

During our study, however, we found that effecting separation raises complex questions regarding (a) the applicable legal framework and (b) how to operationalize that framework in difficult situations on the ground.

Separation is not a legal concept; it connotes a set of acts and processes which have as their object the identification, removal and maintenance of selected individuals apart from the general population of refugees. The legal implications of such activities depend on a variety of acts, including:

The procedure which is taken to identify and separate
The voluntariness or otherwise of the separation
The nature of the confining regime subsequently imposed on those separated

Generally when separation is discussed focus is on the separation of 'armed elements' - most particularly where military involvement in a separation operation is being contemplated. It is of course the type of separation most immediately identifiable as required by international law.

But various separation/confinement measures have also been proposed in relation to other groups where military involvement in the separation operation may also be implicated eg. the separation of refugee political activists or 'intimidators' (in Tanzania in 1996 Mwisu camp in Kagera was set up, for example, with the express purpose of housing alleged intimidators further to Article III of the 1969 OAU Convention) the separation of those awaiting screening for exclusion from protection the separation of ex-combatants who have laid down their arms and been declared refugees (In Zambia – I understand that it is planned to separate ex-Congolese/Rwandan soldiers into a camp for ex combatants at Ukwimo even if they are granted asylum) the separation of voluntary separatees – In Ndota camp in Tanzania for example, armed and self proclaimed combatants actually sought separation. In Guinea, we found that separation primarily operated as a protection measure for Sierra Leoneans suspected of being rebels by compatriots the separation of those who have been excluded from refugee protection

Refugee law, humanitarian law, human rights law (derogation clauses) and the law of armed conflict may permit a strictly circumscribed 'separation' of some of such categories of individuals. But this framework has not been yet clearly elaborated. The Secretary General has in particular called for work to be done on articulating the perimeters for action.

But it is not only from a legal perspective that the object and scope of any proposals to separate require the most careful scrutiny. It is worth recalling that separation activities can often lead to the stigmatizing of those separated, placing them at greater risk of target. Separation can also reinforce command structures, complicate repatriation efforts and be accompanied by extensive restriction of basic rights.

During our study we found that there was a particular need for guidelines to be drawn up to govern:

- the legal basis for lawful 'separation' activities
- the folder of rights enjoyed by the various categories of separated persons
- the procedural safeguards attaching to each type of separation exercise
- identification of the actors responsible for carrying out and monitoring such activities, and
- the conditions for termination of the state of separation (tied clearly to the particular purpose for which the separation was effected)