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Identifying Gaps in Protection Capacity Tanzania

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The views expressed in this report are those of its author and can in no way be taken to reflect the official opinion of UNHCR, the European Commission, Denmark, Germany, the Netherlands, or the United Kingdom

List of Abbreviations

AIDS	- Acquired Immune Deficiency Syndrome
ARC	- Action for the Right of the Child
COP	- Country Operation Plan
CMR	- Crude Mortality Rate
CSFM	-Centre for the Study of Forced Migration
CTD	- Convention Travel Document
DANIDA	- Danish International Development Assistance
DC	- District Commissioner
DPP	- Director of Public Prosecution
DRS	- Department of Refugee Services
EC	- European Commission
FAO	- Food and Agricultural Organization
HIV	- Humane Immunodeficiency Virus
IC	- Individual Case
ICARA	- International Conference on refugee Assistance
ICRC	- International Committee of the Red Cross and Red Crescent Societies
IFRC	- International Federation of Red Cross
IOM	- International Organization for Migration
IP	- Implementing partner
IPD	- In Patient Department
IRC	- International Rescue Committee
MHA	- Ministry Home Affairs
NEC	- National Eligibility Committee
NFI	- Non Food Items
NGO	- Non Governmental Organization
NOGs	- National Operation Guidelines
NPA	- Norwegian People's Aid
OAU	- Organization of the African Unity
PAYE	- Pay As You Earn
PI	- Prohibited Immigrant
PLWHA	- People living with HIV and AIDS
REDESO	- Relief and Development Society
RET	- Refugee Education Trust
RSD	- Refugee Status Determination
SAEU	- Southern Africa Extension Unit

SE	- Sexual Exploitation
SGBV	- Sexual and Gender Based Violence
SOPs	- Standard Operating Procedures
SOSPA	- Sexual Offences Special Provision Act
TCRS	- Tanganyika Christian Refugee Service
TWESA	- Tanzania Water and Environmental Sanitation
UAM	- Unaccompanied Minor
UN	- United Nations
UNDP	- United Nations Development Programme
UNESCO	- United Nations Education, Scientific and Cultural Organisation
UNFPA	- United Nations Population Fund
UNHCR	- United Nations High Commissioner for Refugees
UNICEF	- United Nations Children Funds
UMATI	- Chama cha Uzazi na Malezi Bora Tanzania
US	- United States
U5MR	- Under 5 Mortality Rate
VAT	- Value Added Tax
VEO	- Village Executive Officers
VRF	- Voluntary Repatriation Form
WFP	- World Food Programme
WHO	- World Health Organisation

Table of Contents

Executive Summary	5
Legal, Political and Social Environment.....	9
Demographic Profile	9
National and Administrative Framework.....	10
International Instruments that Have Been Ratified	12
Partnerships to Strengthen Protection Capacity.....	12
Host Environment	15
Refugee Issues and National and Regional Development Agendas	15
Admission.....	17
Admission Policy and Practice.....	17
Non-Refoulement.....	17
UNHCR Access	19
Identification, Assessment and Treatment of Urgent Protection Needs.....	19
Support to Meet Basic Necessities of Life.....	20
Tracing Mechanisms.....	20
Registration	21
Registration Requirements by Law	21
Individual Registration	21
Registration of Prima Facie Refugees.....	22
Registration of Those Individually Recognised.....	22
Registration and International Standards.....	23
Legislative Framework for Determining Protected Status.....	25
Group Determination.....	25
Individual Asylum Procedures.....	26
Complementary forms of Protection.....	27
Country and Legal Information and Analysis.....	27
Protection from Violence, Coercion or Deliberate Deprivation	29
Security in Refugee Hosting Areas.....	29
Civilian Character of Refugee Hosting Areas.....	30
Mechanisms to Prevent and Respond to SGBV	31
Programmes to Protect Children from Abuse and Exploitation	34
Legal Recognition of Protected Status	36
Provision of Documents Confirming Legal Status.....	36
Documents Confirming Civil Status	37
Information Dissemination on Rights and Responsibilities.....	38
Free Movement	41
Restrictions on Freedom of Movement.....	41
Travel Documents.....	42
Arbitrary Arrest and Detention	43
Assistance in Meeting Protection Needs	44
Provision of Food, Water, and Clothing.....	44
Immediate Shelter and Long Term Housing	45
Access to Primary and Curative Health Care	46
Primary and Secondary Education.....	47
Equal Benefit and Protection of the Law	50
Access to Effective Remedies	50
Fair and Public Hearings without Discrimination.....	50
Access to Traditional Forms of Justice	51
Self-reliance	52
Educational and Vocation Programmes	52
Access to Wage-earning Employment	52
Self-employment Opportunities	54
Recognition of Foreign Diplomas.....	55
Social Security and Just and Favourable Conditions of Work.....	55

Right to Own Property	55
Durable Solutions	56
Voluntary Repatriation	56
Local Integration	59
Resettlement	60
Comprehensive Approach.....	62

Executive Summary

This report was prepared in the context of the Strengthening Protection Capacity (SPC) Project. Funded by the European Commission and the governments of Denmark, the Netherlands and the United Kingdom, the SPC project is aimed at devising tools and approaches to strengthen the capacity of States to receive and protect refugees, including enhancing their means of self-reliance and expanding opportunities for durable solutions.

Four countries initially are the focus of this project: Kenya, Tanzania, Benin and Burkina Faso.

This report examines the protection capacity of Tanzania, a country that hosts the largest number of refugees on the Africa continent. Over 800,000 refugees reside in Tanzania. Approximately 409,419 refugees live in eleven camps and are assisted by UNHCR. Another 200,000 refugees reside in the self-supporting settlements in the Rukwa and Tabora Regions. The government of Tanzania estimates that a similar number has spontaneously settled in Tanzanian villages. There are also refugees living clandestinely in urban areas, although there is no reliable data as to their exact number.

Although the report looks at issues that affect refugees wherever they reside in Tanzania, most of the statistics concerning the physical and material well-being of refugees relate to those who receive UNHCR assistance and for whom such detailed information is available.

Tanzania has a long history of receptiveness to refugees, and has sheltered hundreds of thousands of refugees for prolonged periods of time. A history of its role as host points to the many successes it has had, working with UNHCR, other UN and international partners and NGOs in addressing monumental service provision and protection challenges.

While this report notes these successes, it focuses primarily on current protection gaps and challenges so as to provide a working document for the national consultations to follow. These will be designed to focus on prioritizing refugee needs and identifying appropriate measures to meet them.

The following is a list of some of the key gaps in protection capacity that are described more fully in the body of this report.

Overlapping jurisdictions

Refugee affairs are governed principally by two instruments: the Refugee Act and the Refugee Policy whose respective provisions are not always consistent. In addition, several different government institutions have a role in refugee protection. Lines of responsibility are not always clear further contributing to an inconsistent treatment of refugees and asylum seekers.

Insufficient institutional capacity

Government officials at the local level do not have adequate facilities to discharge their functions efficiently. Moreover, the number of UNHCR protection staff in Tanzania is inadequate to provide sufficient coverage. In addition, there are a limited number of local NGOs involved in providing assistance to refugees. Most of

UNHCR's partners are of foreign origin which is a disincentive to the establishment of local relief capacity.

Limited partnerships

The lack of institutional capacity undermines the creation of effective partnerships which also impacts service delivery. Moreover, some implementing partners complain that UNHCR does not systematically consult on programme delivery or on evolving protection problems and, as a result, the benefits of consultation and concerted responses are not realized.

Negative attitudes towards refugees

In recent years there has been a growing intolerance of hosting refugees expressed by both government officials and local communities. This is explained, in part, by concerns, not necessarily substantiated, that refugee camps house criminals and combatants who are a threat to host communities. The positive economic benefits that have accrued to local communities on account of the presence of large numbers of refugees, has been well-documented but not well publicized.

Officials not trained in refugee matters

Border officials and Village Executive Officers are often the first individuals that asylum seekers encounter and these officials are required by law to send refugees to reception centers. Few of these officials have received training in basic refugee protection principles yet they make decisions permitting or refusing entry for asylum purposes. UNHCR no longer is permitted access to asylum seekers at entry points, but is provided access at reception centres. The lack of refugee specific training for officials receiving refugees, and the restrictions on UNHCR's ability to oversee initial reception, leave asylum seekers vulnerable to being denied admission or, when admitted, not registered as required by law.

Principle of non refoulement is not fully respected

In the past Tanzania has adhered to the principle of non refoulement, however, recently there have been incidents where the principle has not been respected.

Reception centres unable meet basic needs

Receptions centres were initially designed to accommodate refugees for a few days. A change in policy requires refugees to be screened and where applicable, their refugee status determined while in reception centres. This has prolonged their stay to several weeks. Reception centres are not properly equipped, many lacking sufficient bedding, clothes and medical treatment for their residents.

Inconsistent registration practices

All asylum seekers must present themselves to an authorized officer and be registered. Registration procedures vary. Local authorized officers do not have guidelines to use in receiving and registering asylum seekers. Some do not have books to register asylum seekers and, given their lack of training and resources, do not attempt to do so.

UNHCR carries out registration in refugee camps, and shares the information with government counterparts. A new global registration system has been introduced to

provide for detailed and continuous registration and to help prevent abuse. There remains a problem in ensuring that marriages and deaths are accurately and regularly recorded.

Erosion of prima facie status

Prima facie status is accorded to Burundian and Congolese asylum seekers. Screening procedures have recently been introduced which amount to individual status determination but without the necessary legal protections in place. The composition of screening panels varies; they are given no guidelines as to the criteria upon which their decisions should be made; asylum seekers are not briefed prior to being examined; in some locations UNHCR is not given observer status and there is no appeal from a negative decision. There have been instances where the person was examined in the presence of an official from the country from which the person seeks asylum.

Refugee status determination: lack of due process guarantees

Individual RSD procedures are cumbersome and not in full accordance with due process of law. The eligibility committee is too large, drawing its membership from several different government ministries and making it difficult to ensure a quorum leading to delays. Moreover, time lines are not adhered to, reasons for decisions are not provided to asylum applicants, and appeals go back to the original decision making body thereby calling into question the impartiality of the appeal hearing.

Physical insecurity of refugees

In spite of improvements over the years, including the implementation of the Tanzania Security Package (for which UNHCR provides financial and material resources to booster Tanzanian police based in and around the refugee camps), the security presence in the refugee camps in Tanzania remains inadequate with too few personnel and too few female police officers, in particular. Additionally, although addressed through a variety of preventative and responsive activities and programmes, sexual and gender based violence is still a major problem in refugee camps with the troubling phenomena of children being the primary victims and adolescent boys the frequent perpetrators.

Absence of documents conferring protected status

Most refugees in Tanzania do not have documents confirming their protected status. Ration cards substitute for identity documents for *prima facie* refugees within the camps but are not recognized for identification purposes outside the camps. Refugees leaving the camps are thereby exposed to risks, including arrest and possible deportation. Further, the majority of refugees are not issued with documents confirming civil status such as birth, marriage, and death certificates which may not therefore be legally recognized and can be an obstacle to accessing durable solutions.

Lack of mobility

Most refugees in Tanzania are required to live in designated areas and not leave such areas without a permit. In practice, camp-based refugees have been permitted to move within a 4 kilometre radius of the camps, however even this permission is not consistently applied. Restrictions on their movements negatively impact on their opportunities to access markets, land, and employment and limit any potential for

self-reliance. Refugees found outside the 4 kilometre periphery zone are subject to arrest. Movement passes are only available on a restrictive basis – primarily for secondary and tertiary education and for medical care.

Inadequate assistance in meeting protection needs

The food assistance provided is below UNHCR standards (2,100 calories/day) and non-food items distributions are irregular and insufficient due to resource constraints and the difficulties of maintaining traditional donor interest in long-running care and maintenance programmes. Shelter is of poor quality and the health care system in the refugee camps, while adequate, is threatened by high turnover of qualified staff. Primary schools in refugee camps suffer from lack of adequate buildings, school supplies and a high student-teacher ratio. Opportunities for secondary education, tertiary education and vocational skills training programmes are extremely limited.

Barriers to Equal Benefit and Protection of the Law

While refugees and asylum seekers in Tanzania are entitled to equal treatment under the law, there are practical impediments to the enjoyment of this right. The distance of refugee camps from courts and the shortage of magistrates cause inordinate delays in hearing of cases involving refugees. Additionally, there are far more legal cases than the few protection officers available can effectively follow and, as such, few refugees receive legal aid. Many do not have access to adequate interpretation. These are significant constraints which can leave refugees without effective remedies in law and vulnerable to criminal convictions without due process.

Inability to achieve self-reliance

The law, policy and practice restrict the ability of refugees to engage in wage-earning employment and self-employment for refugees due to both restrictions on freedom of movement as well as existing labour laws. As a result, opportunities to optimise refugees' contributions to the host country are minimised.

Limited opportunities for durable solutions

UNHCR is facilitating voluntary repatriation to those parts of Burundi deemed safe and, in fact, significant numbers of refugees returned in 2004. Refugees from the Democratic Republic of Congo, however, originate from the Kivu provinces which are not safe for return at this time. As such, repatriation presently is not a viable option for significant numbers of refugees.

The Government is reluctant to allow local integration of refugees fearing the premature withdrawal of the international community and its support of refugees. Resettlement is pursued for a small number of refugees per year (600 – 800) and is limited by the lack of reliable data on the caseload and inadequate staffing to support a larger resettlement programme. Increasingly, however, efforts are underway by UNHCR Tanzania to ensure that the three durable solutions are being pursued in a coherent and complementary manner.

Legal, Political and Social Environment

Demographic Profile

- 1) Tanzania hosts the largest number of refugees on the African continent. Over 800,000 refugees reside in Tanzania. Of this number some 409,419 are assisted by UNHCR in eleven camps mainly in North-western Tanzania – 250,961 are refugees from Burundi, 153,568 are from the DRC, 2,867 are Somalis, 183 are Rwandese and 1,840 are of mixed origin.
- 2) About 200,000 refugees reside in the self-supporting settlements in Rukwa and Tabora Regions. Additionally, the government estimates that there 200,000 refugees without official status in Tanzania, the vast majority of whom are believed to have spontaneously settled in Tanzanian villages. One estimate suggests that there are 20,000 refugees living clandestinely in urban areas.
- 3) Refugees from Burundi are predominantly Hutu. Presently, UNHCR is facilitating return to all but four provinces of Burundi namely Bururi, Bujumbura Rural, Bubanza and Cibitoke which are considered to be too insecure.
- 4) The majority of the 153,000 Congolese refugees in Tanzania are from the Kivu Provinces. These areas remain highly insecure and therefore no facilitated repatriation of Congolese refugees is being contemplated at the moment.
- 5) The Somali refugees in Tanzania are part of Bantu Somalis, many of whom trace their origins to Tanga Region in Tanzania. In early 2003, these refugees were allowed by the Government of Tanzania to settle in Chogo, a settlement within Tanga Region. By mid 2004 UNHCR was making progress in assisting the refugees with their application for citizenship despite the fact, that some of the refugees are still determined to return to Somalia, while others are more attracted by resettlement to the U.S.
- 6) As noted earlier, there are some 800,000 refugees and asylum seekers in Tanzania. Of these, the 409,419 who reside in official settlements assisted by UNHCR, some 200,000 refugees in the self supporting settlements in Rukwa and Tabora and the refugees who have been authorised to reside in urban areas have official status. By simple calculation, this means that nearly 200,000 refugees or about 25% do not have official status. These comprise refugees who have spontaneously settled in villages.
- 7) UNHCR has a prominent presence refugee camps in Tanzania which include Sub/field-offices in Kasulu, Kibondo, Kigoma, Lugufu and, Ngara. The agency also keeps a Field Officer or Field Assistant in each camp to handle day to day issues at that level.
- 8) The UNHCR country programme (including operational budget, ABOD and staffing) as of 7th December 2004 amounted to some 28,130,264 US Dollars. The donors and the size of their contributions were as follows:

DONOR	AMOUNT
EC	13 848 646
USA	5 138 070
Netherlands	3 117 020
Japan	2 400 000
Switzerland	793 651
Canada	763 359
Germany	609 756
Belgium	601 685
Italy	551 471
Austria	124 844
South Africa	80 695
UK	51 824
Australia	49 243
Total Contributions	28 130 264

Source: UNHCR Representation Office (Dar es Salaam) Records, 2004.

9) The Main objectives pursued by UNHCR in Tanzania over the last five years have been:

- Providing protection, including assistance and the promotion of self-reliance to refugees in camps and a few vulnerable urban refugees. The assisted urban caseload includes medical referrals, resettlement movements, security referrals and new arrivals whose entry point is Dar es Salaam;
- Facilitating and, where appropriate, promoting the repatriation of refugees where conditions in the countries of origin permit;
- Searching for other durable solutions, such as resettlement and local integration.
- Promoting refugee law and helping Tanzanian authorities provide security in the refugee camps, including ensuring that the camps retain an exclusively civilian and humanitarian character and they accommodate only those persons entitled to humanitarian protection;
- Strengthening the local institutions and infrastructure for the delivery of services to the Tanzanian population in the refugee affected areas and to providing support to government authorities involved in the coordination of day-to-day management of refugee matters;
- Promoting and implementing preventative and responsive strategies aimed at eliminating incidents of sexual and gender based violence, sexual exploitation, and the reduction and control of HIV/AIDS in refugee camps as well as effective/efficient management of resources through strict enforcement of the code of conduct.

National and Administrative Framework

10) The Refugees Act 1998 is the principal legislation governing refugee matters in Tanzania and is more comprehensive than the Refugee Control Act, 1966 which preceded it. The Refugees Act includes a broad definition of a refugee that accords to the provisions of international instruments, procedures for the granting of asylum in Tanzania, a degree of protection from non-refoulement and the right to education.

However, the Act falls short of some international standards as further discussed below.

