

Rights in Exile

JANUS-FACED HUMANITARIANISM

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Conclusions

This book has examined the ways in which the human rights of refugees have been violated by a variety of actors – most importantly, governments, UNHCR, and humanitarian organisations. As mentioned in the Preface, we did not set out to write about the injustices which refugees suffered before their flight. During our interviews we did collect sufficient material to write a broader ethnography of injustice, especially since our interviews with refugees normally began with the events in their countries of origin that had prompted them to leave. Nevertheless, we decided to adhere to our initial research questions and to focus on the treatment they received once they became refugees in Kenya and Uganda. It might thus appear to some that our criticism of humanitarian organisations and UNHCR is excessive, or even unfair, and that there is a risk of throwing the baby out with the bath water. Certainly, the emergence of a ‘humanitarian conscience’ is a positive moral development. Traditionally, individuals did not make donations for the benefit of strangers, and the recipients of charity were defined by the religious, social or ethnic identity of the donor (Hufton 2004). The fact that humanitarian organisations can raise funds from people prepared to donate to help strangers in distant places is to their credit. The failures and shortcomings of humanitarian organisations should not prompt a retrogressive development and undermine this humanitarian spirit with a sense of fatalistic powerlessness about our ability to make a difference. However, donors – individuals and institutional alike – should use their position of power to ensure that humanitarian organisations are accountable to their beneficiaries and fulfil their mandates; if they do not do this, their humanitarianism could end up being fruitless. Naiveté can undermine the humanitarian action, as Pierre Bezuchov’s artless philanthropy in Tolstoy’s *War and Peace* shows.¹

We have analysed the formation and implementation of refugee policy, highlighting the progressive sidelining of national authorities by UNHCR. Failures in the protection of refugees resulted from a complex combination of bad policies, bureaucratic dysfunctions, and ossified modi

operandi. All actors – host governments, donor countries, UNHCR, NGOs – bear some responsibility for the situation. But, if the repressive face of the state does not come as a surprise, the duplicity of humanitarian organisations, both UNHCR and NGOs, is astonishing. The face of these organisations that refugees encountered was often callous, sometimes cruel, and – nearly always – ineffectual. Their public face, however, was almost the opposite. They wanted to be seen as organisations consisting of compassionate cosmopolitans driven by ideals and values, and committed to helping refugees.

The public face was the one on display especially in countries in the ‘developed world’, when soliciting funds from the public or from governments. It also helped in dealings with the host government: NGOs posed as ‘civil society’, UNHCR as a member of the UN family and representative of the ‘international community’. ‘Civil society’ and ‘international community’ are loaded terms that come with a significant amount of soft power.² Refugees, on the other hand, whether in camps and settlements, or in Nairobi and Kampala, were more accustomed to the other face of humanitarians, and discovered that power exercised under a humanitarian guise was not so different from power in other guises. Against abuses of this power they found little remedy.

Failures in refugee protection started with rejections at the frontier, and continued with the refugee status-determination process in which murky arrangements between UNHCR and its implementing NGOs gave rise to procedures that were arbitrary to an extent that would be considered unacceptable in any legal process. NGOs – InterAid in Uganda and the Jesuit Refugee Service (JRS) in Kenya – were ‘screening’ asylum-seekers. The conflation of various kinds of assistance with the *legal* process of determining who was a refugee corrupted the status-determination process. By the late 1990s, both governments had refugee status-determination procedures in place, but UNHCR continued to play the pivotal role.

In both countries, assistance to refugees was premised on their segregation in camps and settlements. While integration, resettlement, and repatriation are based on the idea – whether in practice successful or not – that refugees have to become part of the surrounding social, political, and cultural environment, encampment *means* separation from the host community. The full catalogue of human rights – both civil and political, and economic, social, and cultural – were violated. This situation obtained not in the ‘camps of the very worst kind’ – like those for Rwandans in Tanzania and Zaire, to which some have ascribed the ‘revival of interest in the question of refugee camps’ (Crisp and Jacobsen 1998: 27) – but in camps that had been established for the better part of a decade (Kenya) and in settlements that were at times even flagged as ‘models’ of refugee assistance and protection (Uganda).

As we have shown throughout, camps and settlements constituted spaces in which the law of the host country virtually ceases to apply. Compounded by the absence of any form of independent and impartial adjudication, camps are spaces that are virtually *beyond the rule of law* and in which the life of refugees ends up being governed by a highly oppressive blend of rules laid down by the humanitarian agencies and the customary practices of the various refugee communities. In Kenya and Uganda, there were some camps and settlements in which respect for human rights could be described as better than others, and there were also occasional improvements. But respect for human rights cannot ultimately be reconciled with encampment: the violation of freedom of movement, which is the defining feature of encampment, was only the precursor to violations of all other human rights.

