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## **Refugee Rights at Risk : Human Rights Abuses in Returns to and from Burundi**

### **Introduction**

It is a time of fragile hopefulness in Burundi. The country has emerged from several decades of devastating civil war and massive human rights violations and begun a peace process. The Arusha Peace and Reconciliation Agreement for Burundi was signed in August 2000. All but one of the armed opposition groups have agreed to those accords.<sup>1</sup> The United Nations has a significant presence in Burundi through the mandate<sup>2</sup> of the United Nations Operations in Burundi (ONUB), which includes a peacekeeping force of close to 5,500 soldiers now widely deployed throughout the country and acting under Chapter VII of the Charter of the United Nations. A constitutional referendum, held on 28 February 2005, led to the adoption of a new constitution for the post transition period. After several delays, local, legislative and presidential elections are due to be held in various phases by 19 August 2005. All of these developments offer reason for hope.

However the situation clearly is tenuous, and any number of serious challenges, if not adequately addressed, could derail the peace process and plunge Burundi back into war and grave human rights abuses. One such challenge is ensuring that the rights of the hundreds of thousands of Burundian refugees, many of whom are now returning to the country, are protected. Whether they continue to remain abroad or choose to return to Burundi, if they are denied their human rights, there is a serious risk that their misery and discontent could become a source of considerable tension and insecurity.

This report is the product of research missions to refugee camps in Kigoma and Kagera regions and Ulyankulu settlement of “first wave” refugees in Tanzania’s Tabora region in late 2004, as well as to officials in these regions and in Dar es Salaam. Amnesty International delegates also visited Bujumbura, Rural Bujumbura, Makamba, Bururi, Ngozi, Kirundo, Ruyigi and Gitega provinces in Burundi in early 2005. Amnesty International delegates interviewed refugees, returnees, government officials, staff of staff of the Office of the United Nations High Commissioner for Refugees (UNHCR) and its implementing partners, Burundian, Tanzanian and international NGOs, journalists and human rights monitors, among others.

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<sup>1</sup> On 8 October 2003, the Transitional Government of Burundi and the National Council for the Defence of Democracy -Forces for Defence of Democracy (CNDD-FDD) also signed the Pretoria Protocol on Political, Defence and Security Power Sharing in Burundi. On 16 November 2003, the Transitional Government of Burundi and the CNDD-FDD signed a Global Ceasefire Agreement at Dar es Salaam, Tanzania. The armed political group remaining outside of the Arusha agreement, the National Liberation Front (FNL) signed a ceasefire accord with the government on 15 May 2005, though clashes have occurred since the signing.

<sup>2</sup> Security Council resolution 1545 (2004)

### **Tanzania, a historical host government**

The Tanzanian government has historically been generous in receiving waves of refugees from the Great Lakes region. Over the years, populations from Burundi, Rwanda, the Democratic Republic of Congo, Somalia and other nations have also sought refuge in Tanzania.

Under the late Tanzanian President Julius Nyerere, Burundian refugees (to whom President Nyerere referred as “resident guests”) were welcomed to Tanzania and given land to farm. Hundreds of thousands of Burundians fled their country in 1972 as a result of massacres, land seizures and violence orchestrated by the Burundian military. Settlements for the Burundian refugees who arrived following the 1972 killings were established in sparsely inhabited areas in Tabora, Rukwa and Shinyanga regions in Tanzania. In later years, these refugee settlements were consolidated in three main settlements—Ulyankulu in Tabora region, and Katumba and Mishamo in Rukwa region. These settlements, after the refugees cleared forest lands, provided adequate arable land to ensure self-sufficiency, even agricultural surplus, and had until recently been considered an essentially permanent solution for these Burundians.

An estimated 777,000 Burundian refugees were living in camps, settlements and villages in Tanzania in June 2004.<sup>3</sup> Approximately 470,000 “first wave” refugees<sup>4</sup>, who arrived following the 1972 killings, remain in Tanzania. Of these, about 170,000 live in geographically isolated agricultural settlements and another 300,000 have settled spontaneously in villages. Those living in these settlements have been able to grow crops and are self-sufficient and have paid taxes since 1985, when they last received substantial international aid.

New waves of Burundians sought refuge in Tanzania again in the years of civil war that began in 1993. Those later arrivals, most dating from 1993 to 1996, have been housed in refugee camps in the Kagera and Kigoma regions.<sup>5</sup> The earliest of these arrivals were allotted larger plots of land for subsistence agriculture than the more recent arrivals, some of whom have no space for growing food crops. All refugee camps in Tanzania are under the authority of the Ministry of Home Affairs. The camps constructed since 1993 are managed by UNHCR and its implementing partners, while food is provided by the World Food Program (WFP). Most refugees have been in the camps in western Tanzania (Kagera and Kigoma regions)

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<sup>3</sup> “Return and Reintegration of Burundian Refugees, Supplementary Appeal, July 2004-December 2005”, UNHCR, p. 1.

<sup>4</sup> The refugees, to which we refer as “first wave”, who fled Burundi after the massacres in 1972, are often referred to by UN agencies and other IGOs and NGOs as “old caseload” refugees.

<sup>5</sup> “Second wave” refugees are those who arrived during and after 1993, when the first democratically elected president of Burundi, Melchior Ndadaye was assassinated, provoking widespread massacres and the flight of at least 350,000 Burundians to Tanzania, according to UNHCR. UNHCR’s 2004 planning document for Burundi counts a total of almost 800,000 Burundians living in Tanzania, including 200,000 “first wave” Burundians, 240,000 “second wave” refugees and 270,000 Burundians living in towns and villages in Tanzania. Burundians also fled to DRC, Rwanda and other countries in Africa and elsewhere.

since 1993 and 1996. Some refugees in these camps were initially in the “first wave” refugee settlements, some of which the Tanzanian government closed.

### **Repatriation from 2002**

In 2002, refugees began to repatriate spontaneously, not as part of a UNHCR repatriation program, to Burundi in significant numbers. Refugees, UN officials and community services workers told Amnesty International that those movements were partially due to a shortage of food rations in the camps.

More than 225,000 refugees returned to Burundi between 2002, when UNHCR began facilitating returns, and January 2005. In its planning documents, UNHCR has projected that it will assist an additional 150,000 people to return to Burundi in 2005. The great majority of these refugees are returning from UNHCR-run refugee camps in Kigoma and Kagera regions of western Tanzania, as well as from settlements in central Tanzania of “first wave” refugees and from villages around Tanzania. Burundian refugees are also returning from the DRC, with small numbers returning from other countries in the sub-region, including Zambia and Rwanda.

A large number of refugees signed up for repatriation after the 2003 ceasefire between the *Conseil national pour la Défense de la Démocratie - Forces pour la Défense de la Démocratie*<sup>6</sup> (CNDD-FDD, led by Pierre Nkurunziza) and the Burundian government. Over 90,000 refugees repatriated in 2004, of which less than 6,500 returned spontaneously and more than 83,000 returned with UNHCR facilitation, according to UN figures.<sup>7</sup> More than 7,000 more refugees had returned by mid-March 2005—well below the average required to attain UNHCR’s planning figure of 150,000 returns in 2005. Refugee returns have slowed considerably since the third trimester of 2004; apparently, those refugees who wanted to return have already done so. Nonetheless, Tanzanian government statements, Burundian government visits to camps to urge rapid returns and the UNHCR’s cooperation with the Tanzanian government have left refugees with little doubt that they are being pressured to leave.

### **Change in attitude towards refugees**

In recent years, Tanzania has witnessed a marked swing in attitude towards refugees. The Government of Tanzania shifted its policy from tolerating local integration to promoting repatriation and the idea of “safe havens” inside Burundi, where individuals would be nationally protected rather than receiving international protection as refugees.

One of the three durable solutions for refugee populations is voluntary repatriation, i.e. for them to return home in conditions of safety and dignity and be fully reintegrated into their home communities once the conditions in their home countries permit sustainable returns.

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<sup>6</sup> National Council for the Defence of Democracy - Forces for the Defence of Democracy (CNDD-FDD).

<sup>7</sup> United Nations Office for the Coordination of Humanitarian Affairs in Burundi, Situation Report, 20 December 2004 – 2 January 2005.

In 2002, the UNHCR, in cooperation with the governments of Burundi and Tanzania, shifted its policy to facilitate the returns, providing transportation to the home area, a three-month return package and other logistical and information services. UNHCR is currently facilitating return to all but four provinces in Burundi, where access for UN staff is restricted due to poor security.<sup>8</sup> The UNHCR has not gone beyond facilitating return and its policy is not to promote returns actively. UNHCR involvement in the return process, however, has led many refugees to believe that the agency is promoting repatriation to Burundi.

While this report only addresses the repatriation of Burundian refugees, Congolese refugees in Tanzania have also felt undue pressures to repatriate and also face harsh camp conditions. Amnesty International also denounced the mass expulsion of Rwandese refugees from Tanzania in a December 2004 report<sup>9</sup>.

## **Legal framework for the protection of Burundian refugees**

According to the 1951 Convention relating to the Status of Refugees (UN Refugee Convention), a refugee is a person who is outside his country of nationality and who

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (Article 1A(2)).

International human rights law firmly establishes the right to return to one’s own country. The Universal Declaration of Human Rights establishes in Article 13 (2) that “everyone has the right to leave any country, including his own, and to return to his country”. This right is enshrined in various binding international human rights instruments including the International Covenant on Civil and Political Rights (Art. 12 (4)) and the International Convention on the Elimination of all Forms of Racial Discrimination (Art. 5 (d) (ii)), as well as in a number of regional human rights instruments and the national legislation of various countries.

There exist durable solutions to the plight of refugees: local integration in the country of asylum, resettlement to a third country and voluntary repatriation to the country of origin. Given that a refugee is outside his/her country of origin as a result of human rights violations,

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<sup>8</sup> One of these areas is Bururi province, where serious acts of both politically-motivated and other violence have taken place on one of the main roads. Returnees and human rights observers have expressed their surprise and dismay that Bururi province continues to remain off-limits for most UN personnel, given the additional hardship the absence of UN personnel has imposed on returning refugees.

<sup>9</sup> See also Amnesty International, “Rwanda: Protecting their rights: Rwandese refugees in the Great Lakes region”, 15 December 2004, AI Index: AFR 47/016/2004.

international law and standards guide the conditions under which refugee return can take place. These rules and standards have been defined in international instruments and further developed by the UNHCR. They provide that the return of a refugee to his/her country of origin should be voluntary, it should be sustainable and take place in safety and with dignity - i.e. in conditions of physical, legal and material safety with full restoration of national protection as the end product.

### **Voluntary return - the issue of voluntariness**

Voluntary repatriation remains the durable solution for the largest number of refugees. The principle of voluntariness is a cornerstone in international law applicable to the return of refugees. While it is not explicitly formulated in the 1951 UN Refugee Convention, it follows from the principle of *non-refoulement*,<sup>10</sup> as the involuntary return of refugees would in practice amount to *refoulement*. As long as a person has a well-founded fear of persecution, he or she is a refugee and cannot be compelled to repatriate.<sup>11</sup>

The 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) stresses the voluntary character of repatriation, stating in article 5 that the “essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.”<sup>12</sup>

The United Nations General Assembly, through a number of resolutions, has repeatedly affirmed the principle of voluntariness of return and broadened UNHCR’s functions with regard to voluntary repatriation and conditions in the country of origin.<sup>13</sup> The conclusions of the Executive Committee of the UNHCR<sup>14</sup> also reaffirm the international

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<sup>10</sup> The principle of *non-refoulement* is a well-established principle of customary international law, which ensures that no one shall be returned to a country where he or she is at risk of serious human rights violations. It is further set out in Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and is reaffirmed in Article 2 (3) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

<sup>11</sup> See UNHCR Handbook, Voluntary Repatriation: International Protection, Chapter 2, Section 2.3 Voluntariness.

<sup>12</sup> See also CM/Res. 399 (XXIV) Resolution on Voluntary Repatriation of African Refugees of the OAU Council of Ministers, Addis-Ababa, 1975.

<sup>13</sup> See in particular General Assembly Resolutions 1672(XVI) of 18 December 1961, 40/118 of 13 December 1985, and 44/137 of 15 December 1989.

<sup>14</sup> The most relevant are Conclusions No. 18 (XXXI) of 1980 and No. 40 (XXXVI) of 1985, both re-affirmed by Conclusion No. 74 (XLV) of 1994. Conclusion No. 85 (XLIX) of 1998 is also relevant. Executive Committee Conclusion 18 (XXXI) (1980) recognized the desirability for UNHCR to verify the voluntary character of repatriation, arrange for safety guarantees in the country of origin, inform refugees of these guarantees and provide them with objective, accurate information regarding conditions in the country of origin, monitor the situation of returnees in their home communities and assist in their reintegration. Executive Committee Conclusion 40 (XXXVI) (1985) develops the doctrine with regard to voluntary repatriation through a clear reiteration of basic protection principles. This Conclusion details practical ways and measures of promoting this solution and of making it truly durable through rehabilitation and reintegration assistance. Executive Committee Conclusion 74 (XLV) (1994) reaffirms both of the aforementioned conclusions.

principle of voluntariness of repatriation and contain standards governing the voluntary repatriation process, including its core elements.<sup>15</sup>

For a decision to return to be voluntary, specific requirements must be met. The decision must be free and informed, which means that the decision must:

- a) arise out of a situation in the country of asylum that is sufficiently secure as to permit free choice.
- b) be based on objective information concerning conditions in the country of origin.<sup>16</sup>

The decision to return must be free. The issue of voluntariness involves “the ability to exercise one’s free and unconstrained will in making a meaningful choice [to return]”<sup>17</sup>; “this choice must be made without undue pressure, whether physical, psychological or material”. Registration of the voluntary decisions to return should take place “without any form of scrutiny or pressure by the parties” or “without any threat of phasing down basic refugee assistance programs”<sup>18</sup>. Legal status in the country of asylum is one of the most important elements in the verification of voluntariness. “If refugees are legally recognized as such, their rights are protected and if they are allowed to settle, their choice to repatriate is likely to be truly free and voluntary. [...] If however, their rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will.”<sup>19</sup> In order to ensure that the return of refugees is truly voluntary there is not only a need to guarantee protection against forcible returns (*refoulement*) but also against other human rights violations which may induce or force refugees to return. Failure to respect the human rights of refugees in the country of asylum, including economic, social and

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<sup>15</sup> The UNHCR Standing Committee did in 2004 (see document EC/54/SC/CRP.12 7 June 2004) identify the following core elements of voluntary repatriation : (i) the importance of providing necessary information to refugees about conditions in their country of origin to facilitate decision-making; (ii) where appropriate, “go and see” visits without loss of refugee status; (iii) formal guarantees for the safety of returning refugees; (iv) UNHCR’s returnee monitoring function, including UNHCR’s direct and unhindered access to returnees at all stages; (v) the provision of necessary documentation and the restoration of citizenship; (vi) the need for reception arrangements and the provision of reintegration assistance by UNHCR and other United Nations agencies; (vii) the promotion of dialogue between the main actors; (viii) the establishment of consultative and tripartite mechanisms; (ix) UNHCR’s leading role in promoting, facilitating and coordinating voluntary repatriation; and (x) States’ primary responsibility in creating conditions conducive to voluntary repatriation as a solution to refugee problems.

<sup>16</sup> See UNHCR Handbook, Voluntary Repatriation: International Protection, Chapter 2, Section 2.3 Voluntariness; as well as Chapter 4, Section 4.2 Information Campaigns

<sup>17</sup> See UNHCR Handbook "Voluntary Repatriation: International Protection", 1996.

<sup>18</sup> Ibid.

<sup>19</sup> See UNHCR Handbook, Voluntary Repatriation: International Protection, Chapter 2, Section 2.3 Voluntariness.

cultural rights, may effectively result in constructive *refoulement*, the forcible return of persons to a country where they may face serious human rights abuses.<sup>20</sup>

The decision to return must also be informed – that is, the decision must be grounded in complete, accurate and objective information regarding the status of, and prospects for reintegration in, the country of origin. Even when the decision to voluntarily repatriate is not tainted by threats or a denial of rights, it cannot be “free and informed”, where the prospective returnee has not been provided sufficient information. To ensure that the decision to return is accurately informed, refugees should be allowed to make “go and see” or “go and work” visits to their country of origin of a reasonable duration, and must be able to return to their country of asylum without fear of reprisal if they find they are unable to sustain their return.

In terms of institutional responsibilities, facilitating and promoting voluntary repatriation is a core statutory function of the UNHCR<sup>21</sup>. UNHCR’s role and responsibilities with regard to voluntary repatriation are set out in its Statute and have been developed over decades through various texts, instruments and practice. Under Article 35 of the UN Refugee Convention, UNHCR has the duty to supervise the application of provisions of the Convention, and State parties are required to co-operate with the UNHCR in the exercise of its functions, including this supervisory responsibility. The General Assembly has repeatedly re-affirmed and broadened UNHCR’s functions with regard to voluntary repatriation and conditions in the country of origin through the “soft law” of General Assembly resolutions and Executive Committee Conclusions.<sup>22</sup>

### **The human rights of refugees – the legal framework in the country of asylum**

International protection of refugees is a “surrogate” protection, that is, necessary in view of the lack of protection afforded by the country of origin of refugees. Refugees enjoy special treatment under international law by virtue of their particularly vulnerable status. This special treatment aims at ensuring that no refugees are returned to a country where they will be at risk of threats to their life or freedom, and in addition that refugees are able to enjoy their fundamental human rights, to have access to asylum procedures and have their status recognised, that they are not penalised for illegal entry, that expulsion or forcible return is prevented and that they are provided with a secure legal status.

The 1951 UN Refugee Convention explicitly states the minimum obligations of contracting parties with respect to the human rights of refugees, one of them being to respect the right to protection from *refoulement*. The UN Refugee Convention also states the obligation of the contracting States to respect rights relating to the refugee’s personal status,<sup>23</sup>

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<sup>20</sup> Amnesty International, Amnesty International’s concerns at 55<sup>th</sup> Session of the Executive Committee of United Nations High Commissioner for Refugees (AI Index: IOR 41/031/2004) October 2004, p. 10-12.

<sup>21</sup> See Statute of the Office of the United Nations High Commissioner for Refugees, G.A. res. 428 (V), annex, 5 U.N. GAOR Supp. (No. 20) at 46, U.N. Doc. A/1775 (1950). article 1 and 8c.

<sup>22</sup> See in particular General Assembly Resolutions 1672 (XVI) of 18 December 1961, 40/118 of 13 December 1985 and 44/137 of 15 December 1989.

<sup>23</sup> Ibid, article 12

freedom of association,<sup>24</sup> access to and protection by courts (including legal assistance),<sup>25</sup> possibility to engage in wage-earning employment<sup>26</sup> and self-employment,<sup>27</sup> access to a rationing system when such exists,<sup>28</sup> as well as rights relating to housing,<sup>29</sup> public education,<sup>30</sup> public relief,<sup>31</sup> social security,<sup>32</sup> freedom of movement,<sup>33</sup> as well as access to travel documents,<sup>34</sup> identity papers<sup>35</sup> and facilitation of assimilation and naturalisation of refugees.<sup>36</sup>

A central principle of the 1951 UN Refugee Convention is that “human beings shall enjoy fundamental rights and freedoms without discrimination”.<sup>37</sup> The UN Refugee Convention also provides that “nothing [in its text] shall be deemed to impair any rights and benefits granted by the contracting state to refugees apart from this convention.” All international and regional human rights instruments ratified by the state of asylum, as well as other customary rules, are applicable to refugees.

Human rights are universal, and civil, cultural, economic, political, and social rights apply to all human beings, including refugees and internally displaced people, according to the principle of non-discrimination. Both of the international human rights covenants include general provisions prohibiting discrimination in the realisation of the rights they enshrine. The ICCPR applies to refugees on the basis of Article 2 which states that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that states undertake to take steps “individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”(article 2(1)). Notwithstanding the standard of progressive full realization of economic, social and cultural rights, states do have obligations of immediate

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<sup>24</sup> Ibid, article 15

<sup>25</sup> Ibid, article 16

<sup>26</sup> Ibid, article 17

<sup>27</sup> Ibid, article 18

<sup>28</sup> Ibid, article 20

<sup>29</sup> Ibid, article 21

<sup>30</sup> Ibid, article 22

<sup>31</sup> Ibid, article 23

<sup>32</sup> Ibid, article 24

<sup>33</sup> Ibid, article 26

<sup>34</sup> Ibid, article 28

<sup>35</sup> Ibid, article 27

<sup>36</sup> Ibid, article 34

<sup>37</sup> 1951 Convention Relating to the Status of Refugees, Preamble.

effect, including the obligation of non-discrimination.<sup>38</sup> Consequently, irrespective of the resources available to a state, the rights in the Covenant are guaranteed “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (article 2 (2)). Furthermore, the UN Committee on Economic, Social and Cultural Rights (CESCR) recognizes that even where a State faces severe resource constraints, whether caused by a process of economic recession, natural disaster, climatic conditions or other factors, measures should be undertaken to ensure that the economic, social and cultural rights are especially fulfilled for vulnerable population groups and individuals.<sup>39</sup>

Similar non-discrimination provisions appear in the Universal Declaration of Human Rights (article 2), the Convention on the Rights of the Child (article 2), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 1) and the African Charter on Human and Peoples’ Rights (article 2). The principle of non-discrimination has assumed a customary nature.

