

The Refugee Policy Group (RPG) is an independent, non-profit organization established in 1982 to improve international and domestic policy on refugee issues. The first center of its kind anywhere, RPG informs policymakers, program implementors and researchers through its reports, briefings, meetings, and resource center. Major financial support has been provided by the Ford Foundation, Edna McConnell Clark Foundation, John D. and Catherine T. MacArthur Foundation, Pew Charitable Trusts, Rockefeller Foundation, and The German Marshall Fund of the United States.



# **Refugees and Human Rights: A Research and Policy Agenda**

**Refugee Policy Group**

The idea for a paper on the relationship between refugee and human rights issues originated at a meeting of the RPG Advisory Council. The paper was prepared jointly by RPG staff, with major contributions by Roberta Cohen and James Morsch.

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## INTRODUCTION

Each year human rights violations force countless numbers of people to flee their homes and seek refuge in other countries. The violations take many forms: deliberate killings and acts of genocide; political, racial or religious persecution; and denial of fundamental civil, political, economic and social rights.

The desperate plight of the victims is of concern to both human rights and refugee organizations. While their roles are different, their involvement in trying to help those endangered often overlaps. The international refugee system offers protection and assistance to those who are forced to leave their homes because of persecution and violence. Human rights organizations seek to publicize and remedy the situations that cause people to flee.

Both groups are interested in the information refugees can provide. Those concerned with human rights want to document human rights conditions in the refugees' home countries. Those concerned with assisting and protecting refugees need the information that human rights groups can provide on the reasons refugees have fled. This information can be critical in detecting early signs of larger refugee flows, and it can be helpful in determining when conditions in a home country are safe enough for refugees to return.

The functions of human rights and refugee groups overlap in other ways as well. In refugee camps, human rights and refugee groups sometimes share a monitoring function. While refugee groups focus on insuring that refugees are adequately fed, sheltered, and clothed, human rights groups work to see that refugees do not fall victim to abuses by fellow refugees or their hosts.

Despite such overlapping concerns and interests, refugee and human rights groups do not work together as effectively as they should. Part of the problem is that refugee and human rights groups tend to focus their attention on different sides of international borders. Human rights groups mostly focus on people inside a country who are subject to violations rather than on those who have moved. Refugee groups mainly focus on assisting and protecting those who have fled rather than on

alleviating the causes of their displacement. Even when the concerns of refugee and human rights groups coincide, they have little experience in working together. As a result, they are less able to fulfill their mandates on important questions, such as:

- ♦ Early Warning of Refugee Movements -- Information on a country's human rights conditions that can be crucial in giving early warning of refugee movements is not routinely made available by human rights groups to those who will be called upon to assist and protect refugees. As a result, there may be serious delays in getting help to new refugees. Moreover, steps may not be taken to try to remedy the cause of their flight.
- ♦ Monitoring Human Rights Violations -- Information from refugees is vital in calling attention to human rights violations within a country. Although those assisting refugees are often the first to hear about the reasons causing flight, they generally do not collect, evaluate and verify such information. In the absence of human rights groups on the scene, legitimate reports of human rights violations may go unheard or unheeded while violations continue.
- ♦ Protection of the Rights of Refugees -- Refugees sometimes find their places of refuge as dangerous as the homes which they were forced to flee. Although refugee groups are often the first to know of human rights violations occurring in refugee camps, they could jeopardize their organization's presence in a particular country if they intercede or call attention to the violations. Human rights groups are in a better position to call attention to such violations but may not be present or be told about the abuses.
- ♦ Protection and Assistance to Internally Displaced and Returnees -- Refugee groups generally have not been involved in the protection and assistance of the internally displaced or of returnees because these persons are within their own national boundaries. Human rights groups, for their part, are concerned about such persons but lack the experience, resources and mandate to assist them effectively. As a result, countless numbers are not protected effectively even though they may be in as great or greater need of help than those who crossed borders.

