Land Access and the Return and Resettlement of IDPs and Refugees in Burundi

PRISCA MBURA KAMUNGI, JOHNSTONE SUMMIT OKETCH AND CHRIS HUGGINS

INTRODUCTION

Burundi is a small land-locked country bordering Rwanda, Tanzania and the Democratic Republic of Congo (DRC), and is one of the poorest countries in the world. Today Burundi stands on the threshold of peace, after decades of decay in the throes of conflict and distress-induced underdevelopment.

Since gaining independence from Belgium in 1962, Burundi has been wracked by civil war and undermined by poor governance. In addition to countless attacks on civilians and general insecurity, particular instances of mass violence have resulted in the death and/or displacement of thousands of Burundians. Repeated cycles of bloodshed have traumatized the people and polarized social and political relations along ethnic lines, thereby entrenching the conditions for political instability in the country. Governance practices by successive regimes galvanized political power and state control in the hands of a small elite group of Tutsi, from particular parts of the country, who have since sustained their hold on power by repressive and exclusive policies. Military dictatorship characterized by the systematic exclusion of Hutus, and intra-Tutsi rivalries have led to Hutu demands for more equitable power-sharing. Efforts by the Tutsi elite to retain political control and associated patronage networks, and violent counter-strategies of the Hutu political and armed groups have precipitated ethnic massacres and retaliatory radicalism marked by acts of genocide.

Widespread displacement of communities within the country and across international borders, wanton destruction of property and death of an unknown number of people as a result of decades of war have had extremely negative impacts on Burundi’s fragile economy. According to a recent study, a staggering 99% of the population lives below the international absolute poverty threshold of US$1 per day, and more than 85% survive on less than US$1 per week. Burundi is currently ranked number 171 of a total of 175 countries in terms of Human Development Indicators. Bujumbura used to be an important business centre for trade in gold, fresh vegetables and a number of other goods, but Kigali and Kampala have taken over that role. Since 1993, annual foreign aid has
declined by about two-thirds, and GDP has fallen by a fifth. Primary school enrolment has dropped from the pre-war figure of 70% to 28%. Average life expectancy fell from its 1993 figure of 54 years to just 41 years. Over a quarter of all Burundian women are widows. Social relations are severed through separation of partners, while among displaced populations there is a higher incidence of casual and/or commercial sex, and associated risk of HIV infection. There are links between land access and HIV infection in Burundi, particularly in instances where widows and orphans cannot inherit land, or when agricultural practices change because capacity for heavy labor is reduced due to HIV-related illness.

Land scarcity remains a major problem in Burundi, not just in the context of post-conflict refugee repatriation and internally displaced persons’ (IDPs) returns, but also in terms of long-term development. Limited access to land resources not only constrains food security, but also poses important challenges to sustainable peace and national development. In the context of post-conflict reconstruction, there is a possibility of land concentration through domination of land markets by a wealthy elite, and increases in the rates of landlessness. The resolution of the current conflict and prevention of future unrest therefore requires the development of culturally and politically appropriate and sustainable policies with a long-term and coordinated approach, rather than only short-term responses to post-conflict emergencies such as refugee returns.

Following the August 2000 signing of a peace agreement by 19 political groups in Arusha, Tanzania, and the enhanced regional stability brought about by the peace process in neighbouring DRC, there is an opportunity for peace and development. This state of affairs has precipitated the return of thousands of refugees, primarily from neighbouring Tanzania. As suggested by ACTS in 2001 and by other organisations since then, the return of the refugees, and situation of IDPs, will hinge on the way that land scarcity and land ownership disputes are managed. Reconstruction of administrative and physical infrastructure, as well as social capital in post-conflict Burundi should serve as the foundation for the implementation of land related policies that promote ethnic, regional and class reconciliation and seek to address root causes of social instability, such as poverty, hunger and homelessness.

**Geographical and historical context**

The current situation of mass refugee return is not without historical precedent. In 1993, spontaneous return of refugees to a country ill-prepared to receive them precipitated political instability and reversed the gains of the just-concluded democratic elections. Some 50,000 refugees returned following the election victory of FRODEBU. The newly installed government was determined to return to the refugees the land and property that had been taken from them, but it was also aware of the fear by members of the Tutsi elite that they would lose from this process. Land access was also a divisive issue within the Hutu elite.
For instance, after September 1993, a rift seemed to emerge between L. Nyagoma (the Minister in charge of managing repatriation, who backed a return of land to returnees without conditions) and President Melchoir Ndadaye, who suspended the works of local committees charged with resolving the land conflict at a grassroots level. Attempts by Hutu returnees to regain access to lost lands included forced evictions of those families (mostly Tutsi) who were occupying their plots. Some of those evicted, from Minago zone, demonstrated outside the President’s office buildings in Bujumbura. This, in addition to official attempts to challenge powerful people who had taken over land after the departure of the refugees, significantly contributed to the deterioration of the political situation that culminated in the coup d’état and the assassination of the President.

The risk that the refugee’s return could exacerbate conflict has been acknowledged by UNHCR and others. Contentious issues around refugee return could provide means for ‘spoilers’ and entrepreneurs of violence and politics to trigger conflict. The land issue is by no means the sole, or most significant factor in the wider situation of refugee return – there are crucial questions regarding the security of those returning to their homes, criminal proceedings against those involved in massacres (which may politically be affected by the impunity provided for political leaders and official members of armed groups), and compensation for properties destroyed or expropriated (not just land, but buildings, coffee and banana stands, and other investments).

However, it is also worth noting that refugees do not have a purely destabilising influence on events and inter-state relations in the region (such as through the cross-border rebel activities that take advantage of the protection offered by refugee camps), but also form a significant force in the efforts to bring peace to the country. For instance, representatives from refugee camps in Tanzania were part of the Arusha Peace Process, while leaders of most of the political parties enjoyed refugee status in neighbouring states. Returned refugees have also been instrumental in domestic efforts to restore peace.

There are essentially two schools of thought on the issue. The first, which includes policy-makers within the government of Burundi, are quietly optimistic that if the political situation remains stable, no sudden influx occurs (for example, as part of a forced repatriation exercise) and adequate mechanisms are put in place for local dispute resolution, the refugee return may not pose major problems in the short term. However, most acknowledge that within the wider economic and demographic context, challenges may emerge over the medium-term.

The second view, held by some NGOs and civil society organisations, considers land questions as potentially explosive, even in the short-term. They argue that the government and civil society does not have the institutional capacity (and possibly the political will) to cope with a sustained influx of refugees. From this perspective, the land issue should not be addressed in isolation, but should rather be part of a general
nation-wide process of capacity-building – particularly of local institutions such as the Bashingantaehe – and democratised governance at all levels.\textsuperscript{18}

Previous work by ACTS concluded that inequitable access to land is one of many structural causes of the conflict in Burundi, contributing to poverty and grievances against the government and elite groups. Burundi has a predominantly rural economy founded on agriculture and coffee production. In a country where 93\% of the population is rural and dependent on agriculture for subsistence, access to arable land is a priority for almost every household.\textsuperscript{19} Due to high population density, over 80\% of rural households have less than 1.5 hectares (ha) of land.\textsuperscript{20} Estimates of the average plot size vary – in 1982 it was reportedly 0.39 ha but other sources give figures of as much as 0.8 ha.\textsuperscript{21} Most experts consider a figure of 0.5 ha to be a reasonable estimate.\textsuperscript{22} Landlessness stands at about 15\% nationally, and the figure is 53\% for the Batwa, a marginalized minority group.\textsuperscript{23} Unequal land distribution, over cultivation and concomitant food insecurity affects the poor, who have few off-farm opportunities.

Burundians traditionally live in separate homesteads, dispersed across the rural ‘hills’, in ethnically-mixed territories. Rapid population growth coupled with the traditional method of succession that divides the property of the father among the male sons has resulted in land fragmentation and increasingly smaller parcels insufficient to assure food security in most households. Hence land scarcity has historically triggered internal population movements towards relatively less populated areas, and contributed to cross-border migration into Tanzania, DRC and Uganda, sometimes generating tension between newcomers and the communities into which they migrate. Population pressure has led to exploitation of marginal lands, which makes livestock and agricultural productivity increasingly fragile. Forests have been devastated and soil productivity is on the decline, especially on small farms, which are intensively cultivated.\textsuperscript{24} Moreover, multiple waves of displacement due to conflict have made land ownership issues very complex and politically sensitive. This is particularly so in areas where land abandoned by fleeing people has been occupied by others. Illegal appropriation of land is also a significant issue, and observers note that sales and/or development of land have increased greatly in recent months, since the transitional process started. Some allege that powerful people are selling land before the transitional period ends – in case of future investigations into land acquisition – or are taking the chance to ‘grab’ land before their political connections are compromised by political change. Many landowners are absentee landlords or maintain properties purely for purposes of speculation and access to bank loans, rather than for development. This is a potential source of tension especially if their under-utilized plots are located in areas of land scarcity. According to some observers, these various processes of land concentration in the hands of the few represents “a major source of ethnic tension in the rural areas creating a growing social malaise for which there appears to be no solution in sight”.\textsuperscript{25}
Given these dynamics, land use and ownership patterns are an integral part of long-term conflict prevention. Among the most salient of these factors are land disputes at the family and community level, which result from population pressure and legal and illegal distress-induced transfers.

Land disputes in Burundi are exacerbated by inconsistent implementation of the relevant legal and policy instruments, which have been poorly disseminated. The existing structure is misunderstood by many actors, while land management and administration institutions are ineffective and highly corrupt.

According to scholars such as Homer-Dixon, negative environmental change and resource scarcity may lead to conflict, especially in poor countries. Resource scarcity, such as land scarcity, made worse by population pressure, environmental degradation and inequitable distribution of resources, lead to poverty, inter-group tensions and displacement. These in turn lead to instability and conflict. While the linkages between environmental scarcity and conflict have been questioned by some, these variables are particularly pertinent in Burundi where access to and control of the scarce land and natural resources has inherent political dimensions and continues to underlie and motivate ‘ethnic’ violence. However, the ‘scarcity’ thesis is by no means the only model that one might use to analyse the situation. The role of ‘military entrepreneurs’, for example, who use violence as a means to gain personal wealth and power, should not be ignored. Often, such entrepreneurs use resource-related grievances as a means to influence people and mobilise them to violence.

Within this context, this chapter examines the causes, patterns and types of displacement, and how long-term displacement impacts on land ownership and access. It evaluates the effectiveness of institutions that have been put in place to address repatriation and resettlement of refugees and IDPs, particularly their role in tackling property rights and settling disputes arising from contested land claims. It examines the mechanisms used to ensure that ‘abandoned’ land or property is returned to its rightful owners, as well as the criteria used to arrive at other types of settlement where land is not available or accessible. This analysis is based on fieldwork in Burundi and interviews in Nairobi, Kenya, as well as extensive review of secondary literature.

In the last decade, Africa’s Great Lakes Region has been characterised as a hotbed of humanitarian crises following cycles of conflict and population displacement. Ceasefire agreements, peace talks and reconciliation processes have failed to procure sustainable peace because they are undermined by unresolved underlying causes of conflict which are easily mobilised to trigger violence. Given this scenario, the fragile peace currently being enjoyed in Burundi can easily be undermined by inadequate preparation to receive returning refugees, or ineffective and weak institutions for addressing land disputes, or the actions of powerful vested interests in relation to the elections and other political and economic considerations. In order to point to ways in which these
underlying issues may be addressed, the chapter includes a number of recommendations for the Government of Burundi, the international community, and civil society actors, for both short-term and the long-term horizons.

**THE CHRONOLOGY OF CONFLICT IN BURUNDI**

Burundi has been ravaged by cycles of dysfunctional conflict since its independence in 1962. As noted in the introduction, this conflict has largely been interpreted in ethnic terms, and seen as pitting the two main ethnic groups – Hutu and Tutsi – against each other in a violent struggle for political power and control of the state. Pre-colonial population estimates suggest that the country’s population is about 85% Hutu, 14% Tutsi and 1% Twa.29

Various theories have been advanced (and critiqued) to explain the origins of the conflict between the two groups,30 as well as the factors that sparked the first wave of violence and continue to sustain genocidal ideologies in the region. Despite the popularity of ethnic discourse, most scholars tend to agree that the protracted conflict is structural in nature. This section maps out the basic ‘facts’ of the conflict, prior to a more in-depth look at the root causes and the socio-economic effects of conflict in the next section.

Clashes and massacres have marked post-independence history. The assassination of the moderate and charismatic leader of the Union pour le Progres National (UPRONA) Prince Luis Rwagasore poisoned the nascent ethnic accommodation that political independence from Belgium may have portended.

In 1965, the assassination of the Hutu Prime Minister was followed by an abortive coup against the King, which was severely repressed by the army. For the first time, ethnic rivalries went out of the political arena to affect the rural population, and some Burundians fled the country. Arguably the most significant event in the conflict, which overshadows most discourse on ethnic violence in Burundi, occurred in 1972 when Hutu militants (many from the Burundian refugee community in Tanzania) attacked and killed thousands of Tutsi civilians. The army- and government-led retaliation and repression that followed were instant and targeted educated Hutu, systematically exterminating teachers, students, doctors, priests and any person with economic and social standing. While estimates of the number of dead vary, it is likely that 200,000–300,000 people were killed, the vast majority of them ordinary civilians, in an act described by the UN as ‘genocidal repression’.31 In the chaos and fear that ensued, many Tutsi also fled from their Hutu neighbours, often to Bujumbura to fill the many jobs left vacant, or to occupy the flat, fertile, palm-oil-producing strip of lake shore south of Bujumbura vacated by fleeing Hutu.32 Nothing was done by successive governments to investigate this and other massacres, or to punish perpetrators, and for a long time many Hutu families stopped sending their children
to school, fearing that they were exposing them to a future annihilation. Thousands fled into Tanzania, where what was perceived as a ‘lost’ generation has grown up in refugee camps. The result is a severely polarized society riddled with resentment, suspicion and mistrust, where actions and issues are perceived and interpreted not so much by their merit, but by the ethnicity of persons behind them. The 1972 events – and their grim mirror, the 1994 genocide in Rwanda – have crystallized ethnic tensions in such a way that all subsequent crises have in many ways been their consequences.

While Jean-Baptiste Bagaza’s 10-year rule (1976–1987) was relatively free of major violence, and many refugees returned home, their return was followed with little reform in power-sharing arrangements. Bagaza engaged in a series of reforms, such as the abolition of the ‘feudal’ land-ownership system, but corruption thrived as elites scrambled for the control of state-owned companies, industry and services, and reforms failed to address the ethnic imbalance in political and economic sectors. Instead, there was further consolidation of the political and military structures of the state by members of a small clique, primarily from a single Tutsi clan from Bururi province, and the expansion of the powers of patronage to the exclusion of the majority Hutu community. Four-fifths of government Ministers were Tutsi. To indicate the extent of the influence of the ‘Bururi mafia’, it is important to note that two Presidents originated from the same village in Bururi, Jean-Baptiste Bagaza (1976–1987) and Pierre Buyoya (1987–1993), while a leader of one of the main rebel groups, also comes from the same hill. The first president, Michel Micombero, and former leader of CNDD Leonard Nyangoma, also come from the same area.

Some progress was made in certain areas by President Buyoya between 1987 and 1993, after he took power through a coup d’état. However, like all post-1972 regimes, the government failed to adequately address the root causes of the conflict or to resolve the ethnic deadlock over matters pertaining to power sharing. Internal unrest in reaction to some policies (e.g. attempts to stop coffee smuggling across the border into Rwanda, and the predominance of ‘southerners’ in the administration in northern Provinces) and pressure from refugee rebel groups eventually culminated in the 1988 Ntega and Marangara violence, in which many Hutu became victims of the army’s disproportionate retaliation for localized killing of Tutsi. Mounting international and local pressure for an independent investigation and comprehensive political, constitutional and economic reforms resulted in a process of reforms that culminated in a new constitution, multi-party elections, and the election of a Hutu president, Melchior Ndadaye, from the FRODEBU party. The 1993 assassination by Tutsi army officers of Ndadaye and his associates following tensions between the Tutsi-dominated military and the Hutu-controlled government plunged the country back into chaos. Some Hutu, in many cases organized by political leaders, slaughtered thousands of Tutsi civilians. In retaliation, Tutsi soldiers and police massacred thousands of
Hutu in a manner reminiscent of 1972. This once again sent thousands into exile to neighbouring countries, exacerbated ethnic intolerance, and undermined public trust in the democratic process. The security situation deteriorated as Hutu rebel groups mushroomed and took up arms against the coalition government. Following the murder of Ndadaye, a coalition government made of Hutu-dominated FRODEBU, Tutsi-dominated UPRONA and several smaller parties took over power, though real power lay with the same elites as before.

Meanwhile, Tutsi extremist parties and militia carried out “dead city” operations in Bujumbura, forcing Hutu to abandon property, which was then looted. Ndadaye’s successor was killed in the plane crash together with Rwanda’s president Juvenal Habyarimana in 1994. It became increasingly difficult for the government to function or to implement any kind of reforms, and in the midst of this confusion and instability, Maj. Pierre Buyoya staged yet another military coup and took over power on July 25th 1996.

International condemnation of the 1996 coup was followed by regional states’ imposition of political, diplomatic and economic sanctions on Burundi. The adverse effects of the embargo, coupled with mounting international and internal pressure forced Buyoya to agree to share power with the National Assembly, and to initiate negotiations for a peace settlement with opposing parties and some armed opposition groups, with a view to restoring the legally constituted government. The late President of Tanzania, Julius Nyerere, spearheaded the talks before he was mandated by the international community as the official mediator by both the Organization for African Unity (now African Union) and the United Nations. However, little progress was made as Nyerere’s intervention failed to reconcile competing political forces within the coalition government. The conflict became intractable and increasingly complex. Regional states intervened and assumed an umbrella position as the custodians of the process. After Nyerere’s death, former South Africa’s President Nelson Mandela stepped in and oversaw years of tedious negotiations that culminated in the signature of the Arusha Peace and Reconciliation Agreement in August 2000. A transitional government, agreed to in the peace accord, was installed in November 2001. It included seventeen political parties and a careful balance of Hutu and Tutsi. The Africa Mission to Burundi Force (AMIB), was established in 2001 to facilitate the return of exiled political leaders.

