

“Two People Can’t Share the Same Pair of Shoes”: Citizenship, Land and the Return of Refugees to Burundi



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“We are forced to share our land but deep down in our hearts we feel bitter and angry about the sharing. Two people can’t share the same pair of shoes: neither really profits since it becomes useless.”
(Returnee, Temporary hosting site, Bukemba, 6 July 2009)

Background to the Paper

This paper is the result of a co-ordinated effort between staff from the Rema Ministries, the International Refugee Rights Initiative (IRRI), and the Social Science Research Council (SSRC).

The field research was carried out by Mbazumutima Theodore, Harerimana Frédéric and Nizigiyimana Renée Micheline, and the paper was drafted by Dr. Lucy Hovil of IRRI. Zachary Lomo, a doctoral candidate at Cambridge University, offered invaluable guidance and input throughout the research process. Olivia Bueno and Deirdre Clancy of IRRI and Josh DeWind and Bill O’Neill of SSRC reviewed and edited the material. The field research team would like to express its gratitude to all those who participated in the study, in particular returnees and government of Burundi officials.

Citizenship and Displacement in the Great Lakes Region Working Paper Series

The paper is the second of a series of working papers that form 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.

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Cover photo: Temporary Housing Site, Southern Burundi. (L. Hovil)

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SUMMARY AND RECOMMENDATIONS

Summary

This paper tracks the experience of refugees returning to southern Burundi and re-asserting their citizenship. Most have been living in exile in Tanzania – some since the early 1990s, and others since 1972. Some were born in exile and have never been to Burundi before. Others left when they were children, while others can still remember the horrors that forced them to flee. Although the paper set out to explore the process of return and reintegration in general, access to land quickly emerged as the most critical issue. Land and reintegration are inseparable in this context: land is access to livelihoods; it allows for the bringing together of family structures that represents a vital coping mechanism in a context of extreme poverty; it symbolises connection with the past, with history, a re-affirmation of identity; and its equitable distribution represents hope for sustainable peace. Land is also in chronically short supply: “This is a small country with a big population. And people are cultivators.”¹

As a result, addressing current demands on land with the return of approximately half a million people in a way that is simultaneously equitable *and* feasible is critical to the long-term stability of Burundi. It is also extremely daunting. In addition to the return of refugees and hundreds of thousands more who have been internally displaced, Burundi is feeling its way through a fragile transition towards sustainable peace after decades of conflict: its economy is in tatters, it is demobilising thousands of former rebels and mopping up the excesses of war, and it is trying to reconstruct governance and judicial institutions that are critical to the running of the country, not least with elections due in 2010. In these circumstances, and with expectations running high, how can the demands for a just and practically workable system for resolving land disputes be met? Can the country afford *not* to address these demands, not least in a context in which population growth is already putting extraordinary pressure on land?

In order to begin to tease apart some of these issues, this paper, based on 245 interviews conducted primarily in southern Burundi, focuses on the way in which the process of returning to Burundi and accessing land is perceived by those caught in the midst of it – people who have returned after decades and are trying to put their lives back together, and people who have never fled and are suddenly being told to share their land with total strangers. In the first instance, the findings show that those who have returned are relieved to have shed their refugee status and the stigma of a label that had stayed with them throughout their time in exile, despite recognition of the assistance that they had received in Tanzania. Returning to Burundi was therefore seen as a critical first step in ending years of exclusion from wider national processes. At the same time the experience of return has otherwise been profoundly challenging, particularly for those returnees who fled, or whose families fled, in 1972.

Economically, those who are returning have received limited assistance: many of the promises made in Tanzania have not been delivered upon, and people continue to struggle as they wait for decisions to be made regarding the status of “their” land. Socially and politically, returnees also feel somewhat marginalised, directly related to their ability – or inability – to regain access to the land they lived on and that their families had owned prior to their flight. Although many have managed to secure some of their original land, the current policy is to encourage the current occupier and the returnee to share the land, a process that is recognised as a pragmatic compromise but hard to accept and hard to live with in practice.

¹ Interview with Director General Repatriation, Ministry of Solidarity and Repatriation, Ministry offices, Bujumbura, 17 June 2009.

At the same time, those whose land was given to corporate or government ventures – sugar plantations, infrastructure and so on – are being told they cannot reclaim their land and are being moved to “peace villages”, as are those who do not know where their original family land was. The findings show that those living in these villages feel physically, socially and politically isolated, calling into question notions of the reality of reintegration in this context.

The complications surrounding the land redistribution process is compounded by the fact that Burundian land law, like many other national codes, states that where land has been peacefully occupied for 30 years by a particular owner, ownership cannot be challenged notwithstanding the means of acquisition. In other words, refugees in exile since the 1970s may no longer have any claim to the land from which they were forced to flee. Even though the law is not being strictly applied in as much as many returnees are, in fact, able to reclaim a *portion* of their original land, it is not perceived as fair by many returnees. The injustice which caused their original flight, and the fact that, in some cases, their land was also given away by government, reinforces this perspective: they strongly believe that they are entitled to the same piece of land from which they were violently removed more than three decades ago. Access to this land is viewed as critical to re-instating their legitimacy to belong, representing continuity with the past and a reinstatement of the access to political rights that were disrupted by their exile. In other words, regaining their land is equated with the restoration of their Burundian citizenship: land is intimately connected with people’s notions of identity which are, literally, rooted in the soil

While these feelings are counterbalanced by a certain amount of realism – in particular in the case of those who have to share their land and recognise that this is a pragmatic response to a complex problem – two factors need to be taken into account. First, the findings point to the fact that many view this as a short-term answer to the need to distribute land in order for people to have access to livelihoods, but they do not see it as a long-term solution. They are accepting the requirement to share for now, but are likely to challenge it in one way or another in the future. Second, the process of asking people to share land or move to a “peace village” should not be equated with reconciliation *per se*, as the government is presenting it. For land disputes to be genuinely resolved in such a way as to promote stability justice needs to be seen to be done in a more meaningful way. First, rules applied to returnees need to be similarly applied to those who never fled, and much work needs to be done on implementation. Second, the absence of any form of compensation (and in people’s minds, being given a small plot in an isolated peace village is certainly not interpreted as reparation) is cause for concern: there is a danger that resentment will build up, and that decisions that are currently accepted – albeit unwillingly – will become a source of future conflict.



Recommendations

The current government of Burundi, having brought peace to the country, now has the challenge of making that peace sustainable. This paper suggests that one key component to such sustainability is creating the situation in which all Burundians are able to genuinely exercise their rights as citizens, not least in a context in which the country's history of violence by past governments and politicians has effectively broken the bond between the government and its people. While all Burundians have suffered as a result of the war, the ability for those who have been living in exile to genuinely reintegrate into Burundian society is an indicator of the potential to restore this broken bond or social contract. Therefore the findings point to the following recommendations:

Access to land as a priority for livelihoods and the promotion of justice

Land is fundamental to the process of reconstruction, reconciliation, peace building and social harmony that is currently taking place in Burundi. In particular, the findings have pointed to the need to take into account the beliefs and values held sacrosanct by all the claimants to a particular parcel of land in such a way as to genuinely promote reconciliation. Therefore, the government of Burundi should make equitable and just land distribution a top priority in its efforts to create the necessary enabling environment for Burundians to live peaceably together as citizens of one country. In particular it should ensure that:

- A fair process for processing claims for restitution and reparations of land is critical in order to reconcile the competing interests in land of original owners of the land and current occupants, taking into account the context of original forced dispossession.
- Where restitution of the original holding, whether wholly or in part, is not possible, just compensation must be provided to the returnee. A clear framework for ascertaining in what circumstances restoration should be considered possible must be developed building on the experiences of the land commissions and other relevant actors.
- Where restitution of original land is possible, appropriate compensation for investments made on the land must be offered to the occupier who is asked to relinquish his or her holding.
- While sharing of land may be a pragmatic approach to complex legal, moral and practical problems of addressing competing claims to land, the government must take urgent measures to address the detrimental impact that this will have on the livelihoods of both parties and the potential impact on long term peaceful co-existence. A variety of measures could be explored in this regard, including offering allocation of land elsewhere or money as compensation, promotion of less land intensive livelihood activities, and provision of social services.
- Any law that imposes time limitations on interests or rights in land due to the absence of a Burundian on his or her land or his or her failure to assert her rights to the land must be read in the light of the specific context in which Burundians were forced into exile. While it is worth noting that the period of peaceful occupation required to establish ownership under Burundian law is actually much longer than in most domestic legal systems, it does not obviate the internationally recognised right of displaced persons to restitution or compensation. A proposed amendment to the legal

code, which demands that the 30 year provision only be applied where land was acquired *in good faith* – is encouraging in this regard.

- The current leadership must address head-on the injustices inflicted by past leaders, such as the granting of land belonging to Burundians forced into exile to their supporters, friends and members of their ethnic communities. It is imperative that any material gains resulting from the commission of international crimes, including arbitrary displacement, particularly if committed in the context of war crimes, be redistributed.

Participation of returnees in land redistribution and repossession mechanisms and processes

Returnees feel left out of the process of land redistribution and repossession. They also believe that the processes are not transparent, or worse, biased. Consequently the report recommends:

- Returnees must be allowed to participate and hold positions in institutions where critical decisions on land repossession are made.
- There must be representation of all groups in any land repossession, redistribution, or policy formulation mechanisms.

Effectiveness of the current mechanisms in addressing land disputes

The *Commission nationale des terres et autres biens* (CNTB or National Commission for Land and Other Property) has been held back in terms of its mandate and continues to be ill-equipped to competently deal with the increasing volume of land disputes. In this context, it is suggested that:

- The CNTB should receive proper facilitation in terms of staffing, training, and resources in order to be able to deal with all the land issues, and should ensure a permanent and effective presence in every province.
- Alternative land urgently needs to be identified and made available for resettling those without land. In particular, those institutions, including the government, who own extensive areas of land should be encouraged to make resources available.
- Alternative means of livelihood that are not solely dependent on land must be pursued and promoted expediently, not only to address the current strain created by the return of refugees and internally displaced persons (IDPs), but also to acknowledge the growing pressure on land due to population growth.

Greater clarity regarding the operation of different processes and mechanisms on land matters

The findings demonstrate that there is confusion about which of the current institutions concerned with matters of land is the most appropriate mechanism for addressing their land claims. This confusion may undermine their effectiveness and sow seeds of discontent and misinformation. Therefore it is recommended that:

- A public education campaign to clarify on the mandate and functions of the *Abashingantahe*, the CNTB, and the courts of law must be launched urgently.
- The hierarchy of these institutions should also be clarified.
- While good legislation is crucial to establishing a sound legal foundation, it will not necessarily solve many of the intricate land issues in Burundi, and while the reconciliatory approach adopted has its shortcomings, it is suggested that the processes of land repossessions should provide a platform for local people to engage in debates about justice and reconciliation. Participation is key in this regard: local people should feel part of the processes of restitution, compensation and land management.

Peace villages

The findings of the study further demonstrate that for many returnees, those peace villages that were visited during the research are not seen to provide a permanent solution for reclaiming land lost to government and corporations: in the opinion of those living in them, they do not offer the opportunity for reintegration into the social fabric of Burundi society and citizenry. Instead, they are fostering feelings of injustice and resentment that do not portend well for Burundi's efforts to rebuild society and persuade its citizens to return home. As a result, we recommend the following:

- The government should revisit and review the concept of peace villages in the larger context of the scarcity of land in Burundi and the returnee's right to reclaim their property and their freedom to participate in the processes of reintegration. The findings indicate that a truly participatory process whereby returnees and displaced persons can not only voice their concerns but also choose where they would like to live or reclaim their land and property or receive just reparation will lead to a lasting and sustainable peace in Burundi.

Promoting education and alternative livelihoods

Access to education and livelihoods are integral to the restoration of citizenship rights. Therefore the report recommends:

- The practice of moving children back by three years at school is unacceptable and demoralising: instead, additional resources need to be found that would enable students to be placed in their age-appropriate class and given additional language assistance in order to help them to adapt to the new educational system.
- Promoting alternative means of livelihoods is critical to diffusing problems relating to increasing shortages of land. It is therefore vital that qualifications received in exile should not only be recognised in Burundi, but their use encouraged.

BACKGROUND

Burundi's Wars

For the past four decades, Burundi has been dominated by a series of conflicts, the most recent of which was sparked by the assassination of Burundi's first democratically elected president, Melchior Ndadaye, in 1993. After almost fifteen years of intense war, Burundi is now in a fragile period of transition to stability. Following the signing of the Arusha Peace and Reconciliation Agreement in August 2000 (the Arusha Agreement), a painstaking peace process led to the approval of a power-sharing constitution, and a new parliament was elected in 2005 in which the *Conseil National pour la Défense de la Démocratie - Forces pour la Défense de la Démocratie* (CNDD-FDD) holds the majority of seats. Pierre Nkurunziza, a Hutu, was elected president and a power-sharing government formed (with Hutu assured 60% representation and Tutsi 40%). The last remaining rebel group, the *Forces National de Libération* (FNL) signed a ceasefire in May 2008. Its leader, Agathon Rwasa, returned to Burundi and it has registered as a political party. Some of the FNL rebels have been integrated in the national army and police with the rest demobilised, ushering in new hope for sustainable peace after years of civil war. With the end of open conflict signifying political changes for the better, more and more Burundian refugees are returning home: UNHCR estimates that 473,865 refugees have repatriated since 2002.² Although approximately 250,000 still remain in exile in the Democratic Republic of the Congo (DRC), Rwanda, Tanzania, and Uganda,³ these recent developments suggest that Burundi is on the path to peace and stability.

