



THE FAHAMU REFUGEE PROGRAMME

## **Rwanda: Cessation of Refugee Status is Unwarranted**

**Memorandum of Fact and Law  
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## Executive Summary

FAHAMU opposes invocation of the “cessation clause” of the 1951 Convention relating to the Status of Refugees (1951 Convention)<sup>1</sup> with respect to Rwanda. Thousands of persons fled Rwanda and are currently seeking protection abroad. These are not people escaping retribution from the 1994 genocide; they are those who have been fleeing Rwanda since that event because of the instability, ethnic strife, arbitrary judicial procedures, indiscriminate retaliation, political violence, intolerance of dissent, impunity, and lack of accountability that has followed. At present, there are more than 129,000 Rwandan refugees in at least 72 countries. The top five countries of exile—the Democratic Republic of the Congo with about 80,500, Uganda with 15,700, the Republic of Congo with 7,100, Zambia with 5,100, and Kenya with 2,500—host about 86 percent of them.<sup>2</sup>

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<sup>1</sup> UN General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, UN Treaty Series, vol. 189, p. 137, [www.unhcr.org/refworld/docid/3be01b964.html](http://www.unhcr.org/refworld/docid/3be01b964.html).

<sup>2</sup> Southern Refugee Legal Action Network, “Country of Residence for Refugees Originating from Rwanda,” [www.srlan.org/beta/index.php?option=com\\_content&view=article&id=938%3Arwanda-coi-stats&catid=37&Itemid=194](http://www.srlan.org/beta/index.php?option=com_content&view=article&id=938%3Arwanda-coi-stats&catid=37&Itemid=194).

Cessation is a drastic measure that would strip refugees of their legal rights and expose them to forcible repatriation and the risk of persecution. It can also split up families and break economic and social ties of years' duration. It should therefore only be invoked rarely and with extreme caution when there has been, according to the 2003 Guidelines on Ceased Circumstances of the UN High Commissioner for Refugees (UNHCR), 1) a *fundamental and profound* change in country conditions such that they no longer have a well-founded fear of persecution, 2) the change is demonstrably *enduring* and not merely transitory, and 3) the change enables refugees to enjoy the *protection* of the government.<sup>3</sup>

Rwanda has made much progress since the genocide but it did not do so through reliable constitutional, democratic, and peaceful means. It remains a fragile, volatile, authoritarian regime with little tolerance for dissent, freedom of speech, or independent human rights observation, reporting, or advocacy. Social and political fissures remain unresolved and the Government of Rwanda (GoR) maintains an overtly hostile attitude toward its citizens who have fled. Positive changes need time to consolidate and genuine national reconciliation remains untested. Moreover, since 2009, more Rwandans have been fleeing, and not just Hutu, but large numbers of *genocide survivors* who were never refugees before, as well as GoR officials and officers of its army. Now is not the time to revoke protection from Rwandan refugees.

## Cessation is a Drastic Measure with Stringent Legal Requirements

Since 2002, the GoR has repeatedly requested at each annual meeting of the Executive Committee (ExCom) of the UN High Commissioner for Refugees' (UNHCR) Programme that UNHCR declare a general cessation of refugee status, and lobbied other states to invoke the "cessation clause" of the 1951 Convention, with regard to Rwandan nationals. At ExCom's 60th Session in 2009, UNHCR declared that it would consider declaring cessation by December 2011.<sup>4</sup> According to ExCom Conclusion No. 69, "Cessation of Status," only Contracting States are competent to apply the cessation clause. UNHCR may declare that the competence of its office under its Statute toward certain refugees ceases to apply, and States may find such a declaration "useful," but this does not relieve States of the burden fulfilling the stringent legal conditions of the Convention and UNHCR remains involved in its supervisory capacity under Article 35 of the Convention.<sup>5</sup>

Article 1(C)(5) of the Convention provides for this when the refugee "can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality." Unfortunately, this proposal is in a context where the procedures for fair and accurate individualized determinations of

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<sup>3</sup> UNHCR, "Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)," February 10, 2003, HCR/GIP/03/03, [www.unhcr.org/refworld/docid/3e50de6b4.html](http://www.unhcr.org/refworld/docid/3e50de6b4.html) (Guidelines).

<sup>4</sup> IRIN, "Rwanda: Group refugee status could be lifted by late 2011," November 11, 2009, <http://www.irinnews.org/Report.aspx?ReportId=86982>.

<sup>5</sup> UNHCR ExCom Conclusion No. 69 (XLIII) 1992 Cessation of Status; UN General Assembly Resolution 428 (V), Statute of the Office of the United Nations High Commissioner for Refugees, December 14, 1950, [http://www.unhcr.org/cgi-bin/texis/vtx/home/.opendocPDFViewer.html?docid=3b66c39e1&query=Statute,¶6A\(ii\)\(e\)](http://www.unhcr.org/cgi-bin/texis/vtx/home/.opendocPDFViewer.html?docid=3b66c39e1&query=Statute,¶6A(ii)(e)).

refugee status in the national systems where many exiled Rwandans reside range from weak to nonexistent.<sup>6</sup>

According to UNHCR's 1997 Note on Cessation Clauses (Note on Cessation),

Given that the application of the cessation clauses would result in the withdrawal of refugee status, **the clauses should be interpreted in a restrictive way**, taking into account the guidance contained in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status [Handbook] and in the Executive Committee's Conclusion 69. **A premature or insufficiently grounded application of the cessation clauses can have extremely serious consequences as refugees who need to remain in the country of asylum may be forced to do so illegally, or may be threatened with refoulement.**<sup>7</sup>

According to the Handbook, "The cessation clauses are negative in character and are exhaustively enumerated. They should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status."<sup>8</sup> The Handbook emphasizes that

Circumstances refer to **fundamental** changes in the country, which can be assumed to remove the basis of the fear of persecution. **A mere – possibly transitory – change in the facts** surrounding the individual refugee's fear, which does not entail such major changes of circumstances, **is not sufficient** to make this clause applicable. A refugee's status should not in principle be subject to frequent review to the detriment of his sense of security, which international protection is intended to provide.<sup>9</sup>

According to the Guidelines,

Cessation of refugee status terminates rights that accompany that status. It may bring about the return of the person to the country of origin and may thus **break ties to family, social networks and employment in the community** in which the refugee has become established. As a result, a premature or insufficiently grounded application of the ceased circumstances clauses can have serious consequences. It is therefore appropriate to interpret the clauses strictly. ...

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<sup>6</sup> Amnesty International, "Uganda Forcibly Returns 1,700 Rwandan Asylum Seekers," July 16, 2010, [www.amnesty.org/en/news-and-updates/uganda-forcibly-returns-1700-rwandan-asylum-seekers-2010-07-16](http://www.amnesty.org/en/news-and-updates/uganda-forcibly-returns-1700-rwandan-asylum-seekers-2010-07-16):

[T]wo groups of Rwandans - both recent arrivals to Uganda – were subjected to an ad hoc procedure whereby authorities sent mobile RSD units to conduct decisions in the camps, without appropriate procedural safeguards. Despite provisions under national legislation, the UNHCR was not provided with access to the refugee status determination procedures of these two groups. "The flawed decision making process for these cases raises concerns that those returned have not been granted effective access to a fair and efficient asylum procedure," said Erwin van der Borgh. According to the UNHCR, since the beginning of 2010, 3,320 Rwandans have filed for asylum in Uganda. Ninety-eight per cent were rejected in the past six months.

<sup>7</sup> UNHCR, Note on Cessation Clauses, May 30, 1997, EC/47/SC/CRP.30, [www.unhcr.org/refworld/docid/47dfaf1d.html](http://www.unhcr.org/refworld/docid/47dfaf1d.html) (Note on Cessation), ¶18.

<sup>8</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979 (UNHCR Handbook), ¶116. **Boldface emphasis added throughout.**

<sup>9</sup> UNHCR Handbook, ¶135.

Cessation ... should not result either in persons being compelled to return to a volatile situation, as this would undermine the likelihood of a durable solution and could also cause additional or renewed instability in an otherwise improving situation, thus risking future refugee flows. Acknowledging these considerations ensures refugees do not face involuntary return to situations that might again produce flight and a need for refugee status. It supports the principle that conditions within the country of origin must have changed in a profound and enduring manner before cessation can be applied.<sup>10</sup>

Again, according to the Note on Cessation,

UNHCR recommends that in deciding whether to invoke the cessation clauses, States should take into account the consequences of cessation of refugee status. Difficulties which may follow from the invocation of the cessation clauses should be considered in both the decision and the timing of cessation. In particular, States should avoid a situation where the former refugee remains in the country of asylum without a definite legal status or with an illegal status. Human rights factors should be taken into account as well as previously acquired rights of refugees, particularly in regard to those who, due to their long stay in the country of asylum, have developed strong family, social and economic links there. States should consider appropriate arrangements which would allow refugees to maintain their established situation, including the grant of permanent residence status.<sup>11</sup>

There are three requirements for cessation. The change must be 1) genuinely *fundamental* [Guidelines ¶¶10-12] and 2) *enduring* [Guidelines ¶¶13-14] and 3) it must result not just in eradication of the well-founded fear but also in the *restoration of protection* [Guidelines ¶¶15-16]. According to ExCom's Conclusions 65 and 69, cessation is warranted only "where a change in circumstances in a country is of such a profound and enduring nature that refugees from that country no longer require international protection and can no longer continue to refuse to avail themselves of the protection of that country."<sup>12</sup>

1) To be "fundamental," changes must be **major, profound and substantial**.

According to the Note on Cessation,

Fundamental changes are considered as effective only if they remove the basis of the fear of persecution; therefore, such changes must be assessed in light of the particular cause of fear, so as to ensure that the situation which warranted the grant of refugee status has ceased to exist. The Executive Committee's Conclusion 69 reflects these principles, and stresses the importance of including the general human rights situation in the country of origin in the overall assessment of whether the changes can be characterized as "fundamental". ...

A complete political change remains the most typical situation in which this cessation clause has been applied. Depending on the grounds for flight, significant reforms altering the basic legal or social structure of the State may also amount to fundamental change, as may democratic elections, declarations of amnesties, repeal of oppressive laws and dismantling of former

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<sup>10</sup> Guidelines, ¶¶4, 6.

<sup>11</sup> Note on Cessation, ¶9.

<sup>12</sup> UNHCR ExCom Conclusion No. 65, "General Conclusion on International Protection" (1991), ¶(q), affirmed in Conclusion No. 69, "Cessation of Status" (1992).

security services. ... [W]here the return of former refugees would be likely to generate fresh tension in the country of origin, this itself could signal an absence of effective, fundamental change. Similarly, **where the particular circumstances leading to flight or to non-return have changed, only to be replaced by different circumstances which may also give rise to refugee-related fear, this cessation clause can clearly not be invoked.**<sup>13</sup>

According to Prof. James C. Hathaway's *The Rights of Refugees under International Law*,

The fundamental nature of a reform is moreover not a function simply of its social and political significance. Rather, it must also be determined that whatever changes have occurred genuinely "address the causes of displacement which led to the recognition of refugee status." [Guidelines ¶10] Even major political reforms do not warrant cessation unless they are causally connected to the risk upon which refugee status was recognized, or could presently be justified.<sup>14</sup>

Even **substantial voluntary repatriation by some refugees does not justify application** of cessation to others who remain in exile. According to UNHCR,

The existence of conditions conducive to voluntary repatriation does not ipso facto warrant the application of the "ceased circumstances" clause. Although the situation in the country of origin may have improved sufficiently to provoke a refugee's personal decision to return voluntarily, the scope of these changes may fall short of the fundamental and durable character of changes required for the application of that particular clause.<sup>15</sup>

2) Whether such change is "enduring" depends upon whether sufficient time has elapsed for the change to consolidate which, in turn, depends upon *the way the change occurs*, e.g., by conflict versus by democratic and constitutional processes; its impact upon *a broad range of human rights indicators*; and the overall political climate of the country. The second requirement is particularly relevant in the case of Rwanda's violent history, autocratic politics, and social fragility.

According to the Guidelines,

13. Developments which would appear to evidence significant and profound changes should be given time to consolidate before any decision on cessation is made. Occasionally, an evaluation as to whether fundamental changes have taken place on a durable basis can be made after a relatively short time has elapsed. This is so in situations where, for example, the changes are peaceful and take place under a constitutional process, where there are free and fair elections with a real change of government committed to respecting fundamental human rights, and where there is relative political and economic stability in the country.

