

PART III

Case studies

CHAPTER 6

International standards, improvisation and the role of international humanitarian organizations in the return of land in post- conflict Rwanda

John W. Bruce

Refugee return and land access in Rwanda has been an extraordinarily complex matter, with some refugees leaving just in time for others returning to take up their homes and lands. In Rwanda, as in Sudan, Burundi, South Africa and Mozambique, land issues were addressed in the peace negotiations to end the conflict. Tensions can emerge between international standards regarding the rights of refugees and displaced persons to return to their land and the compromises that needed to be struck and honoured to obtain (and maintain) peace. This chapter examines that tension and its implications, and assesses the response of international humanitarian organizations and NGOs involved in reconstruction. It seeks to draw from that experience some lessons that may be valuable in future refugee returns.

Competition for land as a cause of the conflict

Rwanda is the most densely populated country in Africa, with the lowest ratio between people and arable land. It has a population growth rate of 3.1 per cent, and population density has increased from 101 people per square kilometre in the early 1960s to 303 people per square kilometre today.¹ In the last 50 years, the population of Rwanda has almost quadrupled. As the population has grown, land has been subdivided among heirs, and in some cases sold. The average size of a family farm holding fell from 2 ha in 1960 to 1.2 ha in 1984, and to just 0.7 ha in the early 1990s. In 2001, almost 60 per cent of households had less than 0.5 ha to cultivate. The FAO's recommended minimum size of an economically viable cultivation plot in Rwanda is 0.9 ha. Land has historically been distributed unequally, and growing land markets may be increasing land accumulation. In 1984, it was estimated that 16 per cent of the population owned 43 per cent of the land, whilst the poorest 43 per cent of the population owned just 15 per cent. Estimates of landlessness range

from 10–20 per cent. While 47.5 per cent of the population was categorized as ‘poor’ in 1990, this had risen to 64.1 per cent by 2000 (Musahara and Huggins, 2005; Huggins, no date).

There is fundamental agreement among scholars that land scarcity and consequent poverty and desperation have played a role in persistent social and civil conflict in Rwanda. However, different authors see the connection between land and conflict in different ways.² Some emphasize roles played by population growth and absolute land scarcity (Andre and Platteau, 1998), ‘environmental scarcity’ (Percival and Homer-Dixon, 1995), social construction of ethnicity, elite capture of land and power, poor land governance and emerging class tensions due to inequality and poverty (Gasana, 2002). Past conflict and the potential for conflict over land in Rwanda in fact involve a convergence of these factors, and it is not the purpose of this chapter to try to assign relative weights to them. The government recognizes the role of competition for land both in its policy documents and in the priority it has given land as a policy issue, and few would dispute that effective management of competition for land will be critical to the maintenance of peace.³

The story of the civil conflict and the return of successive waves of refugees to Rwanda will only be very briefly summarized here. The Tutsi (14 per cent of the population) had ruled Rwanda at the advent of colonialism, dominating the Hutu majority. The Belgian colonialists gave preference to the Tutsi in matters of governance, exacerbating ethnic distinctions and tensions, but in the run-up to independence embraced majority rule, shifting power to the Hutu. Pogroms against the Tutsi began in 1959, and by the end of the 1980s an estimated 700,000 Tutsis, perhaps a third of the Tutsi population, were in neighbouring countries, primarily Burundi, Zaire, Tanzania and Uganda. Those who remained, both Hutu and Tutsi, moved onto the land the refugees had left behind. Extensive Tutsi royal pastures were converted to farming and occupied by predominantly Hutu cultivators.

The Hutu-dominated government from time to time invited exiled Tutsi populations to return. In 1966 the government issued legislation on the reintegration of refugees (Presidential Decree on the Reintegration of Refugees, No. 25/10, 26 February 1966), but this severely limited freedom of choice of residence and freedom of movement. It provided that in no circumstances could returnees reclaim the lands they had been using where these had been occupied by others or designated for some other purpose by the authorities. The government was determined to protect ethnic land gains; one president of the period compared Rwanda to a full glass that would only overflow again if refugees returned (Prunier, 1997; Semujanga, 2002). In 1990, the RPF, recruited from the Tutsi diaspora, launched an armed struggle against the government. More killings and displacements followed. The insurrection was waged primarily in the northern part of the country, and the government found it increasingly difficult to contend with the Rwandan Patriotic Army (RPA). Peace negotiations began in Tanzania.

The 1993 Arusha Peace Accords and their sequel

In August 1993 the Arusha Accords were signed. The provisions of the Accords have had a decisive influence on land access for returnees. The Accords consist of a general agreement and six protocols. The Protocol on the Repatriation of Refugees and the Resettlement of Internally Displaced Persons in Article 1 affirms the right of return, with each person free to 'settle down in any place of their choice'. They only enjoy this freedom, however, to the extent that they do not 'encroach on the rights of other people' (Article 2). Article 3 states:

For purposes of settling returnees, the Rwanda Government shall make lands available, upon their identification by the 'Commission for Repatriation' so long as they are not currently occupied by individuals. The Commission shall be at liberty to explore and choose, without any restriction, resettlement sites throughout the national territory.

The Protocol further specifies, in Article 28, that housing schemes in settlement sites should be 'modelled on the "village" grouped type of settlement to encourage the establishment of development centres in the rural areas and break with traditional scattered housing'. The Protocol did not provide for how land would be given to the returnees for agriculture or cattle (Jones, 2003). A joint RPF/government team travelled throughout the country in the months following the signing of the Protocols, identifying potential settlement sites.

Most striking, however, is Article 4 of the Protocol, which states that each person has a right to reclaim his or her property upon his or her return, but then goes on to 'recommend' that, in order to promote social harmony and national reconciliation, all refugees who left the country more than 10 years ago 'should not reclaim their properties, which might have been occupied by other people'.⁴ They were instead to be provided with land elsewhere. This was a major concession from the RPF. An RPF stalwart from that period explained: 'We had been told that "the glass was full". How could we come back? Rwanda is small, but it can accommodate us all if the land is better managed. We made this decision because we did not want to create new refugees. It would not have been intelligent'.