**Voluntary return and the legal framework applicable in the country of origin:  
Return in safety and dignity and the issue of sustainability**

Voluntary repatriation is a durable solution which, in order to be sustainable, requires the resumption of national protection.<sup>40</sup> A return that is not truly voluntary, or a return that takes place as a result of inadequate or inaccurate information, is likely to be unsustainable. Conditions of return have consequences for the security and human rights protection of returnees as well as broader consequences for the reconstruction of the country of origin. Sustainability is linked both to the human security situation of the area to which refugees and internally displaced persons (IDPs) would return as well as to the absorption capacity of that area.

*Sustainability* requires that refugees are able to return home in *safety* (including legal, physical and material safety) and with *dignity*.<sup>41</sup>

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<sup>38</sup> Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 3, Un Doc. e/1991/23, para. 1.

<sup>39</sup> CESCR, General comment no. 3, Un Doc. e/1991/23, para. 12 and General comment no. 12, Un Doc. E/C.12/1999/5, par. 28.

<sup>40</sup> See for example UNHCR Global Consultation on International Protection, Voluntary Repatriation, EC/GC/02/5, 25 April 2002, paragraph 5: “The return phase cannot be approached primarily as a question of logistics or numbers but is an integral part of a solution whose durability must be in reach from the outset”.

<sup>41</sup> See UNHCR Handbook, Voluntary Repatriation: International Protection, Chapter 2, Section 2.4. Ensuring Return in Safety and with Dignity. See also the UNHCR Standing Committee document EC/54/SC/CRP.12 7 June 2004 which discusses the meaning of the concepts of physical, material and legal safety, as well as the UNHCR Global Consultation on International Protection, Voluntary Repatriation, EC/GC/02/5, 25 April 2002 which also discusses the three aforementioned concepts, as well as the UNHCR Executive Committee Conclusion 101(LV), 2004. .

- Physical safety includes the right to freedom from torture and ill-treatment. It implies an end to violence and intimidation and the (re)establishment of law-enforcement agencies that are compliant with human rights law and standards and of an independent judiciary. Because of the substantial threat of landmines, de-mining and mine-awareness training are also essential components.
- Legal safety relates to the effective functioning of the basic administrative and judicial infrastructure, which are sensitive to gender and age. It also relates to the existence and effective implementation of legislation regulating, *inter alia*, access to citizenship, registration, documentation, civil status, housing, land or property rights and providing fair and effective restitution mechanisms.<sup>42</sup>
- Material safety includes the right to an adequate standard of living, implying the enjoyment of the right to water, health, education and work, as well as other economic, social and cultural rights.

*Dignity* imports the requirement of sustainable restoration of and respect, protection and promotion of human rights, including economic, social and cultural rights.<sup>43</sup> Of particular importance for a dignified return is the need to ensure respect for the right to family unity.

The requirement to assure and to maintain voluntary return in safety and dignity and with full respect for human rights should apply equally before the departure from the country of asylum, during the transit and after the arrival into the country of origin.

According to the 1969 OAU Refugee Convention, the country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country; refugees who voluntarily return to their country shall in no way be penalised for having left it for any of the reasons giving rise to refugee situations (article 5).

In line with its mandate responsibility, UNHCR should be given free and unhindered access to returnees so as to monitor their proper treatment in accordance with international standards, in particular international human rights standards, including as regards the fulfilment of amnesties, guarantees or assurances on the basis of which refugees have returned. UNHCR, and other human rights organizations as appropriate, should be enabled to effectively report on any violations on the rights of returnees and intervene with national and local authorities where necessary to prevent or seek redress for such violations.

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<sup>42</sup> See Commission on Human Rights, Final report of the Special Rapporteur, Paulo Sergio Pinheiro, submitted in accordance with Sub-Commission resolution 2004/2, Housing and property restitution in the context of the return of refugees and internally displaced persons, E/CN.4/Sub.2/2005/17.

<sup>43</sup> See EXCOM Conclusion No. 40 (XXXVI) – 1985, Voluntary Repatriation and EXCOM Conclusion No. 101 (LV) – 2004, Legal Safety Issues in the Context of Voluntary Repatriation.

## **1: Burundian refugees and asylum seekers in Tanzania**

Amnesty International has received reports that Burundians seeking asylum in Tanzania have, in recent months and years, been turned away at the border, prevented from registering as refugees or *refouled* to neighbouring countries.

The forced repatriation of Rwandese refugees from Tanzania in 1996 and again in 2002-2003 stands as a warning to Burundian refugees that their residence in Tanzania can be terminated based on the Tanzanian government's discretion; many refugees with whom Amnesty International delegates spoke were acutely aware of this possibility.

### **1.1. The protection environment – factors influencing the protection of refugees in Tanzania**

#### **1.1.1 Policy of governments – Pressure to return**

In recent years, the Government of Tanzania has shifted away from its previous policy of accepting local integration to one of promoting repatriation and the idea of “safe havens” inside Burundi where individuals would be nationally protected rather than receiving international protection as refugees.

In a speech in September 2003, Jakaya Mrisho Kikwete, Tanzanian Minister for Foreign Affairs and International Cooperation, advocated for the establishment of “safe havens” within refugees’ home countries to eliminate the need for refugees to seek international protection and reinforced his wish “to close the factories that manufacture refugees”. This statement comes in a wider context. The Tanzanian government’s objective of finding durable solutions for the security issues facing the region is laudable. Indeed, the Tanzanian government hosted the lengthy negotiations that led to the Arusha Accord in 2000 (the critical first step in Burundi’s current peace process), as well as the Great Lakes International Conference on Peace, Security, Democracy and Development in 2004. Nevertheless, the growing intolerance toward the refugee population is also evidenced in remarks such as those made by Minister Kikwete. More pointedly, Kibondo District Commissioner Lt. Col. James Mzurikwao has reportedly stated on several occasions that Tanzania should be a refugee-free zone by 2005 and that Tanzania is for the Tanzanians. The Kasulu District Commissioner, Col. L. Makungenge, told Amnesty International, “If the number of repatriations would increase, it would be better...there are no problems in Burundi.”<sup>44</sup> Yet the pressure is not limited to government rhetoric.

The Tanzanian government intends to move quickly to repatriate the refugees, and to fulfil the goal stated by several officials of having a “refugee-free zone” by 2005. As early as 21 January 2004, the seventh Tripartite Commission meeting (between UNHCR and the Tanzanian and Burundian governments) underlined “the need to move gradually from the

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<sup>44</sup> Interview with Col. L. Makungenge, Kasulu, 18 October 2004.

facilitation to the promotion phase” in its joint communiqué.<sup>45</sup> UNHCR seems to have accepted this accelerated schedule, at least on paper. UNHCR “plans to repatriate and provide initial reintegration assistance to some 150,000 refugees in 2004. The planning figure for 2005 is a further 150,000 persons”, according to the UNHCR July 2004-December 2005 Supplementary Appeal.

Burundian refugees are pressured to return to Burundi by Burundian government representatives who come to visit the camps, by the Tanzanian Ministry of Home Affairs, regional and district level commissioners and statements from the highest Tanzanian authorities, including President Benjamin Mkapa. Reasons for the harsher rhetoric deployed to urge repatriations to Burundi may include a fear that Tanzania might be drawn into regional conflicts, or a response to criticisms that the Tanzanian government has supported certain Burundian armed political groups. Another view is that politicians, in the run-up to the October 2005 elections in Tanzania, have increasingly used refugees as a scapegoat for security concerns in Tanzania. In the past, Tanzanian politicians have also been wary of refugees being involved in opposition politics.

Additionally, it is unclear to what extent new arrivals should expect protection, particularly if the situation in Burundi were to deteriorate rapidly and a new wave of refugees attempted to seek protection in Tanzania. Groups of refugees who have attempted to cross into Tanzania in late 2004 and early 2005 have been subject to deportation, illegal screenings by Burundian government officials<sup>46</sup> and harassment when they attempted to obtain lodging and ration cards in established refugee camps.

Furthermore, substantial numbers of new arrivals arrived in the third trimester of 2004, reportedly causing frustration amongst Tanzanian officials attempting to promote the repatriation of Burundian refugees. The arrival of new asylum-seekers provoked Tanzanian government officials to invite Burundian officials to participate in joint screening of new arrivals alongside Ministry of Home Affairs (MHA) staff and the district commissioner of Kibondo, who is frequently reported to have made comments disparaging refugees, to evaluate their eligibility for refugee status. On 28 October 2004, refugees, called in one by one, were reportedly ridiculed by the Burundian and Tanzanian governments and the veracity of their stories challenged. Some were urged to return to Burundi right away, even though they had already been screened earlier and accepted by MHA alone. MHA reportedly accepted only 14 out of 101 as refugees as a result. Some of those rejected fled from the way stations<sup>47</sup> where they were temporarily staying. Others were deported on 8 December 2004: as the Tanzanian government apparently lacked the means to transport them to Burundi, UNHCR agreed to take them on their “voluntary” repatriation convoy. UNHCR argues that it agreed to transport them in order not to increase the hardship on these individuals by making

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<sup>45</sup> See UNHCR, “Outline of Main Actual and Potential Voluntary Repatriation Operations in Africa for 2004”, p. 3.

<sup>46</sup> The participation of the Burundian government in the screening of refugees is contrary to international and national refugee law, as Burundi is the government of the country from which the refugee is fleeing.

<sup>47</sup> Minimal structure allowing the refugees in a convoy to get water and to rest.

them walk back home. UNHCR did protest the screening procedures that the Tanzanian authorities employed, and reportedly received assurances that they would not use them again.

Large numbers of refugees who have returned home either spontaneously or through organized repatriation programs find that the conditions in their home areas are not yet conducive to a safe and durable return. Some of these individuals find their ways back to the camps in Tanzania; UNHCR and Tanzanian government officials usually claim they are “recyclers” attempting to secure additional return packages. These refugees are often afraid of being sent back to Burundi if they are discovered in the camps and tend to live clandestinely as a result, relying on the charity of other refugees. In a sense, this treatment at the hands of Tanzanian authorities encourages asylum seekers to enter Tanzania clandestinely and flout established procedures.

### *1.1.2. The policy and role of UNHCR*

UNHCR is currently in a phase of facilitation, rather than promotion of returns, and UNHCR officials maintain that the decision to begin facilitating repatriations in 2002 came primarily as a result of the many violent incidents recorded against refugees returning spontaneously and to reduce the hardship of refugees returning on foot. However, UNHCR officials also concede that the distinction between the nature of the current facilitation exercise and actual promotion of voluntary repatriation is not entirely apparent. This scant difference is certainly not lost on the Tanzanian government, which has been actively encouraging refugees to return home.

The term “facilitation” is used by UNHCR to indicate the assistance that it will provide to displaced people who wish to return home even when UNHCR staff does not feel that the minimum conditions necessary in the country of origin for return in safety for most refugees have been fulfilled. When refugees voluntarily decide to go home, UNHCR will often provide them with assistance (such as transport and information on conditions in the country of origin and information about the obstacles that may exist to their re-entry to the country of asylum) but will not actually “promote” the return. The “promotion of repatriation” is the term which describes UNHCR’s active encouragement of repatriation. There are a number of essential preconditions that need to be met for UNHCR to promote voluntary repatriation: “there must be an overall, general improvement in the situation in the country of origin so that return in safety and with dignity becomes possible for the large majority of refugees; all parties must be committed to fully respect (the repatriation’s) voluntary character; the country of origin must have provided a formal guarantee or adequate assurances for the safety of repatriating refugees, as appropriate, UNHCR must have free and unhindered access to refugees and returnees”.<sup>48</sup> UNHCR field staff may organize information campaigns to inform refugees of the changed situation in their home country or region and of any peace accords or other relevant agreements that have been signed. Staff in refugee camps will help to participate in the repatriation by registering people who decide to return, providing any relevant counseling and monitoring the legal, physical, and material security of the returnees.

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<sup>48</sup> UNHCR, *Handbook on Voluntary Repatriation*, Chapter 2

UNHCR has remained conspicuously silent at moments when strong advocacy might have helped to uphold the rights of refugees, notably at the time of the mass expulsion of Rwandese refugees in 1996<sup>49</sup> and again in 2002-2003. UNHCR's pattern of apparent acquiescence in Tanzania and in the region has led to a situation where, in the words of one UNHCR official who spoke to Amnesty International delegates, "UNHCR has become totally submissive".

While Tanzania may have failed to live up to its obligations under international refugee law, it has not always received sufficient and timely assistance to support Africa's largest refugee population.

Donors have grown tired of supporting refugees, a reality that becomes apparent from refugees' frequent complaints that non-food items such as cooking utensils, buckets, blankets and clothing are distributed far too infrequently to satisfy basic needs. Inadequate food rations combined with movement restrictions are the leading causes refugees cite for returning home prematurely to Burundi.

All of this is not to say that there are not individuals within UNHCR's office in Tanzania and partner agencies that have not gone to extraordinary lengths to assist refugees. Several have been expelled by the Tanzanian government as a result of their efforts to protect refugees from *refoulement*, notably during the mass *refoulement* of Rwandese refugees. There are signs that UNHCR in Tanzania and its partners are becoming more pro-active in protecting and providing for refugees, though much remains to be done.

### 1.1.3. Government pressure not limited to rhetoric – the issue of protection against *refoulement*

#### *1.1.3.1. "First wave" refugees*

The "first wave" Burundian refugees have lived in Tanzania for up to thirty-two years; some were born in Tanzania, and many have intermarried and become economically independent. Nevertheless, they have not been free from harassment. Over the years, the Tanzanian government has forcibly closed settlements and subjected "first wave" refugees to arbitrary round-ups, supposedly on the grounds of protecting security.<sup>50</sup> Since UNHCR ceased providing assistance in 1985, the "first wave" refugees, in common with many rural Tanzanians, have not had access to adequate clean water, health care or education. Access to these services is particularly difficult for Burundian refugees due to the movement restrictions imposed on them and the extremely limited opportunities available to them to participate in public affairs to promote their concerns.

The Government of Tanzania appears to be taking a much harder stance toward "first wave" refugees and is now actively encouraging the repatriation of all Burundian refugees (as well as refugees of other nationalities). Initially, the Tanzanian government appeared to be

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<sup>49</sup> Amnesty International, *Great Lakes Region: Still in need of protection – repatriation, refoulement and the safety of refugees and the internally displaced*, January 1997.

<sup>50</sup> For more on round-ups of refugees, see Human Rights Watch, "Tanzania: In the Name of Security: Forced Round-Ups of Refugees in Tanzania", 1 July 1999.

advocating “phase two” repatriation after the “second wave” refugees had returned; however, an August 2004 communication from the Ministry of Home Affairs to UNHCR reportedly urged “first wave” refugees to travel to Kigoma to be included in a general repatriation program.

In 2002, Tanzanian government officials began suggesting that these “first wave” refugees should also return home. Following large-scale repatriations of the “second wave” refugees in 2004, the pressure on these refugees seems to have diminished, although an official in the Refugee Department of the Ministry of Home Affairs assured Amnesty International delegates that the Government of Tanzania expects to repatriate the “first wave” refugees once the “second wave” has returned home. UNHCR has commissioned an “intention survey” to determine the preferences of the “first wave” refugees, including when and under which conditions they would be willing to return to Burundi, if ever. Some of these individuals have lived in Tanzania for thirty-two years; the vast majority of the younger generation has never set foot in Burundi. During their stay, these refugees have been financially independent, paid taxes and sold their agricultural production to the benefit of the local economy. Each Tanzanian government official whom Amnesty International interviewed acknowledged that the “first wave” refugees have not caused problems and have in fact been an asset to the economy of the regions in which they are located.

It is likely that few of these refugee families still retain land in Burundi. A 2001 survey commissioned by UNHCR of 1500 Burundian refugees in “first wave” settlements found that approximately 75 percent did not know what had happened to their land, while more than 20 percent responded that their land had been confiscated by the Burundian government.<sup>51</sup> The sustainable return of those people is dependent on real support when they go back home, including a combination of land allocation, compensation and vocational training, among other forms of assistance.

#### *1.1.3.2. “Second wave” refugees*

Amnesty International delegates met several refugee families in Burundi who had recently been expelled from Tanzania. Some individuals claimed they had been expelled after being caught outside of refugee camps when they went to look for work or to farm. Others had been taken from their homes in Tanzanian towns and villages and forcibly expelled by immigration officers. **Jean B.**, age 43, had fled from Burundi as a young child in 1972. Along with his parents and siblings, he went first to the Democratic Republic of Congo (then Zaire). Jean B. and his two wives and six children then fled from DRC to Tanzania in 1999, to escape war and serious human rights abuses in eastern DRC. In Tanzania he supported his family by working as a traditional healer. On 23 January 2005, immigration officers burst into his home, beat him and his family and forced them on to a boat bound for Burundi with very few of their belongings.

The Tanzanian government’s current focus on repatriation, tolerated and supported by UNHCR, may cause violations of international human rights and refugee law. Individuals,

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<sup>51</sup> “Study on Burundian Refugees in Settlements in Tanzania”, Economic Research Bureau, University of Dar es Salaam, UNHCR: March 2001, p. 39.

who are forcibly returned face particular challenges in reintegration, as they come unwillingly, often bereft of their belongings and, given that some were born outside of Burundi or have remained outside the country for more than three decades, without points of reference in the country. Jean B. and his family, for instance, set off for the home of his brother-in-law, his closest relative in Burundi, in the hope that he would lodge them, for lack of any other option.

#### *1.1.3.3. Newly arrived asylum seekers*

On 18 October 2004, sixty-eight Burundians at a reception centre in Lukole B camp and outside of the UNHCR compound in Ngara were loaded into vehicles by Tanzanian police and taken across the border to Burundi. Amnesty International believes that these refugees may have had a valid fear of persecution in Burundi, and as such should have been considered *prima facie* refugees or should have access to a fair and satisfactory asylum determination procedure. Burundi nationals have in the past been granted *prima facie* status on the basis of the fact that their country is subject to “events seriously disturbing public order”, in the sense of article 1(2) of the OAU Refugee Convention to which Tanzania is a party. Even if they were not granted *prima facie* status, UNHCR should have been permitted, under the Tanzanian Refugee Act, to observe the screening interviews prior to the forcible return back to Burundi of individuals whose claims were dismissed. UNHCR should also have been given an effective opportunity to conduct its own assessment on whether the individuals concerned came under its mandate and if so, evaluate the possibility of resettlement to a third country. Seventy-three refugees had reportedly fled Burundi over a two-week period in mid-October when tensions escalated between political parties following a statement made by the head of the CNDD-FDD, Pierre Nkurunziza, who is also the Minister for Good Governance, threatening that elections should take place within two weeks or that matters would be decided in the street.

UNHCR staff members note that since UNHCR is not granted access to border areas, it cannot confirm the numbers of refugees and asylum-seekers sent back or denied access to Tanzania.

### **1.2. Issues affecting the protection of refugees in Tanzania**

Amnesty International strongly believes that promotion, whether tacit or overt, of returns to Burundi remains premature, due to a combination of political, military and socio-economic realities that will be further described later in the report.

The principal reasons refugees cited, at the end of 2004, for continuing to claim international protection include the following:

- The unstable political situation in Burundi, particularly wrangling between different parties in the run-up to the constitutional referendum and elections, provoking fears that violence could again break out;

- The lack of ethnic integration of the army, notably the high command<sup>52</sup>;
- The continued influence of armed political groups that demand money or attempt to recruit members;
- The slow progress of the demobilization program, causing tensions among fighters housed in cantonment sites (temporary living quarters specially built by the army for soldiers) and provoking threats by armed political group leaders that they may order their fighters to take up arms again;
- The shortage of available land coupled with ineffective land redistribution;
- The apprehension that refugees might be targets of violence or arrest once they return home.