**14. A longer period of time will need to have elapsed before the durability of change can be tested where the changes have taken place violently, for instance, through the overthrow of a regime.** Under the latter circumstances, the human rights situation needs to be especially

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<sup>13</sup> Note on Cessation, ¶¶19-20.

<sup>14</sup> James C. Hathaway, *The Rights of Refugees under International Law*, 2005 (Hathaway 2005), pp. 923-24.

<sup>15</sup> UNHCR, "The Cessation Clauses: Guidelines on Their Application," April 26, 1999, [www.unhcr.org/refworld/docid/3c06138c4.html](http://www.unhcr.org/refworld/docid/3c06138c4.html), ¶137.

carefully assessed. The process of national reconstruction must be given sufficient time to take hold and any peace arrangements with opposing militant groups must be carefully monitored. **This is particularly relevant after conflicts involving different ethnic groups**, since progress towards genuine reconciliation has often proven difficult in such cases. Unless national reconciliation clearly starts to take root and real peace is restored, political changes which have occurred may not be firmly established.

Where the reform was the result of conflict, it will be less likely to be quickly and whole-heartedly embraced by all.<sup>16</sup> Also according to UNHCR:

A situation which has changed, but which also continues to change or shows signs of volatility is not by definition stable, and cannot be described as durable. UNHCR generally recommends that **all** developments which would appear to evidence significant and profound changes be given time to consolidate before any decision on cessation is made. ...

22. Obviously, there can be no firm rule on the period needed in evaluating whether the fundamental changes which have occurred can be considered as durable. In general, changes which take place peacefully under a constitutional, democratic process with respect for human rights and legal guarantees for fundamental freedoms, and where the rule of law prevails, permit an assessment of durable change within a relatively shorter period. Where the changes take place in a violent environment, where warring groups or factions have yet to be reconciled, where repatriation itself has provoked new clashes or killings, where the new regime has yet to govern effectively over the entire territory and where there is a lack of human rights guarantees, the changes are manifestly not yet confirmed, and the period for assessing their durability will be longer. **Until national reconciliation takes root and political changes are stable and firmly in place, such changes cannot be considered as durable.**

23. In regard to the human rights situation, the Executive Committee's conclusion number 69 stipulates that the "general" human rights situation should be assessed, thus implying that a **broad range of human rights should be taken into account**. International human rights instruments act as a guide in evaluating such improvements. Indicators may include the following: right to life and liberty and to non-discrimination, independence of the judiciary and fair and open trials which presume innocence, the upholding of various basic rights and fundamental freedoms such as the right to freedom of expression, association, peaceful assembly, movement and access to courts, and the rule of law generally.<sup>17</sup>

"Third and most important," according to Hathaway, "the fundamental and durable reform must be shown to have dependable, practical protection consequences."<sup>18</sup> The current regime's intolerance of dissent and failure to hold human rights violators accountable, detailed below, do not bode well for the ability of returning refugees to avail themselves of the government's affirmative protection as required by the Guidelines:

15. In determining whether circumstances have changed so as to justify cessation under Article 1C(5) or (6), another crucial question is whether the refugee can effectively re-avail him- or

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<sup>16</sup> Hathaway 2005, p. 925.

<sup>17</sup> Note on Cessation, ¶21.

<sup>18</sup> Hathaway 2005, p. 925.

herself of the protection of his or her own country.[c] Such protection must therefore be effective and available. It requires more than mere physical security or safety. It needs to include the existence of a functioning government and basic administrative structures, as evidenced for instance through **a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights**, including their right to a basic livelihood.

16. An important indicator in this respect is the general human rights situation in the country. **Factors which have special weight for its assessment are the level of democratic development in the country, including the holding of free and fair elections, adherence to international human rights instruments, and access for independent national or international organisations freely to verify respect for human rights.** There is no requirement that the standards of human rights achieved must be exemplary. What matters is that significant improvements have been made, as illustrated at least by respect for the right to life and liberty and the prohibition of torture; marked progress in establishing **an independent judiciary, fair trials and access to courts: as well as protection amongst others of the fundamental rights to freedom of expression**, association and religion. Important, more specific indicators include declarations of amnesties, the repeal of oppressive laws, and the dismantling of former security services.

Hathaway continues,

Cessation is warranted only if and when an affirmative situation has been established,[c] namely the “restoration of protection”[c] to the refugee.[c] In line with this approach, the UN Committee on the Elimination of Racial Discrimination has adopted the view that “refugees ... have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.”<sup>19</sup>

In Rwanda, as the facts and analysis corroborated below demonstrates, for the vast majority of refugees no such fundamental, enduring change providing for their protection has taken place.

## **Overall Situation: Repressive, Fragile, and Unstable**

In its June 2011 report, the Center for Strategic and International Studies listed GoR’s “inability to manage political competition within a democratic framework” as a Key Stress Point in the context of “Mutual suspicion and fear along ethnic lines—the product of more than a century of state manipulation.” The Center went on to state that “the country’s apparent stability masks **deep-rooted tensions, unresolved resentments, and an authoritarian government that is unwilling to countenance criticism or open political debate.**”<sup>20</sup> “Given the country’s past, **instability could escalate very quickly and could potentially be very violent.**”<sup>21</sup>

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<sup>19</sup> Hathaway 2005, p. 927, citing UN Committee on the Elimination of Racial Discrimination, “General Recommendation No. XXII: Refugees and displaced persons” (1996), UN Doc. HR1/GEN/1/Rev.7, May 12, 2004, at 214, ¶2(d).

<sup>20</sup> Jennifer G. Cooke, Center for Strategic and International Studies, *Rwanda: Assessing Risks to Security*, June 2011, [csis.org/files/publication/110623\\_Cooke\\_Rwanda\\_Web.pdf](https://www.csis.org/files/publication/110623_Cooke_Rwanda_Web.pdf) (CSIS 2011), p. 1.

<sup>21</sup> CSIS 2011, p. 2.



In the chapter titled “The Brittle Nature of the [Rwandan Patriotic Front (RPF)] Government,” the Center reports,

Among the greatest vulnerabilities that Rwanda will confront in the coming decade is the unyielding nature and occasionally brutal tactics of the RPF. **Without exception, prominent critics of the RPF are now dead, in prison, or living in exile.** Although domestic “opposition” parties can critique certain policies and programs, there is no possibility of more fundamental debate on how the government deals with issues of accountability, ethnic equity, or state legitimacy. **The government’s absolute suppression of dissent** ultimately adds to its own fragility. ...

Criticisms of the RPF by Rwandans and by external actors are met by the country’s leadership with a level of outrage and vehemence that belie the RPF’s stated confidence in its popular appeal. ... **Domestic critics are effectively silenced through exile, intimidation, imprisonment, or assassination.**<sup>22</sup>

Scott Straus and Lars Waldorf note

the presence of all four factors identified by James Scott as necessary for “the most tragic episodes of state-initiated social engineering”: an administrative ordering of nature and society, a high-modernist ideology that believes in the rational re-design of human nature and social relations, an authoritarian state “willing and able to use the full weight of its coercive power to bring these high-modernist designs into being,” and “a prostrate civil society that lacks the capacity to resist these plans.”<sup>23</sup>

Rwanda ranked 34<sup>th</sup> out of 177 in Fund for Peace’s Failed States Index 2011, with a score of 90.1, a 2.3 point decline from the previous year placing the country in the “In Danger” category. By comparison, the Index, based on data from calendar year 2010, rated Rwanda more unstable than Egypt (45<sup>th</sup>), Syria (48<sup>th</sup>), Tunisia (108<sup>th</sup>), and Libya (111<sup>th</sup>). “In Rwanda,” the report noted, “the increasing authoritarianism of Paul Kagame -- including further restrictions on the media and opposition groups -- did no favors for the country’s scorecard.” The Index rated the country most poorly in the categories of Mounting Demographic Pressure, Rise of Factionalized Elites (i.e., “local and national leaders engage in deadlock and brinkmanship for political gain”), Vengeance-Seeking Group Grievance, and Violation of Human Rights and Rule of Law.<sup>24</sup>

It remains particularly vulnerable to external economic shocks such as a fall in key commodity prices or a rise in energy and food costs, to threatened cut-offs in foreign aid, to deterioration in diplomatic relations with the DRC with powerful and unruly militias in its volatile eastern regions, and/or any necessary transition in leadership from the increasingly autocratic and isolated President Kagame.<sup>25</sup>

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<sup>22</sup> CSIS 2011, p. 14.

<sup>23</sup> Scott Straus and Lars Waldorf, “Introduction: Seeing Like a Post-Conflict State,” in Scott Straus and Lars Waldorf, eds., *Remaking Rwanda: State Building and Human Rights after Mass Violence*, 2011 (Straus and Waldorf 2011), pp. 12-13.

<sup>24</sup> Fund for Peace, Failed States Index 2011, June 20, 2011, [www.fundforpeace.org/global/library/cr-11-14-fs-failedstatesindex2011-1106g.pdf](http://www.fundforpeace.org/global/library/cr-11-14-fs-failedstatesindex2011-1106g.pdf), pp. 10, 24, 29, 32.

<sup>25</sup> CSIS 2011.

According to a confidential U.S. Embassy cable released by Wikileaks, despite Tutsis representing only about 15 percent of the population,

An analysis of the ethnic breakdown of the current Rwandan government shows Tutsis hold a preponderant percentage of senior positions. Hutus in very senior positions often hold relatively little real authority, and are commonly “twinned” with senior Tutsis who exercise real power. The military and security agencies are controlled by Tutsis, generally English speakers who grew up as refugees with President Kagame in Uganda. ...

[N]ew Minister of State for Education Theoneste Mutsindashyaka recently addressed 750 secondary school headmasters, and, according to the pro-government New Times, angrily told them that 80 percent of them were “masterminds of genocide ideology.” Assuming that headmasters match the general ethnic breakdown in society, the Minister essentially accused every Hutu in the room being a genocide ideologist. ...

**[I]f this government is ever to surmount the challenges and divides of Rwandan society, it must begin to share real authority with Hutus to a much greater degree than it does now.**<sup>26</sup>

According to one Human Rights Watch (HRW) researcher, “Despite an outward appearance of calm, **Rwanda is a fragile country ruled by fear.** The deep mistrust resulting from the genocide has been exacerbated by a government which does not tolerate criticism and keeps a close watch on all its citizens – Tutsi as well as Hutu – to ensure that no one is stepping out of line.”<sup>27</sup>

According to Timothy Longman, director of Boston University’s African Studies Center and author of *Christianity and Genocide in Rwanda*,

In the post-genocide era, Rwanda has made a transition from one type of authoritarian regime to another. The RPF regime has systematically intimidated, co-opted, and suppressed civil society, so that Rwanda today lacks independent social organizations capable of articulating most public interests. The regime tolerates very little public criticism, strictly limiting freedoms of speech, press, and association. Political parties are restricted and intimidated, while constraints and manipulation of the electoral process have prevented elections from being truly free and fair. ... Rwanda’s persistent authoritarian rule may ultimately prove disastrous for the country’s long-term stability.<sup>28</sup>

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<sup>26</sup> U.S. Embassy-Kigali, “Ethnicity in Rwanda – Who Governs the Country?,” August 5, 2008 (Reference ID Created Released Classification Origin 08KIGALI525 2008-08-05 16:34 2011-08-30 01:44 SECRET//NOFORN Embassy KigaliVZCZCXZ0000 PP RUEHWEB DE RUEHLGB #0525/01 2181634 ZNY SSSSS ZZH P 051634Z AUG 08FM AMEMBASSY KIGALI TO SECSTATE WASHDC PRIORITY 5505), [rwandinfo.com/eng/ethnicity-in-rwanda-who-governs-the-country/?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+Rwandinfo\\_EN+%28Articles+o+n+Rwandinfo+English%29](http://rwandinfo.com/eng/ethnicity-in-rwanda-who-governs-the-country/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+Rwandinfo_EN+%28Articles+o+n+Rwandinfo+English%29) (accessed September 12, 2011), ¶¶1,3,7.

