

International Refugee Rights Initiative



Refugee Rights News

Volume 3, Issue 2

July 2006

In this issue:

SPOTLIGHT:

*Expanding the
Responsibility to Protect
the Displaced?*

**ACTION AND
ADVOCACY:**

*World Refugee Survey:
How does Africa score?*

*Using African
Mechanisms to Promote
the Rights of Refugees*

**FEATURES AND
ANALYSIS:**

*The Darfur Peace
Agreement: What hope for
the displaced?*

*Prosecuting a Warlord:
Charles Taylor facing
justice at last*

LAW AND POLICY:

*Material Support: Eroding
asylum in the United
States*

PUBLICATIONS

SPOTLIGHT:

Expanding the Responsibility to Protect the Displaced?

On June 28, 2006, the international spotlight focused on the issue of the protection of civilians in armed conflict in a special open session of the UN Security Council in New York. UN Under-Secretary for Humanitarian Affairs, Jan Egeland, started off the discussions, noting that in the sphere of protection of civilians in armed conflict “there are significant signs of progress.”

One of these signs of progress was the adoption of UN Security Council Resolution 1674 in May. The Resolution builds upon previous resolutions, such as Resolution 1296, which had identified the forcibly displaced as a group of particular concern and tasked the Secretary-General with identifying situations in which displaced populations might be harassed or where their camps might be infiltrated by armed elements. Such situations were recognized by the Council as potentially constituting a threat to international peace and security, opening the door to further action.

Resolution 1674 and the responsibility to protect

Resolution 1674, as Mr. Egeland noted, is a significant step towards strengthening Resolution 1296. Particularly important is the recognition of the responsibility to protect;

Resolution 1674 reaffirms the commitments made at the World Summit relating to the responsibility of the international community to protect civilians from genocide, war crimes and crimes against humanity. As the body with the primary responsibility for the maintenance of international peace and security, the Security Council has a particularly

vital role to play. Its acceptance of the responsibility to protect is critical to ensuring that this responsibility is upheld in practice.

The displaced and peacekeeping

Of critical importance to the displaced is the recognition by the Security Council in Resolution 1674 of the important role that may be played by peacekeepers in relation to the situation of the displaced. In relation to camps for the displaced, Resolution 1674 encourages peacekeeping operations to take “all feasible measures to ensure security in and around such camps.” The Resolution also refers to the possible role of peacekeepers in ensuring humanitarian access and creating conditions for safe and dignified return.

Refugees and resolving conflict

Another area addressed by Resolution 1674 is the importance of engaging the displaced in resolving conflicts and rebuilding. The Resolution demands that all peace processes address the need to create conditions for the “voluntary, safe, dignified and sustainable return” of the displaced.

Intimately linked with creating peace in the resolution is the ending of impunity, which is also listed as a condition for resolving conflicts. The resolution draws attention to the range of possible mechanisms for this and asks states to take note of their responsibilities to prosecute under international law.

The way forward

As Jan Egeland noted in his June 28th presentation, the commitments set forth in 1674 are an important step, but the international community must do much

Refugee and Humanitarian Affairs Course at Moi University

The Centre for Refugee Studies, Moi University invites applications from qualified individuals to participate in a two week training on Refugee and Humanitarian Affairs, scheduled for 24th September – 6th October 2006 in Eldoret, Kenya.

The course is intended for serious undergraduate and graduate students who wish to carry out research on forced displacement and humanitarian intervention in the African region; field-based women and men working in government, the humanitarian sector and aid agencies are eligible. Individuals with demonstrated interest in working with relief organizations will also be considered.

The course aims at equipping participants with an analytical framework for understanding legal, social, economic and political issues relating to the situation of refugees and internally displaced persons (IDPs) in the Great Lakes region, the Horn and the East African region. In doing so, participants will have the opportunity to critically examine the major international conventions, international and municipal law, economics, politics and recent progressive developments in international human rights law and jurisprudence, including the Guiding Principles on internal displacement. Participants will have the opportunity to share insights on the need for a human rights approach.

Applications must reach the Centre for Refugee Studies by 15 August 2006.

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more to ensure that crises are dealt with effectively.