Jones (2003: 203) concludes:

The 'ten-year rule' was painfully negotiated primarily as a pragmatic (and political) solution for achieving peaceful return. Given the ethnic tensions that existed and the history of past and recent conflict, it seems highly likely that if complete restitution of properties had been allowed immediately, there would have been considerable social upheaval and further outbreaks of violence – particularly as there had been a concerted redistribution of properties.

The 10-year rule was and is often presented as 'a reconciliation measure', and is so described in a National Unity and Reconciliation Commission (NURC) survey on land, property and reconciliation from 2005 (NURC, 2005). This

provision did not, it should be noted, affect refugees who had left the country in the 10 years before the signing of the Protocol, nor those displaced internally; their right to reclaim their land was not affected by the Protocol.

Despite the concessions on land made by the RPF in the negotiations, Hutu extremists in government and the armed forces saw the Accords as a betrayal by their government. In April 1994, they responded to the peace accords and the prospect of Tutsi return by launching a rampage of killing by Hutu militia (*interahamwe*). Over 800,000 Tutsi and moderate Hutus throughout the country died in the ensuing communal violence. The genocide was brought to an end by the disintegration of the government and the national army and the occupation of Kigali in July 1994 by the RPA.

In the wake of the RPF victory, around 700,000 refugees returned to Rwanda, primarily Tutsi returning from Uganda, Burundi, Zaire and Tanzania. They are referred to in Rwanda as the 'old caseload', the 'old case returnees' or the '1959 refugees' (referring to the year when many of them fled the country). At the same time, between 2 million and 3 million Hutu fled Rwanda for Zaire and Tanzania, some fearing retribution for the genocide, others forced to flee with retreating militia and remnants of the former army.

The 'old caseload' returns

The genocide and the collapse of the Hutu government and army led to a more rapid advance by the RPA than anticipated, and the RPF suddenly found itself the government. A minister in the first post-genocide government remembers:

The government was set up after the genocide. The NGOs and international organizations had a more powerful presence than our government. We just had guns to provide security. I belonged to the first government. We negotiated with the International Red Cross. We had no salaries, nothing. We needed beans and maize for six months to survive. We got major assistance, and it was really appreciated. But there were so many NGOs operating. We didn't know how many, we didn't know where they were or what they were doing, but we met and met and finally reached understandings.

Asked about the handling of land issues, he continued:

The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how many would have to be accommodated. After the genocide, there was a total loss of focus on land. There had been plans for land to be identified beforehand, for the refugees and cattle to wait at the border, to be provided with goods and funds, their animals vaccinated. None of this happened.

Another minister in the first post-genocide government remembered: 'RPF when gaining territory said that it would gather returnees into camps, but after

1994 many people just went home'. The return was for all practical purposes uncontrolled. Refugees flowed into the country in the wake of the RPF as it occupied territory in its advance towards Kigali. International agencies had fled the country during the genocide and in its immediate aftermath. They returned within months, but there was a hiatus. And the government took time to get organized. A veteran RPF politician recounts the difficulty of the early days in government and of getting a handle on the resettlement: 'We had just arrived. There were only a few of us who were politicians. We were running here and there. The returnees cut down much of Gishwati Forest before we even knew about it'.

One consequence of the massive outflow of Hutu from the country after the genocide was that many returning Tutsi found that their lands, even if they had been occupied by Hutu for many years, were now available for reoccupation. Jones (2003) notes that there were some cases in which some Tutsi returnees simply took houses and land from Hutus, but that the majority of the returnees did not resort to violence and did not seek to occupy their old homes.⁵ Tutsi refugees who had left the country after 1983 (10 years before the Accords) could reclaim their lands, as could those who had been internally displaced or had simply lost land.⁶

Under the Protocol on Repatriation, the government was to compensate those who could not reclaim their old land by 'putting land at their disposal and helping them to resettle'. The new RPF government was responsible for providing unoccupied lands as resettlement sites. In fact, there was little in the way of unoccupied land. Another veteran RPF official remembers:

Akagera Park was one-seventh of the country, too much compared to parks in other nations. So we reduced it. In other areas, we assumed that if land was free, people could recover it. If the land was taken by government or the church, it would need to be returned or compensation provided.

The Minister State for Lands described the process as follows (Hajabakiga, 2004: 8):

As they returned, some of the former 1959 refugees briefly occupied land and property that had been abandoned by the refugees in 1994. Other former refugees were granted public state land, and vacant land on which they could resettle and produce. They received to this effect: the Mutara Game Reserve, two thirds of the Akagera National Park, and the Gishwati Mountain Forest; as well as land belonging to certain state-owned projects that were partitioned and distributed to the 1959 refugees. Communal land, woody areas on fertile land, pastures, and areas near the shallow sections of marshlands were allocated to the 1959 refugees.

Some of these areas of spontaneous resettlement have required continuing government attention. For example, an estimated 8,000 displaced families who settled within Gishwati Forest in north-west Rwanda had to be expelled

later for environmental reasons and, after substantial delays, were resettled in Gitarama (UNHCR/Rwanda, 2000).

A UNHCR/Rwanda retrospective on the process describes these refugees of 1994–96:

These returnees had no land and property to go back to and installed themselves in houses deserted in towns, commercial centres, and in rural areas. Mostly, they did not believe that Rwandans who had fled in 1994 would return and made little effort to take up the often marginal land allocated to them by the government. (UNHCR/Rwanda, 2000: 24)

But in other areas, returnees, with the help of international humanitarian agencies, settled in villages, *imidugudu*, as envisaged in the Arusha Accords. They formed the nuclei of new resettlement villages. Sites were identified in a hasty process by government teams, based in part on visits made by teams during the period between the Arusha Accords and the genocide.

