] Interview with a refugee man, Kigali village, Nakivale Settlement on 24<sup>th</sup> June 2010.

[54] Interview with a refugee male leader, Rubondo zone, Nakivale settlement on 11<sup>th</sup> July 2016.

[55] Focus Group Discussion, Sangano Base Camp, Nakivale Settlement on 24<sup>th</sup> June 2010.

[56] Focus Group Discussion, Juru Zone, Nakivale Settlement on 30<sup>th</sup> June 2010.

[57] This refers to Tutsi Congolese refugees in Nakivale. It should be noted that this is an extension of the original meaning of this term, as the Banyamulenge are in reality a small group of Tutsi originally from Rwanda who live on the Itombwe highlands in South Kivu. During interviews, Rwandan refugees referred to Tutsi Congolese refugees as Banyamulenge and non-Tutsi Congolese as Bakongomani.

us but we cannot do anything”.<sup>58</sup> This view was supported by another group of refugees: “The coming of the Bakongomani here in Nakivale has been bad news to us. They have taken all the land that belonged to us. We are now beggars in the face of other refugees. These Bakongomani refugees laugh at us that we are landless. At times we fight with them”.<sup>59</sup>

The above views by refugees were confirmed by Ugandan settlement and security officials who mentioned that there was frequent spying on the refugees from Rwandan officials in an effort to confirm existing suspicions that some refugees actively participated in the 1994 Rwandan genocide and others are actively engaged in armed rebellion against Rwanda.<sup>60</sup> They also noted that land conflicts were prevalent in Nakivale settlement. A district official noted: “Here in Isingiro district we have a challenge of land conflicts between the refugees and local hosts. What is surprising us is that some local Ugandans have land titles here in Nakivale and we wonder how they got them. Nakivale is government land and it not possible to issue land titles. Land conflicts have led to insecurity here in Nakivale and it is common to hear of fights, murders and destruction of property”.<sup>61</sup>

The insecurity faced by refugees has been reported by other sources.<sup>62</sup> Externally, this insecurity has been facilitated by the proximity of settlements (Nakivale and Oruchinga are approximately 70 and 52 kilometers respectively from the Rwandan border).<sup>63</sup> This makes it easy to access by Rwandan agents. These agents are also favored by the close political relationship between Uganda and Rwanda. It has been reported that Rwandan agents move freely in Uganda harassing refugees.<sup>64</sup> Internally, insecurity has been fuelled by the Rwandan Hutu-Tutsi conflicts.<sup>65</sup> The Hutu accuse the Tutsi of spying on them for the Rwandan government. There are also land conflicts with local hosts and Congolese refugees.

#### **2.4. Right to asylum**

The refugees were aware of the right to asylum for people faced with persecution. They observed that Rwandans face silent persecution and human rights violations in their country of origin. They argued that this persecution is hidden and it is hard for people from outside to notice it. They said that Rwanda during the day is different from the one at night.<sup>66</sup> During

[58] Ibid.

[59] Focus Group Discussion, Sangano Base Camp, Nakivale Settlement on 24<sup>th</sup> June 2010.

[60] Interview with a Police officer, Kashojwa police post, Nakivale Settlement on 29<sup>th</sup> June 2010.

[61] Interview with Isingiro District Chairperson, Isingiro District Headquarters on 17<sup>th</sup> July 2016.

[62] See Harrell-Bond Barbara (2011), *Cessation Clause Uganda Style*, Keynote Speech Delivered at the Northwestern University Conference on Human Rights, January 23, Working Paper 11-001, January; Amnesty International (2004), *Rwanda: The Enduring Legacy of Genocide and War*, 5 April; Human Rights Watch, “Hidden in Plain View”, op.cit; Musisi Frederic & Kasasira Risdell, “Police Foil Kidnap of Another Rwandan Refugee”, op.cit.

[63] According to the 1969 OAU Convention, “for reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin”. Although the concept of ‘reasonable distance’ has never been officially defined, UNHCR and state practice puts it at 50 kilometers.

[64] Ibid.

[65] See Emmanuel Bagenda, Angela Naggaga & Elliott Smith (2003), “Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda”, *Refugee Law Project Working Paper No. 8*, May, available at: [http://www.refugeelawproject.org/working\\_papers/RLPW08.pdf](http://www.refugeelawproject.org/working_papers/RLPW08.pdf) [Accessed on 20<sup>th</sup> September 2016]; Refugee Law Project (2004), *Land and Ethnicity in Nakivale Refugee Settlement: The Need to Resolve Competing Claims and Address Tensions*, 27 October, available at <http://www.refugeelawproject.org/files/archive/2004/RLP.nakivale.land.pdf> [Accessed on 1<sup>st</sup> December 2016].

