Shadows of Return:

The Dilemmas of Congolese Refugees in Rwanda

CITIZENSHIP AND DISPLACEMENT IN THE GREAT LAKES REGION
WORKING PAPER 6

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Background to the Paper

The paper was drafted by Lucy Hovil of IRRI. Deirdre Clancy and Olivia Bueno of IRRI, and Zachary Lomo edited the material and Galya Ruffer and René Lemarchand reviewed the findings. Those who conducted the field research prefer to remain unnamed. The team would like to express its gratitude to all those who participated in the study, as well as to the government of Rwanda for permission to conduct the field research.

Citizenship and Displacement in the Great Lakes Region Working Paper Series

This paper is the sixth in a series of working papers that forms part of a collaborative project between the International Refugee Rights Initiative, the Social Science Research Council, and civil society and academic partners in the Great Lakes region. The project seeks to gain a deeper understanding of the linkages between conflicts over citizenship and belonging in the Great Lakes region, and forced displacement. It employs social science research under a human rights framework in order to illuminate how identity affects the experience of the displaced before, during and after their displacement. The findings are intended to facilitate the development of regional policies that promote social and political re-integration of forced migrants by reconciling differences between socio-cultural identities and national citizenship rights that perpetuate conflict and social exclusion.

Previous works in this series are:

- “Going Home or Staying Home: Ending Displacement for Burundian Refugees in Tanzania,” 2008.
- "Two People Can't Wear the Same Pair of Shoes: Exploring the Challenges of Access to Land and Reintegration in Burundi," 2009.
- “Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo,” 2010.
- "A Dangerous Impasse: Rwandan Refugees in Uganda," 2010.
- “Hoping for peace, afraid of war: the dilemmas of repatriation and belonging on the borders of Uganda and South Sudan,”2010. (A UNHCR Working paper)

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Front cover: Gihembe refugee camp, Rwanda.

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Summary

In eastern Democratic Republic of Congo's (DRC) North Kivu province, rumours and speculation have been rife regarding the anticipated return of Congolese (Tutsi) refugees from Rwanda,[1] in particular since the signing of a tripartite agreement between the governments of the DRC, Rwanda and UNHCR in February 2010. These refugees, some argue, are not really Congolese, and their "repatriation" is, in fact, part of a broader scheme by Rwanda to appropriate land in North Kivu. Yet as is so often the case when rumours abound, relatively few facts are circulating about these 53,000 camp-based refugees.[2]

This paper sheds light on the prospects of ending exile for this group of Congolese (Tutsi) Kinyarwanda-speaking refugees. Most fled North Kivu in 1997 during the internationalised war in DRC and have been living in camps in Rwanda since. Specifically, it seeks to understand their hopes for the future, whether they return to the DRC or seek citizenship elsewhere. It draws on interviews with 52 refugees living in Gihembe camp, who responded to questions about their lives prior to flight; their experiences of flight; their views on their current circumstances; their understanding of issues relating to human rights, notions of home, identity, belonging and citizenship; and their opinion regarding the viability of potential return.[3] It also builds on previous research with Congolese refugees living in Uganda and internally displaced persons (IDPs) living in North Kivu.[4]

The findings show that refugees are yearning to return to North Kivu. The majority are cattle keepers who are now living without their cows, with no land to graze them on in a country that is already desperately overpopulated. They are living in a camp of dead-ends: there are few jobs, limited schooling and they are dependent on food hand-outs. After fourteen years of isolation, Rwanda is not perceived as ready to provide opportunities for better integration, or to welcome them as citizens. Returning to Congo offers the best opportunity to shed their refugee status and re-establish livelihoods. Most importantly, repatriation offers the prospect of (re)instating their Congolese identity and proving their legitimacy to belong. At the same time, the refugees are concerned that the current political and security situation in North Kivu is not conducive to a safe and durable return. While the immediate threat to their safety was identified as the ongoing presence of the *Forces Démocratiques de Libération du Rwanda* (FDLR), a Hutu-aligned rebel group comprised of a number of former *genocidaires*, refugees also recognised that the presence of armed groups was symptomatic of deeper sources of instability that need to be addressed in order for repatriation to become a possibility.

Although the government of DRC has signed an agreement for voluntary return of the refugees, across the border among local communities in eastern DRC, huge suspicion surrounds the prospect of their return. Labelled by many communities in North Kivu as Rwandan rather than Congolese, their perceived foreignness is rooted in the fault lines that have developed in eastern Congo over who legitimately belongs on the territory.

Antagonism towards the group also continues to be tied to the presence of the *Congrès National pour la Défense du Peuple* (CNDP) in many areas of North Kivu – a former Tutsi-aligned and Rwanda-backed rebel group that is now formally part of the national army but which has retained its strength on the ground. Although it is unlikely that it genuinely represents the refugees, the CNDP has been pushing for their repatriation. The

The government needs to be unequivocal in stating that these refugees are not only legitimately entitled to return home, but are welcomed as a genuine component of the rebuilding of a country that has been thoroughly torn apart by division and polarization.

fact that the CNDP is understood to have strong links with the Rwandan government only adds to negative perceptions towards repatriation, with some local leaders claiming that there were no Kinyarwanda speakers in their areas prior to the war. Therefore the very premise of repatriation – the right of citizens to return – is under dispute.

The refugees recognise, therefore, that in order for return to become viable, they will need to negotiate their legitimacy to belong at both a national *and* at a local level. First, refugees talked about the need to return as recognised *Congolese citizens* and not as Tutsis or Kinyarwanda speakers. They saw that their group identity had become a major source of instability and that the ability to genuinely (re)engage with the state as a citizen would be a key factor in determining the safety and durability of their return. However, there was also a recognition that national acceptance had limited salience if they were not also accepted in the local areas from which they came, where they had land and property. Encouragingly, the need for both national and local acknowledgement of their legitimacy to belong has been integrated into the policy framework for the proposed repatriation exercise. The government of DRC will conduct a verification effort and, at the local level, *Comites Permanents Locaux de Reconciliation* will negotiate and facilitate the reintegration of the refugees on the ground. These mechanisms, however, have yet to be fully implemented and tested, and there are concerns about their ability, in practice, to fairly mediate the complex issues surrounding access to power and land that were at the root of original flight. In addition, none of the refugees interviewed as part of the study had heard about their existence or knew of what alternatives might be put in place to deal with situations where their claims to belong and return were rejected.

The predicament of this group of Congolese refugees provides a prism through which to view the multiple dynamics and tensions that remain fundamentally unresolved in North Kivu – tensions that are both highly localised and yet interact with the broader national and regional context. These tensions revolve around polarised constructions of identity, mobilised and manipulated by those seeking to gain power. Over decades, these fissures have been translated into ethnically-aligned militia groups, violent struggles over access to land and resources, and decades of conflict and displacement. Until these root causes of conflict are addressed both at national and regional levels, durable solutions for these refugees are likely to remain elusive.

The *Pact on Security, Stability and Development in the Great Lakes Region* (the Great Lakes Pact, or the Pact)[5] provides a vital framework of norms, standards and mechanisms in this regard. The Pact has been ratified by ten states in the region, including the DRC and Rwanda, and comprises a comprehensive package of laws, programmes of action and mechanisms dealing with issues ranging from economic integration, to mutual defence, to displacement, to the principle of the responsibility to protect.[6] Discovering ways of tackling the cycles of violence and exile that have left so many of the region's citizens without protection is a major theme of the Pact.[7] Heads of state have expressly recognised that statelessness and exclusion impact regional peace security and development, and that there is an obligation to address these questions collectively.[8] The development of a programme under the auspices of the Pact to assist with refugee return could become a model of response to similar crises of statelessness and exclusion across the region.

Recommendations

In light of the findings, the paper makes the following primary recommendations to the governments of DRC and Rwanda, regional institutions, and the United Nations High Commissioner for Refugees:

- Given the deeply political nature of the issue of belonging in DRC, the fact that these refugees are *prima facie* Congolese citizens who are entitled to exercise their right of return to the DRC, must be handled with sensitivity by the state and communicated clearly at a national and local level.

- Sensitisation on the content of the 2004 citizenship law which *prima facie* confirms citizenship for this group of refugees must take place through a process of dialogue at all levels. This process should be led by an independent and neutral entity, preferably regional, in collaboration with civil society and local authorities on the ground.

- The establishment of a national verification mechanism and the local *Comites Locaux* to assist with refugee reintegration is to be lauded. It is vital, however, that procedures for the verification of identity and rights relating to property are transparent, reviewable and take into account the realities of the particular experiences of flight of this group, not least the fact that many have already suffered the privations of multiple forced flight and destruction of property and documentation. It also needs to take into account the circumstances and views of host populations. The operation of the *Comites Locaux* must be particularly monitored to ensure that they do not perpetuate the divisions which led to conflict and flight.

- There is a major disconnect between the preparations underway in the DRC and the situation on the ground in Rwanda. There must be increased dialogue between the refugees, the receiving communities, civil society and international non-governmental organizations, the governments of the DRC and Rwanda, and UNHCR offices on both sides of the border regarding the process of return.

- Refugee perspectives must be included in all phases of the return process.

- In Rwanda, clear information on the process of return, and the options which will be available post-verification for those who are accepted, *or rejected,* at both local and national levels must be made available. For those who choose not to return, the extent to which they will be facilitated to "deepen their integration"[9] in Rwanda must also be clearly communicated, including information on the procedures and policies surrounding naturalisation, and, if appropriate, resettlement elsewhere. Without this information, refugees remain suspended—hoping to be able to go home and at the same time fearful of the implications of asserting this desire.

- UNHCR and the international community should provide appropriate political and financial resources for the operation and monitoring of the return process, including adequate financing for reintegration programming and support for activating other durable solutions in the event that neither return home nor continued refugee status in Rwanda is feasible.

- Independent and authoritative oversight of the return process, in particular of the operation of the two verification mechanisms, is an important aspect of building confidence in the process, on the part of both returnee and home communities. The norms, programmes and mechanisms of the Great Lakes Pact may provide an appropriate framework in this regard: the leadership of the International Conference on the Great Lakes Region (ICGLR) has already been vital to the attenuation of conflict in

the Kivus, and the Pact is referenced in the Preamble to the Tripartite Agreement governing the return of these refugees to DRC. The Pact advocates for the adoption of standards such as the grant of citizenship to individuals who have a real and effective link with the state and the provision of effective judicial remedies in the event of refusal or withdrawal of nationality. In particular, the Pact foresees the development of measures that facilitate the citizenship of refugees and displaced persons including the mandating of an independent commission to arbitrate and help establish the citizenship of affected populations. The ICGLR might be invited to play a role in the establishment of a regional component of the verification process with sensitisation, technical, arbitration, and oversight functions.

- Given the complexity of issues of identity and belonging and their interconnectedness with land ownership in the region, there needs to be a comprehensive solution to conflict in the DRC that simultaneously addresses the various political, social, cultural and economic dimensions to the tensions that continue to prevent refugees and IDP from returning home. This must be done from a local, national and regional perspective and supported with adequate resources, including within the framework and mechanisms of the Great Lakes Pact.

  Within this mix, political resolution is key: there needs to be a political resolution to the FDLR presence (and not just a military one), which incorporates addressing the massive deficit in justice in the region; a political resolution to the ongoing profile of the CNDP; and greater clarity over the basis for ownership of, and access to, resources, particularly land given its critical economic and cultural value.

- Disputes over access to land are a major threat to stability in eastern DRC, particularly at the point of return of refugees and IDPs. We recognize that a number of initiatives to address this are underway in this regard including through clarifying the rights and obligations of customary chiefs and through the setting up of local dispute resolution systems. We urge the government of the DRC to build on these initiatives to operationalise an effective framework of land law and policy that addresses political, social, cultural and economic dimensions in light of the norms and mechanisms of the Great Lakes Pact and the AU Framework and Guidelines on Land Policy in Africa.[10] The right of women to own and access land, particularly as enshrined in the Great Lakes Protocol on the Property Rights of Returning Persons, ratified by DRC, must be recognised and addressed within the repatriation process.

