

The Ugandan Refugee Model Under Pressure: Protection and Justice in Refugee Settlements

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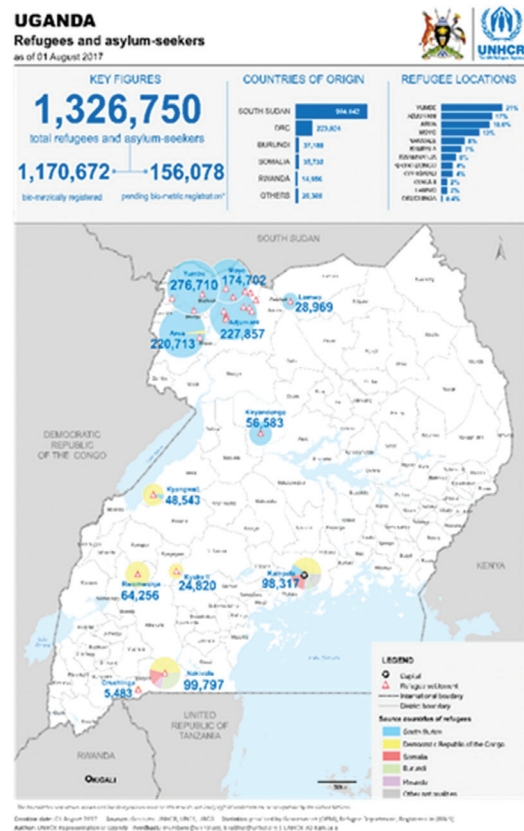
Introduction

The escalation of violence in South Sudan sparked a refugee crisis in the north of Uganda, catapulting Uganda to the forefront of this crisis in Africa. In fact, more refugees entered Uganda than those who crossed the Mediterranean to Europe the same year¹. There were already a staggering 1.3 million registered refugees in Uganda in August, 2017, 994,642 of which were South Sudanese (UNHCR, 2017). These numbers exacerbate the already strained resources available to protracted refugees in the south and southwest of Uganda as a consequence of the refugee crisis in the north. A Solidarity Summit took place in Kampala June 2017, which sought to raise USD 2 billion, but only managed to secure USD 365 million.² With the increased number of refugees mixed with a lack of adequate funding, pressure on Uganda as a refugee-hosting state is at risk of reaching a breaking point.³

Uganda has steadily gained a reputation as a model country for refugee-hosting countries around the world due to its progressive legislation granted by the 2006 Refugees Act and the Refugees Regulations, 2010. Uganda uses an open settlement policy: it allows refugees a plot of land for cultivating and promotes freedom of movement⁴ for refugees to realize opportunities, notably in education and income-generation, not restricted to the settlement. In fact, the United Nations High Commissioner for Refugees (UNHCR) based its new Comprehensive Refugee Response Framework⁵ off of the Ugandan refugee model.⁶ However, recent allegations have been reported that the Ugandan government has exaggerated refugee numbers in Uganda, sold relief items intended for refugee usage, and even took part in the trafficking of refugee girls, all enraging big donors and the United Nations.⁷ This is just the tip of the iceberg into the complexities of practices in refugee settlements in Uganda. The multiplicity of domestic and international actors, and lack of clearly defined roles and responsibilities as well as fluctuations

in program time spans created gaps and tensions, even if the proper laws and policies are in place.

This research seeks to analyze the *practice* of providing refugees with physical protection and access to justice in the Ugandan refugee settlements while highlighting the role of several actors involved in this process. It will contribute to answering two



Source: United Nations High Commissioner for Refugees (2017). This map details the refugee population by region in Uganda before the start of my fieldwork in September 2017.

¹ See the report by the Norwegian Refugee Council, available online: *More Refugees Flee to Uganda than Across Mediterranean* (2017).
² “Uganda’s Solidarity Summit for Refugees Raises over USD350m. UNDP in Uganda, 26 June, 2017
 The Solidarity Summit was hosted by Ugandan President Yoweri Museveni and UN Secretary-General António Guterres; it took place to mobilize funds from the international community in response to the fastest growing refugee crisis in the world in Uganda.
³ Interview with UNHCR Protection Officer, Kampala, November 14th, 2017.
⁴ Refugees are allowed to move in and outside the camp with no physical barriers.
⁵ Established by The New York Declaration, it calls for larger support and burden sharing to refugee-hosting countries.
⁶ Interview with Protection Officer, UNHCR Kampala, November 14th, 2017.
⁷ Onyulo, Tonny. “The U.N. Found Only 7,000 Refugees, despite Uganda’s Claim that Thousands More Needed Aid”, *USA Today*, 23 March, 2018.

questions. First, what and from whom is physical protection provided for refugees in the settlement? And second, how do time, disinvestment, and sociocultural implications influence actors in carrying out physical protection and access to justice in Ugandan refugee settlements? The research addresses the fact that funds become less accessible as a refugee settlement shifts from an emergency phase to a protracted situation, which in turn increases gaps in refugee protection and justice. Refugees address these gaps through actions based on their cultural background from their country of origin and their social standing in their communities inside the settlement. Answers to these two questions will contribute, more broadly, to assessing if Uganda can be said to be a model refugee-hosting country for the world.