## **KEY ISSUE AREAS OF COMMON CONCERN**

There is clearly a need for refugee and human rights groups to develop ways to work together more effectively so that refugees and those displaced are not needlessly exposed to even more serious abuses. Those working in the two fields should undertake a variety of activities including research, policy analysis, meetings and discussions to: identify issues of common concern; review ways in which these issues are currently being addressed; identify gaps where important needs are not being met; and develop specific steps to institutionalize working together.

While a more systematic review of the areas of mutual concern to refugee and human rights groups is necessary, several key issues clearly need to be addressed as a first step.

### **REFUGEE MOVEMENTS: CAUSES AND RESPONSES**

#### **Early Warning of Refugee Emergencies**

As mentioned above, early warning requires the cooperation of refugee and human rights groups.

Flows of refugees from one country to another can occur without much prior warning, catching those who are to assist the refugees unprepared. The result, too often, is that the resources required to care for the needs of refugees are not in place and that serious efforts are not undertaken in time to remedy the causes of their flight.

An early warning system could alert international attention to deteriorating human rights conditions and to the possibility of mass flows. It could stimulate efforts to alleviate the problems causing mass exodus and enable refugee agencies to organize emergency relief more rapidly and effectively.

Despite its importance, early warning is a very weak part of the refugee and human rights systems. Organizations like UNHCR are reluctant to be seen collecting information on human rights conditions for fear that they will be accused of meddling in the affairs of sovereign U.N. member states. Even private voluntary agencies which work on both sides of a border repeatedly fail to exchange information with each other

effectively. Human rights groups which could use such information to advantage often do not receive it.

Human rights groups, for their part, often do not think to share the data they routinely collect with refugee groups or do not do so in a timely manner. Without information useful for early warning, refugee agencies cannot effectively prepare to handle refugee flows and often are surprised by their timing and size. Important questions which need to be discussed include:

- ♦ What constraints now exist on the exchange of potential early warning information between refugee and human rights groups? How can these best be overcome?
- ♦ What types of information on human rights violations are most crucial to early warning of refugee movements?
- ♦ In what kinds of situations can early warnings of refugee movements be used to draw attention to the human rights violations within a country? How can such information be used most effectively to alleviate these conditions?
- ♦ How might the United Nations system play a more effective role in early warning? What obstacles now prevent its doing so?

### **Refugees as Human Rights Monitors**

Refugees can be valuable sources of information about events in their home country. Often, it is only those who have fled a country who are able to talk about human rights violations with some degree of freedom.

At the same time, information provided by refugees has to be carefully screened. Their accounts may be colored by the painful experiences they suffered in fleeing their countries, by time, distance, or political sympathies. Some may have political motives for making the conditions in their home countries sound worse than they really are. Others may exaggerate in order to make their own claims to refugee status appear more credible.



Notwithstanding these problems, refugees are among the best sources of human rights information. They regularly provide accurate eyewitness accounts of specific violations as well as useful general descriptions of human rights conditions. Too often in the past, they have not been listened to.

It is important for human rights groups to explore how they might expand their often limited access to refugees and to the private voluntary organizations assisting them so that legitimate reports of human rights violations can be brought to world attention and acted upon. Frequently governments and others in the international community try to discredit accounts of refugees for their own political or ideological purposes, making it even more crucial that human rights groups establish what is credible in their information. Certainly the tragic experience of the Cambodians in the late 1970s points out the need to listen to refugees. Although those who fled the Pol Pot regime reported massive violations, it was not until years later that human rights groups publicized and drew attention to their reports.

Refugees can also be valuable sources of information on the human rights conditions in the camps or settlements where they live. But refugees and those assisting them frequently face difficulties when they share such information with human rights groups. Refugees may face retribution and refugee agencies may risk expulsion by an angry host government. This leads to serious ethical dilemmas for those in the refugee field about when to report human rights violations. Some of the issues which therefore need to be addressed are:

- ♦ Retrospectively, how accurate and useful have refugee accounts been of human rights violations in their home country? When have such accounts been reliable indicators of larger and more serious problems? What has been the result when refugee accounts have gone unheeded?
- ♦ What are the most effective mechanisms and techniques for collecting, sifting, and analyzing information provided by refugees? Who collects such information and how is it used? What are the problems human rights groups face in gathering this information? What can be done to promote better exchanges of information between human rights and refugee groups so that more effective use of the information is made?