- Efforts must be strengthened to pursue justice and foster reconciliation *throughout the region*. Accountability is needed for all those who have contributed to the conflict. While high level arrests of CNDP and FDLR leaders are encouraging, they are likely to have a limited impact if other factors that sustain the existence of armed groups are not addressed and where one-sided approaches to justice are maintained.

- Although the research focused on camp based refugees, who are the focus of the current operational planning by UNHCR, the situation of self-settled refugees in Rwanda must also be addressed. Particular care will need to be taken to ensure that the rights of this group are both upheld and protected.

Background

This paper explores the dilemmas confronting a group of Congolese Tutsi refugees living in Gihembe camp in Rwanda (currently home to 20,000 refugees[11]) as they contemplate the many complexities that surround their future – whether through returning home after a decade and a half in exile or seeking alternative durable solutions. Most of those interviewed fled from North Kivu province (bordering Rwanda and Uganda to the east and South Kivu to the south) in 1996 and 1997, and specifically from Masisi and Rutshuru territories (with a greater number from the former). They are part of a larger group of Congolese (primarily Tutsi) refugees who fled to Rwanda[12] to escape the chaos surrounding the 1997 ousting of President Mobutu by Rwanda and Uganda backed rebels. Their flight took place at a time of massive upheaval, when hundreds of thousands of Rwandan Hutu refugees were being coerced into returning to Rwanda, and Rwandan Tutsis were still in precarious exile throughout the region. Currently, more than 53,000 Congolese are registered as refugees in Rwanda, and no doubt tens of thousands more are living unregistered in the country.

Having travelled long distances, the group were initially housed in temporary camps in western Rwanda close to the Congolese border. After a number of ruthless attacks on these camps by *interahamwe* based in Congo,[13] the refugees were moved to camps further from the border where they have been living for the past 14 years. Since a relative peace took hold in 2009 in North Kivu, a few refugees have returned home. However, the majority remain reluctant to do so: as history has shown, relative peace in eastern Congo is hardly the basis for optimism.

Notwithstanding the reluctance to return and the complexity of the circumstances on the ground, an official repatriation process was initiated with the signing, on 17 February 2010, of a tripartite agreement on voluntary repatriation between UNHCR and the governments of Rwanda and the DRC.[14] The signing of the tripartite agreement followed closely on the heels of the March 2009 signing of a peace deal between the DRC government and the CNDP, in which one of the principal demands of the CNDP was the return of members of the Congolese Tutsi community that they claimed to represent.[15] Preparations are being made for the return of tens of thousands of Congolese refugees from Uganda and Rwanda (although as of April no actual returns had been carried out[16]), returns of almost 800,000 IDPs within the province are ongoing.[17]

While the returns process in North Kivu in general is extremely fraught, the prospect of the return of this specific group of refugees has been a matter of particularly intense discussion. The very basis on which repatriation is undertaken for this group – namely the reinstatement of the bond of citizenship for those who have been in exile – is in question. Feelings of hostility towards the idea of their "return" are widespread, with many communities and local leaders in North Kivu claiming that they are, in fact, Rwandan.[18] Indeed, some of the UN agencies operating in North Kivu have been accused of having a "hidden agenda" and promoting Rwandan encroachment on Congolese territory by facilitating their return.[19]

These tensions are well recognised on the ground. Steps are being taken in order to mitigate some of the challenges that are likely to arise through this widespread returns process, in particular the establishment of 42 returns committees. The committees, envisaged in the 2009 peace deal with the CNDP, are intended to facilitate the returns process through engaging in the resolution of disputes between returnees and the local population, mediating in land conflicts (expected to be particularly complex) and helping to verify the identities of people and their claims to reside in specific localities. Ultimately, the committees are intended to promote peaceful return and mitigate risks of violence.[20]

Each committee includes representatives from local authorities, customary chiefs, civil society representatives, refugees and IDPs and UN agencies, along with equal representatives of all ethnic groups present in each *groupement* (a territorial subdivision).[21] The 42 committees, when created, will work mainly in the Rutshuru and Masisi areas. The majority of returnees from Uganda (most of whom are ethnically Hutu) are expected in Rutshuru, and the majority of refugees living in Rwanda (mostly ethnic Tutsi) are expected to return to Masisi.

The first committees only began to operate in mid-May 2011 in Rutshuru, as the first phase of the repatriation process from Uganda got underway.[22] Questions remain regarding the commitment of local government to their success and the ability for the committees to deliver impartial decisions, in particular over claims to land.[23] Whether or not they will be able to alleviate rather than exacerbate an already tense situation will need careful monitoring. Indeed, the ability for returnees to be accepted within their locality remains a key concern for the feasibility of return: discussions with NGO representatives in eastern DRC suggest an awareness of the need for widespread sensitisation to take place among communities in North Kivu in order to help ensure that those who do return are accepted back. As elections loom in November 2011, questions regarding the right to belong, not only of these refugees but also of Kinyarwanda speakers more broadly continue to be hotly contested.

In contrast to the flurry of activity and rhetoric in North Kivu, in the camp in Rwanda there are few indicators of pending repatriation. Refugees have received no official information regarding how or when formal repatriation is likely to be implemented. A verification process and survey of intent is apparently expected to take place soon, after which refugees will be offered the possibility of repatriation.[24]

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Seeking citizenship in a highly charged environment

This paper builds on a growing body of research[25] that demonstrates that durable solutions – in particular repatriation – need to be reconceptualised as essentially a political rather than humanitarian process, whereby repatriation represents the restoration of the political contract between the citizen and the state that was broken by their exile. It is a process of re-securing citizenship – or *em*patriation[26] – that links the polity to the individual. Viewed in this way, repatriation needs to be constantly linked to the broader process of post-conflict (or post-authoritarian) reconstruction. The ability for individuals and groups to secure citizenship, therefore, becomes not only an indicator that exile has ended, but that broader issues of instability have been, or are being, addressed – that there is a functioning state to which people can attach themselves. Nowhere is the need for repatriation to be more strongly linked to broader conflict resolution and the (re)construction of governance than in eastern DRC.

The refugees who are the subject of this paper are part of a wider story of conflict and displacement that has unfolded across the Great Lakes region over the past decades as a result of interlocking local, national, regional, and international conflicts. With the 1994 Rwanda genocide as a pivotal point for understanding the situation (but by no means the only point of departure), there are a number of characteristics of conflict that continue to play a dominant role in the future of this group.

First, the conflict is international in its reach: North Kivu, and eastern DRC – or even DRC more generally – cannot be viewed in isolation from the broader region, in particular in the context of ethnic

communities that are on both sides of national borders. Although much of the violence has taken place geographically within eastern DRC, it is constantly fuelled by the broader dynamics in neighbouring countries – in particular Rwanda, Burundi and Uganda. Therefore causes of conflict – and, in turn, ongoing situations of displacement and the plight of this group of Congolese refugees – need to be addressed and resolved simultaneously at a local, national and regional level.[27]

Second, and inextricably linked to the first point, there is a profoundly uneasy relationship between the construction of national identities and ethnic or other forms of local identification, many of which are experienced across borders. These different levels of belonging have been mobilised and pitted against each other in dangerous and exclusive ways to devastating effect in the region, rather than being allowed to co-exist. Ethnicity has become highly distorted in this context and has become anathema, rather than complimentary, to the constitution of national belonging.

Third, there is a shortage of available land in the region, and access to land is inextricably linked to access to power and recognition of the right to belong. The scramble for land has created a highly tangible focus for conflict and continues to drive and sustain it. As Autesserre states, "*the main reason that the peace-building strategy in Congo has failed is that the international community has paid too little attention to the root causes of the violence there: local disputes over land and power*."[28] The country's rich natural resources have added an additional twist, creating lucrative war economies driven by both local and international actors that feed and sustain violence and dramatically raise the stakes on particular areas of land. In a context of growing population, increasing pressure on land (including as a result of the disproportionate use of large swathes of land by individuals and companies), militarisation, and a deeply divided and festering history of violence and brutality, all the ingredients for ongoing violence remain.

Where does this leave this group of Congolese refugees who are seen by many Congolese as being Tutsi Kinyarwanda speakers and, therefore, as immigrants of Rwandan origin – and yet who have remained isolated in Rwanda for fourteen years? What hope is there for finding durable solutions to their exile? In particular, what does this mean for the possibility of repatriation?

The ability for the members of this group to reassert their status unequivocally as Congolese citizens as part of the return process is fundamental to its success. Citizenship – the "*right to have rights*"[29] – is a key factor in determining the future safety and the durability of return for these refugees. At an official level, the governments of Rwanda and the DRC and UNHCR consider them to be *prima facie* citizens of DRC and refugees in Rwanda. The Tripartite Agreement signed in February 2010 clearly provides that the status of those persons who do not wish to return to DRC "*continues to be governed by the applicable provisions of international law and national refugee law.*"[30] In the DRC, after decades of exclusionary and oscillating legal provision, there is finally a legal framework in place that *prima facie* confirms their right to belong: "*Every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence*" (1960) is a Congolese citizen by birth.[31] This definition would therefore encompasses those groups whose ancestors were brought by the colonial administration to Masisi in North Kivu, for example, or those whose families fled from Rwanda in 1959.

But while relatively clear in theory, in practice the issue is likely to be extremely complex. The Tripartite Agreement itself recognises the challenge noting that that there will also be a need to put in place arrangements for the "*identification of persons by the country of origin*."[32] A special verification mechanism is going to be established by the government of DRC to screen those who intend to repatriate in order to ascertain that they are genuinely Congolese citizens. There is no information

available, however, on the procedure or the framework of assessment which will be used or what post screening options are being considered.[33] As discussed above, the *Comite Locaux* will also have a mandate to deal with issues around determining identity. However, how each mechanism will operate, including in collaboration with each other, is not clear.

As these refugees start to return, therefore, oversight of the bodies that will interpret and apply the law's ethnicity and history-based descriptions of eligibility for citizenship will be crucial, at both a local and national level. What standards and burden of proof will be used in a context where many of these refugees lost documentation during cycles of attack and flight? What will happen to any who might be rejected? Although UNHCR has indicated that it will put in place mechanisms to ensure that any returnees who are rejected by their local areas are offered "alternatives,"[34] it is not clear what these alternatives will be. Certainly refugees themselves have not been told about the implications of rejection, whether by the state verification mechanism or the *Comite Locaux*. Although the refugees interviewed did not explicitly talk about the difficulties that might be encountered in the process of asserting their citizenship, "questions related to nationality" has been recognised by the tripartite mechanism as one of the three principle barriers to refugee repatriation.

Within this context, repatriation presents both a threat and an opportunity. If return is pushed forward without adequate measures being taken to affirm the legitimacy to belong of this group, renewed conflict and flight is likely. But if the environment in which return takes place genuinely allows for the renegotiation and recognition of citizenship for these refugees, it offers the hope of building a more sustainable peace.

The challenge, of course, is how to create an enabling environment to ensure that the threat is diffused and the opportunity realised. In order to explore this question, this study seeks to better understand the views of the refugees themselves who are hoping to one day repatriate and be recognised as Congolese citizens.

Methodology

Research took place in Gihembe refugee camp in Byumba, Rwanda, in January and February 2011. Home to approximately 20,000 refugees from DRC, mostly from North Kivu,[35] Gihembe is one of three camps hosting Congolese refugees, and is approximately 20 minutes walk from Byumba town. The other two camps hosting Congolese refugees, Kiziba and Nyabiheke, are near to Kibuye and Gituza towns respectively. Nyabiheke is the newest camp and is mostly comprised of those refugees who attempted to return to DRC in 2002 and were then pushed back out in 2003. The camps are run by the government of Rwanda's Ministry of Disaster Management and Refugee Affairs (MIDIMAR) and UNHCR, the latter working partly through a number of implementing partners and in conjunction with World Food Programme. Permission to carry out this research was obtained from MIDIMAR.

A total of 52 qualitative interviews were conducted with refugees. Participants responded to questions about their lives prior to flight; their experiences of flight; their views on their current circumstances; their understanding of issues relating to human rights, notions of home, identity, belonging and citizenship; and their opinion regarding the viability of potential return.

