
AFRICA

@Amnesty International's concerns and activities on behalf of refugees in Africa May 1989 - May 1991

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SUMMARY

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The attached document was submitted as a written statement to the 18th meeting of the Organization of African Unity (OAU) Coordinating Committee for Assistance to Refugees, held in Ethiopia in early May 1991. The Coordinating Committee is an advisory committee to the OAU's Bureau for Refugees, and comprises agencies concerned with refugee protection such as the Office of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations, including Amnesty International.

This report summarizes a 10-page document (4,000 words), *AFRICA: Amnesty International's concerns and activities on behalf of refugees in Africa, May 1989 - May 1991* (AI Index: AFR 01/04/91), issued by Amnesty International in May 1991. Anyone wanting further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

AFRICA

Amnesty International's concerns and activities on behalf of refugees in Africa

May 1989 - May 1991

Amnesty International's concern for asylum-seekers and refugees arises from its work for the protection of human rights, which is based on fundamental principles set out in the Universal Declaration of Human Rights and other internationally recognized standards. The organization works independently of any government, political grouping, ideology, economic interest or religious creed, and applies the same standards to all governments. It focuses on three specific aspects of human rights which are set out in its Statute.

- ! It seeks the release of men and women imprisoned or otherwise physically restricted anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. these are termed "prisoners of conscience".
- ! It works for fair trials within a reasonable time for all political prisoners and on behalf of such people detained without charge or trial.
- ! It opposes the death penalty and torture and other cruel, inhuman or degrading punishment of all prisoners without reservation.

Amnesty International's concerns about refugees derive from these *prisoner-related* objectives. The organization opposes the forcible return of anyone to a country where he or she might reasonably be expected to be imprisoned as a prisoner of conscience, or to be subjected to torture, "disappearance" or execution. Furthermore, Amnesty International considers that asylum-seekers should receive a fair and impartial determination of their claim. It also reminds governments that it is internationally agreed that the detention of asylum-seekers should normally be avoided, and calls on governments to demonstrate legitimate reasons for detention, in accordance with international standards. This should take place through a prompt, fair, individual hearing before a judicial or similar authority whose status and tenure afford the strongest possible guarantees of competence, impartiality and independence. In cases where asylum-seekers are detained in the absence of such procedures Amnesty International calls on

governments to review their cases with a view to releasing them. Amnesty International also takes action with respect to refugees who, in their country of asylum or elsewhere, are imprisoned as prisoners of conscience or become the victim of other human rights violations falling within Amnesty International's mandate.

In its work on behalf of refugees in Africa (as well as for African refugees outside of Africa), Amnesty International calls on governments to respect their obligations under the United Nations 1951 Convention relating to the Status of Refugees, as well as the Organization of African Unity's (OAU) 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, in particular to respect the principle of *non-refoulement*, set forth in both conventions, and not return people to countries where they risk serious human rights violations. Amnesty International encourages governments to ratify these and other international and regional human rights instruments, including the United Nations' International Covenant on Civil and Political Rights and its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights, both of which were adopted 25 years ago, and the African Charter on Human and Peoples' Rights which OAU heads of state and government adopted at their summit meeting 10 years ago. Amnesty International's work for refugees relates primarily to the protection of refugees, rather than material assistance to them, although the organization provides some assistance to both former prisoners of conscience and former torture victims who have become refugees.

The human rights violations against which Amnesty International works have often been the direct cause of the flight of individuals or groups of people from their homes to face a difficult and uncertain future as refugees, frequently in a country of which they have no knowledge and among peoples with whom they have no connection. The human rights violations which were the root causes of these flows of refugees have sometimes also been a major cause of armed conflict, wars of national liberation and other uprisings, which have in turn increased the numbers of refugees. Even where famine has been the pressure point driving people off their land, human rights issues have often been detectable among the causes of such disasters, which were not just due to natural causes, but also to man-made ones.