However, the context in which refugees are returning to Burundi is highly charged, not least given the country's history of ethnically motivated violence. The dynamics of identity and population growth, and their interaction with access to, and availability of, resources such as land, are issues of critical importance for the country. Identities in Burundi, as in neighbouring Rwanda, have repeatedly been constructed through the assertion of notions of difference between Hutu, Tutsi and Twa peoples, the three main ethnic groups. The mobilisation of ethnicity, lethally combined with politics and power, has been used as a clarion call to mobilise different groups attempting to gain access to and control of resources and been at the root of the cyclical conflicts that have devastated Burundi, one of the most densely populated countries in Africa.

The salience of these identity markers is highly contentious and has changed over time. While there is considerable debate regarding the origins of such groups, what is clear is that their distinctiveness has become increasingly entrenched, not least through the political mobilisation of such identities. During the colonial period, ethnic identifications became particularly polarised and oppressive towards the majority Hutu population through the exploitation of pre-colonial systems. These inequalities were further reinforced in the immediate post-independence period in a number of ways. First, a violent struggle for power and control of access to resources between the Tutsi and Hutu in Rwanda erupted in 1959, with the Twa being caught in the middle like the proverbial grass that suffers when two elephants fight. This led to an influx of Tutsi refugees into Burundi, intensifying fears among Burundian Tutsi (who are a minority) and increasing the impetus to politically exclude Hutu opposition. Likewise, the 1959 Rwandan Hutu revolution increased support among Hutu in Burundi for active participation in national politics. Second, in 1961, Prince

² UNHCR Burundi Fact Sheet, 31 December 2008.

³ See, for example, UNHCR, Burundi Fact Sheet, 31 July 2009, available at http://www.unhcr.de/uploads/media/UNHCR_Factsheet-burundi-0907.pdf.

Rwagasore, the leader of the *Union pour le progrès national* (UPRONA) party and Prime Minister designate, a man with cross ethnic appeal and a profound commitment to unity, was assassinated -- removing a potentially powerful counterbalance to ethnic divisionism and political mobilisation of ethnicity. The impact of his death also showed the lack of objective and transparent institutions that could be sustained beyond the charisma of one individual. Finally, the absence of political parties with a significant ideological base and intra-ethnic rivalries made ethnic mobilisation an attractive political strategy. There was some interethnic power sharing under the rule of the UPRONA post-independence, but this ended in 1965 when the king refused to appoint a Hutu prime minister after the victory of a Hutu-aligned political party. When a group of Hutu officers attempted to overthrow the king, the army intervened and began purging its ranks of Hutus, killing an estimated 5,000 individuals. This marked the first of three major periods of Hutu uprising (1965, 1972 and 1988) and consequent Tutsi armed repression.⁴

A 1966 coup lead by Michel Micombero replaced the monarchy with a presidential system and the development of Burundi as a Tutsi-controlled single party state under UPRONA. In an attempt to stifle what they feared to be an increasingly entrenched Tutsi hegemony, a group of Hutu rebels from the southwestern region of Burundi (in Nyanza-Lac and Rumonge – two of the areas in which the current research took place) attacked government and military buildings, and were subsequently suppressed with extreme brutality. This failed Hutu uprising in 1972 incited Micombero's regime to engage in a systematic campaign against the majority group that resulted in an estimated 150,000 Hutu deaths and the displacement of another 150,000.⁵ A wave of Hutu refugees crossed over to Tanzania and other neighbouring countries. The Nyanza-Lac and Rumonge areas are now at the heart of today's questions over land ownership, as those who fled this violence in 1972 are returning to the area and wanting to reclaim their original homes.

Micombero was overthrown in 1976 by an army officer, Jean-Baptiste Bagaza, and protracted ethnic tensions continued as power became increasingly concentrated among a group of Tutsi elite from the southern province of Bururi.⁶ Another coup ensued in 1987, lead by another southern Tutsi army officer, Pierre Buyoya, who as president introduced reforms to loosen state control over media and religion, especially the Catholic Church, which was widely associated with social action that primarily benefited the Hutu group and was engaged in reconciliatory dialogue. Despite these shifts in policy little hope of real change was engendered among the Hutu population, however, and local Hutu revolts began among the northern peasantry. Hundreds of Tutsi families were slaughtered and the movement was soon repressed by Buyoya's army, which killed thousands of Hutu.⁷ National dialogue and liberalisation followed this period of turmoil: in 1990, a process of reform led to the ratification of a Charter of National Unity and, in 1993, to an election in which other political parties were allowed to compete with UPRONA. Buyoya stepped down and allowed Burundi's first democratically elected President, Melchior Ndadaye, a Hutu, to take power. After three months in office, however, Ndadaye was killed by the army, plunging the country into civil war for the next fifteen years – years of "absolute terror".⁸ In the days following the assassination of President

⁴ International Crisis Group, 2006. "Conflict History: Burundi," November.

⁵ P. Uvin, 1999. "Ethnicity and Power in Burundi and Rwanda: Different Paths to Mass Violence." *Comparative Politics*, 31(3): 253-271. This number was to grow to over 200,000 over the course of the following months. As Uvin comments, "These events constitute the defining moments in independent Burundi's history. They crystallised Hutu and Tutsi identities and created a climate of permanent mutual fear" (p. 258).

⁶ ICG, 2003.

⁷ It is impossible to know how many people died at this time, and there are no official statistics. Anecdotal evidence suggests that approximately 5000 were killed, but there is little evidence to prove this.

⁸ P. Uvin, 2009. *Life After Violence: A Peoples' Story of Burundi*. United Kingdom and United States: Zed Books, p. 12.

Ndadaye, thousands of Tutsi were killed, although there is debate about whether this was a pre-planned attack against the Tutsi or a spontaneous response to the death of the president.⁹ The army moved in and responded with indiscriminate violence against Hutu, and the country descended into a civil war, characterised as “one of the most brutal and deadly civil wars in modern history, fought along ethnic lines.”¹⁰ Hutu were rounded by the Tutsi-dominated army into displacement camps, while Tutsi gathered around police and army posts in search of security. Around 300,000 were killed, 500,000 forced into exile and 800,000 displaced internally.¹¹

It is hardly surprising that the killings in 1972, and the violent conflict more generally, are profoundly formative of the national consciousness of Burundi and Burundians. As Uvin comments, “[t]hese events constitute the defining moments in independent Burundi’s history. They crystallised Hutu and Tutsi identities and created a climate of permanent mutual fear.”¹² The 1972 killings and the episodes of intense violence that followed (1988, 1991-3, in addition to repercussions from the 1994 genocide in Rwanda), demonstrate a repeated pattern of violence: in each case, in response to increasing discrimination and injustice, Hutu peasants attacked local Tutsi; the army was sent in to restore order; and Hutu were indiscriminately killed – but in far greater number. Each time, the power base of the Tutsi seemed to be asserted primarily on the basis of fear and repression, with the military playing a key role in maintaining government control.¹³ On the Tutsi side, the Hutu attacks were perceived as attempts at genocide, from which they were only spared through the intervention of the army.¹⁴ Throughout, the political mobilisation of ethnicity played a crucial role. The Arusha Agreement, for instance, makes reference to both the nature and scale of violence that has taken place in the country’s post-colonial past, and acknowledges the extent to which the conflict is “fundamentally political, with extremely important ethnic dimensions;” and “stems from a struggle by the political class to accede to and/or remain in power.”¹⁵ The agreement was constructed as an attempt, so far successful, to break this cycle of violence.

The question of whether these cycles of violence have been broken in any permanent way by the Arusha Agreement and the subsequent political progress is critical to the discussion on the sustainable return and reintegration of refugees. Indeed, defining how such a transition might be managed and measured has been a subject of considerable debate for many years. Indeed, in research carried out by Marc Sommers among urban Burundian refugees in the 1990s, it was noted that there was a divergence of opinion on this issue between elite and non-elite refugees. Elite refugees stressed the need for free and fair elections, whereas other refugees focused on the need for reform of the army – which they identified as the instrument of their persecution.¹⁶ On this count, considerable progress has been made through the creation of a new integrated *Forces de défense nationale* giving a roughly equal stake to both ethnic groups. This appears to be proceeding well and a new unified identity and loyalty to the elected government is developing. According to Uvin, “this precisely is the basis of the new Burundi.”¹⁷ However, a more

⁹ Uvin, 2009.

¹⁰ J. Chrétien, 1996, “Burundi: The Obsession with Genocide.” *Current History*, 95, May, p. 263.

¹¹ Uvin, 2009, p.15. A recent report by IDMC says that up to 100,000 people remain internally displaced in Burundi, mainly in the north and centre of the country, most of whom were displaced in the 1990s or early 2000s. (IDMC, “Burundi: Long-term IDPs need land security.” 20 October 2009.)

¹² Uvin, 1999, p. 258.

¹³ Chrétien, 1996, p. 259.

¹⁴ Uvin, 2009, 14.

¹⁵ Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000, I(I), Art 4.

¹⁶ Sommers, M. 2001, *Fear in Bongoland: Burundi Refugees in Urban Tanzania*, New York and Oxford: Berghahn Books

¹⁷ Uvin, 2009.

integrated and representative army must be accompanied by similar efforts to support the integration of the civilian population: there must be efforts to ensure equal opportunities to all Burundi citizens, not least institutional mechanisms that ensure equitable access to resources and equitable representation in these institutions, including the judiciary, police and ministerial portfolios. From a transitional justice perspective, the reform of the army, which gives a roughly equal stake to Hutu and Tutsi, can be considered as a form of guarantee of non-repetition. Other mechanisms of accountability – truth telling, vetting or prosecutions – seem more distant: although the Arusha Agreement contains provision for the formation of a truth and reconciliation process, it has not yet been carried out.¹⁸

Widescale Return

It is in this context of transition from conflict to stability that Burundi has witnessed the return of almost half a million refugees since 2002.¹⁹ Their return has been motivated, at least in part, by considerable push factors in countries of exile, in particular Tanzania, which has signed multiple tripartite agreements since 1998²⁰ and has put considerable pressure on Burundian refugees to leave.²¹ Tanzania had announced that the last refugee camp housing Burundi refugees who fled in the 1990s (Mtabila) would be closed in September 2009 further to the completion of “a successful repatriation programme”, although there are still approximately 30,000 Burundian refugees, mostly from the 1990s group of refugees, remaining in the camp. Meanwhile the group of refugees who fled in 1972 have been given the choice of returning to Burundi or applying to be naturalised. Previous research conducted by the International Refugee Rights Initiative and the Social Science Research Council in collaboration with the Centre for the Study of Forced Migration at the University of Dar es Salaam, however, has demonstrated that this process is profoundly fraught and undermined by the stated position of the government of Tanzania that for those who do not wish to naturalise, remaining in Tanzania as refugees will not be permitted – that the only option will be return to Burundi.²²

¹⁸ On 20 June 2008, the Burundian Government, the Joint Steering Committee for Consolidation of Peace in Burundi, and the United Nations Development Programme (UNDP) signed an agreement in support of the national consultations on the structure of the mechanisms for transitional justice in Burundi, viewed as the first step towards the setting up of a Truth and Reconciliation Commission (TRC) as well as a court as outlined in the peace accords of 2000. However, neither has yet been established.

¹⁹ UNHCR puts the figure at 473,865. (UNHCR Burundi Fact Sheet, 31 December 2008.) However, these figures are unlikely to reflect those who have returned “spontaneously” without official assistance. The year 2004 had the highest number of refugees returning and 2008 falls close behind. Of the 84,827 who returned in 2008, 23,740 were refugees from the 1972 conflict. The drastic increase in 2008 from a low of 30,798 in 2007 may be due to the introduction in July 2007 of cash grants by UNHCR to help refugees start their lives in Burundi. www.unhcr.org

²⁰ UNHCR, “Burundi-Tanzania-UNHCR Agree On Tripartite Mechanism” 18 February 1998, available at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3ae6b8141c&query=Burundi-Tanzania-UNHCR%20Agree%20On%20Tripartite%20Mechanism>.

²¹ Such pressures have included rhetoric and the imposition of deadlines, closure of secondary schools, destruction of markets and banning trading in camps, and restriction on refugees leaving the camps to till the land amongst the locals in order to grow fresh food crops. In the context of one such deadline in mid-2009, the International Refugee Rights Initiative and the Centre for the Study of Forced Migration documented a series of measures taken in Mtabila camp to induce return including the closure of schools, limitation of church service and burning of refugee homes in the name of camp consolidation. (See the International Refugee Rights Initiative (IRRI) and the Centre for the Study of Forced Migration (CSFM), “I Don't Know Where to Go: Burundian Refugees in Tanzania Under Pressure to Leave,” September 2009.)

