Rwanda
Protecting their rights: Rwandese refugees in the Great Lakes region

Introduction

Through several international instruments, including the 1951 Convention relating to the status of refugees, and national legislation, the international community is aiming to provide relief and support to people at risk of persecution. The key agency working on behalf of the international community in this field is the United Nations High Commissioner for Refugees and his office, UNHCR.

At present UNHCR is aiming to close the book on several long-standing refugee crises. Ongoing peace settlements and discussions have led asylum states, states providing financial or other support to refugees and the UNHCR to believe that there is an opportunity to resolve a number of protracted refugee situations in Africa though its promotion of voluntary repatriation.[1] Significant new repatriation operations in Africa are commencing, and ongoing major programs of repatriation and reintegration of refugees are continuing. UNHCR has discussed its plans with government representatives from countries of origin and asylum in Africa, other interested countries, in particular donor countries, other United Nations agencies and other partners. One of the focal points of these repatriation operations is the Great Lakes region.[2]

Rwanda is one of the key countries in this focus on voluntary repatriation and the sustainable integration of refugees in their home countries. September 2002 meetings between UNHCR, Rwanda and Tanzania led to a change in UNHCR policy regarding Rwandese refugees. The agency moved from merely facilitating voluntary returns to the promotion of voluntary repatriation.[3] In 2002, acknowledging demands by the Rwandese and Tanzanian

[1] See discussion papers prepared for the meeting "Dialogue on Voluntary Repatriation and Sustainable Reintegration in Africa" in Geneva on 8 and 9 March 2004: "Voluntary Repatriation in Africa" and "Sustainable Reintegration of Returnees and Displaced Populations in Africa".

[2] In addition to ongoing or planned repatriation operations to Burundi, the Democratic Republic of Congo (DRC), Rwanda, Republic of Congo and the Central African Republic, there are or will be operations in Angola, Eritrea, Liberia, Sierra Leone, Somalia and Sudan.

[3] The term "facilitation" is used by UNHCR to indicate the assistance that it will provide to displaced people who wish to return home even when UNHCR staff does not feel that the minimum conditions necessary in the country or region of origin have been fulfilled. When refugees voluntarily decide to go home, UNHCR will often provide them with assistance (such as transport and information on conditions in the country of origin) but will not actually "promote" the return. The "promotion of repatriation" is the term which describes UNHCR's active encouragement of repatriation. Once the minimum conditions required in the country of origin are reached then UNHCR will begin to promote

governments, the UNHCR agreed to consider the possibility of invoking the cessation clauses for Rwandese refugees.[4] Invocation of the cessation clauses (Article 1 (C) of the 1951 Convention relating to the Status of Refugees (the Refugee Convention) and Article 1.4 of the 1969 Organization of African Unity Convention Governing the Specific Problems of Refugees in Africa (the OAU Refugee Convention)) terminates international protection of fundamental human rights accompanying refugee status, replacing it with national protection in the refugee's country of origin or habitual residence.

With the September 2002 change in UNHCR policy towards Rwandese refugees a host of tripartite agreements were negotiated between the UNHCR, Rwanda and a number of African countries hosting Rwandese refugees: Central African Republic, Burundi and Tanzania in 2002 and Zambia, the Republic of Congo, Uganda, Malawi, Namibia, Mozambique and Zimbabwe in 2003. An estimated 55,756 Rwandese refugees have repatriated since the September 2002 shift in policy. UNHCR hopes to bring home all remaining Rwandese refugees, approximately 60,000, within the next 12 months, 40,000 of them in 2004.

Amnesty International welcomes the international community's concentrated re-examination of seemingly intractable refugee situations and search for durable solutions. It is concerned, however, that the current focus on repatriation can lead to involuntary and premature repatriations that violate internationally recognized principles of asylum and *non-refoulement* and which in themselves may lead to further human rights abuses and renewed violence in the refugees' country of origin. The human rights of refugees are increasingly forgotten in situations, like the Rwandese one, where key members of the international humanitarian community, the Rwandese government and the governments of countries hosting Rwandese refugees actively and in the eyes of many observers even aggressively support repatriation.

Repatriation of refugees must be voluntary and sustainable. Premature repatriation is not a durable solution for the individual refugee, and does not provide a comprehensive solution to the large-scale refugee problem. If conditions in the home country have not changed sufficiently to pull refugees home and refugees are pushed out of their countries of asylum by threats, attack and expulsion, then the fundamental right of individuals to protection is effectively denied and the foundation is laid for further flight and instability in the sub-region.

This report focuses on Amnesty International's human rights concerns regarding Rwandese refugees. It illustrates these concerns through a critical examination of past and

repatriation. UNHCR field staff may organize information campaigns to inform refugees (or Internally Displaced Persons (IDPs) of the changed situation in their home country or region and of any peace accords or other relevant agreements that have been signed. Staff in displaced persons camps will help to participate in the repatriation by registering people who decide to return, providing any relevant counseling and monitoring the legal, physical, and material security of the returnees.

[4] See *Final Communiqué at the Conclusion of the Informal Consultations between the Governments of the United Republic of Tanzania, the Republic of Rwanda and UNHCR on the Situation of Rwandese Refugees in Tanzania*, Geneva, 26 to 27 September 2002.

ongoing voluntary repatriation operations, including the repatriation of demobilized Rwandese members of armed political groups in the Democratic Republic of Congo (DRC) and their families. It focuses on voluntary repatriation rather than the other durable solutions of local integration in the host country or resettlement to a third country because it is the core of the current strategy for dealing with Rwandese refugees. The report further documents Amnesty International's concerns with the whole or partial invocation of the cessation clauses with respect to Rwandese refugees.[5]

The organization believes that neither the "fundamental character" of change in Rwanda nor the "profound and enduring nature" of this change have eliminated the "well founded fear of persecution" that led and continues to lead Rwandese refugees to seek asylum elsewhere. A careful assessment of the relevant factors regarding Rwandese administration, the political climate and the absorptive capacity of Rwandese society indicates why this is the case. The repatriation of Rwandese refugees is further complicated by the fact that refugee legislation and practices in countries hosting them does not always fully comply with international protection standards. One of the main problems is that the bodies responsible for deciding asylum claims often are insufficiently qualified and subject to political pressures, and they are often unable to deliver timely decisions on individual claims.

Legal framework for the protection of refugees

A central principle of refugee protection is that of asylum. As enshrined in Article 14 of the Universal Declaration of Human Rights, this principle ensures that "everyone has the right to seek and to enjoy in other countries asylum from persecution". This in intricately linked to the principle of *non-refoulement* which ensures that no one shall be returned to a country where he or she is at risk of serious human rights violations.

Voluntary repatriation

International human rights law firmly establishes the right to return to one's own country.[6] This provides the human rights basis for voluntary repatriation by requiring states to readmit their own people.

In terms of institutional responsibilities, facilitating and promoting voluntary repatriation is a core and statutory function of the UNHCR.[7] By virtue of Article 35 of the Refugee Convention), State parties are required to co-operate with the UNHCR in this area as well as others. UNHCR's role and responsibilities with regard to voluntary repatriation have

[5] UNHCR's Africa Bureau recently took the decision to defer consideration of cessation in relation to Rwandese refugees until the second half of 2006. Nonetheless, local UNHCR offices in countries hosting Rwandese refugees as well as government authorities in the asylum states themselves have used the possible invocation of the cessation clauses in 2004 to encourage the voluntary repatriation of Rwandese refugees.

[6] Article 13(2) of the Universal Declaration of Human Rights; Article 12(4) of the International Covenant on Civil and Political Rights and Article 5(d)(ii) of the Convention on the Elimination of all Forms of Racial Discrimination.

[7] See General Assembly Resolution 428(V) of 14 December 1950.

been developed over decades through texts, instruments and practice. The General Assembly has repeatedly re-affirmed and broadened UNHCR's functions with regard to voluntary repatriation and conditions in the country of origin through the "soft law" of General Assembly resolutions[8] and Executive Committee Conclusions.

The 1951 Refugee Convention and its 1967 Protocol do not expressly deal with voluntary repatriation. The Refugee Convention does, however, contain provisions that impact on voluntary repatriation. Article 33 prohibits a state from expelling or returning (*refouler*) refugees to frontiers or territories where they would be exposed to persecution.[9] Article 1 defines a refugee as someone with a "well-founded fear of persecution" in his or her country of origin and/or nationality. By implication, this subjective "fear" has to cease before voluntary repatriation can take place. The same article (section C) stipulates that refugee status ceases if refugees voluntarily re-establish themselves in the country of origin. Article C (5) further stipulates that if the "circumstances in connexion with which he [or she] has been recognized as a refugee have ceased to exist", the individual can no longer "refuse to avail himself [or herself] of the country of his [or her] nationality". The invocation of the cessation clauses terminates refugee status without the consent or voluntary act of the refugee.

Executive Committee Conclusions also reaffirm the international principles and contain standards governing the voluntary repatriation process. Executive Committee Conclusion 18 (XXXI) (1980) recognized the desirability for UNHCR to verify the voluntary character of repatriation, arrange for safety guarantees in the country of origin, inform refugees of these guarantees and provide them with objective, accurate information regarding conditions in the country of origin, monitor the situation of returnees in their home communities and assist in their reintegration. Executive Committee Conclusion 40 (XXXVI) (1985) develops the doctrine with regard to voluntary repatriation through a clear reiteration of basic protection principles.[10] This Conclusion details practical ways and measures of promoting this solution and of making it truly durable through rehabilitation and reintegration assistance. Executive Committee Conclusion 74 (XLV) (1994) reaffirms both of the above Conclusions.

[8] See in particular General Assembly Resolutions 1672(XVI) of 18 December 1961, 40/118 of 13 December 1985, and 44/137 of 15 December 1989.

[9] Article II (3) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa reaffirms this principle, adding that: "No person shall be subjected … to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or to remain in a territory where his life, physical integrity or liberty would be threatened owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either the whole or part of his or her country of origin or nationality". The principles of both the 1951 and the 1969 Conventions apply to all states receiving and hosting refugees in the Great Lakes region: DRC, Tanzania, Rwanda, Burundi and Uganda as they were and remain parties to the Conventions.

[10] The most important of these is Conclusion 40(b) which provides that: "The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected."

The decision of the refugee to return to his or her home must always be a voluntary one. According to UNHCR guidelines, this involves "the ability to exercise one's free and unconstrained will in making a meaningful choice [to return]".[11] The voluntary repatriation guidelines further state that "this choice must be made without undue pressure, whether physical, psychological or material" and registration of the voluntary decisions to return should take place "without any form of scrutiny or pressure by the parties" or "without any threat of phasing down basic refugee assistance programs".

The OAU Refugee Convention remains the only legally binding instrument that explicitly covers the content of voluntary repatriation. The OAU Refugee Convention recognizes the voluntary character of repatriation and specifies the responsibilities of both the country of asylum and the country of origin.[12] The enshrined principles include the provision of adequate information to refugees, freedom of movement, non-discrimination and the accessibility of land and/or livelihood to returnees.

There are several critical components to a voluntary repatriation operation organized and managed by the UNHCR, the country hosting refugees and the country of these refugees' origin. Before undertaking such an operation, there must be an objective change of circumstances in the refugee's country of origin making it unlikely that that the refugee, should he or she decide to return, be persecuted and a subjective change, giving due regard to the individual refugee's opinion about changed circumstances. Repatriation that does not fulfill both criteria violates the *non-refoulement* rule, enshrined in Article 33 of the Refugee Convention and Article II (3) of the OAU Refugee Convention, and generally regarded as a principle of customary international law.

Voluntary repatriation operations must also guarantee that refugees are able to return home in safety and with dignity.[13] Return in safety ensures the legal safety, physical safety and material security of returnees during the repatriation exercise and through their reintegration into their country of origin or nationality. A return in dignity guarantees that returning refugees are treated with respect and full acceptance by national authorities.

The sustainability of return is also crucially important in all repatriation operations. The failure to effectively resolve the root causes of the conflict causing individuals to leave their home countries and ensure their socioeconomic reintegration in fragile postwar situations like Rwanda incurs the risk of renewed conflict. Hence, there must be a commitment to ensuring conducive socioeconomic conditions and development in areas receiving returning refugees. This is why the UNHCR continually intertwines repatriation with reintegration, rehabilitation and reconstruction (four R's).

[11] See UNHCR Handbook "*Voluntary Repatriation: International Protection*", 1996.
[12] Article V of the 1969 OAU Convention Governing the Specific Problems of Refugees in Africa; see also CM/S Res. 399 (XXIV) Resolution on Voluntary Repatriation of African Refugees in OAU Council of Ministers, Addis-Ababa, 1975.
[13] See UNHCR Handbook "Voluntary Repatriation: International Protection", 1996.

Cessation of refugee status

The Refugee Convention makes clear that refugee status is a transitory condition which ceases when a refugee resumes or establishes meaningful national protection. Article I C defines the situations in which the cessation of refugee status occurs. Paragraphs (1), (3) and (4) of Article I reflect a personal decision on the part of the refugee to re-avail himself or herself of the country of his or her nationality (spontaneous or voluntary repatriation) or acquires the nationality of a new country.[14] The "ceased circumstances" cessation clauses (5) relating to nationals and (6) relating to stateless persons are based on the notion that international protection is no longer justified due to changes in the country where persecution was feared, i.e. the circumstances that led to the recognition of the individual as a refugee no longer exist. The ceased circumstances clauses do not apply, however, to individuals who can invoke compelling reasons arising out of their previous persecution for refusing to avail themselves of the protection of their county of origin or nationality.