- 11) Like other legislation, the Refugees Act provides for the making of rules and regulations for the purposes of operationalisation of the Act. However, to date, such rules have not been promulgated. This has partly contributed to the inconsistent application of the provisions of the Act in different parts of the country. This matter will be pursued further below.
- 12) In addition to the Refugees Act, there are a number of pieces of other legislation which govern some aspects of refugee protection these include laws on regional administration, immigration, land, labour, education, business licensing, taxation, among others.¹
- 13) One of the consequences of multiple legislation affecting refugees is that there are many different ministries and government departments that impact on refugees whose lines of authority are not always clear. As per the Refugees Act, the Directorate of Refugee Services in the Ministry of Home Affairs (MHA) is the principal institution responsible for refugee matters. The Director of the Refugee Services is answerable to the Minister who bears ultimate responsibility in refugee matters.
- 14) Yet, when a decision is taken by the Ministry of Home Affairs in Dar es Salaam, the regional authorities may not follow the direction. Regional authorities are governed by the Regional Administration Act, 1997 which makes the Regional Commissioners (RC) and the District Commissioners (DC) the principal representative of Government within their area.² A good example of how these divergent lines of authority negatively impact the administration of refugee affairs is the decision by some DCs to set up extra-statutory 'ad hoc' committees to do individual RSD for Burundian and Congolese refugees notwithstanding the fact that the official position of the Ministry of Home Affairs is that asylum seekers from these countries enjoy *prima facie* status.
- 15) In some instances, asylum seekers entitled to *prima facie* status have been recognised by the Directorate of Refugee Services in Dar es Salaam but upon being sent to Kigoma to be allocated camps, the regional authorities have re-subjected the recognised refugees to RSD by the extra-legal statutory ad-hoc committees. Sometimes the committee has denied asylum to such refugees and deported them to their countries of origin.
- 16) Inconsistent administration of refugees matters In Tanzania is further complicated by the differences in the provisions of the Refugee Act and the National Refugee Policy. The latter, which was published in 2003. Passed by Cabinet, but not by Parliament it does not have the legal force of the Refugee Act, but sets out the general direction the government intends to pursue in refugee matters. According to the National Policy, its mission is to achieve inter-related objectives: namely the fulfilment of the international and constitutional obligations of the government of the United Republic of Tanzania regarding refugee protection and to safeguard

¹ For the list and specific names of the relevant legislation see *Id.*, p. 9.

² Sections 5(1) and 14(1) require that "all the executive functions of Government" shall be exercised by or through the Regional Commissioner or the District Commissioner (DC), as the case may be, in relation to their areas of jurisdiction.

national interests against the negative impact of the presence of refugees in the country.

17) The Policy contains important statements such as commitment to asylum (para. 8), non-refoulement (para 11) and promotion of acceptable standards of treatment under international refugee law (para 12). However, the same document contains some statements that are inconsistent with the provisions of international standards which the same policy enjoins the Government to abide by. Examples of such statements are the call for protection of refugees in safe zones inside their countries (paras 15 and 36), limiting refugee employment to only small income generating activities within the camps (para17) and the requirement for refugees, irrespective of their circumstances, to reside in designated areas (para 28). In addition, the Policy is silent on some important matters in refugee protection.³

18) Other policies that have been identified as relevant to refugee protection are the National Land Policy, 1997; the National Human Settlements Development Policy, 2000, the Agricultural and Livestock Policy 1997, the National Environmental Policy, the National Forestry Policy, the National Wildlife Policy, 1998, the National Education Policy, the Employment Policy 1997 (under review), the National Fisheries Policy 1997, and the National Immigration Policy (Draft 2003).⁴

International Instruments that Have Been Ratified

19) Tanzania is signatory to two sets of international instruments that may enhance the protection of refugees. The first are refugee specific instruments namely the 1951 Convention on Refugees and the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa.

20) The second are human rights instruments particularly the 1966 International Covenant on Civil and Political Rights; the 1966 International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights and the Convention on the Rights of the Child of 1989.

Partnerships to Strengthen Protection Capacity

21) The basic design of the system of refugee protection in Tanzania may be described as the "Tripartite Plus Partnership Approach." The tripartite partners are the Government, the UNHCR and the latter's Implementing Partners (IPs). The "plus" are UNHCR's Operational Partners such as the World Food Programme (WFP), UNICEF, UNFPA, FAO and IFRC.

22) As per international refugee law, the Government bears the primary responsibility for refugee protection. In Tanzania, the primary roles of the government are to determine refugee status, allocate land for refugee settlements, and enforce refugee law and to administer law and order in such settlements. The role of the UNHCR is to discharge its mandate under its Statute and in particular, to mobilise resources for refugee protection and to oversee refugee operations. Under

³ Important matters not covered by the Policy include registration of refugees and asylum seekers; gainful employment other than self-employment; equal benefit and protection of the law; and issuance of travel documents. For a detailed critique of the Policy see Rutinwa, B., *The National Refugee Policy, A Paper Presented at a Seminar, University of Dar es Salaam, September 2003*

⁴ For the relevance of each of these policies to the refugee question see CSFM, *Review of Refugee - Related Policies and Laws: Synthetic Project Report, (2002)*.

their own mandates, Operating Partners mobilise their own resources for refugee assistance.

23) Implementing Partners are those organisations or institutions which, under agreement with, and with funding from the UNHCR, run specific assignments such as camp management, water and sanitation, community services, environment etc. Current implementing agencies include Africare, CARITAS-Rulenge, GTZ, International Rescue Committee (IRC), Norwegian Peoples Aid (NPA), Prisons Department, Relief and Development Society (REDESO), Tanzania Red Cross Society (TRCS), the Tanzania Christian Refugee Services (TCRS), Southern African Extension Unit (SAEU), World Vision, Tanzania Water and Environmental Sanitation (TWESA), and Chama cha Uzazi na Malezi Bora Tanzania (UMATI).⁵ Some of these NGOs depend 100% on UNHCR funding and others raise their own funds to complement UNHCR funded activities. Generally, the system works well and ensures co-ordination.

24) UNHCR works closely with its Operating Partners with whom it often has Memoranda of Understanding whose coverage include division of responsibilities, joint monitoring and evaluation. UNHCR has also written Implementing Partnership Agreements with IPs. UNHCR confers with IPs at both Sub Office and Branch Office levels when preparing the Country Operation Plan.

25) However, the consultations relate primarily to assistance programmes and not to broader protection issues and concerns. Consultations in regard to assistance programmes, include issues concerning budget cuts and their implications on IP posts and programme activities. Some complain, however, that sometimes UNHCR makes unilateral decisions in these matters.

26) There are at least three matters of concern in the above system of refugee protection. First, the implementing agencies are predominantly of foreign origin. Of those mentioned above, only four, namely REDESO, SAEU TWESA and UMATI are truly local organisations. The concentration of refugee relief work with foreign agencies is a disincentive to the establishment of local relief capacity.⁶ Local NGOs constantly lose staff to UN agencies and better paying international NGOs.

27) Second, most of the agencies working for refugees in Tanzania deal mainly with material assistance. They are rarely involved in other aspects of refugee protection such as providing legal assistance to refugees and asylum seekers. The Centre for the Study of Forced Migration at the University of Dar es Salaam, for example, has not managed to get its outreach programme off the ground. The primary problem is funding. There are no human rights NGOs in all refugee hosting districts.

28) In the absence of NGOs providing legal assistance to refugees, this burden has rested wholly on UNHCR protection staff. However, none of the UNHCR offices have sufficient manpower to handle all legal problems affecting refugees such as processing asylum applications, making representations to government on behalf of refugees facing protection problems, and assisting refugees facing criminal prosecution in courts.

⁵ See UNHCR Tanzania, Implementation Arrangements for 2004 in Sub Offices and Branch Office (2004).

⁶ For more on this topic see Rutinwa, B., Erosion of Local Relief Capacity in Tanzania, in Kathina, M., & Suhrke, A., Erosion of Local Relief Capacity in Africa, African Scandinavian Institute, Uppsala (2002).

- 29) Several UNHCR Field and Sub-Offices expressed the view that there is a need for promoting local agencies that can act as Implementing Partners in following up legal issues such as court cases and prisons visits. This would relieve pressure on UNHCR protection staff and enable them to concentrate on other protection work such as reception of refugees, RSD, registration and SGBV.
- 30) The third and perhaps the most serious problem is the low capacity of the government in the tripartite plus partnership. The principal organ dealing with refugee matters is the Directorate of Refugee Services located in the Ministry of Home Affairs. The operation expenses of the Directorate are met by the Government with the assistance of the UNHCR. There are concerns that the Directorate has insufficient resources to properly fulfil its mandate. In some cases it does not have offices for its staff, or reliable telephone and transportation for employees. Moreover, the living accommodation for staff is not always provided and, where available, is often inferior to that provided to staff of other agencies in the vicinity. Some staff feel insecure due to lack of security around their residence. In addition, the incentives offered to the Directorate's staff in the field were, compared to the packages offered to staff of other agencies, considered inadequate.
- 31) In addition, to the Refugee Directorate, other government institutions involved in refugee management include the Immigration Directorate, the Police, the Judiciary, the Prisons and the offices of the Regional and District Commissioners. As already noted under paragraphs 14 and 15 above, some of these organs had overlapping mandate over refugee matters and the lines of authority are not always clear.
- 32) As previous studies have documented, the presence of refugees in Tanzania has put considerable pressure on the capacity of these institutions.⁷ However, with the exception of the Police, there has not been a satisfactory system of assisting these institutions to bear the extra workload generated by the presence of refugees in their areas of operation. One of the consequences of this situation is that some government institutions that receive no support for their refugee-related work do not prioritise them. Thus, the police assigned to the camp under the UNHCR Security Package, who receive incentives from UNHCR, may efficiently investigate a criminal incident (e.g. rape) but the prosecution may flounder depending on how the matter is prioritised by the prosecution section of the police in the District, who do not receive such incentives from UNHCR.
- 33) Some government institutions have to handle refugee-related problems that they are ill equipped to deal with. One area where lack of institutional capacity is evident is in the District Prisons, which house both petty and serious refugee and non refugee offenders. Many prisons are seriously overcrowded and not sufficiently equipped to deal with dangerous criminals. A case in point is Kasulu District Prison, which suffers from overcrowding, has minimum security features, no electricity, and no reliable transport. A 2003 study of the prison system in the Kigoma region illustrated that prison overcrowding was endemic. It revealed that even excluding the refugee inmates, the prisons would remain stretched beyond capacity: with an

⁷ For example see, Peter, CM., *Refugee Impact on Local Administration, Specifically on Law Enforcement, Namely, Police and Judiciary*, (2002), and Rutinwa, B., & Kamanga, K., *The Impact of the Presence of Refugees in north-western Tanzania*, (2003),

overcrowding rate of 561% for Bangwe (Regional) Prison; 291% for Kasulu Prison, 122.5% for Kibondo Prison, 83% for Ilagala Prison and 72% for Kwitanga Prison.⁸

34) Under these circumstances, according to the Kasulu DC, when a refugee is found outside the camp without a permit, the person is sometimes issued a Prohibited Immigrant (PI) notice rather than being detained in the already overcrowded Kasulu prison pending prosecution. Recipients of a PI notice, under immigration law, are required to leave the country immediately and for refugees this constitutes refoulement. The authorities reportedly been more willing to follow this course of action when dealing with Burundi refugee and have shown more lenience towards Congolese refugees. The latter often are brought to UNHCR and immediately transported to their camps rather than being issued a PI notice requiring them to leave the country.

Host Environment

35) The issue of the local attitudes towards refugees is two sided. If one scans through the local newspapers, the overwhelming majority of stories reflect negative attitudes towards refugees. Refugees are seen as having an adverse impact on the country's security, environment, infrastructure and local administration. One is left with the overall impression that most Tanzanians would like the refugees to leave immediately.

36) However, a recent study,⁹ that examined local attitudes towards refugees in refugee affected areas found the picture to be more complex. While local populations were concerned and sometimes bitter regarding the impact of refugees in their areas, they also appreciated the benefits that had accrued as result. These included employment opportunities, improved health, education, transport water services; and increased revenue for the government. Revenue generated includes income tax (Pay As You Earn [PAYE]; Value Added Tax [VAT] and Customs Duty) and rates charged by District Councils on licenses and business such as market trading.

37) The study also noted that the positive benefits of the presence of refugees were not widely known and had not been given due attention by the media. Subsequent efforts to publicize the results of the study, including through open meetings, illustrated the low level of knowledge of the positive spin-offs accruing to local communities as a result of refugee settlements, and a corresponding high level of misinformation on their actual negative effects. The study and its findings have not been published due to lack of funds. Copies were given to a few people who attended the dissemination workshops.

Refugee Issues and National and Regional Development Agendas

38) The relationship between refugee issues and development has long been recognised although there has not been a clear consensus as to the policy implications for such relationship. Underdevelopment has been known to be one of the underlying causes of the conflicts that lead to refugee flows. Similarly, underdevelopment tends to undermine repatriation as a durable solution. For example, some new asylum seekers from Burundi in Tanzania claim that they had

⁸ Rutinwa, B., & Kamanga, K., *The Impact of the presence of Refugees in Northwester Tanzania* (2003), p. 48.

⁹ Rutinwa and Kamanga, *The Impact of the Presence of Refugees in northwestern Tanzania*, Op. Cit.

returned to Tanzania because in Burundi they were unable to find schools for their children.

39) Because of this, there have been initiatives to integrate refugee/humanitarian issues within the greater quest for peace and development. Tanzania's Refugee Policy calls upon the international community to promote, among other things, good governance as well as social and economic development as a way of achieving durable solutions to the refugee problem (See para 14). At regional level, East African Countries have been developing mechanisms for co-operation on humanitarian issues within the framework of the Treaty of the East African Community.¹⁰ This is seen as essential for the attainment of the ultimate goal which is economic development.

40) At national level, refugees are generally viewed as a negative impact on national development notwithstanding the recognition in the National Refugee Policy that "refugees are a human resource which could be utilised for the improvement of the economy and betterment of life and living standards" (para 17). For example, the National Poverty Reduction Strategy, identifies refugees as one of the external causes of underdevelopment [para 1.2.5.2(III)] and therefore as one of the issues that must be taken into account in developing the national poverty reduction strategy.

41) In fact, however, there is evidence to show that refugees have contributed to the economy of north-western Tanzania in the form of cheap farm labour, new skills, and markets for agricultural and manufactured goods. Nevertheless, refugees are not regarded by policy makers as economic assets and are discouraged from engaging in economic activities. Indeed, much of their economic contribution to the economy has been done in contravention of the law. The greatest contribution of refugees to the economy is by engaging in agricultural activities in areas surrounding their camps. However, refugees do so without permit which is required by law.

42) Following the influx of refugees from the Great Lakes Region in the 1990s, the UNHCR as well as some of its IPs and OPs instituted some refugee affected areas projects. Initially, these projects were aimed at redressing the impact of the presence of refugees. However, many of these projects have gone beyond to address issues of development generally. Projects covered include health, education, environment, and infrastructure. As revealed by a recent study, these projects have been of considerable benefits to the local and host communities especially in the health, education and water sectors.¹¹

43) Recently, DANIDA (the Danish International Development Agency) has sponsored a Refugee Affected Areas Programme which is aimed at both redressing the impact of the presence of refugees but also at increasing the receptive capacity and local integration of refugees. The Programme covers priority areas identified jointly by DANIDA experts and the local authorities. In Kibondo, ongoing projects include refugee agriculture and self-reliance, refugee and local Tanzania youth vocational training and sustainable agriculture for local people and rural water supply. Projects are executed by NGOs carefully identified by DANIDA.

¹⁰ Rutinwa, B., Regional Co-operation for Humanitarian Action: The Potential of the East African Co-operation, in Kathina & Suhrke, Building Local Relief Capacity in Africa (2002) pp. 60-72.

¹¹ Rutinwa & Kamanga, Op Cit., part 7.

Admission

Admission Policy and Practice

- 44) In Tanzania, admission into the territory of the United Republic of Tanzania is controlled by the Department of Immigration. However, due to having an extensive border, and in recognition of the fact that persons in flight do not chose entry points, section 9(1) of the Refugees Act requires any person who enters Tanzania to seek asylum to present himself to the nearest "authorised officer" who include the Director of Refugee Services, refugee officer, a settlement officer or immigration officer; or village Executive Officer (VEOs) or a justice of peace, and apply for recognition as a refugee. Most refugees currently come into contact with village Executive officers.
- 45) Additionally, because of insecurity in areas bordering the countries of origin, the Government has placed military detachment along the border with countries of origin. With some refugees, these are the first governmental officials they come in contact with. Members of the military in border areas have not received any training on refugee matters although in Kibondo the Military Commander has been invited to some of the training meetings organised by UNHCR. Basically, VEOs and the military are parallel structures and there is no chain of command between them.
- 46) When approached by asylum seekers, VEOs or the military, as the case may be, are required to direct them to official reception centres. In the past, there used to be many such facilities in all major refugee-receiving districts. However, most of those facilities have now been closed. Current reception centres/way stations are Kibirizi I for Kigoma, Kasengezi for Kasulu, Bukiriro, Kimonomono, Kumsanga and Mugunzu, for Kibondo and Mbuba for Ngara.
- 47) Some refugees bypass village authorities and go straight to reception centres. Others move directly into camps but are brought back to reception centres for screening. In Kibondo, refugees who report directly to the reception centres are assisted by reception centre staff to report to the VEOs.
- 48) Despite the responsibilities placed on VEOs, they do not have training in immigration or refugee matters. In addition, they do not have guidelines on reception and treatment of refugees. Consequently, some fail to handle refugee matters in accordance with the law. Some permit refugees to reside in their villages without being documented. While this may on the face of it seem to be a favour to the refugees, it is disadvantageous in the long term as it exposes refugees to penalties for illegal presence including expulsion from the country.
- 49) Staff of agencies working at reception centres do receive training from UNHCR on who is a refugee, how to receive refugees, how to maintaining data and appropriate standards of treatment.