The link between human rights violations and the existence of refugees has been noted by the OAU and this committee. The solutions to Africa's refugee problems require measures which face squarely up to the situations which caused the refugee flows in the first place. Action is needed to remedy abuses of human rights and create institutions which will provide protection against new abuses, whether civil and political rights, or economic, social and cultural rights. Ten years ago, in 1981, an important step was taken by the OAU to address human rights issues, namely the adoption of the African Charter on Human and Peoples' Rights. This came into force in October 1986. In 1987 the 11-person African Commission on Human and Peoples' Rights was established with the task of monitoring the implementation of the Charter

and ensuring the promotion and protection of those rights. Amnesty International has observer status with the Commission and has attended its last two working sessions. In March 1991 it held its first reviews of the human rights record of several individual African countries (reviews of periodic reports by state parties), confirming the principle that the OAU has the right, and indeed the obligation to concern itself with the human rights situation in member states. However, a significant number of OAU states, including the one in which our current meeting is being held, have not yet ratified the African Charter, nor demonstrated their commitment to human rights by acceding to any of the international instruments or treaties which place legal obligations on governments at both national and international level to respect human rights. Amnesty International is urging them to do so this year and at the same time has printed tens of thousands of copies of the African Charter in an effort to make its contents better known and eventually better respected throughout Africa.

The range of actions which Amnesty International has taken throughout the world over the past two years ¹ when it learnt of cases of refugees being threatened with or subjected to *refoulement*, or being imprisoned in their countries of asylum, have included the following:

- a) making investigations into such cases and, where appropriate, informing the Office of the United Nations High Commissioner for Refugees (UNHCR);
- b) making direct inquiries or appeals to the government authorities responsible for the actual or threatened violation of the rights of particular refugees;
- c) adopting imprisoned refugees as prisoners of conscience and working on their behalf as for other prisoners of conscience;
- d) calling on governments to release imprisoned asylum-seekers unless their detention is for reasons which international standards recognize as legitimate and unless the reasons for their detention are tested by a prompt, fair and individual hearing before a judicial or similar authority²;
- e) on a limited scale, providing financial assistance from Amnesty International's relief fund to refugees whose cases fell within Amnesty International's mandate, namely

¹ Since it was last represented at a meeting of the OAU Coordinating Committee on Assistance to Refugees in May 1989.

² Amnesty International began opposing the practice of detaining asylum-seekers when adequate and effective safeguards do not exist or are not followed after revising its policies in relation to refugees in September 1989.

if they had recently been prisoners of conscience or torture victims, or if they faced forcible return to their country of origin where they could reasonably be expected to become prisoners of conscience or to be subjected to torture, "disappearance" or politically-motivated extrajudicial execution;

- f) reporting cases in the Amnesty International Report, published annually, which describes Amnesty International's work against human rights violations within Amnesty International's mandate throughout the world, as well as in other published materials.

In recent years there has been growing concern within the Amnesty International movement about the plight of refugees, especially in Europe and North America, where many governments have been considering or adopting increasingly restrictive policies for admitting and recognizing refugees. There were fears that this would result in it becoming more difficult for former prisoners of conscience or others who risk being arrested, tortured or killed, from both African countries and elsewhere, to obtain asylum. Several Amnesty International sections in countries which receive large numbers of asylum-seekers have conducted campaigns to oppose the forcible return of refugees to countries where they risk serious human rights violations and to press their governments to ensure that asylum-seekers have access to fair and impartial procedures for determining their claims to asylum. At Amnesty International's two-yearly International Council Meeting in September 1989, the organization examined the circumstances in which refugees and asylum-seekers are detained and decided to call on governments to demonstrate that such detention is for reasons recognized as legitimate by international standards and demand that there be a review of all such detentions.

Within the past year Amnesty International has investigated and taken action on reports of several cases of actual or threatened violations of human rights of refugees in Africa. It is likely that many more cases have occurred which are not known to Amnesty International.

In addition, as a result of changes of government, the organization has been able to obtain further details about violations of human rights of refugees in the past, both in their countries of asylum and after returning to their country of origin. The most substantial further evidence concerns **Chad**, where details of particularly serious violations against victims of *refoulement* and former refugees who had returned voluntarily to their country came to light following the overthrow of President Hisssein Habré at the beginning of last December. The example is significant because President Habré's government had proclaimed a policy of national reconciliation which was interpreted at face value by many agencies involved in assisting refugees, who encouraged and facilitated the repatriation of Chadian refugees.