The cessation clauses are rarely invoked due to the gravity of their potential consequences. Voluntary repatriation rests on the informed, individual consent of the refugee. The invocation of the cessation clauses terminates international protection of refugees who sought it because of a well-founded fear of persecution in their country of nationality. It does so, moreover, without the voluntary consent of the refugee. The physical security and safety of the refugee as well as his or her enjoyment of fundamental human rights is thus in the hands of the UNHCR and/or the host country that has invoked the clauses.

Subsequent Executive Committee Conclusions[15] have expanded on the conditions under which the cessation clauses can be invoked, noting that circumstances in the country of origin have to be of a "profound and enduring nature" and that the application of the cessation clauses has to follow clearly established procedures which assess the "fundamental character" of the changes in the country of nationality or origin, the "stable and durable character" of the changes in an "objective and verifiable" way. These conclusions further state that the "ceased circumstances" clauses would not apply to refugees who continue to have a "well-founded fear of persecution," compelling reasons arising out of previous persecution or if the invocation of these clauses would jeopardize their established situation in the host country.

Consequent UNHCR guidelines on cessation from 2003 provide further legal interpretive guidance regarding the implementation of the cessation clauses that examines the fundamental character of change in a country to which refugees are to be repatriated through

[14] Spontaneous return refers to the unorganized and frequently unexpected return of refugees to their country of origin. It is frequently brought about by the creation of inhospitable, sometimes threatening conditions in the host country. Voluntary repatriation refers to the organized repatriation of refugees, following the UNHCR or country of asylum's acknowledgement that conditions in the country of origin ensure the safety and dignity of refugees who return. Tripartite agreements establish the necessary legal basis for promotional campaigns and the organization of repatriation convoys.

[15] See Executive Committee Conclusions No. 65 (XLII) (1991), No. 69 (XLIII) (1992) and No. 74 (XLV) (1994).

administrative, political and socioeconomic lenses.[16] There is the realization that the physical security and safety of returnees is dependent on far more than the security situation prevailing in a country. The returnee's well-being requires a functioning government, administrative structures, and the capacity to absorb them. Significantly, there is an important human rights component to all three of these dimensions: toleration for dissenting opinions, establishment of an independent judiciary with fair trials and court access, protection of fundamental human rights, prohibition of torture and a favorable attitude towards human rights groups operating in the country.

Historical overview of Rwandese refugees in the Great Lakes region

Rwanda is one of the few culturally homogeneous states in Africa. Of course, status and power differentials existed, as did various economic specializations, but all Rwandese shared a common culture, language, social structure and, to a large extent, history. The colonial-demarcated borders did not, however, encapsulate all Rwandese. The existence of a Rwandese political unit has caused a number of problems for individuals who are culturally Rwandese but who are living in the DRC, Uganda and to a lesser extent Tanzania. These Rwandese did not necessarily have mixed political allegiances, but national governments and local populations have not always been willing to accord them rights and privileges concomitant with citizenship. It has been estimated that there were close to 500,000 Rwandese in what is today the DRC and more than 120,000 Rwandese in Uganda at the beginning of the colonial period.[17]

Rwandese mobility continued during the colonial period. There were customary economic and social exchanges across the European-demarcated borders along with the migratory movements of Rwandese in search of land and work. Some of these movements were spontaneous; others were sponsored and managed by the colonial powers. There were an estimated 1.3 million Rwandese living in the DRC, 420,000 in Uganda, 80,000 in Tanzania and 10,000 in Burundi by the end of the colonial period.[18]

Pre-1994 Rwandese refugees

Human rights violations, conflict and natural disasters have caused people to flee Rwanda over the last 45 years. The world is well aware of the massive outpouring of refugees concomitant to the 1990 to 1994 armed conflict and genocide but it is less cognizant of the tens of thousands of Rwandese that fled Rwanda in the 35 preceding years and the thousands that continue to flee on an annual basis. The four years of violence that both preceded and

[16] See *Guidelines on International Protection: Cessation of Refuge Status under Article 1c(5) and (6) of the 1951 Convention relating to the Status of Refugees* (the "Ceased Circumstances" Clauses), 10 February 2003.
[17] See Gatanazi, A., *Migrations des populations rwandaises dans la région africaine des grands lacs, Mémoire de D.E.S.*, Dakar, Senegal, 1971.
[18] Ibid.

followed Rwandese independence on 1 July 1962 created a refugee population of an estimated 170,000 in the four neighbouring countries of Tanzania, Burundi, Zaïre (now the Democratic Republic of Congo) and Uganda.[19] Continued ethnic-based political persecution in Rwanda and a coup d'état in 1973 led to the flight of an additional 40,000 Rwandese to these same countries in the early 1970s. By 1993, there were an estimated 600,000 Rwandese refugees and Rwandese of undetermined status in a refugee-like situation in the four neighbouring states.

Initially, both host governments and the local populations in the neighbouring states welcomed Rwandese refugees. The continuing influx of Rwandese refugees, however, generated or aggravated problems with regards to both Rwandese refugees and individuals of Rwandese descent who were living in the neighbouring states. Refugee resettlement camps became overcrowded and refugees moved out to acquire land and seek employment. While many refugees achieved self-sufficiency and a measure of local integration, issues of political power, land distribution and economic competition fueled conflict between Rwandese (both cultural Rwandese living there and incoming Rwandese refugees) and other ethnic groups in the neighbouring states. Host governments increasingly sought to restrict the fundamental human rights of both pre-existing Rwandese populations and Rwandese refugees. The primary intent of Tanzania's 1965 Refugees (Control) Act was to control refugees, restrict their rights, and discourage others from taking refuge in Tanzania.[20] Successive Zaïrian laws in 1972 and 1981 first acknowledged citizenship of Zaïrians of Rwandese descent and then withdrew that citizenship. The possibility of elections in the early 1990's, combined with the numerical majority of the Rwandese in some areas, led to an increase in political tension, land conflicts and violence. Four months of fighting in North-Kivu from March to July 1993 between Zaïrians of Rwandese descent and other Zaïrian ethnic groups led to thousands of deaths, the majority of them Zaïrians of Rwandese descent, and the displacement of another 350,000 individuals. In Uganda, the government began a census of all Rwandese in 1969 (refugees and Ugandans of Rwandese descent) with the intent of excluding them from political processes and eventually deporting them. In February 1982, rising political insecurity and economic pressure caused the government to force all Rwandese refugees back into the settlements. Eight months later, teams of local officials, party youth wings and special police began to attack Rwandese, including refugees in southern Uganda. Houses were burned, possessions confiscated and individuals were beaten and killed. Close to 40,000 Rwandese, most but not all of them refugees, were forcibly repatriated to Rwanda.

Too little attention was paid to durable solutions for Rwandese refugees in this 30-year period as well as their impact on the human rights situation of nationals of Rwandese

[19] It is important to bear in mind that the numbers game in refugee studies depends on why, how, when and by whom the counting was done. It also depends on who was counted. Figures vary widely, from 130,000 by the end of 1963 (UN Visiting Mission to Trust Territories in East Africa, 1960) to upwards of 600,000 (host country censuses).

[20] See Rutinwa, Bonaventure, "The Tanzanian Government's Response to the Rwandese Emergency," Journal of Refugee Studies, 9 (3), 1996. The Act gave the Tanzanian government the right to detain, deport and confiscate the property of refugees.

descent in the neighbouring states. The international community, the UNHCR, the governments of countries hosting Rwandese refugees and the Rwandese government failed to address the root causes of the continuing exodus of Rwandese seeking asylum in neighbouring countries even when the flow of refugees was frequently the result of violence in Rwanda that led to the deaths of tens of thousands of people. Few challenged the former Rwandese government's denial of the Rwandese refugees' right to return to their country.

The successful naturalization of approximately 25,000 Rwandese refugees in Tanzania in 1981 demonstrates a positive and proactive response to the Rwandese refugee situation. Outside of this one significant effort to find a durable solution for Rwandese refugees, there was little attempt by the governments of countries hosting Rwandese refugees or the UNHCR to sensitize those who had locally integrated in the host countries, and no longer wished to return to Rwanda, about the importance of legalizing their status in the host country or to assist them in this process. The UNHCR eventually began to investigate durable solutions for Rwandese refugees in the neighbouring countries, and their 1990 – 1991 investigation in Tanzania revealed that the vast majority of the estimated 21,000 registered Rwandese refugees in Tanzania were successfully integrated and wanted to remain there.[21] The September 1990 invasion of Rwanda from Uganda by the descendents of Rwandese refugees pre-empted a similar investigation into the preferences of Rwandese refugees in Uganda. Victimization in exile and the insecurity of statelessness led to a return by force rather than a reliance on international or bilateral negotiation.

The refugee outflow arising from the 1990 to 1994 Rwandese armed conflict and genocide

The 1990 to 1994 Rwandese armed conflict and genocide created an additional 1.25 million refugees in Zaïre, Tanzania and to a lesser extent Burundi. During the latter half of 1994, the number of new caseload refugees (those who left Rwanda in 1994) who returned to Rwanda was minimal. In September, UNHCR halted repatriation after a UNHCR fact-finding mission found that a systematic retaliation against returnees was being carried out with the knowledge and support of the transitional Rwandese government installed in July 1994.[22] For the remainder of the year, the number of Rwandese leaving Rwanda rose while the number of Rwandese returning dropped. An estimated 78,000 Rwandese refugees returned from the neighbouring countries in 1995, far fewer than UNHCR's targeted daily return of 6,000.

The international community emphasized the distortion of information and physical and psychological intimidation wielded by the former Rwandese government authorities, former soldiers and militia members that effectively controlled the camps to explain the refugees' refusal to repatriate. Though important, it was not the only factor in the refusal of new caseload refugees to return. Refugees ranked equally high their concerns regarding physical security and the restitution of their property. There were credible reports of violent

[21] See UNHCR, *Rwandese Refugees Study*, Geneva, 1992.
[22] The findings of this mission have never been published though their substance was leaked to the press.

reprisals against returnees, an absence of judicial safeguards against arbitrary arrest and detention and contentious property disputes between new caseload returnees and either old caseload returnees (those who had left prior to 1994) or the army.

Amnesty International delegates visited eastern Zaïre in September 1995. They criticized the view of mass repatriation being the only possible "solution" to the Rwandese refugee situation.[23] The situation was problematic with host governments failing to protect refugees—witness the 1995 *refoulements* from Zaïre and Tanzania along with these state's failure to bring the participants of massive human rights violations living in the camps to justice. While the *refoulement* of refugees from Zaïre in August 1995 attracted widespread condemnation, the response thereafter to further *refoulement* was inadequate. For its part, the international community failed to share the burden imposed by the massive number of refugees on the host countries. Faced with an admittedly complex and highly politicized situation, the UNHCR largely acquiesced to host country ultimatums, allowing itself to support and organize a repatriation initiative that was contrary to international norms and its usual practices. The information it provided refugees downplayed the risks the refugees might face upon return. Through indirect pressure, such as the cutting of food rations, some refugees were "persuaded" to return home.

The latter half of 1996 brought forced mass repatriations of Rwandese refugees from the neighbouring countries. In Burundi, the army intervened and caused a renewed flight of refugees with some returning to Rwanda and the remainder fleeing to Tanzania. More direct military intervention against the refugee camps in Burundi in July and August 1996 led to the forcible return of 15,000 refugees, a violation of the principle of *non-refoulement*. The closure of the remaining camps in August 1996 led to the forced repatriation of most of the remaining 60,000 Rwandese refugees in Burundi.

By October 1996 armed conflict between Zaïrian government forces, former Rwandese government forces and militia on the one hand and Rwandese government forces and its Zaïrian allies on the other engulfed the Uvira, Bukavu and Goma areas where most of the Rwandese refugees were located. Some camps were directly attacked; virtually all were deserted and their refugee populations dispersed. Many refugees and local Zaïrians died in the fighting, caught in the crossfire or deliberately targeted by the opposing forces. Between 500,000 and 600,000 refugees returned to Rwanda in the third week of November 1996.[24] Anywhere from 300,000 to 600,000 Rwandese refugees fled deeper into Zaïre. UNHCR figures indicate that an additional 85,000 refugees repatriated from Zaïre by the end of 1996 and 150,000 in 1997. According to reports by human rights monitors and journalists, untold numbers of refugees were slaughtered in multiple massacres. The government of the DRC and

[23] See Amnesty International Report *Rwanda and Burundi The return home: rumours and realities*, 20 February 1996 (AI Index AFR 02/01/96).

[24] There was a valid debate throughout this period, much of it politically motivated, regarding the number of refugees in the camps, the number who returned in the mass November 1996 return and the number left in Zaïre.

its then Rwandese backers fended off U.N. efforts to send in investigators to document these crimes.

The Tanzanian authorities, noting the international community's acquiescence to the forced repatriations in Burundi and Zaïre, ordered the return on 6 December 1996 of all Rwandese refugees by the end of the year. Between 16 and 24 December, 475,000 of the 540,000 Rwandese refugees were forcibly returned.[25] There were reported cases of human rights abuses committed by Tanzanian security forces in this repatriation: confiscation of goods, physical maltreatment and rape. Most of the remaining 65,000 refugees dispersed, many of whom subsequently re-entered refugee camps as Burundians.

The human rights of hundreds of thousands of refugees were violated in these operations.[26] Host country governments and the government of Rwanda did not respect international treaties guaranteeing the right to protection against *refoulement* to which they are parties. Neither the scope of the problem facing them (the sheer numbers of refugees and the rapidity of their exodus from their country of origin), nor the security threat posed by the presence of Rwandese militias, former soldiers and former government authorities mixing with the general refugee population exempted these states from their legally binding obligations to protect refugees. The international community failed to provide an alternative to the closure of camps by force of arms. Moreover, it failed to condemn the relevant governments for using their security forces, and in the case of Rwanda, armed political groups which the government supported, to harass refugees in the camps, attack and/or close the camps and physically abuse them during their return to Rwanda. It is clear that the lack of response to what happened in Burundi provided a green light to what happened in Zaïre, and equally that what happened in both Burundi and Zaïre led the Tanzanian government to undertake similar operations. Surprisingly, foreign governments and intergovernmental organizations, including UNHCR, declared their relative satisfaction with the repatriation operations.