Non-Refoulement

- 50) The Principle of *non-refoulement* is clearly stipulated under paragraph 11 of the Refugee Policy which stipulates that "Refugees will not be expelled from Tanzania except on grounds of national security or public order and in accordance with the applicable principles contained in international instruments." Section 5(1)(e) of the Refugees Act requires the Director for Refugee Services to ensure that no asylum

seeker is removed from the territory of Tanzania until his or her asylum claim has been determined.

51) In the past, Tanzania consistently respected the principle of non-refoulement in relation to admission of asylum seekers. However, from the 1990s, there were sporadic incidents in which the principle was not respected. One such incident is the temporary closure of the Border with Burundi in 1993 to prevent the arrival of refugees from that country. One of the most recent incidents occurred in October 2004, when 68 Burundian asylum seekers were forced to return to Burundi from Ngara. The return was carried out under orders of the local authorities. However, in response to UNHCR's intervention on the matter, the headquarters of the Ministry of Home Affairs defended the measure arguing that the Government no longer believes that asylum seekers from Burundi should continue to enjoy *prima facie* status. However, the Government did not expressly state that the *prima facie* status of Burundian refugees had been cancelled. In any event, even if Burundian refugees were no longer eligible for *prima facie* status, the proper recourse would have been to administer individual RSD and not to expel them. It would appear that the government still accords asylum seekers from Burundi *prima facie* status but simply believed the claims of this particular group to have been manifestly unfounded, a novel concept in group determination procedures. However, even if this was the case, a minimum procedure would still be required.

52) The deportation of recognised refugees is a misinterpretation of the law as a person who is recognised as a refugee cannot be at the same time illegally present in the country. Similarly, the deportation of persons seeking asylum is not compatible with the right to seek asylum which, under the Refugee Act, is implied in the obligation of the Director of Refugee Services to ensure that no person who is seeking asylum is removed from the territory until his claim has been determined.

53) The problem of wrongly applying the Immigration Act to refugees and asylum seekers is partly due to limited knowledge of refugee law by immigration officers. When interviewed by the mission, one such officer told the mission that when immigration officers arrest a person for illegal entry and then such a person claims to be a refugee, they normally refer the person to the Refugee Directorate. However, they do so of their own accord as they believe that there is no law which requires them to do so. In fact, every Immigration officer is, by virtue of section 3 of the Refugees Act, an "authorised officer" and is accordingly obliged by section 9 to register every applicant for asylum and forward him to the Director of Refugee Services.

54) Recognised refugees are sometimes deported for illegal presence for failure to produce ID cards to prove their status. The authorities claim that unless the refugee has an ID card indicating that he or she is a refugee (which the government does not issue) the person is considered to be an alien.

55) The misinterpretation of the law is partly due to the fact that border officials are not given any special guidance regarding handling refugees and asylum seekers. The training of immigration officer involves instruction on refugee law. However this is at a very superficial level.¹²

¹² Interview with Ms Hannerole Manyanga, Ministry of Home Affairs, Immigration Department and member of the SPC Steering Committee, 5th November 2004.

UNHCR Access

56) In the past, UNHCR used to have unimpeded access to new arrivals at all entry points. Today, UNHCR does not but is provided access to asylum seekers when they reach official Reception Centres/Way Stations as noted in paragraph 46. This restriction is generally linked to the new policy of restrictions on entry of asylum-seekers into Tanzania. This policy is carried out through, among other means blocking of most of the access points through which refugees used to enter Tanzania and, in the case of Kigoma, screening of asylum seekers before they contact UNHCR. Those that pass the screening are given to UNHCR to take to the camps. Those that do not are removed from the country.

Identification, Assessment and Treatment of Urgent Protection Needs

57) At every reception facility new arrivals are supposed to receive assistance to meet the basic needs. Each reception centre has an agency which looks after new arrivals until they are moved to settlements. In Kigoma and Kasulu the agency discharging these functions is World Vision. In Kibondo, the same role is played by IRC.

58) For example, in Mugunzu, one of the four way stations in Kibondo District, IRC receives the new arrivals and determines whether the person has already reported to the village Executive Officer as required by law. If not, the IRC takes the person to any Village Executive Officer (VEO) for that purpose. Thereafter, the person is given food, non-food items and shown where to sleep. A clinical officer and an assortment of drugs are kept at the station to attend to asylum seekers with medical needs. If a case cannot be attended at the station, the officer in charge calls for an IRC ambulance which takes the patient to Kibondo District Hospital.

59) The vulnerable and unaccompanied minors (UAMs) are identified and given appropriate assistance. For example, the centre has a few mattress and reef mats for bedding. In distributing mattresses, priority is given to pregnant mothers and those with young children.

60) A few problems were noticed at the Centre. First, supplies given to new arrivals, particularly clothes, were not adequate.

61) Second, and more importantly, the shelter at the centre is very basic. The place has one long structure made of plastic materials with three partitions. Each partition is about 5 x 15 square metres and it is intended to accommodate 50 persons. Men and women are accommodated in separate rooms. All sleep on the mats on the floor. A few, mainly the vulnerable are given mattresses.

62) The reason for having basic facilities is because initially new arrivals are meant to remain in the centres for a very short period, not more than three days. But this was when screening/status determination was done at reception centres in the camps. With the recent order for all asylum seekers to remain or to be returned to reception centres/way stations until their status has been determined, new arrivals have had to remain in these facilities for much longer. The longest staying group at the time of our visit had been there for two months. The problems of poor living conditions were said to be more acute at Kibirizi I in Kigoma where, as noted above, UNHCR has limited access.

Support to Meet Basic Necessities of Life

63) As a matter of procedure, reception centres are required to have mechanisms in place to help identify and assist refugees and asylum seekers with special protection and assistance needs. At Kibirizi I for example, there used to be UNHCR and IP staff with medical kits ready to treat refugees with urgent medical needs. There were also staff at entry points who could radio UNHCR for an ambulance if there was an asylum seeker who was not in position to reach the reception centre. The UNHCR would send transportation to pick such a person. Refugees with serious medical conditions such as bullet wounds would be taken straight to the hospital. However, with the restriction of UNHCR from Kibirizi such services are no longer available. However, such services were available at other reception Centres such as Mugunzu in Kibondo and Mbuba in Ngara where access was not so restricted.

Tracing Mechanisms

64) There are tracing mechanisms in place, in both reception centres and in the camps, aimed at safeguarding family unity and protecting UAMs. With regard to tracing, every camp has a Community Service NGO which has a Tracing and Care Unit. The Unit places a staff at reception centre who must identify and register all unaccompanied or separated children upon arrival. After such registration, a minor is given a "Welcome Form" identifying him or her as UAM. The form is then sent to UNICEF which checks with its data base to ensure that the claimant is not a "recycler" (a person who has already been registered in another camp). In the meantime, the Child Tracing and Care Unit places the UAM arranges for a foster family in the refugee camp while attempting to trace parents in the camp.

65) If after three months parents have not been traced in the camp, then the NGO responsible fills the Grand Fiche form and passes the same to UNICEF. Then UNICEF takes a photograph of the UAM and display it in all other camps. At the same time, information is sent to ICRC which attempts to trace the family both within and outside the country of asylum. This is done through Red Cross messages. If the family is traced the UAM (if he is old enough) is consulted as to whether he or she would like to join them. If the minor is willing, then he or she is sent to the camp where his/her family is. If the family is traced outside the country, UNHCR arranges the transfer of the UAM to that country

66) A number of factors are taken into account in appointing a foster family. First, preference is given to a family which originates in the same village as the UAM to be fostered. This, among other things, is intended to facilitate the repatriation of the minor when this becomes possible. Secondly, preference will also be given to small size family. This is partly because when a family fosters a UAM, all extra services given to the minor must also be extended to all children in the family.

67) With regard to care, the NGO responsible for community services is supposed to monitor, under the supervision of UNHCR community services and protection staff, the wellbeing of fostered UAMs. This includes ensuring that foster children get all the required vaccinations, food, NFIs and toys. Fostered children are treated as vulnerables and therefore they get full rations even when there are food ration cuts. In practice, however, UAMs do not always get these amenities because of shortage of supplies.

68) The Community Service NGOs are also supposed to ensure that fostered children go to school and are not subjected to child labour or sexual exploitation.

Registration

Registration Requirements by Law

69) Under section 30(5) of the Refugees Act, “the registration of asylum seekers or refugees under this Act is without prejudice to any other registration laws requiring registration of persons resident or present in Tanzania.” The primary legislation in this regard is the *Registration and Identification of Persons Act, No. 4 of 1986*. However, this law has never been brought in force.

70) Under section 30(1) of the Refugees Act, the Director of Refugee Services has a mandatory duty to register and keep records of all asylum seekers and refugees in Tanzania and for this purpose she is deemed to be the Registrar of asylum seekers and refugees. The Director may delegate in writing this function to settlement or refugee officers. Thus, by law, both asylum seekers whose refugee status is yet to be determined and recognised refugees must be registered.

71) Any asylum seeker who fails to register himself under the Act is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings (about 100 USD) or imprisonment for not more than three years or to both. (s. 30(6)).

72) Registration of refugees and asylum seekers in Tanzania takes place at two stages. The first is upon application for asylum upon arrival in Tanzania, and the second is upon status being granted. The procedures for registering asylum seekers differ depending on whether a person is subject to an individualised status determination procedure or if he or she is eligible for prima facie status. Presently, only asylum seekers from the Democratic of Congo and Burundi are eligible for *prima facie* status (Although, as noted above they now undergo some “screening”). All other asylum seekers must undergo individualised status determination Procedures.

Individual Registration

73) In accordance with section 9(1) of the Refugees Act, any person applying for refugee status in Tanzania must, within seven days of entry into the country present himself or report to the nearest authorised officer, the Village Executive Officer (VEO) or a justice of peace, and apply for recognition as a refugee. If a person to whom the application is made is not an authorised officer, he must refer the claimant to an authorised officer. Upon receiving the application an authorised officer must immediately fill in a prescribed application form and register the application.

74) The procedure followed in practice depends on the point of entry into Tanzania and the rate of flow of asylum seekers. Asylum seekers from countries contiguous to Tanzania who enter the country through districts with Department of Refugee Services (DRS) offices must report to such offices. There they are registered and interviewed after which a case file is sent to the Director of Refugee Services to await RSD. If an asylum seeker enters through an area without a DRS office, then he or she must report his or her presence to any other authorised officer in the area. The officer will register the asylum seeker, interview him and send the record to the Director of Refugee Services.

75) Where there is a considerable flow of asylum seekers subject to individualised RSD, the DRS establishes reception centres where such persons are received, registered and pre-screened by officials of the Refugee Directorate, Ministry of Home Affairs. The pre-screeners would then prepare case-files and present the same to the National Eligibility Committee for individualised status determination. Such a procedure has in the past been employed at Mbuba, in Ngara District in relation to asylum seekers from Rwanda.

Registration of Prima Facie Refugees

76) As noted above, the law requires all persons seeking asylum in Tanzania to report to an authorised officer, a village executive officer or a justice of peace and apply for recognition as a refugee. In the past, this requirement was not strictly applied to asylum seekers eligible for prima facie refugee status. Such persons could come straight into reception centres and go straight to refugee camps. Irrespective of the first point where they reported, their registration took place at the camps. In Kibondo for example, asylum seekers from Burundi were registered at centres in Kanembwa and Mtendeli camps. This procedure was relatively simple and it enabled refugees to get settled and receive assistance as soon as possible.

77) Recently, as noted above, this procedure has been changed. Now all new arrivals from Burundi or DRC are required to present themselves first to the VEOs. Thereafter they are required to go to and remain in way stations *en route* to the camps (such as Mugunzu and Nyakimonomono in Kibondo) or in reception centres located just outside camps (such as Mbuba in Ngara and Kibirizi in Kigoma) until their status has been determined. This includes asylum seekers from Burundi and DRC Congo who, officially, are entitled to *prima facie* status.

78) There are no guidelines or directives on exactly what the VEOs should do when asylum seekers report to them. In Kibondo for example, some VEOs were interviewing and registering them. Others were refusing to entertain asylum seekers who had entered through points that are outside their jurisdiction. Some VEOs gave a written document to the asylum seekers acknowledging that they had reported to him while others simply told the asylum seekers "I have seen you, proceed to the way station".

79) UNHCR has advised IRC staff at the way stations to ensure that all asylum seekers are not only seen but are actually registered by VEOs to avoid the risk of such asylum seekers being charged with unlawful presence in Tanzania. However, the mission was told by the village leaders in Mugunzu that they were neither given the registers (e.g. counter books) nor money to buy them. Consequently, some still do not register asylum seekers who present themselves. Nor were the VEOs conversant with refugee issues including the legal definition of a "refugee". They requested for training to be provided to them if they are to carry on discharging this function.

Registration of Those Individually Recognised

80) After refugees are recognised, they are allocated designated areas where they have to reside. These areas are refugee camps although the language used in the Refugees Act is "refugee settlements" (See section 16). Upon arrival at such settlements, the refugees are supposed to be registered by the Refugee Directorate. However, this work is done mainly by UNHCR field staff who then share the record with the Government. All refugees are individually registered. The date collected is

disaggregated by gender and age. Special consideration is given to ensure family unity. Thus, all persons under 18 years of age are regarded as children and have to be registered under the head of the family unless they are unaccompanied.

81) Registration is continuously updated by both UNHCR and government. New arrivals and births in camps are easily registered because refugees report the same in order to get material assistance. However, a considerable number of deaths are not recorded because refugees do not report deaths for fear of having their family size on the ration card reduced. Marriages are also registered when reported. However, most marriages are solemnised under custom and tradition and do not get reported to the authorities. Refugee departures are registered through the process of voluntary repatriation. This matter will be covered in detail in the section on durable solutions.

82) Registration is done at reception centres within the camps. A centre has one room in which the interview takes place. The qualifications of persons conducting registration differ from place to place. In Kasulu, registration is done by legally trained protection staff but not experts in registration. In Kibondo (Mtendeli), the registration staff are not trained. There are female registration staff in both Kasulu and Kibondo. However, in Kibondo, these female staff have been employed as repatriation assistants/clerks and not registration personnel as such. This means that they have to do registration work over and above their normal responsibilities which means more work pressure.

83) Registration forms do identify separated children. However when a refugee child is accompanied by an adult refugee there is no verification whether that child is indeed an offspring of that adult. The information given by the adult is taken to be true unless any other person produces information to the contrary.

84) Refugee leaders are involved in the registration process especially by assisting authorities to identify "recyclers" (refugees who do multiple registrations). They also assist to identify suitable foster parents for unidentified minors in camps.

85) Until recently, UNHCR was using an unreliable Access database to register refugees. For example, there were different databases in the different field locations. This created loopholes for double registration. The system depended on periodic head count exercises which required enormous manpower every two years and produced results which were of very short benefit.

86) The registration system is also susceptible to abuse. Some refugees split their families into several small units in order to get more plots and other standard items. Sometimes UNHCR has found out they allocated three plots to one family

Registration and International Standards

87) Towards the end of 2004, UNHCR introduced in Tanzania its new global registration system called Project Profile. This Project is a follow up to ExCom Conclusion No 91 of 2001 which seeks to put in place a comprehensive improved system of registration and population data management activities. In place of periodic large-scale head counts, Project Profile introduces a continuous process in which individual refugee records are updated with additional information added on a regular basis. Thus, persons of concern must be registered within a period of three months after arrival in the territory of asylum. Registration records are verified and continuously updated at a minimum every 12 months. Changes in population figures are updated once a month with population increases and decreases.

88) Based on the new standards, process and data set, Project Profile has developed with the commercial firm ELCA a new global registration application for all UNHCR offices which register persons of concern (ProGres database). The new system will include, as one of several options, biometric technology and the increased use of photo databases and photo IDs.

89) In Tanzania, the following activities have so far been completed under Project Profile:

- (i) Completing and validating the migration of the existing registration data to the new application thereby decommissioning any legacy databases;
- (ii) Installing the new registration application ProGres, and introducing it to users;
- (iii) Training staff through hands-on usage of the new application which includes discussion of registration principles and standards;
- (iv) Developing in conjunction with staff, any changes to procedures and tools deemed necessary to meet standards;
- (v) Ensuring that standard reports such as refugee documentation, statistical reports, and registration forms can be reliably produced by the software;
- (vi) Defining and set user roles and system site configuration (codes, graphical user interface);

90) There is however still much to be done before every user becomes accustomed to the new system and before remaining technical problems and limitations are resolved. An IT consultant arrived from Geneva at the end of January 2005 to work on ensuring an actively functioning registration database upon the departure of the implementation team.