I conducted research in Nakivale and Bidibidi, two settlements that not only differ geographically and demographically, but serve as two different representations of time. Nakivale was established in the early 1960s in the southwest of Uganda; it is composed of eleven different nationalities and is prevalent for protracted refugee situations. Bidibidi, on the other hand, gathers only South Sudanese refugees; it is located in the northwest of Uganda and it re-opened in August 2016 in response to the refugee crisis in the north. Bidibidi has been looked at as a model settlement, but often would draw off the historical experience of Nakivale. This study does not seek to compare and contrast the two settlements, but rather uncovers how practices to ensure physical protection and access to justice may change as a settlement goes from an emergency to permanent status, as in the case of Bidibidi. Moreover, my research made it possible to identify how these practices were influenced both by their temporality and (dis)investment. I will show that investment in the north in response to the crisis, as Bidibidi showcases, led to disinvestment in the older settlements in the southwest, including Nakivale. The fieldwork for this research took place between August and November of 2017.⁸

Refugee Protection and Justice in Practice

Refugee legal protection in Uganda is two-fold: there are international and domestic legal instruments. The international legal framework stems from the 1951 Refugee Convention, its protocol, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Additionally, Uganda is a signatory to many regional and international human rights treaties (Lomo, 2012 : 2012). The current Refugee Act is viewed as progressive: it incorporated a number of international legal standards of the protection of refugees, recognizing “Uganda’s obligations arising from international law, international refugee law and international humanitarian law” (Lomo, Ibid : 20).

While laws and policies have been in place to uphold basic human and refugee rights, it is important to detail the role of the

actors charged with carrying out such legislation. The Office of the Prime Minister (OPM) is the Ugandan government branch charged with spearheading and overseeing all refugee-related matters in Uganda as well as the body responsible for providing physical protection to refugees. In addition, refugees access justice through the Ugandan domestic legal system, involving other actors under the supervision of the OPM, such as the police. UNHCR operates and assists the OPM since “when it comes to refugee (physical) protection, they are the ones responsible for that... (b)ecause for us, the sovereignty of the territory is number one.”⁹ UNHCR collaborates with the OPM by providing support with international protection, which involves on-ground coordination and monitoring, bringing in funds from donors, and identifying partner non-governmental organizations (NGOs) in the settlements who UNHCR monitors and oversees. These are the formal actors in the settlements.

The Refugee Welfare Council (RWC) is composed of elected refugee leaders in the settlements who report to the abovementioned formal actors. The RWC leaders play a key role in implementing physical protection and access to justice for refugees in their communities. They are the first to be reported to by refugees when an issue occurs, and it is through them that the communication chain is sparked during such an instance.

Physical Protection

The first step in providing refugees with physical protection is registration.¹⁰ Once registered, the OPM works to ensure refugees are settled in a way conducive for internal safety and security. For example, in Bidibidi, the OPM gazette refugees based on their tribe as they were categorized by the OPM, UNHCR, NGOs, and refugees themselves, in order to eradicate pre-existing tribal tensions from the country of origin as refugees acclimate to life in the settlement. This largely reduced tribal-based violence within Bidibidi, and when a protection issue arose, the OPM, UNHCR, Ugandan People Defense Force (UPDF), RWCs, NGOs, and the police coordinated internally to oversee matters of security on the ground within the settlement. Cases are first reported to the RWCs who serve as the foundation of the reporting coordination; it is the RWC leader who decides if a case should be addressed at the RWC level or be reported up. In addition, many refugees reported to resolve cases with RWC leaders in accordance with their culture and traditions. For example, one RWC leader reported to have resolved a dispute between a man and his two wives because it is illegal in Uganda. It was keeping “with tradition.”¹¹ When a RWC leader decides the case needs to be reported up, he may report it to the INGO responsible for protection issues or go directly to the police who coordinate closely with the OPM. Ultimately, it is the RWC leaders who decide how to proceed with a case and with whom to coordinate with in the next step.