However, groups that were not party to Arusha have dismissed the peace process as illegitimate, and continue their violent campaign even after the signing of the peace agreement. Ensuing insecurity and human rights violations by all parties to the conflict have caused some apathy among the population with regard to the peace process. FRODEBU, the main Hutu political party which enjoyed overwhelming success in the 1993 elections, has lost significant political mileage to CNDD-FDD.

Negotiations facilitated by South Africa and regional states continued with these groups, and in November 2003 the Transitional
Government of Burundi and the main rebel group – CNDD-FDD – reached an agreement on security, defence and power-sharing, and joined the government. Only FNL remained outside of the process and continues to maintain a hard-line position. In April 2004 the FNL declared a unilateral ceasefire, and it engaged in talks with the UN, but violence continued and in August, they claimed responsibility for the massacre of 160 Congolese Tutsi in a refugee camp close to Bujumbura.

Therefore, despite the progress made so far, there persist concerns among some Burundians and observers about the feasibility of implementation of the peace accord and the sustainability of political stability, given a past history of non-adherence to such agreements, as well as the socio-economic environment and political dynamics within the country and the region. These dynamics reflect and underlie deep-seated feelings of vulnerability and injustice by contending ethnic groups, and are reinforced by the wider ramifications of ethnic solidarities, political and military alliances, resource-based conflicts and activities of prolific armed militias in the Great Lakes region. The alleged involvement of Hutu-extremist former Rwandan military (ex-FAR) and Mayi-Mayi militia from DRC in the refugee camp massacre is evidence of these regional complexities.

**CHALLENGES TO IMPLEMENTATION OF THE PEACE AGREEMENT**

The Arusha Agreement on Peace and Reconciliation in Burundi was finalized in August 2000. Three sub-committees were established to deal with the contentious issues of transitional leadership, creation of a ceasefire, the timetable for the implementation of the accord, and technical corrections to the Agreement document. The Implementation Monitoring Committee (IMC) was established to oversee the agreement’s implementation.

Committee Four on Reconstruction and Development was mandated to collect views, advice, and make recommendations on matters relating to rehabilitation and reinstallment of refugees and internally displaced persons, and economic and social development. An additional task for the committee was to formulate viable policy recommendations regarding the recovery of property by refugees and internally displaced persons, and the reintegration of demobilized soldiers and rebels. Other tasks were to reconstruct and rehabilitate social facilities such as schools, hospitals, and religious buildings; to devise a programme for national reconciliation, and to reform and privatize key sectors of the economy such as coffee and tea, education and health. Modalities on equitable distribution of employment opportunities, land, education, regional decentralization and integration also fell under the doyen of Committee Four.

Progress towards fulfilling provisions of the Arusha Agreement for Burundi have steadily but tortuously been implemented. The Transitional
Senate and Parliament were established a few months after the inauguration of the Transitional Government in November 2001. The rotation of the presidency for the second half of the 36-month transition went ahead without incident at the end of April 2003. Several laws have been passed by the legislature in conformity with the Agreement, including a Transitional Constitution in June 2003.

However, the Arusha Agreement has deeply polarized the society in Burundi and contains vague provisions that could be the subject of differing and contentious interpretations by the parties to the conflict. Some sections of the Hutu majority are of the view that the minority guarantees accorded the Tutsi minority are excessive and should be reopened for discussion. An example is the establishment of the Upper House (the Senate) after the end of the transition period. Additionally, Burundi remains highly polarized about the need to pass a law that will see the creation of a Truth and Reconciliation Commission as provided for in the agreement. Accountability for the repeated ethnically motivated crimes remains a major challenge to the successful conclusion of the peace process in the country. Although Parliament has approved a law on genocide (April 2003), much of the progress registered on this front has been the result of political compromise, thereby stripping them of the spirit of justice and restitution originally intended.

**Transition elections and the imperatives of the peace process**

As the end of the transition period nears, this is a delicate time for the Transitional Government because of the enormous amount of work and immense international pressure and expectation for concrete results. The danger is that interim reforms may be rushed to accommodate the October 31st elections deadline. The country is ill-prepared for elections in terms of legislation, army reforms, mechanisms for voting, guidelines for campaigning and general political confidence. The international community, while insisting that the government sticks to the November 1 election date is also slow on releasing funds necessary to put requisite structures in place.

The Transitional Government and signatories to the Arusha Agreement are yet to finalize and adopt the prerequisite legal framework for viable and credible elections. The transitional electoral timetable was re-scheduled due to logistical problems (including a lack of resources for the Independent National Electoral Commission) and political negotiations, so that the constitutional referendum was delayed from June 2004 until February 2005. Some 90 percent of the electorate voted in the referendum, and more than nine-tenths of all votes supported the constitution (with 8 percent against). Elections at colline level, Commune level and subsequently parliamentary and (indirect) presidential elections have been delayed and are due to take place in 2005. Neither Maj. Pierre Buyoya or the incumbent are eligible to stand
in these elections, and the president will be chosen by a vote of two-thirds majority of the National Assembly and the Senate.

Furthermore, current altercations between UPRONA and FRODEBU on the one hand and CNDD-FDD and a motley of smaller factions on the other over the full compliance with the Arusha Agreement and the attendant boycotts of the National Assembly will serve to further delay time-sensitive legislation and require urgent settlement.

**Demobilization, disarmament and re-integration (DDR)**

Traditionally, the Burundian army has served as the insurance of the Tutsi community against a perceived threat of extermination by the Hutu community. Conversely, the Hutu Community has always viewed the security forces as an oppressive and alien institution in which they have no trust. Reform of the army, gendarmerie and the police is critical to building confidence. This can only be a gradual process; however, it is widely acknowledged that the tragic developments of 1993 were partly a result of lack of reform in the armed forces. Therefore, elections without security sector reform would be a risky gamble. Currently there exist two parallel armies apparently conjoined by the short-term mutual interest of getting rid of the FNL. Both the armed forces and fighters of the CNDD-FDD remain armed. It is difficult to foresee the continuation of the current arrangement after elections.

The agreement signed between the government and the CNDD-FDD has apportioned the two sides percentages of positions in the High Command and in the NCO ranks. Clearly, when hopefully the FNL joins the peace process, it will require its share of positions in the security services. As constituted at the moment, the armed forces-CNDD-FDD alliance offers no room for another major stake in their allocation.\(^{48}\)

The deployment of a UN Force is not guaranteed to undertake the DDR tasks envisaged for it quickly. Experience in other peace-enforcement operations indicates that the lead-time from approval by the UN Security Council and effective deployment could take months. Certainly Burundi does not have the luxury of this time to restructure and reorder its security services and structures.

In terms of justice and reconciliation, the Arusha Agreement provides for the establishment of an International Criminal Tribunal for Burundi, an International Judicial Commission of Inquiry, a law punishing genocide, war crimes and crimes against humanity as well as human rights violations and a National Truth and Reconciliation Commission.\(^{49}\) All these remain unimplemented, with the exception of the law on genocide adopted by Parliament in April 2003. The government won the contest between its position for temporary immunity over the CNDD-FDD’s insistence on general amnesty during negotiations for a ceasefire. The law is seen by some as a protection of the minority elite on both sides of the fence, and a sign of disregard for the need for justice and restitution.
Land and property rights

Article IV of the Arusha Accords provides that all returning refugees will be able to access their property, including their land, or will instead receive adequate compensation. The Agreement recognizes the need for the “equitable apportionment and redistribution of national resources throughout the country” and the “... compensation for plundered property”. The Accords recognize the important role that the international community will have to play, in order to make this a reality. In order to facilitate the return of the refugees and IDPs, and address land-related issues, the Accords provided for the creation of the Commission Nationale de Réhabilitation des Sinistrés (CNRS). As will be described in section six, the operation of the CNRS is currently problematic.

Regional dynamics

The evolution of the Burundi peace process is tied to the interwoven character of the broader conflicts in Great Lakes. Developments in Rwanda have been encouraging in recent years, culminating in general elections in the second half of 2003. However, despite the repatriation of thousands of CNDD-FDD fighters from eastern Democratic of Congo by the United Nations Mission in the DRC (MONUC) beginning in 2003, the direction of the DRC’s own peace process will have a bearing on the peace process in Burundi. Eastern DRC remains volatile and beyond the territorial sovereignty of the central government in Kinshasa and therefore a potential rear-base for disaffected Burundian rebel groups. Similarly, developments in Rwanda could have a demonstrative effect on the peace process in Burundi, as stakes heighten towards the end of the transition. Tanzania, host to circa 800,000 Burundian refugees has and continues to play a strategic role in the Burundian peace process. Camp restrictions in north-western Tanzania are compelling reluctant return. The potential for forcible repatriation, although unlikely, cannot be ruled out. A massive outflow of refugees into Burundi from Tanzania may cause a degree of disruption the country can ill-afford at this critical juncture in the peace process.

STRUCTURAL CAUSES OF THE BURUNDI CONFLICT

As noted earlier, while the discourse on the conflict is often dominated by ‘ethnic’ arguments, most informed analysts agree that the roots of the conflict lie in unequal distribution of economic resources and political power, which in effect results in relative deprivation and differential access to life chances and choices, including education, subsistence, security, leadership and participation. This state of affairs is sustained by (often-illegitimate) repressive and discriminatory regimes, which use political favours and rewards, mobilize and manipulate cultural and ethnic differences or other identity factors to galvanize local support.
and consolidate their hold on power. In order to understand the nature of Burundian society, it is necessary to consider the situation as it was before colonialism.

Historically, Burundian society was dominated by the patron-client relationship based on property ownership and service – usually access to land and livestock keeping. Society was hierarchical, with the king holding absolute power over the country and its resources. Positions in the mid- and lower-levels of the system were occupied by nominated members of certain clans, both Hutu and Tutsi, though the greater proportion was Tutsi. These leaders had almost unlimited powers over the territories they controlled. The patron-client relationship was formalized through the institution of ububagire or ubugererwa, a contractual system where a person would work for a more fortunate one, usually a Tutsi. The client (often referred to as Umuhutu) would be in need of land, livestock or protection, which the patron (often termed Umututsi) would offer in return for services and offerings in kind. Fairness of exchange was not always guaranteed, and instances of exploitation due to the effects of war or scarcity led to cases where the client was unfairly compensated or totally reduced to ‘serfdom’. The parcel of land that the Umuhutu was living on would never become his property or the property of his descendant, therefore he and his children always faced the prospect of expulsion. These dependency relations were “utilitarian and sentimental, jural and moral, and offered opportunities for improving one’s life,” and categories were not completely rigid: an ethnic Hutu could rise economically and socially to become a ‘Tutsi’, in a process called ‘kuhutura’. A Ganwa, who was a person of royal heritage, could also be demoted to a Tutsi. Nonetheless, the issue of ethnic mobility and degree of social cohesion between the two groups has been questioned, with some scholars arguing that ethnic mobility was the exception rather than the rule since access to land and cattle, political and economic power and attendant social influence hinged around the patronage of the royal court, and was mediated through kinship relations and a political system based on the clan. These scholars argue that the system, which was designed to entrench the economic status quo, allowed social mobility only at the lineage level, over a long time period, such that there was minimal opportunity for an individual to change his/her ethnicity. Therefore, many have argued that pre-colonial relations – including land tenure patterns – bred resentment and crystallized ethnic polarization. The Arusha Agreements acknowledge that, “… certain traditional practices such as … Ubugererwa... and others, depending on the circumstances, constitute sources of injustice and of frustration both among the Bahutu and the Batutsi and among the Batwa.”

Colonial legacy

Other scholars have argued that pre-colonial Hutu-Tutsi relations were harmonious, with both communities peacefully coexisting and sharing the same culture, language and social organization. The conflict is then
portrayed as primarily a legacy of colonial divide-and-rule policies. Whatever the true nature of pre-independence interethnic relations, it is true that Hutu and Tutsi were not involved in violent conflict with each other prior to the wars witnessed since the second half of the 20th century. Colonial policies did poison ethnic relations, and formalized the bifurcated nature of society by incorporating the minority Tutsi within the state machinery, while discriminating against and disenfranchising the Hutu in terms of political, economic and educational participation.

Divide and rule policies promoted primordial arguments regarding physical, intellectual, occupational differences and capabilities of the two groups. The colonial government also undermined the monarchical order and supremacy of the Mwami (king) by not only shifting the locus of patronage from the royal court to the state administration, but also by fanning factional power struggles and fragmentation between rival princely elements. The social and political roles that once gave meaning and cohesion to membership in the community vanished, and the use of the terms ‘Hutu’ and ‘Tutsi’ with ethnic connotations became more rigid. Reinforced by portrayals of the Tutsi as “natural rulers” and the Hutu as “indigenous people disposed to opposition and disobedience”, ethnicity became a tool to determine liability to forced labour or admission to school. This augmented the dominant position of the Tutsi and Ganwa in administrative and other employment opportunities. In 1929, for example, a fifth of all chiefs were Hutu, while over 50% were Ganwa and the rest Tutsi. By 1945, the number of Hutu chiefs had been reduced to zero, while the proportion of Tutsi had increased to 29%, and 71% were Ganwa. The colonial powers also disrupted the self-sustaining economy, which was replaced with a market-based colonial system designed to extract maximum profit from the territory. Food crops and cattle keeping were replaced with export crops such as coffee, tea and cotton meant for the external market. Food production declined, and domestic development stalled as colonial merchants pursued their economic agenda while local elites sought to maximize their benefits from the control of the coffee and tea export trade. The impact of the extractive policy was to demarcate the population into the rulers and the ruled, the haves and have-nots, hence a class system where a ‘predatory state’ allowed those in power to control the allocation of natural, social, economic and political resources. For instance, differential access to education in favour of Tutsi from Bururi and physical annihilation of educated Hutu has restricted and perpetuated access to the state and prospects for development to a small elite from a small region. In 2001, for example, just one commune in Bururi Province accounted for 15% of the students at the University of Burundi. Agriculture, which forms the mainstay of 90% of the population, is under funded and neglected compared to the military and state-controlled industrial firms, some of which control the processing and marketing of coffee and other export crops. These firms not only benefit from the pricing of agricultural produce and privileged
access to foreign exchange, but also function as a political tool to retain loyalty and buy off opposition through appointments. Competition for control of state power and related economic rewards, in addition to pressure for reforms, provoke the ruling elite to protect their position through repression and violence.

In spite of progress made since the signing of the Arusha Agreement, the Burundian commercial, political, and military elite class is still dominated by members of the Tutsi community. For instance, during negotiations for balance of power with Hutu-dominated CNDD and other rebel groups in July 2003, the government was willing to offer only deputy command posts to Hutu, arguing that most were untrained and lacked the requisite academic qualifications. It insisted that integration should continue slowly with a view to achieving a 50:50 level between Hutu and Tutsi in four years, arguing that it could not relinquish many positions as reorganization had already taken place and that, for reasons of administrative stability, reshuffling all sectors would be delicate. Generally, the Hutu majority, being less educated, have fewer economic alternatives other than subsistence farming and providing manual labour. There has thus been widespread disaffection among the Hutu who demanded greater representation and participation in the social, economic and political management of the country.

While the beneficiaries of this system are generally characterized as ‘Tutsi’, this grossly simplifies the reality, as many Tutsi, particularly those in rural areas or in IDP camps, are just as poor as their Hutu counterparts. Social conflict in the country is characterized by splits along regional lines, as well as class lines. There is a long-standing rivalry between Muramviya Province, seat of the Kingdom, and Bururi Province, which is the home of most of the post-independence leaders. Indeed, reports suggest that the armed forces of the CNDD rebel movement, which has now joined the government, include Tutsi women within their ranks.

As noted in the previous section, control of the state gives the elites in power the prerogative to decide who gets what where and when, which translates into a win-lose situation in Burundi where the small size of the private sector means the state remains more or less the sole provider of employment and agent of economic redistribution. Through legislative and administrative control, elites have been able to extract surplus generated by the country’s agriculture-based economy. This is particularly true of the coffee sector, for example the Office des Cultures Industrielles du Burundi (OCIBU) regulates the coffee sector and maintains a monopoly over coffee export and marketing. The OCIBU consistently fixes low producer prices paid to coffee farmers, with the profits going to state coffers and the networks of patronage associated with state enterprises. This is a form of structural violence – backed up by state sanction and the implicit threat of ‘legitimate’ violence – which is associated with productive, geographically dispersed resources. As noted by Billon, such structural violence involves the control of labour
and trade, and gives rise to grievances and everyday forms of low-key resistance, such as the ‘weapons of the weak’ identified by Scott. It has also, indirectly, contributed to much more violent forms of resistance.70

Thus, elite competition for the control of the state by both groups has been the basis for creating grievances and mobilizing people for conflict behaviour. Both groups resort to aggressive actions, attitudes and beliefs that not only justify the use of violence as the sole means of retaining or achieving political and economic goals, but also buttress the conviction that the struggle is one of life and death, which necessitates violent behaviour against ‘the enemy’. For the Hutu, Tutsi rule is nothing short of minority rule, which to them is unacceptable given the option of majoritarian democracy. Rebellion by the excluded majority often targets civilian members of the Tutsi community, and is countered by the Tutsi-dominated army’s excessive use of force and reprisals against members of the Hutu community, whether they have participated in the killings or not. This trend, repeated over and over again over the years, has left a legacy of collective memory of atrocities and ‘persecution’ of one group by the other that remains un-addressed to date, due to prevalent impunity.71

The formation of mutual and reciprocal enemy images and recourse to memory of the 1972 genocidal acts against Hutu and the mass murder of Tutsi (for example, in 1993) inform ethnic ideology and are the basis for justification of violence by both communities. Numerous assassinations and coups d’etat also contribute to a perception that political processes are insufficient to bring stability and security. Both groups are convinced that unless the other’s crimes are checked and/or retaliated, planned extermination will inevitably follow. In pursuit of this, both groups invent or suppress information on political events, and tinge memory of historical events with ethnic stereotypes.72 Many policy makers, journalists and politicians continue to perceive and interpret the conflict through ethnic lenses. However, the ‘ethnic’ analysis is simplistic and misleading, as it fails to recognize the underlying political, social and economic causes.73

Population displacement within Burundi and across borders

Insecurity-induced displacement has been part of Burundians’ life for years, and for many, the threat or sporadic occurrence of violence has become a ‘normal’ occurrence. It is estimated that at least one in every seven Burundians has been displaced, some internally, others across the border. People run away from their homes to avoid being caught in the cross fire when fighting erupts between government troops and rebels, in anticipation of outbreak of violence or as a result of it. Retaliation by the army may be followed by reprisals against Tutsi civilians. This compels many Tutsi to flee the villages to regions near army barracks, fearing
attack from their Hutu neighbours. While Bururi and Makamba Provinces saw the heaviest fighting, people in every province have been displaced.