²² See CSFM, IRRI and the Social Science Research Council, “Going Home or Staying Home: Ending Displacement for Burundian Refugees in Tanzania,” November 2008. UNHCR estimate that more than 80% of these refugees have no access to land. (<http://www.unhcr.org/publ/PUBL/4922d40e0.pdf>)

Return has taken place in a context that is also precarious at best on the Burundi side. In particular, there is concern over the specific difficulties facing returning 1972 refugees with regard to access to land. Ninety percent of the population of Burundi makes their livelihoods from subsistence agricultural production, an activity that requires land.²³ As a recent report commissioned by the United States Department of State articulated, land issues remain the most important challenges to sustainable reintegration.²⁴ It is not surprising, therefore, that the dominant issue in the return process is the ability of returnees to reclaim land. Access to land is seen not only as a barometer of meaningful access to socio-economic rights, but also as a symbol of re-assertion of national identity in a context in which, historically, access to rights, and in particular the right of access to land, has often been contingent upon ethnic allegiance.²⁵ While genocidal violence forced hundreds of thousands to flee their land, their ability to reassert claims over land is not only a source of economic empowerment, but also an important indicator of reintegration and the reinstatement of active citizenship and inclusion. In fact, equitable land distribution as a whole in Burundi is critical to the success of current peace-building process and an important indicator of the potential for lasting peace.

Within this context, there is concern that mass return and the subsequent challenges of reintegration will destabilise the country and, consequently, the region. Previous experience highlights the volatility of the situation: almost half of post-conflict countries in the Great Lakes region return to war within ten years and many secondary conflicts break out over land disputes.²⁶ The Burundian government is clearly concerned about the potential for renewed conflict if all refugees were to return home, as there is simply not enough land to go around.²⁷ The land abandoned by the 1972 refugees as they fled, mainly in the southern part of the country, is particularly prized as it is suitable for palm oil production, a relatively lucrative type of agriculture in the country. This increases both returnees' incentive to insist on reclaiming their family's land, and the new occupants' hesitation to give it up.

Many of those who have returned are now living semi-permanently in overcrowded transit centres waiting to be allocated land.²⁸ Many have not been able to reclaim their land especially in cases where their land is occupied and the current inhabitants are unwilling to leave. Where returnees have attempted to make claims to their land through judicial institutions they often find that the ruling is not in their favour. Even when it is, they fear for their safety from retaliation by the current occupants,²⁹ particularly when the land occupant is a powerful army officer or an influential person. For those who cannot reclaim their land, there are limited options with regard to accessing alternative land. This issue particularly affects a group of refugees referred to as "*sans reference*", refugees who are unable to provide a destination address in the

²³ Conseil Norvégien Pour Les Réfugiés (CNR), 2007. "Rapport de Monitoring: de la situation humanitaire dans certaines collines des Communes de Butihinda, Gasorwe, Giteranyi et Muyinga," June.

²⁴ Terra P Group, Inc., 2009. "Impact Evaluation of PRM Humanitarian Assistance to the Repatriation and Reintegration of Burundi Refugees (2003-2008)". Commissioned by the U.S. Department of State Bureau of Population, Refugees, and Migration. 15 February.

²⁵ As Mbazumutima asserts, Burundi refugees living in Tanzania who fled in 1972 view the return to their homeland as reclaiming their identity. Theodore Mbazumutima, 2007. "The role of the Anglican Church in ministry to Burundian refugees in Tanzania with particular reference to the notions of hope and homeland." Submitted in fulfilment of the requirements for the degree of Masters of Theology, University of South Africa, January.

²⁶ C. Huggins, 2007.

²⁷ Interview with a government official, Dar es Salaam, 15 April 2008.

²⁸ Refugees International, 2008. "Stability Depends on Successful Reintegration of Returnees," 1 October. See also Amnesty International, 2005. "Refugee Rights at Risk: Human Rights Abuses in Returns to and from Burundi".

²⁹ Amnesty International, 2005. "Refugee Rights at Risk: Human Rights Abuses in Returns to and from Burundi". In addition, IRIN reports, "Burundi: Huge challenges in solving land crisis," 23 November 2006; "Burundi: Fighting for land," 6 October 2008; and Relief Web report, "Burundian refugees face challenges of identity, land ownership on return," 28 August 2006.

repatriation process. Many of these "*sans reference*" refugees were born in Tanzania and cannot identify the areas from which their parents came and, according to UNHCR, constitute approximately 10% of the returning 1972 refugees (2,322 out of 23,740 in 2008).³⁰ In an effort to move returnees out of transit camps, UNHCR and the government of Burundi have started to relocate people into what are called "peace villages". These villages incorporate returnees with other vulnerable groups in need of land (including, according to government organisers, members of the Batwa ethnic group, which has been traditionally marginalised from Burundi society, and orphans) allotting them space to build homes and farm. While this is generally seen as an improvement over the dire conditions in which people had been living in the transit camps, as the findings will demonstrate, serious questions are raised as to the long-term impact of such ethnic engineering as well as creating pockets of vulnerable people.³¹

Citizenship, Land and Repatriation: A Framework for Analysis

The paper views the process of return within the framework of citizenship and identities, and specifically the way in which they interact with individuals and groups' ability to access their rights. Although citizenship is one of a number of identity markers in a context such as Burundi, it is one that is imbued with specific significance in relation to access to rights given the importance of the *national* framework within which rights are realised. This is particularly important in a context of recent displacement: displacement, by definition, leads to a disjuncture between territory and nationality³² and fundamentally alters people's relation to the state.

Having then been effectively denied a national identity in exile – unable to return home yet with little prospect of attaining new nationality either through resettlement or naturalisation – those refugees who are now returning to Burundi have effectively had their lives put on hold, many for decades. As previous research has shown, while they benefited from international protection under refugee law, in reality the conditions of their exile – constrained by lack of freedom of movement and exclusion from meaningful integration – amounted to a form of unbelonging in as much as it was characterised by marginalisation from meaningful engagement with the state.³³ By the same token, the moment of return represents the (re)securing of citizenship ties.

How do people view this process of repatriation? How do they view their return to Burundi within the context of wider notions of citizenship and belonging? Do identities acquired in exile, either as part of a particular sub-group of refugees or in linguistic terms affect the ability of individuals to access rights and participate in a politically meaningful way? What are some of the indicators of genuine reintegration? These are the questions that are explored through the paper, which seeks to illuminate some of these complex issues through tracking the experience of return. It begins by outlining how returnees view the process of leaving exile and the return process itself, in particular through a consideration of how the mechanisms for land reclamation are functioning in practice. It then looks at some of the economic, social and political implications regarding land, and the way in which this was prioritised as being of primary importance not only with regards to access to livelihoods, but also as symbolising genuine reconnection with the state. After a brief consideration of peace villages and how they are perceived, the report concludes.

³⁰ UNHCR Burundi, "Number of Returnees per Province in 2008", as of 31 October 2008.

³¹ IRIN, 2008. "Burundi: Fighting for land." 6 October.

³² Holsti, K. 1996. *The State, War, and the State of War*. United Kingdom: Cambridge University Press, p. 64.

³³ CSFM, IRRI and SSRC, 2008.

Land: The Legal Framework

Traditionally, land ownership in Burundi is derived through inheritance whereby a son would inherit his father's land. If there was more than one son the land would be divided between them, with the oldest son typically receiving a bigger share. Although viewed as relatively equitable, it has inevitably led to a decrease in the size of plots, especially for those with larger families. In such cases, family needs often required inheritance to be supplemented by alternative access to land.³⁴ The inheritance/sub-division and additional acquisition system was traditionally monitored by *Abashingantahe*, structures of communally appointed elders who mediated conflicts and dealt with any land issues using principles and procedures of customary law.

Although traditional structures still exist, current law on land issues in Burundi is governed by the Land Code of 1 September 1986 (Loi n°1/008 of 1 September 1986) read together with the new Constitution of Burundi (the Constitution), which was adopted through a referendum in 2005.³⁵ While the Constitution guarantees the right to property and incorporates international human rights instruments, the Land Code of 1986 (the Land Code) appears to be at least partly inconsistent with its provisions. For example, the Land Code recognises acquisition of land by prescription or adverse possession in cases where the land has been "peacefully occupied" for 30 years, notwithstanding the means of acquisition of the land.

In practice, regular land law, which would by and large exclude returnees, particularly in the 1972 group, from reacquiring land, is being balanced against the requirements of the country's transitional arrangements and developing international norms which emphasise the need for accommodation of returning populations. The Arusha Peace Accords acknowledged the need to balance the restitution of property to returnees and the need to safeguard the rights of the current legitimate property holders. They also provide that "all refugees and/or *sinistrés*³⁶ must be able to recover their property, especially their land; If recovery proves impossible, everyone with an entitlement must receive fair compensation and/or indemnification."³⁷

The CNTB, mandated by the Arusha Agreement and established in August 2006, facilitates the process of property reclamation.³⁸ The current initiative is a bold attempt to address an issue that has plagued the country for decades – and the CNTB has a crucial role to play in this regard. However, given the scale of displacement in a country with limited land, exacerbated by a lack of resources and lack capacity amongst local authorities to resolve these intractable problems, the challenges it is currently facing are considerable. As Huggins says, the context in which Burundians are returning home is one of huge land-related problems, along with a difficult institutional and geographical context: "a country approaching demographic bursting point", a land registration system which has historically been highly corrupt and dysfunctional, and outdated land law.³⁹

³⁴ ICG, 2003.

³⁵ A new law is currently in draft form, but it remains unclear whether it will be passed before the 2010 elections. (Personal communication with NGO worker, 8 October 2009.)

³⁶ War affected persons.

³⁷ Arusha Peace and Reconciliation Agreement.

³⁸ For an excellent overview of the different processes for the settling of land disputes, see Jenny Theron, 2009. "Resolving Land Disputes in Burundi." *Conflict Trends*, Issue 1, Accord.

³⁹ Huggins, C. 2007. "Land in Return, Reintegration and Recovery Processes: Some Lessons from the Great Lakes region of Africa." (*Paper prepared for HPG-ODI Conference, Uncharted territory: Land, conflict and humanitarian action.*), p. 9.

The CNTB faces a number of serious constraints. First, the mandate of the CNTB is focused on mediation only and it is not authorised to actually allocate new land to returnees or others in cases that it feels are appropriate – it must apply to another government ministry in such cases for the operationalisation of its recommendations.⁴⁰ The process of allocation, according to government representatives, is hampered by the fact that the planned land inventory has yet to be completed, so there is a lack of clarity about where alternative land might be available in the event that reclamation is not possible. Second, the CNTB has a large backlog: as of June 2009 it had only resolved about 4,000 of approximately 10,000 claims that have been brought to it, although it is working on addressing this issue through internal reforms focusing on allowing decentralised decision making. Third, the role of the CNTB is complicated by its positioning outside the framework of formal legal obligations and entitlements. Often the CNTB tries to negotiate among families, for example, for a partition of the plot in question. If the occupant realises that they have a clear legal right to the whole property there may be little incentive for sharing. Finally, the CNTB's determinations are not conclusive: where the CNTB makes a recommendation or mediates a settlement, this can be appealed in local courts, further slowing down the process.⁴¹ Although the last two issues have been at least partially resolved recently with the granting of an expanded mandate to the CNTB which allows them to make a final determination and share the land against the wishes of either party should mediation fail and of additional human and material resources to expand regional presence, the challenge remains for these changes to make an impact on the ground. It should also be noted that the CNTB is a specially mandated commission dealing only with war-related property disputes. A wide range of other disputes are adjudicated on a primary basis in the regular courts.

Alongside the CNTB, the Arusha Agreement provides for the revitalisation of the traditional *Abashingantahe* judicial system,⁴² which is also involved in land disputes at a local level. It is supposed to exist in each *colline*⁴³ and co-exist with other legal mechanisms – although challenges are likely to exist where there are disparities between customary law and national law pertaining to land disputes.⁴⁴ However, as the findings show, many returnees talked of the fact that the *Abashingantahe* are seen as biased against them and, in addition, there is a lack of clarity on the ground with regard to their role vis a vis that of other actors, in particular the CNTB.⁴⁵

Overlaying the national framework, there is an international and regional legal framework relating to the needs and rights of returnees. Of particular relevance is the Protocol on the Property Rights of Returning Persons (the Property Protocol), one of the ten protocols which form an integral part of the Pact on Security, Stability and Development in the Great Lakes Region, a legally binding instrument signed and ratified by Burundi and therefore an instrument which can be relied upon in legal proceedings in Burundi. At the international level, the International Covenant on Economic, Social and Cultural Rights provides for the right to an adequate standard of living, relevant to the livelihoods elements of land restitution. More specifically related to the situation of returnees, important guidance is also provided by the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the

⁴⁰ Most often this will be the Ministry of Land and Forestry, but other ministries are also involved, including the Ministry of the Environment and the Ministry of National Solidarity.