Legislative Framework for Determining Protected Status

Group Determination

- 91) Group determination refers to the situation where refugees are recognised as a group on the basis of the situation in the country of origin. Such refugees are accorded “prima facie” status. Group determination of refugee status is envisaged by section 4(1)(c) of the Refugees Act which includes in the definition of a refugee as one who “belongs to a group of persons which by notice in the Government Gazette has been declared to be refugees...”. Although not stated in the law, group determination is normally employed in situations of mass influx.
- 92) Unlike individual status determination, the Act does not provide for the procedure to be followed by the Minister in granting group recognition of status. In the past, the procedure followed in practice was fairly easy. Once the Government was satisfied, on the basis of objective criteria, that a situation existed in a particular country which would warrant persons in that country to flee, the Government would declare all asylum seekers arriving from such a country from a specified date to be refugees. The implication was that when a person presented himself or herself from that country and claimed asylum, the authorised officers merely had to verify his or her nationality and such person would be registered as a refugee.
- 93) More recently however, there have been developments which have blurred the whole concept of prima facie status. Since the 1990s, Burundians and Congolese asylum seekers were declared to be *prima facie* refugees. Until recently, they were admitted in accordance with the procedure described above. However, although the *prima facie* status of these groups has not been officially lifted, different procedures have been instituted in the various districts to screen asylum seekers from Burundi and Congo, which verge on the individualised status determination procedure. These procedures raise a number of legal questions. First, asylum seekers have to appear before panels of different compositions depending on the district of their entry. In Kasulu, now all asylum seekers from Burundi and Congo must appear before a panel composed of a representative of the Refugee Directorate (known as MHA), Immigration Department and UNHCR as Observer. An asylum seeker must satisfy this panel that he or she has reasons to seek asylum.
- 94) In Kibondo, the panel has begun to include MHA, Immigration, Police and representative of the District Commissioner and UNHCR as an observer. In Kigoma, asylum seekers from Burundi and DR Congo are interviewed by MHA, Immigration and Police. UNHCR has been excluded even in the status of an observer.
- 95) In Ngara, the panel is composed of a representative of the Refugee Directorate, District Immigration Officer, District Security Officer and the District Commissioner. As in Kigoma, UNHCR is excluded even as an observer.
- 96) The setting up of these panels may not be legally problematic because the Refugees Act gives the Minister responsible for home affairs discretion to recognise refugees as a group and it does not describe how he should exercise this discretion ((See section 4(1)(c) of the Refugees Act). If the Minister has chosen to use panels to advise him in this regard, that would be within his mandate. However, the setting up of panels of different compositions to interview asylum seekers from the same country may raise the issues of discrimination and equality before the law. This problem is partly due to the inadequacy of the provisions of the Refugees Act with

regard to group determination of refugee status. While the Refugees Act includes in the definition of a refugee a person who “belongs to a group of persons which by notice in the Gazette has been declared to be refugees...” (section 4(1)(c)), it does not specify the person who will then determine whether a particular individual belongs to that group or the procedure to be followed.

97) Further, rejected asylum seekers do not have access to UNHCR prior to being returned. This denies them the possibility of being treated by the Office as persons of concern and being assisted to find asylum elsewhere.

98) The other, and perhaps the main problem, is one of the procedures followed by these panels. Unlike the persons who undergo individualised procedures, asylum seekers are not given prior briefing regarding the whole process. Second, the interview is not as thorough as the one which individualised cases go through. Third, and more serious, the rejected applicants are not given an opportunity to appeal to any authority.

99) In Kigoma, doubtful cases are forwarded to the Immigration Department for further scrutiny. If Immigration is not satisfied, the applicant is issued a Prohibited Immigrant Notice (PI) whereby he/she must leave the country. In Kibondo, applicants who are rejected by the panel are told to go back to Burundi immediately.

100) Another problem is lack of guidelines for establishing the objective criteria in the country of origin on the basis of which to grant prima facie status. This problem was behind the controversy which arose recently in Kibondo when the District Commissioner, alarmed by the claims by new arrivals that there were massacres in some villages in Burundi, invited Burundian officials from those areas to a way station in Tanzania and then asked the asylum seekers to repeat their claim in front of those leaders. The DC referred to the exercise as “fact finding”. The UNHCR saw it a violation of asylum seeker’s right to confidentiality, potentially jeopardizing their security and others associated with them.¹³

101) The prima facie approach was intended to make it easier for an asylum seeker to get asylum. Paradoxically, now the asylum seekers entitled to prima facie recognition appear to be worse off than those who have to prove their cases individually. In fact, all are required to undergo de facto individualised status determination. However those who are supposedly undergoing prima facie status determination are being denied statutory rights as well as those which have in practice been developed by the NEC. The latter include the right to have the procedure explained and options available to asylum seekers whose applications have not been granted.

Individual Asylum Procedures

102) As noted above, an asylum seeker who is subject to individualised status determination must fill an application form and the application must be registered by an authorised officer. As per section 9(5)(a) of the Refugees Act, the applicant is entitled to make any statement and submit evidence in support of his claim if he so wishes.

¹³ For more on applicable procedural standards see UNHCR, Procedural Standards for Refugee Status Determination under UNHCR’s Mandate.

103) After the applicant has filled the form as above, the authorised officer must interview the applicant, reduce the interview in writing and have it signed by the applicant. Thereafter the application should be forwarded to the Director of Refugee Services who in turn must submit the application before the National Eligibility Committee (NEC). UNHCR must be informed of the presence in Tanzania of the applicant and such person should be informed of the right to contact the agency.

104) The NEC is established under section 6(1) of the Refugees Act and is composed of the Director, the Director of Public Prosecutions who shall be the Chairman, and one representative of the President's Office; the Prime Minister's Office; the Chief Minister's Office; the Ministry of Home Affairs and International Co-operation; the Inspector General of Police; and the Director of Immigration Service. UNHCR enjoys observer status. The Minister may co-opt two additional members for a specified period if he considers it necessary. Co-opted members have no right to vote.

105) The Director of Refugee Services must ensure that the NEC convenes and decides on the application within sixty days. This period may be extended for reasonable cause. Most asylum seekers in Tanzania come from neighbouring countries on which members of the NEC have up-to-date information. However, the NEC has received asylum application from places such as Darfur and Madagascar over which they have little information.

106) Upon completion of hearing the application, the section 9 procedure. NEC must make a recommendation to the Minister for Home Affairs for the application to be accepted or rejected. Any person dissatisfied by the Minister's decision may appeal to the same Minister within seven days of being notified of the outcome.

107) In a study titled Refugee Admission and Eligibility Procedures carried out in 2002 by the same consultant for the Government under the Review of Refugee Related Policies and Laws a number of problems with the section 9 procedure were identified. They include: First, the National Eligibility Committee (NEC) is, at 8 persons, too large making it difficult to get the quorum. This in turn contributes to inordinate delays in resolving asylum applications. Also, the reasons for placing the NEC under the chairmanship of the chief prosecutor (DPP) are not self-evident. It gives an impression of RSD as a criminal inquiry.

108) Timelines within which certain procedural steps should be taken are unrealistic and not observed in practice. The reasons for the decisions of the Minister are not provided. This makes it difficult for those whose applications have failed to process appeals. Finally, sending appeals to the same person who made the first instance decision (Minister) is not compatible with standards of fairness in adjudication.

Complementary forms of Protection

109) As noted in paragraph 17, Tanzania is a signatory to the 1951 Convention on Refugees and the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problems in Africa. Between them, these two instruments cover all persons seeking asylum in Tanzania. Accordingly, there are no complementary forms of protection provided in the country.

Country and Legal Information and Analysis

110) As part of its protection role UNHCR makes available pertinent and up to date country and legal information and analysis.

111) In Tanzania this information, including copies of national legislation, international instruments, international jurisprudence, country of origin information, and UNHCR policy papers and guidelines, are easily available and accessible to all UNHCR staff in Dar es Salaam and the field. Such information is accessible in hard copy, or electronically through the internet, UNHCR Intranet, and the UNHCR Refworld CD-Rom. In addition, UNHCR staff in Tanzania receive information from UNHCR offices in neighbouring countries. Staff are, by and large, familiar with how to access this information.

112) Although such information is public and often shared with IPs and government counterparts, such exchanges do not appear to be regular and systematic.

113) Government authorities involved in refugee matters, and in particular in eligibility screening and RSD have in general no means of using Internet or UNHCR Refworld CD-Rom due to lack of technical means (i.e. no computers and/or no access to Internet). The lack of access to country of origin and legal information negatively impacts on the quality of decision-making. At the same time, even when provided with pertinent information from UNHCR, some government officials have tended to be dismissive of the information, perceiving it as being biased and inevitably in favour of asylum seekers.

114) UNHCR protection staff in Dar es Salaam are principally responsible for monitoring developments in Tanzanian national legislation. New information is provided to UNHCR HQ and is also provided to government authorities upon request.

Protection from Violence, Coercion or Deliberate Deprivation

Security in Refugee Hosting Areas

115) The security situation in refugee camps in Tanzania, particularly after the influx of refugees from Burundi and Rwanda from the 1990s, deteriorated and has since then fluctuated. As several studies have pointed out, the worst period was between 1994 and 2000 when there were high incidents of murder, armed robbery, rapes and unlawful possession of illicit arms.¹⁴ Presently, the entire refugee hosting area is under Security Phase One in UN security classifications on account of the risk of banditry in and around refugee hosting areas. Presently Ngara is regarded as more dangerous than Kasulu, Kibondo and Kigoma. Incidents in the District in the first half of 2004 alone include several armed attacks including an attack by 40 bandits with guns and hand grenades in the nearby village of Murugwanza, some 5 km from Ngara town centre and hijacking of a UNHCR vehicle along the highway, 27 km from Ngara Town centre. In August 2004, six staff of IP Concern were robbed by bandits in the vicinity of a refugee camp.¹⁵ In late 2004, the attack on a bus, allegedly by Burundian bandits, next to Mtabila Burundian camp in Kasulu triggered the very severe restrictions to the freedom of movement and contact with local population currently in place in most Burundian camps.

116) There are a number of factors which contribute to this situation. The first and foremost is the location of refugee camps in a region contiguous to the war torn countries of Burundi, DR Congo and in the past, Rwanda. This among other things enables criminals both from within Tanzania and across the border to obtain weapons from the warring parties in those countries with which to commit crimes. It is also alleged that rebels in neighbouring countries enter into Tanzania to replenish their food and cash supplies by stealing from Tanzanians. While there was some evidence of this happening in the period between 1994 and 2000, there is no concrete proof of the continuance of the practice in recent times.

117) Another factor that contributes to crime in refugee hosting areas is the perennial shortage of food and other basic needs which forces refugees to turn to both petty and serious crimes to make ends meet.

118) Additionally, refugee operations have brought into the area an assortment of accessories such as four wheel drives that have attracted criminals from other parts of the country and beyond.

119) Maintaining security and law and order in refugee hosting areas is the responsibility of the government. However, following the unusually high level of insecurity in refugee settlements that followed the genocide in Rwanda, the Tanzanian Government and the UNHCR entered an arrangement whereby the latter's country programme would include a "Security Package". This package involves Tanzania providing an agreed number of policemen and women, who would then be trained (in refugee security issues), equipped and remunerated by the UNHCR to work in refugee hosting areas for a specified period of time, usually six

¹⁴ See, Rutinwa & Kamanga, *The Impact of the Presence of Refugees in Northwestern Tanzania* (2003); Mogire, E., *Refugee Militarisation in Tanzania, An Independent Study for the Small Arms Survey, BICC, UNHCR and OCHA* (2004); Loescher, G. & Milner, J., *Protected Refugee Situations and Host State Security in Africa*, Submitted to *Survival* 3 February 2005.

¹⁵ In May 2004, one of Kibondo TCRS staff was shot and killed while traveling to Karagwe when the truck they were traveling in was attacked by bandits in Kimisi forest.

months. Thereafter they are replaced by another contingent. These police discharge a number of functions including carrying out security patrols in camps, investigating reports of crimes in the settlements and escorting vehicles plying the roads in the areas with high risk of attacks from bandits.

120) On the whole, and compared with security programmes in other countries, the Tanzanian security package is considered to be a success. It has helped to minimise the level of insecurity both inside and around camps.

121) That said, this security arrangement has not succeeded to ensure the security needs of residents mainly because the number of police officers deployed in each batch is, at around 300 personnel, to police an area of over 400,000 people. This is considered too small to effectively police the entire refugee hosting region. Consequently, bandits and other criminal gangs are able to enter villages and terrorise the population at will. Car-jackings continue to take place notwithstanding the road patrols.

122) As a consequence of this, the Tanzania regular police in the refugee hosting areas have had to intervene to rescue populations living in areas supposedly covered by the Operation Police. In some instances even the army has had to be called in to assist. Yet, the regular police in the refugee hosting areas are not, strictly speaking, supposed to receive assistance from the UNHCR.

123) There is also the problem of high turn over of police officers. They are posted for six months – they work seven days a week for poor pay. The numbers of police officers assigned to individual camps are not necessarily proportionate to the number of people in the camps themselves. There is a need for more women police officers. But living conditions are a serious obstacle to achieving this. There is also a need for more systemized training of police officers in international refugee and human rights law and domestic law. Presently the system is very *ad hoc* with each sub office, and even different field offices, designing and delivering their own training material.

124) At the camp level, the authorities charged with maintenance of law and order are the Settlement Officers (SOs), formerly known as Camp Commandants. SOs, are employees of the Refugee Directorate, accountable to its Director through Zonal Coordinators. They are empowered by law to order detention of refugees for up to three days (S. 18(4)).

125) Refugees are also involved in the security system at the camp level through the “Sungusungu” system. The “Sungusungu” are a sort of neighbourhood watch personnel appointed from the refugee community and empowered to maintain law and order in refugee settlements. They report to the police in the camps. The Sungusungu do receive training on protection issues such as SGBV. However, as with the police, the training is *ad hoc* and not systematised.

Civilian Character of Refugee Hosting Areas

126) Asylum seekers in Tanzania come from war torn countries. Consequently, sometimes the country receives mixed population flows comprising of civilians and former and active combatants. To deal with this situation, all asylum seekers from war torn countries undergo security screening by the Tanzanian security forces. Those found to be combatants are separated from the civilian refugee population and taken to a separation facility at Mwisa under section 27 of the Refugees Act. This section empowers the Minister or any competent authority appointed by the

Minister on his behalf to be satisfied that any asylum seeker or refugee acting in a manner prejudicial to peace and good order or prejudicing the relations between the Government of Tanzania and any other Government, be detained in prison for a period not exceeding three months, or to such longer period as may be extended under the Preventive Detention Act, 1963. This measure is intended to maintain the civilian character of refugee camps and settlements in Tanzania.

127) Although the law vests the powers of separation to the government, in practice, the approach agreed between the Government and UNHCR is that when a person is suspected of being a combatant, UNHCR and the government must conduct a joint screening of that person to verify that fact. When both parties agree, the person is sent to Mwiswa. There have been incidences where the government has transferred refugees to Mwiswa without involving the UNHCR. However, UNHCR monitors the facility on monthly basis and when they discover such persons, they intervene on their behalf.

128) In the past, there have been claims particularly from Burundi that rebels from that country were recruiting, arming and training in refugee camps in Tanzania. These claims were investigated and dismissed by both the Government of Tanzania and UNHCR. There were also rumours of forcible solicitation of funds by rebels and the use of refugee camps and settlement for rest and recuperation by armed elements from DR Congo and Burundi. Again, this is an allegation over which there was some evidence to support it in the period between 1994 and 2000 but as of now there is no concrete proof of the continuance of the practices.

129) Tanzania has consistently warned refugees not to engage in political activities on its territory. There have been incidences where refugees have been arrested and aligned before the court for engaging in military drills in Tanzania. In 2004, the Government cancelled the status of two refugees for engaging in political activities. With the peace process ongoing in Burundi, allegations of political or military activities in refugee camps in Tanzania are rarely made.

Mechanisms to Prevent and Respond to SGBV

130) Sexual and Gender Based Violence (SGBV) including rape, attempted rape, sexual harassment, sexual exploitation, forced marriages, early marriages, and domestic violence is a major concern. The incidence of SGBV in the camps is very high. At the Kigoma Sub-Office alone (which covers the Lugufu camps), a total of 203 SGBV cases were reported between January and October 2004.¹⁶ At the national level some 1,250 cases of SGBV had been reported in refugee camps in Tanzania in the same period.

131) Some staff claim that these figures do reflect the true extent of the problem. Victims are often reluctant to report incidents of SGBV attacks. Also, some victims resolve SGBV cases through traditional justice system. Such cases may go unreported and may end with unsatisfactory decisions such as forced marriages between the perpetrator and the generally very young victim. Thus, the true number of SGBV cases may be much higher than the reports suggest.

132) Many incidents of rape occur outside the camps when refugee women harvest their crops and collect firewood. The perpetrators are suspected to be bandits as

¹⁶ Of these cases 16 were rape, five attempted rape, 17 sexual harassment, 15 early marriage, and 119 domestic violence.

most of the women report that the abusers are armed with guns.¹⁷ Various measures have been introduced to combat the problem. One was to encourage men to accompany their wives. Many refused on the basis that it is against their culture to do so. Others, who did accompany their wives, were unable to prevent the abuse and in some cases were sexually assaulted themselves. Some trucks have been secured to take women to the sources of wood – but this has not been fully implemented in all sites.

133) The incidence of domestic violence is also reportedly high and is believed to constitute the overwhelming majority of SGBV cases. Causes of domestic violence include frustration, failure by males to fulfil gender roles (as providers), drunkenness, idleness, quarrels over misuse of food and NFIs, marital problems and disagreements over whether or not to repatriate.

134) Awareness efforts appear to bear fruit in so far as more women are willing to come forward. Follow-up and prosecution, however, remain weak. As will be seen below some victims are not keen to pursue prosecution for fear of the reaction by the family members of the perpetrator should he be convicted and jailed. There have also been serious incidents of the rape of young girls as young as three years old. Other sexual violations against minor girls have been perpetrated by boys.

135) Lack of adequate food and non food items has also left women and young girls vulnerable to sexual exploitation in exchange for items in short supply.

136) Recent monthly SGBV reports prepared by UNHCR Sub offices show that as high as 40% of the perpetrators of SGBV in some camps were adolescents. When asked why, perpetrators indicated that because they always were exposed to conjugal relations – they wanted to try it out for themselves. This highlights the need for larger living places for families to protect privacy.

137) In Tanzania, UNHCR has a Sexual and Gender Based Programme and, in collaboration with government and other agencies, has developed an SGBV Protocol covering prevention and response to such violence. There are also guidelines, agreed upon by all actors, for handling and investigating sexual exploitation cases.

