

Refugee Law Project Working Paper No. 8

**LAND PROBLEMS IN NAKIVALE  
SETTLEMENT AND THE IMPLICATIONS FOR  
REFUGEE PROTECTION IN UGANDA**

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**The Refugee Law Project (RLP) was established in November 1999 with the aim of protecting and promoting the rights of forced migrants in Uganda. The RLP operates as an autonomous project within the Faculty of Law of Makerere University, and focuses on three main areas: legal assistance, training, and research and advocacy. The Refugee Law Project works towards ensuring that asylum seekers and refugees are, as specified under national and international law, treated with the fairness and consideration due fellow human beings.**

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## **REPORT SUMMARY**

**The following report focuses on the current land crisis in Nakivale refugee settlement, southwestern Uganda. Through incorporating the testimonies of both refugees and nationals, it analyses the circumstances leading to the current conflict over land, and the implications for both the host community and the refugee management structure. The findings suggest that, as long as the land crisis remains unsolved and the policies employed are not modified, development for both refugees and their host communities will be hampered and the policies employed by the government concerning refugee protection will be undermined.**

**The report is based on two research trips conducted in Mbarara District by Winifred Agabo, Roger Balyamujura, Emmanuel Bagenda, Angela Naggaga, and Elliott Smith, from 9th—20th May, and 1<sup>st</sup>—8<sup>th</sup> December 2002. The report was written by Emmanuel Bagenda, Angela Naggaga, and Elliott Smith, all of the Refugee Law Project. The authors are grateful to the Uganda National Council for Science and Technology and the Office of the Prime Minister, Directorate of Refugees, for permission to conduct the research. Comments from Zachary Lomo and Lucy Hovil have been invaluable in the writing of the report.**

**GLOSSARY OF ABBREVIATIONS**

DRC: Democratic Republic of Congo

GoU: Government of Uganda

LC: Local Council

OPM: Office of the Prime Minister

RDO: Refugee Desk Officer

RDC: Resident District Commission

RLP: Refugee Law Project

RWC: Refugee Welfare Committee

SRS: Self Reliance Strategy

UN: United Nations

UNDP: United Nations Development Programme

UNHCR: United Nations High Commissioner for Refugees

## 1 INTRODUCTION

Land is the source of livelihood for the majority of Uganda's citizens. Likewise for refugees in Uganda, the Government of Uganda (GoU) and the United Nations High Commissioner for Refugees (UNHCR) employ policies predicated on the use of land in order to promote development and self-sufficiency. While theoretically this may function successfully in areas of abundant land, these policies can be detrimental to the coexistence of refugees and nationals in areas of land scarcity. Where land is limited and boundaries of ownership are unclear, the possibility of conflict, often manifesting in various forms of ethnic, social, economic, and political disputes, becomes inevitable. In Nakivale refugee settlement, located in southwestern Uganda, social unrest has developed around the issue of land ownership for nationals, and the policy of refugee access to land for cultivation. Nakivale refugee settlement is located in Mbarara district, in the Ankole region<sup>1</sup> of southwestern Uganda. As of February 2003, Nakivale was occupied by 14,666 refugees,<sup>2</sup> with an additional 8,500 predominantly Rwandese Hutu asylum seekers who were formerly living in Tanzania. Of the 14,666 refugees, approximately 1,100 have not been allocated land and are currently surviving on rations. Furthermore, even those with land do not have enough land to become self-sufficient, and continue to receive rations.

The purpose of this paper is to examine and analyse the land crisis that has impacted the lives of refugees and Ugandans living in Nakivale, and its implications for the enjoyment of human rights by refugees. Currently, the settlement is marked by ongoing tension and conflict between nationals and refugees. The conflict is one in which refugees, through the local settlement policy, have been allocated land to which nationals claim title or rights of usage. The result has been deterioration in the relationship between the two groups, characterised by heightened xenophobia, animosity, and even violent confrontation. Due to increased incidents of violence, the land allocation mechanism in the settlement has been halted.<sup>3</sup> At the time of the Refugee Law Project's (RLP) second field research, there were approximately 1,100 refugees<sup>4</sup> waiting to be given land and subsisting entirely on food rations.<sup>5</sup> The urgency of this situation has been compounded by the recent influx of 8,500 additional Rwandese refugees formerly living in Tanzania.<sup>6</sup> The conflict in Nakivale has called into question the ability of the settlement structure to accommodate refugees and promote sustainable development for both refugee and host communities alike. It further raises questions of the viability of refugee protection within the existing policy of local settlement, which removes refugee communities from their hosts, under the auspices that integration into Ugandan society could be economically and politically destabilising.

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<sup>1</sup> Formerly part of the Kingdom of Ankole

<sup>2</sup> Refugees officially recognised by the GoU and UNHCR.

<sup>3</sup> Interview with Refugee Desk Officer (RDO), Mbarara, 2<sup>nd</sup> December 2002.