⁴¹ Interview with Ligue Iteka, 28 January 2009.

⁴² Arusha Peace and Reconciliation Agreement, art. 1(7).

⁴³ Literally meaning "hill," a *colline* is the local level administrative unit in Burundi.

⁴⁴ Tracey Dexter JD and Dr. Phillipe Ntahombaye, Centre for Humanitarian Dialogue, "The Role of Informal Justice Systems in Fostering the Rule of Law in Post-Conflict Situations: The Case of Burundi," July 2005. p. 20.

⁴⁵ Uvin, for instance, emphasises the extent to which the *abashingantahe* have lost status amongst the communities they are supposed to represent. (Uvin, 2009).

Pinheiro Principles. The Pinheiro Principles articulate current standards in relation to the recovery of property, but are not legally binding.

The Property Protocol is a specific response to the scale of property disputes related to return in the Great Lakes region, and the potential of these disputes to reignite conflict: “property disputes arising from claims by internally displaced persons and refugees when returning to their places of origin can be a hindrance to the attainment of the durable solutions of voluntary repatriation and reintegration [...] failure to resolve such disputes can be a source of recurrent conflict in the Great Lakes Region.”⁴⁶

Both the Property Protocol and the Pinheiro Principles adopt an approach similar to that of the Arusha Agreement in that all three emphasise the need for restitution or compensation in the event that property cannot be recovered. The protocol provides that states “shall assist internally displaced persons and refugees and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.”⁴⁷ Although all three instruments indicate that recovery is the preferred solution, they also recognise the need for flexibility. The Pinheiro Principles provide that IDPs and refugees have the right “to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”⁴⁸

In attempting to make this right a reality, the Property Protocol provides that where recovery of property and possessions is “not possible” the state must “provide or assist” returning IDPs or refugees “in obtaining appropriate compensation”.⁴⁹ Article 8 further provides that where a state is “directly responsible” for the property loss, it is the state which is required to compensate. Where the state is not responsible the protocol requires that the state must establish a framework to enable compensation “by those responsible”.⁵⁰ The question of in what circumstances recovery can be considered to be “not possible” and then whether indeed compensation should be paid, in what amount or mode and by which responsible actor (the state or those responsible for the original loss) is highly complex.

In addition, the rights of those currently in possession of the property in question, referred to in the Pinheiro Principles as “secondary occupants” (who may or may not also be responsible for property loss). The Pinheiro Principles note for example that secondary occupants should be “protected against arbitrary or unlawful forced eviction”⁵¹ and the Property Protocol reiterates the principle of “equal protection of the laws”. No guidance is provided on how these competing interests should be balanced or how national laws relating to prescription can be interpreted in accordance with the rights of IDPs and refugees to be assisted to “recover, to the extent possible” their property. In cases, for example, where the application of prescription would seem to permit secondary occupants to continue to assert rights to land, should recovery be understood as “not possible”? Who in such cases has the obligation to assess and pay

⁴⁶ Preamble, Protocol on the Property Rights of Returning Persons, International Conference on the Great Lakes Region, November 2006.

⁴⁷ Protocol on the Property Rights of Returning Persons, art. 4.

⁴⁸ Principle 2.1. This term is further explained as “in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists,” or when “the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.” Pinheiro Principles, principle 21(1).

⁴⁹ Protocol on the Property Rights of Returning Persons, art 4 (2)

⁵⁰ Protocol on the Property Rights of Returning Persons, art., 8 (1) and 8 (2) respectively

⁵¹ Principle 17.1. The right to shelter, for instance, is also addressed in the Covenant on Economic, Social and Cultural Rights, article 11, ratified by Burundi.

appropriate compensation? Little clarification is provided about what recourse might be available if non-state actors responsible are unable or unwilling to provide compensation.

At a minimum, however, it would seem that returnees who are unable to recover property are entitled to receive compensation. Little guidance, however, is provided as to what type of compensation may be considered legally acceptable. The Property Protocol provides only that "Member States shall determine an appropriate compensation package for the loss of the property of internally displaced persons and refugees on the basis of national legislation which shall set out the terms of such a compensation package."⁵² Although compensation is primarily regarded through an economic lens, it is critical to consider non-monetary dimensions to compensation. For instance, in the Burundi context, the findings point to the value ascribed to being able to stay with one's extended family: if an individual or family is unable to recover their land and are compensated with land elsewhere, this means they will be separated from their wider family, a loss that clearly cannot be measured in economic terms. Economic compensation does little to address linkages between land as an economic commodity, and the more profound significance of land in its relationship with people's identities and the meaningful re-establishment of citizenship, which is hard to quantify in any form of monetary terms. Likewise relocating families, which inevitably means creating discontinuity with the past, has a massive impact on identity. Furthermore, the fact that people have been displaced from their land for decades should not lead to the assumption that people have lost their connection with it – it is the place where their forefathers died and were buried.

Another critical element of the Property Protocol is that it provides for the creation of alternative and simplified mechanisms for returnees to make property claims, recognising both the practical inaccessibility of formal court structures in the region for a variety of reasons and the need to facilitate adjudication in situations where large scale return might create an overwhelming number of claims. Although it was established prior to the ratification of the Property Protocol, the CNTB in Burundi embodies the Protocol's approach in seeking to secure restitution or compensation in simplified proceedings, and the Burundian experience may present valuable lessons learned from other countries in the region attempting to create similar mechanisms to implement the Protocol and to resolve similar conflicts over land.

Methodology

Field research took place in June and July 2009, primarily in the three southern provinces of Rutana, Makamba and Bururi. Interviews were conducted with returnees – including both those who fled in 1972 and those who fled in the 1990s – as well as with those who have not fled, in particular current land occupiers who are in the midst of land disputes. Additional interviews were conducted with governmental, NGO and UN personnel in Bujumbura, with a total of 245 interviews. Interviews were conducted on the basis of an interview map which acted as a guide. Most took place in Kirundi and were then translated into English at the point of being transcribed.

In Bururi province, interviews took place in Rumonge, which lies alongside Lake Tanganyika. After the 1972 Hutu resistance against Micombero's government (commonly referred to as *Murere*), which saw a number of Tutsi being killed, Micombero's government retaliated killing considerable numbers of Hutu and forcing many more into exile in Tanzania. The government distributed the fertile palm lands that belonged to these refugees to mainly Tutsi and some Hutus from Bururi province, who currently remain on the land. In

⁵² The Property Protocol, art. 8(3).

Makamba province, interviews were conducted in Mabanda, which is situated in the highlands of Makamba province alongside the Tanzanian border and is a transit zone for returnees, and Kibago. Finally, in Rutana Province in the southeast of the country alongside the Tanzanian border, interviews took place in Bukemba and Giharo. Both areas were severely hit by the 1972 war, and many people fled from this area to Tanzania. Some of the vacated land was redistributed to Rwandan refugees while the rest was taken over by the sugar processing factory, SOSUMO, and the Agricultural Research Institute (ISABU). All three provinces also host considerable numbers of returnees who had fled the country in the 1990s, ensuring that the research focused on all returnees from both major waves of displacement. Given the location of the field research, it is important to note that issues relating to the return of IDPs, as well as numerous other complex displacement-related issues, were not specifically addressed.

“In Tanzania we had free medical care, but no freedom.”

Interview with young returnee man (fled 1990s), Giharo Commune, Rutana Province, 1 July 2009.

LEAVING EXILE

No Longer a Refugee

When asked how they felt about being (back) in Burundi, overwhelmingly interviewees expressed happiness at the fact that they are no longer refugees. There was frequent mention of the fact that, in exile, they had been identified as refugees (*wakimbizi* in Kiswahili), implying those who do not have rights and freedom. As previous research has shown, the stigma of being identified as a refugee, as not belonging, was a source of profound frustration for refugees in Tanzania.⁵³ Although there was a recognition of the fact that they were given medical care, schooling and, particularly in the case of those who had been in the settlements, adequate land to farm, this was small compensation for the many restrictions on their freedom: “I am happy to be back because I was like a slave, now I am a child of the country. We appreciate Tanzania for giving us shelter and food when we fled. But we had no freedom; we were like prisoners.”⁵⁴ There was frequent reference to the stigma that had been permanently attached to them as outsiders in Tanzania regardless of the length of time they had spent there: “Tanzanians say that *mtoto wa nyoka ni nyoka* [the baby of a snake is a snake], hence the child of a refugee is a refugee”⁵⁵; “I am happy to be back to my country. One Tanzanian leader told us that a refugee is less important than an insect. From that day, I decided to come back. I paid for my trip, no organisation helped me. I brought my bicycle only.”⁵⁶

Within this context, there was a strong recognition of the fact that Burundi offered an alternative – a place where they could legitimately belong. One woman, for instance, explained why she had decided to return to Burundi after 36 years in exile, despite the fact that she knew that someone had moved onto her land: “my mother, my father, my grandfather and my grandmother were Burundians. I never felt I could be Tanzanian. In fact, we were considered slaves, inferior to Tanzanians. No-one can deny me my identity as you may leave a place but that place will never leave you. [*Aho wavuye ntihakva inyuma*].”⁵⁷ Or as an elderly woman said, “I am happy to be no longer a refugee and live in my own country. What pleased me in

⁵³ Centre for the Study of Forced Migration, the International Refugee Rights Initiative, and the Social Science Research Council, “Going Home or Staying Home: Ending Displacement for Burundian Refugees in Tanzania,” November 2008.

⁵⁴ Interview with man (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

⁵⁵ Interview with man (fled 1972), Temporary Hosting Site of Bukemba, Rutana Province, 6 July 2009.

⁵⁶ Interview with man (fled 1972), Mabanda commune, Makamba Province, 12 July 2009.

⁵⁷ Interview with woman (fled 1972), Kibonobono *colline*, Rutana Province, 2 July 2009.

Tanzania is that they received us and fed us, but we never had freedom, we were always called refugees.”⁵⁸ In the first instance, therefore, the majority of those interviewed saw returning to Burundi as positive in as much as they no longer felt excluded on the basis of their nationality: their experience as outsiders in exile was a strong motivating factor in encouraging them to return.

Leaving Tanzania

However, the process itself has been highly fraught – both with regards to leaving Tanzania and to arriving in Burundi. In the case of the former, the extent to which pressure on refugees to repatriate has grown in Tanzania has inevitably had an impact on the process itself, with huge discrepancies in people’s experience of “repatriation”. Some, particularly those who were within the official refugee structures in Tanzania, had come back as part of the official UNHCR repatriation exercise. Others had “spontaneously” returned – referred to in the interviews as “buying their own ticket” – while others had been forced back. Those who were part of the official exercise had significant problems relating to what they had been allowed to bring with them. The 50kg weight limit had meant that many returnees have been forced to leave many of their possessions behind – some of which they managed to sell quickly, but at a considerably reduced price. Furthermore, it was apparent that refugees coming from Katumba were arriving with all their belongings, but many of those from Ulyankulu complained that their luggage had been lost along the way – especially on the side of Burundi where they suspect that things have been stolen – and that their luggage allowance had been limited.⁵⁹ Efforts to request for assistance to recover lost luggage have not been fruitful so far, and people expressed their frustration in this regard. Furthermore, there does not appear to have been compensation either for items lost or properties and other goods left in Tanzania during the conduct of the repatriation process raising issues of compliance with both Tanzanian and international law.⁶⁰ A carpenter, for instance, told of how he had been forced to leave all his tools behind and had been given no compensation.⁶¹ Without his tools, he is unable to make a living out of carpentry and support himself and his family. In this context, loss of property represents the loss of coping mechanisms and has had a significantly negative impact on people’s ability to re-start their lives in Burundi.⁶²

Others, particularly those who have been living as self-settled refugees, or “irregulars” as they are commonly referred to, told stories of how they had lost everything. They were forcibly rounded up and returned: as the camps in Tanzania have been closed down, officials have been targeting those outside the camps in the surrounding areas and an estimated 10% of such individuals were victims of violence during the process.⁶³ 26,000 “irregulars” have been expelled over the past three years and received in Burundi, the majority of which are women and children.⁶⁴ One young woman, who had been born in Gatumba camp in Tanzania and then lived as a self-settled refugee, told her story:

⁵⁸ Interview with elderly woman (fled 1972), Rumonge commune, Bururi Province, 22 July 2009.

⁵⁹ Interview with man (fled 1972), Giharo Commune, Rutana Province, 6 July 2009.

⁶⁰ The Tanzanian Refugee Act (Refugees Act No. 9 of 1998) recognised in art 34 (2) that a repatriating refugee “may take with him any moveable property that he owns providing that he complies with any existing procedures or laws”. Any property left behind (“moveable or immovable” comes under the control of the authorities and “fair and adequate compensation” must be paid prior to departure.

⁶¹ Interview with man, (fled 1972), Bukemba commune, Rutana Province, 6 July 2007.