The question, as he phrased it, was how to make this commitment reality on the ground. For this, he said, more efforts must be made to elaborate practical guidelines for peacekeepers to ensure that they are as effective as possible. More efforts were also needed, he urged, to ensure humanitarian access and offer the good offices of the international community as mediation.

An important issue, noted by many governments who spoke in the open session, was the potential role of the International Criminal Court. The government of Ghana noted that the Court could “contribute immensely to containing and combating crimes against innocent populations in conflict areas,” particularly calling on states to arrest indictees and citing the recent handover of Charles Taylor as a positive example. The government of Uganda also called for the arrest of indictees in the Lord’s Resistance Army.

The subject will stay on the agenda of the Security Council; the Secretary-General has been requested to submit another report in 18 months.

ACTION AND ADVOCACY:

World Refugee Survey: How does Africa score?

On June 13, 2006, the International Refugee Rights Initiative co-hosted a session for NGOs previewing the US Committee for Refugees and Immigrants’ (USCRI’s) annual *World Refugee Survey—Risks and Rights*. This year’s *Survey* features articles on the response to Hurricane Katrina in the United States, the impact that the denial of rights--also called refugee “warehousing”--has on refugee women, refugee protests in the Global South and an update on internal displacement. Interestingly the *Survey* found that the global number of refugees had risen last year, in contrast to the assessment of UNHCR, largely due to new outflows from Iraq, included by USCRI but not UNHCR.

The *Survey* also for the second straight year graded more than 40 countries worldwide, hosting most of the world’s refugee population according to their compliance with international standards regarding the treatment of refugees. Each country receives a distinct grade in each of four areas, refoulement and physical protection, detention and access to justice, freedom of movement and the right to earn a livelihood. Of particular interest to African advocates is that overall, the USCRI’s assessment showed a deterioration of refugee rights protections in Africa. In 19 African countries there has been a reduction in the grades assigned as compared to last year.

Perspectives on Refoulement in Africa

On June 17, 2006, IIRI staff member Olivia Bueno presented a paper reflecting on the state of refugee policy with regard to refoulement in Africa at a session organized by the Canadian Council for Refugees in Toronto. The session was intended to bring together advocates from the Global North and South to promote increased collaboration. The paper was presented at a panel which included colleagues from Malaysia, Australia and Colombia.

The paper is now available on the IIRI website at: <http://www.refugeerights.org/Assets/PDFs/RefoulementinAfrica.pdf>

Particularly negative trends were shown in the relation to refoulement and physical protection, where eight countries scored lower in 2006 than in 2005. One such deteriorating score was that of Burundi, which fell from a D to an F in the area of refoulement, largely due to the massive repatriation of approximately 5,000 Rwandan asylum seekers without screening, in June 2005. USCRI also lowered Tanzania's score to an F, citing numerous incidents of forced return of asylum seekers and recognized refugees. They also pointed out that for part of the year the government refused even to entertain applications for asylum from Rwandans.

Rollback of standards was also seen in the area of freedom of movement. USCRI lowered Sudan's grade from a C to a D, for example, citing requirements imposed by UNHCR and the government of Sudan for daily travel permits and security clearances in the tense Kassala state. Newly arrived asylum seekers were also held in detention in Wad Sherife until their claims were processed.

Uganda also drew a lower grade despite maintaining a fairly consistent policy between 2005 and 2006. Changes in the tax system apparently no longer allowed refugees to use receipt of tax payment as identification, thus limiting freedom of movement for some.

With regard to the right to earn a livelihood Côte d'Ivoire saw its grade drop. Côte d'Ivoire received a C in 2005 on the basis that it had passed a law allowing refugees to work. By 2006, however, USCRI declared that "[i]t remained virtually impossible for refugees to work in Côte d'Ivoire." For Chad, incidents of harassment of refugees for selling plastic sheeting and employment of refugees for less than minimum wage, caused its grade drop from a B to a C.

Citizenship and Forced Migration in the Great Lakes Region: Exploring the linkages through multi-disciplinary research

On April 26, 2006, the International Refugee Rights Initiative and the Social Science Research Council presented a new report, entitled "Citizenship and Forced Migration in the Great Lakes Region."

