

UNHCR and Human Rights
a policy paper
resulting from deliberations in the Policy Committee on the basis of a paper
prepared by the Division of International Protection

INTRODUCTION

Extreme caution traditionally marked UNHCR's approach to any suggestion that it should cooperate and collaborate with established mechanisms for the promotion and protection of general human rights principles. While being prepared to acknowledge its human rights origins, as well as the complementarity of refugee protection and human rights promotion, UNHCR nevertheless kept a deliberate distance from the proliferating and increasingly forceful UN mechanisms for monitoring and ensuring compliance with international human rights norms. Motivating this approach was the fear that greater activism would lead to politicisation of UNHCR activities which would compromise our capacity to work with our government counterparts.

Over recent years, however, this "hands off" approach has given way to a policy of more constructive engagement with selected human rights bodies, as the potential of cooperation has become increasingly apparent. UNHCR participation in a multidisciplinary, inter-agency response to complex emergencies is more and more the norm, with human rights monitors becoming an integral part. The heightened prevention focus of UNHCR activities has required the organisation to contribute actively to human rights promotion, *inter alia* working with and through established human rights mechanisms. Human rights bodies, particularly treaty implementation bodies, have also become increasingly aware of the relevance of refugee protection problems to their mandates and have been actively seeking a UNHCR input into their deliberations. A further important development is the growing complementarity between legal human rights protection and refugee law developments.

Taken together, such developments have contributed to breaking down reservations inside the office to selective closer collaboration with human rights bodies. The approach now is increasingly one of cooperation based on complementarity but respect for and maintenance of differences in mandates and approaches.

The approach of working on separate but parallel and interlinking tracks has had the added advantage of allowing the Office, from time to time, to take on exceptional human rights protection responsibilities for individuals whose situation is increasingly untenable without outside assistance. Confidentiality is of the essence here.

Having some experience now with the potential of selective cooperation, UNHCR needs to concretise its policy in a manner which continues to respect both the sensitivities and the particularity of our work, but which at the same time maximises the advantages of greater collaboration and encourages the taking of more initiative. This is the purpose of the present paper.

AN EXPANDING INTERACTION

It is a founding principle of the United Nations Charter that sovereign states are charged with the collective and individual responsibility to promote universal respect for, and observance of, human rights and fundamental freedoms for all. /1(1) Whilst the primary duty rests with states themselves, the effective implementation of these universal standards remains, nonetheless, a legitimate concern of all other entities and individuals. In this, UNHCR has a particular role to play insofar as its mandate extends to refugees and others of concern to the Office.

The linkage between human rights concerns and refugee issues was articulated in UNHCR's first address to the UN Commission on Human Rights in 1990, in the following terms:

Violations of human rights are a major cause of refugee exodus and in its efforts to curb such violations this Commission also contributes to the prevention of refugee flows. Violations of human rights also create complex problems of protection in countries of asylum [...] Finally, too, restoration of acceptable human rights situations in countries of origin can be the key to successful resolution of long-standing refugee problems. It is

clear that human rights considerations are central across the spectrum of the refugee problem, from departure through refuge to the realisation of a lasting solution.

These complex linkages between human rights considerations and international response to the problem of refugees led the High Commissioner to state, in her address to the 50th session of the Commission on Human Rights in February 1994, that

UNHCR today is very much an operational human rights organisation, albeit for certain categories of people.

This policy document reviews some of the most important implications of this statement for UNHCR practice at Headquarters and in the field.

To this end, it distinguishes three levels of interaction between UNHCR's responsibilities and the sphere of human rights, namely:

standards: UNHCR promotes, and is guided by, human rights standards;

information: UNHCR uses and generates human rights information; and

mechanisms: UNHCR co-operates with, and seeks the co-operation of, human rights mechanisms, institutions and field operations.

This document does not purport to be exhaustive on any of these three levels. It does, however, provide policy guidance on a number of issues arising from this interaction.

