

**A SOCIO-LEGAL ANALYSIS OF THE CHALLENGES TO A DURABLE
RETURN AND REINTEGRATION OF REFUGEES: THE CASE OF RWANDA**

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE
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DECLARATION

I, **MWAJUMA KITOI MSANGI**, hereby declare that this dissertation is my own work and that to the best of my knowledge it has not been previously submitted to any other institution. I also declare that any secondary information used herein has been dully acknowledged.

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DEDICATION

In loving memory of my venerated father **ABASI KITOI**

You made me who I am today.

May the Almighty **GOD** that I believe in, grant you pardon and eternal peace.

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Glory is to God the Almighty.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
CFAG	Commission for the Fight against Genocide Ideology
CERD	Convention on the Elimination of all forms of Racial Discrimination
DRC	Democratic Republic of Congo
FDLR	Forces Democratique de Liberation du Rwanda
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
NCR	National Council for Refugees
NCHR	National Commission for Human Rights
NGOs	Non-Governmental Organizations
NURC	National Unity and Reconciliation Commission

OAU Refugee Convention	Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa
RPF	Rwanda Patriotic Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
Vienna Declaration	Vienna Declaration and Programme of Action
VOLREP	Voluntary Repatriation

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Photo courtesy of Serge Balaga/ UNHCR Protection Assistant-Goma

February 2009 at the UNHCR transit centre in North Kivu, Rwandan Refugees who voluntarily opted to repatriate are being explained how to sign the Voluntary repatriation forms.

CHAPTER ONE: INTRODUCTION

1.1 Background to the study

Refugee problems demand durable solutions.¹ For millions of refugees, the ideal durable solution is to return home; home to a familiar language and culture, home to the family residence and personal belongings, home to loved ones and friends.² For the vast majority of refugees, the dream is about being able to return home one day. In the sometimes bleak and bitter moments of exile, the hope of return can be the one factor which sustains the refugee in moments of trial.³

The African refugee problem is not a thing of the past, but continues to challenge the humanitarianism and hospitality traditionally associated with African civilization.⁴ Africa has the largest number of refugees in the world.⁵ The million refugees and displaced persons in Africa today, constitute major humanitarian and political challenges; the situation of individual refugees is tragic in itself.⁶ Refugees are often separated from their families, exposed to the danger of armed attack, subject to exploitation and degradation and haunted by the constant fear of expulsion, not to mention the difference in culture and climate, depression, profound alienation and unemployment. Refugees often cannot enjoy social, economic, civil and political rights while in exile. One of the founders of modern international law, Francesco De Vittoria, rightly describes exile as a form of capital punishment.⁷

¹ Barry N 'Durable solutions for developing country refugees' (1986) *International Migration Review* 1

² BS Chimni *International refugee law: A reader* (2000) 346

³ As above

⁴ F Viljoen *International Human Rights Law in Africa* (2007) 257

⁵ 'AU holds special summit to address Africa's refugee problem' www.chinaview.com

⁶ P. Weis *African Refugees and the Law* (1978) pg 232

⁷ To deny without justification an individual, a group, or a people the satisfaction of their need to belong by expelling or exiling, depriving of nationality or citizenship, by refusing return, or doing nothing to alleviate conditions which prevent return is to inflict grievous injury on the person concerned. Return is the objective to which international law aspires; it derives from the conception of nationality in general international law, being coterminous with the notions of attachment and belonging; and is supported by the concept of fundamental human rights.

Political oppression and violations of human rights, coupled with economic and social injustices have been identified as the major root causes of the refugee problem.⁸ It is no longer possible to think that displacement can only be resolved with humanitarian assistance; efforts that will lead to durable solutions are required.⁹

Rwanda stands out as one of the African countries that have in recent times produced a large number of refugees being hosted in Tanzania, the Democratic Republic of Congo (DRC), Burundi, Central Africa Republic, Zimbabwe, Namibia, Uganda, Zambia, Angola and South Africa. At the end of 2003, approximately 80,000 Rwanda refugees remained scattered throughout Central and Southern Africa.¹⁰ More than five million refugees in Africa are known to have repatriated since the early 1990.¹¹ Nevertheless, millions of refugees in Africa are still un-able or unwilling to return to their countries of origin and continue to languish in refugee camps, in miserable places or in legal limbo.¹²

The putative right to return to one's country and the right to be free from arbitrary exile or human rights abuses are guaranteed under international law instruments including the 1948 Universal Declaration of Human Rights (UDHR)¹³, the International Covenant on Civil and Political Rights (ICCPR)¹⁴ and the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention).¹⁵ The right to return expresses itself in diverse forms; among these, voluntary repatriation, which is believed to be the most favourable durable solution to the refugee plight around the world.

However, for return, re-integration and reconciliation to succeed, people need to feel safe, have renewed faith in their justice system, and confidence in the police and security forces. They must consider the government to be legitimate and be able to protect them and meet their basic needs. Respect for fundamental rights, equality, participation and provision of basic needs are the basic pre-requisites for any

⁸ Weis (n5 above) 232

⁹ AU Commissioner for Political Affairs address to the AU Executive Council on challenges of forced displacement confronting the continent 19 October 2009

¹⁰ IRIN: UN REFUGEE AGENCY LAUNCHES REPATRIATION CAMPAING ' November 2003

¹¹ Crisp (n 9 above) 158

¹² Bover TV 'Returning home: Housing and Property Restitution Rights to refugees and Displaced Persons' (2001) 115

¹³ Article 13 (2)

¹⁴ Article 12(4) of the ICCPR

¹⁵ Article 5 of the OAU Refugee Convention

reintegration process. Reintegration of returning refugees is therefore, a complex political, economic, social and cultural process that goes beyond a simple physical reintegration of refugees in their home communities.¹⁶ Returning refugees are most immediately in need of legal and political reintegration, but in a conflict plagued country many citizens will share distrust of political institutions and have major doubts about respect for their human rights. Confidence grows when there is evidence that the existing laws will enable them to enjoy reasonable citizen rights and that in the places they live the rule of law operates.

The return of the last of Rwanda's refugees is today clearly a key priority of the Rwandan government and the international community.¹⁷ The Rwandan government has been playing an unusually active role in encouraging the return of its refugee population. This is more in line with the Rwanda Constitution provision which expressly provides that no one shall be forced into exile, and that every Rwandan has the right to leave and to return to the country.¹⁸

In line with the efforts to encourage return, Rwanda has been implementing a number of initiatives such as the *Gacaca* tribunals, *imidugudu* land tenure system, enacting legislations like the genocide ideology law, multi-party elections, all aimed at upholding and reinforcing justice, the rule of law, rights of its citizenry, and preventing the bitter past from repeating itself. The Constitution establishes a handful of institutions such as the National Unity and Reconciliation Commission (NURC), the National Council for Refugees (NCR), the National Commission for Human Rights (NCHR) that are charged with the responsibility of upholding and enforcing human rights and democratic ideals.¹⁹

However, the implementation of the laws, policies, and social programs perceived by some as biased, constraints on judicial independence, un-equal participation in governance, mistrust (Both vertical and horizontal), land issues, right of access to justice and the due process of law, arbitrary arrests and detentions, have been identified as stumbling blocks to a sustainable return and reintegration of Rwandan Refugees.

¹⁶ BE Harrell- Bond *Imposing Aid: Emergency Assistance to refugees* (1986) 12

¹⁷ UN General Assembly Resolution 51/114 of 7 March 1997

¹⁸ Article 23, & 24 of the Rwanda Constitution 2003

¹⁹ Articles 177, 178, 179, 180 & 181,

This paper aims to analyze the socio-legal challenges relating to the return and reintegration of refugees. Using Rwanda as a case-study, it will specifically attempt to discuss the conditions or factors necessary for a sustainable return and reintegration and how the implementation of Rwanda's post-conflict socio-legal framework, impacts positively or otherwise the repatriation and reintegration of Rwandan refugees.

1.2 Statement of the problem

The return and re-integration of refugees in many countries affected by war often take place in fragile political, economic, social and legal contexts. Refugees often return to a country devastated by war where social infrastructure, political, judicial, and economic institutions are often in shambles and personal or family property, including land, have been taken by neighbors or those in power. No other country best illustrates this scenario than Rwanda, after a war that was responsible for the deaths of more than 800,000 and the displacement of more than 3 million into neighbouring countries. Rwanda has had a long history of its citizens living outside as refugees. The country's refugees are among the oldest refugee population in the continent;²⁰ the return to and integration of the various generations of refugees into their original communities and country as a whole present daunting challenges.

This study seeks to address the following questions:

1. What socio-legal challenges affect the return and reintegration of refugees in Rwanda?
2. What mechanisms and processes, namely, laws, policies, institutions and practices has Rwanda adopted to address these challenges?
3. What are the challenges faced by the government and other stakeholders including the refugees, in creating and implementing these mechanisms?
4. What short, medium and long term solutions are available in order to overcome these challenges?

²⁰ Ruyenzi J *Repatriation of Rwandan refugees: Propositions and Recommendations* (2009) 42

1.3 Assumptions of the study

The study proceeds from two general assumptions: the first is that refugees can only return and reintegrate into their countries of origin if there are serious efforts to promote human security and serious political, economic, social and legal reforms to address the failures of the past and secure the future; in the second place- the existence of independent and effective judicial, political, economic and social institutions is crucial to sustainable return and reintegration since they ensure transparency, accountability, build trust, enhance equality and the participation of returnees in the reconstruction of their countries of origin such as Rwanda.

Thus the *sine qua non* for the return and reintegration of displaced persons is the restoration of political, legal, social and economic institutions, processes, and security and observance of human rights.

1.4 Objectives

The objectives of this study are four-fold:

1. Examining the existing structures or mechanisms and processes including; legislation, policies and practices in Rwanda to see how they impact on the social life of returnees and the reluctance of some refugees to return home
2. Assessing the effectiveness of such existing structures in relation to a durable return and reintegration of refugees in Rwanda
3. Highlighting the challenges to the implementation of the provisions of those structures.
4. Suggesting practical solutions to addressing the challenges so as to achieve a durable return and re-integration of Rwandan refugees.

1.5 Relevance

Voluntary repatriation and reintegration of uprooted people is an important manifestation of the transition to political stability and human security for a country ravaged by war, mass human rights violations and insecurity.²¹ The voluntary repatriation and sustainable reintegration of refugees provides them with the reality to fully enjoy their human rights, contributes to peace-building and development. Consequently, this study is significant in the following ways:

1. Contribute to the already existing literature on return and reintegration by filling some identified gaps, particularly those related to legal frameworks, structures practices in country of origin and therefore provide interested readers including scholars, government officials, aid agencies, policy makers and Non-Governmental Organizations (NGOs) with a piece of research work that will inform them on the legal and social challenges that need to be overcome to attain a durable return and reintegration of refugees.
2. Provide useful information on the impact of sustainable return and reintegration on peace building, reconciliation, and reconstruction; and ultimately the socio-economic and political development of a country, much more critical to Rwanda that is experiencing voluminous repatriation of its refugee population.
3. Through the findings and recommendations of the study, provide effective means of promoting the human rights of returnees and how this will contribute to the realization of sustainable return and reintegration.
4. Highlight obligations that the state of origin has towards returning refugees.

