



1999 Michael S. Miller

# TANZANIA

## IN THE NAME OF SECURITY Forced Round-Ups of Refugees in Tanzania

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## I. SUMMARY

I fled Burundi in 1972 and came to Tanzania. I have lived in Rusaba B settlement in Tanzania since that time with no problems. My seven children were born in Tanzania. We get along with our neighbors. We contribute to the community. We helped to build the schools. We have given money for community development. We are thankful to the Tanzanians for giving us land and a life. I was able to cultivate the land and even produce oil for selling. I never thought that the Tanzanian government would do this to us. At about 8:00 a.m. on November 25, 1997, I saw an army vehicle. They were rounding up people and ordering them to hurry up, collect their things and get into the lorry. I was at home with one child. My other children had already gone to farm. I was too scared to disobey. I tried to tell the army people that I needed to find my children, but they said, "You go, your children will follow." I got into the vehicle and was taken to Manyovu. I was crying because I did not know what would happen to my children. A hospital nurse was at Manyovu and she calmed me down. For two days, I had no contact with my children. Finally I was able to send a message to them. I am now held in the refugee camp, but my children are still outside. I would like them to come, but they have sent me a message that they have no money to come here. I am not allowed to leave the camp to find my children.<sup>1</sup>

This Burundian woman is one of the tens of thousands of refugees rounded up by the Tanzanian army, separated from her family and stripped of her belongings before being confined to the refugee camps in western Tanzania. These refugees are caught up in the spill-over consequences of conflict in the Great Lakes region and are the unfortunate victims of the Tanzanian government's indiscriminate response to insecurity on its country's borders. While national and border security issues are clearly a priority for any government, Human Rights Watch believes that long-term security interests are best served through the implementation of mechanisms that uphold the rule of law. Ultimately, abusing the human rights of refugees and indiscriminately criminalizing all refugees without due process or individual accountability does not provide for the most effective or sustainable security policy. The blanket presumption that all refugees pose a security threat and can therefore be indiscriminately rounded up and confined in camps appears to be more a part of the pattern of deteriorating respect for refugee rights in Tanzania rather than a legitimate response to a valid security concern.

Tanzania has historically been one of the more welcoming refugee hosts worldwide. It has provided safety and refuge to thousands of African refugees for many decades, going as far as to offer land for settlement, integration, and even citizenship at times. Despite the heavy burden of hosting such large populations, Tanzania, to its credit, has continued to provide a haven to some 345,000 refugees fleeing largely from the intractable conflicts in neighboring Burundi, Democratic Republic of Congo, and Rwanda. However, the influx of refugees since 1994—and the attendant crime and insecurity caused by militants among the refugees, economic strain, and environmental degradation—have resulted in a growing hostility towards refugees in Tanzania. Unfortunately, some of the policies being adopted by Tanzania are undermining refugee protection in violation of international law, and reversing the long and generous asylum tradition that Tanzania has been so well-respected for.

In late 1997, the Tanzanian government ordered the army to round up all foreigners living outside refugee camps, asserting that this was necessary to protect Tanzanian citizens living close to the border with Burundi. The Burundian government had alleged that Burundian rebels were engaged in arms trafficking and cross-border incursions and had threatened to act if the Tanzanian government did not. With little or no notice, the Tanzanian army swept through towns and villages close to the Burundian and Rwandan borders apprehending tens of thousands of foreigners. These refugees and migrants were given the "choice" of being forced back to their country of origin or relocated to the refugee camps. Although Congolese and Rwandans were also affected, the bulk of the refugees and migrants rounded up were Burundian, including a large number of "old caseload" Burundian refugees who were uprooted after having lived peacefully on settlements allocated to them by the Tanzanian government as far back as the 1970s.

Human Rights Watch interviewed approximately 200 Burundians subjected to the round-ups. This report deals only with the experience of Burundian refugees, although refugees of other nationalities were subjected to the same ordeal. Moreover, this report concentrates particularly on the old caseload Burundians who have been more detrimentally affected due to their unique longstanding history in Tanzania, rather than post-1993 refugees who were placed in the refugee camps upon arrival.

Without exception, the refugees interviewed spoke of the hasty, and sometimes rough, treatment experienced at the hands of the Tanzanian army and local militia groups, *sungu sungus*, who seized them from their homes and farms with no opportunity to locate all their family members or pack their belongings. Army and militia men often demanded money from refugees, and in some places refugee homes were looted by Tanzanians. Refugees were often ordered to walk miles—many with young children—to a transit center. Those who walked too slowly risked being hit with batons by army escorts. When the army did use vehicles to transport some, it often demanded that the refugees pay for the petrol costs. Many of the refugees interviewed by Human Rights Watch were separated from their husbands, wives, or children during and after the round-ups. In several cases, Human Rights Watch interviewed Tanzanian women, married to Burundian men, who were living in the refugee camps because they did not want to be separated from their families. Following a cursory screening by the Tanzanian authorities that fell far short of due process guarantees, thousands of refugees were taken forcibly to the refugee camps administered by the United Nations High Commissioner for Refugees (UNHCR).

Many of the old caseload refugees who had built homes, farms, and livelihoods in the government-provided settlements spoke with regret about their destroyed communities, empty, looted homes, and ruined crops. Others spoke of the fear and anxiety that plague them, believing that if the Tanzanian government could change its treatment of them so abruptly it could as easily return them to face violence or even death in Burundi. Others spoke with anger and frustration about the unfair manner in which they have been treated as criminals without an opportunity to defend themselves.

After the round-ups, refugees were strictly confined to the camps, denied even the standard temporary permission that is routinely granted to other refugees to visit family members or the nearby market. Over time, however, the authorities in the area have relented somewhat, and many of the refugees have left the camps to locate family members or have returned to their homes. However, this latter group continues to live with the uncertainty and fear that they could be subjected once again to the arbitrary mistreatment that was meted out to them during the round-ups. Furthermore, those who have returned home have found their personal belongings gone, their schools and other community institutions closed, and relations with their Tanzanian neighbors fraught with distrust.

The Tanzanian government has legitimate security concerns. The conflicts in neighboring Rwanda, Burundi, and the Democratic Republic of Congo can, and have, spilled over in the region. The reports of cross-border militant activity, recruitment and training of refugees by rebel groups, intimidation, extortion of food or money from refugees and local residents by militants, and weapons flows through Tanzania are serious national security concerns that the Tanzanian government must address. Along the border area, crime and banditry have increased in the past few years. Furthermore, it is likely that conditions within Burundi, Rwanda and the Democratic Republic of Congo are not likely to improve sufficiently for these refugees to return to their places of origin any time soon.

However, nationality-based round-ups, forced confinement in refugee camps, and the lack of due process rights are fundamentally inconsistent with the Tanzanian constitution as well as international and regional human rights and refugee law. Since these round-ups contravene several provisions of the Tanzanian constitution and international law, they cannot, as the government asserts, be considered legal actions under the Tanzanian 1995 Immigration Act and the 1995 Citizenship Act. Tanzania has the right to question foreign nationals who have not followed the requisite legal procedures for residence, but, not through mass round-ups. The Tanzanian government policy of confining *all* refugees on the grounds that *some* may pose a security threat, denies refugees a fair opportunity to contest their confinement and places no limit on the period they may be held in this manner. Due process protections require that if the government suspects members of a group of being involved in criminal or rebel activity, that it should not take collective steps

against the entire community but, rather should charge those individuals as warranted before a competent, independent and impartial tribunal. Yet, of the thousands confined to the Tanzanian refugee camps since the October 1997 round-ups, not one has been afforded the opportunity to contest the government's actions or to return to their home with assurances that they will not be uprooted in this manner again.

The Tanzanian government's rationale for conducting the refugee round-ups was security. Yet, the government has made no effort to investigate or enter charges against any individuals rounded up for this alleged rebel activity. Perhaps this is because there was no legitimate reason for suspecting all of the refugees of criminal activity. As our interviews show, many of those brought to the camps were the least likely of engaging in rebel activity: the aged, women, and children. According to some relief workers in the camps, the round-ups may actually be counterproductive to the promotion of security in Tanzania. Forcing Burundian refugees into the camps in this manner can only fuel resentment against the Tanzanian government; bolster the Burundian government's threats to invade by reinforcing the erroneous accusation that all Burundian refugees are rebels; push refugees to identify more closely with the Burundian political alliances in the camps because of the hostility they have experienced at the hands of the Tanzanian army; increase the likelihood of rebel recruitment among the old caseload refugees who have gone from being self-employed farmers to idle refugees situated in camps close to the border; and create distrust between the local population and refugees.

Expediency affords no defense for the abrogation of human rights, particularly when alternate means that do not criminalize and mistreat all refugees are available. The Tanzanian government's defense—that there was no time to conduct such inquiries—simply cannot withstand scrutiny. The Tanzanian government can take other steps to address security, such as increased police patrols and intelligence surveillance along the border or among communities with high numbers of Burundians, the relocation of settlements with Burundians further away from the border, and the investigation and prosecution of those Burundian individuals responsible for criminal activity. Each of these proposals would allow for a more sustainable and rights-respecting security policy over the long term. Human Rights Watch is fully aware of the financial and administrative burden that these alternate security measures would pose to Tanzania's already overburdened judicial and law enforcement branches. The international community bears some responsibility to ensure that the necessary financial support is available to implement security policies that promote international human rights and refugee standards.

Although Human Rights Watch believes that the policy of nationality-based round-ups and the forced confinement of refugees in camps should be reversed in all cases, we are particularly concerned that the old caseload Burundians have suffered the greatest injustice. For over twenty-five years, this group of long-time refugees has lived on settlements provided by the Tanzanian government. Since they arrived in Tanzania, they were given the expectation and relied on the government's policy of local integration. This group has been self-sufficient and productive, contributing positively to Tanzania's development in the form of taxes and other contributions—indications that the authorities accepted their presence as legitimate. Their integration was further encouraged by the Tanzanian government itself, which made several offers of citizenship to this group. While some refugees did become naturalized citizens, others did not take advantage of this generous offer either due to ignorance, cost, the lack of a need for identity papers, or even psychological questions of identity and the unwillingness to give up hope of going home. To summarily uproot this old caseload, the bulk of whom have lived a lifetime peacefully in Tanzanian communities, to strip them without compensation of their livelihoods and belongings acquired over the years, to separate their families, and to forcibly confine them to camps where they are dependent on food rations, is a particular injustice. Human Rights Watch believes that the specific history of this group warrants special consideration by the Tanzanian government to reverse its decision in the case of these refugees since the expectation of integration and assimilation given to them differs from the more recent refugee arrivals who have routinely been referred to the refugee camps. Human Rights Watch is also concerned that UNHCR remain a vigorous advocate on behalf of those rounded up, particular the old caseload.

This report documents the injustices suffered by the Burundian refugees rounded up, and calls on the Tanzanian government: (1) to cease its policy of forced round-ups; (2) to seek alternate means to address valid security concerns near the Burundian-Tanzanian border that do not violate Tanzanian and international human rights and refugee law;

and (3) to restore the old caseload Burundians to their former status by returning them to their homes or to alternate and equivalent settlements farther away from the border. Human Rights Watch calls on UNHCR and the international community to play a more vigorous advocacy role in calling for the respect of refugee rights in the implementation of Tanzanian national security policy and for the reinstatement of the refugees who were rounded up, particularly the old caseload, to their homes or alternate and equivalent settlements. Funding and other support should be given by the international community to the Tanzanian government to strengthen its overburdened judicial and law enforcement capacity to deal with these issues in the border area.

## II. RECOMMENDATIONS

### To the Tanzanian Government:

- Do not use measures such as forced round-ups in order to address security concerns. Seek alternate means that comply with international law, such as increased police patrols along the border, the relocation of settlements or camps with Burundians farther away from the border, and the investigation and prosecution of those Burundian individuals responsible for criminal activity, such as arms trafficking or rebel training.
- Restore the old caseload refugees to their previous status and return them to their long-time settlements or to alternate and equivalent settlements farther away from the border. Local integration is one of the three durable solutions recommended by UNHCR for refugees.
- Grant permission to the refugees who were rounded up to leave the camps, particularly those who need to locate family members or to recover their property. At the least, refugees who were rounded up should be given the standard permits to temporarily leave the camp without discrimination in the same manner as other refugees.
- Property belonging to the refugees who were summarily rounded up should be restored to their refugee owners by the government. The government should instruct the local authorities to organize for the possessions of the rounded-up refugees to be returned to their owners. If property has been looted by the army, sungu sungu, or local residents, the authorities should organize to retrieve or compensate the refugees the market value of their destroyed or stolen property.
- The Tanzanian government should facilitate the process for the relatively small group of interested, eligible refugees to obtain their citizenship by making the process easily accessible to refugees in the camps. According to Section 10(1) of the Tanzanian Citizenship Act, any person with one Tanzanian parent is eligible for Tanzanian citizenship. Additionally, old caseload Burundian refugees are eligible to apply for Tanzanian citizenship. The government should consider making a one-time waiver of the citizenship fees to allow refugees who are unable to pay the fee to apply for citizenship.
- Amend the 1995 Citizenship Act to allow Tanzanian women to apply for citizenship on behalf of their foreign spouses, just as Tanzanian men are permitted to. The Citizenship Act discriminates on the basis of sex, contrary to the Tanzanian constitution and international law.
- Amend the 1995 Citizenship Act to allow second generation refugees who have been born and brought up in Tanzania to apply for Tanzanian citizenship. Under the current law, no refugees—even if they are born and brought up in Tanzania for generations—are ever eligible to apply for citizenship.
- Conduct public education and awareness programs on both refugee and community security issues in western Tanzania. If citizens and refugees are enlightened about their rights and responsibilities, it is more likely that they will cooperate with the authorities to uphold the rule of law.