<sup>4</sup> Already granted refugee status by the Refugee Eligibility Committee.

<sup>5</sup> Full rations consist of 13.5 kg. Maize meal, 0.6 kg cooking oil, and 1.8 kg beans per month.

<sup>6</sup> Telephone interview with RDO, Mbarara, 10<sup>th</sup> March 2003.

While such a state of affairs calls for immediate attention by the GoU and UNHCR, no useful response can be made without a comprehensive understanding of the unique historical, political, environmental, and social factors that combine to create the crisis. Based upon two field studies, this paper attempts to contribute to an understanding of such factors and their implications for Ugandan refugee policy. The paper emphasises the need for modification of the present local settlement structure in Nakivale to alleviate the conflict over land. Furthermore, the Self-Reliance Strategy (SRS), which is due to be introduced in Nakivale settlement in the near future, is likely to fail to cope with the area's land scarcity and social conflict unless it is detached from the local settlement structure. Instead, it needs to be applied with an emphasis on integration, thus facilitating harmonious interaction between refugees and their national hosts.

The paper begins in section two with an examination of the historical background of Nakivale refugee settlement, as well as Ugandan refugee settlement policy. Recent changes in the demographics of the refugee community, as well as changes in managerial aspects of Nakivale that contributed to the current situation, are also discussed. Section three gives an account of the competing interests in the land, and discusses the various protagonists, dynamics, and manifestations of the conflict. In section four, the paper considers the GoU's response to the problem and provides an overview of the legal issues relating to the land problem in Nakivale. Finally, section five concludes with recommendations for the way forward.

## **2 ESTABLISHMENT OF NAKIVALE REFUGEE SETTLEMENT AND UGANDA REFUGEE POLICY**

Nakivale refugee settlement was created in 1960 in the wake of an unprecedented influx of Rwandese Tutsi refugees fleeing persecution from the new Hutu regime.<sup>7</sup> To address this situation, the colonial government exchanged a few scattered parcels of land it owned in the Nyabushozi area of Mbarara, for six parcels of land in the Nakivale area owned by the Omugabe.<sup>8</sup> Because the land in Nakivale area was fairly proximate to the border with Rwanda, and had a low population of nationals (owing to tsetse fly infestation), the colonial government considered it more conducive for accommodating refugees than the land in Nyabushozi. The Nakivale land then became the nucleus of what is today Nakivale refugee settlement.<sup>9</sup>

### **2.1 The local settlement policy**

Nakivale refugee settlement was one of Uganda's first examples of the colonial government's policy of local settlement. Presently applied in most countries within

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<sup>7</sup> Interview with Assistant Chief Administrative Officer, Mbarara District, 4<sup>th</sup> December 2002. See also Gerard Prunier 1995, p. 53.

<sup>8</sup> The King of Ankole.

<sup>9</sup> Interview with Registrar of Titles, Mbarara District, 4<sup>th</sup> December 2002.

the African region,<sup>10</sup> the local settlement policy entails the encampment of refugees in designated and enclosed tracts of land, known as settlements.<sup>11</sup> In Uganda's case, all refugee settlements are located in rural sections of the country and, as such, removed from mainstream economic and political activity within the country. Under the local settlement approach, no refugee can leave the settlement, except after acquisition of a permit from the camp commandant, who is the administrative head of the settlement. Each refugee family in the settlement is initially given some food rations, as well as non-food items like hoes, sickles and basic household utensils. The family is also given a small parcel of land for subsistence agriculture. With each season, the family is expected to be more self-sufficient and, eventually "phased off" food and other humanitarian assistance.

Today, the GoU policy for refugees is still founded on colonial legislation, which grew out of the perception that refugees are largely a burden to the host state rather than a resource for development. Thus, although Article 26 of the 1951 United Nations Convention Relating to the Status of Refugees confers upon refugees the right to freedom of movement within the host State, this right is often brushed aside by pragmatic imperatives. Although local settlements are believed to maximise efficiency in aid distribution, this reason does not answer the question of freedom of movement. Three particular arguments form the foundation for the local settlement policy and the restriction of refugee movement. First, from a political standpoint, it is argued that refugees, as persons fleeing conflict zones, are themselves potential agents of insecurity who, therefore, cannot be allowed free movement and integration into the host community. On this reasoning, it is considered appropriate policy to sequester refugees within designated locations in the host State. The second argument is economic. It is generally believed that any economic dividends to be reaped from allowing refugees free integration into the host community are offset by the damage done to the often fragile host economy, by way of increased competition for jobs (hence, unemployment) or greater demands on the host State's socio-economic infrastructure, such as schools and hospitals. The third and social imperative relates to the generalisation that refugees, because they originate from countries/areas often marked by social collapse, generally carry with them a germ of social regression, and that to allow them free integration into host communities is to open up a Pandora's box of social ills with which the host country cannot cope. With this in mind, and the perception of the refugee phenomenon as largely temporary, local settlement is the standard response to refugee influxes into Uganda.