UNHCR and other humanitarian organizations launched a major shelter programme, involving the building or renovation of over 100,000 houses, most of them in the *imidugudu*.⁷ The owners of land acquired for the *imidugudu* were never compensated. Because land was considered to be state-owned, in theory even those displaced had claims only to compensation for houses and crops. An NGO worker involved in providing food and shelter to the new *imidugudu* remembers: ‘At that time, no one even asked, whose land is this being allocated?’ Another NGO worker involved recalls:

We were assisting them. Many things had been destroyed, we were starting from zero. At first it was pure relief, providing pots, jerry cans, blankets, cups. Then the shelter programme, and houses built to government specs. The '94 returnees first had to stay with family, but wanted housing in the *imidugudu*. Some '94s also occupied houses and others had to stay outside. You still see these lines of houses with no services. The NGOs backed off because of lack of services. Government was very unhappy; it was very contentious.

It is remarkable that, during this period, the RPF government remained fully committed to the provisions of the Arusha Accords, including the 10-year rule and provisions on resettlement villages. After all, the government with which the RPF had negotiated the Accords had collapsed. Assumptions that the parties had shared at Arusha were no longer valid; no one had anticipated the genocide and the dramatic outflow of Hutu refugees. Jones (2003: 206–207) observes that ‘despite the conditional wording, the [10-year] provision has largely been treated as mandatory in its implementation’. A former minister from this period explained: ‘Arusha was well negotiated. It offered the promise of political stability. It was our Bible’. When the new Fundamental Law, the Constitution, was drafted, many of the provisions of the Accords were incorporated verbatim.⁸ The continuing commitment of the government to the principles of the Accords appears to have stemmed from the RPF’s

consciousness of a need to build trust among the Hutu population, given the narrowness of its core ethnic Tutsi constituency.

The 'new caseload' returns

The second major wave of returnees, called the 'new caseload', was composed of the Hutu who fled the country in 1994 and then returned, largely in 1994–97. This return came in a number of stages, the first a sudden and unanticipated mass return from Goma in Zaire in July and August 1994 following attacks by the army on the refugee camps and the insurgents, and a cholera outbreak in the camps in North Kivu. There were further huge returns in November–December 1996, following an illegal *refoulement* by the Tanzanian government, continuing through 1997.

Most of the Hutu who had fled to Zaire came from central and northern Rwanda, and few Tutsi returnees had resettled in that part of the country. The Hutu returning to those areas were able to reintegrate without too much difficulty. But in other areas of the country, Hutu returned to find land occupied by recent Tutsi returnees. Especially in late 1996 and 1997, the two waves of returnees to some extent overlapped. In September 1996, the Ministry of Agriculture issued an instruction that established communal commissions to find abandoned land for returning refugees, giving priority to Tutsi returnees, and allocating it to them on a temporary basis until the return of the owners. When Hutu began to return, however, fears of retribution for the genocide meant that, at first, few Hutu returnees were brave enough to press their claims. By the end of 1997, however, a presidential address threatening action by the army against Tutsi who refused to vacate formerly Hutu-held properties upon the return of the rightful owners resulted in more claims and evictions of temporary allottees (Hajabakiga, 2004).

Those Tutsi moved into the early *imidugudu*, as did some Hutu who had failed to find accommodation elsewhere. But in some areas, an expedient called 'land sharing' was initiated. This was done initially on local initiative. Kibungo Prefecture in eastern Rwanda had received large numbers of Tutsi returnees in 1994, and in 1996 there began a major influx of Hutu refugees, who found their former lands occupied. A veteran politician reported: 'We tried to implement the Accords, but in some areas like Kibungo we needed to do land sharing. We had to adapt. Even now we have to adapt'. The local prefet (governor of the province) launched a series of community meetings to encourage the earlier Tutsi returnees to share their land with the returning Hutu. Hajabakiga (2002: 7) writes: The government policy of plots sharing has been encouraged to allow old case refugees of 1959 to get a piece of land in order to earn a living'. One former official remarked: 'Those '94 returnees who had occupied land and houses in Kibungo knew that it was temporary. They knew the houses and crops did not belong to them. We managed to convince them to share. It was very satisfactory'. This approach was adopted sporadically elsewhere in the country, including in Kigali Rural and Umutara.

Compliance with land sharing was in theory voluntary, but pressure from officials is said to have been intense. A UNHCR staffer familiar with the process explained:

Regarding land access, local officials tried to negotiate access to land for returnees. But some parties were threatened by occupants or neighbours. Authorities got involved, and these situations were resolved not legally but by negotiations. People had no choice. It's all about access to services. If you didn't do it, you would have a problem. You go along to get along.

It is not possible to determine the extent of land sharing. It was done on local initiative, and this makes it difficult to quantify the process. What is clear is that those who lost land in the land-sharing process did not receive compensation. As Jones (2003) indicates, this was a violation not only of Rwanda's obligations under international agreements but also of the new Constitution's property guarantees. Nonetheless, the government clearly considers land sharing an acceptable expedient, and still resorts to it in special cases, without compensation. Some such cases are noted later in this chapter.

Imidugudu and the Habitat Policy

Article 28 of the Arusha Accord's Protocol on Reintegration states that settlement sites should be 'modelled on the "village" grouped type of settlement to encourage the establishment of development centres in the rural area and break with traditional scattered housing'. This reflected a policy dating back to the colonial period, when the Belgians had sought to group peasants in *paysannat*.⁹ In 1996, the new government adopted a National Habitat Policy that stated that dispersed patterns of homesteads in the countryside were an inefficient use of land, and called for the regrouping of all inhabitants into villages. This converted a programme of refugee resettlement into a major social engineering initiative. The Policy was adopted by the Cabinet in 1996, but was never debated or endorsed in parliament or in public, and implementation proceeded without a solid legal basis.