The report was the outcome of a session held in April 2005 in Kampala which assessed the feasibility of conducting a research and network building project in the Great Lakes region, focusing on the question of citizenship. The origin of many conflicts in the region can be understood as conflict over access to, or exclusion from, citizenship—broadly defined as a sense of belonging and entitlement to resources. A review of the situation in the Great Lakes region showed, however, that there is a deficit of quality research which might help to identify policy solutions. The report lays out the framework for how such a collaborative research and advocacy project might be developed.

[Read more about the project on the IRRI website.](#)

In the final category, detention and access to courts, Africa's policy seemed to be more balanced. A number of countries received lower grades, but others improved. The Democratic Republic of Congo (DRC), for example, moved up from a D to a C, apparently because incidents like the deportation of Congolese of Rwanda origin were not repeated in 2005. DRC also improved its score in the area of refoulement, as a result of a general respect for the provisions of its national refugee legislation and not repeating previous threats to refoulement.

The prevalence of decreasing grades, signaling more arbitrary and restrictive policies, is clearly of concern to refugee advocates. It might be interesting to consider whether use can be made of the grades offered in the Survey in advocacy at the national and refugee level.

See the [World Refugee Survey 2006](#).

Using African Mechanisms to Promote the Rights of Refugees

In some ways, refugees in Africa are fortunate. Not only is the ratification of human rights instruments on the continent widespread, but the African regional refugee convention offers additional protections beyond those found in international law.

Despite this, refugees in the region have too often suffered continuing human rights violations in exile. Refugees are subjected to continuing insecurity in host countries. Often their freedom of movement is restricted and access to economic and social rights limited. Why in the context of such a generous international legal regime are refugees so vulnerable?

The problem, of course, is enforcement. Governments lack the will to implement their commitments. And the international refugee regime is notorious for its weak enforcement regime. There is no international court to which refugees may take their claims. Although UNHCR is tasked with monitoring the rights of refugees, it is unable to take on a comprehensive enforcement role due to its delicate relationships with the states within which it operates. In Africa, this weakness has the potential to be remedied in part through the use of African mechanisms, including the African Commission on Human and Peoples' Rights.

Unfortunately, NGOs in the region often lack the expertise and resources necessary to bring communications before the Commission. It is this need that *A Guide to the Use of the African Human Rights System in the Protection of Refugees*, developed by Dr. Chaloka Beyani of the London School of Economics with the support of the Windle Trust, addresses. The *Guide*, therefore, offers a step by step overview of the processes of the Commission and relevant jurisprudence.

A Guide to the Use of the African Human Rights System in the Protection of Refugees

The *Guide* is intended to provide an introduction to the protection available to refugees in the African human rights system. It was prepared over a period of three years, during which input from NGOs from across Africa was solicited. The current iteration of the *Guide* reflects the needs and expertise expressed by these groups.

The *Guide* is divided into five parts. Part one lays out the relevant provisions of the African Charter on Human and Peoples' Rights and the relevant jurisprudence of the

Commission in order to provide the user with the necessary background upon which to build a case.

Part two of the *Guide* covers the practical aspects of taking a case before the Commission. It addresses the bases on which cases should be selected, how to effectively prepare cases and the rules and procedure of the Commission.

Part three of the *Guide* deals with the importance of concerted regional efforts on behalf of refugees. This *Guide* proposes mechanisms for more effective collaboration between NGOs, UNHCR, legal practitioners, NGO advocates and academic practitioners from across the region. It also addresses the importance of follow up on decision to ensure that governments comply with the Commission's decisions, both in relation to the individual refugee or refugees concerned, but also in relation to other, similarly situated refugees.

Part four of the *Guide* presents a series of case studies drawn from the preparatory sessions, designed as a practical tool for teaching and training.

The fifth and final part of the *Guide* is an appendix which includes relevant international texts, including the African Charter on Human and Peoples' Rights, the Rules of Procedures of the Commission, a chart of states that have ratified the relevant treaties and selected decisions and cases.

Using the Guide

The International Refugee Rights Initiative hosted a launch of the *Guide* in the last week of March 2006 in Nairobi. The launch of the *Guide* offered an opportunity for advocates not only to learn about the *Guide* itself, but also to reflect on recent developments with regard to refugee protection in the region and to map out potential collaborative strategies.

