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Rights and Obligations of Rural Refugees in Tanzania: A Case Study of Mpanda District.

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Introduction

This paper will focus on the rights and obligation of rural refugees in Mpanda District, Tanzania. Refugees are essentially obliged to reside in settlement areas but they have the freedom to move in and out if granted a permit. The various procedures followed by the settlement authorities and other authorised officers and the basis for granting such permits will be critically examined. Attention will also be drawn to cases unlawful entrants to settlement areas by the relatives of the refugees from their country of origin. The right of the refugee to self or wage employment within or outside the settlement setting will also be examined.

The Rural Refugees

Tanzania is a land of rural refugees. The Burundi, mainly concentrated in the rural settlement of Katumba, Ulyankulu and Mishamo constitute the majority. There are however few others who have settled spontaneously in Kigoma region.

Over the past few years, assistance has been given for the development of a number of rural settlements in Tanzania (UN, ICARA 11, 1981). These rural refugees escaped to Tanzania as a result of political struggle in their countries. In the case of Burundi refugees, the struggle took the form of a civil war in the early seventies. The scarcely populated areas in Western Tanzania (Mainland) were selected to be refugee settlements. Presently, the Katumba and Mishamo settlements in Mpanda District hosts more refugees (3/4 of the population)¹ within its borders than nationals. This district will be the subject of study in this paper on the obligations and rights of refugees.

Refugees are given free land by the Tanzania Government. The Government also provides the state organs to run the settlements, while the United Nations High Commission for Refugees (UNHCR) provides the funds. The Lutheran World Federation (LWF), which is known as the Tanganyika Christian Refugee Services (TCRS), in Tanzania carries out the actual implementation.

When the rural refugees arrived at their present sites in Katumba and Mishamo, the area was a complete bush, infested with wild animals and

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tsetse flies. They initially built huts for themselves, cleared land for cultivation and generally settled down. They were getting foodstuffs, utensils, bedding, baskets, etc. Each item was registered in a Family history card.

The Refugees were then given seeds of different types and plots on which to build and cultivate their crops. In short, all kinds of efforts were made to assist the refugee peasant to settle within the shortest possible time. The refugee settlements are in principle modelled on Tanzania's rural development strategy of Ujamaa vijijini (rural ujamaa).

Organisation of the Settlement

The two settlements i.e. the Katumba and Mishamo are organised on similar basis of administrative TCRS, MHA and UNHCR coordinate all activities of the settlements. In the case of Katumba, however, it is only the MHA which is currently active. The UNHCR and its agent TCRS, the Caritas International, do undertake small projects, hence the justification for good line of communication. At Mishamo, where construction for the settlement is still going on, communication between the TCRS in Dar es Salaam, and its employees, particularly the Project Coordinator is active.

The Ministry of Home Affairs appoints a settlement commandant who handles the settlement's affairs. The settlement commandants currently running the two settlements are highly experienced in the area of refugee rural settlements are highly experienced in the area of refugee rural settlements. Lyimo for example, the commandant for Mishamo has spent 15 years in refugee work. He was involved in settling Mozambican refugees in Southern Tanzania and has worked in Kagera region among the Rwandese refugees and in Ulyankuru among Burundi refugees.² The commandant is assisted by state security, police etc. He is the symbol of the state power in the settlement.

Below the settlement commandant there is a planning committee of the settlement. This is composed of various village chairmen.

The settlement development committee gives directives to the village chairman who then carry out the orders in the villages. Each village has a village council that assists the chairman in planning the day to day affairs. Under the village chairman, there is a road chairman who controls one hundred families, and under road chairman are the ten cell leaders who take care of ten house families.

It is sometimes true that information can flow upwards from the ten house cell leader to the road chairman, the village chairman, etc. In most cases,

however, the lower echelons of power are recipients of orders and directives from above.

Output and Sale

The refugees in rural settlements are organised in production units which produce a variety of both food and cash crops. For example, in Mishamo, products are bought by the National Milling Corporation (NMC). Sorghum, sweet potatoes, cassava and other crops are grown here and sold in large quantities. 44 women cooperative groups participate in various cooperative activities comprising 1.011 members engaged in tailoring, gardening, animal husbandry, local breweries, basket and mat making Musa Lupatu (1983). As for crops the table below indicates the level of production.

Mishamo Sales From July 1981 to December 1982 to the N.M.C.

Crops in kgs.	Amount in Shillings
Maize	294,268
Beans	185,365
Cassava	48,842
*Tobacco	183,734
	453,297.10
	640,241.25
	14,947.80
	2,713,371.35

Source: Report sent by Mishamo Settlement Commandant to the MHA dated 7.1.83; settlement commandant's office Mishamo.

The Mishamo peasants do not sell all their food crops to the NMC. This is because the NMC has difficulties in purchasing the crops due to financial management and other problems. But more importantly, the peasants find the NMC prices too low (two shillings) as compared to what they can get from private traders (seven shillings per kg. of maize). The Katumba refugees in fact try to avoid selling their crops to NMC. Instead, they either go to the nearby Mpanda town or board a train (which stops at their settlement) to look for better markets as far as Tabora town.