[66] Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 10<sup>th</sup> June 2016; Focus Group Discussion, Juru zone, Nakivale settlement on 30<sup>th</sup> July 2016; Focus Group Discussion, Oruchinga settlement on 29<sup>th</sup> August 2016.

the day Rwanda is peaceful while at night there is violence and human rights violations.<sup>67</sup> They claimed these are the reasons why Rwandans seek asylum in Uganda and other countries.<sup>68</sup>

The refugees expressed their concern that it is increasingly becoming difficult for Rwandans to get refugee status in Uganda. They noted that the new arrivals are told that they don't have any well-founded fear of persecution since Rwanda is peaceful.<sup>69</sup> On the other hand, they noted that new arrivals from other countries were recognized as refugees.<sup>70</sup>

One of the refugee respondents complained that "we did interviews and out of 1500 only 100 passed. I am one of the many who did not make it as a refugee. I call myself a refugee but legally I am not yet a refugee".<sup>71</sup> Another refugee stated that "the first time I came as a refugee I was accorded refugee status but when I went home and came back the second time it has been hard to get refugee status. I have now spent 11 months without refugee status. I now live on my own".<sup>72</sup> Another respondent in a subsequent FGD said: "I was so lucky because when we arrived we were 160 people who were subjected to an interview but only 20 passed and were given refugee status. Those who were rejected have either been returned or live on their own without any support from UNHCR or OPM".<sup>73</sup>

However the refugees reported that the application and processing of refugee status was taking a long period of time and that some of the Rwandan asylum seekers had been denied refugee status. One of the refugee respondents reported that "there is late awarding of refugee status these days for the new arrivals from Rwanda".<sup>74</sup> The views of refugees' limited options of getting refugee status are confirmed by other sources.<sup>75</sup> In fact the forced return of Rwandan asylum seekers on 14<sup>th</sup> July 2010 involved what the Uganda government called "rejected asylum seekers", Rwandans who had no well-founded fear of persecution. During data collection, the author found that these "rejected asylum seekers" were never given a chance to appeal the Refugee Eligibility Committee decision that denied them refugee status.

In interviews with OPM officials, it was confirmed that the government no longer recognizes Rwandans as refugees. One official noted that the Rwandans are running away from Rwanda because they are looking for free land in Uganda.<sup>76</sup> Another official argued that Rwandans no longer have any well-founded fear of persecution. Rwanda is a peaceful country with remarkable progress in socio-economic development. Why don't the refugees return and participate in the socio-economic reconstruction of their country?<sup>77</sup> One of the government officials who participated in Refugee Eligibility Committee (REC) interviews in 2010 noted that "In 2010 we interviewed Rwandan asylum seekers and found that they had no genuine reasons

[67] Ibid

[68] Ibid

[69] Focus Group Discussion, Juru zone, Nakivale settlement on 30<sup>th</sup> July 2016; Focus Group Discussion Oruchinga settlement on 29<sup>th</sup> August 2016.

[70] Ibid.

[71] Interview with a refugee woman, Kigali village, Nakivale on 23<sup>rd</sup> June 2010.

[72] Interview with a refugee man, Sangano Base Camp, Nakivale on 22<sup>nd</sup> June 2010.

[73] Focus Group Discussion, Sangano Base Camp, Nakivale on 24<sup>th</sup> June 2010.

[74] Interview with a refugee man, Juru zone, Nakivale on 2<sup>nd</sup> July 2016.

[75] Ahimbisibwe Frank (2015), *The Host State and Refugee Security in Uganda: The Case of Rwandan Refugees in Nakivale Settlement*, Doctoral Dissertation, Unpublished, Mbarara, Mbarara University of Science and Technology, Harrell-Bond, "Cessation Clause Uganda Style", op.cit; Amnesty International, "Memorandum to the Government of Uganda", op.cit; International Refugee Rights Initiative, Refugee Law Project & Social Science Research Council, "A Dangerous Impasse", op.cit.

[76] Interview with a Uganda Government Official, OPM, Mbarara on 30<sup>th</sup> July 2010.