<sup>27</sup> Carina Tertsakian, Senior Researcher, African Division, Human Rights Watch (HRW), “Time for a review of UK policy on Rwanda,” *African Arguments*, July 29, 2011, [www.hrw.org/news/2011/07/29/time-review-uk-policy-rwanda](http://www.hrw.org/news/2011/07/29/time-review-uk-policy-rwanda).

<sup>28</sup> Timothy Longman, “Limitations to Political Reform: The Undemocratic Nature of Transition in Rwanda,” in Straus and Waldorf 2011, pp. 26-27 (Longman 2011).

In addition to this general intolerance and political fragility, several broad categories of persons have been subject to persecution in the past few years including political opponents of the regime, former loyalists who have defected, human rights activists, independent journalists and media critics, and refugees generally.

## Intolerance of Political Opposition

According to Amnesty International's *Annual Report 2011* on Rwanda,

A clampdown on freedom of expression and association before August's presidential elections prevented new opposition parties from fielding candidates. ... Growing splits emerged within the ruling party, the Rwandan Patriotic Front (RPF). The former head of the army, Faustin Kayumba Nyamwasa, fled to South Africa. Some senior military officers were arrested and held incommunicado. Others fled to neighbouring countries. Tension grew between the government and supporters of Laurent Nkunda, the former leader of the Congolese [Tutsi] armed group the National Congress for the Defence of the People (CNDP). Arrested in January 2009, he remained under house arrest in Rwanda without charge or trial. ...

Restrictions on freedom of association prevented new opposition parties from contesting the elections. FDU-Inkingi and the Democratic Green Party were unable to obtain security clearance to organize meetings needed for their registration. The only new party to secure registration, PS-Imberakuri, was infiltrated by dissident members and decided not to stand. Opposition politicians were harassed and threatened. Investigations into threats were cursory and did not lead to prosecutions."<sup>29</sup>

According to HRW's 2011 submission to the UK's International Development Committee,

The human rights situation in Rwanda deteriorated in 2010 in the run-up to presidential elections, with a crackdown on opposition parties, journalists and other critics. None of the three new opposition parties were allowed to contest the 2010 elections; two of them were prevented from registering as political parties. Two opposition leaders were charged with serious criminal offences. One was sentenced to four years' imprisonment in early 2011; the other has spent seven months in pre-trial detention. Lower-ranking members of their parties were also arrested and threatened, and several detained and ill-treated; some of them remain in prison in 2011. The vice-president of a third party was found murdered, his body mutilated; an independent journalist was shot dead outside his house; and a former army general, once one of the most powerful men in Rwanda, turned outspoken critic of the government, narrowly escaped an assassination attempt in South Africa. It was against this backdrop that the incumbent president Paul Kagame was reelected with 93% of the vote in August 2010, with the National Electoral Commission reporting a 97.5% turnout.<sup>30</sup>

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<sup>29</sup> Amnesty International, *Annual Report 2011*, "Rwanda," May 17, 2011, [www.amnesty.org/en/region/rwanda/report-2011](http://www.amnesty.org/en/region/rwanda/report-2011) (Amnesty Annual Report 2011); Wikipedia, "National Congress for the Defence of the People," [en.wikipedia.org/wiki/National\\_Congress\\_for\\_the\\_Defence\\_of\\_the\\_People](http://en.wikipedia.org/wiki/National_Congress_for_the_Defence_of_the_People) [accessed September 10, 2011].

<sup>30</sup> HRW submission to International Development Committee (IDC), "Working effectively in fragile and conflict-affected states: DRC, Rwanda and Burundi," May 2011,

According to the U.S. Department of State's *Country Report on Human Rights Practices* for Rwanda in 2010,

Authorities prevented political party organizers from meeting. ...

The constitution provides for a multiparty system but offers few rights for parties and their candidates. Parties were not able to operate freely, and parties and candidates faced legal sanctions if found guilty of engaging in divisive acts, destabilizing national unity, threatening territorial integrity, or undermining national security. ...

All political organizations were constitutionally required to join the Forum for Political Organizations, which continued to promote consensus at the expense of political competition, according to observers. Independent political parties must demonstrate membership in every district, reserve at least 30 percent of a party's leadership positions for women, and provide a written party statute signed by a notary to register.<sup>31</sup>

## Recent Examples

- the September and October 2009 police cancellation of three assemblies of the Democratic Green Party: two for alleged procedural errors and one because of a disruption by an unidentified man; a public notary was not available for its assemblies; in November the Party applied for but was unable to obtain police clearance to hold another assembly; GoR also continued to impede the party's registration as of the end of 2010;<sup>32</sup>
- the September 2009 arrest of a teacher and PS-Imberakuri member for campaigning at school and breach of public order; police released him without charge after three days but district authorities in Ruhango dismissed him from his teaching position;<sup>33</sup>
- the February 3, 2010 attack by five men on unregistered opposition FDU-Inkingi (United Democratic Forces) party chair, Victoire Ingabire Umuhiza, and her assistant, Joseph Ntawangundi, outside a local government office in Kigali as they went to pick up forms to register their party; Ingabire reportedly lost her passport in the incident, while Ntawangundi was severely beaten; Ingabire had returned to Rwanda in January, after living in Europe for 16 years; during a visit to the Gisozi Genocide Memorial Museum in Kigali, she called for the prosecution of RPF war crimes in Rwanda and eastern Congo, alluding to the killing of Hutus as

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[www.hrw.org/sites/default/files/related\\_material/2011\\_05%20IDC%20HRW%20Submission.pdf](http://www.hrw.org/sites/default/files/related_material/2011_05%20IDC%20HRW%20Submission.pdf) (HRW 5/11), p. 4-5, citing HRW, "Rwanda: attacks on freedom of expression, freedom of association and freedom of assembly in the run-up to presidential elections, January to July 2010", August 2, 2010; HRW, "Prison term for opposition leader", February 11, 2011, and Commonwealth Secretariat, "Report of the Commonwealth Observer Group. Rwanda presidential elections 9 August 2010,"

[www.thecommonwealth.org/document/229333/2010\\_rwanda\\_elections\\_final\\_report.htm](http://www.thecommonwealth.org/document/229333/2010_rwanda_elections_final_report.htm).

<sup>31</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2010*, April 8, 2011, "Rwanda,"

[www.state.gov/documents/organization/160139.pdf](http://www.state.gov/documents/organization/160139.pdf) (USDOS 2011), pp. 20, 25.

<sup>32</sup> USDOS 2011, pp. 20, 25.

<sup>33</sup> USDOS 2011, p. 25.

well as Tutsis; according to HRW, the attack on Ingabire “appeared to have been well coordinated, suggesting it had been planned in advance;”<sup>34</sup>

- the February 4 reported threats against Green Party president, Frank Habineza; earlier, the Senate called the leader of the Ideal Social Party, Bernard Ntaganda, to answer accusations relating to propagation of genocide ideology;<sup>35</sup>
- the February 25 warning by the security ministry that politicians who “slander the country” or are “against public unity” will be punished;<sup>36</sup>
- the disappearance between March and May of at least four individuals, some close to Nkunda’s wing of the CNDP or with past links to armed groups in the DRC; the Rwandan military reportedly detained at least one of them, Robert Ndengeye Urayenzeza;<sup>37</sup>
- the April 21 arrest of Ms. Ingabire on charges of providing material support to the FDLR and promoting genocide ideology; authorities released her on bail the following day but confined her to Kigali;<sup>38</sup>
- the June arrest and continued (as of December) detention of opposition PS-Imberakuri party leader, Bernard Ntaganda, on charges of “inciting ethnic division” in relation to statements criticizing GoR policies;<sup>39</sup>
- the June 20 stabbing to death of Nkunda chief of staff Denis Ntare Semadwinda at his home in Gisenyi after Rwandan security services had questioned him about this role;<sup>40</sup>
- the early morning June 24 arrest and raid on the home of PS-Imberakuri Party chair and founder, Bernard Ntaganda, on charges of threatening national security, “genocide ideology,” “divisionism,” (see discussion of the laws criminalizing these offences below at p. 18) and creating a criminal organization; Ntaganda claimed authorities denied him access to a lawyer;<sup>41</sup>
- the arrests later that morning of several members of PS-Imberakuri after they gathered outside the U.S. embassy, where they had gone to ask for help following their leader’s arrest; authorities released some but kept several, including party secretary-general, Théobald Mutarambirwa, in detention the next day; PS-Imberakuri members reported that the police also raided the party’s

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<sup>34</sup> IRIN, “Analysis: Poll puts Rwanda under Scrutiny,” March 11, 2010, [www.irinnews.org/Report.aspx?ReportID=88392](http://www.irinnews.org/Report.aspx?ReportID=88392) (IRIN 3/10); USDOS 2011, p. 3.

<sup>35</sup> IRIN 3/10.

<sup>36</sup> IRIN 3/10.

<sup>37</sup> Amnesty Annual Report 2011.

<sup>38</sup> Amnesty Annual Report 2011.

<sup>39</sup> Amnesty Annual Report 2011.

<sup>40</sup> Amnesty Annual Report 2011; “Rwanda: gâchette facile,” *Afrique-Asie No. 59*, October 2010, [library.madeinpresse.fr/samples/MPe\\_77z19A11-4](http://library.madeinpresse.fr/samples/MPe_77z19A11-4), p. 9 (*Afrique-Asie* 2010).

<sup>41</sup> Amnesty Annual Report 2011.

office and took away documents and other belongings and by June 25, the party's flag and sign had been taken down from their office;<sup>42</sup>

- the June 24, arrests of several members of the FDU-Inkingi opposition party who had gathered outside the Justice Ministry to protest the case against their president Ms. Ingabire; authorities continued to hold the party's secretary-general, Sylvain Sibomana, treasurer, Alice Muhirwa, and Kigali representative, Théoneste Sibomana, two days later; some FDU-Inkingi members reported that the police told them that they should leave the party; police also surrounded Ingabire's house at around 6 a.m. and remained most of the day; members of both parties reported the police beating them; on June 25, the Commissioner General of Police declared that about 40 persons had attempted to demonstrate without a permit, that 22 had been arrested and questioned, that 14 had been released, and eight were being held for further questioning;<sup>43</sup>
- the June 27 arrests of several more members of the PS-Imberakuri party and the unregistered FDU-Inkingi party on charges of holding illegal demonstrations; some detainees claimed authorities physically abused them while in police custody; on July 6, the detainees appeared in court, and between July 9 and 13, authorities released all on bail except Ntaganda; in October Ntaganda went on a hunger strike to protest his treatment in prison, and on October 14, prison authorities transferred him to a hospital in Kigali but at year's end he remained in prison awaiting trial;<sup>44</sup>
- the July killing of vice president of unregistered opposition Democratic Green Party, André Kagwa Rwisereka, in Butare; he had left the RPF and expressed concern for his security in the weeks before his body was found on the 14th in the South with his head nearly severed;<sup>45</sup>
- the August 31 assassination in Goma of CNDP treasurer Emeritha Munyeshuli in front of her two daughters;<sup>46</sup>
- the mid-September shooting to death of accused critic of the decision of the Rwandan and Congolese governments on a new joint operation, 'Umoja Wetu' organizing in eastern Congo, Colonel Balibuno;<sup>47</sup>
- the September 17 sentencing to life in prison of People's Defense Pact-Amanzi chair (and 1994 genocide survivor), Deo Mushayidi;<sup>48</sup>

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<sup>42</sup> HRW, "Rwanda: Stop Attacks on Journalists, Opponents Government Actions Undermine Democracy as Presidential Election Draws Near," June 26, 2010, [www.hrw.org/news/2010/06/26/rwanda-stop-attacks-journalists-opponents](http://www.hrw.org/news/2010/06/26/rwanda-stop-attacks-journalists-opponents) (HRW 6/10).

<sup>43</sup> HRW 5/11.

<sup>44</sup> Amnesty Annual Report 2011; HRW, "Rwanda: Stop Attacks on Journalists, Opponents," June 26, 2010, [www.hrw.org/news/2010/06/26/rwanda-stop-attacks-journalists-opponents](http://www.hrw.org/news/2010/06/26/rwanda-stop-attacks-journalists-opponents) (HRW 6/10); USDOS 2011, p. 5.