The principal reasons refugees offered to explain their decision to return to Burundi included the following:

- the harsh conditions in the camps;
- political sensitization undertaken by parliamentarians and armed political groups assuring refugees that peace had returned to Burundi;
- the entry of the CNDD-FDD into a ceasefire with the government and, for some, the promise of material benefits from participating in the demobilization process or filling government or other posts;
- the fear that if they did not return soon, others might settle on their land;
- anxiety that if they did not return with their belongings now that they would be forcibly returned without being able to bring anything with them.

### 1.2.1. Security concerns

#### *1.2.1.1. Security situation in camps*

Refugees note that the security situation in the “second wave” camps calmed down considerably after the main armed political group, the CNDD-FDD (Nkurunziza), signed a ceasefire and power-sharing agreement with the government in late 2003. “Once the CNDD-FDD (Nkurunziza) realized they might have to rule the country, they enforced peace,” said one refugee. Indeed, many refugees believe that the return of a large number of CNDD-FDD (Nkurunziza) fighters to Burundi resulted in far greater security in the camps. Conversely, many also suggested that a spate of rapes in the camps, that the CNDD-FDD allegedly

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<sup>52</sup> The Pretoria Protocol on Political, Defence and Security Power Sharing in Burundi signed on 8th October 2003 between the Transitional Government of Burundi and the CNDD-FDD, stipulates that the integrated General Staff and the Officer Corps, shall be composed of 60% officers selected from the governmental army and 40% officers from the FDD (the armed wing of the CNDD). Moreover the allocation of command posts shall be on the basis of ethnic balance (50-50) as stipulated in the Arusha Peace and Reconciliation Agreement.

committed in early- to mid-2004, was intended to make refugees feel insecure so that families would be more likely to return to Burundi and participate in elections. The CNDD-FDD (Nkurunziza) enjoys substantial support in the camps and believed that high rates of refugee returns would increase their success at the polls. This observation reinforces the impression that many refugees seem to share, namely that the level of security in certain camps is essentially determined by the armed political groups.

Several young men reported to Amnesty International delegates that armed groups had attempted to recruit them into their fighting ranks. Refugees in some camps also noted that political groups still attempted to fundraise from the refugees, often making threats if the refugee hesitated to pay.

**Jean**, age 23, was born in DRC to Burundian parents who had fled their homes in 1972. His father, a Hutu, was killed by Mai-Mai fighters in 1996 because he was sheltering four Tutsi. His mother, a Tutsi, was killed by CNDD-FDD fighters. He fled to Tanzania then in 1997, and was living in Nduta camp in Kibondo. CNDD-FDD fighters found him in the camp, first in 2001, and repeatedly asked him to go with them to fight, most recently in September 2004. He refused, and they threatened to “do something” to him if he continued to refuse. He says that he reported the incidents to the police and to UNHCR, but no action had been taken by October 2004. Jean says the CNDD-FDD fighters repeatedly came with papers saying “FDD” and ask him to pay taxes and make contributions, in addition to trying to recruit him.

The general consensus among refugees and refugee assistance organizations was that political and military activity in the camps had decreased since the 2003 ceasefire between the CNDD-FDD (Nkurunziza) and the Burundian government had been signed. It is clear that a certain amount of politico-military activity continues in the camps, though, as such activities are off-limits for refugees in Tanzania, refugees are hesitant to describe these activities to researchers. However, while in Ulyankulu “first wave” settlement, Amnesty International delegates heard from a variety of sources that Joseph Karumba, leader of the FROLINA armed political group, was conducting military training outside of the settlement during the time that Amnesty International delegates were conducting research there. Amnesty International was not in a position to confirm the alleged recruitment.

Tanzanian authorities have reportedly been placing individuals found to be involved in political or military activity in the so-called separation facility in Mwisa. It is unclear whether this facility is exclusively for politically and militarily involved individuals, in order to maintain the civilian nature of the camps, or whether other refugees accused of crimes have also been detained there. Due to logistical and time constraints, Amnesty International was not able to visit the facility.

#### *1.2.1.2. Restrictions on refugees’ freedom of movement*

Under the 1998 Refugee Act that came into force in February 1999, it is illegal for any refugee to live outside of designated camps. Failure to comply is punishable by a six-month prison sentence. It is unclear to what extent the Tanzanian government informed refugees about the new regulations in the 1998 Refugee Act or about the written instructions that were

issued to local authorities regarding the implementation of the new measures. Until mid-2003 the law had not been strictly enforced. Refugees had, in particular, been allowed to move freely in a four-kilometre radius of the camps. However, now refugees are not allowed to leave the camps without a permit.

Before June 2003, work outside the camp, such as share-cropping on Tanzanian farmers' land or trading, had been considered necessary to supplementing the food rations supplied by humanitarian agencies, in accord with UNHCR/WFP policy guidelines that fixed the rations on the assumption that supplemental income-generation would continue. However, in June 2003, various district and regional commissioners began to insist on strict control of refugee movements. Permits are only issued to refugees on rare occasions and for specific reasons, although officials at all levels acknowledged that refugees had legitimate reasons to leave the camp, notably for firewood collection. "First wave" refugees complain bitterly that, in spite of the fact that they have lived in Tanzania for thirty-two years, pay taxes and have children married to Tanzanian citizens, they are still required to ask the permission of the camp commandant if they wish to leave the camp, even to receive emergency medical treatment.

Local Tanzanians also take advantage of these movement restrictions: refugee sharecroppers sometimes find that when they come to harvest the produce they have cultivated on the land of a previously cooperative Tanzanian farmer, the farmer threatens to call the police and keeps the harvest for him- or herself. The refugees are usually powerless to protest against such abuse, as it would require admitting to authorities that they had violated the movement restrictions.

Movement restrictions, and the human rights violations that can accompany them, limit refugees' ability to engage in income-generating activities, foster good relations with Tanzanians and participate in other valuable projects. For instance, the Tanzanian government has expressed concern that refugees' search for firewood has resulted in the clear-cutting of areas near the refugee camps. Refugees participated in tree-planting activities organized by international NGOs, and, as part of the project, were supposed to tend regularly to the saplings. However, due to the rigorous application of movement restrictions, Tanzanian government officials refused the refugees the right to continue tending the saplings; as a result, many of the saplings reportedly died.

#### *1.2.1.3. Risks of ill-treatment and arbitrary detention*

In some areas, refugees appear to be able to move with minimal disturbance, though the level of enforcement of movement restrictions seems to fluctuate in harmony with political statements and directives issued at the national level. Even where mobility restrictions are not fully enforced, any refugee outside the camp remains at risk of detention, incurring fines or being otherwise harassed by security officials. Many refugees complained to Amnesty International delegates that police officials inside and outside of the camps were corrupt and demanded bribes in order to let refugees pass; if the refugee did not have money, he or she might be subject to beating or detention. Some women going to collect firewood have reportedly also been detained, though not in large numbers.

Amnesty International delegates met a young man in a camp in Kigoma region who had been severely beaten by Tanzanian police officers when he went outside of the camp to earn his living. He showed Amnesty International delegates a medical document that confirmed that his arm had been broken and that he had sustained injuries that had left him incapacitated and incapable of doing physical labour. One member of the Tanzanian police had reportedly apologized to him, but the refugee has never been compensated for his physical or material losses.

Camp authorities sometimes issue permits to businesspeople to purchase and sell wares outside the camp and, depending on the camp and the authorities, to accommodate personal needs related to specialized hospital treatment, economic activities or attending funerals. Even refugees with valid permits to leave the camps have reported difficult encounters. Amnesty International delegates spoke to a businessman, **D.**, in a camp near Kasulu, who claimed that he had been detained twice when in possession of a valid permit, on one occasion in mid-2004 having been severely beaten with a police club on his hands, wrists, elbows, shoulders and back, so that he still coughs blood and cannot lift heavy objects. He reports that the police also stole a substantial amount of money from him that he had brought to purchase wares in town. The money was never returned, nor any compensation offered.

Refugees found to be in violation of the movement restrictions are often considered irregular migrants and charged under immigration law, which carries much harsher punishments than violations of the Refugee Act. As a result, refugees may be detained for periods of up to three years and/or incur substantial fines. Some have reportedly been deported to Burundi during or at the conclusion of their detention rather than being returned to the camps. A Catholic nun in Kibondo reported that sometimes when she went to visit a detainee, she would discover that he had already been expelled to Burundi. While Amnesty International delegates were not able to acquire complete statistics for all detention centres housing refugees, they were told that, at least in some of the detention centres, the majority of refugees detained were there for having violated movement restrictions. UNHCR protection staff should check regularly on the situation in prisons and detention centres and intervene to ensure that refugees lawfully in Tanzania are not being detained for breaches of immigration law.

Refugees have reportedly been detained in smaller numbers in recent months, though remain vulnerable to arrest and police corruption. The arrests remain unpredictable enough to frighten the refugee population, to the point where many no longer leave the camps and instead choose to endure economic and physical hardship and idleness.

#### *1.2.1.4. Gender-based discrimination and violence targeted at women and girls*

In 2003, there were many reported incidents of rape and other violent crimes both inside and outside of the camps, in addition to other crimes that are likely to have gone unreported. Incidents of rape have declined in the past year due in part to the UNHCR “security package” that includes improved police training and increased police presence, reliance on refugee security personnel (known as *sungusungu*) and night patrols.

Sexual assault, including at the hands of Tanzanian or Burundian bandit groups or suspected members of Burundian armed political groups, remains a serious concern for women forced to travel long distances for firewood collection, though certain practices, such as venturing out in groups, appear to have reduced the risks. Inside the camp, some efforts seem to have been made in deterring sexual assault by having the police more frequently intervening and prosecuting these crimes, but much more remains to be done on this front. Forced marriages have also been reported, though it was unclear whether there were standard means of addressing this crime. Community service workers still lament the level of stigma attached to rape that deters survivors from reporting and seeking justice, but note that stigmatization appears to be significantly lower than in Burundi, due to focused education efforts by implementing partners working in the camps.

Family violence continues to be a cause for serious concern in the camps. Several factors apparently contribute to the high incidence of violence, committed mostly but not exclusively by men against women.<sup>53</sup> Family violence reportedly increases at times of heightened stress such as during repatriation. Some refugees, particularly men, have partners waiting for them in Burundi, and feel they need to separate from their common law wives in the camps before returning home. Community service workers, local leaders, *sungusungu* and police have been trained to address domestic violence, and security personnel claimed that their ability to respond to domestic violence had improved.

*Sungusungu* and community activists find that they themselves are subject to threats and violence when they intervene in domestic violence and rape cases, particularly from family members of the suspected perpetrators. One female *sungusungu* said, “They say we are the bosses now because we cooperate with the UN, but they warn us to watch out when we get to Burundi and we are nobody again.”

Security Council Resolution 1325 on women, peace and security, adopted in October 2000, marks the first time that the Security Council addressed specifically the role and experience of women in the context of conflict and post-conflict situations. It urges that “the particular needs of women and girls” are taken into account in the design of refugee camps and settlements (paragraph 12).

### 1.2.2. Camp conditions

Amnesty International spoke with returnees in Burundi who stated that they had left Tanzania because the living conditions in the camps had become too difficult and oppressive. They repeated the refrain, “It’s better to suffer at home than to suffer in a refugee camp” when

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<sup>53</sup> Many of the traditional roles that men in Burundi would expect to assume, including those of providing food and security, are taken over by the humanitarian agencies. Frustration and a sense of powerlessness caused by the lack of economic and other opportunities are enhanced by the prison-like atmosphere of the closed camps and cramped houses. Refugees may be traumatized by violence they witnessed in Burundi and exhibit aggressive behaviours towards members of their families. Community leaders, social services workers and other refugees told Amnesty International that domestic violence tends to spike at food distribution times, when male heads of households may try to force their partners to give up their food rations for men to sell for their own use.

describing their motivations to return to Burundi. For instance, delegates met several widows who had returned to Burundi shortly after their husbands died, not necessarily because they wished to return to Burundi, but because they simply could not provide for themselves and their children adequately in Tanzania. They thought they could get more community support in Burundi and would have an easier time living in their own country where they knew the system and would enjoy freedom of movement. Many of them felt isolated and helpless inside the camp environment.

The main complaints of refugees and refugee advocates regarding camp conditions include the following: insufficient quantity and sometimes poor quality of food rations; inability to supplement their food rations by undertaking supplemental farming or business activities outside the camp (due to movement restrictions); poor quality housing, particularly the poor roofing; restrictions of movements outside camps and of ability to buy and sell on Tanzanian market; difficulty in procuring firewood (due to movement restrictions, lack of nearby firewood sources and security concerns); lack of adequate clothing and basic materials such as buckets; police brutality, harassment and corruption; limited available education; lack of proper mechanisms to register their presence and receive individual identity cards; lack of employment and training opportunities.

#### *1.2.2.1. Access to food and nutrition*

2100 kilocalories (kcal) per person per day constitute the World Health Organization standard rations. Refugees in Tanzania in 2004 were receiving rations of around 1850 kcal per day; in 2003, they received only 1350 per day, due to shortages in the WFP food pipeline. At present, refugees are once again enduring a food shortage due to delays in receiving certain goods, in spite of WFP management's best efforts to ensure a full food pipeline. Refugees add that, not only is the food supplied by WFP not always traditional to their diet, but that they have been expected to eat exactly the same food every single day of their stay in Tanzania—sometimes for more than ten years. Refugees are expected to supplement their diet by farming outside the camp or other income-generating activities; for this reason, the food ration allotted is less than the 2100 kcal prescribed by United Nations agencies. However, these supplemental activities are substantially or entirely curtailed by the restrictions on refugee movement outside the camp. Some refugees are fortunate to have been allocated sizeable plots of land for growing food crops, but many others simply have to struggle with inadequate rations, or leave the camp in order to work or share-crop and thus risk arrest.

Humanitarian agencies explain that all individuals, whether children or adults, receive the same ration, yet children do not consume as much as adult family members. They argue that families are able to cope with reduced rations on the basis that the adults are essentially supplemented by the excess rations of the children. Some camp staff go further to suggest that the high birth rates in the camps are in part driven by the need to increase the family's rations as a whole.

#### ***Market closures***

Another restriction that has been imposed, though not uniformly, is the closure of markets, where Tanzanians and refugees engage in commercial activities. These closures have

increased the economic pressure on refugees. The reason offered by authorities for these closures is concern about security: refugees have found themselves accused of widespread banditry, rape and other forms of criminality.

However, despite the improvement of the security in some areas, the authorities have not reconsidered their decision to close markets. Many refugees and advocates see the market closure, and the restrictions on movement, as punitive measures meant to press the refugees to return home. Some of these markets had been the largest in the area and were a substantial source of revenue for both locals and refugees.

### ***Firewood***

Due to the prolonged presence and high population density of the refugee settlements, the firewood inside the camps has long since been consumed. To find wood for cooking, refugees (mainly women) must walk as far as 15 to 30 kilometres each way. One woman said, "I spend one day in three just collecting wood." The food supplies provided by WFP (maize, pulses and corn-Soya blend) require daily cooking. During firewood collection, women are vulnerable to sexual assault and harassment by the police, including occasional arrest and detention. UNHCR has piloted initiatives to have men accompany the women, but these have sometimes ended up with the physical abuse of the men as well. In some areas, the initiative has however proved more successful.

**Marie**, age 17, from Lukole A camp in Kagera region, was raped in July 2004 when she went out to collect firewood. She was in the company of four elderly men carrying crops they had harvested. They encountered three armed bandits on her path, who told them all to carry their goods to their place. After robbing the men, the bandits told them to leave, then turned to Marie and told her that they would rape her or, if she resisted, kill her. The men raped her and then took her to their superior. She tried to escape, and they fired a shot after her, which did not hit her. Marie returned, and was raped again. The next morning, she was released. She reported to the police station and hospital, with the support of camp staff trained to help survivors of sexual violence. Marie was tearful during the interview and worried that she might have been infected with HIV; she said she would take an HIV test soon.

The Tanzanian government insists that it is UNHCR's duty to provide firewood to the refugees, and that firewood collection should not constitute an excuse for refugees to leave the camp. However, firewood collection is both expensive and time-consuming, as local fuel sources have already been harvested. For a time, UNHCR provided fuel to refugees with specific protection needs<sup>54</sup>: officials running special feeding programs otherwise discovered that although refugees with specific protection needs received extra rations, they lacked the fuel to prepare the food. However, even the refugees with specific protection needs do not consistently receive assistance. WFP has been trying to find funding for sustainable harvesting programs to support them.

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<sup>54</sup> Including at-risk single women, single parents, unaccompanied minors, elderly people, individuals with physical or mental disabilities, victims of sexual violence and individuals infected by HIV/AIDS.

Tanzanian officials also express concern that firewood collection has led to severe environmental degradation. Humanitarian organizations have done much to remedy the damage with tree-planting, but some report that the survival rate of the trees is not as high as it should be due to burning by Tanzanian farmers and the mobility restrictions on refugees who are not allowed to leave the camps to tend the saplings as planned.

#### *1.2.2.2. Right to adequate housing*

Another frequent complaint among refugees and from aid agencies is the terrible condition of their roofing. Refugees are assigned a plot upon their arrival and build their own mud-brick houses. UNHCR provides a piece of plastic sheeting (tarpaulin) for roofing upon arrival. By this point, some refugees have lived more than eleven years with the same piece of increasingly deteriorated plastic. UNHCR policy is apparently not to replace roofing material except for refugees with specific protection needs. Refugees typically collect grass to thatch their houses, however this practice is hampered by the restrictions on their ability to leave the camp and the fact that Tanzanians tend to burn these grasses in bush fires.

The inadequate housing provokes a variety of serious problems. First, food storage is impaired and, during the rainy season, leaky roofs can lead to quick spoilage. An increase in respiratory diseases has also been reported due to cold and wet living conditions. Furthermore, the size of the house is limited by the dimensions of the plastic sheeting. The small, one-room house size accommodates ever-expanding families as well as animals, which are kept inside for fear of theft if they are left outside, and contributes to unsanitary conditions.

#### *1.2.2.3. Right to education*

Educational opportunities differ for the different waves of refugees. Primary schools in “second wave” refugee camps are partially supported by UNHCR, which pays teachers’ salaries, although parents are required to pay for certain supplies. These schools appear to provide a relatively decent standard of education, given the high performance of refugee schools on Burundian standardized tests. “First wave” refugees complain that, in spite of the high numbers of young people and their continued payment of taxes and development fees, no new primary or secondary schools are being built to service their areas. As a result, a significant number of children are not able to attend school. Some of the refugees expressed their perception that the Tanzanian and Burundian governments were denying education to the “first wave” refugees on purpose to prevent them from getting decent jobs or advocating for their rights in Burundi or Tanzania.

Access to secondary education is difficult for both sets of refugees. Parents and the refugee community must reportedly pay the salaries of secondary school teachers in addition to supplies. Though the fees may seem minimal, in a context where there are few means for earning money, the prices are often prohibitive and/or require families to sell part of their rations to enable children to attend school.

In the “first wave” refugee camps, school enrolment for primary has a nearly equal gender balance, though only one-third as many girls attend secondary school as boys. According to teachers, UNHCR officials and community services workers, reasons for this

disparity include the lack of sanitary materials and clothing for girls and the sometimes intense pressure on girls to get married so that the family can receive a dowry from her suitor.

According to MHA and UNHCR officials with whom Amnesty International spoke, the Tanzanian government has insisted that students follow the Burundian curriculum to discourage them from staying in Tanzania. A miniscule number of students gain scholarships to study at university. The Tanzanian government treats refugees as foreign students and thus imposes high foreign tuition rates.

#### *1.2.2.4. Right to health and access to healthcare*

Generally, the health services in the camps are deemed superior to Tanzanian medical clinics – a perception supported by the frequent visits of Tanzanian citizens to the camps’ medical facilities—and all healthcare is available free of charge to the local population and unregistered camp residents. Some refugees attest to a gradual decline in quality, the loss of some staff and the unavailability of some medicines, though facilities are perceived to be adequate and reportedly attract some Burundians from across the border.

There are reports of underweight newborns due to poor diet and high rates of respiratory illness in some areas during the rainy season.

Post-rape treatment appears well-organized in most camps, and the provision of post-exposure prophylaxis to curb the transmission of HIV/AIDS is being piloted by UNHCR implementing partners in one area. HIV prevalence is significantly lower than in surrounding areas in Tanzania, according to camp health workers, although Amnesty International was not able to obtain any studies to support this claim.