Unlike refugees, who come under the mandate of UNHCR, there is no single independent institution mandated to address the protection and assistance needs of IDPs. States are responsible for the welfare of their citizens, including the displaced. Humanitarian agencies in Burundi are approaching the IDPs issue on a sectoral or geographical level, and none has been able to assure the protection that IDPs are granted their rights under international law. In July 2002, there were 443,750 IDPs living in 230 displacement ‘sites’ across the country. Since then, many have returned to their home areas due to the improved security situation: as of April 2004, there were 140,000 IDPs living in 182 camps. Most of the IDPs who returned to their former homes originate from the south of the country. A further 40,000–60,000 persons are displaced monthly for short periods of two to four weeks (currently, these are mainly in Kabezi Commune in Bujumbura Rurale).

Displacement patterns in the country have assumed ethnic patterns, with displaced Tutsi camping outside major urban centres and close to military barracks, while the Hutu moved to army-controlled sites in rural areas. According to NGOs many of the Tutsi settlements were better provided for in terms of social services than the regroupment camps where many Hutu lived in conditions far below acceptable standards. Even in cases of ethnically-mixed settlements, the practice of segregation both in treatment and access to government resettlement priorities tended to favour Tutsi IDPs. This bred resentment and frustration among the Hutu IDPs, many of whom are said to have translated their anger into political support for the many rebel groups.

Population displacement, particularly the regroupment policy, was a very sensitive political issue as some Hutu perceived it as a strategy to emasculate their community. However, the government justified it as a necessary means to end rebellion. Ethnic sentiments are often manipulated by individuals for political support or to achieve narrow sectarian interests, while ‘war merchants’ create violence and displacement for the economic rewards it brings them through banditry, confiscation of land and property, and looting of relief aid. Displacement in Burundi is thus a function of many factors, and in some instances is the sole objective, rather than consequence, of conflict.

Patterns of displacement

Short-term displacement

The conflict in Burundi has no frontiers, and civilians are continuously forced to leave their homes on short notice when fighting erupts, to return only when the situation has stabilized. An average of 100,000 people was displaced this way every month, and displacement continues in areas where the FNL launch attacks (currently Bujumbura Rurale).
The duration of such displacement varies from a few nights in the bush to months.

Short-term displacement has come to be perceived as ‘normal’, and involves temporary movement of people to safer areas, from where some are able to return to their fields during the day to cultivate.\textsuperscript{80} In some cases, affected families have access to their land and property, but are unable to live there continuously due to sporadic insecurity. Unguarded farms, homes and property remain exposed to theft or vandalism by rebels, government soldiers or criminals, especially at harvest time. While the average number of the monthly displaced has reduced significantly in recent times, returning IDPs find their property destroyed or looted. This makes life particularly difficult for widows and separated or divorced women, who have limited access to land.

**Long-term displacement**

The long-term displaced include the ‘old caseload’ of IDPs dating back to 1993 when up to 700,000 people were displaced as a result of the widespread violence that followed the failed coup attempt in October. Many of these are in Bubanza and Bururi provinces. The other provinces with IDPs since 1995/1998 are Bujumbura Marie, Bujumbura Rurale, Cankuzo, Gitega and Karuzi. Some IDPs have decided to resettle permanently in some areas where regroupment sites have been dismantled. They eschew being referred to as displaced persons and are reluctant to receive assistance.

Many Tutsi IDPs may be unwilling to return to their rural homes without security guarantees. Indeed, many camps in which Tutsi form the majority, are well-serviced with water, permanent housing and sanitation,\textsuperscript{81} meaning that living conditions are actually better than those in their original homes on the hills.\textsuperscript{82} Many still cultivate farms upcountry by day and return to the camps in the evening (and are hence known as “night commuters”). The government estimates that about 30,000 IDPs, many (though not all) of whom will be in this category, will not want to return to their original ‘home’ areas.\textsuperscript{83} In response to this pattern, some sections of the Hutu community argue that such IDPs essentially enjoy two plots – they maintain their original farms and also cultivate plots in the camps. Some argue that they should be required to choose one or the other. This is a potential source of disputes. Another issue is that according to reports, some camps for long-term IDPs (especially those located near towns) have been situated on land belonging to others, including refugees.\textsuperscript{84} This portends land disputes in future, probably with a distinct ‘ethnic’ factor.

Because of the apparent unwillingness of many Tutsi IDPs to return to their homes, large parts of the countryside are essentially populated only by Hutu. Many Tutsi indeed feel secure only in certain urban zones. Burundi is therefore becoming divided into ethnically homogenous enclaves, with large areas ‘ethnically cleansed’, though this may not always be as a result of systematic policies.\textsuperscript{85}
Experiences of displacement

Jacques is a Hutu from Bubanza, and has been displaced since 1993. He has six children and a wife, and now lives in a camp for the displaced near Bujumbura. He used to cultivate rice for a parastatals company, and hence this land was not his – it was state land. He had a small plot to grow beans which was his own, but some years ago, he returned to see the situation, and saw that this plot was cultivated by someone he didn’t know – probably another IDP. His house, which was not permanent, had collapsed and “returned to the earth”.

His father was from Gitega and he has a claim to land there, but his uncle took this land six months after his father died, when Jacques was young. He has no confidence in getting access to this land, because: “If you go to see the chief de zone – they tell you come tomorrow! Tomorrow! You will pass months without an answer.”

Instead, he will just stay and work on other people’s lands around the camp, for about US $0.60 per day. He lives in a house built by an NGO, and is saving up to buy it. But because he has to pay to put his children through school, he has managed to contribute only about $9 towards the total – he needs to contribute more than $200 to buy the house.

Regroupment

The proliferation of rebel movements in the second half of the 1990s intensified the civil war and population displacement countrywide. The army has always viewed the Hutu civilian population with suspicion, as providing the rebels with supplies, shelter and information. To control this, in 1996 the Government of Burundi embarked on a policy of forcing the civilian population, mostly Hutu, to leave their homes and relocate to camps guarded by armed forces. The policy was started in Karuzi, Kayanza and Muramvya provinces and spread to other parts of the country, ostensibly to protect the civilian population from rebel attacks, allow the military to pursue the rebels and regain control of the territory. At the same time, through a process of “villagisation,” Tutsi civilians were also gathered in sites located close to urban centres and protected by military garrisons. The people were given little time to collect their property in preparation to move into the designated locations, yet the government provided no assistance to assure minimum living standards in the regroupment camps. Many camps lacked basic social services and provisions and the regrouped population could not access their farms.

The result was a steep decline in agricultural production and deterioration of living conditions for the regrouped. Anyone who remained or ventured into the villages to collect food or for any other purpose was considered a legitimate military target. The humanitarian community provided only basic relief supplies, lest they be seen to endorse or sustain the policy. Rising international criticism led to the closure of the camps in 1997, but the government continued to pursue
targeted population relocation, especially in the west of the country. In 1999, the policy was resumed in 53 sites following rising insecurity in southern Burundi and continuous attacks by rebels in and around Bujumbura, displacing more than half the population. Persistent condemnation of the camps by the international community, coupled with demands by some delegations to the Arusha Peace Process that it be discontinued as a pre-condition to continued negotiations, led to the suspension of regroupment as a military strategy in mid-2000. However, the military discreetly continued the forcible relocation and regroupment of sections of the civilian population (e.g. in Bujumbura Rurale and Ruyigi) well into 2002. Today, although the camps have been dismantled, some former residents remain living in the vicinity as IDPs, because they are unwilling or unable to return home.

The policy is not currently practiced, hence the numbers of those in regroupment camps are fairly stable, but these communities remain located far from their homes, making it difficult to sustain or diversify their livelihoods. Continued fighting between government forces/CNDD-FDD and the FNL in Bujumbura Rurale communes of Kanyosha, Nyabiraba, Kabezi and Mutaha in March and April 2004 revived talk of renewing the policy. Due to uncertainty with the security situation, some IDPs have decided to resettle permanently in some areas where regroupment sites were dismantled.

**Dispersed IDPs**

The term ‘dispersed’ was born in the political spectrum before the policy of regroupment. Leonard Nyangoma was one of the first politicians to use it, at the end of 1993, in contrast to the term ‘IDPs’, who were in camps and were often Tutsi. Dispersed IDPS include returnees and people, mostly of Hutu origin, who have left disbanded regroupment camps but cannot return to their homes because they have been destroyed and their property looted. There are also some displaced people of all backgrounds who live with friends, relatives, or rent rooms in urban areas. They are essentially ‘invisible’ to aid agencies and are at risk of being factored out of their analysis.

The Twa or pygmies have also been affected. They constitute less than one per cent of the population and have traditionally been insignificant actors in socio-economic and political life in Burundi. As a hunter-gatherer community, they were regarded as being under the jurisdiction of dominant groups claiming land rights over the same area, thus their land rights were not recognized in customary or statutory law. While ‘serfdom’, which affected all of Burundi’s landless irrespective of ethnicity, was outlawed in 1976 by President Bagaza, the practice continues and most of the landless Twa have not seen any benefits. With the prevailing policy of allocating ‘free’ land to returning refugees and IDPs, it is envisaged that some Twa found to be genuine war victims will be given land like other war-affected persons. This, however, excludes some other Twa who have not been so displaced but are nevertheless landless.
The livelihood choices of the Twa have been increasingly limited by the capture of natural resources by subsistence farmers or entrepreneurs, or by the state; as forests are expropriated for pasture or destroyed for fuel wood. Their coping mechanisms, including the sale of labour and crafts, are inadequate to meet even their basic needs given the general impoverishment of the local population. Many of them are resorting to agriculture, but the move is hampered by chronic landlessness. Apart from land bought for a few of the Twa by church groups and aid agencies, they do not own any land. They also have limited access to education and are generally marginalized in socio-economic and political life. As one interviewee noted, the Twa suffer the brunt of Hutu-Tutsi hostilities as they are attacked by either or both sides.

**Effects of displacement**

**Reduced access to land**

In Burundi, more than 44 per cent of households in the displacement camps are female-headed, due to widowhood, single parenthood often as a result of rape, or separation and divorce as families fail to cope with the challenges of life in displacement. As in most African contexts where land ownership is based on patriarchal inheritance systems, women and widows are easily dispossessed, as male relatives demand that the women give up land upon the husband’s death. Upon death or separation, many households now suffer reduced access to land, because identifying potential lands for cultivation and negotiating is traditionally a male role. Women in camps have reduced access to land compared to the access they enjoyed before displacement. Alternatives to cultivation for a largely illiterate population are severely limited. Those who seek non-farm opportunities are often separated from their partners for long periods, which also lead to increased risk of HIV-infection as they seek new partners or are forced into the commercial sex trade.

**Cycles of violence**

Given the poor living conditions in camps, poverty, idleness and high illiteracy levels, many youths are easily lured into joining armed groups or criminal gangs, often under promises of jobs, monetary compensation for their loyalty, or land. The prospect of acquiring land as a prize for supporting armed groups has stimulated some parents, especially those fraudulently dispossessed, to send their sons to the bush to fight the government. For others, joining the army or any militia is the only source of income open to them, given their illiteracy and lack of skills or life goals.

When conflict finally ends, several thousand armed opposition fighters, including 14,000 child soldiers, are expected to be integrated into society. A proportion of those troops currently in the army will also be demobilized to make room for rebel troops to be integrated into the national army. Given the slow pace of this process, and idleness among those waiting to be demobilized, there has reportedly been a dramatic
rise in violent armed crime due to the proliferation of small arms. Criminal gangs formed by ex-rebels, deserters from political groups, members of armed forces or Peace Guards, or armed civilians have looted, raped and brutalized people, complicating the return process. It is feared that lack of legitimate livelihood alternatives for demobilized troops in a context of land scarcity, insecurity, poverty and weak transitional institutions is a potential source of grievance, which could lead to sporadic or organized violence.

REFUGEE REPATRIATION AND IDP RESETTLEMENT

The signing of the peace agreement (the Pretoria Protocol) between the Transitional Government of Burundi and the CNDD-FDD in October 2003 was seen to be the defining moment for ending armed hostilities, hence signaling a return to peace and the long-awaited repatriation of refugees and IDPs to their country or homes. Some remain skeptical about the durability and sustainability of peace, given the ongoing fighting between the government and one of the rebel groups, FNL, which until recently continued to perpetuate insecurity and displacement around the capital. This not only hinders the return of IDPs in the affected province of Bujumbura Rurale, but also restricts the willingness of refugees outside the country from voluntarily returning to an insecure environment. Military and security arrangements called for by the 2000 Arusha Agreement are still unresolved, with many of the signatories to the Agreement and subsequent ceasefire agreements between parties complaining of marginalization, since only the agreement between the government and CNDD-FDD is being implemented. Such discontent breeds uncertainty, especially when perceived alongside FDD’s own disaffection with the pace of the government’s implementation of the agreement, which culminated in its withdrawal from the unity government in May 2004, citing inadequate representation. While FDD leader Hussein Rajabu asserts that the decision does not mean a return to war, it demonstrates the delicate political balance in Burundi.

More “local” concerns are also significant, especially due to simmering land disputes and destruction of property. The issues in recovery of property rights for refugees and the displaced differ from case to case. For example, a significant number of refugees were landless before their departure from Burundi. Research in nine provinces by Ligue ITEKA, funded by UNHCR, indicates that about 17% of returnees were in this category. It is particularly important to note that there are substantial differences between those who have been living in exile or have been displaced for a relatively short period – since 1993 or more recently – and those who left their hill in 1972, for example.

With regard to the 1993 caseload, regaining access to their land may not be difficult. This is why most experts believe that some 90% of land disputes are considered to be small, local, intra-family disputes which can be resolved without significant external (e.g. central government)
intervention. Nevertheless even at this level, non-state intervention is necessary to prevent their exploitation by local politicians out to fuel ethnic conflict and hatred. Since 2001, some NGOs have initiated, in different parts of the country, mobile legal clinics in order to manage these intra-family conflicts.

People who have been away from their lands for longer will have greater difficulty in gaining access to land. This applies especially to those who fled the country in 1972. This implies a regional differentiation in the nature and severity of problems, as many 1972 refugees originate from the south of the country. The situation of the long term refugees is particularly delicate because their land, especially that located in the fertile Imbo plains, was confiscated “virtually systematically” by the government. The expropriated land is now in the hands of other owners, who have a legitimate claim to it since they were issued with title deeds. In some cases, land may have changed hands several times. Other land was taken over by relatives, friends, neighbours or sold. In some cases, relatives have subdivided or sold the land, and are now discouraging refugees from returning, through sending messages to the camps that security remains poor.

A 1986 land law states that if somebody occupies land for more than 30 years and there are no claims within 2–3 years of this period passing, then the government can reallocate the land. A consequence of this is that many of the 1972 refugees will be unable to reclaim their lands (unless this provision is altered, and the new policy applied retroactively, which would be problematic), or the government finds a suitable alternative, such as compensation or alternative land elsewhere. Many of the refugees do not possess any documented proof of ownership, and with the total number of sinistres (returnees, regroupes, internally displaced and dispersed) representing about one sixth of the total population, the situation is fragile as people look to the government to determine policy and strategies for managing tension.

The government of Tanzania estimates there to be 200,000 refugees who fled Burundi in 1972 living in villages and a further 270,000 dispersed in towns, although the figures are difficult to estimate. It is not guaranteed that all refugees will return, but aid agencies are planning on the assumption that a proportion will. Concerns around the availability of land limit UNHCR’s willingness to facilitate their return at present, although political pressure has forced UNHCR to open four transit centres handling thousands of returnees per week. Expectations are that the government, which has appointed a National Commission to look at the issue of land redistribution, will present a plan that will pave the way for the reintegration of 1972 returnees. Another category of refugees, like IDPs, may have sold their land and property at throwaway prices in times of distress, or exchanged them for plots in areas they considered more secure or ‘friendly’. Attempts to regain access to these lands, based on a premise that they were sold under ‘threat’, may result in a heightening of local tensions, though the capacity of local
customary and government authorities should not be underestimated.

Another reason for non-return of long term displaced is the fear that they will be accused by those who remained behind of having participated in massacres against civilians, or they will identify those who did, and risk reprisals. It is feared that a scenario similar to what happened in Rwanda after the return of refugees in 1997 could occur, where ‘land sharing’ between Hutu and Tutsi was occasionally marred by false accusations of genocide complicity.

Moreover, in places such as Kayogoro in Makamba province, returning IDPs feel they are at risk due to proximity to areas where former rebels have gathered to await the start of the disarmament and demobilization, while the presence of landmines is also impeding the return. In other cases, as in Gitega, returning IDPs find their houses and property destroyed, hence great difficulty reconstructing their homes as they do not have building materials. Some return to find their land occupied, and efforts to reclaim it result in conflict or threats. The legal processes and political repercussions of land-related conflicts touch on the massacres of 1972 and 1988, and therefore represent major political challenges. Research by the UN found that 58% of IDPs residing in camps express a willingness to return, sooner or later, to their places of origin. However, this percentage varied considerably from one province to another.

**HISTORICAL PRECEDENTS: GOVERNMENT MANAGEMENT OF REFUGEE AND IDP ISSUES SINCE 1972**

This is not the first time that Burundi has been faced by these challenges. Law no 1/21 of 30th June 1977 addressed the situation surrounding the 1972 refugees and their property. The law, in article 1, stated that occupation and use of properties left vacant by the refugees could not be opposed by the administration. Rather, through the workings of a Commission headed by the Minister for Internal Affairs (the “Mandi Commission”), the land would be shared by the current occupant and the refugee claimant. This essentially legalized the occupation of land following the departure of the refugees; and very few took up the offer.