<sup>45</sup> Amnesty Annual Report 2011; FDU-Inkingi and Rwanda National Council, Joint Memorandum of Rwandan Political Organizations to His Excellency, the High Commissioner of the UN for Refugees asking him to postpone the decision to apply the Cessation Clause of Refugee Status for Rwandan Refugees, July 16, 2011 (FDU-RNC 7/11), p. 5; USDOS 2011, p. 25.

<sup>46</sup> *Afrique-Asie* 2010; FDU-RNC 7/11, p. 5.

<sup>47</sup> *Afrique-Asie* 2010.

<sup>48</sup> FDU-RNC 7/11, p. 5.

- the October 14 re-arrest of Ms. Ingabire on separate charges of “genocide ideology” after a former high-level FDLR commander, Major Vital Uwumuremyi, accused her of involvement in establishing the Coalition of Defense Forces as a military wing of FDU-Inkingi; FDU-Inkingi claimed authorities were treating Ingabire inhumanely; at an October 23 pretrial the judge sentenced her to 30 days preventive detention for investigation and on November 25 the court approved an additional 30 days; on December 13, Ingabire appealed and lost and at year's end she remained in pre-trial imprisonment as of June 2011;<sup>49</sup>
- the February 11, 2011 arrest, jailing, and sentencing of PS-Imberakuri’s Ntaganda for political charges to four years in prison, after his being convicted of threatening national security and “divisionism;”<sup>50</sup>
- the threats against the lives of Rene Claudel Mugenzi and Jonathan Musonera, Rwandan dissidents in the United Kingdom, leading the British police to formally warn them on May 12, “Reliable intelligence states that the Rwandan government poses an imminent threat to your life;” Musonera was also a captain in the Rwandan Army but defected in 2001 during its invasion of the Congo;<sup>51</sup>
- the September 5 threat, renewed on the 15<sup>th</sup>, by Nyarugenge District Police Chief Bertin Mutezintare to kill FDU-Inkingi Secretary General, Sylvain Sibomana;<sup>52</sup>
- September 15 shooting and serious wounding of opposition Parti Social Imberakuri member, Eric Nshimyumuremyi, by plain clothes military intelligence officers from “Kwa Gacinya” detention facility, as he headed home from the High Court after attending the Ingabire trial; when police arrived on the scene, they tied his hands behind his back and left him bleeding for about two hours before taking him to the hospital; and<sup>53</sup>
- the continued detention of former transport minister Charles Ntakirutinka, sentenced to 10 years' imprisonment in 2004 in a trial that did not meet international standards; he was charged with incitement of civil disobedience, formation of a criminal association, and embezzlement of public funds although the U.S. State Department refers to him as a political prisoner; Ntakirutinka and former president Bizimungu, who was released in 2007, had sought to establish the Party for Democratic Renewal.<sup>54</sup>

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<sup>49</sup> USDOS 2011, pp. 3, 17; FDU-RNC 7/11, p. 5; See also CSIS 2011, pp. 12-13.

<sup>50</sup> FDU-RNC 7/11, p. 5.

<sup>51</sup> Josh Kron and Jeffrey Gettelman, “British Police Warn Rwandan Dissidents of Threat,” *New York Times*, May 19, 2011, [www.nytimes.com/2011/05/20/world/africa/20rwanda.html?\\_r=1](http://www.nytimes.com/2011/05/20/world/africa/20rwanda.html?_r=1).

<sup>52</sup> Boniface Twagirimana, Interim Vice President, FDU-Inkingi, “Member of Rwandan opposition party PS Imberakuri shot in Kigali,” [http://rwandinfo.com/eng/member-of-rwandan-opposition-party-ps-imberakuri-shot-in-kigali/?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+Rwandinfo\\_EN+%28Articles+on+Rwandinfo+English%29](http://rwandinfo.com/eng/member-of-rwandan-opposition-party-ps-imberakuri-shot-in-kigali/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+Rwandinfo_EN+%28Articles+on+Rwandinfo+English%29) (Twagirimana 2011; accessed September 20, 2011).

<sup>53</sup> Twagirimana 2011.

<sup>54</sup> Amnesty Annual Report 2011; USDOS 2011, p. 15, 25.



## Defectors: Harbingers of Instability and Targets of Retribution

According to the Center for Strategic and International Studies,

Since 1994, the political opposition in Rwanda has never posed a real threat to the RPF's monopoly. It has been effectively suppressed; its leadership has been imprisoned, killed, or forced into exile; and potential domestic supporters have become cowed and quiescent. Much more dangerous for the RPF core leadership have been the increasing challenges to Kagame from within the RPF, and in particular from the inner cohort of senior leaders who fought alongside him in Uganda and in the Rwandan civil war. Schisms began to appear during the transition period, but more recent events suggest a fraying consensus within the top leadership. Recent defections include four powerful, high-profile members of the RPF inner circle—General Faustin Kayumba Nyamwasa, former chief of staff of the Rwandan army and a close confidant of Kagame; Colonel Patrick Karegeya, former head of Military Intelligence; Gerald Gahima, former chief prosecutor; and Théogène Rudasingwa, former secretary general of the RPF. In 2010 these four defectors released a scathing critique, decrying Kagame's ruthless authoritarianism and describing a state apparatus controlled by a small clique of loyalists drawn exclusively from the Tutsi minority group.<sup>55</sup>

Perhaps most alarming from an RPF perspective has been the rising challenges from within that narrow segment of loyalists. There is some speculation that some of the RPF defectors, like General Kayumba, may continue to hold the loyalty of some segment of the Rwandan military. And if his closest cohorts continue to abandon him, President Kagame will have a very narrow political base indeed.<sup>56</sup>

### Recent Examples

- the 2010 conviction of Gen. Kayumba and Rudasingwa in absentia to 24 years imprisonment and Gahima and Col. Karegeya to 20 years following their critique of the Kagame administration's authoritarianism and ethnocentrism; Gen. Kayumba had fled the country to South Africa in February;<sup>57</sup>
- the June 19 shooting critically wounding Gen. Kayumba in Johannesburg, South Africa; the South African Foreign Ministry linked the assassination attempt to Rwandan intelligence operatives;<sup>58</sup> and
- the August arrest, incommunicado holding without charge, and denial of access to counsel of the younger brother of Gen. Kayumba, Lt. Col. Rugigana Ngabo, on allegations of destabilizing national security.<sup>59</sup>

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<sup>55</sup> CSIS 2011, pp. 10-11.

<sup>56</sup> CSIS 2001, pp. 14-15.

<sup>57</sup> CSIS 2011, pp. 10-11; HRW 6/10; USDOS 2011, p. 3.

<sup>58</sup> CSIS 2011, pp. 10-11; USDOS 2011, p. 3.

<sup>59</sup> Amnesty Annual Report 2011.



## Threats to Human Rights Observers and Defenders

HRW has documented

**a longstanding pattern of intimidation and harassment of human rights defenders by Rwandan officials, including threats to their security, administrative obstacles, public and personalized attacks**, and allegations that they are complicit with political opponents. Several human rights organizations, once active in Rwanda, have also been silenced through infiltration by people close to the government who have taken over these groups' leadership.<sup>60</sup>

Also according to HRW,

Rwandan human rights organisations have borne the brunt of the government's repression in the post-genocide years. International NGOs have also faced difficulties. ...<sup>61</sup>

**Independent civil society in Rwanda has been seriously decimated.** It is one of the areas in which state intimidation, threats and infiltration have succeeded in silencing criticism. In the aftermath of the genocide, a number of **independent Rwandan human rights organisations** were still able to investigate and report on human rights violations, albeit at great risk. Over the subsequent years, they **have been silenced one by one**. In 2011, there are barely two or three active human rights organisations left in Rwanda, and even they are struggling to remain active.<sup>62</sup> ...

State institutions such as the National Human Rights Commission (NHRC) and the National Unity and Reconciliation Commission (NURC) ... have sometimes actively undermined civil society initiatives.<sup>63</sup>

According to the *Ligue des droits de la personne dans la région des Grands Lacs* (LDGL),

Organizations defending human rights are also victims of violations. As an illustration, the case of the *Ligue pour la Promotion et la Défense des Droits de l'Homme au Rwanda* (LIPRODHOR), which was the subject of threats in recent years. This had prompted several of its leaders to go into exile. In 2008, the *Commission nationale électorale* had refused accreditation for its observers to the elections. ...

The organization *Association rwandaise pour la défense des droits de la personne et des libertés publiques* (ADL) is, in turn, threatened with dissolution because it failed to renew its accreditation. ...

Threats of arrest were leveled at LDGL officers involved in the process [of Rwanda's Universal Periodic Review of the UN Human Rights Council].<sup>64</sup>

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<sup>60</sup> HRW, "Rwanda: Stop Intimidating Regional Human Rights Group," August 23, 2011, [www.hrw.org/news/2011/08/23/rwanda-stop-intimidating-regional-human-rights-group](http://www.hrw.org/news/2011/08/23/rwanda-stop-intimidating-regional-human-rights-group) (HRW 8/11).

<sup>61</sup> HRW 5/11, pp. 5-6.

<sup>62</sup> HRW 5/11, pp. 10-11, citing Frontline, "Frontline Rwanda: disappearances, arrests, threats, intimidation and co-optation of human rights defenders 2001-2004," 2005, and Longman 2011.

<sup>63</sup> HRW 5/11, p. 11.

According to Amnesty International, “international NGOs reported increased constraints on their work.”<sup>65</sup>

According to the U.S. State Department,

The government generally imposed difficult and burdensome NGO registration and renewal requirements, as well as time-consuming requirements to submit annual financial and activity reports. ...<sup>66</sup>

During the year some NGOs expressed fear of the government and self-censored their activities and comments. ...

The law on nonprofit associations permits government authorities to review budgets and the hiring of personnel. NGOs often found the registration process difficult. To obtain a provisional six-month approval, domestic NGOs must present their objectives, plan of action, and financial information to local authorities of every district in which the organizations intend to work. After obtaining provisional agreement, domestic NGOs must apply for registration (legal recognition) each year with the Ministry of Justice. If a local NGO is initially denied registration, the NGO sometimes must correct and resubmit its registration documents. The government also requires domestic NGOs to submit financial and activity reports each year. NGOs complained these requirements and near compulsory participation in the Joint Action Forum strained their limited resources. While there was no legal requirement to contribute financially to the forum, some organizations felt pressured to do so.

The government also requires international organizations to register each year and obtain yearly provisional authorization from the local governments of every district in which the organizations work, followed by final authorization from the concerned ministry. This requirement made registration difficult for some organizations. The government also requires international organizations to submit yearly reports to the relevant local governments and national level ministries. The paperwork involved was burdensome. The government required civil society groups to submit quarterly financial statements and lists of staff and assets in each of the districts where projects were implemented.

A progovernment NGO platform group, the Civil Society Platform, continued to manage and direct some NGOs through the use of umbrella groups, which theoretically aggregated NGOs working in particular thematic sectors; however, many observers believed the government controlled some of these umbrella groups.

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<sup>64</sup> Joseph Sanane, President, *Ligue des droits de la personne dans la région des Grands Lacs*, “Trente ans après l’adoption de la Charte Africaine des droits de l’homme et des peuples - l’impunité face aux violations des droits des défenseurs des droits de l’homme a atteint son comble dans les Grands Lacs : Cas du Rwanda,” November 12, 2010 (LDGL 2010), pp. 3-4.

<sup>65</sup> Amnesty Annual Report 2011.

<sup>66</sup> USDOS 2011, p. 21.