The refugees in these rural settlements do also engage themselves in peasant like activities such as hunting, fishing and petty trading. They at times do it illegally. There are a number of incidences to that effect that can be sighted. For example, in the case of Republic v. Yacobo s/o Everest, the prosecution charged the accused for leaving the settlement without a permit. It was further alleged in this case that although the accused was accommodated in Katumba Refugee Settlement in 1974 where refugees are given clothes, food assistance and shambas to dig in

* The sale of tobacco to NMC may not be correct as this crop is supposed to be sold to Tanzania Tobacco Authority (TTA)

the month in question several refugees in Karema, carried on fishing instead of cultivation³ so arrangements to follow and stop them were made. These refugees catch fish for personal consumption and at times for sale. It is thus clear that the rural refugees once reintegrated into the production system, behave like other rural residents in Tanzania.

Employment

Employment in Mpanda Town

The Mishamo and Katumba rural refugees are strictly bound to live in the settlement. And, according to the Refugee (Control) Act of 1966 Section 13 (a), any refugee, who without the permit issued under Section 12, leaves or attempts to leave a refugee settlement in which he has been ordered to reside shall be deemed to have committed disciplinary offence.

For this reason the refugees are hardly employed in Mpanda town. The present researcher noted that there were less than 50 refugees in the town. When interviewed, it was further noted that almost all have either acquired Tanzanian citizenship by their lifestyle or would not want to be identified with the Hutu refugees in the settlement. They all claimed to be Tanzanian from Kigoma area. Most of them were obviously Burundi refugees as they had very close connections with the Katumba and Mishamo refugees. It was also noted that when the refugees from the settlement came to town they got accommodation from them. Besides, many of the refugees spoke fluent French with the writer, a further possible indication that they may not be Tanzanian. The refugees in Mpanda town never at any one point wanted to be noticed speaking French when the Tanzanian citizens were around. Indeed, they informed the present author that they wanted to protect their jobs and that they could not do this unless they identified themselves as Tanzanians.

Most of the 50 Mpanda refugees are, however, known to the local Mpanda town people as refugees. They are engaged mainly in self employment (petty trading) such as tailoring and shop keeping. The author was able to visit the business sites of four of these refugees, and noted that in one case the refugee had a small shop with commodities worth over one hundred thousand shillings. The same refugee is currently building a lodging with 30 bedrooms. The refugee has a wife, house and seven employees at his guest house building site. All these employees are refugees from Mishamo and Katumba settlements. Refugees like this one obviously find difficulties because of competition in trade and related spheres. The Tanzanian elements easily isolate the refugees on grounds of nationalism. For this very reason the refugee mentioned above is well

entrenched in Tanzania and consciously closely identifies himself with the Tanzanian state organs.

As for the lower cadres employed, the present writer was able to note two refugees who were employed as bar attendants, three as guest house attendants and several were self employed in 'odd jobs' such as shoe shining, selling fried groundnuts etc.

When the writer talked with D.A.M. about the question of self and wage employment for the refugees in Mpanda town they all emphatically replied by asserting that their place is the refugee settlement'. In view of such altitude, no refugees are either self or wage employed in Mpanda town; except for the very few self styled "Tanzanians". Those in the settlement and are urban oriented live under severe stress due to lack of suitable employments.

On the question of lack of rural refugee counselling, the author was told by the Katumba Refugee Settlement Commandant that 'the UNHCR office has never made an effort to visit their refugees ... why are we forced to take care of these people so much...? The Settlement Commandant pointed out that some of the UNHCR officers would come as far as Mpanda (17 miles away) and go back to the comfort of Dar es Salaam.⁴ When I put a question on this matter to one UNHCR official, he politely told me that they try to avoid visits to settlements such as Katumba because they want to avoid problems. Other UNHCR officials, however, denied the charge.

Self Employment in the Settlements.

Given the difficulty of obtaining employment in the neighboring urban centres, let us look at the opportunities for the rural refugees to obtain employment within the settlements and problems that they either encounter or cause in the process.

The largest number of refugees is composed of peasant farmers and those have been allocated each a plot of land. Almost all refugees in the settlement of Katumba have plots. Cultivation of crops is punctuated by hunting and fishing. Others are involved in petty trading. For the petty trading they need a licence. At times some of them do take to trading without a licence, contrary to the Business Licensing Act (No. 25/1972). Such was the case in the Republic v. Edmanuel S/o Mpempa.⁵ The accused was found selling cigarettes about the maximum price contrary to Regulation 26 of the Regulations of the Prices Act, of 1973 (No. 19). It was alleged that 'on 29th September, 1982, the accused, instead of selling the cigarettes at twenty five cents (-/25), the official price sold them at two

shillings per cigarette'. The case was withdrawn by the prosecution for lack of evidence.

Another refugee, Nyandu s/o Morris⁶ was on 14th day of July, 1982 at about 15.00 hours at Katumba Market, Mpanda District found selling 3 kg. of sugar at shs. 25/= instead of 11/=, the official price, to one District Policeman. The accused was convicted on his own plea of guilty.

In yet another case of Yohana s/o Bayaga⁷ of Irongo, Katumba, Mpanda, the accused was found in unlawful possession of 20 bicycle tyres valued at shs. 1,760/= which were imported into Tanzania from Zambia and which he knew or ought to have known to have been restricted in accordance with Cap. 27 of the East African Customs and Transfer Tax. On the second count he was charged with being in possession of the scheduled articles on which the Sales Tax had not been paid contrary to Section 56 (1), (2) and 57 (1) of the Sales Tax Act, 1976 (No. 13).