Family planning initiatives – the provision of information and services – appear weak and ineffectual: according to some camp staff, only a tiny percentage of the population has access to contraceptives, and birth rates significantly exceed the Burundian or Tanzanian national averages. Children account for more than 55% of the “first wave” refugees settlements; the population growth rate in 2001 was 5.9% in the settlements, double the Tanzanian national average of 2.8%.<sup>55</sup>

Several refugees and humanitarian workers noted the poor services available to physically and/or mentally disabled individuals in the camps in need of long-term assistance and mobility aides.

The “first wave” refugees complain that rural clinics offer scant assistance and often lack essential medicines. In order to go to the hospital, in grave cases, refugees are required first to wait for permission from the camp commandant and then to pay high fees for a private taxi, due to the lack of an ambulance. Refugees interviewed in Ulyankulu camp cited several cases of women who, in their opinions, had died in childbirth as a result of their inability to reach a hospital.

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<sup>55</sup> “Study on Burundian Refugees in Settlements in Tanzania”, Economic Research Bureau, University of Dar es Salaam, UNHCR: March 2001, p. 5.

### **Impact of movement restrictions on the access to healthcare**

Amnesty International delegates spoke to “first wave” refugees in Ulyankulu camp who described the ordeal of getting a woman with a serious medical problem to the hospital:

“The medical emergency occurred outside of business hours, so we were unable to ask the camp commandant for permission to leave the camp. We decided nevertheless to hire a taxi to transport the ailing woman to Tabora hospital, in town, as we deemed her condition to be very serious. When we arrived in town in the hired car, police officers were waiting for us and took all of the money we had brought to pay for medical treatment, without charging us with any crime or detaining us. We then took the woman to hospital, but had to return to the camp in order to find additional money to pay for the high costs of treating her, and had to pay additional transportation fees.”

#### *1.2.3. Procedure for recognition of refugee status*

Burundian refugees have received and officially should continue to receive refugee status in Tanzania on a *prima facie* basis, as per the definition contained in the OAU Refugee Convention. However, since at least 2003, the Tanzanian government apparently has appeared to consider new arrivals to be different from refugees already present in the camps, and has initiated screening procedures at way stations that do not comply with Tanzanian law, as delineated in Tanzania’s 1998 Refugee Act, or standards recommended by UNHCR.<sup>56</sup>

Since the 1990s, Burundians asylum seekers arriving in Tanzania have been granted *prima facie* refugee status. Until recently, they were admitted in accordance with the procedure described in the 1998 Refugee Act.<sup>57</sup> However, although *prima facie* recognition for Burundians is still in place, different procedures have been instituted in the various districts to screen persons coming from Burundi to claim protection in Tanzania, “which verge on the individualised status determination procedure”.<sup>58</sup> These procedures raise a number of legal issues.

Once at the transit centres, asylum seekers are subject by the government to a screening procedure, in order to identify cases of exclusion from refugee status. This procedure involves an assessment of each case on an individual basis. The UNHCR is most of the time excluded from this screening process even as an observer.

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<sup>56</sup> Refugees in Tanzania are supposed to be screened by the Refugee Eligibility Committee.

<sup>57</sup> *Prima facie* status is accorded to refugees, who are recognised as a group on the basis of the situation in their country of origin. This status is envisaged by the article 4(1)(c) of the 1998 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...”. As a result, when an asylum seeker arrives at the Tanzanian border from one of those countries and claim asylum, the authorities just have to verify their nationality and then the asylum seeker would be registered as refugee.

<sup>58</sup> UNHCR, Strengthening protection capacity project, “Identifying gaps in protection capacity – Tanzania”, by Professor Bonaventure Rutinwa, March 2005.

Amnesty International believes that these refugees may have had a valid fear of persecution in Burundi, and as such should have been considered *prima facie* refugees on the basis of the fact that their country is subject to “events seriously disturbing public order”, in the sense of article 1(2) of the OAU Refugee Convention or should have access to a fair and satisfactory asylum determination procedure.

#### *1.2.3.1. Personal identification and registration*

Refugees in Tanzania do not have identity cards. One MHA official told Amnesty International, “A legitimate refugee is one possessing a ration card,” although only one card is issued per family. Without individual registration and an identification card, refugees found outside the camps are likely to be mistaken (whether intentionally or not) for irregular migrants or bandits, and unable to prove themselves as refugees lawfully in Tanzania. The absence of an effective system of registration and identification thus makes them liable to pass longer terms in prison and pay heavier fines, as they would be judged under Tanzanian immigration rather than refugee law. “The police might tear up our permits to leave the camp, but they would never destroy an identity document”, one refugee commented.

Instead, refugees are identified by their ration cards. The head of the family (usually a male head) is identified on the card along with the number of family members, such that often only one person per family has any form of identification as a refugee. One UNHCR official observed, “The ration card shouldn’t be the determining factor in establishing refugee status.” In fact, it may be difficult not only to distinguish Burundian refugees from irregular Burundian migrants, but also to distinguish between local Tanzanians and Burundians, as they are closely related linguistically and culturally. UNHCR is now attempting to de-link the registration and identification of refugees (an issue for UNHCR protection staff) from the provision of humanitarian assistance by issuing individual registration cards that are not associated with the ration card system. By the admission of WFP and UNHCR officials, the refugee databases are in disarray and require thorough verification. Plot verification exercises took place in late 2004 as part of the effort to improve database management.

The usual procedure for registering as a refugee varies from place to place and by nationality, as not all nationalities receive *prima facie* refugee status; Burundian asylum-seekers are generally required to pass through transit centres before arriving in the camps to be screened and accepted as refugees, and then should eventually be accorded ration cards. However, Amnesty International delegates met a number of refugees who had spent months or even years in the camps without ration cards. Some of these individuals said they had not even been able to enter the transit centre, but had been chased away by Tanzanian security personnel. Others claimed they had been given bracelets indicating they had been successfully screened, but then were told at the camp that they had procured the bracelet through devious means and were refused proper recognition and accommodation. Another large category of “unregistered” refugees are those who have returned to Burundi, find that they still have security concerns or face grave socio-economic problems, and then return to Tanzania. However, after repeated speeches from Tanzanian district officials stating that once refugees left for Burundi they should not attempt to return to Tanzania again, these refugees hesitate to declare their presence to MHA authorities as they fear deportation.

Even some recognized refugees have apparently spent months if not years waiting for their ration cards to be issued or re-issued. The poor database management in the camps creates concerns that large numbers of “ghost” refugees may be claiming double or triple rations; on the other hand, hundreds if not thousands of unregistered claimants in the camps have been forced to survive without a ration card. One particularly frequent complaint was that children, including orphans, who arrived from Burundi after their guardians often encountered difficulties in having their presence reflected on the family’s ration card. These management deficiencies have led some refugees to resort to purchasing ration cards from individuals who spontaneously repatriate.

Unregistered claimants, particularly women and children, are exceptionally vulnerable to sexual coercion, rape and involuntary repatriation because of their precarious economic situation and legal status. Refugees accuse individual UNHCR national staff of corruption or of making unsuitable suggestions about how refugees might expedite the process of receiving ration cards. A UNHCR official acknowledged that, while those responsible for distributing ration cards are under supervision, there is considerable room for abuse of power. According to this official, international protection officers are aware of the allegations of abuse against their co-workers and are now taking on a more hands-on managerial role to help reduce incidents of forgery and corruption. The procedure for refugees to register complaints appears to differ between the various camps, with refugees sometimes able to raise complaints only with the same individual they accuse of having stolen their ration cards; however, UNHCR protection staff seems to be committed to improving the system and increasing transparency.

#### *1.2.3.2. Access to citizenship*

Refugees living in settlements are theoretically eligible to apply for Tanzanian citizenship, though the fee is a prohibitive US Dollar 800. Even if they requested a fee waiver, they would still have to pay US Dollar 200 to file the initial application, according to an Immigration Department official. A number of “first wave” refugees, including those born in Tanzania, told Amnesty International delegates that they had applied up to ten years ago, and paid full fees, without having received an answer. Many of these were traders who needed to be able to travel freely in order to conduct their business and import supplies to the settlements. An immigration official in Tabora (the main town in Tabora region, where Ulyankulu settlement is located) admitted to Amnesty International delegates that the region’s policy over the past few years had been not to grant citizenship to any Burundians, as the government was adopting a “wait and see” approach to judge whether the Burundians decided to return home.<sup>59</sup> An immigration official in Dar es Salaam provided Amnesty International with figures as to the numbers of Burundians granted citizenship in past years: according to his

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<sup>59</sup> Rwandese refugees were granted group citizenship in the 1980s, and then returned en masse to Rwanda in 1994 when the Rwandan Patriotic Front government took control. This experience is often raised by Tanzanian government officials, who are evidently hesitant to accord citizenship to Burundian refugees for fear of repeating the episode. Some Tanzanian officials apparently perceived the Rwandese refugees’ return to Rwanda as an affront to Tanzanian hospitality and express bitterness toward all refugees as a result.

statistics, from 1970 to 2004, only 1068 Burundians had been naturalised as Tanzanian citizens, whether refugees or otherwise.<sup>60</sup> (The total number of Rwandese naturalized over the same period was 950.)

The Tanzanian Citizenship Act of 1995 requires the applicant, *inter alia*, to demonstrate that “in, terms of his past and potential contribution to the national economy, scientific and technological advancement and to the national social and cultural welfare, he would be a suitable citizen of the United Republic”.<sup>61</sup> Immigration officials assured Amnesty International delegates that refugees, including small-scale farmers, could fulfil this criterion and that it is not on this basis that settlement refugees are being refused citizenship. Rather, Burundian refugees wishing to naturalize their status are confronted with the political reality that the Tanzanian government expects refugees to return to Burundi and has stalled the process of granting citizenship.

Refugees who throughout the years have lived in villages rather than established camps or settlements are deemed not to have legal status as refugees and would encounter even greater difficulties in filing a successful application.<sup>62</sup> Tanzanian government officials have told Amnesty International that it deems refugees living “spontaneously” in towns and villages to be illegal aliens. An immigration official in Dar es Salaam assured the Amnesty International delegation that group naturalization would not be possible and was not currently being considered. An attempt at group naturalization was apparently made in the early 1980s, but it foundered on lengthy, bureaucratic procedures as applications were transferred between the various strata of government. Additionally, some Burundians felt (and indeed still feel) great loyalty to their country and stated that they would not want Tanzanian citizenship.

### **1.3 Repatriation procedure**

#### **1.3.1. Voluntary repatriation - a process managed jointly by UNHCR and MHA**

The voluntary repatriation of Burundians from Tanzania to their homes is a cooperative process managed by UNHCR and MHA. Refugees must apply for repatriation and are then assigned departure days. Each camp has a maximum repatriation capacity of 500 people per convoy, of which usually two depart per week. This capacity constraint led to delays of several months between the dates of application and repatriation for some refugees at the height of the 2004 repatriation. Since then, the number of those signing up for repatriation has dwindled, though UNHCR has been under great pressure from the Tanzanian government to continue the weekly convoys in spite of the considerable resources involved in organizing them, both on the Tanzanian and Burundian sides. Some UNHCR officials told Amnesty

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<sup>60</sup> Interview with Mr. P.J. Ulungi, Assistant Director, Immigration Service, Dar es Salaam, 4 October 2004.

<sup>61</sup> Tanzania Citizenship Act, Supp 1995-2000, Second Schedule – Section 9(1).

<sup>62</sup> Immigration officials explained to Amnesty International delegates that refugees living outside of the recognized camps are considered irregular immigrants. However, under former Tanzanian President, Julius Nyerere refugees did not necessarily feel the same pressure to live in camps, and many of them intermarried with Tanzanians and settled in villages for social or economic reasons.

International delegates that the money spent on arranging scarcely populated return convoys could be better utilized in other areas of UNHCR's work.

Prior to the refugees' departure, UNHCR conducts a medical examination and should conduct a cursory interview to ensure that the refugee genuinely wishes to repatriate. At this point the refugee surrenders his or her ration card and is provided with a temporary identification form. The refugee is allowed to change his or her mind about repatriation until the last minute, even if that means unloading his or her baggage from the truck. Some refugees and UNHCR staff have noted that, at the height of the 2004 repatriation, proper registration and interviews were lacking, and that UNHCR could not have said with certainty why the refugees were departing. UNHCR is also meant to ensure that families are not being separated, but, due to slack registration procedures, may have repatriated many single men, thus splitting families and potentially creating unaccompanied children. According to UNHCR staff, the agency was under significant pressure from the Tanzanian government to organize repatriations quickly and may have foregone certain safeguards as a result.

On the Burundian side of the border, refugees are taken to a transit centre where their identity is confirmed, and where they receive an identity document and a three-month starter kit of food and supplies. They are then delivered to their province by bus. However, refugees are not always transported to their communes or districts of origin, forcing some of them to sell a part of their return packets to secure transport to their home areas.<sup>63</sup> The National Commission for the Rehabilitation of War-Affected People (CNRS)<sup>64</sup> is supposed to transport returnees to their home areas, but some returnees have reported that they have been obliged to make their own way from main provincial towns.

### 1.3.2. Accurate information regarding the condition in the country of origin

Voluntary repatriation should be an individual decision, made on the basis of impartial information. It demands the informed consent of the refugees who are to be repatriated. The UNHCR guidelines on voluntary repatriation state that refugees must have full knowledge of the facts and that the information they receive must be accurate, objective and verifiable.

UNHCR and MHA often told Amnesty International delegates that "the refugees know more about what is going on in Burundi than we do". While this may be true, refugees may not have the objective, detailed and appropriate information they need to make informed decisions about whether to return home. This fact is, one might argue, borne out by the number of refugees returning to Tanzania after repatriating to their home areas. It is very difficult to determine the number of Burundians who have returned to Tanzania again after repatriation, as they often return clandestinely for fear that they would otherwise be sent back to Burundi. Refugees appear to rely on radio, returning refugees and limited telephone contact with Burundi as their primary information sources. From these sources, they glean general information about the national events and political changes that might affect their security; however, they receive far less detail about events relevant in their community. For instance,

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<sup>63</sup> Provinces in Burundi are divided into communes, then districts and *collines*, or hills, the smallest administrative unit.

<sup>64</sup> Commission Nationale de Réhabilitation des Sinistrés.

many individuals who spoke to Amnesty International were not certain about whether their land and house had been occupied, or whether close family members were alive or dead. Land issues, particularly property reclamation, risk being the most contentious and dangerous facet of many refugees' return home. Other refugees had heard rumours or testimony about refugees who had returned, were accused of having participated in armed groups during their long absences from Burundi, and were subsequently arrested, "disappeared" or killed.<sup>65</sup> In the UNHCR-funded survey of "first wave" settlements, 79% of respondents had not returned to their homeland since becoming refugees,<sup>66</sup> a statistic that reinforces "first wave" refugees' dwindling awareness of present-day realities in Burundi. While many UNHCR staff members were enthusiastic about the "go-and-see" visits—during which delegations of refugees travel to their home countries to see how they find the conditions of return, these visits are not sufficient to address these substantial information deficits. Given that UNHCR has commissioned the human rights monitors from Ligue Iteka<sup>67</sup> to investigate conditions of return in Burundi, it would be appropriate for these monitors to be involved regularly in transmitting information directly to the refugees.

Another factor in refugees' decision-making is the intense lobbying done by Burundian and Tanzanian officials to encourage refugees to "return home to help rebuild Burundi", as several of the visiting dignitaries were quoted to have said. Senior Burundian officials, including provincial governors, were sent to the camps to reassure refugees about the security of their home and the capacity of the country's infrastructure to support their reintegration. These statements, loudly echoed by Tanzanian government officials, are received with considerable scepticism from many refugees. As will be described later in the report, services for ensuring the dignified reintegration of returnees remain extremely weak.

UNHCR officials in Burundi maintain that there is high-quality cross-border information exchange within UNHCR. However, many field-level UNHCR staff (both internationally recruited staff and Tanzanian nationals) in Tanzania as well as Tanzanian government officials concerned with refugee issues appeared poorly informed about recent security issues in Burundi, conditions in specific communities and, in many cases, the activities performed and services offered from humanitarian organizations in Burundi. They professed a reliance on the refugees to inform themselves. Several staff members conceded

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<sup>65</sup> Amnesty International delegates were not able to confirm reports of disappearance or arrest for suspected participation in armed groups. Refugees in western Tanzanian camps did provide delegates with a list of those who had supposedly been killed or "disappeared". Some returnees have reportedly been arrested in connection with specific crimes or, as described later in the report, arbitrarily detained as a result of contesting land or property seizures. Ligue Iteka's monitoring results indicate that the security situation for returnees is generally good.

<sup>66</sup> "Study on Burundian Refugees in Settlements in Tanzania", Economic Research Bureau, University of Dar es Salaam, UNHCR: March 2001, p. 31. Some refugees with whom Amnesty International delegates spoke indicated that they had attempted to return to Burundi in 1993 to vote in the elections, or after the first democratically elected president was inaugurated, only to flee again after his assassination provoked widespread killings

<sup>67</sup> Ligue burundaise des Droits de l'Homme – affiliated member of Fédération Internationale des Ligues des Droits de l'Homme (FIDH).

that UNHCR would not ordinarily facilitate repatriation to areas where UNHCR staff had no monitoring presence and was not itself able to return the refugees.

### **Conclusion to Part One**

The principle of voluntariness is the cornerstone of international protection with regard to refugee returns. It implies the absence of any pressure to return. Repatriation that does not fulfill the criterion of voluntariness violates the *non-refoulement* rule, enshrined in Article 33 of the UN Refugee Convention and Article 2 (3) of the OAU Refugee Convention, and generally regarded as a principle of customary international law.

It is also clear that conditions inside the refugee camps have themselves become so difficult that they are driving refugees to return home to a country whose infrastructure is still shattered by years of war and whose population remains unspeakably poor. Moreover, refugees remain the object of an aggressive propaganda campaign, conducted both by Tanzanian and Burundian government officials, as well as pressures from political groups who have visited the camps to recruit members and encourage refugees to return. In addition to posing risks to the refugees themselves, mass premature repatriation could contribute to destabilization in Burundi, where institutions designated to receive and reintegrate returnees remain weak, and many land issues—the spark of multiple conflicts in the past—have yet to be resolved.

UNHCR's July 2004-December 2005 Supplementary Appeal promises that “[o]nce UNHCR's assessment has confirmed that overall conditions in Burundi are conducive for return in safety and dignity, the Office will move from the facilitation to the promotion of return”. However, UNHCR officials admitted to Amnesty International delegates that they are not adhering to benchmarks (though an internal UNHCR document describing benchmarks does exist) and that “the line between facilitation and promotion of repatriation is thin indeed”, according to one official. The lack of clarity between facilitation and promotion is worrying, as the move from facilitation to promotion should impact resource allocations and programming activities. In addition, the blurred lines indicate to government signatories of the tripartite agreement that they will not be censured for aggressively promoting repatriation.

Some repatriating refugees have returned to Burundi and discovered that the reasons that initially led them to flee their country have not changed substantially, or have encountered new security or other threats. Some of these repatriated refugees consequently decide that their only viable option is to return to the camps. However, Tanzanian officials have made clear to refugees in speeches in the camps that once refugees leave Tanzania, they should not expect to return. In some cases, refugees have reported to transit centres, explained their situation and been allowed to resume life in the camps. Many others fear immediate *refoulement* and return directly and clandestinely to the camp, even without receiving a ration card. Tanzanian officials have given mixed messages to Amnesty International delegates: either that refugees will not be allowed to re-enter Tanzania legally once they have left, or alternately that they would in fact be allowed to stay in Tanzania upon their return if they followed proper procedures and explained their particular situation to relevant authorities.

Amnesty International is also seriously concerned that Burundian officials, representing the state from where people fled, are frequently present in the refugee camps and continue to encourage refugees to return to Burundi. Particularly given the historical and contemporary evidence that massive returns, with inadequate preparations, could provoke tensions.

## **2: Burundian refugees returning from Tanzania**

As described above, many refugees are choosing to return home in part because of human rights abuses and hardship they face in their country of refuge, not because they believe the situation in their home country has improved sufficiently. However, ongoing security and political problems threaten the sustainability of peace in Burundi, and many refugees who have spent years in exile expect to see these issues resolved before venturing back to their homes.