Under President Buyoya, a National Commission was created in January 1991 to oversee the return and integration of refugees. From the outset, the Commission did not consider facilitating the return of land and property to the re free ‘land. This may not always be popular or feasible, given customary preferences for ‘ancestral’ lands.

Under President Ndadaye, a new Commission was formed in July 1993. This commission made the return of property to returnees a priority. At around the same time, there was a massive spontaneous return of refugees, particularly to the south of the country. The majority returned directly to their original farms, without consulting the authorities. In some cases, the returnees intimidated those who had taken control of
their properties in order to make them leave. As documented above, demonstrations by those forcibly evicted from land belonging to refugees, especially in Rumonge and Nyanza-Lac, were a contributing factor to unrest amongst some members of the Tutsi establishment, and thus represent one of the factors in the assassination of the President. After his death, the refugees’ lands were again occupied.115

Given these dynamics inside Burundi, there are a number of push and pull factors determining the pace and pattern of refugee and IDPs’ returns to their homes. Research by Burundian NGOs suggests that returnees’ major expectations are equal social services, recovery of property, employment and land, as well as tolerance and acceptance from the community.116

**Incentives and disincentives for return: The pull factors**

*Increased security and political stability*
One of the major motivating factors in the repatriation and return process is the restoration of relative security and political stability in most of the country following ceasefire and peace agreements reached between the Government of Burundi and most rebel groups in the last four years. Fighting has stopped in all but one province (Bujumbura Rurale). Burundians’ optimism for peace after years of distress and conflict-induced underdevelopment is high, and has reinforced displaced persons’ wish to return to their home areas from refugee and IDPs camps to start a new life. According to a survey of camps in Gitega, Kayanza, Kirundo, Muramvya and Ngozi, IDP numbers have dropped by half, from 284,000 in 2002 to 140,000 in April 2004.117 The international community’s continuing commitment to consolidating peace and offering ‘peace dividends’ is also a significant element of hope.

*Recovery of land and property*
The internally displaced are voluntarily going home in large numbers also due to a prevailing sense of competition to regain access to land, which will become increasingly scarce as more and more refugees return from Tanzania and other neighbouring countries. The rush back home is therefore to acquire remaining land before it is all taken up by returning refugees. There is a regional differentiation in the perceptions of the IDPs, as many from the south and east of the country have returned to their homes before the refugees return. In the central and northern areas, the issue of ‘sharing’ land with returnees is perceived as less of a problem.118 While 75% of households questioned said they owned land in their places of origin, this does not guarantee that gaining access to this land is straightforward.

During a survey in 1999, 28.6% of refugee respondents indicated that land shortage was a “crucial” obstacle to return, while 50.9% felt that it was “not crucial but important”.119 However, despite the importance of
land access, the overwhelming majority rated security issues as the main obstacle; with 96.4% stating that a “Tutsi-dominated army” was a crucial obstacle.

**Push factors**

These are the factors that make IDPs and refugees feel that returning home offers better opportunities than those found in their current locations.

**Deteriorating living conditions in IDP camps in Burundi**

The living conditions in displacement camps and ‘villages’ has progressively got worse since the signing of the Arusha Agreement. In the past, humanitarian assistance that was provided almost entirely by international actors and local NGOs has been sporadically compromised due to funding shortages, and this may continue as donor priorities shift from relief to programmes focusing on the repatriation of the refugees. In some hills where insecurity persists, difficulty in accessing camps due to terrain and rebel attacks has worsened the situation. As such, food shortages and disease have forced many people to relocate from the camps, sometimes to conditions of insecurity and increasing banditry.

In addition to poor conditions in camps, IDPs complain of marginalization in the whole return and rehabilitation exercise, because unlike returning refugees who benefit from an aid package constituting of food and shelter materials from UNHCR, returning IDPs are not receiving any assistance to facilitate their return, in spite of repeated encouragement by government officials and communal administrators to go back.

**Government policies in asylum states**

While the peace agreement and ensuing stability have precipitated spontaneous and facilitated repatriation to Burundi, some IDPs and refugees in Tanzania are not quite so ready to go home yet, adopting a ‘wait-and-see’ stance given the prevailing uncertain security and political situation in Burundi. In particular, they are concerned about the unstable security situation in parts of the country, as well as unresolved land disputes, the settlement of which is perceived as fundamental to sustainable peace. However, the United Nations refugee agency (UNHCR) has opened four entry points to facilitate the return of an estimated 150,000 out of 300,000 in a fast-tracked repatriation drive that has seen to the return of 52,000 refugees since January 2004. Since the opening of the second entry point, the agency repatriates about 5,000 refugees per week.

Observers and human rights NGOs have noted that refugee repatriation from Tanzania may not be as ‘voluntary’ as authorities and politicians would have us believe. Human Rights Watch and Refugees International have attributed large numbers of returns to the “difficult
conditions of life” and “the dire situation” in the Tanzanian camps as the main motivation behind large scale repatriation. The movement has been precipitated by the mounting intolerance to their presence, manifest in stringent restrictions on their movement and deteriorating security in the camps. Restriction of movement has effectively inhibited refugees from employment and tilling arable land outside the camp, which constituted their coping mechanisms in the face of reduced food rations and non-distribution of non-food items. Markets in some of the camps have been destroyed by the authorities, (such as Lukole market, in late 2003). Moreover, there is increased banditry and other forms of attacks on refugees by local Tanzanians due to escalating xenophobia, which is not helped by speeches made by some politicians and administrators, who have reportedly threatened that the Burundians will experience the same treatment as Rwandan refugees, who were forcibly repatriated in 1996 and 1997. Food shortages in Tanzania have further impaired the relationship between the refugees and local communities. However, there are significant positive symbiotic relationships between refugees and local people, particularly in terms of trade and farm labour, though the latter has been reduced due to restrictions on movement.

Those going back on their own face serious logistical problems, particularly transport from the transit camps in Burundi to their homes in the hills. Lack of any reception structures to allow safe and stable reintegration after repatriation aggravates and intensifies their difficulties. Many of them do not have an address, reference or land/property in Burundi. Such cases are allowed to stay at least one week at the transit centres. As noted earlier, others may not be willing to return to their place of origin as they fear facing justice for association with genocidal acts, or reprisals from perpetrators whom they may identify.

Obstacles to repatriation

Alternative settlement

Given the events of 1993 when the government response to massive refugee returns was one of the factors that lead to the assassination of the President and widespread violence, refugees interviewed in Kenya said they have more or less settled in their current location and are not in a hurry to go home. Many of those who go often travel alone, leaving their wives and children in Nairobi, and return after “checking how things are.” Some of the IDPs inside Burundi also sold their land and permanently relocated to regions they considered less prone to insecurity. Such categories of people have no desire to go back, either because they have no attachment to their former homes in terms of land and property, trauma from memory of the war experience, or fear.

As noted in the previous section, preparations for the elections planned for October 2004 are far behind schedule, and fears that returnees may be caught up in heated electioneering and political schemes even before they can effectively reintegrate is raising worries of
renewed violence. Returning refugees also raised concerns about the feasibility of peaceful elections, since the same politicians from 1993 are still in parliament and the senate having the same debates. Many refugees have mixed feelings about returning to Burundi, because the current political scene is reminiscent of the 1993 pre-election period.

Experiences of displacement

“We don’t know if the elections will take place, or how the campaigns will be conducted. We can’t be sure who will take over from Ndayizeye, or what he will do once he takes power. It is too early to go back. Even armed militias who usually terrorize people were seen in Cibitoke in April 2004. We can’t be sure and say now there is peace in Burundi. People are still very afraid, but hopeful. I am not sure whether to go back now, but I also feel many things will pass me by if I don’t. I want to vote.”

Ongoing insecurity

While fighting has stopped in most of the country, intensified fighting between CNDD-FDD and FNL also renders some regions uninhabitable. Incidences of criminal activity including banditry and rape by bands of delinquents, armed political groups and militia are on the rise, which is attributed to the easy availability of small arms among the local population, and has been exacerbated over time by government policies of self-defence, where arms are distributed directly to the population. Deserters from armed political groups and ex-rebels have neither been disarmed nor absorbed into the regular army, nor have they been provided with alternative means of livelihood. Other criminal gangs are formed by members of the armed forces or Peace Guards or by armed civilians, sometimes with the complicity of the security forces. When surveyed in April 2004, only an average of 18% of IDP households felt that security conditions were conducive for return.

Experiences of displacement

Marie originates from a rural area in Muramvya Province. In 1993 she was attacked and suffered multiple machete wounds to her head. She fled and has not returned there because of the danger. She lives in a displacement camp next to Bujumbura city, but doesn’t have a house as they had been allocated prior to her arrival. She asks for hospitality and sleeps in a different place every night. She pays workers to farm her land in Muramvya, and they deliver the produce regularly. When she cannot get enough from her workers she works as a casual farm labourer to get some money.

Some years ago, her cousin went back to assess the situation in Muramvya Province. Local people said there was peace and he was welcomed with sodas and food; but was murdered the same night.

Before she fled, she employed a Twa man as head of her farm work-
ers. After she left, he occupied the land claiming that he was “like her son” after working for her for so long. However the chief de zone forced him to leave. Though she doesn’t want to return there, she won’t sell the land because her children will use it in future, or she can continue to pay workers to work the land for her.\textsuperscript{130}

\textit{Mistrust of the establishment}

Some Burundians also feel that Burundian history suggests that democratic politics portends danger as it threatens the position and influence of the current power-holders, who are likely to stage or sponsor a coup d’état. To others, Hutu personalities with high-ranking position in government and the army are said to be ineffective, with no real power or influence in decision-making, or purely selfish interests.\textsuperscript{131}

\textit{Unresolved land disputes in the context of refugee returns}

As noted elsewhere, land that has been left for many years has eventually fallen into the hands of relatives, neighbours, other displaced persons, or been expropriated by the government and reallocated to other people. Some displaced persons return to find that their relatives who remained behind have sub-divided their portion either among themselves, ceded it to their sons, or sold it off. Those involved in disputes may seek to have them resolved by traditional dispute resolution mechanisms (Bashingantahe) or though the judicial process. Research in nine provinces by Ligue ITEKA indicates that of all returnees who have sought outside assistance in disputes, over half have approached the Bashingantahe. Almost as many (48\%) have approached the local administration, while 28\% had applied to the \textit{Tribunaux de Residence} (the local court system).\textsuperscript{132} These figures suggest that people are approaching more than one institution simultaneously; or that they have been referred from one institution to another. This is because a case cannot be made to the \textit{Tribunaux de Residence} without the plaintiff first approaching the Bashingantahe.\textsuperscript{133} The strategy of approaching more than one system (often known as ‘forum shopping’) can over time result in the undermining of some systems. The classic case involves a situation where local customary approaches are weakened because when their judgements are unfavourable to one party, that person will then go to a formal institution to try to get a different outcome.

Instances of corruption have been reported in both processes. In particular, the formal state justice system requires that plaintiffs have financial resources to see a case to the end, and apart from the lowest level (the \textit{Tribunaux de Residence}) it is an almost exclusively Tutsi institution. According to some reports, it lacks local credibility. From this perspective then, while aiming for a long-term rejuvenation of all state organs, it makes sense for land-related disputes to be primarily addressed at the local level, particularly through the Bashingantahe. However, some analysts question the role that the Bashingantahe could
play in future, especially because many local people blame some Bashingantahe for failing to prevent the 1993/4 mass killings. Given these dynamics, it appears that attempts to invigorate the institution should include substantial local participation.

Access to justice

Access to the justice system is closely linked to class and money. With peace, there has been an increase in the value of land, and some people are willing to pay money for judges and lawyers to travel, to be fed when they do their local investigations… while others don’t have this money. Justice is being done for those who are able to afford it. They pay for justice.\(^\text{134}\)

New owners may be exploiting the land or may have disposed of it through sale or exchange, creating a plethora of ownership disputes of legal and political nature. Returning IDPs and refugees find that not only are they unable to access the land, but that their ownership of the same may be contested by other people who have legal documents, such as valid title deeds. Some returning refugees, especially those who have been away since 1972 or their children (especially those children who have been brought up and orphaned in exile) may have particular problems because they do not have identity documents to prove their identity. Research indicates that more than two-thirds of repatriates do not have identity documents.\(^\text{135}\)

Ensuing disputes hinder return, and as more refugees return to find this situation prevailing in their homes, unresolved disputes are being seen by some experts as a “time bomb” that could blow up the fragile peace that has been achieved in Burundi unless addressed with due urgency by the national government and the international community.\(^\text{136}\)

To address this and similar conflicts, the government conducted a study to identify land which was unoccupied. The report, published in January 2002, found that there were 141,266 hectares of free and available land in the country. One of the ‘priority’ areas is 17,000 hectares of ‘free lands’ in Cankuzo, on which returnees could be resettled in compensation. While this may be feasible to some degree, it does not necessarily represent a comprehensive solution, for a number of reasons. Many of them owned more than five hectares, and given the steep population growth since, it is not possible to meet their expectation of total restitution or commensurate compensation. In addition, the definitions of ‘free’ land utilized in the government studies on the issue means that concepts of ‘available’ and ‘free’ are open to dispute.\(^\text{137}\) Some stakeholders believe that some of the land that appears to be free on paper (belonging to the state) is in fact under customary use, or has been allocated to people through state institutions since then, due to insufficient co-ordination between government departments. These current users would therefore lose their access if the land were to be availed to returning refugees.\(^\text{138}\) As
pointed out by analysts, the challenge is not merely to ensure that returnees and IDPs gain access to land; but to ensure that the process involved is characterized by even-handedness and transparency.\textsuperscript{139}

**Political considerations in refugee repatriation and IDPs resettlement**

The return and reintegration of refugees and resettlement of IDPs is a major political issue out of which political groupings see potential mileage. For instance, politicians in Burundi and Tanzania foresee electoral dividends in having refugees repatriated, since presidential and local elections in both countries are scheduled to take place at the end of 2004 and 2005, respectively. In Burundi, Hutu-dominated parties enjoying majority support among refugee populations, such as CNDD-FDD are keen to see their speedy return to consolidate the party’s chances of victory in the October 2004 elections. In Tanzania, the ruling Chama cha Mapinduzi (CCM) has vowed in its election manifesto to return all refugees from Tanzania before the next elections.\textsuperscript{140} Consequently, it has put pressure on UNHCR to accelerate the repatriation process and adopted harsh measures designed to encourage the ‘voluntary repatriation’ described above. Refugees caught outside the camp are imprisoned and returned to the Burundi-Tanzania border without documents such as identity cards, while government officials have promised to rid camp areas (Kibondo and Ngara) of refugees by the end of the year, to curb the “threat to national security.”\textsuperscript{141}

Other actors are also interested in repatriation and resettlement for financial considerations. Contracts and tenders accruing from the process constitute a source of patronage that the coalescing political alliances wish to profit from ahead of the planned transition elections. The depressed economy, collapsed infrastructure and declining standards of living for the majority of Burundians present a situation where profiteers out to make quick profits will exacerbate inter-government and regional tensions. The Government has made promises to reduce corruption and increase transparency in tendering processes, but little concrete progress has been made in terms of legislation or procedures.\textsuperscript{142}

**Institutions involved in the repatriation of refugees and resettlement of IDPs**

The Arusha Peace and Reconciliation Agreement provides for the establishment of institutions to facilitate repatriation and reintegration of refugees and related concerns towards a post-conflict dispensation. The National Commission for Rehabilitation of Victims of War (Commission Nationale de Réhabilitation des Sinistrés, CNRS), was thus formed, first as an autonomous agency with decision-making powers, but later subsumed under the Ministry of Resettlement and Reinsertion of IDPs and Repatriates (MRRRDR). The Ministry was formed in 1994 and is charged
with ensuring humanitarian assistance to affected populations, the voluntary return of refugees and the resettlement and reintegration of refugees and IDPs. The CNRS replaced the National Repatriation Commission, and is to work alongside other institutions including the Sub Commission on Land Issues, the National Fund for Sinistrés and Reception Committees of local authorities and security agents.

Among the pertinent issues it should address include truth, justice and reconciliation, property rights, especially land ownership and adequate, proportional and timely compensation for lost property and the settlement of disputes; participation in transition elections scheduled between June and October 2004; successful re-integration into society until returnees are able to sustain themselves; and the re-unification of separated people with their families. It should also carry out a census of Sinistrés and other vulnerable groups, including women and children, and provide adequate material support to returning refugees and IDPs to ensure they have access to social services. The return and resettlement preparatory activities also include infrastructure support, administrative support and the protection, rehabilitation and advancement of vulnerable groups.

Given the complex and integrated character of the imperatives for a successful repatriation and resettlement, the Arusha Agreement also provides that supportive or lead roles be played by key stakeholders including UNHCR, the governments of Burundi and Tanzania, OCHA, donors, local and international NGOs and the local communities through the CNRS.

The CNRS was established in February 2003. Its institutional set-up is a result of a compromise between the dominant political parties, FRODEBU and the G10 parties who are associated with Tutsi interests. Frederick Bamvuginyumvira of FRODEBU chairs the Commission, which is under the institutional ‘guardianship’ of the MRRDR, which is headed by a Minister from the Tutsi-dominated Inkizo party. In spite of its broad mandate, its activities since its inception have been limited to providing short-term assistance to IDPs. The Land Sub-Commission was established in April 2003. Reception mechanisms, as well as a National Fund for Sinistrés, have also been established. In January 2004 the National Programme for the Repatriation of Refugees and Resettlement of IDPs was published, in which the CNRS is envisaged as a secretariat of the Ministry. The objective of CNRS is to resettle IDPs and returnees with dignity and establish basic social services, promote the local economy and ensure the successful transition from humanitarian emergency to sustainable development.