The accused pleaded guilty to the above charges and in mitigation, prayed: 'I pray for leniency for I am married with five children. My parents and brothers who depend on me are very old. That is all (sic)'

The court noted, however, that 'the offence of unlawful possession of restricted and uncustomed goods are (sic) now increasing'. It is now high time for the court to give stern and exemplary sentences to the offenders.

The court then declared that 'from the above reasons and the nature of the offence the accused is sentenced on the various counts to twenty months imprisonment or a fine of shs. 4,500/=. The accused, however paid the fine on the same day, vide receipt No. 575977 dated 13.11.82.⁷

The refugees have also been charged with possession of goods that are not allowed by law to be sold without special permission or that are completely confined. One such case is that of the Republic v. Josephat s/o Ndikumama⁸ of Katumba. The accused was found in unlawful possession of 'moshi' (distilled alcohol) to section 30 part V of Moshi Manufacture Distillation Act, 1966, No. 62. On 6th February, 1982 at 18.00 hours the accused was found in the village of Msimbo within Mpanda district in unlawful possession of three gallons of moshi. The same accused was also found in unlawful possession of bhang c/s Section 2(b), Cap. 134 of the Cultivation of Noxious Plants (Prohibition) Ordinance. The Police Inspector led the evidence as follows. The accused is a resident of Katumba Refugees Settlement in Mpanda district. On 6.2.82, the accused was leaving for Ibindi village and had carried three gallons of moshi and 30 grams of bhang. The accused was met and searched by one militia. He was found with the said property without permit. In mitigation the

accused stated: 'It is true that I was found in unlawful possession of moshi and bhang. I was sending them to Ibindi village for sale. I am a pupil at Milambo Secondary School in Form 1 this year. I was arrested on the way. I therefore pray for the leniency. That is all.

The court, however, after taking into account the mitigation factor of the accused and the seriousness of the offence and the fact that the offences "are seriously increasing", sentenced the accused to a fine of Shs. 2,000/= or one year imprisonment. The court also ordered that, "all the exhibits which have lately been brought before the trial be destroyed."

Another refugee was charged with being in possession of prohibited poison contrary to Section 37(1) of the Pharmaceuticals and Poison Act (Act No. 1 of 1981). The accused was found in Katumba refugee settlement in unlawful possession of 9 bottles of chloroquine injection. He pleaded guilty and was convicted on his own plea to a fine of Shs. 1,000/= or in default, three months imprisonment. In mitigation, the accused pleaded for leniency on grounds of repentance and alleged that he would never again repeat the same offence. The chloroquine were ordered to be taken to Mpanda District Hospital.⁹

If any lesson is to be drawn from the foregoing cases it is that some of the refugees are involved in illegal self employment. By far the most important area of illegal self employment by the Katumba and Mishamo refugees is in the area of wildlife. Mpanda district is rich in this. Large herds of elephants do exist. Smuggling of government trophies is one of the most prosperous illegal trades. In discussing this matter with the DAM, it became abundantly clear that although the refugees are involved in smuggling government trophies, they are not the poachers. The refugees are mainly used as either porters or as middlemen between the poachers and the buyers in Burundi.

It is also noteworthy that although the Republic of Burundi clearly has no elephants of its own, yet she nevertheless exports large quantities of elephant tusks. These must be partly from Tanzania. According to the DAM a huge lucrative business has developed which runs as follows: Firstly, the Tanzanian poachers kill the elephants and use the Hutu refugees as porters to travel on foot between Mpanda and Burundi carrying the elephant tusks. A Burundi Tutsi or a Tanzanian businessman awaits the loot in Burundi and sells it in the local market. He then buys clothes, watches etc. (Known locally in Dar es Salaam as 'vidudu') which he then either ships by boat or flies by air to Tanzania. The elephant tusks are then bought from the Burundi market by Belgian or any other western country's businessmen who takes them in turn in exchange for clothes and other consumer goods.

The refugees are merely conduit people (mere pawns in the whole game). To charge them with being the cause of wild life depletion is not only unfounded and largely unfair but extremely misleading. This is due to the simple reason that there are other areas in Tanzania where wild life depletion goes on unabated and yet there is not a single refugee who live there.

The reality of the above mentioned illicit trade has serious implications for Tanzania's economy. The UNHCR often tries to brush this issue aside insisting that: The impact of Burundi refugees on the development of the district has proved to be considerable. The Burundi are known to be industrious and over the last three to four years have not only become self sufficient in food production but also export a lot of surplus food and cash crops to wanting markets.¹⁰

If, indeed, the Burundi refugees are hard working, then they might be the most suitable material for head portorage of the elephant tusks willingly or otherwise. According to the DAM officials, they travel only at night. They rest in hiding during day-time and flee at the slightest sign of a police ambush; they throw away the trophies. The District Police Commandant admitted that it is next to impossible to capture them. What is more, they are more often than not armed and able to engage in cross fire. The district police officers have admitted that unless they are re-enforced with further manpower and weaponry, it will be difficult for them to get rid of trophy smuggling. Some of the refugees have actually been caught with government trophies. In one such case James Elisha was on 12.11.82 at about 12.30 hours, found in unlawful possession of twenty six elephant tusks valued at shs. 51,800/= which he failed to report to the nearest game office or police. This took place at Ugalla forest in Mpanda district. The accused was therefore charged with being found in unlawful possession of twenty six elephant tusks. On application requesting for bail, the prosecution objected on the ground that the accused was a refugee.