The International Refugee Rights Initiative intends to seek support for some of the suggestions made in the session. For example, we would like to make the Guide available in easily searchable electronic format, ensuring not just accessibility but that the Guide becomes a living tool which can be continually updated as new law and practice evolves. A web-based version of the Guide would also include links to other relevant reference material.

Copies of the *Guide* are available from the International Refugee Rights Initiative. To request a copy of the Guide, please contact Olivia Bueno at olivia.bueno@refugee-rights.org.

FEATURES AND ANALYSIS:

The Darfur Peace Agreement: What hope for the displaced?

On May 5, 2006, the Government of Sudan and the faction of the Sudan Liberation Army (SLA) led by Minni Minnawi signed a peace agreement in the Nigerian capital, Abuja. Nearly two months later the debate about the viability of the Darfur Peace Agreement (DPA) rages on. Although it has been welcomed by many as a first step toward peace, some question the viability of the agreement as long as two major groups in the opposition refuse to sign. Others have criticized what they view as the agreement's weak implementation mechanisms, and cite the lack of progress since the signature of the accord.

In Darfur, groups of internally displaced persons (IDPs) have been involved in demonstrations about the agreement, criticizing the deal and calling for international intervention. The heavy pressure on some parties to sign and the continued resistance of others has only added to the suspicion with which the agreement is viewed. There has been a lack of detailed discussion of what the agreement offers.

What does the DPA offer to the displaced?

The DPA agreement addresses the concerns of Darfurians and the Parties through three pillars: security, wealth sharing and power sharing. In respect to the latter, for example, it calls for increased representation by Darfurians in government, including granting a post of Special Assistant to the President Darfur. It also stipulates that a referendum on the integration of the three Darfur states into a single region will be held in 2010. The agreement runs to over 100 pages of detailed provisions and deserves careful and close examination. This article will only focus on those aspects of the agreement which *particularly* relate to responding to the experience of displacement; we recognize that all the agreement's provisions are relevant to displaced Darfurians.

Security in IDP camps

Security is the need most urgently cited by IDPs throughout Darfur. In laying out the ceasefire arrangements, the Parties commit to ensure unimpeded humanitarian access and ensure security in IDP camps. The DPA provides for African Union Mission in Sudan (AMIS) Civilian Police to be deployed in IDP camps in coordination with the Government of Sudan or the Movements, depending on who controls the relevant territory. The Ceasefire Commission is charged with overseeing the creation of demilitarized zones around IDP camps in which Parties may not deploy their forces and in which no weapons may be carried except by AMIS personnel. Going forward, the Parties also pledge to create a secure environment which will be conducive to voluntary return.

Humanitarian Needs

The specific needs of refugees and internally displaced persons with regard to humanitarian assistance and laying the groundwork for return are dealt with in Article 21 of the Agreement (Urgent Programs for Internally Displaced Persons (IDPs), Refugees and other War Affected Persons and Compensation for War-Affected Persons). The section begins by affirming that IDPs and war-affected persons have the same rights as all other Sudanese citizens and that they have the right to return to their places of origin. It also recognizes that in order for the displaced to return they must have security and access to basic resources such as potable water and adequate educational and health facilities.

In practical terms, the section promises the creation of a Darfur Rehabilitation and Resettlement Commission (DRRC). The DRRC is mandated to monitor the situation of internally displaced persons and to “grant the United Nations, NGOs and other humanitarian agencies access to displaced and war-affected populations.” NGOs and UN agencies have had numerous problems in gaining access to the displaced in Darfur. The creation of the DRRC is to be welcomed if it results in greater access to populations in need. It is unclear, however, how this new organ will interact with national authorities such as the Humanitarian Aid Commission. The final provision in the section, which states that disputes should be referred to the national authorities, is worrying in this respect. If the decisions of the DRRC can be overturned easily by the national HAC, then the new body may be reduced to the status of an additional layer of bureaucracy.

The DRRC will also conduct registration of displaced persons and facilitate the issuance to IDPs of all necessary documentation, such as passports, marriage and birth certificates, documents which are crucial to establishing identity and accessing other rights. Most humanitarian agencies agree that it is only with an accurate demographic picture of the population that their needs can be adequately addressed. It is hoped that displaced persons will be included in the design of the registration process, and that due attention is paid to ensuring that confidentiality is respected. These will be especially important issues in the Darfurian context given the generally low level of confidence which IDPs have in the government.