The focus of this section is the violation of economic, social and cultural rights of returnees, which were most frequently brought to the attention of Amnesty International. Returnees also face violations of their civil and political rights, including arbitrary detention and threats from government officials, which are sometimes provoked by land conflicts or by corruption in the administrative or law enforcement sectors. For instance, returnees may be detained or beaten by government authorities if they protest the seizure of their land or property. Returnees, like the rest of the population, are also affected by the persistent impunity of armed groups, including bandits and members of the governmental army, operating in various areas of Burundi. Refugees returning to Burundi often face more difficulties to realize their right to housing, food, education, health and livelihood. The denial of these rights threatens the durability of the repatriation and possibly the sustainability of the peace process in Burundi. UNHCR has stressed that “if the issue of sustainability of reintegration of refugee and displaced populations is not addressed properly, the countries concerned will almost inevitably slide back into conflict”.<sup>68</sup>

### **2.1. Concerns about security and stability in Burundi**

#### **2.1.1. Continuing fighting**

One armed political group, the National Liberation Forces (FNL)<sup>69</sup>, continued to fight in Bujumbura Rural and commit attacks on the outskirts of Bujumbura city, though they are under considerable military pressure and recently signed a ceasefire agreement with the government. During 2004, tens of thousands of people were internally displaced in Bujumbura Rural for months at a time.<sup>70</sup> Burundi has taken huge steps forward towards

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<sup>68</sup> “Dialogue on Voluntary Repatriation and Sustainable Reintegration in Africa: Sustainable Reintegration of Returnees and Displaced Populations in Africa (Discussion Paper N° 2)”, 8 March 2004, UNHCR, p. 1.

<sup>69</sup> *Forces Nationales de Libération*.

<sup>70</sup> Tens of thousands of IDPs returned home in December 2004 in Bujumbura Rural in a mass return. An OCHA official estimated the number of IDPs remaining in Bujumbura Rural in March 2005 to be

security and stability, particularly with the signing of the Global Ceasefire Accord between the CNDD-FDD and the Government of Burundi in October 2003, followed by the nominal integration of the army in January 2005. A United Nations peacekeeping force, *l'Opération des Nations Unies au Burundi* or United Nations Operation in Burundi (ONUB), has deployed around the country since the mission was authorized in May 2004 and has reportedly had a stabilizing influence, although human rights activists note that the troops are not particularly pro-active in ensuring security. ONUB was created "to support and help to implement the efforts undertaken by Burundians to restore lasting peace and bring about national reconciliation, as provided under the Arusha Agreement."<sup>71</sup>

### 2.1.2. Demobilization, disarmament and reintegration (DDR) process

For many refugees, the hallmark of sustainable peace remains the full integration of the army, including the high-ranking officers<sup>72</sup>. Presently, in spite of ongoing cooperation between the former government army soldiers and former fighters from armed political groups, the army high command has yet to be ethnically integrated. Many Burundians and outside observers view the integration of the army leadership to be the test of the durability of the peace process. Additionally, the demobilization process continues to raise tensions, with many former fighters cantoned in sites where they receive inadequate rations and other assistance, leading to repeated threats from former leaders of armed political groups that their troops will recommence fighting. By March 2005, 5,653 combatants were demobilized through the government program, including 1,853 fighters from the *ex-Forces Armées Burundaises* (Burundian Armed Forces or FAB), 3,464 CNDD-FDD combatants, and fighters from other armed political groups.<sup>73</sup> Human rights organizations have complained about the slowness of the demobilization process, as well as the corruption and indifference of some government officials involved with the exercise. Furthermore, discontentment has reportedly been growing among former government soldiers who deserted to fight with armed political groups, and who may be prevented from receiving posts in the integrated army, the National Defence Forces (FDN), because of their desertion.

### 2.1.3. Weapons proliferation and landmines

Weapons proliferation continues to be a significant challenge to peace in Burundi. While combatants are required to hand in their weapons as part of the demobilization process, not all combatants have opted to participate in the demobilization program, and weapons are still stockpiled around Burundi. A UNHCR official described her concern that members of armed

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between 5,000 and 10,000, but warned that the number could rise dramatically if military operations or attacks occurred in the province.

<sup>71</sup> For additional information, see <http://www.un.org/Depts/dpko/missions/onub/>

<sup>72</sup> The integration of the FDD into the Burundian army is part of the DDR process. The Pretoria Protocol of 8 October 2003 stipulates that the combatants of the CNDD-FDD and Burundi Armed Forces who are found to be ineligible to join the Burundi National Defence Force will be demobilized.

<sup>73</sup> Press statement, « État d'avancement des opérations de démobilisation », *Commission Nationale chargée de la Démobilisation, de la Réinsertion et de la Réintégration des ex-combattants*, 10 March 2005. 4,649 men, 386 women and 618 child soldiers have been demobilized through the Burundian government program.

political groups walked around in their home areas with their weapons.<sup>74</sup> Banditry, armed robbery, sexual violence, murder and other violent crimes have reportedly been increasing, in part because of the prevalence and availability of weapons, both from government forces deserting with their weapons and former fighters from armed political groups who keep their weapons, as well as Burundi's proximity to the war-zones in eastern DRC. In the past, government officials reportedly distributed weapons to their populations to protect themselves, or to night patrols charged with keeping the peace. Officials and army officers assert that they could easily recall all of these weapons, since they know to whom they were given. This claim is disputed by Burundian human rights organizations.

Landmines also represent a significant risk to returning refugees. Returnees are the least likely to know which areas were mined, and may also encounter mines in land that has not been cultivated or traversed for years. De-mining efforts have begun, with mine risk education in Burundi and Tanzania. The Tanzanian government has proved resistant to permitting mine risk education for refugees, possibly because Tanzanian officials are unwilling for refugees to receive information that could discourage them from returning to Burundi. It is critical that all governments involved in the repatriation exercise ensure that mine risk education is undertaken for returning refugees to ensure that they are not exposed to dangers from mines and unexploded ordnance.

#### *2.1.4. A fragile democratic process – the 2005 elections*

Another benchmark of stability for refugees is a successful, peaceful election. While refugees would like to vote from exile, many of those who have not yet returned to Burundi have suggested that they would rather wait on the sidelines and see whether the elections pass without violence.

The cautious approach of refugees vis-à-vis elections is grounded in historical antecedents. Many of the refugees in Tanzania fled after the assassination of Burundi's first democratically-elected president, Melchior Ndadaye, a Hutu, in October 1993. His assassination led to reprisal killings of thousands of Tutsi, followed by widespread massacres of Hutu that caused hundreds of thousands of mostly Hutu civilians to flee to Tanzania. In addition to their fear based on historical precedent, refugees are aware of ongoing political divisions as expressed by Burundian political leaders who visit the camps and settlements and described by reports on Burundian radio. Former leaders of armed political groups have returned from exile in recent months and have begun campaigning openly. They have at times made allegations intended to rekindle political rivalries and ethnic resentment and sometimes used language that runs counter to any spirit of reconciliation or peaceful cohabitation. Radio commentators and political leaders have repeatedly denounced various political parties for trying to drum up support on the basis of ethnic loyalties.

A referendum on Burundi's new Constitution was held on 28 February 2005, and was adopted with over 90 percent approval, with a high voter turnout. The vote is meant to be followed by a series of elections, culminating in the indirect election of the new Burundian

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<sup>74</sup> Interview with UNHCR official, Bujumbura, 13 January 2005.

president by Parliament. The referendum, monitored by international observers, occurred with very few incidents of violence and intimidation reported, and Burundians congratulated themselves on the smooth and peaceful referendum vote. However, Tutsi parties, who had been urging constituents to vote against the draft, complained that their partisans had been intimidated to vote for the Constitution. In Kirundo province, more than 500 people, including around 200 Batwa, reportedly fled to Rwanda or Tanzania shortly before or after the time of the referendum, citing intimidation by those campaigning in favour of the draft Constitution.<sup>75</sup> This episode illustrates that, in spite of the relatively straightforward referendum process, political events can easily provoke further displacement.

### 2.1.5. Sexual violence by State and non-state actors

In spite of the precariousness of the Burundian security context, Burundian and Tanzanian officials have repeatedly told refugees in Tanzania that “there are no longer any problems in Burundi” and tell Burundians that it is their duty to return and help in rebuilding. UNHCR on the other hand cautions about the downside of premature returns:

“[I]t is important for UNHCR and States to exercise caution in the timing of organized return movements. Whist [sic] the voluntary nature of repatriation remains a primary protection criterion, ensuring that returns are carried out in safety and dignity...is vital. Equally important in planning any voluntary repatriation operation is the need for adequate safeguards in terms of rights and sustainability, including access to justice, restitution of property and improved human rights conditions.”<sup>76</sup>

Sexual violence continues to affect all sectors of the population in Burundi—women, girls, men and boys. Cases of sexual violence committed in combat areas and within communities and families continue to be reported, as do cases of rape of very young children. While the issue is no longer taboo, much more remains to be done to reinforce the capacity of law enforcement officials, government administration, communities and the medical sector to prevent sexual violence, treat survivors adequately and prosecute the suspected perpetrators<sup>77</sup>.

## 2.2. Reintegration and reconciliation

### 2.2.1. Administrative issues for returnees

When facilitated repatriation began, returnees encountered difficulties in securing identity documents in Burundi, without which their mobility inside the country can be restricted. The identity documents are meant to be issued free of charge, but in practice government officials often ask for contributions, which returnees cannot always afford. UNHCR has begun issuing

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<sup>75</sup> Intimidation related to the referendum may only be one of several intersecting causes for their flight. Those who fled were reportedly from Busoni commune, where a drought has reduced some of the population to famine. A related situation in Kirundo province is described later in the report.

<sup>76</sup> Discussion paper prepared for the meeting “Dialogue on Voluntary Repatriation and Sustainable Reintegration in Africa” in Geneva on 8 and 9 March 2004: “Voluntary Repatriation in Africa”, p. 2.

<sup>77</sup> Amnesty International, *Burundi: Rape - the hidden human rights abuse*, February 2004 (AFR 16/006/2004).

cards to refugees returning with UNHCR facilitation with the assistance of the Burundian government, thus alleviating this problem. Spontaneous returnees, who do not pass through UNHCR transit centres, reportedly still must sometimes pay to acquire registration documents.

### 2.2.2. Social reintegration and reconciliation

Returnees do not face particular issues in cohabiting with their neighbours in most parts of the country, according to Ligue Iteka's monitoring and returnees' testimony. In some areas, such as Nyanza-Lac in Makamba province, returnees sometimes settle in camps for the internally displaced because no land or housing is available for them elsewhere; while having to settle in an IDP camp hardly represents a durable solution, the acceptance of predominantly Hutu returnees into mainly Tutsi IDP camps is an indicator of good cohabitation. In Gitega province, on the other hand, the population of certain largely Tutsi IDP camps are reportedly afraid of returning refugees, saying that they are the ones who killed their family members. In Karuzi province, monitors recount that the local community leaders, the *bashingantahe*, have made returnees pay fines to individuals who are allegedly victims of crimes the returnee committed. Sometimes these fines are so high that the returnees have to sell their lands, sowing the seeds for future conflicts.

### 2.2.3. Economic reintegration

Different forms of assistance are necessary for returnees to attain full economic reintegration. These may include the development of economic opportunities through micro-credit and job training, particularly for those who are landless, and distribution of seeds, farming implements and livestock to supplement food and income as well as provide much-needed fertilizer. Some returnees receive some of these materials which permit them to reach a level of self-sufficiency, either from UNHCR, UN partner organizations or NGOs, though the practices of humanitarian agencies are not consistent. The purpose of these interventions is not to create dependency, but rather to acknowledge the total absence of government or social structures available to assist returnees and the communities they live in and to respond adequately to allow returnees to achieve self-sufficiency in as short a time as possible.

Returnees should by no means be perceived merely as helpless and passive aid recipients. Amnesty International delegates encountered a variety of enterprising returnees who worked either independently or in cooperatives to generate income—particularly those who had no access to land. **Maison Shalom**, based in Ruyigi province, for instance, has helped returnees, internally displaced, former fighters and others to initiate income-generating activities, ranging from soap-making in Kabuyenge village to animal husbandry. A group of returnees in Rumonge, Bururi province, who had lived in Tanzania since 1972 had found empty land to farm (to which they had no title) and were growing tomatoes for sale, although they lacked the funds to purchase implements and fertilizer to increase their yields. Returnees from Tanzania brought many of the skills they had learned in exile and attempt to make a living; often they are hampered in their efforts because they lack the materials or capital to initiate their businesses. Many of these initiatives would benefit from external loans and assistance to be reinforced and enlarged.

#### 2.2.4. The challenge of “homecoming”

Many returnees’ relationship with their “home” country can be complicated and ambivalent. Many may have an idealized expectation of life in Burundi, only to be disappointed upon their return. They may remember Burundi primarily as a place of violence and may fear encountering their persecutors again. Friends and family may have died or moved away during their years in exile, leaving them with an insufficient social network and few points of reference. For many refugees, returning to Burundi can be less of a homecoming than merely a new displacement, particularly when their lands have been occupied, their houses demolished or their livelihood obliterated. Especially for those who left Burundi in 1972, returnees may find that social mores, administrative practices, community values, laws and other fundamental aspects of life have changed significantly since they fled.

Educated returnees also note that they have very limited access to jobs for which they are qualified and which they performed while in exile. They allege that many jobs were filled after the 2003 ceasefire by those with political connections, sometimes with inferior qualifications. Refugees who lived in Tanzania from a young age and followed the Tanzanian curriculum (particularly those who lived in villages rather than camps) encounter difficulties in accessing jobs, as their language of instruction was usually English, rather than the French that is used in the Burundian education system. In the interest of promoting reconciliation, the Burundian government should monitor the employment of returnees by its own agencies and by private employers, to ensure that returnees have equal access to employment opportunities.

Other returnees who occupied professional positions in Burundi complain that they are unable to access salaries that they were owed before they fled, as well as pensions and bank accounts. Burundian government institutions should ensure that these individuals are able to recover their assets.

UNHCR, the Government of Burundi, community leaders and other local actors need to provide support both to returnees and their communities to ensure that returning refugees are accepted and integrated smoothly to their place of origin or their new homes. Returnees may require mental health support in addition to material, judicial and administrative assistance.

### 2.3. Economic, social and cultural rights of returnees

Returnees are entitled to the realization of their economic, social and cultural rights on the basis of non-discrimination with the rest of the population. UNHCR recognizes that “one way of ensuring the sustainability of return of displaced populations is to pay attention to their legitimate social and economic needs as well as to those of civilian populations who never left their homes, but whose lives and livelihoods have also been destroyed as a result of the conflict.”<sup>78</sup>

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<sup>78</sup> Discussion paper prepared for the meeting “Dialogue on Voluntary Repatriation and Sustainable Reintegration in Africa” in Geneva on 8 and 9 March 2004: “Voluntary Repatriation in Africa”, p. 3.

### 2.3.1. The right to an adequate standard of living

#### 2.3.1.1. Land issues

Competition for land in Burundi, one of the most densely populated countries in Africa, is fierce, and the average size of Burundian farms today is a mere 0.8 hectares. Many farms were confiscated by the Burundian government or influential individuals following the massacres and flight in 1972, turned into parastatal plantations run by powerful families, such as the Office de l'Huile de Palme (OHP), producing palm oil. Land was distributed to landless Burundians or simply taken over by family members or other individuals. Much of the land was distributed to elite families from Bururi province, the centre of politico-military power in Burundi. Few refugees returned to contest the appropriation of their lands at the time, reportedly out of fear of retaliation. The widespread confiscation of Hutu citizens' land was a principal grievance of certain armed political movements that originated in refugee settlements.<sup>79</sup>

#### ***Housing, land and property restitution***

Burundians' livelihood still depends overwhelmingly on subsistence agriculture. The World Bank estimates the 2003 per capita GDP at 90 dollars.<sup>80</sup> The older generation of Burundians recalls a time when families were relatively wealthy, land allocations were sufficient to sustain large families and the soil was productive. However, the population of Burundi has roughly doubled every twenty years due to high birth rates, to the point where the average size of farmland has declined to 0.8 hectares, with a population density of 200 inhabitants per square kilometre.<sup>81</sup> Soil fertility has also decreased, due in part to overuse and to topsoil erosion on sloped farmlands. Forests and trees have been cut for firewood and housing or cleared for farmland, contributing to soil erosion and to drought. The cumulative effect of these phenomena has been a gradual reduction in the average size of individuals' farmland, reduced soil productivity and increasing tensions over land ownership and farming rights. The problem of land availability is particularly acute in certain areas of the country, for instance in Nyanza-Lac in Makamba province, where desirable lands near Lake Tanganyika are hotly contested, although much of the country faces similar constraints.

When returnees are unable to access land or housing, they often stay for prolonged periods with relatives, friends or neighbours. An August 2004 OCHA (UN office for the Coordination of Humanitarian Affairs) survey also found 196 households of Burundian returnees living in sites for the internally displaced, the majority of which were in Makamba province, noting that "[a]lthough the precise reasons for the presence of these families in the IDP sites are unknown, it is likely that they are remaining temporarily in the displacement

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<sup>79</sup> For more information, see, *inter alia*, "Réfugiés et Déplacés au Burundi: Désamorcer la Bombe Foncière", International Crisis Group, Africa Report N. 70, 7 October 2003.

<sup>80</sup> The World Bank Group, Burundi Data Profile, <http://devdata.worldbank.org/external/CPProfile.asp?CCODE=BDI&PTYPE=CP>.

<sup>81</sup> *Guide méthodologique de traitement des litiges relatifs aux terres et aux autres biens des sinistrés*, produced by the Commission Nationale de Réhabilitation des Sinistrés, in December 2004, p. 3.

sites while constructing a house in their place of origin and/or they are unable to access their place of origin due to insecurity or land tenure disputes”.<sup>82</sup>

### ***Access to land***

At a time when increasing numbers of Burundians are left landless and destitute, returning refugees are attempting to reclaim land that they left behind when they fled the country. In some cases, returning refugees find their lands vacant and unused, permitting them to begin cultivation without difficulties. However, other refugees return to find their land unavailable, for a variety of reasons. Some lands belonging to refugees were redistributed to other landless Burundians through government programs, including to Burundians internally displaced due to the armed conflict or human rights abuse. The government may have taken possession of refugees’ land to accommodate plantations or to construct schools or clinics. Returnees may also find that their land has ostensibly been sold, usually by family members pretending to be the owners of the land, without the consent or knowledge of the refugee. Finally, returnees may find that other landless Burundians, whether family members or strangers, have simply occupied their land when they found it vacant.

Refugees have fled Burundi for more than three decades. Amnesty International delegates noted that a large proportion of returning refugees faced difficulties in reclaiming their land, though those who fled more recently generally faced fewer challenges.

**Marthe Misago**, age 28, fled Kirundo province in Burundi in 1994. She returned to Kirundo in mid-2004 after her husband died of an illness in Tanzania, leaving her with four children. As she had no support system in Tanzania, she decided to repatriate immediately, without UNHCR assistance for transportation, though she was given a return package upon her arrival in Burundi. When she returned home, Marthe found that her mother-in-law had occupied her land and was threatening to kill Marthe if she attempted to take possession of the land. For several months, Marthe avoided starvation by working in exchange for food on her neighbours’ lands. She lacked the money to pay for her children’s school fees, sufficient food or health care. She sold her return package in order to rent a place to live, and sold her clothes to buy food for the children. Marthe asked the authorities to intervene in the land dispute in December 2004, after which time Marthe’s mother-in-law ceased threatening to kill her. Administrative authorities have promised that she would get her land back and be able to begin cultivating her own crops, though Marthe points out that she lacks the seeds needed to start farming.

### ***Effective remedies and risks***

When returnees are confronted with the occupation of their land, the process for presenting their grievances and reclaiming their land is not always straightforward. Some returnees were not (and are not) aware of how to initiate their claims. Others have found that their efforts to make use of official channels or obtain new land were thwarted by corruption, disinterest or unaffordable court fees.

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<sup>82</sup> “Study of Internally Displaced Populations in Burundi, March – August 2004”, OCHA Burundi, August 2004, p. 9.

Traditional community leaders, or *bashingantahe*, are generally the first port of call for those with land disputes. However, returnees complained that they lacked money to provide the offerings, such as a crate of beer, that *bashingantahe* often expect before they intervene. Many returnees expressed disappointment to Amnesty International delegates that the *bashingantahe* were often unable to reconcile the parties or often sided with the current landholder; however, Ligue Iteka monitors cite the important contribution that *bashingantahe* have made in mediating disputes involving returnees.