1.6 The scope of the paper

This study focuses on the return of refugees in post-war situations with Rwanda as the case study. In other words it will not address return and reintegration of people displaced by other factors such as floods, drought and famine. There are many factors that may militate on against successful reintegration, but this study will only focus on socio-legal

²¹ J Crisp 'Africa's Refugees: Patterns, problems and policy challenges' *Journal of Contemporary African studies* (2000) 162

challenges or factors and how they can ensure durable return and sustainable reintegration in the country of return. The factors influencing a refugee's decision to return or not to return at any given time will also be examined.

In terms of time frame, this study covers the period before, during and after the 1994 Rwanda genocide. It will not distinguish between voluntary and spontaneous returnees; both categories are generally covered as returnees.

Thus, to develop the themes in the paper, it is arranged in four chapters with this introduction as the first chapter. The introduction explains what the paper is all about: statement of the problem, assumptions of study, objectives, relevance, scope, literature review, the methodology and definitions of the key terms used throughout the study.

The second chapter is divided into four thematic subsections. The first looks at human rights and refugee flows: responsibility of state of origin to prevent mass exodus and protect its citizens, the human rights dimensions of repatriation, the right to return to one's country: the obligation of the state of origin, and exercising the right to return: repatriation of Rwandan refugees.

The third chapter covers post-conflict reconstruction in Rwanda, the socio-legal conditions necessary for reintegration in Rwanda and challenges to reintegration in Rwanda. The reluctance of some Rwandan refugees to return is also discussed.

Finally, the fourth chapter gives the conclusion and provides recommendations to address the challenges identified in the research.

1.7 Literature review

The literature on refugee law, durable solutions and issues around the topic of refugees and displaced persons, has grown dramatically over the past decades. The issue of challenges on reintegration of returning refugees however remains relatively under-researched, and particularly the socio-legal conditions that prevail in countries of origin as refugees return home. Most literature that has covered repatriation and reintegration as a durable solution to the refugees focuses on socio-economic conditions, provision of short term relief assistance and reintegration programs. However, how the legal frameworks and its implementation shape individual relationships and in particular

returning refugees and the state, the experience of returnees and how the law affects their reintegration into society, or hinders refugees from returning to their countries of origin, has been denied the required consideration and attention.

In many of the works on African refugees and the development of refugee law, reference is made to the fact that voluntary repatriation and sustainable reintegration are one of the most effective, permanent solutions to the problem of refugees in Africa and elsewhere.²² But these works, acknowledging that, repatriation is not the end of the refugee cycle but the beginning of a new cycle of social, political, and economic reintegration in the home country.²³

Chakraborty²⁴ writes on the impact of refugee problems and the responsibility of governments in addressing the causes of the refugee problems and designing measures to address them. While he clearly sees the link between state responsibility to prevent in the first place and address the problem of refugees, he does not pay particular attention to the need of having clear and effective reintegration policies and structures in place.

Weis²⁵ links the African refugee problem to political evils in society, such as political oppression and the violation of human rights. Awuku²⁶ explains the complexity of the refugee problem in Africa in particular suggesting that in view of the large number of refugees in Africa, voluntary repatriation is the most desirable and durable solution. He acknowledges that in order to solve the African refugee problems, African states have to address the root cause of refugee movements, whereby he notes the importance of adhering to the principle of good governance (accountability, transparency, openness, efficiency, the rule of law and popular participation in the decision making process), and sites the OAU Refugee convention, that refugees who voluntarily return to their country shall in no way be penalized for having left it.²⁷ Awuku further notes that it is the duty of the country of origin to grant those refugees the full rights and privileges of nationals and not to discriminate against them. Awuku firmly believes that the protection of human

²² G Mellander & P Nobel *African refugees and the law* (1978) 124

²³ Crisp J When refugees go home: in Allen and Morsink *Geneva UN Research Institute for Social Development* (1994) 7

²⁴ Chakraborty (n 15 above) 102

²⁵ Weis (n 6 above) 234

²⁶ EO Awuku 'Refugee Movements in Africa and the OAU Convention on Refugees' *Journal of African Law* (1995) 39

²⁷ Article V(4)

rights by African states will discourage new influxes of refugees and create conditions favorable for voluntary repatriation.

Goodwill-Gill²⁸ writes on the need for refugee generating countries to put in place legal and political measures to ensure that their citizens pursue their lives in peace, at home and free from prejudice and persecution. He also discusses the right of refugees to return to their countries of origin. Aiboni²⁹ gives a general presentation on refugee protection in countries of asylum, obligations of receiving states at providing protection to refugees found in their territories, and Nicolson³⁰ looks at the development of refugee rights. Klein-Ahlbrandt³¹ summarizes the progress and problems in efforts to provide protection and assistance to internally displaced persons in Rwanda, taking special note of the inadequacy of the legal framework and institutional mechanisms. His writings, however, focus on internally displaced persons not returning refugees.

Baloro³² provides possible solutions for the re-integration of Mozambique refugees. Crisp³³, Hammond³⁴ and Jooma³⁵ both discuss the right of a refugee to repatriate and the duties of the home government at providing an environment conducive for repatriation. They provide a general account of issues of return and reintegration. Jooma sees socio-economic reintegration and rehabilitation of uprooted individuals in their countries and communities, the main challenge to building peace.³⁶

Van Bover³⁷ focuses on the housing and property restitution rights of returning refugees and displaced persons. Baribonekeza³⁸ expresses his clear belief on political participation as a means to a durable re-integration of refugees. Kennedy Amone

²⁸ GS Goodwill-Gill *The refugee in international law* (1983) 22

²⁹ SA Aiboni *Protection of refugees in Africa* (1978) 33

³⁰ F Nicolson *Refugee rights and realities: evolving international concepts and regimes* (1999) 66

³¹ S Kleine-Ahlbrandt *The protection gap in the international protection of internally displaced persons: The case of Rwanda* (2004) 4

³² J Baloro 'The Law and Pattern of the Repatriation of Namibian and south African refugees: Possible Lessons for a programme of repatriation of Mozambique refugees' *Comparative and International Law Journal of Southern Africa* (1995) 28

³³ Crisp (n 9 above)

³⁴ LC Hammond 'This Place Will Become Home: Refugee Repatriation to Ethiopia' *The Journal of Contemporary African Studies* (2006) 26

³⁵ M Joom 'A Place to Call Home?' *African Security Review* (2005)

³⁶ As above

³⁷ Van Bover (n 11 above) 116

³⁸ Unpublished: JB Baribonekeza 'Political participation of refugees as a means to realize the right to repatriation: The search for a durable solution to the refugee problem in Africa' Unpublished LLM dissertation, University of Pretoria, 2006

P'Olak³⁹ provides an insight into the experience of the abducted boys while in rebel captivity, their coping strategies and their perspective on reintegration in Northern Uganda. He also stresses on the importance of peaceful co-existence as a means to achieving durable reintegration and peace.

Phuong N Pham and others⁴⁰ view community based mental health care services and reintegration programs as a need for the facilitation of the reintegration of former abductees into their communities. Tania Ghanem⁴¹ writes on the psychosocial difficulties returnees' encounter in the reintegration process, the complexity of returning and reintegrating. The author argues that the way returnees perceive home and the way they define their identity influences their re integration process.

J R Rogge⁴² views the rehabilitation of returnees as much a process of instilling new sets of values as it is of finding suitable means of income generation. J Gomes Porto⁴³ sees at the heart of building sustainable peace in countries emerging from the scourge of civil war, and the necessity of transforming the culture and the instruments of war and in particular demobilizing, disarming and reintegrating former combatants into society as well as ridding the wider society of arms. The study conducted a survey on economic, social and political indicators that were used to analyze the reintegration of UNITA ex-combatants in post-war Angola. Drumtra clearly saw the ensuring of a sustainable process of reintegration, rehabilitation, social and political conciliation a principal policy challenge for Rwanda.⁴⁴

This research paper supplements the above cited literature, and many others that have looked into the return and reintegration of refugees not only as a human rights issue, a durable solution, but also as an important process directly linked to peace, stability, reconciliation and development. The research focuses on socio-legal challenges to a

³⁹ K A P' Olak 'Copying with life in rebel captivity and the challenge of reintegrating formerly abducted boys in Northern Uganda' *Journal of Refugee studies* (2007) Vol.20

⁴⁰ P N Pham *Returning home: Forced conscription, reintegration, and mental health status of former abductees of the Lord's Resistance Army in Northern Uganda* (2009)

⁴¹ T Ghanem *When forced migrants return 'Home': The psychosocial difficulties returnees encounter in the reintegration process* (2003)

⁴² J R Rogge 'Repatriation of refugees: a not- so- simple 'optimum' solution' paper presented at the conference: Social and economic aspects of Mass Voluntary return movements of refugees from one African country to another, Harare Zimbabwe (1991)

⁴³ JG Porto et al *From soldiers to citizens: The social, economic and political reintegration of unita ex-combatants* (2007)

⁴⁴ J Drumtra *Life After Death: Suspicion and Reintegration in Post-Genocide Rwanda* (1998)

successful and sustainable reintegration of refugees, putting at heart the lived experiences and views of returnees and refugees. With the belief that, a durable return and reintegration of refugees is a pre requisite to attaining durable peace, stability, development and real reconciliation for a society under transition.

1.8 Methodology

This study is a socio-legal analysis that employs both qualitative and quantitative methodologies. The research findings are gathered by way of library and desktop research of the subject matter, field and ground interviews with returnees, refugees, and officials of relevant government departments. Questionnaires have also been administered. Finally available policies, legislations and government reports on the subject are reviewed.

1.9 Defining key terms

1.9.1 Adopting the UN Refugee Convention definition, a refugee- Is

any person who...owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or unwilling to avail himself of the protection of that country, or who having a nationality and being outside the country of his former habitual residence..is unable or, owing to such fear, unwilling to return to it.⁴⁵

In the African refugee context, the term refugee also applies to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁴⁶

⁴⁵ Article 1(A) (2) of the 1951 Refugee Convention read together with article 1(2) & (3) of the 1967 Protocol relating to the status of refugees.

⁴⁶ Article 1(2) OAU Refugee convention 1969

1.9.2 **Repatriation** is the process of returning a person to his or her country of origin or citizenship. Repatriation can either be organized⁴⁷ or spontaneous.⁴⁸ For the purpose of this research, no distinction is made between returnees who return by either means; both categories are referred to as returnees.