- ◆ Under what circumstances should those working with refugees disclose information concerning host government violations? What are the proper mechanisms for doing so without threatening their or the refugees' presence in a country?

## **RIGHTS OF REFUGEES, ASYLUM SEEKERS, INTERNALLY DISPLACED AND RETURNEES**

### **The Rights of Refugees**

Both international human rights and refugee law provide a broad range of rights for refugees. The Universal Declaration of Human Rights, considered binding on all states, affirms full civil, political, economic and social rights for all persons, citizens and refugees alike. The International Covenants on Human Rights, binding on those states which accede to them, also apply to "all" persons within their territory (Article 25 of the civil and political covenant, which specifies "citizens", is an exception).

International refugee law, although more restrictive, also provides a full range of rights for refugees. The U.N. Convention Relating to the Status of Refugees specifies that refugees should receive treatment almost as favorable as citizens in respect of freedom of movement, acquisition of property, access to courts, education, employment, and other important rights.

Notwithstanding these standards, millions of refugees are routinely denied their rights. Generally, it is the laws and practices of host governments that take precedence over international standards and become the decisive factor in determining refugees' rights. Too often, these laws and practices are restrictive and directly violate the provisions in international human rights and refugee agreements.

While in most industrialized countries, persons accorded refugee status do enjoy rights similar to those of citizens,<sup>1</sup> in many developing countries, this is not the case. Long-term refugees in these countries sometimes find themselves without access to courts, confined to camps, barred from owning or operating businesses, prohibited from purchasing land and denied access to government services.

<sup>1</sup> Prior to obtaining refugee status, their rights are ill-defined, and they may be subject to violations of international standards -- see section on asylum seekers.

Surprisingly, little discussion has taken place between refugee and human rights groups about the rights to which refugees are entitled, the extent to which these are being denied and whether states can be held accountable for not complying with international standards. Furthermore, little attention seems to have been given the fact that international human rights law provides a broader range of rights than does the refugee convention.

The failure of governments to comply with international standards also has not been fully addressed. While some governments argue that they are not bound by international standards because they have not acceded to the agreements in question, the Universal Declaration of Human Rights is regarded by many as binding on all states. Still other governments, although they have acceded to international agreements, have not found it convenient to incorporate their provisions into domestic law. The fact that they may be in violation of those agreements is often not taken up. In other cases, governments simply have not been able to afford to carry out certain of their international obligations because of economic limitations.

While UNHCR and human rights groups are known to intercede with governments in cases where a refugee's life or security is threatened, little effort has been made to assure that refugees enjoy the broader political and economic rights they are accorded under international law. Some of the issues that need to be addressed are the following:

- ♦ To what extent should the rights of refugees be determined by host country law and to what extent by international human rights and refugee law? Is there a difference in the rights accorded refugees by international human rights law and those accorded by international refugee law? Does one have precedence over the other? Can the Universal Declaration of Human Rights be said to prevail over national law where refugees are concerned?
- ♦ To what extent does adherence to international human rights and refugee agreements oblige states to bring their laws and practices in line with international standards? What steps should be taken to make states more accountable?

- ♦ What precisely are the rights refugees enjoy in developing countries and what would constitute violations of these rights? To what extent, for example, do they have equal access with citizens to land, to employment, to government services? Do they have greater rights *de facto* than *de jure*? Which rights do refugees consider most important to their well-being? Should any exceptions be made to take account of economic conditions in host countries?
- ♦ Are the rights of longer-term refugees in developing countries different from those of the newly arrived? Do refugees in official camps and settlements have more rights or less than those of refugees residing in spontaneous settlements?
- ♦ How can refugee and human rights groups work together to ensure that international agreements pertaining to refugees are better carried out? To what extent should the UNHCR be pressed to ensure that refugees enjoy the broad range of rights accorded them by international agreements?