The first quarter of interviews were conducted in one specific area of the camp where the research team was best known. From there, introductions were made with neighbours and friends in other sections of the camp through a basic snow-balling technique, covering seven of the twelve sectors of the

camp. All of the interviews were conducted in the homes of participants in order to ensure privacy. A gender balance was sought, although many of the women, especially those in the 18-25 age group, were reluctant to talk at length. While the 52 interviews are not seen as representative of all Congolese refugees living in Rwanda, the spread of those interviewed within the camp and the strong and consistent narrative that emerged (including a strong sense of cohesion as a group), indicate that the interviews reflect the views of many around them. Unfortunately, despite numerous requests, the team was unable to secure formal interviews with any of the officials working with refugees, including government, UN and NGO workers, and no reasons were given for these refusals. As a result, the paper remains somewhat silent on issues relating to how the government of Rwanda views this group of refugees and their intentions regarding the refugees' future. However, a number of phone interviews with UN and NGO representatives in Goma allow for some insight into the policy framework.

The research builds on a previous study conducted by IRRI that solicited the views of other Congolese nationals displaced from North Kivu, including IDPs within North Kivu and refugees who had fled to Uganda.[36] The majority of those interviewed in this first study were not Tutsi – instead, many identified themselves as ethnically Hutu, providing an interesting juxtaposition of perspectives from a wide range of individuals. Although the two studies are not seen as directly comparative, a number of striking similarities and contrasts are drawn out.

The findings of the research are presented against an overview of some of the key contextual and historical issues that relate to the current circumstances of this group of refugees. This background does not try to be exhaustive of the multiple complex historical factors that lie at the heart of conflict in the region. Instead, it presents salient issues that led to the displacement of this group of refugees and that continue to prevent them from returning home, providing a small thread through the region's history that focuses primarily on a specific territory, North Kivu province, and on the story of this group of Congolese people.

Setting the scene: political power, access to land and the legitimacy of citizenship in eastern DRC

Migration has been a feature of life in the Great Lakes region for as long as people have lived in the area. However, with the formation of territorial boundaries and state structures during and after colonialism, along with the realignment of associated political and economic interests, certain aspects of migration have taken on a particularly significant political profile. In eastern DRC's South and North Kivu regions, a key fault line developed between "indigenous" Congolese and different groups of Kinyarwanda-speakers. The latter, according to Newbury, are comprised of four main categories: the so-called "Banyamulenge" who settled west of Lake Tanganyika in what is now South Kivu province;[37] the group who settled in the area north of Lake Kivu during colonial rule (now North Kivu) comprised primarily of Hutu but also a number of Tutsi, and who had been resettled from Rwanda to DRC to serve as a labour pool for European plantation owners;[38] a group of mainly Tutsi asylum seekers who fled the Rwandan revolution of 1959-62; and those who fled Rwanda in the aftermath of the 1994 genocide and the coming to power of the Rwandan Patriotic Front (RPF), who were primarily Hutu.[39] The majority of those interviewed for this study fall within the second or third category, although in the case of the former, they are all Tutsi.

Citizenship: the legitimacy of belonging

Since independence, the presence of these groups has been a major source of conflict: determining who has the right to belong in the territory has been violently contested for decades,[40] and their citizenship status has been a key tactic in the divide-and-rule strategies of political elites and the outbreak of two recent wars.[41] In particular, Kinyarwanda-speaking groups have been the target of citizenship laws that have been specifically intended to exclude them from Congolese nationality.

At a legal level, the issue of citizenship was resolved with a new law on nationality adopted in November 2004. The law, which was intended to permanently clarify who is and is not a national of Congo, offers the possibility of asserting citizenship to most of these contested Kinyarwanda speaking populations. However, as our previous research showed, the legislation reflects a compromise between promoting an inclusive framework for citizenship based on birth and the proactive creation of *de facto* ties of belonging and continuing to rely on ethnicity as a basis on which nationality is claimed. Most significantly, local understandings of inclusion and exclusion have not been fundamentally altered as a result of the law: on the ground, notions of belonging continue to be profoundly contested.[42] With the prospect of return, the question of whether they are Congolese or Rwandan has once more re-surfaced, resulting in strong hostility towards these refugees.[43]

Control over land

Inclusion and exclusion with regards to citizenship – and, in turn, access to political power – has inevitably had a direct impact on the ability for different groups to secure land. In a country where subsistence farming is the dominant livelihood and where land is rich in natural resources, the stakes in accessing land are high. Therefore the struggle for belonging has manifested itself as an acrimonious battle for land access and ownership: access to land and other resources is dependent on access to political power which, in turn, is contingent upon citizenship.

Under colonialism, cultivation signified land ownership: *use* of land was conflated with *ownership* of land.[44] And with huge ranches falling into the hands of either Tutsi immigrants or white settlers, "indigenous" resentment grew.[45] The influx of Rwandan Tutsi refugees between 1959 and 1962, which brought more educated and politicised elements into the mix, became a catalyst for conflict between different groups, particularly between Kinyarwanda speakers and "indigenous" Congolese.[46] In the 1970s, then-President Mobutu's promotion of Tutsis meant further consolidation of Tutsi control of the land. Their "ownership" of the land was further supported by the 1973 Land Law which "*rejected customary law in land transactions and imposed written law as the only source of land rights, without protecting lands customarily occupied and exploited by their owner, peasants particularly.*"[47] Inevitably, this led to growing resentment among the "indigenous" population, many of whom became landless. Throughout the 1960s, 1970s and 1980s, there was regular violent confrontation over access to land and power in North Kivu, with its Tutsi communities becoming stigmatised as a group for land-grabbing, despite these acts being conducted primarily by "*an unscrupulous minority*."[48] The group of refugees in Rwanda that form the

"The struggle for belonging has manifested itself as an acrimonious battle for land access and ownership: access to land and other resources is dependent on access to political power which, in turn, is contingent upon citizenship."

focus of this study are closely associated with this land-grabbing, and the way in which land was taken is intimately connected with questions over their right to belong.

A 1981 citizenship law, which effectively excluded the Tutsi by restricting citizenship to those who could claim ancestry in Congo in 1885, the date of the Berlin Conference,[49] meant that Congolese Tutsi had became progressively more marginalised at both a political and local level, which, in turn, underscored the vulnerability of their claims to land. This situation created something of an impasse: the land tenure system made the immigrants landowners, but their political subordination to Bahunde authority kept them implicitly in a tenancy status.[50] As a result, therefore, "*today, Congolese of Rwandan descent, especially the Tutsis among them, own most of the land [in the North Kivu territories of Masisi and Walikale], but the Hundes and the Nyangas continue to claim it as their own on the grounds that it was never rightfully sold or given away*."[51] Land ownership therefore remains fundamentally unclear, and does not provide a clear framework for the recovery of land in any repatriation process.

By the early 1990s, tensions had reached a critical point, and an "inter-ethnic war" broke out in North Kivu as the struggle for land metamorphosed into inter-communal violence,[52] leading to approximately 20,000 casualties and the creation of approximately 250,000 IDPs.[53] Meanwhile, a further split was developing (or being re-ignited) within the Kinyarwanda-speaking population that mimicked the politicised ethnic categories (Hutu and Tutsi) destabilising neighbouring Rwanda and Burundi. Civil wars in Burundi and Rwanda increasingly spilled over the border into eastern Congo. Both sides in Rwanda's civil war, for example, drew upon Congolese Kinyarwanda speakers for support, mirroring the same ethnic divisions that were proving to be so poisonous in Rwanda.[54] The arrival of 200,000 Burundian refugees in 1993 further destabilised the situation.

1994 Rwandan genocide: a catalyst for more violence

Although tensions in North Kivu had reduced and a precarious peace had been established by early 1994, the arrival of 850,000 Rwandan (mainly Hutu) refugees in the aftermath of the Rwandan genocide reignited conflict. The configuration of the conflict in Rwanda was transposed onto Kinyarwanda-speaking groups in eastern DRC, making their situation even more vulnerable. As Prunier states, they were in a "*particularly controversial situation because they had both strong state and nonstate loyalties and because one of their segments had just been massacred by the other, turning support for the non-génocidaire group into a matter of politically correct transborder commitment*."[55]

As events evolved in Congo – including the 1996-7 rebellion against Mobutu's regime with the support of Rwanda and Uganda that led to Laurent Kabila's presidency; and the 1998 revolt against Kabila's government (which by then had turned on its Rwandan allies) that morphed into "Africa's First World War" due to the involvement of countries from all over the continent – anti-Rwanda sentiment only grew.

In particular, the fact that a number of Congolese Tutsi moved to Rwanda in the aftermath of the genocide and others fought on the side of government of Rwanda's forces in the unfolding conflict, was, and still is, translated into an assumption that all Congolese Tutsi are somehow more Rwandan than Congolese. This perception was exacerbated by the fact that RPF-aligned fighters, including Congolese Tutsi, were associated with terrible atrocities against the civilian population in North Kivu, as well as land-grabbing, which led to local communities rejecting their presence and asking them to return to Rwanda.[56] In particular, rumours were rife that the presence of the RPF in Congo during the different stages of conflict in eastern DRC was part of a broader conspiracy to incorporate North Kivu into

Rwanda. Consequently, the situation for all Congolese Tutsi became increasingly precarious and vulnerable.

Eventually, thousands of Congolese Tutsi fled from North Kivu to Gisenyi prefecture in neighbouring Rwanda, where they were put into large camps. The camps, including Mudende, were then attacked, supposedly by "interahamwe" operating from bases in North Kivu,[57] before the refugees were moved to camps further from the border. Since then, anti-Rwandan feeling has continued to fester, not least due to the fact that although all international troops were supposed to have officially withdrawn from Congolese territory by 2002 as part of the peace agreement, Rwanda has continued to play an active role.

North Kivu in 2011

Although conflict in DRC officially ended with the Sun City peace agreement in 2003,[58] it is clear that North Kivu can hardly be considered a stable environment, and the situation remains rife with paradox. Rebel groups, or armed gangs, have continued to thrive in North and South Kivu and their presence has led to appalling atrocities against the civilian population. They have not only prevented conditions for favourable return for all those who remain displaced in the region, but also perpetuated anarchy and made resolution of the conflict more complicated.

The *Forces Démocratiques de Libération du Rwanda* (FDLR) is one such group. Originally comprised of significant numbers of former *génocidaires*, it is widely portrayed as a Hutu-aligned rebel group ostensibly fighting to return to Rwanda. In reality, however, it kills indiscriminately and regardless of ethnic affiliation, as evidenced by testimonies provided in previous research.[59] It continues to pose a significant threat to civilians in North Kivu, and the government's inability or unwillingness to disarm these fighters has perpetuated fear that their presence is part of a wider plot against Tutsi Kinyarwanda-speaking communities.[60] Not surprisingly, their presence remains a key factor in the current reluctance of Congolese Tutsi refugees to return.

The FDLR's numbers, currently estimated at approximately 2,500, have been roughly halved in the past two years,[61] attributed to successive military campaigns[62] and efforts to extract FDLR soldiers. Further progress has been made through the arrest of some of the movement's leaders, indicating that the international community is moving to dismantle the leadership structure of the FDLR residing abroad.[63] In February 2011, the International Criminal Court (ICC) began its proceedings against the FDLR's executive secretary, Callixte Mbarushimana.[64] While these developments are positive, neither high level arrests nor military campaigns have stopped the FDLR from continuing to attack the civilian population with extreme brutality. Military campaigns against the FDLR have been characterised by further displacement and brutality committed by all involved, including government forces (the FARDC).[65]

Inextricably linked to the existence of the FDLR – and possibly the cause of kick-starting it back into life by re-opening many of the sores in eastern DRC[66] – the *Congrès National pour la Défense du Peuple* (CNDP) was formed in 2006 in eastern DRC. Widely portrayed as dominated by Tutsi and with strong support from Rwanda, it was formed ostensibly to protect Congolese Tutsi and create the conditions for their return. It has not, however, achieved this goal and instead has contributed to the displacement of approximately 300,000 people and provided yet another excuse for armed militias to brutalise the civilian population. Its existence and operations have only further underscored the linkages between Congolese and Rwandan Tutsi and consolidated prejudices regarding the allegiances of Congolese Tutsi. Not surprisingly, the CNDP, and specifically its former leader Laurent Nkunda (who was arrested in

January 2009 by his former ally, the Rwandan government), were mentioned by informants during the course of the research when discussing previous and current conflict dynamics in North Kivu and perceptions around the configuration of protection (or lack thereof).