1. Standards

International human rights law is concerned with setting standards - some of which are universally recognised - for the behaviour of states towards persons under their jurisdiction. UNHCR, as the UN agency tasked with providing protection to refugees - and, in some cases, returnees and/or internally displaced persons - has a global mandate to ensure that the human rights of its beneficiaries are upheld in accordance with the international obligations of states hosting them.

As far as refugees are concerned, human rights standards have been, in part, framed within specific international instruments - primarily the *1951 Convention relating to the Status of Refugees* and the *1969 OAU Convention governing Specific Aspects of the Refugee Problem in Africa*. It is clear, however, that the human rights provisions of these instruments are not exhaustive. Since the creation of UNHCR in 1950, many more international human rights treaties, both of universal and regional application, have been adopted, the provisions of which are immediately relevant to the protection responsibilities of the Office. UNHCR stands for, and is entitled to invoke, the full array of rights, freedoms and principles related to refugee protection developed by the international community under the auspices of the UN or of regional organisations. It can also base its arguments on constitutional and other domestic legal provisions reiterating or elaborating international human rights standards.

As evidenced by the preparatory process leading to and the Programme of Action adopted by the 1996 Regional Conference on Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Commonwealth of Independent States and Neighbouring States (CIS Conference), UNHCR is expected to actively contribute to overall preventive standard-setting exercises, particularly tailored to societies in transition.

The first requirement for UNHCR staff is, therefore, to be familiar with these standards, their fields and modes of application, and their supervision and enforcement mechanisms. The Division of International Protection has published in 1996 three important documents which are designed to guide UNHCR staff in this area:

- an expanded *Collection of International Instruments and Other Legal Texts concerning Refugees and Displaced Persons*
- a training module (in two parts) on *Human Rights and Refugee Protection* (RLD5)

- a reference manual for UNHCR staff: *International standards applicable to the Protection of Internally Displaced Persons*.

In addition, the REFWORLD CD-ROM published by the Centre for Documentation and Research contains an impressive collection of human rights standards.

Building on these recent endeavours, knowledge of human rights standards must be promoted and disseminated among staff at all levels, and by UNHCR staff among governmental counterparts and, where applicable, NGO partners, as additional tools for the protection of persons of concern.

In determining which rights it is going to defend or promote on behalf of its beneficiaries, UNHCR must be guided by the following considerations:

- maximising protection to the full extent of the law, taking into account permissible limitations or derogations
- promoting new or enhanced legal norms and procedures where domestic law is discriminatory or otherwise falls short of international standards
- attending in priority to the most fundamental civil rights: life, liberty, and security of the person, without however undermining any other civil, political, economic, social or cultural right
- promoting the principle of non-discrimination: persons of concern should not be discriminated against for being displaced, or for being or having been refugees; on the other hand, they should not be treated as a privileged class with regard to the enjoyment of their rights or social benefits.

UNHCR's own goals, aims and objectives must comply with international human rights standards. This means that not only must UNHCR staff be careful not to compromise fundamental protection principles and norms, but they must also make their programme goals compatible with international human rights standards. They must also try to enhance the observance of these standards by their government and NGO partners.

Finally, recognising that human rights is a rapidly evolving area of international law, UNHCR must strengthen its involvement in standard-setting exercises, in particular within the UN, as well as in the development of case law by human rights Commissions and Courts. It must do so in order to ensure proper reflection of the Office's interests and concerns and to safeguard a liberal interpretation of these standards as they apply to refugees and other persons of concern.

2. Information

UNHCR staff make extensive use of human rights information, whether it is generated by UN or regional mechanisms, such as Special Rapporteurs (see the next section on Mechanisms), or by reliable human rights NGOs. UNHCR's REFWORLD contains considerable amounts of information on human rights situations in most countries in the world. This is used primarily in the context of determining the refugee status of asylum-seekers from those countries, but also in other contexts, such as the facilitation or promotion of voluntary repatriation, which depends heavily on an accurate assessment of conditions in countries of origin.