### Detention and Deterrence of Asylum Seekers

Concerned with the arrival of large numbers of undocumented aliens, many nations have adopted policies to deter illegal immigration. Among these policies are: indefinite detention; summary exclusion; denial of due process to those who have not formally entered the country; interdiction at sea; and the imposition of visa and other requirements on transportation companies carrying aliens. These policies generally are applied to all aliens irrespective of their motives for entering the country. The results have been to make it hard for asylum-seekers to present and press their claims for refuge. Bona fide refugees, therefore, may find themselves unable to find safe haven and be forced either to return to dangerous situations or become "refugees in orbit." Those lucky enough to enter a safe country may find that their rights to free movement are seriously abridged. Some of the questions that need to be addressed are:

- ♦ What does the international human right to seek and enjoy asylum mean in practice?

- ♦ When does interdiction or discouragement of refugees constitute a violation of the right to seek and enjoy asylum?
- ♦ What should be considered proper documentation for someone who is fleeing a life-threatening situation? When do requirements for proper documentation constitute deterrence of asylum claims?
- ♦ What kind of criteria should be used to determine who is detained while their asylum status is being decided? Are there standards for the treatment of such detainees?
- ♦ What should be done with refugees who have been detained and granted withholding of deportation if they cannot be returned to their country of origin or first asylum? Do they have a right to be released into the community while a decision about their deportation is made?
- ♦ To what extent do detention and deterrence of asylum seekers in countries which have acceded to the refugee convention diminish the protections refugees are intended to enjoy worldwide?
- ♦ What role can human rights and refugee groups together play in ensuring greater protection for asylum seekers?

### **The Rights of Internally Displaced Persons**

In many instances, the largest number of those displaced by human rights violations are displaced within the borders of their own country. They are usually displaced for the same reasons that refugees are displaced: internal conflict, government-sponsored violence, or other serious human rights violations.<sup>2</sup> In contrast to those displaced across international borders, the internally displaced have very little access to international protection.

<sup>2</sup> Those forced to leave their homes because of natural calamities or other such causes are not dealt with here.

The international system for the protection of refugees was designed to deal with people who have crossed an international border in search of refuge. Internally displaced persons are not able to avail themselves of this system, even though they may be in greater need of protection and assistance than refugees. Refugees, at least, have escaped the causes of their displacement. The internally displaced often continue to live with and fall victim to them. Human rights groups, because of their focus on conditions in home countries, can play an important role in bringing the plight of the internally displaced to international attention. At the same time, they are neither equipped nor experienced to deal with the critical needs of those displaced, such as food, health care and shelter.

There are a number of issues which need to be addressed:

- ♦ What are the rights of internally displaced persons? Do they have a right to some form of international protection? If so, which system should protect them?
- ♦ To what extent do individuals have a right not to be subjected to deliberate arbitrary displacement by a government? Is there in international law protection against internal displacement? To what extent and under what conditions should governments be liable for compensation claims in cases of internal displacement?
- ♦ Do internally displaced persons have the right to return to their home villages? If so, how can return be facilitated and protected?
- ♦ Are internally displaced persons in "refugee-like" situations? Might refugee groups legitimately concern themselves with their care?
- ♦ What role, if any, can human rights groups play effectively to assist and protect internally displaced persons? What can human rights groups learn from the refugee field about how to protect displaced persons?

### **The Rights of Returnees**

Thousands of refugees voluntarily return to their homes each year, assisted by the UNHCR, governments and private voluntary agencies.

Ordinarily, the UNHCR helps pave the way for such repatriations by negotiating agreements between countries of asylum and countries of origin. The UNHCR and private voluntary agencies provide the material assistance and supplies needed to transport refugees across the border. They further lend their physical presence to insure that refugees are not harmed during return and in some cases, for short periods thereafter.

Human rights groups generally are not included in this process. The result is that troubling questions sometimes have arisen about whether refugees were fully informed of human rights conditions in their home countries when they made their decision to return. Questions also have arisen about whether conditions were sufficiently safe to justify their return and whether any pressures were exerted to induce return. Concern too has been expressed, in certain instances, about whether returnees faced retribution in their home countries because of their original flight. Although refugee organizations like the UNHCR often accompany refugees across the border, they do not extensively monitor what happens to them after their return.