In March 2009, the CNDP officially agreed to become a political party and for its forces – then around 6,000 strong – to be integrated into the government army, the FARDC. Its current leader, Bosco Ntaganda (who was indicted by the ICC in 2006 but has not been arrested) has resisted the government's attempts to disperse its soldiers throughout the army and throughout the entire country. Instead, it claims that its soldiers within the FARDC will not leave the area until all the 160,000 Tutsi refugees across the DRC's eastern border return and the FDLR is destroyed.[67] Rumours that Ntaganda functioned as second-in-command of the UN-backed operation to eradicate the FDLR (although strongly denied by the UN, the DRC government, and FARDC) point to the ongoing influence that the CNDP continues to exert in the region.[68] The CNDP retains a strong (and possibly strengthened) military profile: ongoing reports indicate that its soldiers levy taxes,[69] that it has quadrupled the amount of territory it controls, and that it exerts sole authority in some areas still off-limits to other Congolese authorities.[70]

Other local militias, referred to as Mai Mai, continue to operate in North Kivu, fuelled by a lucrative war economy that both drives and sustains their existence. More recently, the *Forces Patriotiques pour la Libération du Congo* (FPLC) was established in 2008 and is thought to be recruiting across ethnic lines in parts of North Kivu and Uganda in order to compete with the CNDP.[71] While the CNDP has traditionally had close links with the Rwandan government, the FPLC is seen as being Uganda-backed. The FPLC's apparent leader, Colonel Nsengiyumva, was assassinated on February 25, 2011, an event that was referred to by a number of those interviewed and is rumoured to have been coordinated by Rwandan intelligence services fearing the FPLC as a threat to their influence over the Tutsi in North Kivu.[72]

Beyond the military threats in the region, there are numerous political problems. One of these is the FDLR, who are inextricably linked to the wider geopolitical context in which it is operating. While at one level the rebel group is little more than a vicious group of looters enjoying the rich pickings of a resource-rich environment, it is also important to emphasise that the factors that led to the creation of the FDLR remain unaddressed.[73] Their presence relates, at least in part, to feelings of political exclusion of Hutus within the Rwandan context, and the associated assumption that all remaining Rwandan refugees are *génocidaires*.[74] More broadly, without sufficient regional political engagement to address the various causes of conflict and displacement, military solutions alone will be ultimately ineffective, and militias will continue to thrive and civilians will continue to be pummelled by ongoing cycles of violence.

"For many, the isolation which has been experienced over 14 years of camp life and the lack of alternatives has created a strong sense of despondency. When asked where they saw their home, many talked of the fact that they have no home."

Another problem is that there is no representation of Tutsis from North Kivu in the provincial assembly, because some 53,000 of them were refugees during the 2006 elections and therefore were unable to vote.[75] Their lack of local political representation, in turn, has a direct impact on their ability to access land as it is the local authorities who in practice determine land distribution. On the other hand, with the integration of CNDP soldiers into the army superficial at best and CNDP soldiers posted to key farming and cattle areas in Masisi and Rutshuru continuing to exercise control,[76] there would seem

to be potential for paramilitary leverage for access to land for Congolese Tutsi in the area. This situation has left everyone vulnerable: Tutsi Congolese on account of their lack of political representation and the poor basis on which CNDP defence rests (its association with the Rwandan government reinforces the perception of refugees as Rwandans/outsiders); and non-Tutsi Congolese for whom the CNDP poses an ongoing military threat, and who continue to feel aggrieved by the way in which their land has been misappropriated in the past. With militia groups continuing to rape, loot and pillage at will, and the UN Stabilisation Mission in the DRC, MONUSCO, unable to effectively protect despite a renewed mandate, cycles of conflict remain unbroken.

These tensions are expected to continue to rise as the November elections approach.[77] Indeed, the elections have the potential to particularly complicate the return of refugees, considering assumptions regarding their voting intentions and capacity to impact the balance of power in favour of Congolese Tutsi. However neutral the humanitarian rhetoric related to return, therefore, the recognition of voting rights for possibly tens of thousands of additional citizens of North Kivu cannot but be expected to affect the outcomes of the upcoming legislative and presidential elections.

This brief historical background provides the context in which this group of Congolese refugees in Rwanda now finds itself caught up in a seemingly interminably protracted situation of exile. So how do the refugees themselves view their current predicament?

The Illusion of Durable Solutions

Not surprisingly, these refugees do not want to be refugees. All of those interviewed fled Congo in the mid-1990s in search of safety. They talked of how, when they fled, they could never have imagined that 14 years later they would still be living in a camp in exile. Whether they had been hoping to be welcomed in Rwanda and offered citizenship, or whether they had anticipated spending a few months sheltering before it was safe to return to Congo, the fact is that this group have been forced to put their lives put on hold for a decade and a half. They have been living in camps, without access to land, subject to restrictions on their movement and completely dependent on humanitarian aid. As exiles, they have had limited access to resources, including education, and this outsider status has impacted their ability to improve their longer-term prospects within Rwanda.[78] As one refugee said, “when I do not have a country I am not good.”[79]

The inability to access adequate land to support themselves was particularly upsetting for those interviewed. Formerly, many had owned cows, some with significant herds of cattle, with access to land to graze them on. Many talked of how they had considered themselves “rich” and they were able to support their families. Now, by contrast, they are landless, do not have any cows and are dependent on hand-outs. One man who had previously had ten hectares of land for cultivating and grazing his cows said, “*Now I cannot say I am rich. I am just sitting waiting for food*.”[80] As another woman said, “*Here I do not have enough food to eat. My children are always hungry. This is not life*.”[81]

In a context in which resettlement is not being offered, local integration or repatriation are the two possibilities offered by the traditional humanitarian framework of “durable solutions” for ending exile for this group of refugees. Yet both are riddled with dilemmas and problems, as evidenced by the fact that these refugees continue to live in the camp.

Local integration?

Given that this group of refugees speak Kinyarwanda and share the same ethnicity as those in power, as conceived within the identity politics of the region, it could be assumed that the basis for local integration is strong. Many of those interviewed spoke, however, of how they feel alienated in Rwanda. Although some do small jobs for Rwandans outside of the camp, there was a strong awareness of the fact that they are considered as foreigners and outsiders who do not belong. Those who have opted out of the settlement system and managed to create a life for themselves within Rwanda have already done so.[82] Those who remain are stuck in a camp that offers no opportunities and only a sense of increased alienation. As one man said in response to being asked if he felt as a refugee that he has rights, "*No, I do not have any. Even to say you are a refugee is a problem. You do not have a country. That means for me, when I do not have a country I am not good*."[83] For many, the isolation which has been experienced over 14 years of camp life and the lack of alternatives has created a strong sense of despondency. When asked where they saw their home, many talked of the fact that they have no home: "*Now I can't say home is in Congo. I don't have Congo, I don't have Rwanda. Rwanda is not my country. We are somewhere between. For me, right now, I do not have a country that I call my home*"[84]; "*Now, I cannot describe home. I cannot say I have a home. I cannot say Rwanda when I am a refugee. Home is in the air, in the sky*."[85] In other words, home feels like an impossibility.

Although we were unable to secure official interviews with government of Rwanda officials as part of the research, it is understood that Rwanda has confirmed that there are no barriers *in theory* to applying for citizenship for any in this group.[86] Indeed, Rwandan law provides that those who have stayed as long in Rwanda as this group of refugees, whatever their nationality, are free to make an application for naturalisation if they fulfil seven threshold conditions.[87] Furthermore, according to the Tripartite Agreement signed by the governments of DRC and Rwanda, those who choose not to repatriate will be permitted to continue to reside in Rwanda and invited to, "*deepen their integration*."[88] However, based on their experience, local integration, including through naturalisation, is seen by this group of refugees as an unrealistic option.[89] And the fact that in 14 years only minimal integration into Rwandan life has been permitted by the authorities suggests that there would need to be a significant change in policy if this potential were to be realised.

In the context of the various options that exist in law above, it is concerning that none of those interviewed spontaneously mentioned naturalisation or recovery of citizenship as a possibility. At the same time, when asked how they would respond if they were to be offered Rwandan citizenship, a significant number of those interviewed did say that they would be happy to consider the option, but that it would be contingent on their ability to access land. As one young man said, "*If Rwanda gives me the opportunity to get citizenship, and then provides land and a house, I can be a citizen of Rwanda. Because in Congo there is no peace."*[90]

Some of the refugees also agreed, when asked, that dual nationality might be a potential path to integration if uncertain peace continued to reign at home. A young man, who had left the camp for a time to fight with the CNDP, said: "*I can accept [to stay in Rwanda as a citizen] if they agree for me to have two nationalities*." He wanted the security of an end to exclusion in exile, but, at the same time, he did not want to shut off the possibility of returning to DRC should peace come.[91] (It should be noted, however, that while Rwanda's constitution allows for dual citizenship,[92] DRC law does not.[93]). At the same time, there was an eagerness to avoid privileging the option of staying in Rwanda: the subtext in all the encounters was that that nothing should threaten closure of the door of return to Congo, a door which finally seemed to be wedged opened, albeit tentatively, after so many years of exile.

Repatriation?

The majority of those interviewed were clear that they saw their future home in Congo, despite the challenges: "*Here I am a visitor. My home is in Congo, even if I don't have my land*."[94] As one refugee said, "*I can stay here as a refugee but not as a citizen... You can't compare Congo and Rwanda. Congo is rich and I was born there. And the culture of Congo, we... there we cultivate and produce. We keep cattle, many cows, not like here in Rwanda where you only have one. You have many things that we lost in Congo*."[95]

One small insight into how closely these refugees see their future tied to the DRC is in how they have, with great determination, ensured that the education of their children is continued within the Francophone/DRC system. Although some have had the resources to send their children to school in Rwanda, the findings show that a significant number of students periodically leave the camp and go back to Congo to study. They move in and out of Rwanda with student identity papers (or, in some cases, pass over the border illegally) and come to Rwanda when it is particularly insecure. One refugee talked about a group of approximately 100 of them who went to North Kivu in 2007 for school.[96] Education, and education in DRC, therefore, is something that is worth taking a risk for, not only with regards to their personal security, but also with regards to their ongoing status as refugees.

Despite the huge desire to return home to Congo, and the limitations of refugee life, why have the vast majority of the refugees have remained in the camp? The decision over whether or not, or when, to return is a tough one to make and is fraught with a number of tensions. Not surprisingly, the key factor in people's minds was the need to ensure safety for themselves and their families. These refugees, like so many in the region, have experienced and witnessed appalling levels of brutality and violence and want to do everything to ensure that they do not place themselves once more in a situation in which they are vulnerable to attack. As such, their views strongly echoed the previous research in which refugees and IDPs alike indicated that they would return to their homes as soon as there is just enough peace for them to sleep in their houses and not have to hide in the surrounding bush at night.[97] However, two events relating to their displacement that were specific to this group of refugees were regularly referred to throughout the interviews and have been crucial in shaping the way in which they think about the possibility of returning to North Kivu.

Attacks on Mudende camp

The first instance involved two major attacks on Mudende camp where most of those interviewed were taken when they arrived in Rwanda. According to interviewees, the first attack in December 1996 took place at night and over 100 refugees were killed. In the second, a few months later, estimates by those interviewed claim that approximately 1,000 refugees were killed. The attacks are widely attributed to *interahamwe* who were hiding in neighbouring Congo at a time when the Rwandan army was trying to hunt them down.