The exodus of Rwandese refugees during this period and their forced return has had a lasting impact on the refugee issue in the Great Lakes region. Tanzanian government authorities pointedly told Amnesty International delegates that the 1994 influx of Rwandese refugees had led to a radical rethinking of their refugee policy, specifically with regards to Rwandese refugees. They stated that the massive intake of refugees combined with former government authorities and former soldiers and militia members, who effectively controlled the camps spread along the Tanzania-Rwanda border, seriously threatened external and internal peace and security. They further noted that donor fatigue had set in and the

[25] Amnesty International noted at the time that the Tanzanian government's ultimatum provided no options for those individuals who continued to fear human rights violations on returning to Rwanda. It stated that, "refugees are not an anonymous mass of half a million people who can be treated in identical fashion. There may be many among them who would be at risk on return. It is the responsibility of governments where they sought asylum and of the UNHCR to ensure that such people have protection", AI press release, 9 December 1996 (AI Index AFR 02/3/96).

[26] See Amnesty International's report, *Rwanda: Human rights overlooked in mass repatriation*, 14 January 1997 (AI Index AFR 47/02/97).

international community's increasing failure to fulfill its financial pledges regarding the maintenance of refugees threatened to transfer this burden onto the Tanzanian government. In addition, authorities complained about the degradation of the environment, the destruction of the area's physical and social infrastructure and the hampering of socioeconomic development. Government authorities further stressed that they have been hosting Rwandese refugees for more than 40 years at considerable cost to their nation and with little thanks. The authorities were quick to mention the return of tens of thousands of old caseload Rwandese refugees from Tanzania[27] following the installation of the 1994 transitional government controlled by the Rwandan Patriotic Front (RPF). This return, they stated, proved the failure of local integration and provided reason for the return of all Rwandese in Tanzania. While many old caseload Rwandese refugees did return in the aftermath of the 1994 genocide, the Tanzanian authorities seemed to forget the tens of thousands who had chosen to remain in Tanzania, penalizing them because some chose to return.

Many of these recurrent assertions are difficult to prove. Tanzanian government authorities were unable or unwilling to substantiate their claims with Amnesty International delegates. A subsequent report written by the Centre for Study of Forced Migration refutes many of them.[28] Their findings show that the high crime rate in Kagera region (which hosted Rwandese refugees) cannot be principally attributed to refugees. Refugees reportedly committed 17.7 percent of the crimes in the Kagera region. The ratio of criminals to non-criminals in the refugee population is comparable to that among the host population. The report points out that the high rate of crime is more attributable to the region's proximity to a conflict zone than it is to the presence of refugees. The report accepts the fact that during the period of mass refugee influx, the mid-1990s, environmental degradation occurred in the areas hosting refugees. Humanitarian agencies have since successfully reversed these affects so that today more trees and vegetation are being planted than harvested. Likewise, the fauna (through UNHCR involvement) is better protected now than ever before. Similar assistance from international humanitarian agencies has maintained, rehabilitated and constructed the area's physical infrastructure. This assistance has also provided safe water as well as healthcare and education facilities and personnel for local Tanzanians as well as refugees. Along an array of social indicators, local populations in the regions hosting refugees are far above the national average. While insecurity (not necessarily the result of the refugees' presence) in these border regions has negatively affected agricultural and economic production, the presence of refugees, and the concomitant involvement of humanitarian agencies, has stimulated local business and agricultural produce markets. It has also increased local employment opportunities and revenues.

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[27] The exact number is difficult to determine. It is estimated that between 700,000 and 800,000 old caseload refugees returned to Rwanda after the 1990 to 1994 armed conflict and genocide. The majority of these refugees were from the bordering states of Uganda, Tanzania, Burundi and Zaïre.
[28] See Centre for Study of Forced Migration, University of Dar es Salaam, *The Impact of the Presence of Refugees in Northwestern Tanzania*, August 2003.

The "voluntary repatriation" of Rwandese refugees

The case of Rwandese refugees in Tanzania

When the repatriation of Rwandese refugees took place in 2002, conditions did not begin to approach those prevailing in the immediate aftermath of the 1990 to 1994 Rwandese armed conflict and genocide, which seriously impacted the ability of UNHCR and relevant national governments and non-governmental organizations (NGOs) to ensure a safe return in dignity. Nonetheless, the 2002 repatriation operation similarly failed to protect the fundamental rights of refugees.

Events immediately prior to the 2002 "voluntary repatriation" of Rwandese refugees in Tanzania

Rwandese asylum seekers from 1998 onwards were no longer given *prima facie* refugee status upon their arrival in Tanzania. A reception centre able to accommodate 600 asylum seekers was established at Mbuba to hold Rwandese asylum seekers going through the refugee status determination process. Although the centre's capacity was almost immediately expanded to 2,000, by 1999 it was incapable of handling the number of new arrivals, the number of Rwandese asylum seekers re-entering Tanzania and those who emerged from Tanzanian villages following the 1996 *refoulement*.

In late 1999 the Tanzanian military authorities in Kagera region issued a written statement ordering all Rwandese refugees to be in refugee camps.[29] Beginning in February 2000, the Tanzanian immigration authorities began to arrest, detain and forcibly return hundreds of Rwandese refugees not in the camps along with old caseload Rwandese refugees from the 1960's who were locally integrated in Tanzanian communities. More than 80 Rwandese were forcibly returned to Rwanda. Most of them were denied the opportunity to contact their families or collect their belongings.

By January 2002, the Rwandese refugee population in Tanzania approached 25,000 with slightly more than half of them having returned to Tanzania following the 1996 mass forcible return.[30] Another 11,000 refugees were new refugees who had fled Rwanda in the previous two years because of political persecution. The Tanzanian government was urging both the international community and UNHCR to ensure their repatriation.

[29] Under the new 1998 Refugees Act that came into force in February 1999, it is illegal for any refugee to live outside any of the designated camps. Failure to comply is punishable by a six-month prison sentence. It is unclear to what extent the Tanzanian government informed refugees about the new regulations in the new 1998 Refugee Act or the written instructions given to local authorities.

[30] Most of these refugees stated that acrimonious property disputes had led to their persecution and detention, necessitating flight. Others stated they were fleeing a discriminatory criminal justice system or other human rights abuses, specifically "disappearances" and extra-judicial executions.

The 2002 to 2003 "voluntary repatriation" of Rwandese refugees from Tanzania

Bilateral and tripartite meetings were held in Geneva between the Tanzanian government, the Rwandese government and UNHCR in late September 2002 to discuss the most appropriate durable solution for Rwandese refugees living in Tanzania. The Tanzanian Minister of Home Affairs stated his government's rejection of local integration as a durable solution for Rwandese refugees and requested their repatriation. The Tanzanian government made it clear that it wanted all Rwandese refugees out of Tanzania and suggested that henceforth Rwandese asylum seekers be protected in "safe havens" within Rwanda. The Rwandese government also supported the repatriation of all Rwandese refugees. The UNHCR decided to shift from its policy of facilitating their "spontaneous" voluntary repatriation to promoting voluntary repatriation and promised to consider invoking the cessation clauses vis-à-vis Rwandese refugees.[31] A Tripartite agreement between UNHCR and the governments of Tanzania and Rwanda established the modalities for this repatriation on 10 October 2002.

A 31 December 2002 deadline was set for the repatriation operation. UNHCR organized a pro-active information campaign during the last two weeks of October geared towards the repatriation of all Rwandese refugees on Tanzanian soil. The campaign included "go and see" visits by Rwandese refugee leaders to Rwanda and returnees invited back to the camps to provide information on the current situation in Rwanda. Repatriation convoys began on 6 November 2002 and ended on 27 December 2002. There were two convoys a week with the exception of Repatriation Week (26 to 30 November) when they occurred on a daily basis. Two thousand refugees were repatriated in November and 17,000 in December. UNHCR announced on the December deadline that 23,500 had been repatriated and that there were only an estimated 150 Rwandese refugees remaining in Tanzania. These individuals were either too ill to travel or in prison.

Remarkably, on 3 January, it was announced that a final group of 1,300 Rwandese refugees were repatriated. On 9 January 2003, another 3,000 Rwandese refugees resurfaced in the refugee camps. They had reportedly hidden in neighbouring villages to avoid the repatriation exercise or had said they were Burundian. UNHCR estimated that there might be another 12,000 Rwandese refugees in the area. Simultaneously, thousands of Rwandese refugees who had been in Tanzania began turning up in such far-flung places as Namibia and Zimbabwe as well as the neighbouring countries of Uganda, Malawi and Zambia.

At the 13 February Tripartite meeting, the Tanzanian authorities gave a two-week ultimatum for the repatriation of the 2,717 Rwandese refugees that UNHCR had formally identified. They stated that at the end of the two-week period, the refugees would lose their refugee status and come under the 1995 Immigration Act. UNHCR could either ensure their repatriation or resettle them to a third country. The arrival of the second deadline found nearly 1,000 Rwandese refugees still in Tanzania. While all of the 2,717 Rwandese refugees were given the opportunity of applying for asylum, only 150 refugees of those who applied were

[31] On 2 October 2002, a Final Communiqué underlining this policy change and stating the possibility of invoking the cessation clause vis-à-vis Rwandese refugees was signed and issued in Geneva.

granted refugee status by the Tanzanian Ministry of Home Affairs. UNHCR was requested to resettle all of them to a third country. On 1 September 2003, Tanzanian government authorities told UNHCR that they were going to expel the remaining Rwandese refugees. The following day, Tanzanian police began rounding up the Rwandese refugees. Burundian refugees burned the houses of Rwandese refugees and looted their possessions. The Tanzanian police did not intervene but loaded approximately 700 Rwandese refugees onto trucks (including at least one UNHCR vehicle) and drove them to the Tanzania-Rwanda border. Throughout this repatriation exercise, the UNHCR was adamant that the repatriation was voluntary and that the safety and dignity of returnees had been assured.[32] The reality, however, was quite different.

Forcible Return?

Although the threshold of change is lower for voluntary repatriation than that required for the invocation of the cessation clauses, a safe and dignified return must still be ensured. UNHCR attributed its shift from facilitation to the promotion of voluntary repatriation for Rwandese refugees to improved conditions in Rwanda that guaranteed the safety and dignity of returnees. In order to assess the existence of improved conditions, there must be an effective monitoring program. Without knowing what happened to previous returnees or how successfully they reintegrated into their home communities, it is virtually impossible to determine whether or not conditions have changed sufficiently to ensure the security and safety of new returnees. Neither the UNHCR nor the Rwandese government effectively monitored the situation of returnees immediately prior to the UNHCR shift in policy.

UNHCR asserts that its presence in Rwanda, its independence and its commitment to humanitarian principles ensures effective monitoring of the protection concerns faced by Rwandese returnees. It is true that in the immediate aftermath of the Rwandese armed conflict and genocide the UNHCR had a significant presence in Rwanda. This presence, however, had been considerably scaled down some time prior to its September 2002 policy shift. The human rights situation in Rwanda is continually evolving. Two years ago, human rights violations focused on the launch of an opposition political party. During last year's elections, they widened to all potential political opposition and election monitors. This year, the victims of massive human rights violations have expanded to local NGO staff, church leaders and school authorities.

UNHCR's scaled-down presence in Rwanda has also led to an over-reliance on government authorities for information on the situation facing returnees as well as on returnees reporting their problems to UNHCR staff. The Rwandese government is not an objective source of information regarding the human rights situation confronting returnees. Few governments willingly provide negative information about themselves. The fact that the

[32] See Integrated Regional Information Networks (IRIN), "Rwanda-Tanzania: Thousands more Rwandese step forward for repatriation", 9 January 2003. In this release, the spokesperson for UNHCR-Tanzania states that the repatriation operation had taken place "by and large without any excesses or problems" and that the large number of returnees was "more a result of favorable conditions than pressure from either the Tanzanian or Rwandese governments".

Rwandese government has robustly pursued the repatriation of all Rwandese refugees raises a serious question about the accuracy of information it provides to UNHCR. Relying on refugees to report their problems to UNHCR officials (and assuming that there are no problems if none are reported to them) raises a number of issues. It cannot be said with any certainty that returnees are aware that UNHCR offers them protection once they have returned; that UNHCR can effectively deal with their protection concerns; that returnees have the means or ability to track down UNHCR staff or that informing UNHCR will not actually aggravate their situation.

UNHCR has further cited a substantial increase in the number of refugees voluntarily electing to return to Rwanda as a positive indicator that voluntary repatriation was possible. It should be remembered that approximately 96 percent of the returnees came from the conflict-ridden countries of the DRC and Burundi. The increase in the number of returnees must also be set against the number of new refugees and the rise in "irregular movers".[33] UNHCR figures indicate that 2,473 Rwandese refugees chose to return in 2000, over 4,000 in 2001 and an estimated 4,000 prior to its decision to promote voluntary repatriation. During this same 2000–2002 period, there were 11,500 new Rwandese refugees arriving in Tanzania and over 5,000 Rwandese refugees who fled Tanzania for neighbouring countries. In the words of one refugee, they fled because they had "learned that our government reached an agreement with the Tanzanian government to have us returned to Rwanda. Yet many of us still fear that we will be harassed by the Tutsi regime." In addition to those Rwandese refugees who fled Tanzania in advance of the repatriation, it is unclear to what extent the Tanzanian government's anti-refugee campaign, and UNHCR's decision to promote the voluntary repatriation of refugees, inflated the number of Rwandese electing to return to Rwanda.