From the beginning, there were problems with sites and services. An NGO worker who provided services to the programme remembers: 'Mistakes were made. Houses were put in with no services. You need water, you need a market, and a health centre nearby. People were promised electricity but never got it'. And while it was said that compulsion would not be used, the Ministry of Interior and Communal Development issued an instruction prohibiting people from constructing homes on their own land, if these were outside *imidugudu*. Refugees who returned after January 1997 to find their homes destroyed could not simply rebuild on their former land, but were required to construct new homes in *imidugudu*. Some households moved voluntarily, but in other cases forced removals to *imidugudu* occurred. While the villagization programme was supposed to allow for more efficient land use in rural areas, those who were forced into villages usually never gave up their old land, and

just had to go further to farm it. And while the Habitat Policy recognized that expropriations of land were involved in villagization, and stated that compensation would be paid, this happened only in a small minority of cases. If compensation was received, it was in the form of compensatory plots in the *imidugudu*.

One of the first signs of unease with *imidugudu* in the international humanitarian community came in 1998. In April ACORD, one of the international NGOs working in the country, published a study which raised serious questions about the wisdom of the villagization programme (ACORD, 1998). The study was initiated in response to early drafts of a land law that contained articles that would have legitimated some of the abuses associated with the creation of *imidugudu*. The report raised numerous concerns about the implementation of *imidugudu*, including poor choice of sites; sites lacking economic opportunities or raising environmental issues; failure to involve the concerned populations in the choice of sites; negative effect of distance from homes in the villages to productive resources; failure to systematically address issues of landholding; weak policy development resulting in inconsistencies and disorder in implementation; and the creation of some settlements consisting entirely of widowed women. It also noted the failure of the government to address more fundamental land reform issues, such as the holdings of the Roman Catholic Church and political and economic elites.

Forced relocation became a much more serious issue when, in the north-west, villagization became a counter-insurgency strategy in the context of the 1997/98 insurgent incursions from Zaire. Jones (2003) probably reflects the opinion of most of the international humanitarian community when she describes the *imidugudu* process as a reasonable expedient, but says that this changed when the army began large-scale forcible relocations in the north-west. In May 2001, Human Rights Watch issued a report claiming that tens of thousands of people had been resettled against their will, and that many of them had had to destroy their homes as part of the government's efforts to control the population (Human Rights Watch, 2001). It urged the international community to press for a re-examination of the programme. The Rwanda Initiative for Sustainable Development (RISD) and Oxfam also raised concerns about resettlement. In the end, donor assistance for the programme dried up.

What was the extent of implementation of the programme? It varied widely from province to province. Alusala (2005) notes that 90 per cent of the population in Kibungo and Umutara prefectures lives in grouped villages, reflecting the large number of Tutsi who fled to Uganda and who, when they returned, were accommodated in the villages. Ruhengeri is third, with more than 50 per cent, and Gisenyi fourth, with 13 per cent. Only a very limited number of people live under this programme in other areas. While the programme still has its proponents, the government is not expanding it but is instead concentrating on provision of long-overdue services to existing villages.

The role of international humanitarian organizations

What influence has the international humanitarian community had over these events? In 1992, UNHCR was mandated in the Arusha Protocol on Refugee Return as the lead agency for organizing the repatriation of refugees over a six-month period and to provide shelter and related social infrastructure in new villages. UNHCR in collaboration with the UN Research Institute for Social Development (UNRISD) was mandated to prepare a socio-economic profile of the refugees and a study of the country's absorption capacity in order to facilitate reintegration and plan international development assistance.

A major UNHCR/Rwanda retrospective on its role in Rwanda stresses the size of the task: an old caseload consisting of 608,000 returnees in 1994, 146,476 in 1995 and another 40,000 in 1996–99, for a total of over 800,000; and a new caseload of 600,000 returnees in 1994, 79,302 in 1995, 1,271,936 in 1996 and over 200,000 in 1997, for a total of over two million (UNHCR/Rwanda, 2000). The total number of returnees was over three million. Over six years, UNHCR spent US\$183 million on projects to help reinstall the three million returnees and reconstruct the country (UNHCR/Rwanda, 2000).

The United Nations Assistance Mission for Rwanda (UNAMIR), established to assist with the implementation of the Peace Accords, was withdrawn at the commencement of the genocide but returned in July 1994. By the end of 1994, UNHCR had begun organizing repatriations and, at the end of December, through Operation Retour, UNHCR, with the IOM and British direct aid (BDA), began to coordinate transport for internally displaced persons back to their communes of origin. In September 1994, the United Nations Human Rights Field Operation in Rwanda (HRFOR) was established and was in place through July 1998. Its work focused on gross human rights violations and did not extend to land issues.

In November 1995, UNHCR embarked on a rural shelter programme. It supported the construction or rehabilitation of around 100,000 houses over a five-year period between 1995 and 1999, providing shelter for half a million Rwandans. Of those, the 2000 report indicates, 27 per cent were in resettlement sites, while 73 per cent were in scattered or clustered locations throughout the country. UNHCR helped with site identification and planning as well as technical and supervisory support during construction.¹⁰ That shelter programme drew UNHCR into land matters.

The UNHCR/Rwanda (2000) retrospective touches on land sharing. It remarks that, following the mass return of the refugees in 1996, there were conflicting claims and the government adopted different policies in different localities. While in some cases people were moved onto recently opened public land, in others 'land had to be shared by mutual consent'. It concludes: 'The latter worked fairly well in Kibungo Prefecture, for instance. After verifying that land was being shared by consent of the rightful owners, UNHCR quickly proceeded to distribute shelter materials and helped returnees to build houses' (UNHCR/Rwanda, 2000: 26).

UNHCR and other UN agencies strongly supported the *imidugudu* programme. In 1997 the programme was endorsed, with some qualifications, in a report commissioned by FAO's Land Tenure Service (Barriere, 1997). A 1999 report by a UNHCR-funded shelter evaluation team (quoted in UNHCR/Rwanda, 2000: 42) argued that there were no viable alternatives and that 'Rather than discussing the policy, the international community should ensure provision of the technical backstopping and training to allow the policy not to become a failure'.