1.9.3 **Reintegration** refers to the progressive establishment of conditions which enable returnees and their communities to exercise their social, economic, civil, political and cultural rights, and on that basis to enjoy peaceful, productive and dignified lives. This definition recognizes reintegration as an integral part of reconciliation and peace building process, closely linked to the progressive reduction of political and social violence.⁴⁹

1.9.4 **Durable solution-** This concept entails a process of successful and lasting reintegration into one's society if it allows the refugee to attain a degree of self sufficiency, to participate in the social and economic life of the community and to retain what might be described, too summarily, as a degree of personal identity and integrity.⁵⁰ Durable solutions aim at restoring or maintaining permanent relationships between individuals and state. Durable solutions mechanisms are so regarded because they promise an end to the refugees' suffering and their need for international protection and dependency on humanitarian assistance.⁵¹

⁴⁷ Is a situation in which refugees return home under the terms of a plan that is worked in advance and has the support of the home and asylum government, as well as that of UNHCR and the refugees themselves

⁴⁸ Takes place without any of the features of advanced planning which characterize organized repatriation. The majority of refugees who return do so out of their own initiative, rather than agreeing to join a formal repatriation plan. This however, does not preclude subsequent assistance in country of origin.

⁴⁹ Paragraph 7 UNHCR role in support of the return and reintegration of displaced population at <http://www.unhcr.org>

⁵⁰ G Goodwin-Gill 'Refugee or asylum: International law and the search for solutions to the refugee problem' in BS Chimni *International refugee law: A reader* (2000) 331

⁵¹ UNHCR 'The state of the world's refugees: Human displacement in the new millennium' (2006) 129

CHAPTER TWO: THE RETURN OF REFUGEES HOME: PROBLEMATISING THE REPATRIATION OF RWANDAN REFUGEES

2.1 Human rights and refugee flows: Responsibility of the State of origin to prevent mass exodus and protect its citizen

The lives of millions of people around the world continue to be thwarted with violence, compelling them to flee from their own country or community mainly for reasons of persecution and armed conflict. While the events that trigger refugee outflows are specific to each particular setting, certain common denominators are apparent. The immediate cause of flight is in most cases an imminent threat to life, liberty or security.⁵² The flight of refugees is more often than not, a symptom of the primary problem: war, bad governance and human rights violations. An accumulation of abuses accompanied by violence, which leads to further abuses and a generalized climate of fear, is a sequence that frequently produces mass exodus. The refugee's need for international protection arises from the violation of his or her rights combined with the state's palpable failure in its duty to defend citizens against such violations- which of course includes the duty to refrain from violations itself.

States are obliged to protect human rights of its citizens including those of returning refugees. The rights that states are obliged to protect are codified in the UDHR, and are translated into binding form in the ICCPR and International Covenant on Economic Social and Cultural Rights (ICESCR) to mention a few. These instruments and others identify the sovereign state as the primary defender of rights such as the right not to be subjected to torture or arbitrary detention, and the rights to freedom of expression, thought and belief.

2.2 The human rights dimensions of repatriation

No one should be a refugee forever.⁵³ Thus, the refugee has the right to return to his/her country of origin. This right is a clear and unambiguously guaranteed by international law under various instruments such as the UDHR which expressly provides that: 'Everyone has the right to leave any country, including his own and to return to his country.'⁵⁴

⁵² BS Chimni 'International Refugee Law: A reader' (2000) 345

⁵³ M. Kamara 'Repatriation of refugees in Africa' Director, UNHCR Regional Bureau for Africa; Keynote lecture at the Peace Building Forum, Wasada University (25 October 2007)

⁵⁴ Article 9 & 13

The OAU Refugee Convention expressly provides for this right placing obligation upon both host states and states of origin to facilitate a smooth return and reintegration of refugees when they wish to so do.⁵⁵

People who flee war and persecution have an unconditional entitlement to go back to their homeland.⁵⁶ In 1980, the United Nations General Assembly reaffirmed the right of refugees to return to their homes in their homelands.⁵⁷

A number of scholars and prominent world citizens have confirmed the individual's right to return, Tomuschat for example writes that the natural place for an individual is the territory of the state of nationality.⁵⁸ Pope John Paul II once remarked

There is something repugnant and abnormal in the fact that thousands upon thousands of human beings are forced to leave their country....Transplantation cannot be a definite solution to the situation of refugees, they have a right to go back to their roots, to return to their native land with its national sovereignty and its right to independence and self-determination.⁵⁹

These views find expression in universal and regional human rights instruments, and declarations such as the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1966 ICCPR⁶⁰ and article 23 of the Vienna Declaration and Programme of Action (Vienna Declaration).⁶¹

In its judgment in the *Nottebohm case*⁶², the International Court of Justice referred to the necessity, from an international law point of view, for nationality to be based upon a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.' Both the Court and leading jurists have recognized the fundamental importance of the relationship between people and territory, and the implications which they have both for sovereignty and for the responsibility of the state. In his separate opinion in the *Western Sahara case*, Judge

⁵⁵ Article 5

⁵⁶ S. Guilin *Repatriating refugees: Managing the right to return* (2008) 12

⁵⁷ UN General Assembly Resolution 35/124 on International Intervention to avert new flows of refugees

⁵⁸ C Tomuschat 'State responsibility and the country of origin' in V Gowlland-Debbas (ed) 'The problem of refugees in the light of contemporary international law issues' (1996) 61

⁵⁹ Pope John Paul II addressing Kampuchean refugees on the border of Thailand in 1984

⁶⁰ Article 12(2 & 4)

⁶¹ As adopted by the World Conference on Human Rights on 25 June 1993

⁶² *Liechtenstein v. Guatemala* (1955) ICJ Reports 4 (accessed at www.icj.cij.org)

Anraoun contrasted to its disadvantage the materialistic concept of *terra nullius* with 'a spiritual notion: the ancestral tie between the land ..., and the man who was born there from remains attached thereto, and must one day return thither to be united with his ancestors . This link is the basis of the ownership of the soil ...'⁶³

In *Rights International v Nigeria*⁶⁴, the African Commission on Human and Peoples' Rights (African Commission) held that the fact that a person is forced to live in exile amounts to a violation of the right to freedom of movement and residence, and his right to leave and return to his country guaranteed by Article 12(1) and (2) of the African Charter on Human and Peoples' Rights (ACHPR).

This has been the case in real life scenarios, as noted by an interviewee returning to Rwanda from Uganda, at the Gatuna border:

"We are well looked after in the camps. But the land wasn't ours. We are tired of being called refugees."⁶⁵

As noted above, no matter how geographically removed refugees might appear, either continuing to live their lives in organized settlements, or as spontaneously settled refugees, they are always on the lookout for news about their home areas.⁶⁶ An interviewee aptly puts it, "we can't have a future in a foreign country."⁶⁷

Although, well aware that they might face difficulties when they return home, refugees in most cases prefer going back home, as observed from one of the Rwanda refugees formerly hosted in the DRC, who says:

I don't know if I will have a house made of concrete or a mud shack covered with corrugated iron sheeting. But I will get by with the help of my family and friends, if they are still alive," the determined mother said before boarding a UNHCR truck to the border.⁶⁸

⁶³ 1975 ICJ 12 37039 (accessed 25 August 2009 at www.icj.cij.org)

⁶⁴ *Rights International v Nigeria* (2000) AHRLR 254

⁶⁵ 'Rwanda: Refugees Return to country' *The New times* 18 May 2009

⁶⁶ Unpublished: JS Collins 'An analysis of the voluntariness of refugee repatriation in Africa' Unpublished LL.M thesis, University of Manitoba 1996

⁶⁷ The new Times (n 65 above)

⁶⁸ www.alertnet.com (accessed 23 September 2009)

Refugee return has significance in a number of respects. Cuny and Stein believe that "...when refugees make a decision to return, they are making a move to re-empower themselves."⁶⁹ Return has meaning beyond individual homecomings. Refugee return in many ways signals the real end of the conflict and a hope that a country can restore itself. Also citing the situation in the DRC, the former UN High Commissioner for Refugees Ruud Lubbers has suggested that the drive to repatriate can itself even act as a catalyzing instrument for peace.⁷⁰ Indeed, for ordinary men and women, the safe return of friends and relatives who had been living in exile for many years can be a more meaningful and moving experience than any number of formal peace agreements and UN resolutions.⁷¹ Even those who pass beyond the threshold and are eventually settled in areas of peace and prosperity, many still remain socially marginalized, often without employment and prone to depression engendered by their sense of alienation.⁷²

2.3 The right to return to ones' country: The obligation of the state of origin:-

The country of origin has the responsibility, on receiving back refugees, to facilitate their resettlement and grant them the full rights and privileges of nationals of the country, not to discriminate against them and subject them to the same obligations.⁷³

Over the years, Rwanda has experienced intermittent conflicts that have led to displacement of large segments of its population at different times in the last five decades. While there were internal displacements affecting the population, it is the displacement of persons to external refuge that still has repercussions to the country.

The 1994 Rwanda genocide⁷⁴ produced a million of refugees fleeing to neighboring countries. Rwanda refugees have existed even before the genocide as the ethnic strife had always been going on for years before the genocide. As pointed out by the United Nations High Commissioner for Refugees (UNHCR) Director of Africa Bureau: "The

⁶⁹ Stein C & Reed P *Repatriation During Conflict in Africa (1992)* 20

⁷⁰ IRIN Great lakes: IRIN INTERVIEW WITH UN High Commissioner for refugees Ruud Lubbers , August 2003

⁷¹ Crisp (n 9 above) 173

⁷² Chimni (n 52 above) 346

⁷³ Article 5(3) 1969 OAU Conventions

⁷⁴ The Rwanda Genocide was the 1994 mass killing of hundreds of thousands of Rwanda's Tutsis and Hutu political moderates by Hutus under the Hutu power ideology. Over the course of approximately 100 days, from the assassination of Juvenal Habyarimana on 6 April through mid-July at least 800,000 people were killed.

agency began organizing emergency aid in the early 1960s for several hundred thousand Rwandans who had fled ethnic conflict inside their country.”⁷⁵

The 1959/60s conflicts caused displacements of hundreds of thousands into neighboring countries. Another conflict erupted in 1973 displacing more people adding thousands more to refugee camps in neighboring countries of Tanzania, the DRC, Burundi and beyond.⁷⁶ Adding to the already existing Rwandan refugee population, the 1994 genocide forced 2 million people to exile joining another 1.4 million in long-term exile.⁷⁷ In late 1994 and early 1995, a large part of the old caseloads⁷⁸ returned en mass to Rwanda.⁷⁹