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<sup>10</sup> Notable exceptions are the West African nations of Ivory Coast and Guinea where refugees are encouraged to live side by side with the nationals and to share resources. The issue of housing refugees in settlements is a highly contested subject, and there is a plethora of literature on the subject. See, for example, Gaim Kibreab 1989, Jacobsen 2001, Kaiser 2001, and Kuhlman 2002.

<sup>11</sup> A 'settlement' differs from a 'camp' in that it is of a more permanent nature (characterised by infrastructure such as schools, hospitals, brick buildings, boreholes etc.) in which refugees are expected to become self-sufficient over time. 'Camps' are often spontaneous and temporary creations (structures of mud and wattle) in which refugees almost exclusively depend on relief handouts. They are similar, however, in that both are isolated from mainstream society and are structured such that refugee freedom is inherently constrained.

## 2.2 Origins of the Nakivale land crisis

Nakivale was no exception to this local settlement policy. However, it is important to note that the formation of the settlement was not preceded by land survey, but rather, because the situation of the Rwandese Tutsi refugees was thought to be temporary, the boundaries were demarcated using surrounding ridges, making the settlement approximately 86 square miles. Although originally intended as a short-term solution for the Tutsi refugees, Nakivale settlement eventually became a permanent home, and many of the refugees became integrated into the local community.

For decades, the Rwandese Tutsi refugees lived alongside indigenous Bahima and Bairu<sup>12</sup> without major conflict.<sup>13</sup> This began to change in the 1980s, however, as land shortages elsewhere caused nationals, primarily pastoralists, to migrate to Nakivale in search of open land. From an historical viewpoint, the scarcity of land in the wider Ankole region is the result of several factors, including the advent of a cash economy and the transformation of customary land tenure, with increased emphasis on private property. These factors, coupled with population growth in the region,<sup>14</sup> created a situation in which poor peasants, of both pastoralist and agriculturalist traditions, were forced to migrate from their home areas in search of free land on which to settle. The trend was generally one of eastward migration from the more densely populated counties in Bushenyi district to more sparsely settled areas in Mbarara district.<sup>15</sup> Nakivale settlement, originally approximately 86 square miles, and not formally demarcated, was the answer for many nationals searching for open land on which to graze their herds or settle. Although illegal, the occupation of land within the settlement by nationals was not addressed by the GoU or refugee agencies. In fact, many nationals interviewed claimed to have purchased, or been given the land in question by the camp commandant or local authorities.<sup>16</sup>

The 1994 repatriation of Rwandese Tutsi refugees left even more land in Nakivale uninhabited, which was subsequently taken over by predominantly national pastoralists (Bahima). Although pastoralists generally did not develop the land, they used it for grazing their cattle and, therefore, considered it theirs. Thus, the subsequent arrival of large numbers of refugees, coupled with the development of

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<sup>12</sup> The Ankole region consists of two ethnic groups, the Bairu who are sedentary agriculturalists, and the Bahima who are pastoralists.

<sup>13</sup> The only reported conflicts were a result of livestock wandering into gardens and destroying crops. These were settled through compensation to the affected party. Interview with national, 12<sup>th</sup> May 2002.

<sup>14</sup> 'Land and Peasants in Western Uganda: Bushenyi and Mbarara districts' by Nelson Kasfir in *Uganda Now, Between Decay and Development*, Holger, Brent, Hansen and Micheal Twaddelle, 1988. The population of Mbarara and Bushenyi districts more than doubled between the 1959 and 1980 censuses. pg.162.

<sup>15</sup> Kasfir 165-173. The advent of the cash economy transformed the notion of customary tenure from a system in which rights to plots are maintained through continuous use and when cultivation ceases, the land reverts back to the community, to a system of legal title with individual farmers asserting rights of ownership over the land that they used.

<sup>16</sup> Interviews with nationals, 3<sup>rd</sup> December 2002.

policies emphasising refugee self-sufficiency through agriculture, led to allocation of settlement land to refugees for cultivation, and conflict ensued between the two groups.

### 2.3 Demographic changes in the refugee population

Throughout most of its initial existence, the settlement's refugee population solely consisted of Rwandese Tutsi refugees.<sup>17</sup> This changed in the early 1990s when Kenyan and Somali refugees arrived in Nakivale<sup>18</sup> and were settled close to the base camp.<sup>19</sup> They were later followed by smaller numbers of refugees from the Democratic Republic of Congo (DRC), Ethiopia, Sudan and Eritrea.