138) The SGBV programme was launched in late 1996 following the publication of a study entitled *Pain to deep for tears*¹⁸ that demonstrated the alarmingly high levels of sexual violence in the refugee camps.¹⁹ This study found that 26 percent of women in Kanembwa camp admitted to having been raped. In 2002, there were 2,978 reported incidents of SGBV, which was a decrease of 8% from 2001.²⁰

139) Preventive activities include public awareness campaigns targeting all parties including parents and girls (in and out of schools) and training programmes on human rights, the Sexual Offences (Special Provisions) Act (SOSPA), SGBV Protocol; adolescent sexual reproductive health, group therapy and conflict management in the context of SGBV. These programmes targeted mainly potential victims of SGBV.

140) Other measures taken to protect women from SGBV include the requirement that at least 50% of the membership of the food committees be women. At some camps such as Nyarugusu, the women constituted over 60% of such committees.

¹⁷ UNHCR, 2004 Annual Programme Interim Report/Review.

¹⁸ IRC, Too Deep for Tears (Study Report, 1996).

¹⁹ In the report, 'sexual violence' was defined as rape and harassment.

²⁰ See UNHCR, Global Report 2002, p. 144.

The involvement of women in camp management and leadership, and in particular in food distribution, minimises the opportunity for women being coerced by male service providers to give them sexual favours in exchange for services.

141) In each camp, there are complaint boxes throughout the camp where victims can anonymously report SGBV cases. Such reports are then investigated by the SGBV Committee. This committee is composed of MHA, Operational Police, UNHCR and representative of IPs, UN sister agencies and refugees. If the complaints are proved, the Committee can take appropriate action. The perpetrators must be dismissed from employment in accordance with the UNHCR “Zero Tolerance” Policy by which any person who engages in sexual exploitation is not fit to work in the agency’s operations, directly, or through its IPs. Where enough evidence exists the perpetrators are prosecuted as well.

142) With regard to response, each camp normally has a “Drop in Centre” which is sometimes also known as a “Women Crisis Centre”. These centres are staffed by trained personnel and reports of SGBV incidents can be made confidentially. The centres are supposed to provide immediate support including provision of clothing for those whose clothing has been destroyed. Many drop in centres were unable to provide the latter. To date, however, no specialised psychiatrists are available to traumatised victims, for whom including minors, resettlement to countries where therapies are available remain the only option.

143) The other main response activity is legal protection including ensuring that SGBV cases are investigated and prosecuted and assisting the victims throughout the process. The UNHCR and some Implementing partners have retained trained legal staff to work specifically as SGBV counsellors. However, the number of legal counsellors is not sufficient to meet the need.

144) SGBV is recognised as a criminal offence in Tanzania. Most forms of SGBV are covered by the Sexual Offences (Special Provisions) Act of 2000 which specifies rules of evidence and procedure to enable women to freely testify and prescribes severe penalties. Ironically, the severe penalties have been reported to be one of the disincentives to report SGBV cases particularly rape which carries a life sentence (s. 18 of SOSPA). Victims are said to fear the consequences of a conviction from the relatives of the perpetrator. For the same reason, refugees are very reluctant to act as witnesses in SGBV cases against fellow refugees.

145) There are also traditional dispute settlement mechanisms to arbitrate SGBV crimes although all serious cases are required to be handled through the criminal justice system. In Burundian refugee camps, SGBV disputes may be presented before the “Abashingatahe” or elders who adjudicate and order appropriate compensation. In Congolese camps, there is a system of traditional justice known as “Kiuno” under which a council of elders may order any person who has sexually attacked a female to pay compensation to the parents or the husband. These systems are favoured by many refugees because unlike in the normal judicial system, the family of the victim receives some form of compensation. Consequently many cases are first brought to the elders and only reported to police when there has been no agreement or the culprit has reneged on paying compensation ordered by the elders.

146) There are problems with traditional justice systems. The victims’ rights and wishes are seldom given primary consideration. In some cases the victim herself may be required to pay compensation. For example, a woman who has been made

pregnant as a result of rape and is unable to identify and/or produce the rapist may be ordered to pay compensation to her husband. Moreover, traditional dispute resolution mechanisms provide for the settlement of offences which by law must be prosecuted. They permit the release of serious offenders leaving others at risk. In addition, the compensation ordered is modest (e.g. a piece of khanga to a woman or goat to the husband) which has no deterrent effect. Additionally, where a victim later wants to bring the matter before the police, she may be precluded from doing so due to the loss of evidence in the intervening period.

147) The Government has been working with the UNHCR to prevent or modify unacceptable forms of traditional justice. Thus, the Government and UNHCR have barred elders from resolving SGBV cases other than domestic violence and minor misdemeanours. At least 30% of the committee of "Abashingatahe" must be women. However, as indicated in the foregoing paragraphs, there are still some problems with the traditional justice systems.

Programmes to Protect Children from Abuse and Exploitation

148) Protection of children is a priority activity in refugee settlements in Tanzania. Children are defined as any person below the age of 18 years. There are problems of proof in that refugees come with no records regarding their birth dates. Whenever there is dispute, a refugee child is given the benefit of doubt.

149) The activities related to protection of refugees in Tanzania are fairly common in all refugee camps and they include social and psychological support, education and protection/security. A closer look at the situation in Lugufu camps may illustrate this point.

150) In Lugufu camps, the World Vision has, under its Community Service Programme, responsibility for the security of children. The agency has established a "Child Care Protection Unit" which is headed by an officer from Community Services.

151) Child protection activities include identification of most vulnerable children and training the community how to identify such children; tracing and reunification of separated children which is done in collaboration with the ICRC; arranging and facilitating foster care and giving material support to all children in a foster family. Other activities are sensitisation of the community on action for the rights of children (ARC); regular medical check-ups to ensure medical and physical well being; protection from SGBV and primary education. In addition, children are given priority when it comes to distribution of food and non-food items.

152) In the Lugufu camps there are mechanisms in place to ensure children's issues are addressed including a Children Committee in each Zone and a Children's Parliament for each camp. Each village has one representative in the Parliament. Their role is to receive views of children and to forward them to the appropriate authorities for action.

153) Refugee children in Lugufu Camps are generally not compelled to work. However, some children from poor families find themselves having to help out with chores that are not suitable for their age. For example, they may work as baggage carriers but rarely as labourers.

154) Children in Lugufu camps have been victims of SGBV/SE. Indeed, 80% of reported rapes and attempted rape cases have been perpetrated against children.

Perpetrators have included strangers and relatives. Cases have been reported of teachers demanding sexual favours for higher marks. A few cases of teachers impregnating pupils have also been reported. These problems are addressed by the Child Support Unit in collaboration with the SGBV programme. The high incidence of SGBV cases against children suggests that more still needs to be done.

155) There are children with physical and mental disabilities. Such children do get assistance from the Community Based Rehabilitation Unit. Children with physical disabilities are offered physiotherapy and mobility aids. There is a problem with mobility aids in that there is no workshop to manufacture them in Lugufu camps. They have to be ordered from Nyarugusu. However, orders take between five months and a year to be delivered by which time the intended beneficiary child has outgrown the artificial limb.

156) Children with mental disabilities are assisted by the Child Protection Unit in collaboration with Community and Health Services. Some patients have been referred to Maweni Regional Hospital in Kigoma and Milembe, which is a hospital specialising in mental health.

Legal Recognition of Protected Status

157) An “asylum seeker” is defined under section 2 of the Refugees Act as “a person seeking refugees (sic) status in accordance with the provisions of this Act and in accordance with other International Conventions relating to refugee matters of which Tanzania has acceded to.” As noted earlier, all asylum seekers are required to report their presence in Tanzania to an authorised officer, a justice of peace or a village Executive Officer (VEO). Presumably, that act of reporting confers a person the right to remain in Tanzania as an asylum seeker. However, this is not clearly articulated in law.

158) There are no explicit provisions in the Act for ensuring that asylum seekers are provided with documents confirming their status. The only provision which comes closer to recognising asylum seeker status is section 5(2)(e) which assigns the Director of Refugees the function of ensuring that an applicant for refugee status is not ordered to leave the country before his claim for refugee status has been decided upon in accordance with the provisions of the Act. However, as was pointed out in the Study on Admissions and Eligibility Procedures noted above the Director has no mechanisms of discharging this function given that some of the government agencies organs and functionaries whom the asylum seekers may encounter are not answerable to the Director.²¹

Provision of Documents Confirming Legal Status

159) The Refugees Act is silent on identity documents. Thus, there is no provision under the Act, which entitles refugees to receive such documents or obliges the Government to issue them to refugees. The Policy on its part calls for all refugees to be registered and issued with identity cards upon admission into the country (para 27).

160) Persons who get refugee status under the individualised procedures receive a written document confirming the grant of status and indicating their place of residence. Other refugees do not receive any document confirming their protected status. Although registered refugees who are recognised on a *prima facie* basis receive UNHCR ration cards, these documents are not officially recognised as confirming status.

161) The Director of Refugee Services has confirmed at the non-issuance of identity documents to refugees is not linked to government policy or lack of enabling legislation. It is simply due to lack of resources. She said that the Directorate of Refugee Services normally depends on UNHCR for IDs but does not consistently receive them. Consequently, the few they have are reserved for those refugees who have to reside outside the camps for special reasons such as attending Tanzanian educational institutions.

162) The impact of not having individual refugee IDs is that refugees are not always able to prove their legal status in Tanzania which exposes them to harassment by the authorities for suspicion of unlawful presence in the country as well as premature removal from the country.

²¹ See Admissions and Eligibility Procedures noted above

Documents Confirming Civil Status

- 163) The Births and Deaths Registration Ordinance (Cap. 108) governs the issuance of documents confirming civil status in Tanzania. Under this rather very old piece of legislation, the registration of births and deaths is compulsory only if one or both parents are of European, American or Asiatic race or origin, or a Somali (s. 25 & 26). Although section 2 of Ordinance 27 empowers the Government to extend compulsory registration of births and deaths to all persons of any particular race, class, tribe, or other group or to all or some inhabitants of any particular town, district or area, no such extension has been made.
- 164) The Minister responsible for refugee matters, however, has issued a directive to District Commissioners in refugee affected areas to register all refugees. The Minister has also indicated the Governments' desire to issue documents to all refugees who are so registered. To date a shortage of registration clerks and funds to pay for overtime work, are said to be the main obstacles in ensuring this is done.
- 165) The Registrar-General also serves as Registrar of Marriages although registration of marriages is voluntary.
- 166) The Refugees Act is silent on civil registration and issuance to refugees of documents confirming civil status. In practice, these facilities are not available to refugees. With regard to births there was a time when the District authorities in Kibondo were issuing birth certificates to refugees upon UNHCR paying the relevant fees. However, this system has stopped. The failure to issue birth certificates is not lack of notification of such births. Virtually all births in camps occur in hospitals and birth data is compiled by the agencies responsible for health and shared with UNHCR and Government. Parents of newborn babies also report the births to UNHCR field offices in order to get ration cards of bigger family size. Organisations running the hospitals do issue some written confirmation of birth, which indicates, among others, nationality of the child. However, such documents are not official.
- 167) Refugees who are born outside Tanzania and who do not have birth certificates can encounter difficulties when they wish to repatriate. Inability to prove their citizenship can be a barrier to return and/or a barrier to exercising other civic rights upon return. This is particularly so with those refugees who return on their own and therefore who cannot produce even a Voluntary Repatriation Form(VRF).
- 168) Most marriages in camps are solemnised in accordance with the traditions and customs of the refugees. Such marriages are not registered and consequently no legally recognised marriage certificates are issued. A few refugees solemnise their marriages before District Commissioners in accordance with the Tanzanian *Law of Marriage Act* of 1971. In such cases marriage certificates are issued. Some refugees undergo church ceremonies and get a certificate of "Christian Marriage" from their churches. However, such certificates are not official in law.
- 169) Failure to notify and register marriages has had a number of implications. First, the absence of notification of marriages makes it possible for early and forced marriages to take place unnoticed. It also makes it easier for a person to have more than one spouse, which is illegal under Tanzanian law. This has had unfortunate consequences for women married in the camps to men whose previous marriages in Burundi have not been dissolved. In some cases, these men have repatriated, leaving their wives in Tanzania without redress. In other cases the non registration

of marriages have enabled parents to prevent the repatriation of their daughters who have chosen to return to Burundi with men they have married in the camps.

170) In Kibondo, the MHA in collaboration with the UNHCR had introduced a marriage notification form which all parties intending to marry are required to fill. This measure was linked to curbing early and forced marriages. However, the system is not working well and most marriages are still unreported.

171) One controversial area is inter-marriages between refugees and Tanzanians. Foreigners married to Tanzanians are entitled to a dependant's pass which enables the foreign spouse to reside anywhere in Tanzania with his or her spouse.²² According to the MHA Co-ordinator for Kibondo District, this entitlement equally applies to refugees. In practice, however, this entitlement is not accorded to refugees. A refugee married to a Tanzania must still reside in a camp and request a permit if he or she wants to visit her spouse. A permit can be issued for up to 14 days. Likewise, a Tanzanian wishing to visit his or her refugee spouse must obtain a permit to do so.

172) According to research by Massabo,²³ a number of Tanzanians married to refugees opted to reside in camps to avoid the hassle of applying for short-term permits.

173) A child born out of a union between a Tanzanian and a foreigner, including a refugee, becomes a Tanzanian even if under the citizenship laws of the foreigner's country the child is entitled to citizenship of that country. However, upon attaining the age of 18, such person must renounce the citizenship of that country and take the oath of allegiance, otherwise he shall be deemed to have ceased to be a citizen of the United Republic of Tanzania (ss. 5, 6 and 7 of the *Tanzania Citizenship Act, 1995*).

174) The Government and UNHCR do register deaths in all camps. However, the deaths recorded are mostly those which occur in hospitals. Refugees do not report deaths of relatives for the fear of having the family size on their ration cards reduced. Even for the deaths that are recorded, no death certificates are issued. Failure to issue death certificates may create legal difficulties with regard to rights of survivors both in the country of asylum and that of origin which, as a matter of law, depend on proof of death. This problem may be addressed by Project Profile which foresees the data collected in countries of asylum helping to rebuild national registries in the countries of origin in the event of return of refugees.

Information Dissemination on Rights and Responsibilities

175) There are also various initiatives aimed at informing refugees of their general rights and obligations in Tanzania. These initiatives take three main forms. The first is public meetings organised by UN agencies or by the government. Meetings called by Government are addressed by, among others, District Commissioners, Regional Commissioners and even Ministers. Meetings addressed by senior government officials tend to emphasize responsibilities of refugees and possible sanctions for

²² Under the Immigration Act, 1995, a holder of a dependant's pass whether or not a refugee is not allowed to engage in gainful activities such as wage earning employment. The Refugee Act is silent on this matter.

²³ Massabo J, The Legal Aspects of Intermarriages between Refugees and Tanzanians, A Compulsory LL.B Research Paper, Faculty of Law, University of Dar es Salaam, (2003).

breaching the law. They barely address rights. Sometimes the addresses take the form of threats, thus affecting the learning environment.

176) The second method of information dissemination is through “protection training” workshops held in refugee camps. These cover a variety of protection issues such as SGBV and Action for the Rights of Children (ARC) which is aimed at dissemination of the rights of refugee children.. This training targets both refugees and service providers.

177) The Limitation of this method is that very few refugees get opportunity to participate. Only a few of them, usually refugee leaders are invited on the assumption that they will disseminate the knowledge acquired to the community. However, there are no evaluation mechanism to determine whether such information filters throughout the community.

178) Refugees are also informed of negative developments regarding some of the services they receive. For example, where there is a likelihood of cuts in food rations, WFP and UNHCR do issue a joint statement to refugees in advance. This helps refugees to prepare for the situation. This information is communicated either directly to refugees at public meetings or through refugee leaders.

179) The third method of information dissemination is through billboards and posters which are placed at strategic places such as hospitals and food distribution centres. These billboards are written in English, Swahili and the language of the refugees such as Kirundi. They carry various messages such as “Services Provided in Refugee Camps are All Free” and information regarding conditions and procedures for third country resettlement. The problem is that many refugees particularly from Burundi are from rural backgrounds and cannot read or write. This limits the effectiveness of this method.

180) At present, the MHA and UNHCR are finalising an “Information Paper on Asylum Seekers and Refugees” which provides a “fact sheet” on rights and responsibilities of refugees. The paper will be published in English, Swahili, French and Kirundi for distribution to refugees and refugee workers. However, the problem of illiteracy noted above, is likely to affect the effectiveness of this tool

181) There are information dissemination initiatives targeting the authorities as well. As noted above, protection training workshops at camp level involve government actors such as Settlement Officers and the police. In addition, UNHCR organises Regional Training Sessions for senior government officials at which rights and duties of refugees are discussed. In 2004 for example, such workshops were held in Bukoba (Kagera), Kigoma, and Bagamoyo. They were attended by officers from the Directorate of Refugees, Immigration and the Judiciary. The Centre for the Study of Forced Migration at the University of Dar es Salaam also organises “Refugee Policy Workshops” for senior government officials when it has funds to do so.

182) The limitations of the initiatives targeting government officials is that they are focused on officers in the refugee affected regions of north-western Tanzania. This leaves out other relevant officers such as police and Immigration staff working at airports and at borders areas through which refugees enter Tanzania. Second, the number of sessions is too limited to meet the needs. There is also the problem of high turn over of trained staff which limits the effectiveness of the initiatives. This is a perennial problem which could be at least partially mitigated by mainstreaming

refugee law courses in the basic training of relevant officials such as police and immigration officers.

Free Movement

Restrictions on Freedom of Movement

183) Freedom of movement in Tanzania is restricted by the Refugees Act which empowers the authorities to designate areas in Tanzania within which refugees may be required to reside (ss 16 & 17). In practice, all refugees are required to reside in camps or settlements. A few refugees have been given permits to live outside camps.