There were reports that authorities pressured some individuals affiliated with NGOs to provide information on their activities. ... The government reportedly conducted surveillance on some international NGOs.<sup>67</sup>

## Recent Examples

- the 2008 twice barring of entry to HRW's advisor on the Great Lakes region, Alison Des Forges, who had testified for the prosecution before the International Criminal Tribunal for Rwanda on several occasions; GoR officials had accused her of "genocide ideology" after she had called for all perpetrators of crimes, including those from the ruling party, to be brought to justice;<sup>68</sup>
- repeated threats to safety over the past 10 years towards LDGL executive secretary, Pascal Nyilibakwe and other LDGL staff and board members and its member organizations, particularly LIPRODHOR, leading several to leave Rwanda for their safety, including Mr. Nyilibakwe in 2010;<sup>69</sup>
- the 2010 attempt by at least two NHRC officials to stifle discussion of a collective civil society report on the human rights situation in Rwanda submitted to the UN Human Rights Council in advance of Rwanda's Universal Periodic Review in 2011 and to pressure several civil society organizations to publicly denounce and withdraw their support for the report;<sup>70</sup>
- the March 2010 confiscation and cancellation by immigration authorities of the work visa of HRW's sole in-country international researcher on charges of forgery and April 23 refusal to grant her a new one, forcing her to leave the country the following day;<sup>71</sup>
- the May 28 arrest of American lawyer, Peter Erlinder on charges of genocide denial, genocide ideology, and threatening national security; he had come to Rwanda to defend Ms. Ingabire; on June 17, authorities released him on medical bail but said they would continue the investigation;<sup>72</sup> and
- the August 19, 2011 detention and diversion to Kigali for questioning of the president and acting LDGL executive secretary, Joseph Sanane and Epimack Kwokwo, by border officials as the two were traveling to Burundi to prepare for the group's annual general meeting; they released Kwokwo that evening and Sanane the following day but charged neither with any criminal offense.<sup>73</sup>

## Restrictions on Expression and Persecution of Media and Other Critics

Reporters Without Borders ranked Rwanda 169<sup>th</sup> out of 178 countries in press freedom during 2010:

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<sup>67</sup> USDOS 2011, pp. 28-30.

<sup>68</sup> HRW 5/11, pp. 5-6.

<sup>69</sup> HRW 8/11.

<sup>70</sup> HRW 5/11, p. 11.

<sup>71</sup> HRW 5/11, pp. 5-6; USDOS 2011, p. 30.

<sup>72</sup> USDOS 2011, p. 17; LDGL 2010, p. 3.

<sup>73</sup> HRW 8/11.

Rwanda, Yemen and Syria have joined Burma and North Korea in the group of the world's most repressive countries towards journalists. This does not bode well for 2011. ... [The country] has fallen 12 places and now has Africa's third worst ranking. The six-month suspension of leading independent publications, the climate of terror surrounding the presidential election and Umuvugizi deputy editor Jean-Léonard Rugambage's murder in Kigali were the reasons for this fall. **Journalists are fleeing the country because of the repression, in an exodus almost on the scale of Somalia's.**<sup>74</sup>

In 2002, GoR began implementing Law No 47/2001 containing two new crimes punishing any speech, written statement or action inciting *irondamoko* (ethnicism or discrimination) or *amacakubiri* (divisionism) with heavy prison penalties and fines. In June 2008, it banned references to ethnic distinction with the creation of the crime of expression or promotion of "genocide ideology." Article 3 of the law defines genocide ideology as

any behaviour manifested by facts aimed at dehumanising a person or a group of persons with the same characteristics in the following manner: [including] marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred.<sup>75</sup>

According to Amnesty International,

Rwanda's vague and sweeping laws against "genocide ideology" and "divisionism" under "sectarianism" laws criminalize speech protected by international conventions and contravene Rwanda's regional and international human rights obligations and commitments to freedom of expression. The vague wording of the laws is deliberately exploited to violate human rights.

Prosecutions for "genocide ideology" and so-called "genocide ideology-related" offences were brought even before the law defining this offence was promulgated. People continue to be prosecuted for "divisionism", under "sectarianism" laws, even though "divisionism" is not defined in law. Rwandans, including judges, lawyers and human rights defenders, expressed confusion about what behavior these laws criminalize.

These broad and ill-defined laws have created a vague legal framework which is misused to criminalize criticism of the government and legitimate dissent. This has included suppressing calls for the prosecution of war crimes committed by the Rwandan Patriotic Front (RPF). In the run-up to the 2010 elections, legitimate political dissent was conflated with "genocide ideology", compromising the freedom of expression and association of opposition politicians, human rights defenders and journalists critical of the government.

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<sup>74</sup> Reporters Without Borders, Press Freedom Index 2010, [en.rsf.org/press-freedom-index-2010,1034.html](http://en.rsf.org/press-freedom-index-2010,1034.html).

<sup>75</sup> International Refugee Rights Initiative and Refugee Law Project, *A Dangerous Impasse: Rwandan Refugees in Uganda*, Citizenship and Displacement in the Great Lakes Region, Working Paper No. 4, June 2010 (IRRI/RLP 2010), p. 24 (citing HRW, "Law and Reality: Progress in Judicial Reform in Rwanda," July 24, 2008, [www.hrw.org/en/node/62097/section/8](http://www.hrw.org/en/node/62097/section/8)) and p. 33.

Individuals have exploited gaps in the law for personal gain, including the discrediting of teachers, for local political capital, and in the context of land disputes or personal conflicts. Several “genocide ideology” and “divisionism” charges based on flimsy evidence resulted in acquittals, but often after the accused spent several months in pre-trial detention.<sup>76</sup>

According to Amnesty’s *Annual Report 2011*, “The government used regulatory sanctions, restrictive laws and criminal defamation cases to **close down media outlets critical of the government**. In July, the government began to enforce certain aspects of a 2009 media law which maintains defamation as a criminal offence. Some **leading editors and journalists fled the country after facing threats and harassment**.”<sup>77</sup>

According to Jeffrey Gettleman, reporting in the *New York Times*,

In the past three years [2007-2010], Rwandan officials have prosecuted more than 2,000 people, including political rivals, teachers and students, for espousing “genocide ideology” or “divisionism.”<sup>78</sup>

According to LDGL,

The 2003 Constitution, which was revised several times, guarantees civil liberties, but they are not in effect. Specific laws are inconsistent with this Constitution and lead to major impediments to their enjoyment. For example, we can mention:

- Law No. 18/2008 / July 23, 2008 on the Punishment of the Crime of Genocide Ideology and Law No. 47/2001 of 18/12/2001 on the suppression of crimes of discrimination and sectarianism. The latter is characterized by the ambiguous nature of the elements of the offense. This opens the way for much abuse due to the discretion regarding the constitutive facts left to the alleged victim.

- The law governing the registration of international NGOs and local associations provides a system of annual review with a complex administrative procedure, which threatens the existence of NGOs defending human rights.

- The Press Law does not guarantee the emergence of a free and independent press. It is the same for Law No. 48/2008 of 09/09/2008 on the interception of communications that allows security services to wiretap citizens, which encroaches on the free exercise of freedom of opinion and information.<sup>79</sup>

According to HRW,

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<sup>76</sup> Amnesty International, “Safer to stay silent: The chilling effect of Rwanda’s laws on ‘genocide ideology’ and ‘sectarianism,’” August 31, 2010, [www.amnesty.org/en/library/asset/AFR47/005/2010/en/ea05dff5-40ea-4ed5-8e55-9f8463878c5c/afr470052010en.pdf](http://www.amnesty.org/en/library/asset/AFR47/005/2010/en/ea05dff5-40ea-4ed5-8e55-9f8463878c5c/afr470052010en.pdf) (Amnesty 2010), pp. 7-8.

<sup>77</sup> Amnesty Annual Report 2011.

<sup>78</sup> Jeffrey Gettleman, “Rwanda Pursues Dissenters and the Homeless,” *New York Times*, April 30, 2010, [www.nytimes.com/2010/05/01/world/africa/01rwanda.html](http://www.nytimes.com/2010/05/01/world/africa/01rwanda.html).

<sup>79</sup> LDGL 2010, p. 2.

Freedom of expression, more broadly, continues to be severely restricted in Rwanda. A variety of laws have been used to prosecute critics -- in particular, a law on "genocide ideology" adopted in 2008. Ill-defined, vague and open to abuse, this law has been used, among other things, to target critics of the government or of the RPF.[c] Critics have also been charged with other serious offences such as endangering national security. ...

[T]he media environment in Rwanda is still extremely restrictive. Two journalists are in prison after being sentenced in 2011 to 17 and 7 years respectively for writing articles which were viewed as critical of the government and the president; several other independent journalists have gone into exile; and most others are afraid of investigating sensitive issues. Almost all active media outlets in Rwanda are now either controlled by the government or compliant with its directives.<sup>80</sup>

According to the International Refugee Rights Initiative and the Refugee Law Project,

maintaining an overtly ethnic discourse under the guise of dealing with the perpetrators of genocide, while preventing discussion of ethnic difference appears to be a front for what is little more than the manipulation of identities by those in power. [Our] findings point to the fact that the history of the genocide appears to have become a smokescreen for the government to carry out repressive measures against any opposition, with ethnicity being used – directly or implicitly – as a functional and tangible means of creating polarisation within communities and as an instrument of control.<sup>81</sup>

According to the U.S. State Department,

The government continued to intimidate and arrest independent journalists who expressed views that were deemed critical of the government on sensitive topics or who were believed to have violated law or journalistic standards. ... Numerous journalists practiced self-censorship.

The law prohibits the propagation of discrimination or sectarianism based on "ethnic, regional, racial, religious, language, or other divisive characteristics." Public incitement to what is commonly termed divisionism is punishable by up to five years in prison, heavy fines, or both. ... Other statutes forbid "contempt for the Head of State of Rwanda." During the year the expression of such viewpoints sometimes resulted in arrest, harassment, or intimidation. ...

In August 2009 the government passed the Law on Media. Provisions in the law grant the Media High Council the power to suspend newspapers, increase the amount of capital required to open new media outlets, impose criminal penalties on journalists who incite discrimination or show contempt for the president, and require journalists to reveal their sources when authorities deem it necessary to carry out criminal investigations or proceedings. The law also requires journalists to have either an associate's degree in journalism or communication, a certificate obtained from an institute of journalism and communication, or a university degree in

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<sup>80</sup> HRW 5/11, pp. 5 & 8, citing Amnesty International, "Safer to stay silent? The chilling effects of Rwanda's laws on 'genocide ideology' and 'sectarianism,'" August 2010, and Lars Waldorf, "Instrumentalizing genocide: the RPF's campaign against 'genocide ideology,'" Straus and Waldorf 2011 (Waldorf 2011).

<sup>81</sup> IIRI/RLP 2010, p. 32.

another field with training in journalism. Journalists without one of these qualifications must obtain them within five years to continue in their positions.<sup>82</sup>

According to the Commonwealth Human Rights Initiative (CHRI), article 13 of the Constitution, which makes “revisionism” or “negationism [of genocide]” offenses, has been “broadly defined to include anyone who disagrees with the ruling RPF’s account of the genocide.”<sup>83</sup> GoR has also accused CARE International, Trócaire, Norwegian People’s Aid, the British Broadcasting Company, and Voice of America as conduits of genocide ideology.<sup>84</sup>

### Recent Examples

- the 2008 conviction and sentencing to one year’s imprisonment (suspended) of local journalists Charles Kabonero and Didas Gasana of *Umuseso* on libel charges for critical articles written about a prominent businessman;<sup>85</sup>
- the August 2009 charging of *Umuwugizi* editor and journalist Jean-Bosco Gasasira with slander, abuse, defamation, and invasion of privacy after he published two articles accusing a GoR official of an extramarital affair; the judge found him guilty of the latter two charges and fined him; Gasasira appealed the decision in December and in September 2010, the Kigali High Court cleared Gasasira of all charges;<sup>86</sup>
- the September 2009 arrest of university lecturer Dieudonne Nyamulinda on charges of insulting the president and denying the genocide; authorities sentenced him to five years in prison but reduced it to two on appeal;<sup>87</sup>
- the March 2010 arrest of former Rwanda Journalist Association president, Deo Mushayidi, in connection with grenade attacks; Prosecutor General Martin Ngoga announced at a press conference that Mushayidi was part of a network threatening national security; a pro-GoR magazine, *Rwanda Focus*, had earlier claimed that *Umuseso*’s Kabonero conspired with a military officer to launch a wave of bombings in Kigali, a charge which Reporters Without Borders investigated and found baseless;<sup>88</sup>
- the suspension from April 14, a few months before presidential elections, to October 2010 of two independent Kinyarwanda newspapers, *Umuseso* and *Umuwugizi*, by the Media High Council (MHC), a regulatory body close to the ruling party, for “defamation [and] spreading false rumors,” alleging that they had incited public disorder, insulted the President, and caused trouble in the army; following threats to their personal security, *Umuwugizi*’s Gasasira fled the country for Uganda in April, and Kabonero and Gasana fled in May; *Umuwugizi*’s website was not

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<sup>82</sup> USDOS 2011, pp. 16-18.