**To the United Nations High Commissioner for Refugees (UNHCR):**

- As a protection priority, provide ongoing guidance and assistance to the Tanzanian government to ensure that measures adopted by the government to address security concerns comply with international human rights and refugee law.
- Vigorously advocate for the return of the rounded-up refugees to their homes and for refugees whose belongings have been destroyed or stolen by the army, sungu sungu, or local residents to be restored or compensated. In particular, UNHCR should actively maintain its call for the old caseload refugees to be assured residency rights and restored to their previously integrated status. UNHCR's mandate includes responsibility for seeking durable solutions for refugees, including local integration.
- Increase the number of UNHCR protection officers in the Tanzanian camps. The UNHCR Tanzania office does not have enough protection officers. Without a strong network of experienced and competent protection officers, regular monitoring and follow up work in such a refugee setting is difficult. As a result, UNHCR Tanzania has not played as consistent an advocacy role as it could have to assist eligible refugees to apply for citizenship, to reunite separated refugee families, or to press the Tanzanian government to reverse its policy on forced round-ups, particularly with regard to restoring the old caseload refugees to their settlements.
- Share security information more routinely and consistently among UNHCR country offices in the Great Lakes regions. Since the round-ups were ostensibly conducted in order to address security concerns, information on security in the border area is critical to refugee protection work. Greater information sharing between UNHCR offices in Burundi and Tanzania could assist UNHCR staff in Tanzania and the Tanzanian government in more effectively analyzing and addressing threats to border security and in maintaining the civilian nature of the refugee camps and the surrounding area to the extent possible.
- Assist those old caseload refugees who are eligible and interested in becoming naturalized Tanzanian citizens to file their applications. UNHCR should identify a local nongovernmental legal aid group that can serve as an implementing partner to assist refugees to fill and file the relevant citizenship forms and to follow up on their citizenship applications with the government.
- Issue birth certificates to refugee children born in Tanzania documenting place of birth and nationality. Some of these refugee children may later be eligible for citizenship or other residency rights.
- Create public education and awareness programs on both refugee and community security issues in western Tanzania. If citizens and refugees are enlightened about their rights and responsibilities, it is more likely that they will cooperate with the authorities to uphold the rule of law. Such programs should be aired on the local radio stations, including Radio Kwizira operated by Jesuit Refugee Service in the refugee camps.

**To the United Nations Development Program (UNDP):**

- Earmark some of the U.S.\$1.1 million that UNDP has allocated to Tanzania for governance programs to strengthen judicial and law enforcement capacity to deal with refugee issues, including training in refugee and human rights law for police and judicial staff, and public education and awareness programs to prevent xenophobia.

**To Donor Governments:**

- Actively call on the Tanzanian government to adopt security policies that do not violate refugee rights.

- Call on UNHCR and the Tanzanian government to take steps to restore the old caseload refugees to their former status and to return them to their settlements or to alternate settlements further away from the border.
- Earmark funding to UNHCR for a local Tanzanian legal aid nongovernmental organization to work in the refugee camps and settlements to assist interested refugees eligible for Tanzanian citizenship to fill and file the relevant forms and pay the application fee.
- Provide funding, training and other logistic support to the Tanzanian government to enable them to adopt alternate security policies that comply with human rights and refugee law. The Tanzanian law enforcement and judicial systems are currently overburdened and underfunded. Greater international support for the judiciary and police is required, including, among other things, training in refugee and human rights law, and increased security patrols in the border area and within the refugee camps.

### III. BACKGROUND: FROM OFFERS OF CITIZENSHIP TO INCREASED HOSTILITY

Tanzania has hosted refugees for decades.<sup>2</sup> Since the 1960s, refugees from Burundi, the Democratic Republic of Congo, Malawi, Mozambique, Rwanda, Somalia, South Africa, Uganda, and Zimbabwe have fled their countries for various reasons and benefited from Tanzania's generous asylum policies. For decades, Tanzania welcomed refugees, offered them land for settlement, integrated them among the local populations, and, on occasion, even made offers of citizenship to some of the long-term refugees.

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<sup>2</sup>As established in the 1951 United Nations (U.N.) Convention relating to the Status of Refugees, a refugee is a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country." The Organization of African Unity (OAU) 1974 Convention Governing the Specific Aspects of Refugee Problems in Africa further expands the refugee definition within Africa to include, "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge outside his country of origin or nationality." 8



Tanzania currently hosts the largest refugee population in the Great Lakes region with refugees coming mainly from Burundi, the Democratic Republic of Congo and Rwanda. The largest number among this group are some 274,000 ethnic Hutu Burundian refugees living in the refugee camps in Tanzania. They have fled the longstanding conflict in Burundi that has resulted in indiscriminate killing, rape, and torture of thousands of civilians by both the Tutsi-dominated government forces and Hutu armed opposition groups. Waves of violence have brought large influxes over the Burundi border to Tanzania particularly in 1972, 1993 and 1996, and a constant flow of incoming refugees continues to date.<sup>3</sup> Recent arrivals since 1993 have been placed in refugee camps along Tanzania's border with Burundi. Formal recognition of Burundi's acute political crisis was made in 1993, when the Tanzanian Ministry of Home Affairs determined that all Burundians in Tanzania qualified for prima facie refugee status on the basis of their nationality due to the unrest in Burundi. Additionally, some 200,000 longstanding Burundian refugees and migrants of the 1970s, known generally as "old caseload" refugees (and not included in the abovementioned UNHCR figure of 274,000), have lived for decades on several settlements provided to them by the Tanzanian government.<sup>4</sup> Many of these old caseload refugees were uprooted by the round-ups.

### **The Old Caseload Burundian Refugees**

Tanzania's welcome to the old caseload Burundian refugee population exemplifies its generous and model refugee policies of the past. Through the 1970s, Tanzania received a major influx of Burundian Hutu refugees following massacres in Burundi. The Tanzanian government welcomed them, allocated land for them to live and farm on, and allowed them to integrate into local communities in western Tanzania. These refugees were well integrated and assimilated into Tanzanian society either in refugee settlements or in existing villages along the border. At the time, UNHCR provided funding to augment the existing infrastructure. The refugee settlements were patterned after Tanzanian villages, and as in Tanzanian villages, the administrative structure of each settlement included a village chair, secretary and treasurer assisted by five committees for education, finance, development, security, and health. Over the years, the Tanzanian government even extended several offers of eligibility for naturalization to this group, which permitted them to apply for Tanzanian citizenship.

The policies of the Tanzanian government allowed refugees to become productive, self-sufficient members of the communities into which they were accepted. Within a short time, these refugees neither required nor received any assistance from the Tanzanian government or UNHCR. Refugees were able to cultivate the plots of land given to them and to contribute to the community around them, rather than be dependent recipients of food aid. By selling part of their harvest, refugees would earn some money and contribute positively to the Tanzanian economy. For example, near the Rusumo border area, there has been a large common market held on Saturdays where refugees and Tanzanians have traded for years. These refugees also contributed to the government and paid a monthly tax to finance public services. In many cases, these longtime refugees were so assimilated that they were allowed by the local authorities to become members of the ruling political party and even voted in local and national elections.

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<sup>3</sup>In a continuing civil war in Burundi, both government troops and insurgent Hutu opposition groups have slaughtered unarmed civilians on ethnic lines and carried out other egregious human rights violations. In October 1993, officers of the predominantly Tutsi army murdered Melchior Ndadaye, the country's first Hutu president, and other senior government officials elected freely and fairly several months before. The coup triggered country-wide violence in which Hutu attacked Tutsi and in turn faced attacks from the military. Tens of thousands of civilians were slaughtered following President Ndadaye's murder and hundreds of thousands fled to neighboring countries. A January 1994 transitional power-sharing government was short-lived when Maj. Pierre Buyoya seized power in a military coup in July 1996. To date, the army and security services and armed Tutsi political groups associated with them have conducted a creeping war against the civilian Hutu population through concerted campaigns of terror. Insurgent Hutu opposition groups fighting government forces have also been responsible for violating principles of humanitarian law. Diplomatic initiatives, led by former Tanzanian President Julius Nyerere, to negotiate an end to the war and to restore a multiparty democracy continue to date. Human Rights Watch, *Proxy Targets: Civilians in the War in Burundi*, (New York: Human Rights Watch, March 1998).

<sup>4</sup>This is a rough estimate currently used by UNHCR and the Tanzanian government based on a 1970s estimate of 80,000. Human Rights Watch telephone interview with UNHCR staff member, New York, April 22, 1999.

For example, in Ulyankulu settlement near Tabora, some 20,000 refugees lived in eleven villages. According to the June 1990 census, each family was allocated five hectares of land for food production in a 1,200-square-kilometer area with twelve primary schools, a vocational training center, a rural health center, five dispensaries, and fifty-five water wells. In Katumba settlement near Mpanda, a June 1992 estimate found that since 1974, some 84,000 refugees were settled in twenty-nine villages. There were twenty-four primary schools, one secondary school and one vocational school (attended by both refugees and Tanzanians), two health centers, six dispensaries, two to six water wells per village, and one cooperative. In Mishamo settlement in Mpanda, an estimate in June 1988 found that 35,000 refugees were settled in sixteen villages. The settlement contained sixteen primary schools, one health center, four dispensaries, one cooperative, and 250 water boreholes.<sup>5</sup> Hundreds more of these types of settlements were created by the Tanzanian government to host the refugee populations that arrived in the 1970s.

For the most part, the policies of integration and assimilation of this refugee population were successful. These refugees were not a burden to the government and contributed economically and socially to their communities.

### **Growing Hostility Against Refugees**

In the last several years, there has been growing xenophobia and hostility against refugees in Tanzania. The large influxes of refugees from the conflicts in Great Lakes region have taken a serious security, financial, and environmental toll, which we do not seek to minimize. The refugee populations in Tanzania have always contained militants—from the southern African refugees of the past to the present day populations from Rwanda, Burundi, and the Democratic Republic of Congo. Political and military elements intent on cross-border incursions have sought to control and exploit the refugee camps in the Great Lakes region, with serious consequences for host countries. As a result, security in the Tanzanian refugee camps and the surrounding areas has deteriorated. The large refugee camps have also taken an environmental toll on the countryside, as large tracts of land have been cleared for refugee camps and the area deforested by refugees in search of firewood for fuel. Additionally, prior to the 1995 elections, Tanzanian opposition politicians sought to exploit local concerns and undermine support for the ruling party by attributing crime and land shortages to the government's generous refugee policy.<sup>6</sup>

The growing hostility against refugees has resulted in violations of international refugee law on the part of the Tanzanian government, reversing a long and admirable history of hospitality to refugees. In 1995, the Tanzanian government closed its borders to Burundians seeking refugee. In December 1996, the Tanzanian army herded some half-million Rwandan refugees over the border back to Rwanda. Among this Rwandan Hutu refugee population, which had fled after the 1994 genocide fearing reprisal from the new Rwandan government,<sup>7</sup> were Rwandans responsible for genocide and crimes against humanity who used the refugee cover to conduct military incursions over the border into Rwanda as well as using terror and force to prevent voluntary return. For two years, the international community remained unwilling, and the Tanzanian government unable, to devote the necessary political or financial resources to screen out combatants or those suspected of genocide.<sup>8</sup> However, the Tanzanian government's action—without regard for whether these Rwandan refugees held a well-founded fear of persecution upon return—coupled with the use of teargas and sticks to herd them towards the border amounted to a serious violation of international refugee law that prohibits forced return, *refoulement*. This violation was facilitated and sanctioned by UNHCR, and watched with virtually no protest by the international community.

Since that time, growing xenophobia and anti-refugee sentiment among Tanzanians of all walks of life have notably hardened. Throughout 1997, the Tanzanian government closed the border to Rwandan refugees and forcibly returned a number of Rwandans, although it continued to accept Burundian and Congolese (DRC) refugees. In 1997, after fighting broke out between rival Burundian rebel supporters in the Kitali Hills refugee camp, the Tanzanian government returned 126 Burundians accused of conducting armed rebel activity in Tanzania. Of those, 124 were shot by the Burundian army at the Kobero border post on January 10, 1997.

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<sup>6</sup>See, Augustine Mahiga, "Tanzania: A Change of Direction," *Refugees*, UNHCR, no.110, Winter 1997, pp. 14-15.

<sup>7</sup>For information on the 1994 Rwandan genocide, see Human Rights Watch and Fédération Internationale des Ligues des Droits de l'Homme, *Leave None to Tell the Story: Genocide in Rwanda*, (New York: Human Rights Watch, March 1999); Human Rights Watch/Africa, Human Rights Watch/Women's Rights Project, and Fédération Internationale des Ligues des Droits de l'Homme, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath*, (New York: Human Rights Watch, 1996).

<sup>8</sup>Under refugee law, those suspected of rebel activity, genocide, and crimes against humanity have no right to the status of refugee and should have been excluded from such status. Had the international community provided the necessary assistance to the Tanzanian government to undertake such a task at the outset, then those Rwandans who wished to return voluntarily and remaining legitimate refugees would have been assured of the protection promised by law.

Since the killing of the Burundian refugees, the Tanzanian government has been reluctant to forcibly return any more refugees and clearly stated to Human Rights Watch that it has no plans to do so.<sup>9</sup> Additionally, as of January 1998, the government reversed its policy to allow Rwandan refugees to cross the border into Tanzania for the first time since the 1996 refoulement. While the Tanzanian government's position on non-refoulement is commendable, the incidents described above and the growing anti-refugee sentiment among Tanzanians generally are extremely worrying developments.

### **The 1998 Refugees Act**

In December 1998, the National Assembly of Tanzania passed a new refugee law, the 1998 Refugees Act, which superseded the 1965 Refugee Control Act. Copies of the new law have been difficult to obtain. Moreover, the process through which the law was drafted was flawed. For example, Article 35(2) of the 1951 U.N. Convention relating to the Status of Refugees obliges states to provide UNHCR with "information and statistical data requested concerning: (a) the condition of refugees, (b) the implementation of this Convention, and (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees." There was no such consultation in the drafting of the December 1998 law. Nor were Tanzanian humanitarian groups consulted, such that Tanzanian church leaders raised public protests to highlight the possible new restrictions in the law.<sup>10</sup> Absent any opportunity for refugee-interested organizations to contribute to the draft law, a number of provisions were included that could be detrimental to refugee protection, including greater powers to camp commanders, the lack of adequate due process protections in the appeals process for status determination interviews, and greater powers devolved to local authorities.<sup>11</sup>

## **IV. SECURITY CONCERNS: ACCUSATIONS OF REFUGEE MILITARIZATION AND CRIME**

Much of the Tanzanian government's recent hostility against refugees is due to the fact that the refugee flows in the Great Lakes region have been "a cocktail of good and bad" as one Tanzanian official put it.<sup>12</sup> Like many refugee settings, those in the Great Lakes region contain militants whose manipulation of refugee camps as a source of recruitment, financing, and protection threatens to undermine the civilian and humanitarian nature of international refugee assistance and to destabilize the security of the host country. Within the Great Lakes region, this destabilization has had a devastating domino effect: one internal conflict after another has spilled over, pulling neighboring countries into a seemingly intractable and inter-linked regional conflict.