Voluntary repatriation also demands the informed consent of the refugees who are to be repatriated. The UNHCR guidelines on voluntary repatriation state that refugees must have a full knowledge of the facts and that the information they receive must be accurate, objective and verifiable.[34] Furthermore, UNHCR personnel are advised that refugees, particularly women and vulnerable groups, are to be consulted so that the information provided addresses their concerns. Within the time constraints of a two-week information campaign, UNHCR followed the standard operating practice of organizing "Go and See" and "Come and Inform" visits in the Tanzanian repatriation operation. Informed consent depends, however, on the quality of the information provided and is not a matter of form. Given the lack of an effective monitoring apparatus in Rwanda, time and resource constraints and the fact that the UNHCR is constrained in the information it can publicly provide, it is clear that the refugees did not possess the necessary information to make an informed decision.

Consent must be voluntary as well as informed and not the result of undue pressure. The Tanzanian government triggered the controversial repatriation through its demand that Rwandese refugees leave Tanzania. In the months prior to the repatriation, Rwandese

[33] Irregular refugee movement refers, according to Executive Committee (EXCOM) Conclusion 58 (XL), to the movement of refuges and/or asylum seekers from countries in which they have already found protection.
[34] Op. cit., UNHCR Handbook "*Voluntary Repatriation: International Protection*."

refugees faced a barrage of negative official announcements, hostile media commentary and the increasing harshness of local authorities who made it clear to them that they were not welcome on Tanzanian soil. Refugees were faced with the options of either accepting repatriation or facing deportation in the future. Working in a highly charged environment where return was seen as a priority by both the Rwandese and the Tanzanian governments, the UNHCR and the two governments negotiated a tripartite agreement that provided a legal and operational framework adhering to refugee law and standards. The tripartite agreement may have lessened the number of human rights violations that took place in the course of repatriation but it may not have stopped the forced return of tens of thousands of refugees from Tanzania. The problem is not with the contents of the agreement nor its purpose but with its implementation and that it may have been viewed as a trigger for the governments of Tanzania and Rwanda to push through their agenda in spite of the continued protection needs of Rwandan refugees. Refugee testimonies received by Amnesty International indicate that many refugees felt that the UNHCR and the international community had acquiesced to the demands of the Rwandese and Tanzanian governments. Under such conditions and faced with a 31 December ultimatum, the consent of Rwandese refugees should not be seen as a sign that the criteria of "voluntariness" was fulfilled. Even under these conditions, most refugees waited out the deadline and thousands fled to other countries in the hope of avoiding it.[35] In 2003, the situation worsened considerably when the verbal harassment by Tanzanian authorities turned to actual physical violence, and there was no longer any pretense of the repatriation being voluntary.[36]

Both the UNHCR and the Rwandese government also failed to fulfill their respective roles regarding the re-entry of Rwandese refugees into Rwanda as outlined in the tripartite agreement. When the first convoy of refugees arrived at the Nyakarambi transit centre in Rwanda, there were no UNHCR or Rwandese government staff present to receive or register the first convoys of returnees. Neither the UNHCR nor the Rwandese government had

[35] These individuals faced an additional problem in Uganda where despite EXCOM Conclusion 58, which recognizes that movement by refugees from one country to another poses problems to the existing international assistance structures but requires states to protect refugees in their territory, the Ugandan field office of UNHCR argued that these refugees were irregular movers who had previously found protection in Tanzania, and as such would not be provided with assistance nor international protection in Uganda. EXCOM Conclusion 58 recognizes, however, that "irregular movers" can only be returned to their first country of asylum or they would be protected against *refoulement* in that country and would be permitted to remain there and be treated in accordance with "recognized basic human rights standards". In addition, the fact that the quality of protection available to refugees in Tanzania was so low would lead to the conclusion that many of those who fled to Uganda were not "irregular movers", but indeed onward movers who continued to be in need of international protection.

[36] Refugees who fled Tanzania for Uganda reported to Amnesty International delegates that in the latter part of 2002 camp commanders became increasingly abusive, threatening Rwandese refugees with police violence if they did not leave Tanzania. Whenever Rwandese refugees would meet to discuss the ongoing repatriation operation, the Tanzanian police would disrupt the meetings, beating and detaining participants. In January 2003, the Tanzanian army also entered the camps to both beat and detain Rwandese refugees. Most of the men that Amnesty International talked to had been physically beaten at least once and detained two or three times for several days.

constructed structures or sanitation facilities to shelter the repatriating refugees. There was no provision of water or medical care. It took a full two and half weeks – out of a six-week repatriation -- before the centre attained minimum World Health Organisation standards.

In the Tanzanian repatriation operation, the UNHCR did not establish a presence that could effectively monitor the reintegration of returnees and, as a result, had little or no way of knowing whether or not the Rwandese government executed its guarantees or whether returnees faced discrimination with respect to the enjoyment of their fundamental human rights. Its failure to do so can be partially attributed to the reticence of the Rwandese government regarding the human rights situation of returnees, the lack of adequate resources and the lack of international agreement on the kinds of "protection tools" available to it when monitoring the situation of returnees.[37] While UNHCR guidelines on voluntary repatriation make it clear that a refugee's rights to a safe return in dignity do not end at the border and that voluntary repatriation does not constitute a durable solution without the successful reintegration of returnees into their local communities, the legal framework and financial means are lacking. UNHCR also failed to support Rwandese legal and judicial capacity building, raise funds from the donor community to support reintegration programs or act as a catalyst for medium and long-term rehabilitation assistance.[38]

Ongoing repatriations of Rwandese refugees in eastern, central and southern Africa

In addition to the completed Tanzanian repatriation of Rwandese refugees, there are ongoing repatriation operations in Burundi (where there are more than 1,200 Rwandese refugees), the DRC (an estimated 21,000), Central African Republic (over 400), Zambia (over 5,000), the Republic of Congo (over 6,000), Uganda (25,000), Malawi (nearly 4,000), Namibia (over 600), Zimbabwe (nearly 3,000) and Mozambique (100).[39] With the exception of the refugees in Burundi, where 1,616 Rwandese refugees returned home between October 2002 and June 2004, and the DRC where close to 26,000 Rwandese refugees returned home between October 2002 and November 2004, [40] relatively small percentages of Rwandese refugees have registered for voluntary repatriation.

[37] The organization – like all intergovernmental organizations and agencies – can be vulnerable to political pressure and does not always feel able to voice its concerns publicly, which hampers its efforts to conduct independent and impartial monitoring. In situations such as those examined in this report, UNHCR is sometimes faced with the dilemma of either speaking out, risking reprisals against its staff or being expelled, thus preventing it from accomplishing anything on the ground, or keeping quiet and doing its best to contain abuses on the ground, at the cost of not alerting the international community.

[38] These elements form an integral part of UNHCR's mandate for voluntary repatriation. See UNHCR, "Benchmarks, Role and Activities for the Return of Rwandese Refugees", Office of the UNHCR Regional Coordinator for the Great Lakes, 7 July 2004.

[39] These are the approximate figures of Rwandese refugees in the host country at the time in which the repatriation agreement was signed.

[40] Repatriation operations frequently reveal discrepancies in the number of registered refugees. Already more Rwandese refugees have returned from Burundi than were registered.

In Zambia, a tripartite agreement between UNHCR, Rwanda and Zambia was signed in January 2003. An information campaign began in February with repatriation to begin in April. Sixteen Rwandese repatriated in May 2003, 52 the following month. Through June 2004, only 142 Rwandese refugees had repatriated and Zambian authorities were threatening to revoke the status of refugees who refused to go home. In September, the Zambian commissioner for refugees, frustrated by the reluctance of Rwandese refugees to repatriate, said his office was considering ceasing to recognize Rwandese asylum seekers as refugees

The tripartite agreement with the Republic of Congo was signed in June 2003. In late February 2004, a local human rights organization reported that some Rwandese refugees were willing to repatriate, but they wanted more accurate, objective information and time before giving their consent. A year after the signing of the tripartite agreement, 73 Rwandese refugees had voluntarily repatriated.

The Ugandan government signed its tripartite agreement in July 2003. An estimated 1,945 Rwandese refugees were voluntarily repatriated by June 2004. In the meantime, approximately 300 of those who were repatriated to Rwanda have already returned to Uganda. Many of those who have returned indicated that they were either unable to regain their land or feared that attempts to do so would lead to their arrest and detention. Others cited human rights abuses and discrimination within the criminal justice system.

Malawi, Namibia, Zimbabwe and Mozambique signed tripartite agreements in November and December 2003. As of June 2004, two Rwandese refugees from Malawi, one Rwandese refugee from Namibia and 12 Rwandese refugees from Mozambique had been repatriated.

The relative lack of registration for repatriation does not indicate a lack of action on the part of Rwandese refugees. In Zambia, refugees lodged a complaint with the Zambian Human Rights Commission citing increased harassment of Rwandese refugees in Zambia following the signing of the tripartite agreement. Again, this is not to fault either the purpose or the content of the tripartite agreement that was negotiated between the respective parties. Its existence did, however, serve as an incentive to enforce repatriation of Rwandese refugees The Zambian authorities apparently stepped up the harassment of refugees to ensure their "voluntary" return. The Commission is investigating their charges. Rwandese refugees in Zambia reacted to hostile government statements regarding them by presenting their issues to the local media and local and international NGOs. Rwandese refugees in Namibia similarly took their case to the local media, stating that a reported 120 refugees had left the camp in anticipation of the projected June 2004 repatriation. UNHCR officials maintain that these refugees at no time faced the risk of *refoulement* and attribute their flight to misinformation. The point is that refugees perceive, with some justification, the reaction of host country governments and populations to these agreements and fear the acquiescence of UNHCR and the international community to host country demands to repatriate them. This is a dilemma that UNHCR and foreign donors must resolve.

The obvious conclusion regarding the paucity of registration for voluntary repatriation as well as the flight from refugee camps, settlements and countries experiencing

ongoing repatriation operations, despite robust UNHCR information campaigns, is that the majority of refugees are unwilling to repatriate. Disinformation provided by some sections of the Rwandese community in exile may account for some of this reluctance. Overwhelmingly, refugees attribute their failure to register for repatriation to their fear of persecution. They reference the persistent human rights abuses in Rwanda: continuing "disappearances," extra-judicial executions, arbitrary arrest and detention, unfair trials and congested prisons cited in human rights reports. They also mention the illegal confiscation and occupation of property by government authorities and security forces. Perhaps the most frequent question posed by Rwandese refugees to Rwandese and host country government authorities in UNHCR-organized informational campaigns is "How can you tell someone it is safe to return to Rwanda when there are still people fleeing because of insecurity?"

Unlike the 2002 Tanzanian repatriations of Rwandese refugees, the UNHCR and host country governments have to date given the refugees in the ongoing repatriation operations considerably more information and time to make their informed decision regarding repatriation. Nonetheless, there is room for concern, particularly regarding the quality of the information that refugees are receiving and the subsequent actions of UNHCR and host countries if refugees make the decision not to voluntarily return to Rwanda.[41] Amnesty International believes that the information being provided by UNHCR often is not addressing the concerns of refugees and that the agency has sometimes failed to gain the trust of the refugees. If refugees sought protection because of a well-founded fear of being persecuted by agents of the current government, it is insufficient to simply relay information from the government of Rwanda to refugees or to have Rwandese and host country government authorities address refugee questions. A better approach would be to also allow for representatives from relevant NGOs, development agencies and independent human rights organizations to address refugees. The information provided to refugees is supposed to be accurate, objective and verifiable. In this respect, an effective (independent, resourced and competent) monitoring system on the ground would enable UNHCR to speak authoritatively on the problems faced by returnees and how they are resolved.

UNHCR has recognized the need to enhance the monitoring of Rwandese returnees. In early 2003, the organization requested five United Nation Volunteer (UNV) positions to undertake this monitoring. Three UNVs were subsequently hired to research the human rights situation of returnees and submit a report. The report submitted did not, unfortunately, provide the information sought. In mid-2004, a three-person monitoring unit was established in the Rwanda field office of UNHCR. UNHCR acknowledges that the unit is both understaffed and under-resourced. In August 2004, this unit had yet to investigate the publicized story that young male returnees from Tanzania and Uganda were being mobilized to fight in the DRC. It is clear that the current level of monitoring, while a step in the right

[41] On 8 September 2004, the UNHCR office in Uganda announced that it would close all three of the refugee settlements housing Rwandese refugees, cease to offer any assistance to Rwandese refugees because they ceased to be considered refugees and that it was up to them to either seek Ugandan citizenship or decide on their own fate. This misinformation, the invocation of the cessation clauses, could be viewed as a mechanism to pressure refugees to register for repatriation.

direction, is insufficient both in terms of UNHCR's mandate to provide objective information to refugees in its repatriation operations or to monitor the human rights situation of returnees.

Amnesty International is concerned about the subsequent steps that UNHCR and/or host countries will take if refugees continue to refuse voluntary repatriation. The organization also fears that any future invocation of the cessation clauses would remove the necessity of obtaining the refugee's consent rather than being based on an objective assessment of the human rights situation in Rwanda. UNHCR and host countries should rather investigate the root causes of the refugee's refusal to voluntarily repatriate, and liaise with the Rwandese government, bilateral donors, inter-governmental organizations (IGOs) and NGOs to address them. It is insufficient for authorities in the asylum countries and the UNHCR to attribute the failure of Rwandese refugees to register for repatriation to their fear of change, their possible participation in the 1994 genocide and poverty. Comprehensive, independent and impartial information campaigns can address the understandable apprehension of refugees regarding return. The UNHCR has established mechanisms for dealing with refugees who are suspected of participating in the 1994 genocide.

Demobilization and Repatriation in the Democratic Republic of Congo

The Rwandese refugee issue in the DRC is intertwined with the disarmament of Rwandese armed political groups operating there. This reality greatly complicates the repatriation issue from a number of different angles: there is the conflict between the Rwandese government and Rwandese elements opposed to it, the conflict between Congolese armed political groups opposed to Rwandese intervention in the DRC and the Rwandese living there and the legitimate fear of demobilized Rwandese armed political group members and their dependents (considered as refugees) regarding their reception in Rwanda. The Rwandese and Congolese governments continue to accuse each other of breaking the various agreements they have signed calling for the withdrawal of Rwandese troops from the DRC and the demobilization and repatriation of Rwandese armed political group members operating there.[42] The leadership of the Rwandese armed political groups categorically refused to disarm their troops until their political demands are taken into account by the Rwandese government. The work of the United Nations Observer Mission in the Democratic Republic of Congo (known by its French acronym MONUC) and the UNHCR is complicated by these unmet political demands and security constraints in the conflict-torn eastern DRC.

[42] The Lusaka Ceasefire Agreement of 10 July 1999 called for a ceasefire among the principle parties in the DRC conflict, the withdrawal of foreign troops, the demobilization of armed political groups (and the repatriation of Rwandese armed political group members) and the implementation of an Inter-Congolese Dialogue. Four months later, Security Council Resolution 1279 authorized the deployment of a United Nations mission for the Congo (MONUC) that would initially deploy military observers, then monitor and verify the withdrawal of foreign troops and finally disarm, demobilize and repatriate armed political group members. The Pretoria Peace Agreement of 30 July 2002 between Rwanda and the DRC established a 90-day timetable for the withdrawal of Rwandese troops and the disarmament and demobilization of Rwandese armed political group members.

The DRC government banned the *Forces Démocratiques de Liberation du Rwanda* (Democratic Liberation Forces of Rwanda, FDLR)[43] on 24 September 2002, arresting and detaining key FDLR members. As a consequence of the banning, FDLR members were no longer allowed to stay in DRC. In an attempt to resolve the problem, a "go and see" mission to Rwanda was organized and resulted in 76 of its 79 members opposed to repatriation.[44] While 75 Rwandese ex-combatants volunteered for repatriation, another 136 Rwandese (98 combatants and 38 dependents) were *refouled* on 13 October 2002. On 30 October 2002, the Third Party Verification Mechanism (TPVM) forcibly returned eight FDLR political leaders -- not ex-combatants -- who had refugee status. The following night, Congolese Armed Forces (FAC) attacked the Kamina camp.[45] Reportedly hundreds of disarmed Rwandese were killed, including individuals who had been hospitalized following the FAC attack. The United Nations never investigated these killings although MONUC declared it did not condone the attack. Another 735 Rwandese (402 combatants and 333 dependents) were *refouled*.[46] The number of repatriated Rwandese armed group ex-combatants and their dependents rose to 4,080 by 31 March 2004. According to MONUC, approximately 12 percent of these individuals are ex-combatants, the rest being dependents.

The complicating factors of political demands and conflict do not affect the legal obligations of IGOs and national states to protect refugees. The arrest and detention of refugees by the DRC government and the *refoulement* of refugees all violate legally binding protection guarantees. Political expediency does not justify the violation of internationally recognized principles. For its part, the Rwandese government too has failed to ensure the national protection and reintegration of returning ex-combatants and refugees from the DRC. Minimal effort has been expended by the relevant Rwandese commissions and government ministries to monitor or assist in the reintegration of these individuals despite the fact that an estimated 50 to 60 percent of demobilized soldiers have turned to crime after failing to reintegrate in their home communities.[47] There are also numerous credible reports regarding both the detention and remobilization of returnees from the DRC into Rwandese or Rwandese assisted forces operating in the DRC.

[43] The FDLR is comprised of key members of the 1994 genocide, members of the former Rwandese army and displaced Rwandese refugees. The group has been based in eastern DRC for many years. There estimated strength in mid-2003 ranged from 15,000 to 20,000.
[44] Eleven of the 19 detained leaders voluntarily agreed to repatriate on 22 January 2003.
[45] Since September 2001, the DRC government had confined 1,794 FDLR combatants at a military camp in Kamina, South-Kivu. The FDLR leadership agreed to their confinement but not their disarmament or repatriation until the Rwandese government opened negotiations with them.
[46] Thirteenth Report by the Secretary General on the Mission for the Organization of the United Nations, 21 February 2003 (S/2003/211). The International Crisis Group (ICG) gives slightly different numbers in the report, "*Rwandese Hutu Rebels in the Congo: a New Approach to Disarmament and Reintegration*, 23 May 2003. ICG, citing *Agence France-Presse*, states that a total of 642 Rwandese were repatriated: 359 ex-combatants and 283 family members.
[47] AI interview with Rwandese government official, October 2003.

Repatriation of pre-1994 Rwandese refugees from Tanzania

The Tanzanian government's hostile attitude towards Rwandese refugees in the aftermath of the 1994 genocide expanded to include all Rwandese present on Tanzanian territory.[48] These include many refugees whose cases pre-date 1994. Their cases are frequently referred to as "old caseload". The "old caseload" issue is complex. Economic migrants are mixed in with "old caseload" refugees, most of whom have dispersed and integrated into Tanzanian society. Even when UNHCR has not provided support and assistance to a particular group of people, refugees remain refugees until a durable solution is found. A more proactive UNHCR would have made a serious attempt to sensitize these refugees regarding the necessity of legalizing their status in Tanzania and assist them in this process.

In 1999, Tanzanian parliamentarians identified Rwanda as a major source of illegal immigration (although informal agreements between the two countries had previously enabled and fostered this immigration). The vast majority of these individuals were so-called old caseload refugees who had settled in the country during the 35 years prior to 1994 when Tanzanian authorities had an "open door" policy towards refugees. Many of the old caseload refugees were Rwandese who had migrated to Tanzania for economic reasons.[49] Most of them did not seek naturalization as Tanzanians but were regarded as "good citizens". They were locally integrated, self-sufficient and contributed to Tanzanian society. To a large extent, many of these individuals no longer considered themselves to be refugees. Many of them were born in Tanzania, and were the children of refugees who had fled Rwanda in the late 1950's and early 1960's.

The Tanzanian government, despite the *prima facie* recognition of refugee status enjoyed by these individuals and the fact that they were locally integrated into Tanzanian society, insisted they were "illegal" migrants. None of the persons rounded up and *refouled* in 2000 were allowed to present claims to refugee status.[50] By the end of the year, the Tanzanian government through the Kagera Regional Commissioner changed its orders, giving Rwandese and Burundians who had not registered the opportunity to report to the refugee camps by 31 December or face deportation.

It is not known how many of the old caseload refugees were aware of the new regulations. In the past, refugees in Tanzania, like those in the neighbouring countries, had over time left the overcrowded settlements, seeking employment and land. Many had integrated into the societies of the host countries where they had sought asylum. Many of them felt that they were Tanzanians by virtue of the fact that they were born there, had lived

[48] A similar situation is now arising in the DRC where the parliament is debating the citizenship standing of Congolese of Rwandese descent.

[49] The fact that a Rwandese national originally migrated to Tanzania for economic reasons rather than for reasons of well-founded fear does not mean that that person cannot qualify as a refugee. Such persons, whose need of international protection is a result of changes in their country of origin while they are outside their country's territory, are often called "*refugiés sur place*". See UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, paragraphs 94-96.

[50] UNHCR, United Republic of Tanzania 1999 Annual Protection Report.

there for a substantial period of time, paid taxes and in virtually all respects lived their lives as Tanzanians.[51] Many of these individuals did not feel that new regulations regarding refugees concerned them even though the vast majority of them had never taken the step of legalizing their status as Tanzanians. While many old caseload refugees returned to Rwanda after the end of the 1990 to 1994 armed conflict and genocide, many did not want to jeopardize their situation and the strong family, social and economic links they had formed in Tanzania.

The political climate in Tanzania vis-à-vis refugees had changed, however, and Tanzanian authorities were increasingly wary of the numbers of refugees and economic migrants that lived in Tanzania as Tanzanians, some of whom occupied important positions in the country's military and government. Tanzanian government authorities frequently complained to Amnesty International delegates that the lack of a national identity card made it difficult to determine who was, or who was not, a Tanzanian. A discreet campaign was undertaken prior to the October 2002 elections to identify "non-Tanzanians" and weed them out. Some individuals lost their positions, merely from the unproven allegation that they were "foreigners" while others successfully argued in court that they were in fact legally Tanzanians. There are many cultural groups that straddle Tanzania's borders. As a result, these Tanzanians find their nationality questioned and face increasing difficulties in proving their Tanzanian citizenship. They sometimes face discrimination, for instance in obtaining civil service jobs or acquiring passports.

Beginning on 25 February 2003 and continuing through 10 March, over 2,300 Rwandese were expelled from Tanzania. These were primarily "old caseload" refugees who had been identified by the Tanzanian authorities as Rwandese. Some of these individuals had heard on the radio or from local authorities that all Rwandese had two to three days to leave Tanzanian territory but assumed the message was for "new caseload" refugees. Regardless, Rwandese were rounded up without notice, robbed and beaten, detained in local lock-ups and transported to the Tanzanian border. Families were separated, their personal belongings and properties lost.[52]

Amnesty International delegates interviewed over 30 from a group of 56 Rwandese refugees who were forcibly repatriated in mid-March 2003 from the villages of Nyagakika, Kihanga, Kakunga, Nyishozi and Nyahura (all in Karagwe district, Kagera region) at the Nyakarambi Transit Centre, Rwanda. Most of the individuals that Amnesty International delegates encountered refused the Rwandese government offer to transport them to their "home" communities because they felt they had nowhere else to go. The Rwandese Red Cross and the World Food Program provided them with a portion of the repatriation package offered to returning refugees. It was impossible for Amnesty International to follow-up on any of

[51] Amnesty International delegates repeatedly talked to old caseload refugees both within Tanzania and those who had been recently *refouled* to Rwanda. The vast majority thought that the fact that they were taxpayers gave them the right to reside in Tanzania. Many in Rwanda complained that the Tanzanian authorities had not given them time to collect and show their tax receipts, thinking that this would have prevented their *refoulement*.

[52] UNHCR investigators estimate that this included 203 metal-roofed houses, 2,126 cows and 746 goats.

these cases because the Rwandese government was unable or unwilling to provide the organization with subsequent information regarding their relocation within Rwanda.

Berenardi N. left Rwanda with his father in 1959 when he was a child. On 26 February, he was stopped by Tanzanian authorities who demanded his papers. He told them that he had left his papers at home and asked to be allowed to get them. He was not allowed to go home to either collect his papers or to notify his family. He was physically beaten and imprisoned in the Kayongo lock-up for six days before being taken to the border by Tanzanian soldiers. His wife and children remained in Tanzania and he had received no word about their well-being.

Madeleni N. left Butare province in Rwanda with her husband in 1980. They were economic migrants in search of land. [There was an informal agreement at the time between the governments of Rwanda and Tanzania that encouraged landless Rwandese to settle in Tanzania.] She did not think that her husband had any Tanzanian identity papers. On 4 March, Tanzanian soldiers seized her and a Rwandese neighbour while they were walking to a local government (cell) meeting. She was not allowed to inform or arrange for the safety of her two minor, teenage daughters before being taken to Benaco police station for the night with her Rwandese neighbour. She had heard that her house in Tanzania was still intact and that her daughters had sought shelter with friends in a neighbouring town. New caseload Rwandese refugees in Tanzania had told her that her entire family had been wiped out during the genocide so she had no idea where she was going to go.

Johani R. was born in Uganda where his Rwandese father had settled in the 1930's. He migrated to Tanzania as a young man (he is now 55 years old) with his Ugandan wife. Like most of the refugees Amnesty International delegates talked to, Johani R. is a pastoralist. He said that he knew nothing about Rwanda, having never lived there, and only knew that he was Rwandese by virtue of the fact that his father came from there and he spoke the language. Johani R. was beaten by Tanzanian soldiers when he and his four children (ages 13, 10, seven and five) were forced into the vehicle that brought them to the Kayonga lock-up where they spent several days before being forced to return to Rwanda. His wife, who was not home at the time, has since returned to Uganda. Johani R. said that he has tax receipts for all of the years he has spent in Tanzania but was never given the chance to present them.

Eduwardi M. was born in Tanzania (he is now 32 years old). His father left Rwanda in 1959. Eduwardi M. was herding his cattle when Tanzanian soldiers apprehended him on 2 March. Like the other men, he was beaten as he entered the vehicle that brought him to the Kayonga lock-up where he spent several days without food or water. He has heard that his house was burned, his cattle taken and his personal effects looted. He feared for the safety and economic well being of his wife and four small children (ages eight, six, four and two).

Rwandese authorities told Amnesty International delegates that they could do little more than accept the return of these individuals whom the Tanzanian government considered illegal migrants. Somewhat disingenuously, delegates were told that these forcibly returned Rwandese were exaggerating their plight and that no Rwandese lacks a home and local community no matter how long he or she has been out of the country.

The evictions stopped in March with the beginning of bilateral negotiations whose purpose was to establish the modalities for the return of an estimated 200,000 to 300,000 Rwandese living in Tanzania.[53] A six-month halt to the repatriation operation was called, allowing the Tanzanian government to identify and sensitize the remaining Rwandese regarding their options: legalize their status in Tanzania or leave.

Although Tanzanian government authorities refused to discuss this issue with Amnesty International delegates, who were in Tanzania just prior to the end of the six-month moratorium, discussions with Rwandese in the area indicated that most were aware of the approaching deadline. Continued harassment over the preceding years had convinced them that they were no longer welcome in Tanzania and they were resigned to their fate. They believed that if they were not expelled now, they would be at some future date and perhaps without the benefits of the bilateral agreement that promised a safe return in dignity. Many Rwandese connected to church, NGOs or state institutions used their connections to facilitate their receipt of a residence permit. The majority of Rwandese living in Tanzania, however, did not know how to proceed, did not have sufficient resources to apply for residence permits or naturalization or felt that without connections they would either be rejected or helpless before corrupt officials who were known to raise the requirements and/or cost of obtaining a residence permit.[54] In October 2003, the Tanzanian government announced that about 20,000 Rwandese would be "voluntarily" repatriated and another 600 had successfully applied to remain in Tanzania as residents. No deadlines were set for the repatriation and repatriated Rwandese were allowed to bring or sell all their possessions. Both governments told Amnesty International delegates that the issue of Rwandese living in Tanzania is closed but the fact remains that there are still hundreds of thousands of Rwandese, of various categories, in Tanzania who face possible expulsion at some future point in time.

Applying the cessation clauses for Rwandese refugees

There has been a demand from various states since at least October 2002 when both the Rwandese and Tanzanian governments asked the UNHCR to consider the possibility of invoking the cessation clauses vis-à-vis Rwandese refugees. The issue resurfaced in later tripartite meetings between Tanzania, Rwanda and the UNHCR, between UNHCR and other countries hosting Rwandese refugees and at UNHCR Executive Committee meetings. The UNHCR has at various times considered total or partial application of the cessation clauses with respect to Rwandese refugees. At the present time, UNHCR has postponed a decision on this issue until mid-2006.

[53] It is impossible to know the exact number of Rwandese living in Tanzania. Both Rwandese and Tanzanian government authorities put the number at between 200,000 and 300,000.

[54] Naturalization, which should cost 800 USD (an already prohibitive figure), becomes increasingly more expensive the closer one gets to the Rwandese border. In Karagwe district, Amnesty International delegates were told that the cost ranges from 2,000 to 3,000 USD apparently due to local corruption.

Amnesty International believes that UNHCR and states should heed the lessons learned from the invocation of partial cessation with regard to certain groups of Eritrean refugees (those who had fled the war of independence or as a result of the armed conflict between Ethiopia and Eritrea 1998-2000) in May 2002, taking effect 31 December 2002. As has been documented by Amnesty International the failure to clearly communicate the fact that the cessation was partial, and did not cover all Eritrean refugees resulted in states considering that the situation in the country of origin was safe for all Eritreans, including those who had fled the country for fear of persecution after cessation was declared.[55]

Amnesty International is opposed to any whole or partial invocation of the cessation clauses because neither the "fundamental character" of change in Rwanda nor the "profound and enduring nature" of this change has eliminated the "well founded fear of persecution" that led Rwandese refugees to seek asylum elsewhere. A careful assessment of the relevant factors regarding Rwandese administration, the political climate and the absorptive capacity of Rwandese society indicates why this is the case.

Assessment of the administrative sphere

There are a number of elements within the administrative sphere that need to be assessed. These include a functioning government exercising effective control, disciplined security forces operating within the confines of national law and international covenants and a functioning system of law and justice. The UNHCR has been considering the

> "general application of the 'ceased circumstances' cessation clauses on all pre-31 December 1994 Rwandese Refugees … [as] [t]his would seem to be the time that the current Rwandese administration may be considered to have secured effective control of Rwanda and when viable internal opposition and dissenting opinion in the general population are believed to have emerged."[56]

Amnesty International strongly opposes the supposition that a viable internal opposition and dissenting opinion had emerged by 31 December 1994 or at any point since that time. When the new transitional Rwandese government dominated by the RPF took office on 19 July 1994, the RPF affirmed its commitment to the power-sharing agreements contained in the Arusha Accord after modifying the Fundamental Law agreed upon in Arusha to ensure their dominance in government.[57] Initially, a number of politicians, civil servants, judges and military in place under the former government did indicate their willingness to co-operate with the RPF. By August 1995, most of them had fled Rwanda citing abuse of power, deliberate and arbitrary killings by the army and intelligence services, massive violations of human rights, insecurity, intimidation and discrimination against both Hutu and Tutsi genocide survivors. Another wave of departures came in early 2000 when the Speaker of the

[55] See, for instance, Amnesty International, *Eritrea: 'You have no right to ask' – Government resists scrutiny on human rights*, 19 May 2004 (AI Index: AFR 64/003/2004), and Amnesty International, *Malta: Open letter to the government of Malta*, 27 September 2002 (AI Index: EUR 33/002/2002).
[56] Op. cit., "UNHCR's Benchmarks, Role and Activities for the Return of Rwandese Refugees".
[57] See F. Reyntjens, "Constitution-making in situations of extreme crisis, the case of Rwanda and Burundi," Journal of African Law 40 (1996).

National Assembly, the Prime Minister and the President resigned within a three-month period. The first two sought asylum, the third, Pasteur Bizimungu, remained in the country but was arrested a year later after trying to launch a new political party. He was sentenced to fifteen years imprisonment in June 2004.

The RPF manipulated elections to their benefit from the first local elections held on 6 and 7 March 2001 to last year's presidential and legislative elections. From the beginning, the RPF-controlled National Electoral Commission has vetted candidates, ensuring that only supporters of RPF policies were selected. Regarding the constitution and 2003 constitutional referendum, the observer mission from the European Union (EU) noted that constitutional restrictions on the freedoms of expression and association as well as party political activities "have frozen the political game and reinforced the position of the RPF."[58] The presidential election campaign that took place in August 2003 was marred by arrests, "disappearances", and intimidation. In both the presidential and legislative elections, the EU observer mission witnessed irregularities and fraud, including the manipulation of electoral lists, ballot box stuffing, intimidation and faults in the non-transparent counting procedure.[59] All of these practices, moreover, took place in a political environment which had nullified all effective opposition. The *Mouvement Démocratique Républicain* (Democratic Republican Movement, MDR) had been banned following the May 2003 Transitional National Assembly's vote to recommend its dissolution, its principle successor *Alliance Démocratique pour l'Equité et le Progrès-Espoir* (Alliance for Democracy, Equity and Progress, ADEP-Mizero) was refused recognition by the National Electoral Commission and the main independent candidates were disqualified or withdrew on the eve of the vote. When the *Parti libéral* (Liberal Party, PL) and the *Parti social démocrate* (Social Democratic Party, PSD) who had supported Kagame's presidential candidacy, ran independent slates for the legislative elections, they were also labeled "divisionist" by the Rwandese government. It is clear that the RPF-based government is ready and willing to take any steps necessary to effectively silence all political opposition.

The history of the Rwandese media is virtually identical to that of the political sphere. In October 1994 the Rwandese minister of Information launched an appeal to re-establish a public and independent press. Freedom of the press and expression were restored with a certain caution exercised towards extremist journalistic expression. The new government, however, neither put new laws in place nor respected existing laws. By March 1995, the government had already circumscribed the freedom of the press to the promotion of national unity and reconciliation and established a commission to control the media. At first, it was only the government-controlled media that was affected but by 1997 independent journalists were also being harassed and assassinated. Once Paul Kagame assumed the presidency on 17 April 2000, freedom of expression was reduced to a bare minimum; virtually no dissenting opinions were voiced in the government-controlled media and the independent media

[58] *Mission d'observation électorale de l'Union Européenne, Rwanda, Référendum constitutionelle 26 mai 2003. Rapport Final*, no date.
[59] *Déclaration préliminaire des élections présidentielles*, Kigali, 27 August 2003 and *Déclaration préliminaire. Le calme et l'ordre règnent, la démocratie n'est pas pour autant pleinement assurée*, Kigali, 3 October 2003.

withered under juridical and financial pressure.[60] The July 2002 Press Law effectively ensures government control over the media by imposing heavy sentences against journalists, publishers, or even street vendors of publications found guilty of broadly defined infractions like endangering law and order, defaming authorities or undermining army morale. The government responds to criticism in the press through intimidation, harassment, arrest and detention. Independent journalists face repeated interrogations at police stations, denunciation by government authorities in the government-controlled media and death threats.[61]

There have been numerous credible accusations regarding massive RPF human rights violations since their 1990 invasion of Rwanda. Large-scale violations took place during the genocide and following the installation of the RPF-controlled broad-based government after the genocide. They were particularly virulent during the RPF's establishment of control, in July 1994 through 1996[62] and during the Northwest Insurgency, mid-1997 through 1998 when the Rwandan Patriotic Army (RPA) responded to a full-scale military attack by armed political groups with its own reprisals and revenge killings. In the aftermath of the genocide, Rwandese security forces killed civilians in numerous summary executions and wholesale massacres. There is convincing evidence that these murders were systematic and discriminatory, targeting the Hutu population. [63] RPA brutality in Zaïre has been well documented from the attacks on the refugee camps in late 1996 through the pursuit of those who fled into the forest to the present time. An investigative team sent by the UN Secretary-General in 1998 found the RPA guilty of massive violations of human rights and international humanitarian law.[64] Their crimes against humanity included the indiscriminate shelling of refugee camps, systematic killing of young men, rape of women and the killing of those who refused to return to Rwanda. During the Northwest Insurgency, both the RPA and armed political groups massacred civilians in their efforts to destroy support for their opponents. The RPA made little attempt to spare civilian lives and according to credible reports killed more unarmed civilians than combatants of the armed political groups. [65] Determining the exact proportion of killings perpetrated by the RPA and armed political groups is impossible due to the measures taken by the Rwandese government to manage and control information that affects its public image in the international community. Although government killings and abuses have abated inside Rwanda over the last five years, Amnesty International and other

[60] The government applies pressure on independent economic enterprises not to advertise in independent newspapers. Neither the government nor government-controlled parastatals advertise in them either.

[61] See Amnesty International report *Rwanda: The enduring legacy of the genocide and war*, April 2004 (AI Index AFR/008/2004).

[62] See Amnesty International report *Rwanda: Two years after the genocide-human rights in the balance*, April 1996 (AI Index: AFR 47/02/96).

[63] See the International Panel of Eminent Personalities established in 1998 by the Organization of African Unity to investigate the 1994 genocide in Rwanda.

[64] See Report of the Investigative Team charged with investigating serious human rights violations of human rights and international law in the DRC, 11998 (UN Index S/1998/581).

[65] See Amnesty International report, *Rwanda, Alarming Resurgence of Killings*, August 1996 (AI Index AFR 47/13/96.

human rights organizations have continued to document such abuses through to the present time.

Over 90,000 Rwandese were arbitrarily arrested and unlawfully detained in the two years following the installation of the RPF-controlled Government of National Unity despite the fact that the Rwandese state lacked the resources to investigate the validity of the allegations made against them and try their cases in a court of law.[66] There was no functioning system of justice in Rwanda from the installation of the new broad-based government in July 1994 through the end of 1996. With the re-opening of the Rwandese courts, the Rwandese government amended the Constitution in an attempt to legalize arbitrary arrests and unlawful detention through 16 July 2001.[67] Amnesty International, along with a number of human rights organizations and legal experts, expressed doubts regarding the fairness of these early trials[68] and the persistence of fundamental problems in the criminal justice system through to the present time.[69] Of primary concern was the lack of defense counsel and witnesses for the vast majority of defendants; the competence, impartiality and independence of criminal justice officials, government interference in court decisions and non-respect of court decisions and the hostile socio-political environment in which the courts were functioning.

Between December 1996 and June 2003, ordinary jurisdictions tried nearly 9,000 genocide suspects, less than ten percent of detainees. During the 2003 election period and until July 2004, the judicial system barely functioned. New legislation is being drafted and passed in an attempt to reform a criminal judicial system which the Rwandese government acknowledges has lost the confidence and trust of the Rwandese people. The Rwanda Law Reform Commission notes the prevalence of arrests and detentions for long periods without trial, re-arrests by public prosecutors, government non-respect for court decisions and incompetent, corruptible judicial offices.[70]

The *gacaca* jurisdictions, a community-based, participatory form of justice, were established by the government in June 2002 to expedite the trials of the over 120,000 detainees, obtain an accurate account of what transpired during the genocide and promote reconciliation. To date, *gacaca* has failed to deliver on any of these issues. The Rwandese government had projected that the *gacaca* jurisdictions would try the genocide suspects within a three to five year timeframe. Eighty jurisdictions were established in June 2002 and another 741 in November 2002, less than ten percent of the total. The more than nine thousand remaining jurisdictions opened in June 2004 but are not yet operational. The government had further projected that *gacaca* jurisdictions would complete the pre-trial phase

[66] See Amnesty International report, *Gacaca, A question of justice*, December 2002 (AI Index AFR 47/007/2002).
[67] See Amnesty International report, *Rwanda, The enduring legacy of the genocide and war*.
[68] See Amnesty International report, *Rwanda, Unfair Trials-Justice Denied*, April 1997 (AI Index: AFR 47/08/97).
[69] See Amnesty International report, *Rwanda, The Troubled Course of Justice*; *Gacaca, A question of Justice* and *Rwanda, The enduring legacy of the genocide and war*.
[70] See The Rwanda Law Reform Commission, *Consolidating the Rule of Law and the Independence of the Judiciary as a Basis for Sustainable Peace and Development*, Kigali, June 2003.

of their mandate within four months. It took the operating jurisdictions a full year and a half to reach the trial phase. More than two years after their establishment, there have been no actual trials, although a few dozen detainees were released due to a lack of evidence. During this same period, the number of cases to be tried has increased dramatically. The 32,000 confessions from detainees received by the Ministry of Justice by the end of 2002 incriminated an additional 250,000 individuals. Confessions have continued unabated throughout 2003, incriminating another 250,000 to 300,000 individuals. The operational *gacaca* jurisdictions have also identified thousands of new genocide suspects separate from those implicated in the confessions received by the Ministry of Justice. While it is unknown how many of those denounced will actually be tried, the numbers are sufficiently large to pose a juridical and logistical nightmare that *gacaca*, as it now exists, cannot handle. As the Rwandese prosecutor general recently stated, "We do not, of course, have the space to detain all these culprits. We will have to come up with new mechanisms."[71]

Assessment of the political sphere

There are also a number of elements that need to be assessed in the political sphere. These include progress towards reconciliation, attitudes towards human rights groups and political attitudes regarding refugees and returnees. After coming to power, and throughout most of 1994, the RPF embarked on a policy of retaliation and revenge killings, not reconciliation. Thereafter, they turned to the massive arrest and detention of tens of thousands of Rwandese alleged to have participated in the genocide with little or no concern as to whether or not they were guilty or would ever stand trial. It was only in the aftermath of the Northwest Insurgency that the word "reconciliation" seemed to become a part of their vocabulary. The National Unity and Reconciliation Commission (NURC) was established in February 1999. It has not proved to be the independent body envisioned by international donors. NURC does little besides public relations work for the government at national and international conferences and management of the "solidarity camps" (*ingando*). Returnees, university students, administrative officials, combatants from armed political groups, demobilized soldiers, provisionally released detainees and most recently taxi drivers have all spent from one to three months in these "civic education" centres studying government-approved doctrine.

It is difficult to determine who, if anyone, has been reconciled in the ten years following the genocide. The majority of genocide survivors have not had their cases heard in a court of law or received any compensation for the criminal wrongs committed against them. They are forced to live with the provisional release of individuals who have confessed to their participation and involvement in the genocide and have had their organizations co-opted by the government when they too vocally expressed their concerns and needs. The government repaid a number of politicians, civil servants, judges and military in place under the old regime who indicated their willingness to co-operate with the RPF with forced exile, imprisonment or assassination. Furthermore, tens of thousands of Rwandese families have had family members arrested and detained for years without any prospects of a fair trial in the immediate future. The current government has also refused to engage in an Inter-Rwandese

[71] See IRIN, "Number of genocide trials to rise sharply", Kigali, 10 September 2004.

dialogue with Rwandese political groups, including those groups in exile who have expressed their willingness to co-operate fully and unconditionally with the International Criminal Tribunal for Rwanda (ICTR) in Arusha and to condemn the genocide.

Another factor undermining any real reconciliation is the fact that the Rwandese criminal justice system has reduced its focus to the genocide and crimes against humanity committed by the former government during the 1990 to 1994 armed conflict and genocide, but has not included those committed by people affiliated with the current government. Through to the present time, the Rwandese judiciary has undertaken no systematic, independent and impartial investigation of human rights abuses, including crimes against humanity, committed during the 1990 to 1994 armed conflict and genocide or in its immediate aftermath. As previously stated, two objectives behind the establishment of the *gacaca* jurisdictions was to obtain a true account of what actually happened in that four year period and to promote national reconciliation. Though the organic law establishing these jurisdictions did not limit their mandate to the human rights abuses committed under the auspices of the former government, government authorities told assembled community members and *gacaca* benches at their first sessions that they were restricted to the consideration of human rights violations committed by the former government. This delimitation on truth telling and accountability effectively nullified any promise of reconciliation that *gacaca* contained. Public confidence in the government and the non-discriminatory fairness of the judiciary was eroded.

Human rights organizations and associations within civil society have experienced the same fate over the last ten years as that experienced by political actors and those in the media, the brief promise of a new beginning followed by closure. Within a very short time, the welter of human rights organizations that had arisen during the seeming democratic opening in the early 1990's was infiltrated, divided, co-opted or shut down. The most recent apparent victim is *La Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme* (the Rwandese League for the Promotion and Defense of Human Rights, LIPRODHOR), the only remaining credible human rights organization focusing exclusively on Rwanda in Rwanda. Government harassment and intimidation increased dramatically in their case following a 2002 report that detailed the cruel, inhumane and degrading treatment of detainees in one of Rwanda's prisons. In May 2002, the parliamentary commission examining the alleged "divisionism" of the MDR used the occasion to allege that MDR members collaborated with LIPRODHOR and that LIPRODHOR received foreign money to support the MDR. There was no substantiation of these claims. In June 2004 another parliamentary commission investigating the killing of three genocide survivors in 2003 alleged that LIPRODHOR (along with an array of organizations and associations in civil society, churches, schools and NGOs) was guilty of disseminating a genocidal ideology and recommended its dissolution.[72] Although the Commission provided no evidence to substantiate its allegations, the Rwandese parliament quickly approved the Commission's recommendations. The government blocked LIPRODHOR's bank accounts (though they have since been opened), effectively shutting

[72] See Amnesty International Public Statement, *Rwanda: Deeper into the Abyss – Waging War on civil society*, 6 July 2004 (AI Index AFR 47/013/2004).

them down, and has recently launched judicial investigations. This attack on the most credible human rights organization in Rwanda essentially closes the door on human rights monitoring in Rwanda.

Government policies and actions regarding refugees and returnees also impacts on voluntary repatriation operations and the UNHCR-proposed invocation of the cessation clauses. Actions taken by the RPA in the closure of the refugee camps in Zaïre and the hunting down of refugees were classified by a UN investigating team as constituting crimes against humanity and may have constituted genocide.[73]. One also has to consider the forced closure of the camps for internally displaced persons (IDPs) between October 1994 and May 1995 and the thousands killed by the RPA at the Kibeho IDP camp. In July 1997, 120 Rwandese refugees who were forcibly repatriated from Gabon were taken in by the Rwandese Department of Military Intelligence (DMI) and have not been seen since. [74] In September and October 2002 close to 10,000 Congolese refugees in the Kiziba and Gihembe camps were forcibly repatriated to Kichanga in the eastern DRC where the armed political groups that had forced them to seek asylum operated. Rwandese officials and leaders of the *Rassemblement congolais pour la démocratie-Goma* (Congolese Rally for Democracy, RCD-Goma) misinformed, intimidated and physically forced the refugees to return, an act condemned by the UNHCR. The recent report by the UN Group of Experts documents visits by Rwandese government officials, security forces and RCD-Goma leaders to these camps in December 2003 and March, April and May 2004 for the express purpose of recruiting forces for military service in the DRC.[75] They noted that the Rwandese government pressured refugees to enlist by refusing to provide them with the appropriate refugee documents and threatening them with the loss of their Congolese citizenship. The same Group of Experts further noted the Rwandese government's abuse of the Disarmament, Demobilization, Reintegration, Repatriation or Reinstallation (DDRRR) process. Demobilized armed political group members repatriated to Rwanda face physical abuse and detention if they refuse to enlist in RCD-Goma. Amnesty International has also received unconfirmed but credible evidence that Rwandese returnees, repatriated from Tanzania and Uganda, are currently undergoing military training in eastern Rwanda and are then being transferred to the eastern DRC.

[73] See United Nations Secretariat report, *Report of the Secretary-General's Investigative Team*, 29 June 1998 (S/1998/581).
[74] See Michael Dorsey, *Violence and Power-Building in Post-Genocide Rwanda*, in Ruddy Doom and Jan Gorus, eds., *Politics of Identity and Economics of Conflict in the Great Lakes Region*, VUB University Press, Brussels, 2000.
[75] See United Nations, *Report of the UN Panel of experts on the Violations on the Embargo on Military Goods Destined to Armed Groups Operating in North Kivu, South Kivu, and Ituri*, 15 July 2004 (S/2004/551).

Absorptive capacity of Rwandese society

The capacity of Rwandese society to absorb returnees is impacted by two principle factors. The first is the availability of land and the numerous unresolved land and property claims. The second is the lack of relevant NGOs, refugee support groups and human rights monitors.

Most Rwandese, and returnees, obtain their livelihood from the land. Land in Rwanda has for some time been a hotly contested commodity. Land cases clog the courts, an issue which might be resolved by the July 2004 creation of Mediation Committees whose purpose will be to resolve minor criminal and civil cases. This contestation over land has been augmented and complicated by the flight of approximately 1.8 million Rwandese in 1994, the return of an estimated 700,000 old caseload refugees, the return in late 1996 of 1.2 million of the new caseload refugees, and the return of another 158,900 refugees between 1998 and the end of 2003. Added to this there were 390,000 IDPs when the 1990 to 1994 war ended. The Northwest Insurgency furthermore caused the internal displacement of an estimated 630,000 persons. There has been draft land legislation for some time, which will attempt to sort out the contradictory forms of land ownership and reform – make viable – the agricultural sector. At present, there are regulations regarding the land rights of returnees but these are enforced in an ad hoc manner by local authorities with ministerial intervention when warranted. The land that a returnee receives thus depends to a large extent on the independence and impartiality of the local authorities.

The lack of effective monitoring regarding the reintegration and rehabilitation of returnees has already been mentioned several times in this report. The fact is that there are no NGOs, refugee support groups and with the recent actions taken against LIPRODHOR, no credible human rights organization that either monitors their reintegration or provides an advocacy role vis-à-vis land, justice and other human rights issues. Amnesty International delegates have spoken several times with the Rwandese Commission for the Repatriation of Rwandese Refugees, the Minister of Local Government (MINALOC), MINALOC officials and the State Minister for Social Affairs. While the Rwandese government is to be commended for its acceptance of repatriation, their facilitation of the return of refugees and the rapid restoration of national status once refugees return, their role seems to stop there. Government authorities appeared quizzical about Amnesty International's concern regarding returnees, regarding them as a privileged group not requiring special human rights attention despite the fact that these individuals no longer had the personal and institutional support networks that they had prior to their departure.

Refugee law and refugee status determination practices

Problems faced by Rwandese refugees are further complicated by the fact that refugee law in countries hosting them does not always fully comply with international protection standards for refugees. In addition, refugee status determination procedures are not always in the hands of competent, independent and impartial authorities, and these procedures are rarely efficient.

The Tanzanian situation provides an exemplary case study.[76] The Tanzanian 1998 Refugees Act, despite its late date, does not fully comply with international standards regarding *non-refoulement*. The Act states only that an asylum seeker or refugee cannot be deported if the Minister, competent local authority or court believes the individual will be tried or punished for a political offence or will be subject to physical attack if he or she returns to the country of origin or nationality (Part 5, Section 28 (4)). These grounds are considerably narrower than the 1951 UN Convention which protects an individual from being returned to an area where his or her "life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (Article 33(1)) or the 1969 OAU Convention where an individual's "life, physical integrity or liberty would be threatened" (Article II (3)). Moreover, the Act's provisions pertain only to those individuals already in Tanzania and only to government authorities who exercise the power of deportation. While the Act partially guarantees the right of admission to asylum seekers and access to refugee status determination procedures in Part 2, Section 5 (2)(e),[77] it is not clear how the Director of Refugees discharges this obligation where an attempt to prevent entry or expel an asylum seeker is made by government officials not answerable to him or her. It is also problematic that the individuals who constitute the National Eligibility Commission, which determines whether or not a refugee receives refugee status, exclusively represent External and Internal Security Organizations and have little or no knowledge or experience regarding international refugee law or international protection standards.

Confusion, chaos and inefficiency reign throughout the refugee status determination process, and while this is understandable given the number of refugees, it also must be understood that refugees are detained and forcibly returned as a result of this confusion and inefficiency. The Rwandese refugee scenario in Tanzania provides a case in point.

Rwandese asylum seekers received *prima facie* refugee status until 1998 but now have to apply for individual recognition as refugees. The extent to which asylum seekers are aware of these changes and of their subsequent rights and obligations is questionable. By law, individual asylum seekers must, unless they can show reasonable cause for delay, report to the nearest authorized officer, village executive officer or justice of the peace, and apply for recognition as refugees (Section 9 of the 1998 Refugees Act). Rwandese refugees entering Tanzania during this change sometimes failed to register as refugees, thinking they had *prima facie* status. The proper governmental response should have been information campaigns that ensured that all Rwandese asylum seekers understood the need to register as refugees and not

[76] The problems with regard to both inadequacies in refugee law and refugee status determination practices are endemic. In Uganda, for example, a draft refugee bill that fully addresses international human rights standards and which would vastly improve current refugee status determination procedures has languished for the past five years because of the low priority given to refugee matters. Fortunately, the government does not rely on the existing law, the 1960's Control of Alien Refugee Act, which ignores international standards of protection. The fact remains, however, that current practice is not determined by law and is subject to abuse.

[77] This section mandates the Director of Refugees "to ensure that an applicant for refugee status is not ordered to leave the country before his claim for refugee status has been decided upon in accordance with the provisions of the 1998 Act."

the *refoulement* that occurred in early 2000. While Article 31(1) of the 1951 Convention regards refugee entry into a country without reporting to the authorities within a reasonable time as a punishable offence, negotiations at the time made it clear that penalties should not include expulsion (though this was not expressly excluded).

Inordinate delays in the refugee status determination process cause severe overcrowding in designated refugee centers or transit camps, where people are denied their right to an adequate standard of living and where the specific rights of children as set out in the Convention on the Rights of the Child are not respected.