[77] Interview with Office of the Prime Minister official, Kampala on 1<sup>st</sup> June 2016.



for being refugees. They claimed that they don't have land in Rwanda but the issue of land has never been a reason for granting refugee status. These Rwandan refugees are just economic migrants seeking economic opportunities".<sup>78</sup>

## 2.5. The principle of non-refoulement

Rwandan refugees pointed at the principle of non-refoulement as the most abused right. The refugees were aware that return to their country of origin should be voluntary and not forced. All the interviewed refugees agreed that they have experienced pressure to return. They stressed that this was a violation of the laws that govern refugees in the world. The following excerpts from the interviews are testimony of their views:

"In 2010, the Uganda Minister for Refugees came here in Nakivale together with officials from the Rwandan government and told us that we had lost our refugee status and had to return to Rwanda. He said that Rwanda was now peaceful and willing to receive us and there was no longer need for us to be here in the settlement. Our pieces of land where we used to grow food for our children were given to Congolese refugees in 2009. Since then life has changed. Our Congolese colleagues continue to harass us telling us to return to Rwanda. In some cases they call us names like murderers, Interahamwe and we feel this is an abuse. Our food rations have been reduced. Our children are hungry and no longer go to school. We are always turned away from hospitals telling us that our medicine is in Rwanda not in Nakivale. Life is very hard and miserable. We do not know what is next".<sup>79</sup>

"When we came here in Nakivale, we were told that Rwandan refugees were no longer wanted here in Uganda and any time we were going to lose our refugee status. We defended ourselves saying that there was no peace for us in Rwanda. We did not understand until we were denied most of our rights like banning cultivation, reducing food rations and other discriminatory practices. We have continued to talk to the Settlement Commandant and UNHCR but they don't want to listen and have kept a deaf ear. Some of us have contemplated committing suicide by throwing ourselves in the nearby Lake Nakivale. But when we think of our children and their future without parents we see that committing suicide will bring more misery to them. We are here but we are not here".<sup>80</sup>

"We used to enjoy our rights until 2009 when things started to change. They took land away from us. We started getting verbal attacks that we had overstayed in Uganda. They started turning us away from health centers. We know that all this is being done to make life hard and force us back to Rwanda".<sup>81</sup>

"Our rights are being violated by forcing us to return to Rwanda. If you are to understand the matter very well, you find that UNHCR has a hand in sending people back home by force. For instance in Tanzania and DRC, they forced Rwandan refugees to return home. Even in Burundi refugees were sent away by force. When you remained behind they would fire at you. This was a violation of their rights. It looks like now is our turn to return home by force".<sup>82</sup>

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[78] Interview with Refugee Desk Officer, Office of the Prime Minister, Mbarara on 27<sup>th</sup> August 2016.

[79] Focus Group Discussion, Juru zone, Nakivale settlement on 30<sup>th</sup> June 2010.

[80] Focus Group Discussion, Kabazana village, Nakivale settlement on 15<sup>th</sup> June 2016

[81] Focus Group Discussion, Rubondo zone, Nakivale settlement on 12<sup>th</sup> July 2016.

[82] Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 24<sup>th</sup> June 2010.

“In 2010 they tricked our fellow Rwandans that they were going to give them food rations and inform them of the decision on their application for refugee status. As they were gathered the army and police came and forced them on trucks and drove to Rwanda. We were here and saw everything with our eyes. People died and others were injured while children were separated from parents. They claimed only taking rejected asylum seekers but we know of genuine refugees who returned at gun point. Was this right? This was illegal returning refugees to a country where they will be persecuted”.<sup>83</sup>

One respondent claimed that “Kagame has been pushing ahead to see us being forced to Rwanda. He is on record to have said that Rwandan refugees in Nakivale will have to return home just like they did in Tanzania, DRC and Burundi”.<sup>84</sup> Another refugee man said: “Kagame said on national television and radio that he will not rest until all the refugees in Nakivale have returned home. He asked why we are not returning. To him our continued stay in exile meant that we are running away from justice and reconciliation”.<sup>85</sup> It was reported by others that the violation of Rwandan refugees’ rights was very common including forced repatriation.<sup>86</sup> Others also mentioned that their right to voluntary repatriation had been violated because they were forced to go back to Rwanda.