Before December 1990 Amnesty International had already published some information about the arrest and subsequent "disappearance" of returning Chadian refugees. Since then, it has regrettably been possible to confirm in many individual cases that those concerned were executed without any sort of trial or died after being deliberately deprived of food and water at detention centres in N'Djamena. One particularly notorious case of *refoulement* occurred in September 1988, involving a former security police official, Bichara Chaïbo. He had been recognized as a refugee by the UNHCR, but was arrested in Togo because an Interpol warrant alleged that he was wanted for murder in Chad. On his arrival in Chad he was detained in secret and entirely outside the framework of the law at the security police's headquarters where he had his hands and feet chained together. He was eventually starved to death, about three months later according to former detainees held with him. His case indicates once again the importance of all countries having fair and impartial procedures for identifying those persons at risk of serious human rights violations in their country of origin, of their respecting the principle of *non-refoulement* (and ensuring that the principle is known and understood by law-enforcement and judicial officials at all levels), and their subjecting any charges concerning murder or other serious crimes against refugees or others whose extradition is sought to scrutiny by the courts.

In other, more recent cases dozens of refugees who voluntarily returned to Chad in 1990 were arrested shortly after their return and either imprisoned without charge in secret detention centres, or killed by government forces. They included Daïenhl Gabriel, a trader, Anhoul Jean, a former local government official, and Metel Ernest, a priest, all of whom were reportedly arrested and executed extrajudicially by government soldiers only a month after they returned to Chad in July 1990 after living for several years at a refugee camp in northern Cameroon. Evidently, such cases are clearly within Amnesty International's mandate, whereas they may appear to fall outside the jurisdiction of agencies responsible for assisting and protecting refugees, as the victims concerned have given up their refugee status by returning to their country. The lessons from Chad, where the international community failed to monitor the fate of returning refugees properly, may also be significant for other countries, as many African countries are now going through a period of political change where repressive governments are being ousted and refugees are keen to return home or under pressure to do so. It is clearly vital to ensure that refugees do not return home to face dangers on a scale equivalent to or greater than those which they left to escape, and also important to ensure both that their fate is monitored once they return and that the international community reacts if their basic human rights are again violated. Chad was, of course, not the only African country where these needs were obvious in 1990; in a non-OAU state, South Africa, the ambiguity surrounding the status of returnees also exposed them to risk and, among many other cases of abuse reported in South Africa last year, Amnesty International received reports that a senior African National Congress (ANC) official who had returned from exile was the victim of assaults and torture while detained incommunicado by the security police.

Other cases to which Amnesty International has responded between 1989 and 1991 in a number of OAU member states have concerned the following situations:

- 1) the *refoulement* of refugees and their imprisonment in their countries of origin;
- 2) imprisonment of recognized refugees in their country of asylum.

Among the *refoulement* cases reported to Amnesty International in 1990, one reportedly resulted in the death of the person concerned. This was Sékou Mary, also known as Agnocame, a Senegalese national who had sought asylum in the Gambia and who died at Diouloulou *Gendarmerie* (police station) in Senegal's Casamance region at the end of October 1990, a few days after being forcibly returned from the Gambia. He and nine others had originally fled to the Gambia in June 1990. In late September they were arrested in the Gambia and charged with entering the country illegally. They were remanded for trial but were nevertheless taken to the Gambia's southern border with Senegal on 12 October - before being tried - and forcibly returned to Senegal. Sékou Mary managed to avoid arrest in Senegal and returned to the Gambia, where he was rearrested on 23 October at Brikame. This time he was handed over directly to the Senegalese security forces, again in the absence of any court ruling. He died in custody in Diouloulou soon afterwards, apparently as a result of severe beatings.

