

UPHOLDING THE MANDATE



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The Protection, Security, and Rights of Refugees

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INTRODUCTION

Grounded in Article 14 of the Universal Declaration of human rights in 1948, the United Nations held a convention in 1951 in order to codify the rights of refugees at the international level. In response to the atrocities of WWII and the subsequent refugee problems plaguing the world, the United Nations drafted a document and declaration of refugee rights that has now become the centerpiece of international refugee protection today. Because this document was drafted under the context of the Second World War, it was limited in scope to persons fleeing events that occurred before January 1951 and within Europe. The convention was thus later amended, with the 1967 Protocol, to remove these limitations and apply universal coverage.¹

According to the 1951 Convention, a refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”² The emphasis of this definition, then, is on the protection of refugees from *political* or other similar forms of

¹ United Nations High Commissioner for Refugees. “Convention and Protocol Relating to the Status of Refugees.” Geneva: UNHCR Communications and Public Information Service, 2010.

² “Convention,” op. cit.

persecution. Some of the Convention's resounding principles include: non-discrimination, non-penalization, and non-refoulement, all of which the United Nations High Commissioner for Refugees (hence force referred to as UNHCR) has adopted as a part of their mandate today. Non-discrimination implies that provisions for and protection of refugees will be applied without prejudice as to race, religion, or other factors. Non-penalization stipulates that refugees are not in breach of immigration laws if they are fleeing their country by means of persecution; they are not subject to be penalized for illegal entry or stay. Perhaps the presiding clause of the 1951 Convention is the principle of non-refoulement, which states that no country or government can return or repatriate ("refouler") a refugee against his or her will back to his region of origin, where he may fear a threat to life and/or freedom.³ Non-refoulement is also central to the current UNHCR mandate, as well.

This report will overview the UNHCR mandate, which more than anything else focuses on protection. Utilizing case studies in both Thailand and Tanzania, refugee protection will be analyzed on the camp level via lessons learned. In conclusion, the UNHCR has identified six strategic priorities for 2011, or principles to be addressed based on lessons learned.

THE UNHCR MANDATE | SECTION ONE

The UNHCR was established on December 14th, 1950, succeeding the previous United Nations Relief and Rehabilitation Administration. Primarily, it

³ "Convention," op. cit.

serves to lead and coordinate international action to safeguard the rights and well being of refugees worldwide. According to UNHCR its mandate is “to provide, on a non-political and humanitarian basis, international protection to refugees and to seek permanent solutions for them.”⁴ As it will apply further in the report, an economic migrant under the definition set forth by the 1951 Convention and the UNHCR is *not* a refugee. Economic migrants leave their country voluntarily to seek a better life and can also return to their country under no pretenses of political persecution. Because economic migrants may leave their countries due to financial or personal reasons, they cannot be considered refugees.⁵ More comprehensive than the 1951 Convention definition, the UNHCR sets forth this description of a refugee:

A person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself to the protection of that country, or to return there, for fear of persecution.⁶

The UNHCR fulfills its mandate primarily by ensuring the implementation of international refugee law, including the right of non-refoulement. As previously defined, non-refoulement is the concept that prohibits states from returning a refugee or asylum-seeker to territories against his or her will where there is a

⁴ UN High Commissioner for Refugees. “Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR.” 1 August 2005, available at: <http://www.unhcr.org/refworld/docid/4214cb4f2.html> [accessed 21 February 2011]

⁵ UN High Commissioner for Refugees. “The 1951 Refugee Convention: Questions and Answers.” September 2007, available at: <http://www.unhcr.org/3c0f495f4.html> [accessed 21 February 2011]

⁶ “The 1951 Convention,” *op. cit.*

risk against his or her life and/or freedom. It remains a cardinal protection principle in international refugee law – so important that no reservations or derogations may be made to it.⁷

Physical safety and camp security, by law, is left as a responsibility of the receiving state.⁸ The obscuring between physical and legal protection can be problematic at times because legal protection cannot progress in an atmosphere of insecurity and militarization. Due to the asymmetrical nature of warfare in the 21st century, protection is not enough. Refugee camps, in some cases for example, have lasted longer than twenty years without any real solutions. Something more must be done.