A refugee woman notes: “Even if they stop us from cultivation, we will not return to Rwanda. Our refusal to return home is not connected to land in Nakivale. We would have returned immediately when they told us not to carry out cultivation activities. Our failure to return is closely related to politics, human rights and justice in Rwanda”.<sup>87</sup> In one of the focus group discussions, refugees argued: “We know Kagame is trying to force Uganda to expel us. We know Uganda has no problem with us. We have been living here without harassment from the government. We request President Museveni to resist Kagame’s plan of repatriating us by force”.<sup>88</sup>

The current repatriation of Rwandan refugees going on currently in Uganda cannot be called voluntary. It is indeed forced return as evidenced by ultimatums, verbal abuse and threats, deadlines, anti-Rwandan refugee rhetoric, destruction of crops and huts, restriction of access to humanitarian assistance, denial of refugee status, and starvation mentioned above. Furthermore Rwandan refugees also face the possibility of invocation of the cessation of refugee status as recommended by UNHCR in December 2011.<sup>89</sup> It is very clear that the threats of declaration and implementation of the cessation clause violate refugee rights and undermine the voluntary nature of repatriation. In circumstances where refugees are not given optional durable solutions like local integration or resettlement, invocation of cessation of refugee status means forced repatriation to Rwanda. These are some of the tactics used by the Government of Uganda to force the refugees to return to their country of origin.<sup>90</sup>

[83] Focus Group Discussion, Sangano Base Camp, Nakivale settlement on 10<sup>th</sup> June 2016.

[84] Interview with a refugee woman, Juru zone, Nakivale settlement on 24<sup>th</sup> June 2010.

[85] Interview with a refugee man, Sangano, Nakivale settlement on 23<sup>rd</sup> June 2010.

[86] Focus Group Discussion, Oruchinga settlement on 29<sup>th</sup> August 2016.

[87] Interview with a refugee woman, Juru zone, Nakivale Settlement on 3<sup>rd</sup> July 2016.

[88] Focus Group Discussion, Rubondo zone, Nakivale Settlement on 12<sup>th</sup> July 2016.

[89] The cessation of refugee status was initially set for implementation by 30<sup>th</sup> June 2013 and later suspended by government. After the 2016 UNHCR Executive Committee meeting in Geneva, the new proposed date for implementation of the cessation clause is December 2017.

[90] The same view is reported by the following reports: Amnesty International (1997), *Human Rights Overlooked in Mass Repatriation Report*, 14<sup>th</sup> January, available at [http://www.essex.ac.uk/armedcon/story\\_id/Human%20Rights%20Overlooked%20in%20Mass%20Repatriation.pdf](http://www.essex.ac.uk/armedcon/story_id/Human%20Rights%20Overlooked%20in%20Mass%20Repatriation.pdf) [Accessed on 12<sup>th</sup> November 2012]; Amnesty International (2004), *Rwanda Protecting their rights: Rwandese refugees in the Great Lakes region*, available at <http://www.amnesty.org/en/>



Although most officials from government and humanitarian agencies submitted that repatriation of Rwandan refugees was voluntary in nature, some government and NGO officials interviewed said it was forced. An employee of GIZ stated: “I must say that the repatriation of Rwandan refugees was not voluntary. There was indirect force used because UNHCR and Governments of Uganda and Rwanda have argued that Rwandan refugees had overstayed in Uganda and yet their country is peaceful. They therefore should go back home”.<sup>91</sup> Another official said “We don’t call the repatriation of Rwandans voluntary. The repatriation of Rwandans is forced as shown by push factors like deadlines to return, ban on cultivation, reduction in assistance, verbal attacks and threats and the recommendation of cessation clause in 2011. All these conditions undermine the voluntary nature of repatriation”.<sup>92</sup>

There were also threats from government officials putting pressure on Rwandan refugees to return. According to the Refugee Law Project, in November 2004, Moses Ali, First Deputy Prime Minister and Minister for Disaster Preparedness and refugees (as he then was), on a visit to Nakivale told a group of Rwandan 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?”<sup>93</sup> In addition Christine Aporu, State Minister for Disaster preparedness and refugees (as she then was), told Rwandan refugees: “Pack your bags and go home. Rwanda is ready to receive you”.<sup>94</sup> Such threats from government officials undermined the voluntary nature of repatriation.