2.4 Exercising the right to return: Repatriation of Rwandan refugees:-

Just as the instability in Rwanda goes as far back as the 1960s, so the desire to have Rwandan refugees repatriate back to Rwanda started years back before the genocide of 1994. The first formal effort was laid down by a protocol on return and reintegration drafted under the Arusha Peace Accords of 1993⁸⁰, which resulted into the return of tens and thousands of Rwandans being exiled in the neighboring countries. Even since then, and now than ever, the government of Rwanda has been actively involved at calling back all Rwandans who are in exile, to go back and rebuild their nation, the government has even given deadlines and ultimatums for refugees to go back home⁸¹. The country’s former Ambassador to Uganda, proudly said in an interview “For Rwanda, the impetus to

⁷⁵ K Doherty ‘Rwanda Recovery: UNHCR Repatriation and Reintegration Activities in Rwanda from 1994-1999’ (2000) A UNHCR Rwanda Publication

⁷⁶ J Van Barel & P Vervimp ‘Child survival and fertility of refugees in Rwanda’ *Journal of population* (2005)

⁷⁷ Speech by H.E MR. Manzimhaka Patrick, Minister of Rehabilitation and Social Integration, delivered at the UN Habitat Conference in Istanbul on 11 June 1996 (accessed on 26 September 2009 at <http://www.un.org/conferences/habitat/eng-stat>)

⁷⁸ The first wave of returnees who had left the country from 1959 onwards and started to return in 1994 when the RPF took control of the country

⁷⁹ Alert Net Reuters foundation ‘Act rapid response payment: Rwanda (Refugees from Tanzania)’ at <http://www.act.intl.org>

⁸⁰ Consisted of a general agreement and six protocols of which the first is the protocol of repatriation of refugees and the resettlement of internally displaced persons. The Rwanda government and the RPF signed the peace accord agreeing to the rule of law, democratic governance, power sharing, and a speedy, orderly and peaceful voluntary repatriation of refugees and internally displaced (August 4 1993). The repatriation program aimed at ensuring among others, that the repatriation enhances both political and economic stability of the country.

⁸¹ The government of Rwanda gave some 17,000-18,000 Rwandan refugees living in Nakivale refugees in Uganda a deadline that by July 31st to go back home. Many of these refugees remain skeptical of the assurance given by the government, and claim it isn’t safe enough to return. (Report by Ben Simon of The Christian science monitor; accessed at <http://www.csmonitor.com> on 25 August 2009)

support repatriation is national pride.”⁸² The Uganda repatriation operation, which began on May 12, will see all the estimated 20,000 refugees in Ugandan camps return to Rwanda by the end of July this year.⁸³

Encouraging Rwandan refugees to repatriate to Rwanda, Home Affairs Permanent Secretary Peter Mumba is quoted as saying "Rwanda has changed for the better. There are many developmental projects taking place. I advise the Rwandese refugees to seize this opportunity to go home.”⁸⁴

After signing of a tri-partite agreement⁸⁵ with the UNHCR and Uganda in July 2003, that was to facilitate the return of about 25,000 Rwandan refugees in Uganda, the head of the Rwanda delegations (who then was also the chairman of the Rwanda Reconciliation Commission), clearly stated: “Upon present time we have repatriated 3.3 million Rwandan refugees’ appealing to all the refugees to go back to Rwanda to join the government in the development of the Central African country.”⁸⁶

Rwanda has concluded tripartite agreements with UNHCR and the various countries who continue to host Rwandan refugees.⁸⁷ To this end, by January 2004, tripartite agreements setting out the framework for refugee return operations had been negotiated between Rwanda, UNHCR, and host nations across Africa, including Burundi, Central African Republic, the DRC, Malawi, Mozambique, Namibia, Tanzania, Uganda, Zambia, and Zimbabwe.⁸⁸

The signing of these agreements has resulted in a number of Rwandan refugees electing to voluntarily return back to their country from different countries of refuge.

⁸² As above

⁸³ The new times (n 65 above)

⁸⁴ D Williams ‘Is Rwanda safe? An inquiry into the reluctance of the Rwandan refugee community to repatriate’ Jesuit Refugee service, 16 August 2004

⁸⁵ An agreement signed between a refugee host country, a refugee country of origin and UNHCR setting out the terms, procedures, modalities and conditions within which refugees would be voluntarily repatriated and integrated into their country of origin. The agreement sets out binding obligations to the three main contracting parties, to co-operate among each other, and places upon the country of origin duty to establish and reinforce administrative and judicial security, ensure equal enjoyment of rights and public services to . It also establishes a refugee repatriation commission charged with *inter-alia* monitoring the implementation of measures to facilitate return and reintegration of refugees, providing information of the progress made and difficulties encountered and advice the contracting parties on measures to be taken to overcome the difficulties.

⁸⁶ ‘Rwanda refugees in Uganda start repatriating’ Xinhua News Agency 11 January 2004

⁸⁷ Williams (above n 84) 64

⁸⁸ As above

Rwanda has been eager to seek and generate support for return from the international community. As President Kagame declared on January 31, 2003:

“It is my intention to request the international community to continue to support Rwanda in carrying through with these meaningful and historic processes, which will deliver on the expectations of both the people of Rwanda and the international community.”

The most current statistics reveal that from 2000 to 2008 a total of 57,537 Rwanda refugees repatriated from the North Kivu alone. The figure does not cover spontaneous returns. During 2002-2003 a total of 37,813 refugees from Tanzania, the DRC and Zambia repatriated back to Rwanda with the assistance of UNHCR.⁸⁹

Recently, visiting Rwandan refugees hosted in North Kivu, the UN High Commissioner for refugees, Antonio Guterres noted: “Rwanda has ensured that a remarkable number of refugees return home. In fact, it is one of the biggest numbers of returnees registered.”⁹⁰

2.5 Summary findings

The chapter has provided a background to causes of refugee flows, to which bad governance, war and violation of human rights have been identified. The state has the obligation to protect its citizen and that the state should refrain from violating human rights of its citizen. The state also has the obligation to receive back returning refugees and to facilitate their reintegration into their communities. The state duty in this regard is codified in various International and national human rights instruments. The right to return to one's country following exodus has also been confirmed as an unconditional entitlement that is spelled out in various international and national legal documents. It has also been gathered from the foregoing discussion that to facilitate the rights of its refugees to repatriate, Rwanda has been signing several agreements with the UNHCR and other parties. The country has also been actively involved at calling back Rwandan refugees to return back to Rwanda and help build their country.

⁸⁹ Report of the Secretary general 'Assistance to refugees, returnees and displaced persons in Africa' UN GA 8 September 2003 in compliance with General Assembly resolution 57/183 of 18 December 2002

⁹⁰ 'UN Refugee chief hails Rwanda on Repatriations' www.newtimes.co.rw

CHAPTER THREE: Reintegration of refugees: Rwanda's challenges and experiences

3.1 Post conflict reconstruction in Rwanda

Any efforts to rebuild a war-torn society and embark on development must incorporate the sustainable reintegration of returnees if reconstruction is to be effective and successful. Returnee reintegration is not just about physical or economic re-adjustment but also a process linked closely to the task of reconciliation after war. The fact that transition from war to peace may be disrupted if returnees are not fully reintegrated into their societies of origin goes beyond simply the economic aspects of post-war recovery.⁹¹

Conflict undermines the ability of states to protect and serve the needs of their citizens. War to peace transition implies social, economic, and political transformation to bring about citizen security, rule of law, more equitable distribution of resources, functioning markets, responsive and effective governance, and active civil society and basic trust. These are the building blocks of durable peace and development, where governments and society must share a political will to peace and change.⁹²

According to an analyst, as long as significant portions of a society's population are displaced, the conflict has not ended. There can be no hope of normalcy until the majority of those displaced are able to reintegrate themselves into their societies.⁹³ Getting the refugees home, a difficult task, is only half the challenge. Helping the returnee populations become self-sustaining, productive members of society and facilitating their social and cultural integration remain the other half of the challenge.⁹⁴ Repatriation is therefore, not a simple mission accomplished at the time at which the refugees re-enter their country of origin. Sustainable reintegration is an even more challenging concept because it goes beyond the initial period of return and implies

⁹¹ Stiefel 'Rebuilding after war: Lessons from the war-torn societies Project' 14

⁹² PW Fajer *Post conflict reintegration and reconstruction: Doing it right takes a while* in Niklans Steiner et al *Problems of protection: The UNHCR, Refugees and Human Rights* (2003) 21

⁹³ S Holtzman 'Post conflict reconstruction' Environment Department Work in Progress, Washington DC World Bank (2002) 29

⁹⁴ US Committee for Refugees 'Getting home is only half the challenge: Refugee reintegration in war-ravaged Eritrea' (2004) 8

permanency and stability. Helping displaced populations to return and reintegrate can therefore simultaneously address the root causes of a conflict and help prevent further displacement.⁹⁵

As Rwanda attempts to recover from the genocide and civil conflicts trauma, it has an opportunity to make a contribution not just to the history of genocide, but also to the pursuit of justice. If the genocide was widespread, so is Rwanda's innovative response.

3.2 Conditions necessary for reintegration in Rwanda

Re-integration of returning refugees must be seen as a process, and not an event that takes place within a specific social, political, and economic context.⁹⁶

The most successful return and reintegration processes have been those where 'pull' factors have been created in areas of origin through upgrading of basic services, creation of livelihood opportunities and, most importantly, the establishment of law and order. For example, returnees who have left their places of displacement because of 'push' factors such as acute discrimination or overt hostility by local authorities or populations, need the assurance that the same are being addressed before they decide to return.⁹⁷ The process entails recovery of full rights and access to political, legal and judicial benefits.⁹⁸ An inclusive social system is crucial to reintegration of ethnic groups and to establish a unified national consciousness.

Bulto rightly notes that one of the means of achieving unity is submitting all citizens to the same rights and equal access to public resources and by providing for a supreme legal basis for all Rwandans to share in the spirit of national unity.⁹⁹

The most important element in creating such a regime is the will of national authorities to fully accept the returning citizens into the national fabric, and to promote human rights and democratic practices.

A number of Rwandan refugees, who fled ethnic turmoil, have and are still returning in large numbers, thousands more are still reluctant to return despite the government's

⁹⁵ Koser K *The return of refugees and IDPs and sustainable peace* (Feb 2008) 2

⁹⁶ Stein B *Repatriation and reintegration: durable solutions?* (2004) 1

⁹⁷ S. Kleine-Ahldbrandt 'Learning lesson from IDP resettlement: Villagisation in North-West Rwanda' *Forced Migration Review* (2004)

⁹⁸ Opondo 'Refugee repatriation in the Horn of Africa: A contextual Overview of some socio-economic, Legal & Administrative constraints (yr)

⁹⁹ S Bulto 'The promise of new constitutional engineering in post-genocide Rwanda' *African Human Rights Law Journal* (2008) 195

efforts to convince and assure them that it is safe, even with reports from colleagues who undertake the go and see visits in Rwanda¹⁰⁰. At the end of 2003, approximately 80,000 Rwanda refugees remained scattered throughout Central and Southern Africa, resisting strenuous efforts by both the Rwandan government and the international community to persuade them to go home. There are a range of legitimate reasons why many of those bona fide refugees who are still in exile fear return completely unconnected to culpability for acts relating to the genocide.¹⁰¹

Various reasons have been advanced by these refugees, some of which have been discussed in this chapter.