The strength of the CNRS lies in the fact that it is a product of the Arusha Agreement and as such, enjoys some legitimacy and recognition by the signatories. Despite financial and logistical constraints, it has made significant inroads into addressing the short-term needs of IDPs in some parts of the country.
However, it has a number of potential weaknesses, most importantly its loss of autonomy, as its financial and administrative capacity was placed under the MRRDR. This greatly hampers its effectiveness, especially because its mandate conflicts or overlaps with that of the Ministry. Indeed, the Commission established to monitor implementation of the Arusha Accords sees this political compromise as a breach of the spirit of the Accords. Some internal relationships within the CNRS are also problematic. Given these dynamics, the CNRS lacks the support and good will of some political parties, which perceive elements of its leadership as politically partisan. For instance, analysts have questioned the selection of a Tutsi army officer as head of the sub-commission on land, arguing that it does not bode well for an impartial and de-politicized process. Moreover, the manner of appointment of some members of the CNRS leaves a lot to be desired, as it appears professional competence was not a significant criterion of selection; as some of them may have bought cards of political parties just to get through to the CNRS, where they stood to earn a salary equal to that paid to the CSA’s members. There are also questions over the lack of human capacity and resources needed to handle the needs of high numbers of returnees. The impact of this can be seen in the need for some returnees to move into IDP camps, to receive assistance from international agencies, as they were receiving little or no help outside the camps.

This problem is aggravated by lack of a detailed plan of action and constrained co-ordination between the CNRS and other entities involved in the repatriation and resettlement. Priorities, budgets and work schedules were missing from the Global Plan of Action presented by the CNRS in October 2003. Most alarmingly perhaps, the CNRS does not seem to have a contingency plan of operation in case of a sudden, spontaneous (or forced) repatriation of refugees.

Furthermore, the management of the CNRS may lack some technical expertise, as the composition of its personnel reflects a political battle for control of resources, rather than competence in addressing repatriation, resettlement and reintegration needs of affected people. Many stakeholders also feel that the CNRS is not communicative enough, both in terms of disseminating its plans to other stakeholders (such as NGOs and CBOs) and in raising awareness amongst returning refugees and IDPs about their rights and the procedures for securing those rights.

A wider issue perhaps is the role of the CNRS vis-à-vis other actors. The CNRS has been given the responsibility of ensuring that refugees’ rights to land are respected. The procedure to be followed involves the refugee making a case to the Provincial Governor, who then writes a letter to the lands sub-commission of the CNRS. The sub-commission is then responsible for examining the case and identifying a solution. Considering the number of potential returnees, this is a logistically challenging responsibility for CNRS. Currently, due to the lack of dissemination of this policy, the refugees are unaware of this procedure. For example, refugees returning from the DRC interviewed at a transit
centre in Bujumbura were unaware of the role of the CNRS and were “totally lost” regarding the potential means for solving land-related problems. The issue is not only one of dissemination of procedures. The need for transparent and equitable decision-making requires awareness-raising amongst all the stakeholders involved in the process, including local authorities and communities who will ‘receive’ the returnees. Indeed, some civil society groups have criticized the lack of participation of the refugees and IDPs themselves in the preparation of guidelines and formulation of procedures. Although involving the beneficiaries – especially the refugees – in decision-making will be challenging and expensive in terms of time and resources, a more participatory approach would ensure that these stakeholders felt a sense of ‘ownership’ of the process, and reduce the risk of possible future disputes and dissatisfactions.

The good intentions of the CNRS and donors could be threatened by political interference and greed for the funds reserved for the Commission’s programme activities. The resources required for the successful implementation of the provisions of Protocol IV are significant. Whoever controls these resources will be seen as controlling a source of patronage, which in the current political dispensation in lieu of the October 2004 elections could be perceived as an asset in mobilizing political support. It is important that use of CNRS resources is not perceived to favour political, regional or ethnic interests. There are examples from the past where, for example, returnees have benefited from official assistance while adjacent IDP communities – who might actually be worse off – are ignored. There is a risk of the classic relief-agency problem of ‘host’ communities being ignored while ‘vulnerable’ elements are aided, which could lead to conflict.

The success of the Commission also depends on the establishment of other institutions, such as justice and reconciliation structures, provided for in the Arusha Agreement. Donors have also been slow to release pledged funds, which could frustrate the implementation of the Commission’s activities. Without material assistance for reconstruction of homes and livelihoods, there is a high risk for returnees to become internally displaced. Delays or partial implementation due to lack of funds, coupled with lack of political support, could erode public confidence in the Commission.

In spite of these challenges, all is not lost, as opportunities still remain unexplored should donors release the monies pledged to support and empower the CNRS to carry out its mandate. It seems that improved co-ordination with other stakeholders would be a prerequisite for this to happen.

Experiences of displacement

Isabelle is from Bubanza Province, which she left in 1993 due to the conflict. Her husband is dead. She has six children. She has no land in
Bubanza because her husband didn’t originate from there – he went there to look for work, and they rented land. In Burundian custom, as a widow she can only have land access by going to her place of origin and asking her blood relatives, who live in Gitega. However, her parents are dead and she doesn’t know people there, and most local people are in displaced camps. She therefore doubts that anyone can identify her: “How then can the Bashingantaha help me?”

She has heard of the CNRS and knows what they are meant to do: to help the refugees and displaced people to go back to their hills. But she has never seen them, just heard of them on the radio, and doesn’t know where their office is. They have never been to the camp and the chief de zone never talked about it.

LEGAL AND POLICY FRAMEWORKS OF LAND ACCESS

The preceding sections have demonstrated the centrality of the land question in the successful transition to peace, especially in the context of refugee repatriation and expropriation of land by power brokers in Bujumbura. During the transition period, significant issues that could thwart the achievement of durable peace in Burundi ought to be given priority over short-term gains by sectarian interests. But focus seems to have shifted from implementation of the provisions of Protocol IV of the Arusha Peace Agreement to haggling over transitional issues dealing with the institutions and the legal framework under which the country is governed. Issues such as unresolved land disputes have been relegated to non-essential status as the issues become part of political ‘turf wars’. Land, which has a strong social value as it is associated with status and prestige, is being sought in unscrupulous ways – such as expropriation by the elites – as a source of security or a long-term safety net.

Given the ethnic and political sensitivities around land ownership and access, this section examines land tenure systems in Burundi with a view to understanding the significance of land access to power relations and conflict resolution in the current political environment. It describes land use and livelihood patterns in a predominantly agrarian society devastated by war, trends in women’s access to land, the production, management and marketing of export crops, specific land-related challenges and dispute resolution opportunities and alternatives.

Land scarcity and access

Population density in Burundi is the second-highest in Africa: estimates of average population density vary from about 230 people per km² to as high as 278 people per km² and is as high as 360 persons per km² in some areas. Over 93% of the population is rural and entirely reliant on agriculture for their survival and income; hence most of the land, 90% of the total cultivated area, is devoted to food crops and 10% to export
crops. Settlement is in dispersed homesteads, similar to those found in Rwanda. Land use is as shown below.

**Table 1: Land Use in Burundi**

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arable land – % of total</td>
<td>30</td>
</tr>
<tr>
<td>Arable land – % under continuous cultivation</td>
<td>81</td>
</tr>
<tr>
<td>Arable land – Ha per capita</td>
<td>0.12</td>
</tr>
<tr>
<td>Irrigated –% of cropland</td>
<td>1</td>
</tr>
<tr>
<td>Permanent pastures –% of total</td>
<td>60</td>
</tr>
<tr>
<td>Forests &amp; woodlands – % of total</td>
<td>&gt;2</td>
</tr>
<tr>
<td>Deforestation rate /yr – % of total</td>
<td>2.7</td>
</tr>
<tr>
<td>Nationally protected areas – % of total land area</td>
<td>4.23</td>
</tr>
</tbody>
</table>


Given the high population growth and increasingly smaller plots of land per family unit, land scarcity has become a severe problem, and access to arable land is a priority for almost every household. Pressure on the land is pushing underprivileged families to relocate to relatively less populated areas, often generating suspicion on the part of communities into which newcomers integrate, or to encroach on forest reserves, national parks and swamplands to meet their demands. Levels of poverty are such that the poor have very little capacity to withstand external shocks, and may be forced to sell a portion of land in order to cope with a relatively minor crisis, such as a child falling ill and requiring medical treatment.

Although yields could be improved with technical alternatives, agricultural production has declined due to over-cultivation of small plots, while lack of purchasing power means that fertilizers cannot be purchased, and there is little land available to leave fallow for regeneration of soil fertility. In addition, forced population displacement has led to exploitation of ecologically sensitive areas in safer zones around displacement camps.

Agricultural production and economic reward have increased for groups with favourable access to productive land and resources, hence the high social status, political power and patronage associated with land ownership. Access to land is an important indicator and symbol of social rights, obligations, and status, both within and between households. Land ownership or access is the basis of ‘feudal’ relations in Burundi, and transfer patterns significantly shape the perceptions of various social groups on the relationship between increased competition for land, poverty and the on-going conflict. For instance, cycles of violence have
been described as ‘ancient hatreds’ and inter-ethnic struggles for control of political power. This analysis, as described above and as shown by ACTS researchers, obscures the underlying causes of conflicts in the great lakes region, among which is competition for scarce land due to population pressure, government policies and market forces.

The relationship between power struggles and land lies in the fact that the state guarantees the right to access, use and ownership of land. In Burundi, political power also means access to control of resources emanating from the market for agricultural export crops. Land scarcity and soil degradation in Burundi has meant lower production of both food and export crops, hence lower incomes and limited access to other productive resources. This is exacerbated not only by fluctuating prices of coffee in the international market, but also by exploitation by local elites who control the processing and marketing of coffee and offer very low prices for the produce and fail to reinvest in the agricultural sector. The population’s sense of exploitation by the state and lack of other off-farm opportunities to diversify the sources of income lead to grievance, especially as rising poverty predisposes more people to violent behaviour to effect change.

**Natural resource distribution and conflict**

In most African societies, land was a corporate property owned by the community, and each household enjoyed usufruct rights. The community had special attachment to the land, which essentially belonged to the ancestors buried therein and held in trust by the supreme authority on the land, usually a king, council of elders or a privileged class. Land held significant religious, cultural, and political importance, where the rights to own, use, enjoy the fruits of, alienate or sell it was determined by stringent established rules on who could access what resource, how they were granted this right, and when and how they could exercise it. Most of these systems were patriarchal, where land was passed down generations through the male lineage. Women never owned land, although they had access to it depending on their relation-ship to the male owner, for example, as wife or daughter. Communal land could not be sold, but plots allocated by the king as reward or other consideration could be exchanged.

A similar situation existed in pre-colonial Burundi where, as noted above, there was an elaborate socio-economic land ownership and access system based on the ‘feudal’ institution of the Ubugererwa. Through the client-patron dependency relationship that developed between a ‘lord’ (Umututsi) and a less fortunate ‘serf’ (Umuhutu) those who did not own land could be allowed to use another person’s property in exchange of gifts in kind or service. While these labels were flexible and represented socio-economic standing of individuals regardless of their ethnicity, divisive colonial and post-colonial policies that preferentially empowered the Tutsi over the Hutu and Twa polarized
and politicized the society, crystallizing ethnic stereotypes as lowly, ineffectual Hutu and charismatic, competent Tutsi.

**Ubagererwa**

As noted in previous sections, in pre-colonial Burundi, all land was formally the preserve of the king (Mwami), and ownership was bestowed as a reward for loyalty or as an entitlement to members of the royal blood, the Ganwa. Various forms of land relationships existed. Ubagererwa, which was the most prevalent, was a contractual system where a person in need of land, livestock or protection would work for a more fortunate one in order to access and/or utilize these properties usually in return for services and offerings in kind. The system had distinct characteristics from province to province, and depending on circumstances, constituted a source of injustice and frustration both among the Hutu and the Tutsi, and among the Twa. Ubagererwa continued throughout the colonial period and into the postcolonial state. With state control of land, those in power took over the Mwami’s source of patronage, and abused it. President Bagaza outlawed Ubagererwa in 1977, because it was inflexible and coercive, with the classical characteristics of any other feudal society. The banning of the exploitation structures was hailed as a radically positive move in re-orienting the socio-economic relations of the Burundian society. Many rentees subsequently became ‘owners’, resulting in the growth of private ownership. While this was seen as a way of stimulating access to finance, the banks place little value on rural land, only on land in and around the urban centres, so farmers have not been able to use their land as collateral for accessing loans.

Over time, a situation of poor consultation, minimal consensus-building during policy-making and limited dissemination in relation to land policy has resulted in a confused land tenure situation on the ground, which is subject to abuse and great variations at local level. Generally, local authorities make decisions based on a combination of statutory and customary law, and the interpretations of both custom and statute vary widely from province to province. Contradictions and disconnects in the current land tenure systems continue to create loopholes that are exploited through irregular allocation of state land to individuals in positions of influence in government, the military and the civil service.

**Land acquisition and dispute resolution systems**

*The customary tenure system*

As noted above, land ownership and access was based on Ubagererwa, as well as a system where the king allocated land to an individual or group in recognition of service, loyalty or other consideration. Communal land could not be sold; its transfer was based on a rigid patriarchal inheritance system where subdivision occurred between the
male heirs upon the death of their parents. Those who gained land by clearing and exploiting it put themselves under the protection and patronage of the chief – generally a Tutsi – in whose jurisdiction the land was situated, and paid tribute in the form of farm produce or labour in recognition of the chief’s authority. The chief also occasionally allocated ‘free’ land to those who did not have land, such as the Twa. Thus monarchical distributions of land and inheritance patterns were the main types of land acquisition and access mechanisms in the customary system. However, we must bear in mind that the system was characterized to some degree by social mobility and a general flexibility.165

Land tenure conflicts were mediated by the local council of elders, the Bashingantahe. The Bashingantahe council was made up of Hutu and Tutsi men of integrity, chosen for their sense of truth, justice, responsibility for the overall good, knowledge of customs and ability to exercise authority as judge, notary and ombudsman.166 They were an organized corporate group in whom was vested the social, political and judicial power of their society. The council settled disputes by conciliation or judgment, authenticated contracts such as marriage, sale or land inheritance, oversaw the maintenance of justice, and provided guidance and balance to politicians.167 They were accountable to the people. Most of the disputes in which they were expected to intervene pertained to property, but they engaged in other types of conciliation on family or other matters. The council held such power and respect in the society. However, during the colonial period, the institution of Ubushingantahe was weakened when the Catholic Church usurped some of its traditional roles, and individuals without the requisite qualities were appointed by the authorities.168 As they increasingly became judges and executors of the policies of the colonial power, they lost their virtues of neutrality and independence. Successive regimes ignored the moral value of the institution, and made few serious attempts to rejuvenate it.

In some cases the independence of the institution, which is essentially free to access, has also been compromised by changes to the ceremonies involved. Customarily, the final decision of the Bashingantahe would be followed by the conciliatory sharing of beer between all present – the Bashingantahe as well as the parties in the dispute. These days, some Bashingantahe request the beer prior to the decision-making process, and those too poor to provide it may be refused a hearing.169 Efforts to support the institution have been criticized in some quarters, as some Bashingantahe included in donor-funded support projects have been civil servants or political figures, which is not allowed under custom.170

Current efforts to revive the institution of Ubushingantahe are premised on the conviction that a return to traditional cultural values and to traditional methods of conflict resolution after years of conflict stands a chance of contributing to the restoration of peace and stability in Burundi.171 The Arusha Agreement emphasizes the role of the Ubushingantahe in reconciliation at the level of the colline (hill).172 In the context of escalating land disputes, it is hoped that involvement of
Bashingantahe in judgment on land disputes will circumvent fraud and corruption, and ensure the return of (or fair compensation for) land and property to their rightful owners. Currently, however, Bashingantahe report that land issues are one of the most difficult problems to resolve, and some NGOs are doing training and dissemination of basic tenets of the land law to tackle this. While Ubushingantahe has lost some of its power and its effectiveness has been dampened by political interference and allegations of corruption, it remains alive as an institution and commands significant regard among most Burundians.

**The statutory land tenure system**

Landowners in Burundi are able to transfer land mainly through bequest to the male heir upon marriage or the parents’ death, while landless people can acquire land through purchase, donations from relatives or wealthier patrons, or distribution by the government. The primary beneficiaries of land distribution by the government are returning refugees, though the land donated is often unproductive swamp land and natural reserves, due to land scarcity. Another way of gaining access to land is through temporary leasing for one or several seasons, given the decreasing availability of land for cultivation by households.

Provisions on land ownership, access and transfer as spelt out in the Land Code are little understood and hardly implemented. Land tenure in Burundi, as in many countries, currently has both customary and modern systems operating in parallel, and with some overlapping and ‘hybrid’ arrangements in place. This creates confusion, contradictions, disconnects and points of interaction between the tenure systems, making the resolution of land disputes particularly intricate. For instance, the 1986 Land Tenure Code acknowledges the legitimacy of customary claims but requires all land, and all land transactions, to be registered with the state. While the law states that registration must be passed on when it is sold, inherited or otherwise passed from one owner to the other, land is often sold in areas under indigenous tenure systems yet to be registered. Moreover, the state lacks the financial resources to disseminate and implement the Land Tenure Code. As a result, customary tenure regimes are still very influential in rural areas, and land holdings remain largely unregistered. Besides, less than 5% of the land is registered, and oral traditions about its ownership predominate. Thus title deeds hold little value, and endemic corruption in the Ministry of Lands has undermined the legitimacy of such documents. While the land code stipulates that all land belongs to the government and no transactions may occur, land sales do take place (whether registered or not) and renting of land is also significant, with up to one fifth of households accessing some land through renting.

The Burundi constitution allows the state to expropriate land in the public interest. However, expropriated land is often allocated to influential political and military figures without adequate compensation
to those from whom it has been taken. This has been made possible by a tightly-knit group bound by kinship and a network of patronage. For instance, the Rumonge Regional Development Corporation scandal, in which the state expropriated private property and irregularly distributed it to ‘businessmen’ for better production of palm oil, featured prominently in the negotiations leading up to the Arusha Agreement. Many of the families from whom the land was expropriated were never fairly compensated. The state has increasingly encroached on unoccupied land and repossessed it ostensibly for distribution to the landless. However, distribution of land to the landless, provided for in the law at a small fee, has ended up benefiting politically-connected and land endowed people at the expense of the landless.

Expropriation of land by the government and redistribution to underserving cases aggravates the disparity in land distribution among the rural poor peasants and the elites. Such expropriation reflects tenure insecurity for the landless and near-landless who, due to land scarcity, are compelled to cultivate hillsides prone to erosion, or to clear and exploit lands belonging to the government. Following the cessation of hostilities, the value of land has gone up, and rich individuals and groups with the means to purchase or ‘grab’ land are expanding the size or number of plots for economic security, while the land available to returning IDPs and refugees is getting increasingly smaller. Unequal land distribution, over cultivation and concomitant food insecurity affects the poor, who have few off-farm opportunities. Over 90% of available arable land is under cultivation. Agricultural practices such as continuous cropping, elimination of fallow periods, shifting to higher-yielding crops such as tubers and agricultural intensification is inadequate in addressing the threat of food insecurity and to sustain livelihoods. Rural-urban and rural-rural migration in Burundi is on the rise, while some people are working as labourers in agricultural farms. Poverty and threats to rural livelihoods, coupled with the government’s inability to provide welfare and address the causes of deprivation and dispossession by the rich only feeds rural disaffection.174

**Land administration**

The land administration system in Burundi has been negatively affected by the conflict. The loss of human resources through out-migration is one issue; many of those people able to leave have done so. Those with the money and connections to leave are generally the well-trained cadre of the civil service, and the quality of land administration has subsequently declined. Lack of coordination between different government departments is a big problem. Provincial Governors can allocate land, whilst the Ministry of Agriculture and the Ministry of Environment are also able to control access to land. Often, Provincial governors will allocate state-owned land, which is under the mandate of the Ministry of Environment, for example, without any communication between the two.175
Double-registration of plots is another problem. Treatment of the issue of landlessness is also problematic: according to official policies, landless people are able to apply to the government in order to receive plots of land. Only a small fee is charged for this service. However, anecdotal reports suggest that the system is abused, with some people waiting for years while others, who are not actually landless, receive plots rapidly due to favoritism or bribery.\textsuperscript{176}

\section*{Women's access to land}

Differentiated access to land in Burundi is based on sex and ethnicity. Under customary law, women could not own or inherit land; they could only enjoy limited access bestowed through affiliation to the male legatees.\textsuperscript{177} As such, in the event of death or separation, widows or divorcees could easily be dispossessed of the land by male relatives. In the ongoing conflict situation, women’s access is further compromised by repeated displacement, particularly because they may not competently undertake male roles such as negotiating for land access that life in displacement compels them to assume. Besides, upon return from displacement, they may find their spouses’ land occupied, denying them access. High population growth and subsequent subdivision of land is increasingly disinheriting many people because of the increasing unavailability of smaller and smaller parcels of land. This directly places women in a disadvantaged position, in spite of the fact that they are the main force working the farms.

Article 17 of the Constitutional Act of Transition establishes the equality of men and women before the law, and the 1993 Amendment of the Code of the Person and the Family includes the right to joint management of family property granted to women and to the wife if the husband is absent. In practice, this means she has no rights as most men tend to delegate land matters to their male relatives. Besides matrimonial arrangements, succession, legacies and gifts are all governed by customary law, which does not recognize women’s land rights.\textsuperscript{178}

Despite limited access to land, women are nonetheless expected to provide food and keep the families going in conflict situations, when their partners abandon them or go to fight.\textsuperscript{179} Non-observance of women’s property rights in spite of these responsibilities could breed resentment and apathy, and determine the role of women in post-conflict reconstruction and reconciliation. For instance, dispossessed women who do not find viable redress may support warring parties by providing food, money, clothes or indirect support by maintaining secrecy over their whereabouts, political support or information in the hope that when they come to power, they will address these grievances. Furthermore, they may be willing to ‘donate’ their sons to the war effort, especially when armed groups promise land as a prize for such sacrifice. Without an alternative source of income, women may send their sons to
join armed groups, from where they support themselves through looting. Experiences of Displacement

Adela has been displaced from her home in Bubanza, close to the Kibira forest, since 1994, and now lives in an IDP camp on the outskirts of Bujumbura. She is Tutsi. She had five children but two have died, along with her husband. She has heard that someone is cultivating the family farm, but she does not know who. Due to bad memories of the place and her feelings of insecurity (Kibira forest is a traditional rebel stronghold), she is going to stay in Bujumbura. However, she won’t sell her plot in case there is a problem in Bujumbura, and perhaps her children can stay there and cultivate it in the future.

HIV/AIDS, land ownership and use

The effects of HIV/AIDS on affected households include reduced labour availability, both in terms of those suffering from AIDS-related diseases, and those caring for them. The prevalence of HIV – estimated at around 7% – translates into several negative effects on the land use patterns of affected households, including a reduction in area of cultivation, fewer crops, lower levels of production, hence lower incomes and more expenditure as time, energy and money are diverted to relieve the effects of ill health. Access to land and land uses are also altered, as households with HIV positive members rent or lease out land, enter into sharecropping or lend land to others. HIV-affected households are also more likely to lose land, either through formal or informal sale to meet the cost of caring for AIDS patients, abandonment of land, or having land forcibly taken from them.

Officials at the CNLS, the National Commission for addressing HIV/AIDS, are broadly aware of these issues. However, firm evidence of the effects of HIV prevalence on land use is lacking, partly because the situation in many rural areas is so fluid, with many factors affecting household’s land use, including displacement and injury or death from violence. It is thought that rural areas have a lower prevalence than towns, but these figures may be skewed due to the stigma attached to HIV, which is greater in the countryside than in towns, and the difficulties this poses to estimating rural prevalence.

Women in abusive relationships often lose their land if they leave their husbands, in spite of having children to support. Equally, women in polygamous relationships may be evicted to create room for a new wife. Widows are particularly vulnerable to dispossession of land and/or confiscation of property by male relatives of the deceased, although this depends on many factors, such as her bargaining power, whether or not bride price was paid for her, availability of land, her social standing in the society, and decisions taken by community leaders.

Given the conflict that the people of Burundi have lived with for decades, the response to HIV/AIDS may be viewed within the larger context of the humanitarian response to food and shelter needs, as well as to
recurring epidemics of malaria, meningitis and other infectious diseases. According to a study by Save the Children (UK), the spread of HIV/AIDS is linked to poverty and conflict-induced displacement. Many people lack adequate information about the disease, while conflict has not only disrupted their social networks but also livelihoods. The response to the epidemic is scattered due to a critical lack of coordination between different actors. The impact and quality of NGO interventions are rarely evaluated, making lesson-learning difficult. The study concludes that there is a pressing need to create systems for sharing information, which will enhance transparency and accountability.185

**Experiences of displacement**

Jean-Bosco is from Ngozi Province, but was displaced in the conflict and now lives with his wife in a camp for the displaced near Bujumbura. He has no access to land in Ngozi because after his parents died, his uncle took the plot. Jean-Bosco has no certificate to prove that it is his, and most of his identification papers were destroyed when he was fleeing the violence. In any case, he cannot return there as he fears his uncle would kill him because of the land issue. He doesn’t think that the chief de zone could help him.

He has AIDS and can do little work. His wife, who is pregnant, makes and sells sisal rugs, and does tailoring. Though they have a rural background, they have stayed so long in Bujumbura that he is like a “child of the town”.186

**Land fragmentation**

As noted above, the size of land inherited or otherwise available to households has progressively shrunk due to subdivision as families have continued to expand. Land fragmentation has also resulted from distress-induced transfers, where people are forced to sell their land in conflict situations for fear of losing it. Others have exchanged it for smaller plots in safer regions. As noted elsewhere in this chapter, families affected by HIV/AIDS have sometimes been compelled to sell off part of their land or property to meet the cost of medication and care for patients.

Because less land is available to put under food crops, food security and livelihoods are threatened. Burundians have adopted various coping mechanisms to reverse the effects of reduced plot size. These include recourse to off-farm income-generating activities such as itinerant labour, petty trade in such items as second-hand clothes, vegetables, sugar, fuel wood, manufacture and sale of crafts, and fishing. Some households receive remittances from urban relatives. Others have migrated to less populated rural areas or urban centres. Agricultural practices have also been modified to increase productivity by investing greater amounts of time and energy in weeding, mulching and other labour-intensive activities. More farmers are replacing grains and legumes with tubers such as sweet potatoes and cassava that can feed
more people per hectare, though they are not as nutritious, and the health of the household may be affected as a result.

Land fragmentation is a complex problem in the densely populated country, and its effects can be addressed only by very fundamental measures such as providing widespread off-farm economic opportunities, or by influencing traditional inheritance systems. In Rwanda, an attempt at ‘villagisation’ aimed at moving people into farming villages to maximize rational exploitation of land by reducing population pressure and fragmentation, failed because it resulted in unequal and unfair land distribution among the rural poor. It also did not address the root causes of land scarcity. Environmental degradation is being attributed to land pressure that has reduced the periods available for land to lie fallow. Soil fertility is reportedly also declining as a result of over cultivation and continuous cropping. Because arable land is limited, many households are resorting to cultivating sloping areas, which are very prone to loss of topsoil through various processes of erosion. Inability to afford agricultural inputs due to poverty and the decline in terms of trade for goods such as coffee also contribute to the problems. Over-exploitation of farmland near IDP camps has reduced its productivity. Deforestation for fuel wood and concomitant soil erosion has exacerbated environmental degradation.

**National agricultural policies**

The Interim Poverty Reduction Strategy Paper (PRSP) notes that agricultural production should be intensified through use of improved livestock varieties and breeds, mineral and organic fertilisers, appropriate cultivation techniques and use of high-yield seed varieties, while acknowledging that the availability and affordability of these inputs is problematic. It also identifies certain dry areas as suitable for irrigation. Compared to other countries in the region, the Burundian Interim PRSP does not identify many concrete options for agricultural specialisation (e.g. developing niche markets). It does recognise that ensuring that the displaced and returnees are able to find land to settle on is a priority.

Previous research by ACTS has documented in detail the role of state control over the coffee sector in the reproduction of the predatory state and economic structures. This section will not reproduce that argument, but it is important to make explicit the links between coffee production and land use more generally. The coffee industry is of relevance to this study because of its role in state dominance over land use at the level of individual farming households.

Almost all farmers across the country grow some coffee, because it is state policy that they should do so, and local administrations enforce this. Because of the coercive nature of the industry, coffee is often planted without due regard for soil suitability, in which case the trees are unproductive. This effectively puts valuable land out of productive use, driving farmers further into poverty.
When land is inherited, the recipient is obliged to plant some if coffee is not already planted. On an average smallholder farm, this is generally a minimum of 50 trees. The prices received for coffee are extremely low, and are also highly variable, despite producer price stability being the main government justification for its regulation of the sector through the Coffee Board of Burundi (OCIBU). Coffee producers – who are almost all smallholders – receive only a small percentage of the international price, about 40%. The comparable figure in Kenya is 85%.

Research by Oxfam GB suggests that coffee generates far less revenue than other alternative cropping patterns. For example, a farmer in Kirimiro region with a plot of 575 square metres devoted to coffee can expect to make about 17,100 Burundian Francs. In comparison, a combination of bananas (which are a cash crop) and maize and beans planted on the same plot could generate 85,000 Burundian Francs. The insistence of local administrators that coffee should be planted therefore directly contributes to local poverty.

Coffee is also a very labour-intensive crop. People who are unable to cope with the labour requirements, such as the old and those weakened by HIV/AIDS-associated illness, either have to pay for labour to tend the trees – which may even become a loss-making enterprise – or simply abandon the trees, in which case the land is then confiscated by the local authorities.

Land, politics and conflict

As noted above, land is the main source of wealth and livelihoods in Burundi, and is therefore a vital means of patronage. The ruling elite dominate decision-making structures and institutions for land allocation, which they manipulate to not only accumulate personal wealth but also to maintain their hold on state power, which in turn assures their continued control and access to scarce land and other natural and economic resources. The issue of scarce land has been used by elites from across the ethnic divide competing for control of the state to fuel ethnic resentment and polarize the local population. By arguing that those aiming to capture power are interested in dispossessing landowners, the ruling elite shift responsibility for poverty and social injustice from the state. On the other hand, rebel groups mainly of Hutu origin cite the need to redress unequal land distribution as a raison d’être for the struggle for state power. Such resentment is said to have been instrumental in the genocidal massacres of 1993, when some people who had illegally occupied land belonging to refugees resorted to violence to prevent refugee returns, because repatriation spelt reforms that would have led to their eventual dispossession and return of the land to its
rightful owners. Violence was used to ensure continued access to land and also to displace more people to ‘free’ more land.

It is alleged that before the cessation of hostilities following the signature of the Arusha Agreement and the Pretoria Protocols, commanders of most of the rebel groups in Burundi promised land to recruits as a prize for joining rebel ranks. They told them that when they seized power, they would compensate them for their sacrifice and service with employment and parcels of land. Rebels in the bush also had access to agricultural produce through looting and banditry. As noted above, off-farm activities for most Burundians are limited due to land scarcity and environmental degradation. This predisposes the youth to involvement in crime or recruitment into armed groups. Lack of legitimate and viable livelihood alternatives is a concern for the future of demobilized soldiers and ex-rebels, especially if they are not given land and supported to integrate into civilian lifestyle.

People who are disaffected or aggrieved with the government’s handling of the land issue are thought to render political support to conflicting parties. Such grievance may stem from perceived or real injustice regarding access or ownership of land, such as an unfavourable court ruling, dispossession or an intractable land dispute. Support for armed groups may be direct logistical support through provision of food, shelter and other supplies, recruitment drives, and information about the whereabouts or plans of opposing sides. They may also get personally involved for the opportunity to exact revenge.

Unresolved and new land and property disputes are feared to be the biggest threat to sustainable peace in post-conflict Burundi, especially in the context of refugee returns. Already, such disputes have been reported in Gatakwa, where returnees and those who remained behind are contesting ownership of the palm-tree growing area.

Case study: The Gatakwa commissions

Gatakwa is a sector situated in Kigwena zone, Rumonge Commune in the southern province of Bururi. The sector contains extensive marshes that were farmed since the early 1980s, after President Bagaza gave authorization for marshes to be drained in order to cope with food insecurity (which was partly a consequence of the massacres, conflict and displacement). People from other areas came to Gatakwa in 1981 to drain the swamp through manual labour – an exhausting process which took three years, before planting of palm oil trees could start. The locals did not participate in these efforts, and the land remained state property. Soon after, the farmers were told by the Rumonge Regional Development Society (RDSR) to stop producing the current species, and concentrate on a new species of palm oil. The argument for justifying this instruction was that the land belonged to the state. However, those whose land was re-planted with the new palms did not gain access to all of their plots: some land was appropriated by RDSR and allegedly given to military personnel and senior RDSR staff. Many farmers therefore defied this order, and were
consequently harassed and threatened with eviction. The community took the case of de facto land ownership to the administrative court to get clarity and legal ownership, but to date they do not have this and the case is still pending, even though in 1998 Parliament stated that someone who drains marshland becomes the owner of a property through that action.

In 1999, the farmers were again subject to threats of expropriation and went back again to the court because this time fields of maize, cassava and other crops were destroyed. In response to these threats they took the case to court, and a commission was appointed in October 2001 to look into the matter. But the commission, while claiming to have identified beneficiaries as “destitute people, returnees, widows and other vulnerable groups”, drew up a list of beneficiaries composed of the commissioners themselves, their wives, relatives and other administrative cadres and civil servants, especially those from Bururi province. The 240 farming families were issued with eviction notices, but the community has continued to resist demands that they leave the land.

In March 2003 the community made a presentation to the Ministry of Agriculture to denounce this. After a short period where they suspended their farming activities due to administrative pressure, they resumed their agricultural activities on 4th August 2003. In response the authorities at provincial and communal level took a decision to arrest people. Three people were arrested: one for a period of two days, one for two weeks and the third for two and half months. Despite these threats, the community continued to pursue farming activities, it being a crucial time for agriculture, before the rainy period. On 2nd September they went to Parliament to protest. MP’s replied that they were busy discussing the matter. On their side, the community started the process of having those arrested released. According to local people, the authorities started to organise soldiers, young local defence forces and local administrators in operations to harass and beat members of the community. Many were wounded, one person killed and others put in jail. The community again went to Parliament, this time with their wives and children. The Speaker of the Parliament, Jean Minani, gave the order that they could go back and resume agricultural activities, and he also ordered the release of prisoners.

At this stage then, the local people, some of whom had been in exile in Tanzania (who had not drained the marshes) attempted to gain control of the plantations. The farmers again went to the Ministry, who after receiving them (both delegations) gave the order to immediately stop exploiting the fields. Another commission was appointed. At the time of writing, the community is still awaiting a final decision, and tensions remain high between the returned refugees, the local population and the group that cleared the land. According to local informants, the Bashingantahe have not been effective in this case, probably because of the influence of the urban-based elites who have a vested interest in the outcome. Affected farmers insist that, “the Gatakwa land crisis must be dealt with on the justice level and not with the current commission.”
The involvement of government officials in the scandal has not only politicized the dispute, but also set the stage for probable fresh violence. Besides grabbing of public land by influential individuals as demonstrated above, the state also uses different processes to expropriate or dispossess individuals of their land, or to appropriate public lands to individuals. While expropriation of land by the state in the public interest is permitted in the Constitution (for example in order to encourage private investment in industry), corruption has enabled undeserving individuals to grab or benefit from appropriation of plots in formerly conflict-affected zones as compensation for displacement. In the process, many people are dispossessed of their land, and in some cases may not receive any compensation. State appropriation of privately-owned land and subsequent unfair subdivision between previous owners has been a source of great acrimony.

Prevalent corruption in the judicial system, which is the ultimate guarantor of land tenure security in the country, exacerbates the problem. Some land disputes take extremely long periods in the courts, as judicial officers lack sufficient travel budgets to facilitate visits to disputed land to ascertain facts. Claimants with the means to offer transport, accommodation and other facilitatory services may be able to influence the case in their favor. Expropriation of land by politically-connected elites seems to continue to be the rule in many parts of the country. Economic and political exclusion in Burundi is based on tight networks of kinship and patronage, with strong links between the civil service, military and the private business sector. As noted above, the struggle for control of land and the most important purchasing offices has been a factor in the development of the civil war.

Land conflicts in the context of refugee returns
As noted above, land disputes related to the return of refugees and IDPs to their former homes are common. Research by local NGOs indicates that 90% of problems experienced by refugees (as reported in interviews) are land-related. This research also supports the general hypothesis that the 1972 refugees tend to have problems due to their land being occupied by non-relatives, while the refugees from 1993 and later tend to have intra-family land access disputes.

Another effect of the returns, in some areas, is an increase in land prices. In Ruyigi, for example, agronomists reported in April 2004 that the price had increased by 50% in a matter of a few months, forcing some people to cultivate marginal areas as they were unable to access fertile land.

While supporting refugee repatriation and resettlement of IDPs, the Government of Burundi has not developed effective legal mechanisms to address land-related disputes arising from occupation, restitution and compensation. Given the war fatigue felt by the population after decades of violence and displacement, any measures to address inequitable land distribution that has dichotomized the society into the
haves (the rich and the rulers) and the have-nots (the poor and the masses) is welcome. The historical dynamics of land ownership, its social value and approaches to address land disputes, for example, through the Bashingantahe, have been overshadowed by political dimensions that foreground the commercial value of land, access to which is promoted for long-term economic security. Corruption has permitted fraudulent transfer of prime land, such as plots near the Bujumbura airport, to influential individuals and politicians, while commissions appointed to look into land availability for the resettlement of refugees have appropriated the land for themselves. Some Bashingantahe have been compromised by indulgence in politics, and many have failed to rise above sectarian interests, allowing themselves to become the local elites in such conflicts.

Individuals working in the current transitional government are reported to be occupying and exploiting lands belonging to Burundians who fled during the civil war. Others are colluding with people who remained behind to deny returning refugees and IDPs access to their land. In some instances, as in Ruyigi, returnees are being forced to sell their land, houses or property at throw away prices amid threats or violence. The practice is also common in the urban centres where the new buyers purchase land for security, not for agricultural purposes. Peasants sell in order to raise money for things such as medical bills and school fees.

Proposed revisions to the land code

The Arusha Agreement on Peace and Reconciliation in Burundi calls for the revision of the Land Code, in order to address various (unspecified) land management problems. The Agreement also provides that environmental sustainability should be a factor in the policies of distribution and allocation of land. Protection of forests, in order to maintain hydrological regimes, is given emphasis. While stating that, “...all refugees and/or sinistrés must be able to recover their property, especially their land”; or else receive compensation, the Agreement also acknowledges the need for political awareness in the process of resolving land claims as, “...the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.”

The Land Code is now in the process of being revised, through the preparation of a draft document by a combination of foreign consultants – funded by the Food and Agricultural Organisation (FAO) – and a working group of civil servants.

Policy-makers have taken inspiration from Rwanda’s draft policy and have modeled several ideas upon it, such as the establishment of local-level land commissions. By May 2004, a draft was almost ready for presentation to Parliament for debate. However, the finalization of the Code is not currently a high priority, as the upcoming elections are the main political focus. There are several proposed changes to the law, which have been summarized in the table below. While there is insufficient space here to discuss the proposed revisions in detail, a few
comments may be made. The Code seems to be broadly in line with the concepts of land tenure security and the need for land markets, as championed by the World Bank, the FAO and other institutions in a number of countries. Customary aspects are to be ‘replaced’ with a modern system, through universal land registration. Land redistribution is not being considered. Instead, it is envisaged that land markets will redress some imbalances.

Many of the proposals, as summarized below, are positive, particularly the revisions on how much land may be allocated by different authorities; and the establishment of national and commune-level land commissions, as long as these are designed to allow full local participation of a cross-section of local stakeholders. The draft code specifies that the national commission shall be made up of representatives of the following institutions: ministries concerned with land; provincial and commune-level associations of agriculturalists and pastoralists; NGOs involved in agriculture, silviculture or pastoralism; as well as people chosen for their particular competence. However, as the text is silent on how these people will be selected, it may be assumed that they will be appointed by the Ministère de L’Amenagement du Territoire, de L’Environnement et du Tourisme. The land commissions at the commune level, which will come under the authority of the communal authorities, will be composed of technical personnel associated with land issues, representatives of the population and people chosen for their particular skills. As is the case for the national commission, it seems that the Ministry will take responsibility for operational modalities, including selection of members. The commissions have many responsibilities for many important aspects of land administration, including registration of land rights, expropriation of land, and the establishment of zones of intensive agriculture; as well as the establishment of local land management plans. No more than half of the members may be state employees.

The recognition of the currently informal Certificate de Possession will bring increased security of tenure at local level. Experience from Rwanda suggests that farmers do not necessarily require full title (the type required to use land as collateral) but rather require protection from expropriation by the state or competing land claims by neighbours and family-members. Other aspects could be perceived as disappointing. Improving women’s access to land should be a priority, not necessarily only through equal inheritance rights but perhaps by other means, such as strengthening their access to legal information and representation. The move towards formalization of land documentation will require a well-designed policy which will facilitate formalization but will not result in those without papers being dispossessed by those who are able to take advantage of money, literacy and connections. Systematic registration of land is clearly a multi-year project and will require massive resources, which are unlikely to become available in the near future. For this reason, a more realistic evaluation of the likely continued role of customary law would be useful. The Code will seek to prevent the
subdivision of plots of 0.5 ha or smaller. However, policy-makers are aware that this may be impossible to implement. In the absence of a realistic strategy for implementation, it is conceivable that this provision will be implemented in ad hoc ways and could be abused by some administrators in order to further their vested interests.

The prescription period is important due to the great numbers of refugees living in exile. This is likely to be extremely controversial, and if the 15-year proposal is accepted by Parliament, thousands of people who were displaced in 1988 will have difficulty in reclaiming lands. Those who were displaced in 1993 will also be under extra pressure to return and formalize their land claims.

Finally, it is notable that the proposals do not envisage any kind of land redistribution exercise. The ripple-effects of the war, as well as decades of skewed development, will continue to distort the land market, making it unlikely that it will function efficiently. Due to historical reasons and the devastating effects of violence, a small urban elite is in a position to ‘buy out’ the rural poor, many of whom struggle to survive on the equivalent of US$1 per week and may sell land to pay for medical fees or other emergency expenses. Even the Catholic church, which is already a major land-owner in the country, has been purchasing land from displaced people. A maximum land ceiling would be one simple way of making at least a preliminary move towards greater equality.
**Table 2:** Some Current Provisions of the Land Code, and Proposed Revisions:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Current Law</th>
<th>Proposed Revision</th>
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<tbody>
<tr>
<td>Area of rural land that can be distributed by authorities (private domain of the state)</td>
<td>Minister: 50 ha Governor of Province: 4 ha Commune Administrators: in practice, up to 20 ha</td>
<td>Minister: 2 – 10 ha Governor of Province: 2 ha Commune Administrators: none</td>
</tr>
<tr>
<td>Land ownership Registration</td>
<td>Certificate de Possession issued by commune authorities for a small fee – but no legal recognition Acte de Notoriete/ certificate d’enregistrement used in urban areas – issued in Bujumbura</td>
<td>Certificate de Possession to be legally recognized Acte de Notoriete to be abolished. Certificate d’enregistrement to be issued at Provincial level Systematic registration of lands planned – so that titles may be used for collateral and to avoid disputes</td>
</tr>
<tr>
<td>Maximum length of land lease.</td>
<td>99 years</td>
<td>50 years</td>
</tr>
<tr>
<td>Swamp exploitation</td>
<td>No legal individual ownership of swamps, currently (state ownership) No fee paid</td>
<td>Those using swamp-land, and living nearby, will be able to purchase their plots Annual fee will be payable by others for access</td>
</tr>
<tr>
<td>Max. landholdings</td>
<td>None</td>
<td>None – but local provincial laws may impose them</td>
</tr>
<tr>
<td>Female access to land (Inheritance)</td>
<td>None</td>
<td>None – but clause will call for ‘situation to be analyzed in order that the succession law may be revised’</td>
</tr>
<tr>
<td>Land Administration structure</td>
<td>Centralised; minimal civil society participation</td>
<td>Land Commissions to be formed at commune and national level.</td>
</tr>
<tr>
<td>Period of Prescription</td>
<td>30 years (i.e. if land is unused for 30 years it reverts to the state – important for refugees)</td>
<td>15 years</td>
</tr>
</tbody>
</table>
CONCLUSION AND RECOMMENDATIONS

The decade-long civil war that began in Burundi in 1993 has produced a humanitarian crisis marked by widespread population displacement, destruction of property and devastation of infrastructure. While the violence has oftentimes been described as ethnic in nature, it has recently been acknowledged that competition for scarce natural resources – particularly land – and elite struggles for political power, to ensure access and control of such resources, is the underlying cause of violence. Genuine grievances over unequal land distribution, relative deprivation in terms of political representation and participation in the formal economy, access to education, and exploitation of revenue from coffee exports to benefit a small elite class, among other underlying dynamics, make it possible for politicians to polarize the society along ethnic lines. By exploiting sentiments about poverty and inequality, elites fan ethnic hatred to justify the use of violence, repression and exclusion in order to retain or ascend to power.

The signing of the Arusha Peace and Reconciliation Agreement and the Pretoria Protocols signified the beginning of a return to peace in Burundi, and a long healing process. Internally displaced persons and refugees in neighbouring states have started returning to their home areas, albeit with varying degrees of hope and skepticism. While political negotiations continue with the aim of bringing on board the FNL and ironing out differences among all parties, it is feared that large scale return of refugees to a country ill-prepared to receive them – especially in the context of unresolved land disputes – could trigger violence and undermine the gains made in the implementation of the peace accords. In this regard, the successful repatriation and resettlement of refugees and IDPs hinges on more than physical security and guarantees, because fundamental issues and grievances, particularly inequitable land distribution, must be addressed to bolster and sustain public confidence in the Transitional Government.

Regarding livelihoods, it is important that the government seeks ways and means of providing alternatives to subsistence in agricultural production, given the shrinking land resources. Also, in line with the global tendency towards regionalism, Burundi should endeavor to fulfill any necessary steps in order to gain membership of regional economic blocs such as the East African Community or the Common Market of Eastern and Southern Africa (COMESA), a move that could open the regional labour market as a solution to the demographic challenge inside Burundi.

Recognition of the existence of oppressive structures that have been put in place by the ruling elite in Burundi will significantly change perceptions about the nature and conduct of the conflict. Land tenure issues affecting the majority of the population must not be subordinated to political settlements negotiated to satisfy sectarian interests of an elite few. Stakeholders must therefore lobby the Government of Burundi to institute comprehensive land tenure reforms that will not only address inequitable land distribution, streamline land management and administration, and shift control of land resources to an independent body subject to external scrutiny, but also assure tenure security for the rural poor. Due to the complexity of issues at hand, all of which need immediate attention, Burundi might need to borrow a leaf from the book of ‘best practices’ on security of tenure and access to land from other countries with similar experiences to effectively address its own challenges posed by unresolved land disputes and complex land law.

At the time of writing, the political situation in Burundi is quite fluid given the fact that the country is now in the last phase of a three-year transition period. As the implementation of the Peace Agreement labours on, the situation is complex and any recommendations at this stage may be overtaken by events in a short while. For instance, according to the Arusha Agreement, elections should be held by 31 October 2004, but several Burundian political parties were opposed to this date, and proposed to extend the three-year political transitional period by one year. While the risks of the country going to the polls unprepared is very great, there may also be risks in delaying the election, particularly if this entails a more general revision of the Arusha Accords, which would open the way for more disagreements. Due to various obstacles, the elections were delayed and will now take place in 2005.

A regional summit meeting under the auspices of a regional initiative to restore peace in Burundi on 5th June 2004 urged the parties to stick to the Peace Accord and to begin the country’s electoral process. Regional leaders also imposed immediate ‘restrictions’ on the FNL and mandated the African Union’s newly formed Peace and Security Council to recommend further punitive actions against the FNL, which is yet to sign a ceasefire agreement with the government. These actions are intended to ensure that the FNL no longer constitutes a threat to security. In addition to the political maneuvers, informal negotiations and formation of unofficial alliances by elites and political parties as elections approach, the number of refugees returning to Burundi has increased steadily, posing new challenges to the Transitional Government, particularly with regard to the question of land allocation.

Taking these dynamics and the protracted nature of the Burundi conflict into consideration, this chapter makes recommendations to relevant stakeholders to address pertinent issues in two time frames – the short term and the long term – with a view to mitigating the possibility of renewed violence in the run-up to or shortly after the elections, and also to address underlying structural causes of conflict.
**Short-term recommendations**

In the short-term, a number of important issues need to be urgently addressed, including legal, political and social preparations for elections; disarmament, demobilization and reintegration; and negotiations with the FNL. However, other organisations are better-placed to map the way forward on these issues. We have restricted ourselves to making recommendations which are directly related to the land-related issues discussed in this section. All such programmes will require the support of the international community, which greatly reduced its aid to the country between 1992 and 2003. It is essential that the more than US $1 billion pledged at donor meetings in early 2004 is disbursed in a timely fashion.

1. **Build the capacity of institutions handling refugee repatriation and integration**

The CNRS, the institution mandated with handling all matters related to reinsertion of victims, lacks technical and financial resources, and its effectiveness is compromised by lack of autonomy from the Ministry of Rehabilitation and Resettlement of the Displaced and Returnees (MRDRR). Consequently, displaced persons returning to their homes are not receiving adequate services and their problems are not addressed to their satisfaction, which is breeding resentment and apathy. It is therefore recommended that enough funds be allocated to CNRS to carry out its mandate, while its functions should be separated from those of the Ministry to give it autonomy of operation. Its technical capacity should be improved by the appointment of competent civil servants with the requisite knowledge of repatriation and related matters, as well as effective devolution of some responsibilities to the relevant civil society organisations or international institutions. Donor support to the CNRS should be generous in order for it to achieve its objectives; but should be contingent on it being able to use its funds independently and transparently, and on effective coordination with other institutions.

2. **Strengthen dispute resolution mechanisms**

As noted in the text, the institution of the Bashingantahe has wide-ranging roles in dispute resolution at the community level, and it enjoys significant legitimacy among the population across the ethnic divide. Although the institution’s effectiveness and esteem have been curtailed by political interference and allegations of corruption, the elders continue to be relied on and consulted in many regions and cases of disputes. It is therefore recommended that the institution be revamped and strengthened by official recognition of its role as a community-based peace mechanism, with membership decided through participatory local elections, similar to the ‘original’ style of recruitment of Bashingantahe elders, in order to restore the institution’s esteem and steer it away from political interference and corruption.
3. Implement education and advocacy around land tenure issues

In post-conflict Burundi, the reconstruction of destroyed infrastructure and the development of necessary administrative institutions at the centre may overshadow or ignore salient concerns and priorities of the population at the community level, such as access to land and governance issues. Civil society organizations at the grassroots and national level should lobby the government to maintain land access issues on the political agenda. They should particularly advocate against discriminative attitudes and practices with regard to land ownership by the Batwa, women, the long-term displaced and others.

NGOs such as League ITEKA and Global Rights should be supported in their efforts to provide human rights and legal education to promote tolerance and co-existence, and to provide legal clinics for land-related disputes. Civil society organisations should also be supported in educating the population about the provisions of the Land Code, when it is finalized. In particular, rumour-mongering or political manipulation of land disputes should be countered by a campaign of full transparency in decision-making, on the part of the government as well as civil society partners who will have monitoring and dissemination roles. They should also lobby the government to take measures to enable the population to plan the size of their families more effectively.

Long-term recommendations

These recommendations constitute actions and policy decisions designed to eradicate the underlying structural causes of conflict in Burundi. These should be undertaken in conjunction with other initiatives, such as peace education, the formulation and implementation of comprehensive and fair policies on impunity, and further support for the independent media.

1. Institute land policy reform

One of the main causes of grievance among the people of Burundi regardless of ethnic affiliation is the unequal distribution of land, which has ensured the concentration of wealth in the hands of a few elites, mainly from the southern province of Bururi. The disparity in land ownership is also significant. A policy, or a clause in the Land Code, should also be formulated to limit the size of land holdings per individual in order to help redistribute land resources. The land registration systems and procedures should be reviewed and reformed to be more accessible and transparent to ensure effective land administration and management. Local land records and information systems can be used to generate information and records on land rights, transfers or other transactions, and land use. These aspects can limit conflicts over ownership and enhance tenure security for those using the land.
The operation of land markets is unlikely to benefit the poor due to the distorting effects of war and displacement and the massive disparities of income in the country. The operation of land markets should be carefully monitored in order to identify trends and means to mitigate some of the negative effects.

Women’s unequal access to land and consequent tenure insecurity in Burundi stems mainly from discriminative inheritance patterns, but is reinforced by their political and economic disempowerment, as well as gender-insensitive legal, administrative and regulatory frameworks. The current law should be amended to include a provision allowing for equal access to land and property for women. The law should be amended to protect women against arbitrary dispossession, and to provide the legal basis for women to inherit some land and property upon being widowed or separated. NGOs need to do more capacity building for women so that they know their rights, and include men in such training so that they are not resistant to reforms to include women.

2. Encourage decentralization of resources and power

As noted in the text, control of the state amounts to control of the country’s economic resources and foreign exchange, as well as institutions charged with land allocation and management. State power is therefore the ultimate prize which elites, regardless of ethnic affiliation, struggle and fight to gain or retain. The government, with the help of the international community, should encourage the development of the private sector to deconcentrate the responsibilities and resources of the government. Rigorous checks need to be put in place to ensure that this process does not come to be dominated by a small politically-connected group, as has been the case in other countries. In addition, infrastructural and market development should be balanced to avoid regional disparities.