In an interview with a Senior Protection Officer in the Office of the Prime Minister in Kampala the issue of Rwanda strongly pushing for repatriation and the cessation clause came out clearly. “Our colleagues from Rwanda have been pushing us in our tripartite commission meetings to buy their point of view of declaring cessation clause and forced repatriation of Rwandan refugees. At times we don’t agree with them but we are forced to compromise on our positions and policy regarding Rwandan refugee case load because of the need to maintain good interstate diplomatic relations”.<sup>95</sup> This was confirmed by an official working with the Refugee Law Project: “Obviously Rwanda is strongly pushing other countries to force all Rwandan refugees to return. Kagame knows very well the implications of failure to repatriate refugees outside Rwandan territory. Remember there is an active rebel group opposed to the Kigali government. Who knows Rwandan refugees in Uganda are a recruiting ground for these rebels. Because of national security interests, Kagame has made refugee repatriation one of his foreign policy priorities”.<sup>96</sup>

According to a Senior Officer in the OPM, “[t]here was a belief that Rwandan refugees were not willing to return to Rwanda because of the accessibility of land in Nakivale. Rwandans were the most productive refugee groups producing good harvests of mainly maize and beans which they would sell and get huge amounts of money. Our Rwandan colleagues

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[library/asset/AFR47/016/2004/en/f22d9445-d556-11dd-bb24-1fb85fe8fa05/af470162004en.pdf](http://library/asset/AFR47/016/2004/en/f22d9445-d556-11dd-bb24-1fb85fe8fa05/af470162004en.pdf) [Accessed on 4<sup>th</sup> April 2012]; Human Rights First (2004), *A Decade of Unrest: Unrecognized Rwandan Refugees in Uganda and the Future of Refugee Protection in the Great Lakes*, available at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/Decade-of-Unrest.pdf> [Accessed on 30<sup>th</sup> June 2013]

[91] Interview with a humanitarian official of GIZ, Mbarara on 26<sup>th</sup> July 2016.

[92] Interview with a Protection Officer, Centre for Refugee Rights, Mbarara, 1<sup>st</sup> July 2016.

[93] Refugee Law Project (2005), *Update: Repatriation of Rwandan Refugees from Uganda*, March, Available at [www.refugeelawproject.org/joint\\_statement.html](http://www.refugeelawproject.org/joint_statement.html), [Accessed on 20<sup>th</sup> June 2013].

[94] Ibid.

[95] Interview with Senior Protection Officer, Directorate of Refugees, Office of the Prime Minister, Kampala on 16<sup>th</sup> August 2010.

[96] Interview with an official of Refugee Law Project, Kampala on 15<sup>th</sup> August 2010.

(Rwanda Government Officials) thought that by denying Rwandans land, they would be encouraged to return to Rwanda. They asked us to implement this policy of putting a ban on cultivation as a way of encouraging repatriation”.<sup>97</sup> The same view was raised by an official working with the International Refugee Rights Initiative: “Rwanda at first thought that refugees were not returning due to land access in Nakivale. This issue of land was raised in the Tripartite Repatriation Commission and an agreement was reached to stop Rwandan refugees’ access to land. They thought this would encourage refugee returns. However, this policy has backfired since there are no refugees voluntarily registering for repatriation”.<sup>98</sup>

According to the Settlement Commandant, Rwandan refugees were relying on food assistance from humanitarian agencies like the World Food Programme. Despite the fact that the ban on cultivation was implemented, few Rwandan refugees were willing to return. Thus, “we thought a good number of them would have returned home by now but no one is interested in leaving Nakivale”.<sup>99</sup> The above observations by government officials all confirm the forced nature of Rwandans’ repatriation.

### **3. WHY VIOLATION OF RWANDAN REFUGEE RIGHTS?**

#### **3.1. Conflict between state legal obligations and interstate relations**

Uganda faces a dilemma of striking a balance between her obligations to protect the rights of refugees and maintaining friendly relations with Rwanda. The Rwandan government has aggressively pursued the repatriation of Rwandan refugees from neighboring countries to the extent of using forced return and lobbying countries hosting refugees to invoke the cessation clause. This has been attributed to the fact that Rwanda wants to protect and promote her image as a country that is reconciled and has put the past behind her. Refugee repatriation is one of the indicators of a reconciling society moving towards peace. Concentrations of refugees across the border is also seen by the Rwandan government as a security threat. Uganda as a neighbor and friend of Rwanda has chosen the option of friendly relations at the expense of observing its obligations to refugees. For example, a senior official in the Office of the Prime Minister working with refugees said that “declaring cessation clause for Rwandan refugees is not in Uganda’s interest. It’s Rwanda pushing us in that direction. If we can protect other refugee nationalities, why should we fail to protect Rwandan refugees, who are also our African brothers and sisters? The issue of cessation and forced repatriation of Rwandan refugees is being pushed by their country of origin. Uganda has no problem with them”.<sup>100</sup>