The events, which took place almost a decade and a half ago, remain vivid in people's memories. One woman told of how she saw her brother being killed: "*They cut him... After they had cut him I turned away. I was with my parents... I spent the night walking*."[98] Other people talked of how their relatives had been burnt to death inside their huts.[99] One man saw two of his children killed during the attack: *"[The* Interahamwe*] were cutting them in the head. They used traditional tools... When a person remembers what happened there they feel very bad*." He returned the next morning to bury his children

before the dogs could eat their bodies: "*Inside the camp they dug a large hole and put the bodies in the hole*."[100] Even those who were too young to remember what happened knew details of what took place.

When asked who the attackers were, interviewees were unequivocal in saying that is was *interahamwe*, meaning that they were remnants of the former Rwandan government apparatus that carried out the 1994 genocide and had since fled to eastern Congo. In turn, they linked the attackers to the group who are still fighting in eastern Congo under the guise of the FDLR: "*Those people who are killing in Congo are the same as the ones who killed in Mudende*."[101] They crossed over the border from the area around the volcanoes where they were hiding – and from where they continue to operate.

However, there were two particularly disturbing aspects to these attacks. The first was that the attack had allegedly taken place in collusion with Rwandan Hutus living in the area surrounding the camp. An RPF officer had allegedly been acting as a source of intelligence for the *interahamwe*. He had apparently shared information about the lay-out of the camp as well as details about how many people were in the camp, along with other informants who were working as employees of international agencies in the camp. Therefore the *interahamwe* were seen to have included not only former *génocidaires* hiding in Congo, but also locally-based Rwandans: *"[NGOs operating in the camp] were communicating with the* interahamwe*. When they came, the employees went to the* interahamwe*, put on uniforms and came to kill the Tutsi."*[102] Another man said, *"The problem was the neighbours of the refugee camp. They were citizens but they were* interahamwe*. In the day, citizens, in the evening, they collaborated with* interahamwe*. So when the RPF came they found they were* interahamwe*, not citizens. They changed. It was the night and the army was scared. The local people were working with* interahamwe."[103] The second disturbing aspect of these attacks was the fact that such brutality could take place under the "protection" of the RPF and UNHCR, which has inevitably made the refugees particularly cautious about trusting those who are mandated to protect them.

Although the refugees were moved further from the border after the second attack and have not been attacked again since, the trauma of the event remains raw for many people and has reinforced their vulnerability as a group. Specifically, for as long as the FDLR remain an unresolved threat refugees will remain extremely reluctant to return home. And it is a threat that is acutely real. For instance some of those interviewed talked of how the FDLR currently occupy their land: *"The* interahamwe *have remained on our land. That's why we can't go home.* Interahamwe *occupies it and there is no authority to take it from them and give it to their owners. They have power over the government. That is the main problem*."[104] Another man talked of how his brother stayed behind on their land, but lives in constant fear of attack. When he hears the FDLR are near, he runs to the nearest town and then returns to the farm when he hears it is safe, a strategy that is high-risk at best.[105] As one man said, "*The people who chased us are still there*."[106]

Therefore while the FDLR is a threat to all civilians in eastern DRC – and, indeed, was specifically named by other groups of refugees as a factor preventing them from returning home[107] – those interviewed believe that if they return while the FDLR is still active, they would be a specific target of attack on account of their Tutsi ethnicity. Ultimately, therefore, although the majority talked about wanting to return home and of the many problems they face in the camp, the fact that they are currently safe is a significant disincentive to beginning to think about return.

Failed repatriation

The other event that has impacted people's understanding of their security in relation to return is a failed repatriation exercise that took place in 2002. A significant number of refugees repatriated to Congo following a visit by a joint delegation of government of Rwanda officials and members of the Congolese Rally for Democracy (RCD), the rebel group that had toppled Mobutu and was then in control of much of North and South Kivu. At the point of return, however, the security situation soon deteriorated and many were unable to access their original land. Again, those who were supposed to protect them were unable to, and many of those who had returned effectively traded their refugee status for IDP status,[108] feeling deceived by those who had encouraged them to return. As the security situation further deteriorated, many fled back to Rwanda. But in the process they had not only been once more subjected to brutality, but many had lost the few possessions that they had accumulated.

Combined, these two events have underscored the vulnerability of this group of refugees, should they choose to return. Not surprisingly, when a delegation comprised of government officials from Rwanda and the DRC along with UNHCR came to the camp to talk to them about repatriation in 2010, the refugees clearly did not take them seriously. Instead, they talked of how they prefer to rely on what they hear from phone calls with friends and family in Congo and from the radio: "*The BBC says there is still war*."[109] As one woman said, when asked what the delegation said, *"[t]hey said we must go back to Congo where there is peace. That they would provide us with land*." And when asked if they believed them, she answered, "*No. We think they are lying*."[110] Ultimately, therefore, there was a strong recognition that having security but no land was better than having land but no security. As one woman said, when asked how she felt about being in the camp: "*This is not my home or my own house. But I am protected here*."[111] Therefore despite its limitations, Rwanda currently offers safety to this group – safety that is not taken for granted.

National *and* local belonging: the basis for repatriation

While the ongoing presence of the FDLR in North Kivu was the immediate disincentive to return, there was also a strong recognition of more deep-rooted factors that have created exile and that might jeopardise their protection at the point of return. In this respect, their ability to genuinely *re*patriate was at issue, the ability to negotiate return and be recognised as Congolese citizens. Ultimately, if they are to be recognised as returning Congolese citizens (as opposed to Rwandan migrants) who are entitled to live in a specific area by others living in the communities to which they hope to return, the legitimacy of their return needs to be acknowledged by both the government and local community structures. Belonging at both of these levels is crucial to ensuring their access to both livelihoods and security (freedom from want and freedom from fear). As the findings demonstrate, one without the other is simply inadequate and makes return and reintegration impossible.

Securing livelihoods: freedom from want

Belonging, of course, is hard to quantify, particularly at a local level. However, one area in which it becomes highly tangible is through ownership of land (with land being the dominant source of livelihoods in the region). Land is the ability to grow crops, graze cows, generate enough income to send your children to school, and facilitate business and trading in town. It is also an indicator that you belong to that territory and have a right to be there: access is important, but ownership imbues a legitimacy to belong. Yet land is also in short supply and the stakes are unbearably high.

As stated above – and as with other displaced groups of Congolese[112] – there was widespread recognition that returning to North Kivu represents the strongest opportunity for these refugees to once more have land. However, as we have seen, access to land is extremely fraught in North Kivu, as elsewhere in the region: ownership and/or access is highly subjective and arbitrarily administered, and is inextricably linked to military and political power dynamics, particularly in mineral-rich areas. Therefore it is precisely the biggest driver to return that signifies the greatest threat to the sustainability of that return.

In the first instance, there was recognition that access to land was dependent on proving their Congolese nationality. Without a Congolese identity card that proves your nationality, you would not have access to land. As one man said, "*To have land you must first have an ID. Then if you have that you can vote and then the government knows you, that you are a citizen of a certain area*."[113] Access to land, political power and citizenship are all intimately related and cannot be separated.

Yet while proving their national status is a necessary first step, in practice access is then realised at a local level. In the views of those interviewed the ability to claim their land at the point of return will be primarily dependent on the opinion of local chiefs and neighbours – or, in some cases, on the ability of members of their own group to assert and providence "evidence" of ownership. For instance, an elderly woman who had moved to Congo from Rwanda with her family in 1941 when she was five years old talked of how she needs to re-establish her family in Congo on their land before she dies: "*My brother has called me [from their home in Kitchanga] saying that people want to take his land and that I can go to help solve the problem... The thing is, before we were not thinking the problem of land would happen so we had no documents. But I know the borders of my land. I know where my parents died*."[114] As the oldest relative alive, she is the one who can best "prove" their ownership.

Others talked of how local leaders are in charge of sorting out conflicts over land, with the assistance of neighbours for ascertaining exact boundaries. When asked if he knew who that person was, one man said, "*Yes, I know. Because before, my father used this method of after one year, they give one cow. It's like a tax of the land. They write your name. They have a file. That is the proof of the land. If you get the problem, you go and ask your neighbours. They know too what land belongs to them... When neighbours know there is no problem*."[115]

Several informants referred to the way in which their land was rented on a tenancy basis. One man from Masisi, for instance, described his situation in this way: "*I had the land but it didn't belong to me. If you have enough money you go and tell those Bahunde and buy one hectare... After that you get a paper and sign at the government*." When asked who is on that land now, he said: "*Those Bahunde, my neighbours, have my land. It's like when you are keeping cattle, you have five cows and they provide you with one hectare inside for also caring for theirs. I was working with a person who had a big farm and we shared a small piece of land. I paid a little for the land*." When asked how their relationship was, he replied, *"[w]e were living together... because those Hunde are rich, they are the boss, they have the land but do not know how to keep cows... but even they have problems with interahamwe... If we go back now we will have a good relationship*."[116]

Despite this optimism, however, there was also a strong recognition that the arbitrary nature of land ownership and access can as often work to their disadvantage as their advantage. In particular, there was acknowledgement of the extent to which land is inextricably linked to power. As one woman said, "*They can take my land depending on the person who has power in government. They can come and*

take that land if he is superior than my family."[117] She later talked about the fact that in her village before she fled, "*the Hutu were the ones with the power in my village, so as a Tutsi, you don't have any right.*"[118] It follows, therefore, that in a context in which local power and knowledge determine access, it is easier to get your land back in areas that were predominantly Tutsi-owned.[119] Some talked of Masisi as being easier to return to in this regard than Rutshuru, as there were previously larger numbers of Tutsi in Masisi. Yet the fact remains that without any local political representation, their ability to access land that is so tightly controlled by local administrative structures is going to be seriously compromised.

The need for safety and the challenges around access to land converged around the fact that refugees were unequivocal about the fact that they need to return to North Kivu *as a group*. Their return as a group is inextricably linked to their need to identify plots of land and provide legitimacy over land disputes: many of their neighbours are living in the camp with them, and their testimony will be needed at the point of return if they are to "prove" legitimate access to the land from which they fled. Their combined standing as a group, therefore, is seen as a means of facilitating their return to Congo and reclaiming their land.

Finding safety in a polarised context?

Access to land, however, is somewhat futile if these refugees are unable to ensure their safety. As with land, safety is something that is technically the responsibility of the state, but in reality is locally realised. Therefore their return is intimately connected to their ability to access protection for themselves as individuals, families and, significantly, as a group.

> *"Although the majority talked about wanting to return home and of the many problems they face in the camp, the fact that they are currently safe is a significant disincentive to beginning to think about return."*

Group dynamics are a key factor in understanding security dynamics in North Kivu. The way in which groups have been attributed a certain status defines not only the way in which they are either included or excluded from accessing political and economic resources, but also the way in which sources of aggression and means of protection are configured. A key organising principal in this regard is the issue of ethnicity. The way in which groups have been constructed along ethnic lines was well-recognised by those interviewed. As outlined above, ascribing groups with an ethnic label has become a principal means for articulating the configuration of conflict in the region. In this respect, ethnicity is seen as primarily negative – it creates violence. For instance, Hutu Congolese that were interviewed in our previous research identified the primary threat to their safety as being the CNDP – a Tutsi-aligned militia (now officially a political party).[120] Indeed, as with the current research, ethnicity was blamed for much of the violence that had caused them to flee, whether to Uganda or within North Kivu in our previous research.

At one level, this was blamed on the violence exported from Rwanda in the aftermath of the genocide. The fact that the FDLR, blamed for much of the immediate insecurity, was most commonly referred to as *interahamwe* emphasises its association with the genocide committed primarily by Hutu extremists and targeted against Tutsi: "*I cannot continue to stay in this country. This country is the one that caused us to become refugees. They caused the problems there in Congo*."[121]; "*When interahamwe came there they started to spread bad information to those in Congo and the tribes in Congo started saying those Tutsi are Rwandese not Congolese. They said Tutsi must go back in our country*."[122] The fact that the word *inyezi*, meaning cockroach, that was infamously used to refer to Rwandan Tutsi during the genocide is

now used in Congo was seen as further evidence of this.[123] However, as with our previous research, there was also strong recognition that the violence had drawn upon earlier localised tensions within North Kivu that pre-dated the genocide.