The Tanzanian government has legitimate security concerns with regard to those who seek to use the refugee cover either to conduct cross-border military activities or to evade prosecution for human rights violations they have committed previously in their own country. Cross-border militant activity by Burundian rebel groups in Tanzania fluctuates depending on events within Burundi. Additionally, in the past few years, common crime has become more of a problem around the border areas, often attributed to former Rwandan Hutu militia, *interahamwe*, who make their living through banditry. Weapons in western Tanzania are easily and increasingly available in the border area (reportedly an AK47 can be purchased for as little as T.shs10,000 to 15,000 [approximately U.S.\$15 to \$23]),<sup>13</sup> and armed robberies and carjackings at gunpoint have increased in the past few years. However, the bulk of refugees in Tanzania do not participate in criminal activities and are as concerned about rebel intimidation and crime as the Tanzanian authorities.

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<sup>9</sup>Human Rights Watch interview, Ministry of Home Affairs (MHA) officials Bernard Mchomvu, MHA principal secretary; Caroline Mchome, refugee department legal protection head; Johnson Brahim, refugee department project head; and Patrick Tsere, principal refugee officer, Dar-es-Salaam, June 10, 1998.

<sup>10</sup>"Refugee Bill Criticized by Tanzanian Church Leaders," AANA, Arusha, January 11, 1999.

<sup>11</sup>The Government of the United Republic of Tanzania, Bill Supplement, "The Refugees Act, 1998," no. 6, Gazette of the United Republic of Tanzania No. 39, vol. 79 (Government Printer: Dar-es-Salaam, September 25, 1998).

<sup>12</sup>Human Rights Watch interview, John Mwaka, Nduta camp commander and Andrew Kibona, Nduta assistant camp commander, Nduta camp, June 1, 1998.

<sup>13</sup>Human Rights Watch interview, U.N. staff member, Dar-es-Salaam, May 20, 1998; Human Rights Watch interview, diplomat, Dar-es-Salaam, May 21, 1998. At the time of these interviews, one U.S.\$ was equivalent to approximately 650

Concerns about destabilization and insecurity caused by the refugee camps are further heightened by events in neighboring Democratic Republic of Congo (the former Zaire). The specter of the Zairian refugee camps—their forced dispersal by the Rwandan government and allied Zairian factions in 1996, which sparked the ongoing civil war in the Democratic Republic of Congo—hangs heavy on the minds of Tanzanian and international policymakers.<sup>14</sup> However, it is important to note that while security concerns do exist, the refugee situation in Tanzania is fundamentally different. The camps in Tanzania are not as insecure or as lawless as those that existed in Zaire. The Tanzanian authorities and law enforcement officials in the camps are trained professionals whose work has ensured that the civilian nature of the refugee camps is largely retained.

That said, Burundian rebel groups do conduct political, and even military, activities in Tanzania, some of which have been supported by the Tanzanian government in the past. Since 1996, the Council for the Defence of Democracy (Conseil National de la Défense de la Démocratie, CNDD) and the Hutu People's Liberation Front (Partie pour la Libération du Peuple Hutu, PALIPEHUTU) have used Tanzania as their political center, replacing Zaire. But even before then, Burundian rebel groups maintained bases in Tanzania for at least the past decade. The association between Burundian Hutu refugees and their Tanzanian hosts dates back to the 1970s, and some of these Burundian refugees later served in the Tanzanian army or were trained by it. According to Burundian rebel officials and a western diplomat, rebel soldiers continued to be trained in Tanzanian military bases in 1995 and 1996. Tanzania has also permitted Burundian rebel leaders to solicit support on Tanzanian soil from governments such as Sudan and Iran, which maintain embassies in Dar-es-Salaam.<sup>15</sup>

However, in the past few years Tanzanian policymakers have become more wary about supporting armed insurgent groups following the recent events in the region. Despite accusations by the Burundian government, there does not appear to be a Tanzanian central government policy nowadays to support the Burundian rebel cause in Tanzania, but some rebel activity does occur due both to the porous border area which is difficult to monitor as well as to corrupt or sympathetic local authorities who turn a blind eye at the border.

Toward the end of 1997, the Burundian government charged that the rebels had created new bases in Tanzania. Tensions between the two governments flared as Burundi accused Tanzania of allowing Burundian rebel activity on Tanzanian soil, an allegation denied by Tanzania. Burundian government accusations of Tanzanian partiality in the Burundian conflict include allegations of bias leveled at former Tanzanian President Julius Nyerere, the key mediator in the Burundian peace talks appointed by the United Nations and the Organization of African Unity. In November 1997, the situation between the two countries deteriorated to such an extent that cross-border shelling briefly occurred between the Burundian and Tanzanian armies. However, the Tanzanian government has made it clear through public statements and actions that it does not want the confrontation with Burundi to escalate, and in response to the concerns voiced by the Burundian government, Tanzania has stated strongly that it will not allow rebel activity in the refugee camps.

Human Rights Watch tried to ascertain the extent of militarization in the refugee camps through conversations with security personnel, diplomats, international humanitarian workers, Tanzanian police, and refugees themselves. Human Rights Watch was able to verify intimidation and voluntary recruitment in the refugee camps by both CNDD and PALIPEHUTU and its splinter groups, but was unable to find any definitive proof of forced recruitment or active

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<sup>14</sup>See generally, Human Rights Watch/Africa, "Democratic Republic of Congo: Casualties of War, Rule of Law, and Democratic Freedoms," *A Human Rights Watch Report*, vol. 11, no. 01(A), February 1999; Human Rights Watch/Africa, "The Democratic Republic of Congo: Uncertain Course: Transition and Human Rights Violations in the Congo," *A Human Rights Watch Report*, vol. 9, no. 9(A), December 1997; Human Rights Watch/Africa and Fédération Internationale des Ligues des Droits de l'Homme, "Democratic Republic of Congo: What Kabila is Hiding: Civilian Killings and Impunity in Congo," *A Human Rights Watch Report*, vol. 9, no. 5(A), October 1997; Human Rights Watch/Africa, "Zaire: Transition, War and Human Rights," *A Human Rights Watch Report*, vol. 9, no. 2(A), April 1997; Human Rights Watch/Africa and Fédération Internationale des Ligues des Droits de l'Homme, "Attacked by All Sides: Civilians and the War in Eastern Zaire," *A Human Rights Watch Report*, vol. 9, no. 1(A), March 1997.

<sup>15</sup>The Sudanese and Iranian embassies in Dar-es-Salaam transferred funds to a Burundian rebel leader to his National Bank of Commerce account in Dar-es-Salaam. Human Rights Watch was able to confirm this with bank documents, but

human rights watch for the purposes of these funds were disclosed.

arming and training *in* the refugee camps. Human Rights Watch did not investigate rebel activity outside of the refugee camps, although it is widely accepted that rebel Burundians have launched armed attacks on the northeast and south of Burundi from Tanzanian territory. However, the vast majority of the refugees are not implicated.

Like many other refugee camps around the world, the Tanzanian camps are used by rebel group members as a safe haven for their wives and children; as a retreat from armed activity in Burundi; for recruitment of new rebel members; for fundraising; and to obtain medical treatment for injuries incurred during armed activities in Burundi. A doctor in the camps verified treating refugees with bullet wounds and mine fragments, injuries he speculated were likely to have been sustained during fighting, although possibly incurred during refugee flight.<sup>16</sup>

Within the Burundian refugee camps in Tanzania, there is rebel activity, which appears to be greater in the Ngara camps than in the Kibondo camps. The influence of the rebel groups inside the refugee camps appears to be held in check in part by the work of the Tanzanian authorities and in part due to rebel group in-fighting, disorganization, and bad supply lines. These insurgent groups were weakened by the disruption of their bases in the neighboring Democratic Republic of Congo in late 1996 when the refugee camps were cleared and most of them fled to Tanzania.

Refugees in the Ngara and Kibondo camps are regularly "taxed" by rebel groups. Refugees interviewed by Human Rights Watch in Lukole camp verified that there was intimidation by both CNDD and PALIPEHUTU members who regularly came through the camp to raise funds. These sources appeared to be more fearful of PALIPEHUTU, whose presence in the camps appears to have strengthened since 1995. Some spoke of a coerced Tshs.300 [approximately U.S.\$0.50] tax that PALIPEHUTU imposes on each refugee family.<sup>17</sup> Other refugees said that CNDD did the same thing but that, since it had greater support in the camp, the contribution was given more voluntarily. Other refugees spoke of a food tax and mentioned that after food distributions, rebels demand a portion of the food ration.<sup>18</sup>

More disturbing than the reports of forced monetary contributions to the rebel groups was a 1998 report of a vigilante justice system operated by the rebels in one of the camps. Although the authorities took action in this instance, continued attention is required to ensure that the rebels are not able to use such tactics within the camps again. In January 1998, the chief security guardian for Lukole camp reported that CNDD supporters were operating a "detention center" in a home in the camp where they reportedly interrogated and used violence against refugees whom they suspected of spying for the Burundian government. This report was confirmed when Chantal Bakamiriza, a Burundian national who had come to the camp on her university holidays to visit her mother in the camp, was detained by a group of refugees that included a former body-guard for President Ndadaye and a former captain in the Burundian army. She alleged that she was beaten and tortured. Two of her captors were arrested on February 1, 1998, when the Tanzanian police raided the home.<sup>19</sup>

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<sup>16</sup>Human Rights Watch interview, doctor, Mtendeli camp, June 2, 1998.

<sup>17</sup>Human Rights Watch interview, refugees, Lukole camp, June 7 and 8, 1998.

<sup>18</sup>Human Rights Watch interview, refugees, Lukole camp, June 7 and 8, 1998.

<sup>19</sup>Human Rights Watch interview, UNHCR staff member, Geneva, May 14, 1998.

Refugees tentatively and fearfully confirmed that there was rebel recruitment particularly in the Ngara camps, but stated that it was voluntary. There is some evidence that Hutu fighters cross the border near Kibondo in search of recruits in the refugee camps. In early 1998, three groups of thirty-two Hutu men arrived at the camps to seek recruits. Once reported to the Tanzanian authorities, they declared themselves to be militants and were reportedly returned to Burundi. A former Burundian army officer in Mtabila camp was reportedly recruiting refugees in 1998.<sup>20</sup> In late 1998, a truckful of unarmed young men from Lukole camp was intercepted by chance by a UNHCR field officer. Two weeks later, four truckloads of young unarmed men were stopped in Kibondo and intercepted by the police. The adult refugees among this group were subsequently sentenced for leaving the camp illegally.<sup>21</sup> Reports of recruitment were much more difficult to verify, and opinions differed as to the extent of the practice.

Training and weapons possession within the refugee camps appear to be limited due to the vigilance of the Tanzanian authorities. The rebel groups appear determined not to provoke the Tanzanian authorities and have been careful to ensure that these activities are done clandestinely outside the refugee camp setting. One U.N. security officer told Human Rights Watch that in 1998, rebel training sites appeared to have moved to the Burundian side of the border and that little or no active training was occurring on the Tanzanian side.<sup>22</sup> Human Rights Watch heard of several instances of young refugee men exercising in groups but found no reports of open military training after mid-1997. In mid-1997, a group of young refugee men at Muyovosi extension were reportedly conducting basic training exercises (including squad and battalion training) using sticks instead of guns. This was stopped after it was brought to the attention of the Tanzanian authorities by an international humanitarian organization.<sup>23</sup> In 1998, there were reports that Hutu refugees were engaged in military training near both the Ngara and Kibondo camps; upon investigation the authorities found groups of young men jogging and doing calisthenics but no concrete evidence that this was for a military purpose.<sup>24</sup> There have been reports that both CNDD and PALIPEHUTU train some five to ten kilometers outside Lukole camp, but Human Rights Watch could not verify this.<sup>25</sup> Periodically, raids of the camps are conducted by the Tanzanian authorities, but very rarely are weapons and ammunition found.

Often, the amount of rebel activity in Tanzania corresponds to political developments within Burundi. In early 1999, in anticipation of the April peace talks, rebel activity in and around the Tanzanian camps increased. As one observer put it: "in the dynamics of peace-making, there is war-making to hold ground in the negotiations."<sup>26</sup> For some of the Burundian opposition groups, the refugees are the only power base that they can recruit and mobilize support through. In early 1999, several cross-border attacks from Tanzania did occur, eventually prompting the Burundian government to protest officially to the Tanzanian government that an attempted infiltration by 500 Burundian rebels had occurred from the Tanzanian side of the border. The Burundian authorities said the rebels were supported by a group in one of the Tanzanian refugee camps, a charge denied by UNHCR.<sup>27</sup>

In a commendable move, the Tanzanian government and UNHCR permitted and assisted a refugee delegation to attend the April 1999 Burundian peace talks (taking place in Arusha, Tanzania) as observers so they could report back on the progress of the talks to the larger refugee population. Following the peace talks, former Tanzanian president and chief negotiator of the talks, Julius Nyerere, visited the refugee camps and spoke directly with the refugees about the negotiations. This type of structured political activity should be further encouraged, because it engages the refugee population constructively in the peace process and allows refugees who are interested in being involved an opportunity distinct from involvement with the rebels.

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<sup>20</sup>Human Rights Watch interview, UNHCR staff member, Geneva, May 14, 1998.

<sup>21</sup>Human Rights Watch interview, UNHCR Tanzania staff member, Nairobi, May 5, 1999

<sup>22</sup>Human Rights Watch telephone interview, U.N. security officer, New York, May, 1998.

<sup>23</sup>Human Rights Watch telephone interview, U.N. security officer, New York, May, 1998.

<sup>24</sup>Human Rights Watch interview, UNHCR staff member, Geneva, May 14, 1998; Human Rights Watch telephone interview, U.N. security officer, New York, May, 1998; Human Rights Watch interview, U.N. staff member, Dar-es-Salaam, May 20, 1998.

<sup>25</sup>Human Rights Watch interview, UNHCR staff member, Geneva, May 14, 1998.

<sup>26</sup>Human Rights Watch interview, refugee relief worker, Nairobi, April 29, 1999.