The UNHCR/Rwanda report (2000: 42) acknowledged that 'the perceived involuntary nature' of some resettlement activities had caused several governments to withhold support, but argues that by 1999 the Rwandan government was paying more attention to the need to respect individual rights. UNHCR, it suggests, made an effort to distinguish between cases of voluntary and coerced villagization schemes, and in effect supported *imidugudu* when it appeared to be voluntary and with the consent and knowledge of the beneficiaries. The report states that local authorities were encouraged to ensure that farm plots were allocated for each family near the villages, noting that 'UNHCR facilitated the provision of farm plots to residents, but it was and continues to be the government responsibility to carry out the distribution process' (UNHCR/Rwanda, 2000: 46). The report admits that some beneficiaries had to walk up to several kilometres to their farm plots, and that this was 'indeed an inconvenience and an issue to be addressed'.

UNHCR in the end remained a supporter of *imidugudu*. In 2000 a Thematic Consultation on Resettlement was launched as a means of continuing the dialogue and reaching a consensus among the development partners. The Framework adopted in February 2000 contained a number of cautionary points but reaffirmed the UN commitment to support the programme. In 2000, the United Nations Community adopted a Framework for Assistance in the Context of the Imidugudu Policy, which encourages the government to continue a dialogue on the issue, to adopt a more participatory rights-based approach and to resolve legal issues related to land ownership and use. The 2000 UNHCR/Rwanda retrospective concludes that the *imidugudu* contributed to the peaceful resolution of a number of land disputes between old caseload refugees, new caseload refugees and survivors of the genocide. It asks (UNHCR/Rwanda, 2000: 47–49): 'Was the shelter program in Rwanda a success? So far, property-related conflict has been avoided, unlike in the former Yugoslavia'. This seems spurious. The absence of overt conflict in response to the *umudugudu* programme probably had less to do with the virtues of the programme than with the general atmosphere of fear and exhaustion.

UNHCR is no longer a major player in land policy in Rwanda. Other donors, such as USAID, DFID and the European Commission (EC), stepped into its shoes as relief and reconstruction gave way to development programming, and have been far more wary of *imidugudu*. Opposition to the programme has also developed within the government. In 2006, a Law on Habitat was proposed by the Ministry of Infrastructure (MININFRA) that might have revitalized the

programme, but it contained substantial provisions that weakened property rights and was strongly opposed by the Ministry of Land, Environment, Forestry, Water and Mines (MINITERE). It was withdrawn from parliamentary consideration in December 2006.

A thorough examination of the *imidugudu* experience by Human Rights Watch (2001) concluded:

In an ironic twist, the program which donors supported in the hopes of ending homelessness covered another which caused tens of thousands of Rwandans to lose their homes. Praise for the generosity and promptness with which donors responded to the housing program must be tempered by criticism of their readiness to ignore the human rights abuses occasioned by the rural reorganization program that operated under its cover.

The facts seem clear enough and it is important to understand better why the mistakes were made, not in the interest of assigning blame but in the interest of avoiding them in the future.

UNHCR's concern with the immediate needs of returnees for shelter appears to have overridden any qualms it may have had regarding the potential land problems of a resettlement programme. Recall the comment by a minister in the first government quoted earlier: 'The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how many would have to be accommodated'. This preoccupation is understandable, given the chaotic conditions in which it was initiated. Faced with the huge challenge of delivering shelter – which UNHCR documents repeatedly emphasize as its priority – the delivery of that housing is obviously far easier if it can be done in concentrations rather than in scattered hamlets. The simple logistical advantages of the approach the government proposed must have been very seductive to UNHCR.

Why, when it became a major social engineering exercise – and in one part of the country became central to an anti-insurgency strategy – did the international humanitarian community not more critically examine its role? The Human Rights Watch report (2001) concludes that, ultimately, human rights seem not to have been a priority of donors, who failed to mount a serious critique of the policy. A number of factors may account for this failure. One is guilt over the international community's failure to mount an effective response to the events leading to the genocide. The new government had moral authority as the representative of those who had been brutalized, and a clear sense of what it wanted to do. That combination would not have been easy to resist, and with early information from the field being patchy and inconsistent, it would have been easy to set aside misgivings. In addition, the same Human Rights Watch report cites competition in resettlement, between UNDP and UNHCR in particular.

In the end, UNHCR seems to have provided little by way of a moderating influence. It was instead the NGOs working in rural development and human

rights, and academic researchers, who raised concerns about its implementation and provided critical intelligence. The Lutheran World Federation had by 1997 issued instructions to staff that they could only assist in resettlement where movement into the new villages was voluntary, where those who moved into the villages were not required to destroy their existing housing, and where there was a reasonable level of service provision (Human Rights Watch, 2001). In April 1998 ACORD published its critique of the viability and technical soundness of the programme. A 1999 study from the Rural Development Sociology Group at Wageningen University (Hillhorst and van Leeuwen, 1999) also raised concerns. It is difficult at this remove in time to tell how aware most donors were of the issue, but a 1999 retrospective study by the Organisation for Economic Co-operation and Development (OECD) (Baaré et al, 1999), examining the ability of donors to influence policy in the pre- and post-conflict contexts, makes virtually no mention of the land issue. The first full documentation of the human rights abuses associated with the programme emerged in 2001, in the Human Rights Watch report.

There is a further contribution by the NGO community in this area that deserves attention. Rwanda has some multi-purpose membership organizations that have made important contributions to the debate on land, such as the national farmers' organization, the Union for Agriculturalists and Stockholders of Rwanda (IMBARAGA), but the post-conflict period saw the emergence of the first specialized 'land' NGO, LandNet Rwanda. LandNet Rwanda was created in 1999 in connection with DFID-initiated work to establish an Africa-wide network of national chapters of LandNet Africa. Its specialization in land has made it a valuable player in policy discussions. It is itself a network of local and international NGOs dealing with land policy issues in Rwanda, and has strong DFID and Oxfam connections. In Rwanda, CARE International provided early support, detailing a staff member to work on setting up the organization, providing initial office space and services and modest initial funding.