Elsewhere, *refoulement* was followed by prolonged periods of imprisonment. For example two former prisoners of conscience left Swaziland in November 1990 to avoid imprisonment, after making an unsuccessful attempt to obtain asylum in the Embassy of the United States of America. Ray Russon and Sabelo Dlamini sought asylum in neighbouring South Africa, where they were detained and questioned by South African border police about alleged African National Congress activities in Swaziland. After five days, during which their asylum plea was evidently not given fair or impartial consideration, they were forcibly returned to Swaziland and handed over to the Swaziland police. They were promptly imprisoned and kept in administrative detention without charge or trial until the end of March 1991.

In 1989 and 1990 Amnesty International was also concerned about the lack of protection afforded to large numbers of asylum-seekers fleeing from countries experiencing high levels of violence. For example, refugees and asylum-seekers from Somalia were subjected to detention in Kenya and Tanzania and there were some reports of *refoulement* from Kenya. After a new influx of Somali asylum-seekers into Kenya in September 1989 as a result of fighting between Somali government troops and the opposition Somali Patriotic Movement, the Kenyan authorities reportedly returned about 60 to Somalia, of whom 18 were reportedly killed by Somali soldiers, while others were imprisoned in the town of Kismayu in Somalia. The Kenyan authorities kept other asylum-seekers from Somalia under guard, effectively as prisoners, denying them access to the UNHCR. Among those forcibly deported to Somalia were a number of Somalis previously

resident in Kenya who were arrested after the "screening" of all Somalis to detect illegal immigrants, an exercise which was carried out at exactly the time when many Somalis with a genuine fear of persecution were fleeing to Kenya.

In each of these cases of *refoulement* it is evident that border police and other members of the security forces may have received inadequate instruction and training about how to respond to asylum-seekers and in particular about the principle of *non-refoulement*. Priority should therefore be given to ensuring that all state officials who might be involved in dealing with refugees or asylum-seekers are aware of the principle of *non-refoulement* and of the correct procedures which they should follow.

The "screening" operation in Kenya in late 1989 created such a level of fear among Somali asylum-seekers in Kenya, both of imprisonment in Kenya and repatriation and possible death in their own country, that many preferred to leave the country. However, some of them were then detained in neighbouring Tanzania, where they were among 130 detainees of Somali origin who were reportedly held in harsh conditions in Ukonga and Keko prisons in Dar es Salaam. Although most came from Kenya, they included some who had been in Tanzania for a number of years, as well as others who had made their way directly to Tanzania by boat from Somalia. Amnesty International was concerned that following their detention these Somalis did not receive a fair and impartial consideration of their asylum claim, in particular each individual asylum-seeker did not have his or her case examined thoroughly on its individual merits. From mid-1990 onwards there were progressive releases, although a number are believed to be still in prison.

Among the detained refugees who appeared to be prisoners of conscience and for whom Amnesty International has interceded during the past year is a group of Burundi nationals arrested in Tanzania in March 1989 and detained since then without charge or trial. Fifteen recognized refugees who apparently belonged to a Burundi opposition movement, the *Parti pour la libération du peuple Hutu* (PALIPEHUTU), Hutu People's Liberation Party, were accused by the Tanzanian authorities of political activity detrimental to Tanzania's relations with Burundi and were said to have advocated the use of violence against the government of neighbouring Burundi. The Tanzanian authorities have evidently insisted that the 15 should be resettled in another country, but have refused to release them in the meantime. In August 1990 one of the refugees, the PALIPEHUTU's leader, Remi Gahutu, died as a result of ill-health, possibly exacerbated by harsh prison conditions and poor medical facilities. The 14 others remain in prison, more than two years after their arrest. In this time they have not appeared in court or had their cases reviewed by a judicial authority, and have therefore had no opportunity to dispute the accusations against them in court. They have been held in administrative detention under the terms of Tanzania's Refugee Control Act, which states that if a refugee "is acting in a manner prejudicial to peace and good order or is prejudicing the relations between the Government of

Tanzania and any other Government he [the Minister of Home Affairs] may, by order in writing, direct that the refugee be detained in prison".