⁶² The lack of cross-border assistance structures was one critical factor in this regard. With the notable exception of Lutheran World Federation’s programme, most NGOs are functioning within a national context. Despite careful co-ordination, this limits the effectiveness of assisting those who are, themselves, crossing borders.

⁶³ Interview with NGO worker, Bujumbura, 18 June 2009.

⁶⁴ Ibid.

I was brought by force; I was seized and packed in a truck and brought nothing. My belongings, a sewing machine, two bicycles, and two mattresses, were left in a Wasukuma village because they said we were doing business illegally. They never gave us compensation. We were brought in the Tanzanian government's vehicles.⁶⁵

Such "irregulars" get the same limited assistance as other returnees, but are not entitled to the cash grant when they arrive in Burundi. Ironically these individuals, who had opted out of the assistance structures in Tanzania and relied, instead, on generating their own support, are subject to considerable additional challenges upon return.

Arriving in Burundi

Those who were part of the official repatriation exercise were given a return package at the point of entry in Mabanda. However, this package has varied significantly over time and between different groups of returnees. It seems that many of the initial returnees received almost no assistance – which, inevitably, had a major negative impact on reintegration and discouraged those still in Tanzania from returning. Since July 2007, however, returnees from the camps have been given a cash grant as an incentive set up by UNHCR to "encourage" repatriation.⁶⁶ Each returnee is supposed to be given \$41 (50,000 Burundian francs minus a 6,600 bank fee). It was only in April 2009 that this same cash component was extended to the 1972 group of returnees – presumably because there was less need for incentives in a context in which they were offered a choice between returning and applying for naturalisation.

From Mabanda, they are transported to the headquarters of the commune where they had previously lived – if they know where that is – in order to begin the process of locating and trying to move back onto their land. In the case of those who fled in the 1990s, interviews point to the fact that this is a relatively straight forward process in as much as reclaiming land in the majority of cases has proved to be relatively unproblematic. However, for those who have found someone already living on their land, they have had to begin the process of waiting for a decision to be made on whether or not they can access part or all of their land – which can take anything from a few weeks to several years. While they are waiting most returnees are left on their own without shelter, although in a few communes there are a limited number of temporary shelters. Not surprisingly, this has created intense frustration among returnees and has put considerable pressure on them to push forward the complex process of reclaiming their land. One elderly man, who had just returned from Katumba camp in Tanzania having lost all his belongings on the way, has been forced to rent a piece of land for cultivation that he claims was originally his: "[y]ou know when we live like animals and have houses that are not fit for human beings to live in, it is the whole country that loses its value."⁶⁷

Lack of alternatives is also putting immense pressure on relatives who temporarily host returnees before they get their own shelters. In other cases, returnees have been forced to rent houses, quickly using up the little money they received. Significant numbers are forced to sleep in the open with no shelter at all. Likewise, while returning refugees are given three months of free medical care, there were numerous complaints that this was too short a time considering the fact that most are not able to be ready to be self-

⁶⁵ Interview with young woman (born in Tanzania), Musenyi Peace Village, Makamba Province, 14 July 2009.

⁶⁶ For more information on the background to this, see UNHCR PDES "Money matters: An evaluation of the use of cash grants in UNHCR's voluntary repatriation and reintegration programme in Burundi." July 2009.

⁶⁷ Interview with man (fled 1972), Rumonge commune, Bururi Province, 21 July 2009.

sufficient within that time due to the lengthy land reclamation procedure. In addition many hospitals do not give free medical care because the government does not reimburse them on time.

One local government official in Kibago, who is currently accommodating seven returnees in his house as they have nowhere else to go, expressed his outrage at how they have been treated:

Returnees were treated as animals. They were dumped at the commune and left there. I got three sheds to welcome them... But there is no water, no blankets. They had been promised everything from the [native] commune while they were still in Tanzania. They even had papers showing what they had been promised... But their luggage is just dumped here at the commune and from here they are not given any other assistance as to how to get to their respective homes which could be far away.⁶⁸

If they are able to locate the land that they claim was originally theirs, they are given 50m by 50m to pitch a tent on the land – which, for some, becomes a semi-permanent home for two years or more. Without adequate access to land, they are unable to support themselves and their small resources dwindle further.

For those who either do not know where their land is or whose land has been taken by the government or government projects (for instance hospitals, other infrastructural developments, or the palm oil industry and sugar factories), they have no choice but to go to the *villages rureaux intégrés*, or peace villages,⁶⁹ discussed in detail below. Many in this category have spent months in Mabanda transit camp waiting to be allocated land. In short, the experience of return has been extremely tough for many – and it is hardly surprising that those remaining in Tanzania are reluctant to repatriate. As a local official in Bururi said, “[w]e are very sad that there has been no clear way of dealing with returnees. They are left on the street just struggling to make sense on how to start life more than 30 years after they left Burundi. They need to be treated fairly, they are human beings.”⁷⁰

Other Integration Challenges

In addition to feelings of exclusion in relation to land, returnees are also facing numerous other challenges as they try to re-start their lives in what is, effectively, a new country. One issue that was mentioned throughout the interviews by those who fled in 1972 was the fact that their children are facing enormous problems in school due to the language barrier. Having used Kiswahili and English in Tanzania, they do not know French and Kirundi, the two main languages in Burundi. As a result, they are being forced to drop back three years or more at school, which is proving demoralising and many are dropping out of school. Other informants talked of how they had been unable to continue with their university education as they do not speak French. One man told of how he has gone through two years of university in Tanzania – posing as a Tanzanian – but cannot further his studies in Burundi for this reason.⁷¹ In addition, many talked of the fact that diplomas and certificates that they had received in Tanzania are not being accredited or validated in Burundi. A midwife who was trained in Mtabila, for instance, told of how her qualification had not been accepted in Burundi.⁷² These factors are contributing to feelings of alienation for returnees:

⁶⁸ Interview with man (fled 1972), Rumonge commune, Bururi Province, 21 July 2009.

⁶⁹ Interview with local government official, Bururi, 24 June 2009.

⁷⁰ Interview with local government official, Rumonge Commune, Bururi Province, 20 July 2009.

⁷¹ Interview with young man (born in Tanzania), Mabanda Commune, Makamba Province, 12 July 2009.

⁷² Interview with woman (fled 1990s), Giharo Commune, Rutana Province, 7 July 2009.

For us not to flee any more, the government should consider all Burundians equal before the law without favouritism. Like now the children who are studying, the children were told that they would just continue from where they were [in Tanzania], but unfortunately, when we arrived in Burundi we were told that those who studied in Tanzania did not study at all. The government should know that what it told to people, it told it to reasonable people, not insane people. We realised that the government is a liar, how can there be peace in a country where the government can cheat to people and lie to them?⁷³

RECLAIMING LAND

The greatest challenge, however, has been over reclaiming land and other assets. With over half a million people returning to Burundi, many of whom have been out of the country for over three decades, recovering assets that were lost at the time of flight is complex and yet vital to the future of both the returnees and those who never fled. A few returnees did talk of trying to reclaim other moveable and immovable property such as houses, cars, and money – both social security assets saved through the National Institute for Social Security, and money left in banks. Overwhelmingly, however, land dominated discussions.

In the vast majority – if not all – cases, those who fled in 1972 have returned to find their land has been given away and then, in many cases, subsequently sold on to a second or third owner. Many plots have been sub-divided and now have multiple occupants, and other pieces of land have semi-permanent structures on them such as schools or hospitals. What is rarely in question is the legitimacy of claims by returnees to having previously owned the land. The fundamental question is how to accommodate or reconcile competing interests or the needs of both the returnees and current occupants of the land, legal or otherwise. The sheer scale and volume of multiple demands to individual pieces of land, along with the need for people to have access to land without long delays, and the incredible lack of resources in a country recovering from decades of civil war, has led to a situation in which the formal justice mechanisms are, objectively, unable to cope with processing all the cases and are seen as a last resort. Instead, the government has taken the pragmatic decision to work towards resolving as many land disputes as possible through “mediation”. Within this context, the main government body formally mandated to assist in the recovery of land and other assets lost during the war is the CNTB.

In reality, however, given the scale of land disputes and the overwhelming lack of resources (both human and financial), the situation on the ground can at best be described as *ad hoc*. On the ground therefore the process of land reclamation is by and large facilitated by the local administration with, at times, the help of the CNTB or NGOs. As one of the CNTB officials working in the field admitted, “we do not have enough workers but we try and work hard and we make use of the *Abashingantahe* and the local administration.”⁷⁴ Therefore within the local administrative structures – from the chief of village to the governor of the province through the chief of zone, sector, and commune – everyone is involved in some way in trying to settle matters involving land. At the same time, the local court of elders (*Abashingantahe*) and the formal courts are also actively deciding on matters of land. It is hardly surprising, therefore, that returnees and even current land occupants do not know the right channel to access claim back their properties. In terms of

⁷³ Interview with young man (born in Tanzania), Rumonge Commune, Bururi Province, 20 July 2009.

⁷⁴ Interview with member of CNTB, Bururi Province, 20 July 2009.

understanding respective roles and scope of the various mechanisms, a number of returnees often did not differentiate between the local administration and the courts, and the “traditional” courts and the formal justice mechanisms, and a considerable number had not even heard of the existence of the CNTB.

This is not to say that the CNTB is not active – and is becoming increasingly so. But with limited presence on the ground, its effectiveness is constantly being challenged. One official told of a case in which the CNTB decided that a returnee should be given 25m by 30m of their original land, but the whole plot was only 20m by 20m: “Imagine the land commission deciding a case before they see the land.”⁷⁵ As a local administrative officer in Makamba said:

The problem with [CNTB] is that they live in Bujumbura yet are supposed to be operating from the provinces. These land issues exceed 1000 cases per week while these people from CNTB come just once a week in the province. These people are given just 50 m by 50 m so that they get where to put up their houses while waiting for CNTB to come and divide for them. We have set up commissions in each village to try and speed up the work, but they are not being paid, which they resent as the perception is that [CNTB] staff are being paid enormous amounts of money. As a consequence, the commission selected from the village becomes reluctant.⁷⁶

In many cases the involvement of the local administration is effective without CNTB involvement. Through their assistance returnees are being allocated small plots of land, generally a portion of their original claim. Typically, a discussion takes place between the original land owner and the current occupier, in the presence of either local government officials or the *Abashingantahe*, an agreement is reached and all parties sign – including, officially, the CNTB. This document is then registered and has some value in as much as if one of the parties decides to go back on the agreement, they would have to explain why.⁷⁷ However, technically a returnee or the other occupier can still renege on the agreements on allegations of duress or undue influence. Further problems relate to the fact that the process is inadequately monitored and regulated, allowing for considerable discrepancy with regard to the fairness and involvement of individual officials on the ground. For instance there was frequent mention of the fact that many of the decision-makers were biased against returnees, in particular the members of the *Abashingantahe*⁷⁸ – who also often demand “payment” in the form of drinks, which many cannot easily afford.⁷⁹ Ultimately, the nature of ad hoc agreements means that persons similarly situated are being treated inconsistently.

Furthermore, the extent to which local government officials are involved in the process has exacerbated the ad hoc nature of the process. In some cases, this was working negatively for returnees, with reports in locations of the local “chef” controlling which cases are taken up and decided by the CNTB. The blocking of transfer of some cases to the CNTB, in the minds of returnees, proved that the local administration was biased against them.⁸⁰ It was also mentioned that local government officials were nervous of getting involved in cases where those in positions of power were involved in land disputes – for instance in situations where government was using the land. This was particularly the case in Rumonge, where considerable amounts of land have been appropriated by government for the production of palm oil. At the

⁷⁵ Interview with local administrative officer, Rumonge Commune, Bururi Province, 20 July 2009.

⁷⁶ Interview with local administrative officer, Bururi, Bururi Province, 24 June 2009.

⁷⁷ Interview with Norwegian Refugee Council, NRC offices Bujumbura, 18 June 2009.

⁷⁸ Interview with elderly man (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

⁷⁹ Interview with local administrative officer, Giharo Commune, Rutana Province, 6 July 2009. See also Uvin, 2009, pp. 62 – 63.

⁸⁰ Interview with woman (fled 1972), Rumonge commune, Bururi Province, 22 July 2009.

same time, it was acknowledged that in other situations, local officials had been incredibly pro-active in working to sort out disputes in equitable and creative ways. For instance the administrator in Mabanda on his own initiative started a system for sorting out land disputes at the *colline* level after realising that the CNTB was chronically under-staffed:

I am the pioneer of starting land commission on the lowest level; that is the *colline*. It started from the *colline* of Mabanda and there are at least 60 people whose cases were dealt with by commission and all of them were satisfied. I went to Samvura and set up the committee myself on each *colline*. Six hundred cases have been dealt with and settled while the CNTB dealt only with 15 cases. As a suggestion, the CNTB should be detached from their work, come in the commune and stay there because that is where their work is, because dealing only with 15 cases in a period of four years while there are thousands and thousands of cases is a joke.⁸¹

This innovative and pro-active approach to sorting out a hugely vexing and complex problems of land repossession shows the extent to which local administrators are critical to the efficacy of the process. However, it is critical that agreements concluded between the parties are then translated into binding legal obligations or interests – for instance by both being given certificates of title – and that the process is adequately monitored and formalised.

