

Rights-based Policies and Forced Migrants

Summary of Key Issues

*This briefing aims to show why it is important for forced migration policy and practice to shift the balance from settlement-based 'relief' and welfare oriented (or needs-based) efforts towards more rights-based 'development'. This entails treating individuals as responsible actors who have rights and are capable of making decisions about their own lives in the course of forced migration. Unlike needs-based approaches, rights-based approaches carry an element of entitlement. Rights-based approaches also point to a 'duty-bearer' – someone who has a responsibility to ensure that the rights are met. This approach, then, readily serves as a check against the violation of basic rights of both **refugees**, who cross international borders, and of those **internally displaced** due to conflict, civil war or development projects (referred to as **oustees**), who remain in their country of origin.*

Rights-Based vs. Needs-Based Approaches

Policies for refugees and internally displaced people have different institutional contexts and are governed by different legal regimes. These differences aside, policies and programmes addressing both refugee and internally displaced people have largely focused on providing relief or charity. Traditionally at least these approaches rarely go beyond the provision of basic needs, limiting their efforts to physical protection at best.

Refugee and internally displaced (oustees) policy in the South has been largely driven by the demands of donors, governments and humanitarian organisations. The pressure to see results is overwhelming and is focussed on the satisfaction of immediate needs. This has led to the adoption of a confinement strategy, keeping large numbers of refugees in settlements or camps, and dependent on relief. These encampment strategies view refugees as a 'problem' and are aimed at satisfying their 'immediate needs'. It must be noted, however, that the majority of refugees are not in camps, but are self-settled or urban refugees, who then receive little or no assistance as they are outside the 'system'.

By contrast, a rights-based approach would focus on the integration of two kinds of rights: civil and political rights; and economic, social and cultural rights, as set out in international human rights conventions and covenants. In the past, policy makers tended to focus more on



Focusing on immediate needs leads to camps

the former and viewed the latter as 'second generation' rights. But now it is widely believed that the two are indivisible and each is necessary for the realization of the other.

Are Needs Met in Needs-Based Approaches?

Even though refugees can be provided with numerous services to meet their needs, they can remain economically isolated and therefore, as suggested in refugee testimonials, have 'hardly any rights'. Moreover, it has long been known that focusing assistance on camps can ignore the needs of the large numbers of refugees, internally displaced or oustees who are self-settled or who have chosen to exclude themselves from settlement programmes.

Forced Displacement Due to 'Development'

Ousteers are internally displaced people who have been forcibly relocated for the sake of a development project. While international solidarity towards refugees began to be formulated in 1951, it was only in 1980 that the World Bank came up with its first policy on involuntary settlement, despite massive displacement processes in the 1950s and 1960s. Some countries, such as India, are only now declaring official resettlement and rehabilitation policies.

Many studies and reports have documented that the interests of 'development oustees' have rarely been taken into consideration when infrastructure projects are built. The history of forced displacement thus has been characterised by trauma, psycho-social loss, impoverishment, a reduction in well-being and ill-health.

Treating Individuals as Responsible Actors

An emerging literature is now acknowledging the need to recognise recipient rights while simultaneously taking a deeper look at the individual's situation, treating individuals as responsible actors, and creating a legitimate space for involving refugees and oustees in decision making processes. Camp-based programs are particularly blameworthy. They often fail to recognise the resources which the refugees themselves bring, and often assume that the needs of displaced populations are uniform.

Box 1: Rights for Palestinian Refugees in Lebanon Camps

According to 2006 UN statistics, 214,093 Palestinian refugees live in 12 camps in Lebanon, and another 191,332 refugees live outside camps. Palestinians make up 10% of the population in Lebanon, where their right to work is severely curtailed. Access is only granted to low skilled occupations such as construction or cleaning. In June 2005 Palestinians were granted access to various other occupations if they obtain a work permit. Amnesty International points out that as it is unclear how many have been able to do this, it may have had only a 'cosmetic' effect. Palestinians are still barred from all professional roles. Refugees also have heavily restricted rights to buy and inherit property, which means that the poorest, who cannot afford rent elsewhere, are virtually trapped in overcrowded camps. So, they are also without the right to adequate housing. In a Migration DRC working paper, Jaber Suleiman writes about the prohibition against re-building housing in camps destroyed during the Lebanese civil war. Furthermore, while struggling for the realisation of rights in Lebanon, exiled Palestinians are struggling for what many see as the most important right - the right to return to their homeland.