Protection is Not Enough

In the third edition of UNHCR's Agenda for Protection, released in October 2003, the High Commissioner stated:

I have become more and more convinced that protection in exile is not enough. Refugees need both protection *and* solutions. The Agenda for Protection strongly emphasizes both, to enable refugees to start a new life with dignity and to bring an end to their need for international protection.⁹

Part of the solution, as defined above, is ending a refugee's need for protection.

This can most comprehensively be done through prevention mechanisms and

⁷ "Convention," op. cit.

⁸ Lischer, Sarah Kenyon. "Dangerous Sanctuaries: Refugee Camps, Civil War, and Dilemmas of Humanitarian Assistance." Ithaca, NY: Cornell University Press: 2005, 144.

⁹ Riera, Jose and Marilyn Achiron, eds. "Agenda for Protection: Third Edition." Department of Internal Protection, UNHCR: October 2003.

through the transformation of short-term relief to sustainability (of the conflict situation and by the enabling of refugees for long-term solutions). One example given in the Agenda for Protection is the collection of data “on the nexus between asylum and migration” and the better understanding of “push” and “pull” factors of migration.¹⁰ However, before over-viewing best practices for future sustainability, this report will look at the current security situation in refugee camps today.

SECURING PROTECTION IN REFUGEE CAMPS | SECTION TWO

Security in refugee camp settings is one of the most basic (yet most pervasive) manifestations of protection on a vast and somewhat-systematized level. However, the current model implemented today in refugee camps focuses on relief and basic security rather than long-term development and protection. The current status quo and paradigm dictate that the crisis is of temporary nature and therefore, that temporary assistance is needed. History has proven, however, that refugee camp situations can be protracted over the period of several decades. Although the protection mandate includes ensuring the provision of needs and the upholding of rights, long-term camp security, rather than the relief or development in camp, is most important to protection.¹¹ If the security of camps is not ensured, relief and development cannot begin in the first place and cannot remain sustainable.

¹⁰ Riera, Jose and Marilyn Achiron, *op. cit.*

¹¹ Wigley, Barb. Ed., Crepeau, Francois. “Forced Migration and Global Processes: A View from Forced Migration Studies.” Lanham, MD: Lexington Books, 2006, 151-169.

Relief and Short Term Assistance as Flawed Models

The predominant model in refugee camps for addressing needs is short-term relief, or actions undertaken in emergency situations and intended to be short-term solutions. The nature of the current model reflects this general camp paradigm. There is an assumption in the development world that refugee camps are themselves short-term in nature – that the current situation is an aberration of normal stability, that the conflict will settle, and that development can be effective. However, the problem with this standard is that there are an increasing number of situations “where conflict, instability and turmoil constitute the predominate “normality” and neither model [relief or development] proves adequate to meet the needs of refugees, hosts and donors at the same time.”¹² Instead, there exists a pervading inability to hold in mind long-term needs, provide long-lasting solutions and respond appropriately.

When long-term needs are met with short-term relief, problems can include conflict, violence, frustration, hopelessness, loss, and trauma. ¹³ What exists in today’s refugee camp situation is a lack of debate, reflection, and planning, or what the UNHCR’s Third Agenda for Protection deemed “solutions.” In fact, in the past, a separation of development and humanitarian aid in favor of quick and easy repatriation has left thousands of refugees

¹² Wigley, Barb, op. cit., pg 160.

¹³ Wigley, Barb, op. cit., pg 168.

“warehoused” for years on end.¹⁴ A focus on security and the attempt to reduce the occurrence of violence and displacement in the first place will help provide longer-lasting solutions.

What Threatens Camp Security

As mentioned previously, aiding to the problem of refugee protection is the fact that often a resulting refugee crisis leads to an expansion of violence rather than an escape from it. Refugees and camps themselves can function as tools and strategies of war. In fact, “for exiled rebel groups, a refugee population provides international legitimacy, a shield against attack, a pool of recruits, and valuable sources for food and medicine.”¹⁵ Legally, the “receiving state,” or state that receives refugees and in which camps are set up, is responsible for providing security for camps located in their country. Because these situations are so complex, the current status quo is to ignore militarization, which can actually serve to exacerbate the pervading conflict.¹⁶ When ignoring militarization, agencies and states can potentially be feeding militants, sustaining and protecting militants’ dependents, supporting war economy, and/or providing legitimacy to combatants.¹⁷ Larger camps that ignore militarization can become breeding grounds not only for insurgents but also for criminal organizations, as security in these camps is harder to control. Large numbers of young men living in poor conditions leads to discontent,

¹⁴ Wigley, Barb, op. cit., pg 164.