In the majority of cases, “resolution” of a dispute means returnees whose land is currently occupied having to share their original land with those who have most recently been occupying them – a scenario that was prevalent for those refugees who had fled in 1972. Depending on who is on the land, this process of reaching agreement on sharing the land can take anything from a matter of days to years. In the commune of Kibago in Makamba, for instance, an informant said that much of the land that belonged to the returnees is now occupied by authorities, officers of the army, and “wealthy people”:

It may even take two years before these poor returnees get back their lands or at least share. Most of the exploiters of those lands do not live in them rather they exploit them from far. CNTB are afraid of these high profile authorities to the detriment of those poor returnees... There is a problem of methodology – a lot of corruption, bribery.⁸²

The fact that it appears to be taking longer for returnees to re-access land grabbed by powerful people shows the urgent need for increased government commitment to the process, which could enforce repossession where appropriate. Others have been told that they will never recover their land. One man talked of how his land is now the site of a Catholic Church and he had been told he would not be able to get it back.⁸³ Another said that a school had been built on his land. While the presence of a church or school on land presents unique problems, it is not alone a sufficient legal reason for refusing recovery. Furthermore, in some cases are complicated by multiple claims to the same piece of land – as a UN official said, one dossier can have five families claiming the same piece of land: “[t]here are even a few cases with 20 plus families – even one of 200.”⁸⁴

A Legal or Political Process?

⁸¹ Interview with local administrative officer, Mabanda Commune, Makamba Province, 15 July 2009.

⁸² Interview with man (fled 1972), Rumonge commune, Bururi Province, 21 July 2009.

⁸³ Interview with man (born in Tanzania), Rumonge commune, Bururi Province, 23 July 2009.

⁸⁴ Interview with UNHCR official, UNHCR offices, Bujumbura, 17 June 2009.

The problems being encountered with regard to the resolution of land disputes relate to the complicated inter-relationship between the “legal” and “political” processes that are operating in parallel. The CNTB is seen as the arm of government and therefore has the legitimacy of a political mandate. However, this legitimacy is limited: its decisions – and processes – are not seen as having the strength of judicial or “legal” decisions and ultimately that of an enforcer of rights. As a UN official said, the CNTB is divorced from legal process; it is very pragmatic, based on principles rather than the law.⁸⁵ Likewise an NGO worker said:

The Land Commission [CNTB] is a government structure and when returnees come to such a system it's as if it is just about trying to reconcile people rather than using the legal process. Returnees don't want reconciliation, just their land. It is a problem of mandate. What is needed is a legal settlement. Land Commission [CNTB] cases are not binding.⁸⁶

This was apparent in the weaknesses that were reported in the process of implementation of CNTB decisions: a number of interviewees talked of how they had gone through the CNTB process but the outcome had not been implemented – especially in cases where the returnee had been granted either a share or all of his previous land back.

At the same time, however, the capacity and effectiveness of formal justice mechanisms were also recognised as fraught. In the first instance, taking a case to court was seen as both expensive and slow, and it is clear that the majority of people do not have access to lawyers to advise or advocate for them. While some organisations are providing legal assistance in court, their reach is minimal given the overwhelming number of potential cases.⁸⁷ As one young man said:

My dad wants to go to courts but he does not have a lawyer. He is doing it all on his own. The journey to justice is painful and we do not want my dad to continue the battle. As his son, I would advise him to [agree to] share [the land] because it is very difficult to win this case, it is the government's decision and we cannot fight this.⁸⁸

More importantly, however, going to court was not seen as an option for returnees from the 1972 caseload as there was widespread fear of the “30-year provision”, described above in the section on the legal framework. Many argued that the rule meant that all cases that go to court would automatically be won by the current occupier, a perception that was acting as a clear deterrent to returnees to pursue litigation. As one local government official said, “the repatriated always loses the case in court due to the 30 years tenure law in place.”⁸⁹ In other words, the legal process is seen as being stacked against returnees. Indeed, the extent to which the law was seen as biased was underscored by the fact that the 30-year provision was enacted in 1986 after many had gone into exile: it is being interpreted as a political tool that had been originally intended to exclude those who fled in 1972. Meanwhile, it appears that, in reality to

⁸⁵ Interview with UN official, Bujumbura, 17 June 2009.

⁸⁶ Interview with local NGO, Bujumbura, 17 June 2009.

⁸⁷ The Information, Counselling and Legal Assistance (ICLA) Programme of the NRC offers alternative programming to returnees with land conflicts through mediation, rather than having their case handled through the judicial system. Interview with Norwegian Refugee Council, NRC offices Bujumbura, 18 June 2009.

⁸⁸ Interview with man (born in Tanzania), Mabanda commune, Makamba Province, 15 July 2009.

⁸⁹ Interview with local administrative officer, Giharo commune, Rutana Province, 29 June 2009.

date, there have in fact been no cases of 1972 returnees that have been heard in court.⁹⁰ So despite the fact that it remains open to question how this aspect of the law would be applied if tested, the perception that the 30 year provision will be applied without modification is having a profound cooling effect on recourse to law. Linked to this is the fact that the courts have been in practice relatively inaccessible to Hutus – whether as litigants or as legal professionals – over the past decades. Although the Arusha Agreement contains provisions for reform to allow for greater Hutu representation, this process of change is inevitably slow.

In CNTB decisions, however, the 30 year provision is not being applied. In fact many dismissed the rule as theoretical to the practice of compromise which is being effected through the redress process at the CNTB and therefore not of concern. As such, there was clearly a lack of consistency and synchronisation between the two processes, showing the need for the Land Commission and the courts of law to be complementary rather than dissonant in order to enhance each others legitimacy. With the CNTB's mandate having been recently reportedly reviewed and renewed, it is hoped that this will, to some degree, be addressed: that the balance between “mediation” and reliance on the law will somehow be better aligned.

What is clear is that a political decision has been taken in order to try and strike a balance between the meticulous demands of legal justice, and the pragmatic need for reconciliation and peaceful co-existence between and amongst Burundians as citizens of one country in the light of its violent history. However, the means by which this overarching objective is achieved are crucially important. Recognising that good legislation or laws in and of themselves may not solve the many intricate land issues confronting the country – both for practical and more philosophical reasons – mediation has been identified as one such means to help the returnee and current occupant of his or her land to amicably settle ownership issues. The question remains: will mediation without acknowledgement of legal rights succeed without creating trigger factors which undermine the very overarching objective of peaceful co-existence? Crucially, how do the purported beneficiaries from this mediation-driven redistribution of land view it? Is it something they genuinely accept or is it something that has been imposed on them by the government? As the following sections show, the majority of returnees, in particular the 1972 group of returnees who are generally on the losing side, expressed a certain amount of disquiet regarding the current approach, which does not portend well for the long term stability of Burundi.

RESTORING ECONOMIC RIGHTS

What are the implications for returnees with regard to sharing or, in some cases, not being able to claim back any of, their land? How is the process viewed by those who are in the midst of it – both returnees and those who are currently occupying disputed pieces of land? In the first instance, the immediate issue, not surprisingly, relates to having sufficient access to land in order to ensure the resumption of adequate livelihoods. Without land, there are few alternatives and people become increasingly vulnerable.

Within this context – and recognising that there are limited choices – in a number of the instances covered by the research the process of gaining access to some land had been relatively fairly straightforward in as much as the current land occupier and the returnee had quickly reached agreement to share the land. One man who recently returned told his story:

⁹⁰ Interview with UN official, Bujumbura, 17 June 2009.

I left this country in 1972 and went to Tanzania and came back in 2008. When we came back we found someone living on the family land. We had papers showing that we own the land but this person also had papers. The *chef de colline* decided that we should share. We accepted because we had no other ways but we had hoped that we would get the whole land. It did not take long because we had finished dividing the land in no more than one month. We are living very well with the new neighbour because he is a good person. We assist each other and we are really turning to be good friends.⁹¹

Likewise several current occupiers of land talked of how they were expecting returnees to come and claim their land soon and would be willing to share.

For many, however, the process has been less straightforward: they are either still waiting for resolution, or are profoundly unhappy with the decision that had been made, often due to the fact that land that was already small is being divided further, creating considerable challenges for accessing effective livelihoods:

We found someone who is not from our family living in our land (five hectares). We split the land in two equal parts. In the 2.5 hectares, we are four families and three more that are still in Tanzania. The man we found in the land says that he was given the land by local leaders in 1974. The current local leaders divided the land for us. We were not happy; we were forced to agree just because it is a rule set by the government. But we sometimes think that we may resort to the court because we do not see how seven families can live in a land of 2.5 hectares only. We do not have enough space to grow crops. I have nothing to say now.⁹²

As this demonstrates, sharing land is putting serious economic strain on people, not least returnees who are particularly vulnerable at this time of transition. As one official asked, “[p]eople do not like the idea of sharing land because they already have very small land. How do you divide them again? We find it hard to divide these plots of land. Why should we do that? The government needs to work out a strategy on how to settle returnees other than creating conflicts unnecessarily.”⁹³

However, acceptance of sharing was contingent upon the fact that the current occupier did not have alternative land that they can access – often evidenced by whether or not they had built a house on the land. In cases where there were no permanent structures, this was interpreted to mean that the current occupier had land elsewhere. In cases where the occupier had other land available, there was a strong belief that the returnee should be given their whole plot of land back. As one woman said, “I went to talk to the man and told him that the land is ours. He told us that he has seen the war and he is accustomed to sharing. He was ready to share; but we do not know yet if he is not having another land. He did not fall from heaven anyway.”⁹⁴ In other words, it is well recognised that people who are living on other people’s land must have had a place they were living in before the events of 1972: there was frustration that current land occupiers were not going through similar processes to recover their previously owned land. Other situations were made more complicated by the fact that some of the disputes were arising within families: in most cases, land that was left with family members is creating as many problems for returnees as those occupied by outsiders.

⁹¹ Interview with man (fled 1972), Giharo commune, Rutana Province, 6 July 2009.

⁹² Interview with elderly returnee man (fled 1972), Giharo commune, Rutana Province, 1 July 2009.

⁹³ Interview with local administrative officer, Rumonge commune, Bururi Province, 20 July 2009.

⁹⁴ Interview with woman (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

Meanwhile current land occupants are also unhappy with the emphasis on sharing land, which they were either allocated by the government post-1972 or had bought from someone who had got it in this way. Many referred to the fact that they had not only bought the land but had invested money and time in it. As an elderly widow said:

Apart from us, 15 other people had bought part of the land. When the original owner came back, we were asked to share with him. This was very hard because he took half of the land and the 16 of us were given the other half. As a widow, I am very worried because I have no land for my children. I understand why we should share with the one who is coming back but this does not help me because I had invested in this land and all my investment is now nothing. I cannot buy another land because I have no money and land has now become very expensive. I do not want to go elsewhere, away from my family because they are assisting me as a widow. I think that the government should compensate people like me. It is good that our brothers and sisters are coming back but the government should find a solution to this land problem.⁹⁵

“It is a big problem to be a cultivator but have nowhere to cultivate.”

Interview with woman, near the Temporary Hosting Site, Bukemba, Makamba Province, 7 July 2009.

Although there was frequent acknowledgement both of the legitimacy of claims by returnees and of the desperate circumstances in which many are living, the fact that they are now being asked to share it without any form of compensation is angering many – exacerbated by the fact that they are not receiving the same assistance as returnees despite the fact that they are often losing out when land is divided. In some instances, they talked of how they had already sold their original family land and genuinely have nowhere else to go – although the returnees argue that they should therefore go through the same process of reclaiming land, although a quite different legal framework would apply to those who sold lands rather than being dispossessed and who were never forcibly displaced. And although they recognised the legitimacy of the claim of the “original” owner – as they referred to those returning from Tanzania – this still does not take away from them the fact that they are often as much a victim of this predicament as those who are returning to find that their land has been given away. As one man said, “[w]hen I got this land [given to him by the local administrator in 1974], it did not have anything in it. I planted bananas, built a house and believed that this is where I had to bring up my children.”⁹⁶ Another man said, “If we have to share, I cannot stop the hand of the government but why do they have to give my banana plantations? Why can’t they give these returnees the part that does not have bananas? ... I want the government to remove the secondary school fees because we do not have where to get it from especially after taking away our land!”⁹⁷ In this context it was hardly surprising that there were stories *from both sides* of people being threatened – and, in some instances, of people believing that witchcraft was being used to harm them and scare off one of the parties to the claim.

The bitterness of disputes was particularly apparent in Rumonge, an area that is highly fertile and where people can grow palm trees to produce and sell palm oil. Much of the land here is now owned by the *Office*

⁹⁵ Interview with non-displaced elderly woman, Giharo commune, Rutana Province, 7 July 2009.