<sup>27</sup>U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Integrated Regional Information Network (IRIN)

In addition to cross-border activity by Burundian rebels, there has also been an increase in banditry in western Tanzania. Much of this crime in the Ngara area is attributed to former Rwandan refugees (referred to generically as interahamwe) who were in the refugee camps until December 1996 when the Rwandan refugees were forcibly returned by the Tanzanian authorities, and who fled to the forests to avoid repatriation. Human Rights Watch interviewed international humanitarian workers and refugees in Ngara camp who described being held up at gunpoint outside the camp area. The Rwandans responsible for the crime have been living in groups, eluding the Tanzanian authorities and surviving through banditry. Human Rights Watch interviewed a nineteen-year-old Burundian refugee woman who had been abducted by one such group of about twenty Rwandan men in the Ngara area when she left the camp to search for firewood. She was held for ten months and used by one of the men for sex and labor before she was able to escape and return to her family in the camp. She verified that there are a number of such groups of Rwandans in the area who make their living through armed robbery.<sup>28</sup>

The Tanzanian authorities legitimately seek to control those who would use the refugee cover to violate the law. However, it is convenient and easy to make blanket accusations against all refugees for the crime that occurs in western Tanzania. Though some of the crime is committed by refugees, some is also committed by Tanzanian nationals. While rebel activity and crime are perpetrated by some of those who have sought refuge in Tanzania, Tanzanian public opinion frequently depicts all refugees indiscriminately as harbingers of crime and insecurity. Such blanket accusations only feed the xenophobia that is increasingly evident in Tanzania and become the justification for restrictive policies, such as the round-ups, that unnecessarily trample on the dignity and rights of refugees. In addition, these accusations are inconsistent with the facts. The vast majority of refugees in Tanzania are law-abiding. Most refugees are fearful of the rebel intimidation and activity that is occurring in Tanzania and are equally at risk of crime when they leave the confines of the camps.

## V. HUMAN RIGHTS ABUSES AND THE FORCED ROUND-UPS OF REFUGEES

In late 1997, with little or no notice, the Tanzanian government ordered the army to conduct a round-up of all foreigners "unlawfully" residing in Tanzania. The government's stated reason for the round-ups was security and the desire to protect Tanzanians and refugees living close to the Burundian border. The action followed allegations by the Burundian president that Tanzania was allowing Burundian rebel activity in the Tanzanian villages along the Tanzanian-Burundi border. The Tanzanian government also put forward the argument that if these foreigners were bona fide refugees that they should be held in refugee camps funded by the international community regardless of their length of stay in Tanzania, the level of integration in the Tanzanian village communities, or humanitarian factors.<sup>29</sup>

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<sup>28</sup>Human Rights Watch interview, refugee woman, Lukole camp, June 7, 1998.

<sup>29</sup>Human Rights Watch interview, Ministry of Home Affairs (MHA) officials Bernard Mchomvu, MHA principal secretary; Caroline Mchome, refugee department legal protection head; Johnson Brahim, refugee department project head; and Patrick Tsere, principal refugee officer, Dar-es-Salaam, June 10, 1998.

This argument has no validity under international law. Refugees need not be housed in camps to be accorded full recognition of their rights as refugees. The U.N. General Assembly has reiterated that as a priority, states should seek durable solutions for refugees including through assimilation and local integration. See U.N. General Assembly Res. 1166(XII), Norman Rights Watch, para. 2, reaffirming the basic approach set out in para. 1 of the UNHCR Statute. Vol. 11, No. 4 (A)



From September 1997 through early 1998, in the midst of unusually heavy rains, refugees and migrants were systematically forced from their homes without adequate notice, separated from their families and belongings, and taken to transit centers where a cursory determination process was conducted by the Tanzanian authorities to determine their fate. The round-ups were largely targeted at Ngara, Kibondo, and Kasulu districts close to the border, although a number of foreigners elsewhere in the country were also affected. The refugees and migrants apprehended by the army were given the option of being confined to the UNHCR-run refugee camps or returned to their countries of origin regardless of when or why they came to Tanzania. Although Congolese and Rwandans were also affected, the bulk of those rounded up were Burundians. Figures on the numbers eventually rounded up varies from government estimates of 67,000 to U.N. numbers of over 35,000.<sup>30</sup> UNHCR estimates that of the approximately 18,000 who were brought to the refugee camps, roughly half were Burundian.<sup>31</sup>

For the most part, those rounded up were sent to the refugee camps,<sup>32</sup> although some 2,000 Rwandans were forcibly returned to Rwanda, many of whom had resided in Tanzania for decades. There were also instances of intimidation leading to spontaneous (but not entirely voluntary) return of Congolese refugees and migrants from lakeside villages south of Kigoma. According to UNHCR, Burundians were not forced back to Burundi in keeping with the Tanzanian Ministry of Home Affairs determination that allows all Burundians in Tanzania refugee status on a prima facie basis due to the unrest in Burundi.<sup>33</sup> Tanzanian citizens who were mistakenly picked up by the army and refugees who had become naturalized citizens or who possessed documentation indicating that they had started the process to obtain citizenship were eventually allowed to return to their homes.

One U.N. agency survey of 306 families rounded-up in Ngara district found that 25 percent had lived in Tanzania for over twenty years, 60 percent had been living in Tanzania for over ten years, and 12 percent had lived in Tanzania for over seven years. Of this group, 96 percent were subsistence farmers in villages and most possessed some land, a house, and livestock. Eighty-two percent of those interviewed were between twenty to fifty years old, and 18 percent were above fifty years of age. Sixty-nine percent of the families interviewed had been separated during the round-ups and as a result were headed by women at the time of the interviews. Among the 306 families interviewed, there were 724 children in total. No birth certificates were available to prove birth dates or places, but, through interviews with the

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<sup>30</sup>Human Rights Watch interview, UNHCR staff member, Kibondo, May 28, 1999. Also, UNHCR, "Update on UNHCR's Refugee Programme in Tanzania," 4<sup>th</sup> Quarter of 1997, p.2; and according to one U.N. figure, as of 27 November, 1997, a total of 31,392 foreigners had been rounded up from Kigoma, Kasulu and Ngara districts in western Tanzania. In Kigoma district, 20,304 persons (10,878 Congolese, 9,407 Burundians, and 19 Rwandans), mostly old caseload refugees or long-term residents, were rounded up and 18,336 were sent to the Kibondo refugee camps. In Ngara, 11,088 people were rounded up and transported to Lukole camp. In Kasulu district, another 2,200 long-term residents from Manyovu were rounded up in Kasulu district.

<sup>31</sup>Human Rights Watch interview, UNHCR staff member, Kibondo, May 28, 1999.

<sup>32</sup>There are currently nine refugee camps in the Kigoma and Ngara regions set up in 1994 and 1996: Kanembwa, Lugufu, Lukole/Lumasi, Mkugwa, Moyovosi, Mtabila, Mtendeli, Nduta and Nyaragusu. Burundian refugees are housed in Mtabila camp in Kasulu district, Kanembwa and Mkugwa camps in Kibondo district and Lukole/Lumasi camp in Ngara district. Congolese refugees are housed in Nyaragusu and Lugufu camps in Kasulu and Kigoma districts. The camps are located in a remote and poor area with little infrastructure some twenty to forty kilometers from the Rwandan and Burundian borders. Common health complaints in these camps are malaria, anaemia, and high infant mortality. Increasingly the Tanzanian government has become more restrictive about providing access to land for cultivation, or allowing income-generating activities or formal education in the camps on the grounds that this would encourage refugees to remain for the long-term. The presence of such a large number of refugees has taken its toll on the infrastructure and the environment due to the heavy relief trucks that service the refugee camps on the already bad roads and the cutting of trees by refugees for cooking fuel. The presence of the international relief agencies has also brought benefits to the area through the implementation of programs that benefit the local population including health services and the improvement of the local infrastructure. See U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Integrated Regional Information Network (IRIN), "Tanzania: Refugee Situation Report," April 18, 1997. According to UNHCR, the 1996 Burundian refugees were sent to Mtabila camp, then to Nduta camp. The 1993 refugees were sent to Kanembwa camp. Human Rights Watch interview, UNHCR staff member, Kigoma, May 25, 1998.

<sup>33</sup>Human Rights Watch interview, UNHCR staff member, Kibondo, May 28, 1998.

parents it was determined that 67 percent of these children were born in Tanzania and 31 percent in Burundi. Eighteen percent of the children born in Tanzania had one Tanzanian parent. Except for 1 percent who were able to sell their property before leaving the villages, 36 percent had their property destroyed due to theft or abandonment, 21 percent left their property in the custody of friends or relatives, and 28 percent did not know what had happened to their property.<sup>34</sup>

Human Rights Watch interviewed refugees in the camps who said they had been rounded up from Bitale, Bugamba, Bugarama, Busamandeki, Bubango, Gihinga, Ilagara, Kagunga, Kaparamsenga, Karago, Kaseke, Kirando, Malenga, Mkabogo, Mugaraganza, Mwakizega, Rugunga, Rusaba, and Sonoca villages. Human Rights Watch found that those most detrimentally affected both psychologically and economically by the round-ups were the old caseload Burundians.

A young refugee man who had lived in Bugamba, Tanzania since he fled Burundi in 1993 recounted his experience:

The commissioner of Kigoma, Yusuf Makamba, came and told Burundian refugees to leave or go to the camps. He said if we went on our own we would not be chased. Some refugees went immediately where they were told. But those who did not were chased from their homes by the army. The army came at 8:00 a.m. on October 27, 1997 and the sungu sungu pointed out all the Burundians to them. A boat that carried about 200 people from Kagunga was provided by Caritas, and we were brought to Kigoma. The army was using sticks to hit us while they ordered us to get on the boat quickly. I saw them beat one woman and her sick sister on the back of the legs shouting at them to walk faster. We were taken to Kigoma where we were given biscuits and water and questioned about who we were, where we came from and how we traveled to Tanzania. The next day we were brought to Nduta camp where I have been since then. As long as the Tanzanians do not return me to Burundi, I am satisfied to live in the camp.<sup>35</sup>

Another refugee man who has lived in Tanzania since 1972 stated:

The army came and told us to pack what we could carry. Some people were driven by the army to Kibirizi and others walked the nine kilometers. Families were separated. One old woman tried to say something, but they would not listen. They would only say "All Burundians must go to the camps." It took us five to six hours to reach Kibirizi where we found other people who had been rounded up as well as new refugee arrivals. We were questioned about when we arrived in Tanzania and then were told to wait. Slept on the ground and used water taps there. After one week told we were being taken to Nduta camp. I had been separated from my wife and children. After living in Nduta for two months, I asked for permission to see my relatives outside and I was refused. I don't know when I will see my family again.<sup>36</sup>

Rusaba is a settlement close to the Burundian border that houses both Tanzanians and old caseload Burundians. According to the Tanzanian government it was necessary to uproot the Burundians who had been allocated settlements in Rusaba 'B' village because there had been reports of rebel activity in this settlement and if anything happened from the Burundian side, the most affected would be Tanzanians who occupy Rusaba 'A.' A Burundian woman who lived in Rusaba recounted her experience:

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<sup>35</sup>Human Rights Watch interview, refugee, Nduta camp, May 31, 1998.

<sup>36</sup>Human Rights Watch interview, refugee, Mtendeli camp, June 2, 1998.

On November 28, 1997, the army called a meeting and told us that all refugees had to leave in one week because we were too close to the border. At first we did not know what to think. We had been living here since 1972. We have always paid taxes. Some of us are married to Tanzanians. The next week the army came into our houses and told us to go to the road. We were not allowed to pack anything. I came only with the clothes I was wearing. We were forced to leave everything behind and to walk with our small children for twelve kilometers. We begged them to give us three more days. The army said no. They began to take us to the customs house at Manyovu. As we were leaving, our Tanzanian neighbors were looting our homes and taking our things. Some of the small children, pregnant women, and old people were given transport by the army. We were made to pay for the petrol for one army car and a lorry from Matiaso Hospital that were used to transport people. The rest of us were made to walk from Rusaba B to Manyovu. I was separated from my family because my children were at school when the army came. At the customs house we were given water and biscuits by the army and they took our names and information and then transported us to Nduta camp. There were about fifty to eighty people per lorry.<sup>37</sup>

### **Violations of Constitutional and International Law**

The Authority of the State and all its instruments must direct all their activities and policies toward the task of ensuring: (a) individual and all other human rights are respected and cherished; . . . (f) that human dignity is preserved and maintained in accordance with the International [sic] Declaration on Human Rights; (g) that the Government and all its instruments of the people offer equal opportunities for all citizens, men and women, regardless of color, tribe, religion, or creed; (h) that all forms of exploitation, intimidation, discrimination, corruption, persecution and favoritism are eliminated from the country.

–Tanzanian Constitution, Sections 2(9)(1)(a),(f),(g) and (h)

The round-ups and confinement of Burundians and other foreigners—strictly on the basis of their national origin—have occurred in violation of the Tanzanian constitution and international law. Human rights violations perpetrated against refugees by the Tanzanian government due to these round-ups include nationality-based discrimination, harsh treatment at the hands of the army, the lack of due process protections, the separation of refugee families, the loss of property, and confinement in the refugee camps.

The Tanzanian Constitution and international and regional human rights and refugee law guarantee respect of human rights, equal protection under the law, and due process rights. Tanzania has ratified several major international treaties guaranteeing these rights, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the Convention on the Elimination of Discrimination of Women, the Convention on the Rights of the Child, the 1951 U.N. Convention relating to the Status of Refugees, and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. As a party to these major international human rights and refugee conventions, Tanzania has an obligation to ensure that its national legislation and practices are in conformity.

Within Tanzania, the Tanzanian Constitution is the supreme law of the land and all other national laws must comply with its provisions. The relevant laws governing foreigners in Tanzania are the 1995 Immigration Act and the 1995 Citizenship Act. The Immigration Act regulates the entry into and presence within Tanzania of persons who are non-citizens, and the Citizenship Act determines citizenship eligibility and procedures for naturalization. Refugee affairs are regulated by the Ministry of Home Affairs pursuant to the 1998 Refugees Act which recently replaced the 1965 Refugee Control Act.

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<sup>37</sup>Human Rights Watch interview, refugee, Nduta camp, May 31, 1998.