¹⁵ Lischer, Sarah Kenyon. “Dangerous Sanctuaries: Refugee Camps, Civil War, and Dilemmas of Humanitarian Assistance.” Ithaca, NY: Cornell University Press: 2005, 2.

¹⁶ Lischer, Sarah, op. cit., pg 4.

¹⁷ Lischer, Sarah, op. cit, pg 8.

which can then lead to militancy. Two case studies, of the Burmese in Thailand and of the Rwandan Hutus in Zaire and Tanzania will illustrate points of failure of refugee protection – specifically in the area of security. While there are many camps that exhibit best practices, the two examples below will formulate lessons learned.

Case Study I: Burmese Refugees in Thailand

Burmese refugees fleeing persecution from the SLORC regime, currently enslaving and oppressing minority groups, face little better circumstances as they cross the border into refugee camps in Thailand. Enacting a policy towards the Burmese as economic migrants rather than refugees, Thailand has closed its camps to new arrivals. Thus, thousands of refugees live in or around camps unofficially; as Thailand declares parts of Burma “safe,” these unofficial refugees move from one place to another, back and forth across the border.¹⁸ Not only do most Burmese remain unwelcome in Thailand, but the populations even officially residing in camps also face dire circumstances. Thailand enforces strict guidelines for their camps that encourage repatriation and discourage dependency. Camps are purposefully designed to mirror economic conditions in villages in war-torn Burma – with limited educational access, health care facilities, or income-generating projects. Referred to by Barbara Wigley as a “deterrence policy,” these camps are made deliberately unpleasant so as to deter refugees from permanently settling in the receiving state. In

¹⁸ Mason, Jana. “No Way In, No Way Out: Internal Displacement in Burma.” Washington, D.C: U.S. Committee for Refugees, 2000, pg 12.

essence, the hope is that refugees will find their war-torn country a much better option than staying at the camp.¹⁹ Lack of security is one means of deterrence.

Due specifically to the lack of security in Thailand, Burmese forces frequently attack Thai refugee camps. Any kind of cross-border assistance is severely limited, as well, as both states view that type of assistance as a violation of sovereignty.²⁰ In fact, Thailand did not allow UNHCR to mandate protection in the area until more than ten years into the conflict. The entire situation remains a mess, as more and more Burmese are displaced with nowhere to go. Even the refugee camps themselves in Thailand fail to provide security, short-term relief, and longer-lasting sustainability. One UNHCR report on Burma is appropriately entitled “No Way In, No Way Out.”²¹

Case Study II: Rwandan Hutu Refugees in Tanzania and Zaire

In the mid-1990s during the Rwandan genocide, both Tanzania and Zaire saw an influx of refugees in their countries. 1.2 million Hutus fled to Zaire, while 500,000 refugees became a part of established camps in Western Tanzania. Although both countries hosted a similar population of refugees along relatively similar locations near the border of Rwanda, the two camps saw drastically different results. Insurgent leaders in Zaire established their own state-in-exile, began training soldiers and militia, and posed such a threat

¹⁹ Wigley, Barbara, *op. cit.*, pg 165.

²⁰ Mason, Jana, *op. cit.*, pg 18.

²¹ Mason, Jana, *op. cit.*

to the stability of Zaire, that the camps were forcibly dismantled in 1996. By complete contrast, Tanzanian camps remained relatively successful and presented much lower threats to regional stability; militant leaders did exist in these camps, but they were unable to militarize the camps. Why did the Zairian camps crumble while the Tanzanian camps flourished? Tanzanian camps housed less than half as many refugees (nearly 700,000 less) than Zairian camps and enabled security measures at a faster rate.²² However, even measures such as these do not necessarily ensure successful protection in camp.

Also located in Tanzania in the 1990s were Burundian Hutu refugees. In comparison with the Rwandan Hutu camps, the presence of 300,00 Burundian refugees led to numerous cross-border conflicts, with both armies militarized along the border. The Burundi government even warned that if necessary, it would come and eradicate the threat posed by the camp in Tanzania itself. Sarah Lischer explains this comparison in how “differences in sending state (and in the conflicts there) and the policy of the receiving state can influence outcomes.”²³ What lessons can be learned from failed situations such as these? Outlined below are best practices for securing protection in refugee camps and moving towards long-term development.