⁹⁶ Interview with current land owner, Giharo commune, Rutana Province, 7 July 2009.

⁹⁷ Interview with non displaced elderly man, Mabanda commune, Makamba Province, 14 July 2009.

de huilerie de palm de Rumonge (OHP Rumonge). With the return of many original owners of the land – along with others who have heard that the area is particularly fertile and so want to make claims on the land – there are profoundly complex layers of claims on overlapping plots of land. Meanwhile the government, which owns OHP, appears to be out of the picture with regards to sorting out the situation. Further to Burundi's ratification and incorporation of the Property Protocol (discussed above) it would appear that where the state is the occupying owner and recovery is “not possible” the state is legally required to pay compensation.⁹⁸

From an economic point of view, therefore, the current initiative in the majority of cases to share land offers a short-term solution to ensuring that the majority of returnees have access to at least some land relatively quickly. Recognition also needs to be made of the fact that shortage of land is a general problem in Burundi quite apart from the **current** return of thousands of refugees. It provides a pragmatic answer to an intensely complicated situation in which there are multiple, and possibly legitimate, claims to the same piece of land, and which any solution is likely to be complicated. However, the longer term implications are cause for concern: economically the sharing solution is palliative at best – it is unlikely that many of the families currently sharing land are going to be able to meet the immediate basic needs of their family for long let alone essential costs such as medical and school fees. With neither party receiving any form of compensation, everyone feels that they have lost out and the challenge to generate a livelihood for their families has only got harder. In the longer term, therefore, other forms of livelihood are going to be critical as an alternative to families trying to survive only on small plots of land.

RESTORING SOCIAL CONTRACTS?

Land, of course, is much more than an economic commodity, and the redistribution of land is not just an economic and pragmatic exercise: it relates to issues of justice, reconciliation and sustainable peace, and has enormous consequences with regard to wider issues of reintegration and notions of belonging and inclusion. These broader issues are what beat within the heart of the current process, and were dominant throughout the research: if their significance is overlooked, the implications are far-reaching and potentially dangerous.

Throughout the research it was clear that access to land – and access to a specific piece of land – was intimately connected with people's notions of identity. For many in Burundi, identities are, literally, rooted in the soil: “every Burundian can trace where he came from.”⁹⁹ The fact that displacement has created such a fundamental disjuncture between territory and belonging has only heightened the interconnectedness of the two. Those who are returning from exile, after decades of alienation, are searching for continuity with their past, which is most tangible through physically returning to the land from which they fled, and on which their ancestors lived. As one informant said, “land connects the current generation to their ancestors... Land, and especially family land, is priceless; it is a gift you get from the ancestors and it is a gift you have for your descendants. Land keeps the extended family together and as such it is like a clan umbilical cord.”¹⁰⁰ As a result, numerous interviewees, when asked if they would be happy to be given an alternative piece of land, said that they would not: “I would never sell my inheritance unless I want to choke my children. In fact, even if you get money, you use it, utilise it and eat it until it is finished yet the land remains forever and your kids

⁹⁸ Protocol on the Property Rights of Returning Persons, art 4 (2).

⁹⁹ Interview with man (fled 1972), Kibonobono *colline*, Rutana Province, 1 July 2009.

¹⁰⁰ Interview with government official, Bujumbura, 22 June 2009.

would suffer forever if it is sold.”¹⁰¹ “A small family land is better than a big land that you have acquired because it gives you a name. Even if the government gives me another, I will not accept.”¹⁰²

The status of family land is seen in contrast to other land that has been bought and which people can sell if they chose: “With your own purchased land you can give it to whoever you want without referring to the family while the land you inherited from your father you cannot.”¹⁰³ “Your identity depends on the family land; you have an origin and people will say: so and so come from that area or that hill belongs to so and so. I have no papers for that land, but witnesses know that I was born there, and the land belonged to my father.”¹⁰⁴ By the same token, people who are landless feel that they are worthless: one man, who identified himself as Mutwa, made reference to this, saying that they are servants and slaves (*umuja*).¹⁰⁵ The few who said that they would not mind being reallocated land were mostly young people who had been born in Tanzania – although it is important to note that, at the same time, many other younger returnees were equally adamant that they would not accept alternative land. As one young man who had spent the past 16 years in Mtabila said, “if the government gives me another land, I can accept. Living away from the family is not a problem because that very family is causing me trouble.”¹⁰⁶ Another young man who had fled in 1972 when he was four years old, said that he was happy to be given land elsewhere if his family could not reclaim their land.¹⁰⁷

“We have been refugees for so long. We want to live together as a family again.”

Interview with man (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

Within this context, the fact that many returnees have now been forced to share their family land with someone who is often a complete stranger is strongly resented: “To share a land with an intruder is a big problem. We do it to please the government which ordered it that way but we feel it is an injustice committed against us.”¹⁰⁸ “It is not good to share [family land] with someone from another someone. You have to talk to him before you cut a tree; and it is not good to ask permission to someone who comes from another family. You can sell the family land to a sibling, but never to an outsider”¹⁰⁹; “It is painful to share a family land with an outsider; it does not even exist in our traditions. If you give it to someone, you kind of delete the name of the family... A family land is the identity of the family.”¹¹⁰

Thus the emphasis on sharing land, based on the principles of mediation and reconciliation, presents considerable challenges for the reintegration of returnees. While it has appeal in as much as it attempts to mediate the interests of both parties resolving a complex problem, the findings indicate that it offends fundamental traditional values attached to land and the potential alienation when separated from that land – which, in turn, has serious implications for bringing about genuine reconciliation. In other words, the current

¹⁰¹ Interview with man (fled 1972), Kibonobono *colline*, Rutana Province, 2 July 2009.

¹⁰² Interview with man (fled 1972), Mabanda Commune, Makamba Province, 12 July 2009.

¹⁰³ Interview with man (fled 1972), Kibonobono *colline*, Rutana Province, 1 July 2009.

¹⁰⁴ Interview with man (fled 1990s), Giharo Commune, Rutana Province, 7 July 2009.

¹⁰⁵ Interview with a Mutwa man (fled in 1993), CHT Bukenyi, Kibago commune, Makamba Province, 15 July 2009.

¹⁰⁶ Interview with woman (fled 1972), Giharo commune, Rutana Province, 2 July 2009.

¹⁰⁷ Interview with young returnee man (fled 1972), Giharo commune, Rutana Province, 2 July 2009.

¹⁰⁸ Interview with man (fled 1972), Kibonobono *colline*, Rutana Province, 2 July 2009.

¹⁰⁹ Interview with elderly returnee man (fled 1972), Giharo commune, Rutana Province, 1 July 2009.

¹¹⁰ Interview with returnee man (fled 1990s), Giharo commune, Rutana Province, 1 July 2009.

approach discounts the strong intergenerational social contractual relations embedded in land that are cherished by those who claim to rightfully own the land. The challenge for the authorities, Burundians, and international actors is how to take into account the beliefs and values held sacrosanct by all the claimants to a particular parcel of land in such a way as to genuinely promote reconciliation.

Practical Benefits

Inextricably linked to the interconnections between family identity and land, were references to the practical social benefit that it brings: the “tradition” of specific pieces of land being intimately connected to the family is based on values that foster social inclusion and notions of community. “Living with relatives creates unity, you support each other. When you live away from the family, you miss something, you are not really free. We need to give pieces of land to the old and vulnerable, give them grandchildren who can help them.”¹¹¹ The need for community and family structures to offer support is even more critical during the current process of change and transition: moving from Tanzania to Burundi, as outlined above, has been traumatic for many people and has made them vulnerable as they struggle to re-start their lives. As one woman said:

If the government gives you another land, it puts you together with people whose characters you do not know. You are separated from your family and relatives; and they cannot be by your side when you are in trouble. When I remember how they came to welcome us and gave us food, it is good to have relatives by your side. You cannot sell a family land, unless there is urgent need on which the whole family agrees.¹¹²

“Living close to your family is very important... When someone is vulnerable, we help him by giving him the basic things that he needs.”¹¹³

Of course, it is important not to over-romanticise notions of family and community: not everyone has family members to help them resettle. And in some cases disputes over land have emerged within families and have torn them apart. What is clear, is that some of the positive attributes and traditions of protecting land interests must be identified and factored into any land reform policy and legislation, including the current process of land redistribution and repossession. In a context in which resources are stretched to their limits, it is important for coping mechanisms to be enhanced rather than undermined, and the way in which land is distributed with due regard for these factors is critical in this regard.

¹¹¹ Interview with elderly returnee man (fled 1972), Giharo commune, Rutana Province, 1 July 2009.

¹¹² Interview with woman (fled 1972), Mabanda commune, Makamba Province, 13 July 2009.

¹¹³ Interview with man (fled 1990s), Giharo commune, Rutana Province, 7 July 2009.

POLITICAL CONTRACT RENEWED?

Land also has wider, political implications which, once more, relate to notions of political citizenship and re-engagement of the relationship with the state. The political forces that kept them excluded as legal aliens throughout their time in Tanzania are seen as being reversed by the process of their returning to Burundi and re-asserting their legitimacy to belong within a national context. The findings show that the realisation of citizenship for returnees is centrally contingent upon fair and effective repossession of land – and specifically family land – signifying an end to the causes of flight that broke their citizenship bond in the first place.

As such, the current process is linked into wider issues of governance and justice and to the way in which people perceive the necessary attributes for (re)assertion of their Burundian citizenship. When asked what it meant to regain their citizenship, repeatedly returnees talked of recovering access to their family land as a primary indicator that they were once more “Burundian” and no longer in a state of exile. Conversely, those who have not gained access to their land talked of how they felt that they had not yet become Burundian once more. As one woman who has been unable to claim back her land said, “We cannot feel that we are citizens as long as we are not treated as Burundians in what should be ours without discrimination. We are currently discriminated against.”¹¹⁴ “Sharing the farm with someone who has another farm is painful. We are all Burundians; we should be equal.”¹¹⁵ Likewise a man who has been in exile for 37 years said:

“I am a stranger until I get my land... I am still a refugee although I am in my own country.”

Interview with man, Temporary Hosting Site of Bukemba, Makamba Province, 7 July 2009.

I cannot accept another land because that is similar to living in a foreign country. The spirits of my ancestors would harm me. A family land is an inheritance, and inheritance cannot be shared. Even if I have problems, I am happy because I am in my country. Even if I have nothing to eat, I can laugh [from joy]. Nothing pleased me in Tanzania because I was a foreigner. I could have huge harvests, but I decided to leave and come back.¹¹⁶

Specifically, gaining access to land – which is seen as a process determined by the government – represents the renewal of a political relationship with the state. Within this context, therefore, access to land is inextricably linked with notions of citizenship and forms of governance, to which such citizenship is attached: “For us not to go into exile again, we have to live in unity without discrimination. Having citizenship is living in freedom. It means that you are a citizen when you are free everywhere regardless of your ethnic background.”¹¹⁷ However, this political relationship can only function if it is based on justice: repeatedly throughout the interviews returnees emphasised the fact that the main source of justice – or lack thereof – comes from the government. The role of government (albeit realised in numerous configurations over the past decades) was seen as both the source of injustice that caused flight in the first place, and the current force behind the redistribution of land: numerous interviewees talked of the unfair distribution of

¹¹⁴ Interview with woman (fled 1972), Giharo commune, Rutana Province, 2 July 2009.

¹¹⁵ Interview with man (fled 1972), Mabanda commune, Makamba Province, 12 July 2009.

¹¹⁶ Interview with elderly man (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

¹¹⁷ Interview with man (fled 1972), Mabanda commune, Makamba Province, 12 July 2009.

resources by government, and the injustice that this represents, as lying at the heart of the cycles of war and displacement that have dominated the country's recent history. By the same token, the *fair* distribution of land was seen as an antidote to such cyclical patterns of violence.

However, to many, the current scheme is not seen as fair. Numerous interviewees expressed bitterness towards a system that is perceived as fundamentally unfair to returnees, who have had their land taken away and are now only being given part or none of it back. The main point of contention was the fact that the same logic of sharing was not being applied to those who are the current land occupiers. As one elderly man said, "We [returnees] share our lands only, and they keep theirs undivided."¹¹⁸ As another man said:

This law of sharing lands between returnees and those who stayed is not fair because those who stayed have other lands. How can ten families share half of the land? Don't you see that we have been tricked? How can he say that he has nowhere to go if he is Burundian? Even if he came here when he was very young, he can trace back his origin and go there.¹¹⁹

As a result, many referred to the fact that they feel somehow second class citizens: "[b]ecause the returnee does not have a say in Burundi, he just accepts what he is given. But surely he harbours grudges and hatred in his heart against such an injustice, and when the time comes I will go to court."¹²⁰

One antidote to this was the suggestion that there is an urgent need for those who have returned to be represented in the whole process of land distribution: "There is still suspicion between the returnees and others. We need to be included in the administration so that we may not feel discriminated against."¹²¹ Once more, this was linked to notions of the equitable distribution of power, seen as a way of mitigating against conflict: "[t]here will be no refugees if the public services are no longer dominated by one group. People should have access to fair justice as well. To have citizenship, people need to be free in their country."¹²²; "people who are coming back should be welcomed to sit on the Land Commission, that way justice will be done."¹²³ Furthermore, access to land is linked to access to participation in local government mechanisms, a further indicator of genuine reintegration.