While selected NGOs have provided alerts and important information on land issues, they have not programmed significantly in this area. CARE has supported LandNet Rwanda, and in the context of its other programmes is to a limited extent addressing land dispute resolution. The International Rescue Committee co-sponsored with DFID and Swedish International Development Cooperation Agency (SIDA) a 2005 opinion survey on 'Land, Property and Reconciliation'. Oxfam has engaged primarily through support of LandNet Rwanda. The Norwegian Relief Association is providing funding to support studies by Africa Rights at several sites in Rwanda on the land access issues facing women, widows in particular, as well as monitoring by CAURWA (Community of Indigenous People of Rwanda) of Batwa land access.¹¹ NRC (2005) and Swisspeace (Wyss, 2006) have published studies seeking to draw attention to continuing land-related human rights violations. The limited operational engagement of these organizations with land issues is not surprising, given the sensitivity of the issue and the uncertain policy environment of the past decade.

There are local CSOs through whom such NGOs could work, but they are weak and reluctant to assert themselves. Musahara and Huggins (2004) note that, even when CSOs have had opportunities to put forward their views on land in contexts such as the Poverty Reduction Strategy Paper (PRSP) process leading to the 2002 Poverty Reduction Strategy, they have hung back. The authors attribute this to damaged social structures from the genocide, links between government and most CSOs, and the centuries-old tradition of centralized, exclusivist governance.

The continuing return: The ‘new new caseload’

Most of the publications on refugee return and land tenure in Rwanda seem to assume that returns are substantially over. While most refugees have returned, quite large numbers continue to do so, and this has important implications for land tenure security. In June 2006, Tanzania expelled 500 Rwandaphones by force. In July 2006, a convention was signed between Tanzania and Rwanda, and in September 2006 6,000 Rwandaphones were expelled from Tanzania. They came from the Karagwe District of Tanzania, bordering Rwanda, and were part of a predominant Tutsi pastoralist community with origins in the colonial period, a community that had quietly absorbed large numbers of other Rwandans leaving the country more recently. Those who returned included a large number of women, children and the elderly; 80 per cent were recent migrants (1995 and 2005). UNHCR estimates that some 40,000 may be returned to Rwanda. Tanzania says that it considers them illegal immigrants. UNHCR staff note that there is an urgent need to identify parcels to cultivate and to provide incomers with cultivation kits. UNHCR was told by the Rwandan government that over FRW24 billion had been budgeted for the resettlement of more than 60,000 Rwandans and 80,000 head of cattle that may be repatriated from Tanzania (UNHCR/Rwanda, 2006). Staff at UNHCR’s Kigali office in December 2006 wondered: ‘Shall we call these the “new, new caseload”?’

Considerable numbers of Rwandans remain outside the country. UNHCR’s ‘Rwanda at a Glance’ summary for November 2006 notes that some 48,435 refugees and 4,721 asylum-seekers from Rwanda were in other African countries. Of these, the largest numbers and those most likely to return home live in the DRC, Uganda and Burundi. (These include recent and continuing flows from Rwanda to the countries of those concerned that they would be implicated by the 1,545 *gacaca* courts discussing and now bringing indictments against those involved in the genocide.) UNHCR is tracking current returns. The same summary document indicates that, during 2005, 9,600 refugees returned, and 5,620 have returned home since January 2006. In October 2006 alone, over 3,000 refugees and asylum-seekers returned, and late 2006 saw the voluntary return of 13,200 asylum-seekers from Burundi. The Tanzanian case mentioned above is instructive in that very few of those expelled from Tanzania appear in the UNHCR statistics, as they are not officially refugees and did not request

asylum. UNHCR thus understates the scale of the problem significantly, albeit the actual extent is not clear.

The minister of state for MINITERE indicated that an inter-ministerial commission including MINITERE and MINAGRI (the Ministry of Agriculture) is trying to identify land for these returnees, and is looking into land held by the army, research farms and possibly land sharing of allocations received by earlier returnees in portions of Akagera National Park. Some of those expelled from Tanzania are being settled in Akagera under the 'land sharing' principle. Informants reported many small huts in the park, and many cattle going into the park. The refugees have brought substantial numbers of cattle with them, though theirs are certainly not the only cattle going into the park; there are regular rumours of large herds in the area belonging to military commanders. Bugesera, near the border with Burundi, is another area to which these returnees are said to be going in significant numbers. While land is available there, the area is drought-prone and poor.

Land sharing is also still being carried out in the densely populated Musanze District in Northern Province, where old-case refugees are now pressing land claims. Local officials explained that these old-case refugees had been back in the country since 1994 in most cases, but had come to this area in 2001. Due to insurgency in the area, they had not then been able to obtain land. Now that things were calmer, they had asked for land and needed to be accommodated. A farmers' union worker explained: 'When an old case refugee comes and claims land, and the occupants refuse, and say "I don't know you", then you go to the authorities for mediation. They rely on local elders'. One official noted that local residents had complained that 'these are people whose families came to this area as feudal officials; how can we be asked to share land with them?'. But, he said, they must share and the sharing has begun. The process had begun in two sectors, and there are four where it will be carried out. Another official explained: 'No one likes giving up land, but people have a good will and it is going smoothly. It will be finished in a year. Of course the land plots are very small, no one can get as much as a hectare'.

Drawing a line under crisis: No easy task

MINITERE, the national land agency, understands the urgent need to re-establish stability in landholding, to affirm property rights and to create security of tenure, and a 2005 Land Law provides for the systematic demarcation of holdings, the issuance of long-term leaseholds and their registration. MINITERE is moving to implement these objectives. Pilot work under the new law has begun with substantial support from DFID. The programme detailed in MINITERE (Republic of Rwanda, 2006, 2007) and Pottier (2006) provides a thorough critique of the new law in terms of the practical problems that could arise in its implementation in the Rwandan context.¹²

At the same time, however, proposals for 'land use master planning', villagization and land consolidation threaten new dislocations. Ordinary

Rwandans hear about these proposals in an atmosphere of uncertainty and mistrust. One informant spoke of Rwanda as 'a culture of rumours'. Programmes that interfere with landholdings will be viewed with suspicion, and planners will find ethnic motivations attributed to them.