As mentioned above, after the victory of the Rwandese Patriotic Front (RPF) forces in 1994, most of the Rwandese Tutsi refugees returned home.<sup>20</sup> However, they were soon to be replaced by another group of Rwandese refugees, this time of mainly Hutu ethnicity, fleeing the aftermath of the 1994 genocide. Since then Rwandese Hutus have continued to flock into Uganda and currently comprise the largest ethnic population (12,321) of refugees in Nakivale settlement.<sup>21</sup> The largest influx of Rwandese Hutu refugees occurred between 1998 and 2002, and did not come directly from Rwanda, but from Tanzania, where they had previously lived.<sup>22</sup> Research indicates two primary reasons for this movement from Tanzania. First, the refugees were wary of involuntary repatriation by the Tanzanian government, acting in collaboration with UNHCR. Second, they were attracted by the prospect of acquiring land as refugees and, hence, being able to earn a livelihood through agriculture. Many Rwandese Hutu asylum seekers interviewed by the RLP expressed the desire to engage in agriculture rather than receive relief assistance. In the words of one respondent:

In Tanzania, we were given food and other relief assistance. No refugee was given land in Tanzania. The only land a few individual refugees got was from private individuals. Since we arrived here, we have never received any kind of

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<sup>17</sup> Interview with the Assistant Resident District Commissioner (RDC), 6<sup>th</sup> December 2002.

<sup>18</sup> Many Kenyan refugees were settled in Nakivale in 1992 having fled ethnic clashes between Kalenjin and Bantu people's in parts of Western Kenya (Field interviews with Kenyan refugees in Nakivale in May 2001). Somali refugees were settled in Nakivale in 1994 after UNHCR, unable to support Somali refugees on the urban caseload, requested the GoU to allow Somali refugees to be settled in Nakivale. Somali refugees are not officially recognised by the government and, as such, prior to 1994 were not permitted to reside in refugee settlements.

<sup>19</sup> Where settlement administrative offices are located.

<sup>20</sup> The government of Rwanda estimates that one-year after the war ended a total of over 700,000 old caseload refugees had returned (see returnee figures according to the Rwandese Government, 1995 Government of Rwanda, Ministry of Rehabilitation and Social Integration).

<sup>21</sup> Interview with RDO 2<sup>nd</sup> December 2002.

<sup>22</sup> The largest number of Rwandese Hutu refugees settled in Tanzania. UNHCR figures approximate 577,000 Rwandese Hutu refugees in Tanzania by mid- November 1994 (UNHCR special unit for Rwanda and Burundi, *Rwanda and Burundi information meeting*, Geneva, 16<sup>th</sup> November 1994).

assistance from anyone. We would like to be given land rather than relief assistance.<sup>23</sup>

These large numbers of Rwandese Hutu refugees arrived, and continue to arrive, in Uganda at a time when the GoU and refugee agencies, because of the protracted nature of the refugee situation, along with ‘donor fatigue’, are trying to phase out direct relief assistance to refugees, in favour of promoting refugee self-sufficiency. Hence, policies that emphasise self-sufficiency through agricultural output have become a major focus of the overall approach to refugee management. In 1995, the GoU (through the Directorate of Refugees, in the Office of the Prime Minister) and UNHCR began to allocate land to refugees in Nakivale, particularly those refugees who had been settled further from the base camp area. It is this new form of settlement of refugees, and the lack of clear demarcation of settlement boundaries, that has brought refugees into conflict with nationals living within the settlement.

Prior to 1994, self-sufficiency through agricultural production was not emphasised in Nakivale settlement, since the majority of refugees were Rwandese Tutsi pastoralists, who earned their livelihood through cattle rearing. Neither did the Somali and Ethiopian refugees engage in agriculture.<sup>24</sup> Although there were a few attempts by Kenyan, Rwandese, and Congolese refugees to engage in agricultural production, this was generally done in an informal *ad-hoc* manner in which refugees were given permission by camp officials to grow crops. Because of this absence of agriculturalists, there was no official policy of land allocation in Nakivale during that time.<sup>25</sup>

### **3 COMPETING LAND INTERESTS IN NAKIVALE**

#### **3.1 The nature of interests in land**

There are a number of competing land interests in Nakivale refugee settlement that must be clearly understood: First, there are Ugandan pastoralists; second, there are Ugandan peasant farmers; third are refugee pastoralists; and finally, there are refugee agriculturalists. All of these groups have an interest in the land, and the primary point of contention that gives rise to the crisis is the basis on which all of these groups claim ownership or right to the land in Nakivale. Although a delicate balance is required to reconcile these competing interests for land, it appears that a cautious approach has not been contemplated by policy makers. Thus, while the move away from direct relief has created an increased need for land by refugees, land is also imperative for economically deprived Ugandans in the area.

One of the dominant characteristics of the tension in Nakivale is the divide between pastoralist nationals and agriculturalist refugees. This conflict, which grows out of a

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<sup>23</sup> Interview with Rwandese asylum seeker, 5<sup>th</sup> December 2002.

<sup>24</sup> Interviews, 15<sup>th</sup> May 2002. The Somali refugees are also pastoralists; the Ethiopians who were interviewed were largely from an urban background.