⁸ I used an anthropological approach to uncover hidden nuances among various actors in their everyday practice. Much literature has been published from a legal stance on refugees, but using an ethnographic approach allowed for better insight into the functions and implications of the system in place while identifying key factors, such as sociocultural norms, spatial composition, temporality, and power structures. The research methods involved conducting participant observation, focus-group discussions, in-depth interviews, and informal conversations that form the backbone of the research findings.

⁹ Interview with a Protection Officer, UNHCR, Kampala, November 14th, 2017.

¹⁰ Interview with Assistant Protection Officer, OPM, Kampala, November 17th, 2017.

¹¹ Interview with a refugee man, zone 1, Bidibidi Settlement, October 23rd, 2017.

Uganda's open settlement policy upholds certain refugee rights, such as freedom of movement, but requires the monitoring of *who* enters and exits the settlement for security purposes. To ensure physical protection of refugees within the settlement, the OPM coordinated with external institutions operating under the central government to identify and address potential external security threats to the settlement. This involved information flow between the resident district commissioners (RDC), Local Community Councils (LCC), of which the RWC structure is modeled off, and sub-county officers. The RDC is appointed to oversee matters of security, property, and daily activities of government programs in the district, and also to oversee the Local Community Councils (LCC). These LCCs provide on the ground information reported to the RDC when there is an issue in the community. There are also sub-counties that have a 'giso', the gongora – local word for 'sub-county' internal security officers. These external actors report any suspicious activity to the Deputy Settlement Commandant of the OPM who is in charge of security matters. This information flow is designed to allow for the detection and regulation of security matters.



Refugees lining up to be registered in Bidibidi, November 2017/ Photo: Hoff.

The OPM coordinates with the police force and UPDF both inside the settlement and outside in Yumbe district. Due to the limited capacity of the police force in the district, the UPDF was brought in to enhance the security and protection of nonfood items worth millions of dollars.¹² However, several NGO workers I interviewed stated that UPDF was present to also ensure the safety and security of the settlement in case of security threats, which was an issue at the re-opening of Bidibidi. Because of the close proximity of Bidibidi to the South Sudan border, security threats largely consisted of South Sudanese government delegates and militias coming into the settlement disguised to attack and spy on targeted refugees, as will be discussed later in this paper. I found discussing the activities of the UPDF a sensitive topic, and two UNHCR officials even denied the UPDF's presence in the settlement to mask the potential security threats present at Bidibidi.

The ease of mobility in and out of the settlement also increased the number of refugees traveling to and from South Sudan from Bidibidi. This resulted from the lack of livelihood opportunities and the economic hardship refugees faced inside Bidibidi. For

instance, one refugee I interviewed planned to spend a month in South Sudan working because "Christmas is coming up"¹³ and wished to buy presents for his children. Other reasons included visiting family, attending weddings or funerals, or some cases of voluntary repatriation. Several refugees I interviewed during my fieldwork reported cases of deaths of refugees during the journey to or from South Sudan back to Bidibidi. In other words, many refugees compromise the structure of protection and security afforded to them within the settlement to return to the very place in their country of origin from which they initially fled in order to meet economic or social needs.

Although the structure in place has indeed worked to ensure the securitization of Bidibidi as an open settlement, it does not eradicate in entirety the security threats. Security was a sensitive topic during my field work and most of the data I gathered resulted from interviews with refugees and partner staff who spoke more openly than UNHCR or OPM personnel. At the inception of the settlement, 'spies' delegated by the government of South Sudan in the reception center were identified by refugees and reported to the OPM and UNHCR who 'took care of it'¹⁴ which remains unclear on how exactly this threat was addressed. Several refugees I interviewed reported cases of husbands of women in the camp, who had stayed behind to fight in South Sudan but visited their wives inside the settlement, highlighting the ease with which individuals may enter and remain inside the settlement undocumented and unreported. This issue of *who* is inside the settlement prompts other concerns: several refugees claimed to see former government soldiers in the settlement and feared they may be targeted by government delegates due to their previous involvement with the opposition militia in South Sudan.

Nakivale, on the other hand, serves as an example of how strained resources from institutional disinvestment in protracted refugee situations leads to increased security risks due to lacking capacity among different actors. One police officer mentioned it was difficult to track who enters and exits the Nakivale, and the recruitment of young males in the settlement for military purposes was one of their biggest concerns. Moreover, it was common to hear refugees, particularly from the Great Lakes region (especially Rwandans) report alleged cases of attacks and abductions by delegates from their countries of origin. A Burundian female refugee I interviewed claimed she had been attacked by Burundian government delegates inside Nakivale. In one interview she stated, "there is no security in Nakivale. No. I don't feel safe here. I have been attacked and nothing has been done. I need security. The RWC can't protect and the OPM and police and partners won't help me."¹⁵ Lastly, like Bidibidi, due to limited livelihood opportunities within the settlement and diminishing resources in Nakivale in response to the refugee crisis in the north, many refugees worked outside the settlement and were vulnerable to crime and abuse. For example, three different mothers I interviewed reported being raped after they

¹² Phone interview with Deputy Commandant, Kampala, November 13th, 2017

¹³ Interview with a refugee man, zone 1, Bidibidi Settlement, October 25th, 2017.