The DRRC’s functions with regard to humanitarian affairs are to be supplemented by a Joint Humanitarian Facilitation and Monitoring Unit (JHFMU), which is to be created by AMIS within 14 days of the signing of the agreement. The JHFMU is charged with monitoring the humanitarian situation and making recommendations to AMIS, humanitarian actors and the Parties. Two months after the signing of the agreement, however, there is no indication that this body has been created.

Restitution of Property and Compensation

Another important function of the DRRC will be to ensure restitution or compensation to returnees for property lost as a result of the conflict. A separate body – the Compensation Commission – is to be tasked with compensation for physical or emotional injury. The two bodies are to work in tandem, with the DPA providing, for example, that cases

brought to the Compensation Commission regarding lost property shall be referred to Property Claims Committees also to be set up by the DRRC.

The provisions of the DPA do not provide in detail for the structure of these processes, but do set out general principles. The DRRC's procedures for ensuring compensation must be "just, timely, accessible, free of charge, and age and gender sensitive;" the Compensation Commission is to be representative of affected communities and its work transparent. Transparency is also an important element of the property restitution process: hearings on these matters are to be held in public and written decisions are to be issued.

The Property Claims Committees are to be mandated to resolve disputes relating to land stemming from the displacement of the original owners or users of the land. Again, although the procedures of the Committees are to be decided on by the Committees in consultation with DRRC, there are general principles set forth in the Agreement. The DPA provides that the Committees should be independent and impartial. It also notes that they should encourage full participation and have access to all necessary land and other records.

The Committees will likely be dealing with extremely sensitive issues. Given widespread allegations that villages from which people have been displaced have been occupied by those from "Arab" tribes, these claims are likely to also be ethnically charged. If they are to effectively resolve conflicts, they must be seen to be impartial and take due note of traditional land ownership systems.

Adequately addressing restitution and compensation is critical for sustainable return. Many Darfurians have lost property crucial to their survival; entire villages have been burned, wells have been poisoned, and livestock has been stolen or killed. Unless serious efforts are made to ensure that property is either returned or compensated in such a way that it allows the displaced to rebuild, return will be unsustainable.

One important element of this is how the work of the Compensation Commission will be funded. The DPA does not address this except to say that the government of Sudan is willing to commit \$30 million dollars to this effort. Although a substantial sum, it has been widely criticized as not nearly enough. In fact, if we were to assume that each of the estimated 3.8 million war affected persons in Darfur were entitled to some form of compensation, this sum would work out to merely US \$7.89 per person.

Regeneration of the region

In addition to these mechanisms for compensation and restitution, the need for a program of rebuilding and development in the region has been recognized in the agreement. In this regard the parties have agreed to the creation of a Darfur Reconstruction and Development Fund (DRDF). The DRDF is to raise funds within Sudan and abroad and disperse this money in an effort to ensure the resettlement, rehabilitation and reintegration of displaced persons and to "address past development imbalances."

An important question in assessing the potential impact of the DRDF is how funds will be channeled from international donors. It is likely that international donors will prefer to give funds via channels with which they are already familiar in the UN system and among NGOs. If this is the case, the resources of the DRDF may be dwarfed by the resources available to UN actors and international NGOs. The DRDF's relevance may therefore be determined in large part by its relations with donors, international and national NGOs and the UN system.

Implementation and next steps

Despite its flaws, the Darfur Peace Agreement lays out a framework within which to address the needs of the internally displaced in Darfur. However, its implementation is hanging by a thread, undermined by the failure of parties to the conflict to sign on, and delay in achieving the implementation deadlines. It is urgent that the parties to the conflict and the international community continue dialogue, particularly through the establishment of inter-Darfurian and inter-Sudanese dialogue which helps to address outstanding concerns and mistrust.

Prosecuting a Warlord: Charles Taylor facing justice at last

On July 21, 2006, history was made as former Liberian President Charles Taylor appeared in a courtroom in the Hague to answer eleven charges of war crimes and crimes against humanity. The Netherlands has agreed to host Taylor's trial and the United Kingdom has agreed to jail him in the event that he is convicted. The trial of one of West Africa's most wanted seems poised to begin.