Furthermore, there was anger that promises that had been made in Tanzania by Burundian officials had not been delivered upon, and many felt that they had been tricked into returning. As one local administrator said, "Refugees should have been told the truth about their land so that they may be patient with a system of land reclaiming that was going to take long."¹²⁴ One man from Ulyankulu talked of how officials had come from Burundi and promised them compensation in situations where the government had taken over their land, "but when we came we were extremely displeased because the promises never materialised, we were cheated and lied to."¹²⁵ Another returnee talked about how they had not been told about decisions to share land when they had made their choice between naturalisation and repatriation.¹²⁶

¹¹⁸ Interview with elderly man (fled 1972), Rumonge commune, Bururi Province, 23 July 2009.

¹¹⁹ Interview with elderly man (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

¹²⁰ Interview with man (fled 1972), Bukemba commune, Rutana Province, 3 July 2009.

¹²¹ Interview with young returnee man (fled 1972), Giharo Commune, Rutana Province, 2 July 2009.

¹²² Interview with man (fled 1972), Kibago commune, Makamba Province, 15 July 2009.

¹²³ Interview with man (born in Tanzania), Mabanda commune, Makamba Province, 15 July 2009.

¹²⁴ Interview with local government official, Rumonge commune, Bururi Province, 20 July 2009.

¹²⁵ Interview with elderly man (fled 1972), Kibonobono *colline*, Rutana Province, 1 July 2009.

¹²⁶ Interview with man (fled 1972), Kibonobono *colline*, Rutana Province, 2 July 2009.

Within this context, many are accepting decisions on their land with a view to waiting either for the money or the right time to reclaim their land through the courts: the decisions being made by the CNTB or local authorities are seen as temporary. The fact that no follow up is being carried out to see if people are happy with decisions that have been made is crucial in this regard.¹²⁷ It also calls into question the “reconciliatory” nature of the current approach, as it shows clearly the potential for resentment to resurface in the future.

Land and Conflict: Potential for Peace?

Indeed, throughout the interviews, reference was made to the fact that fair and equitable access to land is intimately connected to issues of peace and security. This linkage is particularly critical in a context in which peace in Burundi is not something that is taken for granted – indeed many referred to the current situation as one of “relative peace” [*agahengwe*].¹²⁸ Frequent mention was made of the fact that there is a precedent in the country for conflict to erupt over land, particularly in the case of the 1972 genocide, seen as a means of eliminating people in order to obtain their land. As one woman said:

We fled a genocide that was geared to exterminating the Hutu tribe and taking our land... They came and campaigned that peace was prevailing in Burundi. When I repatriated, I found that what had been said was true, so many things have changed because now I can share a bottle of beer with a Tutsi, something that was impossible in the past.¹²⁹

As another woman said, “for us not to flee again there should be no more war. Politicians use us in their fights; they should see how they have harmed us and should stop deceiving us because we pay for their tricks, which we do not know. People then come to kill you so as to take your land.”¹³⁰ Indeed, the fact that the land was re-allocated by the government subsequent to the events of 1972 was evidence that this was, indeed, the case. As one man asked, “why did the government bring the people from Vyanda and implant them in Kigwena, what was the motive behind the move?”¹³¹

At a localised level, already a number of interviewees referred to how they had been threatened with violence over land disputes – returnees and non-displaced alike. One woman, for instance, told a story of witchcraft being used by a returnee to “persuade” her to leave by making her child sick, a story that was supported by several others in the area.¹³² Indeed, the current situation of land redistribution and land sharing is putting considerable pressure on families and individuals. An elderly man who has not yet been allowed onto part or all of the land that he is claiming to originally be his, talked of the hostility that has developed between them:

We don’t want to share because the land is small and we are a big family. Or if they want us to do the sharing, *let them compensate us for what we have lost*. The current owner of this land is the one who harvests the palm oil while we are the ones who planted them. We’ve been turned into watchmen to watch our palm oil being cut by people who occupied our land and if any of this is stolen, as so often happens in other places, it is understood that we are the ones who stole them

¹²⁷ Interview with NGO worker, Bujumbura, 18 June 2009.

¹²⁸ Interview with young man (fled 1990s), Nyembuye *colline*, Rutana Province, 1 July 2009.

¹²⁹ Interview with woman (fled 1972), Rumonge commune, Bururi Province, 20 July 2009.

¹³⁰ Interview with woman (fled 1993), Giharo commune, Rutana Province, 6 July 2009.

¹³¹ Interview with man (fled 1972), Rumonge commune, Bururi Province, 20 July 2009.

¹³² Interview with woman (current land occupier), Rumonge commune, Bururi Province, 22 July 2009.

[and the current owners accuse us in court]... When it rains, before we get our land, what are we going to do? I can almost predict war because we will have to plant whether they like it or not. The current landowners are extremely fed up with us but we are also extremely fed up with them. So what will happen?¹³³

Whether such localised disputes will spread and become more generalised remains to be seen. What is clear, however, is that Burundi is currently in a fragile transition from decades of war to one of stability and peace, and the way in which land is distributed is a critical indicator of the success and durability of this transition. This vulnerability relates particularly to the ethnic undertones that inevitably exist in this context: given the ethnically-manipulated basis on which conflict has taken place in Burundi, the vast majority of returnees are Hutu – and, therefore, perceptions of the land redistribution process are critical to people’s understanding of their place within the country. If the redistribution of land is not done – or seen to be done – in an equitable way, it has the potential to ignite renewed violence and destabilise the country.

“Peace villages are for people who have nowhere to go”¹³⁴

The dynamics discussed above coalesce in discussions that took place regarding peace villages, which were seen as a new form of exclusion by those living in the specific villages that were visited during the field research. In the first instance, there were numerous complaints about the quality and size of the land that people were being allocated in these areas, and the fact that the proposed numbers of families was far greater than the land could sustain.¹³⁵ Rutana Province, for instance, has two peace villages, where people are allocated ½ hectare to cultivate. As the governor of the province said:

We are more than aware that this is a small piece of land but the government doesn’t have big land. The majority of those people who lost their land to big corporate organisations... do not easily recover their land. Also those who can’t remember or do not simply know their home places are the ones who benefit from peace village programme.¹³⁶

Many of the other proposed sites for peace villages are in the eastern provinces of Ruyigi and Cankuzo, which is far less fertile than the south and where there is limited infrastructure and business opportunities. It appears that these plans have been dropped, also due to the apparent decrease in demand.¹³⁷

Those who have returned to Burundi and now find themselves living in peace villages were profoundly angry about the situation – not least as for many, the reason they were there was because the government is now using their land. Indeed, many referred to it as a new form of exile: “In this peace village, I still feel as if I am in exile – the refugee camp I was in was far better than this peace village. I do not feel I am a Burundian at all. At least if we were placed in a good place not in this desert, we were dumped in this useless place.”¹³⁸ They are seen as places for those who do not know where they belong – who are unable

¹³³ Interview with elderly man (fled 1972), Rumonge commune, Bururi Province, 21 July 2009. Emphasis added.

¹³⁴ Interview with elderly woman (fled 1972), Rumonge commune, Bururi Province, 22 July 2009.

¹³⁵ In the interim, fewer returnees than originally anticipated have been willing to live in the planned villages, and a great deal of space remains. Interview with NGO worker, Bujumbura, 17 June 2009.

¹³⁶ Interview with government official, Bujumbura, 22 June 2009.

¹³⁷ Interview with NGO worker, Bujumbura, 17 June 2009.

¹³⁸ Interview with man (born in Tanzania), Musenyi Peace Village, Makamba Province, 14 July 2009.

to reconnect with a specific piece of land or area in the country. One man whose parents had been killed in 1972 talked of how he felt:

I have lost my identity completely. This peace village is meant for people without reference and secondly I am uprooted as I do not know where I lost my umbilical cord and the land of my dad and my forefather. Now I would say I am a Burundian but a lot is lacking: I feel I am a refugee in my own country as I lack a lot which makes me not feel I qualify to be called a Burundian.¹³⁹

Another man said that he is going to write to those he knows who are still in Tanzania and tell them not to return or they will be “tricked” like him.¹⁴⁰

The sense of isolation that many are feeling relates not only to the physical isolation of the peace villages, but also to the fact that there was no sense of having reconnected with the political and social processes of the country that are bound up with notions of inclusion. Many talked of how there had been no meetings with local officials, and of how no-one had “welcomed” them. The fact that the villages that were visited are, in practice, mono-ethnic as they are comprised primarily of returnees, only underscores these notions of exclusion. These artificially created villages, therefore, are seen to exemplify the worst end of return and reintegration. They neither form the function of providing compensation for land that has been lost, nor do they provide the much needed assistance for those who are unable to locate or reclaim their land. Most importantly, they are not seen to offer the potential for returnees to genuinely reintegrate within Burundi, and to feel included within the wider processes of the country.

CONCLUSION

Burundi is currently beginning the long and painful task of reconstruction after decades of violence, political turmoil and displacement. The challenges it faces are hard to exaggerate. The fact that half a million people are able to return to their homes, some after more than three decades in exile, is extremely encouraging and symbolises optimism for the country’s future. Yet the effective reintegration of those who have been displaced is also probably the greatest challenge facing the country: the return process, while somewhat unique, highlights the extent to which shortage of land is a growing problem throughout the country. And the return of refugees to the south of Burundi, the dominant focus of this report, is only a part – albeit a significant one – of a wider process of return throughout the country.

This paper has sought to illuminate some of the dynamics surrounding return and to assess the extent to which it represents genuine reintegration – an authentic re-instatement of the bond between citizen and state that has been violently broken as a result of massive violations of human rights and the playing of partisan ethnic politics as a route to power. To restore this broken contract, the findings have shown that land is fundamental: its equitable and just distribution is key to the processes of reconstruction, reconciliation, and peace building currently taking place in Burundi. Its mishandling is likely to maintain the cyclical patterns of injustice and violence that have characterised the past decades. Indeed, reconciling the competing interests in land of original owners and other occupants is possibly the single most important factor in preventing the conditions within which future conflict can take place.

¹³⁹ Interview with man (born in Tanzania), Musenyi Peace Village, Makamba Province, 14 July 2009.

¹⁴⁰ Interview with man (born in Tanzania), Musenyi Peace Village, Makamba Province, 14 July 2009.

Yet in order to do this, the government has to grapple with meeting two somewhat competing demands: the fact that land is seen as a critical marker of identity and belonging, and that it is a dwindling resource for livelihoods in Burundi. On the one hand, therefore, systems for resolving disputes over competing claims for land need to be constructed in such a way as to acknowledge and, to the extent possible, address the serious human rights violations of the past. If they are not seen to be just, they risk sowing the seeds of further conflict. At the same time, there is a need to address factors that are imbuing land with such critical importance, and alternative forms of livelihood that are not dependent solely on land must be promoted. In order to begin to balance these competing demands, greater emphasis needs to be placed on ensuring that the bonds between the state and its citizens are built on robust structures that do not rely exclusively on connection with the land. While the equitable redistribution of land is critical, it is only the first step towards the genuine and sustainable rehabilitation of genuine citizenship in Burundi.

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About the International Refugee Rights Initiative

The International Refugee Rights Initiative (IRRI) works to enhance the protection of the rights of those who are forced to flee their homes worldwide. IRRI grounds its research and advocacy in the rights accorded to the displaced in international human rights instruments and strives to make these guarantee effective in the communities where the displaced and their hosts live. Based in New York and Kampala, IRRI acts as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home. Currently IRRI has a regional focus on Africa, the continent that hosts more refugees per capita than any other.

www.refugee-rights.org

About the Rema Ministries

Rema is a Kirundi word which means to console, comfort, encourage, strengthen, to build up, support and give hope to people who have suffered misfortune and catastrophes such as deaths, civil wars, HIV/ AIDS, earthquakes, etc.

Rema Ministries is a non-denominational Christian non-government organisation (NGO) that brings "rema" to refugees and other disadvantaged people from and in Burundi.

About the Social Science Research Council

The Social Science Research Council (SSRC) leads innovation, builds interdisciplinary and international networks, and focuses research on important public issues. Since its inception in 1994, the SSRC Migration Program has had as its primary goal the strengthening of international migration studies. Its field-building strategy has been to recruit young, promising scholars to the field, to connect scholars with shared thematic interests across disciplines, and to link social scientists with other researchers in the humanities, the professions, and the not-for-profit sector. The purpose of the SSRC's Migration Program's "Forced Migration and Human Rights" project was to explore how an international human rights framework could be used in collaborations between scholars and practitioners in international humanitarian and human rights organizations to develop new understandings and program designs that will enhance the protection of forced migrants in Africa.

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