It should be noted that, the refugees, displaced persons and former combatants who return following war are certainly victims, but more often than not, they also have been direct or indirect participants in these hostilities. Therefore, their successful reintegration is fundamental to reconciliation and a durable peace. In several countries, return of refugees is an essential part of the transition to peace, rather than simply a result of it.¹⁰²

3.3 Challenges to reintegration in Rwanda

There are social, legal, economic, political or governance factors that militate against the smooth reintegration of refugee returnees in their countries of origin. While reintegration has its own challenges, such as being forced to return, not being able to carry all one's belongings, and loss of one's meager possessions, the challenge of starting a new life once in one's own country can be daunting. In other words, the choice to return may be an easy one, but returns can also be accompanied and marked by the start of a challenging process in the restoration of livelihoods and social protection. As in many other post-war situations, reintegration of returnees is a complex process. However, sustainable reintegration is an even more challenging concept because it goes beyond the initial period of return and implies permanency and stability.

¹⁰⁰ Normally as a tripartite agreement is reached, a go & see visit is organized in partnership with the UNHCR, whereby volunteers from the refugee community go back to their countries of origin to assess the existing conditions before they make a choice of whether to return or otherwise. These volunteers then go and report back to their fellow refugees in the camps and leave them to make a final choice.

¹⁰¹ Human rights first 'A decade of unrest: unrecognized Rwandan refugees in Uganda and the future protection in the great lakes, A case study' April 2004

¹⁰² UNHCR 'Going Home: Voluntary Repatriation, The state of the world's refugees, The challenge of protection' (1993)

This part therefore, discusses five major challenges that Rwanda faces at ensuring a sustainable return and reintegration of refugees. The challenges discussed fall under democracy and governance, freedom of expression and the genocide ideology, the gacaca, rule of law and judicial independence, land issues and suspicions and mistrust within the community.

3.3.1 Democracy and Participation

People who are physically home but are not participating in the economic and political life of their country are still uprooted persons.¹⁰³ Participation in governance entails not only voting rights, but the right of all citizens to be consulted and to play a part in the formulation of policies that affect their lives.

The right to participate is provided under the ICCPR¹⁰⁴, the ACHPR.¹⁰⁵ The UN Human Rights Committee (UNHRC) has observed that the right to political participation lies at the core of democratic government.¹⁰⁶

The right is expressly entrenched in the Rwandan Constitution, which clearly provide that the principle governing the Republic is government of the people, by the people and for the people, and that all power derives from the people. The Constitution goes further by providing for the determination to fight dictatorship by putting in place democratic institutions and leaders freely elected by Rwandans. It recognizes a pluralistic democracy, multi-party system of government and equitable power sharing.¹⁰⁷

People's participation in the decision-making process is a feature of democracy and rule of law. Moreover, the participation of refugees and internally displaced persons (IDPs) in post conflict elections is critical to ensure governance that is legitimate and accountable. Inclusive electoral processes in post-conflict societies can create an environment for reconciliation and lay the foundation for the development of strong democratic institutions. Particularly in divided post-conflict societies, participatory elections provide a mechanism to attain meaningful reconciliation and sustainable peace. It is important that

¹⁰³

¹⁰⁴ Article 2 & 25

¹⁰⁵ Article 13

¹⁰⁶ HRC General Comment No.25: The right to participate in public affairs, voting rights and the right to equal access to public service (Article 25), 12 July 1996; UN Doc. CCPR/C/21/REV.1/Add.7; paragraph 1 available at <<http://www.ohchr.org/english/bodies/hrc/comments.htm>>

¹⁰⁷ Preamble & articles 2, 8, 9

the legal structural pre-requisites are in place so that every individual has the opportunity to participate as an equal member of society.¹⁰⁸

In Rwanda, the legal structures and institutions providing for democracy and participation exist, but attaining their genuine objective of fair and equal participation has been put into question in various reports and by some Rwandan citizens who were interviewed.

As an interviewee notes:

There is also a feeling I have noticed among some people (especially those who in some way can be associated with the former regimes in Rwanda) that they do not have a strong say in national politics. And this has been compounded by the common occurrence in this country where policies are just dumped on people. Of course when government wants to start something, it will go on radios and TV, but it will largely be emphasizing the good of its policy, other than to get the views of the public.¹⁰⁹

Civil society participation has been an issue for decades in Rwanda, just as noted by Zorbas “development interventions are still reported to be top-down in style, not allowing room for local creative problem-solving.”¹¹⁰

The electoral process itself has been questioned and condemned by international observers and International human rights organizations. Amnesty International for example, wrote that:

The past elections (2003) were marred by severe irregularities and were condemned by international observers.¹¹¹ This included a government crackdown on the political opposition in the run up of elections.

The inability to air views and criticize government policies, even in a constructive manner, is bound to create tension and heighten resentment as it effectively eliminates democratic space and maintains a high degree of suspicion between fellow Rwandans.

There have been similar reports on government crackdown on the political opposition in the run-up to the elections.¹¹²

¹⁰⁸ Caritas Europa ‘Integration: A process involving all’ (2004) 8

¹⁰⁹ Interviewed at the University of Butare, Rwanda on 11 September 2009

¹¹⁰ E Zorbas ‘Reconciliation in post-genocide Rwanda’ *African Journal of Legal Studies* Vol. 1. (2004) 29

¹¹¹ Amnesty International ‘Opposition silenced in run-up to elections in Rwanda’ August 2003

In most post-conflict societies without a tradition of democratic governance, the institutional challenge inheres in building systems of accountability, transparency and participation.¹¹³ It also includes the institutions that enable ongoing democratic rules to manage conflicting interests and deliver the benefits of democracy, in order to consolidate and so become the society's trusted and natural system. How (and whether) people participate in civic life reflects how they see the world and who their friends are.¹¹⁴

There is a correlation between political participation and political trust; increased social trust may generate political trust because the citizens feel that their leaders are competent to monitor local government.¹¹⁵ The participation of displaced populations and returnees in elections has an impact beyond the legitimization of the outcome of an election; their participation promotes the success of reconciliation and nation-building processes in divided post-conflict societies.¹¹⁶ It is clear from the deduction above that the culture of democracy and genuine participation of the people of Rwanda and in particular returnees, as much as it is expressly provided for in the Constitution and other relevant International instruments that Rwanda is party to, is not fully respected in practice, which has caused the reluctance of some Rwandan refugees to return, and limited the participation rights of those who have already returned.

3.3.2 The rule of law and judicial independence

A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments on its rights and freedoms under the law.¹¹⁷

¹¹² IRIN Rwanda 'Amnesty International criticizes Government orchestrated crackdown on political opposition' 23 April 2003

¹¹³ Khadiagala GM 'State building: Governance in post conflict situations: The case of Rwanda' (2004) 13

¹¹⁴ EM Uslaner 'Civic engagement and particularized trust: The ties that bind people to their ethnic communities' (1997)

¹¹⁵ M Fennema & J Tillie 'Civic community political participation and political trust of ethnic groups' (2001) 2

¹¹⁶ B Lacy 'Building accountability, legitimacy and peace: Refugees, internally displaced persons and the rights to political participation' (2005) 1

¹¹⁷ The judicial integrity group (2007) Commentary on the Bangalore principles of judicial conduct

Gacaca

The *Gacaca* process was initiated as a traditional form of local participatory justice, which did not only aim at helping to rebuild the communities that had been so profoundly damaged by genocide, but also to help the obscene backlog of cases piling up in the ordinary courts. The *Gacaca* plan aimed at linking two important goals of retributive justice and community rebuilding with the goals to reconstructing communities and re enforcing traditions. The *Gacaca* courts are governed by the Organic Law.¹¹⁸ The *Gacaca* law that created the *Gacaca* courts was officially promulgated on the 26 January 2001, tasking the *Gacaca* courts with investigating and prosecuting crimes committed between 1st October 1990 and 31st December 1994.¹¹⁹

For the Rwanda government, *gacaca* is the main tool for reconciliation in Rwandan society. The principles and process of *Gacaca* are most closely aligned with a restorative type of transitional justice, and one of its key restorative components is truth-telling. However this component is not realized across the country. Article 54 of the *Gacaca* law provides for the right to the procedure of confessions, guilty plea, repentance and apologies for any person who committed offences of genocide.¹²⁰

Viewed as an instrument to overcome the general lack of evidence available to try suspects of genocidal crimes, the confession and guilty pleas were also intended to establish the truth about the genocide and to serve justice and reconciliation.¹²¹

A pre-set fixed reduction in the penalty is available to all perpetrators in return for an accurate and complete confession, a plea of guilty to the crimes committed, and an apology to the victims.¹²² The confession procedure is the cornerstone of justice for the genocide, and thus for the *Gacaca*, however, as observed, confessions and forgiveness are many but they lack the necessary qualities.¹²³

The *Gacaca* process was believed from its conception to having the ability of removing suspicion among Rwandans, dispelling rumors and distrust as well as helping the victims

¹¹⁸ Article 152 Constitution of Rwanda 2003

¹¹⁹ Art. 1 Organic law No. 16 2004

¹²⁰ Organic Law no.13 of 2008

¹²¹ Crisp (n 9 above) 35

¹²² Article 54 & 58 Organic Law 2008

¹²³ www.pri.org

of genocide to know where the bodies of their relatives were thrown or buried so they can bury them in dignity.¹²⁴

While it remains important that no innocent person be punished, it is not obvious what weight is given to statements of those perpetrators who name others while making their confessions. There is no doubt that the reward for the confession procedure also encourages false and partial confessions. In some instances, prisoners or accused also attempt to shift the blame, accusing people who are dead or in exile.¹²⁵ As noted by an interviewee who says that even though she opted to return to Rwanda from Uganda where she lived as a refugee for over 14 years, her husband and their 3 children, decided to remain in Uganda for fear of being falsely and maliciously indicted before the *Gacaca*. She further adds that her husband's close friend is imprisoned and face charges before the *Gacaca*, charges which he believes are unfounded, and politically motivated.¹²⁶ The reluctance of several refugees to return is attributed to the fact that they do not trust the *Gacaca*. Various reports have documented on the inadequacy and low standards of the evidence and confessions produced in the *Gacaca*. The *Gacaca* has been accused for the lack in fair trial standards.¹²⁷