²² Lischer, Sarah, *op. cit.*, pg 16.

²³ *Ibid.*

Best Practices for Securing Refugee Rights and Protection on the Camp Level

Based off of many case studies and a dearth of literature on protection strategies and mechanisms, below is a simplified list of ten best and basic practices in fulfillment of the refugee protection mandate.²⁴

- Locate camps at a reasonable distance from the border of the sending state; ideally, this should be at least more than 20 miles, but preferably 30 miles, from the border.
- Camps should not exceed more than 20,000 refugees.
- Create a stable ethnic balance in the receiving state so that it does not encourage a previously oppressed minority group to confront the state.
- Because “maleness is by far the biggest risk factor for violence” in camps, create both gender and age balances in the refugee population.²⁵
- Develop and apply standards and principles in dealing with problems of protection.
- Have contingency plans ready (incentives if necessary) in the case that receiving states cannot provide security and protection.
 - In the 1990s, UNHCR provided funds to the Tanzanian government for improving police presence in refugee areas.
 - In Zaire, UNHCR paid members of the army to guard Rwandan camps.
- Deploy security forces to separate combatants from non-civilians and provide physical protection in refugee populated areas.
- Avoid protracted situations, as state-in-exile refugee groups gain strength over time.

²⁴ Lischer, Sarah, *op. cit.*, pgs 14-154.

²⁵ Vaux, Tony, *qtd in* Lischer, Sarah, *op. cit.*, pg 37.

- Influence existing refugee leadership structure to maintain community, encourage self-reliance, and avoid paternalism.
- Keep the men busy. Enable education, sports leagues or other groups and activities that occupy the time of young men prone to violence. This will reduce domestic and gender-based violence, as well as stop the spread of militancy.

STRATEGIC PRIORITIES FOR 2011 | SECTION THREE

Because current situations challenge the international community as never before, there are many flaws in the current mandate and structure for protection for refugees today. Improved protection can only be achieved through enhanced multilateral cooperation, a shared commitment to implement new and practical arrangements, and the development and implementation of new approaches and standards, or the “Convention plus approach.”²⁶ As outlined by the UNHCR, these strategic priorities include:

- Safeguard protection and asylum space.
- Find solutions for protracted situations.
- Ensure protection and durable solutions for IDPs.
- Ensure protection for people of concern.
- Build protection capacity in natural disaster response.
- Maintain operations in high-risk areas.
- Reduce and prevent statelessness and protect stateless persons.
- Address security concerns more effectively.
- Share burdens and responsibilities more equitably, and build capacities to receive and protect refugees.

²⁶ Riera, Jose and Marilyn Achiron, op. cit.

CONCLUSION

Refugees often have to make quick (and typically forced) decisions to either remain in their country or to flee from the situation. In pressing circumstances, they have to weigh the possibilities of assuring their own survival. Professor and scholar Peter Van Arsdale describes the refugee decision as such:

Risk and vulnerability are weighed. Persecution, political unrest, and abuse emerge as undesirable pressures; autonomy, security, and personal or familial well-being emerge as desired outcomes. Memory emerges as a key adaptive device. Refugee human rights therefore best can be understood interactively, processually, and systematically.²⁷

First outlined in the 1951 Convention, the protection of refugees is the primary mandate of the UNHCR. Protection and security must be the primary focus of the initial response to the refugee crisis, as development and long-term sustainability cannot ensue until security is established. The UNHCR accomplishes its protection mandate through the enforcement of international laws and by ensuring the rights and security of individuals fleeing political persecution. However, because the burden of security falls to the receiving state, sometimes the mandate of protection fails.

²⁷ Van Arsdale, Peter. "Forced to Flee: Human Rights and Human Wrongs in Refugee Homelands." Lanham, Maryland: Lexington Books, 2006, pg 3.

The UNHCR's strategic priorities for 2011 address gaps in its protection mandate. IDP numbers continue to rise, as refugee numbers decrease; this one equation alone must change the scope of the current mandate. Equitable burden sharing, solutions for protracted situations, and a focus on more vulnerable populations will aid in transforming the current mandate to one that is solution-oriented and focused more on long-term sustainability.