184) As noted earlier, approximately 200,000 refugees are spontaneously settled in Tanzania villages. Technically, these refugees are not in violation of sections 16 and 17 as they have not been expressly required to reside in any designated area. However, they are actually in a more precarious legal position. Since they have not declared their presence to the authorities, they are in breach of section 12 of the Refugees Act which stipulates that no asylum seeker or refugee shall remain in Tanzania unless he is issued with a permit to remain in the country. Upon being discovered they could be subjected to various sanctions including expulsion from the territory of Tanzania.

185) No asylum seeker or refugee is allowed to leave a designated area without a permit from the Director or Settlement Officer. Such permit can be issued for up to 14 days only. Any refugee who contravenes these provisions is guilty of an offence under the Act. Upon conviction, the person is liable to imprisonment for up to six months or a fine of fifty thousand shillings. The provisions are rigorously enforced. For example, of the 20 refugee prisoners in Kasulu Prison at the time of the mission, five (25%) had been convicted and jailed for six months under the above provisions. As noted above, Congolese refugees are generally treated more leniently than Burundian refugees.

186) By a rule of practice, refugees are allowed to move within a four-kilometre radius around the camps in order to get amenities such as firewood. However, there are no demarcations as to where the camp area ends and the 4 kilometre zone begins. This puts refugees at risk of crossing the line without knowing it. Further, as we shall see below, this can be restricted further at the will of the authorities.

187) Refugees and asylum-seekers found outside camps without permits have also been prosecuted for unlawful presence in Tanzania under the Immigration Act, 1995. Unlawful presence in Tanzania carries harsh penalties under immigration law. The alien involved could be deported immediately. He could also be charged and if convicted imprisoned for two years followed by deportation from Tanzania.

188) 4-km rule is not enforced consistently across the camps. Different settlement officers are inclined to close their eyes especially when refugees leave the zone in order to gather firewood or to work for locals. How liberal the settlements officers are also depends on the orders they may have received from the District Commissioner regarding movement of refugees. For example, at the time of the mission, the District Commissioner for Kasulu had banned refugees to move even into the four-kilometre radius. The ban was reinforced because he had failed to find a provision in the Refugees Act which allowed such movement.

189) The historical rationale for restricting the movement of refugees appears to have been to maintain law and order in refugee affected areas and for efficient administration of refugee programmes. Increasingly, the restriction is explained in terms of security in refugee affected areas. It is also, however, part of the overall

more restrictive policy aimed at encouraging repatriation by, among other means, discouraging/restricting possibilities for self-reliance and local integration.

Travel Documents

190) The Refugees Act does not expressly provide for issuance of travel documents to refugees. The only section that makes reference to such documents is section 17(6) which makes it an offence for a refugee or asylum seeker to whom permit or travel document has been issued under the section to fail to comply with the terms and conditions thereof. The referred section talks about permits to leave designated areas and not travel documents.

191) The lacuna in the Refugees Act may have been filled by the *Tanzania Passports and Travel Documents Act, No. 1 of 2002*. This Act provides for two types of travel documents that may be issued to refugees. The first is the "Certificate of Identity." This may be issued under section 10(6) of the Act to "a person other than a citizen of the United Republic of Tanzania who cannot obtain a passport from the country of which he is a citizen or does not have citizenship of any country for the purposes of travelling outside the United Republic of Tanzania".

192) The second document is a "Geneva Convention Travel Document" which may be issued under section 10(7) of the Tanzania Passports and Travel Documents Act to "any refugee granted asylum in the United Republic of Tanzania pursuant to the provisions of the Refugees Act, 1998 for the purposes of travelling abroad.

193) The specific forms and the detailed requirements for both Identity Documents and Geneva Convention Travel Documents have been given in the recently issued *Tanzania Passports and Travel Documents Regulations, 2004*.

194) As per section 11 of the Act, holding of such documents is prima facie evidence of the nationality or domicile of the holder and his entitlement to state protection. However, mere possession of such documents does not operate as a bar to inquiry, investigation or judicial proceedings against the holder if there are reasons to warrant such course of action.

195) To get one of these documents, a refugee must make an application to the Director of Immigration, through the Director of Refugee Services. The applicant must state where s/he is going, for what reason and for how long. He also must pay an application fee of 10,000 shillings. Although the procedure for applying for travel documents appears not too difficult, there are practical problems such as ability of refugees to get permit and resources to travel from refugee camps to process the travel documents.

196) A refugee who fails to get the travel document cannot travel abroad for the *Immigration Act* requires any person travelling in or out of Tanzania to possess a valid travel document. A refugee who travels without such a document commits an offence and, while abroad, enjoys no international protection of Tanzania.

197) The Convention Travel Document issued to refugees is valid for 2 years and it can be renewed abroad at any Tanzanian embassy. A refugee possessing a CTD issued by the Government of Tanzania may return to the country without having to apply for a re-entry visa.

Arbitrary Arrest and Detention

198) Refugees suspected of having committed offences are supposed to be dealt with in accordance with the *Criminal Procedure Act, 1985*. If a refugee is to be arrested in a camp then the Settlement Officer in charge must be informed. Where a refugee has been remanded in prison UNHCR is informed. Sometimes refugees arrested outside camps do give the police false details regarding their names and camps. This makes it difficult for UNHCR to make timely intervention. That said, incidents have been reported where recognised refugees and asylum seekers found outside their designated camps without permit have been arrested and detained for unlawful presence in Tanzania.

199) UNHCR maintains a list of all refugees in remand in prisons and has unlimited access to them. UNHCR has taken measures to improve the conditions of such inmates such as the monthly provision of soap as well as the provision of blankets, mattresses, clothes, stationery, and sanitary materials to women. It has also constructed a waiting shelter at the Kibondo court premises.

200) As already noted, section 27 of the Refugees Act, empowers the Minister or any competent authority appointed by the Minister to order the detention of a refugee or asylum seeker if he is satisfied that the asylum seeker or refugee is acting in a manner prejudicial to peace and good order or is prejudicing the relations between the Government of Tanzania and any other Government. The procedures to be followed and UNHCR's involvement are also delineated under that section. A detention facility has been set up for this purpose at Mwisa in Karagwe District, Kagera Region. As of 31 December 2004, there were 14 persons in the Mwisa facility of whom 9 were Congolese and 5 were Burundians.

201) Persons liable to be detained under section 27 are informed of the reasons for such. However, they have no access to free, impartial legal assistance other than the assistance that may be provided by UNHCR when conducting joint screening with the government. The duration of detention under section 27 is limited to three months but this may be extended under the Preventive Detention Act. The section is silent on judicial review. However, administrative law jurisprudence in Tanzania is clear that the exercise of executive powers under provisions such as section 27 is subject to judicial review. The only problem is that most refugees are not aware of this nor can they afford the legal costs involved.

202) UNHCR monitors the Mwisa on a monthly basis. NGOs, however, have no access to the facility.

Assistance in Meeting Protection Needs

Provision of Food, Water, and Clothing

203) All refugees in camps in Tanzania rely on assistance for food, water and clothing. UNHCR and the agency responsible for camp management in each camp maintain the information necessary for this purpose. All refugees in Tanzania depend on the WFP which supplies the food through a camp management agency. Every camp management agency collects and maintains information on key food security indicators through food basket monitoring, beneficiary contact monitoring, as well as nutritional and micronutrients surveys. Agencies dealing with health help to monitor and report diseases linked to malnutrition.

204) Generally, food is distributed in a protection sensitive manner. Most camps use the "Community based group distribution" method. This is a system where a group of refugees are given their share of the food as a group so that they can redistribute the same among themselves according to their entitlements. Refugees are informed as to what to expect, and have been taught how to calculate the amounts they are entitled to. At the distribution centres, there are scales where refugees can take independent measurements to ensure that they received the right quantity. An independent agency is also always available to monitor the food basket. This agency is normally a health and nutrition agency.

205) Measures are also taken to ensure that women participate in food distribution activity. In Kasulu camps for example, women constituted up to 75% of the membership of the Food Committee. Food basket surveys in the same camp indicate that 60% of participants in the food distribution activity are now women.

206) In each camp there are supplementary and therapeutic feeding programmes which are often done in collaboration with the food distribution agency. Among the recipients of supplementary feeding are pregnant mothers who receive feeding six months before and three months after delivery. Therapeutic feeding is given to malnourished children as well as those suffering from diseases such as HIV/AIDS.

207) A number of problems were noted with regard to food. First, there have been frequent (if not perennial) food cuts resulting in refugees receiving rations below the recommended standards. In December 2004, food rations of 1400 kcal per refugee per day were being provided instead of the minimum of 2,100 kcal per day recommended in the Standards in the UNHCR Emergency Handbook. The Joint Food Assessment Mission undertaken by both UNHCR and WFP recommended 1,857kcal per day. According to the WFP representative in Kigoma, the situation was not expected to return to normal until February 2005.

208) Second, refugees sold the more nutritious food received from the WFP in exchange for local food stuffs of equal volume which appeals to their taste but has no equal nutritional value. There was also pressure on refugees to liquidate food in order to get the non food items (NFIs) currently not provided by UNHCR. Refugees also use the food for a number of other purposes such as settling debts or payment of fines. Some men monetise the food in order to buy local beer. All this affects the nutritional status of the communities involved.

209) All refugees have access to adequate and clean drinkable water. At least 15 litres/per person/day was provided in all camps with the notable exception of Nyarugusu, where during the dry season sometimes less than 5 litres per person a

day were available. Walking distance to the nearest water point was 300 metres or less with the exception of Lugufu I and II camps. Water is obtained from river sources, bore holes, deep wells, shallow wells, and gravity schemes. The water sources are protected and the pumped water is treated and tested to ensure safety and generally all refugees receive the recommended amounts.

210) While there was adequate supply of water, there is a problem of lack of adequate storage facilities. Refugees use plastic buckets to store water. However, like all other non-food items, the distribution of jerry cans has never been satisfactory. As a consequence, refugees use one utensil for multiple purposes, resulting in contamination of water and inadequate availability of water at household level.

211) There are shortages of non-food items (NFI) in all camps. General distribution of these items is rare. In 2004, for example, only new arrivals and vulnerable individuals were provided with kitchen sets, jerry cans, plastic sheeting, soap and blankets. Non food items were distributed on a targeted basis hence no general distribution was made. However, UNHCR maintained a constant supply and provision of soap in the general population on a monthly basis.

212) Clothing is in short supply in all the camps. At some camps such as Nyarugusu, the last general distribution of clothes by UNHCR took place some four years ago.

213) Some agencies had attempted to fill the vacuum by mobilising clothes from their own back donors. These agencies include World Vision and TCRS in Kasulu and Kibondo camps respectively. However these clothing supplies are not adequate.

214) In addition, the clothes given to refugees are second hand, collected at random without necessarily taking into account the needs of the intended beneficiaries. Consequently, many refugees fail to find clothes that fit them. Also, sometimes donated clothes are not culturally appropriate for women to wear.

215) Another item in short supply are sanitary materials for women. When they are supplied they tend to be of low quality. Some women have been forced to use sanitary materials to make dresses for their children due to lack of clothes. There was no distribution of sanitary materials in 2004. Lack of clothing and sanitary materials was cited as one of the major causes of girls dropping out of schools.

216) There have also been problems of refugees selling their NFIs in order to buy food. For example, pregnant women who are normally targeted to receive mosquito nets often decide to sell them in order to buy food especially during the ration cut period. At present, UNHCR is not planning to do a general distribution of NFIs until January-February 2005 when the food ration will have returned to normal reducing the pressure to monetise NFI in order to buy food.

217) Shortage of food and non food items at the time when refugees are restricted from engaging in food production and income generation outside camps has multiple adverse impacts on protection including affecting the nutritional status of refugees, compelling some of them to engage in criminal activities in order to make ends meet and exposing women to sexual exploitation.

Immediate Shelter and Long Term Housing

218) The overwhelming majority of refugees in Tanzania live in camps where they are provided with plots, plastic sheeting and poles to construct houses. Due to the small size of plots and limited plastic sheeting, most refugees are compelled to

construct very small houses which do not provide adequate space for basic household activities, store essential non food items and ensure privacy. Representatives of health agencies in Ngara (NPA) and Kibondo (IRC) told the mission that the houses refugees stay in expose them to health problems including increase of respiratory track infections resulting from congestion. Inadequate shelter makes it difficult for families to use mosquito nets, thus contributing to the problem of malaria.

219) Refugees thatch their houses with plastic sheeting supplied by UNHCR. However, it has been a long time since plastic sheeting has been distributed in most camps. In Kasulu camps for example, plastic sheetings were last distributed seven years ago. Consequently, the sheeting has decayed exposing refugees to the elements.

Access to Primary and Curative Health Care

220) Refugees in camps have access to free medication. All health care facilities were adequately supplied with medicines, medical supplies and staffing. New arrivals are medically screened.

221) Refugees with communicable diseases are isolated and treated in special IPD wards. The refugee population is systematically vaccinated against measles, polio, DTP, and BCG. Immunisation coverage is over 90%. Ante-postnatal coverage is 90%. Crude mortality rate (CMR) is 0.3/1000/m, U5MR 0.5/1000/m. These indicators compare very well with the national ones.

222) Health services are offered by an appointed agency, which may service one or several camps. In Kibondo for example, IRC provides health services in all Karago, Mtendeli Kanembwa, Nduta and Mkugwa camps. A hospital and four health outposts in each camp offer curative and preventative care to between 300 and 500 patients daily, including outpatient services, dental and eye care, vaccinations, and mental health services. All assistance and services are provided free of charge to the refugee population.

223) Sexual and gender based violence concerns are addressed through the reproductive health unit, which also provides family planning and responds to sexually transmitted infections. The health programme's preventative arm complements curative services through ongoing community sensitisation and awareness efforts in all three camps.

224) There has been an HIV awareness campaign in the camps. The incidence is lower than outside the camps in Tanzania. Those who are HIV positive are given supplementary feeding as well as mosquito nets to ensure that they do not get acute malaria. Prevention of mother to child transmission of HIV programme is available which runs together with the voluntary counselling and testing programme. There are also home-based care programmes focussing on the health needs of people living with HIV/AIDS. There remains, however, an issue with regards to the provision of anti retroviral treatment (ART) to those who need it. Tanzanian authorities are in the final stages of introducing ART programmes in 64 pilot areas which include Kigoma and Kasulu District hospitals. However, the authorities have not agreed that refugees will benefit from national ART treatment. Consultations are going on within UNHCR to ensure that refugees are not left out. However, given that many of them will be returning to Burundi and Congo, it is imperative to know that the

treatment will be continued there as is required by the ART protocols. This requires negotiation and agreement with the governments of Burundi and Congo.

225) The main problems expressed with regard to the health sector were the constant cuts in budgets from UNHCR. Another problem is the low remuneration given to local staff. This makes it difficult to attract or retain qualified and experienced medical staff to refugee hospitals in north-western Tanzania. According the IRC senior staff, these problems, particularly shortage of funds, were threatening the continuation of some of the health-related activities.

226) Malaria remains the primary cause of morbidity and mortality within the camps. In Kibondo, malaria accounted for over half of all patient consultations in 2003, and was responsible for up to 40% of deaths.²⁴ The other main health problems are respiratory diseases in Kibondo camps and diarrhoea in Lugufu I & II camps which are attributed to poor housing and shortage of water and poor sanitation systems respectively. In Kibondo there is also the problem of skin diseases.

227) The main measures taken to address the problem of malaria are spraying in the refugee camps, coating the interior walls of refugee dwellings with insecticides and distribution of mosquito nets. These measures have resulted in a considerable reduction in malaria cases in the year 2004. Diarrhoea is being combated through improvement in water systems and improving the level of family latrines.

Primary and Secondary Education

228) The importance of providing education to refugee children is well articulated in the National Refugee Policy. In regard to primary education, the National Policy provides for the education of refugees 'in accordance with the curricula used in their countries of origin'. As for post primary education, the government will encourage the international community through UNHCR and other agencies to establish special schools and institutions in the camps'' (para 16). Thus, the refugee policy in Tanzania calls for education for repatriation.

229) The above policy is not quite compatible with the Refugees Act, 1998, under which every refugee child is entitled primary education on the same terms as Tanzanian children and which also gives refugees free access to post primary and secondary education (see s. 31). In practice, it is the position in the Policy which is followed.

230) Refugees in Tanzania are entitled, and do receive, primary education in camps and follow home country curricula. The educational programmes are funded primarily by UNHCR and UNICEF both of which construct schools and supply materials.

231) In most places, the enrolment and completion rate of children between 5 - 17 is very high. The average enrolment of children of school age is 90%. Some camps such as Mtabila camps the enrolment is almost 100%. The number of pupils per classroom did not exceed 75 for grades I-III, 60 for grades IV-VII. Teacher student ratio in primary classes was around 1 per 120 for grades I-III and 1 per 50 for grades IV-VII. The completion rate was 92%.

232) There is special education for children with special needs. This education is limited at few schools. At Mtabila camps in Kasulu, special education was a

²⁴ IRC-Tanzania, 2002-2003 Annual Report, p13..

component of community based rehabilitation programme. It is funded by UNHCR, Africare (with funds from the US State Department) and World Vision.

233) The primary school system has a number of problems. The first is poor and/or inadequate school buildings. Although most camps had reasonably well built classrooms and offices, there were some which had buildings of very poor quality. A good example is Lugufu I camp where the majority of primary schools were housed in structures that had only the roof, supporting frames and half built walls. Thus, a teacher in one classroom can see all the other teachers in other classes in the same building. Similarly, students in one class can see and hear teachers in other classes in the same block.

234) Some camps have very good buildings. However, they are not adequate to comfortably accommodate all students. A case in point is Mtabila I & II camps in Kasulu where despite impressive school buildings, the community was compelled to use churches as classrooms because the number of the school buildings were not adequate.

235) A second problem is lack of textbooks. This is mainly due to the fact that the refugees follow curricular of home country and books had therefore to be obtained from those countries. UNHCR has a budget for books for primary schools. However, the books are not available in the countries of origin particularly Burundi. Some books are ordered from France and Belgium but obviously such books would not entirely meet the local needs.