In mitigation, the accused prayed for leniency as follows: I am married with some children and my parents whom I support (sic).

The accused was, however, sentenced to three years imprisonment and an order was made to the effect that all the elephant tusks were to be handed over to the United Republic of Tanzania.¹¹

In yet another case involving Government trophies, Takisumba s/o Jeremia and Zochandanya, both of Mishamo Refugee Settlement, were charged with being in unlawful possession of the government trophies contrary to Section 67(1) (2) (a) and 78 (1) (c) of the Wildlife Conservation Act (No 12 of 1974) and Government Notice No. 268 of 1974. One of the accused found with 20 kg. of buffalo meat valued at

shs. 220/= . The other was found with 10kg of warthog meat valued at shs. 110/- . The accused were apprehended with the meat in Mishamo market. Both were convicted on their own plea of guilty and they forfeited the meat.¹²

Besides self employed refugees engaging in 'illegal business' there are those in the settlements who have obtained a valid permit or licence and are involved in lawful business. In Mishamo refugee settlement, one Vizura Ali who had a big shop in Burundi, currently owns a butchery which earns him a profit of over shs. 3,000/= per month. Similar refugee butcheries exist in Katumba settlement.

In Mishamo headquarters alone there are four small restaurants or 'hotel' owners. They run a restaurant and provide food for the workforce employed by the TCRS and the Government. In Katumba, three miles from the settlement headquarters there are five similar 'hotel' similarly so owned.

There are also small shops in the settlements. Mishamo has over twenty and Katumba about thirty. In these shops the shopkeepers sell items such as bicycle tyres, soap, salt, clothes etc. These 'hotel' owners and shopkeepers are playing the role of a commercial petty bourgeoisie and do cooperate with the settlement administration in policy matters.

Most of these shops are moving shops and every market day the businessmen take their products to the market. The peasants also bring their farm crops to the market for sale. The present author was able to note that some of these 'hotel' owners and shopkeepers had a monthly profit of over shs. 5,000/= . Some of the shopkeepers have been able to get vehicles and the present author was given a lift to Katumba in a one and a half ton Toyota pickup of one of the richest refugees in Katumba refugee settlement. The author was informed that there were about five refugees of his status. There is no Mishamo refugee who owns a vehicle as yet.

Wage Earning Employment in the Settlement

As we have pointed out above, the refugees are not allowed to leave the settlement without a permit. In practice, the duration of their stay outside is not to exceed 30 days and in all cases they must give adequate reasons for leaving the settlement. In practice, therefore, very few refugees get wage earning employment outside the settlement. Those who do get jobs are mainly in very needy areas of manual labour. For example, the Tanzania Sisal Authority went to Mishamo settlement to recruit refugees to work in the Tanga Sisal Estates. Over one thousand young males were recruited for this purpose. Over three hundred returned in less than six months due to harsh conditions that they found in the sisal estates.

Job opportunities, though limited, exist in the settlements. In Katumba settlement, for example, there are over ten primary schools. All these schools need teachers. There is a dispensary which need nurses and cleaners. There is the Settlement Commandant's office which employs over twenty people. There is also the Settlement Cooperative Organisation which has a shop and a 'hotel' all of which employ over twenty people.

It is, however, clear that employment opportunities are very slim in Katumba settlement. Instead it is Mishamo settlement which has a variety of chances. The unfortunate thing, however, is that even in these settlements, the refugees compete with the local labourers. The result is that in almost all departments in the settlement the present author was able to note that the refugees were fewer than the local employees. The author also noted that the local labourers did not even come from the nearby villages or district, instead they come from all corners of Tanzania. Citizens of Mtwara, Iringa, Mbeya, Moshi, Arusha and Bukoba were all represented among the Mishamo local employees. The local people of the district got a very little chance of employment. The author tried to observe whether there were any special skills needed from the labour forces which could justify the employment of workers far afield instead of using either the refugees or the local people. There was no such a skill.

In Mishamo, the largest employer is Education, followed by Health, Rural Development, and Building and Agriculture in that order. In all these cases, the Tanzanians outnumbered the refugees except in the Water and Building sections. TCRS is perhaps partly responsible for this policy as it moves along with the employees from one project to another. Some of these who were employed at the very inception of the TCRS in the early sixties are in Mishamo settlement with the exception of the expatriate staff.

Another peculiar feature of refugee employment in the settlement which the present author noted is the fact that they are at the bottom of the hierarchy. The author noted, among other things, that all the departments in Mishamo settlement, with the exception of the Settlement Commandant's Office and the dispensary, were headed by expatriate staff. It was also noted that in all these cases, the next category were the Tanzanians. Residential quarters are also arranged according to seniority. The houses for expatriate staff on the other hand were the only furnished ones. Thus there has developed a clear cut relationship between the refugees, expatriates and Tanzanians.

This hierarchy was queried by the present author and it was clear that there was no sufficient explanation by the TCRS for its existence. For example, one employee had successfully done a driving school certificate course, a three years course in carpentry and one year mechanical training.

