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Burundi: Rwandan asylum seekers should have access to fair and satisfactory refugee determination procedures

Since the beginning of April approximately 7,000 people have fled Rwanda to seek asylum in Burundi. The United Nations High Commissioner for Refugees (UNHCR) indicated on 13 May that people are fleeing Rwanda "because of fears over the Gacaca tribunals". Additional reasons included "threats and rumours of massacres and revenge attacks".

The governments of Burundi and Rwanda have organised joint sensitisation campaigns among the asylum seekers to encourage them to return to Rwanda. However, reports indicate that pressure, threats and intimidation are being used to induce people to return. In addition emergency assistance to the asylum seekers at the temporary sites, to ensure access to shelter, health care and food, is obstructed by the position taken towards the asylum seekers by the Burundian government. On 27 April the Burundian government announced that the asylum seekers from Rwanda would not be granted refugee status. A few days earlier the Burundian authorities had already halted the UNHCR arranged transfers of asylum seekers away from the border to more suitable and secure structures further inland.

Amnesty International is concerned that Burundi's recent response to the arrival of Rwandans seeking asylum in its territory risks being in breach of its international and regional obligations, including the principle of non-refoulement.

The principle of non-refoulement is provided under a series of international treaties, including the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol, as well as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, to which Burundi is a state party. The principle, also binding under customary international law, obliges States to refrain from returning or expelling persons to countries where they may face serious human rights abuses.

To forcibly return asylum-seekers who have not had access to fair and satisfactory asylum procedures would be in circumvention of the principle of non refoulement as would the introduction of any coercive measures, including restrictions of access to basic social and economic rights or the use of verbal or physical threats or abuse aimed at "inducing" people to return.

Article 1(F) of the Refugee Convention excludes from protection persons with respect to whom there are serious reasons for considering that they have committed war crimes, crimes against humanity or serious non-political crimes, among others. However, determination to exclude an individual from refugee status on grounds recognized under the Refugee Convention should only be made after full consideration of the claim in a fair procedure in accordance with international law and standards, including the right to be informed of the evidence, to rebut the evidence and to appeal. A decision to exclude a person from the protection of the UN Refugee Convention does not mean, however, that Burundi can expel or extradite a person to a country

where they would risk serious human rights abuses or face unfair trial. The legislation establishing the Gacaca jurisdictions fails to guarantee minimum fair trial standards that are guaranteed in international treaties ratified by the Rwandese government. The first trials under the Gacaca jurisdiction started in March 2005.

Amnesty International is deeply concerned over reports that the government of Burundi appears to hamper the UNHCR's possibility to exercise its supervisory role according to article 35 of the Refugee Convention.

Amnesty International is also concerned over reports that the Rwandan government is allowed to operate in the midst of the refugee populations, as this runs counter to refugee protection concerns and may result in sur place claims (i.e asylum claims arising after the time of a claimant's departure from his or her country of origin).

Amnesty International is also concerned that actions undertaken by the government of Burundi risk undermining the civil and humanitarian character of asylum as set out in various UNHCR Executive Committee conclusions, including Conclusion No. 94 (LIII) – 2002. This calls upon States to ensure that safety and security concerns are integrated, from the outset of a refugee emergency, into refugee camp management in a holistic manner and that all efforts are made to locate refugee camps and settlements at a reasonable distance from the border and to maintain law and order.

Recommendations:

Amnesty International calls on the government of Burundi to:

- o uphold the principle of non-refoulement and refrain from taking any action that would be in violation of its obligations under the Refugee Convention and other international human rights and refugee law and standards;
- o ensure that all individuals, including women and children, who express a wish not to return to Rwanda have access to a fair, satisfactory and individual asylum determination procedure, including independent appeal procedures;
- o ensure UNHCR access to border areas as well as involvement in the asylum process;
- o refrain from all measures which directly or indirectly may have the effect of coercing asylum seekers to return to Rwanda;
- o grant asylum seekers enjoyment of their human rights, such as their social and economic rights and their right to protection from violence and threats of the same;
- o ensure that the Rwandan government is prevented from operating in Burundi and cannot pose a security threat to asylum seekers from Rwanda;
- o move sites and settlements away from the border areas and ensure their civil and humanitarian character;
- o investigate all reports of human rights violations against Rwandan asylum seekers, including sexual or other forms of gender-based violence by the state or non-state actors, and make public the findings as well as prosecute the suspected perpetrators.
- o conduct a thorough, prompt, independent and impartial investigation of all persons alleged to have committed genocide, crimes against humanity, war crimes or other crimes under international law and, if there is sufficient admissible evidence, to prosecute them. If Burundi does not prosecute them, it should extradite them to a State able and willing to do so in a fair trial without the possibility of imposition of the death penalty or risk of torture or surrender them to the International Criminal Tribunal for Rwanda.

Amnesty International urges the government of Rwanda to:

- o respect the exclusively civilian and humanitarian character of refugee camps and settlements in Burundi;
- o not engage in any operations in Burundi which may have the effect of coercing asylum seekers to return to Rwanda.

Amnesty International calls on the UNHCR to:

- o intervene strongly with the government of Burundi to ensure that refugees and asylum-seekers are not subject to refoulement whether directly through deportation, or indirectly through denial of economic and social rights.

Amnesty International calls on the international community to:

- o provide the UNHCR with the necessary support to ensure that it is able to exercise effectively its protection mandate in Burundi, including through facilitating the UNHCR's duty to supervise the Refugee Convention, under article 35 of the Convention.