<sup>25</sup> Interviews with refugees in Nyarugugu, 16<sup>th</sup> May 2002.

shared need for limited land, is not restricted to Nakivale, but exists in varying degrees in other parts of Uganda as well as in neighbouring countries.<sup>26</sup> Whereas in Nakivale, agriculturalist nationals are settled closer to the outer areas of the settlement and are less affected by refugee farming, pastoralists utilise the empty land throughout Nakivale for grazing their livestock and are thus threatened by land allocation to refugees.

Pastoralists in Nakivale are predominantly nationals, many of whom did not originate from the Nakivale area, but had migrated from surrounding regions due to increased private alienation of land in those areas.<sup>27</sup> As mentioned above, Nakivale became particularly attractive after the mass repatriation of Rwandese Tutsi refugees to Rwanda in 1994. One respondent related the plight of many pastoralists that had migrated into Lake Mburo national park in search of open land:

I originated from Nyabushozi but I had to leave there because there was not enough land for my cattle. I moved to Lake Mburo national park but the government evicted me because it was a game reserve. I have been living in the settlement for ten years.<sup>28</sup>

Other respondents spoke of land scarcity in neighbouring areas as the reason for settling in Nakivale. They came largely from surrounding areas within Mbarara district, notably Nyabushozi. From the perspective of nationals, the allocation of land to refugees for agricultural purposes has diminished the size of land available for grazing. While land given to refugees appears to be empty and bushy,<sup>29</sup> it often turns out to be used by (national) pastoralists for grazing their cattle. As explained by one national:

Most of the land being taken by refugees is either not cultivated or it is poorly cultivated with almost no crops. If you have cultivated your land and it has crops your land is not taken. Pastoralists land looks undeveloped because it is not cultivated and it is given away to refugees because it is considered to be free land.<sup>30</sup>

Many of the national pastoralists interviewed by the RLP were very frustrated at their land being allocated to refugees. In the words of one respondent:

There is not enough land to graze our animals because the population is growing very fast...before there was a big space for grazing we could even graze at night but today the whole place is getting finished.<sup>31</sup>

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<sup>26</sup> In Rwanda, for instance, this difference in access to land livelihood has erupted into ethnic hatred, war, and genocide over the past several decades.

<sup>27</sup> There are also refugees who are pastoralists, as will be discussed below.

<sup>28</sup> Interview, 16 May, 2002

<sup>29</sup> Interview with camp commandant, 9<sup>th</sup> May, 2002.

<sup>30</sup> Interview with LCI representative, Kiretwa cell, 14<sup>th</sup> May 2002.

<sup>31</sup> Interview with male refugee, 14<sup>th</sup> May 2002.

Thus, some pastoralists perceive refugees as a threat to their land interests, and some have gone so far as to fence off areas of land inside the settlement for grazing, anticipating further encroachment by refugees. In one case, a pastoralist fenced off a tract of land of over 30 acres and forbade any trespassing.<sup>32</sup> Ordinarily, this land would have been allocated to the recently arrived refugees in the neighbouring Kabazana C section,<sup>33</sup> since they had no land and survived only on rations.<sup>34</sup>

While some nationals can afford to fence off pieces of land, many refugees' gardens are often unfenced. This means that livestock belonging to pastoralists has often strayed into refugee gardens, destroying crops and other vegetation, and in the process exacerbating the conflict. In one incident, refugees cut off the tail of a cow belonging to a national pastoralist after it strayed into a refugee's garden. The national retaliated by getting soldiers from the Ugandan army to intervene in the situation.<sup>35</sup> The soldiers gathered several of the refugees living in proximity to the property of the national and threatened the refugees with physical harm if they harmed any more livestock.

Other pastoralists within the settlement are the Rwandese Tutsi refugees who came to Uganda in the 1960s, and their progeny, referred to as 'old Rwandese nationals'. The name illustrates their disputed citizenship. Many either did not return to Rwanda after the 1994 genocide or, if they did, later came back to Uganda, after they found economic conditions in Rwanda less comfortable than those in Uganda.<sup>36</sup> Owing to their long history in the area, many Tutsi refugees now claim to be nationals. One old Rwandese respondent claimed: "I am a national, I have been with all the leaders here, the Kabaka, Obote, Amin and Museveni . . . my children, my grandchildren were born here."<sup>37</sup> This respondent, like others interviewed, had not continuously lived in the settlement since the 1960s, but had migrated to other parts of Uganda and returned to the settlement to look for good pasture, particularly after the voluntary repatriation of large numbers of their kinspeople in 1994.

Another dimension to the land crisis is the dispute between Ugandan farmers and refugees. Agriculturalist nationals have settled throughout Nakivale in enclaves

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<sup>32</sup> Interview with refugee, 3<sup>rd</sup> December 2002.

<sup>33</sup> Refugees are settled in clusters according to their nationality and time of arrival. These clusters are named according to the area in which they are located; hence, refugees settled in the Kabazana area of Nakivale refugee settlement are settled in clusters known as Kabazana A, Kabazana B, Kabazana C etc., refugees settled in the Kiretwa area are settled in clusters known as Kiretwa A, Kiretwa B etc. However, the refugees refer to the areas as Somali zone, Bakongo zone, and so on.