This policy paper focuses on the gathering of human rights information by UNHCR field offices, with particular emphasis on actual or potential countries of origin of refugee flows. The question is often asked whether it is legitimate and/or prudent for UNHCR to involve itself in the gathering and processing of information concerning the general human rights situation in countries where it operates - i.e., information which would not be limited to the situation of refugees, returnees or IDPs, as the case may be. This question must be considered bearing in mind that, on the one hand, UNHCR is not a human rights monitoring organisation intent on exposing abuses publicly, but, on the other hand, it has an indisputable interest in human rights issues that impact on its mandate and activities. The follow-up process to the CIS Conference is a case in point where UNHCR - jointly with States and its partners, especially IOM and OSCE - is expected to assist in and monitor the implementation of the Programme

of Action.

In this connection, gathering information on human rights developments that may lead to refugee flows and/or hinder repatriation is a legitimate and necessary activity for UNHCR staff assigned to an actual or potential refugee-producing country.

Wherever possible, UNHCR Representatives should present this concern as a matter of course to their Government counterparts. Based on such information, they should propose to Headquarters preventive measures which could be designed and implemented cooperatively by Governments and other UN and regional organisations, according to their respective mandates.

Exchange of information with human rights mechanisms and field operations is dealt with in the next Section.

3. Mechanisms

UNHCR is part of the UN's effort to promote respect for human rights. Co-operation with the other components of this system is, therefore, mutually beneficial.

In recent years, UNHCR has considerably increased its co-operation with a number of mechanisms constituting the "traditional" human rights machinery of the UN. These include the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, bodies supervising the implementation of specific human rights treaties, and special procedures, such as Rapporteurs or Working Groups.

A detailed description of these, as well as the major regional mechanisms can be found in the module *Human Rights and Refugee Protection, Part I*. The participation of UNHCR in the work of these human rights bodies is now actively solicited. /2(2)

The human rights liaison function within the Division of International Protection has greatly contributed to raising the profile of UNHCR and of refugee-related concerns in the human rights arena. There is, however, a crucial role for field offices to play in this area, since UNHCR's credibility as a source of information for the human rights machinery is based, largely, on its extensive field coverage. The instructions contained in IOM/64/-FOM/63 of August 1993 regarding the Committee on the Rights of the Child should be considered to apply, *mutatis mutandis*, to co-operation with all treaty monitoring bodies. /3(3)

In essence, these require all field offices to participate in the preparatory process of state reporting, by providing accurate information on the implementation of the rights enumerated in each respective treaty, and to provide some comment on the accuracy, or otherwise, of the initial report submitted by each state.

UNHCR field staff are also requested to continue to extend all necessary facilities to Special Rapporteurs, Representatives and Experts who often rely on refugee testimonies as a critical source of information for their reports, subject to security and confidentiality considerations.

General rules of confidentiality govern the sharing of information with human rights mechanisms, particularly with a view to protecting victims and witnesses of human rights violations. The Division of International Protection will soon publish new, comprehensive guidelines on this issue.

In the 1990's the UN human rights system is expanding into two new areas, namely:

- human rights field missions, either in the framework of peace processes or, more recently, at the initiative of the Commission on Human Rights and the High Commissioner for Human Rights; and
- jurisdictional activities -- such as the international tribunals for the Former Yugoslavia and Rwanda - which "bridge" human rights and international criminal law. /4(4)

This policy paper focuses on the former development.

Human rights are regarded more and more as fundamental building blocks in achieving durable peace. There has been in recent times a multiplication of human rights components - including Civilian Police - in UN peace keeping missions: the United Nations Transition Assistance Group/UNTAG in Namibia; the United Nations Observer Mission in El Salvador/ONUSAL; the United Nations Transitional Authority in Cambodia/UNTAC; the United Nations Operation in Mozambique/ONUMOZ; the United Nations Protection Force/UNPROFOR and the United Nations Confidence Restoration Operation in Croatia/UNCRO in the Former Yugoslavia; the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) and the International Civilian Mission in Haiti/MICIVIH which was part of the United Nations Mission in Haiti/UNMIH. In addition, some new field missions are being sponsored by the Commission on Human Rights and/or the High Commissioner for Human Rights/Centre for Human Rights. The human rights field operation in Rwanda (HRFOR) is seen by many as a "test" of the High Commissioner for Human Rights' role in "operationalizing" human rights. Mention should also be made of regional organisations, such as the OSCE, the OAS or the European Union, which have fielded some human rights observer missions.