236) Related to the above is the problem of adequate qualified teachers. In Mtabila camps for example, the student teacher ratio was 100:1. Some of the teachers are not formally qualified: of the 241 primary school teachers 86 are not certified.

237) Until recently, there was a problem of refusal by the Government of Burundi to recognise the results of the grade six examinations by Burundian children in Tanzania. The consequence was that upon return to Burundi, the school certificates received in Tanzania were not recognised in Burundi. This problem was resolved in 2004. For the first time, the grade six examinations were organised simultaneously in Burundi and in all Burundian camps in Tanzania and supervised directly by Burundian officials. This means that the results are now recognised by Burundi.

238) As per section 31(2) of the Refugees Act, every refugee is entitled to post primary education in accordance with rules made by the Minister with regard to fees and category of schools in which refugee students can be enrolled. To date, the Minister has not made such rules. Consequently, refugees who seek to attend post primary education in Tanzania are subjected to the same formalities as other foreign students including the need to apply and pay for a study permit. Moreover, they must pay fees which most refugees cannot afford. According to agencies in Kigoma and Ngara which have attempted to sponsor refugees to pursue post primary education in Tanzanian institutions, such permits are expensive and hard to obtain. The permit, which is valid for one year, may cost more than the fees. The other problem is the fact that refugee children in Tanzania attend primary education following the Burundian curriculum, offered in French. This makes it harder for them to attend post-primary education in Tanzania which follows the Tanzanian curriculum and is conducted in English.

239) Consequently, very few refugees receive post primary education in Tanzanian institutions. In Ngara, for example, less than 25 refugees were receiving post primary education.

240) Unlike with primary education, UNHCR does not provide secondary education in camps as such. Rather it provides limited support to schools that may be established by the community and other organisations. Consequently, secondary school education is guaranteed for only a few refugee children residing in camps.

241) In Lugufu, for example, secondary schools have been established and are run by the community. They get very little support from the UNHCR. The Refugee Education Trust (RET),²⁵ provides some support in the form of educational materials and uniforms. However, the support is sporadic. RET supports post primary school in Kasulu. But, like in Kigoma, the coverage of the support is small. For example, Mtabila camp has a total of 12 primary schools with a student population of 17,879. Yet there are only 2 secondary schools which between them can accommodate about 3,000 students. These schools are taught by 120 teachers all of whom have no salary. They are paid "incentives" by RET. Even this payment is sporadic.

242) In Ngara, secondary school education is funded by churches and other voluntary organisations. RET does provide support for period of six months per supported student per year. However, the school year lasts for much longer leaving RET supported students without support for part of the school year.

243) Refugees in Tanzania do not have the right to access higher education on the same terms as nationals. This is by virtue of section 31(2) which provides that refugee access to post primary education, including higher education, is subject to the rules made by the Minister with regard to fees and category of institutions refugees may join. These rules have not been made. In practice, refugee wishing to join a university must produce certificates to show that they have appropriate pre-university training. Universities in Tanzania do accept certificates issued by agencies providing education in camps such as TCRS. In addition refugees must take an admissions test. If they meet the required admission requirements, refugees must still obtain study permits and pay fees.

244) Presently there is very limited funding for refugees to pursue higher education. UNHCR does not fund this level of education unless special funds are received from sponsors for that purpose. Current sponsors of higher education are DAFI, Belgian Technical Cooperation, TCRS, NPA Ngara and AHADI Institute who sponsor distance higher learning. Some 240 student are currently being sponsored.

245) Schools in refugee camps administer home country syllabi and teach in French and Kirundi. This puts at a disadvantage students who leave these schools to join higher education institutions in Tanzania in which English is the language of instruction. There are many institutions that can provide such training but the problem is funds.

²⁵ RET is a fund established by Madame Sadako Ogata, former High Commissioner for Refugees, upon her retirement to support refugee education, particularly at post-primary level. Tanzania and Pakistan were selected as pilot countries in which the Trust works.)

Equal Benefit and Protection of the Law

Access to Effective Remedies

246) Refugees and asylum-seekers in Tanzania receive equal treatment under the law and are in principle entitled without any discrimination to equal protection under the law. However, there are some practical impediments to enjoyment of this right. For example, refugees have free access to courts in accordance with the laws relating to criminal and civil procedures. However, courts are located far away from camps. To access them refugees must first obtain permit to leave camps. Sometimes refugees and their witnesses have failed to obtain such permits leading to the dismissal of their cases.

247) To ease the situation, UNHCR Kibondo provides a vehicle to the police under the security package to take to court refugees involved in criminal proceedings. However, this sometimes leads to the complainant and accused being carried in the same vehicle turning it into a forum for negotiations over the case and/or intimidation of the complainant. In the end this defeats justice.

248) The other problem, faced by refugees and locals alike, is the acute shortage of magistrates in refugee affected districts. This has led to a backlog of cases, leading refugee inmates to spend long periods in custody pending the hearing of their cases.

Fair and Public Hearings without Discrimination

249) Criminal cases involving refugees are tried in the same manner as similar cases involving the local population. They are governed by the Criminal Procedure Act, 1985 which provides for fair and public hearing of criminal cases.

250) Refugees facing criminal charges do receive advice from UNHCR protection staff who also monitor their cases and conditions of detention in prisons. However, as noted above, this service is affected by the limited number of protection staff in virtually all districts hosting refugees.

251) Refugees rarely get legal aid. In Kigoma, the UNHCR has sometimes retained lawyers to assist refugees involved with serious offences, or to process appeals in cases where there has been glaring miscarriage of justice. However, very few refugees receive this service. When a refugee is charged of a serious offence and a victim is also a refugee, UNHCR finds itself in a dilemma as to whether or not to provide legal assistance. An example is where a refugee may be charged with the rape of another refugee.

252) Refugees facing criminal charges do have procedures explained to them. However, the mission was informed of incidents where refugees have been brought before the court without knowing what they are charged with. Also, incidents were reported whereby refugees have been advised by the prosecution to admit the charges when they are read out before the magistrate and assured them that they would then get a conditional discharge. This has induced refugees to confess crimes which they have not committed only to receive jail terms.

253) Refugees do get interpretation services. However, the quality differs from place to place. In Kasulu, refugees rely on fellow refugees for interpretation. In Kibondo, UNHCR has hired a Tanzanian who understands Kirundi to act as an interpreter for refugees facing legal proceedings. The same person also follows up refugee cases in court and at police stations. Proceedings in Tanzania take place in Swahili. Although

some refugees speak the language, they do not have a degree of proficiency to assure quality translation in sensitive matters such as legal proceedings in which technical terms are used.

254) Refugees and asylum seekers dissatisfied with the decision of a lower court may appeal to higher courts in the same manner as Tanzanians may do. Appeals from the decisions of District and Resident Magistrates courts in Kigoma must go to the High Court in Tabora. The Court is so far away and under immense work pressure that for a case to proceed there must be close follow up. Unfortunately, refugees cannot easily make such follow ups due to their confinement.

255) UNHCR tries as much as it can to follow up refugee cases at the level of appeal. However, the protection staff involved are not practicing advocates and this limits their ability to pursue certain legal remedies in case of delays.

Access to Traditional Forms of Justice

256) As noted under section 7.3, there are traditional forms of justice in refugee camps namely “Abashingantahe” and “Kiuno” in Burundian and Congolese camps respectively. These systems are linked to the national judicial systems. For example, when a dispute that has been referred to a traditional system of justice and remains unresolved, it may be referred to the “Sungusungu”. Sungusungu are paid community law and order officers, appointed by the Government and UNHCR. Upon receiving the reference, the Sungusungu will forward the case to the police for investigation and prosecution before the courts of law.

257) If it is an SGBV case, it may be referred to an SGBV counsellor who also will take steps to take the case to the police. In such cases, the victim is often consulted as to whether she would like to press charges.

258) The strengths of traditional forms of justice are that they are culturally familiar, accessible, affordable and the violated party receives compensation. Like all traditional forms of justice, these systems also aim at reconciling parties so as to restore harmony in the community.

259) However, there are numerous weaknesses associated with these systems. Traditional systems of justice are often not in compliance with international legal norms and standards - few, for example, have an appeal process; their adjudicating bodies are seldom representative (for example, before UNHCR intervened, all Bashingantahe were men); and, the fines or sanctions imposed, while promoting community harmony, are often unacceptable to the victim. As such, the rights of the individual (to due process including representation and a fair trial) may be abdicated as the victim’s family prefers receipt a cash settlement. Further, elders sitting in these tribunals have adjudicates criminal offences contrary to the Tanzanian legal prohibition on recourse to customary law in criminal matters. To deal with this problem, now the elders are required to keep registers in which to record the cases they have dealt with. They have specifically been prohibited from dealing with serious criminal offences as well as any SGBV cases other than domestic violence.

260) Additionally, the tribunals have no means of enforcing their orders should any party fail to obey them. In such cases, the tribunals do refer the matter to the “Sungusungu” who in turn refer the same to the police. However, at that point in time, the evidence may have been destroyed rendering further prosecution of the case impossible.

Self-reliance

Educational and Vocation Programmes

261) There are vocational training programmes in the refugee camps. However, it is very limited because like secondary education, such training is not supported by UNHCR. It depends on sporadic donations obtained through IPs, and voluntary contributions from refugees. Recently, vocational training received a boost from DANIDA's Refugee Affected Areas Programme which has provided funds to agencies to conduct vocational training for the benefit of young people from refugee camps and local populations as well. Among these agencies is TCRS which covers Kibondo and REDESO which will handle Ngara, Kasulu and Kigoma. TCRS has already commenced the training and it offers courses recognised by the Vocational Education Training Authority (VETA). Currently there are vocational schools in Kibogora, Kanembwa and Kibondo. At the time of the mission, REDESO was in final stages of construction of vocational training schools in Kibondo, and Lugufu in Kigoma.

262) These vocational training programmes are in principle equally accessible to both men and women. The student ratio is supposed to be 50% women and 50% men. However this ratio has not been attained. In Kanembwa camp for example, refugee women constituted only 30% of the students. At Lugufu camps the gender balance policy is pursued in offering vocational training. However, there were fields such as mechanics where there were no women. Likewise, there were courses such as cooking where there were no men.

263) There are apprenticeship programmes whereby young refugees are attached to skilled refugees to learn skills through mentoring. At Lugufu, the mission visited a centre where young refugees were receiving training in tailoring, carpentry, music etc. In Mtabila (Kasulu), we visited a similar facility which offered carpentry training only. The major constraints expressed at both locations were lack of equipment and incentives for trainers.

264) There are also self-reliance groups some of which are exclusively for women. However, many such groups have tended to be inefficient due to different degrees of motivation and commitment. Some agencies now prefer to support individuals and family based initiatives than groups of unconnected people.

Access to Wage-earning Employment

265) The National Refugee Policy does recognise the need for refugees to work as a means of attaining a degree of self-reliance and as an opportunity for refugees to use their skills and gain new ones. However, the policy also notes that Tanzania has a serious problem of unemployment. Consequently, the government will only allow refugees to engage in small income generating activities to be undertaken with the camps (para 17). Under the part on "Strategy on Refugee Employment", it is stipulated that "refugee employment will be regulated by the National Employment Promotion Services Act of 1999 which should be amended to suit both formal and self employment" (para 32). Under part VI of this Act, every foreigner who wants to work in Tanzania must obtain a work permit. An employer wishing to engage a foreigner must prove that he has failed to get a qualified local person to do the work. Thus, in effect, the policy puts refugees on the same footing as other foreigners with regard to wage earning employment.

266) Under section 32(1) of the Refugees Act, the Director of Refugee Services is empowered to grant work permit to any refugee who qualifies for the same. The Minister responsible for refugee matters is empowered to make rules on the model or type of permits to be issued under the Act. This provision conflicts with the Employment Promotion Act which vests the powers to issue work permits to foreigners to the Ministry responsible for labour. It also conflicts with the Immigration Act which requires all persons seeking any type of permit, including Employment permits, to be cleared by the Immigration Department. In a paper prepared for the Refugee Policy Workshop in 2001, the Director of the Immigration Department stated that:

“The work permit granted by the Director of Refugee Services amounts only to the permission to reside and work outside the designated area. This presupposes compliance with the immigration formalities before the Director of Refugee Services may invoke the powers granted to him to issue “work permit”. In essence, the work permits under the Refugees Act are merely permits to leave the camps or designated areas. As regards immigration formalities, there is no differentiation between permits issued to qualified refugees employees and other foreigners so qualified.²⁶

267) It is clear from the above quotation that the Department of Immigration regards the permit issued by the Director of Refugee Services as, the name notwithstanding, merely a permit to reside outside a designated area.

268) At the same workshop, the Ministry of Labour also presented a paper which shared the sentiment of the Immigration Department that refugees should be treated like any other foreigner with regard to wage earning employment. However, the paper notes that this would be contrary to the obligations of Tanzania under international law.²⁷ The two statements are indicative of the unresolved tension between the recognition of the need and right of refugees to work and the restrictive national immigration and employment policy.

269) The effect of law and policy is actually to put refugees in a situation worse than that of other foreigners with regard to wage earning employment. While a foreigner wishing to work in Tanzania must obtain only one permit – the work permit, a refugee must obtain both a work permit from the Immigration Department and a “work permit” from the Director of Refugee Services to enable him or her to reside outside the camps to take up the employment. A further obstacle for refugees is the restriction on their movement which makes it more difficult for them to seek for jobs and pursue work permits.

270) In practice, where a refugee wants to work in Tanzania, he must make an application as required by the Refugees Act. Upon receiving such an application, the Director of Refugee Services forwards the same to the Immigration Department to be dealt with like any other application. Thus, the provisions of the 1951 Convention regarding treatment of refugees with regard to wage earning employment do not apply.

²⁶ Employment Regime and the Rights of Refugees to Employment in Tanzania, Paper Presented at the Refugees Policy Workshop, Sheraton Hotel, 30th March, 2001, pp. 6-7.

²⁷ MLYSD, Policy Perspectives in Respect of the Labour Market in Tanzania, paper Presented at the 2nd Workshop on the Refugee Policy Review Project, Sheraton Hotel, 30th March 2001.

271) The consequences of the restriction of asylum seekers and refugees from engaging in wage earning employment is to deny them the benefits noted in the policy namely an opportunity to attain a degree of self reliance and to use their skills and to acquire new ones while in exile which could facilitate meaningful integration upon return. The policy also denies the Tanzanian economy the opportunity to benefit from refugee labour and skills.

272) There has been at least one major study²⁸ on the economic and social impact of refugees on local communities. This work found out that there has been both positive and negative impact. In certain areas such as health, education and water, the benefits might be higher than the negative impact.

Self-employment Opportunities

273) As already noted, refugees in Tanzania are allowed to engage only in income generating activities inside the camps. Therefore, to engage in self-employment outside camps a refugee must obtain a permit in the same manner as one seeking wage employment.

274) The income generating projects that are undertaken by refugees in various camps include subsistence farming, weaving, tailoring, shop keeping, haircutting saloons, livestock keeping, carpentry, soap making, radio repair shops and running restaurants. Of these activities, the main IGA is farming whose objective is to enable refugees to supplement their food rations and to get some money to buy non-food items.

275) Some agencies run programmes which provide support for refugees' income generation activities. For example, the TCRS has a programme which supports basket weaving in Kibondo refugee camps. The support extends to acquisition of raw materials to marketing and exporting the products within and outside Tanzania. TCRS also gives cows and goats to refugees on condition that who ever receives an animal must bring back the first calf to be delivered. That calf is then given to another refugee on the same terms.

276) Income generation programmes are equally available to men and women. Some projects may involve men only, others women only and others both. Projects involving men and women are known as "Integrated Micro-Projects".

277) In an evaluation of micro economic projects for women refugees conducted in 2001,²⁹ a number of projects were found to have been successful. Some problems were also identified including poor planning, inadequate land for meaningful agricultural activities, inadequate capital and lack of sustainable and profitable markets. The last problem was linked to restriction on freedom of movement for refugees.

278) In recent times, some local authorities have ordered measures to be taken which have had a negative impact on income generation activities with camps. These measures include closure of common markets for refugees and Tanzanians where refugees sold their goods and restriction on replenishment of goods in refugee

²⁸ Rutinwa, B. & Kamanga, K., The Impact of the Presence of Refugees in Northwestern Tanzania, September 2003.

²⁹ See Rutinwa, B., Changing Gender Roles, Relations and its Impact on the Empowerment and Livelihood of Refugee Women: A Case Study of Refugee Camps in Tanzania, (Study Funded by UNIFEM and Ford Foundation), 2001.

shops. At one meeting with refugees, a local leader told shop keepers not to buy new stock when the current ones run out. He told them to prepare for repatriation.

Recognition of Foreign Diplomas

279) In Tanzania, there are various organs that are charged with responsibility of setting educational standards and accrediting diplomas at various levels. These organs are the Higher Education Accreditation Council (HIEAC) which covers higher education, the National Commission for Technical Education (NACTE) which governs technical education and Vocational Education Training Authority (VETA) which deals with vocational education. A refugee can, in principle, present his diploma to the appropriate body for recognition. However, given that refugees are restricted from employment outside the camps, this would serve no purpose.

280) Refugees wishing to work in refugee camps as nurses or teachers get their diplomas verified by UNHCR and relevant agencies. If a refugee did not bring the certificate with him, he could still produce other evidence that may satisfied the agency from which he is seeking employment that he possesses certain qualification.

Social Security and Just and Favourable Conditions of Work

281) The principal legislation governing employment standards in Tanzania is the Employment Ordinance (Cap 336) which covers, among other things, remuneration and hours of work; the Security of Employment Act, 1964 which covers security of tenure; and the Occupational health and Safety Act, 2003 which covers health and safety at work. The first two pieces of legislation will soon be replaced by the Employment and Labour Relations Act, 2004, which has already been assented to by the President. There are also several social security schemes established by law the main ones being the National Social Security Fund and (NSFF) the Parastatal Pension Fund (PPF).