Ultimately, ethnicity has taken on particular significance because it is not only the way in which much of the violence is organised or articulated, but, by the same logic, is also the way in which *protection* has become configured. For instance, refugees feel safe in Rwanda under a government that is ethnically on their side as a result of the Tutsi dominance of the Rwandan state. Similarly, interviewees talked of how they had protection when the RPF was in control in the Kivus, as has been the case more recently with CNDP controlled areas (although clearly not enough to give them the confidence to return at present). As one man said, "[*w]hen CNDP were leading there was no Hunde who could come and take your cows... They didn't fight because they wanted someone to be president. No, they just wanted to protect their people*."[124] Not surprisingly, this is in direct contrast to Congolese Hutu who were interviewed during previous research and who identified the CNDP as the primary *threat* to their security. As this reveals, the problem here is not ethnicity per se but the way in which it has mutated into a powerful weapon in the conflict environment of North Kivu.

At the end of the day, however, protection based on ethnic allegiance alone is both transient and dangerous. As the previous interviewee later said, the protection by the CNDP ultimately failed, and the only way to bring peace to Congo was "*to bring interahamwe back to Rwanda. Those Hunde are not the ones who chased us*."[125] Yet there was also recognition of the fact that taking the FDLR back to Rwanda will not sort out all the problems in North Kivu: deep-seated tensions will remain.

No room for multiple forms of allegiance

This construction of polarised forms of identification that both pre-dates the genocide and was solidified by it, has created profound confusion for those who, at one level, identify strongly as a group (underscored by the violence directed against them collectively that forced them to flee, followed by a time in exile, once again as a group), and yet at the same time see the very basis for their group identity as dangerous. As Reyntjens says, "*The Congolese Tutsi Banyarwanda (or Kinyarwanda-speakers) are torn between their local and national allegiance on the one hand, and their ethnic and transboundary loyalty on the other, with the latter offering (the illusion of) protection and being a threat at the same time. The interlocking conflicts allowed ethnic entrepreneurs to mobilise identities across boundaries, thus giving rise to instant 'ethnogenesis' under the form of a divide between 'Bantu' and 'Hamites'*."[126]

This has created something of a dilemma for these refugees. On the one hand, they have a strong sense of shared identity as a group – their commitment to each other as a group has been a critical source of support prior to and during exile – and yet at the same time their very group identity counts strongly against their prospects of return. Ultimately, in the Congolese context, there is little room for multiple forms of allegiance and identity. As a result, there was widespread recognition amongst the refugees that in order for them to return in safety, their ethnicity strongly counted against them. While the CNDP might offer some support, it could not be relied upon. When asked about how they described themselves, therefore, it was not surprising that interviewees presented their Congolese national identity as an antidote to the way in which they are perceived by others as Tutsi: "*I say I am Congolese, but those people [others in Congo] say I am Tutsi. That is what they say about us*"[127]; "*For me, my priority is being a citizen from Congo. Others say I am Tutsi, causing me to feel like a Tutsi. For me, I am just Congolese. You could say Hutu or Tutsi, but we all have the same blood. It doesn't mean anything to me*."[128] These quotes show an awareness of a situation in which being Tutsi is unacceptable. To be

Congolese you have to deny your Tutsi identity and your self-image as a Kinyarwanda speaker. You have to be just Congolese.

In our previous research, Hutu Congolese expressed similar sentiments: there was a strong awareness that they, too, needed to prove their legitimacy as Congolese as Kinyarwanda speakers. They also realised that their ethnicity counted against them: the fact that the CNDP and FDLR are associated respectively with Tutsi or Hutu ethnic identities that function across borders across the region was seen to have created a situation in which all Hutu or Tutsi are somehow not Congolese, despite the fact that some of these populations have been present in the territory that is now DRC since before independence. Indeed, interviews with non-Kinyarwanda speaking Congolese suggested that Kinyarwanda speakers could only be legitimately recognised as Congolese if they renounced their ethnic ties that, implicitly or explicitly, crossed borders.

Specifically, this group recognised that their ethnic linkage with many of those living in Rwanda (and, significantly, the predominant group in power) has created a situation in which to be Tutsi was defined as being Rwandan and not Congolese. Their Rwandan roots were underscored by the fact of their flight to Rwanda and, as a result, they are viewed with particular suspicion.[129] Thus while they want to return as a group for their safety and to best ensure access to land, in reality they recognise that their Tutsi-ness has become a liability. This dilemma encapsulates many facets of the conflict dynamics in eastern DRC – and, indeed, the Great Lakes region as a whole, in which ethnic categories have become a dominant trope for describing and mobilising violence and in which "foreign" identities (as exemplified by their Tutsi identity which is seen as Rwandan) are determined to be unacceptable for political expediency.

Previous interviews conducted with IDPs living in North Kivu support their fears: there is a widely held view that when this group fled to Rwanda, they were hoping to reclaim their Rwandan citizenship. This group were seen to have essentially thrown in their lot with Rwanda when they fled, thereby revealing their "true" identity. The mooting of return for this group now is somehow seen as part of a Rwandan plot to take over land in North Kivu: IDPs in North Kivu, for instance, were extremely worried about the thought of this group being repatriated before them, as they would then get first choice of land.[130] Indeed, there have been recent reports of Kinyarwanda speakers being unable to (re)access their land due to local politicians asserting that they should "return" to Rwanda.[131] The potential for conflict to re-ignite in such a context is not hard to imagine.

Thus for this group of refugees, by virtue of having fled to Rwanda (underscored by the fact that their ethnicity mirrors that of the government of Rwanda under whose protection they are living), their allegiance is seen to be highly suspect. The fact that both national processes and local *Comites* are being put in place to, *inter alia*, verify whether or not they really are people who fled from Congo rather than Rwandan trying to gain access to land is case in point. Indeed, interviewees were aware that many Congolese do not see them as refugees but as nationals of Rwanda. One man talked about how this message has come from the top: "*Kabila is the one who said that we were local people... but the government of Rwanda was the one that said we are refugees*."[132] To repatriate, therefore, this group has to not only prove that they are Congolese, but that they are not Rwandan. And the basis on which to do this is to deny their Tutsi identity.

Repatriation: an antidote to violence?

So what is the way forward? In this highly charged context, effective repatriation offers inherent opportunities, in the first instance, the possibility of allowing these refugees to assert their legitimacy as Congolese. Second, there was a strong recognition that the criteria for safe return rests on identifying a polity that is able to provide legitimate and functioning security – an antidote to the partisan, polarised militias that currently retain power. In recognition of this, many of the interviewees talked of how they want the decision for their return home to be made by the Congolese government as a sign of its commitment to guarantee that its citizens are being welcomed home.[133] As one refugee said: "*I am always ready to turn back, always waiting. It is not good to stay as a refugee. The camp is not good. When you are a refugee, the problems without nationality – they do not care for you, or respect you. Like when I go outside the camp, they say, there is a refugee. But in your country, you feel proud that you are there. There you can be a Congolese*."[134] The only way to end their current predicament is a form of justice being done, namely redressing the injustice of stripping them of their identity and Congolese citizenship. As one refugee said: "*Justice is to return to your own country*."[135]

Yet in reality, the ability for the Congolese government to protect its citizens was recognised as having fundamentally failed. When asked who is in charge in Congo, people pointed to Kabila but also talked of his failure, and many talked about the fact that the government is scared of the FDLR. One man, when asked who is in charge in Congo, replied, "*Kabila, the president. But he is not powerful. If he was, we would not be here in the camp*."[136] Security is *supposed* to be guaranteed by their government but, in reality they are not. As one man said, "*It is not me who made me a refugee*."[137]

It is therefore vital that empatriation also takes place at a *local* level and that the debate about belonging unfolds on the ground as well as in the capital. Indeed, several stories offer some hope in this regard, and show the extent to which ethnicisation of the conflict has become over-exposed. While ethnic categories might *describe* the conflict, they do not necessarily *explain* it. For sure, it has been a useful tool in creating and organising violence by unscrupulous political elites and, in that respect, holds real power and influence. Yet it is vital that its salience is not over-determined. Just as there were stories of people being targeted for being Tutsi, there were also many stories of people being protected by those who belong to other groups. One interviewee described how he fled his home after an attack by *interahamwe*, but that the (Bahunde) local leaders helped to protect him and his family so that they could escape: "*The local leaders knew the population. They grew up in the same area. They didn't want them to be killed in front of them*."[138] This story of protection has nothing to do with ethnicity; it is about one family protecting another. Ethnicity is not static, but rather a fluid form of identification that contains within it multiple sub-texts and nuances.

"I am always ready to turn back, always waiting. It is not good to stay as a refugee. The camp is not good. When you are a refugee, the problems without nationality – they do not care for you, or respect you. Like when I go outside the camp, they say, there is a refugee. But in your country, you feel proud that you are there."

There were also stories of Hutu neighbours phoning refugees in the camps to warn them that their land had been taken over by FDLR. One man told of how his (non-Tutsi) neighbours call him about once a month to give an update on the situation there.[139] Another said that his Bahunde neighbours would help him get his land back, which is currently occupied by the FDLR. As he said, "*the interahamwe hate [the Hunde] and kill them. Interahamwe are like animals. They even kill those Hutu from Congo too*."[140]

However, while these stories offer hope, they do not provide the basis for safe return. In reality, at the point of return they *will* be identified as Tutsi who have been living in Rwanda, their legitimacy to belong *will* be strongly contested, and disputes over access to land *will* inevitably re-erupt.

Therefore in order for this group of refugees – and all other groups displaced around the region – to return home and genuinely repatriate, there needs to be simultaneously a *national and political* resolution to the many factors that generated their flight and that have kept them in exile since, and a strongly *localised* or community approach to addressing and resolving inequalities and injustices that lie at the heart of ongoing conflict. Crucially, the government needs to be unequivocal in sending a message that this particular group of Congolese refugees are not only legitimately entitled to return home, but are welcomed and are seen as genuine component for re-building a country thoroughly torn apart by division and polarisation. And this message needs to resonate at a local level.

Conclusion

The story of this group of refugees encapsulates many of the causes and consequences of inter-connected conflict and displacement in the Great Lakes region that continues to manifest itself and is in danger of further re-igniting. The potential return of this group of refugees is being discussed in a context in which ethnicity has been distorted into a poisonous tool for group mobilisation; ownership of land is ambiguous and rooted in injustice; high levels of militarisation generate constant insecurity and brutality; mineral wealth continues to be violently exploited; and national and local political structures remain weak and undermined by shifting allegiances and interests.

At base, the ongoing exile of these refugees is evidence that the Congolese state continues to fail in its mandate to protect its citizens. It has failed to create an environment in which different groups can flourish and have equal access to resources and in which multiple forms of allegiance are not only acceptable but encouraged. Instead, locally constructed (but regionally maintained) groups control access to resources and define the way in which protection is both configured and violated: the insecurity they generate creates a continual need for protection and, in turn, a constant excuse for their existence. Ethnicity has become highly politicised in this context, and its manipulation is clearly exemplified by the changing status of Congolese Tutsi groups within the country.

Yet in a context in which local power dynamics are the source of so much violence, people have little choice but to look to the state – a state that holds so little promise, but to which there are few alternatives in a context in which rights are realised primarily through securing a link with a state. An antidote to violence, therefore, is the reconstruction of the polity whereby the state can function at a minimal level and diffuse the power of polarised ethnicities, however idealistic that notion might be. This is where the discussion on repatriation becomes so crucial. By linking the return of this group of refugees with wider conflict resolution (or transitional justice) endeavours, not only will the chances be improved that safe and wise decisions will be made regarding their future, but that such decisions feed into reconstruction rather than becoming a further source of tension.