<sup>83</sup> IRIN 3/10.

<sup>84</sup> Lars Waldorf 2011, pp. 48, 53.

<sup>85</sup> USDOS 2011, p. 18.

<sup>86</sup> USDOS 2011, p. 18.

<sup>87</sup> USDOS 2011, p. 20.

<sup>88</sup> Tom Rhodes, Africa Program Coordinator, Committee to Protect Journalists, “Rwanda’s Kagame tries to link bombs to critical press,” March 10, 2010, [cpj.org/blog/2010/03/in-rwanda-kagame-tries-to-link-bombs-to-critical-p.php](http://cpj.org/blog/2010/03/in-rwanda-kagame-tries-to-link-bombs-to-critical-p.php).

accessible in Rwanda although GoR denied blocking it; by year's end neither paper had reregistered, a requirement to publish;<sup>89</sup>

- the June 24 execution-style shooting death of Jean-Léonard Rugambage, the last journalist working for *Umuwugizi* in Rwanda after its suspension, outside his home in the capital, Kigali; he had been investigating the June 19 shooting and attempted assassination in South Africa of former Rwandan army chief of staff Lieutenant General Faustin Kayumba Nyamwasa and *Umuwugizi* editor Gasasira claimed the murder was related to an article the paper had published online that morning alleging GoR involvement in the assassination attempt and that Rugambage had reported being under increased surveillance in the days leading up to his death; in October, a court convicted two men of Rugambage's murder and sentenced them to life in prison; they claimed that he had killed a member of one of their families during the 1994 genocide, although he had previously been acquitted in *gacaca* proceedings;<sup>90</sup>
- the July 8 and 13 arrests of *Umurabyo* editor Agnès Uwimana for incitement to civil disobedience, contempt of the head of state, spreading rumors to cause public disorder, and denying the genocide, and of *Umurabyo* journalist Saidati Mukakibibi for defamation, inciting public disorder, and divisionism for likening President Paul Kagame to Hitler; on February 4, 2011, authorities sentenced the women to 17 and 7 years, respectively, in prison;<sup>91</sup> and
- the serious threats against the publisher of the bi-monthly *Ishema*, Fidèle Gakire, causing him to suspend publication August 28, 2011; the newspaper had run an editorial referring to President Kagame as a "sociopath" the previous month.<sup>92</sup>

## Failures of the Judicial System

### Impunity for Human Rights Violations by GoR Actors

GoR has adamantly and successfully pressured the International Criminal Tribunal on Rwanda (ICTR) to limit its investigations to only one side of the conflict, effectively exempting the RPF, suspected of having killed at least 45,000 Rwandan civilians in its 1994 invasion. The chief ICTR prosecutor from 1996 to 1999, Louise Arbour, recognized the need to prosecute cases of human rights violations by the RPF but, according to Victor Peskin, she "reportedly expressed concern that such investigations could lead to retribution against her Kigali-based investigators." In 2002, her replacement, Carla Del Ponte, launched a Special Investigations initiative and declared that she would issue the first indictments in RPF cases by the end of the year. In June, GoR demonstrated its power to halt ongoing ICTR proceeding by instituting travel requirements that effectively blocked witnesses from travelling to Arusha to testify, prevented ICTR investigators from interviewing anyone in Rwanda about possible RPF atrocities, and pressed the UN to remove her from her post. In August 2003, with U.S. and U.K. complicity, despite Germany and Spain's concern that changing prosecutors in Rwanda so late in the investigation would undermine the

<sup>89</sup> Amnesty Annual Report 2011; LDGL 2010, p. 3; USDOS 2011, p. 18.

<sup>90</sup> Amnesty Annual Report 2011; USDOS 2011, p. 19; HRW 6/10; Committee to Protect Journalists, "Journalists Killed in 2010 - Motive Confirmed: Jean-Léonard Rugambage," January 2011, [www.unhcr.org/refworld/docid/4e54d6abc.html](http://www.unhcr.org/refworld/docid/4e54d6abc.html).

<sup>91</sup> LDGL 2010, p. 3; FDU-RNC 7/11, p. 5; USDOS 2011, p. 17.

<sup>92</sup> Reporters Without Borders, "Bimonthly decides to suspend publication after receiving threats," August 31, 2011, [www.rsf.org/rwanda-bimonthly-decides-to-suspend-31-08-2011,40877.html](http://www.rsf.org/rwanda-bimonthly-decides-to-suspend-31-08-2011,40877.html).



court's work, the UN complied. Del Ponte's replacement, Gambian Supreme Court justice Hassan Bubacar Jallow, made no mention of the four cases Del Ponte reportedly had ready to proceed.<sup>93</sup>

GoR also responded with hostility to a draft UN mapping report on human rights violations in the Democratic Republic of Congo (DRC) between 1993 and 2003, "dr[awing] attention to impunity for past abuses by the Rwandan Patriotic Army."<sup>94</sup> Key findings of the report reprinted by the BBC, which noted that "researchers required two independent sources for each of the 600 incidents documented in their 545-page report," include:

The systematic attacks, in particular killings and massacres perpetrated against members of the Hutu ethnic group ... resulted in a very large number of victims, probably tens of thousands of members of the Hutu ethnic group, all nationalities combined. In the vast majority of case reported, it was not a question of people killed unintentionally in the course of combat, but people targeted primarily by AFDL [Congolese rebels led by Laurent Kabila, who became president in 1997]/APR [Rwandan army]/FAB [Burundi's army] forces and executed in their hundreds, often with edged weapons.

The majority of the victims were children, women, elderly people and the sick, who posed no threat to the attacking forces. Numerous serious attacks on the physical or psychological integrity of members of the group were also committed, with a very high number of Hutus shot, raped, burnt or beaten. Very large numbers of victims were forced to flee and travel long

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<sup>93</sup> Victor Peskin, "Victor's Justice Revisited: Rwandan Patriotic Front Crimes and the Prosecutorial Endgame at the ICTR," in Straus and Waldorf 2011, pp. 177-78; Carla Del Ponte and Chuck Sudetic, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals, and the Culture of Impunity*, 2009; Steven Edwards, "Del Ponte says UN caved to Rwandan pressure," *National Post* (Canada), September 17, 2003, [www.globalpolicy.org/component/content/article/163-general/29047.html](http://www.globalpolicy.org/component/content/article/163-general/29047.html); John Hooper, "I was sacked as Rwanda Genocide Prosecutor for Challenging the President, Says Del Ponte," *Guardian*, September 13, 2003, [www.guardian.co.uk/world/2003/sep/13/johnhooper](http://www.guardian.co.uk/world/2003/sep/13/johnhooper); Felicity Barringer, "Annan is said to Want a New Prosecutor for Rwanda War Crimes," *New York Times*, July 29, 2003, [www.nytimes.com/2003/07/29/world/annan-is-said-to-want-new-prosecutor-for-rwanda-war-crimes.html](http://www.nytimes.com/2003/07/29/world/annan-is-said-to-want-new-prosecutor-for-rwanda-war-crimes.html); UN Doc S/Res/203/1503, August 28, 2003 (requesting nomination by the Security Council for a new ICTR prosecutor and nominating Del Ponte for re-appointment as ICTY prosecutor); and ICTR Military-1 Exhibit, DNT 264, September 10, 1994, Memo from George Moose to Warren Christopher, U.S. Secretary of State:

A UNCHR investigative team that spent July and August in Rwanda [i.e. Gersony] has reported systematic human rights abuses by the GOR (i.e. RPA/F) forces – including systematic killings – in the south and southeast of the country. The team has concluded that the GOR is aware of these reprisals against Hutu civilians and may have sanctioned them

On the basis of interviews with refugees/individuals, the UNCHR team concluded that a pattern of killing had emerged. The RPA convened meetings of displaced persons to discuss peace and security. Once the displaced persons were assembled, RPA soldiers moved in and killed them. In addition to these massacres, the RPA engaged in house to house sweeps and hunted down individuals hiding in camps. Victims were usually killed with hoes, axes, machetes and with fire. Although males 18-40 were at the highest risk the young and elderly were not spared. The team estimated that the RPA and Tutsi civilian surrogates had killed 10,000 or more Hutu civilians per month, with the RPA accounting for 95% of the killing.

The UNCHR team speculated that the purpose of the killing was a campaign of ethnic cleansing intended to clear areas in the south of Rwanda for Tutsi habitation. The killings also served to reduce the population of Hutu males and discouraged refugees from returning to claim their land.

<sup>94</sup> Amnesty Annual Report 2011.

distances to escape their pursuers, who were trying to kill them. The hunt lasted for months, resulting in the deaths of an unknown number of people subjected to cruel, inhuman and degrading living conditions, without access to food or medication. On several occasions, the humanitarian aid intended for them was deliberately blocked, in particular in Orientale Province, depriving them of assistance essential to their survival. [¶512]

[T]he majority of the incidents reported indicate that the Hutus were targeted as such, with no discrimination between them. The numerous attacks against the Hutus in Zaire, who were not part of the refugees, seem to confirm that it was all Hutus, as such, who were targeted. The crimes committed in particular in Rutshuru (30 October 1996) and Mugogo (18 November 1996), in North Kivu, highlight the specific targeting of the Hutus, since people who were able to persuade the aggressors that they belonged to another ethnic group were released just before the massacres. The systematic use of barriers by the AFDL/APR/FAB, particularly in South Kivu, enabled them to identify people of Hutu origin by their name or village of origin and thus to eliminate them. Hundreds of people of Hutu origin are thus thought to have been arrested at a barrier erected in November 1996 in Ngwenda, in the Rutshuru territory, and subsequently executed by being beaten with sticks in a place called Kabaraza. In South Kivu, AFDL/APR/FAB soldiers erected numerous barriers on the Ruzizi plain to stop Rwandan and Burundian refugees who had been dispersed after their camps had been dismantled. [¶515]

The extensive use of edged weapons (primarily hammers) and the systematic massacre of survivors, including women and children, after the camps had been taken show that the numerous deaths cannot be attributed to the hazards of war or seen as equating to collateral damage.<sup>95</sup>

Anneke Van Woudenberg, an HRW authority on the Great Lakes region, declared in 2010 that

any attempt to present the information contained in this report has been blocked, subverted, or really discouraged. The report starkly shows the consequences of a culture of impunity. You see the same crimes being committed again and again. And **we're continuing to document those same abuses today. This is the kind of horrific cycle you get when you bury the truth, when you don't hold perpetrators to account.**<sup>96</sup>

GoR has shown no greater willingness to apply justice impartially in its own *gacaca* tribunals. (See also discussion of the procedural inadequacies of these fora below.) According to the U.S. State Department,

Because the government has not authorized *gacaca* courts to consider human rights abuses allegedly committed by the 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. The government claimed

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<sup>95</sup> UN High Commissioner for Human Rights, "Democratic Republic of the Congo, 1993-2003: Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo," August 2010 draft, as excerpted by BBC, "UN DR Congo 'genocide' draft report - key excerpts," August 27, 2010, [www.bbc.co.uk/news/world-africa-11111578](http://www.bbc.co.uk/news/world-africa-11111578).