<sup>34</sup> Interview with RDO, 2<sup>nd</sup> December 2002. These refugees are part of 1,100 predominantly Rwandese Hutus who have attained status but have not been given land. They complained that the rations they were given were insufficient and feared that without land they would not have enough food to subsist.

<sup>35</sup> Interview with national pastoralist, 3<sup>rd</sup> December 2002.

<sup>36</sup> For instance, many returning refugees were faced with a huge shortage of land in Rwanda and considered it better to return to Uganda, where they had acquired sizeable parcels of land as refugees.

<sup>37</sup> Interview with male 'old Rwandese national', 14<sup>th</sup> May, 2002

known as ‘cells’.<sup>38</sup> Nationals have lived within or around the settlement for several decades and believe they have a legitimate stake in the settlement land. This, in turn, means that they feel directly affected, or even aggrieved, by the allocation of the settlement land to refugees. Their fears and concerns were succinctly reflected by the LCI chairman of Kiretwa cell:

Refugees in this area [*Kiretwa*] came last year but one [2000] from Tanzania. Before they were brought onto our land, we would go and trade with them, but now they have brought [them] on our land. . .before they [were confined to] the [base] camp . . . this system of giving them [*refugees*] land has brought problems...the land I now use is little...you can be digging extending your farm then they [*camp authorities*] bring a refugee and say stop here then they put a refugee there...we are not on good terms with refugees because of land...when I came in 1992 [*respondent was born in Kiretwa cell but moved to Mubende to work and came back to Kiretwa in 1992*], I had about 5 acres before refugees came, now I have less than one acre. I am in the middle, my farm is surrounded by refugee farms...if I had more land I would be engaged in agriculture extensively but now I have no land...our developments have been reduced because we have no land.<sup>39</sup>

It is clear that the nationals feel besieged in their own country as more and more refugees are settled in Nakivale. There is no security of tenure as they can be evicted any time by the authorities. In the words of another respondent from Kiretwa cell:

The RDC came last week and said [that although] we [have settled] here, anytime [they] can bring refugees here. . . we will become refugees in our own country so the people have made a big sound . . . these people of big

<sup>38</sup> A cell operates at a Local Council level 1 (LC1). The local government structure functions within the national communities in the settlement. There are three principal groups of agriculturalists that have settled within Nakivale: First, indigenous Bairu farmers who originated from surrounding areas in the counties of Bukanga and Isingiro, particularly Rugaaga and Ngarama, and from neighbouring Bushenyi district. Some of the respondents’ families had moved into the area 50-60 years ago. While some were not sure how their ancestors came to settle on the land, a 74-year-old respondent in Kiretwa cell, who had lived in the area since 1941, informed us that he had been allocated a square mile of land by a local chief, and that his family has since been living on that land. Other respondents had moved into the area more recently (20 years or less). Second, Banyankole who had moved into Nakivale in search of a means of livelihood as fishermen (they settled amongst national communities at the landing sites of Lake Nakivale), the majority of respondents cited land shortage in their home areas as the reason for their migration into the area. An 18-year-old student in Kiretwa cell, whose family originated from Isingiro county, had been living in Kiretwa cell for ten years and his mother for 18 years: “Mum settled [on] the land; there is a land crisis where we come from, so this land looked empty and we settled here.” The third group of agriculturists within the settlement are Bakiga, predominantly from Kabale district in the Kiga region of southwestern Uganda. They also moved into the Ankole region because of acute land shortage in their home area. Also within the Nakivale settlement are a number of Banyankole nationals of Kiganda ancestry. The RLP interviewed a number of these in cells along the landing sites of Lake Nakivale. The ancestors of these respondents had migrated from Buganda (central Uganda) to the area in the 1930s or 1940s, after obtaining licenses to fish in Lake Nakivale. These respondents were born in this area and occupied land that has been passed down from their ancestors.

<sup>39</sup> Interview with LCI, Kiretwa cell, 14<sup>th</sup> May 2002.

offices must be against government because how can they say that? People come from Rwanda as refugees and they come and chase us out as [nationals]!<sup>40</sup>

As this illustrates, refugees appear to enjoy a privileged position in terms of their ability to be allocated land at the expense of nationals. The consequent resentment has been exacerbated by the arrival of considerable numbers of Rwandese refugees from Tanzania. Indeed, the interviews suggest that sentiment towards refugees is contingent upon the context of their relationship: not all nationals in Nakivale have been affected by refugee encroachment, and such nationals generally have a good relationship with refugees. Refugees, in particular the new arrivals from Tanzania, were seen as a good source of cheap labour and a market for agricultural produce.<sup>41</sup> This generally underscores the fact that the tension between the different communities is created by the specific struggle for land as a socio-economic resource.