Ensuring the safe return of these refugees, therefore, is not only about the specific security for this group: it is about creating a viable structure for future stability of all of DRC's citizens, a structure in which broader issues such as good governance and security sector reform – including the army, the police and the judiciary – are fundamental to the process of return. It is about refugees being able to

return to their homes and, in so doing, becoming part of the reconstruction of their country. And it is about creating an environment in which multiple forms of allegiance and identity can flourish alongside each other.

At the heart of this story is the question of the “true” citizenship of this group of Congolese refugees at both a national and local level. There is no “true” answer to this question, and certainly not one that can be answered only at a legal level, or that can be imposed from outside. The task of negotiating the return of this group of refugees to DRC is a multi-dimensional challenge that requires political compromise, imagination and courage by those in exile, by home communities and by those in positions of power.

References

[1] For instance in November 2009, the report of a government of DRC representative, citing the National Commission for Refugees that 12,000 persons had crossed the border, sparked a statement by 18 members of the North Kivu to denounce the "massive" and "clandestine" movement, which they termed a prelude to occupation. Onesphore Sematumba, "Retour des Refugies Congolais Installes au Rwanda: Course Derriere des Verites Mouvantes," Pole Institute, December 2009, p.1.
[2] This paper focuses on the situation of the 53,000 camp based refugees that are the target of current repatriation plans, but it should be recognised that thousands more refugees are living elsewhere in Rwanda.
[3] It is important to note that the paper focuses on the refugee perspective while recognising that this is only one perspective on durable solutions, albeit a crucial one. Other actors, such as government officials, UN representatives or NGO implementing partners in Rwanda have relevant insights, but our ability to reflect those perspectives was limited by the fact that our research team was unable to secure any interviews with these actors, despite requests to that effect.
[4]International Refugee Rights Initiative and Social Science Research Council, 2010. "*Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo",* Citizenship and Displacement in the Great Lakes region, Working Paper no. 3, March.
[5] Concluded under the aegis of the International Conference on the Great Lakes Region (ICGLR), on 14 and 15 December 2006.
[6] The full text of the Pact and all the Protocols are available online at the website of the ICGLR Secretariat: http://www.icglr.org.
[7] The Pact includes two new and groundbreaking protocols, for example, which are specifically devoted to two critical aspects of exile in the region – the property rights of returning populations and the protection of those who are internally displaced. See the Protocol on the Property Rights of Returning Persons and the Protocol on the Protection and Assistance of Internally Displaced persons.
[8] Dar es Salaam Declaration, article 68.
[9] Tripartite Agreement, art. 5 (translation from the French, IRRI staff).
[10] AUC-ECA-AfDB Consortium, *Framework and Guidelines on Land Policy in Africa* (2010), available at: http://www.au.int/en/dp/rea/content/framework-and-guidelines-land-policy-africa.
[11] Gihembe is one of three camps hosting Congolese refugees, and is approximately 20 minutes walk from Byumba town. The other two camps, Kiziba and Nyabiheke, are near to Kibuye and Gituza towns respectively. Nyabiheke is the newest camp and is mostly comprised of those who returned to DRC and were then pushed back out.
[12] As well as to other neighbouring countries including, in particular, Uganda.
[13] Génocidaires who fled to Congo in the aftermath of the genocide.
[14] See *Accord Tripartite entre le gouvernement de la république du Rwanda, le gouvernement de la République Démocratique du Congo et le Haut Commissariat des Nations Unies pour les refugiées relative au rapatriement volontaire des refugiées Congolais vivant au Rwanda* (hereinafter Tripartite Agreement), on file with IRRI.
[15] It is interesting in this regard that the Tripartite Agreement signed by UNHCR and the Governments of Rwanda and DRC contains references in its preamble to the Lusaka Ceasefire and Humanitarian Protocol of 1999; the Nairobi Communiqué of November 9, 2007 (Governments of DRC and Rwanda); the decisions of the Conference on Peace, Security and Development of the provinces of North and South Kivu of 23 January 2008; and the various agreements entered into by the Government of DRC with the CNDP and armed groups in South and North Kivu of 23 March 2009.
[16] UNHCR, "Repatriation Fact Sheet (Democratic Republic of Congo)," 30 June 2011.
[17] IRIN, "Land rows complicate refugees' return from Rwanda." 2 July 2010. Found at http://www.rnanews.com/regional/3714-land-rows-complicate-congolese-refugees-retese-refugees-return-from-rwanda
[18] As evidenced by interviews with IDPs outside Goma during interviews conducted during previous research. See IRRI and SSRC, 2010.
[19] Oumar Sylla, "Land and property disputes impeding return and reintegration." Forced Migration Review, Issue 36, November 2010.
[20] Steve Hege, "Of tripartite, peace and returns." *Forced Migration Review*, Issue 36, November 2010.
[21] Ibid.
[22] Interview with UNHCR official (by phone), Goma, 19 May 2011.
[23] Correspondence with NGO official, Goma, 20 May 2011.
[24] Interview with UNHCR official (by phone), Goma, 19 May 2011.
[25] IRRI, in partnership with the Social Science Research Council, has been developing this idea in the course of a broader research project exploring Citizenship and Displacement in the Great Lakes region. See: "Going Home or Staying Home: Ending Displacement for Burundian Refugees in Tanzania," Working Paper no. 1, November 2008; "'Two People Can't Share the Same Pair of Shoes: Citizenship, Land and the Return of Refugees to Burundi." Working Paper no. 2, November 2009; "Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo", Working Paper no. 3, March 2010; "A Dangerous Impasse: Rwandan refugees in Uganda." Working Paper no. 4, June 2010 (all available for download on http://www.refugee-rights.org/Publications/Papers/Papers.html); and Lucy Hovil, 2010, "Hoping for peace, afraid of war: the

dilemmas of repatriation and belonging on the borders of Uganda and South Sudan." New Issues in Refugee Research, Working Paper no. 196, UNHCR Policy Development and Evaluation Service, November. (http://www.unhcr.org/4cf5018b1.pdf)
[26] Katy Long, 2008. "State, Nation, Citizen: Rethinking Repatriation." Refugee Studies Centre Working Paper No. 48, Oxford, August, p. 35.
[27] The Pact on Security, Stability and Development in the Great Lakes Region provides a vital framework in this regard which will be explored later in the paper.
[28] Autesserre, 2008, pp 94 – 110.
[29] Hannah Arendt, 1986, *The Origins of Totalitarianism*. Andre Deutsch, pp. 295-296.
[30] Tripartite Agreement, Article 2.
[31] Loi No.04/024 Relative à la Nationalité Congolaise, article 4.
[32] Tripartite Agreement, article 9, translation from French by IRRI staff.
[33] Interview with UNHCR official (by phone), Goma, 19 May 2011.
[34] Interview with UNHCR official (by phone), Goma, 19 May 2011.
[35] There are two other camps in Rwanda: Kiziba camp near Kibuye and Nyabiheke camp in Gituza, both of which are predominantly host to Congolese refugees. However, time constraints did not permit the research to extend to them.
[36] IRRI and SSRC, 2010.
[37] It is important to note that there is a false assumption that all Congolese Tutsi are part of a cohesive group of people called "Banyamulenge". In fact, not only is there no such thing as a single Congolese Tutsi identity but only a small proportion of those who could be categorised as Congolese Tutsi would call themselves "Banyamulenge". Like other Kinyarwanda-speaking groups, the Banyamulenge have suffered marginalisation within the national context on account of their citizenship status being continually challenged and, in response have tried to distance themselves from other Kinyarwanda-speaking groups by creating a Banyamulenge identity based around a specific territory – Mulenge hill in South Kivu. Indeed, even this "Banyamulenge" identity is contested by "indigenous" Congolese who argue that there was no such ethnic group prior to the coming of the Tutsi who settled in region from what is now Rwanda. The very act of calling themselves Banyamulenge, meaning belonging to the hill of Mulenge, was viewed as an attempt to claim ownership of land that was already owned by local Hunde and other indigenous communities. For more information see Koen Vlassenroot, "Identity Formation and Conflict in South Kivu: The Case of the Banyamulenge." *Review of African Political Economy*, Vol. 29, no. 93/94, State Failure in the Congo: Perceptions and Realities, Sept – Dec 2002, pp. 499–515, p. 504.
[38] Between the 1930s and 1950s, Rwandans – both Hutu and Tutsi – were "transplanted" into eastern DRC, particularly around North Kivu, as part of the Belgian administration's deliberate "Mission d'Immigration des Banyarwanda", which had two major aims: first, to alleviate demographic pressure in Rwanda, and second to meet labour demands. An estimated 85,000 Rwandaphones were moved to Masisi during this period. See Bucyalimwe Mararo, 1997. "Land, Power, and Ethnic Conflict in Masisi (Congo-Kinshasa), 1940s – 1994." *The International Journal of African Historical Studies*, Vol. 30, No. 3, pp. 503 – 538.
[39] David Newbury, "Convergent Catastrophies in Central Africa." Department of History at the University of North Carolina, November 1996 (http://www.grandslacs.net/doc/1016.pdf)
[40] For a discussion on the evolution of citizenship rights in DRC, see Bronwen Manby, *Struggles for Citizenship in Africa*. Zed Books: London, New York, 2009.
[41] Stephen Jackson, 2007. "Of "Doubtful Nationality": Political Manipulation of Citizenship in the D.R. Congo." *Citizenship Studies*, Vol. 11, No. 5, November, pp. 481 – 500, p. 481.
[42] IRRI, 2010.
[43] Oumar Sylla, 2010. "Land and property disputes impeding return and reintegration." Forced Migration Review, Issue 36, November.
[44] Mararo, 1997, p. 516.
[45] Ibid.
[46] Mararo, 1997, p. 518.
[47] Mararo, 1997, p. 523.
[48] Prunier, 2009, p. 50.
[49] Séverine Autesserre, "The Trouble with Congo: How Local Disputes Fuel Regional Conflict." Foreign Affairs, Vol. 87, no. 3, May/June 2008, pp 94 – 110.
[50] Mararo, 1997, p. 518.
[51] Autesserre, 2008, pp 94 – 110.
[52] The conflict escalated when a significant number of Kinyarwanda-speaking Hutu Congolese were killed by Bahunde militiamen near Walikale in March 1993, leading to the death of approximately 1000 Kinyarwanda-speakers. (Médecins Sand Frontièrs, « Des conflits fonciers aux lutes inter-ethniques dans la zone de santé de Masisi. » Goma, April 1993, quoted in Prunier, 2009, p. 51.)
[53] Prunier, 2009, p. 51.
[54] The then President of Rwanda, Habyarimana, organised a pro-Kigali network under the guise of a peasant association, the Mutuelle des Agriculteurs des Virunga (MAGRIVI) as a means of recruiting Congolese Hutu. At the same time, the RPF recruited

young Congolese Tutsi into its ranks, thereby creating deep divisions within the Kinyarwanda speaking community. (Prunier, 2009, p. 50.)

[55] Prunier, 2009, p. 333.

[56] *See* Democratic Republic of Congo, 1993-2003: Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of Congo between March 1993 and June 2003, Office of the High Commissioner for Human Rights. Available at http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf. Reference to local communities asking them to leave.

[57] Reyntjens, however, talks about the number of disturbing contradictions that surround these attacks including the fact that during the attack on Mudende on 11 December 1997, the RPA, who were only 20 minutes drive away, only arrived after several hours of slaughter: "at the very best, these contradictions suggest that the RPA allowed or, at worst, staged this incident..." (See Filip Reyntjens, *The Great African War: Congo and Regional Politics, 1996 – 2006.* Cambridge, 2010.)

[58] The Sun City Agreement of March 2003 led to the installation of a transitional government on 30 June 2003, which brought together the three main warring parties (President Kabila's Government, Jean-Pierre Bemba's Movement for Liberation of the Congo (MLC), and Azarias Ruberwa's Congolese Rally for Democracy (RCD-KML)); a number of armed groups affiliated with the government (Mai-Mai); and representatives from civil society and the unarmed political opposition.

[59] IRRI and SSRC, 2010

[60] International Alert, 2007. "Peacebuilding in Eastern DRC: Improving EU Support for Economic Recovery." p. 14.