He had also worked for seven years as a carpenter in Burundi. Not only that, but he was also fluent in written and spoken English and Kiswahili. However, this young man was a mere labourer in the carpentry workshop. The present author noted also that Head Carpenter was semi illiterate and the overall incharge officer of the workshop and expatriate staff, had no previous experience nor was he actually involved, very much in the actual work. Indeed, it was needless to employ an expatriate for this job. The refugee would have run it efficiently, given his qualification and experience.

The carpentry workshop was in a very bad shape as a result of poor management and 'silent resistance' by the refugee employees. It should also be noted that a number of refugees who have good qualifications are unemployed. The UNHCR and the TCRS are both aware of this but they have not given the matter serious attention. For example, the UNHCR representative noted, *inter alia*, in his letter to TCRS Director. Amongst the refugee population are a small number of persons with intellectual background we would propose for your consideration that whenever possible, use be made of these skills by offering employment within the settlement; In reply to this TCRS noted:

'Regarding the above mentioned Burundi refugee from Mishamo settlement, we have interviewed him. We did not feel that he was suitable for such position as he was unable to express himself in either English or Swahili both of which are necessary for such a post.'

The author met this particular refugee and found that he was above almost all those employed in the settlement in a similar position which he had requested. His English and Kiswahili, both spoken and written were excellent. Indeed, the present author asked the refugee to write several letters of applications and the refugee did so very well. In any case it was not necessary to employ the said refugee as an accountant the post he had requested. He could have been employed in any other post, including teaching in the sixteen primary schools at Mishamo.

The present author noted that educated refugees who do not have employment or who are disguisedly unemployed live under severe stress and have either resorted to begging or have generally developed a rebellious attitude towards the settlement authorities. This has also created further problems as such refugees are seen by the said authorities and the TCRS as 'potential trouble makers.'

Freedom of Movement of Rural Refugees

In the course of the research, the present author noted with regret that a number of people have yet to come to grips with the reality of the current

difficulties of rural refugee movement in Tanzania. It is submitted that the real problem lies in the Refugee (Control) Act, 1966 and not in the 'mistaken' or evil acts of the authorities who are obliged to ensure the compliance by refugees with the Act. The Act, as its title suggests essentially ensures the control of the refugees in the country of asylum. Through this Act, the refugees can be subdued into submission. In this way their level of political organization can be brought under effective control.

Using the mischief rule of statutory interpretation, the author is totally convinced that the Act gives to the law enforcing organs excessive powers which do not exist in any other laws in Tanzania. Take for example, the definition of the authorised officer under Section 2(b) which means: 'An Administrative Officer, a Settlement Commandant, a Police Officer, a Prisons Officer or a member of the Tanzania People's Defence Force' who is empowered by Section 12(1)(a) to: 'require any refugee who is within his area to reside within a reception area or refugee settlement (whether he/she) is within such competent authority's area or not.' Further, Section 5(2) provides that the 'Minister or, as respects his area, the competent authority may' by order in writing: 'Direct that any refugee entering or leaving Tanganyika shall enter or leave by specific routes or at specified place, (or) that any refugee moving from one part of Tanganyika to another shall move by specific routes.' The law thus gives wide powers to the competent authority who, by definition, includes even an Administrative Officer, A person who is not usually given such powers in other laws such as the Criminal Procedure Code and the Penal Code.

Thus from the foregoing, the law makes it obligatory that the movement of the refugees be strictly controlled. To call the acts of the individual settlement commandants or DAM as being unacceptable is to mistake the shadow for the person.¹⁴

Further, receipt for the certificate of good service from the Tanzania government by the employees of MHA and DAM depends on their stringent enforcement of the Refugee (Control) Act, 1966.

Granted that the Geneva Convention of 1951 read together with the Protocol of 1967 and the DAU Refugee Convention of 1969, require the host country to give the refugee a certain amount of freedom of movement, we should nevertheless not forget that in the event of a conflict of municipal and international law, municipal law prevails in the domestic courts (unless the contrary is provided by law) or to administrators when they are enforcing parliamentary directives such as the Refugee (Control) Act, 1966.

Having said the above few introductory words and bearing in mind the difficulties we had raised when dealing with, *inter alia*, refugee self employment and wage employment, we may now deal with the actual legal and practical operational problem of the Mishamo and Katumba refugees' freedom of movement. It is submitted that the real solution to the problem of the free movement of rural refugees can only be by an amendment of the Refugee (Control) Act, 1966.

Reasons for wanting to Move

The author wanted firstly to know the reasons why generally the refugees wanted to move out of the settlement and what were the most dominant reasons. It was noted when looking at the first week of the month of September, 1982, which was selected by random sampling, that the following were the main reasons given by Mishamo refugees for wanting to travel outside the settlement. Most of them alleged that they were going to either visit a relative or see a sick person. None of them gave a reason for example that he was going to hunt, fish in the lake or to smuggle goods. The present researcher was, however, able to find out by talking to refugees that most of them who sought to leave the settlement wanted to look for either a market to sell their goods or went to look for a scarce commodity. Others went to look for a temporary manual labour. In the case of Katumba settlement, the main reason which features in Mishamo, namely 'going to visit a relative' is not acceptable to the settlement authorities.¹⁵

The present researcher, instead noted that the main reasons given were going to see a sick person, attend a marriage, attend to seriously sick person, or for a pastor going to attend a meeting in Kigoma. For licensed businessmen, going to buy goods was the main reason. The Settlement Commandant of Katumba informed the present author that refugees intending to go for illicit activities never sought permits and confessed that it was impossible to control such movements as the settlement is very large with no barbed wire. Besides, the Settlement Commandant of Katumba, his deputy and the police have a single very old Land-Rover that is hardly on the road. The Mishamo Settlement Commandant and his deputy have each a brand new Land-Rover and they are frequently on the settlement tour and are able at times to cross-check the genuineness of the reasons by the refugees for wanting to leave the settlement.

