



Refugee Law Project

Faculty of Law, Makerere University



PRESS STATEMENT

Rwandan Refugees to lose their status by December 2011: Is Rwanda safe for all its citizens to return?

As we celebrate World Refugee Day, Rwandan refugees in Uganda are uncertain of what will happen to them after 31 December 2011. At a tripartite meeting held on 8 May 2010, the Governments of Rwanda and Uganda together with the UNHCR agreed among other things that all Rwandan refugees should return to Rwanda because the country is now regarded as safe. They agreed that the cessation clause should be invoked by December 2011 based on change of circumstances in the country of origin, Rwanda. If this step is indeed taken, it will mean the end of refugee status and the accompanying international protection for some 12,000 Rwandans currently residing in this country.

While we appreciate the need to find solutions especially for protracted refugee situations worldwide and Africa in particular, in the case of Rwanda it remains questionable whether the pre-conditions for invoking the cessation clause will be fulfilled by the end of 2011. The mis-application of the clause for any group of refugees risks exposing them to serious human rights violations, and itself constitutes a breach of international protection. Accordingly the decision to invoke the cessation clause on any group of refugees must not be done in haste and should be considered very carefully.

Blanket application of the cessation clause

The decision to work towards ensuring all Rwandan refugees voluntarily repatriate treats them as a homogeneous group. Yet Rwandans have sought asylum in Uganda at different times and for different reasons. The first mass influx was in 1959 when close to 80,000 Rwandese fled civil war between Tutsis and Hutus. Following the 1994 Rwandan Genocide, it is estimated that 60,000 refugees fled to Uganda, and since 1994 many individuals have sought asylum in Uganda mostly based on political persecution, and indeed have gone through individual status determination processes. Even in 2010 new asylum claims are being made. Given these very different histories, it is unlikely that refugee status can be withdrawn in a blanket fashion.

“Change of circumstances” as the basis for cessation

International refugee law recognizes invoking the cessation clause based on change of circumstances or ceased circumstances in the country of origin, in this case Rwanda. The change must be fundamental, effective and durable. Fundamental change refers to developments that completely transform the political and social structure of the country of origin as well as its human rights situation. Change of government for political asylum seekers is a well recognized criterion for “change of circumstances” warranting the application of the cessation clause in many situations. However in the case of Rwanda, while political circumstances have changed for those who came to Uganda prior to 1994, the same cannot be said for those who sought asylum in 1994



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onwards, because the same RPF government from which they fled remains in power. Considerable caution therefore has to be taken before the latter case-load are stripped of their protection based on change of circumstances in the country of origin.

While Rwanda has been praised worldwide for its post-Genocide economic recovery and development, its human rights record remains of concern; earlier this year, a work permit was denied to a Human Rights Watch researcher. It should also be noted that even the high economic growth rate has failed to attract back many refugees, despite claims that Rwandan refugees were only in Uganda for economic reasons. The real reasons for their continued unwillingness to return should be considered carefully before invoking the cessation clause.

What options are available?

International refugee law recognizes three durable solutions; voluntary repatriation, local integration and resettlement to a third country. Rwanda however prefers to have all its citizens returned to the country and has asked the government of Uganda and UNHCR to facilitate this process. This raises a lot of concern, especially given that the meeting did not even mention the other options for the many refugees who may not wish to return to Rwanda. Available statistics shows that since the repatriation of Rwandese refugees began in 2009, less than a third has opted to return to Rwanda.

While we commend the parties at the tripartite meeting for resolving to ensure that repatriations to Rwanda are sustainable and that the reintegration process of returnees is strengthened, we believe that the decision not to allow Rwandese refugees access to cultivation land creates to a “push” factor that is tantamount to forcing returns. International refugee law demands that all repatriation should be voluntary and that return must be in safety and dignity. It should also be followed by proper reintegration. This last condition is particularly important given that we have already witnessed repatriated Rwandans making their way back to Uganda owing to lack of proper reintegration in their country of origin.

Recommendations:

All parties should:

- Consider the decision to invoke the cessation clause carefully to ensure that the human rights of the returnees are guaranteed;
- Prioritise international protection ahead of politics in dealing with Rwandese refugees.
- Measure the diplomatic assurances by Rwanda that the country is safe for return against other objective country of origin information before a definite decision is made to invoke the cessation clause.
- Ensure that where repatriation does take place it is purely voluntary and that refugees are returned in physical, legal and material safety and with dignity

The Government of Uganda should:



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- Be able to unequivocally answer in the affirmative the question as to whether there has indeed been a change of circumstances in Rwanda to justify the invocation of the cessation clause. Consultations must be made with all stakeholders including human rights groups and the refugees themselves in this regard.
- Be satisfied that all returnees are guaranteed protection back in Rwanda and that its actions will not amount to *refoulement*
- Make necessary arrangements to facilitate applications for citizenship by the refugees who qualify
- Review the decision to deny Rwandese refugee the same access to cultivation land granted to other refugees as this may have the effect of forcing repatriation
- Objectively and impartially continue to allow Rwandese asylum seekers full access to the asylum process in Uganda as guaranteed by Uganda's international obligations and the Refugee Act 2006

The Government of Rwanda should:

- Satisfy the international community and especially the Government of Uganda that the protection of returnees are guaranteed and that the reintegration process will be carried out fairly and in a manner devoid of stigmatization and which guarantees the human rights of the returnees
- Address the concerns of the refugees especially in regards to restitution of property, victimization through the *Gacaca* process, freedom of conscience and political opinion
- Facilitate the option of naturalization for qualifying refugees.

The UNHCR should:

- Provide current and accurate country information on Rwanda to enable returnees make informed decisions on repatriation
- Intensify efforts to identify cases of Rwandan refugees that meet the criteria for third-country resettlement.
- Sustain its mandate for international protection for all refugees
- Collaborate with other partners such as World Food Programme to ensure adequate material assistance to Rwandese refugees in view of the decision to prevent them from cultivating land for sustenance

Dr. Chris Dolan, Director