Most Liberians seeking refuge in neighbouring countries in 1990 were afforded generous assistance by their host countries. However, in marked contrast one group which crossed into Upper Guinea in July 1990 was subjected to a series of abuses, not only of their status as refugees but also of their basic human rights. The group included 34 people, mostly Liberians but some Guineans resident in Liberia. They were arrested at Macenta after crossing the border into Guinea to escape the conflict in Liberia. Ten women were released uncharged after five days, but the 24 men were all held until October 1990, when 17 of them were released uncharged. One other detainee was reportedly released in November. The 34 were apparently detained on suspicion of being supporters of the Liberian rebel leader, Charles Taylor, whose forces had killed a number of Guineans living in Liberia and to whom the Guinean authorities were opposed. However, the only evidence against them seems to have been that they wore clothing or bore markings associated with Charles Taylor's forces.

The 24 men were reportedly beaten in detention with their hands tied behind their backs. They were moved to the Alpha Yaya military camp in Conakry and later to security police custody. They were held incommunicado in harsh conditions and reportedly kept naked: one of them was said to have died in custody in October as a result. After about four months in illegal detention, some of the five refugees remaining in custody in December 1990 appeared in court. It seems that only one was eventually convicted by the court and sentenced to five year's imprisonment.

Amnesty International also worked on a considerable number of cases outside Africa of African asylum applicants who were at risk of being forcibly returned to their country of origin, and supported those cases whenever it considered that the applicant risked serious human rights violations if returned to his or her country. Appeals were made to the governments concerned with supporting documentation.

In some of the cases on which we worked over the past year, the organization's appeals and actions were successful: asylum applications were granted, deportation orders were lifted, in some cases refugees were allowed to travel to other countries to seek to obtain asylum, or refugees were freed from detention. In other cases, the outcome was not known, or the refugees were sent back to their country of origin and some were imprisoned, tortured or even in some cases, extrajudicially executed. We know there is no ground for complacency when people continue to appeal to us for help, often as a last resort after they have exhausted all other possibilities.

Our experience in 1990, as well as that from previous years, shows that state officials in many countries are still insufficiently aware of the principle of *non-refoulement* and receive inadequate instruction on the correct ways of responding to refugees or asylum-seekers. The OAU's Convention Governing the Specific Aspects of Refugee Problems in Africa is far from being a new agreement and the UN Convention relating to the Status of Refugees is 40 years old this year. Amnesty International would therefore like to encourage the OAU Bureau of Refugees, as well as other members of the Coordinating Committee on Assistance to Refugees, to make a special effort over the coming year to ensure that the principle of *non-refoulement* is better understood by state officials at all levels and, as a consequence, more fully respected.

The *non-refoulement* principle obliges all governments to provide protection to those fleeing serious human rights violations. This protection must continue until these people no longer face a threat of such violations. The principle is also an implicit recognition that a universal standard of state conduct exists, and that when governments ignore or violate that standard, people at risk of serious human rights violations have a right to call upon other states of the international community for protection.

Our work on behalf of refugees in Africa will continue no less vigorously in the coming year which marks the 10th anniversary of the OAU's African Charter for Human and Peoples' Rights and the fifth anniversary of its entry into force. This work will continue to focus on the need for both prevention and protection. However, it is important that governments recognize that the only way to "solve" refugee "problems" is no longer to turn a blind eye to serious human rights violations in other states when they occur. A more active and concerted effort to address serious human rights violations is an essential element of reinforcing international cooperation for solving refugee "problems". Consequently, we are urging, both at the coming OAU summit of heads of state and government, and when there are subsequent opportunities, that the issue of respect for human rights should be attributed high priority in all OAU states.

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Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

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AFRICA:

**AI'S CONCERNS AND ACTIVITIES ON BEHALF OF REFUGEES IN AFRICA,
MAY 1989 - MAY 1991**

RECOMMENDED ACTIONS

Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference. In addition please undertake as many of the following recommended actions as possible:

- : The attached paper is EXTERNAL and may be given out to anyone who would be interested in AI's refugee work in Africa. In particular it would be useful to give a copy to NGOs working for refugees, to branch offices of UNHCR, and to journalists dealing with refugee issues or African affairs.

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Refugee Coordinators
All Africa country coordination groups