Kamaraba told her story of how she had returned to Rwanda once before in 2006 and had found herself arrested without reason, an experience which had frightened her and convinced her to remain in Uganda.¹²⁸

Some Kibati camp residents expressed concern to Human Rights First that the *Gacaca* process was not solely driven by a need for justice and reconciliation. In particular land issues were cited. A number claimed that the desire to hold onto lands which had been confiscated from refugee families would foster unfounded accusations of involvement in the genocide against returning refugees. It was clear also that some feared not just the vagaries of the formal systems of accountability but also extrajudicial "revenge" killings by both genocide survivors and perpetrators.¹²⁹ Violence against genocide survivors and

¹²⁴ Gacaca Law: Organic law No. 13 of 2008

¹²⁵ As above n 122

¹²⁶ Interviewed at Butare on 22 April 2009

¹²⁷ As above no 122

¹²⁸ L Konghim 'Rwanda: Returning refugees need more than comforting words' 18 May 2008

¹²⁹ IRIN 'Rwandan refugees reluctance to return home' 3 March 2004

witnesses claimed at least 16 lives. Unidentified individuals reportedly killed several witnesses to the 1994 genocide throughout the country to prevent testimony and undermine the gacaca.¹³⁰

Government officials are also known to have attempted to influence judicial outcomes.¹³¹ It has been noted that because the government has not authorized gacaca courts to consider human rights abuses allegedly committed by the Rwanda Patriotic Front (RPF) during the 1994 genocide, some human rights groups criticized the gacaca courts for representing a form of incomplete or one sided justice and for being biased against those who acted on behalf of the former government.¹³²

The widespread involvement of many, though certainly not all Hutu in the genocide has led to many public officials to speak as if all Hutu are guilty of this crime. And when officials responsible for the administration of justice and the police make such statements, they promote an atmosphere where it is difficult to assure judicial processes that are impartial and free of bias.¹³³

A Rwandan refugee interviewed in the DRC had this to say about why he is still very reluctant of returning to Rwanda even though he would love to:

I love my country Rwanda, being a refugee is not the best thing that you can be, but whenever I remember the gacaca, and how it is biased, I change my mind about going home. Although it hurts me that I cannot connect to my mother Land, I have to be a refugee to save my life and that of my wife and our 6 children. I do not trust the gacaca, and now I hear that witnesses and survivors are being targeted and killed and the government is doing nothing about it.¹³⁴

Another interviewee who is still living as a refugee in Zambia says:

Home is home and I would like to go back. I am not sure whether to go back or remain in Zambia because we are being told that peace has not returned and that people are still being persecuted for crimes they did not commit.¹³⁵

Adding:

¹³⁰ US Embassy 2009 HR report

¹³¹ As above

¹³² IRIN (n 128 above)

¹³³ HRW Sarah Wells et al

¹³⁴ Interviewed in Goma/ North Kivu on 24 April 2009

¹³⁵ 'Rwandese refugees yearn for information on peace plan' *Times of Zambia* 12 June 2004

when peace, justice, and democracy prevail in Rwanda we will return on our own, with or without UNHCR assistance. Recent reports on the killing of genocide survivors have also prevented some refugees from going back to Rwanda.

The Rwanda constitution affirms the judiciary as the guardian of rights and freedoms of the public, also recognizing that the three organs of the state are separate and independent from one another.¹³⁶ However, reality contradicts what is on paper.

Judicial authorities, it was noted, operate in a political context where the executive continues to dominate the judiciary and where there is an official antipathy to views diverging from those of the government and the dominant party, the RPF.¹³⁷

It is the conviction of many Rwandans, both returnees and those still in exile that, unless the Gacaca courts are proven to sufficiently protect the innocent who have been wrongly accused, the hopes for return, sustainable reintegration, reconciliation, healing, and peace are far from becoming a reality, and justice may be compromised if there is little done to deter false accusations and confessions. Although it can be assumed that some of this number are guilty of committing crimes during the 1994 genocide and wish to avoid prosecution (which would, if true, exclude them from protection as refugees) many others arguably possess well-founded fears of persecution should they return to Rwanda.¹³⁸ People need to have confidence in the judiciary and not to have perceptions of bias and impartiality.

3.3.3. Oppressive legislation: The genocide ideology legislation and freedom of expression:

Freedom of expression is a fundamental human right that is crucial to the process of reintegration. It is recognized as a core value and bare minimum of an open society, essential to the discovery of truth, the promotion of democracy and personal fulfillment.¹³⁹ The right, however, is not absolute.¹⁴⁰ Public order, safety, health, and democratic values justify the imposition of restrictions on this right, however, as Bulto

¹³⁶ Article 44 & 60 Rwanda constitution 2003

¹³⁷ Human Rights Watch 2008 July report

¹³⁸ As above

¹³⁹ Bulto (n 99 above) 186

¹⁴⁰ Art 19 ICCPR

notes, the reasons for limiting a right as fundamental as the right to expression need to be exceptionally strong.¹⁴¹

In Rwanda, the need to curtail the potentially destructive role of the media saw the post-genocide government limiting certain modes of expression through constitutional (article 13 & 33)¹⁴² and other legislative¹⁴³ prohibitions. This culminated in June 2008 in the adoption by Parliament of a law which made “genocide ideology” a crime.¹⁴⁴ However, the lack of a clear and precise definition of this crime has led to situations in which it has been abused, raising concerns that it will be increasingly used as a tool to secure power, by suppressing dissent, for the ruling party.¹⁴⁵

Article 3 of Genocide ideology law states that the crime of genocide ideology is manifested in any behaviour characterized by evidence aimed at depriving a person or a group of persons of common interest of humanity in the following manner:

1. Threatening, intimidations, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting to hatred;
2. Marginalise, laugh at one’s misfortune, defame, mock, boast, despise, degrade, create confusion aiming at negating the genocide which occurred, stirring up ill feeling, taking revenge, altering testimony or evidence for the genocide which occurred;
3. Kill, planning to kill or attempting to kill someone following the genocide ideology.¹⁴⁶

¹⁴¹ Bulto (n 99 above) 187

¹⁴² As above

¹⁴³ Article 166 of the Rwandan Penal Code 21/77 criminalized ‘any speech made at public meetings or in public places which is designed to cause the citizens to rise up against one another.’

¹⁴⁴ Article 3 of Law 47/2001(criminalizes divisionism or sectarianism) and article 4 of law number 33/2003 of 06/09

¹⁴⁵ Human Rights Watch ‘Law and Reality’ July 2008

¹⁴⁶ As above

The legislation stipulates harsh sentences of between ten and twenty five years imprisonment and a fine of up to 1 million Rwandan Francs for first time offenders.¹⁴⁷ It covers not only the formal media but also individuals including children of the age between 12 and 18.¹⁴⁸ The confusion regarding genocide ideology as a crime was documented in Human Rights Watch report which confirmed during interviews with judicial practitioners that some had refused to pursue such charges because of the lack of a clear definition.¹⁴⁹ Such measures are creating a superficial sense of peace and are preventing reconciliatory efforts from gaining the momentum they require to achieve and maintain true peace and reconciliation in Rwanda. A total of 1,304 cases have been initiated in the courts for similar charges, involving genocide ideology.¹⁵⁰

Fear of persecution and arbitrary arrests has prevented several Rwandan refugees from returning despite government appealing to them to return and re-assuring them of a peaceful climate. An interviewee¹⁵¹ stated that her sister was arrested and charged with divisionism for a bona fide statement she made in the market. The statement was to the effect that her husband who is a refugee in North Kivu fears to return because he has no trust in the current government and that he heard innocent people were being arrested and charged both at the gacaca and under the genocide ideology legislation. She further went on by saying that, the genocide ideology law is not being fairly implemented, and has affected innocent people including returnees.

Many other returnees were in support of this view, and appealed that their government takes extra caution when implementing the genocide ideology legislation in order to protect people's rights. The government's suppression of any ethnically explicit language or affiliation is seemingly creating more tensions, as it requires a level of surveillance and repression that creates great fear and anxiety for everyone. It also prevents dialogue on these issues.¹⁵²

¹⁴⁷ HRW (n 142 above)

¹⁴⁸ Article...

¹⁴⁹ HRW (n 142 above)

¹⁵⁰ As above

¹⁵¹ Interviewed in Gisenyi on 23 April 2009

¹⁵² Fletcher school of law and diplomacy 'Imagine co-existence: Assessing refugee reintegration efforts in divided communities (2002) 8

It has been observed that campaign against 'divisionism' and 'genocide ideology' imposes the risk of serious consequences on persons who question official interpretations of the past and who would prefer other than the official vision for the future.¹⁵³ A score of jurists told Human Rights Watch researchers that the broad and ill defined charges of 'divisionism' or 'genocide ideology' have been frequently used to serve political or personal interests. Several prosecutors and judges have refused to pursue some of these cases saying they lack substance.¹⁵⁴ As noted, the government's continuing campaign against divisionism discouraged debate and criticism of the government. The government at times restricted freedom of speech and press by enforcing overly broad and vaguely defined laws.¹⁵⁵

Freedom of expression, it is suggested, is an essential method of achieving a stable community. The process of open discussion promotes greater cohesion in a society because people are more ready to accept decisions that go against them if they have a part in the decision making process. Freedom of expression thus provides a framework in which the conflict necessary to the progress of a society can take place without destroying the society.¹⁵⁶ The Rwandan government's promise to support the strengthening of democratic governance, including support for media and civil society participation, allow legitimate political expression seems to run contrary to the reality on the ground as an atmosphere of fear continues to reign within Rwanda's civil society.¹⁵⁷

Law is a tool of social integration, which can serve as modern society's basis of social solidarity. Law presents itself as a feasible means for achieving unity and contributes to better social cohesion.¹⁵⁸ Laws must be developed in an objective manner. If the law is to be implemented, with aims of achieving the good intentions of its very being, it has to be used as a tool of socializing communities into citizens of one nation; it should not be designed in a selfish ways by those in power.

¹⁵³ HRW (n 142 above)

¹⁵⁴ As above

¹⁵⁵ Embassy of the United States in Kigali Human Rights report 2009 at <http://rwanda.usembassy.gov/2009>

¹⁵⁶ AO Wierzynska 'Consolidating democracy through transitional justice: Rwanda's gacaca courts' 79 *New York University Law Review* (2004)

¹⁵⁷ Christian Aid 'It's time to open up: Ten years after the genocide in Rwanda' (2004) 12

¹⁵⁸ D Bara-Erez 'Law in society: A unifying power or a source of conflict?' 2006

3.3.4 Ethnic Tensions, suspicions and mistrust:

Repatriation of refugees to their home land is a possible sign that safety and control over one's own life has the possibility of being restored, but it does not necessarily mean that the bond of trust and loyalty has been restored.¹⁵⁹

To trust is to believe that the results of somebody's intended action will be appropriate from our point of view.¹⁶⁰ The lack of trust often leads to political instability and unworkable political communities. Sometimes refugees flee the impersonal danger of a war zone, but more often they flee the violence and persecution aimed at them by their own government. Such governmental violence strains and can break the normal bond of trust and loyalty between the citizen and the state.¹⁶¹ Together with communication, interaction, and cooperation trust serves a major component of co-existence.