<sup>96</sup> James Traub, "Judgment Day for Rwanda," *Foreign Policy*, September 3, 2010, [www.foreignpolicy.com/articles/2010/09/03/judgment\\_day\\_for\\_rwanda?page=0,0](http://www.foreignpolicy.com/articles/2010/09/03/judgment_day_for_rwanda?page=0,0).

that it had prosecuted 46 soldiers, that civil and military authorities addressed RPF abuses, and that one could not equate such abuses with the genocide. A human rights organization claimed that 36 soldiers had faced trial for crimes committed against civilians during the genocide and attributed the low number to government reluctance to try RPF soldiers for such crimes. No charges were brought against RPF soldiers during the year.<sup>97</sup>

### Shortcomings of the Law Enforcement, Judicial, and Penal Systems

According to Amnesty International, the “chilling effect [of the ‘genocide ideology’ and ‘divisionism’ laws] has discouraged people from testifying for the defence in criminal trials.”<sup>98</sup> Abductions, enforced disappearances and *incommunicado* detention increased in 2010 but, according to Amnesty International, GoR refused to investigate such cases.<sup>99</sup>

According to the U.S. State Department,

There were serious problems of lengthy pretrial detention, including the detention of persons whose unresolved cases dated from 1994, a consequence of the large number of persons suspected of committing genocide who continued to be held in prisons and detention centers. ... The law provides for a presumption of innocence, but government officials did not always adhere to this in practice. Juries are not used. ... [T]he number of prosecutors, judges, or courtrooms to hold trials within a reasonable period of time was inadequate. ... During the year there were some reports of police arbitrarily arresting and beating individuals, engaging in corrupt activities, and demonstrating a lack of discipline.<sup>100</sup>

According to Amnesty International, “Prison overcrowding continued to be a problem.”<sup>101</sup> According to the U.S. State Department,

Conditions in prisons and detention centers were generally harsh... There were unconfirmed reports that police sometimes beat newly arrested suspects to obtain confessions. ... In August 2009 prisoners in the Kimironko and Cyangugu prisons rioted over lack of food and visitation rights, resulting in several injuries. ... In September 2009 in Nyagatare Prison, two prisoners died and 11 were hospitalized due to a botulism outbreak; 67 of the 188 inmates in the prison contracted the disease. As of year's end, the prison population was approximately 62,000 in a system designed for 43,400.<sup>102</sup>

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<sup>97</sup> USDOS 2011, p. 13.

<sup>98</sup> Amnesty 2010, p. 8.

<sup>99</sup> Amnesty International, “Rwanda: Respect freedom of expression and end arbitrary detentions and enforced disappearances: *Human Rights Council adopts Universal Periodic Review outcome on Rwanda*,” Public Statement, AFR 47/005/2011, June 17, 2011, [www.amnesty.org/en/library/asset/AFR47/005/2011/en/e2002323-9c5d-4755-a50e-1915069f1ecd/afr470052011en.pdf](http://www.amnesty.org/en/library/asset/AFR47/005/2011/en/e2002323-9c5d-4755-a50e-1915069f1ecd/afr470052011en.pdf).

<sup>100</sup> USDOS 2011, pp. 10, 11-12, 26.

<sup>101</sup> Amnesty Annual Report 2011.

<sup>102</sup> USDOS 2011, pp. 5-6.

## Other Countries Refuse to Extradite to Rwanda

According to Amnesty International,

The mandate of the International Criminal Tribunal for Rwanda (ICTR) was extended until the end of 2011 for first-instance trials and to the end of 2012 for appeals. Ten suspects subject to arrest warrants by the ICTR remained at large. The ICTR Prosecutor made new applications in November to transfer cases to Rwanda. **Past applications failed after Trial Chambers decided that the accused would not receive fair trials.**

Judicial proceedings against genocide suspects took place in Belgium, Finland, Netherlands, Spain, Switzerland, and the USA. Sweden consented to extradition in 2009, but the case has yet to be decided before the European Court of Human Rights. **No country extradited genocide suspects to Rwanda due to fair trial concerns.**<sup>103</sup>

According to the U.S. State Department,

In 2008 the three panels of the International Criminal Tribunal for Rwanda (ICTR) considering case transfers to Rwanda ... denied case transfer, citing fair trial concerns, including inadequate witness protection and improper sentencing guidelines.<sup>104</sup>

### Gacaca Trials Deny Due Process

According to Amnesty International, in September 2010 GoR postponed indefinitely the deadline to complete *gacaca* trials of genocide cases.<sup>105</sup> According to CSIS, "Since 2005, about 12,000 *gacaca* courts have adjudicated more than 1.2 million cases. The longer-term impact of *gacaca* is as yet unknown, but there are some concerns that the process may have reinforced the notion of collective guilt and inequitable justice on Hutu. Concerns have been raised that defendants (all Hutu) were not given adequate legal protections; that untrained judges may not have been entirely impartial or free from political influence; and that without robust rules of evidence, accusations of involvement were occasionally used to settle personal disputes."<sup>106</sup> Although by law detainees are generally allowed access to lawyers, they are not allowed formal representation in the *gacaca* process.<sup>107</sup>

According to the U.S. State Department,

*gacaca* courts normally decide a case on the same day a trial begins. There is no bail in the *gacaca* system. Defendants are informed of the charges against them during the trial, not before it. Defendants in *gacaca* courts can present witnesses and evidence on their own behalf, although witnesses were sometimes reluctant to testify for fear of reprisals, mainly in the form of accusations of complicity in the alleged crimes at issue. According to a Penal Reform International (PRI) report released during the year, which provided a compilation of their

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<sup>103</sup> Amnesty Annual Report 2011.

<sup>104</sup> USDOS 2011, pp. 11-12.

<sup>105</sup> Amnesty Annual Report 2011.

<sup>106</sup> CSIS 2011, p. 13, citing HRW, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, May 31, 2011, [www.hrw.org/sites/default/files/reports/rwanda0511webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover_0.pdf) (HRW on *Gacaca*).

<sup>107</sup> USDOS 2011, p. 9.

findings on gacaca courts from 2001 through September 2009, some defense witnesses were also reluctant to testify for fear of being accused of “genocide ideology.” ... Lawyers are not permitted to participate officially in gacaca courts. ... Some gacaca judges denied defendants the right to present witnesses and ordered the imprisonment of those who questioned the impartiality of gacaca judges. Poorly qualified judges and ill-defined guidelines on evidence and hearsay were problems. During the year there were reports that local gacaca officials and citizens abused the process to pursue personal matters and settle grudges unrelated to the genocide, including making false accusations to acquire land. According to the PRI report released this year, local authorities “at times” were reported to have unduly influenced gacaca judges during the course of hearings. ... [V]iolence and threats of violence--usually perpetrated by persons accused of crimes related to genocide--against genocide witnesses were sometimes problems. Some citizens were too frightened to testify in gacaca courts.<sup>108</sup>

*Gacaca* are especially problematic for rape cases. In May 2008, Parliament transferred most remaining "category 1" genocide cases from conventional courts to *gacaca*, including at least 8,000 rape or sexual violence cases, “seriously compromise[ing]” the survivors’ privacy, according to HRW, because of the community-based nature of *gacaca*, despite the fact that testimony in rape cases is heard behind closed doors. Some women, who had not told their families about the rape and did not want the community to know, dropped their cases after they were transferred. There were also reports of intimidation and accusations of false testimony. On the other hand, one of the justifications for not involving lawyers in *gacaca* is that community participation negates the need for them—if a witness lies or judges are prejudiced, community members can speak out; in camera, however, there is no public participation or monitoring by rights groups.<sup>109</sup>

According to LDGL,

Justice being a bulwark of human rights and civil liberties, it is called upon to play its role fully, but it is clear that it is at the service the executive to suppress dissenting voices and even those of Human Rights Defenders. This is the case of our colleague François Xavier Byuma, condemned by the *Gacaca* court to 17 years in prison for acts of genocide.<sup>110</sup>

## **GoR Ability to Identify and Persecute; Hostility toward Refugees; Desperate Fear of Return**

According to CSIS, “the RPF remains in firm control... **The state has a robust and pervasive security and intelligence apparatus; internal opposition is effectively suppressed.**”<sup>111</sup> The RPF maintains a “pervasive and uncompromising grip on political discourse and competition.”<sup>112</sup>

In April 2010, President Kagame allegedly referred to Rwandan refugees as human waste that needed to be excreted. According to Rwandainfo.com:

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<sup>108</sup> USDOS 2011, p. 12.

<sup>109</sup> IRIN, “Rwanda: Rape, Justice, and Privacy,” June 2, 2011, [www.irinnews.org/report.aspx?reportid=92876](http://www.irinnews.org/report.aspx?reportid=92876), citing HRW on *Gacaca*.

<sup>110</sup> LDGL 2010, p. 2.

<sup>111</sup> CSIS 2011, p. 11.

<sup>112</sup> CSIS 2011, p. 18.

In a speech Tuesday afternoon at the Parliamentary buildings, President Paul Kagame took a few minutes to talk in perplexing terms about those officials who flee the country. ...

**“Those fleeing are like [the waste] being excreted,”** he said amid applause, before he had even completed the idea he was advancing. “It means the country has sieved.”

He added: “Those who do good for the country [as well as] understanding the role they have, the country owns them...they live in it. But for the waste, the country throws them out. These are things that are automatic. If that is how it’s supposed to be, so be it.”<sup>113</sup>

In 2009, GoR threatened to strip Rwandan refugees of their nationality if they failed to return from Uganda by the end of the year.<sup>114</sup>

According to one senior Rwandan official CSIS interviewed in 2011, “The system relies on people committed to the process and willing to sacrifice and **those who don’t share that vision have no place in today’s Rwanda.**”<sup>115</sup>

For these and many other reasons, Rwandan refugees are understandably and demonstrably desperate to resist return. On July 14 and 15, Ugandan and Rwandan authorities had to force Rwandans onto trucks at gunpoint to return some 1,700 failed asylum-seekers and refugees from Nakivale and Kyaka II camps in south-western Uganda, injuring several, including pregnant women.<sup>116</sup> According to Amnesty International,

armed police officers rounded up the asylum-seekers and forced them on to waiting trucks during two major operations at the Nakivale and Kyaka II refugee settlements in southwestern Uganda.

When some asylum-seekers tried to escape, police officers fired shots into the air. In the ensuing panic and stampede people were reportedly injured and children were separated from their parents.<sup>117</sup>

According to IRIN,

A Rwandan community leader among the refugees in Juru A camp - one of the settlements in Nakivale predominantly occupied by Rwandans - told IRIN on the telephone: “When we were called to the camp offices [on 14 July], we thought it was for a meeting but when we got there we found the police and camp commanders and about 12 trucks.

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<sup>113</sup> Rwaninfo.com, April 14, 2011, [rwaninfo.com/eng/kagame-rwandan-exiled-officials-are-like-excreted-human-waste](http://rwaninfo.com/eng/kagame-rwandan-exiled-officials-are-like-excreted-human-waste).

<sup>114</sup> IRIN, “Rwanda-Uganda: Go home, Uganda tells Rwandan refugees,” August 4, 2009, [www.irinnews.org/Report.aspx?ReportId=85566](http://www.irinnews.org/Report.aspx?ReportId=85566) (IRIN 8/09).

<sup>115</sup> CSIS 2011, p. 14.

<sup>116</sup> Amnesty Annual Report 2011.

<sup>117</sup> Amnesty International, “Uganda Forcibly Returns 1,700 Rwandan Asylum Seekers,” July 16, 2010, [www.amnesty.org/en/news-and-updates/uganda-forcibly-returns-1700-rwandan-asylum-seekers-2010-07-16](http://www.amnesty.org/en/news-and-updates/uganda-forcibly-returns-1700-rwandan-asylum-seekers-2010-07-16).

"The situation was very bad; we were held at gunpoint as the police and the commanders tied people's hands and forced them into the trucks; those who escaped were shot at. I understand several people were injured in the chaos," the community leader, who requested anonymity, said.

He said some of those who were being herded into the vehicles were beaten up when they tried to resist.

"Right now there are very few Rwandans in Nakivale camp. Many have fled into the bush or among the host community. Those left are mostly children and the aged who cannot run," the community leader said. "I have heard that some of those who have fled are in very bad conditions in the bush."

Another Rwandan refugee in Nakivale, said: "They took many of my neighbours yesterday; I am too old to run or to return to Rwanda. What will happen to me? I am worried for my grandson who I take care of and who is in high school. I fear they might catch him and force him to go to Rwanda yet he was born here. My son, his father, is dead, he knows no other home. What will happen to us?"<sup>118</sup>

According to UNHCR,

"In the Nakivale settlement, Rwandese asylum-seekers were assembled on the pretext that they were to be informed of the results of their asylum claims. Panic spread among the group when police intervened, firing shots. Force was used to push people onto trucks," UNHCR spokesperson Melissa Fleming told journalists in Geneva. ...

Fleming said that in the Kyaka settlement, food distribution at a World Food Programme (WFP) warehouse was used as the pretext for the round-up. "Once in the building, the group was surrounded by armed men and police. Those who did not manage to escape were forced onto waiting trucks. Many were not permitted to take their personal belongings with them," she said.