¹⁴ Interview with Protection Officer, IRC, Yumbe town, October 27th, 2017.

¹⁵ Interview with refugee woman, basecamp, Nakivale Settlement, September 25th, 2017.

left the settlement to seek economic opportunities in nearby towns. Such cases of crime and violence outside the camp were commonly reported as the resources inside the settlement dwindled over time, forcing refugees to seek outside economic opportunities with limited physical protection.

Access to Justice

In Bidibidi, various mechanisms were put in place to ensure justice. The NGOs in charge of protection issues set up 'complaint desks' around the settlement to offer guidance and serve as mediators between refugees and the police. In addition, because refugees have to use the domestic legal system in Uganda, cases were heard in local courts outside the settlement. Mobile courts were brought into Bidibidi on an *ad hoc* basis when available; they bring in the local magistrate from Yumbe and create a makeshift temporary courtroom at a selected site in the settlement. This proved successful¹⁶ for ensuring justice and allowed for refugees to attend the sessions and learn more about the Uganda law, which served as a deterrent in committing crimes.

However, accessing justice still meets challenges in both settlements. The largest challenge is an adequate understanding of the laws and rights afforded to refugees in Uganda by RWC leaders, the first actor notified after a crime had been committed. Often times RWC leaders would respond by utilizing cultural and traditional customs from their country of origin to address a case. This was partially due to limited police capacity and the proper know-how by RWC leaders on when to report a case to the police, such as a capital offense like rape. A heavier reliance on RWC leaders was particularly prevalent in Nakivale, where the police lacked the proper capacity to address all cases, and no mediatory role by an NGO was put in place such as in Bidibidi. This resulted in heightened power among RWC leaders in addressing criminal cases and subsequently a poor use of the Ugandan refugee legislation, which explains why many cases finally remain unresolved. The blurred lines as to *which actor* addresses a crime and the inadequate training in the Uganda law system negatively impact refugees access to justice and sentences.

The Ugandan Refugee Model as a Home

The research uncovered three different results which I will briefly discuss in conclusion. The first result is that even though Uganda seems to try its best to handle the refugee question – and it indeed offers many benefits for refugees – it should not withstand criticism and accountability, especially as settlements emerge out of an emergency phase and one into one of stability, often resulting in lesser funds and capacity on the ground in everyday practice. In other words, the Ugandan refugee settlement model can be thought of as a home: the structure is there to protect persons so that they can carry out their everyday lives in safety. But what happens when, as time

goes on, the house begins to experience wear and tear? It needs investment, not disinvestment, to uphold the structure. This is precisely how problems and challenges arose in Nakivale, due to neglect and disinvestment. No matter what framework is in writing, this serves as a lesson in upholding physical protection and access to justice for all refugees in Ugandan settlements, despite the timeframe or historical component of a settlement or the refugees within that settlement.

Secondly, physical protection is provided for refugees both within the settlement and from external threats. However, a lack in livelihoods may push refugees to seek new economic opportunities outside the settlement, and the open settlement policy without an adequate support from actors in charge of security may result in bringing outside threats into the settlement. Ultimately, if the opportunities are available for refugees to be self-sustaining and the capacity of security forces inside the settlement remained robust such as in Bidibidi, refugees would have a much better chance to remain physically protected, self-sustained, and able to potentially thrive and not just survive.

The praise Uganda has received for its refugee legislature and policy is known worldwide, and other countries are beginning to discuss similar measures. But we cannot understand how a model really works and its value without looking and analyzing what is happening on the ground. As this paper shows, the implementation of law and policy in practice is far more difficult in practice and differs from what is written on paper in response to the given circumstances. The refugee settlement is not only a place of different cultures, but of actions that stem from this context in response to the situation at hand. RWC leaders and refugees alike stepped up their roles as a tool to uphold this model, and although, at times, it led to discrepancies in the appropriate practice and implementation of law and policies in the communities, it often served as a gateway for refugees to receive some form of physical protection and access to justice that would have otherwise been denied. This paper, in conclusion, serves to highlight the need for the international community and Uganda as a refugee-hosting state to continuously invest and empower refugees in these settlements, rather than disinvest over time, which allow for such gaps in physical protection and access to justice to emerge.

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¹⁶ Phone interview with Deputy Commandant, Kampala, November 13th, 2017