[61] British Embassy Kinshasa, "FCO Support Helps Demobilise Over 1,800 Rebels in DR Congo", UK in DRC, available at http://ukindrc.fco.gov.uk/en/about-us/working-with-congo/uk-support/.

[62] IRRI and SSRC, 2010.

[63] Specifically its President and Vice-President (Ignace Murwanashyaka and Straton Musoni respectively) were arrested and will stand trial in Germany for crimes against humanity and war crimes committed in Rwanda. See James Karuhanga, "Trial of FDLR Leaders Set for May", The New Times, In 2 East Africa, *available at* http://in2eastafrica.net/trial-of-fdlr-leaders-set-for-may/.

[64] See "Editorial: Another Blow for Congo Rebels", VOANews.com, available at http://www.voanews.com/policy/editorials/Another-Blow-For-Congo-Rebels--116952233.html. In addition, on February 15 2011, Samuel Bisengimana, a member of the FDLR's high command, defected to MONUSCO where he will undergo a repatriation programme in Rwanda and will hopefully diminish the operational capacity of the FDLR due to Bisengimana's important role as a recruiter for the FDLR.

[65] As evidenced in IRRI's previous research. See IRRI 2010.

[66] Prunier, 2009, p. 324.

[67] "DRC: Regrets after Cosying up to Enemy." Peace Women, 11 Jan 2011, available at http://www.peacewomen.org/news_article.php?id=2840&type=news.

[68] Ibid.

[69] It is not clear how many combatants the CNDP is able to call upon at present, but it is likely that most, if not all, of those combatants are in the eastern DRC, and that the CNDP leadership exercises at least some control over the units of those soldiers. These ex-CNDP combatants are spread among 35 FARDC brigades in the eastern DRC. *See Program Update: DDR in the Democratic Republic of Congo*, World Bank, Sept. 2009, pg. 4-5 *available at* http://www.mdrp.org/PDFs/DRC_Program_Update.pdf.

[70] Steven Hege, "Of Tripartites, Peace and Return." Forced Migration Review, Armed Non-State Actors and Displacement, available at http://www.fmreview.org/DRCongo/hege.htm.

[71] See Congo (DR) Conflict: In Detail, AlertNet, http://www.trust.org/alertnet/crisis-centre/crisis/congo-dr-conflict#detail-section5. As of October 2010, the group had no more than 300 combatants. According to one analysis, the FPLC is more significant as a symbol of the discontent with the peace agreement with the CNDP, than an operational military threat. (See Letter Dated October 26, 2010 from the Group of Experts on the Democratic Republic of the Congo Addressed to the Chair of the Security Council Committee Established Pursuant to Resolution 1533 (2004), UN Doc. S/2010/596, 18-19, available at http://www.scribd.com/doc/44370265/Final-Report-of-the-Group-of-Experts-on-the-DRC-Nov-26-2010)

[72] AfroAmerica Network, *Congolese Tutsi Rebel Colonel Nsengiyumva Linked to General Kayumba Nyamwasa Assassinated*, France-Rwanda Tribune, Feb. 27, 2011, available at http://www.france-rwanda.info/article-congolese-tutsi-rebel-colonel-nsengiyumva-linked-to-general-kayumba-nyamwasa-assassinated-68167056.html.

[73] See International Refugee Rights Initiative and Refugee Law Project, "A Dangerous Impasse: "A Dangerous Impasse: Rwandan refugees in Uganda." Citizenship and Displacement in the Great Lakes Region, Working Paper no. 4, June 2010.

[74] Indeed, of the 1,881 FDLR combatants extracted in 2010, 630 were children and 847 were Congolese. British Embassy Kinshasa, FCO Support Helps Demobilise Over 1,800 Rebels in DR Congo, UK in DRC, available at http://ukindrc.fco.gov.uk/en/about-us/working-with-congo/uk-support/.

[75] Séverine Autesserre, "The Trouble with Congo: How Local Disputes Fuel Regional Conflict." Foreign Affairs, Vol. 87, no. 3, May/June 2008, pp 94 – 110.

[76] IRIN, "Land rows complicate refugees' return from Rwanda." 2 July 2010. Found at http://www.rnanews.com/regional/3714-land-rows-complicate-congolese-refugees-return-from-rwanda

[77] See for example press release by a group of NGOs on the challenges facing mission at the time of the renewal of its mandate in June 2011. http://www.hrw.org/en/news/2011/06/09/dr-congo-strengthen-civilian-protection-elections

[78] Refugees in the camp are only provided with assistance for education up until senior level three and after that they have no access to support within the camps.

[79] Interview with refugee man, 24 January 2011.

[80] Interview with refugee man, 28 January 2011.

[81] Interview with refugee woman, 20 January 2011.

[82] Others have managed to integrate. See Stefanie Carmichael, "The Enterprise of Integration: The Case of Urban Refugees in Rwanda." A Thesis Submitted to Saint Mary's University, Halifax, Nova Scotia, in Partial Fulfillment of the Requirements for the Degree of Masters of International Development Studies, 10 January 2011, Halifax, Nova Scotia. Although many of the self-settled Congolese refugees have integrated in Rwanda does not mean to imply that they do not also wish to return to Congo should the situation become viable.

[83] Interview with refugee man, 24 January 2011.

[84] Interview with refugee man, 21 January 2011.

[85] Interview with refugee man, 8 February 2011.

[86] Interview with UNHCR official (by phone), Goma, 19 May 2011

[87] The law governing "acquired nationality" is set out in 2008 legislation and provides seven conditions which must be fulfilled in order to make an application, including five years legal residency and being the "owner of sustainable activities" in Rwanda (See ORGANIC LAW N° 30/2008 OF 25/07/2008 RELATING TO RWANDAN NATIONALITY, Article 14. Available at http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=2322&Parent_ID=30700388&type=public&Langue_ID=An&rubID=30700389#30700389). Some refugees would certainly fulfill these conditions although the implication that there is a requirement of economic self-sufficiency might be a barrier, unless flexibly interpreted. On a positive note, the Refugee Act does not appear to impose any additional conditions for refugees in terms of reaching the threshold for making the application (See Rwanda's Law N* 34/2001 of 05/7/2001 Relating to Refugees. Available at http://www.adh-geneva.ch/RULAC/pdf_state/Law-34-2001-Refugees.pdf).

[88] Tripartite Agreement, art.5 (translation from the French, IRRI staff).

[89] There is also another route which might be open for exploration by some of the group: Rwanda's law on "recovery" of nationality. (Article 22 of Organic Law N° 30/2008 of 25/07/2008 Relating to Rwandan Nationality provides that a person: "or his or her descendant who was deprived of his or her Rwandan nationality between November 1, 1959 and December 31, 1994 due to acquisition of foreign nationality shall upon their returning home re-acquire their Rwandan nationality of origin without applying for that matter.") As noted at the outset, a sub-set of this group's ascendants originally fled Rwanda in the 1950s. Although some in the group were among those who originally fled Rwanda between 1959 and 1994, or their descendents, many were not. Indeed, one old lady interviewed remembered fleeing Rwanda when she was five years old in 1941. Others had no recent ancestral connection at all to Rwanda, tracing back generations of family residence in DRC to colonial times. Finally, even if a member of the group might be *prima facie* entitled to request recognition of citizenship, multiple barriers remain. With "Rwandanness" a basis for discrimination, and destruction of documents and belongings a common experience of most of those interviewed, it is difficult to imagine that physical proof of prior connection to Rwanda remains for anyone in this group. At the same time it is important to note that there are indications in the law that flexibility can be exercised with regard to the elements of proof if there was political will. The stipulations surrounding proof of that original status, for example, at first glance present a challenge: a birth certificate is the primary document requested, with Rwandan ID card, passport or citizenship certificate also being of persuasive authority. The provision in the law on proof of nationality, however, provides that "in case of doubt any other means may be used to prove the truth, using particulars entered in the Registrar of civil status or available at the Directorate General" (article 28). A Presidential Order on Nationality provide greater detail on the specific modalities surrounding recovery of nationality (Presidential Order N* 21/01 of 27/05/ 2009 Establishing the Procedure for the Application and Acquisition of Rwandan Nationality. Available at http://www.migration.gov.rw/IMG/pdf/PRESIDENTIAL_ORDER_ON_NATIONALITY.pdf). Article 18 provides that in addition to documentary proof, in certain circumstances, "originating in Rwanda shall be proven by the parents of the concerned person through his/her genealogy, their former residence or through testimonies of persons who know him/her very well. The Rwandan origin may also be proven by the degree of his/her integration in the Rwandan culture."

[90] Interview with refugee man, 21 January 2011.

[91] Interview with refugee man, 10 February 2011.

[92] See Title 1 (3) of the Organic Law 2008.

[93] Loi No.04/024 Relative à la Nationalité Congolaise, article 1.

[94] Interview with refugee man, 28 January 2011.

[95] Interview with refugee man, 3 March 2011.

[96] Interview with refugee woman, 26 January 2011. This movement takes place completely off the official radar: it is not officially sanctioned by UNHCR. In fact most said they believed UNHCR did not know what they were doing. It is interesting to note that the education system in Congo does appear to be functioning above expectations despite huge challenges. See Kristof Titeca and Tom de Herdt, "Real governance beyond the 'failed state': negotiating education in the Democratic Republic of Congo." *African Affairs*, Vol. 110, no. 439, April 2011, pp. 213 – 232.
[97] IRRI and SSRC, 2010.
[98] Interview with refugee woman, 7 February 2011.
[99] Interview with refugee man, 27 January 2011.
[100] Interview with refugee man, 15 February 2011.
[101] Interview with refugee man, 26 January 2011.
[102] Interview with refugee man, 3 March 2011.
[103] Interview with refugee man, 3 February 2011.
[104] Interview with refugee man, 21 and 24 January 2011.
[105] Interview with refugee man, 24 January 2011.
[106] Interview with refugee man, 14 February 2011.
[107] IRRI and SSRC, 2010.
[108] Pole Institute reported that in late 2009, a number of these returnees were still living at a site originally designed as a transit camp at Kahe. Onesphore Sematumba, "Retour des Refugies Congolais Installes au Rwanda: Course Derriere des Verites Mouvantes," Pole Institute, December 2009, p.3.
[109] Interview with refugee man, 28 January 2011.
[110] Interview with refugee woman, 20 January 2011.
[111] Interview with refugee woman, 27 January 2011.
[112] IRRI and SSRC, 2010.
[113] Interview with refugee man, 21 January 2011.
[114] Interview with elderly refugee woman, 27 January 2011.
[115] Interview with refugee man, 21 January 2011.
[116] Interview with refugee man, 27 January 2011
[117] Interview with refugee woman, 20 January 2011.
[118] Interview with refugee woman, 20 January 2011.
[119] Interview with refugee man, 24 January 2011.
[120] IRRI and SSRC, 2010.
[121] Interview with refugee man (former soldier), 14 February 2011.
[122] Interview with refugee man, 21 January 2011.
[123] Interview with refugee man, 2 February 2011.
[124] Interview with refugee man, 26 January 2011.
[125] Interview with refugee man, 26 January 2011.
[126] Reyntjens (140 – 44).
[127] Interview with refugee woman, 20 January 2011.
[128] Interview with refugee man, 3 February 2011.
[129] The extent to which Congolese Tutsi refugees in Rwanda are singled out specifically by communities in North Kivu was evident, for instance, through interviews with IDPs in North Kivu, as noted below.
[130] Focus Group Discussion with 6 IDPs, including camp chairman, Bulengo IDP Camp, Goma, 15 June 2009
[131] Martin Adams and Robert Palmer (eds), June 2007. "Independent Review of Land Issues, Volume III, 2006 – 2007. Eastern and Southern Africa." Oxfam.
[132] Interview with refugee man, 3 March 2011.
[133] Interview with refugee man, 24 January 2011.
[134] Interview with refugee man, 24 January 2011.
[135] Interview with refugee man, 21 January 2011.
[136] Interview with refugee man, 2 February 2011.
[137] Interview with refugee man, 10 February 2011.
[138] Interview with refugee man, 24 January 2011.