http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf

Self-Settlement, Coping Strategies, and the Capacity to Seek Rights

Social networks and ties play a key role in realising rights in local contexts. Reliance on social interconnectedness often interacts with income-generation coping mechanisms. As Katarzyna Grabska describes in a Migration DRC paper, refugees in Egypt are self-settled in urban settings, as there are no camps specifically for refugees. Some are coping through a social network of friends and family in other countries who send remittances. And, many have formed community-based organisations or associations which take up collections to help the most economically vulnerable and to run services, such as day care and literacy classes, which would otherwise not be available.

When developing policies for refugee self-sufficiency, it is important to look at what strategies for self-sufficiency are already in place. Further, it is worth noting that when refugees take advantage of the situations they are placed in, they are not exhibiting dependency so much as a capacity for changing their livelihood strategies.

Resistance and Rights

The last decades have been characterised by vibrant resistance movements against forced displacement. Some examples include the anti-dam movements in Pak Mun (Thailand), Narmada (India), James Bay (Canada), Alto Rio Doce (Brazil) and Berg River (South Africa) as well as recent refugee protests in Cairo (Egypt) and Ghana. These resistance movements are united by overarching aims which include resistance to displacement, settlement programmes and the 'development' rationales underlying projects that may be displacing them. Another common feature is the perceived sense of lack of control that displaced people have over determining their lifeworlds and livelihoods.

Thus, as Oliver-Smith noted in 1991, resistance is largely about the 'recognition and restoration' of rights

- One form is the recognition of the risks that accompany displacement (e.g. the risk of losing one's land, cultural identity, job, livelihoods and so on). Clearly, those who potentially stand to risk more may be the most vocal in their resistance.
- Resistance also takes place due to exclusion from categories/labels (such as 'project affected person') or compensation packages that would help restore the rights and livelihoods of displaced people. It is also now well known that conventional compensation packages are very inadequate in capturing loss since they rely on cost-benefit analyses and balance sheet approaches which are silent about the hidden costs of forced displacement, and intangible social and cultural issues.

The success of such high-profile resistance activities depends on transnational alliances of NGOs, campaigns and movements. Here international human rights standards as well as the policy directives of international organisations such as the International Labour Organisation and the World Bank are evoked and adapted to grant salience to local struggles and campaigns.

Competing Rights

Donor and official resistance to the principles of rights often stems from the fact that competing rights claims exist due to a lack of clarity around:

- who has the power to determine rights
- who has rights
- whose rights are at risk
- who is to be the 'duty-bearer' to protect and ensure the different rights described above are met

The violation of oustee rights, for example, is often legitimized in the interests of the rights of the majority who are supposed to benefit from development projects. Often national governments complain of resource constraints that prevent them from realizing rights. It is also common to disregard the rights of refugees as being non-citizens. This, though, is largely due to a marked lack of political will to take the rights of marginalized displaced groups seriously.

Box 2: World Commission on Dams: Risks and Rights

One significant effort to highlight crucial issues around rights of displaced people is the 'risks and rights' approach of the World Commission on Dams developed in its 2000 report as a tool for decision-making. This approach advocates the recognition of rights and the assessment of risks (in particular rights at risk). The rights include constitutional rights, customary rights, rights to livelihoods, legislated rights and rights to property. Unlike conventional balance sheet approaches, it also seeks to give more voice to those who face the greatest risk and whose rights are the most negatively affected.