3. Support off-farm livelihood alternatives

Most of the population in Burundi is rural and subsists on agriculture. Given the chronic land shortage, agriculture is no longer a viable means of livelihood and there is need to diversify income-generating activities. Efforts should be made to develop the private and informal sectors through vocational training and promotion of micro-finance enterprises to provide self-employment in non-agricultural domains. The government, with the help of donors, should provide funds for such programmes. Revolving funds or micro-credit facilities could be promoted among women’s and youth groups or individuals. Particular attention should be paid to demobilized soldiers and ex-rebels so that they do not revert to war or crime. Besides allocating them with land, vocational training opportunities should be availed with the help of NGOs and religious organizations. These efforts should be seen within the long-term development of a regional labour market.
4. Revive regional economic cooperation

In July 2004, the foreign ministers of Rwanda, Burundi and the DRC agreed to revive the Economic Community of the Great Lakes Countries, which will aid regional cooperation, particularly in the various economic, energy, conservation and social development sectors. Besides the economic gains of such regional cooperation, the initiative aims to consolidate peace and stability, as a prerequisite to promoting cultural, scientific and economic cooperation, besides allowing for the free movement of labour. Whilst remaining cognisant that there are serious political obstacles to this, and thus avoiding excessive spending on insubstantial activities, the international community should support this initiative with the requisite resources and technical expertise.

Before, during and after the colonial period the rural populations in Burundi have established mechanisms to diffuse the land and fiscal pressure through temporary or permanent migrations towards Tanzania, the DRC and Uganda. At the end of the 1970s and early 1980s, the governments of these countries endeavoured to institutionalise those movements, in particular within the CEPGL (Communauté Économique des Pays de la Région des Grands Lacs), but war put an end to this effort. The concept remains important. For instance, Tanzania, with its large territory and political stability, could be a key player in resolving the population/land question in Burundi and Rwanda by hosting development projects and allowing settlement of the landless displaced in its Kagera and Kigoma regions. Currently, the Tanzanian Government opposes such an arrangement, but with continued negotiations and the support of the international community, mutually beneficial terms could be identified.

5. Further research and information dissemination

Much has been written about the causes of the conflict in Burundi, the actors, duration and resolution mechanisms, but there remain lacunae in information about such factors as the impact of long term displacement on the society, the prevalence and implication of HIV/AIDS; long term solutions to the problem of land scarcity in the midst of soaring population growth, the plight of demobilized ex-rebels and ex-soldiers, and other issues that have a direct bearing on sustainable peace. Discussion among stakeholders should focus on the implications of the interface between forced population displacement, conflict and land tenure in order to guide policy formulation and implementation with a view to preempting conflict. Gender, regional and ethnic differentials in land access and utilization should be further explored to identify necessary legal, institutional and socio-cultural measures or innovations through which women and the landless majority can be helped to secure land and security of tenure.

Like-minded organisations inside Burundi and beyond should foster greater collaboration and networks through formation of theme groups (for example, on HIV/AIDS, land rights, refugees etc) not only to profile
the issues, but also avoid duplication and competition. Moreover, findings should be shared with policy makers with a view to contributing to political processes such as peace talks, and influencing positively government decisions on emotive issues such as land and migration, which often underlie conflict.

Access to land and tenure security is a fundamental element of stability and sustainability in post-conflict Burundi. Research should be conducted in order to help policy makers to be sensitive to the highly varied and fluid nature of land-related issues in post-conflict Burundi, particularly in the context of refugee returns. There are no easy or uniform answers. It is therefore imperative to take the needs of each stakeholder into consideration, and to co-ordinate government policy activities with the activities of local and international NGOs and the needs of local people in order to identify the main areas of concern and potential conflict.

ENDNOTES

1 Considerable input and fieldwork data was also provided by Jenny Clover and Jean-Marie Gasana of ISS, and the chapter was reviewed by Arnaud Royer.


10 See for example R Kitevu and J Lind, Enhancing the Arusha Agreement: Environmental aspects of the Burundi peace process,


12 ICG assert that these people were essentially being used by UPRONA to pressurize the President. See International Crisis Group (2003), Réfugiés et Déplacés au Burundi – Desamorcer la Bombe Foncier. Africa Report N°70, 07 October 2003.


15 See A Hatungimana, and J Ndayishimiye, op cit.


18 The Bashingantahe are a local council of elders, who customarily resolve community disputes.

19 Burundi has an area of 27,830 km², about 6,224,000 inhabitants.


28 Interviews were conducted by ACTS researchers as well as by Jenny Clover, and Jean-Marie Gasana of ISS, who also provided access to a number of important documents. Key informants included government officials, NGO and UN representatives, community and religious leaders, internally displaced persons, returning refugees, youths, demobilized ex-rebels, community opinion leaders, scholars, elders and members of the general public. Document analysis was also undertaken on records related to land policy, adjudication of land issues, and literature on land ownership, displacement, repatriation, and related issues.

29 These percentages may not be accurate given widespread intermarriage and the effects of genocide and displacement. They also leave out members of the Ganwa sub-group and immigrant communities. See R Lemarchand, 1997, op cit. p 6.

30 Two distinct ‘schools of thought’ prevail regarding Hutu-Tutsi relations. Some people insist there is no ethnic difference between the two communities; that what there exists is a normal socio-economic difference, a division of labour between pastoralists and agriculturists (this was the line taken by many members of the RPA in neighbouring Rwanda, for example). On the other hand, others – particularly Hutu extremists - maintain that the two are distinct peoples with different origins, histories and racial characteristics. See S Jackson, *Regional conflict formation and the “Bantu/Nilotic” mythology in the Great Lakes*, Centre for International Co-operation, New York University, 2002.


36 The most notable of the rebel groups were the CNDD, FDD and PALIPEHUTU (the latter of which pre-dated the events of 1993). Many of them later disintegrated into rival factions, further complicating the attainment of a ceasefire. For instance, PALIPEHUTU-FNL is better known for its radical stance and military capacity than for local mobilization or area of influence.
37 The operations included violent street demonstrations and riots, looting, burning of vehicles and homes, beatings and other acts of hooliganism and civil disobedience intended to breed fear and chaos with the effect of bringing all business and activities in the city to a standstill. See L Ndikumana, 2004, op cit.
38 In addition to the effects of conflict, the sanctions sent commodity prices soaring, contributing to a 36% increase in the general price index over the course of the first year alone and virtually doubling the average family’s household costs. By the time they were lifted three years later, the cost of living had increased by 50%, the exchange rate had fallen and state structures had weakened. See United Nations Resident Coordinator System in Burundi, 1998, pp 16–17.
42 Its leader, Pierre Nkurunziza was appointed the Minister of State for Good Governance, the third highest ranking position overall in the political hierarchy in Burundi. The president and the vice-president cannot, according to the agreement, make any security-related appointment decision without consulting him. Two other ministerial positions were allocated members of the rebel groups.
43 Agathon Rwasa’s faction of the FNL maintains that negotiations should be between the armed Hutu groups and the Tutsi dominated army, which they perceive as wielding power in Burundi, not the government.
Most of the rebel movements rely on informal bases in neighbouring countries and military support from other countries in the region.

M Carnegie, UN says Rwanda, DR Congo fighters may have carried out Burundi slaughter, Agence France-Presse, 24th August 2004.


Since this report was initially drafted, the draft electoral calendar was changed due to logistical problems and political negotiations. and foresees a constitutional referendum in June, commune elections in July, Commune elections in August and subsequently parliamentary and presidential elections in October. Both Maj. Pierre Buyoya and the incumbent are not eligible to stand in these elections and the president will be chosen by a vote of two-thirds majority of the National Assembly and the Senate.

President Ndayizeye signed two decrees formalizing the agreement between the government and the CNDD-FDD in January 2004. The first decree, signed on 7th January, appointed 33 members of the Joint Military High Command (20 from the army and 13 from the CNDD-FDD). The second decree elaborated the mandate of the Joint Military High Command as being to propose the structure and size of the proposed new Burundi National Defence Force.

The Transitional Assembly adopted the legislation for the establishment of a National Truth and Reconciliation Commission in April 2003, but the legislation remains stuck in the Senate.

Protocol I Article 7 (19).
Protocol I, Article 7 (25c).
See for example Protocol IV.
See for example The national refugee policy, the United Republic of Tanzania, Ministry of Home Affairs, (undated); and for a detailed analysis, M Fellesson, Prolonged Exile in Relative Isolation: Long-Term Consequences of Contrasting Refugee Policies in Tanzania, Acta Universitatis Upsaliensis Studia Sociologica Upsaliensia 49, Uppsala Universitet, 2003.
Lemarchand, op cit. p 12.

In traditional hierarchical Burundian society, the Ganwa were the ruling princely class. They had wide ranging powers to enforce labour, extract taxes and distribute land to the Hutu, Tutsi and Twa. Factional rivalries between royal princes were common – notably between the Batare and the Bezi – compelling each to resort to family, cattle clients and local peasantry for support. Such political rivalry intensified during the colonial era, and is thought to have
contributed not only to the decline of the social system that allowed social/ethnic mobility, but also to regional rivalries. See R Lemarchand, *Rwanda and Burundi*, 1st ed, Pall Mall Press, London, 1970.

58 For greater analysis of these dynamics of Hutu-Tutsi ethnic relations and the subtle rankings within each group, e.g. based on clan or kinship affiliations, see R Lemarchand, 1997, op cit. pp 2–16.


67 The civil service is yet to be restructured to accommodate equitable ethnic distribution, though a few key posts such as ambassadorial positions have been given to Hutu. See JM Gasana and H Boshoff, *Burundi: Critical Challenges to the Peace Process*, *ISS Situation Report*, 16 September 2003.

68 Recently, provisions of the Arusha Peace Agreement and the Pretoria protocols have seen an increase in the numbers of Hutu in the civil service and the security forces from CNDD-FDD and other political groups.

69 Interview with aid agency personnel.


77 In 1996 the Government of Burundi embarked on a ‘regroupment’ policy of forcing the civilian population, mostly Hutu, to leave their homes and relocate to camps guarded by armed forces.


79 Some Burundians argue that people are forced to move out of their homes so that their property can be stolen, or their land fraudulently acquired by influential individuals. Interview with a Burundian refugee in Kawangware, Nairobi on 5th May 2004. See section 5 on land disputes.

80 The phenomenon of ‘night commuters’ or seeking refuge in urban centres and other safe areas by night and retuning home during the day is common in most rebel-controlled areas of the Great Lakes region.

81 Many NGOs operating on the ground assert that Tutsi camps are generally better serviced than Hutu ones. However, the reality is more complicated because this generalization does not apply to displacement situations in such places as Kirundo and Muyinga where the majority of the Tutsi do not have access to water, sanitation or permanent housing.


84 Interview with international NGO personnel, Bujumbura, May 2004.

85 See Bikwemu *et al*, 2003, op cit.


87 Interview with JRS personnel, Bujumbura, May 2004.


89 Interview with JRS personnel, Bujumbura, May 2004.

91 For greater analysis of Twa lives, livelihoods and culture, see D Jackson, 2003, op cit.

92 Interview with a Burundian refugee living in Kangemi, Nairobi on 20th April 2004.

93 Often, gender roles change. Trauma, alcohol abuse and poverty predispose families to situations of stress and domestic violence, which ultimately leads to divorce or separation. See P Kamungi 2001, op cit.


95 Interview with Burundian refugees in Nairobi, 19th April, 2004.


100 Interviews with Francois Ngendahayo: Minister of Repatriation, Reintegration and Reconstruction; Terence Nahimana, MP; and NGO personnel, Bujumbura, April 2004.

101 These NGOs include Global Rights and League ITEKA.

102 Most of the refugees who fled due to violence in 1988 returned to their hills within six months.

103 Nyanza-Lac and Rumonge are the classic cases of especially problematic areas.


105 Interview with IRIN staff who had conducted research in the refugees camps in Tanzania.


108 According to some analysts, Tanzanian authorities’ estimates of the number of refugees include Burundian migrants who settled in Tanzania during the colonial period. Consequently these estimates are an exaggeration of the true number of refugees. UNHCR offers a
figure of 100,000 but these are only registered refugees, in known locations; UNHCR, *Operation plan for the repatriation and reintegration of Burundian refugees* (Draft), Bujumbura, February 2004.

109 Interview with UNHCR personnel, Bujumbura.

110 Personal communication with Burundian official, Nairobi.


112 UN-OCHA, *Internally displaced populations and displacement sites in Burundi*, March–April 2004


115 International Crisis Group, 2003, op cit provide the example of the Chief of Vyanda, who allegedly occupied 10 ha of land in Kigwena Zone.


117 Survey carried out by the Ministry for Rehabilitation and Reintegration of Displaced Persons in March and April 2004. However, the figure did not include those temporarily displaced in Bujumbura Rurale, and those living with host communities. <www.irinnews.org> 12th May 2004.


120 Thousands of refugees voluntarily (spontaneously) repatriated to Burundi in 2003, a development hailed by many as an encouraging sign.

121 This brings the total number of repatriations to 188,000 since the operations began in 2002. See IRIN, *UN Refugee Agency Opens New Border crossing with Tanzania*, <www.reliefweb.org/countries/Burundi>, 23 June 2004.


123 Such restrictions on refugee movement include household curfews between 8 pm and 6 am; no movement of refugees outside some camps, and other camps’ perimeters; no permits for any refugee to travel outside some camps, including for medical emergencies; and arrests of refugees who are traveling with issued permits. These restrictions are arbitrarily imposed by local officials and are accompanied with various forms of harassment. See Refugees International, *Burundian refugees in Tanzania: Between a rock and a hard place*, June 2003.
Refugees get supplementary income by trading in local markets or cultivating the fields of local Tanzanians where they are paid in kind, e.g. food.

Interviews with JRS personnel, May 2004.

For instance, according to Refugees International, in November 2003, individuals wearing uniforms similar to the Tanzanian police burned markets and stole items belonging to the refugees in Lukole, Ngara and Kibondo Districts. Incidents of banditry and assaults, including pillage and rape, have increased, both outside and inside the refugee sites. See Refugees International, Burundian refugees in Tanzania: Mounting pressure to return, 23 March 2004.

Interview with Burundian refugee, Nairobi, April 2004.

For instance, members of the armed forces have allegedly distributed arms to unofficial Tutsi self-defence groups or ‘Peace Guards’ in response to increased armed crime. See Amnesty International, UN-OCHA, Internally displaced populations and displacement sites in Burundi, March–April 2004.

Based on interviews conducted by ACTS in May 2004. Names have been changed.

Interviews with Burundian refugees, Nairobi, May 2004.


However, cases involving very valuable property may go directly to the Tribunaux.


League ITEKA, Monitoring des répatriés. Bujumbura, December 2003


Interview with FAO representative in Bujumbura, April 21 2004.


Ibid.

Interview with World Bank staff, Bujumbura, May 2004.

See for example IRIN-BURUNDI, Returnees stage sit-in to demand food, shelter, 8 April 2004.


For example, the appropriateness of Mr Nzeyimana, Vice president of the CNRS is questioned as he is known for his extremist political positions and for having organized the ‘dead city’ operations in Bujumbura in 19994/95.


Interview with JRS staff, may 2004, Bujumbura.

Protocol IV deals with issues related to resettlement and reintegration of refugees and _sinistres_, assistance for vulnerable groups, the equitable redistribution of wealth and reconstruction of damaged infrastructure. See _General conclusions of the report of committee IV of the Arusha Agreement on Peace and Reconciliation in Burundi_, August 2000.

A Hatungimana, and J Ndayishimiye, 2003, _op cit._

For instance, most of the $US 1.2 billion pledged in conferences since December 2000 has not been released to the government, as donors opt to channel resources to non-governmental entities for relief and humanitarian assistance, partly out of doubt as to the absorptive capacity of the government, slow implementation of the provisions of the Arusha Agreement and because of ongoing violence and insecurity in the country. See ICG, _A Framework for Responsible Aid to Burundi_, _Africa Report No.57_, February 2003.


Estimates vary significantly from source to source, either due to differences in definitions, or difficulties in data collection during the conflict.


J Lind and K Sturman, (eds.) _op cit._


Decrees No.1 and 1/19 of 1977 also established the ‘Mandi Commission’ to look into land acquisition malpractices in the wake of the 1972 genocide. However, the Commission’s findings were never implemented as the legal procedure it afforded the aggrieved did not provide them the opportunity of appearing in court to reclaim their property without placing them in the very danger they had fled.

Interviews, Bujumbura, April 2004.

Personal communication with Burundian official in Nairobi.

R Lemerchand, 1997.

Nindorera Agnes, _Ubushingantahe as a Base for Political Transformation in Burundi_, _Working Paper No. 2_, _The Boston_


168 Initially, the *Mushingantahe* title was conferred upon the most deserving person(s) by a council of *Bashingantahe* at the end of a period of preparation, training and initiation to the function. See Ngorwanubusa, Prof J, *The Institution of Bashingantahe and the Universal Ideal of Mankind*, in *Multidisciplinary Study on the Revival of the Institution of Bashingantahe*, op cit.

169 Interviews with League Iteka and other civil society institutions, Bujumbura, may 2004.


172 Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Protocol 2, ch 1 article 9 para 8

173 NGOs include CARE International interviewed in Bujumbura, May 2004.

174 Personal communication with Burundian official in Nairobi, May 2004.

175 Interviews with civil society organisations, Bujumbura, may 2004.

176 Interviews with Burundian journalist and student in Nairobi, October 2003


180 Based on interviews conducted by ACTS in May 2004.


183 Interview with Technical Director of CNLS, May 2004.
Author interview with 45 year-old female Burundian refugee in Nairobi, 18 May 2004.


Based on interviews conducted by ACTS in May 2004. Names have been changed.


However, use of chemical inputs presumably in coffee plantations has led to 80% of soils in Burundi being categorised as ‘chemically degraded’ by the FAO. See A Hale, Burundi’s Regroupment Camps: Environmental Decline and the Role of Collective Discontent” in *International Third World Studies Journal and Review*, Vol. 13, 2002.


Oxfam GB. *Value chains or slave chains? An economic analysis of crisis in the coffee sector in Burundi*. Nairobi/London, 2002

ibid.


ibid.

Oxfam GB, op cit.

ibid.

This case study is summarized from a field report by Jenny Clover and Jean-Marie Gasana, ISS, based on fieldwork conducted in April 2004.


Interviews, April 2004.

Summit and Polzer, op cit.

Interview with League Iteka personnel, Bujumbura, May 2004.


Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Chap 4 art 8 para i.

Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Chap 4 art 8 para h.

Chap 4 art 8 paras b, c, and k.


V Nikumasabo, E Ndaye, D Nindorera, op cit.

See Musahara and Huggins, this volume.
209 Interview with Director General, Ministry of Environment, Bujumbura, April 2004.