



UNHCR Policy on Return to Burundi –
List of Questions of the Ministry of Foreign Affairs of Germany

1. Which internationally recognised conditions have to be fulfilled for UNHCR to declare a country or a region to be safe for return?

UNHCR does not declare a country or a region to be safe for return of refugees, as no country can be considered safe for all. UNHCR engages in different ways in the voluntary return of refugees to their country of origin. The level of physical, legal and material safety will determine the type and degree of UNHCR's involvement in return operations. Where the potential for a sustainable solution through voluntary repatriation is considered high and conditions are deemed conducive for the large scale return in safety and dignity, the Office may promote voluntary repatriation. Promotion of voluntary repatriation constitutes the highest degree of UNHCR involvement, when it is deemed that conditions in the country of origin have become conducive for return in safety and dignity.¹

The search for solutions has generally required UNHCR to promote, with governments and with other international bodies, measures to establish conditions that would permit refugees to return safely and with dignity to their homes and to make a free and informed choice. Creating actual conditions for return, however, remains fundamentally a political process going well beyond the capacities of UNHCR. This process involves actors with different and often not necessarily converging interests.

From UNHCR's perspective, the core components of a solution-oriented process of voluntary repatriation, namely a process leading to the restoration of national protection, are conditions of physical, legal and material safety and a process of reconciliation in the country of origin. This is what is meant by "return in safety and with dignity".

The overall security situation will determine whether return takes place. A secure environment is essential. This means an end to violence and intimidation, combined with strides towards human rights-compliant law-enforcement agencies, as well as an independent judiciary. The physical safety of returnees must be assured by the authorities, monitored by UNHCR and possibly supported by the international community, wherever return takes place.²

¹ See General Assembly Resolution 428(v) 14 December 1950.

² See EXCOM Conclusion 18 Para. (h); see also EXCOM Conclusion 40 Para. (l).

Returnees also have to be assured of legal and material safety, such as the existence of legal systems, including traditional structures, which enable the realization of and respect for human rights, and therefore the full restoration of national protection, access to means of survival and non-discriminatory access to basic public services.

Against these principles, the situation in Burundi continues to be a matter of concern to UNHCR. The promulgation of the Transitional Constitution in October 2001, the establishment of the Transitional Government in November 2001 and the Transitional Parliament in January 2002, have marked significant achievements in the implementation of the Arusha Peace and Reconciliation Agreement. However, to date a cease-fire agreement has not been signed and fighting between the army and the rebels continues to flair up in different provinces in an unpredictable fashion. Furthermore, the crucial question of the reform of the army to make it more ethnically balanced has not yet been addressed.

Against this background, movements of internal displacement as well as refugee outflows are still recorded in the aftermath of clashes between the rebels and the army, particularly in the Southern provinces of Makamba and Ruyigi and in Bujumbura rural.

After the signing of the Arusha Peace and Reconciliation Agreement in August 2000, a Tripartite Agreement³ was concluded between the Governments of Burundi, Tanzania and UNHCR in May 2001. This agreement establishes a Tripartite Commission to discuss operational matters pertaining to voluntary repatriation, and sets out the duties and responsibilities of the respective governments as well as the rights of Burundian refugees and returnees. This agreement is an important underpinning of the principles relating to voluntary repatriation. However, for such instrument to be fully operational, the necessary conditions must be in place in the country of origin to guarantee its proper implementation. In the case of Burundi, conditions are not conducive at this stage for promotion of voluntary repatriation, and UNHCR only facilitates it upon the specific request of refugees, provided that minimum security conditions have been established in areas of return and the Office has access thereto. At the present stage, such facilitation occurs almost exclusively to the Northern province of Musinga, which has been relatively stable for some time and where UNHCR has access to returnees.

2. What happens to refugees who refuse to return to their country which has been declared safe for return by UNHCR?

As explained above, UNHCR does not declare a country or a region to be safe for return of refugees. However, the Office promotes voluntary repatriation when conditions in the country of origin are deemed to be conducive for return in safety and dignity. Since the principle of voluntariness⁴ underlies voluntary repatriation operations conducted under the auspices of UNHCR, some refugees may well remain in the country of asylum even as the Office promotes voluntary repatriation on a large scale. In such situations, the “residual caseload” should continue to enjoy international protection in

³ See EXCOM Conclusion 40 Para. (j) These agreements concern the more significant voluntary repatriation operations and set out respective duties and responsibilities of countries of origin and asylum as well as the rights of refugees and returnees.

⁴ See EXCOM Conclusion 18 Paras. (b) & (c), see also EXCOM Conclusion 40 Para. (a).

the country of asylum until the “ceased circumstances” cessation clause of the 1951 Convention is applied by UNHCR and the countries concerned. Such clause has the effect of bringing to an end the refugee status of certain categories of persons in situations where the circumstances that led to the flight of such persons from their country of origin have ceased to exist.

Upon application of the “ceased circumstances” cessation clause, any refugee unwilling to re-avail themselves of the protection of the country of origin due to a continuing fear of persecution or compelling reasons arising out of previous persecution should be afforded the opportunity to present the specific grounds on which they base their claim.⁵

Such review should take place either before existing national eligibility structures or before UNHCR, if no national procedures exists. The Office should ensure that cases genuinely claiming continuing fear of persecution are reviewed. Cases found to fulfil the criteria for granting of refugee status at the end of a fair procedure should be able to continue to remain in the host countries as refugees and to enjoy international protection accordingly.

In the case of Burundi, it should be noted that the eventuality of applying the “ceased circumstances” cessation clause does not even arise at the present stage for the reasons mentioned above.