Information and Rights

In order to facilitate their involvement and recognise their capabilities as assets, refugees, internally displaced and oustees alike must themselves have a good understanding of what rights they are entitled to, and have credible knowledge of the situation they are in. Though it may seem improbable, it is often the case that oustees or refugees do not have complete knowledge of the circumstances around them. Information (such as impending submergence schedules or eviction dates associated with dam based displacement), whether purposely or unintentionally withheld, can be very disempowering. It can, therefore, keep a displaced community bound to outside assistance. In Nagarnaar, India, the indigenous people have good knowledge of their constitutional rights. This, however, is not the case in Burma, particularly in the state of Arakan. These refugees have long demanded adequate information about their homeland, but strict



All displaced people need a good understanding of their rights

government policies have denied them this right. Furthermore, there is a real need for adequate legal acumen vis-à-vis refugee and oustee issues, and adequate access for all to that legal framework.

Policy Recommendations

This *awareness of rights*, however, needs to be complimented by adequate policy and institutional mechanisms to *deliver and enforce rights*. It is also vital that refugees and internally displaced people are included in decision making processes, as rights-based approaches can be top down if implemented without taking into consideration the views and rights priorities of the displaced themselves.

The legal definitions of rights and entitlements are pivotal to how displacement and resettlement takes place since the very decision to displace people violates people's right to self-determination. Refugee/oustee rights need to be safeguarded through the mechanisms of law. However, of course, the law itself is janus-faced, since it can both violate as well as protect different rights.

In refugee situations the host government often has difficulty providing full rights to its own citizens, much less to refugees in its boundaries. Often, therefore, socio-economic rights for refugees are seen as progressive and only provided according to the state of development in the host country. This, however, sets a dangerous precedent of denying and violating rights – justified on the basis of the host country's development status. Often refugees can and do contribute to the development process and economy of the host country. But, special treatment for refugees is also problematic, creating tension with host populations. These considerations must be taken into account in policy.

Specific policy recommendations from this briefing include the following:

- Focus policy on treating individuals as agents responsible for their lives and livelihoods. What rights do refugees want? Do they have legitimate space in decision-making processes? What skills and knowledge do they bring?
- Maintain accountability for international human rights standards as well as for existing national rights legislation. Rights and the ability to realise rights become meaningful when a proper system of justice and locus of accountability is in place.
- Clearly identify 'duty-bearers' whose responsibility it is to ensure the realization of rights.
- Inform/facilitate rights-holders' knowledge of their rights. Information on rights, as well as rights on information are key to refugees and oustees successfully claiming their rights.

- Put in place structures that allow refugees/oustees adequate access to legal recourse as well as support in understanding legal frameworks.
- Use a rights and risks analysis, which especially looks at rights at risk. As the World Commission on Dams (see Box 2) has demonstrated, this is more favourable than a balance sheet approach.
- Ensure policy is sensitive to 'intangible' social and cultural issues in displacement.
- Bear in mind that rights are often competing. Whose rights are to be prioritized? Are any group's rights currently being implicitly prioritized over another's? Which groups have the power to make their rights count? Be sensitive to power relations in forced migration policy and practice.
- Further consider that refugees' rights often cause friction with hosts. Yet withholding rights in order to match the host country's level of development is also problematic and sets a precedent for the violation of rights.
- Ensure rights-based approaches are participatory and bottom-up, and not top-down as is characteristic of many needs-based approaches.

Conclusion on Rights Policy

It is easy to coopt the language of rights, without making rights real. Many existing policies of 'forced settlement', whether implicit or explicit, often violate the right of oustees and refugees to determine their own circumstance as well as their rights to socio-economic and civil-political freedoms.

A rights-based approach, however, should include accountability and culpability, which a needs-based approach lacks. An institutional mechanism to enforce rights includes both appropriate legislation and a working bureaucracy for implementation. Both need to have accountability mechanisms and the ability to address rights claims and grievances. 'Duty-bearers' must be clearly identified, otherwise it is highly likely that no one will take responsibility.

Key Readings

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Development Research Centre on Migration, Globalisation and Poverty

The Migration DRC aims to promote new policy approaches that will help to maximize the potential benefits of migration for poor people, whilst minimising its risks and costs. It is undertaking a programme of research, capacity-building, training and promotion of dialogue to provide the strong evidential and conceptual base needed for such new policy approaches. This knowledge base will also be shared with poor migrants, contributing both directly and indirectly to the elimination of poverty.

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