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[97] Interview with Refugee Desk Officer, Office of the Prime Minister, Mbarara on 22<sup>nd</sup> July 2010; Interview with Refugee Desk Officer, Office of the Prime Minister, Mbarara on 27<sup>th</sup> August 2016.

[98] Interview with an official of International Refugee Rights Initiative, Kampala on 22<sup>nd</sup> August 2016.

[99] Interview with the Settlement Commandant, Nakivale Settlement on 25<sup>th</sup> June 2010; Interview with the Settlement Commandant, Nakivale Settlement on 26<sup>th</sup> August 2016.

[100] Interview with a Protection Officer, Office of the Prime Minister, Directorate of Refugees, Kampala on 20<sup>th</sup> August 2010.

### 3.2. Protracted refugee situation

The Rwandan refugee situation is one of the protracted refugee situations<sup>101</sup> where refugees are facing no foreseeable durable solutions. The Rwandan refugee situation has become complex as new Rwandan asylum seekers continue to join them in Uganda. Since the signing of the tripartite agreement in 2003, a significant group of Rwandans have not returned to their home country.<sup>102</sup> Even those who are repatriated end up coming back to Uganda as recyclers.<sup>103</sup> This means that voluntary repatriation as a durable solution has failed to address the problem.<sup>104</sup> Uganda is yet to sort out the legal ambiguities surrounding local integration as a durable solution. Besides, local integration has many obstacles, political, economic and social. The last possible durable solution is resettlement but practically speaking, western countries are not willing to resettle all the Rwandan refugees.<sup>105</sup> In general, only 1% of the world's refugees benefit from resettlement.<sup>106</sup> In fact, "given the narrow quotas, the chances of being resettled is slim, and indeed many people in refugee camps think of resettlement as akin to winning the lottery".<sup>107</sup> Uganda as a host country is left with very few options on how to handle the Rwandan refugee case load where all the three durable solutions face obstacles as to their implementation.

### 3.3. Questionable role of UNHCR

The UNHCR was established in 1950 by the UNHCR statute as a body responsible for protecting refugees based on the 1951 UN Convention and its 1967 Protocol. However, the way UNHCR does her work leaves a lot to be desired. For example, the UNHCR participated in the 1996 forced repatriation of Rwandan refugees from Tanzania when it was clear that this was against the principle of non-refoulement.<sup>108</sup> Questions have been raised as to the 2011 UNHCR recommendation to declare the invocation of the cessation clause for Rwandan refugees in Uganda and other countries when all the indicators are clear that their rights, physical and legal safety may not be guaranteed in Rwanda.<sup>109</sup> As one Rwandan refugee put it, "If Kayumba Nyamwasa, genocide survivors and other government officials can run away, what

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[101] See Gil Loesher et al (Eds) (2008), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, Tokyo, New York & Paris, United Nations University Press. The authors have written extensively on the human rights implications associated with Protracted Refugee Situations (PRS). They argue that states tend to violate refugee rights in protracted refugee situations like forced repatriation, encampment and restricting freedom of movement among others. This is the reality in which Rwandan refugees find themselves in Uganda.

[102] See Ahimbisibwe Frank, "The Host State and Refugee Security", op.cit; Karooma Cleophas (2013), *Rwandan Refugees and their Attitudes to Repatriation, 1994-2012*, Doctoral Dissertation, Unpublished, Mbarara, Mbarara University of Science and Technology; Amnesty International, "Memorandum to the Government of Uganda", op.cit; International Refugee Rights Initiative, Refugee Law Project & Social Science Research Council, "A Dangerous Impasse", op.cit.

[103] Ibid. Research done has revealed that a significant number of Rwandan refugees have subsequently returned to Uganda after various obstacles prevented them from successfully reintegrating in Rwanda.

[104] Ibid.

[105] See Ahimbisibwe Frank, "The Host State and Refugee Security", op.cit.

[106] Long Katty (2011), "Permanent Crises? Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons", *Policy Overview*, Refugee Studies Centre.