It should also be noted that as at present Katumba and Mishamo settlements have varied reasons for refusing to grant permits to the refugees. Guidelines in this area made by the MHA would have standardised the procedure. This would minimise the abuse of power that exists at present. The point being made here is based on the contention that in the Refugee (Control) Act, 1966, the legislature, though emphatic

on the question of the control of the movement of refugees, could not have intended their *de facto* imprisonment. Such an interpretation in view of Tanzania's policy of 'Ujamaa' and recent positive constitutional amendments is an absurdity and ought to be rejected outright. It should however be understood that the spirit of the Act in issuing and refusing to issue the permit is geared toward the safety and convenience of the refugees and the national interest of Tanzania.

In the author's opinion, the question which ought to be asked when the applicant is seeking a permit from the settlement is not whether it is a luxury trip or not, but rather: Whether it is safe and if so, whether it advances the welfare of the refugee and if the national interest of Tanzania. Thus where it is clear to the authorities that the Burundi refugees are being hunted by the security agents of their mother country, it may be improper to give out any permit at all. But where it is quite clear that the life of the refugee is not at stake or that Tanzania's relations will not be damaged by the refugee's being outside the settlement, it would be advisable to grant the permit even when the refugee says that he is going to visit a game park or that he wants to go to Kigoma to see a film. To do otherwise would be contrary to their full integration into Tanzanian citizenship, leading to hosts of frustration (whereby the refugees feel themselves as an underprivileged group). This situation is clearly evident among the settlement refugees and less so in Mishamo.

On the other hand, to let refugees leave the settlement and expose them to attack by their persecutors is equally imprudent. The balance is not easy. The responsibility lies with the Settlement Commandant; his personal administrative ability makes all the difference. The present author noted this in the wise and able leadership of settlement administrators of Mishamo. Not a single refugee raised any issue regarding the question of refusal or granting of the permit. Furthermore, the refusal on granting of the permit is subject to approval by the village agricultural officer during the cultivation season. He has to ensure that the refugee in question has cultivated sufficient acreage of land before he is allowed to leave the settlement. This point vividly illustrates the fact that refugees can be used as productive tools for food and cash crops.

Methods of Getting Permits

There is a slight variation in the method used in Katumba and Mishamo settlements for issuing permits to refugees. In the case of Katumba settlement, the individual refugee seeks permission from his ten house cell leader, who recommends him to the road leader and then to the village leader who writes a letter to the Settlement Commandant of the intention of the refugee to leave the settlement. The refugees get the permits from the Settlement Commandant's Office every Tuesday and Thursday. These are

the only two days in a week allocated for this purpose. On such dates, two pathetic long queues are formed in front of the Settlement Commandant's Office. The Commandant and his assistant work from as early as 8.00 a.m. to as late as 6.00 p.m. The refugees enter one by one to be interviewed. Many may be refused. Once issued, the permit is further taken to the Police Station to be stamped by the police in-charge. This further procedure, the present author was told is to avoid forgery of permits. Some members of staff in the settlement Commandant's Office have been involved in forging permits and selling them at a good windfall profit.

In the case of Mishamo settlement the procedure is as follows: The refugee seeks the permission of the ten house cell leader, road leader and village chairman and, if successful, gets a letter introducing him to the Settlement Commandant. In this letter the name of the refugee, the reasons for wanting to travel and the destination are mentioned. If the letter is correct on the face of it, the refugee is given his permit in less than ten minutes in the Settlement Commandant's Office. Here a clerk fills several particulars and takes it to the Settlement Commandant or his assistant for endorsement and the refugee gets his permit. The permit contains several particulars: the name of the refugee, the date of issue, the village of residence of the Refugee, the destination, his date of departure and return and the signature of the Settlement Commandant. The permit is issued under Section 12(5) (b) of the Refugee (Control) Act, 1966, which provides as follows: Any refugee to whom a permit has been issued under this section who fails to comply with the terms and conditions shall be guilty of an offence against this Act.

Katumba settlement does not have a standard form permit like Mishamo. The reason is shortage of paper and hence in trying to cope with the problem, the settlement uses any available sheets of paper including a telegraphic form. The present author was informed by the refugees that at times police in distant stations such as Tabora do not accept such informal permits. The result is that the refugee is detained unlawfully on many occasions.

The question of providing some financial aid to cater for the running cost of the settlement is a matter that ought to be re-examined carefully. Very often MHA has no sufficient funds for such purposes and the UNHCR contends that their responsibility ceases after a certain period of time and yet the refugees, if they are to travel are forbidden by law to do so without a permit. But that permit must be written on a piece of paper which must in turn be bought.