Since the manner in which the round-ups were carried out violated several Tanzanian Constitutional provisions and international law, they cannot therefore be justified under the Immigration or Citizenship Acts. The government's interpretation of the Citizenship and Immigration Laws that permitted the round-up and confinement of old-caseload Burundians *without due process of law* is over broad—both with respect to the Tanzanian Constitution and to international human rights and refugee instruments. Furthermore, Burundians in Tanzania receive refugee status on a *prima facie* basis, thus nullifying any argument that these people were in the country “unlawfully.”

Under international human rights law, forced relocations and confinements of civilian populations on the basis of nationality are a serious violation of human rights and refugee law that may only be justified by a direct, severe and imminent threat to national security or to the health and safety of the nation, or to those to be relocated. In no event are racial, religious or ethnic classifications permissible in selecting the population to be relocated. Any government proposing to relocate forcibly civilian populations must publicly disclose this fact and before commencing the relocation seek a hearing before an impartial judicial body. Those from affected communities should be able to participate fully in any such hearing by presenting their own evidence and examining evidence presented by the government in support of such a relocation. In carrying out any forced relocation, a government should minimize harm to those civilians who are affected by, at a minimum: providing as much notice as is reasonably possible; providing reasonable transportation to carry out the evacuation; providing assistance in moving personal possessions; providing temporary housing; and aiding families in staying together during the relocation and after. Relocated individuals are entitled to compensation for their losses. When the emergency that prompted the forced relocation has ended, those who were relocated are entitled to return to the areas from which they were removed and to receive government assistance in rebuilding their homes and communities.

While the Tanzanian government has argued that its actions were motivated by security concerns, under international and Tanzanian law, the derogation of rights can only occur under specific, limited and extra-ordinary conditions. In this case, there was no indication that all (or even most) Burundians were acting in a way to harm the nation itself or that if the government had not undertaken the round-ups that a full-scale war with Burundi would have erupted. Moreover, the government did not seek alternate means to protect national security in the border area that complied with human rights obligations.

### **Discrimination on the Basis of Nationality**

All people are equal before the law, and have the right, without discrimination of any kind, to be protected and to be accorded equal justice before the law. It is forbidden for any law enacted by any Authority in the Union Republic to impose any condition which is of a discriminatory nature or which is obviously to one's disadvantage. . . . It is forbidden for anyone to be discriminated against by anyone or any authority which is exercising its powers under any law or in carrying out any duty or function of the Authority of the State or the Party and its instruments . . . the word ‘discrimination’ means meeting the needs, rights or other requirements of different people based on their *nationality*, tribe, *their origin*, their political affiliation, color, religion or their lifestyles in such a way that certain people are made or considered inferior or subjected to restrictions or conditions of restrictions whereas other people are treated differently. . . .” (Emphasis added.)

–Tanzanian Constitution, Sections 3(13)(1),(2),(4) and (5).

The round-ups were clearly directed at foreigners on the basis of their nationality, rather than on specific actions by foreign individuals to endanger Tanzania's security. The nationality-based round-ups of refugees are in contravention of the Tanzanian constitutional and international legal prohibition against discrimination on the basis of nationality. Acting on a suspicion that *some* Burundians living in Tanzania *might* be engaged in rebel activity, the Tanzanian government forced *all* Burundians on the basis of their nationality, and not on their actions, into refugee camps with no time limit and no recourse to contest their confinement. Section (3)(13)(5) of the Tanzanian Constitution specifically prohibits discrimination on the basis of nationality or origin, as does the International Covenant on Civil and Political Rights (Articles 2 and 26), the African Charter on Human and Peoples' Rights (Article 2), the 1951 U.N. Convention

relating to the Status of Refugees (Article 3), and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Article 4).

### **Abusive Treatment**

Everyone deserves the respect and protection of his life, his individual right and that of his family and household, also respect and protection of his abode and his personal communication . . . . In order to maintain human justice and equality, human dignity will be protected in all areas and matters of investigation, and matters involving crime and in all other activities where an individual is under protective custody.

–Tanzanian Constitution, Sections 3(16)(1) and 3(13)(6)(d)

The round-ups were conducted by the army assisted by sungu sungu (local security militia)<sup>38</sup> and local government authorities or residents who helped the army identify and apprehend the foreigners in the villages. Those identified as foreigners were ordered to leave the villages immediately, and some were verbally threatened and intimidated into leaving if they tried to ask for some time to collect their belongings or to locate family members. The operation was led by Brig. Gen. Benjamin Msuya, who had commandeered the forced return of the Rwandan refugees in December 1996. A number of international humanitarian workers noted that Brig. Gen. Msuya and the Tanzanian army exhibited high levels of professionalism in following their orders, and that for the most part there was minimal abuse given the scale and time constraints of the operation. Accounts from the refugees and Tanzanians who were subjected to the army and sungu sungu are much less glowing and depict a more abusive exercise of military power.

Under international law, the International Covenant on Civil and Political Rights guarantees that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 7). Similarly, the African Charter on Human and Peoples’ Rights guarantees that “every individual shall have the right to the respect of the dignity inherent in a human being” (Article 5).

During the round-ups, the army and sungu sungu were reportedly hasty and rough in most places. They shouted and ordered people to leave on threat of force, but generally did not use physical coercion. In the Kigoma area, however, refugees consistently reported that the army had used sticks and fists in order to herd them quickly on the boats used to transport them to Kigoma town. Reports of mistreatment, bribery, and theft at the hands of the sungu sungu were more common. Refugees were often shocked at how quickly their neighbors of many years turned on them, identifying them to the army and then looting the abandoned homes. However, in a few villages, the local authorities and villagers protected their Burundian neighbors by refusing to cooperate with the army who eventually left because they could not identify the refugees. In other places, the army took bribes from refugees and Tanzanians alike in order to pass them over.

Once people were rounded-up, the army transported them or ordered them to walk to the nearest transit center. At the transit centers, they were screened by Ministry of Home Affairs officials (with UNHCR observers present) in a cursory procedure that lacked fundamental due process protections, before being sent to the refugee camps.<sup>39</sup> In some cases, the distances to the transit centers were long and refugee families with small children were forced to drag their tired children along under threat from their army escorts. Transport from the transit centers to the refugee camps was provided by UNHCR, but in protest of the round-ups, it refused to provide transport from the villages to the transit centers. Many refugees were brought to the camps with only the clothes they were wearing and nothing more.

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<sup>38</sup>The sungu sungu are neighborhood civil defense forces organized at the village level to assist the police and combat crime. They are selected by the community and represent them at local government meetings. They receive no formal training from the police or army and are not officially armed, although some possess home-made weapons. Human Rights Watch interview, Tanzanian relief worker, Kasulu, May 27, 1998.

<sup>39</sup>For example, in the Kigoma area, people were sent to the National Milling Corporation (a warehouse that had previously been prepared to receive new refugees) and Manyovu customs house. In Kibondo, people were sent to Kibirizi. In Ngara, people were sent to Mbuba transit center (a center that regularly processes new refugee arrivals).

In Ngara district, a group of refugees who had lived in Tanzania for between thirteen to fifteen years in Gihinga spoke of their experience:

The army came on a weekend with no advance notice. At first, the women were separated from the men. We were brought to Rulenge by the army and sungu sungu. The local militias pointed out the refugees. People who gave the army money were left alone. They taxed people according to what they could afford. The sungu sungu wrote down the names. They were made to leave all their property, and the army took the best things. The sungu sungu took the next best, and the rest were looted. At first we were taken to the police post, then to Mbuba transit center. We were made to walk there. We walked all day from 7:00 a.m. to 8:00 p.m. Even the children. Women were dragging their children, and the army wouldn't let them stop. We were made to walk fast all the way. Children who were slow were hit by the army and pushed. Women were hit on their legs with batons to hurry them up, and children were smacked by hand. We were told by the army we should go back to our home because "[Burundian president Pierre] Buyoya is calling you." At Mbuba transit center they took our papers and threw them away. They put an identity bracelet on everyone and spent no more than five minutes a person. There were ten lorries of people a day. People stayed from three to seven days eating only biscuits and water. Then we were taken to Lukole camp. When we got here we had nothing except what we were wearing and other refugees came and gave us things.<sup>40</sup>

A refugee man who came from Burundi in 1993 and was living in Busamandeki, Tanzania recounted his experience:

I was told by the army to go to Burundi or the camps in January 1998. I was made to walk four hours to the reception center at Bukiliro. Then I was taken by vehicle to the Mtendeli camp. All the 1993 Burundian refugees who had lived at Busamandeki were not giving the Tanzanian government any trouble. We had our *shambas* [farms] where we farmed. The army just came and told us all to go, even the pregnant women. Some people took two days to walk to Bukiliro, where we were made to stay for one day while they interviewed us. Then we were taken to Mugunzu for two days, then brought to Kanembwa and Mtendeli camps. When they took us from our houses, the army hit us and took our things. Everything was taken. We were not allowed to go home or even take anything with us. The army had sticks. They would not even let me call my children.<sup>41</sup>

A refugee man who had been living in Bubango said:

The army came early in the morning. We had only heard an announcement once on the radio telling us to go to the camps. We thought that it just meant the new refugees not those of us who have been here for twenty-five years. In the past, new refugees have been taken to the camps. This time they did not differentiate. The army came and then asked Tanzanians to verify that we were refugees. Only three families who hid in the forest were left. We were beaten by the army to hurry us up. Then we were taken to Bubango primary school before being taken to Kibirizi to be processed. For two weeks we were there before being transferred to the camp.<sup>42</sup>

In the midst of the disarray, some local authorities exploited the opportunity to falsely point out fellow Tanzanians who were not in good standing or disliked. In their haste, the army often collared a number of Tanzanians who were eventually allowed to return to their homes after a few weeks, but not without being confined to the refugee camps for a few weeks and suffering some economic loss due to their absence. One such Tanzanian from Malenga spoke of his experience during the round-ups:

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<sup>40</sup>Human Rights Watch interview with refugees, Lukole camp, July 5, 1998.

<sup>41</sup>Human Rights Watch interview with refugee, Mtendeli camp, June 2, 1998.

<sup>42</sup>Human Rights Watch interview, refugee, Mtendeli camp, June 2, 1998.

The army came in January 1998 looking for the 1993 and 1972 Burundian refugees. They told the Tanzanians in the area to seek them out. The army went from house to house asking for money. They were accompanied by the *Ballosi* [the local headman]. We were also asked if we were members of the ruling party and were asked to show our CCM [ruling political party Chama cha Mapenduzi] cards. The army came on a Sunday, and they wouldn't even allow people to go to church. Actually they closed all the churches. They were going to arrest me, but I paid them Tshs.2,000 [approximately U.S.\$3.00]. They said it was not enough. As the army was going around they were hitting the men with sticks on the back and buttocks. I was taken to an office where about forty men, women and children were being kept. We spent the night there being guarded by the army and sungu sungu. In the office people who protested were hit. I saw the army hurt two men, an old man and a younger man, because they didn't have any money to give. I was kept six days and then transported to Kanembwa refugee camp. I kept trying to tell them that I was Tanzanian, but they would not listen to me. I stayed one week at the reception center waiting for a decision from the DC [district commissioner]. Four people interviewed me, and then I was put into a refugee camp for two and a half weeks before somebody finally listened and then I was released. When I got home I found that my wheat and maize had not been weeded and some of it had spoiled.<sup>43</sup>

One local government official who spoke to Human Rights Watch on the condition of anonymity verified corruption on the part of the army and local government officials and the fact that Tanzanians were also arrested:

The army and government officials were corrupt. On January 21, 1998, the army came and told me they wanted to meet me. They asked me to get them a list of all the Burundian refugees (both 1972 and 1993) living in our area. We collected these names from the village registry and then called all the Burundians in for interviews. Some Burundians who gave the Tshs.10,000 [approximately U.S.\$15.00] were allowed to go free by the army. The army then took people to an assembly point where they had to walk to. It was a shop that was turned into a prison. The refugees slept there. They asked each one, "What year did you come from Burundi?" The recent refugees from Burundi who could not reply in Kiswahili were taken immediately to the transit centers and then the refugee camps. The army also went from house to house, even Tanzanian houses, asking for money. If you gave them money they left you alone. In Nyakayensi about twenty Tanzanians were arrested with the refugees, and some were released the following day. I know of one Tanzanian woman who was arrested because her father (a Tanzanian) had lived across the Burundi border at one point.<sup>44</sup>

### **Lack of Due Process Protections**

When the rights and well-being of *anyone* need to be ascertained . . . then that person will have the right to be given a chance to be listened to in full, also the right to appeal or to receive other legal considerations arising from the decisions of the court or any other relevant instrument. It is forbidden for anyone who has been accused of a criminal offence to be considered guilty until it has been proved that the person is guilty of the offence. (Emphasis added.)

–Tanzanian Constitution, Section 3(13)(6)(a), (b)

The entire operation abrogated due process protections that are guaranteed under Tanzanian and international law—from the manner in which refugees were dragged from their homes with little or no notice to the cursory questioning by Ministry of Home Affairs officials only to determine nationality before refugees were confined to the camps. References to due process rights occur throughout international law, including in the International Covenant on Civil and Political Rights (Articles 9 and 14), the African Charter on Human and Peoples' Rights (Article 7), and the 1951 U.N. Convention Relating to the Status of Refugees (Article 3). These provisions ensure universal rights to be presumed innocent, to be protected from arbitrary state action and to be heard—rights that are not limited to Tanzanian citizens alone. To be consistent with these constitutional and international provisions, then, Burundians and other

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<sup>43</sup>Human Rights Watch interview, Tanzanian rounded-up (name and location withheld on request), July 2, 1998.

<sup>44</sup>Human Rights Watch interview with local ruling party official (name and location withheld on request), July 2, 1998.



foreigners should have been provided with adequate notice and information, given adequate time and facilities to contest the government's action, given an opportunity to appeal any act that violates fundamental human rights, and compensated for their losses.

Given that many of these refugees had lived in Tanzanian villages for years and were settled and readily identifiable by the authorities, serious questions are raised as to the necessity of carrying out such an operation at all, and why it was conducted in such haste without any due process protections. The Tanzanian government also did not consult or notify UNHCR before embarking on the round-ups so that UNHCR could adequately prepare for the large influx of refugees into the camps nor did the government attempt more humane efforts to bring refugees to the camps. Some refugees stated that they were willing to live in the camps and would have complied with the government order willingly had they had been given adequate time and assistance to move their families and belongings. The operation was also commenced during unusually heavy rains and a food crisis, further inflicting unnecessary hardship to the refugees. Long-time refugee residents who had acquired belongings over the years lost their lifetime's belongings with no recourse for reparations.