[107] Jacobsen Karen (2005), *The Economic Life of Refugees*, USA: Kumarian Press Inc: 55.

[108] See Whitaker Beth Elise (2003), "Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania" in Niklaus Steiner, Mark Gibney & Gil Loesher (Eds), *Problems of Protection: The UNHCR, Refugees and Human Rights*, New York & London, Routledge: 141-154. Whitaker discusses in detail why UNHCR participated in the forced repatriation of Rwandan refugees in Tanzania.

[109] See Ahimbisibwe Frank, "The Host State and Refugee Security", op.cit; Interviews with recyclers in Oruchinga settlement in 2016 and Nakivale settlement in 2010 and 2016; Amnesty International Annual Reports (2003-2016) on the status of human rights, justice and democracy in Rwanda; Human Rights Watch (2001), *Uprooting the Rural Poor in Rwanda*, New York & London, May, Available at <http://www.hrw.org/reports/pdfs/r/rwanda/rwnvlgo501.pdf>

about us refugees who are already accused of being genocidaires?”<sup>110</sup> In short UNHCR is said to put the interests of states first at the expense of refugees’ rights and protection. The organization meant to protect and be an advocate for refugees has ended up joining those violating and undermining their rights.<sup>111</sup>

### **3-4- Increase in refugee numbers**

The increase in refugee numbers as a result of a conflict affected region has seriously tested the generosity of Uganda. The recent refugee movements from DRC, South Sudan, Burundi and the continuous migrations from Rwanda, Somalia, Ethiopian and Eritrea continue to be a big strain on Uganda. For example, in 2010, Nakivale settlement had a population of around 70,000 refugees. By August 2016, the refugee population had increased to 115,542.<sup>112</sup> Countries like Tanzania have a history of generosity and open door policy to refugees but have since adopted a more restrictive approach. This partly has been due to large refugee numbers and the environmental, economic and security burdens associated with refugee movements. For example, much as the decision to ban cultivation and remove land from Rwandan refugees in Nakivale settlement was discriminatory against them, this policy could have been partly caused by the influx of Congolese refugees who also wanted access to land.<sup>113</sup> Perhaps the Uganda government decided to give land to the new arrival Congolese refugees and force Rwandan refugees to return to Rwanda.<sup>114</sup> Therefore with the ever increasing refugee numbers, Uganda finds herself with challenges of guaranteeing the rights of all the refugees both new and old caseloads.

### **3-5- Refugee-host relations**

With the increasing tensions between refugees and host communities in Nakivale settlement, it was becoming difficult to ensure the physical safety and rights of refugees. Land conflicts were rampant in Nakivale as refugees were engaged in serious tensions and violence with the local hosts.<sup>115</sup> The latter were not happy that the former had taken over their land.<sup>116</sup> The author observed cases of open confrontation between the refugees and host communities over land and other services like water sources in the settlement.<sup>117</sup> It was therefore difficult to protect refugees’ rights like life, liberty and security of person, asylum and non-discrimination in an environment where there were conflicts between refugees and the local hosts.

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[110] Interview with a refugee man, Sangano, Base camp, Nakivale on 18<sup>th</sup> June 2016.

[111] Amnesty International (1997), *Human Rights Overlooked in Mass Repatriation Report*, London, International Secretariat, 14<sup>th</sup> January, available at [http://www.essex.ac.uk/armedcon/story\\_id/Human%20Rights%20Overlooked%20in%20Mass%20Repatriation.pdf](http://www.essex.ac.uk/armedcon/story_id/Human%20Rights%20Overlooked%20in%20Mass%20Repatriation.pdf) [Accessed on 12<sup>th</sup> November 2015]; Amnesty International (1997), *Great Lakes Region Still in Need of Protection: Repatriation, Refoulement and Safety of Refugees and the Internally Displaced*, London: International Secretariat, 24<sup>th</sup> January.

[112] Interview with Deputy Settlement Commandant, Nakivale settlement Base Camp on 26<sup>th</sup> August 2016.

[113] Interview with Settlement Commandant, Nakivale settlement Base Camp, 25<sup>th</sup> June 2010.

[114] Ahimbisibwe Frank, “The Host State and Refugee Security”, op.cit.