Unfinished business from the conflict also continues to create insecurity. The government has launched the *gacaca* process to prosecute those guilty of genocide, and the National Service of Gacaca Jurisdictions estimates that some 761,000 people will be indicted during this process (on the *gacaca*, see Wolters, 2005). It is possible that the *gacaca* will order remedies which return land, creating further uncertainties. A number of local situations contain seeds of conflict. In the north, in former Rukungeri, resettlement abuses during the Hutu insurgency have never been satisfactorily resolved (NRC, 2005). In the east, a traditional expansion area with substantial pastures, there are said to have been land grabs by elites and the military after 1994 (Musahara and Huggins, 2004). At the same time refugee return continues, increasing the pressure on land.

Ethnic tensions persist, and NGO reports castigate the government for ethnic favouritism in land matters. The NRC report on resettlement (2005: 12) complains generally of 'the blatant protection of the interests of returning Tutsi refugees to the detriment of the Hutu – their preferential treatment in allocation and distribution of assistance, in land sharing and resettlement'. Similarly, a Swiss Peace report (Wyss, 2006) asks, in an accusatory tone, whether the government's land reform programme represents 'the restoration of feudal order or genuine transformation'. These statements are neither constructive nor accurate. This chapter suggests that, while the RPF government has certainly been most concerned with finding land for the 1959 refugees, it has done so with restraint and with some attempt at even-handedness, to an extent remarkable in the wake of the genocide.

Although overt conflict over land is no longer taking place, there is still very real competition for land and many disputes over land, coloured by past events. One hears widely differing assessments of the potential for a return to conflict. One informant spoke of continuing tensions over land, tensions being passed down generations: 'A father walks his son past a house he had owned, or land the family had owned. He points them out to his son, and says, "This was ours, and then they took it". The boy will remember'. Another informant, an NGO worker with long experience in rural communities, reports: 'The mentality has changed. Post-genocide work has helped so much, because victims were supported. When you go to the hills, you feel no identity differences'. Another informant acknowledges continuing tensions and insecurity over land, and argues: 'Land registration is our last chance'.

Pace Pinheiro: Rules, improvisation and international humanitarian agencies

What can international humanitarian agencies involved in conflict and post-conflict situations learn from the Rwanda experience?

First, there is for people on the ground no clear-cut distinction between conflict and the post-conflict period: these states do not exist on a spectrum, but overlap. Countries that have been in serious conflict may suddenly find peace, but peace is not the absence of competition and even limited conflict, just the absence of war. Competition over land, expressed through disputes, continues after peace and may threaten to regress into conflict. Land claims and grievances must be addressed promptly, but with restraint and balance.

Second, inputs from the international community on land tenure best practices and lessons for post-conflict situations should begin – at least in countries where land has played a significant role in conflict – during the peace-making process. In the case of Rwanda it is clear that the international community did not provide the expertise that would have helped the parties at Arusha arrive at more adequate formulations and solutions.

Third, the focus on the shelter needs of returnees must be supplemented by a well thought-through strategy for access to productive land resources for returnees, a strategy sensitive to the rights of existing land occupants. In Rwanda, it seems that a narrow focus on shelter led humanitarian agencies in an unfortunate direction. Shelter was most easily provided in the village context, and this may have delayed recognition by UNHCR and others of the shortcomings of villagization.

Fourth, where land issues are likely to surface, it would be prudent to involve some NGOs with substantial experience in land tenure issues. In Rwanda, the input of such NGOs was critical in eventually identifying the serious shortcomings of well-intentioned programmes. In the case of resettlement, the alert provided by such players was effective in causing a withdrawal of donor funding. Subsequently, human rights organizations have taken a lead role in critically assessing policy and legal proposals in the land sector.

Fifth, NGOs with an interest in these land tenure issues should seek to develop sustainable and informed input from civil society. In the case of Rwanda, international NGOs contributed to the creation of a national 'land' NGO, LandNet Rwanda. Such NGOs/CSOs may be more constrained by political pressures than their international counterparts, but they can play a critical role in informing government action.

Donors and international humanitarian organizations can do several things to be more effective, both during the run-up to peace and after the conflict comes to an end:

- Raise awareness of international standards during peace negotiations. Parties should work with these standards in mind.

- Inform participants of current trends in land policy and land law reform, and provide them with opportunities to discuss these with knowledgeable individuals in relation to their country.
- Involve NGOs and others with strong competence in development and land policy, in particular in the planning for return and its implementation.
- Remind negotiators of the needs of those who may not be at the bargaining table, such as female-headed households and forest-dwellers.
- Approach proposals to fund resettlement programmes cautiously, watching out for compulsion and the appropriation of land from existing users. Restitution of prior landholdings is the preferable solution, and is required by international standards where possible.
- Support, in the post-conflict period, programmes that re-establish security of land tenure, and discourage programmes that undermine security.
- Support the development of local civil society organizations with expertise in land, and with constituencies who rely on the land for their livelihoods, and encourage public consultation on changes in land policy and law.
- To the extent possible, ease pressure on land by supporting non-land-based solutions for returnees, for example, training and micro-funding, and skills that are often in demand in post-conflict situations, such as the building trades, simple machinery repair (bicycles, tyres, fishing equipment) and mobile phone access provision.

There is a final issue that deserves highlighting here, a cautionary tale relating to international standards and political reality. In Rwanda, the government has tried to adhere to the land provisions of the Arusha Accords even where these provisions, such as the 10-year rule, have been labelled a violation of human rights. When officials in the first RPF government were asked why they had persisted in attempts to see that the provisions of the Accords on land were honoured, when conditions had changed so completely, they emphasized that the new government considered that its political legitimacy in the eyes of many Rwandans hinged upon its compliance with the Accords.