Additionally, once at the transit centers, refugees were subjected by the government to a screening exercise of individuals, only to ensure that no lawful immigrants or Tanzanian citizens were rounded up. The authorities claimed that the procedure was consistent with the immigration and citizenship laws of the country with regard to the treatment of "unlawful immigrants." This argument is particularly weak with regard to Burundians who all receive prima facie refugee status in Tanzania. This means that the Tanzanian government has recognized that the conflict in Burundi is sufficiently acute to warrant that all Burundians in Tanzania be automatically granted refugee status unless they have contravened the conditions for receiving international refugee protection.<sup>71</sup>

The screening process was conducted by the ad hoc screening committee of the Ministry of Home Affairs composed of: the Ministry of Home Affairs camp commander/representative; the army; a district security officer; and a representative from the district commissioner's office. The screening was perfunctory, often taking no more than a few minutes, and it determined nothing more than whether a person was a national or a non-national, when they had arrived in Tanzania, and where they were living. The screening was done to determine who had documents and what type of documents pertained to their residence status in Tanzania. Most of the old caseload refugees had old UNHCR/government identity cards that had been issued by UNHCR in 1987. The screening process did not cover individual situations about when and why a family had come to Tanzania and the degree of their integration into Tanzanian villages. To their credit, the committees allowed refugees who had commenced the citizenship application process to return to their homes. However, no attempt was made to determine which refugees posed a risk to security and which did not: the stated goal of the whole endeavor.

UNHCR unsuccessfully attempted to persuade the Tanzanian authorities to treat the old caseload refugees differently and to allow them to return to the settlements. One refugee woman who had been living in Mugaraganza with her children since 1972 described the process she witnessed:

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<sup>71</sup>For example, Article 1(f) of the 1951 U.N. Convention Relating to the Status of Refugees states that refugee status cannot be claimed by anyone who has: (a) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments; (b) committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) been guilty of acts contrary to the purposes and principles of the Convention. 11, No. 4 (A)

In October 1997, they announced once on the radio that people would have to go the camps. Some people began to move to Kibirizi. When I heard the radio, I couldn't move. I had small children. Some of my relatives went. I waited there wondering what the government would do to us. On October 21, 1997, I saw the soldiers come to Mugaraganza. I had packed some things. We were ordered to walk to the marketplace. They assembled us all at the marketplace, and we were kept there without any water or food all day. Five lorries came, and some were put into the lorries. Others had to wait and were held until the following day. We were all taken to Kibirizi. I got there at about 7:00 p.m. and was given some food to cook by the U.N. I slept there. It was chaos. There were many people there: some were old 1972 refugees, others were Congolese who were being repatriated, and others were new arrivals from Burundi. We were asked where we come from. All the refugees who had arrived recently in Tanzania were taken to the camps immediately. Those of us who were 1972 refugees were told to wait for a government decision. A U.N. person told the Tanzanians that the U.N. would not accept the 1972 refugees. The immigration people were checking to see if people had registered. They also asked us who had applied to be a citizen. Some of us had forms, others didn't. We asked if we could go home to get the forms and were told that we could sort it out in the camp. In some cases, the children who were born in Tanzania were left by the army, but their parents were taken to the camps. One woman left two children at home and one in school.<sup>72</sup>

Another old caseload refugee said:

About seventy army men came to Rusaba on the morning of November 25, 1998 and commanded everyone to go to the road. There were two cars: an army lorry and a Matiaso Anglican Hospital lorry. One lorry was loaded with belongings and the other carried people. The army made people contribute for the fuel. People paid because they were scared. Others did not have any money. Those who could not pay were forced to walk to the receiving center. If they tried to refuse they were threatened by the army, but no force was used. We were taken to Manyovu center. People were exhausted, because some had walked under army escort for twelve hours. At Manyovu there was a shed with plastic sheeting, and we were given biscuits and water but no other food. They asked us if we were 1972 refugees and pulled us aside. We stayed there overnight under guard of the army. The newer refugees were taken immediately to the camps. We thought that maybe a mistake had been made and that we would be allowed to go back to our homes. But after two days they took us to the camps as well.<sup>73</sup>

The work of the screening committee was made all the more difficult by the fact that few refugees and Tanzanian citizens in that part of the country have identity documents and that many refugees who were born or lived in Tanzania for many years were well-integrated into the community and speak fluent Kiswahili. The lack of any required national identity documentation for Tanzanian citizens means that most rural Tanzanians do not possess any written means of proving their nationality. As a result, the army and the screening committee had no way to determine nationality other than the word of the local authorities or residents. In some places the army demanded that people show membership cards to Chama cha Mapenduzi, the ruling party, as a sign of citizenship. This demand belies a fundamental lack of understanding of the political liberalization process by members of the national army given that Tanzania is now a multiparty state and that a Tanzanian may still be a citizen without being a member of the ruling political party.

The truly ad hoc nature of the screening process was underscored by the fact that some Tanzanian citizens who were unwittingly swept up in the round-ups were determined by their fellow Tanzanians on the screening committee to be foreigners and thus were consigned to the refugee camps. One Tanzanian interviewed by Human Rights Watch was rounded up and accused of being Burundian. He was taken to Kinongo (the assembly point) and held there for five days. Despite his protests, the screening committee found him to be Burundian and he was sent to Kanembwa refugee camp where he remained for several weeks before being allowed to leave. He noted that he saw thirty-nine other Tanzanians at Kinongo who had also been mistakenly found to be foreigners.<sup>74</sup>

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<sup>72</sup>Human Rights Watch interview, refugee, Nduta camp, May 31, 1998.

<sup>73</sup>Human Rights Watch interview, refugee, Nduta camp, June 1, 1998.

<sup>74</sup>Human Rights Watch interview, Tanzanian citizen (name and location withheld on request), June 1, 1998.11, No. 4 (A)

Another weakness of the screening committees was the lack of an appeals process, a fundamental due process protection. Even in cases of ambiguity, people were sent to the camps and told to sort out their problem in the camp without being allowed to return to their homes to obtain documentation or other verification. The camps' inaccessibility to legal counsel only compounds the injury to Burundians' due process rights, since they may not know or be able to access what legal recourses are available to them. The right to counsel even for those not accused of any crime is fundamental, and it applies regardless of one's immigration status.

## Separation of Families

Everyone deserves the respect and protection of his life, his individual right and that of his family and household, also respect and protection of his abode and his personal communication.

-Tanzanian Constitution, Section 3(16)(1)

One of the most damaging effects of the round-ups was the separation of refugee families. The Tanzanian authorities conducted the operation without any regard to keeping couples together or with their children. International human rights law emphasizes the sanctity of the home and family. The International Covenant on Civil and Political Rights recognizes that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (Article 23) and that "no one shall be subjected to arbitrary or unlawful interference with his . . . family" (Article 17). Article 10 of the International Covenant on Economic, Social and Cultural Rights and Article 18 of the African Charter on Human and Peoples' Rights contain similar provisions.

While many of the families divided during the round-ups have been reunited, some continue to remain apart with no knowledge of, when, or if, they will see each other again. An informal survey conducted by Human Rights Watch in June 1998 among the refugees interviewed found that about one-third had been separated from immediate family members. Human Rights Watch interviewed countless refugees who remain divided from one or another family member since the round-ups. One fifty-six-year-old refugee woman who is married with three children ages seventeen, twenty, and twenty-one years had lived at Rusaba since 1972. She has been separated from her family since November 1997. She said:

When the army came, my husband was away. We were ordered to go the camps. The children were told to walk, and the older people told that they would be taken by vehicle to Manyovu. I was told to wait for the vehicles. But then the vehicle never came, so eventually I decided to walk to Manyovu because I was so worried about the children. For two weeks I could not locate our children. I was getting desperate worrying about them. Finally I was reunited in Nduta camp with my children who are now here with me. My husband is still out there. I have cancer and am being treated. I worry what is going to happen to my children and if I will ever see my husband again.<sup>75</sup>

Another thirty-one-year-old refugee woman from Rusaba has also been separated from her husband and two of her seven children, ages eleven and sixteen years old, since the round-ups:

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<sup>75</sup> Human Rights Watch interview, refugee, Nduta camp, June 1, 1998.

I came to Tanzania in 1972 when I was five years old and lived at Rusaba on the land that we were given by the Tanzanian government. I have never done anything against the government. I am now living in the refugee camp with five of my children, ages fourteen, nine, five and three years, and four months. The army came on November 28, 1997 and told people to stand by the road because we were going to be taken to the camps. At the time I was pregnant, and my youngest child was sick. We had packed some of our belongings, but I could not carry a lot because I was pregnant and holding my youngest child. I was given a lift to Manyovu with two of my children by a nurse who was helping people. My husband was left with the other four children, and we thought he would be arriving shortly. The next day, two more of my children were brought to Manyovu. My child was extremely sick by then after spending the night outside. The next day twelve vehicles took people to Nduta camp. I tried to protest that I was waiting for my husband and two children and that I did not have my family together. The army told me that they did not care if the family was complete or missing one or two people and that they did not want people staying here any more. I arrived at Nduta camp on November 29, 1997. I got a letter from my husband, who is still outside with two of our children. He has no means to come here, and even if I got permission I cannot leave because I cannot manage with all my children, who are too small.<sup>76</sup>

Refugee families who have been separated are still trying to find ways to get back together again. At Mbuba transit center, Human Rights Watch interviewed a fourteen-year-old Burundian girl from Bugarama who had come with her father and sister in search of her mother and another sibling who had been rounded up:

My family came to Tanzania five years ago from Burundi. I lived with my family in Bugarama. In April 1998, my mother and sister were taken while my father was working on the farm and we were at school. When we came home that day we found the house had been robbed by our neighbors and then burned down. In June 1998, my father decided that we would walk to Mbuba transit center to find my mother. We walked for twelve hours. Now we are waiting here until they can find my mother and send us to her in the refugee camps.<sup>77</sup>

Most of the refugees interviewed are extremely distraught at being divided from their loved ones, particularly since the break-up may be permanent depending on how long the Tanzanian government confines them to the camps. The round-ups have had a detrimental impact on the well-being of children. Many children were separated from one parent. Some of these children were born and brought up in Tanzania, and some are half Tanzanian. In many families, some of the children accompanied one parent to the camps while other siblings stayed in the village with their other parent. Some children with a Tanzanian father were living in the camp with their Burundian mother because they were infants or their fathers were not able to take care of them. Parents separated from their children were particularly worried about how their children were faring on their own. Most children affected by the round-ups did not understand fully why they were reduced to rationed meals, semi-permanent housing structures, and scarce fuel in the camps. Additionally, some of the children who used to be in school were kept at home by the parents in the camps in order to collect firewood a distance from the camp area.

### **Mixed Marriages: Tanzanian Citizens Living in Refugee Camps**

Spouses and children of mixed marriages to Tanzanian nationals were also affected in the round-ups. Human Rights Watch found that in cases where Burundian women were married to Tanzanian men, they were generally allowed to return home. However, Tanzanian women married to Burundian men did not receive equal consideration. In violation of international law, the Tanzanian 1995 Citizenship Act discriminates on the basis of sex.<sup>78</sup> Under Tanzanian law, Tanzanian men can apply for their foreign wives to become citizens, but Tanzanian women married to

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<sup>76</sup>Human Rights Watch interview, refugee, Nduta camp, June 1, 1998.

<sup>77</sup>Human Rights Watch interview, refugee child, Mbuba transit center, June 6, 1998.

<sup>78</sup>Discrimination on the basis of sex is prohibited by the International Covenant on Civil and Political Rights (Article 2), the African Charter on Human and Peoples' Rights (Articles 2 and 18), and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).

foreign men cannot obtain citizenship for their husbands.<sup>79</sup> As a result, several Tanzanian women married to Burundian men were forced to the refugee camps in order to keep their families together.

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<sup>79</sup>Under section 11(1) of the 1995 Citizenship Act, only “a woman who is married to a citizen of the United Republic [of Tanzania] shall at any time during the lifetime of the husband be entitled, upon making an application in the prescribed form, to become a citizen of the United Republic” on condition that she officially renounces her previous citizenship. 4 (A) Human Rights Watch

While some mixed Burundian-Tanzanian couples have opted to live apart since the round-ups, Human Rights Watch interviewed three Tanzanian women who had decided to live in the refugee camps with their Burundian husbands because they did not want to divide their families. They were saddened and bitter about the manner in which the government has treated Burundians. One Tanzanian woman said “I begged the army not to take my family to the camps, asking what would happen to me alone. The army told me that I could go back to my parents.”<sup>80</sup> A twenty-nine-year-old Tanzanian woman born in Mwanza had lived with her Burundian husband in Rusaba B since 1985. She was rounded up on November 25, 1997, with her husband and three children ages twelve, ten, and five years old. She said:

The army told us to pack their things and wait by the roadside. They told us that we had to walk to Manyovu unless they contributed to the fuel for the vehicle. We did not want to give the army our money, so we started walking, each carrying as much as we could and with a bundle of their belongings on our bicycle. At Manyovu we were given flour and beans and bought some firewood to cook dinner. Two days later we were taken to Nduta. We were never questioned by anyone because we had arrived a bit late. Those who arrived late were not interviewed by anyone. We were just brought to the camps.<sup>81</sup>

Another Tanzanian woman in the camp was interviewed by the screening committee at the transit center:

I told them I was a Tanzanian. They asked me if I had relatives I could go to. I said yes, a brother. They did not say anything. Then when people were put on the lorry to go to the camps I got in with my husband. I am not happy here, but what can I do? It has been difficult, and now I am pregnant. My husband applied for citizenship, but we have not heard anything. We also made this request to [U.N. High Commissioner for Refugees] Mrs. Ogata when she visited.<sup>82</sup>

Another Tanzanian woman born in Manyovu, twenty-six years old, and with a one-year-old child is living in Nduta camp. Her parents born in Muninira and she grew up there. In 1994, she married a Burundian (who had come to Tanzania when he was eight years old) and has lived in Rusaba settlement since her marriage. She said:

When the army came I tried to tell them that this was a Tanzanian family. But they told me that if you are married to a Burundian he must go to the camps. Again at Manyovu I told them, “I am a Tanzanian.” But they would not let my husband go. What is our choice? You can only follow your husband even if you don’t want to go to the camps. Or you can go to your parents’ house. But what woman wants to break her marriage like that?<sup>83</sup>

## Loss of Property

Everyone deserves the respect and protection of his life, his individual right and that of his family and household, also respect and protection of his abode and his personal communication.