The transfer was the latest step in a three year long struggle to bring the former President to Court. Taylor was indicted by the Sierra Leone Special Court in March 2003. When he fled from Liberia in August 2003, he was able to take refuge in Nigeria, thanks to an internationally brokered deal which offered provisional safe haven.

Ever since Taylor fled to Nigeria in August 2003, regional and international NGOs have been campaigning to ensure that Taylor is tried. The International Refugee Rights Initiative took part in this effort by working with the Open Society Justice Initiative to draft a legal brief arguing that Taylor was ineligible for asylum in Nigeria on the grounds that international law excludes individuals who are believed to have committed serious international crimes from protection as refugees. The brief was submitted in a case brought by several Nigerian victims of Taylor's atrocities, calling on the Nigerian government to hand him over. Other groups issued political calls to see Taylor handed over and tried to establish that he was violating the terms of his exile agreement by continuing to meddle in Liberian politics. (See "[Charles Taylor: One Step Closer to Justice](#)", Refugee Rights News, Volume 2, Issue 4, November 2005; "[Is Charles Taylor's Time Up?](#)" Refugee Rights News, Volume 2, Issue 2, July 2005.)

The road to the Special Court

On March 18, under fierce international pressure, Liberia's newly elected president, Ms. Ellen Johnson Sirleaf, formally demanded Taylor's extradition in a speech to the United Nations Security Council. Nigeria's President Olusegun Obasanjo, who had made such a request a prerequisite to handing Taylor over, announced on March 25 that Liberia was free to take Taylor into custody. The announcement spurred Taylor's flight from Calabar and his eventual apprehension as he attempted to escape into neighboring Cameroon.

The Nigerian border guards who had captured Taylor on March 27 had handed him over to peacekeepers in Liberia. Acting under the mandate of a 2005 Security Council resolution, UN peacekeepers flew Taylor from Liberia to neighboring Sierra Leone to face eleven charges of war crimes and crimes against humanity on March 29. At his first court appearance on April 3, Taylor pled "not guilty" to all charges and challenged the legality of the UN-backed tribunal.

Security concerns and the "Hague Option"

Taylor's capture, extradition, and arrest spun the international community into a maelstrom. Kofi Annan welcomed news of Taylor's arrest, stating that "his capture and being put on trial does not only close a chapter, but it also sends a powerful message to the region that impunity will not be allowed to stand, and would-be warlords will pay a price."

At the same time, some feared that Taylor's return would reignite conflict. President Sirleaf, who was originally hesitant to push for Taylor's extradition, cautioned that peace and security in the volatile region remains tenuous. "Liberia's peace is fragile. There are many loyalists in our country to Mr. Taylor; there are many business interests he has. Whatever decision is taken by the African leadership must ensure that the safety of the Liberian people and the stability of our nation is not undermined."

The President of the Special Court requested that the government of the Netherlands and the President of the International Criminal Court (ICC) facilitate Taylor's trial at The Hague. The Special Court will remain the adjudicating body while using the ICC's facilities. In defense of the so-called "Hague Option," Chief Prosecutor Desmond de Silva cited President Sirleaf's plea to move Taylor out of the region, and assured international community that the Court's founding principles of citizen participation and community outreach would be maintained during Taylor's trial in the Hague.

Possible ramifications for international justice

Although the failure to try Taylor in Sierra Leone may hinder public participation and the trial's impact on regional reconciliation, Taylor's indictment and the cooperation of numerous countries in his prosecution heralds a victory for international justice.

Taylor's transfer too will greatly curtail the distinctive qualities of the Sierra Leone Special Court's in-country location and hybrid structure. The Court's emphasis on local participation, accessibility, and the possibility of strengthening the Sierra Leonean judiciary as well as the regional legitimacy of the Court will be challenged by an out of country trial. The security concerns raised in the region are obstacles that have to be taken serious, but perhaps more could have been done to explore how international assistance in shoring up security structures could have provided an alternative to moving the trial. Now that the trial has been moved to the Hague, the court must take innovated steps to ensure that the proceedings reach those most affected by Taylor's crimes. Public awareness campaigns, media attention and outreach programs may assist in protecting the public integrity and legitimacy of the court.