Several refugees do leave the settlements without a permit. For example, in the case of *Republic v. Novati Hovonimana*,¹⁶ the accused was charged c/ss 12(2) (c) and 15(2) of the Refugee (Control) Act, 1966. In this case the charge sheet noted that the accused did leave the said camp for Burundi without permit of the Settlement Commandant. Although the accused denied the charge, the court was persuaded to agree with the prosecution on the ground that 'the prosecution evidence has been supported by P.W.3 who is the accused's mother. The court further stated that 'these offences are now increasing so they need stern sentences. The accused was sentenced to six months imprisonment.

In the case of the *Republic v. Kigoma s/o Kamudi* and seven others, the prosecution argued that: All the accused are refugees of Katumba in this District (Mpanda). The accused are not allowed to leave refugee settlements without written documents from the Settlement Commandant. On 13th May, 1978 all the refugees accused were checked and found that they were not at the settlement, they were all arrested and charged. All the accused were found guilty and were fined each Shs. 400/= or three months imprisonment. They duly paid the fine.¹⁷

In some other cases police follow suspects. In one such case the accused were seen in a bus coming to Mpanda from Sumbawanga. It was not known where they boarded the bus. Besides, 'there were other accused who boarded the same but at Kamganhaa. A police suspected them that they were in unlawful possession of illegal things'. He searched them and they had no permit for leaving Katumba settlement to a place about 30 miles away. So they were arrested and charged as they stand.¹⁸

When seeking permit, in reality, the refugees do not at times give correct places which they intend to visit. The present give to the Settlement Commandant several places for this purpose: On the average about 37.3% of those who travelled with a permit (between the month of August 1982 and January 1983) alleged that they were going to Kigoma, 9.7% gave Ulyankulu as their destination, none gave for instance, Burundi nor the lake area for fishing. The author found that most of the Mishamo refugees went to Kigoma to search for articles of trade or to sell their produce. Of the eighteen villages in Mishamo, the researcher noted that village six had the highest number of people moving out the settlement (12.6) followed by village 2 (11.8%) and village 10 (9.11%) in that order. The villages which reflected less movement out of the settlement were villages 14, 15, 18 and 13 respectively. These villages which tend to have less people moving out of the settlement are, in fact, the furthest from the settlement headquarters whereas those which tend to have more people moving out of the settlement are nearer to the settlement headquarters. In other words,

nearness to the settlement headquarters encourages more refugees to seek permits, whereas those staying 22 miles away, such as those of village 18 opted to leave the settlement without permits rather than undertaking the burden of having to walk to and from the settlement headquarters (covering 44 miles) before actually embarking on the intended journey out of the settlement. The author noted that in the case of Katumba, some of the villages are completely out of touch and cannot be visited by any vehicle. This means that great distances must always be covered by the refugees on foot.

It is submitted that in order to solve this problem, several options could be devised. Firstly, the office of the Settlement Commandant may set up sub offices within the settlement. He and his deputy could then reside on separate parts of these settlement rather than both being at the headquarters. Besides, more Assistant Settlement Commandants could be employed for each village or for a set of villages. Secondly, the Settlement Commandant's Office may be assisted to set up mobile office specifically designed to deal with the question of issuing permits. Such an office would move from village to village considering the cases of those who want permits. In this way the service would be nearer to the people in need of it. For this to take off effectively, there must exist an efficient transport system for the settlement. Thirdly, the office of the Settlement Commandant may delegate its powers of issuing permits to the village chairmen in cases which are not complicated such as a day's visit to Mpanda by a Katumba refugee. Or in a case where members of a family are going for burial or where a member must accompany a sick person.

The present author also noted that refugees who stay far from the settlement administration were not easily checked by the settlement administration, owing to the problem of distance. Thus the absence of refugees from the settlement could not easily be noticed. It is submitted that if some powers of issuing certain type of permits were given to the refugee village chairman this would enhance his status. The author noted, for example that in Katumba Settlement the Commandant found it extremely difficult to move within the settlement because of transport difficulties.

Entering the Settlement Without Permit

On this question the present author noted that quite a number of times refugees do visit each other within the settlement of Ulyankulu, Mishamo, and Katumba without seeking entrance permit. In one such case the prosecution alleged before the court that the accused had entered Katumba settlement without a permit from the Settlement Commandant contrary to Section 14(1), and 15(2) of the Refugee (Control) Act, 1966.¹⁹ Another case on this point which was more exhaustive was that of *Republic v.*

Seleman s/o Kaliningi. The accused was arrested during the night by the Settlement Commandant of Katumba and the prosecution charged that the accused did enter the refugee settlement without a special permission of the Minister or the Settlement Commandant. (sic) The Accused was found guilty and convicted accordingly.

Unlawful Entry in Tanzania

Another area which concerns the entry into refugee settlement is the whole question of unlawful entrants into Tanzania from Burundi, persons who come basically to visit their relatives in Katumba and Mishamo settlements. In one such case, Leonard Kilomoja was charged because he was found unlawfully entering Tanzania contrary to section 26(i) and (2) of the Immigration Act (No 8) of 1972.²⁰ In yet another case the prosecution charged Gahangu s/o Vincent with being unlawfully present in Tanzania without permit or pass issued by the Principal Immigration Officer. The prosecution objected to bail on the ground that the accused was not a Tanzanian citizen and could easily abscond if released. It was proved before the court that the accused was found living in Katumba refugee settlement. The accused pleaded guilty and was convicted and fined Shs. 2,000/= or in default imprisonment. It was further ordered that unless he obtained a permit or a pass to legalise his presence in Tanzania, the accused was to leave the country forthwith.²¹