Many returnees would then proceed to request the assistance of local-level government leaders or would bring the case to the courts<sup>83</sup>. Many returnees with land concerns told Amnesty International delegates that fees or bribes were often required to initiate the procedures. The court processes were often very slow. Some returnees received favourable rulings from the court only to find that the judgment was never implemented: illegal land occupants were sometimes not evicted by court order in spite of having lost the lawsuit and hence their right to occupy the land. In some cases, magistrates requested fees from the returnees in order to conduct site visits and evict the former occupants.

**Joseph C.**, age 41, returned from Tanzania to his home in Kirundo in August 2004 after ten years in exile to find that his land had been confiscated. A local authority, the *chef de colline*, had conspired with the President of the Tribunal de Grande Instance to use his land to build a local association. When Joseph went to the Busoni communal administration to complain about the confiscation of his property, he was detained for two days in the communal jail. Since he has not been able to access his land, he has no place to grow food for his family. He and his wife now alternate going to the neighbouring province to work as day labourers. He has three of his own children and takes care of two children belonging to his younger brother, who is ill. The children (in their fourth, fifth and sixth years of studies) have all been chased from school because of their inability to pay school fees. Joseph states that as soon as he finds some money, he will go to the Minister of Justice and file a complaint, and emphasizes that he has no faith in the local authorities' ability to distribute land or humanitarian assistance fairly. He claims that any assistance destined for returnees or other vulnerable groups in his area is embezzled and sold in Rwanda. Joseph is the only member of his family left alive; his thirteen brothers and sisters were all massacred.

Returnees who fled Burundi in 1972 face the gravest challenges in regaining or claiming land. In most cases, their land was seized and redistributed by the Burundian government several years after they left the country. Furthermore, many of the 1972 refugees were small children when they left or were indeed born in exile to refugee parents. Some of them lost their parents at a young age and, as a result, lack precise details as to where their family's land is located, making it even more difficult for them to assert a claim. Their need for land in order to support themselves is however no less dire.

**Hagai M.**, age 48, fled Burundi in 1972 and returned in 2004, travelling across Lake Tanganyika to Rumonge in Bururi province. UNHCR was not facilitating repatriations to

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<sup>83</sup> UNHCR reported that 70% of legal cases in court in Burundi are property related. Reported at the 32<sup>nd</sup> Meeting of the Standing Committee (8–11 March 2005).

Bururi, so he and his family returned on their own. Everything he brought with him was stolen by Tanzanian militia en route. Hagai reports that he was refused any material assistance on the grounds that he had returned spontaneously. When he left Burundi, his family had two houses, five properties and many heads of cattle; now every parcel of land is occupied. He went to the local administration for advice, and was told to wait for a commission to decide on property allocations for landowners who fled in 1972. The commission has not yet been put in place. Meanwhile, Hagai, his wife and seven children live with a neighbour, completely unassisted.

A number of returnees have faced threats, violence or imprisonment when they have attempted to reclaim their lands. Many of those with land disputes reported receiving death threats when they visited their lands, including from family members. Sometimes this threat is enough to prevent the returnee from taking further action. As no protection is available from law enforcement officials if the returnee decides to take the case forward, the returnee may fear reprisal action and drop the case entirely. In some instances, local officials have been able to intervene successfully on behalf of the returnee. In a few cases, land disputes have actually erupted into violence.

**Sylvestre R.**, age 41, fled Burundi for Tanzania in 1994. He returned to Burundi in July 2003 after Burundian officials visited the refugee camp (Lukole B in Ngara region), saying that the situation in Burundi was stable and positive. When he returned home to Gitobe commune, he registered at the commune and was immediately arrested by the commune secretary, then held at Mukenke brigade for six months. His sister had “sold” his land to a third party after he fled Burundi. He brought the case to a tribunal, and in February 2004, the tribunal ruled in his favour, adding that he had to repay the 10,000 Burundian francs that his sister had received for the land. He repaid the money, and then went to re-occupy his land on 10 January 2005. When he arrived on his land, the current occupants ambushed him, seriously injuring him in a machete attack. He was hospitalized for two weeks (with assistance from the human rights organization APRODH), having sustained machete wounds to his nose, the back of his head, right wrist and wounds that destroyed his left eye. One suspected perpetrator was arrested and is in jail; a second was arrested but escaped from jail, and two others were never arrested. These two are at large in the commune, and Sylvestre does not know why they were not arrested. He remains very afraid of them, and as a result is still staying with friends, rather than re-occupying his land. His seventeen-year-old son, Ntakirutimana, and his brother, Rwaswa, have also received death threats in connection with the affair.

#### ***Dispute resolution and alternative solutions***

An employee of one international NGO that mediates in land disputes in Bururi province, warned of emerging conflicts over land, particularly those taken over by the government. “The administration needs to compensate returnees for land that has been expropriated by the government; otherwise there will be big problems. For instance, the parastatal Office of Palm Oil took a huge tract of land for palm oil production, although it had no right to the land. It promised to compensate people, but never did...The army, administration and parastatals all have interests in expropriating land for themselves. Various armed groups and political

leaders are now using this issue to try to stir up tensions in the region, telling their supporters that they have to fight to recover their lands”, he told Amnesty International.

The Commission for the Rehabilitation of War-Affected People (CNRS), which is responsible for reinserting and reintegrating refugees and other displaced individuals, has tried to address these concerns by issuing a methodological guide for resolving land disputes.<sup>84</sup> Organizations involved in assisting returnees have criticized the guide as unrealistic and inadequate, and noted that practitioners’ suggestions were generally not taken into account in its formulation. CNRS would like the provisions in the methodological guide to be legally binding, and the guide refers to the “jurisprudence” of earlier commissions on land and other goods.<sup>85</sup> Furthermore, the provisions of the methodological guide require affected individuals to be compensated for loss of land, property and wealth in cases where they are not able to recover their goods. However, CNRS will need to rely heavily on donor funding for such compensation schemes. Donors are likely to be wary of channelling their funds through CNRS, given the historical weaknesses of CNRS and bureaucratic challenges in the Burundian government more generally. Given the poor performance and lack of technical skills of CNRS in fulfilling its other duties, such as distributing housing materials, returnees and those assisting displaced communities are sceptical of the Commission’s ability to live up to its promises. In addition, few people believe that CNRS staff has the technical expertise to mediate land and property disputes.

In cases where the land is not available, the government is supposed to assist returnees in finding other lands. A survey was completed to identify available lands. These lands are supposed to be allocated expediently to returning refugees and other displaced individuals, with a priority on extremely vulnerable people such as the elderly, single women with children and the disabled. In practice, these groups of people do not necessarily benefit from priority treatment, and in some cases told Amnesty International delegates that they were unaware that they were supposed to be accorded special treatment. Returning refugees are sometimes initially unwilling to accept replacement lands, particularly as they often view the remaining lands as inferior to those they once had (for instance, as being sandy and unsuited to agriculture or on steep slopes) or because of an emotional attachment to their ancestral lands. In other cases, even when land is identified, returning refugees are not expediently settled into new lands, whether because of official corruption or simple inefficiency.

### ***Unresolved land issues***

Amnesty International delegates met a group of returnees in Kigwena village in Bururi, many of whom had returned to Burundi in 1991 or earlier and had never received land allocations. Most of the returnees or their parents had fled in 1972.

**Jacqueline M.**, a young woman with a small child, is living with her mother in the village. She was told that she could receive land, but that she would have to pay a bribe of 10,000 Burundian francs (less than 10 USD) to be included on the list. As she did not have the

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<sup>84</sup> *Guide méthodologique de traitement des litiges fonciers.*

<sup>85</sup> *Guide méthodologique*, page 8.

money, she was excluded. Other returnees confirmed that the administration did distribute land to returnees and internally displaced persons in 2004, but that only those who paid 10,000 Burundian francs had been able to benefit. **Boniface K.**, a middle-aged man in the same village, returned from exile in Tanzania in 1981 and tried to reclaim his land. When he did so, he was imprisoned for three months and accused of inciting others to violence. A village has since been built on his property, and he has yet to receive compensation.

Amnesty International delegates met another group of returnees in Bujumbura Rural in Rukaramu in Mutimbuzi commune. A group of about one hundred families had fled, repatriated or been refouled from DRC in 2000 to 2002. They had been living in a site for returning refugees in Gatumba, Rural Bujumbura, until August 2004, when a brutal attack occurred on the transit camp for Congolese refugees<sup>86</sup>. After the massacre, the camps were dismantled, and the returnees are now living in makeshift tents and huts, or in abandoned buildings just north of Bujumbura airport. CNRS reportedly promised them land in 2002, and officials have even shown the returnees the plots of land they are supposed to occupy. However, they have not yet been given the right to exploit the land, for unknown reasons; the returnees suspect that certain government officials may already have sold the land to other parties. Amnesty International delegates interviewed the Mutimbuzi communal administrator in person in January and by phone in March 2005. He claimed that the land would soon be given to the returnees, but that the commune is waiting for the assistance of the international community to prepare the land before it can be handed over, including the construction of a primary school. He also suggested that the commune needed to verify that they were all indeed Burundians, in spite of the fact that they had repatriation documents from UNHCR. In March, he noted that a management committee was being created to study the question of land allocation further. Meanwhile, these one hundred families are living in precarious conditions, month after month, without land to cultivate or food assistance, not far from the vacant lands.

Amnesty International delegates noted with concern that many returnees with land disputes who have already been in Burundi for years had not been able to reclaim their lands or receive land allocations from the government. It is difficult to imagine that the Government of Burundi will easily be able to facilitate the access to land for the hundreds of thousands of refugees remaining in Tanzania and DRC, given its apparent inability to cope efficiently with the needs of refugees who have already returned. Ligue Iteka, a Burundian human rights organization monitoring the reintegration of returnees for UNHCR in Burundi, has met with returnees and recorded their needs and problems related to reintegration since December 2002. The head of the returnee monitoring program approximates that over 90 percent of returnees whom Ligue Iteka monitors interviewed who complained that they were unable to

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<sup>86</sup> More than 150 Congolese refugees, mostly from the Banyamulenge ethnic group, were massacred on the night of 13 August 2004. A Burundian army position was located less than a kilometre away from the massacre site; the army claims that the position was attacked, preventing army units from protecting the refugees. The FNL armed political group claimed responsibility for the attack. However, the results of a Burundian government investigation have yet to be issued publicly, while a UN investigation points to the cooperation of Congolese armed groups. Amnesty International received reports from returnees who had been living at the site that army reinforcements were prevented by government soldiers from entering the site, making it appear (taken together with other evidence) that at least some members of the Burundian armed forces bear some share of the responsibility.

access land upon their return still remain landless. Monitors cite the inaction of CNRS, but say that CNRS has indicated to them that it should shortly begin land distributions.

### ***Political exploitation of land issues***

Returnees are certainly not the only individuals with a critical need for arable land. For instance, Burundians internally displaced as a result of conflict and human rights abuse are often unwilling to return to their original lands due to their fear of facing further instability and feel they have a right to inhabit lands that they perceive to be safe. In addition, the growing population requires some means to sustain itself. Politicians have been exploiting the land issue for their own political gains in the run-up to the elections, for instance by blaming their political rivals for mishandling the situation, thus exacerbating tensions. The land problem thus necessitates serious political discussions at the highest levels, aimed at identifying equitable, transparent and just solutions to the land issue, with substantial input and collaboration from the affected populations, not merely a series of ad hoc remedies, often facilitated by bribery and corruption at all levels.

Amnesty International delegates encountered a preoccupying situation illustrating the level of tension and potential for land-related conflicts in densely populated areas of Burundi. Delegates met inhabitants of Kabuyenge, a village in Ruyigi province just near the Tanzanian border. The village was populated by returning refugees, existing villagers and newly arrived families from Kirundo province, nearly all of whom were living with minimal food, poor shelters and poor access to education and healthcare. The families from Kirundo had fled their homes during or after October 2004, when tensions were building around a potential political crisis: Burundi's political transition was supposed to have ended by 31 October 2004, but it was clear that elections could not be held before that date. During October, there were rumours in Kirundo that the CNDD-FDD was planning to pre-empt the elections with military attacks. Some of the Tutsi population fled to Rwanda, in turn leading some Hutu to flee for fear of reprisals, mostly to other areas of Burundi or to Tanzania. Politicians and businesspeople in Kirundo reportedly played up the tensions, warning people that massacres could soon begin and urging them to sell their properties in order to have cash in hand, in case they had to flee. Some sectors of the population reportedly responded to these warnings by selling their assets, including land, property, food stocks and animals, at very low prices. Certain administration officials and businesspeople in Kirundo reportedly bought these goods very cheaply, benefiting handily from the panic in the population. Amnesty International delegates received reports of these events both in Kabuyenge and in Kirundo, as well as from the Centre de Paix pour Femmes in Ngozi, a project of Search for Common Ground, which had conducted investigations in Kirundo. Amnesty International delegates also spoke to the president of CNRS, Hon. Frédéric Bamvuginyumvira, former Burundian Vice-President, who acknowledged that there had been irregular property acquisitions. He stated that CNRS was not in a position to intervene to help those who had fled to regain their goods and property. In addition to the panic-induced flights, other inhabitants of Kirundo, particularly in Busoni commune, left their homes for Rwanda or to other areas of Burundi in order to escape drought conditions that led to malnutrition in the area, to the point where several individuals died of starvation. Many suspect that the drought is at least in part a result of environmental

degradation, particularly deforestation. The displaced people from Kirundo had come to Kabuyenge, and apparently continue to arrive there, because they had heard that there were available arable lands in the area. In reality, remaining vacant lands have already been occupied, such that the new arrivals to the area have been disappointed and left without any means of livelihood. This event illustrates not only the corruption and manipulation of certain government officials who are meant to be involved in mediating land disputes but also the ease with which rumours in Burundi can be manipulated to create serious and lasting conflict related to land ownership, as well as dispossession, famine and flight.

### *2.3.1.2. Right to adequate housing*

#### ***Ruined or unavailable lodging***

Those returnees who are able to return to their property almost inevitably find that their houses have been destroyed due to fighting, weather and/or neglect. UNHCR estimates that 40 to 60 percent of returnees have no immediate access to housing.<sup>87</sup> Lacking the means to rebuild, they look to local authorities, UNHCR and humanitarian organizations to provide assistance, particularly for durable roofing materials without which adobe-brick homes inevitably collapse in the rainy season.

In other cases, returnees have found their houses still standing, but occupied by other people, in many instances by family members. In these cases, returnees may attempt to find officials to mediate in the conflict, as with land disputes. However, given that the conflict over housing is often intra-familial, returnees often attempt to find an alternate solution, often waiting, sometimes for years, for the government to assign them other plots of land and assist with building materials.

#### ***Reconstruction assistance***

In many cases, returnees reported that CNRS, NGO or local administration officials had told them that they would receive roofing once they had built the foundations and walls of their houses; they did as they were told, only to find that roofing material was not forthcoming. In many instances, their handiwork was destroyed by rains before the roofing material was provided. Amnesty International found that the procedures for providing roofing and other housing assistance via CNRS are often unclear, inconsistent, poorly managed and inadequately resourced, though of course there are partner organizations working efficiently to provide high-quality housing. In many cases, corruption at the local commune level meant that returnees could only access assistance such as roofing materials if they paid bribes. In such a system, the most destitute returnees become those most likely to be excluded from assistance schemes.

As with land allocations, the individuals deemed most vulnerable (such as widows, single mothers and disabled individuals) were ostensibly supposed to receive priority assistance, but in practice were often unable to benefit from such assistance or had never been informed that they were entitled to receive it.

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<sup>87</sup> Interview with UNHCR official, Bujumbura, 13 January 2005.

### ***Environmental implications***

Several humanitarian assistance organizations also emphasized the environmental impact of cutting the many trees necessary to build sturdy houses. They stressed the need for replanting to compensate for the adverse effects on the environment and agriculture, including topsoil erosion and increased drought. It is essential that humanitarian actors intervening in Burundi undertake the same kinds of efforts to protect the environment and promote sound environmental practices as were eventually adopted in western Tanzania, following massive deforestation by refugee populations. These practices are particularly important given the apparent connection between environmental degradation, drought and low soil productivity, which can in turn provoke further flight or conflict.

#### *2.3.1.3. Right to adequate food*

### ***Content and distribution of return packages***

Food aid is provided to returnees by the UNCHR by means of a return package that is meant to last for three months.<sup>88</sup> Invariably, Amnesty International delegates found that returnees had consumed the food assistance within one or two months. Some UNHCR officials alleged that the food lasted for such a short time because returnees would give some to other villagers; still, the majority of UNHCR officials acknowledged that the return package indeed was insufficient to last for a full three months even if consumed by the returnees alone. Some returnees acknowledged to Amnesty International delegates that they had been forced to sell some or all of their return packages in order to secure transport from the centre of the commune to their home hills, to pay for rent if they were unable to secure housing, to pay for medicine, or to satisfy other basic needs.

The food assistance is given to assist refugees during the time it takes them to plant and harvest their first crops. However, the time to prepare the fields, plant and harvest inevitably takes longer than three months and can take significantly longer if the refugee has returned during the dry season. This deficiency leaves the returnees dependent on hand-outs from neighbours or, occasionally, on rare deliveries of additional humanitarian assistance. The difficulty in accessing food assistance is of particularly grave concern for returnees who have not obtained land and have not been able to grow their own crops. As UNHCR officials have themselves noted that a three-month return package is inadequate to meet returnees' basic needs, international donors should support UNHCR in providing a minimum adequate amount of food assistance until the returnee becomes effectively self-sufficient.

Furthermore, Amnesty International has observed inconsistent approaches regarding which returning refugees are eligible for return packages and other assistance. Sometimes UNHCR and CNRS limit their assistance to returnees who lived in an official UNHCR camp and refused assistance to those individuals who lived outside of these camps.<sup>89</sup> In other cases,

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<sup>88</sup> This package also contains a variety of non-food items such as blankets, cooking pots utensils, clothing and seeds to ease the burden of their reinsertion into their communities.

<sup>89</sup> Some Burundian refugees lived outside of refugee camps in order to pursue economic or social opportunities, among other reasons; others arrived in Tanzania at times when the camps were not

UNHCR provided assistance to individuals who had lived outside of the refugee camps, on the condition that they could provide documentary proof that UNHCR deemed acceptable of their previous residence in Tanzania. UNHCR officials stated their concern that Burundian villagers who are not returnees otherwise attempt to benefit from the food packages if stringent identification measures are not employed, thus diminishing the resources available to returning refugees. As UNHCR itself stresses in its documents, an important way to foster reconciliation and sustainability of returns is to ensure that one group is not perceived to be privileged over another.

### 2.3.2. Right to health

#### *2.3.2.1. Specific health concerns for returnees*

Without land, adequate housing and access to clean water, returnees are more vulnerable to security threats and at greater risk of malnutrition and serious illness. The health consequences are of particular concern because access to healthcare is so limited and inconsistent in Burundi. Médecins Sans Frontières (MSF) notes that, on the basis of three epidemiological surveys MSF conducted, the “[crude mortality] rates are higher than the threshold of 1 death per 10.000 persons per day, and indicate an emergency situation”.<sup>90</sup> In theory, returnees are entitled to three months of free healthcare, however, the government as well as the communities to which they return are often too poor to subsidize their healthcare and, in practice, do not waive the fees. In some areas, returnees are temporarily able to obtain free healthcare at medical centres funded or supported by international humanitarian organizations. Returnees are eligible for free care for only a limited time, after which they are expected to pay fees that are often beyond their means (except in areas where healthcare for the general population is supported by international organizations).

Health officials have commented that in many cases returnees were in better general health than the Burundian population as a whole, because they had access to high-quality, free healthcare in the refugee camps. However, officials acknowledge that returnees’ health conditions often deteriorated rapidly due to the increased likelihood of getting respiratory illnesses, skin infections or malaria—the leading cause of mortality in Burundi—due to the poor quality or lack of housing upon their arrival, leaving them vulnerable to cold, rain and malaria mosquitoes.

#### *2.3.2.2. A worrying situation country-wide*

The healthcare situation for all Burundians remains preoccupying. The strategy of the Ministry of Health is to push for managerial and financial autonomy of health centres around Burundi, even though the local population cannot afford to pay for adequate services. MSF’s research indicates that “[t]he cost recovery system is applied in four-fifths of the country and

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accepting new refugees and were essentially obliged to settle in Tanzanian towns and villages. The Tanzanian government maintains that those Burundians living outside of the camps are in fact irregular migrants.