**The operations resulted in the deaths of two men who jumped off trucks en route to Rwanda.** Children were separated from their parents. Twenty-five people who were not among the deported were injured, some from police beatings. Among the injured were six pregnant women who were treated at a local hospital and then released. UNHCR is interviewing the injured and trying to trace those separated from their families in the deportation.

Fleming said that although UNHCR was broadly aware of an agreement between Uganda and Rwanda to return failed asylum-seekers, "We were not informed of the timing and the nature of this operation. At the outset, UNHCR staff who were present in the settlements were asked to leave the scene."

Although the operation was aimed at failed asylum-seekers, UNHCR has since received confirmation that recognized refugees were among those returned. ...

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<sup>118</sup> IRIN, "Rwanda-Uganda: Kampala urged to end 'gunpoint' deportations," July 15, 2010, [www.irinnews.org/report.aspx?reportid=89847](http://www.irinnews.org/report.aspx?reportid=89847) (IRIN 7/10).



Since the beginning of this year, 3,320 Rwandans have filed for asylum in Uganda. Ninety-eight per cent were rejected in the past six months. UNHCR is concerned that asylum applications are not being determined properly and fairly.<sup>119</sup>

According to Barbara Harrell-Bond, however,

Refugees themselves embarked on investigating this outrage and wrote a report on these events. They found that instead of only two having died, 14 had lost their lives and their burial places could be accounted for. The causes of death, as reported by the refugees, included: being *strangled* by Rwandan officials, shot dead by police, jumping off the truck, flattened by the crowd, being “disenwombed,” and “genitals amputated by barbed wire.” They were also able to name 6 cases where the families had been separated and 4 where children had been *refouled* without their parents and 39 cases where children had been left behind. And, contrary to official reports, 17 recognized refugees were *refouled*. Hundreds of wounded and frightened refugees escaped into the bush.<sup>120</sup>

According to an August 2009 IRIN report, despite the expiration of a July 31 deadline upon which Uganda threatened to revoke Rwandan refugees’ status and render them illegal aliens,

In the past two months, however, only 3,000 have returned home out of 17,000, some out of fear of possible persecution back home.

Andrew Munyakazi, a refugee working as a cleaner in Mbarara town told IRIN on 14 July that his family had voluntarily returned to Rwanda in 2002, but his father was arraigned before a Gacaca court and imprisoned for 15 years on genocide charges.

“Our land was immediately confiscated,” he said. “How can I return to Rwanda - those who took over our land will cause my arrest again because they will think I have come to reclaim it.”<sup>121</sup>

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<sup>119</sup> UNHCR, “UNHCR condemns forced return of 1,700 Rwandans from Uganda,” July 16, 2010, [www.unhcr.org/4c406edb6.html](http://www.unhcr.org/4c406edb6.html); IRIN 7/10.

<sup>120</sup> Barbara Harrell-Bond, Director, Fahamu Refugee Programme, “The Cessation Clause Uganda style,” Keynote Speech Delivered at the Northwestern University Conference on Human Rights, January 23, 2011 (Buffett Center for Forced Migration Studies, Working Paper 11-001, January 2011, [thealeph.posterous.com/cessation-clause-uganda-style-keynote-speech](http://thealeph.posterous.com/cessation-clause-uganda-style-keynote-speech)), pp. 13-14.

<sup>121</sup> IRIN 8/09.



## Appendix: Testimonials from Rwandan Refugees and Others

“Please can you take this message to the UNHCR representative during that meeting: I am a Ph.D. student in Cape Town, South Africa since 2005 when I left my beautiful country again after being jailed from 1997 to 2003. In 1994, my whole family and I left the country and went to Nyangezi Mulwa refugee camp in eastern Congo where we were living before the attack of Kagame’s army that came exterminate the refugees accusing them of being *Interahamwe*. My family was killed at Walikale, in eastern Congo, by the soldiers of Rwanda’s current president, Paul Kagame and I am the only survivor. I witnessed this with my own eyes. It was not my family alone that was killed. There were many people in the equatorial forest of the eastern Congo. I was thrown innocently in jail for six years when I came back home in 1997 and released without any accusations against me. Now the mapping report accusing Kagame and his army of massacring our families is out and we are the only witnesses to those atrocities. Once they are brought to court, who will stand as witnesses of these killing? They now know that we survivors of that tragedy can tell the truth because we are eye witnesses. I want you to ask them that on my behalf: What will happen once all the key witnesses of those killings at TINGI-TINGI, HOMBO, KISANGANI, MBANDAKA, WALIKALE, TCHIMANGA, TEBERO, NYASA, have been handed over to Kagame, who is the mastermind. He will gather them and kill them so that nobody will explain what happened in that forest. It can be the end of the justice for our relatives who have been killed mercilessly by Kagame’s army.

For the Rwandan representative, for which good reasons do you always fight to convince host countries to revoke Rwanda refugees’ status saying Rwanda is secure country while people are running away every day to seek refuge in different countries? We know how our relatives are mistreated inside the country. Those who are not detained because of *gacaca* do not have a job and they have taken their land. They always show that Kigali is progressed but why they do they not show villages (i.e., 80% of the country)? If there is technological advancement, can you limit it to one place? We need human dignity, security, and life in our country as citizens, not as foreigners or slaves. We need liberty of expression. Why they are still putting journalists and political rivals in jail? Why do we who were in country before 1994 not have the social status of those who were refugees in Uganda and other countries? Why are they using genocide to evade criticism for their wrong doing?

For the UNHCR representative, do you think we forgot your plot with Kigali when they attacked us in the refugee camp in 1996? You refused to give us food so that hunger would force us back home. We left all the stores full of food when we ran away to the forest. When will you stop betraying Rwandans? The blood of our relatives is claiming justice. Why do you force us to go back to our motherland as if you loved it more than we or as if we are happy to be called refugees?”

- Name withheld, Cape Town, South Africa, September 1, 2011

“I shudder at the mere mention of the so-called cessation clause being invoked by Uganda in the case of Rwandan Refugees in Uganda. I have a long relationship with Rwandans in Uganda since I come from a tea growing area in Western Uganda where there are many. I know this is a case to do with the post-genocide situation where whoever is outside Rwanda may be seen as a *genocidaire*-yet in my opinion this is for political expediency!

I have some degree of knowledge of regional political dynamics here and pray that this so-called 'Cessation Clause' should literally cease being mentioned in this matter. How can my country, praised internationally for good refugee policies, be thrown to the wind! I wish pressure were put on our country! The political powers that be! If the current leadership in Rwanda were to have had the same clause invoked, where would they be today? God save humanity!

These views are from the depth of my heart and head.”

- Paddy Musana, Coordinator, Peace and Conflict Studies, Makerere University, Uganda, September 2, 2011

"If UNHCR is unaware of all the people that Kagame and his allies have murdered since 1997, it must close its offices including the one in Geneva!"

- Joseph Twahirwa, Environmental Consultant, Geo Pollution Technologies, Cape Town South Africa, September 1, 2011

“The cessation clause is about to touch Rwandan refugee around the world is very dangerous for me in particular and for all refugees from Rwanda in general.

I fled my home country of Rwanda in October 2002 after long lasting imprisonment for nothing. After my trial, they re-arrested me and those arrests were accompanied by torture, not because I was a criminal, but because I had been deputy mayor in our commune of Rukara. I obtained my release only with the help of human rights agencies.

When I returned to my home, my wife and children were not there. The police and mayor of Rukara had chased her from town and followed her to Kigali where she had gone to seek assistance. She was obliged to leave Rwanda because of them.

Today, I live in exile but I still receive threats from Rwanda because I have agreed to go to the ICTR in Arusha as a defense witness. Before my fled, the police and mayor implicated her for having supported the political party of PDR-Ubuyanja of former president, Pastor Bizimungu.

I feel as an enemy of my country when I remember all they did to me and my family. UNHCR supports operations that force Rwandan refugees to return under the pretext that there is no problem but, when they reach there, some face long imprisonment for nothing like me; others face death without even being tried. I am witness to that. I saw such cases with my own eyes. UNHCR does not intervene in such cases in Rwanda. Lately you may have heard of “genocide ideology,” a charge that affects many Hutu who recently fled the country. Even some political cases cause people to go into exile because of the massive imprisonment which follows. UNHCR thinks the genocide trials were done in very positive way but they do not know that some authorities urge people to give false testimonies to help them imprison Hutu. I know of such cases.

Even the Tutsi today are fleeing because of problems in Rwanda.

I ask UNHCR and the countries which host Rwandan refugees not to listen Rwandan officials who come to tell us about the peaceful situation in Rwanda. We know about the situation because we are in the technological age. We have phones and internet. We have time to know what they are not able to tell us when they come to inform us about Rwanda. UNHCR when they go to Rwanda, according to what they tell us in their meetings, they say, when they go there, they see buildings, people who cultivate, cattle and people walking around. That is not enough. There are other things they do not see and we know them. Let them approach refugees and show them where the problem is.

I thank you from the bottom of my heart for this effort.”

- Charles Murwanashyaka, Zana Village, Kampala, Uganda, September 5, 2011

I am a religious with Nairobi East Baptist Church, a human right activist, and an educationalist. I hold an MA in Human Sciences/Theology from Potchefstroom University. I am married with 5 children and am a Rwandan aged 41 in exile in Kenya.

According to the reasons that force people to flee their countries, in consideration with what Kigali advances that would condition their invocation, there several others which are not yet if not far from being accomplished in Rwanda.

Some of them are:

1. Freedom of expression and speech: Rwanda has been mentioned apart from Islam states among the state that stifles the fundamental freedom of expression;
2. Police state: far from being a democratic nation, Rwanda is a totalitarian country;
3. Lack of political dispensation: not one leader of opposition party is at liberty; what freedom can there be for ordinary members?
4. Draconian and egregious political ideology: there will never be peace in Rwanda without opening political space; and
5. Exclusive law i.e., the laws on genocide ideology, sectarianism, etc., the interpretation of which stands outside basic international law.

- Rev. Pastor Aloysius Habimana, East Baptist Church, Nairobi, Kenya, September 6, 2011

“The human race has usually a tendency of siding with the mighty and powerful, leaving the weak, the defenseless to stand alone against the tornado. I am not convinced that it will be voluntary repatriation. They say if a bona fide son and daughter of a family are refusing to enter their father’s home, there is strong need to consider their explanations to their refusal, because the house may be well built, perfectly painted outside, with a nice roof, and most importantly with a consistent and inviting publicity to enter, whereas the rooms therein are prison cells for the same children.”

- Emile Hatungimana, Chairman, Refugee Communities in Zambia, World Refugee Day Speech, June 20, 2011, Lusaka, Zambia (referring to Rwandan refugees’ reluctance to return)

“The view of those in authority in the Regional Office of UNHCR and Government appear to be that Rwandese refugees are reluctant to return because they value their small businesses in Lusaka. This despite their lack of freedom of movement and employment, with harsh provisions that refugees must be investors and have \$50,000 to possess legal self-employment permits, and are consequently at the mercy of corrupt immigration officials who demand payment not to imprison them pending removal to Meheba settlement.”

- The Rt Revd John Osmer, Rector St John’s Anglican Seminary, Assistant Anglican Bishop of Lusaka, Zambia, Letter to High Commissioner Antonio Guterres, August 10, 2011

“I am 25 years old. I am here in Uganda as a Rwandese refugee since 2006. About [invoking the] cessation clause, I would like to tell you these:

1. As a Rwandese refugee, I can't and I will not go back in Rwanda. I am the one who can feel and who knows the sweetness of my home country, not someone else on my behalf. When Kagame asks for the cessation clause on Rwandese refugees, it is not because he loves us, but because he is used to killing innocent people. So let him find us where we are, as he did in Congo.
2. I was born in a family of 10, but now we are only two. My parents with my brothers were killed by RPF in my sight in Rwanda, others in the camps of Congo. So even if you say Rwanda of Kagame is peaceful, I can go back unless he brings back my parents with my brothers and sisters.
3. Rwanda nowadays doesn't have stability, security, or peace. Imagine a country where the soldiers walk day and night in war uniform with heavy weapons. Why is that if Rwanda is peaceful?

There are many more things to say about Kagame's Rwanda but you have enough knowledge about human rights and refugee rights. We are requesting you to let the world to know the truth about the killing by the RPF in Rwanda.”

- Name withheld, Uganda, September 15, 2011