Many more refugees return to their home countries "spontaneously" each year outside the formal repatriation programs monitored by the UNHCR and private voluntary agencies. In their cases, much less is known about whether they face persecution upon return or whether they are subjected to other denials of fundamental human rights. Existing as they do primarily outside the international assistance and protection system, they have little or no relationship with refugee or human rights groups.

The fate of refugees forcibly returned to their home countries is an even more troubling issue. Each year, thousands of refugees are returned against their wills to their countries of origin. Some host countries forcibly return refugees, citing concerns about the refugees' impact on local economies or on national security. Others expel refugees in return for receiving back from other countries their own nationals who fled. Still others may induce return by making the refugees' living conditions so bad that they will want to return home regardless of the conditions awaiting them.

Refugee and human rights groups do not always do all they should to prevent forcible repatriations and to protect those returned. They do not always intercede with governments as vigorously as they might. Nor do they extensively monitor the return of refugees. Often they are prevented from doing so by the governments concerned. In other instances, they

may not see it as part of their mandates. The result has been that refugees forcibly returned have little protection. They may find themselves subject to the same life threatening situations and human rights abuses which made them flee in the first place. A number of issues need to be addressed.

- ♦ Under what conditions is it appropriate for host countries and refugee organizations like the UNHCR to encourage the return of refugees? Are human rights criteria used to support such determinations? What actions constitute coercion?
- ♦ What role can human rights groups play in providing information to refugees about the conditions that likely await them? What obstacles might human rights groups face in doing so?
- ♦ When do returned refugees cease to be of concern to refugee organizations like the UNHCR? Who is then responsible for their protection? What role should human rights groups or humanitarian organizations assume?
- ♦ How can refugees who spontaneously return be better assisted and protected by the international refugee and human rights system?
- ♦ How can human rights and refugee groups work together more effectively to prevent forcible repatriations and to protect and assist returnees? What role might each play in monitoring refugees' reintegration into their home societies?

## **ROLES AND RELATIONSHIPS**

### **Increased Cooperation Between Refugee and Human Rights Groups**

Understanding the differing roles of refugee and human rights groups should provide an effective framework for promoting increased cooperation between them. The roles of both are rooted in international human rights and in international refugee law. Although the mandates of the two groups have evolved considerably over time, making increased cooperation more possible, their traditional roles and relationships often



have worked to limit their cooperation. A first step in exploring how the two groups might better work together to safeguard the rights of refugees and displaced persons would be to conduct an organizational analysis of the institutional roles and relationships of both. Among the issues to be examined would be:

- ♦ What international conventions defined the mandates of refugee and human rights groups?
- ♦ What have been the traditional roles of the two groups? How have those roles evolved over time? What particular situations influenced that evolution? What impact have financial considerations had on the roles they have assumed?
- ♦ How have the two groups worked together in the past to protect the rights of refugees and to ameliorate human rights abuses in countries from which refugees have fled? On what issues or in what cases have the two groups not worked together effectively? In what instances has failure of the two groups to work together resulted in human rights violations going unnoticed or uncared for?
- ♦ What obstacles and pitfalls do refugee and human rights groups see in examining their roles and relationships? What do the two groups see as likely benefits of such an effort?

### The Protection Role of Refugee Organizations

Organizations such as the International Committee of the Red Cross (ICRC) and the United Nations High Commissioner for Refugees (UNHCR) have formal, international mandates to deal with refugee protection matters. However, in practice their protection role is often quite limited. This is especially true when it comes to maintaining an adequate physical presence in the field to observe, and when possible deter, abuses to which refugees are subject. These tasks, instead, often fall to the staff of private voluntary agencies operating refugee assistance programs or to human rights groups which happen to be in the area.

However, some private voluntary agencies contend that they do not have a protection role. Others have a limited involvement in protection issues, in part, because they have a clear understanding only of their assistance roles. Most have little regular contact with human rights

groups or others engaged in protection. The staff of these agencies sent to the field rarely receive any training or orientation in protection issues or even a clear statement of their agency's overall position regarding protection matters.