### 3.2 The consequences of sustained competition over land

Upon revisiting Nakivale in December, the RLP noted that these circumstances had not only created heightened tension, but had begun to be articulated along ethnic lines. Not only was there increasing resentment against refugees generally, suggesting the possibility of violence between refugees and nationals, but old rivalries between different divisions within the refugee population had begun to surface. Thus the Tutsi/Hutu divide (which is also a pastoralist/agriculturalist divide) was being used to express a further dimension to the struggle for land. As stated by one 'old Rwandese national' pastoralist: "we cannot live with these people [the Rwandese Hutu refugees] . . . children who do not belong to the same family cannot live together."<sup>42</sup>

National pastoralists also presented the conflict in these terms. As stated by one national:

The other complication with living with refugees is that the problem between the Hutu and Tutsi cannot end and yet it affects us also. The Hutus mistake us for Tutsis and they threaten us and tell us to go back to Rwanda.<sup>43</sup>

Indeed, some national pastoralists went as far as to indirectly accuse the refugees of involvement in the Rwandese genocide:

We are very afraid of these people [Rwandese Hutu refugees] because of the bad things that they did when they were in their country.<sup>44</sup>

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<sup>40</sup> Interview with male national, 12<sup>th</sup> May 2002.

<sup>41</sup> Interviews with Kazya nationals, 13<sup>th</sup> May 2002. Kazya is a cell located at the very edge of the settlement and no refugees have yet been settled in the area.

<sup>42</sup> Interview with national pastoralist, 3<sup>rd</sup> December 2002.

<sup>43</sup> Interview with national, 5<sup>th</sup> December 2002.

<sup>44</sup> Interview with national, 14<sup>th</sup> May 2002.

Reflecting this ethnic interpretation of the crisis, criminal activity within the settlement was also blamed on the Rwandese Hutu refugees: “Since they have come there have been more robberies. They are thieves and once they killed the child of a national.”<sup>45</sup>

The RLP interviewed three Rwandese Hutu refugees in Kabazana B about this incident. They stated that the man who perpetrated the act was known to be mentally ill and had recently escaped from Mbarara hospital when he attacked the family. They also claimed the nationals knew the man was mentally ill. After the incident, some nationals rounded up several Rwandese Hutu men; they took them to the top of a nearby hill where they planned to kill them. It was the camp commandant’s intervention in the matter that saved these men. A camp officer working for Uganda Red Cross confirmed the events and, further informed us that the Rwandese Hutu refugees in this area had begun to organise themselves to attack nationals’ homes if their men were not returned.

Another national expressed frustration with the lack of response by relevant authorities to the issue, signifying the serious nature of the conflict.

I’ve reported this matter to the RDC and he says they will evict the refugees. If they don’t evict the refugees, I will do something about it. God only knows what this will be.<sup>46</sup>

However, he went on to clarify his relationship with the refugees:

Apart from the land issue, I have no problem with refugees and have a good relationship with them. I sell my milk to the Somali community and some of them work for me. My kids share schools and hospitals with refugees. I also have no problem with the Congolese but I don’t trust the Rwandese because of a recent incident in which they killed a national.<sup>47</sup>

The extent to which the vast majority of nationals and refugees agreed that resolution of the land problem would create a harmonious coexistence between them shows how pressure over land has polarised the different groups along national and ethnic lines.

#### **4 MEASURES TAKEN TO RESOLVE THE LAND CRISIS**

As shown above, the competing interests over land in Nakivale have resulted in serious tension and animosity between nationals and refugees, and among groups of refugees themselves. The GoU responded to this emerging crisis by taking administrative measures: in 2000, they instituted a Task Force headed by the RDC, to investigate claims of land ownership by nationals living within the settlement and

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<sup>45</sup> Interview with national, 5<sup>th</sup> December 2002.

<sup>46</sup> Interview with national, 2<sup>nd</sup> December 2002

<sup>47</sup> Ibid.

to ascertain the boundaries of settlement land. The only report by the Task Force that the researchers were able to obtain was a one-page document stating that the conflict was fuelled by ambiguous boundaries of settlement land, and the proposed solution was a clear demarcation of settlement land and subsequent eviction of nationals living within the settlement.

Given the continuing conflict, it appears that such administrative steps were inadequate to resolve such a complex problem for a number of reasons. First, the composition of the Task Force itself was only composed of local and central government appointees with no representation from either the refugees or the nationals living in the affected area. Second, the terms of reference for the Task Force were not adequate given the complexity of the situation. Third, the findings and suggested solutions were simplistic, narrowing the problem to one of demarcation of settlement land: the proposed solution of evicting nationals without alternatives is not only inadequate, but is likely to exacerbate further the tensions between nationals and refugees. As the Registrar of Titles (Mbarara) concedes, this solution will be unlikely to resolve the conflict between the two groups:

... we have a major problem as we don't know where to strike a compromise with the nationals who still claim most of the land. The original and present boundaries covering 86 square miles simply cannot be maintained, as what was originally unoccupied land is now occupied. Yet again, the 30 square miles recommended by the *Ngoma Ngime* (Task Force) report is too small to accommodate all the refugees.<sup>48</sup>

Fourth, and most seriously, the Task Force seems to be silent on the issue of land-grabbing by influential officials within the local district administration. During interviews with both refugees and nationals, it emerged that there were incidents in which certain government officials acquired huge chunks of settlement land.<sup>49</sup>

The administrative steps taken would have possibly yielded better results if they were grounded on a sound policy framework. Such a policy framework would strategically look at refugees and nationals as a combined resource to economic progress and, therefore, would suggest measures that would allow refugees to freely find land in any part of the country.

