

FEATURE

In the first of three articles, *Lucie Collinson* investigates the International Community and its role in humanitarian crises. In this issue, the mechanisms currently in place for the protection of both refugees and internally-displaced persons are critiqued.

Refugee and internally displaced people (IDPs) crises are rising up the global political agenda. The increasing prevalence of natural disasters and civil conflict has elevated forced migration into a global phenomenon. This is creating new pressures at both state and local levels that lack the capacity to manage these demands.

This article will evaluate the existing protection mechanisms for refugees and IDPs. It will focus on humanitarian crises born of conflict rather than natural disasters, and on the protection mechanisms that have the primary aim of protecting the basic human rights of individuals – in particular the right to health. These include the international legal framework theoretically safeguarding refugees and IDPs from physical and psychological trauma; international agencies and non-governmental organisations

(NGOs); and host governments.

What is a refugee and who protects them?

Refugees, as defined by the 1951 Refugee Convention, are people who have a well-founded fear of persecution and cannot return to their home countries or regions for fear of placing their lives in jeopardy. IDPs are people who take flight within the national borders of their home countries and are thus forced to seek safety from their own governments [1]. Every day both refugees and IDPs from many different corners of the world are forced from the safety of their homes. Direct threats to personal security and other forms of violence oblige individuals, families and entire communities to gather their belongings and begin a journey to uncertain destinations.

The key actors in providing protection mechanisms for refugees and IDPs today are the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and the United Nations Children's Fund (UNICEF) [2]. The UNHCR, created by the UN General Assembly in 1950, is the only international organisation charged with legal protection of refugees [3]. IDPs, on the other

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hand, have no formal protection: the UN Guiding Principles for Internal Displacement written by the UNHCR stresses that the primary responsibility for the protection and assistance of IDPs must lie with national governments. In practice, however, the UNHCR does take responsibility for IDPs wherever feasible.

Differing Roles

The UNHCR's protective role for refugees operates more through advocacy than producing a definitive action. It anchors international debates about human rights and international responsibility in the delivery of humanitarian assistance. It is vested with considerable moral authority and legitimacy but lacks political weight. It is restricted in its actions by the practices of states and is not permitted to intervene politically against human rights violations. The UNHCR therefore relies on other actors to manage problems created by refugee movements, and this creates some delicate political dynamics.

The UNHCR must balance its founding purpose and responsibilities, to manage the consequences for domestic instability, interstate tensions and national security of refugee displacement, with sensitivity to the sovereign prerogatives and conflicting interests of different states. If it does not take account of these realities on the ground, or alienates host states, it risks becoming a producer of empty rhetoric, undermining effective solutions for refugees. However, while the UNHCR is a useful focal point for the reasons described above, it is unable to provide comprehensive protection for refugees and IDPs.

The ICRC and UNICEF provide humanitarian protection and relief for victims of war and armed violence - as exemplified by their actions in Kenya recently. The ICRC's mandate under international law, to take impartial action on behalf of

prisoners, the wounded and sick, and civilians affected by conflict including prisoners of war, ceases when conflict ends [4]. Despite UNICEF and the ICRC having no legal standing in the protection of refugees and IDPs from conflict they have the ability to place the protection of refugees and IDPs on the humanitarian agendas of governments. The ICRC and UNICEF are capable of advocating humanitarian values however are limited in providing sufficient protection for refugees and IDPs in the field.

International agencies and NGOs provide life saving assistance and protection to refugees in the form of humanitarian assistance such as emergency shelter and food, health care, refugee camp coordination and management, IDP registration systems, evacuation of people in extreme danger and promoting international cooperation on migration issues. A current example is Columbia today where Médecins Sans Frontières are providing basic health care services in the absence of any other [5].

In order to improve coordination among United Nations (UN) agencies it was agreed in 2005 to establish responsibilities by sector to lead organisations in humanitarian assistance and develop clusters of relevant partners. Despite the good intentions of this joint programming, and information- and knowledge-sharing on technical and policy issues, the cluster approach has been criticised for being a UN concept imposed from above on the aid community. NGOs in Somalia admitted to feeling they were being pushed to intervene in insecure areas [6]. However it has been argued that the majority of the problems encountered since implementation of the cluster system in the field derive from a misunderstanding of the key operational nature of clusters [7].

Despite providing emergency humanitarian assistance, raising awareness in the international

community and advocating nationally for better health care, international organisations and NGOs are powerless to protect refugees and IDPs from conflict itself. At times they may be responsible for exacerbating forced migration through being unwittingly manipulated by local politicians in host countries. The Zimbabwean government, for example, has become particularly adept at directing foreign aid towards rewarding and strengthening government supporters, whilst systematically excluding the supporters of opposition groups [8].

Legal Protection?

The international legal framework which governs the protection of displaced populations is composed of three interrelated sets of rules: International Humanitarian Law (IHL), International Human Rights Law (IHRL) and International Refugee Law (IRL). IHL regulates the protection of persons in areas of armed conflict; IHRL imposes standards that governments to which must abide in their treatment of persons both in peacetime and in war; and IRL exclusively protects refugees.

The common objective of these legal regimes is to protect human life, health and dignity. There is, however, an enormous gap between the rights that the above laws “guarantee” to refugees and the realities they face. International conventions on the laws of war are largely ignored by the perpetrators of atrocities. Women and children are rarely able to make use of these protection mechanisms. Refugee law, as it is conventionally interpreted, is an inadequate shield for those people whose fears of persecution arise out of forms of protest or ill-treatment not considered to be political, or deserving of international protection.

The inadequacy of current approaches to protecting refugees and IDPs in areas of civil or international conflict is demonstrated by the

instability brought about by refugee and IDP crises. The escalating plight of refugees and IDPs that still exists today underlines the need to re-evaluate both traditional and current practices and the role of international organisations, in particular the UNHCR.

Efforts by domestic NGOs to assist refugees and IDPs provide the most potential at the national level. The international community needs to exercise greater assertiveness and creativity in order to gain access to refugees and IDPs to improve their existing protection mechanisms. Its recalcitrance in this regard may lie in post-colonial guilt and a reluctance to interfere politically or militarily to relieve the suffering of refugees and IDPs for fear of being labelled ‘imperialist’. Yet many of these problems of displacement find their roots in colonial activities: ‘Old Europe’ carved up Africa with arbitrary lines across the map, creating new countries that ignored centuries old tribal and religious groupings. The consequence has been continuous and growing tribal and religious civil conflict, producing more refugees and IDPs every year. Perhaps it is the responsibility of New Europe, therefore, to commit more effort to resolving this problem.

International organisations and NGOs are equipped and experienced to supply the necessary humanitarian relief for refugees and IDPs. However, states often lack the resources or the will to assist in this provision of care and protection. The protection of refugees and IDPs is the first and foremost duty of the state. When states are unable or unwilling to comply with their obligations under international law, humanitarian and human rights organisations become crucial in providing protection. These mechanisms are insufficient, however, to create binding legal protection for refugees and IDPs, and lack the capacity to stop conflicts from escalating. States therefore remain the key actors in the process.

Government responses to crises of forced mi-

gration are known to be notoriously inadequate in terms of protecting refugees and IDPs. This is often due to a lack of resources, but in some circumstances the forced displacement of people forms part of systems of power and is pursued strategically, as is seen currently in the Sudan. Thus, as the international community witnesses the daily flagrant abuse and violation of its own laws in areas of conflict and violence, the conclusion that the ultimate protection of refugees and IDPs resides in the political will of individual governments, is a sobering one for refugees and IDPs the world over.

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