The impact of repressive state policies on the refugees' enjoyment of their rights should not be underestimated. As we have discussed, governments, especially the Kenyan one, were responsible for hundreds of cases of arbitrary arrest and detention. Both were to blame for unfair trials, for appalling conditions in detention, for some cases of *refoulement*, not to mention the failure to protect the security of refugees. They also failed to protect refugees from forced recruitment, by being either passive (Kenya) or active (Uganda) accomplices to rebel movements like the Sudan People's Liberation Army (SPLA). Nevertheless, it would be wrong to surmise that humanitarian agencies were doing a favour to refugees by exempting them from the application of the law of the often authoritarian states which host them. Even in a country like Kenya, with all its chronic institutional and judicial failures at the time of the research, injustice suffered by refugees outside camps at the hands of the Kenyan authorities was more 'remediable' than injustice perpetrated in camps: such indefensible violations of human rights as the imposition of collective punishment on tens of thousands of people were perpetrated against refugees in camps.

Further research is called for. In particular, cost-assessment studies of encampment are much needed. If, as we would hypothesise, camps are more expensive than interventions aimed at local integration and development, then there should be no obstacle to making the pursuit of the latter the primary objective of humanitarian assistance programmes for refugees. Politics is by nature dynamic (MacFarlane 2000: 5), and any political hostility to this solution could be surmounted through a concerted effort involving international and local actors. In Kenya and Uganda, however, UNHCR and humanitarian organisations have seemed more bent on encouraging such hostility than seeking to reduce it.

This book was not about solutions. We did not set out to collect data specifically on repatriation, integration, and resettlement, and it might seem odd that we discuss solutions only in our conclusion. Yet our research can offer important insights into the debate on solutions, since,

whichever solution is opted for, respect for the human rights of refugees has to be the essential prerequisite: this is a legal and moral imperative. Kenya and Uganda were paradigmatic, because for the vast majority of refugees none of the three 'durable solutions' – repatriation, integration, and resettlement – was available. They were trapped in the fourth 'durable (non) solution': 'the relief void ... the space of protracted care and maintenance programming', centred upon their encampment (Elder 1999b: 11; *see also* Jamal 2000; Crisp 2000b).

The adoption of the policy of encampment in Kenya and Uganda was not a 'local accident'. The urban policy document prepared by UNHCR headquarters in Geneva confirmed that encampment was UNHCR's policy of choice (UNHCR 1996c; 1997b). Two versions of this document exist, the first one so draconian that it had to be hastily withdrawn after criticism from the protection section. The second version reiterated, albeit in a slightly toned-down form, the overall assumption that assistance should be provided in camps and settlements, and that very little would be done for urban refugees. As was pointed out in a report by UNHCR's own evaluation unit (UNHCR 2001a), refugee protection took the back seat in these policy documents.

There is a close conceptual and practical link between UNHCR's focus on repatriation and its ineffectiveness as a protector of refugee rights. The issue of repatriation came to dominate refugee policy at every level and had an impact on refugee protection. Since the 1980s UNHCR has regarded repatriation as the preferred solution (Harrell-Bond 1989: 45; Loescher 2003: 10), an approach crystallised later with the high commissioner's announcement that the 1990s would be 'the decade of repatriation'. The call for repatriation has permeated UNHCR's work since then, and repatriating large numbers is regarded as an institutional achievement. By viewing countries of asylum as 'waiting rooms' before repatriation, UNHCR has virtually given up on integration, choosing instead to coerce refugees to the margins of host societies and to segregate them in camps. Even those within UNHCR who are aware of the fact that 'camps are not good' for refugees continue to support encampment as an intermediate stage before the 'durable solution' of repatriation can be effected.

Repatriation is premised on the notion that refugees have an eternal and visceral tie with the country of origin – 'home' – the place to which they will always 'belong'.³ This somewhat reactionary conception of unalterable identities and loyalties is in marked contrast with the idea of fluid and dynamic personal and collective identities that seems to underlie our 'era of globalisation'. To the extent that this focus on repatriation as the best solution creates or reinforces the refugees' resolve to go back rather than encourage their integration in the host country, it could also act as a factor that worsens conflicts.⁴ Leaving educated élites stranded in a refugee camp without work opportunities, while continuing to feed them

the dream of repatriation, can lead to the creation of the leadership of insurgent groups, since, as has been repeatedly argued (Douglas 1986; Richards 1996), intellectuals excluded from economic and political power often form the basis for radical and ever violent political movements.