[115] See Refugee Law Project, “Land and Ethnicity in Nakivale Refugee Settlement”, op.cit; Bagenda Emmanuel, Angela Naggaga & Elliott Smith, “Land Problems in Nakivale Settlement”, op.cit; Ahimbisibwe Frank (2013), “The Effect of Land Conflicts on the Livelihoods of Refugees: Implications for Refugee Protection in Uganda”, *Research Journal of Social Science and Management*, Vol. 3 No.6, October.

[116] Interviews with local hosts within and neighboring Nakivale settlement in 2010 and 2016.

[117] Personal Observations, Nakivale settlement in 2010 and 2016.

#### 4- ENHANCING THE PROTECTION OF RWANDAN REFUGEE RIGHTS

Uganda has an obligation to protect the rights of refugees. Rwandan refugees are threatened by their country of origin as evidenced by cases of abductions and harassment. Uganda needs to strongly oppose the activities of Rwandan security agents as they are a violation of its territorial integrity and of its duty to protect refugees. She can arrest and prosecute Rwanda's agents who are caught abducting, torturing and harassing refugees. Another way is to stand firm on its decisions as regards the protection of Rwandan refugees. Uganda can show to the Rwandan government that the grant of refugee status is not to be interpreted as an unfriendly act but rather as a humanitarian act and a legal obligation.

Uganda needs to revise her policy of the ban on cultivation and reduction of food rations for Rwandan refugees in Uganda. This policy promotes forced repatriation and discrimination against Rwandan refugees contrary to refugee and international and domestic human rights law. By declaring this policy, Uganda thought that many Rwandan refugees would be induced to return. The majority of Rwandan refugees have not returned meaning that the reasons are beyond access to land.

The UNHCR needs to be pro-refugees, resist being influenced by states to achieve their interests. It is claimed that the decision to invoke the cessation clause is due to the pressure the Rwandan government is exerting on UNHCR. A Refugee Law Project official argued: "Don't blame UNHCR or Uganda for the cessation of refugee status for Rwandan refugees. This is the decision by the Rwandan government which wants its people back."<sup>118</sup> However, it is important that UNHCR remains an advocate and defender of refugee rights despite opposition and interference from states.

#### 5- CONCLUSION

This article has argued that much as Uganda has been praised worldwide as being friendly and hospitable to refugees, its policy and treatment of Rwandan refugees have been inconsistent with international obligations. From the refugees' point of view, there is a discrepancy between the rights they are entitled to under international and municipal law and the ones they enjoy in practice. Views from government, UNHCR and NGO officials to a great extent agreed with the refugees' views.

The article further documented the reasons why rights of Rwandan refugees have been violated. These were the protracted refugee situation, increase in refugee numbers, clash between diplomacy and obligations to protect refugees and the compromised role of UNHCR. It is recommended that Uganda resists and takes strong action against the activities of Rwandan agents who harass Rwandan refugees on its territory.

The insights in this article have methodological and policy implications. From a methodological perspective, more work needs to be done to identify and explore between the official narrative of government, UNHCR and NGOs and the views of refugees who are at the receiving end. Most times, the official narrative supports the view that refugee rights are protected. All that is presented is how UNHCR, NGOs and government fulfill their legal and moral obligations of protecting refugees. It might be argued that the findings in this article do not correspond with the widely accepted view that refugees are protected in Uganda. The approach of exploring the views of refugees helps us to understand refugee protection from the point of view

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[118] Interview with an official of Refugee Law Project, Mbarara on 10<sup>th</sup> August 2016.

of rights holders affected by state-centric policies, laws and decisions. There is need for further research on this issue.

From a policy point of view, the insights in this article call for a review on how policies are made with regard to refugee protection. Most times policies are made by governments, UNHCR and NGOs without listening to the refugees. For example the decision to repatriate Rwandan refugees in Uganda was made by Uganda, UNHCR and Rwanda when they signed a tripartite agreement in July 2003. Thirteen years later a significant number of refugees have not returned. Some of those who returned have moved back to Uganda.<sup>119</sup> This raises questions of whether there were consultations of Rwandan refugees before the repatriation process started. This calls for a bottom up as opposed to top down approach in refugee policy making. The approach that involves refugees in policy and decision making will help in making policies and decisions that protect their rights, security, welfare and well-being.

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[119] Email communication with the Refugee Desk Officer, Mbarara, Office of the Prime Minister on 8<sup>th</sup> December 2016. According to this official, there are no official statistics of Rwandan refugees in Uganda.



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