The structures, mandates and *modus operandi* of these missions vary considerably. Some have a role of observing/monitoring and reporting to a central body, much in the traditional way of the UN human rights machinery. Others, including HRFOR, are getting closer and provide essential support to the "operational" conception of protection familiar to UNHCR.

Overall a positive interaction has developed between the human rights field missions and the UNHCR operations on the ground. The mandates and activities of these missions are relevant to UNHCR's work, and indeed UNHCR has been repeatedly calling for a more operational human rights machinery as a useful complement to its own protection efforts. At the same time, UNHCR must preserve its specificity as a humanitarian, operational protection agency. UNHCR's interest clearly resides in having co-operation based upon complementarity and respect for differences in mandates and approaches. The pros and cons of greater UNHCR involvement in human rights operations must be weighed carefully in each situation.

In order to avoid misunderstandings and enhance complementarity, the adoption of co-operation agreements between UNHCR and human rights field operations is encouraged. Their usefulness has been demonstrated in Rwanda, where they cover issues of division of labour/responsibilities and exchange of information. Headquarters is looking into the possibility of establishing a framework agreement, or memorandum of understanding, with the High Commissioner for Human Rights.

In addition, UNHCR will

- continue to promote comprehensive prevention approaches to potential population displacement, as exemplified by the 1996 CIS Conference;
- be proactive in discussing with the High Commissioner for Human Rights and UN Headquarters the need for new human rights field operations, whenever this may assist in the resolution of refugee problems;
- associate itself more closely with the preparation of human rights field missions to ensure that refugee/returnee issues are duly taken into consideration;
- at the outset of a mission, actively encourage the establishment of a clear division of labour among all actors involved, or likely to be involved, in capacity-building activities. These include UN organisations and agencies as well as regional organisations and NGO's;
- consider positively the possibility of seconding appropriate staff to the Office of the High Commissioner for Human Rights and other UN departments responsible for human rights missions. Reciprocal arrangements will also be explored. UNHCR must also engage systematically in joint training of UNHCR and human rights field staff;
- consider ways of contributing to human rights field missions with procurement, logistical

and/or fund-raising support.

THE FUTURE

Further guidance will be provided regularly on these issues, in the light of anticipated developments following the recent designation of a new High Commissioner for Human Rights and the presentation of the Secretary-General's UN reform plan, which highlights the need for human rights to be integrated in all principal United Nations activities and programmes. The policy delineated in this paper and the examples of its implementation which are provided are designed to enhance that goal and contribute to greater integration of efforts.

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Endnotes

/1 Articles 1(1)-(4), 55 (c) and 56 of the Charter of the United Nations 1945.

/2 In addition, the Division of International Protection will soon issue guidance on support to national human rights institutions.

/3 **The main treaty bodies and the conventions they monitor are:**

* Committee on the Rights of the Child: Convention on the Rights of the Child

* **Committee against Torture:** Convention against Torture

* **Committee on the Elimination of Discrimination against Women:**

Convention on the Elimination of All Forms of Discrimination against Women

* **Committee on the Elimination of Racial Discrimination:** Convention on the Elimination of All Forms of Racial Discrimination

* **Human Rights Committee**

International Covenant on Civil and Political Rights

* **Committee on Economic, Social and Cultural Rights:** International Covenant on Economic, Social and Cultural Rights

/4 For UNHCR positions on these issues see:

* Briefing Note on the International Criminal Court, DIP, 24 October 1996

* Address by the High Commissioner at the Holocaust Memorial Museum, Washington, 30 April 1997.