Repatriation also appears as an anachronism if viewed in a broader historical context. In fact, 'Throughout history, most refugee movements have tended to result in permanent exile of the refugee population' (Rogge 1994: 21). What prompted UNHCR to sail against the stream of overwhelming historical precedents? Donor countries short-sightedly tend to view repatriation as a less costly and 'simpler' solution (Harrell-Bond 1989), although in most countries in the 'developed world' integration, even if somewhat undermined by the idea of temporary protection, remains the predominant approach to recognised refugees. However, the failure of the repatriation-based approach to refugees is becoming increasingly evident, and some authors are now talking about local integration as the 'forgotten solution' (Crisp and Jacobsen 1998; Jacobsen 2001).⁵

Integration is a complex socio-economic and cultural process that is the result of different variables, but a sine qua non for successful integration is that legal barriers that impede or obstruct it are removed. In neither Kenya nor Uganda were these barriers removed. Before 1991, Kenya's laissez-faire refugee policy meant that, despite the absence of a systematic piece of legislation, in most cases refugees could integrate. However, without a law that clearly spelt out their rights and obligations, the status of refugees was susceptible to sudden changes at the behest of the government, as what happened in the early 1990s showed. From then on, the policy centred on the encampment of refugees in remote areas, making local integration impossible for nearly all refugees. As detailed in Chapter 1, UNHCR was behind this shift in policy. It admitted that the issue of local integration was never 'seriously discussed with the government' in the 1990s (UNHCR 1997a: 20), although it was clear that for most groups of refugees (Sudanese, Somalis, Rwandans, and Burundians) an end to the conflict that had caused them to flee was not in sight. Rather than acting as a catalyst for re-introducing integration, at least after the end of the acute phase of the Somali emergency and once the numbers of refugees had begun to stabilise, UNHCR invested exclusively in the 'fourth solution' – that is, encampment.

It was not until 1998 that UNHCR finally brought up integration in discussions with the Kenyan government – one of the positive outcomes of changes in protection staff. The senior protection officer achieved some important results: the government was persuaded to proceed with the naturalisation of the pre-1991 caseload (UNHCR 1999f: 4.2). The imposition of taxes on the commercial activities undertaken by refugees in camps, which UNHCR had usually resisted, was agreed upon and even regarded as a positive step by the senior protection officer, and business

licences were granted to refugee traders in the camps. Significant as these results might be, there was still no concerted effort to put into practice a developmental model for assisting refugees as an alternative to camps. Such an effort would have involved a U-turn from established UNHCR policies and practices in assisting refugees, in fundraising, and in its relations with other UN agencies and with NGOs.

With the elections in 2002 and the change of government, Kenya had the best chance in a generation to radically reform its refugee policy and become a model for countries in the region. The publication in the Kenya Gazette of the Refugees Bill 2003 shows that the government is keen to review legislation and policy. With this renewed political will and as donors are better disposed towards Kenya than in the past, UNHCR and humanitarian organisations should take this opportunity to promote an integration-based approach to refugees.

In Uganda, the situation was different from Kenya because the government and UNHCR maintained that the settlements were part of a policy of refugee self-reliance, or self-sufficiency, and of integration (MoLG 1993). The self-reliance policy, however, far from allowing refugees to integrate in their host societies, kept them isolated and separated in areas that were often highly dangerous. It was based, as we have seen, on an outdated *dirigiste* economic approach and did not take into account the importance of certain rights – freedom of movement, right to work – for socio-economic integration. Self-reliance also gave UNHCR a justification for its programme cuts, arguing that, for refugees to achieve self-sufficiency and to integrate, they had to free themselves from the ‘dependency syndrome’ (ignoring though that, even if such a syndrome ever existed, it was entirely iatrogenic). UNHCR pulled out of certain settlements expecting the local authorities, which it had neglected and even undermined for years, to now take over its role. Self-reliance thus became a paradox: a concept intended to improve the situation of refugees and the enjoyment of their rights became the basis for a strategy that ended up worsening their plight.

In Uganda, UNHCR did not use the debate on the adoption of a new refugee law to promote local integration as a durable solution for refugees. In some respects, its comments on draft bills were heavy-handed. On the provision in the Ugandan legislation on camps, for example, UNHCR Geneva recommended, ‘Perhaps under this section there should be added positive powers to establish or designate specific areas as transit centres, camps or settlements where refugees will be required to stay or settle rather than just including a provision that empowers the Commissioner to specify certain areas out-of-bounds for certain refugees’ (UNHCR 1996j). Therefore, not only was it not considered appropriate to raise objections to encampment, it was even suggested that certain areas be designated for refugees by statute, like permanent ‘mini-bantustans’ for refugees.