282) The laws do not make distinction based on nationality. Therefore working refugees should receive equal treatment with respect to nationals under these laws. However, this may not be guaranteed for refugees who work without permits and therefore who are vulnerable to exploitation. For example, it is unlikely that an employer will pay statutory social security contributions for an employee who is not documented in the first place.

Right to Own Property

283) There is no law which prohibits asylum seekers and refugees from acquiring movable or immovable property. With regard to movable properties, settlement officers in fact keep a register in which refugees who acquire such property can register them. If a refugee is to repatriate, the Settlement officer gives a document certifying that the refugee is indeed the owner of the property. This enables the refugee to take the property out of Tanzania and to do so without paying any taxes.

284) With regard to immovable property, the law in Tanzania requires any disposition of land to be assented to by the President. The policy of the Government at the moment is to discourage anything that might encourage refugees to want to remain including possessing land, however temporarily. Under these circumstances, it is unlikely that consent to sell land to refugees will be obtained.

285) Refugees are not subjected to any duties or charges on their property that are higher than those imposed on nationals.

Durable Solutions

286) The three traditional durable solutions are voluntary repatriation, local integration and resettlement. The Refugees Act makes provisions for voluntary repatriation (Section 34) and resettlement (s.36). However, the Act is silent on local integration. The National Refugee Policy on its part mentions and defines all the three durable solutions. However, it makes substantive provision for repatriation only which it describes as "the best solution to the refugee problem" (para 14).

Voluntary Repatriation

287) Presently UNHCR is facilitating the repatriation of Burundians only. The repatriation started in March 2002 following the country's peaceful transition of government and progress in the ongoing peace process. As of July 2003, some 130,000 refugees had been repatriated, almost half of them within the first seven months of 2004. Refugees appear to choose to return. Of the 10 families interviewed by the researchers at Mtabila I Departure Centre, all of them said they had voluntarily chosen to return to Burundi. The main reason given was peace in the areas of origin. Other reasons were the desire to rebuild Burundi, family reunion and good prospects for employment.

288) However, the entire context in which repatriation is taking place raises questions as to how 'voluntary' the return is. As pointed out above, the National Refugee Policy clearly prioritises return over all other solutions. The Policy maintains that refugees should return home as soon as the situation that causes their flight normalises. It even goes further to say that if the situation does not normalise within a year, then safe zones should be established in the countries of origin to which refugees should be repatriated (Para 15).

289) As also noted above, the government has imposed on refugees restrictions on movement and engaging in economic activities. It is not unreasonable to assume that this has also influenced the decision of the refugees to return. Finally, poor living conditions and perennial shortage of food and non-food items has also been a factor in the decision of the refugees to return.³⁰

290) As pointed out above, UNHCR is facilitating and not promoting return to Burundi. The constraints faced by UNHCR are the refusal of the Palipehutu-FNL, (Agata Rwasa) armed group to sign a cease-fire agreement and uncertainty in relation to the national elections which were scheduled for the fall of 2004 but have been postponed.

291) Before repatriation takes place, surveys are conducted in order to obtain important information including demographic and socio-economic profile of prospective repatriates. Among the details collected are name, age, gender, relationships, arrival date and ethnic group. Refugees are also asked about their vocational background. Other data collected is place of origin and preferred area of return. Refugees are not compelled to return to communities of origin. There are some places to which UNHCR does not facilitate return. These are Bujumbura Rural, Cibitoke, Bururi and Bubanza provinces. The provinces to which the majority of returnees have settled are Ruyigi, Muyinga, Makamba, Rutana, Kirundo, Cakunzo and Karuzi.

³⁰ UNHCR (Tanzania), 2004 Annual Programme Interim Report/Review, p. 1.

292) A key activity in the repatriation programme is information gathering and dissemination. Returnee area profiles are compiled by UNHCR and shared with refugees in camps. This information is obtained from monthly sitrep on “hotspots” and UNHCR offices in Bujumbura which makes a continuous assessment of the absorption capacity and any monitors any events that could affect repatriation. According to some UNHCR protection staff, the return area profiles sent to them provide only limited information. There is no database on the situation in Burundi.

293) Refugees in Tanzania have participated in “Go and See Visits” to some of the main provinces of return. Radio *Kwizera*, a station based in North-western Tanzania, operated by the Jesuit Refugee Services (JRS) targets refugees and devotes most of its air time to broadcasting information on Burundi. Leaflets in three languages explaining modalities of facilitated repatriation and conditions in Burundi have been published by the Burundian Government with UNHCR’s support. However, these leaflets had not, at the time of writing this Report, been disseminated in refugee camps in Tanzania.³¹

294) The legal framework for repatriation is provided for in a tripartite agreement between Tanzania, Burundi and UNHCR, which established a tripartite commission and lays down operating procedures. Information campaigns regarding repatriation are carried out by Africare, under the supervision of UNHCR. The information is strictly limited to the communication of convoy dates. This is because UNHCR is, as of now, facilitating but not promoting repatriation. Registration clerks provide country of origin information upon registration to ascertain that the return is based on free and informed decisions. Gender and age sensitive counselling is provided by community services.

295) All persons above 18 years must sign the voluntary Repatriation Form (VRF) separately. As pointed out above, refugees are counselled by Community Services before they proceed to sign the VRFs.

296) A number of measures have been put in place to ensure safe return travel, particularly for the vulnerables. A guiding principle is that of family unity. These measures include the requirements that:

- Children under 18 years cannot be separated from their families. If parents go the children must go and vice versa. UAMs may repatriate alone if efforts to trace their families have not been successful and the UAM has received sufficient counseling. In those rare cases, they are taken care of upon return by IRC.
- A husband and wife who want to leave at different dates can do so if it is in the best interests of the family, but counseling is given to uphold as often as possible the principle of family unity. In no case can minor children or vulnerable individuals remain behind.
- Pregnant women of 7 months and above cannot join repatriation
- Children less than 42 days cannot repatriate.
- Refugees who are severely malnourished or those who suffer an internationally notifiable disease must defer travel until they are treated.
- On the date of travel, vulnerable individuals are taken by a special bus while the rest of refugees travel in trucks. Vulnerables include in particular the elderly,

³¹ Id. P. 3.

weak, pregnant women, single female heads of family physically or mentally disabled and the chronically ill. The list of vulnerables is sent in advance to NGOs in the locations of return in Burundi so that they can provide assistance immediately upon arrival.

- Each repatriation convoy is accompanied by MHA, UNHCR, police, an ambulance and a mobile mechanical workshop to service vehicles that may break down on the way.

297) UAMs and separated children must accompany their foster parents if they have any. The list of such children must be sent to ICRC in Tanzania to allow them to approach the children and propose their “door-to-door” repatriation services. It is sent as well to UNHCR and IRC in Burundi for further monitoring upon return. The passenger manifest must indicate UAMs and separated children who must wear identity cards.

298) The community services must register all children who are still in school indicating the grade and other important particulars. This list is given to Burundian authorities. Some families remain in camps in Tanzania because their children are still going to school.

299) UNHCR provides transportation for the refugees with their luggage from the assembly points to transit centres in Burundi and then onwards to communes of origin. On arrival in the commune the returnees are received by a “*comite d'accueil*” (reception committee) tasked with helping them with their re-integration in their communes. The reception committee is composed of local authorities, earlier returnees and other members of the community. All returnees - those assisted and those who return on their own - receive a Non Food Item package containing plastic sheets, blankets, mats, jerry cans, kitchen sets, soap, condoms and sanitary material as well as three months’ food ration provided by WFP.³²

300) In 2002, UNHCR introduced a returnee monitoring, legal assistance, reconciliation and conflict resolution project. As of December 2004, some 14,080 households in returnee provinces had been visited. Monitoring activities address problems dealing with returnees’ reintegration within the local population including issues of security, social and administrative re-insertion, administration of justice and conflict resolution. Others are food assistance, access to land, accommodation, education and health care. Unaccompanied and separated minors are visited more regularly.³³

301) The monitoring project has provided a better picture of the conditions of return of Burundian refugees which is relevant to potential returnees, host countries and other actors.

302) The obstacles to reintegration have been put in one report thus:

“Following years of conflict and population displacement, the Burundian population in its majority is in a state of extreme poverty. Infrastructure is destroyed and basic services are inadequate. As a result, not all returnees are able to enjoy their right of free access to health care during the first three months after arrival home. In addition, schools are overcrowded and refugees who, in refugee

³² Id. P. 4

³³ Ibid.

camps in Tanzania, were used to send their children to schools are eager to do upon return. The country is very densely populated and land is scarce. Property ownership is therefore a regular source of conflict within communities.³⁴

303) The hard living conditions in Burundi have forced some refugees who have repatriated to return to Tanzania to again seek asylum. For example, at Mgunzu way station, we met a refugee claimant, whose case was that she had exhausted all the food in her repatriation package before she could harvest the crops she planted upon return. The case was rejected.

304) UNHCR plays an active part in promoting the “4Rs” (Return, Reintegration, Rehabilitation and Reconstruction) to ensure smooth transition from humanitarian to development assistance. In line with the “4Rs” approach, the UN Country Team has established a *Cellule inter-agence de coordination pour la reinsertion (CIR)* in order to reinforce cooperation, coordination and communication amongst UN Agencies and NGOs involved in the reintegration of Burundian returnees. The CIR produced a “4Rs” strategy, which serves as guidelines for agencies’ intervention. To implement the “4Rs” strategy, UNHCR signed several MOUs: with WHO and UNICEF on health, with UNICEF and UNESCO on education, with FAO and WFP on food security and agriculture, with UNDP and the World Bank on income generation, crop production and reintegration. To continue addressing the ravages of HIV/AIDS, UNHCR concluded an agreement with UNFPA, WHO and GTZ.

Local Integration

305) Presently Tanzania pursues a temporary protection policy, regarding repatriation as the most desirable durable solution. The National Refugee Policy states clearly that local settlement is “a merely temporary solution rather than a permanent one” (para 15). Consequently, there is no framework for the long-term integration of refugees. The rationale for this, as stated in the National Refugee Policy, is that experience has shown that refugees prefer to return home when the situation allows them to do so (para 15).

306) The policy and absence of framework notwithstanding, Tanzania does offer local integration to refugees on a case by case basis. The first group of refugees to be afforded such opportunity is the old Burundian caseload who have been living in settlements in Tabora and Rukwa Regions since the 1970s. However, these refugees were granted, at best, economic integration in that they were not allowed to leave their settlements and live anywhere (social integration) nor given citizenship (naturalisation). When they want to leave the settlements for any reason, they must apply for permit like any other refugees in Tanzania.

307) In 2003, the government offered approximately 3,000 Somali refugees living in the Chogo Settlement in Tanga Region permanent settlement with the possibility of naturalisation. The Government also reduced naturalization fees from 800US to 50US\$. UNHCR is presently assisting these refugees with their application for citizenship.

308) In theory, refugees, like any aliens, may apply for naturalisation in Tanzania if they meet the criteria under the *Citizenship Act* of 1995. These include residence for a

³⁴ UNHCR, Update on the Return and Reintegration of Burundian Refugees, (February 2005), pp.5-6.

qualifying period which is that the applicant must have resided in the United Republic of Tanzania throughout the period of twelve months immediately preceding the date of application and that during the ten years immediately preceding the said period of twelve months, the applicant must have resided in Tanzania for periods amounting in the aggregate to no less than seven years (S. 9(1) & Second Schedule). Many refugees in Tanzania meet this criterion. However, they cannot invoke these provisions because, though not stated in the law or policy, refugee residence as such does not count towards meeting the residence requirements.

309) The government is reportedly wary of extending local integration to other groups of refugees because experience with the old Burundian caseload. In particular, the government is concerned that if it permits refugees to locally integrate, the international community will abandon refugees in Tanzania, leaving the burden of supporting them to the government. In support of this argument, the Government cites the old Burundi caseload discussed above who, since 1985 when their settlements were handed over to the Government, have not received any further assistance from UNHCR.

310) The other factor is the experience with Rwandan refugees who were granted citizenship but following a regime change in Rwanda in 1994, some tore up their Tanzanian passports and returned to Rwanda.

Resettlement

311) As will be noted below, resettlement in Tanzania is supposed to be an integral component of UNHCR's protection mandate forming part of a comprehensive protection and durable solutions strategy. However, this objective appears to have not been fully achieved. Emphasis is still on using resettlement primarily as a tool of protection rather than also as a durable solution. A mission in 2004 by the Chief of the Resettlement Section, HQ, and the Senior Resettlement Officer from the Regional Resettlement Hub in Nairobi made specific recommendations as to how resettlement could be fully incorporated into UNHCR's Tanzania's country-wide protection strategy.³⁵

312) The resettlement programme in Tanzania is guided by the Resettlement Accountability Framework titled "*UNHCR Tanzania: Resettlement and Accountability Framework (Standard Operating Procedure)*" which was developed in 2002. The framework is designed to ensure a significantly higher degree of accountability and transparency in the system. It is designed to assist in detecting and eliminating any fraud and to ensure that refugees are properly attended. The framework states that:

- (i) Resettlement in Tanzania is an **integral component of UNHCR's protection mandate**, and must be, in practice, treated as such.
- (ii) The **resettlement identification criteria** is strictly followed (*inter alia*, implying that a standard protection response for all cases in the field is applied by all offices).
- (iii) An international staff member is **accountable** for every stage of the protection/resettlement process;

³⁵ Demant, E., & Cicchella, D., Resettlement Mission to Tanzania 29 August-4th September 2004, p.2.

- (iv) **Multiple verification of each case** is conducted by the Field/Sub Office and Branch Office level and finally that a quality control is conducted by Headquarters/Regional Office before a case is submitted to a resettlement country.
- (v) A **central database is maintained** to provide updated information about each case at every stage of the process.³⁶

Questions remain, however, on how application of the framework is monitored and managed.

313) In the Branch Office, the Representative is directly responsible for coordinating resettlement work. This was seemingly due to the absence of a Senior Protection Officer in Tanzania from May to the end of 2004. The Representative is assisted by an Assistant Protection Officer who serves as focal point for resettlement activities. Field and sub offices also designate officers to serve this purpose. Kigoma serves as a centre for post-selection arrangements and has a Resettlement Officer (TA) and 2 resettlement clerks.

314) Further, there is a high turn over of protection officers in the field responsible for resettlement tasks. This has on occasion led to the questioning of previously agreed policies on resettlement, particularly with regard to the resettlement of groups which, in turn, has led to subsequent delays in the submission of refugees initially identified as in need of resettlement.

315) Resettlement activities in Tanzania are primarily, but not exclusively, conducted by six deployees from the UNHCR/ICMC Resettlement Deployment Scheme. A key issue that arises is the goal of the Office to mainstream some or all of these resettlement staff and activities.

316) The process of resettlement begins with identification and documentation of cases that meet established resettlement criteria by UNHCR in the field. The field then forwards such cases to UNHCR Dar es Salaam which, in turn, refers them to the resettlement hub in Nairobi or UNHCR Geneva. The resettlement hub then submit cases to the most appropriate resettlement country based on a variety of factors including the refugee's profile and the programme criteria established by resettlement countries. If a resettlement country accepts a case, a mission is fielded to meet the refugee involved to make sure that his or her case is credible.

317) If a case is provisionally accepted at interview (pending successful medical and security clearances), then the person undergoes medical screening. The screening is currently conducted in Kigoma by IOM who are based in Nairobi Kenya. They come to Kigoma 2 to 3 times a year. Presently, IOM has no office in Kigoma and relies on UNHCR for logistics which puts strain on UNHCR resources.

318) Refugees accepted for resettlement by States in many cases receive pre-departure cultural orientation training and departure documents. The Ministry of Home Affairs provides exit documents. IOM handles the cultural orientation.

319) Over the course of the past few years, refugees have been resettled annually to the major countries of resettlement - USA, Canada, Australia, Sweden and Norway - who generally apply flexible resettlement criteria. New Zealand also accepts limited number cases including for family reunion. According to the *Annual Protection Report for Tanzania for 2003*, 1,281 refugees were processed for resettlement to third

³⁶ UNHCR, Resettlement Accountability Framework (Standard Operating Procedure), 2002, p. 1

countries and 640 departed during that year. Some 2000 refugees were expected to be submitted for resettlement in 2004.

320) Where there have been strong protection cases, HIV status and limited integration potential have been, at times, barriers to resettlement.

321) As a matter of UNHCR Policy, resettlement is a tool of protection as well as a durable solution. As such, any refugee whose protection needs cannot be met in the country of first asylum should be eligible for resettlement as is every refugee for whom repatriation and local integration are not feasible. However, in practice some countries of resettlement regard "integration potential" as an overriding consideration. For example, refugees screened for resettlement have been rejected by Canada on the opinion of an immigration officer that refugees would not be able to integrate in Canada.

322) The major obstacles to more effective resettlement programme are the lack of reliable registration and population profile data, limited personnel designated to coordinate and conduct resettlement activities, and the lack of an operational strategy to identify and address needs, capacity, and the development of a structure which includes management, monitoring and oversight processes.

Comprehensive Approach

323) UNHCR Tanzania has been making efforts to ensure that durable solutions are pursued in a coherent and complementary manner. Thus, while facilitating the repatriation of the 'new' Burundian refugee caseload (post 1990s refugees); UNHCR has also been assisting Somali refugees in Chogo to attain naturalisation in Tanzania. At the same time the agency is engaging the government to explore the possibility of local integration of the old Burundian caseload in Tabora and Rukwa Regions. It is hoped that a successful repatriation of the new Burundian caseload may convince the government to consider favourably the local integration of the old Burundian caseload. Donors are involved in efforts to find durable solutions through funding resettlement work and financing the local integration of Somali refugees in Chogo.