Special Court Prosecutor Desmond de Silva heralded Taylor's capture: "Today is a momentous occasion and an important day for international justice, the international community, and above all, the people of Sierra Leone. His presence in the custody of the Special Court sends out the clear message that no matter how rich, powerful or feared people may be—the law is above them."

Taylor's trial signals an enormous development in international justice and a major shift in international policy. Other notorious African heads of state have found refuge in friendly countries and escaped prosecution for horrendous human rights abuses; examples include two of Uganda's most nefarious despots, Idi Amin and Milton Obote, as well as Chadian dictator Hissein Habre and Ethiopia's Mengistu Haile Mariam.

Most importantly, however, is the impact of the trial on allowing Liberia to rebuild. Speaking about Taylor's transfer to the Hague, President Johnson Sirleaf said, "it allows Liberia to move forward. As long as the threat of return was there, it held certain risks for us." It is hoped that Liberia will truly be able to move forward from the atrocities of Taylor's reign.

This article was contributed by Annamartine Salick, an intern with the International Refugee Rights Initiative.

LAW AND POLICY:

Material Support: Eroding asylum in the United States

Since September 11, 2001, the United States government has been understandably concerned about the potential for terrorists to strike at targets within its territory. One response to this concern has been to broaden the scope of provisions intended to keep those involved in terrorism from entering the United States. Unfortunately, the provisions which were enacted in an effort to protect US citizens from terrorism have had the effect of excluding vulnerable refugees and asylum seekers from protection.

Of particular concern is a provision barring those who have supplied "material support" to terrorist organizations from protection as refugees. While passage of this legislation

may have been motivated by a genuine desire to protect citizens, it has been interpreted in such a way as to exclude those genuinely in need of protection.

As an example, let us take the case of a Liberian woman who was referred by UNHCR to the United States resettlement program. This woman was attacked by LURD rebels during the course of Liberia's civil war, she watched as her father was killed and was herself raped by rebels before being abducted. While in the custody of the rebels, the woman was forced to carry out menial tasks such as washing laundry. While processing her application for resettlement, the Department of Homeland Security expressed concern that the tasks that the woman had carried out in captivity might constitute material support and put her case on hold.

In another case, a member of Burma's persecuted Chin minority who was applying for asylum in the United States was ruled not to be a refugee on the grounds that she had provided material support in the form of 1100 Singapore dollars (or about US \$700) to the Chin National Front. The Board of Immigration Appeals held that the Chin National Front was a terrorist organization under the provisions of the statute despite the fact that it acknowledged the organization had "democratic goals and used force only in self-defense."

How are these individuals caught in the web of the war against terror? The problem lies in the overly broad characterization of what constitutes both "material support" and a "terrorist organization." According to the Immigration and Nationality Act, material support in the context of asylum can include "a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training." Further, the Board of Immigration Appeals has already ruled that this list is not intended to be exhaustive and that other acts may be considered as providing material support. There is simply no threshold provision stating what level of support would be needed to be considered "material."

Similarly, the definition of what constitutes a terrorist organization is also broad. In addition to including specific groups designated as such, the statute includes any "group of two or more individuals whether organized or not, which engages in, or has a subgroup which engages in" listed illegal activities. These include, "threat, attempt or conspiracy" to use weapons to endanger, directly or indirectly, the safety of one or more individuals. Under this definition groups may be considered as "terrorist" even if only a small number of their members used very limited violence. Therefore, the Chin National Front, for example, was considered to be a "terrorist organization," even though the court took note of the United States Department of State's proclamation that it had no indication that the group engaged in terrorism. That pronouncement, it claimed, was immaterial to the application of the term in the meaning provided for in the statute.

An additional problem with the statute is that there is no limit on the retroactive nature of the provision. As long as the law was in force at the time that an issue was adjudicated, action committed years in the past can potentially act as a bar. This has unfortunate

potential effects in terms of integration, because refugees who were granted asylum under the old laws, but who may be excluded under the new regime, may not be allowed to obtain permanent residence status or citizenship.