Issues needing attention include:

- ◆ How can the ICRC and UNHCR carry out their protection mandates more effectively? What obstacles prevent their doing so as extensively as they might?
- ◆ What are the legal, philosophical, and ethical bases for the involvement of private voluntary agencies in protection matters?
- ◆ What are the major protection problems which private voluntary agencies typically encounter in the field? What approaches have been taken to dealing with them and what are the lessons learned from these experiences?
- ◆ What assistance can human rights groups give staff of private voluntary agencies to better prepare them to deal with protection problems? What are the appropriate roles of expatriate staff versus those of refugee or host country staff?

### **Refugee Issues and the U.N. Human Rights Agenda**

Because the refugee and human rights fields largely have grown up in isolation from one another, U.N. bodies traditionally have addressed refugee questions and human rights questions separately. Only in recent years have U.N. human rights bodies begun to make a connection between human rights conditions and flows of refugees and to regard refugees as a potential part of the human rights framework. A report presented to the U.N. Human Rights Commission in 1982 on Human Rights and Massive Exoduses focused attention for the first time on the reasons for refugee flights and concluded that human rights violations were a significant cause. U.N. human rights resolutions in addition have urged that greater attention be paid to the relationship between human rights violations and mass exoduses. In 1988, for the first time in many years, a UNHCR representative addressed the Human Rights Commission

on the need for better protection of refugee rights. And for the first time, U.N. human rights bodies are considering a draft declaration on the right to leave and return to one's country, which addresses many issues of concern to refugees.

Still there remains much to be done. For example:

- ♦ Specific cases of mass exoduses caused by human rights violations have not become a regular feature of the human rights agenda;
- ♦ Most of the recommendations in the study on Human Rights and Massive Exoduses have not been carried out;
- ♦ A number of important issues such as the liability of governments for refugee flows or whether compensation should be paid those forced to flee have not been fully addressed; and
- ♦ Whether a right exists for a person "to enter" a country as proposed in a U.N. report on the right to leave and return, has not yet been explored.

Human rights and refugee groups accredited to the U.N. have not to date worked together to develop a strategy to promote action on these and other related issues. Refugee groups do not generally attend U.N. human rights meetings and human rights organizations do not sit in on U.N. meetings dealing with refugee questions. Some issues that need to be addressed are:

- ♦ How can human rights and refugee organizations accredited to the U.N. work together more effectively to ensure that issues relating to refugees are more regularly and fully included in the work of U.N. human rights bodies? Should consideration be given to the creation of a formal NGO committee to deal exclusively with these issues?
- ♦ How can human rights groups play a more vigorous role in alerting U.N. human rights bodies to situations in specific countries that could cause mass exoduses? In what ways can they promote discussion of important issues such as: the extent to which states are obliged under international law to avoid circumstances that give rise to mass

displacement; the conditions under which states can be held liable for refugee flows; whether displaced persons can take legal action against a state in the national courts of the receiving country; under what conditions refugees should be entitled to compensation?

- ♦ How can human rights and refugee groups seek to ensure that the draft declaration on the right to leave and return does not in its final version include restrictive clauses that could diminish its basic intent? How can the two groups play a role in developing concepts of freedom of movement that might include the right to enter a country?
- ♦ How might human rights and refugee groups help ensure that the good offices roles of the U.N. Secretary General and U.N. High Commissioner for Refugees are better utilized to promote and protect the rights of refugees?

## CONCLUSION

The growing numbers of refugees and displaced persons throughout the world make it timely, indeed critical, for human rights and refugee groups to expand their collaboration. It is no longer acceptable for human rights groups to treat the protection of refugees as beyond the scope of their concerns. And it is no longer acceptable for refugee groups to ignore the reasons that people flee and not give thought to ways to remedy those conditions. Although frontiers do create divisions, the victims of violations should be protected and assisted no matter what side of the line they are on. Refugee and human rights groups increasingly have come to see that they have mutual concerns. Now they need to develop effective modes of working together. If they can accomplish this, they will make an important contribution to the causes they both seek to promote.

# **RPG REFUGEE POLICY GROUP**

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