That refugees will one day return home, it is argued, does not undermine the validity and feasibility of such an approach. Moreover, such a policy would be consistent both with the 1995 Constitution of Uganda, which vests ownership of land in the people, and with government's efforts to liberalise the economy and give greater freedom to private individuals to manage economic resources.

Many of the problems discussed above could have been avoided had government taken the right legal procedures to acquire settlement land. Under the Land

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<sup>48</sup> Interview with Registrar of Titles, Mbarara,

<sup>49</sup> Interview with nationals, 5<sup>th</sup> December 2002.

Acquisition Act, the government can acquire land for public purposes. However, as noted above, the land that comprises Nakivale was obtained through informal means by the colonial government. Post independence, the government did not take any steps to rectify this. Because such measures were not taken, the GoU has no legal claim to the land in Nakivale. The settlement land is not registered, and therefore does not exist legally, hence anybody can acquire the land. Indeed, some nationals have already acquired land as this national stated:

I own 84 hectares of land and these were given to me by the Camp Commandant. I even have a certificate of title but it is not here. I got the certificate of title in the 1990s and it is a 49-year lease.<sup>50</sup>

Under the Land Act, such acquisitions are legitimate, and the GoU cannot simply evict such nationals without compensation. If the GoU intends to legally acquire the land in Nakivale for purposes of establishing a refugee settlement, it must follow the law—in this case, the Land Acquisition Act, in light of Article 26 of the 1995 Constitution. It is thus clear that for as long as the legal rules for acquiring and protecting land interests are not followed by government and individuals, the land crisis will endure.

## 5 CONCLUSION

The land crisis in Nakivale illustrates how the protection and development of refugees is dependent on harmonious co-existence and mutually beneficial interaction with their national hosts. As such, the climate of social mistrust and violent confrontation within the refugee and national communities in Nakivale is not conducive to either self-sufficiency or effective protection. Indeed, the social tension has begun to create antagonism towards refugees, owing to suspicion on the part of some nationals that the latter are, in fact, economic migrants seeking land.

As a result of this tension, one may draw two broad observations concerning the socio-economy of Nakivale settlement and the capability of the settlement to ensure refugee protection and development. First, from the perspective of refugee protection, the scarcity of land has led to an intense, sometimes violent relationship between refugees and nationals, partly owing to the policy of local settlement. This has undermined the obligation of the GoU to protect the security and human rights of the refugee community. Second, land scarcity surrounding Nakivale settlement is compounded by a failure on the part of government to properly acquire the land as is required under the Land Acquisition Act. This failure has serious implications for the long-term socio-economic development of the area, for nationals and refugees alike.<sup>51</sup>

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<sup>50</sup> Interview with Ugandan family in Kabazana section, 2<sup>nd</sup> December 2002.

<sup>51</sup> Indeed, the present situation is only deteriorating. At the time that this paper went to press, approximately 8,500 predominantly Rwandese refugees formerly living in Tanzania were living in Nakivale area. They were receiving no assistance and had not engaged in the process of determining their eligibility as refugees. While the lack of response by the GoU and UNHCR to the problem is

In light of these findings, the RLP makes the following recommendations:

- In the immediate term, that a functional land distribution process be developed and implemented in Nakivale settlement and its surrounding area. Such a process needs to take into account the interests of both refugees and nationals alike. Furthermore, land redistribution should not be influenced by the interest of keeping refugees and nationals apart. We would argue that refugee protection in the long run is going to be a function of both good social and economic relationships between nationals and refugees, and sound refugee policies that promote free individual interaction between refugees and their hosts. For example, it is only in such an environment that the proposed implementation of the Self Reliance Strategy (SRS) will be able to function.
- That land that has been acquired by people in positions of authority should be re-assessed in light of the above.
- That any future initiatives allow for greater involvement of refugees and nationals in resolving the current impasse.
- In the longer term, the government should consider dispersing refugees, rather than maintaining them within limited areas of the country.
- Furthermore, the government should encourage other means of self-sufficiency for refugees that do not entirely depend on land. Such a diversification would ensure that pressure on land in areas such as Nakivale is reduced.

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troubling, Nakivale settlement, given its current situation, would be unable to accommodate this influx if the present structure and policies were to continue.

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