In the case of Republic v. Kisa s/o Ismail and another, the accused were charged with unlawful entry to Tanzania contrary to Section 10 (1) and (2) of the Immigration Act of 1972 as well as for unlawful entry to Mishamo settlement contrary to Sections 14 (1) and 15(2) of the Refugee (Control) Act, 1966. The accused were found guilty. In mitigation the first accused as follows: "I was ignorant of the law. I came to visit my uncle." The court in passing the sentence stated: 'The accused persons are both Hutu from Burundi Republic. These offences are now increasing within Mpanda District. The same need stern sentences to deter the offenders from committing the offences.' The court then sentenced the accused to fines and further ruled that: The accused shall quit Tanzania immediately after completion of their prison terms.²²

In a number of cases the refugees themselves do point out the unlawful entrants to Tanzania. In one such cases the prosecution stated in court thus: 'All the accused are residing at Burundi in the village known as Bukoba. On 23.2.79, while the Settlement Commandant was visiting refugee settlement he was informed that at the village there were three guests who have no entry permit to enter Tanzania according to Immigration Act.' The accused were convicted on their own plea of guilt. They were fined and they paid after four hours of being in jail.

Conclusion

The Burundi refugees who are settled in Mpanda District are obliged to live in settlement. They have limited freedom of movement and are mainly self-employed in rural farming.

FOOTNOTES

1. Interview with the Mpanda District Police Commandant in his office on 7.3.83 at 9.00 a.m.
2. Interview with the Mishamo Settlement Commandant, Ndugu Lyimo in his office on 25.2.83 at 9.30 a.m.
3. Republic v. Yacobo s/o Eversto, Criminal Case No. 225 of 1974 Mpanda District Court.
4. Interview with the Katumba Settlement Commandant in his office on 25.3.83 at 4.30 p.m.
5. Republic v. Edamaniel s/o Mpempa, Criminal Case No. 206 of 1982 at Mpanda District Court.
6. Republic v. Nyandu s/o Morris, Criminal Case No. 138 of 1982 at Mpanda District Court.
7. Republic v. Yohana s/o Bayaga, Criminal Case No. 12/77 Mpanda District Court.
8. Republic v. Josephat s/o Ndikumana, Criminal Case No. 12/82 at Mpanda District Court.
9. Republic v. Franco s/o Kamani, Criminal Case No. 12/82 at Mpanda District Court.
10. Barundi Refugees in Mpanda District, Rukwa Region, UNHCR Dar es Salaam Branch Office's document.
11. Republic v. James Elisha, Criminal Case No. 238/82 Mpanda District Court.
12. Republic v. Takisumba s/o Jeremia and another, Criminal Case No. 119 of 1981, Mpanda District Council.
13. T.C.R.S. files, Mishamo Settlement.
14. See, for example, the letter by the UNHCR to the District Commissioner of Mpanda - UNHCR office files.
15. Interview with the Katumba Settlement Commandant and is deputy in the Settlement Commandant's Office at 4.00 p.m. Katumba on 25.3.83
16. Republic v. Novati Mbonimana, Criminal Case No. 149/82 Mpanda District Court.
17. Republic v. Kagoma s/o Makudi and others, Criminal Case No. 142/82 Mpanda District Court.

18. Republic v. Adrea s/o Banganya and another, Criminal Case No. 166 of 1978, Mpanda District Court.
Note also the case of Republic v. Mizigaro, Criminal Case No. 200 of 1974, Mpanda District Court in which the accused was found 8 miles away from the camp boundary.
The prosecution actually stated:
The accused are first offenders. But the refugees are so notorious that they are always breaking this law.
Many of them have been convicted but they don't listen.

19. Republic v. Yacobo s/o Bal, Criminal Case No. 2 of 1983, Mpanda District Court.

20. Republic v. Seleman s/o Kaliningi of Ndui, Criminal Case No. 299/77, Mpanda District Court.

21. Republic v. Leonard Kilomoja, Criminal Case No. 216 of 1982, Mpanda District Court. The prosecution amended this charge and substituted it with that of unlawful entry into the settlement on discovery that the accused was a refugee. The accused in mitigation prayed:

I am sorry for the offence, for I had left the camp to visit a sister at Karema Village.

22. Republic v. Gagangu s/o Vincent, Criminal Case No. 36 of 1981, Mpanda District Court. The accused paid the fine, vide receipt No. 10617, dated 28th July, 1981.

See also Republic v. Paolo Andrea s/o Nitunze, Criminal Case No. 3/1983.

Another case of unlawful entry into Tanzania is that of Republic v. Rufurugula Landrea, Criminal Case No. 34 of 1983. In this case the accused also stated in mitigation as follows:

I came to Tanzania since 28/2/1983 from Burundi. I am a Hutu and I know little Swahili. My intention was to visit my relative, one Simbarakiya of Mishamo Refugee Settlement. I pray for leniency that is all.

REFERENCE

1. America Society of international Law (1970). The East African Community v. Republic of Kenya, *Volume IX*
2. Nyerere, K. (1883)
Daily News, Tanzania Wednesday March 23, 1983.
3. United Nations, (1981) "ICARA II (International Conference on Assistance to Refugees in Africa):" "The Refugee situation in Africa," Geneva, April, 1981.