<sup>90</sup> “Access to health care in Burundi: Results of three epidemiological surveys”, Médecins Sans Frontières, April 2004, p. 6.

concerns around 5 million people. In this almost generalised system in Burundi, almost one-fifth of the population (17%) does not have access to any healthcare whatsoever, principally for financial reasons (82% of sick people have not consulted a medical facility or professional because of a lack of money). This means that almost one million people do not have access to health care in Burundi”.<sup>91</sup> The report also stresses that “[e]ven among patients who are seriously ill, 14.5% do not attend a consultation, mainly due to lack of money”.<sup>92</sup>

#### *2.3.2.3. Little special assistance for returnees*

The hospital in Rumonge, Bururi province has two doctors, one funded by an NGO, and one of whom is also the hospital administrator. One of the doctors acknowledged that returnees generally have to pay for health services. “If they really have no money, we tell the hospital administrator and he sometimes finds a way to subsidize the poorest people for serious cases, whether or not they are returnees, but not always... And everyone has to pay for medicine.” Ligue Iteka registered 1468 returnees in September 2004, of whom 553 (38 percent) had no access to healthcare. In Bururi province, 76 percent of returnees registered had no access to healthcare, with high percentages of returnees also lacking healthcare in Rutana, Karuzi, Muyinga and Kirundo. In addition to the user fees that hamper access to healthcare, some areas of the country lack sufficient infrastructure to provide basic treatment.<sup>93</sup>

Health workers agree that, without the support of NGOs, the system would collapse. An official from CORDAID, an NGO supporting medical care in several provinces, noted, “The idea was for the communal administration to pay for vulnerable individuals to be treated in the hospitals, but in reality, the hospitals are not autonomous and can’t even pay their own staff. After four years of autonomy, the state owed money to the hospitals, leading to situations where the hospitals were seriously under-funded and patients were detained in the hospitals until their families could find the money to pay for their care.”

In Kabuyenge, in Ruyigi province near the Tanzanian border, Amnesty International delegates visited a village of approximately 1200 to 1500 people with a significant number of returning refugees. In the previous week alone, two women and one child had died of preventable causes before they had been able to reach the closest health centre, several hours’ walk from the village. One of them, **Madeleine N.** and her baby died of complications during childbirth on the way to the health centre, leaving her husband to take care of their remaining children.

#### *2.3.2.4. Health problems aggravated by poor access to clean water*

Many areas of Burundi suffer from a lack of available clean water, causing much of the population, particularly women, to travel long distances to collect water, which is often dirty. Several organizations are engaging in infrastructure programs to facilitate the population’s access to water. The lack of clean or treated water has caused Burundians, including refugees,

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<sup>91</sup> Ibid., p. 45, emphasis in original.

<sup>92</sup> Ibid., p. 6.

<sup>93</sup> “Rapport de monitoring du rapatriement, Septembre 2004”, Ligue burundaise des droits de l’homme ITEKA, Bujumbura, November 2004, pp. 8-9.

to suffer from a variety of water-borne diseases. Many returnees reported that their children were afflicted with diarrhoea and other illnesses. Returnees all over the country implored Amnesty International officials to lobby on their behalf for development projects to ensure the availability of clean, accessible water.

### 2.3.3. Access to education

Another major concern of returning refugees that also affects other Burundians is the acute lack of educational possibilities for their children due either to poverty or to the excessive distance of schools from the returnees' residence. Returnee children are ostensibly entitled to free primary education for a limited time under the terms of the Tripartite Agreement, and are likewise eligible for being considered as "indigents" necessitating educational subsidies for secondary school.<sup>94</sup> However, as with healthcare, the financial burden falls on the communities themselves as the central government provides extremely limited support. Communities are typically too poor to subsidize returnee children's education, and as a result, parents must pay even for primary education. Returnee children, whose families are denied avenues for economic reintegration, are thus even less able than other families to pay such fees. Returnee children are either denied access to education altogether or subject to being sent home from school when the school administration decides that the child must pay. School materials such as notebooks, pens and uniforms are often beyond the reach of returnee families as well as the general population, particularly given the large numbers of children in many families. As in many other countries, girls are often the most likely to suffer from a lack of educational opportunities and be required to work at home.

The proportion of returnee children attending school has apparently increased since facilitated repatriations began, according to human rights monitors' assessments. Of school-age returnee children registered by Ligue Iteka monitors in June 2003, 265 out of 751 did not have access to a school (due to distance or destruction of schools), while an additional 343 out of 751 could not attend school due to an inability to pay school fees. By April 2004, only 67 out of 463 children did not have access to a school, while an additional 172 out of 463 could not attend school due to an inability to pay school fees.<sup>95</sup>

### 2.3.4 Groups at particular risk of human rights violations

#### 2.3.4.1 Women

Female returnees encounter a variety of gender-related social problems upon their return from exile or prior to their departure. Refugee and returnee women whom Amnesty International delegates interviewed both in Burundi and Tanzania described having been left by their partners when they were returning to Burundi. The refugee men sometimes had wives waiting

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<sup>94</sup> Returnee children do not automatically qualify as indigents; a communal council (Conseil Communal) is responsible for determining criteria for indigence and verifying the eligibility of those requesting assistance. See *Ordonnance Ministerielle N. 610/530/607 du 13/08/2001 Fixant les Modalités de Scolarisation des Jeunes Indigents*, Ministère de l'Éducation, Cabinet du Ministre, Burundi.

<sup>95</sup> Returnee monitoring reports, June 2003 and April 2004, Ligue burundaise des droits de l'homme ITEKA.

for them in Burundi, and so left women with whom they had relationships in Tanzania, often with children, with economic and psychological difficulties. Other women were widowed while in Tanzania, divorced due to maltreatment or in other ways became heads of households. These women often face significant challenges upon their return to Burundi, particularly in finding adequate housing, a means of securing their livelihood, sufficient food for themselves and their children and school fees. These difficulties put women heads of households and their children at a particular risk of hardship and subjection to gender-based violence.

**Immaculée S.**, age 44, fled to DRC, returned to Burundi and fled again in 1995 to Tanzania. She returned on 24 January 2005, and Amnesty International delegates met her in Rumonge just after she had gotten off the pirogue that brought her from Tanzania. Five of her ten children died of illnesses in Tanzania, as had her husband. She returned to Burundi with one child, and left the others in the care of neighbours in Tanzania. She knows that her land and property in Burundi have been occupied, and is not sure how to go about reclaiming her property. She has no food, money or livelihood, but found life too difficult to stay in Tanzania. She hopes that her husband's family will be welcoming and give her a piece of land to farm, so that she can tell her remaining children in Tanzania to join her.

Security Council Resolution 1325 on women, peace and security, adopted in October 2000, calls on "all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction" (paragraph 8). Those "involved in the planning for disarmament, demobilization and reintegration" are urged "to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants" (paragraph 13).

#### *2.3.4.2. Unaccompanied minors and youth arriving in Burundi for the first time*

Unaccompanied children<sup>96</sup> and young people who were born in Tanzania also face great challenges upon their arrival. Some people were either born in Tanzania or else were orphaned there, before they were of an age for the parents to tell them about their homes.

**Roger**, a young man who was born in Katumba refugee settlement in central Tanzania, returned to Makamba province in September 2004. He had been orphaned in Tanzania, and UNICEF and Caritas-Tanzania took care of him until he turned eighteen. He found a wife and had several children in Tanzania, and later decided to return to Burundi. Someone in a refugee camp told him that he came from Kayogoro commune in Makamba province, but he does not know where in the commune, so has been unable to identify his ancestral land or home. Upon his return to Kayogoro commune, he and his family spent ten days sleeping under a tree, and were asking people if they knew his place of origin. Now, he and his family are living with other families and doing daily labour, but are often chased out of their temporary shelters and need to find a new place to stay. He has no money to buy

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<sup>96</sup> Children under 18 years of age who are separated from both parents and are not being cared for by a guardian or another adult who by law or custom is required to do so.

clothes or send his children to school, and sometimes makes plans to return to Tanzania, as he finds life in Burundi too difficult.

#### *2.3.4.3. Other individuals with special needs*

Other individuals, such as those with physical or mental disabilities and the elderly, also face significant challenges in finding adequate support and livelihood. Those with physical disabilities reportedly have problems even reaching their homes, as they are not always transported all the way to their hills but rather left at the communal centre. Without loans and training to establish a means of earning a living, returnees with disabilities often live in dire circumstances. Elderly returnees do not find the support network they would have expected, because their extended families have left the area, been killed during the war, or died from other causes. Without humanitarian assistance, they are often at the mercy of their impoverished neighbours to provide them with food and other necessities.

### **Conclusion to Part Two**

Voluntary repatriation operations must guarantee that refugees are able to return home in safety and with dignity. Return in safety ensures the legal safety, physical safety and material security of returnees during the repatriation exercise and through their reintegration into their country of origin or nationality. A return in dignity guarantees that returning refugees are treated with respect and full acceptance by national authorities.

Amnesty International strongly questions whether the conditions of a return in safety and dignity are met in many regions of Burundi. A national NGO regularly highlighted the very poor socio-economic conditions to which refugees return, the absence of adequate mechanisms to address the need for housing, land and property restitution and related concerns, and the particular challenges faced by extremely vulnerable individuals returning to Burundi, among other issues.

The Burundian government must exercise the political will to find a rational, just and transparent solution to land issues; the issue requires not only a series of ad hoc solutions but an equitable discussion at the highest levels of government. Corruption at all levels of government administration and in the judiciary need to be tackled to ensure that returnees' economic, social and cultural rights, and indeed the rights of all Burundians are respected and that aid distributions proceed fairly and transparently.

Burundi requires an immediate infusion of resources and technical expertise to support rehabilitation of returning refugees' homes, to reconstruct schools and hire educators, to reintegrate and support those unable to provide for themselves due to real constraints on land and capital, and to rehabilitate and stabilize the desperately inadequate healthcare system in the country. The problems affecting the reintegration of returnees are symptomatic of challenges faced by the general population. This reality speaks to the urgent need to infuse significant resources into rehabilitating and rebuilding Burundian infrastructure and addressing the root causes of poverty.

Amnesty International recommends that urgent measures be put in place to ensure that returns are both fully voluntary and sustainable over the long-term. The failure to resolve

the root causes of the conflict causing individuals to leave their home countries and to ensure their socio-economic reintegration in fragile post-war situations like Burundi invites the risk of renewed conflict. Hence, there must be a commitment to ensuring conducive socio-economic conditions and development in areas receiving returning refugees as well as adequate living standards in refugee camps to ensure that refugees are not being prematurely “pushed” out of Tanzania.

### **3. Burundi as a country of asylum**

#### **3.1. Movement of Rwandans across the border with Burundi**

While Rwandese have started seeking asylum in Burundi since January 2005, they began fleeing in mass with the advent of the eleventh anniversary of the genocide (6 to 7 April). Since April 2005, approximately 10,000 Rwandans have sought asylum in Burundi. Close to 2,000 of these asylum seekers were initially located in the transit centres of Mishiha commune, Cancuzo province and Songore, Ngozi province where they received a small amount of international protection and humanitarian assistance. Most of the remaining asylum seekers were located in seven sites along the Rwanda – Burundi border where international protection and humanitarian assistance were virtually non-existent. By early June most of the asylum seekers were concentrated in Songore transit centre as the other sites had been closed by the authorities. Many Rwandese reportedly fled the ongoing work of the *gacaca* tribunals, which are currently gathering information about crimes committed during the 1994 genocide in Rwanda. Others cited threats of intimidation, persecution and rumours of revenge as reasons for leaving Rwanda.<sup>97</sup>

Amnesty International expressed its concerns that the asylum seekers were at risk of forcible return (*refoulement*) without regard for the guarantees and conditions set out in the 1951 UN Refugee Convention and the OAU Convention on Refugees. This concern derived from the generally poor standards of refugee protection in the Great Lakes region, hostile comments from the Rwandese government, including the Rwandese government’s labelling of the asylum seekers as “fugitives from justice”, decisions taken by the Burundian government to prevent the transfer of Rwandese asylum seekers to safe transit centres or refugee camps away from the border and reports that verbal pressure and physical coercion are being used by Rwandese and Burundian government authorities to force people to return to Rwanda.

These concerns of *refoulement* were confirmed when on 12 June the Rwandan and Burundian governments stated that the asylum seekers were considered to be “illegal immigrants”. The asylum seekers were informed that they would have to return to Rwanda by 14 June and that force could be used if they would not comply.

To forcibly return asylum-seekers who have not had access to fair and satisfactory asylum procedures would be in circumvention of the principle of *non-refoulement*, as would

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<sup>97</sup> See United Nations High Commissioner for Refugees (UNHCR) press release “Intimidation reported as Rwandans return from Burundi”, 13 May 2005.

the introduction of any coercive measures, including denial of even minimum levels of economic, social and cultural rights, such as through restricting access to health care and education; or the use of verbal or physical threats or abuse aimed at “inducing” people to return.<sup>98</sup>

Given domestic political tensions in Burundi and Rwanda, Amnesty International is concerned that there will be increasing pressure to forcibly repatriate the new asylum-seekers before they have had access to fair and satisfactory asylum procedures. AI remains concerned that in the absence of any effective measures to address the human rights concerns that led these people to flee Rwanda, the risk of being subjected to serious human rights violations upon their return to the country remains very high.

### 3.1.1. A flight from justice? : the question of the Gacaca jurisdictions

There are conflicting reports as to why the refugees fled Rwanda. The Rwandan government claims that the refugees are fleeing *gacaca* - a community-based system of tribunals, based upon a customary system of community hearings used to resolve local disputes, established to prosecute the crime of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994. It is possible that some of the individuals who have recently fled Rwanda might have participated in the genocide. Many, however, complain that in the current phase of pre-trial information gathering, they have found their names on the list of those suspected of having participated in the genocide without knowing why and without being given the time to explain their case.<sup>99</sup> There are also asylum seekers as yet unnamed in the *gacaca* sessions who fear that they could be falsely accused of participation in the genocide for reasons of personal enmity or economic gain. There are even cases of individuals who are fleeing not because of their alleged participation in the genocide but because they are afraid of testifying, possibly endangering their lives, during the *gacaca* sessions.

The Rwandese question the fairness of the judicial system that exists in their country.<sup>100</sup> Rwanda has repeatedly violated fair trial guarantees, including the right to be presumed innocent until guilt is proven in a court of law whose proceedings meet international law and standards. The fact that individuals are arrested and unlawfully held for years on unsubstantiated, uninvestigated allegation(s) has not only fostered false allegations, including the rise of “syndicates of denunciation” who falsely accuse individuals for a price, it has instilled a climate of fear among the general population.

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<sup>98</sup> See Amnesty International Public Statement “*Burundi: Rwandan asylum seekers should have access to fair and satisfactory refugee determination procedures*”, 19 May 2005 (AI Index AFR 16/004/2005).

<sup>99</sup> In an attempt to ensure the security of witnesses, witnesses have been allowed to give their statements in camera [*huit clos*]; their name and signature are not included in the written records. The names of those alleged to have participated in the genocide are then publicly read during the *gacaca* sessions.

<sup>100</sup> See Amnesty International’s Report “*Gacaca: A question of justice*”, December 2002 (AI Index AFR 47/007/2002) and “*Rwanda: The enduring legacy of the genocide and war*”, April 2004 (AI Index AFR 47/008/2004)

With the launch of *gacaca* nation-wide in March 2005, a number of high-ranking Hutu in the military, parliament and civil administration have been interrogated in *gacaca* sessions. Many Rwandese have related their fear to Amnesty International delegates that this critical examination of high-ranking Hutu will extend to all Hutu.

F, 45 years old, came in April from Mugombwa district, Butare province. “They can send us to jail without a reason. They say that we participated in the genocide. The Government of Rwanda wants to chase after the Hutus by saying that the Hutus are lawbreakers. ...What causes fear is the fact that they can arrive by night and kill you without motive. I know people that have disappeared. I don’t fear the Gacaca, but I think that there are lots of false declarations.”<sup>101</sup>

### 3.1.2. Fear of persecution and violence

The vast majority of individuals that Amnesty International delegates talked with during a recent mission to Rwanda, and confirmed from testimonies from asylum seekers in Burundi, left Rwanda because of a stated fear that they were about to become victims of well-planned revenge attacks against them as “Hutu”. In Butare province, which provided an estimated 85 percent of the refugee exodus, rumours seemed to be based on the simultaneity of the nation-wide launch of *gacaca*<sup>102</sup>, the reburial of genocide victims linked to the eleventh commemoration of the genocide and the arrival of Burundian refugees.<sup>103</sup> Given the climate of fear and perceived linkages between the above events, virtually any human rights violation or out of the ordinary, unexpected event could serve as a catalyst for the flight of whole communities. Catalysts related to Amnesty International delegates include the rape of a woman by a member of the Local Defence Forces (LDF), an alleged “disappearance” or murder, frequently cited in Mugombwa district, the arrival of soldiers or even a Ugandan collecting scrap metal.

The Rwandese government has blamed armed political group members and corrupt local authorities for the creation and dissemination of the rumours that led to people’s flight but provided no evidence to Amnesty International delegates to substantiate these claims. It appears, from the testimonies of those that fled Rwanda, that it was more the climate of on-going human rights abuses and fear in Rwanda, hard-line statements made in the government-controlled media and perceived discrimination in government policies that fostered the widely circulated rumours of revenge attacks against a certain portion of the Rwandese population.

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<sup>101</sup> Testimony from asylum seeker, Songore, Ngozi province, 26 May 2005.

<sup>102</sup> Executive Secretary of the Gacaca Department, Domitilla Mukantaganzwa announced to both chambers of parliament in mid-March that 668 people (including four members of parliament) holding leadership positions in Rwanda have been implicated in the 1994 genocide. Mid-March also saw public statements by her that 35 percent of the *gacaca* magistrates have been accused on participation in the genocide and were asked to resign.

<sup>103</sup> Immediately prior to, during and following the 28 February 2005 constitutional referendum in Burundi, over 800 Burundians sought asylum in Rwanda, citing increased tension in the country. These refugees were located in Gikonko Transit Centre in Butare province.

**R.** comes from Kibingo district, Butare province. She is 41 years' old, mother of seven children. She crossed the border with the children and her husband on 18 May. "I've come here because of the insecurity. We saw soldiers coming to our hill. I heard rumours saying that they have come to our hill to harm us".

"The administrator communal (local authority) of our region in Rwanda came here (to the transit camp in Mihigo site) two days ago. He told us to come back. He said that we are fleeing from starvation. I have not left my house because of hunger. I have an abundant harvest in my house. Some of us left by force. They came back later to Burundi with many others" <sup>104</sup>.

**E.** is 34 years' old, a mother of four children. She came from Kibingo district three weeks ago [early May]. She holds her youngest baby, born in Burundi a week ago, in her arms. "I left Rwanda because of insecurity. Local administrators treat the population badly. They are going to kill us. The administrators say that we disobey. They are bad tempered. I have received no threat in Burundi. If during the Gacaca meetings you point your finger to no one you are directly punished. I have enough to eat at my home. There is the remains of the harvest: sorgho, beans, soya."

**D,** 38 years' old, is mother of eight children. She arrived from Kibingo district in mid-May.

"I've come because of the insecurity. When I was at home I was afraid. I have heard that people have been taken by night and "disappeared" in Mugombwa, district. We are told that even the children that were born in 1994 are guilty. At home I have food because now it's the moment of the harvest. I do not figure in the Gacaca lists but they say that each Hutu has killed. Even if you are not in the list, you are supposed to have seen people killing." <sup>105</sup>

### **3.2. Governments' pressure**

The Government of Burundi initially started to register Rwandese asylum seekers and requested UNHCR to provide humanitarian assistance. UNHCR requested the transfer of asylum seekers to transit centres away from the border, in order to ensure their security and provide assistance. <sup>106</sup> The transfer of Rwandese asylum seekers to the transit centres of

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<sup>104</sup> Testimony from asylum seeker, Mihigo, Ngozi province, 25 May 2005.

<sup>105</sup> Testimony from asylum seeker, Gatsinda, Ngozi province, 26 May 2005.