The challenge for Rwanda is to alleviate ethnic tensions through mediation and to prevent them from turning into violent conflicts.

Establishing social cohesion and trust after a period of mutual mistrust is a huge challenge. Indeed, Knight has suggested that the re-socialization of a population involves more than addressing immediate fears for security. Concerted efforts must be directed at dealing with the more entrenched cognitive and cultural dispositions that militate against the restoration of trust. It is not in any sense a short term palliative, but rather a long term prerequisite for the restoration of political stability.¹⁶²

The state has a preventive role that is set within a more positive responsibility: to manage ethnic diversity in a way that promotes tolerance within and beyond national borders, and clearing the climate of uncertainty. This has been one of Rwanda's post-genocide priorities.¹⁶³

The role of the Constitution in reversing the cause of the conflict is of paramount importance. The Constitution is based *inter-alia* on the principle of eradication of ethnic

¹⁵⁹ Kumar K *Rebuilding societies after civil war: Critical roles of international assistance* (1997) 12

¹⁶⁰ BA Misztal *Trust in Modern Society* (1996) 24

¹⁶¹ BN Stein *Reintegrating returning refugees in Central America* (1996) 4

¹⁶² J Knight *Institutions and Social conflict* (1992) 2

¹⁶³ Article 6 Rwanda Constitution 2003

and regional divisions and promotion of national unity.¹⁶⁴ The aspiration is to change the focus from ethnicity and race to the creation of a common Rwandan national identity. The constitution promises to addressing the problems underlying the Rwandan conflict, not only through its substantive guarantees, but also via the establishment of the necessary institutional framework For example, the, NURC that is responsible for the co-ordination and promotion of national unity and reconciliation¹⁶⁵, the NCHR, responsible for examining the violations of human rights committed on Rwanda territory by state organs¹⁶⁶, and the Commission for the Fight against Genocide (CFAG) charged with organizing a permanent framework for the exchange of ideas on genocide, its consequences and strategies for its prevention and eradication.¹⁶⁷

Yet trust is not fully restored in Rwanda, as observed from various reports and interviews. An interviewee from the (NURC) noted:

Building trust and making everyone feel safe is a major challenge that the post-genocide regime has to deal with. We have been intensifying our awareness campaigns and sensitization activities, to bring the people of Rwanda together, to facilitate co-existence and reconciliation. But still trust remains a major challenge. More effort is required to deal with this serious issue which has negative implications to our peace building efforts.¹⁶⁸

Another interviewee says:

There is plenty to be done but my feeling is that the country is on another course to trouble unless there is change in the politics of the country. There seems to be a time-bomb, as people brew with pain, fear, suspicion, mistrust etc. There is a growing inequality and people are feeling it, and more seriously, people are looking at the growing situation as one-sided.¹⁶⁹

You have to understand that at the moment, it is largely or only people who I can describe as “Hutu” who are out of the country in refugee camps in Uganda, DRC, Zambia, etc. When these people come back to Rwanda – which they many have refused

¹⁶⁴ Preamble to the constitution

¹⁶⁵ Article 178

¹⁶⁶ Article 177

¹⁶⁷ Article 179

¹⁶⁸ Interviewed at the NURC offices, Kigali on 22nd April 2009

¹⁶⁹ Interviewed on 16th September 2009, the interviewee was a refugee for over 30 years in Uganda

to, they tend to look at those they find in their villages suspiciously. They see the Hutus they find as people who have already been intoxicated and see Tutsis as people who are now in power. Though nobody talks about this openly, my work as a journalist has enabled me to find such bitter truth. The level of mistrust in this country is high and not a good sign.

Asked about what he sees as challenges to a durable return and reintegration of Rwanda refugees that are scattered throughout Africa, a returnee, formerly a refugee in the DRC for 18 years responds:

Government has since the birth of the FDLR rebels who are now in the jungles of DRC, describing them as *genocidaires*! This is not true because the FDLR rebel group includes some people who just joined from camps and did not participate in the genocide. So this has scared thousands of possible returnees because they feel they will be branded as such.¹⁷⁰

Wyss acknowledges the existence of mistrust among the Rwandan community, and notes: “this feeling of mistrust has also been fostered by the development of the new land policy and law, which largely took place behind closed doors.”¹⁷¹

It has been noted that without trust, a society hardly merits the name, a challenge that all too often confronts those who happen to be residents of disrupted states.¹⁷² It is the duty of the state as custodian of citizens’ rights, in its actions to clear any suspicions and mistrust, by fighting against any biasness, and subjecting all its citizens to equal rights and duties, free of prejudice. Sustainable reintegration is inextricably tied to rebuilding the social fabric and social capital of communities with an understanding of the causes of the conflict and a determined effort not to recreate these. Interventions must not privilege any category of returnee or privilege returnees vis-à-vis those that remained

¹⁷⁰ Interviewed on 26 August 2009

¹⁷¹ K Wyss ‘A thousand hills for 9 million people Land reform in Rwanda: Restoration of Feudal order or genuine transformation?’ (2006) at www.swisspeace.org

¹⁷² W Maley ‘Institutional design and the rebuilding of trust’ in Foundation of Peace *From civil strife to civil society: Civil and Military responsibilities in disrupted states* (2003) 3

behind.¹⁷³ Support for sustainable reintegration of groups and individuals are crucial for the recovery of post-conflict countries and to prevent their relapse into conflict.¹⁷⁴

3.3.5 Land issues

In any post-war country that is recovering and trying to reconstruct the destroyed economy and the social fabric, there is always the challenge of providing land access for returning refugees and internally displaced persons. Concerns such as, will the returnees get back the land they left behind? Will there be restitution for lost land? Or will they be resettled on an alternative land? raise great challenges to the government and other stake holders. As Ballard rightly argues, “the successful reintegration of refugee groups in rural areas often depends on people’s access to, and control over, productive land resources.”¹⁷⁵

In agrarian societies such as Rwanda, land has great value, as a means of production, and a hope for survival. It is also an element of identity and culture. It is said that if you hold land securely, it gives you confidence in the future.¹⁷⁶

As an attempt to deal with land issues in the country, in February 2004 Rwanda officially adopted a national land policy and in September 2005 a national land law came into effect. The land law seeks to establish a land system that is secure for all Rwandans, and bring to an end inequality in land access, marginalization and discrimination against groups. In December 1996, the Cabinet adopted a National Habitat Policy that focused on the construction of villages, the so-called *imidugudu* (an integral part of the new land law and policy) plan to relocate returnees and other Rwandans into grouped settlements. Although many people did move willingly into their new habitats, hundreds of thousands of others were forcefully expelled from their homes, often expropriated of land and/or even forced to destroy their own houses, in general without any of the promised compensation.¹⁷⁷

¹⁷³ As above

¹⁷⁴ Peace building Commission ‘Lessons learned on Sustainable reintegration in post conflict situations’ 28 May 2009

¹⁷⁵ BM Ballard *Refugee reintegration in rural areas: Land distribution in Ban Pha Thao, Lao PDR* (2003) 21

¹⁷⁶ J Bruce ‘Drawing a line under the crisis: Reconciling returnee land access and security in post conflict Rwanda’ (June 2007) at www.odi.org.uk

¹⁷⁷ Wyss (n 168 above)

Despite all the efforts that the current government, assisted by external interveners, has made, ongoing discrimination in the distribution of land, the growing concentration of large plots in the hands of political cronies as well as a tendency towards historical revisionism, raise doubts about the government's true intentions. This impression becomes even more pertinent in relation to the de facto exclusion of civil society from the drafting process of the new land law and policy. Moreover, or as a result, neither the policy nor the law adequately guarantees the protection of the interests of large parts of the rural population.¹⁷⁸ Thus, land access for returnees has been a problematic and potentially explosive issue. As noted, it is regrettably not uncommon for members of elite groups taking power after conflict to move very rapidly to appropriate land on their own behalf, taking advantage of the uncertainty and insecurity.¹⁷⁹ Several non-governmental stakeholders in Rwanda critically observe the disturbing repetition by the current government of certain discriminatory patterns in the distribution of land and resources.¹⁸⁰

The tensions and structural inequalities (e.g., distribution of land, wealth, political power) that existed prior to the genocide are still present. Some refugees have acknowledged that it may be possible to return home and live in safety, but only under the condition that they live apolitically and make no claims on their land and property which has been commandeered by the current regime. In other words, refugees can return in safety as long as they make no attempt to assert their fundamental human rights guaranteed under international law by treaties which the government of Rwanda has sworn to uphold under the new constitution.¹⁸¹ Land has long been a scarce and disputed resource in Rwanda; such trends have seriously undermined social harmony and reconciliation, and prevented some refugees from returning back to Rwanda.

The government has been favoring the old case load (mostly comprised of the Tutsi); who claimed to be more deserving of land after long years in exile, whereas the new case load refugees are argued to be "lazy" because of their "pampered time in the camps" in Zaire.¹⁸² Global IDP pointed out that the provinces of Gisenyi and Ruhengeri, once strongholds of the Habyarimana regime, have received considerably less assistance for village construction from the government and the international community

¹⁷⁸ As above

¹⁷⁹ As above

¹⁸⁰ As above

¹⁸¹ Amnesty International (n 110 above)

¹⁸² Pottier *Re-imagining Rwanda* (2002) 195

than the rest of the country.¹⁸³ Unequal distribution of land by social discrimination has been documented by various NGOs working in Rwanda.¹⁸⁴

As a consequence of these critical developments, local land disputes have become increasingly common. In 2001 the Ministry for Lands, Human Settlement and Environmental Protection stated that an estimated 80 percent or more of the cases coming before a prefect court were concerned with land. The same has been reported by the National Ombudsman whose office was established in early 2004.¹⁸⁵

Although officially there no longer exist any ethnicity in Rwanda, many of these cases are related to ethnic discriminations in the distribution of plots to returning refugees and their resettlement. As a result, the majority of the Rwandan population considers the land issue as the main obstacle in building lasting peace in the country, according to a survey by the NURC, held in 2001, land-related problems are considered to be the most serious and greatest negative factors hindering sustainable peace and reintegration of returnees. The prospects of returnees and those resettled depend on continuing reconciliation and the equitable distribution and management of scarce land.¹⁸⁶

Thus, in the end the new land policy and law remained an achievement of the Rwandan government, not of the Rwandan population, whose needs are much too often said to have been neglected to a large extent.¹⁸⁷

It is important that historical injustices are addressed, especially where they have played a role in generating the conflict. The situation as it is has the potential of threatening the fragile social equilibrium. It is a matter of serious concern to the Rwandan government to address, as addressing is significant in terms of reconciliation and consolidation of lasting peace, which will also benefit the returnees and act as an incentive for other refugees to repatriate back home. Today's increasing disagreements over land property should be a warning sign that such a development would be anything but favorable to Rwanda's reconciliation and the establishment of long-term peace in the country.¹⁸⁸

¹⁸³ Global IDP Project 'Ensuring durable solutions for Rwanda's displaced people: A chapter closed too early' (2005)

¹⁸⁴ CORDAD

¹⁸⁵ Swiss peace (n168 above)

¹⁸⁶ www.internal-displacement.org (accessed 30 September 2009)

¹⁸⁷ As above

¹⁸⁸ Swisspeace (n 168 above)

3.4 Summary findings

The chapter observes that the return and successful reintegration of refugees is to any efforts to reconcile and rebuild a war torn nation. Challenges as identified are many, falling under social, legal, political and economic.