In the Tanzanian case, the recognition of this problem led to the transferral of Rwandese asylum seekers to settlement camps before their status determination by the National Eligibility Committee (NEC). The fact that refugees whose status had not been recognized lived in the same camps, with the same protection and assistance, as refugees who had been recognized along with individuals who had been denied refugee status by NEC[78] undoubtedly creates confusion in the minds of asylum seekers and refugees regarding the significance of the process they are undergoing.

Confusion and delays regarding refugee status determination procedures lead to a multitude of human rights violations and an array of problems, which the host country then uses to legitimate its *refoulement* of refugees. Host governments consistently fail to observe the time limits (some do not even have them) within which they have undertaken to determine refugee status. In Tanzania, NEC has rarely met its requirement of hearing cases within sixty days of receiving an application. It can be years before an application is acted upon and years again between the interview and a final decision. This is particularly problematic when one considers the poor treatment suffered by refugees during this period. In Tanzania (but again common to most countries hosting Rwandese refugees), the Eligibility Commission is too large, making it difficult to meet regularly and making the proceedings and deliberations unduly cumbersome.[79] The fact that the representatives of the various security organizations constituting NEC are not permanent members precludes their developing an expertise on refugee issues. The result of all these factors is that NEC is unable to efficiently consider the thousands of cases that come before it or to do more than superficially examine individual cases. It is then the Ministry of Home Affairs in Dar es Salaam which completes the investigation. At this point the asylum seeker is not present and therefore unable to respond to questions or provide evidence regarding his or her application.

Although most host countries allow refugees to appeal if their application for refugee status is rejected, the procedures in place do not fully protect their rights. Normally, the time given to refugees is too short, making it difficult for them to gather substantiating evidence to support their appeal. As important, asylum seekers are not given the reasons as to why their

[78] Amnesty International has heard of cases where individuals have remained in the camps for several years after their cases were rejected.

[79] NEC only meets about four times a year, each time for a two to three week period, and with no fixed dates. The Refugee Eligibility Commission in Rwanda meets once a month but this to is far from adequate.

case was rejected, rendering it virtually impossible to file a meaningful appeal. In many countries in the region, it is the same authority which rejected their application in the first place that serves as the appeals board, rendering the whole appeals process meaningless. NEC's acceptance of only three percent of the appeals tendered by Rwandese refugees in 2003 illustrates the problem.

Conclusion

Amnesty International does not oppose voluntary repatriation by individuals making a free and informed decision to do so, but the organization calls for caution in the assessment of the conditions for a free and informed decision by the individual refugee. Without a free and informed decision on his or her part, no refugee should be under pressure to agree to repatriation, in particular if conditions in the home country continue to be the basis for reasonable fear of persecution.

The organisation's concerns regarding the repatriation process focus on four main areas: the actual availability of relevant information to decision makers, the objectivity of information available to refugees, freedom of decision making and actual "voluntariness" of repatriation, and the conditions of reintegration and persisting human rights concerns.

Availability of information to decision makers

It remains doubtful whether the asylum states or the Rwandese government had sufficient information regarding the situation of Rwandese returnees at their disposal before applying pressure on the UNHCR to promote the voluntary repatriation of Rwandese refugees. The same is true for the UNHCR regarding its decision in 2002 to promote their voluntary repatriation. The lack of effective monitoring regarding the human rights fate of returnees by either the Rwandese government, the UNHCR or relevant, credible NGOs suggests that significant, necessary information was not available. Amnesty International is concerned that the agency suffered from an incomplete basis of reliable information for this decision to be taken.

It is furthermore questionable whether or not the tripartite commissions responsible for the voluntary repatriation are in a position to provide refugees with the accurate, objective, verifiable information that is required of them. It also remains unclear whether the information provided to refugees meets standards of actual relevance to their situation.

Objectivity of information available to refugees

Amnesty International questions whether the information provided and available to refugees through UNHCR and others acting on its behalf was indeed "objective", thus casting further doubt on the approach of "promotion" of repatriation. An examination of the newsletters, videos and information sessions provided Rwandese refugees indicates more of a focus on promoting or selling voluntary repatriation to refugees than on providing them with the objective information needed to make an informed decision. There seems to be an over-

reliance on government authorities for the provision of information. Government authorities do have a role to play in the provision of information, as do credible local human rights organizations and NGOs or civil society organizations working in areas of concern to refugees.

Freedom of decision and "voluntariness"

The decision to repatriate is a subjective decision that should not be influenced by deliberate or unintentional pressure. The cutting of food rations and restrictions on movement – whether with the intention to force people out of the country or not – have a deleterious effect on a refugee's coping mechanisms, forcing him or her to make a decision that endangers his or her existence. There is also the problem of deadlines and ultimatums, which come in a variety of guises, such as the threat of deportation or the invocation of the cessation clauses.

In the wake of refugee crises, the unfortunate tendency is often to promote prematurely the return to the country of origin of refugees, asylum seekers and other persons under complementary forms of protection. Such policies frequently coincide with "donor fatigue," particularly in protracted refugee situations like the Rwandese one. Amnesty International is concerned that UNHCR's 2002 decision to promote the voluntary repatriation of Rwandese refugees reflects a preoccupation with the demands of a major refugee-receiving state like Tanzania or international donors funding refugee work, rather than the long-term protection and safety needs of Rwandese refugees and an exploration of a comprehensive solution to the problem where all durable solutions for refugees would be deployed. Amnesty International does not accept the notion that applying the cessation clauses is necessarily or automatically the subsequent step to the promotion of voluntary repatriation. At this juncture, the human rights status of returnees needs to be monitored, assessed and addressed.

Conditions of reintegration and persisting human rights concerns

The sustainability of reintegration has to be further investigated and transparently discussed. Recent history has shown that, in the drive to ensure the repatriation of refugees, agencies and state actors involved frequently lose sight of the aim of successful reintegration. Both the reintegration and rehabilitation of all returnees are necessarily integral to successful repatriation. A commitment to all four R's -- repatriation, reintegration, rehabilitation and reconstruction – must be openly declared and put into practice.

In addition, at no time in the last ten years have conditions in Rwanda warranted the application of the so-called "ceased circumstances" cessation clauses that would terminate the international protection of Rwandese refugees. From the installation of the transition government in July 1994 through to the present time, it is impossible to credit the Rwandese government with fundamental changes – comprehensive in nature and scope -- which can be assumed to remove the basis of the fear of persecution by refugees. The stifling of internal opposition and dissent in Rwanda has led to a deplorable human rights record over the last ten years, replete with extra-judicial executions, "disappearances," detention and constant harassment and intimidation of suspected government opponents and those critical of RPF

policies. This has occurred at both the political level and in civil society. Over the last ten years, the current government has successfully effaced political opposition, civil society, an independent media and the effective monitoring of human rights abuses.

The Rwandese government itself has acknowledged the problems endemic to its criminal justice system. Trials do not meet international standards of fairness. Arbitrary arrest and unlawful detention are commonplace. The mere allegation that someone participated or was involved in the genocide (or in clandestine political activity) is sufficient to secure their arrest and detention, which without a well-functioning judicial system tends to be long-term. In many cases, there is no *prima facie* evidence to justify their detention. Then there is the judicial backlog, which the *gacaca* jurisdictions have thus far not resolved.

Under the current circumstances Amnesty International is therefore opposed to the application of the cessation clauses with regards to Rwandese refugees. The current absence of credible human rights monitoring in Rwanda and the lack of any IGO, NGO or refugee support group monitoring of the human rights situation of returned Rwandese refugees is another significant argument against the application of the cessation clauses. Grossly inadequate monitoring and the virtual lack of sensitization campaigns in the communities receiving returnees further impedes on the reintegration process. There is no independent source whom returnees can inform about human rights violations nor an independent source from which they can seek redress.

Refugee law implementation and refugee status determination practices in the region require a dramatic rethink. Amnesty International encourages all states to reconsider and update existing legislation affecting refugees, making sure that the resulting legislation is in line with international standards. It is further incumbent upon states hosting refugees, the UNHCR and its partner organizations to ensure that refugees are fully aware of the laws, regulations and practices affecting them. Too often, the lack of information or misinformation places some refugees on the wrong side of the law, leading to their physical abuse, detention and *refoulement*. Finally, refugee status determination procedures must be fair, the bodies responsible for deciding asylum claims must be independent and competent and refugee status decisions should occur within a reasonable time frame. Inordinate delays in the processing of asylum claims place refugees at risk.

Recommendations

The Tanzanian repatriation of Rwandese refugees in 2002 and 2003 was the first in the currently planned repatriation operations for the more than 60,000 Rwandese refugees in 20 African countries. Amnesty International is concerned that international human rights and refugee law standards were not adhered to in the Tanzanian repatriation of Rwandese refugees. Refugees did not receive accurate, objective or verifiable information and they were forced to make a decision whether or not to return under duress. There was no effective monitoring of these returnees that could have fostered their sustainable protection and security, and that could have yielded the information other Rwandese refugees would need to make an informed decision on whether or not to return. UNHCR, host countries, the Rwandese government and

the international community need to ensure that its promotion of voluntary repatriation of Rwandese refugees will guarantee the long-term protection of returnees.

At no time in the last ten years, have conditions in Rwanda warranted the application of the so-called "ceased circumstances" cessation clauses which would terminate the international protection of Rwandese refugees. At this juncture, the relevant actors involved in the promotion of voluntary repatriation need to become better acquainted with conditions in Rwanda, particularly as they pertain to the sustainable protection of returnees. This information needs to be channeled back into ongoing repatriation operations. The focus of the relevant actors should be on ensuring viable and sustainable solutions based on the informed, voluntary consent of refugees.

UNHCR should

- refrain from whole or partial invocation of the cessation clauses for Rwandese refugees without having objective and independent evidence - including evidence gathered through an established monitoring presence in return areas - that the changes in Rwanda are of a profound and enduring and stable nature.
- inform states hosting Rwandese refugees, NGO partners, specialist human rights agencies and organization and the Rwandese refugee communities about its decision not to terminate refugee protection for Rwandese refugees by the end of 2004.

In its promotion of repatriation measures UNHCR should further

- conduct comprehensive and regular monitoring of the protection and other post-return needs of refugees. Such monitoring should include effective attention to the needs of women and girls. Regular and transparent reports should be made available to all relevant parties, primarily Rwandese refugee communities in other countries.
- provide accurate, unambiguous and accessible information on the security, material and human rights situation in Rwanda to Rwandese refugees and asylum-seekers, in particular women refugees and asylum-seekers.
- ensure that it intervenes forcefully with host states to ensure that refugees and asylum-seekers are not subject to *refoulement* whether directly through deportation, or indirectly through denial of basic economic or social rights.

The international donor community should

- continue to provide aid and material assistance in a timely fashion to countries hosting large numbers of refugees to lessen the strain on usually scarce resources and to ensure that the refugees can enjoy their fundamental human rights;
- provide the necessary resources to ensure the sustainability of voluntary repatriation operations. Both humanitarian and development actors must ensure that returnees and their communities of origin are assisted in order to ensure successful reintegration;
- search for long-term solutions to the refugee crisis in the Great Lakes region and adopt a coordinated overall strategy that both protects an individual's fundamental human rights and prevents further mass human rights violations in the area;
- encourage the Rwandese government to implement measures that reduce the likelihood of human rights violations;
- encourage all countries hosting refugees to fulfill their obligations under instruments such as the 1951 Refugee Convention and the 1969 OAU Refugee Convention, including, but not limited to, the principle of *non-refoulement* which prohibits the return of persons to territories where they could be at risk of serious human rights abuse;
- condemn any refugee returns that are not voluntary and/or undertaken under conditions of duress or solely because alternative solutions are not found;
- provide sufficient support to assist host countries, particularly those with large refugee populations, determine refugee status in a timely manner.

Host governments should

- refrain from returning refugees to Rwanda or to any country where they might face serious human rights violations, in accordance with their obligations under UN and OAU conventions relating to refugees;
- fully respect the principle of *non-refoulement* and other international standards concerning the repatriation of refugees and honor their commitments to voluntary repatriation made in tripartite agreements with UNHCR;
- explicitly and permanently withdraw any threats of *refoulement* or deportation and refrain from imposing any arbitrary deadlines for the repatriation of refugees;

- ensure that refugees are not ill-treated or subject to human rights violations by the security forces of the host country;
- investigate all reports of such violations, making public the findings and bringing those responsible to justice.
- improve the facilities at reception centers and transit camps so that they provide all necessary assistance for refugees and the basic necessities of life including adequate food, decent shelter and basic sanitary and health facilities;
- ensure respect for the dignity and privacy of asylum seekers and refugees at all times;
- ensure that the body responsible for deciding asylum claims is independent and competent and makes its decisions in a timely manner;
- establish a viable and credible independent appeals mechanism in the asylum procedure ;
- ensure the timely resolution of an applicant's request for asylum.

The Rwandese government should

- investigate all reports of human rights violations. If warranted, the perpetrator(s) must be prosecuted in fair trials, which exclude the death penalty. The government should regularly provide public information on human rights abuses;
- sensitize the communities to which refugees will be returning;
- monitor the reintegration of returnees to their home communities on a regular basis, ensuring their protection, security and other human rights;
- facilitate the free and unhindered access of UNHCR and human rights organizations to populations and areas of return;
- ensure that all refugees are able to return to their homes, their places of origin or former habitual residence or to any other place in Rwanda of their choice;
- ensure that mechanisms aimed at solving property disputes are established, and that the access of returnees to such mechanisms is guaranteed. These mechanisms must be accessible and responsive to female-headed households;

- ensure that all authorities recognize the legal status of returnees and relevant documentation issued in host countries, and that spouses and children will be permitted to enter and remain in Rwanda;
- ensure that every effort is made to uphold the right to family unity, and that no families are forcibly separated.