<sup>106</sup> International refugee law does not specify size or location of camps for refugee accommodation. The UNHCR Handbook for Emergencies recommends that refugees "be settled at a reasonable distance from international borders as well as other potentially sensitive areas such as military installations." UNHCR Executive Committee conclusions, including Conclusion No. 94 (LIII) – 2002 calls upon States to ensure that safety and security concerns are integrated, from the outset of a refugee emergency, into refugee camp management in a holistic manner and that all efforts are made to locate refugee camps and settlements at a reasonable distance from the border and to maintain law and order. The Organization of African Unity (OAU) Convention urges that refugees be located "a reasonable distance from the frontier of their country of origin." The Sphere Humanitarian Charter and Minimum Standards in Disaster Response suggests that a safe distance from external threats is usually "not less than 50 km [30 miles]."

Mishiha, Cancuzo province and Songore, Ngozi province began on 18 April and continued through 23 April when the Government of Burundi ordered UNHCR to stop all transfers. According to Colonel Didace Nzikoruriho, charged with dealing with refugee affairs in the Burundian Ministry of Interior, the transfers were stopped because Burundians in the famine-struck northern regions were stating that they were Rwandese so that they could obtain food assistance. Although there are indications that the Rwandese government applied pressure on the Burundian government to change its policies with respect to Rwandese asylum seekers, including through accusations that Burundi was harbouring “fugitives from justice”, this has been consistently denied by Burundian government officials. While 2,000 asylum seekers were successfully transferred to transit centres before the Government of Burundi’s change of policy, the vast majority were left in seven sites located along the Rwanda – Burundi border with virtually no protection and minimal humanitarian assistance.

On 27 April the Burundian government announced that the asylum seekers from Rwanda would not be granted refugee status. The Government of Burundi’s response is in breach of Burundi’s international and regional obligations. Moreover, the Rwandan asylum seekers have been denied access to fair and satisfactory refugee determination procedures.

From 28 April until 20 May the Rwandese and Burundian governments organised joint sensitization campaigns to encourage the asylum seekers to voluntarily return to Rwanda. Relatively few were “convinced” to return. Reports indicate that many of the meetings between the asylum seekers and senior government officials were tense. In some cases, asylum seekers were verbally threatened with forced repatriation if they did not voluntarily return now. Around 5 May, the respective governments temporarily softened their tactics, principally sending less threatening, lower-ranking government authorities, to sensitize the refugees.

When neither approach convinced the asylum seekers to return, both governments reverted to physical coercion. From early to mid-May, Burundian soldiers entered and emptied many of the sites along the Rwanda-Burundi border. Asylum seekers were physically assaulted and there was one reported rape of a young woman by Burundian soldiers. Four of the eight sites were emptied mid-month, another three by 20 May. Several thousand people were forcibly returned and others melted into the Burundian countryside even though local authorities in some of the sites had stated that any Burundian aiding these asylum seekers would be punished. The exact numbers are difficult to determine since many of the forced repatriations occurred at night when international and local NGOs or United Nations representatives were not present. By 25 May, most of the forcibly repatriated asylum seekers had re-entered to Burundi. There were again close to 7,000 asylum seekers in four of the old border sites.

On 28 May, the Burundian and Rwandese governments undertook a new policy of gathering all of the asylum seekers (those in the border sites as well as those in the Mishiha transit centre) into Songore transit centre, a facility having a limited capacity of 800 people and already holding over 1,000. The UNHCR was informed after decisions had already been taken by the respective governments. “We were simply told the camp [Cankuzo transit centre]

would be closed, so we decided we could at least provide safe transport to Songore.”<sup>107</sup> The border sites were quickly dismantled, reportedly by Rwandese soldiers, and the asylum seekers ordered to go to either Songore transit centre on foot (a distance of up to 50 km) or Rwanda. Many of the asylum seekers were allegedly beaten. Simultaneously, UNHCR began to reluctantly transfer asylum seekers in the Mishiha transit centre to the Songore transit centre.<sup>108</sup> As of 1 June 2005, there were 6,700 Rwandese refugees in the Songore transit centre.<sup>109</sup>

Amnesty International is concerned over reports that the Rwandan government is allowed to operate in the midst of the refugee populations, as this runs counter to refugee protection concerns.

At the beginning of June, a commission consisting of Rwandese and Burundian judicial officials was established, reportedly led by the Rwandese Attorney-General, which will prepare a list of “guilty” persons for extradition. On 8 June, three asylum seekers were arrested for their alleged participation in the genocide and were held in Ngozi prison, awaiting their extradition to Rwanda. In addition to the detention of the three alleged genocide suspects, two “agitators” were also arrested. Rwandese and Burundian government officials maintain that such individuals are holding the asylum seekers “hostage”.<sup>110</sup>

Amnesty International is concerned that both the labelling of the asylum seekers as “fugitives from justice” and the judicial commission as established, including the prominent role of Rwandan judicial officials in the joint judicial commission, may violate fair trial guarantees, including the right to be presumed innocent until guilt is proven in a court of law whose proceedings meet international law and standards.

Article 1(F) of the Refugee Convention excludes from international protection persons with respect to whom there are serious reasons for considering that they have committed a crime against peace, war crimes, crimes against humanity, serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the United Nations. However, determination to exclude an individual from refugee status on grounds recognized under the Refugee Convention should only be made in the context of a fair and satisfactory procedure in accordance with international and refugee law and standards, including the right to be informed of the evidence for exclusion, to rebut the evidence and to appeal against a decision to refuse refugee status on exclusion grounds. A decision to exclude a person from the protection of the UN Refugee Convention does not mean, however, that Burundi can expel or extradite a person to a country where they would risk serious human rights abuses or

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<sup>107</sup> Interview of UNHCR spokeswoman Jennifer Pagonis on 31 May 2005 – UNHCR news stories - UNHCR concerned as Rwandans converge on Burundi transit centre

<sup>108</sup> See UN News Service press release, “*Rwandan refugees moved without notice further into Burundi, UN says*”, 31 May 2005.

<sup>109</sup> See MSF press release, “*Burundi: Thousands of Rwandan Refugees Living in Precarious Conditions*”, 1 June 2005.

<sup>110</sup> On 7 May 2005, a high-level Rwandese government official similarly complained to Amnesty International delegates that the UNHCR and NGOs offering humanitarian assistance were holding the asylum seekers “hostage”

face unfair trial. The principle of non-refoulement is binding upon all States and must be duly taken into account in any treaties relating to extradition or in national legislation on the subject.

On 12 June 2005, the Burundian and Rwandan governments stated that the 8,000 Rwandese asylum seekers were considered to be “illegal immigrants”; and planned to start their repatriation, if need be by force, from 14 June 2005. However, on 13 June 2005, thousands of Rwandese asylum-seekers had already been forcibly expelled from Burundi, in complete contravention of international refugee and human rights law<sup>111</sup>.

*An additional pressure: the deteriorating conditions in the camps*

The provision of humanitarian assistance to the Rwandese asylum seekers has been difficult from the outset. On 24 April 2005, the Burundian authorities halted the UNHCR-arranged transfers of asylum seekers away from border sites with no facilities to established refugee transit centres, one of which at least was at a safer distance from the Rwanda-Burundi border.

The Burundian and the Rwandan governments have hampered the UNHCR’s mandated supervisory role expressed in article 35 of the Refugee Convention. In like manner, there has been a lack of reaction and support for the UNHCR from the international community with respect to the protection and provision of humanitarian assistance to the asylum seekers.

By May, UN Agencies (e.g. UNHCR, WFP) and international and local NGOs had organized to improve the provision of humanitarian assistance to the border areas, although this remained limited and ad hoc. The situation was further complicated by the decision of the Burundian and Rwandese authorities to relocate the entire refugee population to Songore transit centre. Asylum seekers were removed from a transit centre that offered better protection and security to one located only 20 kilometers from the Rwandan border. Moreover the Songore transit centre was full to capacity before the influx of refugees moved by the authorities. The camp had a capacity of 800 but following the transfers held close to 7,000 people. Médecins sans Frontières (MSF) reported that the “Lack of water, access to food and shelter are weakening this population’s health and increasing the risks of epidemics and malnutrition”.<sup>112</sup> Aid workers were rushing to build shelters and latrines for the thousands of asylum seekers. Amnesty International expressed was concerned that the Burundian authorities were bowing to political pressure from Rwanda to deny these refugees adequate protection and directly undermining their rights to health, adequate housing, food and water.

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<sup>111</sup> See Amnesty International press release, “Burundi: 8,000 asylum seekers at risk of imminent expulsion”, 13 June 2005, (AI Index AFR 16/005/2005)

<sup>112</sup> See MSF press release, op.cit.



## Recommendations

Amnesty International is concerned that international human rights and refugee law standards have not been adhered to in the repatriation of Burundian refugees from Tanzania.

### The Government of Tanzania should

1. Fully respect the principle of *non-refoulement* and other international principles concerning the repatriation of refugees as well as honour their obligation to voluntary return as directly following from the principle of non-refoulement. This implies that the Government of Tanzania:
  - should not forcibly return refugees and asylum seekers, whether directly or indirectly, to Burundi;
  - should stop the current use of measures which may have the effect, directly or indirectly, of forcing, coercing, inducing or otherwise compromising the voluntariness of return, including denial of economic, social and cultural rights;
  - should refrain from imposing any arbitrary deadlines for the voluntary repatriation of refugees;
  - should explicitly and permanently withdraw any threats of *refoulement* or deportation of refugees. All returns of refugees to Burundi must be voluntary, safe and sustainable over the long-term.
2. Ensure that all individuals seeking asylum in Tanzania have access to group recognition or a fair, satisfactory and individual asylum determination procedure, including independent appeal procedures and other essential procedural safeguards;
3. Ensure that UNHCR is granted full access to all areas hosting refugees, including border areas, as well as participation in the screening process, as appropriate, in order for the agency to be able to exercise its supervisory role according to article 35 of the UN Convention relating to the Status of Refugees;
4. Ensure respect for all human rights of Burundian refugees and asylum seekers without discrimination including their economic, social and cultural rights, and provide effective and durable protection against human rights abuses;
5. Ensure that all refugees and asylum seekers are registered individually and issued with their own separate identity documents as quickly as possible upon their arrival.
6. Investigate all reports of human rights abuses, against Burundian refugees and asylum seekers, including those involving sexual or other forms of gender-based violence, by the state or non-state actors. If criminal offences have been committed and enough evidence has been gathered, prosecute the suspected perpetrators;
7. Promote the grant of a secure legal status, including residence rights for Burundian refugees who arrived in 1972 as they have already attained a considerable degree of socio-

economic integration in Tanzania. This should include measures to expedite naturalization procedures and reduce the charges and costs associated with such procedures;

8. In coordination with UNHCR and the international community, develop a protection-based comprehensive approach for Burundian refugees who cannot voluntarily repatriate to Burundi within a reasonable timeframe. Such an approach should include the use of the other two durable solutions of local integration and resettlement as per identified needs;
9. Put an end to any restrictions on the freedom of movement of refugees unless such restrictions are shown to be necessary for any of the grounds permitted under international human rights standards, and are proportional and consistent with all other rights recognised under international human rights law including those set out in the International Covenants on Civil and Political Rights and the Economic, Social and Cultural Rights.

**The Government of Burundi should**

*In regard to Burundian refugees returning:*

1. Ensure that all returnees are able to return in safety and dignity without harassment, discrimination, or physical threats during or after return;
2. Ensure respect for the human rights of all returnees, in particular by ensuring their security, and access to adequate food, housing and clean water. Positive measures should be taken to ensure at the very least minimum essential levels of economic, social and cultural rights, and the means of securing an adequate standard of living for women, and vulnerable individuals including unaccompanied children, elderly, and the disabled;
3. Promptly investigate all reports of human rights abuses against returnees, and if criminal offences have been committed and enough evidence has been gathered, prosecute the suspected perpetrators in fair trials;
4. Regularly provide public information on human rights abuses;
5. Sensitize the communities to which refugees will be returning and monitor the reintegration of returnees to their home communities on a regular basis, ensuring the respect, protection and promotion of human rights during the reintegration process;
6. Refrain from the use of language which may have the consequence of fuelling conflict, discrimination and human rights abuses against returnees;
7. Facilitate the free and unhindered access of UNHCR and human rights organizations to monitor returnee populations and the areas they have returned to, including issues relating to access to land and property restitution. UNHCR should be enabled to intervene with national and local authorities where necessary to prevent or seek redress for human rights violations it observes in the course of monitoring return;
8. Take all necessary steps to ensure the right to restoration of housing, land and property of which returnees have been arbitrarily deprived, or to ensure compensation where such restoration is factually impossible, as determined by an independent, impartial tribunal. Such determination should be made by equitable, timely, independent, transparent and

non-discriminatory procedures, institutions and mechanisms, and must recognise the equal rights to housing, land and property restitution of women and men.

9. Establish guidelines to ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, taking account of the Principles on Housing, and Property Restitution for Refugees and Displaced Persons, recently submitted to the UN Sub Commission for the Promotion and Protection of Human Rights in the final report of the Special Rapporteur Paulo Sérgio Pinheiro in accordance with Sub-Commission resolution 2004/2;
10. Ensure the enjoyment of human rights to the entire population, including returnees, on the basis of non-discrimination.
11. Ensure that every effort is made to uphold the right to family unity, and that no families are forcibly separated. This would require recognising relevant documentation issued in host countries, and, where returnees have married non-Burundians or their children have been born outside Burundi, allowing those spouses and children to enter and remain in Burundi;
12. In cooperation with UNHCR, community leaders and other local actors, provide support both to returnees and their communities to ensure that returning refugees are accepted and integrated smoothly in their place of origin or their new homes. Returnees may require mental health support in addition to material, judicial and administrative assistance.

*As a country of asylum:*

1. Uphold the principle of non-refoulement and refrain from taking any action that would be in violation of its obligations under the Refugee Convention and other international human rights and refugee law and standards;
2. Ensure that all individuals, including women and children, who express a wish not to return to Rwanda have access to a fair, satisfactory and individual asylum determination procedure, including independent appeal procedures;
3. Ensure UNHCR access to border areas as well as involvement in the asylum process;
4. Refrain from all measures which directly or indirectly may have the effect of coercing asylum seekers to return to Rwanda;
5. Grant asylum seekers enjoyment of their human rights, such as their social and economic rights and their right to protection from violence and threats of the same;
6. Ensure that the Rwandan government is prevented from operating in Burundi and cannot pose a security threat to asylum seekers from Rwanda;
7. Move sites and settlements away from the border areas and ensure their civil and humanitarian character;

8. Investigate all reports of human rights violations against Rwandan asylum seekers, including sexual or other forms of gender-based violence by the state or non-state actors, and make public the findings as well as prosecute the suspected perpetrators;
9. Conduct a thorough, prompt, independent and impartial investigation of all persons alleged to have committed genocide, crimes against humanity, war crimes or other crimes under international law and, if there is sufficient admissible evidence, to prosecute them. If Burundi does not prosecute them, it should extradite them to a State able and willing to do so in a fair trial without the possibility of imposition of the death penalty or risk of torture or surrender them to the International Criminal Tribunal for Rwanda;
10. Limit the work of the judicial commission, put in place by the Burundian and Rwandese governments to identifying those subject to extradition;
11. Ensure that decisions regarding exclusion from refugee status are made in the context of an independent, fair and satisfactory procedure that allows for a case by case examination of asylum claims in accordance with international and refugee law and standards. Asylum seekers should have access to all necessary procedural safeguards, including the right to be informed of the evidence for exclusion, to rebut the evidence and to appeal against a decision to refuse refugee status on exclusion.

**The Government of Rwanda should**

1. Respect the exclusively civilian and humanitarian character of Songore transit camp in Burundi;
2. Not engage in any operations in Burundi which may have the effect of coercing asylum seekers to return to Rwanda;
3. Ensure respect for the human rights of all returnees who have been expelled from Burundi or those who returned voluntarily, in particular by ensuring their security. Allow independent monitoring of the human rights situation of the returnees;
4. Promptly investigate all reports of human rights abuses against returnees, and if criminal offences have been committed and enough evidence has been gathered, prosecute the suspected perpetrators in fair trials;
5. Regularly provide public information on human rights abuses.

**UNHCR should**

1. Take appropriate measures in co-operation with the authorities of Tanzania to ensure that refugees and asylum-seekers are not subjected to *refoulement*, whether directly through deportation, or indirectly through denial of human rights in Tanzania;
2. Work with the Tanzanian government and ensure that government officials including border guards and the police receive training on the rights of refugees and persons seeking asylum under international human rights and refugee law;

3. Provide technical support to the government of Tanzania for the development of effective registration systems that enable all refugees and asylum seekers to be registered and issued with documents as quickly as possible. Ensure that the registration undertaken in Tanzania also benefits registration needs in Burundi for those returning;
4. Undertake practical steps to ensure the effective exercise of its supervisory role under the Refugee Convention through negotiating full access to refugee, returnee and asylum seeking populations, ensuring its involvement in screening procedures and monitoring camp or other reception conditions for Burundian refugees and asylum seekers including conditions of physical security on routes of return;
5. Initiate an independent evaluation regarding the voluntariness and sustainability of return to Burundi from Tanzania and other neighbouring as well as non-neighbouring states;
6. Ensure that UNHCR and government officials with responsibility for refugee status decision-making in Tanzania are kept fully and objectively informed of the human rights situation in Burundi;
7. Provide accurate and accessible information on the human rights situation in Burundi to Burundian refugees and asylum seekers, including asylum seeking and refugee women. This requires setting up independent mechanisms for the dissemination to Burundian refugees of reliable, objective and impartial information on the situation on the ground in the whole country, including but not limited to areas of prospective return;
8. Make available regular reports on UNHCR's current policy on return to all relevant parties, in particular to Burundian refugee communities in Tanzania and other countries, including the scope of its role in facilitating rather than promoting voluntary repatriation;
9. Continue to facilitate the voluntary return of refugees to Burundi until such time as the essential preconditions for UNHCR to promote voluntary repatriation can be met including *inter alia* an overall, general improvement in the situation in Burundi so that return in safety and dignity is possible for the large majority of refugees and a commitment by all parties to fully respect the voluntary character of repatriations; AI considers that such conditions are currently not met.
10. Maintain pressure on neighbouring and resettlement states to ensure their commitment to develop a protection-based comprehensive approach to Burundian refugees who cannot voluntarily repatriate to Burundi within a reasonable timeframe and work with States to provide the other two durable solutions of local integration and resettlement, notwithstanding current levels of voluntary repatriation;
11. Conduct comprehensive and regular monitoring and reporting of the needs of returnees, including their need for legal, physical and material security, and any human rights abuses committed against returnees. Such monitoring should include

particular attention to the needs of women and girls. Monitoring reports should be made publicly available.

**The international donor community should**

1. Promote and protect the right to voluntary return in safety and dignity.
2. Comply with obligations of international cooperation and assistance where the states of Tanzania and Burundi are otherwise unable to realise, at the very least, minimum essential levels of economic, social and cultural rights of all, including refugees and returnees.
3. Recognise and respect the obligations of international responsibility-sharing to ensure the sustainability of voluntary repatriation operations. Donors, humanitarian organisations and other relevant actors, including development actors, should support the government of Burundi to ensure that human rights of returnees and their communities of origin are adequately realised;
4. Provide UNHCR with necessary resources to fulfil its protection mandate;
5. Encourage Tanzania and other countries hosting refugees to fulfil their obligations under instruments such as the 1951 UN Refugee Convention and the 1969 OAU Refugee Convention, including, but not limited to, the principle of *non-refoulement* which prohibits the return of persons to territories where they could be at risk of serious human rights abuse;
6. Condemn any refugee returns from Tanzania or other countries that are not voluntary and/or are undertaken under conditions of duress in breach of the principle of non-refoulement;
7. Provide sufficient support to assist Tanzania and other host countries, particularly those with large refugee populations, to determine refugee status in a timely manner and in accordance with international law and standards;
8. Intervene strongly with the government of Burundi to ensure that refugees and asylum-seekers from Rwanda are not subject to refoulement whether directly through deportation, or indirectly through denial of economic and social rights.

**Other international and inter-governmental organizations**

1. International and inter-governmental organizations engaged in any manner whatsoever in the return of Burundian refugees, asylum seekers or rejected asylum seekers should be guided by the international human rights and refugee law standards;
2. Provide the UNHCR with the necessary support to ensure that it is able to exercise effectively its protection mandate in Burundi, including through facilitating the UNHCR's duty to supervise the Refugee Convention, under article 35 of the Convention.

**Civil society in Tanzania and Burundi should**

1. Promote the respect for refugees' human rights by undertaking projects to foster relationships of mutual aid between refugees or returnees and neighbouring communities;
2. Media organisations should make a particular effort to promote the understanding of refugees' rights within the population, to promote positive cohabitation and reconciliation and to convey positive images of refugees and returnees.