From the foregoing deduction, it is clear that democracy is not yet a reality to some Rwandans and especially returnees, the judiciary has not been independent, some laws are being formulated to oppress and cater for political interests. Mistrust is still a major challenge, and land issues that are yet to be addressed. It can therefore be concluded that while the government of Rwanda is putting so much efforts at establishing the necessary frameworks, and creating an environment conducive for a sustainable return and reintegration of refugees, there still are major challenges to achieving this goal.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

4. Conclusion

This study sought to analyse the issue of return and reintegration of refugees as a durable solution to their predicament in exile. The focus of the exercise was to establish how successful and sustainable reintegration would be achieved in the context of post conflict reconstruction and in ways that contribute to peace, full enjoyment of human rights, reconciliation, development and reconstruction. The work focused on Rwanda which has experienced the most dramatic refugee returns of any country in Africa.

Despite these challenging phases and instabilities in Rwanda, the government of Rwanda has made tremendous advancements and commendable investment in legal change, for example the proclamation of new constitution with equal rights and duties for all, establishment of institutions and ministries charged with the promotion of human rights, reconciliation and reintegration; all these in a conscious attempt to woo back refugees to Rwanda to work together in the reconstruction of the country. However, the actual implementation of the provisions contained in the aforementioned laws, policies, programs and the functioning of the said institutions has been criticized and challenged as not being fair and impartial, which negatively impact upon the return and successful reintegration of refugees.

As Lyndon Johnson believes “It is not enough to open the gates of opportunity; all our citizens must have the ability to walk through these gates.”¹⁸⁹

Reintegration as discussed above is a major challenge to a durable return of refugees. While UN agencies and other International interveners are mandated to provide relief and development assistance, the responsibility for reintegration must perforce also lie with government institutions in the state in question. Several efforts and interventions have been and are still being undertaken from the International and Regional levels to support Rwanda in its reintegration programs and activities. These include the presence of humanitarian agencies like the UNDP, UNHCR, WFP, CARITS and other. The World Bank has also been supporting Rwanda in the effort to reintegrate returnees and

¹⁸⁹ Lyndon Johnson ‘LBJ and Equality of Outcome’ Howard University

reconstruct the country; the UN resolutions such as Resolution 51/30 of 17/12/1996 are worth mentioning.¹⁹⁰

Undeniably, therefore, political will is the essential ingredient for achieving a sustainable return, reintegration and reconciliation. Outsiders, no matter how intent they are on promoting dialogue and channeling resources at target populations, cannot make it happen in the absence of a genuine commitment and political will of the concerned Government.

The research identified lack of genuine democracy and equal participation, non respect for the rule of law absence of independent judiciary to impartially interpret the laws, absence of an affirmative plan of action to ensure that *dejure* equality evolves into *de facto* equality, oppressive laws with excessive judicial restriction, restriction of freedom of expression, suspicions, mistrust and ethnic tensions, and land issues as stumbling blocks to successful reintegration in Rwanda. In light of these challenges, the following recommendations are provided:

4.1 Recommendations:

Firstly, efforts should be made to remove any bias in the implementation of government policies. The government must strive for fairness and minimize feelings of discrimination or unequal benefits from post conflict services, and promote equal access to justice and other social services. Government of Rwanda should put into action what it has committed itself to do with regards upholding the rule of law, democracy and respect for human rights, by fighting social inequalities, promoting effective civil engagement, and make efforts to build and strengthen the capacity of Rwandan civil society to be able to engage in dialogue with government.

Secondly, government should implement an equitable distribution and management of the scarce resources including land. Disputes and claims arising from land should be resolved in a timely and fair manner. These include claims that members of the

¹⁹⁰ On international assistance to Rwanda for reintegration of returning refugees, the restoration of total peace, reconstruction and socio-economic development.

Rwandan army illegally occupy land formerly belonging to displaced people. It is hereby proposed that the Rwanda government establish independent and impartial land tribunals and/or courts to deal exclusively with land matters in an expeditious manner.

Thirdly, it is recommended that the government makes efforts to improve the performance and professionalism of the judiciary conform to international standards of due process of law. Respect for the principle of separation of powers and judicial independence guaranteed in the constitution is critical to achieving this. The judicial officer should comply with ethical values, code of conduct, independence and impartiality as a prerequisite for dispensation of justice as proclaimed at Regional and International levels.¹⁹¹

Fourthly, the government of Rwanda should conduct a regular review of its legislation to see if they actually serve the purpose of which they were intended to, and address identified gaps. Among the laws that should be reviewed is the Genocide ideology legislation which reflects excessive legislative restrictions; which has violated peoples' human rights and provides excessive limitation of freedom of expression creating an atmosphere of fear among Rwandans.

Fifthly, the government should make all efforts at ensuring that the coming 2010 presidential elections are inclusive, fair and participatory. To this end, sensitize and create maximum awareness to the returnees of their right to vote and participation. To this end, the government should strengthen and facilitate the relevant Ministries and the electoral commission that are charged with elections so that they can improve in dispensing of their functions for the benefits of all Rwandans.

Fifthly, the government of Rwanda should put in place a mechanism or system to do better follow-up on returnees, ensuring that their immediate and long term needs such as health, counseling, nutrition are met. In line with this, it should follow up on how the returnees are reintegrating into their communities, identify gaps and address them.

¹⁹¹ Bangalore Principles of judicial conduct (2002) & Resolutions of African Commission on Human Rights on judicial independence

Six, Constitutional bodies such as the Human Rights Commission should be strengthened to make the government accountable. The National Human Rights Institution should be guaranteed independence and pluralism so as to easily carry out their human rights mandate in accordance with agreed international standards such as the Paris Principles.¹⁹²

Seven, the government should respect and improve the peoples' right to information by educating returning refugees on government programs and policies to make them aware of what is going on in the affairs of their country, and have them fully and equally participate. In the same vein, there is need to intensify information campaigns and sensitization programs that will convince the pre-dominantly Hutu refugee population that they will not be stigmatized upon their return to Rwanda. The government of Rwanda should uphold its promise that returnees will be safe and protected in Rwanda.¹⁹³ The Rwanda population that is still reluctant to return need accurate information on the real picture of their country in order to make the decision of whether to return or otherwise.¹⁹⁴

Eight, while delivering of justice for the genocidaires is essential for the establishment of the rule of law in Rwanda, and in the international community more generally, the quest should not be implemented at the cost of fair trial standards such as presumption of innocence. The principles of a fair trial as expressly provided for in International as well as Regional Human rights instruments and resolutions including the African Commission Resolution on the Right to fair trial and legal assistance of 1999 and articles 7 & 126 of the ACHPR should be applied and respected.

Nine, as the gacaca is officially finalizing the hearing of cases this October 2009, there is great need for the gacaca judges assisted by the secretariat to verify confessions already made so as to make sure justice is fairly served and redress awarded to victims of false confessions. The law makes clear provisions for this verification.¹⁹⁵ Rwanda could explore on the need to establish a Truth and Reconciliation Commission to carter

¹⁹² Paris Principles relating to status of National Institutions 1993

¹⁹³ L Konghim 'Rwanda: Returning refugees need more than comforting words' (18/5/09) Refugees International: A powerful voice for life saving action at www.refugeeinternational.org (accessed 30 September 2009)

¹⁹⁴ IRIN 'Rwanda refugees reluctant to return home' 3 March 2004

¹⁹⁵ Article 63 Organic Law 13/2008

for the quest of justice and truth about the genocide that the people of Rwanda still have. Strengthen the ordinary courts where gacaca files will be transferred to in order for justice to be served in accordance to standards of fair trial and judicial independence.

On the part of the international donor community, it is recommended that

They makes close follow-up on implementation of programs and policies that they fund to make sure the same are in conformity with international human rights standards that the government of Rwanda has committed itself to uphold. It should monitor the use of funds and resources to make sure that the same is used towards achieving the intended goals.

Finally, it should provide more assistance to Rwanda in support of the massive return and reintegration programs, and other reforms aimed towards attaining a durable return and reintegration.

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Interviews

A total of 16 ground interviews were conducted, and 15 questionnaires administered to government officials (working in relevant ministries), returnees, refugees, service providers and normal citizens living in Rwanda.

Annexture: Research Questionnaire

A DURABLE RETURN AND RE-INTEGRATION OF REFUGEES IN RWANDA

1. Name and nationality (optional)
2. Town/district of residence before displacement:
3. Have you or any of your family members been a refugee?
4. Where did you/they live as refugees?
5. For how long did you/they live as refugees?
6. Briefly describe the challenges of a refugee life
7. When and why did you decide to return home from refuge?
8. How did you come back? Was it a spontaneous or assisted/organized return?
9. How do you find life here in Rwanda after returning? What challenges do you find as a returnee?
10. Are you aware of any efforts that the government has put into place at making return and re-integration durable? Mention these.
11. What are your perceptions on participation in governance and other development activities in post-genocide Rwanda as compared to former times?

12. What are your perceptions on land re-acquisition after return? Do you have any particular experiences to share?
13. What are your perceptions on the *gacaca* judicial process? Do you have any particular experiences to share?
14. What are your perceptions on application of the rule of law, the performance of the judiciary, and the respect for human rights and democracy generally in post-genocide Rwanda? Do you have any particular experiences to share?
15. Have you ever felt any sense of regret for your decision to return from exile? Why?
16. Do you see your return durable? How and Why?
17. Is that a general feeling shared by other returnees?
18. Are you aware of any external/international agencies working at assisting your government in its efforts to return and re-integrate Rwandans? Mention any you know of and what they do.
19. In your opinion, is the government doing enough to facilitate durable return and reintegration of Rwandese refugees?
20. What comments and/or recommendations can you give for a durable reintegration, peace and reconstruction of your country?
21. Kindly provide any other information that you see useful but not covered in the questions above: