

**MEMORANDUM TO THE
GOVERNMENT OF THE
DEMOCRATIC
REPUBLIC OF CONGO
ABOUT THE CESSATION
OF REFUGEE
PROTECTION FOR
RWANDANS**

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Background

As with numerous other countries, Amnesty International has a long-standing commitment to research and action on Rwanda's human rights record. In this context, the organization has also documented the experiences of Rwandan refugees who fled to neighbouring countries, including the Democratic Republic of Congo (the DRC), following the 1994 genocide, as well as in recent years.

This document outlines Amnesty International's recommendations regarding the expected invocation and application of the so-called ceased circumstances clause of the 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention) to Rwandan refugees in the DRC in light of international refugee law and standards.¹

“Ceased circumstances” cessation

In recent years, the cessation of international refugee protection for Rwandan refugees has been considered at bilateral and multilateral levels. To Amnesty International's knowledge, the latest position of UNHCR on achieving “comprehensive solutions for Rwandan refugees”, including cessation, was set out in a joint communiqué issued by UNHCR and the Government of Rwanda on 7 October 2011.² The communiqué recommended that countries hosting Rwandan refugees invoke the ceased circumstances cessation clause and stated that further details would be discussed by relevant states, UNHCR and other actors in December 2011.

In light of UNHCR's expected recommendation to countries hosting Rwandan refugees, including the DRC, Amnesty International makes detailed recommendations to the government of DRC on the cessation of refugee status and related matters. The organization believes that the implementation of these recommendations would help ensure that any measures taken to cease refugee status for Rwandan refugees be consistent with relevant international refugee and human rights law and standards, including treaty provisions by which the DRC is

¹ The relevant provisions of the ceased circumstances cessation clause in the Refugee Convention read as follows: “This Convention shall cease to apply to any person ... if: ... (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality”. Article I(4) (e) of the Convention Governing the Specific Aspects of Refugee Problems in Africa is worded in identical terms.

² In this respect, the communiqué states “...UNHCR will recommend to States that they invoke cessation by 31 December 2011 effective on 30 June 2012 so as to make further progress on solutions and to manage the implementation of cessation in an effective and protection-sensitive manner.”

bound, as well as with domestic law.³

Under international refugee law – reflected in Articles 1C(5) & (6) of the 1951 Refugee Convention and Article I(4) (e) of the Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention) – when the circumstances in the country of nationality or habitual residence that had warranted recognition of entitlement to international protection have undergone a “fundamental, stable and durable change”,⁴ such that they have ceased to exist, refugees who were entitled to the surrogate protection of the host state⁵ can no longer refuse to avail themselves of the protection of their country of nationality or habitual residence.

It is self-evident that for former refugees, the availability of effective national protection in the country of nationality or habitual residence is a positive development and may present an opportunity to return home and rebuild their lives.

However, under international refugee law, the test for lawful termination of refugee protection on the basis of a fundamental, durable and stable change of circumstances in the country of nationality or habitual residence is stringent. It requires proof that an individual refugee *will* – as opposed to *may* - enjoy the protection of his or her country of nationality or habitual residence.

Before terminating refugee status, international law and practice require host states to comprehensively assess conditions in the country of origin or habitual residence. Moreover, international standards require host states, if the individual refugee so requests, to evaluate post-flight developments against the particular cause(s) of fear of persecution that warranted refugee status recognition in the first place.⁶

Host states need to establish a “screening or reconsideration” process⁷ to allow

³ See in particular Art. 4 e) of the *Loi No 021/2002 portant statut des réfugiés en République démocratique du Congo* of 16 October 2002.

⁴ Executive Committee Conclusions, Cessation of Status No. 69 (XLIII) - 1992, paragraph B (hereinafter Executive Committee Conclusions No. 69). To be both fundamental and durable, the change has to be major, profound and stable in nature.

⁵ The term host State is used in this document to refer to country that has been providing protection to refugees.

⁶ The main international standards addressing cessation of refugee status, including in particular decision-making and implementation processes, are set out in Executive Committee Conclusion No. 69 and UNHCR’s Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses), Section B, , and UN High Commissioner for Refugees, Note on Cessation Clauses, 30 May 1997, EC/47/SC/CRP.30.

⁷ Executive Committee Conclusion No. 69, UNHCR Guidelines and past instances of declarations of cessation refer to a multiplicity of terms to indicate a process by which refugees can -- on an individual

individual refugees to request reconsideration of the application of the cessation clause on the grounds of a continued risk of persecution which may include different persecution risks that have materialized since recognition,⁸ or on the basis that they have “compelling reasons arising out of previous persecution”.⁹ Amnesty International, while using screening and reconsideration to describe this exercise, underscores that whatever the name given to this process, it is the substance, rather than the form, of the framework implemented by host States that matters. In summary, the procedure whatever its name must ensure full compliance with relevant procedural safeguards derived from international refugee and human rights law and standards.

Screening procedures should also identify other reasons, including those based on broader human rights protection grounds, which, while not warranting continuance of refugee status *per se*, may entitle the person to remain in the host state as a permanent resident on international or domestic law grounds.

Given the serious consequences that cessation may have on the situation of people living in the host state as recognized refugees, including, in particular, their entitlement to, and enjoyment of, rights exclusively granted to them as refugees under international and domestic refugee law, Amnesty International urges the government of the DRC to ensure that it carefully evaluates conditions in Rwanda to ensure that they do indeed warrant invocation and application of the ceased circumstances cessation clause.

Further, should the government of the DRC decide to apply the cessation clause, the organization urges it to do so in a manner consistent with its obligations under international and domestic refugee and human rights law and standards.

Assessment of a fundamental, durable and stable change of circumstances

As a state party to the 1951 Refugee Convention and its 1967 Protocol, the Government of the DRC has the exclusive competency to invoke and apply the ceased circumstances cessation clause. It is the DRC's responsibility to demonstrate in a verifiable, objective and transparent manner that stringent requirements for the invocation and application of the clause have been met prior to

basis -- request a decision-maker to reconsider the application of the cessation clause on different grounds in international and domestic refugee law with a view to their cases being exempted from the general application of the clause. This process is referred to, among other things, as a screening process, reconsideration process, review of individual cases, exemption procedures/process etc.

⁸ In Amnesty International's view, an assessment of “a continued risk of persecution” must comprise consideration of the original circumstances that warranted refugee status recognition, as well as a full appraisal of potential, new intervening causes of persecution.

⁹ Art.1 C (5) 1951 Refugee Convention

invoking and applying it. While the government of the DRC should give due consideration to UNHCR's evaluation of the situation in Rwanda, Amnesty International considers that the DRC authorities should also conduct their own assessment of the situation in Rwanda.¹⁰

Amnesty International urges the government of the DRC to use a broad range of indicators to ascertain whether the conditions in Rwanda have sufficiently changed for the purposes of cessation. The government of the DRC should evaluate "reforms that alter the basic legal or social structures of the State",¹¹ including:

- adherence to fair trial standards, including with regard to the use of evidence gathered by gacaca in any future genocide trials before conventional courts;
- mechanisms for the respect and protection of human rights such as the right to life, non-discrimination, freedom from torture or other ill-treatment, liberty of persons, freedom of expression and opinion;
- freedom of association and peaceful assembly, including tolerating criticism and dissent; and
- ability of human rights organizations to monitor violations and advocate for remedies, including through conducting prison visits.

The DRC authorities should draw on diverse sources, including statements by UNHCR and its Executive Committee offering authoritative guidance on evaluating in a verifiable, objective and transparent manner whether a fundamental, durable and stable change of circumstances has taken place to warrant the invocation and application of the ceased circumstances clause. Reports from independent local and international non-governmental organizations assessing the political and social space and the human rights landscape in Rwanda should also be fully considered.

In this regard, Amnesty International continues to have serious concerns about human rights violations in Rwanda. The organization has documented patterns of abuse relating to restrictions on the right to freedom of expression, association and peaceful assembly; unlawful detentions of civilians in military facilities; lack of access for Rwandan human rights organizations to monitor prison conditions; and lack of accountability for serious violations of international human rights and humanitarian law, including unlawful killings committed by the Rwanda Patriotic Army in Rwanda and in the Democratic Republic of Congo (DRC).¹²

¹⁰ Executive Committee Conclusions, 69 paragraph A

¹¹ UN High Commissioner for Refugees 'Note on Cessation Clauses' 30 May 1997, EC/47/SC/CRP.30, paragraph 20.

¹² See for example Amnesty International publications including: *Rwanda: Respect freedom of expression and end arbitrary detentions and enforced disappearances*, AFR 47/005/2011; *Rwanda: Safer*

In the light of the above, the organization urges the authorities of the DRC to pay specific consideration to refugees who may have a continued well-founded fear of persecution, including due to:

- their actual or perceived political views or past or present involvement in criticism of or opposition to the Rwandan government, whether in Rwanda or in exile;
- their denunciation of human rights abuses, corruption or other alleged wrongdoings by the government;
- past prosecutions, or threat of prosecution, for vaguely worded crimes, such as “genocide ideology” or divisionism;
- their trial in absentia before gacaca based community courts in cases where the trial did not meet fair trial standards;
- their having been victims and/or witnesses of serious violations of international human rights and humanitarian law committed by the Rwanda Patriotic Army in Rwanda or in the DRC or simply their being in possession of information about the above-mentioned violations; and
- their property or land in Rwanda being currently occupied by influential members of the ruling party or the army.

Equally, however, Amnesty International considers that the profile of a number of Rwandan refugees in the DRC may raise legitimate questions about their continued eligibility for refugee protection on the basis that they may be undeserving of such protection on exclusion grounds (e.g. there are serious reasons for considering that they have committed war crimes and/or crimes against humanity).¹³

A lawful implementation of cessation

An assessment of post-flight conditions in the country of origin or habitual residence may lead to a conclusion that a fundamental, durable and stable change of circumstances has indeed occurred. However, this broad assessment is unlikely

to Stay Silent: the Chilling Effect of Rwanda's Laws on 'Genocide Ideology' and 'Sectarianism', AFR 47/005/2010.

¹³ Article 1F of the Refugee Convention reads as follows: “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.”

to exhaustively address the grounds giving rise to a well-founded fear of persecution for all Rwandan refugees who have a complex displacement history and have sought asylum at different times and for different reasons.

In the light of this, it is important that the government of the DRC publicly announces whether it intends to apply the ceased circumstances clause to all Rwandan refugees in the DRC or whether the cessation process will apply only to certain categories of existing refugees.

In line with accepted practice as reflected in Executive Committee Conclusion No. 69 and UNHCR Guidelines on International Protection, Amnesty International recommends that all refugees who are subject to a group application of the ceased circumstances cessation clause be given access to a fair and effective procedure by which they can challenge, on an individual basis, the termination of their refugee status if they so wish. The organization considers that such a procedure is essential to prevent the unlawful termination of refugee status of persons who -- notwithstanding the fact that a fundamental, durable and stable change of circumstances may have taken place -- continue to need, and be entitled to, international protection on the basis of the specific circumstances of their cases.

Further, Amnesty International urges the DRC authorities to take the following steps – if it decides to invoke the cessation clause – so as to ensure that the procedure by which cessation takes place is both fair and credible:

- publicly declare the invocation of the cessation clause, providing clear guidance on its scope, including the group to whom it applies, and details about how it affects their rights;
- refugees be given clear and timely notice, in a language they understand, of the type of screening procedures, including appeal, established by the DRC authorities together with details about the deadlines for review applications, the body responsible for consideration of review requests and any further requirements, including, for example, application forms, other documents, etc.;
- refugees be provided with translation and interpretation services, if required, when their reconsideration claim is considered;
- refugees be given sufficient time to access legal advice in preparation for their interview;
- any reconsideration process, including interviews should be conducted by qualified officials who are familiar with refugee law and have been trained in the legal framework around cessation; and
- applicants should be informed in writing of the outcome of their request and if negative, they should be able to appeal, ultimately to an independent and impartial tribunal previously established by law. Applicants must be able to appeal on the grounds of material errors of law and/or fact, as relevant.

Amnesty International is mindful of the challenges that host states such as the DRC may encounter when establishing and implementing the procedural framework described above, including the fact that it could potentially result in a lengthy process. The organization appreciates that technical and material support may be needed from UNHCR for this process, as well as for the independent evaluation that should precede the invocation of the cessation clause. In the light of this, Amnesty International will call on relevant agencies to make their support available.

Durable solutions: Local integration and sustainable voluntary return

While the cessation process may formally lead to a termination of refugee status for a portion of the caseload of Rwandan refugees in the DRC, *per se*, it does not guarantee a lasting solution to the Rwandan refugee situation. Amnesty International considers that while there may be scope for devising strategies aiming to conclusively resolve the Rwandan refugee situation, there is simultaneously a need for host states to be flexible to respond to the evolving displacement patterns of Rwandan refugees.

Further, the organization believes that there will be an enduring refugee caseload because there is likely to be a group of Rwandan refugees who have continued protection needs even after the cessation process is carried through. Moreover, the Government of the DRC should bear in mind that Rwandan asylum-seekers are still leaving Rwanda and seeking international protection. The DRC authorities should continue admitting and recognizing those with meritorious claims and ensure that Rwandan asylum-seekers are not prejudiced by the potential partial or complete declaration of cessation. New asylum-seekers often state that they fled Rwanda following harassment, accusations of “genocide ideology” or divisionism, or arbitrary arrests due to actual or perceived involvement with opposition parties.

Amnesty International urges host states such as the DRC to view the current juncture as a real opportunity to commit to the realization of all durable solutions, including local integration to respond to the complex situation created by decades of waves of displacement from Rwanda.

Local integration

Many long-term Rwandan refugees in the DRC have established strong social, family and economic ties in their host state and have acquired rights during their time there.

Amnesty International notes that many refugees left Rwanda in 1994 and have spent most or all of the last 17 years outside of Rwanda. Long-term refugees are likely to have established strong ties in their host states. It is therefore important that host states recognize that social, family and economic ties arising from long-term residence may warrant granting alternative lawful residence status in the DRC

even if no longer based on a need for, and an entitlement to, international protection. In this regard, Amnesty International urges the government of the DRC to give careful and favorable consideration to credible claims under international and domestic human rights law based on the right to private and family life because these entitlements are not extinguished by a lawful ending of refugee status.

Amnesty International would be grateful for information on measures being considered by the government of the DRC to achieve durable solutions for Rwandan refugees through local integration.

Voluntary repatriation and monitoring of returns

Amnesty International stresses that all voluntary repatriation operations organized by the DRC either alone or with the assistance of UNHCR, including repatriations planned ahead of a potential cessation declaration should at all times respect the voluntary character of return. The organization wishes to underscore that any material pressure - such as reducing or withdrawing essential services such as access to food assistance - or physical pressure to push recognized refugees to repatriate renders the "voluntariness" of their return highly questionable and raises questions about the DRC's compliance with the *non-refoulement* principle. Voluntary return requires that the choice to return has been made free from coercion and on the basis of the refugee's prior and informed consent. In the light of this, the organization seeks the government of the DRC's assurances that it will, at all times, respect the voluntary nature of repatriation.

Amnesty International further believes that the monitoring and evaluation of the reintegration of Rwandan returnees who have chosen to repatriate is an important safeguard to ensure that their human rights are adequately protected and that they are adequately supported in their reintegration. In this respect the organization is aware of Rwandan returnees who have returned to host states in the past two years because they have experienced difficulties in the reintegration process. Rwandan returnees who re-entered a neighbouring host state told Amnesty International that some of the problems they experienced on return to Rwanda related to restitution of property and inadequate support from government officials in their home areas.

Amnesty International recommends that the DRC government urge UNHCR and the government of Rwanda to ensure that they provide returnees with adequate reintegration packages, increase monitoring of returnees in their home areas and address all legal and practical obstacles that prevent sustainable return for those who are determined to no longer have a well-founded fear of persecution.

Provision of information

Refugees may experience increased uncertainty and confusion about their legal status in the host state when cessation is being considered or when the cessation

declaration is being implemented. It is crucial that the government of the DRC ensures throughout all stages of the cessation process that there are sustained and comprehensive efforts to inform refugees of how the process is progressing. Refugees should be given detailed information on matters relating to the cessation process, including the implications of a cessation declaration on the refugees' legal status and rights enjoyed in the host state. Amnesty International believes that regular communication with refugees on the cessation process and meaningful engagement with the Rwandan refugee community not only helps build confidence with the refugees that the cessation of refugee protection is being undertaken in a rights-respecting manner, but also the very public sharing of information facilitates transparency and dialogue.

Amnesty International recommends that the government of the DRC, if it has not already undertaken specific information sharing activities, rolls out sensitization campaigns which among other things inform refugees of the cessation process, the rights of refugees in this context and the options available to them. Moreover, it is important that objective information on conditions in Rwanda is also available, including by creating opportunities for refugees to visit their home areas in Rwanda to assess the conditions there for themselves,

Amnesty International recommends that there are ongoing sensitization and counseling campaigns undertaken by the government of the DRC and that the government ensures there is engagement of refugees in discussions on voluntary repatriation.

Removals

The government of the DRC should at all times abide by the principle of *non-refoulement*. No person should be forcibly returned to or removed from the DRC to Rwanda if once there s/he would face a real risk of persecution or other forms of serious harm.

Further, Amnesty International stresses that all removal proceedings, including of persons who no longer require international refugee protection or qualify for alternative status in DRC, must always be conducted in compliance with international human rights law and standards, ensuring respect for the rights of persons subject to enforced removals.

RECOMMENDATIONS

In the light of the concerns set out in this memorandum, Amnesty International urges the government of the DRC to:

- conduct a comprehensive, objective and verifiable evaluation of current human rights conditions in Rwanda to determine whether there has been a fundamental, durable and stable change of circumstances such as to justify the invocation and application of the ceased circumstances cessation clause in manner that is fully consistent with international and domestic refugee law and standards;
- establish procedures to assess the general impact of any such a change in Rwanda, as well as on the original and/or present well-founded fear of persecution so that refugees can individually request reconsideration of the application of the cessation clause and be granted an exemption from it -- if indeed one is warranted in their individual case. Such procedures should also enable people with no continued international protection needs to nonetheless apply for -- and be granted if warranted -- alternative lawful residence status in the DRC on grounds recognised in international law and domestic law, including human rights law;
- explore all durable solutions to enable the DRC to adequately respond to the protracted nature of the Rwandan displacement situation. Those solutions should include pathways to local integration;
- respect the fundamental prohibition on *refoulement*, including, in particular, by ensuring the voluntary character of any repatriation;
- ensure that any enforced return be conducted in a rights-respecting manner in accordance with international human rights and domestic law;
- guarantee continued access to assistance and services;
- ensure adequate information sharing efforts with the Rwandan refugee community, including in the context of the expected invocation of the cessation clause and operation of reconsideration/exemption procedures;
- urge UNHCR and the government of Rwanda to provide adequate reintegration packages for returnees, and increase the monitoring of returnees in Rwanda; and
- ensure that new Rwandan asylum-seekers have adequate access to asylum procedures and that their refugee status determination claims are given a fair hearing.

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