The law does, however, grant a possibility for exemption. There is a possibility for the application of the provision to be waived, with the assent of the Department of State and the Department of Homeland Security. There is no clarity, however, as to how those waivers will be applied in practice. The Board of Immigration Appeals has ruled that the Courts have no role in applying this waiver, so even if such a procedure were to be put in place, it would very likely not be subject to judicial review.

While the need to exclude those who have committed serious crimes or who may be threats to the security of the host state has been widely recognized, it is clear that the provisions of the current law are unfairly curbing access to protection. Asylum seekers in the United States have had their claims denied, and those referred for resettlement have been placed in a semi-permanent holding pattern.

Many groups in the United States have already begun the campaign for legislative reform to address this concern. They are hoping to convince Congress to adopt a more restricted definition of who may be barred from refugee protection. For the most part, this is being pursued domestically, but there are two areas where NGOs from outside the US can be helpful. The first is to be vigilant about the possibility of copycat legislation in other countries; it is very possible that other countries may adopted similar legislation in an effort to exclude deserving refugees. Second, if NGOs in countries of origin or resettlement countries are aware of any cases where individuals were denied asylum or resettlement on the basis of this provision, it would be helpful if you could inform us about these cases. Having specific details about the individuals who are suffering as a result of this legislation is powerful ammunition for those advocating for change.

PUBLICATIONS

The following is a selection of recent publications relating to refugee issues in Africa. Please let us know of any publications which may be of interest to readers.

<p>Jeff Crisp, "Forced Displacement in Africa: Dimensions, Difficulties and Policy Directions," New Issues in Refugee Research, July 2006.</p> <p>Da Costa, "The Administration of Justice in Refugee Camps: A Study of Practice," March 2006.</p> <p>Ditshwanelo, "The UN Committee on the Elimination of Racial Discrimination points out discriminations against indigenous people, certain ethnic groups, non-citizens, asylum seekers and refugees," April 2006.</p> <p>Jason Hart and Bex Tyrer, "Research with Children Living in Situations of Armed Conflict: Concepts, Ethics and Methods," Refugee Studies Centre Working Paper No. 30.</p> <p>Cindy Horst, "Connected Lives: Somalis in Minneapolis, Family Responsibilities and the Migration Dreams of Relatives," New Issues in Refugee Research, July 2006.</p> <p>Caroline Hunt-Matthes and Elena Shishkova, "Optimizing Service in the Field: A Review of the Role of the Desk in UNHCR," July 2006.</p> <p>International Refugee Rights Initiative and the Social Science Research Council, "Citizenship and Forced Migration in the Great Lakes Region: Report of a Consultation on the Feasibility of a Collaborative Network Building Project Linking Research with Program and Policy Development," April 2006.</p> <p>International Refugee Rights Initiative, "Perspectives on Refoulement in Africa," June 2006.</p> <p>Ronald Kalyango Sebba, "Land Conflicts and their Impact on Refugee Women's Livelihoods in Southwestern Uganda," New Issues in Refugee Research, July 2006.</p>	<p>Kihato, Caroline and Loren Landau, "The Uncaptured Urbanite: Migration and State Power in Johannesburg," March 2006.</p> <p>Landau, Loren, "Shaping Urban Futures: Human Mobility and Poverty in Africa's Globalizing Cities," June 2006.</p> <p>Refugee Law Project, Internal Displacement Monitoring Centre, "Only Peace Can Restore the Confidence of the Displaced," March 2006.</p> <p>Refugee Law Project and Human Rights Focus, "Not a Crime to Talk: Give Peace a Chance in Northern Uganda," July 24, 2006.</p> <p>Refugee Studies Centre, <i>Forced Migration Review No. 25</i> "People Trafficking: Upholding rights and understanding vulnerabilities," May 2006.</p> <p>Refugees International, "Sudan: Despite the Darfur Peace Agreement, Death and Displacement in Darfur," July 2006.</p> <p>Sudan Organisation Against Torture, "Annual Report 2005-6," April 12, 2005.</p> <p>UNHCR, "The State of the World's Refugees: Human Displacement in the New Millennium," April 2006.</p> <p>UNHCR, "UNHCR and International Protection: A Protection Induction Programme," June 2006.</p> <p>Press Statement of The Botswana Civil Society Coalition, May 26, 2006.</p>
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