–Tanzanian Constitution, Section 3(16)(1)

Most uprooted Burundians, particularly the old caseload refugees, have suffered significant losses of their belongings with no reparations. Whether a person is a legal or illegal resident, a foreigner or a national, his immigration status does not warrant the arbitrary deprivation of his property. The 1951 U.N. Convention relating to the Status of Refugees (Article 13) states that refugees should be accorded the same treatment as nationals “as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property. The African Charter on Human and Peoples’ Rights (Article 14)

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<sup>80</sup>Human Rights Watch interview, refugee, Nduta camp, June 1, 1998.

<sup>81</sup>Human Rights Watch interview, refugee, Nduta camp, May 31, 1998.

<sup>82</sup>Human Rights Watch interview, refugee, Nduta camp, May 31, 1998.

<sup>83</sup>Human Rights Watch interview, refugee, Nduta camp, May 31, 1998.

reiterates the same position and stresses that the right to property “ . . . may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of the law.”

Some refugees know that their property was destroyed or stolen by local residents. Others were able to leave their property in the hands of relatives or friends. Yet others have no idea what has happened to their belongings. In some villages, houses belonging to Burundians were demolished by villagers for firewood. Most banana and cassava crops cultivated by the Burundians were stolen, abandoned, or overrun by weeds. One old caseload refugee said:

The army came on November 15, 1998 at 9:00 a.m. They told us to go and wait at the road. We were told: you are all refugees. You are required to be in the refugees camps by November 22. We showed them all our receipts contributing to development funds and the ruling party, and old refugee identity cards. They just said that we should go to the camp where we would be dealt with. The army allowed us to take whatever we could carry. But it is hard to carry more than one or two bundles of things. We begged for more time to sell some things and organize ourselves. They gave us three more days. Even then, we were not able to sell everything. We had cows and goats. Others were businessmen who had shops. They lost a lot of money. People started selling things at one-fifth the price of their value. People had good homes. Even our crops of beans, maize, nuts, bananas, and coffee were worth a lot of money. Everyone was wondering what to do. We lost everything. Now we are sleeping under plastic sheeting in semi-permanent houses. Look at our children. Since coming to the refugee camps they are suffering from anaemia, malaria, and scabies.<sup>84</sup>

Another Burundian couple who had lived in Tanzania since 1972 and who were separated from three of their six children (ages fifteen, seventeen, and twenty years old) in November 1997 know from their children remaining in Rusaba that they have lost everything. The fifty-year-old wife explained:

I had left the village to visit people when the army found me. I tried to explain to the soldiers that the family was not together, but they would not listen. They took half my family, and the rest remain in the house. But there is nothing there anymore. When the children came back, they found the house ransacked and everything, including the doors of the house, looted. The children have sent word to say they are suffering and asked for help.<sup>85</sup>

A UNICEF officer who witnessed the round-ups noted:

It was sad to see these people. Many of them had spent some twenty years here and had amassed a substantial number of belongings. It was sad to see them trying to save what little they could and carry it with them to the refugee camps before their things were taken by their neighbors.<sup>86</sup>

In some villages, the abandoned property has been protected by the local authorities. Some villages have placed the plots under the village authority. Others have left them abandoned but untouched, unsure what to do until they receive some direction from the government.

### **Confinement in the Refugee Camps**

Everyone has the right to be free and to live as a free person.

–Tanzanian Constitution, Section 3(15)(1)

When the Burundian refugees who were rounded up first came to the camps, they were forbidden from leaving the camp area. They were denied even the standard temporary permission granted to other refugees to leave the camp site to meet relatives or to travel to the local market. In June 1998, refugees who had been rounded up, particularly the old

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<sup>84</sup>Human Rights Watch interview, refugee, Nduta camp, June 1, 1998.

<sup>85</sup>Human Rights Watch interview, refugee, Nduta camp, June 1, 1998.

<sup>86</sup>Human Rights Watch interview, UNICEF staff member, Kigoma, May 25, 1998.

caseload refugees, said that their requests to leave the camp in order to locate their spouses or children or to return to their home areas to sell their possessions were repeatedly been denied by camp commanders.

International refugee and human rights law guarantees freedom of movement to refugees without discrimination. Article 26 of the 1951 U.N. Convention Relating to the Status of Refugees states that host governments “shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.” Article 12 of both the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights guarantees the same right.<sup>87</sup> Refugees need not be housed in camps to be accorded full recognition of their rights as refugees. The U.N. General Assembly has reiterated that as a priority, states should seek durable solutions for refugees including through assimilation and local integration.<sup>88</sup>

Human Rights Watch found generally that more recently arrived Burundian refugees who had come to Tanzania since 1993 had not made requests to leave the camp and were more accepting of their fate in the refugee camps. Most of the recently arrived refugees had not acquired nor lost many possessions since the round-ups. The old caseload refugees, however, were a different matter. Without fail, these long-time residents of Tanzania remain traumatized by the round-ups and extremely troubled by the loss of their family members and a lifetime’s worth of belongings, expressing resignation, despair, depression, frustration, indignation, and anger at the way they have been mistreated by the Tanzanian government. Refugees interviewed by Human Rights Watch spoke about the fact that they have now become idle dependants of inadequate food rations, prohibited from leaving the camps to find family members or settle their affairs. Due to the crowded conditions in the refugee camps, many have fallen sick since arriving there and their children have contracted anemia, malaria, or scabies. Refugees made comments to Human Rights Watch such as: “What pains me most is to go from a place where I could feed myself and my family to become a beggar.” “I have gone from being productive to a life of waiting.” “My children outside the camp are sending messages to say that they are living like orphans.” “When we ask to seek our children, we are told to wait by the camp commander.” Refugees also expressed shock at the Tanzanian government’s assumption that they were all involved in rebel activity and posed a security threat to Tanzania: “No guns were found when we were rounded up” said one refugee. “We built a good life, we never did anything to our Tanzanian brothers, and now look how we live under one piece of plastic sheeting. What have we done to deserve this?” Another said: “When I left Burundi I was a small child of seven or eight years old. I have grown up here and now have seven children of my own, all born in Tanzania. If I went to Burundi, I would not even know where to go. We do not support the rebels. There are many of us like this.”<sup>89</sup>

By early 1999, the Tanzanian authorities became less strict, and many of the refugees rounded up left the camps without permission and returned to their homes. However, law-abiding refugees who are following the government’s instructions remain confined in the camps. However, those refugees who slipped out the camps and returned home live with the fear and uncertainty that they may be rounded up again in the future. Additionally, the round-ups destroyed communities. For instance, in Rusaba, where some old caseload refugees have returned to their settlement, they find that their land is now occupied by their Tanzanian neighbors, their lifetime’s belongings have been stolen, and community institutions such as the local school remain closed. Some former Rusaba residents opt to live elsewhere because they believe that living on a refugee settlement makes them a visible and potential target for future government action against refugees.

## **The Response of UNHCR**

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<sup>87</sup>The right to freedom of movement is only derogable when necessary to protect national security or public order and, as noted, can only occur under very specific, limited and extraordinary conditions. The fact that other Burundian refugees not subjected to the round-ups are allowed temporary permission to leave the camp site is strong proof that national security is not at stake.

<sup>88</sup>U.N. General Assembly Res. 1166 (XII), November 26, 1957, para. 2, reaffirming the basic approach set out in para. 1 of the UNHCR Statute.

<sup>89</sup>Human Rights Watch interviews, old caseload refugees, Nduta camp, May 31, 1998.



When the forced round-ups began, UNHCR had not been notified and was initially unprepared to assist and receive the refugees being sent to the camps. At first, UNHCR played an active role in protesting the Tanzanian government's policy. According to one UNHCR document:

UNHCR conveyed to the Tanzanian government its regret that refugees who had been integrated for so many years and settled by the authorities in villages were affected by the operation. UNHCR also requested a clear distinction should be made between illegal immigrants and refugees who had already been integrated. UNHCR also expressed concern about the conduct of the operation with regard to family separation and the loss of property for many refugees.<sup>90</sup>

In an attempt to dissuade the Tanzanian government from forcibly moving the old caseload refugees, UNHCR initially took the position that it was not responsible for providing humanitarian relief for these self-sufficient refugees. UNHCR argued that only newcomers should be put in the UNHCR-run camps and advocated for the old caseload refugees to be restored to their settlements. Both UNHCR staff and refugees who witnessed the interactions at the transit centers attest to the vigorous advocacy role that UNHCR played in attempting to overturn the decision with regard to the old caseload. For two weeks, UNHCR argued that the old caseload should not be subjected to the round-ups. Ultimately, however, the Tanzanian government prevailed.

Recalling its unfortunate cooperative role with the forced return of the Rwandan refugees in 1996, UNHCR found itself in a difficult position. It was faced with the dilemma of either taking a principled stand by not cooperating with the Tanzanian operation in any way, which would result in the refugees enduring extra hardship, or providing humanitarian assistance (particularly with regard to shelter, food, and transport) to the refugees and risk accusations of collaboration with an operation that violated human rights. UNHCR also did not want to oppose the flow to the camps too categorically, because it was better than the alternative of deportation. Ultimately, it took the middle road. UNHCR refused to provide vehicles or fuel to transport refugees during the round-ups but did provide food and shelter and took part in the screening process with the authorities on cases of refugees with long stays or links to Tanzanian citizens. In order not to be seen to be affiliated with the army round-ups in any way, UNHCR refused to provide transport to bring the refugees to the transit centers, but it did transport refugees to the camps after they were interviewed in the transit centers. But as one UNHCR staff member wryly noted: "I wonder in fact if the refugees noticed that they were brought in one type of vehicle to the transit center and taken by another vehicle to the camps."<sup>91</sup> UNHCR also attempted to reunify families. Given the difficult choices, UNHCR played as constructive a role as they could have under the circumstances and struck the fine balance between protesting the injustice while doing something to alleviate the hardship. A few months later when High Commissioner Sadako Ogata visited the Tanzanian camps in February 1998, this issue was raised and she even met with refugees who had been rounded up.

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<sup>90</sup>UNHCR, "Update on UNHCR's Refugee Programme in Tanzania," 4<sup>th</sup> Quarter of 1997, p.3.

<sup>91</sup>Human Rights Watch interview, UNHCR staff member, Kibondo, July 3, 1998.

Since the round-ups, UNHCR's action on this issue has been slow and intermittent. By the time Human Rights Watch visited the refugee camps in June 1998, UNHCR attention to this issue had notably waned.<sup>92</sup> This appeared to be due to a number of factors, not least that there are too few protection officers assigned in the camps and a number of pressing issues. More disturbingly, Human Rights Watch also found a general attitude of passivity and inaction to human rights concerns prevalent among some of the UNHCR staff in Tanzania. A frequent response to our concerns about the forced round-ups and other human rights issues was: "At least they are not being refouled (forcibly returned)."

At the prompting of the U.N. Children's Fund (UNICEF), UNHCR has sought to reunite separated families in the camps. UNHCR has also, with some success, been calling on the government to restore the old caseload refugees from Rusaba settlement to their homes.

UNHCR has commissioned two internal reports on the subject. The first of these, prompted again by UNICEF, was a joint UNICEF/UNHCR study commissioned from a Tanzanian lawyer in 1997, analyzed the legality of the round-ups. The findings of this report were submitted to the Tanzanian government in late 1998 and as of June 1999 had received no response.<sup>93</sup> The legal analysis of this report, however, is narrow and stops short of examining the government's actions under the Tanzanian constitution, mistakenly concluding that the government's actions were legal under national law because they did not contravene the Immigration and Citizenship Acts of the country. The Tanzanian government's actions in fact contravene provisions of the constitution and cannot therefore be justified under national legislation. The second report, completed in early 1999, focused on the status of the round-up refugees in the camps in 1999. In February and March 1999, UNHCR retained two law students from the University of Dar-es-Salaam as legal interns to visit the camps and identify the refugees who had been rounded up in order to interview them about their situation, to determine what they wanted, and to initiate the process for those eligible for citizenship. Continued follow-up work is necessary to ensure that the recommendations of both reports are implemented as much as possible.

UNHCR has been more proactive in trying to ensure the civilian character of the camps. The agency has assisted the Tanzanian government with a security package to enhance security in and around camps with vehicles, communications equipment, incentives for police, and meetings with refugee leaders on need to respect the camps' civilian nature. UNHCR does not have a twenty-four hour presence in the Tanzanian camps and relies on the Tanzanian police, which it funds to maintain posts on site. These police, in turn, are kept informed by refugees who are paid a small stipend to serve as security guardians. For the most part, the Tanzanian police are professional. UNHCR conducted two joint security missions with the Tanzanian government in May and December 1997. Both missions concluded that there was no military activity within the camp but that voluntary recruitment did occur. Both missions recommended a greater police presence in and around the camps.

In addressing the need for a greater police presence in the camps, UNHCR has provided funding and is working to strengthen communication between the police and UNHCR. When U.N. High Commissioner for Refugees Sadako Ogata visited the camps in February 1998, she pledged that UNHCR would deploy some 500 additional police to ensure a twenty-four-hour police presence in the camps, to monitor unauthorized movements, patrol roads, and maintain order.<sup>94</sup> By the end of 1998, only 278 police (including ten women) had been deployed to the camps, making an average of twenty police per camp. Some police had also been deployed to Mwisu, a prison-type facility that holds some forty combatants. UNHCR also provided funding for police facilities to be built at Lugufu camp and Kasulu.<sup>95</sup>

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<sup>92</sup>See also, Women's Commission for Refugee Women and Children, "A Child's Nightmare: Burundian Children at Risk," New York, May 1998, p. 13 which stated in its report: "The views privately shared by officials from other humanitarian agencies were generally critical of UNHCR's handling of the situation. 'UNHCR backed down on this round-up,' one commented. 'They didn't raise a stink,' another remarked, adding that the Tanzanian government 'got UNHCR to do a lot of their work' by transporting and caring for the tens of thousands of rounded up Burundians."

<sup>93</sup>U.N. Office for the Coordination of Humanitarian Affairs (OCHA), "U.N. Consolidated Inter-Agency Appeal for the United Republic of Tanzania: January-December 1999," December 7, 1998, p. 6 available at <http://www.notes.reliefweb.int>.