Respect for the human rights of refugees can only be improved once encampment is abandoned as the policy of choice and integration is again pursued as the best solution. Integration is after all the solution that historically has been the predominant and probably the most successful one. UNHCR could assist refugees in a way that would benefit hosts and persuade states of the worth of this approach rather than encourage them, as it does at present, to adopt encampment and the establishment of separate health and welfare services for refugees.

The pursuit of integration does, of course, pose serious challenges. Nevertheless, integration remains the best solution, if only by a process of elimination of the others. Only small numbers of refugees can be resettled, and, difficult as they may seem, the challenges of integration almost pale in comparison with those posed by repatriation. The second half of the *Odyssey* is often forgotten: once he arrives home, a new series of violent vicissitudes begins for Ulysses. Similarly, for refugees, reintegration into their countries of origin is likely to be arduous and often more difficult than integration into countries of asylum (Allen 1988; Arhin 1994; Harrell-Bond 1989; Majodina 1995, 1998; Pottier 1999; Rogge 1994; van Hear 1994; Zetter 1988, 1992, 1999).⁶ Furthermore, the timing of repatriation has the disadvantage of being beyond the control of UNHCR and humanitarian organisations: no one can claim sufficient prescience as to be able to predict when a conflict will end and when conditions for return will be acceptable. Pacifying countries and preventing conflicts is beyond the statutory and practical limits of UNHCR;⁷ persuading host governments to integrate refugees, and using relief resources as a lever, is not.

That, of all people, those who are uprooted should be relegated to camps at the margins of society and be denied their freedom of movement is a tragic irony. Hopefully, in a not-so-distant future, confining refugees in camps will be perceived for what it really is: a breach of the most fundamental human rights, a cruel and dehumanising absurdity which neither economic nor political factors can justify. The dysfunctions and misperceptions that led to the adoption and implementation of this policy by UNHCR and humanitarian organisations will be viewed as a tragic accident of history. Refugee camps will then join the array of total institutions (mental asylums, internment camps, Bantustans) premised on the segregation of human beings that human kind has learnt to regard as aberrant.

Notes

1. Having decided to fund schools and hospitals for the farmers working on his land, he was not prepared to do any serious follow-up. He visited the land for only a very short time, congratulating himself for all his good charity. His vanity blinded him to the reality of deception, diversion, and corruption, and

to the fact that the vast majority of 'his' farmers were no better as a result of his charity.

2. Soft power is a concept developed in the context of international relations to explain the ability to influence behaviour by cooptation rather than coercion (Nye 2002: 8ff.). For the UN and for humanitarian organisations, which lack the military and economic means of the most powerful states, such soft power based on the values they profess is crucial and helps them shape the political agenda.
3. UNHCR chose as one of its slogans one of the very few rather anodyne lines – one could say even a cliché – to be written by Aeschylus: 'There is no place like home'. Laura Hammond has observed the implication of the construction of this ideal home and of the terminology that is normally used to describe repatriation (reintegration, return, re-assimilation, readaptation, and so on): 'returnees should seek to move backward in time, to recapture a quality of life that they are assumed to have enjoyed before becoming refugees or that those who remained behind currently enjoy. Because post-repatriation life, or "home" in the discourse of repatriation, is rooted in the country of origin it is considered by outsiders to be necessarily better than life in exile' (Hammond 1999: 230).
4. Malkki has noted that Burundian refugees who lived in the camps in Tanzania had an 'unflinching belief in the temporariness of exile' (Malkki 1995: 228, 228–31). See also her postscript on 'return to genocide' (ibid.: 259 ff.).
5. On the other hand, the insistence that local integration remains the exception, to be pursued only in 'protracted refugee situations', is ill-advised: how could UNHCR know in advance if a refugee situation will become 'protracted' or not?
6. As Dolan has shown (1999: 106–107), lack of integration can even have the effect of holding refugees back in their countries of asylum, even when they desire to repatriate: disruptions in employment and vulnerability ensuing from lack of status meant that many Mozambicans in South Africa were not able to accumulate the minimum capital that they thought necessary to start again in Mozambique.
7. The cross-border operations in Somalia in the first half of the 1990s (Waldron and Hasci 1995) and the ongoing Operation Lifeline Sudan (OLS) are examples. Studies of the impact that such programmes have on potential refugees by interfering with their right to flee and to seek asylum abroad are needed.