Critical analyses of post-conflict programming in Rwanda tend to highlight non-compliance with international standards. These standards tend to be stated unconditionally. Most recently, the Pinheiro Principles (the United Nations Principles on Housing and Property Restitution for Refugees and Displace Persons)¹³ provide that:

- 10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, land or places of habitual residence, in safety and dignity...
- 10.2 State shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of

- state succession, nor can it be subject to arbitrary and unlawful time limitations.
- 18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as those agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.
- 21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

Note the tension between the terms of the Arusha Accords and international standards such as those enunciated in the Pinheiro Principles. Section 10 makes unconditional statements about the right to return to residences and lands, and 18.3 suggests that peace agreements must be honoured in national legislation only where they do not contravene international standards reflecting those rights. But in 21.1 the possibility of compensation in case of failure of restitution is admitted, and one of the narrow cases in which it is said to be allowable is 'when the terms of a negotiated peace provide for a combination of restitution and compensation'.

In this context, it is important to recognize that, in situations such as Rwanda, people who occupy the land of those who have fled do not necessarily do so without legal sanction. Their occupation may be entirely legal under the law at the time it occurs. In other cases, occupation may not have had legal sanction initially, but may be viewed under national law as having acquired legitimacy by the passage of time. One is thus often faced with the need to balance two inconsistent set of rights, both valid under national law and whose justice is deeply felt by claimants. It will not be possible to fully satisfy both claims, and negotiation is required.

The Pinheiro Principles are quite right to insist upon restitution as the preferred solution. But those principles must be understood as principles rather than strict rules requiring compliance. How should one look at a provision such as the 10-year rule in relation to these principles? It is certainly an arbitrary limitation on the right of restitution. It was politically necessary at the time of the peace negotiations, and the government sought to honour it, suggesting that it retained some political importance in the post-conflict period. Political bargains in peace negotiations may contravene international standards, and yet may be needed to find and maintain peace. As Jones (2003)

notes, some of the solutions brought forth by the Rwandan government have raised valid concerns, but critics have not always been able to propose convincing alternative solutions to the country's land and economic crisis.

Finally, it is important to recognize that there is a discrepancy between the international standards relating to the right to property of returnees and displaced persons on the one hand, and those standards applicable to citizens who have remained in place on the other. Standards applying to the former group, the returnees, are more highly developed, presumably because the returnees are more vulnerable and have more often been abused. In contrast, international law provides little effective protection to the property rights of ordinary citizens (Seidl-Hohenveldern, 1999). While the Universal Declaration of Human Rights, in its Article 17, provides that citizens should not be 'arbitrarily deprived' of their property rights, there is no clear standard for arbitrariness and no universally accepted requirement of or standard for appropriate compensation for the compulsory taking of land by the state. Returnees and displaced persons may enjoy a legal and sometimes a practical advantage here because international humanitarian organizations are on the ground to take their part. While protecting returnee rights is entirely appropriate, care must be taken to balance this with respect for the land rights of those who have remained behind. The rights of both groups must be balanced, and as a result it may not be feasible to fully honour the claims of either.

It is important that the international community approach future situations of refugee return with a strong commitment to international standards, but also with a thorough understanding of the history of land claims and a realistic appreciation of what is politically possible.

Notes

1. Many estimates are higher, often up to 320 people per square kilometre.
2. Wyss (2006) provides a good short summary of the literature on land as a cause of conflict in Rwanda at pp. 10–11.
3. Much of the recent literature has pointed out that the conflict was neither a simple conflict between Tutsi and Hutu, nor was it exclusively over land. Musahara and Huggins (2005) provide a nuanced discussion.
4. It was suggested to the author that it had some legal basis in a prescription rule, but most dismissed this as a post-rationalization.
5. Jones (2003: 206, note 32) notes that there were some violent property takeovers by Tutsi returnees, and that a few did challenge the 10-year rule, but rarely successfully.
6. Sorcha O'Callaghan in comments on a draft of this chapter noted that there were many new households among the returnees created by marriages in exile, which had never had their own landholdings in Rwanda though they would have had claims to parental land.

7. UNHCR/Rwanda (2000) indicates that a little over a quarter of these units are in the *imidugudu*, but other sources suggest that most, and possibly a large majority, were in the *imidugudu* (Human Rights Watch, 2001).
8. It is not clear whether the government continues to consider the Accords operational or whether they have effectively been replaced by the new Constitutional provisions, which vary them in some respects. A number of officials consulted were of the latter opinion.
9. One of the objectives of the *paysannat* was to establish minimum holding sizes, creating farms deemed large enough to be commercially viable by colonial authorities. The programme has been criticized, and in the event has proven impossible to sustain (Blarel et al, 1992). The holdings in the former *paysannats* were gradually subdivided and are indistinguishable from other holdings.
10. Human Rights Watch (2001) suggests that the 27 per cent figure may refer to houses actually constructed by UNHCR, the remainder being houses constructed by local people with building materials distributed by UNHCR through local authorities, and that some – perhaps most – of those building materials were provided in connection with *imidugudu*.
11. Rwanda's indigenous forest dwellers, the Batwa, have suffered land loss as a consequence of refugee return. Disadvantaged for many decades with respect to land access, they found their forest habitats seriously reduced by the resettlement of returnees in parks and forest reserves.
12. The discussion in this section of current land policy initiatives exists in a much more extended version in Bruce (2007).
13. The Principles are named after Paulo Sergio Pinheiro of Brazil, and were approved by the United Nations Sub-Commission on the Promotion and Protection of Human Rights (a sub-committee of the Committee on the Elimination of Racial Discrimination) in August 2005 (FAO et al, 2007).

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John W. Bruce has worked on land policy and law in developing countries for 40 years, primarily in Africa. He is a former Director of the Land Tenure Center, University of Wisconsin-Madison, and between 1996 and 2006, he served as Senior Counsel (Land Law) at the World Bank. He currently heads a small consulting firm, Land and Development Solutions International. He has published extensively on land policy and law, most recently *Land Law Reform: Achieving Development Policy Objectives* (World Bank, 2006) and 'Land and Business Formalization for Legal Empowerment of the Poor, Strategic Overview Paper' (ARD for USAID, 2007).