<sup>94</sup>John Nyaga, "UNHCR to Train Tanzanian Police to Patrol Refugee Camps," Agence France Press, February 17, 1998.

<sup>95</sup>Human Rights Watch telephone interview, UNHCR staff member, Dar-es-Salaam, April 22, 1999. Vol. 11, No. 4 (A)

Since the round-ups were ostensibly conducted in order to address security concerns, information and action to augment security in the border area are critical to refugee protection work in Tanzania. Yet, Human Rights Watch found that some UNHCR staff members in Tanzania are not aware of and do not follow current events in Burundi or security developments in Tanzania that could impact detrimentally on their refugee protection work. Furthermore, according to one senior UNHCR staff member, security information between UNHCR offices in the Great Lakes region is currently not collected consistently or shared among UNHCR country offices.<sup>96</sup> In 1999, the Swedish government pledged to second staff to UNHCR for two police liaison officers, in order to improve information sharing and communication between UNHCR and the police, a development that should address the above stated concern.<sup>97</sup>

## VI. THE SITUATION OF THE OLD CASELOAD REFUGEES

Although Human Rights Watch believes that the Tanzanian government's policy of nationality-based round-ups and confinement of refugees in camps should be reversed in all cases, we are particularly concerned about the situation of old caseload Burundians who have suffered the greatest injustice. To entirely uproot these families—the bulk of whom have lived a lifetime peacefully in Tanzania without being a burden to the government or the international community—to strip them without compensation of their livelihoods and belongings acquired over twenty-five years, to separate their families, and to forcibly confine them to camps where they are now dependent on food rations, are particular injustices. There are strong humanitarian considerations to restore the old caseload refugees to their former status and regularize their stay in Tanzania based on the government's longstanding policy of integration.<sup>98</sup> The unique history of this group gives the Tanzanian government a meaningful basis on which to distinguish the old-caseload Burundians and to restore them to their settlements or to alternate settlements if security considerations dictate.

Since the 1970s, this community of refugees reciprocated Tanzania's hospitality by being responsible, self-sufficient, and contributing members of the society that welcomed them. Most of the refugees interviewed by Human Rights Watch were in possession of receipts that indicated that they had been paying government taxes and community development contributions for many years—in some cases as long as twenty years. Some of them were in possession of membership cards of legal political parties in Tanzania. Some even had receipts showing annual contributions to the Tanzania African National Union (TANU), the former ruling party when Tanzania was a one party state prior to 1976. A U.N. representative who interviewed twelve village leaders confirmed this level of integration and noted that the village leaders had stated that Burundians were often at the forefront of village development activities and while it would take several reminders for Tanzanians to pay their taxes, it only took one announcement for Burundians in the village to honor their payments or render services.<sup>99</sup> Their long-term participation in development and political activities indicates their complete integration as contributing members of Tanzanian society.

In most countries, voting is the hallmark of citizenship—the primary right that distinguishes citizens from aliens. Tanzania is no exception. Although the Tanzanian constitution reserves the right to vote to citizens (as do most constitutions), the possession of ruling party membership cards indicates that the old caseload Burundians participated in government elections and were accepted by the local authorities as being indistinguishable from citizens in all regards, many for over two decades. Having been granted and having lawfully exercised such a fundamental right, the old caseload Burundians have a meaningful basis on which to distinguish themselves from other Burundian residents.

Socially, this group of refugees has assimilated into Tanzanian society. Many of their adult children who have been born in Tanzania speak fluent Kiswahili and have never been to Burundi. Most refugees interviewed by Human Rights Watch spoke of the close and friendly relationships that they had established with their fellow villagers before

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<sup>96</sup>Human Rights Watch interview, UNHCR staff member, Geneva, May 12, 1998.

<sup>97</sup>Human Rights Watch interview, UNHCR Tanzania staff member, Nairobi, May 5, 1999.

<sup>98</sup>Some refugee law analysts have posited that under international and common law, individuals acquire enforceable interests based on the development of ties, links, roots, and expectations given to them and that a foreign national's "legitimate expectations" should be taken into account, including such "acquired rights" as may derive from long residence and establishment, business, marriage, and local integration. Guy S. Goodwin-Gill, *The Refugee in International Law*, (Clarendon Press: Oxford, 1983), p. 211, 222.

<sup>99</sup>Human Rights Watch interview (name withheld on request), Mwanza, May 24, 1998.

the round-ups. Most had developed strong family and community ties with the Tanzanians around them and considered themselves upstanding members of their community. For many of these Burundian refugees, their loyalty is to Tanzania.

The old caseload Burundians' contributions to Tanzanian society, their ability to be self-sufficient, and their non-threatening posture toward the Tanzanian government all warrant their release from the camps; indeed, these facts should have prevented their being rounded up in the first instance. Long-time refugee families who are able to sustain themselves without international assistance should not be forced into camps where they are deprived of the opportunity to support themselves.

Even if the nation's safety were compromised by *some* Burundians in the settlements, it is highly unlikely that old caseload Burundians *en masse* would be the catalysts for national instability in Tanzania. As employed, taxpaying residents of Tanzania, these old caseload Burundians represented no threat to the political or social stability to Tanzania; if anything, they enhanced it. These were active members of community regularly paying taxes in a timely fashion, providing farming labor for the local economy, and voters in local and party elections. Tanzanian villages have become so reliant on these Burundian residents' labor that when the round-ups occurred, local residents reportedly expressed fears that this could have an adverse economic impact.<sup>100</sup>

The Tanzanian government's contention that Burundians are illegally present if they are outside the refugee camps does not apply persuasively to the old caseload Burundians, whose immigration status is closer to a longstanding resident alien or naturalized citizen than to an illegal alien. Additionally, the right of old caseload Burundians to be restored to their settlements does not hinge on a finding of citizenship. In meetings with officials from the Ministry of Home Affairs, Human Rights Watch found that arguments for the restoration of the old caseload refugees to their settlements were immediately met with the assumption that such a move would require the government to grant all the old caseload refugees Tanzanian citizenship. The Tanzanian government did offer the old caseload Burundian refugees the opportunity to change their citizenship between 1991 and 1993, and even went so far as to significantly lower the administrative fee. Camp commanders at Nduta camp expressed the sentiments that were echoed by other camp commanders and officials in Dar-es-Salaam when they stated:

These refugees had years to apply for citizenship but they did not do it. Now that they are rounded up, all of a sudden they talk about citizenship. We need to be careful who we give our citizenship to. Look how we gave it to the old caseload Rwandans. We treated them well and they tore up our passports and left. We cannot even give them a permit to go out of the camps because we know that they will not return. We have to think about our security. We are not interested in fighting with the Burundian government. We don't want to have any problems. We have already had border skirmishes with the Burundian army.<sup>101</sup>

The Tanzanian government does not have to give all the old caseload Burundian refugees citizenship in order to restore them their former status as integrated refugees. The old caseload refugees should be permitted to apply for residence permits and allowed to return to their settlements. Local integration of refugees is one of the three durable solutions (along with voluntary repatriation and third-country resettlement) preferred and recommended by UNHCR. In many places in the world, refugees live outside organized camps without international assistance. Some analysts have suggested that in Africa, well over half of all exiles fall into this category.<sup>102</sup> The government can, and should, return this relatively small group of refugees, as refugees, to their integrated refugee status in Tanzania until such time as they can return voluntarily to Burundi.

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<sup>100</sup>Human Rights Watch interview (name withheld on request), Mwanza, May 24, 1998.

<sup>101</sup>Human Rights Watch interview, John Mwaka, Nduta camp commander and Andrew Kibona, Nduta assistant camp commander, Nduta camp, June 1, 1998.

<sup>102</sup>Human Rights Watch, *The State of the World's Refugees, 1997-1998*, (Oxford University Press: Oxford, 1997), p. 1811, No. 4 (A)

That said, there are some old caseload Burundians, particularly those married to Tanzanian citizens, who are eligible and should be assisted by UNHCR to apply for citizenship. Offers of eligibility for Tanzanian citizenship were made to this group in the early 1990s. Some Burundian refugees did take advantage of this offer since most regarded themselves as Tanzanians, having lived most (and in some cases all) of their lives in Tanzania. There are others who did apply who never received any reply. However, many did not either because of lack of money, ignorance as to the consequences of not applying, and the lack of any explanation regarding the potential repercussions of not changing their citizenship. Identity documentation in that area is the exception rather than the rule. Most rural Burundians and Tanzanians do not possess identity documents of any sort that verify citizenship. Records of national identity are retained by the village leaders and through personal knowledge. Many refugees assumed from their lengthy stay and the government's acceptance that such formalization was not obligatory, particularly since most Tanzanians do not possess any national identification. The required fee for applying for citizenship deterred many from filing their applications even though they were eligible and even interested. Other Burundian refugees told Human Rights Watch that they had not applied for citizenship because they were unaware of or intimidated by the process. In other cases, Burundian refugees expressed their gratitude to Tanzania for giving them refuge but wanted to retain their Burundian nationality and return to Burundi when the situation permits. One UNHCR staff member noted: "identity is all that these Burundian refugees have left."<sup>103</sup>

For those refugees who are eligible for citizenship but are unable to pay the filing fee, the government should make a one-time fee dispensation to assist them to apply. Article 34 of the 1951 U.N. Convention Relating to the Status of Refugees states that host governments "shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings." If any refugee group is deserving of consideration under this clause, it is those old caseload Burundian refugees who qualify.

## VII. CONCLUSION: ENHANCING SECURITY WITHOUT VIOLATING REFUGEE RIGHTS

No government can, in the name of security, trample on the rights of refugees. The responsibilities of a government to ensure national security and to uphold its obligation to respect refugee rights are not contradictory. Long-term security interests are best served through the implementation of mechanisms that uphold the rule of law. Ultimately, abusing the human rights of refugees and indiscriminately penalizing refugees without due process or individual accountability is neither an acceptable option under international law nor does it provide the most effective and sustainable security policy.

Notwithstanding the round-ups, rebel activity and crime around the border areas remains a concern as does the tense relationship with the Burundian government, which continues to accuse Tanzania of allowing rebel activity. As recently as April 1999, the Burundian government complained to the Tanzanian authorities that 500 Burundi rebels, supported by refugees from one of the camps, had attempted to infiltrate the country's eastern border in late March, an indication that rebel activity is occurring independently of most refugees.<sup>104</sup> One diplomat told Human Rights Watch:

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<sup>103</sup>Human Rights Watch interview, UNHCR staff member, Kigoma, May 25, 1998.

<sup>104</sup>U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Integrated Regional Information Network (IRIN) Central-East Africa Weekly Round-up, No. 15, April 10-16, 1999 available at <http://www.notes.reliefweb.int>, Vol. 11, No. 4 (A)

The round-ups were a mistake from a policy perspective. The sweep of the Burundians was solely a response to [Burundian President Major Pierre] Buyoya's complaints of rebel activity in Tanzania. To show Buyoya they were cooperating, the Tanzanians conducted the round-ups. In retrospect, it was a mistake. Nothing was achieved by it from a security standpoint. It doesn't reduce Burundian hostility toward Tanzania. It doesn't reduce the rebel activity at the border. Buyoya is not going to give Tanzania credit for taking any action, and in fact it is in his interest to continue to blame Tanzania for his problems rather than have to make changes within Burundi. Look how he treats his own citizens. It was a misguided decision on the part of the Tanzanians. What did the round-ups achieve?<sup>105</sup>

A UNHCR staff member analyzed the round-ups purely from a logistics perspective and concluded that:

The round-ups were unnecessary. The cost to the army for the round-ups would have been far better spent on increased border patrols, improving the security surveillance within the camps, and ensuring that the camp layout is conducive to enhanced safety. As it is, the young boys do not stay in the camps. It was the older people and children that were brought there. There were even some school teachers arrested. They are not the security problem. So who is stuck in the camps? The wrong people.<sup>106</sup>

International relief workers in the area speculated that the round-ups may have been counterproductive to enhancing security. Some relief workers made comments such as: "The Tanzanian government has done something unfair. There is now growing resentment against the government."<sup>107</sup> "It was uncalled for to uproot the refugees. The government said security reasons but ultimately rebel activity continues."<sup>108</sup> One UNHCR staff member noted that "the Tanzanian government has created a greater security risk by rounding up refugees. There have been more allegations of security problems in the camps since the round-ups."<sup>109</sup> Forcing Burundian refugees into the camps in this manner can only fuel resentment against the Tanzanian government, play into the hands of the Burundian government as it threatens to invade by reinforcing the erroneous accusation that all Burundian refugees are rebels, push refugees to identify more closely with the Burundian political alliances in the camps because of the hostility they have experienced at the hands of the Tanzanian army, and increase the likelihood of rebel recruitment among the old caseload refugees who have gone from being self-employed farmers to idle refugees situated in camps close to the border.

The Tanzanian government can take other, more just steps to address security and prevent covert rebel activity, such as increased police patrols and intelligence surveillance along the border or among communities with high numbers of Burundians, the relocation of the refugee camps and settlements with Burundians further away from the border, and the investigation and prosecution of those Burundian individuals responsible for criminal activity. Each of these proposals is less restrictive than the indefinite detention of thousands of people who have not historically jeopardized Tanzania's safety, and would allow for a more sustainable and rights-respecting security policy over the long-term. The Tanzanian government's recent announcement that it will increase the number of markers denoting the border with Burundi to "remove confusion" over the frontier is the type of measure that can serve to augment security without violating refugee rights.<sup>110</sup>

Additionally, Tanzanian residents in the border areas could benefit from the government adopting a more sustainable security policy, both because local residents' safety would be better assured and the Burundian refugee contribution to the local economy would be restored.

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<sup>105</sup>Human Rights Watch interview, diplomat, Dar-es-Salaam, May 21, 1998.

<sup>106</sup>Human Rights Watch interview, UNHCR staff member, Kibondo, July 3, 1998.

<sup>107</sup>Human Rights Watch interview, U.N. staff member, Kigoma, May 25, 1998.

<sup>108</sup>Human Rights Watch interview, U.N. staff member, Kigoma, May 25, 1998.

<sup>109</sup>Human Rights Watch interview, UNHCR staff member, Kigoma, May 25, 1998.

<sup>110</sup>U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Integrated Regional Information Network (IRIN)

## VIII. ACKNOWLEDGMENTS

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