3. Does UNHCR only support return if the conditions in the country of origin are better than in the country of asylum?

The level of physical, legal and material safety in a country of origin determines UNHCR’s involvement in a voluntary repatriation exercise. In UNHCR’s experience, four different types of return can be distinguished:

- (i) Return under conditions of *force majeure*, when the life or physical integrity of refugees in the country of asylum is threatened to the point that return is the safer option (evacuation);
- (ii) Spontaneous return, when refugees leave the country of asylum on their own initiative, and UNHCR provides assistance in the country of origin wherever access exists to areas of return;⁶
- (iii) Facilitation of voluntary repatriation by UNHCR upon the specific and fully informed request of refugees, even when conditions are not fully conducive for large-scale repatriation, provided that minimum security has been established in areas of return and the Office has access thereto;
- (iv) Promotion of large-scale voluntary repatriation when conditions are considered conducive to return in safety and with dignity, with the potential for sustainable reintegration.

⁵ See EXCOM Conclusion 69 Paras. (c) & (d).

⁶ See EXCOM Conclusion 40 Para. (h).

4. Is there a duty to grant refugee protection individually although UNHCR sees no need for international protection of this group? Can refugees be deported against their will?

The basis for the granting of international protection is persecution or the fear of persecution of an individual, irrespective of whether this is determined on a *prima facie* basis or in an individual asylum procedure. Burundian refugees in neighbouring countries have been granted refugee status on a *prima facie* basis pursuant to the extended refugee definition enshrined in the 1969 OAU Convention, owing to the sheer number of persons involved. However, claims of persecution or fear of persecution are examined on an individual basis in all other countries where Burundian asylum seekers are present. As explained above, many Burundians have fled from acts of a persecutory nature perpetrated by both government and non-government authorities. As such, they may well be found to fulfil the criteria for refugee status on the basis of the 1951 Convention if they are given access to a refugee status determination procedure. Therefore, there is a responsibility to ensure that individual protection is available to those who can make a genuine claim to it, even when conditions for providing *prima facie* group protection have ceased to exist. This, in any event, is not the case for Burundian refugees at the present stage.

Voluntariness of repatriation being a basic tenet of UNHCR protection mandate, States are urged not to resort to forced returns of refugees, which could amount to a violation of the fundamental principle of non-refoulement.⁷

5. Will UNHCR support refugees who refuse to return if the country of asylum cannot or does not want to continue support?

UNHCR has an obligation under its mandate to protect refugees who can demonstrate that they continue to have a well-founded fear to return to their country of origin even after the “ceased circumstances” cessation clause has been invoked. This responsibility includes provision of material assistance to those who are in need of it. As a matter of UNHCR practice, upon application of the “ceased circumstances” cessation clause residual caseloads are reviewed on a case by case basis (screened) to assess the claim of each individual and confirm whether there is a need to continue to extend international protection, which may include access to alternative durable solutions such as resettlement to a third country. Accordingly, those found to be in continuing need of international protection will continue to receive it from UNHCR, either in the current host country or in a third country.

6. What are the reasons against establishing camps in the country of origin if its government is willing to do so and can get UNHCR’s support for the step-by-step reintegration?

An important principle of voluntary repatriation is the need for return to take place “preferably to places of residence of the refugee in his country of origin⁸”, rather than to

⁷ See 1951 Convention and 1967 Protocol relating to the Status of refugees Article 33, see also EXCOM Conclusion 6.

a situation of internal displacement. In UNHCR's experience in Africa, return to areas other than the refugee's place of origin or previous residence may impact adversely on the protection of the returnees themselves, on others and generally on the process of stabilisation, reintegration and reconciliation. In principle, therefore, UNHCR does not facilitate voluntary repatriation when return would result in a situation of internal displacement, which may be unsustainable and might give rise to further refugee movements. However, facilitation of voluntary repatriation may be possible in situations in which relocation of returnees to different areas is based on a free and informed choice, is not the result of policies preventing return to the area of origin, and does not infringe the rights of others, including property rights. Exceptionally, return to internal displacement may have to take place when UNHCR is engaged in emergency evacuation of refugees due to *force majeure* in the country of asylum.

The possibility of establishing settlement camps inside Burundi to accommodate returnees was raised last year, in relation with the notion of "safe haven". However, this idea was not retained as it would have meant compounding the already disastrous situation of internally displaced persons in the country. Legally speaking, there was also no basis in the Arusha Accord or the Tripartite Agreement to support the setting up of camps inside Burundi for returning refugees, because such repatriation could not meet the criteria for return in safety and dignity, nor would it be sustainable.

From UNHCR's perspective the essence of voluntary repatriation is return and reintegration in safety and dignity to ensure that return is a lasting solution and does not generate another cycle of displacement. Where conditions of repatriation are such that safety of returnees can only be ensured in a "safe haven", such return would not be sustainable in UNHCR's assessment.

A distinct situation is contemplated in the Tripartite Agreement, which stipulates that returnees who are unable to recover their property may be provided with alternative plots of lands. The measures provided for in this provision may entail temporary settlement in a camp site inside Burundi pending allocation of a plot of land. This provision, however, cannot be considered as contravening basic principles of international protection. In fact, it sets operational modalities to implement the right to return in safety and dignity in situations where property previously owned by refugees cannot be recovered. Prospective returnees (especially the old caseload) are amply made aware of this possibility to ensure that their decision to return is well informed and truly voluntary.

7. How can protection of refugees and the right to immigrate be differentiated?

Refugee protection is a humanitarian and human rights responsibility. Whereas migration control is a sovereign prerogative of States, refugee protection responds to obligations voluntarily assumed by States under international law, and cannot be made conditional on refugees fulfilling the requirements for admission under existing legal migration programmes.

⁸ See, among others, Executive Committee Conclusion 40 (XXXVI) Para. (b).